

1 DEFINITIONS AND INTERPRETATION

In this Agreement, unless the contrary intention appears:

1.1 Definitions

- 1.1.1 **Business Day** means a day on which trading banks are generally open for business in Melbourne, Victoria.
- 1.1.2 **CDD** means Alexander Roberts and Associates Pty Ltd (ACN 093 041 984) trading as Corporate Document Destruction.
- 1.1.3 **GST** means GST within the meaning of the GST Act.
- 1.1.4 **GST Act** means the *A New Tax System (Goods and Services Tax) Act 1999 (Cth)* and the related imposition Acts of the Commonwealth.
- 1.1.5 **Interest Rate** means the interest rate set out under the *Penalty Interest Rates Act 1983 (Vic)* from time to time.
- 1.1.6 **Waste Paper Material** means the recyclable material streamed from general household or commercial waste including but not limited to the clean office waste paper and cardboard (non-waxed or laminated and containing no sharps (i.e. syringes)) as well as any other materials or waste that may specifically be agreed between the parties from time to time.
- 1.1.7 **Supply Point** means the point at the Location from where CDD will collect the filled collection containers.

1.2 Interpretation

- 1.2.1 certain capitalised words and expressions shall have the meaning set out in the Schedule;
- 1.2.2 headings are for convenience and do not affect interpretation;
- 1.2.3 words importing the singular include the plural and vice versa;
- 1.2.4 a reference to "\$" means the lawful currency of Australia; and
- 1.2.5 the words "include" or "including" and cognate words and expressions are to be construed without limitation.

2 TERM

- 2.1 This Agreement commences on the Commencement Date and continues for the Term.
- 2.2 No later than 60 days before the end of the Term, CDD shall notify the Client in writing that the end of the Term is approaching and that the Term will be automatically renewed for successive terms of 1 year unless the Client notifies CDD at least 30 days before the conclusion of the Term that it does not wish to renew this Agreement. Where the Agreement is renewed, each successive term will also then be a Term.

3 SERVICES

- 3.1 The Client engages CDD to provide the Services exclusively and CDD agrees to provide the Services to the Client in accordance with the Collection Intervals. CDD shall provide the Services in such manner and using such equipment (including vehicles) as CDD deems appropriate to facilitate the provision of the Services, acting reasonably.
- 3.2 The Client agrees to ensure that the collection containers are filled only with Waste Paper Material and, on the days agreed for collection, the Client must ensure that the collection containers are made available at the Supply Point for the safe collection by CDD. In the event that a collection is unable to take place by CDD at a pre-arranged date and time, CDD shall be entitled to charge the Client a fee for the failed collection equal to the minimum collection service fee applicable at the time of the failed collection. The Client agrees that such charge is reasonable in order to compensate CDD for its costs in attending at the pre-arranged date and time, notwithstanding that the collection did not take place. CDD may elect to waive the failed collection charge in the event that the Client can demonstrate that the failed collection was due to reasons beyond the reasonable control of the Client.
- 3.3 CDD, acting reasonably, is permitted to reject any collection containers containing material other than Waste Paper Material.

4 COLLECTION CONTAINERS

- 4.1 CDD is to provide the number of collection containers specified in the Schedule to the Client at the Location.
- 4.2 Property in, and ownership and title to, the collection containers shall remain with CDD at all times.
- 4.3 The Client shall ensure that, for the duration of the Term, the collection containers remain at the Location and are safely and readily accessible and freely available for collection by CDD.
- 4.4 At the conclusion of the Term or otherwise upon termination of this Agreement, the Client, at its own cost, will return, or will arrange for the return of, the collection containers to CDD.
- 4.5 The Client will ensure that the collection containers are maintained in good order and repair or condition and are appropriately insured, and when necessary, will make good, any loss, theft or damage (fair wear and tear excepted) to the collection containers for the duration of the Term.
- 4.6 The Client agrees during the Term to use the collection containers only for the purpose set out in this Agreement and to maintain the collection containers in a safe and proper working condition whilst the collection containers are at the Location.
- 4.7 CDD is, upon providing reasonable notice in advance to the Client, entitled to enter the Location and inspect the collection containers.
- 4.8 If the Client is in default of payment or otherwise breaches this Agreement (and fails to remedy that breach within 7 days of having received written notice from CDD requiring remedy), CDD may remove the collection containers from the Location.

5 FEES

- 5.1 The Client will pay all Service Fees to CDD in accordance with the Payment Terms. Service Fees paid by credit card will attract a credit card surcharge which will be payable by the Client. Where the Client wishes to pay the Service Fees by direct deposit, as security for payment, the Client agrees to provide CDD with valid credit card details. CDD shall be entitled to reserve an amount equal to the Service Fees payable on such credit card. Where the Client then pays the Service Fees by direct deposit, CDD shall immediately un-reserve the said amount. In the event that the Client fails to pay the Service Fees by direct deposit within in fourteen (14) days of the date of the invoice, CDD shall be entitled to process the payment from the credit card provided.
- 5.2 CDD reserves the right to vary the Service Fees by giving 30 days prior written notice to the Client. If the Client does not wish to accept the varied Service Fees, the Client may terminate this Agreement by providing CDD with 14 days written notice of such termination.
- 5.3 If the Client fails to pay the Service Fees in accordance with the Payment Terms, the Client shall be liable to pay CDD interest at the Interest Rate, calculated daily, on all outstanding amounts from the due date until payment in full has been made, plus any costs (including legal costs) incurred by CDD in recovering the outstanding Service Fees.

6 INDEMNITY

The Client indemnifies and keeps CDD indemnified from and against all claims, demands, actions, proceedings or prosecutions which may be brought, commenced or prosecuted against CDD or in which CDD may be involved except where and to the extent any such claim, demand, action, proceedings or prosecution is caused or contributed to by a negligent act or omission of CDD.

7 LIMITATION OF LIABILITY

- 7.1 Subject to clause 7.2 and to the fullest extent permitted by law, CDD is excluded from any and all liability for any direct or indirect loss, damage, cost or expense, however or wherever incurred by the Client, other than that if incurred by the Client due to a negligent act of, or omission by, CDD.
- 7.2 If CDD breaches the Agreement or any term, condition or warranty which is implied by law and cannot be lawfully excluded, CDD's liability for that breach is limited to, at its election, the re-supply of the relevant Services or the payment to the Client of the cost of having the relevant Services supplied again.

8 CONFIDENTIAL INFORMATION

Each party may use confidential information of the other party only for the purposes set out in this Agreement and must keep confidential all such information except to the extent that party is required by law to disclose any confidential information.

- 9 GST**
- 9.1** Expressions set out in italics bear the same meaning as those expressions in the GST Act.
- 9.2** To the extent that a party makes a *taxable supply* under or in connection with this Agreement, except where express provision is made to the contrary, the *consideration* payable by a party under or in connection with this Agreement represents the *value* of the *taxable supply* for which payment is to be made and on which GST is to be calculated.
- 9.3** If a party makes a *taxable supply* under or in connection with this Agreement for a *consideration*, which, under clause 9.2 represents its *value*, then the party liable to pay for the *taxable supply* must also pay at the same time and in the same manner as the *value* is otherwise payable, the amount of any GST payable in respect of the *taxable supply*.
- 9.4** Not later than 7 days after receipt of the *consideration* and GST payable, the recipient is to deliver a *tax invoice* to the party liable to pay the *consideration* and GST payable.
- 10 NOTICES**
- 10.1** A notice under this Agreement must be in writing, signed by or on behalf of the person giving it, addressed to the person to whom it is to be given and delivered to that person's postal address, email address or facsimile number.
- 10.2** A notice given to a person in accordance with this clause is treated as having been given and received on the day of delivery or transmission if a Business Day, otherwise on the next Business Day.
- 11 TERMINATION**
- 11.1** At any time during the Term, either party may terminate this Agreement if a party breaches this Agreement and does not rectify that breach within 14 days of receipt of a written notice from the other party requiring such rectification.
- 11.2** Upon termination of this Agreement for any reason:
- 11.2.1 the Client must pay CDD all amounts owing to CDD for Services provided by CDD up to, and including, the end of any termination notice period; and
- 11.2.2 the Client irrevocably appoints CDD as its attorney for the sole purpose of entering the Location and taking possession of the collection containers.
- 11.3** Notwithstanding clauses 11.1 and 11.2, either party may immediately terminate this Agreement if the other party becomes insolvent or ceases to trade.
- 12 GENERAL**
- 12.1** This Agreement contains the entire agreement of the parties with respect to its subject matter and may only be varied by the mutual written agreement of the parties.
- 12.2** Each party warrants to the other party that it has the power and authority to enter into this Agreement.
- 12.3** This Agreement is governed by the laws of the State of Victoria and the parties submit to the non-exclusive jurisdiction of the courts exercising jurisdiction in Victoria.
- 12.4** The persons signing this Agreement warrant that they have the authority to being the relevant party.