

**ROJAN AUSTRALIA PTY LIMITED**  
**GENERAL TERMS OF ENGAGEMENT**

These terms of engagement are between **ROJAN AUSTRALIA PTY LIMITED** (ABN 47 097 347 049) of 119 Robsons Road, Keiraville, NSW 2500 (*Rojan*) and the Party identified, and of the address listed, in Item 1 of *Schedule 1 (Customer)*, for the provision of the Services (*the Agreement*).

**1. DEFINITIONS AND INTERPRETATION**

**1.1 DEFINITIONS**

In this Agreement:

*Acceptable Use Policy* means Rojan's Acceptable Use Policy, a copy of which has been provided to the Customer, and as amended from time to time, as notified to the Customer.

*Additional Fees* means a charge in accordance with Rojan's standard hourly rates, in effect and as amended from time to time, which includes all out of pocket expenses incurred by Rojan, including travel expenses, materials, extra computer time and resource rationalisation, and as set out in Item 8 of *Schedule 1*.

*Billing Period* means the period beginning on the first business day of each successive month after the Initial Payment and ending on the day immediately prior to the beginning of the next Billing Period.

*Confidential Information* of a Party means all information treated by that Party or any of its Related Bodies Corporate as confidential (regardless of its form or whether the other Party becomes aware of it before or after the Commencement Date), except information that is public knowledge otherwise than as a result of a breach of any obligation of confidentiality, and includes, but it not limited to each of the following:

- (a) The Services.
- (b) Information relating to the personnel, policies, business plans, financial information, marketing plans or material and client lists of either Party.
- (c) Information relating to this Agreement, and any Schedule to it.

*Change Request* means the form set out in *Schedule 2*.

*Commencement Date* means the date specified in Item 5 of *Schedule 1*.

*Control* has the meaning given to it by section 50AA of the *Corporations Act 2001* (Cth).

*Event of Default* means each or any of the following:

- (a) The Customer ceases to carry on its business;
- (b) Any step is taken to enter into any scheme of arrangement between the Customer and its creditors;
- (c) Any step is taken by a mortgagee to enter into possession or dispose of the whole or any part of the Customer's assets or business; or
- (d) Any step is taken to appoint a receiver, a receiver and manager, a trustee in bankruptcy, a liquidator, a provisional liquidator, an administrator or other like person of the whole or any part of the Customer assets or business.

*Fees* means Rojan's fees for providing Services to the Customer, as itemised in Item 2 of *Schedule 1*.

**Force Majeure** means a circumstance beyond the reasonable control of a Party that result(s) in a Party being unable to observe or perform on time an obligation under this Agreement. These circumstances include but are not limited to each of the following:

- (a) Acts of God, lightning strikes, earthquakes, floods, storms, explosions, fires and any natural disaster;
- (b) Acts of war, acts of public enemies, terrorism, riots, civil commotion, malicious damage, sabotage and revolution; or
- (c) Strikes.

**Intellectual Property Rights** means any and all intellectual and industrial property rights throughout the world including rights in respect of or in connection with any copyright (including future copyright and rights in the nature of or analogous to copyright), performers' protection, moral rights, inventions (including patents), trademarks, service marks, designs and semiconductor and/ or circuit layouts; whether or not now existing and whether or not registered or registrable and includes any right to apply for the registration of any right and includes all renewals and extensions of those rights:

**Minimum Technical Requirements** means Rojan's minimum technical and operational requirements, as specified in **Schedule 4**.

**Party** means each of Rojan and the Customer (collectively **the Parties**).

**Privacy Policy** means Rojan's policy for collecting, using and storing personal information of individuals, and as amended from time to time, as notified to the Customer.

**Related Body Corporate** has the same meaning as in the *Corporations Act 2001* (Cth).

**Restrained Person** means any employee, agent or sub-contractor of Rojan during the Term.

**Restraint Period** means the period ending 12 months after the end of the Term.

**Services** means the services set out in Item 2 of **Schedule 1** and **Schedule 3**, together with any other services that are necessary or incidental to the proper performance of the Services.

**Service Levels** means the minimum service levels required for a Service, as set out in the Special Conditions.

**Special Conditions** means any or all of the conditions set out in **Schedule 3**.

**Specifications** mean the technical and functional specifications of any of the Services.

**Term** means the term of this Agreement specified in Item 6 of **Schedule 1**, as extended by clause 8.2.

## 1.2 INTERPRETATION

In this Agreement, including the Schedules and any Special Conditions, unless the context otherwise requires or permits:

- (a) References to a Party include as the context requires respective executors, administrators, successors and permitted assigns;
- (b) References to a person include any other entity recognised by law and vice versa;
- (c) References to legislation or legislative provisions include modifying, consolidating or replacing legislation or legislative provisions;
- (d) References to months and years mean calendar months and years;

- (e) Words denoting the singular number include the plural and vice versa;
- (f) Words denoting one gender include every gender;
- (g) Where any word or phrase is given a defined meaning any other grammatical form of that word or phrase has a corresponding meaning;
- (h) Every covenant or provision applying to or binding more than one person binds them jointly and each of them severally;
- (i) If any part of this Agreement is void or unenforceable or would be so unless severed, then the rest of the Agreement continues to have full force and effect;
- (j) Headings are only for convenience and do not affect interpretation; and
- (k) If the day on which any act, matter or thing is to be done under or pursuant to this Agreement is not a business day, that act, matter or thing may be done on the next business day. A business day is a day on which banks are open for general banking business in Sydney, New South Wales.

### **1.3 ORDER OF PRIORITY OF DOCUMENTS**

The terms of any Special Conditions take priority over these general terms and conditions or any other Schedule. The terms of any other Schedule also take priority over these general terms and conditions. If there is an inconsistency or ambiguity, the terms of the Special Conditions or any other Schedules prevail over these general terms and conditions.

## **2. APPOINTMENT OF ROJAN AND PROVISION OF SERVICES**

### **2.1 APPOINTMENT**

The Customer appoints Rojan to provide, and Rojan agrees to provide, the Services on the terms and conditions contained in this Agreement.

### **2.2 SERVICE REQUIREMENTS**

Rojan must at all times do each of the following:

- (a) Provide all Services:
  - (i) With due skill, care and to the best of its knowledge and expertise; and
  - (ii) In compliance with all applicable standards, laws and regulations.
- (b) Ensure that it, its employees, agents, sub-contractors and assigns comply with all lawful orders and reasonable instructions given to Rojan by the Customer and comply in all respects with any rules and regulations which have or may be established by Rojan.
- (c) Comply with all Service Levels.

### **2.3 CHANGE TO SERVICES OR PROVISION OF ADDITIONAL SERVICES**

- (a) The Customer may request Rojan to not perform any Services or to perform further services in addition to the Services by giving a completed Change Request in writing to Rojan.
- (b) The Parties must agree on an appropriate variation to the Fees in respect of any Services that the Customer no longer requires. In the absence of any Agreement, the Customer remains liable for the full amount of the Fees.

- (c) Rojan may, at its discretion, offer to perform any additional services for the Customer requested in a Change Request, stating any terms and conditions upon which it is prepared to perform those additional services, including as to cost.
- (d) The Customer may accept that offer by notice in writing. On acceptance, any additional services are thereafter included as Services and will be subject to the whole of this Agreement, including automatic extension pursuant to clause 8.2.
- (e) Except to the extent of any inconsistency with any terms set out by Rojan under **clause 2.3(c)**, the terms and conditions of this Agreement apply to the performance of the additional services.

## **2.4 MINIMUM TECHNICAL REQUIREMENTS**

- (a) Rojan may need to specify some Minimum Technical Requirements that it requires the Customer to provide or comply with throughout the Term (***Set Out in Schedule 4***), and which Rojan, in its absolute discretion, considers necessary in order for it to provide the Services to the Customer.
- (b) If the Customer fails to provide the Minimum Technical Requirements requested by Rojan, Rojan may at its discretion do any of the following:
  - (i) Refuse to provide the Services until the Minimum Technical Requirements are complied with or provided to Rojan's satisfaction.
  - (ii) Agree to provide the Services and accept no liability for any loss or damage incurred by the Customer as a result (whether direct or indirect) of the Customer's failure to provide or comply with the Minimum Technical Requirements.

## **3. PAYMENT OF FEES**

### **3.1 INITIAL FEES**

- (a) An initial payment covering the percentage of the Fees for setup, installation, supply and establishment of the necessary hardware and software for the Services (***Initial Payment***) is due and payable to Rojan after signing of this Agreement.
- (b) If the Customer does not make the Initial Payment prior to installation of the Services, Rojan may suspend or terminate the Services.
- (c) If the Customer cancels any Services prior to the installation and establishment of Services, any setup, installation and establishment Fees incurred by Rojan in relation to those Services remain due and payable in full to Rojan.
- (d) If the Customer cancels any Services after delivery of hardware and software necessary for those Services the Fees for that hardware and software remain due and payable in full to Rojan.
- (e) Following satisfaction of the Initial Payment, the Customer must pay, in arrears, all of the Fees for each Billing Period. Fees must be paid in accordance with Item 3 of ***Schedule 1***. The Special Conditions may set out any terms and conditions for the agreed method of payment.
- (f) All amounts due to Rojan are payable within 30 days of the date of a valid tax invoice as issued by Rojan.

- (g) Unless the Customer has made special arrangements with Rojan to the contrary, all invoices will be issued electronically.
- (h) All payments by the Customer must be made in full for the entire amount of the relevant invoice without reduction, offset or charge back, unless and only to the extent that any reduction, offset or charge back has been approved in writing by Rojan.

### **3.2 ADDITIONAL FEES**

Additional Fees may apply in any of the following circumstances, where the circumstances are not the result of a breach by Rojan:

- (a) The provision of the Services is delayed due to any delay or breach by the Customer.
- (b) Rojan is required to provide the Services in circumstances other than those expressly or reasonably anticipated under the terms of this Agreement.
- (c) There is a change in the timing or complexity of provision of the Services.

### **3.3 LATE PAYMENT**

- (a) Unless a dispute has been lodged, without prejudice to the rights and powers of Rojan under this Agreement, the Customer must pay to Rojan interest on any amounts due to Rojan but unpaid for 30 days, chargeable from the date of the invoice until full payment of the due amount is made by cleared funds.
- (b) The rate of interest for the purpose of this clause is the rate per annum of two per cent (2%) above the maximum overdraft rate, current from time to time for loans in excess of \$100,000, as charged by Rojan's banker.
- (c) Without prejudice to the rights of Rojan otherwise under this Agreement, if any amounts due to Rojan remain unpaid for more than 2 months from the date of the invoice, Rojan is entitled to charge the Customer an administration fee being the greater of \$20.00 or 20% of the amount due and payable, which sum is due and payable immediately.
- (d) If the Customer defaults in payment of any invoice when due, the Customer indemnifies Rojan from and against all Rojan's costs and disbursements incurred as a result of the default. Rojan's costs and disbursements include Fees paid to Rojan's debt collection agency and legal costs (on a solicitor/client basis).

### **3.4 SUSPENSION OF SERVICES**

- (a) Without prejudice to any other remedies Rojan may have, if at any time the Customer is in breach of any obligation under this Agreement, Rojan may suspend or terminate the provision of Services to the Customer and any of its other obligations. Rojan is not liable to the Customer for any loss or damage the Customer suffers because Rojan exercises its rights under this clause.
- (b) If Services have been suspended or terminated, the Customer may reactivate the Services only with the written consent of Rojan on any terms or conditions required by Rojan and provided that the Customer pays all outstanding amounts owed to Rojan.
- (c) If, following a suspension or termination of Services, the Customer's information has been purged from Rojan's database, the Customer is responsible for paying to Rojan any additional fees that Rojan may incur in re-setting and re-entering the Customer's information.

- (d) The Customer acknowledges and agrees that, following a suspension or termination, if the Services are reactivated
  - (i) The Customer is responsible for re-uploading the Customer's files.
  - (ii) Rojan is not responsible for any lost files, information or data.
  - (iii) Reactivation will only be performed during Rojan's regular business hours.

### **3.5 NO SET OFF**

The Customer must not set off against any amounts due to Rojan amounts due to the Customer by Rojan

## **4. SUBCONTRACTING**

### **4.1 ENGAGEMENT OF SUB-CONTRACTORS**

- (a) Rojan is entitled to engage any subcontractors it deems necessary.
- (b) Rojan is responsible for the performance of any obligation by a sub-contractor.
- (c) Rojan remains primarily liable for performance of the Services.

### **4.2 OBLIGATION OF CONFIDENTIALITY**

Rojan must ensure that any sub-contractor engaged under clause 4.1 agrees to be bound by confidentiality obligations identical to those by which Rojan is bound in relation to the Confidential Information of the Customer and the Customer's Confidentiality Agreement signed by Rojan Australia.

## **5. INTELLECTUAL PROPERTY**

All Intellectual Property Rights created in the course or as a result of or for the purpose of performing the Services automatically vests in Rojan when created.

## **6. CONFIDENTIAL INFORMATION**

Both Parties must do each of the following:

- (a) Keep the Confidential Information confidential.
- (b) Use the Confidential Information solely for the purposes of performing an obligation or exercising a right under this Agreement.
- (c) Only disclose the Confidential Information to those of its officers, employees, agents, contractors or advisers who have a need to know and on terms substantially similar to those in this **clause 6**.

## **7. NON-SOLICITATION**

- (a) For the Restraint Period, the Customer must not, whether directly or indirectly, solicit, offer to employ or engage, employ or engage the services of any Restrained Person without Rojan's prior written consent.
- (b) Each restraint imposed by paragraph (a) (which results from the combination of the Restraint Period and the Restrained Persons) is a separate and independent obligation from the other restraint obligations imposed (although they are cumulative in effect).
- (c) Each of the restraint obligations imposed by paragraph (a) is reasonable in its extent (in respect of all durations and categories of persons) having regard to the interests of each Party and extends no further (in any respect) than is reasonably necessary and is solely to protect Rojan's goodwill and commercial interests.

## **8. TERM AND TERMINATION**

### **8.1 TERM**

This agreement commences on the Commencement Date and continues for the Term unless terminated earlier in accordance with the provisions of this Agreement.

### **8.2 CONTINUATION**

- (a) The Term of this Agreement will be automatically extended by the duration specified at Item 6 of *Schedule 1* if:
  - (i) The Term has expired (other than by termination pursuant to this Agreement); and
  - (ii) Within 30 days of this Agreement expiring, the Customer has not re-negotiated new terms of agreement. (*Continuing Agreement*)
- (b) The Term of this Agreement will be automatically extended by an additional 12 months if there is any change to services made or additional services provided pursuant to clause 2.3.
- (c) Either Party may terminate the Continuing Agreement by providing the other Party with one month's written notice of their intention to terminate the Continuing Agreement, in accordance with clause **8.2(d)**.
- (d) Notice under clause **8.2(c)** is effective if it is provided no less than 5 clear days prior to the commencement of the calendar month at the end of which termination is to be effective. For the avoidance of doubt, for termination to be effective on 30 November in any year, notice must be provided no later than 26 October of that year. Notice any later than that date, and prior to 25 November, means that the Agreement, terminates on 31 December of that year.

### **8.3 TERMINATION BY ROJAN WITHOUT CAUSE**

Rojan may terminate this Agreement, or any Services, for any reason by giving at least 2 months' written notice to the Customer.

### **8.4 TERMINATION FOR BREACH**

Either Party may terminate this Agreement at any time during the Term immediately by giving the other Party 14 days written notice where any of the following occurs:

- (a) The other Party breaches any obligation of confidentiality.
- (b) The other Party breaches any material term of this Agreement, that breach is capable of remedy and the Party in breach fails to remedy the breach within 14 days of being given written notice by the other Party requiring the breach to be remedied.
- (c) The other Party breaches any material term of this Agreement, and that breach is not capable of remedy.

### **8.5 TERMINATION UPON EVENT OF DEFAULT**

Rojan may terminate this Agreement immediately by written notice if any Event of Default occurs.

### **8.6 SURVIVAL**

- (a) Termination does not affect the accrued rights or remedies of either Party.
- (b) Clauses 4 (Confidential Information) and 16.5 (Relationship) continue to apply after termination.

## **8.7 RETURN OF CONFIDENTIAL INFORMATION**

Within 2 days of termination of this Agreement, or as soon as practicable after that, each Party must do each of the following:

- (a) Provide the other Party with all items held by it containing any of the other Party's Confidential Information.
- (b) Ensure that, after those items have been provided, it retains none of the other Party's Confidential Information.

## **9. INDEMNITIES**

### **9.1 ROJAN INDEMNITY**

Subject to clause 9.5, Rojan indemnifies the Customer, its officers, employees, contractors or agents from and against all liabilities, expenses, losses and costs (including reasonable legal costs and expenses) suffered by the Customer for infringement of any third party Intellectual Property Rights in respect of the provision of the Services.

### **9.2 CUSTOMER INDEMNITY**

The Customer indemnifies Rojan from and against any damages incurred or suffered by Rojan to the extent that the liability is a result of a third party claim against Rojan, its officers, employees, contractors or agents in connection with the provision of the Services, other than any claim that alleges negligence or a breach of contract by Rojan.

### **9.3 NOTIFICATION OF CLAIM**

On the assertion of any claim or the commencement of any suit or proceeding under clauses 9.1 or 9.2, the Party learning of the claim, suit or proceeding must promptly notify the other Party and the Party not having the defence obligation must do each of the following:

- (a) Give the party with the defence obligation reasonable opportunity to defend and settle the claim at its own expense and with counsel of its own selection.
- (b) At all times have the right to fully participate in any defence at its own expense and is not be obligated, against its consent, to participate in any settlement which it reasonably believes would have an adverse effect on its business.
- (c) Make available to the party with the defence obligation all books and records relating to the claim, and the parties agree to render to each other any assistance as may reasonably be required to ensure a proper and adequate defence.
- (d) Not make any settlement of any claims that will give rise to liability of the party with the defence obligation without prior written consent.

### **9.4 MODIFICATION**

Rojan may within 30 days of receiving notice of a claim by a third party against the Customer in respect of an infringement of any Intellectual Property Rights do any of the following, in its absolute discretion:

- (a) Modify, alter or substitute the Services so that they cease to infringe those rights.
- (b) Procure promptly for the Customer the right to use the alleged infringing material in connection with the Services free of any claims by third parties.

## **9.5 NO INDEMNITY**

Rojan is not obliged to indemnify the Customer if the liability for infringement of Intellectual Property Rights arises from any of the following:

- (a) Failure by the Customer to comply with its obligations under this Agreement.
- (b) The modification, enhancement or alteration of any component of the Services by a person other than Rojan without Rojan's prior written consent.

## **10. LIMITATION OF LIABILITY**

### **10.1 EXCLUSION BY ROJAN**

Rojan excludes any condition or warranty that would otherwise be implied in this Agreement to the maximum extent permissible by law. However, the liability of Rojan for any breach of an implied condition or warranty that cannot be excluded is limited, at the option of Rojan, to any relevant remedy listed in section 68A of the *Trade Practices Act 1974* (Cth).

### **10.2 NO LIABILITY FOR CONSEQUENTIAL LOSS**

Each Party:

- (a) Excludes all liability to the other for any consequential, indirect or punitive loss or damages including, without limitation, lost interest, lost profits and lost opportunity; and
- (b) Limits its total aggregate liability to the other Party for any direct loss or damages arising out of any breaches of this Agreement to the amounts payable under clause 4 at the time the breach arose.

## **11. FORCE MAJEURE**

### **11.1 LIMITATION OF LIABILITY**

Notwithstanding any other provision of this Agreement, neither Party is liable for any failure to fulfil any term of this Agreement where that fulfilment is delayed, prevented, restricted or interfered with by reason of Force Majeure.

### **11.2 OBLIGATION TO NOTIFY**

The Party unable to perform its obligations, or its obligations are suspended due to Force Majeure, must do each of the following:

- (a) Notify promptly the other Party of the delay.
- (b) Use its best efforts to resume performance in accordance with this Agreement as soon as possible.

### **11.3 TERMINATION**

- (a) If a delay or failure by a Party to perform its obligations due to Force Majeure exceeds 60 days, either Party may immediately terminate this Agreement by written notice to the other Party.
- (b) On termination, Rojan must refund Fees previously paid by the Customer for any Services not provided by Rojan to the Customer at the time of termination.

## **12. RESOLUTION OF DISPUTES**

### **12.1 REFERRAL TO GENERAL MANAGER**

Before resorting to external dispute resolution mechanisms the Parties must attempt to settle any dispute in relation to this Agreement or the Services by referring the matter to their respective General Manager (or their equivalent) or their nominee.

### **12.2 NO RESOLUTION**

If a dispute is not settled by the Parties pursuant to clause 12.1 within 14 days of one Party sending to the other written notice of the dispute, the Parties may pursue other dispute resolution mechanisms.

## **13. INSURANCE**

Rojan is responsible for holding and maintaining all necessary insurances for carrying out the Services including workers' compensation, employee's liability and any other insurance required by law. Rojan must provide to the Customer, upon reasonable request (to be made not more than once in any year), evidence of the terms and currency of all necessary insurance policies.

## **14. TAXES AND STAMP DUTY**

The Customer must pay directly or reimburse Rojan for any stamp duty and/or taxes (including, without limitation, a GST or consumption tax) payable on these terms and conditions, and any Agreement executed to give effect to any provision of this Agreement.

## **15. ASSIGNMENT**

Both parties must not assign or attempt to assign any right or obligation under this Agreement without either party's prior written consent, which consent must not be unreasonably withheld.

## **16. MISCELLANEOUS**

### **16.1 ADDRESS FOR NOTICES**

Any notice under this Agreement must be in writing and must be by hand delivered or sent by pre-paid post, or sent by facsimile transmission, to the address or facsimile number specified in respect of the Customer in Item 1 of the *Schedule 1* and in respect of Rojan in Item 7 of *Schedule 1* (or any other address or facsimile number notified from time to time):

### **16.2 RECEIPT OF NOTICES**

A notice is deemed received:

- (a) If hand delivered, on the date of delivery;
- (b) If sent by pre-paid post, 5 days after the date of posting; and
- (c) If sent by facsimile transmission, on the day the transmission is sent (as long as the sender has a confirmation report specifying a facsimile number of the recipient, the number of pages sent and the date of the transmission).

### **16.3 VARIATION**

The terms of this Agreement cannot be varied except in writing signed by both Parties.

### **16.4 ENTIRE DOCUMENT**

This Agreement contains the entire agreement of the Parties in respect of its subject matter. All previous correspondence and negotiations in respect of it are superseded.

**16.5 RELATIONSHIP**

The Customer acknowledges each of the following:

- (a) Nothing in this Agreement constitutes a relationship of employer and employee, principal and agent, partnership or joint venture between the Customer and Rojan; and
- (b) The Customer has no right to bind Rojan in contract or otherwise at law.

**16.6 NO WAIVER**

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

**16.7 GOVERNING LAW**

The laws of New South Wales govern these terms and conditions. The Parties submit to the non-exclusive jurisdiction of the courts of that State.