

## Schedule 3: Terms and Conditions

The following terms and conditions apply to the supply of the Services to the Client.

### 1. Definitions

**Intellectual Property** means any intellectual property including: (a) the copyright in all literary, artistic or other works, films, sound recordings or broadcasts, or other subject matter; (b) all trade marks, names, domain names or other indicia used in connection with the provision of the Services; (c) the rights to any patentable invention; (d) the rights to any design capable of registration; or (e) the rights to any confidential information, concepts or ideas.

**Services** means the services described in schedule 1 and any other services agreed in writing between the parties.

### 2. Services

The Client engages Axito, and Axito agrees, to provide the Services to the Client.

### 3. Subcontracting

Axito may subcontract the provision of the Services. Axito remains liable for the performance of the Services by any subcontractor. The Client will not engage Axito's subcontractors directly unless Axito gives Axito's prior written approval (which approval will not be unreasonably withheld).

### 4. Payment

The Client will pay for the Services as specified in Schedule 2. Unless otherwise indicated, the amounts payable by the Client do not include GST, or other taxes or duties. If applicable, such taxes or duties are payable by the Client in addition to the amounts payable to Axito described above. Axito will provide the Client with a tax invoice for all payments made to Axito by Client. Interest is payable on amounts due from the Client to Axito at a rate equal to the lesser of 1.5% per month or the maximum allowed by law. Interest runs from the date on which the payment is due until paid in full.

### 5. Intellectual property

Unless otherwise agreed, each party retains ownership of any Intellectual Property created by it in relation to the provision of the Services. Axito grants a licence to the Client to use the Intellectual Property created by Axito for the purpose it was created. Axito may revoke the licence to use the Intellectual Property by written notice to the Client if the Client fails to pay any invoice for the supply of the Services.

### 6. Warranties

Axito warrants that the Services will: (a) substantially conform to the description of the Services; (b) will be provided with reasonable care and skill; and (c) will be reasonably fit for the purpose that the Services are provided.

### 7. No other warranties

Except as set out in clause 6 above or where warranties or guarantees apply by operation of law or statute, Axito gives no other warranty or guarantee and makes no representation or undertaking in relation to the

Services, or their performance or availability or suitability for any purpose. Except to the extent that any law or statute prohibits the exclusion of any warranty or guarantee, all other warranties or guarantees are excluded.

#### 8. Non-excludable rights

Where any law or statute gives the Client any warranty or guarantee, or confers a right or remedy, which cannot be excluded, restricted or modified, the liability of Axito is limited to the maximum extent allowed under the applicable law or statute. Nothing in the agreement is to be interpreted as excluding, restricting or modifying any applicable law or statute except where permitted under such law or statute.

#### 9. Remedy for breach of warranty or guarantee

Subject to any law or statute which prohibits the exclusion, restriction or modification of any warranty or guarantee, Axito's liability and the Client's remedy for breach of any express warranty, or warranty or guarantee or right implied or conferred by law, is limited to, at Axito's option, one or more of:

In the case of any goods: (a) replacement of the goods or supply of equivalent goods; (b) repair of the goods; (c) payment of the cost of replacing the goods, or acquiring equivalent goods; or (d) payment of the cost of correcting the goods.

In the case of any services: (a) supplying the services again; or (b) payment of the cost of having the services supplied again.

#### 10. Liability

Except as expressly provided elsewhere in this agreement or where any law or statute prohibits the exclusion, restriction or modification of any warranty or guarantee, or right or remedy, Axito will be under no liability to the Client (whether for breach of contract, negligence or otherwise) in respect of any loss or damage which may be suffered or incurred by the Client or which may arise directly or indirectly in respect of the supply or availability or use of the Services under this agreement.

#### 11. Consequential loss

Except where any law or statute prohibits the exclusion, restriction or modification of any right or remedy, Axito will be under no liability to the Client (whether for breach of contract, negligence or otherwise) for any special, incidental, indirect, or consequential damages whatsoever (including, without limitation, damages for loss of business or profits, loss resulting from business interruption, loss of business information, loss resulting from any claim by any third party or any other pecuniary loss) arising out of the supply or availability of the Services or any use of the Services, even if Axito has been advised of the possibility of such damages.

#### 12. Resources and Access

Client will provide at its own cost any resources, access, co-operation and assistance reasonably required by Axito for the purpose of the provision of the Services. The Client warrants and represents that all information provided by the Client is true, accurate and up to date. The Client must review the deliverables supplied by Axito and inform Axito if there are any material errors or omissions. The deliverables supplied by Axito may be used by the Client only and only for the purpose they are provided and for no other purposes.

From time to time, Axito will be required to create and manage my online accounts/portals specifically for the purpose of the application and lodgement of the Services. Axito hereby agrees to transfer all login details and passwords to the Client upon the successful completion of this application and lodgement process.

### 13. Termination

Either party may terminate this agreement with immediate effect, including the supply of the Services, by giving notice to the other party if: (a) the other party is in breach of this agreement and the breach is not capable of being remedied; (b) the other party is in breach of this agreement and, in the case of a breach which is capable of being remedied, the other party fails to remedy the breach within 30 days of receipt of written notice of the breach; (c) the other party is subject to any application for winding up or liquidation, or for the appointment of a receiver or manager, or is subject to any other form of insolvency event, or in the case of an individual is declared bankrupt and where applicable:

- (a) Axito shall repay to the Client any money paid by the Client for the Services, less any amounts owing to Axito for Services provided up to the date of termination; or
- (b) the Client shall pay Axito for all Services provided up until the termination date (including any amount to discharge any liability of Axito to third parties incurred in relation to any Services originally envisaged pursuant to the Client's initial instructions).

On termination all accrued payments due to Axito must be made within 14 days. Where Axito is entitled to payment on the occurrence of future events (including but not limited to receipt of funds by the Client or where Axito is entitled to commission on future sales made by the Client or otherwise under agreements entered into by the Client pursuant to this agreement) Axito's entitlement to payment survives termination of this agreement and payments must be made by the Client as and when they fall due to be paid.

### 14. Confidentiality and privacy

Each party will keep confidential, and not use or disclose to any third party, any confidential information belonging to the other party disclosed pursuant to this agreement. Any personal information provided by a party to the other party will be kept, used and disclosed in accordance with the requirements of privacy laws including the Privacy Act. The Client consents to the use and disclosure of personal information regarding the Client's shareholders and/or officers for the purpose of Axito obtaining and using a credit report for the Client or any individual shareholder or officer.

### 15. Assignment

Except as provided in this clause, neither party may assign its rights under this agreement without the prior written consent of the other party (which consent will not be unreasonably withheld). Axito may assign its rights and transfer its obligations to a company controlled by Axito without the consent of the Client.

### 16. Severance

If any term or part of this agreement is, or becomes, for any reason invalid or unenforceable at law, that term or part of this agreement will be and is hereby deemed to be severed from this agreement without affecting the remainder of this agreement and the remainder of this agreement will continue to be valid and enforceable.

#### 17. Amendment

This agreement may only be amended, varied or replaced by a document duly signed by or on behalf of the parties.

#### 18. Relationship

The relationship between the parties is that of independent contracting parties. Nothing in this agreement creates any relationship of employment, partnership, agency or otherwise between the parties. Axito is not the agent of the Client. The Client acknowledges that Axito is not: (a) acting as a tax agent, financial advisor, lawyer or other specialist service provider to the Client; or (b) providing tax, financial, legal or other specialist advice to the Client.

#### 19. Entire agreement

This agreement constitutes the entire agreement between the parties in respect of the supply of the Services, subject to any law or statute which may apply. This agreement supersedes all prior representations, warranties, agreements, understandings, negotiations and discussions whether oral or written, express or implied, collateral or otherwise, by or between the parties pertaining to the subject matter of this agreement. This agreement supersedes any terms and conditions in any purchase order or other document provided to Axito by the Client, whether before or after the signing of this agreement.

#### 20. Force majeure

A party will not be liable to the other for any delay or failure to perform its obligations under this agreement by reason of any circumstances beyond its reasonable control including (without limitation) any Act of God, epidemic or pandemic, loss of power or internet connectivity, act of terrorism, criminal act or third party conduct.

#### 21. Dispute resolution

In the event of any dispute arising between the parties which cannot be resolved by negotiation, unless otherwise agreed, the parties will appoint a mediator for the purpose of facilitating discussions between the parties. If the parties cannot agree on the identity of the mediator, they will ask the President of the Law Society of Western Australia to appoint a mediator. If the dispute cannot be resolved by mediation, either party may commence legal action against the other party. Nothing in this clause prevents a party from immediately commencing legal action for urgent relief to protect that party's interests or for payment of any amount payable under this agreement. In the event that Axito engages a debt collection agency or other agent to recover amounts owed to Axito, the Client will pay the commission or other fees charged by the agency or agent in addition to the amount owed to Axito.

#### 22. Notices

Any notice given under this agreement must be in writing and authorised by the party giving the notice. A notice may be given by email provided that such email is actually received by the intended recipient of the email.

#### 23. Governing law and jurisdiction

This agreement is governed by and is to be construed in accordance with the laws of Western Australia. Each party irrevocably and unconditionally submits to the non-exclusive jurisdiction of the courts of Western Australia.