

Independent Contractor Agreement with Deed Poll

Between:

Whizdom Pty Ltd (ACN 52 119 884 945) of Unit 7, 28-34 Thynne Street, Bruce ACT 2617 ("**Firm**")

And

Enter contractor company name (ACN **insert ACN**) of **Company Address** ("**Contractor**")

(together, "**Parties**")

Background

- A. The Firm is an Australian company in the business of providing on-hire contracting services and recruitment management services and holds a Labour Hire Licence in the ACT, QLD and VIC as required.
- B. The Firm has made or proposes to make an agreement with a Client for the supply of services and wishes to obtain the Contractor's services to enable it to conduct its business.
- C. The Contractor conducts a business and is able to supply the Services through the Key Person(s) on the terms and conditions set out in this Agreement.
- D. This Agreement is made between the Parties on **[insert Date]**.

1 DEFINITIONS AND INTERPRETATION

See Schedule 1

2 TERM

- 2.1 This Agreement will be for a specified term beginning on the Commencement Date set out in Schedule 2 and continuing until the Expiry Date, unless otherwise varied or terminated earlier in accordance with this Agreement in which case the Agreement will end on the Termination Date ("**Service Period**").
- 2.2 Should the Contractor continue to supply Services after the Expiry Date, the terms of this Agreement will continue to apply (except for this clause 2.2), until otherwise varied or terminated in accordance with this Agreement.

3 ENGAGEMENT AND WARRANTY

- 3.1 During the Service Period, the Contractor will procure the Key Person(s) to apply their skills and expertise to the supply of the Services in relation to the Client's business.
- 3.2 The Contractor must procure that all the Key Person(s) execute and provide to the Firm a Deed Poll in the form attached at Schedule 3 prior to a Key Person commencing to provide Services to a Client.
- 3.3 The Contractor undertakes that:
- (a) it is able to supply the Services through the Key Person(s) and to perform and comply with the functions, obligations and responsibilities set out in this Agreement and, in doing so, the Contractor and any Key Person are not breaching any other agreement, contract or obligation owed to a third party; and
 - (b) all representations made by the Contractor, including as to a Key Person's qualifications and experience, are true and correct, and the Contractor has not failed to disclose any matter which may have influenced the Firm's decision as whether or not to engage, or continue to engage, the Contractor.
- 3.4 The Contractor warrants that there are no contracts, restrictions or other matters that the Contractor has not disclosed to the Firm, which would interfere with:
- (a) the Contractor's ability to discharge its obligations under this Agreement or and Engagement Offer; or
 - (b) the ability of the Firm to recover the payment of a fee payable by the Client in the event that the Contractor or Key Person is subsequently engaged by the Client or a third party otherwise than through the Firm.

4 INDEPENDENT CONTRACTOR RELATIONSHIP

- 4.1 The Parties agree that the relationship between the Firm and the Contractor is and shall be for all purposes an independent contractor relationship. Neither this Agreement, nor anything

contained in it or otherwise implied, shall constitute any other relationship or any offer or contract of employment.

- 4.2 Neither the Contractor nor any Key Person is or will be in a partnership or joint venture with the Firm or employees of the Firm.
- 4.3 The Contractor will have no claim against the Firm in respect of any payments or benefits which the Firm's contractors or employees receive, or may be entitled to receive, including (without limitation) fees, salary or wages, leave entitlements, workers' compensation coverage or superannuation. The Contractor shall be solely responsible for providing any and all employment related benefits to the Key Person.
- 4.4 Neither the Contractor nor any Key Person shall have authority to bind the Firm in any manner including (but not limited to) contracting with third parties without the Firm's specific written consent.

5 SUPPLY OF SERVICES TO OTHERS

5.1 General

- (a) Subject to clause 19 (Restraint), this Agreement does not prevent or restrict the Contractor supplying services to any other person, provided that the supply of such services does not adversely affect the Contractor's ability to diligently and professionally provide the Services under this Agreement.

5.2 Conflict of interest

- (a) The Contractor represents that:
- (i) there currently exists no conflict of interest, real or apparent, between the Services and any other work performed by the Contractor or any Key Person; and
 - (ii) complete and total disclosure of any conflict of interest, real or apparent, has been made to the Firm prior to the signing of this Agreement.
- (b) If the Contractor supplies services to a person other than the Firm, and a conflict, or potential conflict, of interest arises between the Contractor's interests and those of the Firm or the Client, then the Contractor must immediately disclose the conflict, or potential conflict, of interest to the Firm and must resolve the conflict of interest as required by the Firm.

5.3 Right to delegate

- (a) The Contractor may delegate to another person those aspects of the Services which do not require the Contractor's specialist skills and knowledge, subject to the prior written consent of the Firm, which may be given subject to such reasonable conditions as the Firm may require and which will not be unreasonably withheld.
- (b) If the Contractor wishes to replace the Key Person or provide an additional Key Person to also supply the Services under this Agreement, the Contractor will:

- (i) obtain the prior written consent of the Firm, which must not be unreasonably withheld; and
- (ii) ensure that the replacement Key Person or additional Key Person (as the case may be) executes a Deed Poll in the form attached as Schedule 3 prior to that Key Person commencing to provide Services to a Client; and
- (iii) provide an updated Engagement Offer identifying the replacement or additional Key Person and any other change in details, as agreed with the Firm, for execution by the parties as a variation to this Agreement in accordance with clause 22.

6 CONTRACTOR'S OBLIGATIONS

6.1 The Contractor agrees:

- (a) to ensure that that the Key Person attends at the location identified in Schedule 2 and at any other reasonable location as may be instructed by the Firm or the Client from time to time;
- (b) to supply the Services set out in in Schedule 2 and in any subsequent Engagement Offer and all other reasonable services instructed by the Firm or the Client with due care, skill, timeliness and diligence;
- (c) to remedy or meet the costs of remedying any work or product that does not meet with the reasonable satisfaction of the Client by reason that the Services have not been supplied in accordance with sub clause 6.1(b) above;
- (d) to comply with all lawful and reasonable instructions issued by the Firm and/or the Client from time to time;
- (e) to comply, and ensure that each Key Person complies, with all policies and procedures (including any codes of conduct) as instructed by the Firm and/or the Client from time to time (provided that where there is any inconsistency between the policies and procedures of the Firm and those of the Client, the Firm's policies and procedures will apply to the extent of the inconsistency unless otherwise stated by the Firm);
- (f) to advise the Firm immediately if the Contractor's Australian Business Number ("ABN") changes or is cancelled;
- (g) to advise the Firm as soon as possible if, for any reason whatsoever, the Contractor becomes unable to supply any or all of the Services;
- (h) without limiting clause 17.5, to duly account for all property of the Firm or the Client that is or was in the use, possession or control of the Contractor in connection with or resulting from providing the Services; and
- (i) to contact the Firm immediately if:
 - (i) the Client requests the Contractor to supply the Services or any other services at a place that is not set out in Schedule 2; or

- (ii) the Contractor believes the safety of the Key Person is at risk whilst engaged on an assignment.

6.2 The Contractor will provide such reports about the supply of the Services as the Firm may reasonably require to the Firm's representative named in Schedule 2 or to any other representative named by the Firm from time to time.

6.3 The Contractor will co-operate fully and in good faith with any contractor management firm or other third party (i.e., external payroll provider), which the Firm has appointed to perform any of the Firm's powers, tasks and responsibilities under this Agreement.

7 INDEMNITIES

7.1 The Contractor is liable for and indemnifies the Firm for any loss, damage or costs (including reasonable legal costs on a solicitor and own client basis) suffered or liabilities incurred directly or indirectly by the Firm, the Contractor or the Key Person as a consequence of any act or omission by the Contractor or the Key Person in the course of supplying the Services, including but not limited to:

- (a) a breach by the Contractor of this Agreement; including but not limited to a breach of the Contractor's obligations under clause 18 of this Agreement;
- (b) any negligent, willful or unlawful acts or omissions of the Contractor or the Key Person;
- (c) any personal injury, death or property damage caused by the acts or omissions of the Contractor or the Key Person;
- (d) the Services infringing another person's IP Rights; or
- (e) any breach of any obligation of confidence or privacy by the Contractor or the Key Person.

7.2 It is not necessary for the Firm to incur a cost or expense or make payment before enforcing a right of indemnity conferred by clause 7.1.

7.3 The liability of the Contractor for loss or damage to the Firm will be reduced proportionately to the extent of the Firm's negligent or wilful act or omission, or failure to comply with its obligations under this Agreement.

8 PAYMENT FOR SERVICES & INVOICING

8.1 The Contractor agrees that any payment made in accordance with this Agreement shall be based solely on the Services supplied, charged at an agreed rate, but excluding time engaged whilst remedying defective or unsatisfactory work for which the Contractor is responsible. The

Contractor shall not be entitled to any other benefits, payments or entitlements other than those expressly contemplated by this Agreement.

- 8.2 Provided the Contractor complies with this Agreement, as consideration for properly supplying the Services, the service fee payable by the Firm to the Contractor is set out in the set out in Schedule 2 ("**Service Fees**").
- 8.3 Before the Firm will be required to pay to the Contractor any Fees or make any other payment to or on behalf of the Contractor under this Agreement, the Contractor must:
- (a) provide the Firm with a tax invoice relating to the Services in accordance with the terms of this Agreement ("Invoice");
 - (i) where you have completed an RCTI agreement with the Firm, no tax invoice is required; and
 - (b) provide the Firm with a timesheet approved by the relevant Client; or
 - (c) ensure that the relevant Client has confirmed that the Services have been supplied by the Contractor to the Client's satisfaction.
- 8.4 The Invoice must contain complete, correct and clear explanations, details and descriptions of the Services supplied, the hours, time and expenses incurred and spent in properly supplying the Services, and other relevant and applicable information required by the Firm. Details pertaining to the times at/within which the Invoice shall be rendered and paid are as set out in Schedule 2.
- 8.5 Deductions and set-offs may be made by the Firm from the Service Fees for (without limitation):
- (a) taxes;
 - (b) failure to return Firm property;
 - (c) over payment of the Service Fees; or
 - (d) for any other amounts owed to the Firm.
- 8.6 Save as may be agreed in writing between the Parties, the Contractor is responsible for all expenses that the Contractor incurs in supplying the Services.
- 8.7 Payment of any Invoice to the Contractor does not infer unconditional acceptance of the Services and does not waive the Firm's or Client's rights to seek redress or otherwise should the Contractor or the Services be found to have breached or not complied with this Agreement.

9 GST

9.1 Interpretation

In this clause 9, a word or expression defined in the GST Act which is not otherwise defined in this Agreement has the meaning given to it in that Act.

9.2 Consideration GST exclusive

The Parties agree that all consideration provided under this Agreement is exclusive of GST unless it is specifically expressed to be GST inclusive. If a party ("**Supplier**") makes a taxable supply to another party ("**Recipient**") under or in connection with this Agreement in respect of which GST is payable, the Recipient must pay the Supplier an additional amount equal to the GST payable on the supply (unless the consideration for the taxable supply was specified to include GST). The additional amount must be paid by the Recipient by the later of:

- (a) the date when any consideration for the taxable supply is first paid or provided; and
- (b) the date when the Supplier issues a tax invoice to the Recipient.

9.3 Adjustment events

If an adjustment event varies the amount of GST payable by a Supplier under this Agreement, the Supplier must adjust the amount payable by the Recipient to take account of the adjustment event. Any resulting payment must be paid by the Supplier to the Recipient, or the Recipient to the Supplier (as appropriate) within 10 Business Days of the Supplier becoming aware of the adjustment event. Any payment under this clause is deemed to be an increase or decrease of the additional amount payable under clause 9.2.

9.4 Reimbursements

Subject to an express provision in this Agreement to the contrary, any payment, reimbursement or indemnity required to be made to a party ("**Payee**") under this Agreement which is calculated by reference to an amount paid or payable by the Payee to a third party ("**Outgoing**") will be calculated by reference to that Outgoing inclusive of GST, less the amount of any input tax credit which the Payee is entitled to claim on that Outgoing.

9.5 Payments calculated by reference to revenue

Subject to an express provision in this Agreement to the contrary, any payment, or amount required to be made under this Agreement which is calculated by reference to sales, revenue, income or other amounts received or receivable from a third party ("**Revenue**") will be calculated by reference to that Revenue exclusive of GST.

9.6 This clause 9 will survive the termination of this Agreement by any party.

10 ENTITLEMENT, TAXES AND OTHER CHARGES

10.1 In respect of all Key Persons, the Contractor must:

- (a) pay all remuneration and other employment related entitlements, including termination payments, and make superannuation contributions;
- (b) if applicable, pay payroll tax to the relevant statutory authority as required by law;
- (c) deduct and remit PAYG income tax instalments; and
- (d) pay fringe benefits tax and all other statutory charges or taxes,

as required by law in connection with this Agreement and supply of the Services.

- 10.2 The Contractor must pay all other taxes and levies and maintain all registrations, licences and insurances required by law in connection with this Agreement and supply of the Services.
- 10.3 The Contractor warrants that they have an Australian Business Number (“**ABN**”) under the GST Act and has provided the applicable ABN to the Firm and must:
- (a) continue to have an ABN during the term of this Agreement;
 - (b) quote its ABN on each invoice it provides to the Firm;
 - (c) advise the Firm in writing immediately if its ABN changes or its ABN is cancelled; and
 - (d) indemnify the Firm for any loss or damage suffered or any tax, charge, fine, penalty or other impost which the Firm incurs or becomes liable to pay, as a result of its breach of any of the warranties contained in this clause.

11 INSURANCE

- 11.1 The Contractor must (at its own expense) maintain in full force and effect at all times during the Service Period:
- (a) workers' compensation insurance in respect of the Key Person in the form and amount as required by the applicable legislation in force;
 - (b) public liability insurance for a minimum amount of **\$20 million** on a single occurrence basis; and
 - (c) professional indemnity insurance for a minimum amount of **\$10 million** on a single occurrence basis.
- 11.2 The insurances referred to in clause 11.1 above must:
- (a) insure against any Claim arising from the performance of the Contractor's obligations under this Agreement; and
 - (b) cover each entity in the Group (if applicable) for their respective rights and interests.
- 11.3 The Contractor must provide the Firm certificates of currency and the terms of the insurance policies referred to in clause 11.1 above:
- (a) before starting to perform the Services; and
 - (b) within 48 hours of a written request by the Firm.
- 11.4 If a Client requests the Contractor or Key Person to use the Client's vehicle, handle cheques, cash, valuables, documentation or equipment, whether on or off the Client's premises, the Contractor will advise the Firm immediately in writing to allow the Firm to verify that appropriate insurance arrangements have been made by the Client. If the Contractor fails to advise the

Firm, the Contractor acknowledges and agrees that the Contractor may be responsible for any damage or loss incurred or suffered.

- 11.5 The Contractor will immediately notify the Firm of an event that is likely to give rise to a claim under an insurance policy or other similar arrangement of the Contractor in connection with the Services and will ensure that the Firm is kept fully informed of any subsequent actions and developments concerning the relevant claim.
- 11.6 If the Contractor fails to take out and maintain an insurance policy required under this clause, the Firm has the right to:
- (a) take out and maintain the insurance policy;
 - (b) set off against any sum payable by the Firm to the Contractor (including the Service Fees), all reasonable costs and expenses incurred by the Firm in taking out and maintaining that policy; and
 - (c) refuse any claim by the Firm for payment (including payment of the Service Fees), until the Contractor complies with the Contractor's obligations under clause 11.1.

12 WORK HEALTH & SAFETY

- 12.1 The Contractor must, to the extent that is reasonably practicable, comply with all of its work health and safety obligations at law, including by:
- (a) taking all practicable steps to ensure the health and safety of the Key Person and any other person over whom it has the capacity to exercise control;
 - (b) ensuring that the health and safety of other persons is not put at risk from work carried out as part of the Contractor's conduct of its business or undertaking;
 - (c) having in place a Work Health and Safety policy and ensuring that Key Persons are familiar with its contents;
 - (d) ensuring Key Persons are properly trained and supervised;
 - (e) complying with all lawful and reasonable instructions of the Firm and the Client with regard to health and safety, including complying with the Client's work health and safety policies; and
 - (f) fully co-operating with the Firm and the Client in any action to maintain a working environment which is safe and without risk to health.
- 12.2 Anti-discrimination
- (a) The Contractor must comply with all relevant anti-discrimination laws to provide an environment free of discrimination, sexual harassment and/or other forms of harassment at any premises or at any location at which the Contractor provides the Services.

13 CONFIDENTIAL INFORMATION

13.1 The Contractor acknowledges that:

- (a) Confidential Information is confidential to the Firm, Group and/or Client (as the case may be); and
- (b) through its engagement with the Firm and the Key Person's supply of the Services, it may obtain or become aware of Confidential Information.

13.2 The Contractor will, and will ensure that all the Key Persons will, whether during the Service Period and after the Termination Date:

- (a) not disclose, use or attempt to use any Confidential Information obtained or received by the Contractor or Key Person, other than is necessary for the proper performance of the obligations pursuant to this Agreement;
- (b) as requested, return all Confidential Information to the Firm or Client (as the case may be) together with any other property in its or any Key Person's possession or control as a consequence of the Services; and
- (c) not keep copies in any form of any of the Firm's, Groups or Client's Confidential Information or other records including, without limitation, computer programs, data and manuals.

13.3 Despite clause 13.2, the Contractor may disclose Confidential Information required by law to be disclosed or with the written consent of the Firm, Group or the Client as the case maybe.

13.4 The Contractor will take all reasonable measures to protect Confidential Information obtained by the Contractor and any Key Person in the course of, or in connection with, the supply of the Services from use or disclosure otherwise than in accordance with the consent of the person from whom it was obtained.

13.5 The Contractor shall indemnify and keep indemnified the Firm in respect of any loss, damage, injury, claim, demand or allegation relating to, or arising out of any breach by the Contractor or the Key Person of any obligation under clauses 13 and 12.2.

13.6 This clause 13 will survive the termination of this Agreement by any party.

14 PRIVACY

14.1 The Contractor must ensure each Key Person provides their consent to:

- (a) the Firm and any Group Member (if applicable) holding and processing personal information relating to them for legal, personnel, administrative and management purposes and in particular the processing of any "sensitive information" as defined in the Privacy Act in relation to him/her; and
- (b) the Firm transferring their personal information to shareholders, any Group Member or any third party or payroll or administrative provider (under an outsourcing arrangement) without breaching their rights under the Privacy Act.

- 14.2 The Contractor agrees to comply, and must ensure each Key Person complies, with all applicable policies and privacy laws including (but not limited to) the Privacy Act in respect of any personal or sensitive information which is disclosed to, or is collected or accessed by him/her in the course of supplying the Services.
- 14.3 The Contractor agrees that, if called upon to do so in accordance with this Agreement (whether during or after the supply of Services), the Contractor will (at its cost) execute all instruments and do all things necessary in order to secure and to assure to the Firm and the Client the confidentiality and privacy of information obtained by the Contractor and each Key Person in the course of, or in connection with, the supply of services pursuant to this Agreement.
- 14.4 This clause 14 will survive the termination of this Agreement for any reason.

15 COPYRIGHT AND INTELLECTUAL PROPERTY

15.1 Ownership

- (a) All Firm IP remains the sole property of the Firm. The Contractor acknowledges that it acquires no right, title or interest in or to the Firm IP by virtue of this Agreement or the disclosure or use of the Firm IP in the course of the performance of the Services, other than as expressly set out in this agreement.
- (b) All Contractor IP remains the sole property of the Contractor. The Firm acknowledges that it acquires no right, title or interest in or to the Contractor IP by virtue of this Agreement or the disclosure or use of the Contractor IP in the course of the performance of the Services, other than as expressly set out in this Agreement.

15.2 Assignment of Services IP

- (a) The Parties agree that all Services IP vests in the Client immediately when created and the Contractor hereby assigns all IP Rights it has or may have in the Services IP to the Client and the Contractor must do, and must procure that the Key Person does, all things and execute such documents as required to assign such IP Rights to the Client as directed by the Client in its sole discretion.
- (b) The Contractor must promptly and fully disclose all Services IP to the Client.
- (c) The Contractor warrants that the Client will not require any licence of any IP Rights owned by a third party in order to use the Services IP. This applies unless the Client has consented in advance in writing to the relevant third-party IP Rights being incorporated into or otherwise used for the creation of the Services IP on terms acceptable to the Client. If this occurs, the Contractor is responsible for obtaining all necessary rights for the use of the third-party IP Rights.

15.3 Moral Rights

- (a) The Contractor consents to the doing of any acts or making of any omissions by the Client, its employees, servants, agents, licensees and assigns that infringe the Contractor's Moral Rights in any Works made by them in the course of assisting the Contractor to provide the Services, including:
- (i) not naming the Contractor as the author of a Work;

- (ii) naming another person as the author of a Work;
 - (iii) amending or modifying (whether by changing, adding to or deleting/removing) any part of a Work,
 - (iv) whether those acts or omissions occur before, on or after the date of this deed poll.
- (b) The Contractor acknowledges that this consent is genuinely given without duress of any kind and that the Contractor has been given the opportunity to seek legal advice on the effect of giving this consent.

15.4 Restricted conduct

The Contractor agrees that it must not and must procure that the Key Person(s) does not:

- (a) except as expressly authorised by the terms of this agreement disclose any part of the Firm IP or Services IP to:
 - (i) any other person (whether governmental, corporate or individual) except in accordance with the terms of this Agreement; or
 - (ii) any person, related body corporate or body corporate with whom it has an understanding or affiliation;
- (b) create or attempt to create a product, technology or arrangement that is the same as or similar to the Firm IP and/or the Services IP disclosed to it;
- (c) do any act or thing:
 - (i) that is inconsistent with the proprietary interest of the Firm in the Firm IP;
 - (ii) that is inconsistent with the proprietary interest of the Client in the Services IP; or
 - (iii) which leads, or may lead, to a reduction in the value of the Firm IP and/or the Services IP or causes or may cause the Firm IP and/or the Services IP to otherwise be adversely affected; or
- (d) hold itself out as being entitled to any proprietary interest in the Firm IP or the Services IP.

15.5 Disclosure

- (a) The Contractor is absolutely liable to the Firm for any Claims arising from disclosure of the Firm IP where such disclosure:
 - (i) was made by the Contractor, the Key Person or persons who obtained knowledge of the Firm IP through the Contractor; and
 - (ii) was not made in accordance with the terms of this Agreement.

(b) The Contractor is absolutely liable to the Client for any Claims arising from disclosure of the Services IP where such disclosure:

- (i) was made by the Contractor, the Key Person or persons who obtained knowledge of the Services IP through the Contractor; and
- (ii) was not made in accordance with the terms of this Agreement.

15.6 Assistance to the Firm in the event of infringement of rights

- (a) If the Contractor becomes aware of a person using the Firm IP without the apparent approval of the Firm, then it must immediately notify the Firm.
- (b) The Contractor must, if requested by the Firm and at the Firm's expense, do all such acts necessary to assist the Firm to protect its interest in the Firm IP.

15.7 Assistance to the Client in the event of infringement of rights

- (a) If the Contractor becomes aware of a person using the Services IP without the approval of the Client, then it must immediately notify the Client.
- (b) The Contractor must, if requested by the Client and at the Client's expense, do all such acts necessary to assist the Client to protect its interest in the Services IP.

16 TECHNOLOGY AND EQUIPMENT

16.1 If the Firm or the Client provides the Contractor with any technology, equipment, plant or other resources ("**Equipment**") during the Service Period, the Contractor acknowledges that such Equipment remains the property of the Firm or the Client (as the case may be), however, the Contractor is responsible for the care of the Equipment while it is in the Contractor's possession.

16.2 The Contractor will ensure that it has in place suitable and adequate backup and disaster recovery systems in place to protect any Equipment.

16.3 The Contractor will only use the Equipment for the purpose of supplying the Services in accordance with Schedule 2 and not for any other purpose.

16.4 The Contractor warrants that any technology, equipment, plant or other resources owned or introduced by the Contractor or Key Person, for use in the supply of the Services are, at the time of such use:

- (a) free from any defect in title, ownership, licence, or usage that would prevent or inhibit them from being so used; and
- (b) free from any defect, (including malware or computer contaminant) which may cause damage (including damage to reputation, data, or privacy) to the Firm, the Client or to any other person.

17 TERMINATION

17.1 Termination on Notice

- (a) The Firm or the Contractor may at any time and for any reason terminate this Agreement, by providing written notice of the period referred to in Schedule 2 ("**Termination Notice**").
- (b) The Firm may (at its discretion) require the Contractor to provide the Services for all or part of the Termination Notice, or it may provide the Contractor with payment in lieu of all or part of the Termination Notice.

17.2 Termination for Cause

- (a) The Firm may terminate this Agreement immediately for cause (without any obligation to provide notice of termination or pay the Contractor compensation) if:
 - (i) a Client rejects the further supply of the Contractor's services (or those of any Key Person);
 - (ii) the Contractor (or a Key Person, as the case may be):
 - (A) commits a material or persistent breach of this Agreement including without limitation clause 5.2 (Conflict of interest), clause 13 (Confidential Information) and clause 15 (Copyright and Intellectual Property) or clause 18 (Compliance);
 - (B) commits a breach of this Agreement that cannot be remedied or that remains unremedied for a period of 7 days after receipt of written notice from the Firm;
 - (C) wilfully disregards any lawful or reasonable instruction from the Firm or the Client;
 - (D) is grossly, seriously or persistently incompetent or unprofessional in the supply of the Services;
 - (E) is unable or unwilling to supply the Services; or
 - (F) is involved in anything which, in the Firm's reasonable opinion, affects the Contractor's or the Key Person's suitability for engagement with the Firm or which brings the Firm into disrepute or injures its reputation, interests, business or good name; or
 - (iii) a Key Person:
 - (A) commits an act of Serious Misconduct;
 - (B) is found to be, in the Client's reasonable opinion, negligent, inefficient or technically unsuitable in supplying the Services;
 - (C) breaches any obligation owed to the Firm pursuant to the deed poll at Schedule 3; or

- (D) is declared bankrupt or is otherwise precluded or disqualified from managing a corporation under Part 2D of the *Corporations Act 2001* (Cth) as in force and varied from time to time.

- (b) Nothing in this Agreement restricts the Firm's right to terminate the engagement summarily at common law.

17.3 Payment on Termination

Without limitation, if the Agreement is terminated for cause, the Firm will not be obliged to pay the Contractor any moneys other than any accrued unpaid Service Fees to which the Contractor is entitled as at the Termination Date. Following payment of any Service Fees properly due to the Contractor, the Contractor releases the Firm and Group (in full and final settlement) from any claim regarding the engagement and its cessation.

17.4 Firm's Premises and Suspension

At any time during the Agreement (including the Termination Notice), the Firm may prevent the Key Person from coming onto the premises of the Firm or the Client (as the case may be). The Firm may also suspend the Contractor's engagement, without payment of any Service Fees, where the Firm considers it necessary to investigate allegations of misconduct or impropriety against the Contractor or any Key Person. Such an act or suspension will not amount to a termination of the Agreement.

17.5 Return of Firm Property

On the cessation of the Agreement, or otherwise at any other time during the Service Period as requested by the Firm, the Contractor will immediately return to or deal with as directed by the Firm any Equipment and other Firm, Group or Client property. The Contractor acknowledges that it has no claim over or entitlement to Equipment and other Firm, Group or Client property.

17.6 Representation, Use of Names, Survival of Provisions

The Contractor agrees and acknowledges that, following the cessation of the Agreement, the Contractor will not represent itself as being connected with the Firm or Group in any way, or use or register any name identical to or likely to be confused with a name (including a trade or Firm name) used by the Firm.

18 COMPLIANCE

18.1 The Contractor must:

- (a) during the Service Period, comply, and take all reasonable steps to ensure that any of its subcontractors comply, with all applicable obligations under the Fair Work Act 2009 and Fair Work Regulations 2009;
- (b) during the Service Period and for a period of 6 years after the Termination Date, provide the Firm with any information and documentation that the Firm reasonably requires to confirm that the Contractor has complied with all applicable obligations under the Fair Work Act 2009 and Fair Work Regulations 2009;

- (c) undertake annual audits to determine that the correct wages, loadings, allowances and penalties have been paid to its Key Person and any other employees, and the Contractor will rectify any underpayments within a reasonable time period of identifying the underpayment;
 - (d) immediately inform the Firm of any:
 - (i) compliance action taken by the Fair Work Ombudsman in any way related to the provision of the Services, including but not limited to penalty infringement notices, compliance notices, enforceable undertakings, proactive compliance deeds or court orders; or
 - (ii) other court orders arising from non-compliance with the Fair Work Act 2009 or Fair Work Regulations 2009 by the Contractor in any way related to the provision of the Services, and any remedial action that the Contractor is required to take, has taken or proposes to take as a result of the compliance action or court order; and
 - (e) commit all necessary resources, financial or otherwise, and meet all necessary expenses associated with the effective implementation of the requirements of this clause 18.
- 18.2 The Contractor warrants that it complies, and will continue to comply, with any applicable labour hire licensing legislation that may apply to the Contractor from time to time including any obligation to hold and maintain any licence required to provide labour hire services.
- 18.3 The obligations of the Contractor in this clause 18 will survive the termination of this Agreement for any reason.

19 RESTRAINT

- 19.1 Except with the Firm's prior written approval, the Contractor must not during the Service Period:
- (a) directly or indirectly approach, solicit, endeavour to entice away, contract with or employ, any employee or contractor of the Firm or of the Client who is engaged or employed by the Firm or the Client;
 - (b) directly or indirectly approach, solicit, canvass or try to entice away any Client from the Firm;
 - (c) counsel, procure or otherwise assist any person, firm or corporation to do any of the acts referred to in 19.1(a) and 19.1 (b) above; or
- 19.2 The Contractor and the Firm agree that the provisions of this clause 19 are reasonable and the parties intend the provisions to operate to the maximum extent.

20 DISPUTE RESOLUTION

- 20.1 *Dispute:* A Party must not start arbitration or court proceedings (except proceedings seeking interlocutory relief) about a dispute which arises out of or in connection with this Agreement

("Dispute") unless it has made a genuine effort to resolve the Dispute and complied with this clause 20.

- 20.2 *Notification:* A Party claiming that a Dispute has arisen must notify the other Party to the Dispute by giving details of the Dispute ("**Notification**"). On receipt of Notification each Party must refer the Dispute to their nominated representative for resolution.
- 20.3 *Referral to Mediation:* If the Parties are unable to resolve the Dispute by discussion and negotiation within 14 days of receipt of the Notification, then the Parties must immediately refer the Dispute to mediation.
- 20.4 *Conduct of Mediation:* The mediation must be conducted by a mediator and at a fee agreed by the Parties. Failing agreement between the Parties, the mediator will be selected, and his/her fee determined by the President for the time being of APSCo Australia and the mediator's fee will be borne equally between the Parties.
- 20.5 *Failure to comply:* If a Party to a Dispute does not comply with any provision of this clause 20, the other Party to the Dispute will not be bound by this clause.
- 20.6 *Information:* Any information disclosed under this clause:
- (a) must be kept confidential; and
 - (b) may only be used to attempt to resolve the Dispute.
- 20.7 *Costs:* Each Party must bear its own costs of complying with this clause.

21 CONSENT TO SCREENING

- 21.1 The Contractor consents and will procure the written consent of any Key Person, for the purpose of enabling the Firm to undertake reasonable suitability checks including, without limitation, security clearance, criminal history checking, reference, qualification and transcript checking, professional registration status checking, and lawful entitlement to work checking.

22 VARIATION OF AGREEMENT

- 22.1 The Parties may vary this Agreement (including its schedules), provided that no variation will be effective or binding on either Party unless it is in writing and signed by both Parties.

23 WAIVER

- 23.1 The failure of the Firm at any time to insist on performance of any provision of this Agreement is not a waiver of its right at any later time to insist on performance of that or any other provision of this Agreement.

24 SEVERABILITY

- 24.1 If any provision of this Agreement is viewed as contrary to law or unenforceable by any Court or tribunal with jurisdiction to consider such matters, the provision will apply as modified by the

Court or tribunal, or in the event it is not modified by the Court or tribunal, it will be severed from this Agreement and the remainder of Agreement will continue to be enforceable by the Parties.

25 APPLICABLE LAW

- 25.1 This Agreement is governed by and construed in accordance with the laws in force in the Australian Capital Territory and the Commonwealth of Australia and the Parties irrevocably and unconditionally submit to the exclusive jurisdiction of the courts of these jurisdictions.

26 COMPLIANCE WITH LAWS

- 26.1 The exercise of or compliance with any discretion, right or obligation under this Agreement is subject to compliance with all applicable laws, including the *Corporations Act 2001* (Cth).

27 NOTICES

- 27.1 Any notice required to be given by a Party under this Agreement must be given in writing. A notice given in accordance with this clause is taken to be received:

- (a) if hand delivered, on delivery;
- (b) if sent by prepaid post, 3 Business Days after the date of posting; and
- (c) if sent by email, when the sender's email delivery system confirms a successful transmission of the message or the time a delivery receipt is generated.

28 ENTIRE AGREEMENT

- 28.1 This Agreement (together with its schedules), contains the whole and entire agreement between the Parties and supersedes all prior understandings or agreements between the Parties and any prior condition, warranty, indemnity or representation imposed, given or made by a Party in connection with that subject matter.

SIGNED AS AN AGREEMENT**Signed** for and on behalf of **Whizdom Pty Ltd (Whizdom Recruitment)** (ACN 119 884 945)

Signature of Whizdom Representative



Name of Whizdom Representative (print)

Choose an item.

Date

Signed for and on behalf of **Enter contractor company name** (ACN **insert ACN**)

Signature of Contractor



Date

SCHEDULE 1 Definitions and Interpretation

1 DEFINITIONS

The following definitions apply unless the context requires otherwise.

"Agreement" means this Independent Contractor Agreement including all Schedules and Engagement Offers.

"APSCo Australia" means the Association of Professional Staffing Companies in Australia.

"Business Days" means a day that is not a Saturday, Sunday, public holiday or bank holiday in the State work is performed as outlined in Schedule 2.

"Claim" includes a claim, complaint notice, demand, action, proceeding, litigation, investigation, judgment, damage, loss, cost, expense or liability however arising, whether present, unascertained, immediate, future or contingent, whether based in contract, tort or statute and whether involving a third party of a Party to this Agreement.

"Client" means the client identified in Schedule 2 and any other client or potential client of the Firm or any Group Member to whom the Contractor may provide Services to from time to time.

"Confidential Information" means any information of or relating to the Firm, the Group or a Client including:

- a) all information concerning their business, methods of operating and methods and proposals for marketing, promotion, and other activities;
- b) information concerning Clients, customers, suppliers or competitors;
- c) confidential and financial information;
- d) trade secrets or know-how;
- e) the Works and Intellectual Property;
- f) Intellectual Property rights in the Works and Intellectual Property rights arising out of or in relation to the provision of the Services;
- g) the terms of this Agreement;
- h) specifications, drawings, diagrams or any other information relating to equipment or machinery which are now, or which are proposed to be designed, manufactured, leased, owned or operated by or for the Firm or the Group; and
- i) information of or relating to any third party which the Firm or the Group has an obligation not to disclose or use,

that the Contractor becomes aware of or generates in the course of, or in connection with, the provision of the Services under this Agreement (but does not include information that is or

becomes publicly available for reasons other than unauthorised disclosure by the Contractor or any person to whom they have disclosed such information).

"Contractor IP" means IP Rights owned by or licensed to the Contractor as at the Commencement Date or acquired or developed by the Contractor during the Service Period independently of the activities carried out under this Agreement, which the Contractor has the right to license to third parties and which are necessary or desirable for use in connection with the Services.

"Deed Poll" means deed poll contained in Schedule 3.

"Engagement Offer" means Schedule 2 and any subsequent Engagement Offers agreed to between the parties in accordance with this Agreement.

"Firm IP" means IP Rights owned by or licensed to the Firm prior to the Commencement Date or acquired or developed by the Firm independently of the provision of the Services, which the Firm has the right to license to third parties and which are necessary or desirable for use in connection with the Services.

"Group" means the Firm and any body corporate which is a Related Body Corporate of the Firm within the meaning of section 50 of the Corporations Act 2001 (Cth), and any other associated Firm nominated by the Firm.

"Group Member" means any member of the Group, including the Firm.

"GST" any tax, levy, charge or impost generally imposed pursuant to the GST Act or any other Act of Parliament of the Commonwealth of Australia which the Parties are obliged to pay in respect of the supply of any services under this agreement.

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

"IP Rights" includes all present and future rights in or to any copyright, database, patent, design, trade mark (including any rights in get up or trade dress), brand name, domain name, business name, know-how, trade secret, confidential information and any other rights of a similar nature whether registrable, registered or not and wherever existing in the world, including all renewals, extensions and revivals of, and all rights to apply for, any of the foregoing rights.

"Key Person" means each and every person procured by the Contractor to supply the Services, as agreed by the Firm, as named in Schedule 2 and as bound by the Deed Poll in Schedule 3.

"Moral Rights" means any moral rights or other analogous rights arising under any statute (including the Copyright Act 1968 (Cth) or any law of the Commonwealth of Australia), that exist or may come to exist anywhere in the world.

"Privacy Act" means the *Privacy Act 1988* (Cth) as amended or replaced from time to time.

"Serious Misconduct" means:

- a) wilful or deliberate behaviour by the Contractor or a Key Person that is inconsistent with the continuation of the engagement under this Agreement;
- b) conduct by the Contractor or a Key Person that causes serious and imminent risk to the health and safety of a person or the reputation, viability or profitability of the Firm's or Client's business;

- c) theft, fraud or assault engaged in by a Key Person in the course of the engagement;
- d) a Key Person being intoxicated in the course of providing the Services; or
- e) a refusal by the Contractor or a Key Person to carry out a lawful and reasonable instruction which is consistent with this Agreement.

"Services" means the services described in Schedule 2, which may be varied by the Firm in response to the Client's requirements following agreement with the Contractor.

"Services Fee" means the fee payable by the Firm to the Contractor under this Agreement, as described in Schedule 2.

"Services IP" means all IP Rights created, conceived, developed or reduced to practice in the course of the:

- a) performance of this Agreement; and/or
- b) the provision of the Services.

"Termination Date" means the date upon which the Contractor's engagement with the Firm ceases for any reason.

"Works" means all programs, programming, literary, dramatic, musical and artistic work within the meaning of the *Copyright Act 1968* (Cth).

2 INTERPRETATION

In this agreement, unless the contrary intention appears:

- a) if a word or phrase is defined, its other grammatical forms have a corresponding meaning;
- b) a reference to includes or including must be construed without limitation;
- c) a reference to a person, corporation, trust, partnership, unincorporated body or other entity includes any of them;
- d) a reference to legislation or to a provision of legislation includes a modification or re-enactment of it, a legislative provision substituted for it and a regulation or statutory instrument issued under it;
- e) a reference to conduct includes, without limitation, an omission, statement or undertaking, whether or not in writing;
- f) a reference to any thing is a reference to the whole or any part of that thing;
- g) the singular includes the plural and vice versa;

- h) a reference to a clause or schedule is a reference to a clause or schedule to this agreement and a reference to this agreement includes any schedules;
- i) a reference to an instrument, a document or agreement, including this agreement, includes a reference to that instrument, document or agreement as novated, altered or replaced from time to time;
- j) a reference to \$ is a reference to Australian currency;
- k) a reference to writing includes typewriting, printing, photocopying and any other method of representing words, figures or symbols in a permanent visible form;
- l) no provision of this agreement will be construed adversely against a party because that party was responsible for drafting the provision; and
- m) headings are for ease of reference only and do not affect the meaning of this Agreement.

Draft

SCHEDULE 2
Engagement Offer

1. **Independent Contractor:** **Name:** Enter contractor company name
ACN: insert ACN
Address: Company Address
2. **Key Person** Insert Key Person name
3. **Firm representative:** **Name:** Choose an item.
Phone: 1300 944 936
Email: admin@whizdom.com.au
4. **Client:** Insert Client Name
5. **Location:** [insert client address or site-specific address per work order]
6. **Services:** **Description:** [insert general description of Contractor's services from the work order]
Security Requirements: [insert any security levels or police checks needed for the contract]
Specific Client Requirements: [insert any other requirements specific to the client from the work order, e.g., drug test, confidentiality agreements, etc.]
7. **Commencement Date:** [insert start date]
8. **Expiry Date:** [insert end date]
9. **Extension options:** Choose an item.
[insert info for other – or delete line if not applicable]
10. **Reduced activity period:** as per department guidelines – usually public holidays and Christmas/New year stand down.
11. **Termination Notice period:** [insert info from panel deed or work order]
[If nothing is outlined then use the following: 2 weeks]
12. **Hours:** As offered by the Client and accepted by the Contractor from time to time. Where a Client's work order specifies total contract or core hours, those will be set out below.
- Total Contract hours:** [insert from work order]

Core Hours: [insert from work order, example: not to exceed 8 hours per day between 7am and 7pm]

13. Service Fee:

All Inclusive Rate: \$xxx.xx per hour ex GST

14. On-Call Provisions

[outline any on-call provisions per the work order, if none, then please insert Not Applicable]

15. Travel and Expenses:

If an Invoice includes items related to travel or expenses, the Contractor will only be entitled to receive payment from the Firm for those travel or expense items after they have been authorised by a Client in writing.

Client Specific Information:

[insert info from panel deed or work order]

16. Pay Cycle:

Choose an item.

17. Timesheets

Client approved timesheets must be submitted to the Firm within 3 business days at the completion of the nominated pay cycle.

Your 1st pay cycle dates are:

Please quote your Choose an item. listed below on all timesheets

Number: [insert contract or PO number]

18. Payment Terms:

Subject to item 15 above, payments will be made within 5 business days on receipt of the Client approved timesheets/expenses and correctly rendered Invoice at the completion of each pay period.

If an RCTI Agreement is on file, payments will be made within 5 business days on receipt of the Client approved timesheets/expenses at the completion of each pay period.

SCHEDULE 3
Deed Poll

THIS DEED POLL is made by **Insert Key Person name** ("**you**") of **[address]** in favour of Whizdom Pty Ltd (ACN 119 884 945) of Unit 7, 28-34 Thynne Street, Bruce ACT 2617 (the "**Firm**").

Introduction

- A. The Firm has entered into an independent contractor agreement ("**Agreement**") with **Enter contractor company name** (the "**Contractor**") for the supply of the Services.
- B. The Contractor has employed or engaged you for the purposes of supplying the Services pursuant to the Agreement.
- C. There are provisions in the Agreement that impose obligations on the Contractor, including those relating to standards of conduct, restraints, work health and safety, confidential information and intellectual property.
- D. You have agreed to enter into this Deed Poll in favour of the Firm.

AGREED TERMS**1 DEFINED TERMS**

In this deed:

"Agreement" means the Independent Contractor Agreement between the Firm and the Contractor dated **Insert Date**.

"Client" means **Insert Client Name** and any other client or potential client of the Firm or any Group Member to whom the Contractor may provide Services to from time to time.

"Confidential Information" means any information confidential to the Firm or Client including trade secrets, know-how and information relating to the business or financial affairs of the Firm or any Client which is generally not available to the public.

"Firm IP" means IP Rights owned by or licensed to the Firm prior to the Commencement Date or acquired or developed by the Firm independently of the provision of the Services, which the Firm has the right to license to third parties and which are necessary or desirable for use in connection with the Services.

"Group" means, both jointly and severally, the Firm and any body corporate which is an Associated Entity within the meaning of the *Corporations Act 2001* (Cth) and any other associated company nominated by the Firm.

"Group Member" means any member of the Group, including the Firm.

"IP Rights" includes all present and future rights in or to any copyright, database, patent, design, trade mark (including any rights in get up or trade dress), brand name, domain name, business name, know-how, trade secret, confidential information and any other rights of a similar nature whether registrable, registered or not and wherever existing in the world,

including all renewals, extensions and revivals of, and all rights to apply for, any of the foregoing rights.

"Moral Rights" means any moral rights or other analogous rights arising under any statute (including the Copyright Act 1968 (Cth) or any law of the Commonwealth of Australia), that exist or may come to exist anywhere in the world.

"Privacy Act" means the *Privacy Act 1988* (Cth) as amended or replaced from time to time.

"Serious Misconduct" means:

- a) wilful or deliberate behaviour by the Key Person that is inconsistent with the continuation of the engagement under this Agreement;
- b) conduct by the Contractor or the Key Person that causes serious and imminent risk to the health and safety of a person or the reputation, viability or profitability of the Firm's or Client's business;
- c) theft, fraud or assault engaged in by a Key Person in the course of the engagement;
- d) the Key Person being intoxicated in the course of providing the Services; or
- e) a refusal by the Contractor or the Key Person to carry out a lawful and reasonable instruction which is consistent with this Agreement.

"Services" means the services described in the Agreement which may be varied by the Firm from time to time in response to the Client's requirements following agreement with the Contractor.

"Services IP" means all IP Rights created, conceived, developed or reduced to practice in the course of the performance of the Services.

"Works" means all programs, programming, literary, dramatic, musical and artistic work within the meaning of the *Copyright Act 1968* (Cth).

2 INTERPRETATION

In this deed poll, headings and bold text are for ease of reference only and do not affect the interpretation of this deed poll and, unless the context otherwise requires:

- a) the singular includes the plural and vice versa
- b) another grammatical form of a defined word or expression has a corresponding meaning;
- c) a reference to a clause, paragraph or schedule is to a clause or paragraph of or a schedule to this Deed Poll and a reference to this Deed Poll includes any schedule or annexure;
- d) a reference to a document or instrument, includes the document or instrument as novated, altered, supplemented or replaced from time to time;

- e) a reference to A\$, \$A, dollar or \$ is a reference to Australian currency;
- f) a reference to time is to Australian Capital Territory time;
- g) a reference to a Party to this Deed Poll, and a reference to a Party to a document includes the Party's executors, administrators, successors and permitted assigns and substitutes;
- h) a reference to the Firm in this Deed Poll, includes the Firm's administrators, successors and permitted assigns and substitutes;
- i) a reference to a person includes the natural person, partnership, body corporate, association, governmental or local authority or agency or other entity;
- j) a reference to a statute, ordinance, code or other law includes regulations and other instruments under it and consolidations, amendments, re-enactments or replacements of any of them
- k) the meaning of general words is not limited by specific examples introduced by including, for example or similar expressions; and
- l) a rule of construction does not apply to the disadvantage of the Firm because the Firm was responsible for the preparation of this Deed Poll or any part of it.

3 COMPLIANCE WITH LEGISLATION

3.1 Work Health and Safety

- (a) You must comply with all relevant work health and safety legislation at any premises at which you assist the Contractor to provide the Services.
- (b) You must immediately notify the Firm upon becoming aware of any health and safety incidents that occur in the provision of the Services, or of any involvement by relevant health and safety authorities in matters relating to the provision of the Services.

3.2 Anti-Discrimination

You must comply with all relevant anti-discrimination laws to provide an environment free of discrimination, sexual harassment and/or other forms of harassment at any premises at which you assist the Contractor to provide the Services.

3.3 Privacy

You consent to:

- (a) the Firm and any Group Member holding and processing personal information relating to you for legal, personnel, administrative and management purposes and in particular the processing of any "sensitive information" as defined in the Privacy Act in relation to you; and

- (b) the Firm transferring your personal information to shareholders, any Group Member or any third-party administrative provider (under an outsourcing arrangement) without breaching your rights under the Privacy Act.

3.4 You agree to comply with all applicable policies and privacy laws including (but not limited to) the Privacy Act in respect of any personal or sensitive information which is disclosed to, or is collected or accessed by you in the course of supplying the Services.

4 CONFIDENTIAL INFORMATION

4.1 You acknowledge that:

- (a) Confidential Information is confidential to the Firm and/or the Client (as the case may be); and
- (b) through the supply of the Services, you may obtain or become aware of Confidential Information.

4.2 You will, whether during the term of or after termination of the Agreement (for whatever reason):

- (a) not use, disclose or distribute to any person or entity, otherwise than as necessary for the proper performance of the Services and obligations pursuant to this deed, any Confidential Information acquired by you in the course of the Contractor supplying the Services;
- (b) take all necessary measures to protect Confidential Information obtained by you in the course of, or in connection with, the Contractor's supply of the Services pursuant to the Agreement from use or disclosure otherwise than in accordance with the consent of the person from whom it was obtained;
- (c) return all Confidential Information to the Firm or Client (as the case may be) together with any other property in your possession or control as a consequence of the Services; and
- (d) not keep copies in any form of any of the Firm's or Client's Confidential Information or other records including, without limitation, computer programs, data and manuals.

4.3 Despite clause 4.2, you may disclose Confidential Information required by law to be disclosed or with the written consent of the Firm or the Client.

4.4 You shall indemnify and keep indemnified the Firm in respect of any loss, damage, injury, claim, demand or allegation relating to, or arising out of any breach of your obligations under this clause 4.

4.5 You must at all times, unless otherwise authorised in writing by the Firm, keep the terms of this deed confidential and not disclose them to any other person. Without limitation, you must not,

directly or indirectly reveal the rate or fees paid, or to be paid, to the Contractor for the supply of the Services, to any other person or company.

5 COPYRIGHT AND OTHER INTELLECTUAL PROPERTY

5.1 Ownership

You acknowledge that:

- (a) all Firm IP remains the sole property of the Firm; and
- (b) you acquire no right, title or interest in or to the Firm IP by virtue of the Agreement or the disclosure or use of the Firm IP in the course of assisting the Contractor to provide the Services.

5.2 Assignment of Services IP

- (a) You agree that all Services IP vests in the Client as and when created and you hereby assign all IP Rights you have or may have in the Services IP to the Client, and you must do all things and execute such documents as required to assign such IP Rights to the Client as directed by the Client in its sole discretion.
- (b) You must promptly and fully disclose all Services IP to the Client.

5.3 Moral rights

- (a) You consent to the doing of any acts or making of any omissions by the Client, its employees, servants, agents, licensees and assigns that infringe your Moral Rights in any Works made by them in the course of assisting the Contractor to provide the Services, including:
 - (i) not naming you as the author of a Work;
 - (ii) naming another person as the author of a Work;
 - (iii) amending or modifying (whether by changing, adding to or deleting/removing) any part of a Work,
 - (iv) whether those acts or omissions occur before, on or after the date of this deed poll.
- (b) You acknowledge that this consent is genuinely given without duress of any kind and that you have been given the opportunity to seek legal advice on the effect of giving this consent.

5.4 Restricted conduct

You agree that you will not:

- (a) except as expressly authorised by the terms of this deed poll disclose any part of the Firm IP or Services IP to:

- (i) any other person (whether governmental, corporate or individual) except in accordance with the terms of the Agreement; or
 - (ii) any person, related body corporate or body corporate with whom you have an understanding or affiliation;
- (b) create or attempt to create a product, technology or arrangement that is the same as or similar to the Firm IP and/or the Services IP disclosed to them;
- (c) do any act or thing:
 - (i) that is inconsistent with the proprietary interest of the Firm in the Firm IP and/or the Client in the Services IP; or
 - (ii) which leads, or may lead, to a reduction in the value of the Firm IP and/or the Services IP or causes or may cause the Firm IP and/or the Services IP to otherwise be adversely affected; or
- (d) hold yourself out as being entitled to any proprietary interest in the Firm IP or the Services IP.

5.5 Assistance to the Firm in the event of infringement of rights

- (a) If you become aware of a person using the Firm IP without the apparent approval of the Firm, then you must immediately notify the Firm.
- (b) You must, if requested by the Firm and at the Firm's expense, do all such acts necessary to assist the Firm to protect its interest in the Firm IP.

5.6 Assistance to the Client in the event of infringement of rights

- (a) If you become aware of a person using the Services IP without the apparent approval of the Client, then you must immediately notify the Client.
- (b) You must, if requested by the Client and at the Client's expense, do all such acts necessary to assist the Client to protect its interest in the Services IP.

6 POST ENGAGEMENT RESTRAINTS

6.1 You will not, without the Firm's prior written consent, during any engagement under the Agreement:

- (a) directly or indirectly approach, solicit, endeavour to entice away, contract with or employ, any employee or contractor of the Firm or of the Client who is engaged or employed by the Firm or the Client at the date of termination of the Agreement;
- (b) directly or indirectly approach, solicit, canvass or try to entice away any Client from the Firm;
- (c) counsel, procure or otherwise assist any person, firm or corporation to do any of the acts referred to in 6.1(a) and 6.1(b) above; or

6.2 You must not make or cause to be made, any adverse comments about the Firm or its business, save for any comments which are required to be made by law.

6.3 You agree that the provisions of this clause 6 are reasonable and the parties intend the provisions to operate to the maximum extent.

7 RELATIONSHIP

7.1 You acknowledge and agree that no contractual or employment relationship of any sort exists between you and the Firm.

7.2 You will have no claim against the Firm in respect of any employment related payments or benefits, including (without limitation) salary or wages, leave entitlements, notice pay, redundancy pay, workers' compensation coverage or superannuation. The Contractor shall be solely responsible for providing any and all employment related payments and benefits to you.

7.3 You shall have no authority to bind the Firm in any manner including (but not limited to) contracting with third parties without the Firm's specific written consent.

8 GENERAL

8.1 Entire agreement

This deed poll constitutes the entire agreement between you and the Firm in relation to its subject matter. All prior discussions, undertakings, agreements, representations, warranties and indemnities in relation to that subject matter are replaced by this deed poll and have no further effect.

8.2 Benefits held on trust

You agree that:

- (a) the Firm holds the benefits conferred on the Group by this deed poll on trust for each member of the Group; and
- (b) each member of the Group may bring an action to enforce any of those benefits despite it not being a party to this deed poll.

8.3 Amendment

This deed poll may not be amended or varied unless the amendment or variation is in writing signed by you and the Firm.

8.4 Severability

Part or all of any provision of this deed poll that is illegal or unenforceable will be severed from this deed poll and will not affect the continued operation of the remaining provisions of this deed poll.

8.5 Waiver

Waiver of any power or right under this deed poll:

- (a) must be in writing signed by the Firm; and
- (b) is effective only to the extent set out in that written waiver.

8.6 Survival of clauses

Clauses 1, 2, 4, 5, 6, and 8 survive the expiry or termination of this deed poll for whatever reason.

8.7 Rights, remedies additional

Any rights and remedies that a person may have under this deed poll are in addition to and do not replace or limit any other rights or remedies that the person may have.

8.8 Further assurances

You must do or cause to be done all things necessary or reasonably desirable to give full effect to this deed poll and the transactions contemplated by it (including, but not limited to, the execution of documents).

8.9 Costs

Except as specifically provided in this deed poll, you and the Firm must bear their own legal, accounting and other costs for the preparation and execution of this deed poll.

8.10 Governing law and jurisdiction

This deed poll will be governed by and construed in accordance with the laws in force in the Australian Capital Territory and the Commonwealth of Australia and you and the Firm submits to the exclusive jurisdiction of the courts of that Territory and the Commonwealth of Australia.

Executed as a deed poll

Signed, sealed and delivered by **Insert**
Key Person name in the presence of:

Signature of witness

Signature of **Insert Key Person name**

Name of witness (BLOCK LETTERS)

Draft