

# Licence Agreement (Business Award)

## Parties

- 1 The Australian Business Awards (ABN 88104222380) of Level 27, Rialto South Tower, 525 Collins Street, Melbourne VIC 3000 (**ABA**)

## 2 (Licensee)

## Background

- (a) ABA is convenor of the Australian Business Awards program and is the registered owner of or has the right to licence the Licensed Material.
- (b) Licensee has agreed to participate in the Australian Business Awards on the terms of this Agreement and seeks a licence to use the Licensed Material.
- (c) ABA has agreed to grant the licence sought on the terms of this Agreement.

## Operative Provisions

### 1. Definitions

In this Agreement, unless the context requires otherwise:

**Australian Business Awards** means the Australian Business Awards program run by ABA.

**Award** means a Business Award under the Australian Business Awards.

**Eligibility Requirements** means the eligibility requirements issued by ABA for participation in the Australian Business Awards, as amended by ABA from time to time.

**Entry Terms and Conditions** means the entry terms and conditions issued by ABA setting out the terms of participation in the Australian Business Awards, as amended by ABA from time to time.

**Licence Fee** means the fee referred to in clause 3.

**Licensed Material** means the relevant Award trade mark licensed to Licensee under this Agreement (including associated artwork supplied by ABA), and any other material owned by ABA and referred to in the Usage Guidelines as being included in the licence under this Agreement.

**Term** means 12 months commencing on the date of official publication by ABA that Licensee has received an Award, subject to termination in accordance with this Agreement.

**Usage Guidelines** means the guidelines issued by ABA relating to use of the Licensed Material, as amended by ABA from time to time.

### 2. Licence

#### 2.1 Grant of Licence

- (a) ABA grants Licensee a non-transferable, non-exclusive licence to use the Licensed Material for the Term, subject to this Agreement.
- (b) The licence and other rights granted under clause 2.1(a) are conditional on:
  - (i) payment of the Licence Fee by Licensee in accordance with this Agreement;
  - (ii) official publication by ABA that Licensee has received an Award applied for by Licensee under the Australian Business Awards; and
  - (iii) Licensee continuing to meet the Eligibility Requirements.

#### 2.2 Use by Licensee

- (a) Licensee:

- (i) must only use the Licensed Material in the manner specified by ABA from time to time, including in this Agreement and the Usage Guidelines;
  - (ii) must only use the Licensed Material in the form supplied to it by ABA and must not use any other material obtained by Licensee from ABA's website or any other source including any other trade marks owned by ABA;
  - (iii) must use and display the Licensed Material only in connection with its legitimate business activities;
  - (iv) may make copies of the Licensed Material for the purpose of back-up and security only. Licensee acknowledges that all right, title and interest in copies of the Licensed Material made by Licensee vest in ABA. Licensee agrees not to claim to have any rights, title or interest in those copies. The terms of this Agreement apply to all copies of Licensed Material made by Licensee;
  - (v) must not apply for registration of or use in Australia or any other country any business name, corporate name, domain name, trade mark or similar that incorporates ABA's name or trade marks including the Licensed Material or is substantially identical with or deceptively similar to ABA's name or trade marks including the Licensed Material; except as expressly permitted by this Agreement;
  - (vi) must not use or display the Licensed Material in any way that may indicate or imply, whether directly or indirectly, that the ABA has provided any goods or services to Licensee for use in connection with its business activities;
  - (vii) must not use or display the Licensed Material on any product or product packaging for any of Licensee's products, without limiting any other use restriction in the Usage Guidelines;
  - (viii) without limiting paragraph (vii), must not use or display the Licensed Material in any way that may indicate or imply, whether directly or indirectly, that the ABA has authorised or endorsed the provision of any of Licensee's goods or services or made any representations about the quality of any of Licensee's goods or services provided in connection with its business activities;
  - (ix) not do or say anything which may damage the reputation of ABA or the Australian Business Awards; and
  - (x) not use or display the Licensed Material in any way that would be considered defamatory to the ABA or any other person or that would constitute a breach of any law or statute.
- (b) Licensee must keep ABA informed of all relevant changes to its trading circumstances during the Term. ABA reserves the right to make inquiries and inspections as required to confirm ongoing compliance by Licensee with this Agreement.
- (c) Licensee must immediately notify ABA of any change to Licensee's address.

### **2.3 Sub-Licence**

- (a) Subject to clauses 2.3(b) and (c), Licensee may permit its consultants and contractors (**Consultant**) to use the Licensed Material solely on Licensee's behalf for the purposes set out in this Agreement, but only if:
  - (i) the Consultant agrees to comply with this Agreement; and
  - (ii) the Consultant agrees to return all copies of the Licensed Material to Licensee immediately after ceasing to be employed or engaged by Licensee.
- (b) Licensee must ensure that its Consultants comply with this Agreement and acknowledges that it is liable for its Consultants' use of the Licensed Material and any failure of its Consultants to comply with this Agreement.
- (c) Licensee may only make available the Licensed Material in electronic format, online or in multimedia applications if Licensee or Consultant restricts access to the Licensed Material used or distributed by those means so that the Licensed Material can only be viewed and cannot be independently downloaded or reproduced.

### 3. Licence Fee

- (a) Within 7 days after being requested to do so by ABA, Licensee must pay ABA the Licence Fee applicable for the Award Category or Categories in which Licensee has applied for an Australian Business Award as specified in the following Fee Schedule:

Award Allocation	Licence Fee (GST inclusive)	Term
Business Awards	\$1500.00 per Award category	1 year

- (b) Licensee acknowledges that it must pay the applicable Licence Fee in advance of the relevant Award being announced.
- (c) A full refund of the licence fee will be given if Licensee does not receive the Award applied for by Licensee. ABA agrees to refund the Licence Fee by cheque or credit card refund within 7 business days after the relevant Award is announced. Except as provided, the Licence Fee is not refundable.

### 4. Intellectual Property Rights

- (a) The License acknowledges that it acquires no rights, title or interest in or to the Licensed Material, except as expressly set out in this Agreement. Licensee acknowledges that the Licensed Material is and will remain the property of ABA or its successors or assigns and must be returned on request by ABA.
- (b) Licensee agrees not to claim that it has any rights, title or interest in the Licensed Material (or any other ABA intellectual property) except for those expressly set out in this Agreement. Licensee must not take any action, or assist any person to take any action, which would or might invalidate or put into dispute ABA's rights, title or interest in the Licensed Material or any other intellectual property.
- (c) Licensee acknowledges that the Licensed Material and associated documentation may be subject to copyright. Licensee must not during or any time after the expiry or termination of this Agreement permit any act which infringes copyright in the Licensed Material.
- (d) Licensee acknowledges and agrees that ABA may use company information relating to Licensee in connection with promoting the Australian Business Awards.

### 5. Term and Licence Renewal

Subject to this clause, this Agreement expires automatically at the end of the Term. ABA may offer to renew the Term for an additional period of 12 months (**Further Term**) by notifying Licensee in writing. The notice must specify the fee payable by Licensee for the renewal (**Renewal Fee**) and the date by which the Renewal Fee must be paid. If Licensee accepts ABA's offer to renew the Term, this Agreement will continue on the same terms and conditions for the Further Term subject to payment of the applicable Renewal Fee (failing which, this Agreement expires automatically). Licensee acknowledges that ABA may vary the Renewal Fee for each Further Term.

### 6. Termination

- (a) This Agreement immediately terminates if Licensee ceases to meet the Eligibility Requirements.
- (b) ABA may terminate this Agreement at any time by written notice if Licensee breaches this Agreement.
- (c) ABA may terminate this Agreement at any time by written notice without liability.
- (d) On termination or expiry of this Agreement, Licensee must:
- (i) immediately cease displaying and using the Licensed Material;
  - (ii) undertake any and all acts necessary to permanently remove the Licensed Material and any information or other documentation associated with it from all material manufactured, used, distributed or published by Licensee;
  - (iii) at ABA's discretion, return or dispose of the Licensed Material and information in the manner directed by ABA within 30 days of termination; and

(iv) ensure that all Consultants immediately comply with this clause.

(e) Clauses 2.2(a)(v), 2.3(b), 4, 6, 7 and 8 survive termination or expiry of this Agreement.

## **5. Acknowledgements and Liability**

- (a) Licensee acknowledges that it has exercised its independent judgment in seeking a licence of the Licensed Material and has not relied on any representation by ABA which is not stated expressly in this Agreement or upon any descriptions, illustrations or specifications contained in any document including catalogues or publicity material produced by ABA.
- (b) To the extent permitted by law, all warranties, conditions, representations and statements (whether express or implied and statutory or otherwise) regarding the condition of the Licensed Material are excluded. Where exclusion of implied warranties is not permitted, to the extent permitted by law, ABA's liability for breach of such warranties is limited, at ABA's option, to re-supply of the affected goods or services or payment of the cost of re-supply.
- (c) Despite anything else in this Agreement except clause 7(b), and to the extent permitted by law, ABA will not be liable to any person in respect of any claim or cause of action for any direct, indirect, incidental, consequential, special, exemplary, punitive, or other damages or losses arising directly or indirectly out of or relating in any way to the performance or non-performance of this Agreement or Licensee's use of the Licensed Material, however the liability arises including in contract, tort (including negligence), misrepresentation or any other common law, equitable or statutory cause of action or otherwise, even if the damages or losses were reasonably foreseeable. Licensee hereby releases ABA, its officers and sponsors from and against all such damages or losses.
- (d) To the extent that liability cannot be excluded, to the extent permitted by law, ABA's maximum aggregate liability to Licensee in respect of any claim or cause of action for any direct, indirect, incidental, consequential, special, exemplary, punitive, or other damages or losses arising directly or indirectly out of or relating in any way to the performance or non-performance of this Agreement or Licensee's use of the Licensed Material, however the liability arises including in contract, tort (including negligence), misrepresentation or any other common law, equitable or statutory cause of action or otherwise, is limited to the amount of the Licence Fee paid to ABA by Licensee in accordance with this Agreement.
- (e) Licensee must at all times defend, indemnify, release and hold harmless ABA and its sponsors, officers, employees, and successors from and against any claim, action, proceeding, liability, loss, damage, cost, or expense (including, without limitation, legal fees) incurred by Licensee or any other person as a result of any claim relating directly or indirectly to:
  - (i) a breach by Licensee of this Agreement, the Entry Terms and Conditions or the Usage Guidelines;
  - (ii) use of the Licensed Material (including the name "Australian Business Awards") by Licensee; or
  - (iii) any willful or negligent act or omission by Licensee.

## **6. General Provisions**

### **7.1 Assignment**

Licensee must not assign or otherwise transfer the benefit of this Agreement without ABA's prior written consent.

### **7.2 Waiver**

Failure or neglect by either party to enforce at any time any of the provisions of this Agreement must not be construed or deemed to be a waiver of that party's rights under this Agreement.

### **7.3 Governing Law**

This Agreement is governed by the laws of Victoria, Australia and both parties submit to the non exclusive jurisdiction of the Courts of Victoria.

### **7.4 Entire Understanding**

This Agreement, together with the Usage Guidelines and the Entry Terms and Conditions for the Australian Business Awards program issued by ABA from time to time, represents the entire understanding between the parties relating to their subject matter, and supersede any prior agreements between the parties. Licensee agrees that it has read and understood the Usage Guidelines and Entry Terms and Conditions, and agrees to be bound by the terms of the Usage Guidelines, the Entry Terms and Conditions and this Agreement.

#### **7.5 No Partnership**

Nothing in this Agreement may be construed as creating a relationship of partnership, joint venture, employment, of principal and agent or of trustee and beneficiary.

#### **7.6 Joint and several**

If Licensee consists of more than one entity, this Agreement binds those entities jointly and each of them individually.

#### **7.7 Inconsistencies**

The terms of this Agreement prevail if there is any inconsistency between this Agreement and the Usage Guidelines or the Entry Terms and Conditions.

**End of Business Awards Licence Agreement**