

TERMS AND CONDITIONS

1. DEFINITIONS AND INTERPRETATION

1.1 Definitions

In this Agreement, unless the context requires otherwise:

Acquisition Date means the date that all conditions under the Contract for Sale are fulfilled or otherwise satisfied.

Acquisition Fee means the acquisition fee set out in item 8 of the Key Details.

Agent means the party set out in item 2 of the Key Details.

Agreement means this document, the Key Details signed by the parties, these Terms and Conditions, any schedules and any annexures.

Agreement Date means the date set out in item 1 of the Key Details.

Authorisation means any authorisation, approval, consent, right, certificate, certification, licence, membership, permit, declaration, exemption, notarisation, waiver or authority, however described, required to be issued (or which a reasonable person would expect to be issued) by any authority for, or in respect of, a parties' obligations under this Agreement.

Buyer means the party set out in item 3 of the Key Details.

Claim includes a claim, notice, demand, action, proceeding, litigation, prosecution, arbitration, investigation, judgment, award, 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 or a party to this Agreement or otherwise.

Contract for Sale means a contract for sale entered into by the Buyer (or the Buyer's nominee) and such relevant vendor, facilitating the purchase of a Target Property by the Buyer.

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

Criteria means, such criteria in respect of evaluating real property that needs to be met to satisfy the Buyer's needs as set out in item 4 of the Key Details.

Engagement Fee means the engagement fee set out in item 8 of the Key Details.

Exclusivity Period means the period set out in item 7 of the Key Details.

Fee means, subject to clause 2.2, the Engagement Fee and Acquisition Fee.

Insolvency Event means, in respect of a party, any one or more of the following events or circumstances applying to that party:

- (a) in the case of a corporation:
 - (i) a winding up, dissolution, liquidation, provisional liquidation, administration or bankruptcy;
 - (ii) having a controller (as defined in the Corporations Act) or analogous person appointed to it or any of its property;
 - (iii) being unable to pay any of its debts as and when due and payable or being deemed to be insolvent under any provision of the Corporations Act or any other law;
 - (iv) seeking protection from its creditors under any law, entering into a compromise, moratorium, assignment, composition or arrangement with, or for the benefit of, any of its members or creditors; or
 - (v) any analogous event or circumstance to those described in sub-
 - (vi) paragraphs (i) to (iv) above under any law,unless such event or circumstance occurs as part of a solvent reconstruction, amalgamation, compromise, arrangement, merger or consolidation approved by the other parties;
- (b) in the case of an individual:
 - (i) death;
 - (ii) becomes, or is declared by a medical practitioner (who is registered in practise in an Australian state)

- to be, mentally or physically incapable of managing the person's affairs;
- (iii) is or states that the person is unable to pay all of the person's debts when they become due and payable;
- (iv) enters into, attempts to enter into, or convenes a meeting for the purpose of entering into, an arrangement, assignment or composition with the person's creditors; or
- (v) an event occurs in relation to the person which is analogous to anything referred to in sub-paragraphs (i) to (iv) above or which has a substantially similar effect.

Prospective Property means such real property that the Buyer is potentially interested in purchasing.

Purchase Price means the purchase price the Buyer has agreed to pay to the vendor under a Contract for Sale.

Services means the scope of services set out in 5 of the Key Details to be provided by the Agent to the Buyer in accordance with this Agreement.

Settlement Date means the date of settlement associated with the purchase of the Target Property contemplated under a Contract for Sale.

Target Property means a Prospective Property that the Buyer has agreed (by way of a Contract for Sale) to purchase from the vendor of that Prospective Property, as a direct consequence of the parties having entered into this Agreement.

Terms and Conditions means these general terms and conditions.

Third Party means a person who is not a party to this Agreement.

1.2 Interpretation

In this Agreement, unless the context requires otherwise:

- (a) **(agreement other than this document)** A reference to an agreement other than this Agreement includes an undertaking, deed, agreement

- or legally enforceable arrangement or understanding whether or not in writing.
- (b) **("at any time" or "from time to time")** The expression "at any time" or "from time to time" includes reference to past, present and future time and the performance of any act and incurrence of any liability during any specified period.
- (c) **(Australian currency)** A reference to money amounts, dollars or \$ is to the lawful currency of the Commonwealth of Australia unless the amount is specifically denominated in another currency.
- (d) **(conduct)** Conduct includes an act, omission, statement, undertaking or acknowledgment, whether or not in writing.
- (e) **(corresponding meanings)** Other parts of speech, and grammatical forms of words or phrases derived from defined terms or expressions, have corresponding meanings.
- (f) **(document)** A reference to a document includes any part of any agreement or contract in writing, or any certificate, notice, deed, instrument or other document of any kind as amended, modified, varied, novated, supplemented or replaced from time to time and despite any change in the identity of the parties.
- (g) **(headings)** The headings, subheadings, bold, italicised and highlighted font and table of contents are used for convenience only and do not affect the interpretation of this Agreement.
- (h) **("include", "including" and "for example")** Wherever the words "include", "including", "for example" or any form of those words or similar expressions are used, they do not limit what else is included and must be construed as if they are followed by the words "without limitation" or "without being limited to", unless there is express wording to the contrary.
- (i) **("in writing")** A reference to the words "in writing" includes

- any communication sent by letter, facsimile transmission or email or any other form of communication capable of being read by the recipient.
- (j) **(joint and several)** Any promise, agreement, covenant, representation, warranty or indemnity:
- (i) in favour of two or more parties (whether those parties are included in the same defined term or not) is for the benefit of them jointly and severally; and
 - (ii) by two or more parties (whether those parties are included in the same defined term or not) binds them jointly and severally.
- (k) **(law)** A reference to a law includes:
- (i) legislation, regulations and other instruments made under legislation and any consolidations, amendments, re-enactments or replacements of them;
 - (ii) any constitutional provision, treaty or decree;
 - (iii) any judgment; and
 - (iv) any rule or principle of common law or equity,
- and is a reference to that law as amended, consolidated, re-enacted, replaced or applied to new or different facts.
- (l) **(legislation)** A reference to all or any part of a statute, rule, regulation, proclamation, ordinance, code or by-law includes that statute, rule, regulation, proclamation, ordinance, code or by-law as amended, consolidated, re-enacted or replaced from time to time and a reference to a statute includes all rules, regulations, proclamations, ordinances, codes, by-laws and any other subordinate legislation issued under that statute.
- (m) **(party)** A reference to a party is to a party to this Agreement and a reference to a party to a document includes the party's executors, administrators, successors and permitted assigns and substitutes (including persons taking by novation).
- (n) **(person)** A reference to a "person" includes a natural person, partnership, joint venture, body corporate, association, governmental or local authority, agency and any other body or entity whether incorporated or not.
- (o) **(singular)** Words denoting the singular includes the plural and vice versa.
- (p) **(thing)** A reference to any thing (including any right) includes a part of that thing, but nothing in this clause 1.2(p) implies that performance of part of an obligation constitutes performance of the obligation.
- (q) **(time and date)** A reference to a time or date in connection with the performance of an obligation by a party is a reference to the time and date in Sydney, New South Wales, Australia, even if the obligation is to be performed elsewhere.
- (r) **(written form)** A reference to a notice, consent, request, approval or other communication under this Agreement or an agreement between the parties means a written notice, consent, request, approval, communication or agreement.

2. FEES, COMMISSIONS AND EXPENSES

2.1 Manner of payment

All payments of any nature to the Agent under this Agreement must be made by bank cheque, credit card, electronic transfer to an account or accounts nominated by the Agent or otherwise in cleared funds.

2.2 Fee adjustment (due to scope variation)

In the event that the Buyer, after the Agreement Date, instructs the Agent to provide and deliver beyond and/or outside of the ordinary scope of Services (as set out in 5 of the Key Details), then the Agent reserves the

right to appropriately adjust the Fee accordingly in its absolute sole discretion acting reasonably, and the Agent agrees to, as soon as reasonably practicable, notify the Buyer in writing of the additional amount to comprise the Fee payable by the Buyer associated with such adjustment.

2.3 Expenses

The Buyer agrees to reimburse all reasonable expenses properly and necessarily incurred by the Agent in the course of providing the Services, including (without limitation) costs relating to the following:

- (a) building and pest inspections;
- (b) strata searches;
- (c) valuations;
- (d) surveying;
- (e) conveyancing; and
- (f) legal advice,

subject to reasonable production of receipts or other reasonably appropriate evidence of payment.

2.4 Security Interest

(a) In this clause 2.4:

- (i) **Equitable Interest** means a registrable equitable interest and charge over real property giving rise to a statutory injunction preventing the registration of dealings and plans on a title;
- (ii) **PPSA** means the *Personal Property Securities Act 2009* (Cth);
- (iii) **PPSA Personal Property** means:
 - (A) all of the Buyer's present and after-acquired property in which the Buyer can be a grantor of a PPSA Security Interest including property in which the Buyer has, or may in the

future have, rights or the power to transfer rights;

(B) proceeds; and

(C) PPSA retention of title property (as that term is defined in the Corporations Act);

(iv) **PPSA Security Interest** has the meaning given to the term "security interest" in the PPSA;

(v) **Security Interest** means:

(A) a PPSA Security Interest;

(B) an Equitable Interest; and

(C) any interest held as security for the payment of a monetary obligation or the performance of any other obligation, including, a mortgage, charge, encumbrance, lien, pledge or hypothecation, and a bill of sale, assignment, title retention arrangement, trust or power held as security,

granted in accordance with clause 2.4(b);

(vi) **Secured Property** means all of the Buyer's present and after-acquired:

(A) property (including, but not limited to, PPSA Personal Property); and

- (B) real property.
- (b) To secure performance of the Buyer's payment obligations contemplated in this clause 2, the Buyer hereby agrees and consents to grant a Security Interest in the Secured Property to the Agent.
- (c) The Buyer agrees that the Security Interest:
- (i) is a continuing security until the Agent releases the Secured Property from the Security Interest; and
- (ii) takes priority over all other security interests and other interests in the Secured Property at any time other than as mandatorily preferred by law.
- (d) The Agent agrees that it must release the Secured Property from the Security Interest if it is reasonably satisfied that the Buyer has completely fulfilled its payment obligations contemplated in this clause 2.

2.5 Survival

Item 8 of the Key Details and this clause 2 survives the expiry or termination of this Agreement.

3. EXPIRY AND TERMINATION

- (a) If not terminated earlier, this Agreement and the engagement of the Agent expires at the earlier of:
- (i) the Buyer entering into a Contract for Sale to purchase a Target Property in accordance with this Agreement, and directly consequential to this Agreement having been entered into by the parties; and
- (ii) conclusion of the Exclusivity Period.
- (b) The Buyer or the Agent may terminate the engagement of the Consultant and this Agreement at any time without cause by giving the other party 7 days' notice in writing.
- (c) On termination or expiry of this Agreement each party must:
- (i) must promptly deliver to the other all

- property belonging to the other that is in its possession or control; and
- (ii) pay to the other any sums that are outstanding and to be accounted for under this Agreement.
- (d) It is acknowledged and agreed that, to the extent within 12 months of termination or expiry of this Agreement the Buyer proceeds to enter into a Contract for Sale to purchase a Target Property, the Buyer remains liable to pay the Agent the full extent of the Acquisition Fee, and to this end, this clause 3(d) survives the expiry or termination of this Agreement.
- (e) Termination or expiry of this Agreement does not affect any rights, remedies, obligations or liabilities of the parties otherwise available that have accrued up to the date of termination or expiry, including the right to claim damages in respect of any breach of the Agreement which existed at or before the date of termination or expiry.

4. LIMITATIONS

The Buyer acknowledges that:

- (a) any information or advice provided by the Agent to the Buyer through the course of providing the Services is non-exhaustive and general in nature, and does not constitute financial or investment advice;
- (b) the Agent does not hold a financial services license as defined in section 913B of the Corporations Act and does not provide financial services;
- (c) particularly where the Acquired Property has been procured by the agent (through the course of providing the Services) in a pre-market, off-market, or pre-auction context, the Purchase Price may be above market or bank valuation values;
- (d) research, comparative market analysis from recent sales and statistics provided by the Agent to the Buyer does not take into account the subjective

- considerations and policies of financiers;
- (e) the Buyer is completely responsible and liable for all risks in relation to procuring finance to purchase a Prospective Property and/or Target Property, and the Agent will not be held liable and/or responsible for such risks;
 - (f) the Buyer is wholly responsible for:
 - (i) satisfying itself as to the condition of any Target Property prior to purchasing it; and
 - (ii) its final decision to purchase a Target Property and accepts full responsibility for satisfying itself in relation to all aspects of a Target Property (including building integrity, planning regulations, location, information of the selling agent) in light of the Buyer's own priorities, needs, and circumstances;
 - (g) under no circumstances will the Agent be liable to the Buyer for any:
 - (i) loss, damage, cost, or compensation arising out of or in connection with the Buyer's decision to purchase a Target Property, including which may arise as a result of a shortfall in finance;
 - (ii) indirect, incidental special, consequential, aggravated, exemplary, and/or punitive damages (such as in relation to loss of revenue, profits, goodwill, tangible or intangible losses or other economic losses); or
 - (iii) loss of sales, revenue, profits, data, or procurement amount; whenever or howsoever arising;
 - (h) the Buyer is advised to obtain independent legal, financial, tax, and investment advice from appropriate professionals in respect of a Target Property and/or purchasing a Target Property;
 - (i) the Agent may recommend independent Third Party service providers to the Buyer for the purposes of facilitating the transactions contemplated under this Agreement, and that:
 - (i) all such Third Party service providers are independent of the Agent;
 - (ii) under no circumstances will the Agent be liable for the advice, acts, or omissions of such Third Party service providers; and
 - (iii) the Agent makes no warranties and disclaims liability in respect of information provided by such Third Party service providers (including its accuracy, completeness, suitability, and reliability);
 - (j) in terms of any independent Third Party service providers engaged to facilitate the transactions contemplated under this Agreement, the Agent is not responsible for:
 - (i) managing such Third Party service providers;
 - (ii) any acts, errors, omissions, miscommunications or delays of such Third Party service providers;
 - (iii) such Third Party service providers' quality of service delivery and quality of work carried out; or
 - (iv) resolving any disputes that may arise between such Third Party service providers and the Buyer;
 - (k) if the Buyer instructs the Agent to engage any Third Party service providers on the

- Buyer's behalf for the purposes of facilitating the transactions contemplated under this Agreement, the Buyer agrees to advance, or reimburse the Agent immediately upon receipt of a tax invoice issued by such Third Party service provider or the Agent, for all amounts arising out of or in connection with the Agent's engagement of such Third Party service provider;
- (l) property values, rental yields, and market conditions are subject to fluctuation and external factors beyond the Agent's control;
 - (m) the Agent makes no representations or guarantees regarding capital growth, rental income, or future financial performance of any Prospective Property or Target Property;
 - (n) the Buyer agrees to indemnify and hold harmless the Agent from all claims, damages, liabilities, and expenses arising from the Buyer's actions, omissions, or failure to obtain appropriate independent legal, financial, tax, or investment advice in connection with the purchase of a Prospective Property or Target Property;
 - (o) properties sourced by the Agent are typically established assets and may contain wear, imperfections, or minor defects consistent with their age and condition, and while the Agent will take reasonable steps to assist the Buyer in identifying material issues, no property will be perfect;
 - (p) it is normal for established homes to exhibit minor defects such as cracked tiles, leaking taps, or general wear and tear, and such minor defects do not entitle the Buyer to terminate a Contract for Sale or require the vendor to rectify such issues;
 - (q) the purpose of a building and pest inspection is to identify major structural defects or active pest infestations, and while the Agent may assist with arranging inspections or reviewing reports, the Buyer remains solely responsible for engaging qualified professionals and acting on their findings;
 - (r) a pre-settlement inspection is an opportunity to verify that the Target Property is in the agreed condition and compliant for rental purposes, and this includes confirming that fixtures, fittings, appliances, and inclusions (such as blinds and smoke alarms) are substantially present and functional; and
 - (s) the Agent does not attend or supervise pre-settlement inspections and is not responsible for arranging the rectification of any items identified though the course of a pre-settlement inspection carried out.

5. COMMUNICATION PROTOCOLS

5.1 Business Hours

The Agent will be available for communication during standard business hours only, being Monday to Friday, 9:00am to 5:00pm (AEST), unless otherwise agreed in writing, and the Buyer acknowledges and agrees that communications received outside these hours may be responded to on the next business day.

5.2 Consolidated Queries

- (a) The Buyer agrees to consolidate their queries to the Agent and avoid sending multiple fragmented messages across different platforms.
- (b) The Agent may request that the Buyer collate questions into a single communication to facilitate efficient and effective responses.

5.3 Preferred Communication Channel

The Buyer must raise important matters to the Agent via email to ensure clarity, traceability, and proper record-keeping, and communications via SMS, WhatsApp, or other informal channels should be limited to urgent or logistical matters only.

5.4 Accessibility Expectations

The Buyer acknowledges that the Agent is not expected to be available for ad hoc or open-ended communication outside the scope of this Agreement.

6. REPRESENTATIONS AND WARRANTIES

- (a) Each party represents and warrants to the other that:
- (i) it has full authority to enter into this Agreement and is not bound by any agreement with any Third Party that adversely affects this Agreement;
 - (ii) it holds full legal capacity, power and each Authorisation that is necessary or desirable to:
 - (A) execute this Agreement and to carry out the transactions that this Agreement contemplates; and
 - (B) ensure that this Agreement is legal, valid, binding and admissible in evidence,and it is complying with any conditions to which any of these Authorisations is subject;
 - (iii) this Agreement constitutes legal, valid and binding obligations, enforceable against it in accordance with its terms, subject to any necessary stamping or registration;
 - (iv) to its knowledge, there are no actions, Claims, proceedings or investigations pending or threatened against it or by, against or before any person that may have a material effect on the subject matter of this Agreement;
 - (v) it is not the subject of an Insolvency Event; and

- (vi) it is not entering into this Agreement as trustee of any trust or settlement.

- (b) Each party acknowledges that the other party has executed this Agreement and agreed to take part in the transactions contemplated by this Agreement in reliance on the representations and warranties that are made in this clause 6.

7. GOODS AND SERVICES TAX (GST)

7.1 Definitions

In this clause 7:

- (a) **GST** means goods and services tax or similar value added tax levied or imposed pursuant to the GST Law, or otherwise, on a Supply;
- (b) **GST Act** means *A New Tax System (Goods and Services Tax) Act 1999* (Cth) (as amended);
- (c) **GST Law** has the meaning given to that term in the GST Act;
- (d) the expressions Consideration, Input Tax Credit, Recipient, Supply, Supply of a Going Concern, Tax Invoice and Taxable Supply have the meaning given to those expressions in the GST Act; and
- (e) terms used in this clause 7 which are not defined in this Agreement, but which are defined in the GST Law, have the meanings given in the GST Law unless the context indicates otherwise.

7.2 Exclusion of GST

Unless expressly stated otherwise, the Consideration for any Supply under or in connection with this Agreement is exclusive of GST.

7.3 Payment of GST

- (a) To the extent that any Supply made under or in connection with this Agreement is a Taxable Supply (other than any Supply made under another agreement that contains a specific provision dealing with GST), the amount payable by the Recipient is the Consideration provided under this Agreement for that Supply

(unless it expressly includes GST) plus an amount **(additional amount)** equal to the amount of that Consideration (or its GST exclusive market value) multiplied by the rate at which GST is imposed in respect of the Supply.

- (b) The Recipient must pay the additional amount at the same time and in the same manner as the Consideration to which it is referable subject to the Recipient receiving a valid Tax Invoice relating to the Supply.

7.4 Reimbursement of expenses

If this Agreement requires a party (the **First Party**) to pay for, reimburse, set off or contribute to any expense, loss or outgoing (**Reimbursable Expense**) suffered or incurred by the other party (the **Other Party**), the amount required to be paid, reimbursed, set off or contributed by the First Party will be the sum of:

- (a) the amount of the Reimbursable Expense net of Input Tax Credits (if any) to which the Other Party is entitled in respect of the Reimbursable Expense (**Net Amount**); and
- (b) if the Other Party's recovery from the First Party is a Taxable Supply, any GST payable in respect of that Supply,

such that after the Other Party meets the GST liability, it retains the Net Amount.

7.5 Recipient registered for GST

The Recipient warrants that on the day of the Supply it will be registered or required to be registered under the GST Law.

8. NON-DISPARAGEMENT

Each party must not:

- (a) do anything which materially damages or is likely to materially damage the reputation of the other party;
- (b) make any negative, or adverse or disparaging promise, representation or statement about the other party, without the prior written consent of the other party; and

- (c) make or publish any adverse, disparaging or other comments that may reasonably be expected to bring, or are intended to have the effect of bringing, the other party into disrepute,

in relation to the terms of this Deed directly, indirectly or expressly (unless required by law).

9. CONFIDENTIAL INFORMATION

The parties:

- (a) agree that the contents of this Agreement and all documents and information made available to any party for the purposes of entering into this Agreement or in the course of the performance of this Agreement will be kept confidential and secure and will not be disclosed, divulged or communicated to any other person, except where:

- (i) the information is public knowledge (but not because of a breach of this Agreement) or the party has independently created the information;
- (ii) disclosure is required by law or a regulatory body (including a relevant stock exchange); or
- (iii) disclosure is made to a person who must know for the purposes of this Agreement on the basis that the person keeps the information confidential and secure; and

- (b) acknowledge that monetary damages may not be an adequate remedy for a breach of clause 9(a), and a party may seek specific performance or an injunction as a remedy for such a breach or where such a breach is anticipated, in addition to any other remedies available at law or in equity.

10. DISPUTE RESOLUTION

- (a) If the parties have been unable to resolve any dispute arising between them in relation to a matter referred to in this

Agreement (**Dispute**) within the period stated in the relevant clause, then either party must refer the Dispute to be finally resolved by arbitration administered through the Australian Disputes Centre (**ADC**).

- (b) Arbitration in accordance with clause 10(a) (**Arbitration**) shall be conducted in New South Wales, Australia in accordance with the ADC Rules for Domestic Arbitration operating at the time the Dispute is referred to ADC (**the Rules**).
- (c) The terms of the Rules are hereby deemed incorporated into this Agreement.
- (d) Arbitration will comprise of one arbitrator and the language of the arbitration will be English.

11. GENERAL

11.1 No variation

This Agreement cannot be amended or varied except in writing signed by the parties.

11.2 Successors and assigns

This Agreement binds and benefits the parties and their respective successors and permitted assigns under clause 11.3.

11.3 No assignment

A party may not assign, novate or otherwise transfer the benefit that arises out of or under this Agreement without the prior written consent of each other party.

11.4 Counterparts

- (a) This Agreement may be executed in any number of counterparts, each executed by one or more parties.
- (b) If this Agreement consists of a number of signed counterparts, each counterpart when so executed is deemed to be an original and all such counterparts together constitute the same single document.

11.5 Conflicting provisions

If there is any conflict between the main body of this Agreement and any schedules or annexures comprising it, then the provisions of the main body of this Agreement prevail.

11.6 Severability

Any provision of this Agreement which is wholly or partly void, illegal, invalid or unenforceable under the law of any jurisdiction must, in relation to that jurisdiction:

- (a) be read down to the minimum extent necessary to achieve its validity, if applicable; and
- (b) be severed from this Agreement in any other case,

without invalidating or affecting the remaining provisions of this Agreement or the validity of that provision in any other jurisdiction.

11.7 No merger

A term or condition of, or act done in connection with, this Agreement does not operate as a merger of any of the undertakings, warranties and indemnities in this Agreement or the rights or remedies of the parties under this Agreement of which continue unchanged.

11.8 Entire understanding

This Agreement contains the entire understanding between the parties concerning the subject matter of the Agreement and supersedes, terminates and replaces all prior agreements, discussions, negotiations, explanations, understandings and communications between the parties.

11.9 No reliance

Except as expressly stated in this Agreement, each party acknowledges:

- (a) that party has not relied on any representation, warranty, undertaking, explanation or information of any kind made by or on behalf of another party in relation to the subject matter of this Agreement; and
- (b) no oral explanation or information provided by any party to another:
 - (i) affects the meaning or interpretation of this Agreement; or
 - (ii) constitutes any collateral document, warranty or understanding between any of the parties.

11.10 Further steps and assurances

Each party, at its own expense (unless otherwise provided in this Agreement) and within a reasonable time of being requested by another party to do so, must do all things and complete and execute all documents that are reasonably necessary to give full effect to this Agreement.

11.11 Time of the essence

- (a) In this Agreement, time is of the essence unless otherwise stipulated.
- (b) If the parties agree to vary a time requirement, the time requirement so varied is of the essence of this Agreement.
- (c) An agreement to vary a time requirement set out in this Agreement must be in writing.

11.12 Date if undated

If this Agreement is undated and there is no contrary intention stated, the date of this Agreement is the date of last execution by a party.

11.13 Legal advice

Each party acknowledges that in relation to this Agreement, the parties have received legal advice or have had the opportunity of obtaining legal advice.

11.14 Relationship of parties

Unless this Agreement expressly provides otherwise, nothing in this Agreement:

- (a) may be construed as creating between parties a relationship of partnership, of principal and agent or representative, of trustee and beneficiary or of employer and employee;
- (b) gives a party authority to bind any other party in any way;
- (c) imposes any fiduciary duties on a party in relation to any other party; and
- (d) gives rise to any duty of care by any party to another.

11.15 Preservation of rights

All rights, powers and remedies under this Agreement are in addition to and do not abrogate, limit or reduce any other rights, powers and remedies that party may have.

11.16 Survival of obligations

The obligations under this Agreement which are expressed to or, by their nature, survive expiry or termination of this Agreement, will survive expiry or termination of this Agreement and are enforceable at any time at law or in equity.

11.17 Nature of obligations

- (a) Any provision in this Agreement which binds more than one person binds all of those persons jointly and each of them severally.
- (b) Each obligation imposed on a party by this Agreement in favour of another is a separate obligation.
- (c) Unless specified otherwise, the performance of one obligation is not dependent or conditional on the performance of any other obligation.

11.18 No adverse construction

This Agreement, and any provision of this Agreement, is not to be construed to the disadvantage of a party because that party was responsible for its preparation.

11.19 No waiver

- (a) A failure, delay, relaxation or indulgence by a party in exercising any power or right conferred on the party by this Agreement does not operate as a waiver of the power or right.
- (b) A single or partial exercise of the power, obligation or right does not preclude a further exercise of it or the exercise of any other power, obligation or right under this Agreement.
- (c) Any waiver must be in writing, signed by the party granting the waiver and is only effective to the extent set out and specified in that waiver.
- (d) A waiver of a breach does not operate as a waiver of any other breach.

11.20 Costs and expenses

Unless otherwise agreed, each party must pay its own costs (including legal costs) and expenses in connection with the negotiation, preparation, execution and completion of this Agreement.

11.21 No right of set-off

Unless this Agreement expressly provides otherwise, a party has no right of set-off against a payment due to another party.

11.22 Governing law and jurisdiction

- (a) This Agreement is governed by and is to be construed in accordance with the laws in force in Victoria, Australia **(State)**.
- (b) The parties irrevocably and unconditionally submit to the exclusive jurisdiction of the courts and courts of appeal of that State and the Commonwealth of Australia in respect of all matters or proceedings arising out of or relating to or in connection with this Agreement, its performance or subject matter.
- (c) Each party irrevocably waives any right it has to object to the venue of any legal process in the courts described in clause 11.22(b) on the basis that:
 - (i) any proceeding arising out of or in connection with this Agreement has been brought in an inconvenient forum; or
 - (ii) the courts described in clause 11.22(b) do not have jurisdiction.