



**ASIC**  
Australian Securities &  
Investments Commission

---

# **ASSETLESS ADMINISTRATION FUND GRANT AGREEMENT**

## **ASSET RECOVERY GRANT**

---

<b>PARTIES</b>	<p>1. <b>AUSTRALIAN SECURITIES AND INVESTMENTS COMMISSION (ASIC)</b></p> <hr/> <p>2. <b>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)</b></p>
<b>RECITALS</b>	<p>A. The Assetless Administration Fund (<b>AA Fund</b>) 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 actions to recover assets for the benefit of the creditors of the relevant company or companies.</p> <p>B. ASIC has issued the Asset Recovery (<b>Asset Recovery</b>) Grant Guidelines (<b>Guidelines</b>) in respect of its administration of the Asset Recovery grants from the AA Fund.</p> <p>C. The Liquidator has formed a reasonable belief that misconduct in relation to the Company/Companies outlined in <b>Item 2 of the Schedule</b> has occurred which caused the assets to dissipate from the Company/Companies, and there is a real prospect that assets can be recovered for creditors after payment of the Liquidator's remuneration and disbursements if the Liquidator undertakes legal action to recover those assets (<b>Recovery Action</b>).</p> <p>D. In order to obtain funding to undertake the Recovery Action, the Liquidator has submitted an application specified in <b>Item 3 of the Schedule</b> to ASIC under the Guidelines for funding from the AA Fund (<b>Funding Application</b>).</p> <p>E. ASIC agrees to provide, and the Liquidator agrees to accept, funding in the amount specified in <b>Item 4 of the Schedule</b>, 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:

<b>AA Fund</b>	The Assetless Administration Fund referred to in Recital A.
<b>Adverse Costs Orders</b>	any court order for costs, damages, compensation, loss or monies payable by the Liquidator and/or the Company/Companies in favour of any person in relation to, arising out of, or in connection with the Preliminary Action and/or the Legal Proceedings, including an order made by agreement by the Liquidator and/or the Company/Companies.
<b>Agreement</b>	this agreement including the Recitals and all of its annexures and schedules.

<b>ASIC Material</b>	any Material ASIC provides to the Liquidator for the purposes of the Liquidator undertaking any activity under or in connection with this Agreement.
<b>ASIC Officer</b>	the ASIC Officer specified in <b>Item 12 of the Schedule</b> of this Agreement, or any other officer notified by ASIC to the Liquidator from time to time for the purpose of clause 21.1.
<b>Australian Privacy Principles</b>	has the same meaning as in section 6 of the <i>Privacy Act 1988</i> (Cth).
<b>Bankruptcy Application</b>	the processes under the <i>Bankruptcy Act 1966</i> against the Relevant Person(s) specified in <b>Item 8 of the Schedule</b> .
<b>Business Day</b>	a day that is not a Saturday, Sunday, or public holiday in the Australian Capital Territory.
<b>Commencement Date</b>	the date this Agreement is executed by all Parties or, if executed by counterparts, all counterparts have been executed and exchanged among the Parties.
<b>Commonwealth Purposes</b>	does not include commercialisation or the provision of the Material to a third party for its commercial use.
<b>Company/Companies</b>	the company or companies to which the Liquidator is appointed, as specified in <b>Item 2 of the Schedule</b> .
<b>Completion Date</b>	<p>means the date that is ten Business Days after ASIC serves notice following either of:</p> <p>(a) the date of the court order disposing of the substantive issue the subject of the Legal Proceedings specified in <b>Item 7 of the Schedule</b>; or</p> <p>(b) the date of any agreement to settle the Legal Proceedings is entered by all parties to the Legal Proceedings if such an agreement is entered into to settle the Legal Proceedings specified in <b>Item 7 of the Schedule</b>.</p> <p>If <b>Item 7 of the Schedule</b> specifies multiple sets of Legal Proceedings, the Completion Date is the date relating to the last set of the Legal Proceedings that the Liquidator is funded to undertake.</p>
<b>Conflict</b>	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(s) to ASIC fairly and independently.
<b>Corporations Act</b>	<i>Corporations Act 2001</i> (Cth).
<b>Counsel</b>	the barrister engaged or to be engaged by the Liquidator for the purposes of the Preliminary Action and/or the Legal Proceedings and specified in <b>Item 10 of the Schedule</b> .
<b>Court</b>	the Federal Court of Australia or the Supreme Court of a State or Territory of Australia at which the Liquidator has filed, or intends to file the Legal Proceedings.
<b>Electronic Communication</b>	has the same meaning as in the <i>Electronic Transactions Act 1999</i> (Cth).

<b>Eligible Data Breach</b>	has the same meaning as section 6 of the <i>Privacy Act 1988</i> (Cth).
<b>Freezing Order Application</b>	legal proceedings for orders freezing assets of certain person(s) specified in <b>Item 7 of the Schedule</b> .
<b>Funding</b>	up to the amount specified in <b>Item 4 of the Schedule</b> .
<b>Funding Application</b>	the application referred to in <b>Item 3 of the Schedule</b> for funding from the AA Fund is incorporated by reference into this Agreement.
<b>Guidelines</b>	the Asset Recovery Grant Guidelines referred to in Recital B.
<b>GST, GST Act</b>	the tax defined in, and which is payable and imposed as goods and services tax ( <b>GST</b> ) under, section 195-1 of, the A New Tax System (Goods and Services Tax) Act 1999 (Cth) ( <b>GST Act</b> ).
<b>Information System</b>	has the same meaning as in the <i>Electronic Transactions Act 1999</i> (Cth).
<b>Intellectual Property Rights</b>	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)).
<b>Material</b>	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.
<b>Legal Proceedings</b>	the legal proceedings and/or processes specified in <b>Item 7 of the Schedule</b> .
<b>Party</b>	a party to this Agreement.
<b>Personal Information</b>	has the same meaning as in section 6 of the <i>Privacy Act 1988</i> (Cth).
<b>Preliminary Action</b>	tasks set out in <b>Item 6 of the Schedule</b> .
<b>Preliminary Report</b>	a report containing the matters referred to in clause 4.5 of this Agreement.
<b>Progress Report</b>	the document referred to in clause 6.6 of this Agreement.
<b>Project Timeline</b>	the timetable set out in <b>Item 9 of the Schedule</b> .
<b>Purpose</b>	the purpose defined in <b>Item 5 of the Schedule</b> .
<b>Relevant Person</b>	the person(s) specified in <b>Item 8 of the Schedule</b> .
<b>Recovery Application</b>	legal proceedings to recover assets from the Relevant Person(s) specified in <b>Item 7 of the Schedule</b> .
<b>Schedule</b>	the document entitled Schedule which is attached to this Agreement.
<b>Sensitive Information</b>	has the same meaning as in section 6 of the <i>Privacy Act 1988</i> (Cth).
<b>Solicitor</b>	the solicitor or the firm of solicitors engaged or to be engaged by the Liquidator as legal advisor for the purposes of the Preliminary Action and/or Legal Proceedings and specified in <b>Item 11 of the Schedule</b> .
<b>Taxable Supply</b>	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:
- (a) the date ASIC advises the Liquidator that it does not intend to provide further funding to the Liquidator to undertake any Legal Proceedings after receiving the Preliminary Action Report; or
  - (b) the Completion Date.
- 2.2. Clauses 7, 8, 9, 10, 11, 12, 16, 17, 19, 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. The Liquidator must comply with the Project Timeline set out in **Item 9 of the Schedule**.

#### **4. Preliminary Action by the Liquidator**

- 4.1. If **Item 6 of the Schedule** is completed, the Liquidator is funded to undertake the Preliminary Action specified in that Item.
- 4.2. If applicable, the Liquidator must provide to the Solicitor and Counsel timely, clear and complete instructions in a professional manner to support the proper conduct of the Preliminary Action.
- 4.3. During the course of the Preliminary Action, the Liquidator must notify ASIC in accordance with clause 21 within three Business Days of any of the following events:
  - (a) there is a change of the Solicitor or the Counsel;
  - (b) if the Preliminary Action involves an application to the Court—the application is contested or opposed or there is an application from another party to strike out, dismiss, discontinue or set aside the application; or
  - (c) if the Preliminary Action involves making inquiries into the prospects of recovering assets—the Liquidator receives any offer to settle or compromise all or any part of any claim against the assets or any other claim against the Relevant Person(s).
- 4.4. If the Liquidator notifies ASIC of an offer under clause 4.3(c) they should provide the terms of the offer to ASIC at the time of notification.
- 4.5. Once the Liquidator completes the Preliminary Action, the Liquidator must provide to ASIC the Preliminary Action Report outlining the outcome of the Preliminary Action in accordance with the Project Timeline.

#### **5. Legal Proceedings**

- 5.1. If **Item 7 of the Schedule** is completed, the Liquidator is funded to undertake the Legal Proceedings specified in that Item.
- 5.2. If, in accordance with **Item 7 of the Schedule**, the Liquidator is to seek orders to freeze any properties of the Relevant Person(s), the Liquidator must:
  - (a) within one month of the date the Liquidator notifies ASIC of the decision to seek freezing orders or a date otherwise agreed with ASIC, issue the Freezing Order Application;
  - (b) engage the Solicitor to act for the Liquidator in the Freezing Order Application; and
  - (c) engage Counsel to represent the Liquidator in the Freezing Order Application.
- 5.3. If, in accordance with **Item 7 of the Schedule**, the Liquidator is to seek orders to recover assets of the Company/Companies, the Liquidator must:
  - (a) issue the Recovery Application within three months of the Commencement Date or a date otherwise agreed with ASIC;

- (b) engage the Solicitor to act for the Liquidator in the Recovery Application; and
  - (c) engage Counsel to represent the Liquidator in the Recovery Application.
- 5.4. If, in accordance with **Item 7 of the Schedule**, the Liquidator is to seek bankruptcy of the Relevant Person(s), the Liquidator must:
- (a) within one month of the date that the Liquidator notifies ASIC of the decision to seek bankruptcy of the Relevant Person(s) or a date otherwise agreed with ASIC, undertake the Bankruptcy Application;
  - (b) engage the Solicitor to act for the Liquidator in the Bankruptcy Application (if the Liquidator deems necessary); and
  - (c) engage Counsel to represent the Liquidator in the Bankruptcy Application (if the Liquidator deems necessary).
- 5.5. The Liquidator must notify ASIC in accordance with clause 21 if there is a change of the Solicitor or the Counsel during the course of the Legal Proceedings.

## **6. Conduct of Legal Proceedings**

- 6.1. The Liquidator must provide to the Solicitor and Counsel timely, clear and complete instructions in a professional manner to support the proper conduct of the Legal Proceedings.
- 6.2. The Liquidator must notify ASIC in writing within three Business Days upon becoming aware that:
- (a) a written offer to settle, strike out, dismiss, discontinue or set aside the Legal Proceedings has been made; or
  - (b) the Legal Proceedings are contested or opposed; or an application is threatened or made to strike out, dismiss, discontinue or set aside the Legal Proceedings.
- 6.3. The Liquidator must include in any written notice within clause 6.2, the Liquidator's reasons for the decision in respect of the subject matter notified.
- 6.4. The Liquidator must notify ASIC in writing within three Business Days upon being served with an application for security for costs from the defendant(s). If the Liquidator requires or expects that the Liquidator requires further funding to satisfy any security for cost order if the application is successful, in the notification to ASIC, the Liquidator must also make a request in accordance with clause 12 at the same time as the Liquidator notifies ASIC under this clause.
- 6.5. The Liquidator must notify ASIC in writing within two Business Days upon the Court making an order in relation to an application for security for costs from the defendant(s).
- 6.6. The Liquidator must provide to ASIC the following reports in respect of the Legal Proceedings:
- (a) written Progress Reports specified in the Project Timeline;
  - (b) a written report (including the relevant details) immediately upon:
    - (i) the Legal Proceedings or any related application been filed with the Court; or
    - (ii) the Liquidator being advised of any court hearing dates; or
    - (iii) the Liquidator being informed of the outcome of the Legal Proceedings or the related application;

- (c) a written report (including all relevant details) of any of the following events, as soon as is practicable which in any event must be within three Business Days of the event:
    - (i) a decision by the Liquidator to issue a Freezing Order Application; or
    - (ii) a decision by the Liquidator to issue a Bankruptcy Application; or
    - (iii) any development or change in circumstances that has or is likely to have a material impact on the course or conduct of any Legal Proceedings; or that affects or may affect the prospect of success of the Legal Proceedings.
- 6.7. For the avoidance of doubt, unless already provided in previous Progress Reports, a Progress Report must include, where appropriate and without limitation:
- (a) a copy of all applications lodged, including any sworn affidavits, in respect of the Legal Proceedings;
  - (b) a statement regarding the status of the Legal Proceedings and each application, and any changes to their status;
  - (c) any change to the prospects of success of the Legal Proceedings and/or the relevant application;
  - (d) any change to the Solicitor's estimated legal costs in filing and prosecuting the Legal Proceedings and/or the relevant application;
  - (e) any change to Counsel's estimated fees in prosecuting the Legal Proceedings;
  - (f) any change to the Liquidator's estimated remuneration and expenses in filing and prosecuting the Legal Proceedings; and
  - (g) the estimated timeframe to undertake the Legal Proceedings and to obtain the orders sought in the Legal Proceedings, and any material changes to that estimated timeframe.
- 6.8. ASIC may at any time request a Progress Report from the Liquidator in relation to the progress of the Preliminary Action and/or the Legal Proceedings. The Liquidator must provide ASIC with the requested Progress Report within five Business Days of the request or otherwise as agreed with ASIC.

## **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), the Solicitor and/or Counsel, in accordance with this Agreement.
- 7.2. In the event that ASIC elects to provide further funding to the Liquidator under clauses 12 or 13, then ASIC's liability to the Liquidator under this Agreement is increased by the amount of further funding provided under clause 12.3 or 13.
- 7.3. Subject to clauses 8 to 10, the Liquidator will be paid in the manner set out under clause 11.
- 7.4. 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 the 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 seek further funding from ASIC under this Agreement;
    - (iv) 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
    - (v) the liquidation of the Company/Companies; 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.
- 7.5. 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 7.5 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/her claim assessed for payment.
- 7.6. 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 Purpose:
    - (i) with all due care and diligence in compliance with the Guideline;
    - (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.

## 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 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 carrying out the work specified in **Items 6 and/or 7 of the Schedule**.
- 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) a correctly completed Vendor Form specified at clause 8.2 of this Agreement; and
- (b) a copy of the relevant and correctly rendered tax invoice, and a fee account or memorandum from the Solicitor setting out the Solicitor's fees and disbursements. The fee account or memorandum must set out and contain:
  - (i) a summary of the work or tasks performed with a description of the tasks which were completed by the Solicitor and each of its 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 Solicitor's firm);
  - (ii) the name and title of each person performing the work or task;
  - (iii) the date(s) and amount of time spent by each person performing the work or task;
  - (iv) the period during which the Solicitor and its employees were engaged to perform the work or task;
  - (v) the charge-out rate of each person performing the work or task;
  - (vi) the amount charged by each person to perform the work or task;
  - (vii) details of the disbursements claimed, including supporting documentation; and
  - (viii) any time that has been written off by the Solicitor; and
- (c) a copy of the relevant and correctly rendered tax invoice, and a fee account or memorandum from Counsel setting out fees and disbursements charged by the Counsel. The fee account or memorandum must set out and contain:
  - (i) a summary of the work or tasks performed with a description of the tasks which were completed by Counsel;
  - (ii) the date(s) and amount of time spent by Counsel performing the work or task;
  - (iii) the period during which the Counsel was engaged to perform the work or task;
  - (iv) Counsel's charge-out rate for performing the work or task;
  - (v) the amount charged by Counsel to perform the work or task;
  - (vi) details of the disbursements claimed, including supporting documentation; and
  - (vii) any time that has been written off by Counsel; and
- (d) a written statement signed by the Liquidator stating that:
  - (i) in the opinion of the Liquidator,
    - (A) the invoices relevantly from the Solicitor and/or Counsel are appropriate,
    - (B) to the best of the Liquidator's knowledge, the services claimed to have been relevantly undertaken by the Solicitor and/or Counsel were in fact undertaken by them; and

- (C) the fees and disbursements charged were properly incurred and were charged in accordance with the fee agreement relevantly between the Liquidator and Solicitor and/or Counsel; and
    - (ii) the Liquidator has either paid the invoice or invoices, or have approved payment and will pay the invoice or invoices; and
  - (e) a copy of the relevant and correctly rendered tax invoice or invoices, and a fee account or memorandum from the Liquidator setting out the Liquidator's fees and disbursements. The fee account or memorandum must set out and contain:
    - (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 perform 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.
- 9.2. 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, the Liquidator:
- (a) agrees to ensure that the total of the tax invoices rendered to ASIC will not exceed the maximum amount of Funding specified in clause 7; and
  - (b) acknowledges that should the total of the tax invoices rendered to ASIC exceeds the maximum amount of Funding specified in clause 7, the Liquidator will be requested to amend and re-submit the relevant invoice.
- 9.4. **Item 9 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 9 of the Schedule**, and if the tax invoice otherwise complies with clauses 9.1, the tax invoice will be taken to have been received by ASIC on the day specified in **Item 9 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 the 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 the 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. Request for further funding or further time by the Liquidator**

- 12.1. In the event the Liquidator forms the opinion that the Liquidator will require further funding to undertake the Preliminary Action and/or the Legal Proceedings as may be specified in the Schedule, the Liquidator must notify ASIC as soon as they form that opinion and must do so before they undertake the additional work.
- 12.2. In notifying ASIC under clause 12.1, 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, and why this is an exceptional and unforeseen circumstance where further funding should be provided;
  - (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.
- 12.3. Upon being notified by the Liquidator under clause 12.2, 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).

12.4. In the event that the Liquidator forms the opinion that they are unable to comply with the date and/or timeframe set out in:

- (a) the Project Timeline; and/or
- (b) clauses 4, 5 and 6 in relation to the relevant Preliminary Action and/or Legal Proceedings;

the Liquidator must notify ASIC immediately and the Liquidator must also provide an estimate of the revised timeframe.

12.5. Upon being notified by the Liquidator under clause 12.4, ASIC at its sole discretion, can elect whether to:

- (a) accept the revised date provided by the Liquidator under clause 12.4;
- (b) stipulate its own revised date; or
- (c) terminate the Agreement under clause 15.1(g).

12.6. ASIC may at its sole discretion communicate the revised date or timeframe under clauses 12.5(a) or (b) by email to the Liquidator.

### **13. Further funding by ASIC after the Preliminary Action Report**

13.1. In the event ASIC forms the opinion that it wishes to fund the Liquidator to undertake any Legal Proceedings after receiving the Preliminary Action Report, ASIC and the Liquidator must use their reasonable endeavours to negotiate further funding the Liquidator requires to undertake the Legal Proceedings.

13.2. The agreement between ASIC and the Liquidator in relation to clause 13.1 will be in writing and in accordance with clause 28.

### **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 ten 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 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.

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 the Liquidator under clause 21 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 as

specified in the Schedule. 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 9.1. 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 7, 8, 9, 10, 11, 12, 16, 17, 19, 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 Funding 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 registration as a liquidator has not been cancelled or suspended at the Commencement Date and during the term of the Agreement.

## 17. Notification of Significant Events

17.1. For the purposes of this clause, 'Significant Event' means:

- (a) any adverse comments or findings made by a court, commission, tribunal or other statutory or professional body regarding the conduct or performance of the Liquidator the Liquidator's staff, employees, agents, consultants, contractors and parties engaged by the Liquidator, that impacts or could be reasonably perceived to impact on their professional capacity, capability, fitness or reputation; or
- (b) any other significant matters, including the commencement of legal, regulatory or disciplinary action involving the Liquidator, the Liquidator's staff, employees, agents or contractors and parties engaged by the Liquidator, that may adversely impact on compliance with Commonwealth policy and legislation or the Commonwealth's reputation.

17.2. The Liquidator must immediately issue ASIC a Notice on becoming aware of a Significant Event.

17.3. The Notice issued under clause 17.2 must provide a summary of the Significant Event, including the date that it occurred and whether any of the Liquidator, the Liquidator's staff, employees, agents or contractors and parties engaged by the Liquidator engaged in connection with this Agreement were involved.

17.4. ASIC may notify the Liquidator in writing that an event is to be considered a Significant Event for the purposes of this clause, and where this occurs the Liquidator must issue a Notice under clause 17.2 in relation to the event within three (3) Business Days of being notified by ASIC.

17.5. Where reasonably requested by ASIC, the Liquidator must provide ASIC with any additional information regarding the Significant Event within three (3) Business Days of the request.

17.6. If requested by ASIC, the Liquidator must prepare a draft remediation plan and submit that draft plan to ASIC for approval within ten (10) Business Days of the request.

17.7. A draft remediation plan prepared by the Liquidator under clause 17.6 must include the following information:

- (a) how the Liquidator will address the Significant Event in the context of the performance of work under this Agreement, including confirmation that the implementation of the remediation plan will not in any way impact on the delivery of that work or compliance by the Liquidator with its other obligations under the Agreement; and
- (b) how the Liquidator will ensure events similar to the Significant Event do not occur again; and
- (c) any other matter reasonably requested by ASIC.

17.8. ASIC will review the draft remediation plan and either approve the draft remediation plan or provide the Liquidator with the details of any changes that are required. The



Liquidator must make any changes to the draft remediation plan reasonably requested by ASIC and resubmit the draft remediation plan to ASIC for approval within three (3) Business Days of the request unless a different timeframe is agreed in writing by ASIC. This clause 17.8 will apply to any resubmitted draft remediation plan.

17.9. Without limiting its other obligations under the Agreement, the Liquidator must comply with the remediation plan as approved by ASIC. The Liquidator agrees to provide reports and other information about the Liquidator's progress in implementing the remediation plan as reasonably requested by ASIC.

17.10. A failure by the Liquidator to comply with their obligations under this clause will be a material breach of the Agreement. ASIC's rights under this clause are in addition to and do not otherwise limit any other rights ASIC may have under the Agreement. The performance by the Liquidator of their obligations under this clause will be at no additional cost to ASIC.

## 18. Confidentiality and Legal Professional Privilege

18.1. 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, agents, or consultants, and the Solicitor and/or Counsel, for the purposes of performing the work specified in **Items 6 and/or 7 of the Schedule**, or for internal reporting, audit or other compliance enable him or her to perform his 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 the 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 use its best endeavours to ensure that the recipient is made aware of, and maintains, the confidentiality of this Agreement.

18.2. If a Party receives from another Party under this Agreement documents, legal advice, or summaries of or commentary in relation to any legal advice (including legal advice provided by the Solicitor or Counsel to the Liquidator in relation to the Preliminary Action and/or Legal Proceedings) (collectively hereafter, the **Protected Communication**), the receiving Party must keep the Protected Communication confidential and must not disclose it to any third party except:

- (a) if they are required to do so by law; or
- (b) to an officer, employee or legal adviser, to the extent necessary to enable a Party perform obligations or to exercise rights under this Agreement.

- 18.3. For the avoidance of doubt, if the Liquidator provides ASIC with a copy of any legal advice given by a legal adviser, the mere provision of the copy of that legal advice by the Liquidator to ASIC does not amount to an express or implied waiver of the Liquidator's right to legal professional privilege of any of the Protected Communication.
- 18.4. To the fullest extent permitted by law, each Party undertakes to ensure its provision of any Protected Communication to another Party under this Agreement:
- (a) will be made for a specific purpose within this Agreement;
  - (b) will not cause the Protected Communication to cease to be confidential; and
  - (c) will not involve or give rise to any waiver of any legal professional privilege existing in the Protected Communication or in any associated documents.
- 18.5. If a Party is required to disclose any Protected Communication under clause 18.2 the Party must, except where contrary to law for it to do so, notify the other Party before making the required disclosure.

## 19. Liability and Relationship

- 19.1. The Liquidator:
- (a) must not;
  - (b) must ensure that the Liquidator's staff, employees, consultants, contractors and parties engaged by the Liquidator do not;
  - (c) must use best endeavours to ensure that Counsel does not; and
  - (d) must use best endeavours to ensure that the Solicitor and the staff, employees, consultants and contractors of the Solicitor, do not
- represent themselves as being an officer, employee, partner or agent of ASIC, or as otherwise able to bind or represent ASIC.
- 19.2. This Agreement does not create a relationship of employment, agency or partnership between the Parties.
- 19.3. The total amount that ASIC may be liable to pay to the Liquidator under this Agreement is capped at the amount specified in **Item 4 of the Schedule**.
- 19.4. ASIC is not liable in any way for:
- (a) the acts or omissions of the Liquidator in relation to or arising out of or in connection with the Preliminary Action and/or the Legal Proceedings or the Liquidator's conduct as the liquidator of the Company/Companies;
  - (b) the Solicitor's legal fees, costs and disbursements incurred as a result of, or arising out of or in connection with the Preliminary Action and/or the Legal Proceedings, except as otherwise set out in this Agreement;
  - (c) Counsel's fees and disbursements incurred as a result of, arising out of or in connection with the Preliminary Action and/or the Legal Proceedings, except as otherwise set out in this Agreement;
  - (d) any costs, damages, losses or claims which are ordered by a Court or agreed by the Liquidator and/or Company/Companies arising out of or in connection with the Preliminary Action and/or the Legal Proceedings, or the liquidation of the Company/Companies, including any Adverse Costs Orders; or

- (e) any costs, damages, losses or claims awarded by a Court in the Preliminary Action, and/or the Legal Proceedings, or the liquidation of the Company/Companies, which are in excess of any amount that ASIC agreed it would pay in relation to any order against the Liquidator or ASIC for payment for security for costs.

## 20. Relationship between the Parties

- 20.1. 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.

## 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 12 and Item 13 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 to the email address set out in **Item 12 and Item 13 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 12 and Item 13 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, five 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 the 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 the 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 Australian Capital Territory and each Party irrevocably and unconditionally submits to the non-exclusive jurisdiction of the Courts of the Australian Capital Territory.

### **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. Before making a public announcement in connection with this Agreement, the Liquidator must 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. To the extent practicable, the Liquidator must first consult with ASIC and take into account any reasonable requirements of ASIC as notified to the Liquidator, 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.

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. The Liquidator owns the Intellectual Property Rights in Material created undertaking any activity under or in connection with this Agreement.
- 33.2. The Liquidator gives ASIC a non-exclusive, irrevocable, royalty-free licence to use, reproduce, communicate, publish, adapt the Material for Commonwealth Purposes.
- 33.3. This Agreement does not affect the ownership of Intellectual Property Rights in the liquidator's pre-existing 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. Privacy**

- 35.1. When dealing with Personal Information or Sensitive Information in relation to the provision of services under this Agreement (including carrying out tasks under the Schedule), the Liquidator agrees not to do anything which, if done, by ASIC, would be a breach of the Australian Privacy Principles.

### **36. Notifiable data breaches**

- 36.1. 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 Liquidator as a result of this Agreement or its provision of services, the Liquidator agrees to:
  - (a) notify ASIC in writing as soon as possible, which must be no later than within three 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).
- 36.2. 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 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.

### **37. Counterparts**

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

### Schedule

**PLEASE DO NOT CHANGE THE ITEM NUMBERING AS THEY ARE CROSS-REFERENCED IN THE AGREEMENT. IF NEED TO ADD AN ITEM NUMBER, PLEASE ADD IT AT THE END OF THE SCHEDULE.**

<b>Item 1</b>	[insert liquidator name and firm details]			
<b>Item 2</b>	[insert company name and ACN]			
<b>Item 3</b>	An application under the AA Fund dated [insert date] (Document ID Number [insert]) [and the following specified correspondence between the Parties:] (optional) <ul style="list-style-type: none"> <li>• [add reference to the detailed quote here]</li> </ul>			
<b>Item 4</b>	[ <b>\$insert funding amount</b> ] (including GST and disbursements), with estimated break down summarised below:			
	<b>Professional fees</b>			
	<b>Position</b>	<b>Estimated no. of hours</b>	<b>Rate per hour (exclusive of GST)</b>	<b>Total fee</b>
	<b>Total Professional fees</b>			<b>\$</b>
	<b>Disbursements</b>			
	<b>Description</b>			<b>Total Expense</b>
Subtotal				
GST				
<b>Total Disbursements</b>				
<b>Item 5</b>	<b>Purpose</b>  To enable the Liquidator to undertake the Preliminary Action specified in Item 6 of this Schedule to determine:			



	<p>(a) whether sufficient admissible evidence exists for a court to order recovery of assets [<i>delete if not applicable</i>]; and</p> <p>(b) whether the Liquidator has reasonable prospects of success should an application for asset recovery be made [<i>delete if not applicable</i>]; and</p> <p>(c) whether there is a real prospect that assets will be recovered for creditors after payment of the Liquidator's remuneration and disbursements [<i>delete if not applicable</i>]; and</p> <p>(d) [insert other items]</p> <p><b>OR</b></p> <p>To enable the Liquidator to undertake the Legal Proceedings specified in Item 7 of this Schedule.</p>
<p><b>Item 6</b></p>	<p><b>Preliminary Action</b></p> <p>The Liquidator is to undertake the following action:</p> <p>(a) apply to the Court under sections 596A and/or 596B of the Corporations Act for the issuance of summonses and notices to produce (<b>Examinations</b>) [<i>delete if not applicable</i>];</p> <p>(b) apply to the Court under section 530C of the Corporations Act for a warrant to search for and seize the books of the Company/Companies (<b>Warrant</b>) [<i>delete if not applicable</i>];</p> <p>(c) determine whether there is a real prospect that assets will be recovered for creditors after the payment of the Liquidator's remuneration and disbursements, including but not limited to:</p> <ul style="list-style-type: none"> <li>(i) conducting searches and making enquiries to identify the assets that may be recovered;</li> <li>(ii) identifying any impediments to the recovery of the assets; and</li> <li>(iii) identifying the costs and disbursements which will be paid from any asset recovery ;</li> </ul> <p>(d) obtain written legal advice from Counsel on any proposed legal action to recover assets, including details of any legal or practical impediments to the legal action, and whether there is sufficient admissible evidence for the Liquidator to commence any proposed legal action [<i>delete if not applicable</i>]; and</p> <p>(e) prepare a Preliminary Action Report providing sufficient details of the outcome of the Preliminary Action;</p> <p>(f) [insert other options].</p> <p><b>OR</b></p> <p>Not applicable for the purposes of this Agreement.</p>
	<p>For the purpose of Item 6 , the following definitions apply:</p>

	<p>'Creditor Defeating Disposition' has the same meaning as s588FDB of the Corporations Act.</p> <p>'Assets' includes [description of the asset(s) identified, where relevant][ensure to consider whether assets need to be specified</p>							
<b>Item 7</b>	<p><b>Legal Proceedings</b> means the following:</p> <p>(a) an application filed or to be filed in the Court for orders freezing the assets of [insert name of the person][delete if not applicable] ;</p> <p>(b) an application filed or to be filed in the Court for orders against the Relevant Person(s) to recover assets of the Company/Companies, including but not limited to orders for payment, transfer of company property, and compensation;</p> <p>(c) undertake the processes specified under the <i>Bankruptcy Act 1966</i> to seek the bankruptcy of the Relevant Person(s) [or specify the name][delet if not applicable].</p> <p>(d) [insert other proceedings if relevant] and</p> <p>(e) [including/excluding] any mediation (whether court ordered or otherwise) as a part of any of the application listed in the above paragraph of this Item.</p> <p><b>OR</b></p> <p><b>Legal Proceedings</b></p> <p>Not applicable for the purposes of this Agreement.</p>							
<b>Item 8</b>	<p><b>Relevant Person</b> means [specify the person or the company or any other entity that the action will be taken against]</p> <p><b>OR</b></p> <p><b>Relevant Person</b></p> <p>Not applicable for the purposes of this Agreement.</p>							
<b>Item 9</b>	<p><b>Project Timeline [subject to change having regard to the type of action funded]</b></p> <p>All communication to the ASIC Officer is to be via email unless otherwise notified to the Liquidator by the ASIC Officer.</p> <table border="1"> <thead> <tr> <th><b>Date/timeframe</b></th> <th><b>Liquidator obligation</b></th> </tr> </thead> <tbody> <tr> <td><b>Within [insert time frame] of the Commencement Date</b></td> <td>Make an application for the [Examinations/Warrant]. [Only relevant if the Preliminary Action in Items 5 and 6 list this. Delete if no Preliminary Action is funded or this item is not funded.]</td> </tr> <tr> <td><b>[insert time frame] from the filing of the application for</b></td> <td>Give written update to the ASIC Officer regarding the progress of the [Examinations/Warrant]. [Only relevant if we want the Liquidator to provide periodic update regarding the progress of the Examination or Warrant if they are</td> </tr> </tbody> </table>		<b>Date/timeframe</b>	<b>Liquidator obligation</b>	<b>Within [insert time frame] of the Commencement Date</b>	Make an application for the [Examinations/Warrant]. [Only relevant if the Preliminary Action in Items 5 and 6 list this. Delete if no Preliminary Action is funded or this item is not funded.]	<b>[insert time frame] from the filing of the application for</b>	Give written update to the ASIC Officer regarding the progress of the [Examinations/Warrant]. [Only relevant if we want the Liquidator to provide periodic update regarding the progress of the Examination or Warrant if they are
<b>Date/timeframe</b>	<b>Liquidator obligation</b>							
<b>Within [insert time frame] of the Commencement Date</b>	Make an application for the [Examinations/Warrant]. [Only relevant if the Preliminary Action in Items 5 and 6 list this. Delete if no Preliminary Action is funded or this item is not funded.]							
<b>[insert time frame] from the filing of the application for</b>	Give written update to the ASIC Officer regarding the progress of the [Examinations/Warrant]. [Only relevant if we want the Liquidator to provide periodic update regarding the progress of the Examination or Warrant if they are							

	<b>[the Examinations or warrant] [or as indicated by ASIC or agreed with Liquidator]</b>	funded. Need to insert a timeframe, for example: Bi-monthly, every three months. Delete if no Preliminary Action is funded or this item is not funded.]
	<b>Within [insert timeframe] of the conclusion of the Preliminary Action</b>	Provide the Preliminary Action Report to the ASIC Officer in accordance with clause 4.5. [Delete if no Preliminary Action is funded.] <b>Conclusion of the Preliminary Action</b> means: [insert the date which is relevant to the Preliminary Action funded]. For example: the date that the public examinations under section 596A and/or 695B of the Corporations Act are completed. the date that the Warrant was executed by the Liquidator. the date that the Liquidator received the written legal advice from Counsel.
	<b>Within [insert timeframe] of providing the Preliminary Action Report</b>	Submit the invoice to the ASIC Officer. [Delete if not Preliminary Action is funded]. The Liquidator should ensure that the invoice includes all the information which is contained in the sample invoice set out in Annexure B.
	<b>Within [insert time frame] of the Liquidator's decision under clause 5.2</b>	Notify the ASIC Officer. [Delete if not relevant]
	<b>Within [insert time frame] of the Liquidator's decision under clause 5.4</b>	Notify the ASIC Officer. [Delete if not relevant]
	<b>Within three Business Days upon becoming aware of the event outlined in clause 6.2</b>	Notify the ASIC Officer in accordance with clauses 6.2 and 6.3. [Delete if only Preliminary Action is funded].
	<b>Within three Business Days upon the occurrence of the event outlined in clause 6.4</b>	Notify the ASIC Officer. [Delete if only Preliminary Action is funded].

	<b>Within two Business Days upon the occurrence of the event outlined in clause 6.5</b>	Notify the ASIC Officer. [Delete if only Preliminary Action is funded].
	<b>Immediately upon the occurrence of the event outlined in clause 6.6(b)</b>	Provide a written report to the ASIC Officer in accordance with clause 6.6(b). [Delete if only Preliminary Action is funded.]
	<b>Within three business days upon the occurrence of the event outlined in clause 6.6(c)</b>	Provide a written report to the ASIC Officer in accordance with clause 6.6(c). [Delete if only Preliminary Action is funded.]
	<b>[insert time frame] from the filing of the Legal Proceedings specified in Item 7 of this Schedule</b>	Provide a Progress Report to the ASIC Officer in accordance with clause 6.6(a). [Delete if only Preliminary Action is funded].
	<b>Within [five Business Days or otherwise as agreed] of the request outlined in clause 6.8.</b>	Provide a written report to the ASIC Officer in accordance with clause 6.8. [Delete if only Preliminary Action is funded].
	<b>Within [insert time frame] of the Completion Date.</b>	Submit the final invoice to the ASIC Officer. The Liquidator should ensure that the invoice includes all the information which is contained in the sample invoice set out in Annexure B. [Delete if only Preliminary Action is funded].
	<b>Within [insert time frame] of the receipt of the Preliminary Action Report</b>	[Staged matters only] Subject to the outcome of [insert details i.e., the written legal advice, the Preliminary Action Report, or the Warrant etc] and at ASIC's absolute discretion, ASIC will decide whether further funding will be provided and will notify the Liquidator of the decision via email.
<b>Item 10</b>	<b>Counsel</b>	

	<p>Name: [name]</p> <p>Position: [position]</p> <p>Street Address: [address]</p> <p>Postal Address: [postal address]</p> <p>Telephone: [number]</p> <p>E-mail: <u>[email address]</u></p>
<b>Item 11</b>	<p><b>Solicitor</b></p> <p>Name: [name]</p> <p>Position: [position]</p> <p>Street Address: [address]</p> <p>Postal Address: [postal address]</p> <p>Telephone: [number]</p> <p>E-mail: <u>[email address]</u></p>
<b>Item 12</b>	<p><b>ASIC Officer detail</b></p> <p>ASIC Officer name: [name]</p> <p>Position: [position and team]</p> <p>Street Address: [address]</p> <p>Postal Address: [address]</p> <p>Telephone: [phone number]</p> <p>E-mail: <u>[email address]</u></p>
<b>Item 13</b>	<p><b>Liquidators' contact details</b></p> <p>Name: [name]</p> <p>Position: [position]</p> <p>Street Address: [address]</p> <p>Postal Address: [postal address]</p> <p>Telephone: [number]</p> <p>E-mail: <u>[email address]</u></p>
<b>Item 14</b>	<p><b>Schedule of Rates</b> [please amend 'Position' column according to your firm's classifications]</p>

<b>Position</b>	<b>Charge out rate (inclusive of GST/Exclusive of GST)</b>
Liquidator	\$[*] per hour
Director / Associate Director	\$[*] per hour
Senior Manager	\$[*] per hour
Manager	\$[*] per hour
Supervisor	\$[*] per hour
Senior	\$[*] per hour
Intermediate	\$[*] per hour
Junior	\$[*] per hour
Secretary	\$[*] per hour
Other – please specify	\$[*] per hour

**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

Date: \_\_\_\_\_

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

x

\_\_\_\_\_  
Signature of Liquidator

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 <b>(the Agreement)</b> For the period: [day/month/year to day/month/year]	
<b>Remuneration</b>	<b>\$xxxx</b>
<ul style="list-style-type: none"> <li>➤ Attached is the detailed supporting documentation which includes:                             <ul style="list-style-type: none"> <li>• a summary of the work performed;</li> <li>• the name of each employee engaged in the work performed;</li> <li>• the amount of time spent by the Liquidator and each employee;</li> <li>• the period during which the Liquidator and each employee were engaged in performing the work;</li> <li>• the charge-out rate of the Liquidator and each employee engaged in performing the work;</li> <li>• the amount charged by the person to perform the work or task; and</li> <li>• any time that has been written off.</li> </ul> </li> </ul>	
<b>Disbursements</b>	
➤ identify disbursements (excluding GST free items)	<b>\$xxxx</b>
➤ separate and identify GST free items here	<b>\$xxxx</b>
➤ Attached is an itemised account of disbursements incurred in accordance with the Agreement	
Add: Applicable GST	\$xx
<b>TOTAL (Including GST)</b>	<b>\$xxxx</b>

**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 – (Please provide a copy of this to the case officer in Excel format)**

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

**TOTAL**