

The *Client* appoints SWA Recovery Services Pty Ltd (“*SWA*”) as the *Client’s* collection agent on the terms and conditions set out below. Words in *ITALICS* are defined at clause 17.1 below.

## 1. Appointment of Collection Agent

- 1.1 The *Client* appoints *SWA* to act on behalf of the *Client* in relation to the collection of each *Referred Debt*.
- 1.2 The *Client* authorises and instructs *SWA* to take such collection steps in pursuit of collection of a *Referred Debt* as *SWA* considers appropriate in view of the *Approach* the *Client* has requested be taken, including by letters, emails, telephone, SMS messages, field calls, skip tracing and, subject to clause 9.1, Court action (“*the Collection Services*”).
- 1.3 The *Client* acknowledges that:
- a *Debt* shall be deemed to be a *Referred Debt* upon:
    - submission via our Website or other form of instruction to *SWA* in relation to the *Debt*, and
    - the *Client* entering into a *SWA Payment Agreement* in relation to the *Debt*.
  - for best results the *Client* should complete and submit via our Website in relation to each *Referred Debt* before the *Debt* is 100 days overdue.
- 1.4 The *Client* authorises *SWA* to instruct, at the *Client* cost on written authority, it’s Solicitors, to perform all or any part of the *Collection Services*.
- 1.5 Unless the *Client* advises otherwise in writing, the *Client* authorises *SWA* to use its name, business type and logo to market *SWA’s* services and that the *Client* is or has been a client of *SWA* including on *SWA’s* website or social media.

## 2. SWA Obligations & Warranties

- 2.1 *SWA* warrants that it:
- will provide the *Collection Services* in a timely, proper and professional manner,
  - will do all things reasonably practicable to collect a *Referred Debt* before recommending that Court action be taken,
  - will obtain the *Client’s* written or verbal authority before accepting from a *Debtor*:
    - a compromise or settlement of a *Referred Debt* in an amount less than payment in full, or
    - a proposal for payment of a *Referred Debt* by instalments,
  - will cease any action in relation to a *Referred Debt* upon receipt of the *Client’s* written instruction.

## 3. Approaches

- 3.1 *SWA* shall do everything reasonably practicable to follow the *Client’s* instructions in relation to the desired *Approach* to the *Collection Services* for a *Referred Debt*.
- 3.2 Unless the *Client* specifies otherwise in an *Instruction* submitted in relation to a *Referred Debt*, *SWA* will take the appropriate course of recovery action *SWA* believes best.
- 3.3 Where the *Client* requests in an *Instruction* that *SWA* take the *Customised Approach* in relation to a *Referred Debt* the *Client* shall, in addition to the commission payable pursuant to clause 6, pay *SWA* an Administrative collection fee which will be quoted case by case and only payable on the *Client* instruction to proceed.

## 4. Accounting for Money Collected

- 4.1 *SWA* shall promptly pay all *Collected Debt* received by *SWA* to the *Trust Account* on behalf of the *Client*.
- 4.2 Subject to clause 4.3, *SWA* shall remit all *Collected Debt* to the *Client* weekly within seven (7) days of the end of each calendar week.
- 4.3 The *Client* hereby irrevocably authorises *SWA* to deduct and pay to itself from the recovered monies, all commission, *Search Fees*, fees, charges, GST and any other amounts due and payable by the *Client* under this *Agreement*.
- 4.4 If a *Debtor* makes a payment to the *Trust Account* towards a *Referred Debt* via a Credit Card, the *Creditor* indemnifies *SWA* for any transaction fees, charges and levies incurred by *SWA* in connection with the payment provided that *SWA* has recovered the transaction fee, charge and/or levy from the *Debtor*.

## 5. Client Obligations & Warranties

- 5.1 The *Client* shall promptly provide *SWA* with all information and assistance reasonably requested from time to time in relation to the collection of a *Referred Debt*.
- 5.2 If requested, the *Client* shall appoint a contact person within the *Client’s* organisation in relation to one (1) or more *Referred Debts*, whereafter *SWA* shall be authorised to take instructions from that contact person and to report to that person in relation to the *Collection Services*.
- 5.3 *Debt Warranties*: The *Client* warrants that:
- each *Referred Debt* is, at the time of the referral, due, owing and payable to the *Client*,
  - the information supplied by it to *SWA* in an *Instruction* or otherwise from time to time is true and correct and includes all information relevant to a *Referred Debt*,
  - if the *Client* specifies in an *Instruction* that debt collection costs or interest are recoverable from a *Debtor*, those costs and/or interest are legally recoverable, and
  - except as disclosed to *SWA* in writing at the time of submitting a *Referred Debt*, the *Client* is not aware of any dispute or other circumstances that may give rise to a sustainable defence, counter-claim or set-off in relation to any *Referred Debt*.
- 5.4 *Recovery Warranties*: The *Client* warrants that:
- the *Client* will notify *SWA* in writing within one (1) *Business Day* if the *Client* receives any:
    - contact or correspondence from a *Debtor*, or
    - payment directly in relation to a *Referred Debt*,
  - during the term of this *Agreement*, the *Client* will not, without *SWA’s* prior written consent which shall not be unreasonably withheld:
    - negotiate directly with, or contact, a *Debtor*, or
    - accept a payment, other than an instalment payment, less than the full amount of a *Referred Debt*.
- 5.5 If the *Client* breaches a warranty in clause 5.3(d), the *Client* shall be liable to pay compensation to *SWA* equal to the greater of \$250 and 20% of the commission that would have been payable if the *Referred Debt* had been paid in full on demand. The *Client* acknowledges that this is a genuine pre-estimate of *SWA’s* loss or damage based on the costs and resources likely to have been expended in providing the *Collection Services* prior to the discovery of the circumstances relating to the breach of warranty.

- 5.6 *SWA* shall be entitled to charge commission as if the *Referred Debt* had been paid in full if:
- the *Client* fails or refuses to provide information or assistance reasonably requested in relation to the collection of a *Referred Debt* within 14 days of a written request, or
  - the *Client* breaches a warranty in clause 5.4(b).
- 5.7 If *SWA* suffers any loss, damage or expense due to any false, misleading, inaccurate or insufficient information supplied by the *Client*, the *Client* shall indemnify *SWA* in full for such loss, damage or expense.

## 6. Commission

- 6.1 *SWA* shall not be entitled to any commission if a *Referred Debt* is not collected, unless otherwise stated in this *Agreement*.
- 6.2 All commissions referred to in this *Agreement* shall be determined in accordance with this clause and the *Commission Schedule*, unless the parties agree otherwise in writing.
- 6.3 The *Client* shall pay *SWA* a commission where:
- a *Referred Debt* becomes a *Collected Debt*,
  - Interest on a *Referred Debt* becomes *Collected Interest*,
  - goods, stock or services are received in lieu of payment of a *Referred Debt*,
  - the *Client* sells or assigns a *Referred Debt*, and
  - the *Client* terminates this *Agreement* generally or in relation to one (1) or more *Referred Debts*.
- 6.4 For the purpose of determining *SWA’s* entitlement to commission, all amounts received from a *Debtor* shall be deemed to be applied as follows:
- as *Collected Debt*, and
  - as *Collected Interest*.
- 6.5 Where a commission becomes payable under:
- clause 6.3(a), the commission shall be calculated on the amount collected or paid,
  - clause 6.3(b), the commission shall be calculated on the amount of interest collected or paid,
  - clause 6.3(c), the commission shall be calculated on the value of the goods, stock or services accepted by the *Client*,
  - clause 6.3(d), the commission shall be calculated on:
    - the sale price, where the sale or assignment is pursuant to an arm’s length transaction, or
    - in all other cases, the balance owing in relation to the *Referred Debts* to which the sale or assignment relates, and
  - clause 6.3(e), the commission shall be calculated on the balance owing in relation to the *Referred Debts* to which the termination relates.
- 6.6 Notwithstanding any other clause of this *Agreement*, *SWA* shall not be entitled to commission in relation to any *Referred Debt* in respect of which *SWA* has given notice in writing that the *Referred Debt* is an *Uncollectable Debt*.

## 7. Searches

- 7.1 *SWA* is not liable for any claim, loss or damage suffered by the *Client* as a result of the use of the information contained in any *Search* supplied by *SWA* to the *Client*.

## 8. SWA Payment Agreements with Debtors

- 8.1 If a *Debtor* wishes to pay a *Referred Debt* by instalments or one (1) or more delayed payments, *SWA* shall endeavour to cause the *Debtor* to enter into a *SWA Payment Agreement* in relation to any agreed payment arrangement.
- 8.2 Subject to clause 8.3, where the *Client* enters into a *SWA Payment Agreement* with a *Debtor*, the *Client* shall pay *SWA* the fee, if any, recoverable from the *Debtor* for the processing and handling of instalment payments received to its *Trust Account*, for responding to a payment default or for responding to a request for a statement of the balance owing.
- 8.3 No amount shall be payable by the *Client* under clause 8.2 unless:
- SWA* has collected the full amount of a *Referred Debt*, or where the *Client* has agreed to accept a lesser amount, that lesser amount, and
  - the corresponding fee amount has been collected from the *Debtor*.

## 9. Court Action

- 9.1 *SWA* will not initiate any Court proceedings on behalf of the *Client* without the *Client’s* prior instructions.
- 9.2 Where the *Client* instructs *SWA* to initiate Court action in relation to a *Referred Debt*:
- the *Client* shall provide *SWA*, or its appointed Solicitors, with all original documents, statements, records and information reasonably required to conduct the Court action proceedings and will cooperate fully with any enquiries undertaken by *SWA* or its solicitors;
  - the *Client* authorises *SWA* to instruct its Solicitors to sign Court related documents on behalf of the *Client* as required,
  - SWA* or its Solicitors shall notify the *Client* as soon as practicable after receiving notification of any defended matter, or request for further and better particulars, in relation to a Statement of Claim;
  - the *Client* shall pay amounts on account of Court filing fees, process service fees and scale legal fees on a Statement of Claim and Application for Default Judgment in advance and shall indemnify *SWA* for all reasonable legal costs and disbursements incurred by *SWA*, unless *SWA* has agreed otherwise,
  - the *Client* authorises *SWA* and its Solicitors to take such enforcement action as *SWA* considers reasonable or necessary in relation to a Judgment debt provided that the *Client* shall not be liable for any legal costs or disbursements of such enforcement action unless the *Client* has given its prior instructions to the action being taken, and
  - unless pre-paid by the *Client*, *SWA* shall be entitled to deduct from monies recovered from a *Debtor* the Court filing fee and service fees in connection with the Statement of Claim and/or any other Court process and all reasonable legal costs and disbursements incurred by *SWA*, in addition to commissions or other amounts payable under this *Agreement*, and in the event that such costs and disbursements exceed the *Collected Debt* the subject of the Court action the *Client* shall be liable to *SWA* for that excess.

## 10. Termination

- 10.1 This *Agreement* shall continue until terminated in accordance with this clause.
- 10.2 *SWA* may terminate this *Agreement* to the extent that it relates to one (1) or more *Referred Debts* at any time if it considers that the *Referred Debt* is an *Uncollectable Debt*.
- 10.3 Either party may terminate this *Agreement* wholly or in relation to one (1) or more *Referred Debts* by 14 days notice in writing at any time. However, if the *Client* terminates this *Agreement* pursuant to this clause *SWA* shall be entitled to charge commission on the *Referred Debt(s)* to which the termination relates on the date of termination as if the *Referred Debt(s)* had been paid in full.
- 10.4 *SWA* reserves the right to cease action on any *Referred Debt* where *SWA* or its Solicitors have a conflict of interest in relation to the *Debtor* or if *SWA* otherwise considers it appropriate to do so.

**11. Privacy Protection**

11.1 Personal information about the *Client* and other sources is protected under the *Privacy Amendment (Private Sector) Act 2000*. Disclosure of such information may be compelled by law. The *Client* authorises *SWA* to disclose such information where necessary to others in furtherance of the collection of a *Referred Debt* (eg. to the Court, the other party or parties to litigation etc).

**12. Confidential Information**

12.1 Each party acknowledges that in connection with this *Agreement* it may receive certain confidential or proprietary technical and business information and materials of the other party ("**the Confidential Information**"). For avoidance of doubt the terms of *SWA* written demands and the *SWA Payment Agreement* are *Confidential Information*.

12.2 Each party shall hold and maintain in strict confidence all *Confidential Information* and shall not:

- (a) use the *Confidential Information*, and
- (b) disclose the *Confidential Information* to any third party except as may be required by a Court or governmental authority,

without the prior written consent of the other party.

12.3 The parties shall be responsible for ensuring that their respective officers and employees do not cause the party to breach clause 12.2.

**13. Guarantee**

13.1 In consideration for *SWA* agreeing to provide the *Collection Services* for the *Client*, the *Guarantor* guarantees to *SWA* the performance by the *Client* of all of the *Client's* obligations under this *Agreement*.

13.2 If the *Client* does not pay any money due under this *Agreement* the *Guarantor* must pay that money to *SWA* on demand without deduction, set-off or counterclaim even if *SWA* has not first tried to recover payment from the *Client*.

13.3 Even if *SWA* gives the *Client* extra time to comply with an obligation under this *Agreement* or does not insist on strict compliance with the terms of this *Agreement* the *Guarantor's* obligations will not be affected.

13.4 If there is more than one *Guarantor*, this guarantee shall be binding on each of them jointly and severally and the release by *SWA* of any *Guarantor* from this guarantee does not affect the liability of any other *Guarantor*.

13.5 This guarantee is a continuing guarantee. The *Guarantor's* liability under this clause is unlimited.

**14. Limitation of Liability**

14.1 *SWA's* liability to the *Client* (and any party claiming through the *Client* against *SWA*) for any claim for loss or damage (including legal expenses), whether arising in contract, tort or otherwise, in connection with this *Agreement* shall be limited to the lesser of the costs of:

- (a) supplying the services again, or
- (b) payment of the costs of having the services supplied again.

14.2 *SWA* shall not be liable for any indirect, special or consequential loss or damage of any nature whatsoever resulting from or caused in any way by the carrying out of the Works.

**15. GST**

15.1 Commission, *Search Fees* and all other monies payable by the *Client* pursuant to this *Agreement* are exclusive of *GST* unless otherwise stated.

15.2 Subject to clause 15.3, if *SWA* incurs a liability to pay *GST* in connection with a supply to the *Client* pursuant to this *Agreement*, the consideration that the *Client* must pay for the supply is increased by an amount equal to the *GST* liability that *SWA* incurs in making the supply and the amount of the *GST* liability is payable at the same time and in the same manner as the consideration in respect of which the supply is payable.

15.3 *SWA* shall provide the *Client* with a tax invoice for any *GST* payable by the *Client* pursuant to this *Agreement*.

**16. General**

16.1 In the event that any commissions, *Search Fees*, fees, expenses or other amounts payable by the *Client* under this *Agreement* exceed or are not deducted out of the monies collected on behalf of the *Client*, the *Client* shall pay such amounts to *SWA* within 14 days of its receipt of a tax invoice.

16.2 If the *Client* fails to pay any money under this *Agreement* within seven (7) days of the due date for payment:

- (a) *SWA* shall be entitled to interest on the outstanding amount at the rate of 2.5% per calendar month calculated daily from the due date for payment until payment is received,
- (b) the *Client* shall indemnify *SWA* from and against all costs and disbursements incurred or payable by *SWA* in connection with the recovery of monies owing by the *Client* (including, without limitation, legal fees on a solicitor-client basis, collection agency costs and bank dishonour fees).

16.3 The parties agree that email shall be the primary method of contact and communication in relation to any matters arising under this *Agreement*.

16.4 This *Agreement* embodies the whole agreement between the parties relating to the subject matter of this *Agreement* and supersedes any and all oral and written negotiations and communications by or on behalf of any of the parties.

16.5 Each of the *Client* and the *Guarantors* (if any) hereby charge all of their right, title and interest in any land or other property of any kind that they, or either of them, presently or hereafter own solely or jointly with the performance of the *Client's* obligations under this *Agreement* and hereby irrevocably consent to the registration by *SWA* of a Caveat against the title to such land in the event of any default under this *Agreement*.

16.6 The terms in this *Agreement* may not be varied, waived, discharged or released, except with the prior written consent of the parties.

16.7 This *Agreement* shall be governed by the laws of New South Wales. The parties irrevocably submit to the jurisdiction of the Courts of New South Wales in connection with any dispute relating to this *Agreement*.

16.8 The parties agree that a construction of this *Agreement* that results in all provisions being enforceable is to be preferred to a construction that does not so result.

16.9 if, despite the application of clause 16.8, a provision of this *Agreement* is illegal or unenforceable:

- (a) if the provision would not be illegal or unenforceable if a word or words were omitted, that word or those words are severed; and
- (b) in any other case, the whole provision is severed, and the remainder of this *Agreement* continues in force.

16.10 Either party may assign the benefit of this *Agreement*, however, such assignment will not release the *Client* or the *Guarantor* from any existing on contingent liability.

**17. Definitions & Interpretation**

17.1 In this *Agreement*, unless expressed otherwise:

- "**Agreement**" means these terms and conditions and the *Appointment*;
  - "**Appointment**" means the *Collection Service Agreement* (*Appointment of Collection Agent*) and/or each *Instruction* by the *Client*;
  - "**Approach**" means the *Approach* to be taken in relation to the collection of a *Referred Debt* as stated in the *Instruction* or failing the selection of such approach, the *Direct Approach*;
  - "**Business Day**" means any day other than Saturdays, Sundays or public holidays;
  - "**Client**" means the party named as the *Client* in the *Appointment*;
  - "**Collected Debt**" means all payments or part payments received by *SWA* or the *Client* directly in respect of a *Referred Debt*;
  - "**Collected Interest**" means all payments or part payments received from a *Debtor* on account of interest that has accrued on a *Referred Debt*;
  - "**Commission Schedule**" means the schedule of commission rates at the end of these terms and conditions;
  - "**Collection Services**" has the meaning attributed to it at clause 1.2;
  - "**Customised Approach**" means a written or verbal approach to requesting or demanding payment of a *Referred Debt* developed in conjunction with and approved by the *Client* with the aim of preserving the *Client's* relationship with the *Debtor* as far as reasonably possible;
  - "**Debt**" means a tax invoice, invoice, account, statement or other document containing the details of a debt owing to the *Client* by a *Debtor* and includes any compromise of an original amount;
  - "**Debtor**" means the party or parties named as a debtor in any *Instruction Sheet* or *Debt* provided by the *Client* in relation to a *Referred Debt*;
  - "**Direct Approach**" means *SWA's* usual direct approach to demanding payment of a *Referred Debt*;
  - "**Disputed Approach**" means a detailed written demand or verbal approach as determined best by *SWA* following the consideration and evaluation of the dispute and obtaining of legal advice from our *Solicitors*, if considered necessary;
  - "**SWA Payment Agreement**" means an agreement in writing between the *Client* and a *Debtor* for the payment of a *Referred Debt* by instalments or one (1) or more delayed payments and incorporating terms and conditions to the effect of those set out in the *SWA Payment Agreement*;
  - "**SWA**" means *SWA Recovery Services Pty Limited* ACN 629 706 565;
  - "**GST**" has the same meaning as given to it in the *A New Tax System (Goods and Services Tax) Act 1999*;
  - "**Guarantor**" means the person or persons who have signed this *Agreement* as guarantor and includes their executors, administrators, successors and assigns;
  - "**Interest**" means any and all interest that has or may accrue on a *Debt*;
  - "**Instruction**" means our online submission instruction or by post, facsimile, email, online portal or otherwise;
  - "**Referred Debt**" means a *Debt* owed to the *Client* and which is referred to *SWA* for collection;
  - "**Searches**" means one (1) or more of the searches listed in the *Table of Searches & Search Fees* below and any other paid search available in connection with a person, company or property;
  - "**Search Fees**" means the fee corresponding to a *Search* as set out in the *Table of Searches & Search Fees* below as varied by *SWA* by notice in writing to the *Client* from time to time;
  - "**Trust Account**" means the trust account maintained by *SWA* in accordance with Schedule 2 of the *Commercial Agents and Private Inquiry Agents Act 2004* (NSW); and
  - "**Uncollectable Debt**" means a *Referred Debt* which *SWA* determines in its absolute discretion to be not commercially collectable.
- 17.2 In this *Agreement*, unless otherwise indicated by the context:
- (a) the singular includes the plural and vice versa;
  - (b) a reference to one gender includes a reference to all other genders;
  - (c) headings to clauses are included for the sake of convenience only and will not affect the interpretation of the clauses to which they relate;
  - (d) references to any statute or statutory provision include that statute or statutory provision as amended, extended, consolidated or replaced by subsequent legislation and any orders, regulations, instruments or other subordinate legislation made under the relevant statute;
  - (e) the word person means and includes a natural person, a company, a firm or any other legal entity whether acting as a trustee or not;
  - (f) this *Agreement* will bind each party's legal personal representatives, successors and assigns; and
  - (g) where a party comprises two (2) or more persons the rights and obligations of such persons pursuant to this *Agreement* will ensue for the benefit of and bind each of them jointly and severally.

<b>All Payment Amounts between \$1.00 - \$999.99 Commission at</b>	<b>35% + GST</b>
<b>All Payment Amounts between \$1,000.00 - \$4,999.99 Commission at</b>	<b>25% + GST</b>
<b>All Payment Amounts between \$5,000.00 - \$19,999.99 Commission at</b>	<b>15% + GST</b>
<b>All Payments over \$20,000.00</b>	<b>12.5% + GST</b>