



ASIC

Australian Securities & Investments Commission

ASSETLESS ADMINISTRATION FUND GRANT AGREEMENT

DIRECTOR BANNING GRANT

PARTIES	<p>1. AUSTRALIAN SECURITIES AND INVESTMENTS COMMISSION (ASIC)</p> <hr/> <p>2. THE PERSON/S NAMED IN ITEM 1 OF THE SCHEDULE AS THE LIQUIDATOR/S OF THE COMPANY/COMPANIES OUTLINED IN ITEM 2 OF THE SCHEDULE (LIQUIDATOR)</p>
RECITALS	<p>A. The Assetless Administration Fund (AA Fund) is a grant scheme established by the Australian Government and administered by ASIC. The AA Fund may fund liquidators to undertake a number of different activities, including funding preliminary investigations and reports into the failure of companies with few or no assets.</p> <p>B. ASIC has issued the Director Banning (Director Banning) Grant Guidelines (Guidelines) in respect of its administration of the Director Banning grants from the AA Fund.</p> <p>C. The Liquidator has formed the opinion that it is desirable lodge a further report with ASIC pursuant to section 533(2) of the <i>Corporations Act 2001</i> (Corporations Act) in relation to the company or companies outlined in Item 2 of the Schedule.</p> <p>D. In order to obtain funding to prepare and complete a report, the Liquidator has submitted an application specified in Item 3 of the Schedule to ASIC under the Guidelines for funding from the AA Fund (Funding Application).</p> <p>E. ASIC agrees to provide, and Liquidator agrees to accept, funding in the amount specified in Item 4 of the Schedule, under the terms and conditions set out in this Agreement.</p>

1. Definitions and interpretation

1.1. In this Agreement, unless the context otherwise requires, the following expressions have the meanings given below:

AA Fund	The Assetless Administration Fund referred to in Recital A.
Agreement	this agreement including the Recitals and all of its annexures and schedules.
ASIC Material	any Material ASIC provides to the Liquidator for the purposes of the Liquidator undertaking any activity under or in connection with this Agreement.
ASIC Officer	the ASIC Officer specified in Item 10 of the Schedule of this Agreement, or any other officer notified by ASIC to the Liquidator from time to time for the purpose of subclause 21.1.
Australian Privacy Principle	has the same meaning as in section 6 of the <i>Privacy Act 1988</i> (Cth).
Business Day	a day that is not a Saturday, Sunday, or public holiday in the State.

Commencement Date	the date this Agreement is executed by ASIC.
Company	the company or companies to which the Liquidator is appointed, as specified in Item 2 of the Schedule .
Commonwealth Purposes	does not include commercialisation or the provision of the Material to a third party for its commercial use.
Completion date	the date on which the Report is taken to be completed under clause 5.2, or the date on which the Liquidator completes the further assistance under clause 12.1.
Conflict	Refers to a conflict of interest, or a risk of conflict of interest, or an apparent conflict of interest arising through the Liquidator engaging in any activity or obtaining any interest that is likely to conflict with or restrict the Liquidator in providing the Report to ASIC fairly and independently.
Corporations Act	<i>Corporations Act 2001</i> (Cth).
Director	the person(s) specified in Item 7 of the Schedule .
Due date	the date specified in Item 9 of the Schedule , being the date the Report needs to be lodged with ASIC.
Electronic Communication	has the same meaning as in the <i>Electronic Transactions Act 1999</i> (Cth).
Eligible Data Breach	has the same meaning as in section 6 of the <i>Privacy Act 1988</i> (Cth).
Funding	up to the amount specified in Item 4 of the Schedule .
Funding Application	the application referred to in Item 3 of the Schedule for funding from the AA Fund which is incorporated by reference into this Agreement.
Guidelines	the Director Banning Grant Guidelines referred to in Recital B.
GST, GST Act	the tax defined in, and which is payable and imposed as goods and services tax (GST) under, section 195-1 of, the A New Tax System (Goods and Services Tax) Act 1999 (Cth) (GST Act).
Information System	has the same meaning as in the <i>Electronic Transactions Act 1999</i> (Cth).
Intellectual Property Rights	mean all copyrights, patents, registered and unregistered trademarks (including service marks), registered designs, and other rights resulting from intellectual activity (other than moral rights under the <i>Copyright Act 1968</i> (Cth)).
Material	includes documents, equipment, software (including source code and object code versions), goods, information and data stored by any means, including all copies and extracts of them.
Party	a party to this Agreement.
Personal Information	has the same meaning as in section 6 of the <i>Privacy Act 1988</i> (Cth).
Project Task	the tasks set out in Item 6 of the Schedule .
Project Timeline	the timetable set out in Item 8 of the Schedule .

Purpose	the purpose defined in Item 5 of the Schedule .
Report	the report prepared by the Liquidator pursuant to section 533(2) of the Corporations Act.
Revised Date	the date ASIC has agreed to be provided with the Report under clause 13.5 as a result of a request by the Liquidator made under clause 13.4.
Schedule	the document entitled Schedule which is attached to this Agreement.
Sensitive Information	Has the same meaning as in section 6 of the <i>Privacy Act 1988</i> (Cth).
State	the State or Territory in which the Liquidator has his or her principal place of practice.
Task Schedule	a document of the kind referred to in clause 12.3.
Taxable Supply	has the same meaning as it has in the GST Act, as amended from time to time.

1.2. This Agreement is to be interpreted according to the rules of interpretation as follows, unless the context otherwise requires:

- (a) month means a calendar month;
- (b) headings are for convenience only and do not affect the interpretation of this Agreement;
- (c) references to sections, subsections and paragraphs are to those of the Corporations Act;
- (d) the singular includes the plural and vice versa;
- (e) words importing a gender include each other gender;
- (f) 'person' includes a natural person, a corporation, partnership, joint venture, association or other body corporate;
- (g) a reference to anything includes a part of that thing;
- (h) a reference to a monetary amount is to the amount in Australian currency;
- (i) a reference to a Recital, clause, subclause, Annexure, or Schedule is to that of this Agreement;
- (j) a reference to a statute includes each regulation, proclamation, ordinance and by-law issued under that statute; and a reference to any statute, regulation, proclamation, ordinance or by-law includes a reference to each statute, regulation, proclamation, ordinance or by-law varying consolidating or replacing it;
- (k) a reference to a document includes an amendment or supplement to it, or a replacement or novation of it;
- (l) a reference to a Party includes its successors and permitted assigns;
- (m) when a day on or by which anything is to be done is not a Business Day, that thing must be done on or by the next Business Day; and
- (n) a covenant or agreement on the part of two or more persons binds them jointly and severally.

2. Term of this Agreement

- 2.1. This Agreement starts on the Commencement Date and, unless terminated earlier under clause 15, ends on the conclusion of the Completion Date.
- 2.2. Clauses 6, 7, 8, 9, 10, 11, 12, 16, 17, 22, and 29 of this Agreement survive the conclusion of the Completion Date.

3. Purpose of Funding

- 3.1. The Funding has been made available in reliance on, and on the basis of the matters set out by the Liquidator in the Funding Application. However, to the extent there is any inconsistency between any matter contained in the Funding Application and the terms of this Agreement, the terms of this Agreement must prevail.
- 3.2. The Funding is for the Purpose set out in **Item 5 of the Schedule**.
- 3.3. Nothing in clause 3.2 is taken to relieve the Liquidator of their obligations under section 533(2) of the Corporations Act generally, and in particular to bring any matter to ASIC's attention which has not been selected by ASIC to be reported in the Report.

4. Preparation and contents of the Report

- 4.1. In preparing the Report, the Liquidator must:
 - (a) observe the Guidelines and will prepare the Report having regard to the matters set out in section 206F or 206GAA of the Corporations Act (whichever is applicable as specified in **Item 5 of the Schedule**);
 - (b) ensure that any evidence or material relied on in the Report to support an allegation contained in it is, in the Liquidator's reasonable opinion, credible and relevant. The completion of the Project Tasks by the Liquidator will not relieve the Liquidator of their obligations:
 - (i) under this clause; and
 - (ii) to make all necessary enquiries, which may result in the Liquidator performing additional tasks, in order to ensure that any allegation contained in the Report is supported by evidence or material that is in the Liquidator's reasonable opinion, credible and relevant;
 - (c) ensure that the Report is prepared in a format and style acceptable to ASIC; and
 - (d) provide details of all the information and material that the Liquidator has relied on in preparing the Report.
- 4.2. The Liquidator must comply with the Project Timeline.
- 4.3. If more than one person is specified in **Item 7 of the Schedule**, the Liquidator will prepare one Report per the specified person.
- 4.4. The Liquidator must lodge the Report with ASIC by the Due Date or the Revised Date.
- 4.5. The Liquidator must provide ASIC with the Report by the Due Date or the Revised Date. In the event that the Liquidator forms the view that they cannot comply with clause 4.1. in relation to any aspect of the Report or the Report in total, then the Liquidator must notify ASIC as soon

as practicable. ASIC may then elect to notify the Liquidator to discontinue performing work in relation to that aspect of the Report or the Report in total.

- 4.6. In the event that ASIC reasonably forms the view that the Liquidator cannot comply with clause 4.1 in relation to any aspect of the Report or the Report in total, then ASIC must notify the Liquidator as soon as practicable. ASIC may then elect to notify the Liquidator to discontinue performing work in relation to that aspect of the Report or the Report in total.
- 4.7. In the event that ASIC notifies the Liquidator under clause 4.5 or 4.6 to discontinue performing work in relation to the Report in total, that notification will be taken to be a notice terminating this Agreement and clauses 15.2, 15.3, 15.4, and 15.5 will apply.

5. Completion of the Report

- 5.1. After receiving the Report from the Liquidator, ASIC must notify the Liquidator if it requires:
 - (a) any amendments to be made to the Report. Any request made by ASIC for the Liquidator to amend the Report may concern matters of style and format only; or
 - (b) the Liquidator to provide documents which were referred to in the Report but were not attached to the Report; or
 - (c) the Liquidator to explain or amend the Report to address inconsistencies between different parts of the Report; or
 - (d) the Liquidator to explain or amend the Report to address inconsistencies between information contained in documents which the Liquidator has prepared (including but not limited to documents lodged with ASIC) and/or other publicly available information.
 - (e) Subject to clause 6, the Liquidator must comply with a request made by ASIC under clause 5.1.
- 5.2. When ASIC notifies the Liquidator that it has no requests or no further requests under clause 5.1, the Report will be taken to be complete.

6. Independence of the Liquidator

- 6.1. The Liquidator must ensure that any views, conclusions or opinions expressed in the Report are those of the Liquidator and that the Liquidator has not adopted any view, conclusion or opinion expressed in the Report on the basis of any assistance or influence from any third party including ASIC.
- 6.2. Nothing in clause 6.1 prevents the Liquidator from seeking or obtaining any legal or other advice and using or relying on any advice obtained for the purposes of forming any view, conclusion or opinion expressed in the Report.

7. Total amount of Funding by ASIC and ASIC's liability

- 7.1. ASIC will pay, and the Liquidator is entitled to be paid an amount:
 - (a) up to the maximum amount of Funding specified in **Item 4 of the Schedule** which is inclusive of GST and disbursements; and

- (b) for work properly undertaken within the scope of the Purpose by the Liquidator (including by the Liquidator's employees), in accordance with this Agreement.
- 7.2. In the event that ASIC elects to provide further funding to the Liquidator under clause 13.3 or the Liquidator provides assistance under clause 12, then ASIC's liability to the Liquidator under this Agreement is increased by the amount of further funding provided under clause 13.3 or the remuneration payable to the Liquidator under clause 12.1.
- 7.3. ASIC's liability to the Liquidator under this Agreement is limited to payment of the Funding, to the maximum amount specified in **Item 4 of the Schedule** or in accordance with clause 7.2. For the avoidance of doubt and unless expressly stated in **Item 4 of the Schedule**:
- (a) ASIC is not liable to pay the Liquidator remuneration or any other amount for costs and expenses (including legal fees) incurred by Liquidator in connection with:
- (i) any work (including work related to the Purpose) done before the Commencement Date unless expressly authorised in writing by ASIC before the Liquidator undertakes the work;
 - (ii) any work related to the Funding Application;
 - (iii) any work related to seeking further funding from ASIC under this Agreement in relation to the Report unless expressly stated in the Schedule;
 - (iv) any work related to seeking further time to provide the Report to ASIC;
 - (v) any work related to complying with statutory notices issued by ASIC exercising its compulsory powers under the ASIC Act (including but not limited to sections 19, 30, 30B and 33 of the ASIC Act); and
 - (vi) the liquidation of the Company; and
- (b) the Liquidator must bear his or her own costs (including all legal fees, disbursements and other expenses) incurred in submitting and progressing the Funding Application, and in negotiating and completing this Agreement.
- 7.4. ASIC may, at its sole and absolute discretion and subject to clauses 8, 9 and 10, elect to make interim payment of an amount within clause 7.1, provided that nothing in this clause 7.4 may be construed as:
- (a) creating an obligation on ASIC to assess or make any interim payment; or
 - (b) conferring a right on the Liquidator to claim or require any interim payment, or to have his or her claim assessed for payment.
- 7.5. Any claims for payments, and all amounts paid by ASIC, under this Agreement are subject to:
- (a) the Liquidator's performance of work and delivery of the Project Task:
- (i) with all due care and diligence in compliance with the Guideline and the Purpose;
 - (ii) to a high professional standard;
 - (iii) within the time, in the manner and under the provisions of this Agreement; and
 - (iv) in compliance with the Guidelines, the Corporations Act and all other applicable law,
- (b) ASIC's discretion to refuse payment, or to require repayment of any amount:
- (i) for unsatisfactory, incomplete, or non-performance by the Liquidator;
 - (ii) above the amount calculated based on work actually done and specified in **Item 4 of the Schedule**; or

(iii) for a material breach of the Guidelines or this Agreement.

- 7.6. If ASIC requires the Liquidator to provide evidence or documents which should have been included with the Report to substantiate the allegations contained in the Report under clause 5.1, ASIC is not liable to pay the Liquidator for the additional time incurred by the Liquidator to amend the Report to ensure compliance with the Guidelines.
- 7.7. Subject to clauses 8 to 10, the Liquidator will be paid in the manner set out under clause 11.

8. Payments by ASIC

- 8.1. The Liquidator is entitled to be paid and ASIC will pay the Liquidator up to the amount specified in **Item 4 of the Schedule** for the work performed by the Liquidator and the Liquidator's employees in preparing and completing the Report on an hourly basis at the rates normally charged by the Liquidator for performing work of similar type, together with disbursements incurred by the Liquidator in preparing the Report.
- 8.2. The Liquidator will complete the Vendor Form attached at Annexure A on their firm's letter head and return it to ASIC as soon as practicable after the Liquidator signs this Agreement. The Liquidator acknowledges that ASIC is unable to make payment to the Liquidator pursuant to clause 11 unless the correctly completed Vendor Form is returned to ASIC.
- 8.3. Subject to clauses 9 and 10, the Liquidator will be paid in the manner set out under clause 11.

9. Invoicing by the Liquidator

- 9.1. In order to receive payment, the Liquidator must provide ASIC with a correctly:
- (a) completed Vendor Form specified at clause 8.2; and
 - (b) rendered tax invoice and fee account.
- 9.2. For the purposes of this Agreement, a tax invoice is correctly rendered if:
- (a) it is correctly addressed and calculated and relates only to services delivered pursuant to this Agreement;
 - (b) it is accompanied by a correctly rendered fee account; and
 - (c) it is a valid tax invoice in accordance with the GST Act.
- 9.3. For the purposes of this Agreement, a fee account is correctly rendered if it sets out:
- (a) a summary of the work or tasks performed with a description of the tasks which were completed by the Liquidator and each of the Liquidator's employee (which may be in the form of the work-in-progress report showing the time spent by each employee and a narration of tasks performed, as may be generally maintained by the Liquidator's firm);
 - (b) the name and title of each person performing the work or task;
 - (c) the amount of time spent by the person performing the work or task;
 - (d) the period during which the Liquidator and the Liquidator's employees were engaged in performing the work or task;
 - (e) the charge-out-rate of the person performing the work or task;
 - (f) the amount charged by the person to perform the work or task;

- (g) details of disbursements being claimed, including supporting documentation; and
- (h) any time that has been written off by the Liquidator.

9.4. For the purposes of this Agreement, the Liquidator:

- (a) agrees to ensure that the tax invoice rendered to ASIC will not exceed the maximum amount of Funding specified in clause 7; and
- (b) acknowledges that should the tax invoice rendered to ASIC exceeds the maximum amount of Funding specified in clause 7, the Liquidator will be requested to amend and re-submit the invoice.

9.5. The Liquidator must provide ASIC with any documents or other material that ASIC requires in order to verify any costs claimed by the Liquidator.

9.6. **Item 8 of the Schedule** outlines the date the Liquidator is required to render a tax invoice to ASIC. If the Liquidator renders a tax invoice to ASIC before the date specified in Item 8 of the Schedule, and if the tax invoice otherwise complies with clauses 9.2 and 9.3, the tax invoice will be taken to have been received by ASIC on the day specified in Item 8 of the Schedule.

10. ASIC's right to review and query invoice

10.1. ASIC:

- (a) is entitled to raise objections or request further information in relation to any amount claimed in an invoice or a fee account submitted under this Agreement; and
- (b) has no obligation to pay the Liquidator any amount claimed in an invoice or a fee account for which ASIC has raised an objection or has requested further information for.

10.2. The Liquidator must consider any objection by ASIC in good faith. If requested by ASIC, the Liquidator must provide ASIC with any further information related to the objection, or to the invoice or fee account generally.

10.3. The Liquidator must consider any reasonable request for further information in relation to an invoice or fee account in good faith. The Liquidator must provide ASIC with any further information with regard to any reasonable request from ASIC.

10.4. ASIC is not obliged to pay the Liquidator any amount in respect of an invoice or fee account until it has confirmed with the Liquidator that all of its objections and/or requests for further information relating to the invoice or fee account have been satisfactorily resolved. ASIC will not unreasonably withhold that confirmation.

10.5. The Liquidator is not entitled to charge, and ASIC is not liable to pay for remuneration and expenses incurred by Liquidator in dealing with objections raised or requests for further information by ASIC in relation to any of their respective invoices or any fee accounts submitted under this Agreement.

11. Payment

11.1. Any payment to Liquidator under this Agreement will be paid into the administration account maintained by the Liquidator in accordance with section 65-10 of Schedule 2 of the *Corporations Act 2001* (Cth).

- 11.2. The Liquidator warrants that it will provide the accurate administration account details to ASIC to ensure that the payment is made into the correct administration account.

12. Further obligations of Liquidator

- 12.1. If requested by ASIC in writing, the Liquidator will attend a court, tribunal or other forum to give evidence relating to the Report. The Liquidator acknowledges that ASIC will not provide funding to the Liquidator to give evidence relating to the Report.
- 12.2. In the event that ASIC requires the Liquidator to undertake additional work (other than attending the banning or appeal hearing), the Liquidator will provide ASIC with further assistance when:
- (a) the Liquidator receives a written request from ASIC; and
 - (b) a Task Schedule is agreed between ASIC and the Liquidator as referred to in clause 12.3.
- 12.3. If ASIC makes a written request as referred to in clause 12.1(a), ASIC and the Liquidator must use their reasonable endeavours to agree upon a Task Schedule setting out the nature, timing and estimated cost of the assistance to be provided to ASIC by the Liquidator.
- 12.4. In calculating the estimated cost of any assistance for the purpose of the Task Schedule, the Liquidator and ASIC will apply the same hourly rates for the Liquidator and their employees as are set out in clause 8.1 of this Agreement, or as expressly agreed between the Liquidator and ASIC.
- 12.5. The Liquidator is entitled to be paid the amount of remuneration and disbursement as agreed between ASIC and the Liquidator which is set out in the Task Schedule.
- 12.6. ASIC may at any time by notice in writing to the Liquidator terminate its request for further assistance whereupon the Liquidator must cease work on the matters referred to in the agreed Task Schedule. Such termination will not affect the Liquidator's right to seek payment for work performed in accordance with the Task Schedule prior to the date of termination.
- 12.7. In order to receive payment for further assistance under clause 12.1, the Liquidator must provide ASIC with a correctly rendered invoice and a correctly rendered fee account that comply with clauses 9.2 and 9.3.
- 12.8. If ASIC terminates its request for further assistance under clause 12.6 and if the request for further assistance involves the Liquidator generating or preparing any documents, the Liquidator must provide ASIC with any documents that arise from the Liquidator's work from ASIC's request for further assistance.

13. Request for further funding or further time by the Liquidator

- 13.1. In the event the Liquidator forms the opinion that the Liquidator will require further funding to prepare the Report, the Liquidator must notify ASIC as soon as they form that opinion and must do so before they undertake the additional work.
- 13.2. In notifying ASIC under clause 13.1, the Liquidator must provide ASIC with:
- (a) the reason for the request, including an explanation for the change of costs from the information previously given to ASIC;
 - (b) a detailed estimate of each of the following matters:

- (i) the amount of further funding required by the Liquidator;
 - (ii) how further funding would be applied, in particular:
 - A. the tasks it would be applied in;
 - B. how much work has been completed in relation to those tasks; and
 - C. the staff who would be engaged to complete the tasks.
- 13.3. Upon being notified by the Liquidator under clause 13.2, ASIC at its sole discretion may elect to:
- (a) refuse or agree to consider the Liquidator's request for further funding; or
 - (b) refuse or agree to provide the further funding requested, or
 - (c) agree to provide further funding in the amount which ASIC in its sole discretion considers appropriate; or
 - (d) terminate the Agreement under clause 15.1(g).
- 13.4. In the event that the Liquidator forms the opinion that they are unable to provide ASIC with the Report by the Due Date or the Revised Date (if applicable), the Liquidator must notify ASIC immediately. The Liquidator must also provide an estimate of when they will provide ASIC with the Report.
- 13.5. Upon being notified by the Liquidator under clause 13.4, ASIC at its sole discretion can elect whether to:
- (a) accept the revised date provided by the Liquidator under clause 13.4;
 - (b) stipulate its own revised date for the provision of the Report; or
 - (c) terminate the Agreement under clause 15.1(g).
- 13.6. ASIC may at its sole discretion communicate the revised date under clauses 13.5(a) or (b) by email to the Liquidator and the revised date contained in ASIC's email will be taken to be the Revised Date for the purposes of this Agreement.

14. Conflict of Interest

- 14.1. The Liquidator warrants that, at the Commencement Date, no Conflict exists or is likely to arise in the performance of the Liquidator's obligations under this Agreement.
- 14.2. The Liquidator must seek to ensure that no Conflict arises during the term of this Agreement, but if a Conflict does arise the Liquidator must:
- (a) immediately notify ASIC in writing of that Conflict and of the steps the Liquidator proposes to take to resolve or otherwise deal with the Conflict;
 - (b) make full disclosure to ASIC of all relevant information relating to the Conflict; and
 - (c) take such steps (if any) as ASIC may reasonably require to resolve or otherwise deal with that Conflict.
- 14.3. If:
- (a) the Liquidator fails to notify ASIC as required by clause 14.2; or

- (b) the Liquidator is unable or unwilling to resolve or deal with a Conflict as required by ASIC;
or
- (c) in the reasonable opinion of ASIC, a Conflict exists which would prevent the Liquidator from performing the Agreement in accordance with its terms;

ASIC may by notice to the Liquidator terminate this Agreement, in which case clauses 15.2, 15.3, 15.4 and 15.5 will apply.

15. Termination

15.1. If:

- (a) the Liquidator becomes bankrupt or enters any form of arrangement, scheme or agreement with creditors pursuant to the *Bankruptcy Act 1966* (Cth);
- (b) the Liquidator's registration as a liquidator has been suspended or cancelled, whether indefinitely or for a period of time;
- (c) a condition is or conditions are imposed on the Liquidator's registration which affects the Liquidator's ability to comply with this Agreement;
- (d) in the reasonable opinion of ASIC, the Liquidator has failed, whether in or outside the jurisdiction of the Corporations Act, to carry out or perform adequately and properly the duties of a liquidator, or any duties or functions required by an Australian law to be carried out or performed by a registered liquidator, or is otherwise not a fit and proper person to remain registered as a liquidator, whether in relation to liquidation of the Company/Companies or in relation to some other matter;
- (e) in the reasonable opinion of ASIC, the Liquidator has failed to comply with or is in breach of his or her obligations under this Agreement and does not rectify the omission or breach after receiving 10 Business Days' notice in writing from ASIC to do so; or
- (f) any Warranty by the Liquidator under clause 16 of this Agreement is or becomes false;
- (g) ASIC considers it appropriate in the circumstances to do so;
- (h) ASIC is satisfied that any statement made in the Application is incorrect, incomplete, false or misleading in a way which would have affected the original decision to approve the Funding; or
- (i) the Liquidator no longer acts as the liquidator of the Company/Companies,

then ASIC may immediately terminate this Agreement by giving written notice to the Liquidator of the termination.

15.2. The Liquidator must comply with any reasonable requirements in ASIC's notice of termination, including, but not limited to, any or all of the following:

- (a) providing ASIC with all working or draft versions of the Report which had been prepared up to the date of termination of this Agreement and all relevant information to support the views expressed in those documents in a format that is acceptable to ASIC;
- (b) if no working or draft versions of the Report have been created, the Liquidator must make available to ASIC:
 - (i) all raw data, working papers or other books (of the Liquidator or the Company/Companies) in the possession of the Liquidator or prepared by the Liquidator up to the date of termination of this Agreement in a format that is acceptable to ASIC;

- (ii) a memorandum setting out the preliminary views of the Liquidator on the matters set out in **Item 5 of the Schedule** based on the investigation conducted up to the date of termination of the Agreement as well as the location or source of all evidence identified to support those preliminary views; and
 - (iii) copies of expert or consultant reports (and any drafts thereof) prepared by an expert engaged by the Liquidator further to the Liquidator's performance of this Agreement.
- 15.3. If ASIC terminates this Agreement pursuant to clause 15.1, this Agreement is taken to have terminated on the date that notice of the termination is deemed to have been received by Liquidator under clause 18 of this Agreement.
- 15.4. If ASIC terminates this Agreement pursuant to clause 15.1, the Liquidator is only entitled to payment for work performed and disbursements incurred up to the date of termination in order to receive any payment, the Liquidator must provide ASIC with a correctly rendered tax invoice and a correctly rendered fee account containing the same details as those set out in clauses 9.2 and 9.3. The Liquidator must provide ASIC with any documents or other material it requires in order to verify any disbursement claimed by the Liquidator.
- 15.5. If ASIC terminates this Agreement pursuant to clause 15.1, ASIC is not liable for:
- (a) the loss of any benefits (including loss of prospective profits or revenue) that would have been conferred on the Liquidator had the termination not occurred; or
 - (b) any costs or losses incurred by or ordered against or otherwise suffered by the Liquidator as a result of or arising out of or in connection with ASIC's termination of the Agreement.
- 15.6. Clause 15.3 does not limit or exclude any of ASIC's other rights, including the right to recover any other amounts from the Liquidator on termination of the Agreement.
- 15.7. Clauses 6, 7, 8, 9, 10, 11, 12, 16, 17, 22, and 29 of this Agreement survive the termination of this Agreement.

16. Warranties by the Liquidator

- 16.1. The Liquidator warrants at the time of commencement of the Agreement and throughout the term of the Agreement that:
- (a) to the best of the Liquidator's knowledge and belief after making diligent inquiry, any information provided by the Liquidator in the Application is true and correct;
 - (b) the Liquidator has read and understood the Guidelines;
 - (c) to the best of the Liquidator's knowledge and belief after making diligent inquiry, no conflict of interest exists or is likely to arise in the performance of the Liquidator's obligations under this Agreement or in the Liquidator's conduct as the liquidator of the Company/Companies;
 - (d) the Liquidator will perform and discharge his or her obligations under this Agreement in a professional and diligent manner and in accordance with all relevant laws;
 - (e) the Liquidator will carry out or perform adequately and properly the duties of a liquidator, or any duties or functions required by an Australian law to be carried out or performed by a registered liquidator including requirements of any professional standard, and otherwise remain a fit and proper person to stay registered as a liquidator, whether in relation to the liquidation of the Company/Companies or in relation to some other matter;

- (f) the Liquidator has adequate capacity to perform the Liquidator's obligations under this Agreement;
- (g) the Liquidator is a fit and proper person to act as a registered liquidator;
- (h) the Liquidator's registration as a registered liquidator is not subject to any conditions which may impair his or her ability to comply with this Agreement; and
- (i) the Liquidator is a registered liquidator, and the Liquidator's registrations as a liquidator has not been cancelled or suspended at the Commencement Date and during the term of the Agreement.

17. Confidentiality

17.1. Except:

- (a) as agreed in writing by the Parties; or
- (b) as required by law; or
- (c) to the extent reasonably necessary to explain this Agreement to a court; or
- (d) in the case of the Liquidator, with their fellow partners or directors, employees or agents, consultants, for the purposes of conducting the investigations and preparing the Report, or for internal reporting, audit or other compliance enable him or her to perform his or her obligations or to exercise his or her rights under this Agreement;
- (e) in the case of ASIC, where disclosure is:
 - (i) permitted under section 127 of the *Australian Securities and Investments Commission Act 2001* (Cth); or
 - (ii) required by the Commonwealth Parliament (or a House, or committee of a House, of the Commonwealth Parliament) ASIC's responsible Minister,

the Parties agree to keep this Agreement confidential. A Party may disclose this Agreement to its legal advisers, experts, forensic accountants, auditors and insurers, on condition that confidentiality is maintained by each recipient. To the extent that a Party is legally required or permitted to disclose this Agreement, the Party must to use its best endeavours to ensure that the recipient is made aware of, and maintains the confidentiality of this Agreement.

17.2. Except as agreed in writing by ASIC, the Liquidator must not disclose the Report except to his or her legal advisers, experts, forensic accountants, and auditors, on condition that confidentiality is maintained by each recipient. To the extent that the Liquidator is legally required or permitted to disclose the Report, the Liquidator must use his or her best endeavours to give reasonable notice to ASIC to allow it to consider its position in relation to the proposed disclosure of the Report.

17.3. If ASIC uses the Report for the purposes of disqualifying a person from managing corporations under section 206F or section 206GAA of the Corporations Act, a copy of the Report may be provided to the person, the subject of the Report and his or her legal representative, for the sole purpose of preparing for any proceeding or hearing under section 206F or section 206GAA of the Corporations Act.

17.4. ASIC may at its sole discretion disclose certain terms of the Agreement or the entire Agreement. In the event that ASIC chooses to disclose certain terms of the Agreement or the entire Agreement, ASIC may at its sole discretion give reasonable notice to the Liquidator prior to ASIC's disclosure of the terms of the Agreement.

18. Relationship between the Parties

18.1. A Party is not by virtue of this Agreement the employee, agent or partner of the other Party and is not authorised to bind or represent the other Party.

19. Privacy

19.1. When dealing with Personal Information in preparing and completing the Report (including carrying out the Project Tasks), the Liquidator agrees not to do anything which, if done by ASIC, would be a breach of an Australian Privacy Principle.

20. Notifiable data breaches

20.1. If the Liquidator becomes aware that there are reasonable grounds to suspect that there may have been an Eligible Data Breach in relation to any Personal Information or Sensitive Information held by the Supplier as a result of this Agreement or its provision of the Services, the Liquidator agrees to:

- (a) notify ASIC in writing as soon as possible, which must be no later than within 3 days of becoming aware; and
- (b) unless otherwise directed by ASIC, carry out an assessment in accordance with the requirements of the *Privacy Act 1988* (Cth).

20.2. Where the Liquidator is aware that there are reasonable grounds to believe there has been, or where ASIC notifies the Liquidator that there has been, an Eligible Data Breach in relation to any Personal Information or Sensitive Information held by the Liquidator as a result of this Agreement or its provision of the Services, the Liquidator must:

- (a) take all reasonable action to mitigate the risk of the Eligible Data Breach causing serious harm to any of the individuals to whom the Personal Information or Sensitive Information relates;
- (b) unless otherwise directed by ASIC, take all other action necessary to comply with the requirements of the *Privacy Act 1988* (Cth); and
- (c) take any other action as reasonably directed by ASIC.

21. Notices

21.1. A Party giving notice or notifying under this Agreement to the other Party must do so in the manner set out in clause 21.3 to the persons specified in **Item 10 and Item 11 of the Schedule**, or any other addressee as notified by a Party to the other Party in writing:

21.2. A Party giving notice or notifying under the Agreement must do so in writing:

- (a) sent by Electronic Communication to the other Party's contact by email as set out in clause 21.1 at the email address set out in **Item 10 and Item 11 of the Schedule**; or
- (b) hand-delivered or sent by pre-paid post to the other Party's relevant address as set out in **Item 10 and Item 11 of the Schedule**.

21.3. A notice given in accordance with clause 21.1 is taken to be received:

- (a) if hand-delivered, on delivery;
- (b) if sent by pre-paid post, 5 Business Days after the date of posting unless it has been received earlier;
- (c) if sent by Electronic Communication, at the time that would be the time of receipt under the *Electronic Transactions Act 1999 (Cth)* if a notice was being given under a law of the Commonwealth, which is currently when the Electronic Communication enters the addressee's information system as defined in the *Electronic Transactions Act 1999 (Cth)*.

22. Taxes, duties and government charges

- 22.1. Subject to this clause, all taxes, duties and government charges imposed or levied in Australia or overseas in connection with this Agreement must be borne by the Liquidator.
- 22.2. The provisions of this clause in respect of GST apply if the Liquidator is registered or is required to be registered for GST.
- 22.3. ASIC is registered in accordance with the GST Act and will notify Liquidator of any change in its GST registration status.
- 22.4. Any payment made paid by ASIC to the Liquidator for supplies provided by the Liquidator to ASIC in accordance with this Agreement and which are Taxable Supplies within the meaning of the GST Act will be inclusive of GST.
- 22.5. The Liquidator must give ASIC a tax invoice in accordance with the GST Act in relation to any Taxable Supply by the Liquidator to ASIC in connection with this Agreement before the payment of Funding by ASIC.
- 22.6. Any invoice provided under this Agreement must not include any amount that represents GST paid by the Liquidator on the Liquidator's own inputs and for which an input tax credit is available to Liquidator.
- 22.7. If a payment to satisfy a claim or a right to claim under or in connection with this Agreement (for example, a claim for damages for breach of the Agreement) gives rise to a liability to pay GST, the payer must also pay, and indemnify the payee against, the amount of that GST (except any GST for which that payee is entitled to an input tax credit).
- 22.8. If either party has a claim under or in connection with this Agreement for a cost on which that party must pay GST, the claim is for the cost plus all GST on that cost (except any GST for which that party is entitled to an input tax credit).

23. Applicable law and jurisdiction

- 23.1. This Agreement is governed by the law of the State and each Party irrevocably and unconditionally submits to the non-exclusive jurisdiction of the Courts of the State.

24. Entire Agreement

- 24.1. This Agreement constitutes the entire agreement between the Parties and supersedes all communications, negotiations and arrangements oral, written or implied between the Parties with respect to the subject matter of this Agreement.

24.2. ASIC and the Liquidator will promptly execute all documents and do all things that either of them from time to time reasonably requires of the other to effect, perfect or complete the provisions of this Agreement and any transaction contemplated by it.

25. Severability

25.1. A term or part of a term of this Agreement that is illegal or unenforceable in any relevant jurisdiction may be severed from this Agreement and the remaining terms or parts of the terms of this Agreement continue in force.

26. Waiver

26.1. Waiver of any provision of or right under this Agreement:

- (a) must be in writing signed by the Party entitled to the benefit of that provision or right; and
- (b) is effective only to the extent set out in any written waiver.

27. Costs

27.1. Each Party bears his, her or its own costs arising out of the preparation of and obtaining advice regarding the provisions of this Agreement.

28. Variation

28.1. No agreement or understanding varying or extending this Agreement is legally binding upon any Party unless the agreement or understanding is in writing and signed by all Parties or in accordance with a term or terms of this Agreement.

29. Announcements

29.1. The Liquidator must, before making a public announcement in connection with this Agreement, obtain ASIC's written agreement to that public announcement, except if required by an applicable or the governing law, or a regulatory body (including a relevant stock exchange).

29.2. If the Liquidator is required by an applicable or the governing law, or a regulatory body to make a public announcement in connection with this Agreement, the Liquidator must, to the extent practicable, first consult with ASIC and take into account any reasonable requirements of ASIC as notified to the Liquidator.

29.3. The public announcement outlined at clauses 29.1 or 29.2 must also acknowledge the funding from the AA Fund or as otherwise agreed with ASIC. If the Liquidator considers it inappropriate to acknowledge the funding from the AA Fund in the public announcement, the Liquidator must provide their reasons when seeking ASIC's written consent under clause 29.1 to that public announcement or when consulting with ASIC under clause 29.2.

29.4. The Liquidator acknowledges that ASIC may issue media releases referring to or publicly refer to the funding of this matter.

30. Assignment and novation

30.1. The Parties cannot assign their rights and obligations or novate their rights and obligations under this Agreement without the prior written consent of the Parties.

31. Dispute resolution

31.1. The Parties agree not to initiate legal proceedings in relation to a dispute unless they have tried and failed to resolve the dispute by negotiation.

31.2. The Parties agree to continue to perform their respective obligations under this Agreement where a dispute exists.

31.3. The procedure for dispute resolution does not apply to action relating to termination or urgent litigation.

32. Insurance

32.1. The Liquidator agrees to maintain adequate insurance for the duration of this Agreement and provide ASIC with proof of insurance when requested.

32.2. Adequate insurance for the purposes of this clause means workers' compensation insurance as required by law, and professional indemnity and fidelity insurance as required by section 25-1 of Schedule 2 of the Corporations Act that is further explained in ASIC's Regulatory Guide No.258 *Registered liquidators: Registration, disciplinary actions and insurance requirements*.

33. Intellectual Property

33.1. ASIC owns the Intellectual Property Rights in Material that is created by the Liquidator undertaking any activity under or in connection with this Agreement.

33.2. ASIC gives the Liquidator a non-exclusive, irrevocable, royalty-free licence to use, reproduce, disclose, communicate, publish, adapt the ASIC Material and the Material for any purposes in connection with this Agreement only and this includes to disclose them as required or authorised by law. For all other purposes not connected with the Agreement, the Liquidator must obtain ASIC's prior written agreement.

33.3. The Liquidator gives ASIC a non-exclusive, irrevocable, royalty-free licence to use, reproduce, disclose, communicate, publish, adapt the pre-existing Liquidator or third party Material that is incorporated into or in connection with the Material created by the Liquidator under clause 33.1 of this Agreement.

33.4. This Agreement does not affect the ownership of Intellectual Property Rights in pre-existing Liquidator Material, third party Material or ASIC Material.

34. Information data security

34.1. The Liquidator agrees to comply with any security requirements specified in the Australian Government's *Protective Security Policy Framework* or *Information Security Manual* as they apply to any Material as reasonably notified in writing by ASIC to the Liquidator.

34.2. The Liquidator must ensure that any ASIC Material is at all times:

- (a) protected from unauthorised access or use by a third party;
- (b) protected from misuse, loss, damage or destruction by any person; and
- (c) afforded protective measures (including but not limited to administrative, physical, and technical safeguards) that are no less rigorous than accepted industry standards or best practice.

35. Counterparts

35.1. This Agreement may be executed in counterparts. The parts may be exchanged by email transmission and together constitute one Agreement.

Schedule

Item 1	[insert liquidator name and firm details]
Item 2	[insert company name and ACN]
Item 3	An application under the AA Fund dated [insert date] (Document ID Number [insert]) [and the following specified correspondence between the Parties:]
Item 4	[\$insert funding amount] (including GST and disbursements).
Item 5	<p>Purpose</p> <p>To enable the Liquidator to conduct further investigations and prepare the Report pursuant to section 533(2) of the Corporations Act in relation to the Director (outlined in Item 7 of this Schedule), which may be used to assist ASIC to determine whether it should disqualify the Director under section [206F/206GAA] [Delete the non-applicable one] of the Corporations Act or for other purposes that ASIC considers appropriate.</p>
Item 6	<p>Project Task</p> <p>Investigate and prepare the Report having regard to the matters set out at section [206F/206GAA] [Delete the non-applicable one] of the Corporations Act.</p> <p>OR</p> <p>Investigate and prepare the Report having regard to the matters set out at section [206F/206GAA] [Delete the non-applicable one] of the Corporations Act, in particular:</p> <p><i>Examples:</i></p> <ul style="list-style-type: none"> (a) the sale or transfer of the assets of the Company to related entities for zero or minimal consideration (Transaction); (b) whether the Director obtained any benefit for himself or his related entities as a result of the Transaction, and the extent of the benefit; (c) the Director's role in the management of the Company; (d) the transfer of funds from the Company's bank account to the Director and/or his related entities shortly prior to the Liquidator's appointment; (e) when the Company became insolvent for the purposes of section 95 of the Corporations Act; <p>For the purpose of this Item 6, the following definitions apply:</p> <p><i>Examples</i></p> <ul style="list-style-type: none"> (a) 'Related entity' has the same meaning as in section 9 of the Corporations Act.
Item 7	<p>[insert the name of the person the subject of the Report]</p> <p>If more than one person is specified in this Item 7, the Liquidator is referred to clause 4.3 which imposes the requirement to prepare one Report per specified person.</p>
Item 8	Project Timeline

	Date	Liquidator obligation
		Lodge the Report with ASIC
		Provide the correctly rendered invoice to ASIC. The Liquidator should ensure that the invoice includes all the information which is contained in the sample invoice set out in Annexure B.
Item 9	[insert due date]	
Item 10	ASIC Officer detail ASIC Officer name: [name] Position: [position and team] Street Address: Postal Address: [address] Telephone: [phone number] E-mail: [email address]	
Item 11	Liquidators' contact details Name: [name] Position: [position] Street Address: Postal Address: [postal address] Telephone: [number] E-mail: [email address]	

Executed by the Parties as an agreement

SIGNED for and on behalf of the
**Australian Securities and Investments
Commission** by its authorised
representative:

x

Print full name and position of
representative

Signature of representative

In the presence of:

Print full name of witness

x

Signature of witness

Date: _____

Executed by [**add Liquidator's full name**]:

x

In the presence of:

Signature of Liquidator

Print full name of witness

x

Signature of witness

Date: _____

Annexure A – Vendor Form

ASIC ASSETLESS ADMINISTRATION FUND VENDOR FORM

Please complete the following on your Company/ Business letterhead

LIQUIDATOR DETAILS

Company / Business Name:

Liquidator Name:

Phone:

ABN:

Address:

Accounts Contact Name:

Phone:

Remittance email:

COMPANY IN LIQUIDATION DETAILS

Name:

ABN:

Registered for GST:

Yes / No

Address:

Is GST being remitted to ATO under company in liquidation ABN:

Yes / No

If **No**, why, please tick:

1. No funds in Administration account – no ABN

2. Using Trustee account ABN

3. Other: Please advise further details

If **No**, confirm which ABN will remit GST to the ATO:

EFT PAYMENT DETAILS

Bank Name:

Account Name:

BSB Number:

Account Number:

Upon receipt of the Vendor form, an ASIC Finance officer will make phone contact to verbally verify the bank details. ASIC Finance is unable to activate the vendor until a verbal bank confirmation is completed.

Payments are reported annually to the ATO via the taxable payments annual report.

<https://www.ato.gov.au/Business/Reports-and-returns/Taxable-payments-annual-report>

All invoices issued to ASIC are to meet the ATO requirements for a tax invoice and include the ABN remitting the GST. <https://www.ato.gov.au/Business/GST/Tax-invoices/>

Signed:

Date:

Annexure B – Sample Invoice

** Add below to Liquidator's Letterhead - Ensure to also Include Firm name and Firm ABN

TO: Australian Securities & Investments Commission
 GPO Box 9827
 BRISBANE QLD 4001

TAX INVOICE for Professional Services

NAME of COMPANY in Liquidation:

ABN of COMPANY in Liquidation:

Reference Number of Liquidator: [Your Reference Number]

Date of invoice: [Date]

Description	Total \$
Services provided in accordance with the Assetless Administration Fund Grant Agreement dated XXXX (the Agreement) For the period: [day/month/year to day/month/year]	
Remuneration	\$xxxx
<ul style="list-style-type: none"> ➤ Attached is the detailed supporting documentation which includes: <ul style="list-style-type: none"> • a summary of the work performed; • the name of each employee engaged in the work performed; • the amount of time spent by the Liquidator and each employee; • the period during which the Liquidator and each employee were engaged in performing the work; • the charge-out rate of the Liquidator and each employee engaged in performing the work • the amount charged by the person to perform the work or task 	
Disbursements	\$xxx
<ul style="list-style-type: none"> ➤ Attached is an <u>itemised</u> account of disbursements incurred in accordance with the Agreement (<i>GST free items are identified in the itemised account</i>) 	
Add: Applicable GST	\$xx
TOTAL (Including GST)	\$xxxx

PAYMENT METHOD

(Liquidation account pursuant to 65-10 of Schedule 2 of the Corporations Act 2001 (Cth).)

Bank Name:

Account Name:

BSB Number:

Account Number:

Payments are reported annually to the ATO via the taxable payments annual report. <https://www.ato.gov.au/Business/Reports-and-returns/Taxable-payments-annual-report>

All invoices issued to ASIC are to meet the ATO requirements for a tax invoice and include the ABN remitting the GST. <https://www.ato.gov.au/Business/GST/Tax-invoices/>

NAME of COMPANY in LIQUIDATION:

ABN of COMPANY in Liquidation:

SAMPLE ACCOUNT OF REMUNERATION

Employee	Position	Hourly Rate (Excl GST)	Tasks	Period of work	Hours	Amount \$

TOTAL