

## Terms and Conditions

These terms and conditions set out the basis on which Velrada Capital Pty Ltd ACN 136 050 701 (**Velrada**) will provide the services described in the accompanying Order Form (**Services**) to you (the **Client**):

### 1. Definitions and Interpretation

#### 1.1 Definitions

In this document:

**Agreement** means these terms and conditions and the Order form which comprise the entire agreement between Velrada and the Client.

**Business Day** means a day other than a weekend or public holiday at the place where the Services are to be provided.

**Client** means the client referred to in the Order Form.

**Commencement Date** means date of commencement of provision of Services by Velrada to the Client.

**Confidential Information** means and includes:

- a) the terms of this Agreement and the details of the goods and Services;
- b) any information or material which is proprietary to or deemed to be proprietary to a party;
- c) any Intellectual Property and methodologies and technologies that you use in your business, and to which we are exposed in the course of providing the goods or Services or we use to provide the Services;
- d) trade secrets;
- e) any information designated as confidential by either of us;
- f) any goods or Services we provide to you; and
- g) any information acquired by either of us solely as a result of the goods or Services, but excludes any information that:
  - i. is or becomes publicly available, except by a breach of this Agreement;
  - ii. is disclosed to either of us by a third party provided that the recipient reasonably believes the third party is legally entitled to disclose such information;
  - iii. was known to either of us before we received it from the other;

- iv. is developed by either of us independently of any disclosures previously made by the other;
- v. is disclosed with the other's prior written consent; or
- vi. is required to be disclosed by law, order of any court, tribunal, authority or regulatory body, rules of any stock exchange or any professional standard, provided that, to the extent permitted by law, the party disclosing the Confidential Information notifies the other of the requirement to disclose and only discloses the minimum Confidential Information required to comply with the law or requirement.

**Controller** has the meaning it has in section 9 of the Corporations Act.

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

**Client's Representative** means the person representing the Client as provided in the Order Form.

**Client Representative's Nominated Email Address** means the email address of the Client's Representative as provided in the Order Form.

**Client's Site** means locations or facilities of the Client as set out in the Order Form where Velrada provides the Services.

**Deliverables** means the deliverable(s) set out in the Order Form.

**End User** means the operator of the Client's Services.

**Velrada**, means, Velrada Capital Pty Ltd (ACN 136 050 701) of Level 14, 123 St Georges Terrace, Perth, Western Australia, 6000 or any of its subsidiaries.

**Fee** means the fees and expenses for goods and Services described in the Order Form and otherwise advised in writing by Velrada from time to time.

**Force Majeure** means a circumstance beyond the reasonable control of the Parties which results in a Party being unable to observe or perform on time an obligation under this Agreement. Such circumstances include but are not limited to:

- a) acts of God, lightning strikes, earthquakes, floods, storms, tempest, subsidence, inundation, explosions, fires and any natural disaster;
- b) acts of war, acts of public enemies, terrorism, riots, civil

- commotion, malicious damage, sabotage and revolution; and
- c) industrial strikes.

**Guarantee and Indemnity** means the Guarantee and Indemnity entered into by one or more directors of the Client.

**Guarantor** means one or more directors who sign the Guarantee and Indemnity.

**GST** means the goods and services tax, as defined in "A New Tax System (Goods and Services Tax) Act 1999".

**Initial Term** means the period agreed in the Order Form from the Commencement Date.

**Insolvent Event** means:

- a) a Controller, receiver, manager, receiver and manager, or similar officer is appointed in respect of a person or any asset of a person;
- b) a liquidator or provisional liquidator is appointed in respect of a corporation;
- c) any application is made to a court for an order:
- i. appointing a person referred to in paragraph (a) or (b);
  - ii. winding up a corporation; or
  - iii. proposing or implementing a scheme of arrangement other than under a solvent scheme of arrangement pursuant to Part 5.1 of the Corporations Act;
- d) a moratorium of any debts of a person, a personal insolvency agreement or any other assignment, composition or arrangement (formal or informal) with a person's creditors, or any similar proceeding or arrangement by which the assets of a person are subjected conditionally or unconditionally to the control of that person's creditors or a trustee, is ordered declared or agreed to; or
- e) a person becomes, or admits in writing that it is or is declared to be or is taken under any applicable law to be, insolvent or unable to pay its debts.

**Interest** means amounts calculated on an outstanding balance using the Interest Rate, accruing from the day immediately

following the due date for payment until the date payment in full is received by Velrada.

**Interest Rate** means 8% above the Reserve Bank of Australia cash rate (calculated daily from the due date) and compounded monthly.

**Office Hours** means during standard office opening times which are defined here as during 8:30am to 5:30pm on a Business Day.

**Order Form** means an order for any goods and/or Services that the Client has submitted to Velrada in an order form signed by the Client which may be sent via Velrada's website [<https://velrada.com/>] or email from the Client's Representative's Nominated Email Address, by mail or via facsimile to such email address, street address or facsimile number (as appropriate) as may be notified by Velrada to the Client from time to time, and which has been accepted by Velrada in writing. If not stated in the Order Form, all Services will be completed during Office Hours.

**Party or Parties** as the context requires means a party or parties to this Agreement. (Third Party means a party other than the Parties).

**Personnel** means officers, employees, agents, sub-contractors and representatives.

**Related Bodies Corporate** means a body corporate that is a holding company of a second body corporate, a subsidiary of that second body corporate or a subsidiary of a holding company of a second body corporate.

**Services** means the provision of the services (and supply of goods) described in the Order Form and accepted by Velrada in writing.

**Term** means either the Initial Term, together with any extension to the Initial Term as agreed by the Parties, or any other such Term as has been defined and agreed in the Order Form.

## 1.2 Interpretation

In this Agreement:

- a) headings are for convenience and unless the context indicates otherwise;
- b) an obligation or a liability assumed by, or a right conferred on, 2 or more persons binds or benefits them jointly and severally;
- c) a word or phrase in the singular number includes the plural, a word or phrase in the plural number includes the singular, and a word indicating a gender includes every other gender;
- d) if a word or phrase is given a defined meaning, any other part of speech or grammatical form of that word or phrase has a corresponding meaning;
- e) a reference to:
  - i. a party, clause or schedule, is a reference to a party, clause, or schedule to or of this Agreement;
  - ii. a party includes that party's executors, administrators, successors and permitted assigns, including persons taking by way of novation;
  - iii. an agreement includes any undertaking, deed, agreement and legally enforceable arrangement whether in writing or not;
  - iv. a document (including this Agreement) includes a reference to all schedules exhibits attachments and annexures to it and is to that document as varied, novated, ratified or replaced from time to time;
  - v. legislation or to a provision of legislation includes any consolidation, amendment, re-enactment, substitute or replacement of or for it, and refers also to any regulation or statutory instrument issued or delegated legislation made under it;
  - vi. a person includes an individual, the estate of an individual, a corporation, an authority, an unincorporated body, an association or joint venture (whether incorporated or unincorporated), a partnership and a trust;
  - vii. a right includes a power, remedy, authority, discretion or benefit;

viii. conduct includes an omission, statement or undertaking, whether in writing or not.

- f) the word "includes" in any form is not a word of limitation;
- g) the words "for example" or "such as" when introducing an example do not limit the meaning of the words to which the example relates to that example or to examples of a similar kind;
- h) a reference to a day is to a period of time commencing at midnight and ending 24 hours later;
- i) if a period of time dates from a given day or the day of an act or event it is to be calculated exclusive of that day; and
- j) all warranties, limitations and exclusions of liability and indemnities are continuing and survive termination or expiry of this Agreement;
- k) in the event of any inconsistency between the terms of this Agreement, the order of priority will be as per the precedence outlined in clause 19:12; and
- l) in the event, and to the extent, of any inconsistency or where intended to be a replacement rather than an addition, the most recent Order for Service will prevail over any earlier Order(s) for Service.

## 2. Services

2.1 Subject to the terms of this Agreement, Velrada shall carry out the Services for the Fee in accordance with Agreement and the Client accepts the Services on that basis.

2.2 In providing the Services, Velrada will at all times endeavour to exercise the degree of skill, care and diligence which would reasonably and ordinarily be expected from a skilled, competent and experienced professional providing services that are the same or similar to the Services.

## 3. Ordering and Acceptance Procedures

### 3.1 Order

On signing the Order Form and written acceptance by Velrada the Parties agree to be bound by these terms.

### **3.2 Additional Orders**

During the Term, the Client may order additional Services at any time from Velrada subject to written agreement by Velrada.

### **4. Non-Performance**

Nothing in this Agreement requires Velrada to provide the Services where this would place Velrada in breach of any law or any contract to which it is a party.

### **5. Payment**

#### **5.1 Fees and Expenses for the Services**

The Fees payable by the Client for Services are payable in accordance with this clause 5 and as set out as in the relevant Order Form or as otherwise agreed in writing between the Parties from time to time.

#### **5.2 Payment**

The Client agrees to pay Velrada the Fees and Expenses for the Services as specified and agreed in the accompanying Order Form and for any reimbursable expenses. The Client also agrees to pay Velrada for any other amounts related to any variation of Services directed, or agreed to, by the Client.

All Fees payable to Velrada for the Services performed will be paid within 14 days of the Client receiving a tax invoice from Velrada for the Services, unless otherwise expressly stated in the accompanying Order Form. Monies not paid within that period will attract the Interest Rate interest until payment plus any reasonable debt collection fees.

The Client must pay all amounts owing by the Client under this Agreement by EFT, direct debit, cash, or cheque and without encumbrance, set-off, withholding, counterclaim or deduction to Velrada.

#### **5.3 Time of Payment**

Velrada will invoice the Client monthly for Fees due under this Agreement or at a time as specified in the Order Form.

#### **5.4 Taxes**

- a) All prices quoted for supplies made and/or to be made under this Agreement are in Australian dollars and are exclusive of GST.
- b) If GST is applicable to any supply made by Velrada under this Agreement, Velrada is entitled to add to the amount

otherwise payable an additional amount for the applicable GST.

- c) The Client agrees to pay Velrada such GST charge in the same manner and at the same time as the payment for the relevant supply.
- d) Velrada will issue tax invoices to the Client for the purposes of GST.
- e) If required by applicable law, Velrada will give the Client an adjustment note arising from the adjustment note arising from the adjustment event relating to a taxable supply made under, or in connection with, this Agreement within 30 days after the date Velrada becomes aware of the adjustment event.

#### **5.5 Dispute**

If a dispute arises between the Client and Velrada, the aggrieved party must (as soon as practicable) notify the other party in writing of the nature of the dispute and proposed remedy. Within 7 days of being notified of the dispute and proposed remedy, the parties must meet to resolve the dispute. If the parties fail to resolve the dispute during this time, either party may refer the dispute to mediation and the parties will endeavour in good faith to settle the dispute by mediation administered by, and under the rules and guidelines of, the Australian Commercial Disputes Centre before having recourse to litigation. The parties must share the mediation costs equally.

Nothing prevents any party to a dispute from seeking interlocutory, declaratory or injunctive relief in respect of any dispute.

#### **5.6 Provision of Information and Goods**

Where, during the course of providing any Services, Velrada is to provide any goods or information to the Client, Velrada may require the Client to enter into a separate agreement in relation to the goods or information. Velrada will be deemed not to be in breach of this Agreement where Velrada fails to meet any of its obligations as a direct or indirect result of the Client refusing or delaying its entry into any such agreement for any reason.

#### **5.7 Suspension of Services**

Where the Client is late in paying Fees (other than that portion (only) which may be the subject of a genuine Dispute) in addition to being liable to pay interest to Velrada at the

Interest Rate, Velrada may contact the Client to request immediate payment of outstanding Fees.

Velrada, in its sole discretion, may:

- a) issue a notice of demand in relation to any overdue payment providing (at Velrada's election) the Client further time for payment; and
- b) following non-compliance with any notice of demand, suspend its provision of any or all of the Services to the Client until all outstanding Fees have been paid. Velrada will be deemed not to be in breach of this Agreement where any breach arises directly or indirectly from any suspension by Velrada of the Services.

## **6. Implied Terms**

### **6.1 Implied Terms Excluded**

Subject to clause 6.2, any condition or warranty which would otherwise be implied in this Agreement is hereby excluded. Any warranty or term that any goods or Services will be fit for their intended purpose are hereby expressly excluded.

### **6.2 Statutory Limitation of Liability**

Where legislation implies in this Agreement any condition or warranty, and that legislation avoids or prohibits provisions in a contract excluding or modifying the application of, or exercise of, or liability under, such condition or warranty, the condition or warranty will be deemed to be included in this Agreement. However, where the statute permits liability to be limited, the liability of Velrada for any breach of such condition or warranty will be limited, at the option of Velrada, to one of the following:

- a) If a defect relates to goods:
  - i. the replace of the goods or the supply of equivalent goods;
  - ii. the repair of the goods;
  - iii. the payment of the cost of replacing the goods or of acquiring equivalent goods; or
  - iv. the payment of the cost of having the goods repaired; and
- b) If a defect relates to fixed price Services:
  - i. the supplying of the Services again; or

- ii. the supplying of labour to rectify any defect in relation to the Services.

## **7. Warranties**

### **7.1 Mutual Warranties**

Velrada will rectify defective Services provided that the Client notifies Velrada of the defect within 60 days after the relevant Services are provided.

Each Party represents and warrants to the other Party that:

- a) it is duly incorporated under the jurisdiction of its incorporation, with all requisite corporate power and authority to own, lease and operate its assets and to carry on its business as currently owned, leased, operated and conducted;
- b) it has full power and all necessary rights to enter into this Agreement and to perform its obligations according to the terms of this Agreement; and
- c) no Insolvent Event has occurred nor is subsisting or threatened.

## **8. Liabilities**

### **8.1 Exclusion of Liability**

- a) Velrada will not be liable in contract or in tort (including negligence) or otherwise for any loss or damage (including indirect, special or consequential punitive loss, damage, cost or expense) however caused (including loss of profits, loss of data, and liability to third parties), which may be suffered, or incurred, or which may arise directly or indirectly in respect of the use of or inability to use the Services except where such liability arises out of a breach of any conditions and warranties which are implied by law and cannot be excluded in which case the liability of Velrada for breach of those conditions or warranties will, subject to clause 28, be limited to one of the following (at Velrada's option):-
  - i. the supply of the services again; or
  - ii. the payment of the cost of having the services supplied again.

- b) Velrada does not warrant that the goods or Services will be free of interruptions, delays, faults or errors. Velrada will not be responsible for any loss and/or damage to the Client's business and/or the Client's End User(s) that may result

- from any interruptions, delays, faults or errors in the supply of the Services.
- c) For the avoidance of doubt, either party's liability will be reduced proportionately to the extent that a breach of this Agreement, breach of a relevant law or negligent act or omission of the other party or its employees, agents or contractors contributed directly or indirectly to any claim, action, damage, loss, liability, expense or payment.
- d) Notwithstanding any other clause in this Agreement, neither party is liable to the other party for any loss or damage in contract, in tort (including, but not limited to, negligence), in equity or by operation of any common law or statute arising under and/or in connection with this Agreement or the Services or otherwise suffered by a party, or any other person which:
- i. Does not arise naturally or in the usual course of things from that breach; or
  - ii. Constitutes or arises from or in connection with an indirect, special or consequential loss or damage, including a loss of revenue, loss of opportunity, loss of profit, loss of anticipated profits or revenue, loss of contracts, loss of goodwill, loss arising from business interruption, or liability arising out of or in connection with greenhouse emissions, pollution or contamination, even if such loss arises naturally or in the usual course of things from that breach.
- e) Velrada has no liability to the Client, any of the Client's End Users or to any other person, for:
- i. the acts or omissions of any third party, including the suppliers which have been engaged by Velrada for the purpose of supplying or maintaining goods or a Service supplied to the Client under this Agreement;
  - ii. faults or defects in Services which are caused by the Client's own conduct or misuse or the conduct or misuse by the Client's End Users;
  - iii. any loss of revenue or profits, loss of data, loss of bargain and damage to reputation or for any form of indirect or consequential loss, whether in respect of breach of contract, equity, intended conduct, tort or otherwise, arising out of, or in connection with, the provision of the Services or this Agreement;
  - iv. faults or defects in the Services that arise due to equipment or cabling owned or leased by the Client or an End User or otherwise in the Client's control or the Client's End User's control; or
  - v. faults or defects in the Services that arise due to failure by the Client or any third party (other than a contractor or agent engaged by Velrada) to appropriately maintain any equipment or cabling relevant to the supply of the Services.
- 8.2 Limitation of Liability**
- To the extent Velrada's liability has not been limited by clause 6.2 or excluded by clause 8.1 above, Velrada's total liability under or in connection with this Agreement will be limited in aggregate and will not exceed the greater of:
- i. one times the fees payable by the Client to Velrada for the Services; or
  - ii. the amount which is recovered under Velrada's insurance policies.
- 8.3 Title and Risk: Goods**
- a) Risk shall pass to the Client upon delivery of the Services to the Client and title shall pass to the Client upon payment of Fees.
  - b) Title to goods which are software shall remain with the applicable licensor(s) at all times.
- 8.4 Title and Risk: Specifically Developed Items**
- a) Any rights to any pre-existing intellectual property that is owned by a party (including third parties) prior to this Agreement or developed independently outside of this Agreement, is retained by that party, and nothing in this Agreement transfers any rights in that pre-existing intellectual property to any other party, nor is any party entitled to any commercial exploitation of any pre-existing intellectual property in any way.
  - b) Title to in all goods, work, items, materials and information produced or developed by or on behalf of Velrada (whether under the Client's direction or otherwise), shall remain vested in

Velrada, on them being produced or developed.

- c) Velrada grants to the Client an irrevocable licence in respect of any item, title to which has passed to or vested in Velrada, to use that item for the purpose of using or modifying as required, Services. The client is not granted any rights to on sell, sub-licence or commercially exploit any Services (including goods) for future commercial purposes.
- d) The Client grants to Velrada an irrevocable licence in respect of any of the Client's pre-existing intellectual property incorporated into any goods, work, items, materials and information, to use that intellectual property in the course of or for the purpose of providing the Services pursuant to this Agreement.

#### **8.5 Title and Risk: Other Items**

Except as provide in clause 8.3, title to all goods, work, items, materials and information produced or developed by or on behalf of Velrada in the course of or for the propose of providing or to enable it better to provide the Services shall be and remain in Velrada.

#### **8.6 PPSA**

- a) Velrada claims and the Client grants to Velrada, a Purchase Money Security Interest ("PMSI") [as defined in the Personal Property Securities Act 2009 (Cth) ("PPSA")] in all goods used in providing the Services to secure payment of the Fees. Client agrees not to do or permit anything to be done which creates or allows another in, or dispose or part possession with, any goods used in providing the Services.
- b) To the extent the law permits, Client waives its rights to receive any notice that is required by any provision of the PPSA or any time period that must otherwise lapse under any law before a secured party exercises a right, power or remedy.
- c) For the avoidance of doubt, nothing in this clause prohibits Velrada from giving a notice under the PPSA.
- d) The Client agrees to take such further steps which may be required by Velrada to perfect its security interest under the PPSA (including obtaining written consents, supplying information,

executing documents or granting/procuring access to premises).

- e) The Client must not lodge any financing statement on the Personal Property Securities Register in connection with this Agreement or any goods or Services without the prior written consent of Velrada.

### **9. Delivery**

#### **9.1 Place of Delivery**

Velrada shall deliver the Services to the Client's Site subject to written agreement by Velrada.

#### **9.2 Delivery by Instalments**

Velrada may, at its discretion, deliver the Services by instalments in any sequence in consultation with the Client.

#### **9.3 Delay**

- a) Any dates quoted by Velrada for the delivery of the Services are approximate only and shall not form part of this Agreement.
- b) Velrada shall not be liable for any delay in delivery of the Services, howsoever arising.
- c) Where Velrada has advised the Client that Velrada's Personnel has been committed to the provision of the Services at specific times (for example, by providing the Client with a project plan which includes the scheduling of that Personnel), then the Client will provide at least 10 Business Day's prior written notice, or as otherwise agreed by the Parties, if Velrada is required to postpone or cancel the Velrada Personnel.
- d) Where a Party becomes aware of an event or occurrence which may affect the provision of Services being carried out in accordance with the applicable Order Form/Service schedule, that Party shall notify the other Party in writing as soon as practicable after it becomes aware of the event or occurrence. The Parties shall meet within a reasonable time of receiving the notice with a view to mitigating any possible delay to the provision of Services.
- e) Where Velrada suffers a delay in providing the Services caused by the Client or any third party in the Client's control and Velrada's Personnel is unable to carry out the Services in

accordance with the Order Form/Service schedule ("**Delay**"), Velrada shall:

- i. be entitled to an extension to any target date or date for completion of the Services outlined in the Order Form/Service schedule; and
  - ii. be entitled to charge an hourly or daily rate of the Personnel who are unable to carry out the Services for the duration of the Delay ("**Delay Charge**") plus any associated costs resulting from the Delay.
- f) Velrada will take reasonable steps to mitigate its loss and reduce the Delay Charge and its claim for any associated costs.

## **10. Confidentiality**

### **10.1 Keep Confidential Velrada Material**

The Client will keep confidential all information or material belonging to Velrada or in Velrada's possession, power or control and which is obtained as a result of Velrada providing the Services, attending Velrada's premises or otherwise. This obligation shall not apply to information or material which is lawfully within the public domain, or to the extent disclosure is required by law or subject to clause 10.3.

### **10.2 Keep Confidential Client Material**

Velrada will keep confidential that information or material provided by the Client to Velrada, where at the time of its provision, the Client advised Velrada in writing that the relevant information or material was to be kept confidential. This obligation shall not apply to information or material which is lawfully within the public domain, or to the extent disclosure is required by law or subject to clause 10.3.

The parties agree not to use any information and/or material furnished, derived or created under this Agreement for any purpose not expressly permitted under this Agreement.

### **10.3 Use of Confidential Information**

A Party may make a disclosure of the other Party's Confidential Information (including the terms of this Agreement), if that other Party reasonably believes it necessary, to:

- a) its suppliers of professional services (including, without limitation, legal and

financial advisers, financiers and insurance carriers) if those persons undertake to keep such disclosed information confidential;

- b) for credit purposes where the persons to whom such information is disclosed undertake to keep the disclosed information confidential;
- c) any of its employees to whom it is necessary to disclose such information if that employee has agreed to keep the disclosed information confidential; or
- d) comply with any applicable law or requirement of any governmental agency; and
- e) comply with any rules of any securities exchange.

Velrada may also provide Client details to its vendors to enable the provision of Services.

For the avoidance of doubt, this clause survives termination.

## **10.4 Uncertainty**

If there is any uncertainty by any Party regarding whether any information or material is in the public domain, they will treat that information or material as confidential until the other Party advises that Party in writing that it is not confidential.

## **11. Related Bodies Corporate**

### **11.1 Velrada's Related Bodies Corporate**

Velrada may:

- a) provide Services to the Client through the use of any of Velrada's Related Bodies Corporate; and/or
- b) invoice the Client via any of Velrada's Related Bodies Corporate.

The Client acknowledges that any debt the Client owes under this Agreement is a debt owed to Velrada and that Velrada may take any necessary action in relation to any such debt notwithstanding that the right or obligation giving rise to that debt has been satisfied by a Related Body Corporate of Velrada or that the invoice for that debt has been provided to the Client by a Related Body Corporate of Velrada.

### **11.2 The Client's Related Bodies Corporate**

- a) Velrada may, upon the Client's written request and on such conditions as



Velrada reasonably requires, provide Services to the Client's Related Bodies Corporate

- b) If Velrada agrees to provide Services to such Related Bodies Corporate, the Client and the Client's Related Bodies Corporate are jointly and severally liable to Velrada for performance of the obligations (including payment obligations) in relation to those Services under this Agreement.

## **12. Force Majeure**

### **12.1 No Liability for Force Majeure**

Velrada will not be liable for any delay or failure to perform its obligations under this Agreement if such failure or delay is due (whether partially or wholly) to Force Majeure.

### **12.2 Velrada to Notify Client**

Velrada will notify the Client as soon as practicable of any anticipated delay due to Force Majeure. The performance of Velrada's obligations under this Agreement will be suspended for the period of the delay due to Force Majeure.

### **12.3 Force Majeure Termination**

If a delay due to Force Majeure exceeds forty (40) Business Days, the Client may terminate this Agreement immediately on providing notice to Velrada. If the Client gives such notice to Velrada:

- a) Velrada shall refund moneys previously paid by the Client under this Agreement for which no Services have been provided; and
- b) The Client shall pay Velrada a reasonable sum in relation to Services rendered or costs and expenses incurred prior to termination (as reasonably determined by Velrada) for which no payment has been made by the Client.
- c) The Client shall be liable to Velrada for all third party expenses agreed as part of the Order Form prior to any termination where Velrada is unable to cancel, have refunded, or obtain credit for those expenses, or where Velrada is otherwise unable to mitigate the expenses, using reasonable efforts to do so.

## **13. Access to Information and Site**

The Client will, at its own cost, provide Velrada with:

- a) all reasonable information, aid and assistance;
- b) access to the Client's sites, computer hardware and software, personnel and company information; and
- c) floor space, communications, equipment and any ancillary support services at the Client's sites, reasonably required by Velrada in order to provide the Services (Velrada consultants will have their own laptop personal computers when working at the Client's premises).

## **14. Service Period and Termination**

### **14.1 Service Period**

The Services shall commence on the Commencement Date and continue for the Term.

### **14.2 Termination**

- a) Unless terminated under clause 12.3, 14.2(b) or 14.2(c), this Agreement ends on the completion of the Services;
- b) The Client may terminate this Agreement, if:
  - i. Velrada breaches an essential term of this Agreement and does not remedy that breach within 60 days of being notified in writing of the breach; and
  - ii. the course of action required to remedy the breach; or
  - iii. the Client gives Velrada 30 days written notice of its intention to do so.
- c) Velrada may terminate this Agreement by notice, if:
  - i. monies payable by the Client to Velrada are overdue for more than 28 days; or
  - ii. the Client breaches a term of this Agreement and does not remedy that breach within 30 days of being notified in writing of the breach; and
  - iii. the course of action required to remedy the breach; or
  - iv. Velrada gives the Client 30 days written notice of its intention to do so

- d) Velrada may immediately terminate the Services without notice under these terms and conditions, if:
  - i. the Client fails to perform any of its obligations under these terms and conditions;
  - ii. it is likely to have a conflict of interest in its performance of a fundamental obligation within these terms and conditions; or
  - iii. the Client is in (in Velrada's opinion) in financial distress.
- e) If this Agreement is terminated under clauses 12.3 or 14.2, then the Client will:
  - i. pay Velrada all due Fees for Service performed up to and including the date of termination, less any payments previously made by the Customer in respect of those Services;
  - ii. take any other action reasonably required by Velrada the Company in relation to the termination;
  - iii. pay Velrada to the Company the reasonable out-of-pocket costs and expenses that Velrada has incurred up to and including the date of termination and any other costs reasonably incurred by reason of the termination;
  - iv. immediately return to Velrada any Confidential Information belonging to Velrada;
  - v. return to Velrada any items (including Velrada Company Equipment) provided to the Client by Velrada;
  - vi. take any other action reasonably required by Velrada the Company in relation to the termination; and
  - vii. immediately take all possible action to mitigate any liabilities incurred by it as a result of the termination.

#### **14.3 Additional Rights**

If this Agreement is terminated for any reason, Velrada may:

- a) retain any moneys paid to Velrada by the Client;
- b) invoice the Client a reasonable sum for Services provided in respect of work which no sum has been previously invoiced;

- c) retake possession of all property of Velrada or its sub-contractors in the possession of the Client;
- d) be regarded as discharged from any further obligations under this Agreement; and
- e) pursue any additional or alternative remedies available to it.

Immediately after the termination of this Agreement, Velrada will, return to the Client all of the Client's property in Velrada's possession.

#### **14.4 Unpaid Sums**

- a) On termination of this Agreement, all unpaid sums owing by each Party will become due and payable to the other Party, and the Party owing any money not paid within 14 Business Days of the date of termination will be liable to reimburse the other Party for all reasonable legal costs and disbursements incurred by the other Party in the recovery of such sums.
- b) This clause will survive the termination of this Agreement.

#### **15. Variation**

##### **15.1 Variation of the Order Form**

This Agreement may only be varied with the written consent of each Party.

##### **15.2 Variation of this Agreement**

Except as otherwise provided in this Agreement, the provisions of this Agreement will not be varied, except by agreement in writing signed by the Parties.

#### **16. Notices**

Each of Velrada's directors and the Client's directors or nominated representative(s) is capable of giving and receiving any notices required to be given or received for the purposes of these terms and conditions and doing all things necessary to be done by a Party under these terms and conditions.

A notice, consent or other communication under these terms and conditions is only effective if it is in writing, signed and either left at the addressee's address or sent to the addressee by mail, fax or email.

A notice, consent or other communication that complies with this clause is regarded as given and received if:

- a) sent by mail, 3 Business Days after it is posted;
- b) sent by fax, when the addressee actually receives it in full and in legible form; and
- c) sent by email, when the sender receives confirmation on its server that the message has been transmitted.

A Party's postal address, email address and fax number are those notified at the commencement of Services, or as last notified by the Party.

## **17. General Provisions**

### **17.1 Restriction on Engagement of Employees**

During, neither Velrada nor the Client may entice, solicit or endeavour to entice, solicit or engage any person who is an employee of the other party to act as its employee or as a consultant to or agent for the other party or otherwise knowingly offer employment, a consultancy or an agency or employ or engage as a consultant or agent or cause employment or a consultancy or an agency to be offered to any person who is or has been an employee of the other party, either whilst Velrada is providing Services for the Client or for a period of 6 months after the Services have been completed.

The parties agree this clause is an essential term and shall survive the termination of this Agreement.

The parties agree that a breach of this clause releases the non-breaching party from the burdens but not the benefits of this Agreement.

### **17.2 Assignment**

Neither Party may assign, novate or otherwise deal with any right or obligation under this Agreement (whether in whole or in part) without the written consent of the other Party.

Unless stated in writing to the contrary, no assignment, novation or otherwise will release the assignor from any obligation under this Agreement.

### **17.3 Entire Agreement**

This Agreement embodies the entire understanding and agreement between the Parties as to the subject matter of this

Agreement and supersedes any prior written or other arrangement of the Parties.

### **17.4 Severability**

If a clause or a part of a clause of these terms and conditions can be read in a way that makes it illegal, unenforceable or invalid, but can also be read in a way that makes it legal, enforceable and valid, it must be read in the latter way. If any clause or part of a clause is illegal, unenforceable or invalid, that clause or part is to be treated as removed from these terms and conditions, but the rest of these terms and conditions are not affected.

Where a clause is prohibited or unenforceable, the Parties must negotiate in good faith to replace the invalid clause by a clause which is in accordance with the Governing Law and which must be as close as possible to the Parties' original intent and appropriate consequential amendments (if any) will be made to these terms and conditions.

### **17.5 Governing Law**

This Agreement is governed by and is to be construed in accordance with the laws applicable in the State or Territory in Australia where the Services are to be performed (unless otherwise agreed in writing). If the Services are to be performed outside Australia, then the laws of Western Australia, Australia will apply (Governing Law). Notwithstanding the laws governing the Agreement, each Party irrevocably and unconditionally submits to the jurisdiction of the courts of Western Australia.

### **17.6 Waiver**

- a) Failure to exercise or enforce or a delay in exercising or enforcing or the partial exercise or enforcement, of a right provided by law or under this Agreement by a Party does not preclude or operate as a waiver of the exercise or enforcement, or further exercise or enforcement of that or any other right provided by law or under this Agreement.
- b) A waiver or consent given by a Party under this Agreement is only effective and binding on that Party if it is given or confirmed in writing by that Party.
- c) No waiver of a breach of a term of this Agreement operates as a waiver of another breach of that term or of a breach of any other term of this Agreement.

### **17.7 Further Acts and Documents**

Each Party must promptly do all further acts and execute and deliver all further documents (in form and content reasonably satisfactory to that Party) required by law or reasonably requested by the other Party to give effect to this Agreement.

### **17.8 Consent**

A consent required under this Agreement from a Party may not be unreasonably withheld, unless this Agreement expressly provides otherwise.

### **17.9 No Representation or Reliance**

- a) Each Party acknowledges that neither the other Party (nor any person acting on a Party's behalf) has made any representation or other inducement to it to enter into this Agreement except for representations or inducements expressly set out in this Agreement.
- b) Each Party acknowledges and confirms that it does not enter into this Agreement in reliance on any representation or other inducement by or on behalf of the other Party, except for representations or inducements expressly set out in this Agreement.

### **17.10 Stamp Duties**

The Client must pay all stamp duties and any related fines and penalties in respect of this Agreement or the performance of this Agreement.

### **17.11 Insurance**

- a) Velrada will maintain for the period of the Services, professional indemnity insurance with an amount of cover of \$1 million (per occurrence and in the aggregate), public liability insurance with an amount of cover of \$5 million (per occurrence) and workers' compensation insurance as required under the laws of the State or Territory in Australia where the Services are to be performed.
- b) The Client must effect and maintain during the currency of the Services, at its own expense such additional insurance as may be required by Velrada including but not limited to occupiers liability and provide on request by Velrada a certificate of currency evidencing insured coverage.

### **17.12 Order of Precedence**

It is to be noted that any conflicting terms should be read in the following order:

- a) Terms and conditions contained in any Order Form which is agreed in writing by Velrada;
- b) Schedules associated with the aforementioned signed Order Form (if any); and
- c) At no time will the terms and conditions received from a Client on a Client purchase order override the order of precedence in the above-mentioned documentation.

### **18. Acceptance**

The Client shall have a period of 15 days (Evaluation Period) after clause of the Deliverables to verify that such Deliverables conform in all material respects with the specifications set forth in the Order Form. If the Client notifies Velrada in writing prior to the expiration of the relevant Evaluation Period that such Deliverables fail in an adverse material respect to conform with such specifications (a Nonconformity), Velrada shall, to the extent practicable at its own expense, promptly correct such Nonconformity, whereupon the Client shall receive an additional 15 day period (Verification Period) commencing upon the Client's receipt of the corrected Deliverables to verify that the previously reported Nonconformity has been corrected. The Client shall provide Velrada with such assistance as Velrada may reasonably require enabling it to verify the existence of and correct a reported Nonconformity. The Client agrees that the Deliverables shall be deemed accepted by it upon the expiration of the Evaluation Period or, in the event that it has notified Velrada of Nonconformity as provided above, upon expiration of the relevant Verification Period.

### **19. Intellectual Property**

- a) All rights, title and interest in and to any derived intellectual property including, without limitation, any copyright, moral right, trade mark (registered or unregistered), patent, design or any other intellectual property right as well as any discovery, invention, secret, process or improvement in procedure made, developed or discovered by Velrada while performing the Services is, and will remain, vested in the Client.
- b) The Client agrees to grant Velrada a non-exclusive, irrevocable, world-wide,

- royalty payment-free licence to use, reproduce, publish, adapt and exploit that intellectual property to the extent necessary to enable Velrada to perform the Services and for no other purpose.
- c) All intellectual property rights that belonged to Velrada prior to the commencement of the Services will remain the property of Velrada.
  - d) Velrada agrees to grant the Client a non-exclusive, irrevocable, world-wide, royalty payment-free licence to use, reproduce, publish, adapt and exploit the intellectual property referred to in clause 19.3(c) to the extent necessary to enable the Client to enjoy the full benefit of the Services and for no other purpose.
  - e) Velrada acknowledges that the Client does not permit the use of its name, logo or any other identifying indicator in any material which is to be provided to third parties (including, without limitation, material designed for public relations, business development and/or marketing exercises) without the Clients' consent. Such consent will not be unreasonably withheld or delayed.

**20. Relationship**

- a) Velrada is engaged as an independent contractor and the Client must not represent itself, and must ensure that its personnel do not represent themselves, as being agents, servants, employees, directors or representatives of Velrada.
- b) Nothing in this Agreement constitutes a relationship of employer and employee, principal and agent, joint venture or partnership between the Parties or otherwise sharing risks or rewards or constituting a Party the agent, servant, employee or representative of the other Party.

**21. Client's Obligations**

- a) The Client must, in requesting and during the Services:
  - i. Not interfere with Velrada's business;
  - ii. Be aware of and comply with and ensure that the Client's personnel are aware of and comply with any applicable laws;
  - iii. Ensure that it provides Velrada's personnel a safe work environment and health and safety training if

- required by Velrada or any applicable law;
- iv. Comply with its workplace health and safety practices as reasonably required by Velrada from time to time; and
- v. Take all necessary and prudent measures to protect people and property.
- b) In circumstances where Velrada's personnel are on the Client's Site, the Client must not cause, permit, procure or tolerate an unsafe condition or activity including but not limited to unacceptable actual or potential hazards and incidents relating to safety, health or the environment on the Client's Site.

**22. Representations and Warranties**

- a) The Client acknowledges and declares that by entering into the Agreement, the Client has relied solely on its own due diligence, inspection, advice, search enquiries, perusal and opinion in relation to the suitability of the Client's Services and has not relied on any promise, representation, guarantee, warranty or undertaking given by or on behalf of Velrada in respect of the suitability of Velrada's Services for any use required by the Client and all warranties (if any) implied by law are, subject to Clause 24 and to the extent permissible by law expressly waived.
- b) Unless agreed otherwise in writing, the Agreement supersedes any previous express or implied verbal, written or other communications or representations.

**23. Sub-Contracting**

Velrada shall be entitled to sub-contract any work relating to the Agreement without obtaining the consent of, or giving notice to the Client.

**24. Competition and Consumer Act 2010**

- a) In this clause "Consumer" means an Individual or a corporation acquiring Services at a price not exceeding \$40,000,
- b) If the Client is not a Consumer, then to the extent permitted by law, all conditions, warranties and liabilities, implied, statutory or otherwise not contained in this Agreement (or in any

- written warranty statement provided by Velrada with the Services ("Company Warranty")), are excluded.
- c) If the Client is not a Consumer, then to the extent permitted by law Velrada is not liable to the Client for any loss or damages, however caused (including by negligence of Velrada or its personnel), suffered or incurred by the Client due to a breach of these terms and conditions or in relation to any defect or deficiency in the Services (other than as set out in any Company Warranty).
  - d) This clause does not limit the Velrada's liability to a Client who is a Consumer.
  - e) If the Client is a Consumer as defined under the ACL ("Consumer"), nothing in these terms and conditions excludes, restricts or modifies your rights or remedies against Velrada for failure to comply with a guarantee under the ACL, however and subject to section 64A(3) of the ACL, to the extent that the Services are not of a kind ordinarily acquired for personal, domestic or household use or consumption, Velrada limits its liability for failure to comply with a guarantee under the ACL (other than a guarantee under section 51, 52 or 53 of the ACL) at Velrada's option to the supplying of the Services again or the payment of the cost of having the Services supplied again.
  - f) Velrada is not liable for any indirect, special, consequential or reasonably foreseeable losses or expenses suffered by the Client or any other person or entity, howsoever caused, including but not limited to loss of turnover, profits, business or goodwill or any liability to any other person or entity, except to the extent of any liability imposed by the ACL.
  - g) Nothing in this clause is to be interpreted as excluding, restricting or modifying or having the effect of excluding, restricting or modifying the application of any State or Federal legislation applicable to the supply of services which cannot be lawfully excluded, restricted or modified.
- 25. Variations and Extensions**
- a) At any time during the currency of these terms and conditions, Velrada may by notice in writing to the Client, vary the Services to be provided to the Client as a consequence of:

- i. a change in the nature, quality, timing or sequence of portions of the Services at the direction of the Client;
  - ii. an increase in the costs to provide the Services which are beyond the control of Velrada; or
  - iii. additional work is required to perform the Services.
- b) Velrada will be entitled to an extension of time to provide the Services if:
    - i. the cause of the delay was beyond the reasonable control of Velrada; and
    - ii. Velrada gives notice to the Client explaining the reason and duration of the extension required.
  - c) Velrada will be entitled to be paid the Service Fee and any ancillary costs and expenses during any extension under this clause.

**26. Electronic Communication**

The Client and Velrada agree that they may communicate with each other electronically, provided that neither Party is responsible to the other for any loss or damages suffered in connection with the use of email as a form of communication.

**27. Software**

- a) Any software provided by Velrada is sold as a reseller and the software, including all files and images, contained in or generated by the software, and accompanying data (together referred to as "Software") are deemed to be licensed to you by the licensor of the Software subject to their terms and conditions of use.
- b) Velrada does not transfer either the title or the intellectual property rights to the Software and the licensor of the Software retains full and complete title to the Software as well as all intellectual property rights therein.
- c) The Client agrees it may not sell, redistribute or reproduce the Software, nor may the Client decompile, reverse engineer, disassemble or otherwise convert the Software to a human-perceivable form.
- d) All trademarks and logos of the Software are owned by the Software licensors and the Client agrees it shall not copy or use them in any manner.

- e) The Client assumes all responsibility and risk for the use of Software and Velrada does not warrant that the Software will be error free, accurate, useful, complete, that defects will be corrected, or that it is free of viruses, malicious software or bugs.
- f) The Client acknowledges responsibility for implementing sufficient procedures and virus checks (including anti-virus and other security checks) to satisfy its own particular requirements for the Software.
- g) The Client agrees to abide by the Software licence terms of and conditions, acknowledges that they are the sole responsibility of the Client and indemnifies Velrada on a full indemnity basis for any breach of them.
- h) Velrada expressly disclaims liability for errors or omissions in the Software and shall not be liable to the Client for any direct, special, indirect or consequential damages or any other damages or whatever kind resulting from whatever cause including, but not limited to, loss of use, loss of profit or loss of data, whether in an action of contract, negligence, strict liability or otherwise, arising out of or in any way in connection with the use or performance of the Software.

**28. Guarantee and Indemnity**

- a) In consideration of Velrada providing the Services to the Client at the request of the Guarantor the Guarantor enters into the Guarantee and Indemnity in favour of Velrada.
- b) Guarantees to Velrada the performance by the Client of all of its obligations under the Agreement and indemnifies Velrada from and against all and any costs, claims, damages and expenses whatsoever, and howsoever, arising out of the breach or non-performance by the Client of the terms of the Agreement.
- c) This guarantee and indemnity continues during the currency of the Agreement between Velrada and the Client, and the guarantor's liability is not affected by Velrada giving time, or any other concession, indulgence or compromise to the Client for the performance of its obligations.
- d) This guarantee and indemnity may be enforced against the guarantor without Velrada first taking action against the Client, or pursuing any other available recourse, and may be enforced despite

any neglect or omission to enforce any rights against the Client, or if any of the agreements between Velrada and the client are wholly, or partially unenforceable, or if the Client goes into administration, receivership or liquidation.

**29. Time to Complete**

- a) Velrada shall complete the Services as soon as reasonably practicable but in any event Velrada shall not be obliged to complete the Services by any particular date unless expressly agreed to in writing by Velrada. The duration of any delay arising in Velrada's completion of the Services caused by events not reasonable within its control shall be added to any time state in the Order Form for the completion of the Services. After provision of Services commences, Velrada reserves the right to invoice the Client for any costs incurred resulting from delays indirectly or directly attributable in whole or in part to the Client in providing the necessary information or decisions required by Velrada to complete the Services.
- b) The Client will, within a time that does not delay Velrada in performing the Services, provide all information necessary for Velrada to perform the Services.

----- End of Document -----