

1. Definitions

In this Agreement, unless the context otherwise requires:

- 1.1 **8Squad** means 8Squad Pty Ltd, ABN 54 633 218 318, an Australian company;
- 1.2 **Agreement** means these Terms and Conditions, and all Statements of Work, schedules, special conditions and annexures thereto accepted by the parties;
- 1.3 **Business Day** means a day that is not a Saturday, Sunday, public holiday or bank holiday in Melbourne, Victoria;
- 1.4 **Change Order** means an agreement in writing, signed by both parties, authorising a change to this Agreement or a Statement of Work (as applicable);
- 1.5 **Claim** means any claim, action, proceeding or investigation of any nature or kind and includes the allegation or threat of a claim;
- 1.6 **Client** means each person to whom 8Squad provides Services, and shall generally be the party named in a Statement of Work;
- 1.7 **Client Material** means any data, information, content or other material of the Client provided to 8Squad or to which 8Squad is given access;
- 1.8 **Commencement Date** means the earlier of:
- (a) the date that 8Squad first starts providing Services or Deliverables to the Client; or
 - (b) the date described as the Commencement Date in the first Statement of Work agreed between the parties;
- 1.9 **Confidential Information** means all information belonging to, or licensed by a party to this Agreement (**Discloser**) and includes, without limitation, all Intellectual Property, notes and other records, whether written or otherwise, including information that:
- (a) the Discloser advises the other party (**Recipient**) is confidential;
 - (b) by its very nature, might reasonably be understood to be confidential or to have been disclosed in confidence;
 - (c) would be of commercial value to a competitor of the Discloser;
 - (d) relates to any arrangements or transactions involving the Discloser;
 - (e) relates to any arrangements or transactions between the Discloser, and its suppliers, contractors, employees or consultants (including their identity and the value in respect of the supplies of goods, services or labour the Discloser acquires from them);
- (f) relates to the Discloser's fees, quotations, prices or charges in respect of services or, formulae, technical information, plans, drawings and specifications;
 - (g) is a business plan or forecast;
 - (h) are financial records, reports, accounts and proposals of the Discloser;
 - (i) relates to the marketing and selling techniques used by the Discloser (including marketing plans, sales plans, research and data surveys);
 - (i) is personal information within the meaning of the Privacy Act 1988 (Cth);
- but excludes information that:
- (k) is, or becomes, generally known or available to the public, through no act or omission on the part of the Recipient;
 - (l) was known, without restriction as to use or disclosure, by the Recipient prior to receiving such information from the Discloser;
 - (m) is rightfully acquired by the Recipient from a third party who has the right to disclose it and who provides it without restriction as to use or disclosure; or
 - (n) is independently developed by the Recipient.
- 1.10 **Corporations Act** means the *Corporations Act 2001* (Cth);
- 1.11 **Defect** means any characteristic of a Deliverable that fails to meet the service levels or acceptance criteria described in a Statement of Work, or otherwise renders the Deliverable not fit for purpose;
- 1.12 **Deliverable** means a deliverable to be provided by 8Squad to the Client pursuant to a Statement of Work;
- 1.13 **Fees** means the fees set out in a Statement of Work or otherwise agreed in writing by the parties from time to time;
- 1.14 **Force Majeure Event** means an event:
- (a) that is outside of the reasonable control of the party claiming that the event has occurred; and
 - (b) the adverse effects of which could not have been prevented or mitigated by that party by reasonable diligence or reasonable precautionary measures,
- and includes natural disasters, acts of terrorism, riots, civil disturbances, pandemics and epidemics, industrial disputes and strikes (other than strikes

involving that party or its officers, employees, agents or contractors);

- 1.15 **GST** means goods and services tax or similar value added tax levied or imposed in Australia under the GST Law or otherwise on a supply;
- 1.16 **GST Act** means *A New Tax System (Goods and Services Tax) Act 1999* (Cth);
- 1.17 **GST Law** has the same meaning as in the GST Act;
- 1.18 **Insolvency Event** means, in respect of a party, any one or more of the following events or circumstances:
- (a) a winding up, dissolution, liquidation, provisional liquidation, administration, or bankruptcy;
 - (b) that party having a receiver or receiver and manager appointed over any of its property or assets, or an administrator, liquidator or provisional liquidator appointed to that party;
 - (c) being unable to pay any of its debts as and when due and payable or being deemed to be insolvent under any provision of the Corporations Act or any other applicable law;
 - (d) seeking protection from its creditors under any applicable law, entering into a compromise, moratorium, assignment, composition or arrangement with, or for the benefit of, any of its members or creditors; or
 - (e) any analogous event or circumstance to those described in paragraphs (a) to (d) above under any applicable law of any jurisdiction,

unless such event or circumstance occurs as part of a solvent reconstruction, amalgamation, compromise, arrangement, merger or consolidation approved by the other party;

- 1.19 **Intellectual Property** means all industrial and intellectual property rights, both in Australia and throughout the world, and includes any copyright, moral right, patent, registered or unregistered trade mark, registered or unregistered design, trade secret, knowhow or other proprietary right or right of registration of such rights, including any such rights subsisting in (without limitation): circuit layouts; inventions; product formulations; databases; software code; domain names; brand names; trade names; business names; and company names.
- 1.20 **Loss** means any loss, damage, liability, charge, expense, outgoing or cost (including all legal and other professional costs on a full indemnity basis) of any nature or kind;
- 1.21 **Personal Information** has the meaning given in the Privacy Act;
- 1.22 **Personnel** means a party's officers, employees, agents, contractors and subcontractors;
- 1.23 **Privacy Act** means the *Privacy Act 1988* (Cth);

1.24 **Privacy Law** means:

- (a) the Privacy Act;
 - (b) any legislation from time to time in force in any:
 - (i) Australian jurisdiction (which includes the Commonwealth of Australia and any State or Territory of Australia); and
 - (ii) non-Australian jurisdiction (to the extent that 8Squad or the Client is subject to the laws of that jurisdiction),
- affecting privacy, Personal Information or the collection, handling, storage, processing, use or disclosure of data; and
- (c) any legally binding ancillary rules, guidelines, orders, directions, directives, codes of conduct or other instruments made or issued thereunder, as amended from time to time;

1.25 **Privacy Policy** means 8Squad's privacy policy accessible at <https://www.8squad.com.au>.

1.26 **Proprietary Technology** means the Intellectual Property 8Squad holds in the underlying code, or other software product that 8Squad may make available to the Client as part of the Services, that forms part of 8Squad IP as defined in clause 11.1(a), and includes any updates or further development made during the provision of Services;

1.27 **Related Bodies Corporate** has the meaning given to that term in the Corporations Act;

1.28 **Restraint Period** means the greater of:

- (a) 12 months;
- (b) 9 months;
- (c) 6 months;
- (d) 3 months;

1.29 **Services** means services to be provided by 8Squad to the Client, including those described in a Statement of Work;

1.30 **Statement of Work** has the meaning given in clause 3.2;

1.31 **Term** has the meaning given in clause 2.1;

2. Term and Agreement

2.1 This Agreement commences on the Commencement Date and continues until terminated in accordance with its terms (**Term**).

2.2 The relationship between the parties shall be governed by the terms of this Agreement and each Statement of Work until both are terminated in accordance with their terms.

3. Statements of Work

3.1 Where the Client wishes to obtain services from 8Squad, it must notify 8Squad in writing, including a description of the services requested, and any

additional information reasonably necessary for 8Squad to respond to the request (**Request for Services**).

3.2 8Squad will provide a written response to the Client's Request for Services either accepting or rejecting the request, and where it accepts the request, its response will be accompanied by a statement setting out the Services it will provide, the terms on which it will provide the Services, including any associated Deliverables and applicable Fees (**Statement of Work**).

3.3 A Statement of Work will become binding on the parties, and form part of this Agreement once it is executed by both parties.

3.4 The Services will not extend beyond the scope of a Statement of Work unless the parties agree otherwise in writing.

4. Provision of Services and Deliverables

4.1 8Squad will provide the Services and Deliverables (if any) in accordance with this Agreement and the applicable Statement of Work.

4.2 8Squad will provide the Services and deliver the Deliverables (if any):

- (a) to a level of professional skill and care at least equal to the level of skill and care reasonably expected of a professional organisation experienced in providing services and/or deliverables of the type and complexity of the Services and/or Deliverables; and
- (b) in accordance with:
 - (i) all applicable laws and regulations;
 - (ii) widely accepted industry practises; and
 - (iii) the reasonable directions of the Client from time to time.

4.3 8Squad may subcontract any part or all of the Services. Where 8Squad chooses to do so, it remains responsible to the Client for the performance of the Services by its subcontractors as if those Services were being performed by 8Squad.

5. Acceptance of Deliverables

5.1 Upon receipt of a Deliverable under a Statement of Work (if any), the Client will have a period of five Business Days to notify 8Squad in writing of any Defects in the Deliverable, or failure to provide the Deliverable substantially in accordance with this Agreement (**Acceptance Period**).

5.2 8Squad will use reasonable efforts to fix the Defects or provide a compliant Deliverable as soon as reasonably possible, following which 8Squad will resubmit the Deliverable to the Client and the terms of clause 5.1 will apply again.

5.3 Upon Client's acceptance of the Deliverable (or rectified Deliverable, if applicable), the Client shall

provide to 8Squad a written confirmation of acceptance. However, the Client's failure to accept or reject any Deliverable within the Acceptance Period and in the manner described in clause 5.1 will be deemed to be acceptance by the Client.

5.4 The Client will be responsible for any additional review and testing of a Deliverable in accordance with any applicable acceptance criteria and test suites, and to the extent that it seeks to rely on such testing to reject a Deliverable, must provide a complete copy of all related materials.

6. Client obligations

6.1 The Client must provide 8Squad with reasonable co-operation, assistance, information, equipment, data, a suitable work environment and resources to enable 8Squad to fulfil its obligations under this Agreement.

6.2 The Client acknowledges and agrees that:

- (a) 8Squad's ability to provide the Services and/or Deliverables described in a Statement of Work may be affected if the Client does not comply with clause 6.1;
- (b) 8Squad will be relieved of its obligations to meet any milestone dates for Services/Deliverables set out in a Statement of Work and will apply a day-for-day adjustment to the schedule in proportion to the number of days by which any milestone dates are not met as caused or materially contributed to by the Client; and
- (c) if the duration of the delay extends beyond the final delivery date for a Deliverable defined in a Statement of Work (or otherwise agreed between the parties), either party may elect to institute a Change Order to apply additional resources to meet the Client's milestones (which may necessitate an increase in Fees).

6.3 The Client must not access or use the Services or Deliverables for the purpose of creating a product or service that competes with 8Squad's products or services.

7. Payment of Fees

7.1 The Client must pay 8Squad the Fees in accordance with this Agreement.

7.2 8Squad will issue the Client with invoices for Fees in respect of Services and Deliverables subject to a Statement of Work.

7.3 Unless otherwise stipulated in an 8Squad invoice, the Client must pay 8Squad the Fees within 14 days of the date of invoice by electronic funds transfer to 8Squad's nominated bank account.

7.4 The Client must notify 8Squad of any disputed invoice before the invoice's due date. Disputing an invoice will not relieve the Client of its obligation to pay the invoice in accordance with clause 7.3 without reduction of any amount in dispute. If an

error is confirmed in resolving the invoice dispute, 8Squad will in its discretion either:

- (a) reimburse the Client for the amount of any overpayment received; or
- (b) set-off future payments from the Client against the amount of any overpayment.

7.5 8Squad reserves the right to suspend Services and/or charge interest on overdue amounts at a rate prescribed by the applicable penalty interest rate laws if invoices are overdue by more than 28 days from their due date.

8. GST

8.1 This clause applies if a party to this Agreement is, or becomes, liable to pay GST regarding any Supply of goods, services or anything else under this Agreement.

8.2 Capitalised expressions that are not defined in this Agreement but have a defined meaning in the GST Act have the same meaning in this clause 8.

8.3 If a party (**Supplier**) makes a Taxable Supply under this Agreement, then the Recipient of the Taxable Supply, must pay the Supplier the GST payable on the Taxable Supply in addition to the consideration for the Supply.

8.4 Within seven days of a Supply being made under this Agreement, the Supplier must provide to the Recipient a Tax Invoice or other documentation that complies with the requirements for a valid Tax Invoice under the GST Act.

8.5 Subject to the Supplier issuing a Tax Invoice to the Recipient as required under clause 8.4, the Recipient must pay the GST on the Taxable Supply under this Agreement to the Supplier at the same time as the Recipient pays the consideration for the Supply to the Supplier.

8.6 Despite any other provision of this agreement, if the whole or part of any consideration under this Agreement is a reimbursement or an indemnity to one party of an expense, loss, outgoing or liability incurred or to be incurred by the other party, the consideration excludes any GST included in such expense, loss, outgoing or liability incurred or to be incurred for which the other party can claim an Input Tax Credit. The other party will be assumed to be entitled to a full Input Tax Credit unless it can establish otherwise.

8.7 If an Adjustment Event occurs regarding a Supply under this Agreement, the Supplier must issue to the Recipient an Adjustment Note regarding the Adjustment Event within seven days of the Supplier becoming aware of the Adjustment Event.

8.8 If the Adjustment Note gives effect to an Increasing Adjustment, the Recipient must pay to the Supplier the GST component of the Increasing Adjustment not later than the fourteenth Business Day of the month following the month in which the Adjustment Note is issued to the Recipient.

8.9 If the Adjustment Note gives effect to a Decreasing Adjustment, the Supplier must pay to the Recipient the GST component of the Decreasing Adjustment not later than the fourteenth business day of the month following the month in which the Adjustment Note is issued to the Recipient.

9. TECHNOLOGY LICENSING

9.1 8Squad grants the Client and its successors and assigns a perpetual, royalty-free, worldwide licence to use Proprietary Technology within the products or services offered to the Client's customers, provided that the Proprietary Technology:

- (a) Is provided as part of the Services; and
- (b) Is required to be used by the Client in the products or services it offers to its customers, unless agreed otherwise in writing.

9.2 The licence contained in clause 9.1 is subject to the following conditions:

- (a) the Client must not sub-licence or in any way commercialise the Proprietary Technology separately from the Services or Deliverables the Proprietary Technology is contained in; and
- (b) the Client must not reverse engineer, decompile or otherwise purport to copy the Proprietary Technology.

9.3 For the avoidance of doubt, Proprietary Technology shall be treated separate from any other Intellectual Property under this Agreement.

10. Client Material

10.1 Unless otherwise set out in this Agreement, the Client is responsible for all matters pertaining to the Client Material, including (without limitation):

- (a) ensuring the accuracy and completeness of Client Material;
- (b) ensuring safeguards are in place to prevent the misuse, interference, loss and unauthorised access, modification and disclosure of Client Material; and
- (c) providing 8Squad with a safe, suitable and reliable means by which Client Material may be accessed by 8Squad in order for 8Squad to comply with its obligations under this Agreement.

11. Intellectual Property

11.1 8Squad IP

- (a) For the purposes of this clause **8Squad IP** means Intellectual Property rights, including those contained in Proprietary Technology:

- (i) owned by 8Squad, or licensed to 8Squad by a third party, before the Commencement Date; or
 - (ii) developed by 8Squad or licensed to 8Squad outside the scope of this Agreement (including any customisations, modifications, improvements or developments to such Intellectual Property);
- (b) 8Squad retains all right, title and interest to the 8Squad IP.
- (c) Notwithstanding the separate licence of Proprietary Technology under clause 9, 8Squad grants to the Client, a royalty free, worldwide, perpetual, irrevocable licence (including the right to sub-license on the same terms), to use, display, modify and distribute the 8Squad IP to the extent that the Client requires the use of any 8Squad IP to receive the full benefit of the Services or use of the New IP.

11.2 Client IP

- (a) For the purposes of this clause Client IP means Intellectual Property rights:
- (i) owned by the Client, or licensed to the Client by a third party, before the Commencement Date; or
 - (ii) developed by the Client or licensed to the Client outside the scope of this Agreement (including any customisations, modifications, improvements or developments to such Intellectual Property).
- (b) The Client retains all right, title and interest to the Client IP.
- (c) To the extent that 8Squad requires the use of any the Client IP to perform the Services and any other obligations under this Agreement, the Client grants 8Squad a royalty free, worldwide, revocable licence (including the right to sub-license on the same terms) to use, display, adapt, modify, reformat, transform, process and/or distribute the Client IP for the Term.
- (d) 8Squad shall not use the Client's name or logo in 8Squad marketing or tender documents, unless the Client approves such use in writing.

11.3 New IP

- (a) For the purposes of this clause **New IP** means all Intellectual Property created, conceived or developed in the course of the performance of the Services during the Term excluding the Client IP and 8Squad IP.
- (b) Ownership of New IP shall vest in and be assigned to the Client immediately on creation.

- (c) 8Squad agrees to do all things and execute all documents, including obtaining all necessary moral rights waivers and consents, necessary to perfect the Client's ownership of the New IP in accordance with this Agreement.
- (d) The Client grants 8Squad, a royalty free, worldwide, non-exclusive, perpetual, revocable licence, to use the New IP for the purposes of continuing to provide the Services.

11.4 Feedback

- (a) For the purposes of this clause **Feedback** means any ideas, comments or suggestions relating to Proprietary Technology or 8Squad's services generally.
- (b) If the Client provides 8Squad with any Feedback:
- (i) all Intellectual Property in the Feedback and anything created as a result of that Feedback (including inventions, designs, materials, enhancements, modifications, improvements or derivative works) are owned by 8Squad immediately on creation and form part of the 8Squad IP; and
 - (ii) 8Squad may use or disclose the Feedback for any purpose.

12. Liability

- 12.1 Subject to clause 12.3 below, to the maximum extent permitted by law, all representations, warranties, conditions, guarantees, indemnities or undertakings that would be implied in, or affect, this Agreement by legislation, common law, tort, equity, or by course of performance, dealing, trade, custom or usage are excluded.
- 12.2 To the maximum extent permitted by law, 8Squad is not liable to the Client for any indirect or consequential Loss, loss of profits, loss of opportunity or loss or corruption of data incurred by the Client under or in connection with this Agreement (whether arising under contract, in tort (including negligence) or otherwise), irrespective of whether the Client previously notified 8Squad of the possibility of such Loss.
- 12.3 Nothing in this Agreement excludes, restricts or modifies any consumer guarantee, right or remedy conferred on the Client by the Australian Consumer Law contained in Schedule 2 to the *Competition and Consumer Act 2010* (Cth) or any other applicable law that cannot be excluded, restricted or modified by agreement (**Non-Excludable Guarantee**).
- 12.4 To the maximum extent permitted by law, 8Squad's liability for breach of any Non-Excludable Guarantee is limited, at 8Squad's option, to:

- (a) in the case or services: the supplying of the services again; or the payment of the cost of having the services supplied again; and
- (b) in the case of goods, any one or more of: the replacement of the goods or the supply of equivalent goods; the repair of the goods; the payment of the cost of replacing the goods or of acquiring equivalent goods; or the payment of the cost of having the goods repaired.

13. Indemnity

- 13.1 For the purposes of this clause, the following definitions shall apply:
- (a) **Defaulting Party** means a party to this Agreement responsible for a Claim or Loss;
 - (b) **Indemnified Party** means a party to this Agreement indemnified by the Defaulting Party in relation to a Claim or Loss.
- 13.2 The Defaulting Party indemnifies the Indemnified Party against any direct Loss incurred by the Indemnified Party as a result of:
- (a) any breach of this Agreement by the Defaulting Party;
 - (b) any negligent or unlawful act or omission by the Defaulting Party or its Personnel;
 - (c) a Claim by a third party against the Client for any Deliverable (excluding any Claim related to Client Material) that infringes the Intellectual Property of the third party, in which case 8Squad will be the Defaulting Party and the Client will be the Indemnified Party; or
 - (d) a Claim by a third party against 8Squad for any Claim related to Client Material that infringes the Intellectual Property of the third party, in which case the Client will be the Defaulting Party and 8Squad will be the Indemnified Party.
- 13.3 The Indemnified Party must allow the Defaulting Party (or the Defaulting Party's third party supplier) to direct any defence and settlement of the Claim;
- (a) providing the Defaulting Party (or the Defaulting Party's third party supplier) with all reasonable assistance and information required by them in connection with the defence and settlement of the Claim;
 - (b) using reasonable efforts to mitigate the Losses associated with the Claim; and
 - (c) notifying the Defaulting Party in writing of the Claim and the Indemnified Party's request for indemnification under this clause 13.1 within 10 Business Days of being notified of the Claim by the third party.
- 13.4 Where any person makes a Claim for Intellectual Property infringement in connection with the provision of any Deliverable by 8Squad, 8Squad

may modify, limit, suspend or cancel the provision of the Deliverable, if required, in response to the Claim.

13.5 The indemnity in clause 13.1 does not apply to the extent a Claim:

- (a) arises out of any modification of any Deliverable made by the Client or a third party;
- (b) relates to services or materials provided by a third party in conjunction with the Services and/or Deliverables; or
- (c) is caused, or contributed to, by the Indemnified Party and/or its Personnel.

14. Privacy

- 14.1 8Squad maintains the Privacy Policy in compliance with Privacy Law for data that it collects about individuals.
- 14.2 The Privacy Policy does not apply to how the Client handles personal information. If necessary under the Privacy Act, it is the Client's responsibility to meet the obligations of the Privacy Act by implementing a privacy policy in accordance with law.
- 14.3 8Squad may collect personal information about the Client's representatives and employees throughout the course of this Agreement. This personal information will only be disclosed and used for the purposes of providing the Services, improving 8Squad's services and obtaining feedback, or otherwise in accordance with the Client's instructions and the Privacy Policy.
- 14.4 Where the Client provides 8Squad with the personal information of its customers, employees, contractors or other individuals, 8Squad warrants that it will keep such information confidential and secure and will not use such personal information other than for the purposes of providing the Services to the Client and in accordance with the Privacy Law.
- 14.5 The Client warrants and represents to 8Squad that the Client has complied (and will continue to comply) with all Privacy Laws (whether or not the Client is bound by them), including by making such disclosures and procuring such consents as are required under Privacy Laws, when collecting and disclosing Personal Information to 8Squad, in order to ensure that 8Squad is able to perform its obligations under this Agreement.

15. Confidentiality

- 15.1 Each party agrees:
- (a) to maintain the other party's Confidential Information in strict confidence;
 - (b) not to disclose Confidential Information to any third parties except as provided for under this Agreement, or otherwise with the consent of the Discloser; and

- (c) to use Confidential Information only for the purpose it was provided for, or to carry out its obligations under this Agreement.
- 15.2 The Recipient may disclose the Confidential Information to its employees and consultants, where necessary to carry out its obligations under this Agreement, provided that each such employee and consultant is first bound by a written agreement that contains provisions at least as protective of the Discloser's Confidential Information as those set out in this Agreement.
- 15.3 The provisions of this clause 15 will not restrict a Recipient from disclosing Confidential Information if required by any law or regulation, provided that the Recipient makes reasonable efforts to give the Discloser advance notice of the required disclosure.
- 15.4 On termination of this Agreement, the Recipient will promptly carry out to the furthest practical extent, any of the following, in accordance with the Discloser's request:
- (a) Return to the Discloser all tangible items and embodiments containing or consisting of the Discloser's Confidential Information, and all copies thereof (including electronic copies stored on removeable media);
 - (b) Delete or destroy the recipient's copy of the Discloser's Confidential Information; and
 - (c) Notify the Discloser of its compliance with its request.
- 15.5 In the event the Recipient is unable to fully comply with a request pursuant to clause 15.4, the Recipient will notify the Discloser of the reasons why, and the steps it will take to ensure confidentiality of the Confidential Information is maintained.
- 15.6 All Confidential Information remains the sole and exclusive property of the Discloser. Each party acknowledges and agrees that nothing in this Agreement will be interpreted as granting any rights to the Recipient, by license or otherwise, over any Confidential Information of the Discloser, or any Intellectual Property or other proprietary rights of the Discloser, except as specified in this Agreement.
- 15.7 Each party acknowledges that the unauthorized use or disclosure of the Discloser's Confidential Information would cause the Discloser irreparable harm and significant damages, the degree of which may be difficult to ascertain. In such a case the Discloser may obtain immediate equitable relief for any unauthorized use or disclosure of its Confidential Information pursuant to clause 16.8 in addition to any other rights or remedies that it may have.
- 16. Dispute resolution**
- 16.1 Each party must follow the procedures in this clause 16 before starting court proceedings (except for urgent injunctive or other interlocutory relief).
- 16.2 A party claiming that a dispute has arisen must give written notice to the other party specifying the nature of the dispute.
- 16.3 If the parties cannot resolve the dispute within 10 Business Days after notice has been given under clause 16.2, the dispute must be referred to the chief executive officers of each party (or equivalent position holder) or their respective nominees (in this clause 16, the Chief Executive Officers) for resolution.
- 16.4 If the Chief Executive Officers cannot resolve the dispute within 10 Business Days after referral under clause 16.3, either party may (by giving written notice to the other party) require the dispute be referred for mediation.
- 16.5 If the parties do not agree on a mediator or location within 10 Business Days of a party requesting mediation under clause 16.4, the mediator and location are to be nominated by the then current Chair of the Resolution Institute or her/his designated representative (**Mediator**) (or if no such person is available or willing to nominate a mediator or a place, by the President of the Law Institute or Law Society of the state or territory whose laws govern this Agreement, or their nominee).
- 16.6 The costs of the Mediator are to be borne equally by the parties.
- 16.7 Subject to clause 16.6, each party must pay its own internal and legal costs in relation to complying with this clause 16.
- 16.8 Nothing in this clause 16 prevents a party from commencing and prosecuting any application for urgent injunctive or other interlocutory relief.
- 16.9 Notwithstanding the existence of a dispute, each party must continue to perform its obligations under this Agreement.
- 17. Relationship**
- 17.1 The parties acknowledge that 8Squad has been appointed as an independent consultant under this Agreement.
- 17.2 Nothing in this Agreement is intended to create a relationship of employment, agency or partnership between 8Squad and the Client.
- 18. No inducement of 8Squad staff**
- 18.1 During the Term and for the Restraint Period after expiry or termination of the Agreement, the Client must not (and must ensure that its Related Bodies Corporate do not) directly or indirectly induce a person who:
- (a) was or is an employee or contractor of 8Squad; and
 - (b) worked or is working directly in relation to the Services,

to be engaged as an employee or contractor of the Client (or of any of its Related Bodies Corporate) without 8Squad's prior, written consent.

18.2 Clause 18.1 does not prohibit the Client from employing any employee or contractor or former employee or contractor of 8Squad who responds to a bona fide public advertisement about a vacant position, provided that the advertisement is not targeted specifically at the person concerned, and there is no solicitation by or on behalf of the Client.

18.3 In the event of a breach of clause 18.1, the Client must pay 8Squad by way of liquidated damages 18% of the relevant employee's annual salary package.

19. Force majeure

19.1 If 8Squad is unable to perform or is delayed in performing an obligation under this Agreement because of a Force Majeure Event, that obligation is suspended but only so far and for so long as it is affected by the Force Majeure Event.

19.2 If the Force Majeure Event continues for a period of not less than 30 days, either party may terminate this Agreement immediately by giving the other party written notice.

20. Suspension

20.1 8Squad may suspend the supply or performance of the Services at any time without notice to the Client:

- (a) if the Client is subject to an Insolvency Event;
- (b) if the Client fails to pay any amount due to 8Squad under this Agreement when due; or
- (c) if 8Squad (or its third party supplier) reasonably suspects that the Client is in breach of its obligations under this Agreement.

20.2 To the maximum extent permitted by law, 8Squad excludes all liability to the Client if 8Squad suspend the Services under this clause 20.

20.3 The suspension of the Services under clause 20.1(b) above may continue until 8Squad notifies the Client that 8Squad has received full payment of the overdue amount.

21. Termination

21.1 **Termination for cause.** A party may terminate this Agreement immediately by notice in writing to the other party if the other party:

- (a) is in material breach of this Agreement and the breach is incapable of remedy; or
- (b) is in breach of this Agreement and the party fails to remedy the breach within 30 days of receiving written notice from the first party requiring it to do so;
- (c) is the subject of an Insolvency Event; or
- (d) a Force Majeure Event continues for a period of not less than 30 days.

21.2 **Termination for convenience.** Either party may terminate this Agreement, or any Statement of Work, without cause, by providing the other party with 3 months' notice.

21.3 **Obligations on termination.** If this Agreement expires or is terminated for any reason:

- (a) the Client must pay 8Squad all outstanding invoices by the due date, and all other amounts outstanding as at the date of termination;
- (b) each party must deliver to the other party all Confidential Information of that party in its possession or control (or if requested by the other party, destroy it); and
- (c) all rights that a party has accrued before termination continue.

21.4 **Effect of termination.** On termination or expiry of this Agreement all Statements of Work entered into between the parties will terminate immediately.

22. Electronic Communication and Notices

22.1 The words in this clause 22 that are defined in the *Electronic Transactions Act 1999* (Cth) have the same meaning.

22.2 A consent, notice or communication under this Agreement is effective if it is sent as an electronic communication unless required to be physically delivered under law.

22.3 All notices and consents must be in writing and sent to the addresses specified in the most recent Statement of Work, or as otherwise agreed.

22.4 Notices, consents or communications sent:

- (a) by hand, are taken to be received when delivered;
- (b) by post, are taken to be received by the third Business Day after posting, notwithstanding that a notice may be returned through the post office unclaimed; or
- (c) by email, are taken to be received at the time of confirmation of sending.

23. Change Orders

23.1 The terms of this Agreement and/or a Statement of Work may be varied by a Change Order.

23.2 The parties acknowledge and agree that a Change Order will be required if:

- (a) the Fees set out in a Statement of Work are exceeded by 10%; and/or
- (b) there is a material change in the scope of Services and/or Deliverables to be provided under a Statement of Work.

23.3 Additional costs (if any) associated with each Change Order will be added to the Fees payable under the relevant Statement of Work.

24. General

24.1 **Entire Agreement.** This Agreement together with each Statement of Work represents the entire agreement between 8Squad and the Client in respect of its subject matter and supersedes all other representations and agreements.

24.2 **Governing Law.** This Agreement is governed by the laws of the State of Victoria and the parties submit to the non-exclusive jurisdiction of the courts of that State.

24.3 **Assignment.** Neither party may assign its rights under this Agreement without the written approval of the other party.

24.4 **Severability.** If any clause or part of a clause is held by a court to be invalid or unenforceable, that clause or part of a clause is to be regarded as having been deleted from this Agreement; and this Agreement otherwise remains in full force and effect.

24.5 **Counterparts.** If this Agreement consists of a number of counterparts, each is an original and all of the counterparts together constitute the same document.

24.6 **Survival.** Clauses 9 (Technology Licensing), 11 (Intellectual Property), 12 (Liability), 13 (Indemnity), 14 (Privacy), 15 (Confidentiality), 18 (No inducement of 8Squad staff) and 21 (Termination) survive the termination of this Agreement, as well as all other clauses which by their nature should survive the termination or expiry of this Agreement.

24.7 **Special Conditions.** The parties may agree to any special conditions to this Agreement in writing.

24.8 **Prevalence.** To the extent the Statement of Work is inconsistent with the terms of this Agreement, the terms of the Statement of Work will prevail. To the extent any special conditions are inconsistent with the terms of this Agreement or a Statement of Work, the special conditions will prevail.

24.9 No waiver.

- (a) The failure of a party to require full or partial performance of a provision of this Agreement does not affect the right of that party to require performance subsequently.
- (b) A single or partial exercise of or waiver of the exercise of any right, power or remedy does not preclude any other or further exercise of that or any other right, power or remedy.
- (c) A right under this Agreement may only be waived in writing signed by the party granting the waiver, and is effective only to the extent specifically set out in that waiver.

25. Interpretation

In this Agreement, unless the context otherwise requires:

25.1 a reference to:

- (a) one gender includes the others;
- (b) the singular includes the plural and the plural includes the singular;
- (c) a recital, clause, schedule or annexure is a reference to a clause of or recital, schedule or annexure to this Agreement and references to this Agreement include any recital, schedule or annexure;
- (d) any contract (including this Agreement) or other instrument includes any variation or replacement of it and as it may be assigned or novated;
- (e) a statute, ordinance, code or other law includes subordinate legislation (including regulations) and other instruments under it and consolidations, amendments, re-enactments or replacements of any of them;
- (f) a person or entity includes an individual, a firm, a body corporate, a trust, an unincorporated association or an authority;
- (g) a person includes their legal personal representatives (including executors), administrators, successors, substitutes (including by way of novation) and permitted assigns;
- (h) a group of persons is a reference to any two or more of them taken together and to each of them individually;
- (i) an entity which has been reconstituted or merged means the body as reconstituted or merged, and to an entity which has ceased to exist where its functions have been substantially taken over by another body, means that other body;
- (j) time is a reference to legal time in Melbourne, Victoria;
- (k) a reference to a day or a month means a calendar day or calendar month;
- (l) money (including '\$', 'AUD' or 'dollars') is to Australian currency;

25.2 the meaning of any general language is not restricted by any accompanying example, and the words 'includes', 'including', 'such as', 'for example' or similar words are not words of limitation;

25.3 the words 'costs' and 'expenses' include reasonable charges, expenses and legal costs on a full indemnity basis;

25.4 headings are for convenience only and do not form part of this Agreement or affect its interpretation;

25.5 if a period of time is specified and dates from a given day or the day of an act or event, it is to be calculated exclusive of that day;

- 25.6 the time between two days, acts or events includes the day of occurrence or performance of the second but not the first day act or event;
- 25.7 if the last day for doing an act is not a Business Day, the act must be done instead on the next Business Day;
- 25.8 a reference to a *party* to this Agreement or another agreement or document includes that party's successors and permitted substitutes and assigns (and, where applicable, the party's legal personal representatives).
- 25.9 where there are two or more persons in a party each are bound jointly and severally; and
 - (a) a provision of this Agreement must not be construed to the disadvantage of a party merely because that party was responsible for the preparation of this Agreement or the inclusion of the provision in this Agreement.

END TERMS AND CONDITIONS