

This Business Process Outsourcing Agreement governs the relationship between the Company and the Client.

1. DEFINITIONS

- a. **'Agreement'** means this Agreement, any Schedules, Annexures and amendments to the Agreement.
- b. **'Alternate Employee'** means an Employee that is providing or will potentially provide Services to the Client while the Employee is on Employee Leave or unable to provide the Services;
- c. **'Address for Notices'** means:
 - i. For the Company: ANZAC Square Arcade, CBD Suite 007, Shop 12B, Level 1/198 Adelaide Street, Brisbane in the State of Queensland; and
 - ii. For the Client: the Client's address.
- d. **'Advance Security Payment'** means an amount equal to six (6) weeks of the total Services selected under the Schedule.
- e. **'Business Day'** means a day other than:
 - i. a Saturday or Sunday;
 - ii. a public holiday in Brisbane, Queensland; or
 - iii. a day in the period of 27 to 31 December (inclusive).
- f. **'Client'** means the party identified under the heading in the Smart Online Staff application.
- g. **'Commencement Date'** means the date stated on the Schedule.
- h. **'Company'** means New Vision Agencies (Aust) Pty Ltd ACN 126 743 959 as trustee for the NVA Trust trading as Smart Online Staff.
- i. **'Employee'** means the staff member that the Company will supply to the Client;
- j. **'Employee Leave'** means:
 - i. Four 4 weeks annual leave in a twelve (12) month period; and
 - ii. 10 days annual sick leave in a twelve (12) month period.
- k. **'Force Majeure'** means:
 - i. War, riot or civil commotion;
 - ii. Strike action or embargo;
 - iii. Storm, tempest, pandemic or act of God;
 - iv. Such other circumstances beyond the reasonable control or direction of the relevant Party.
- l. **'GST'** means the Goods and Services Tax under the GST Act;
- m. **'GST Act'** means *A New Tax System (Goods and Services Tax) Act* and includes other GST related legislation;
- n. **'Party'** means a Party to this Agreement;
- o. **'Recruitment of Employee Fee'** means the amount in Item 1 of the Schedule;
- p. **'Services'** means any of the services selected by the Client under Item 2 of Schedule;
- q. **'Supply Rate'** means the rate set out in the table under Item 2 of Schedule; and
- r. **'Schedule'** means the Schedule separately provided to the Client by the Company with regard to the provision of the Services.

2. INTERPRETATION

- a. A reference to persons includes corporations.
- b. Words including the singular number include the plural number and vice versa.
- c. Words referring to a gender include the other gender.
- d. A reference in this Agreement to a statute or a section of a statute includes all amendments to that statute or section passed in substitution for the statute or section referred to or incorporating any of its provisions.
- e. A reference to dollars or \$ in this Agreement means the currency of Australia.

- f. A reference to a clause, clauses, Schedule or Annexure is a reference to a clause or clauses, Schedule or Annexure to this Agreement and a reference to this Agreement includes any Schedules and Annexures whether provided prior to or contemporaneously with this Agreement.
- g. A reference to a Party includes its respective employees, servants, successors and assigns.
- h. No waiver by a Party of any of the provisions of this Agreement is binding on that Party unless it is made in writing.
- i. If part of this Agreement is illegal or unenforceable that part may be severed and the remaining parts of this Agreement will continue in force.
- j. Headings may be used to assist in the interpretation of this Agreement.

3. PURPOSE OF AGREEMENT & ACKNOWLEDGEMENT OF THIRD PARTY

- a. The overarching purpose of this Agreement is for the Company to source and provide an Employee to the Client pursuant to the terms and conditions of this Agreement and the Schedule.
- b. The Employee will undertake and provide the Services to the Client in exchange for the Client paying all fees to the Company as invoiced from month to month.
- c. The Client acknowledges that the Company will source an Employee who is employed through a related third party company registered in the Philippines, being Soho Smart Outsourcing Inc (**Third Party**).
- d. The Client consents to all information provided to the Company being shared by the Company with the Third Party for the purposes of this Agreement in order to receive the Services.
- e. The Client acknowledges that this Agreement is solely between it and the Company. The Client has no agreement with the Third Party or the Employee directly.

4. PERIOD OF AGREEMENT

This Agreement will begin on the Commencement Date and will continue to operate throughout the duration of the provision of Services by the Company to the Client until such time as the Agreement is terminated in accordance with the termination protocol contained in Clause 10 in this Agreement.

5. EMPLOYEE ENGAGEMENT

a. Recruitment of Employee

- i. Upon entering into this Agreement, the Company, in conjunction with the Third Party, is responsible for and will take all steps necessary to source, recruit and engage an Employee to provide the Services to the Client.
- ii. As part of the recruitment process, the Company will put forward a panel of prospective Employees to the Client which it and the Third Party will have interviewed and vetted.
- iii. The Client, in consultation with the Company, will need to nominate the Employee the Client wishes to have engaged on its behalf to provide the Services.

b. Provision of Employee

- i. The Company will provide the Employee on a monthly basis to the Client and the Employee will undertake and provide the Services to the Client
- ii. The provision of Services by the Employee will be invoiced in accordance with the Supply Rate and/or Package Selected, as contained in Item 2 of the Schedule, and will depend upon the Services that have been selected and requested by the Client.
- iii. The Client will not directly employ or pay any amount of money to the Employee, however, it is encouraged by the Company that the Client think of the Employee as a member of their team and treat them as though they would any other of their employees, for example, including the Employee in team meetings and considering the Employee's Employee Leave requests when undertaking annual planning.
- iv. As part of their entitlements, the Client acknowledges and understands that the Employee will be entitled to Employee Leave, which shall be approved and not unreasonably withheld by the Client.

- v. In the event that the Employee takes Employee Leave in excess to that which they may be entitled during a twelve (12) month period, the Company will supply, at no extra cost to the Client, an Alternate Employee, to undertake and provide the Services to the Client for that time.
 - vi. The Client understands the Employee will be available to provide the Services from 9:00am AEST to 5:00pm AEST, and is entitled to a 30 minute lunch break.
 - vii. In the event the Client requires the Employee to provide the Services outside of the hours set under clause 5.b.vi., this may be arranged by agreement between the Client, Company and Employee, provided, however, the hours per week do not exceed those provided for under the Services.
- c. Training of Employee**
- i. The Client will, in consultation with the Company, identify the Services required, by reference to Item 3 and Item 4 of the Schedule.
 - ii. The Client acknowledges and understands that whilst an Employee will have a base level of skill and knowledge to undertake the relevant Job Description, the training of the Employee, to familiarize them with the Client's own industry-specific software and office or business practices and procedures, will be the Client's responsibility.
 - iii. The Client agrees to provide training and guidance to the Employee to ensure that the Employee is able to perform the tasks required to fulfil the Job Description.
 - iv. As part of any training, the Client understands that it will be required to provide any log-in codes and passwords for any software, social media, web pages or other accounts which are required to be accessed by the Employee as part of their Services.
- d. Alternate Employee**
- i. The Company will assist with and encourages the training of an Alternate Employee by the Client, at no additional cost to the Client.
 - ii. The purpose of the Alternate Employee is to ensure somebody available to fulfil the Services in the unlikely event that the Employee takes Employee Leave in excess to that which they would be entitled in a twelve (12) month period.
 - iii. The Company will identify an Alternate Employee it considers appropriate to provide the Services to the Client and will introduce that person to the Client and the Employee.
 - iv. The Alternate Employee will primarily be trained by the Employee, however, the Client should be actively involved and assist with the training of the Alternate Employee to ensure the Alternate Employee is able to take over and perform the Services if ever required.
 - v. The Company also encourages the Client to get to know the Alternate Employee, so they are familiar with each other and so the Alternate Employee is aware of the Client's business processes and procedures.
- e. Quality Assurance and Vetting**
- i. To ensure and maintain quality assurance, the Company and Third Party will, at all times during the day, actively monitor the productivity and attendance of the Employee, by both personnel located in the Philippines and software-based systems.
 - ii. On a monthly basis, the Company and Third Party will undertake internal reviews of the Employee.
 - iii. Before any Employee is engaged or presented as a possible candidate to the Client in accordance with clause 5.a., the Company ensures that the Employee has been the subject of both a National Bureau of Investigation background check, as well as a Police background check.
 - iv. In the event the Client is not satisfied with the performance or quality of Services of the Employee, the Client must advise the Company immediately in writing, providing a detailed outline of all issues encountered by the Client.

6. SUPPLY OF EQUIPMENT

- a. In the event the Client requires the Employee to make and receive telephone calls on its behalf as part of the Services, the Client understands it is responsible for the cost of supplying a telephone line to the Employee as per Item 5 in the Schedule. The telephone line will be established by the Company and Third Party.
- b. Upon the basis the Client requires a telephone line to be provided to the Employee, the Company will supply the telephone equipment or softphone software (as may be required, applicable or appropriate) in accordance with Item 6 of the Schedule.
- c. The cost of the telephone line will also include the Company integrating the Employee's telephone equipment into the Client's telephone system. The Client understands that the integration of equipment will be undertaken to the best abilities of the Company, however, some functionality may be limited, depending upon the Client's telecommunication system.
- d. If the Client requires the Employee to have any other specific equipment to fulfil the Services, such additional equipment must be outlined in Item 7 of the Schedule.
- e. The Company will source the additional equipment and issue an invoice to the Client for that additional equipment. Upon payment of that invoice, the Company will ensure the additional equipment is delivered to the Employee.

7. FEES AND PAYMENTS

- a. Upon commencement of the Agreement the Client will pay to the Company:
 - i. the Advance Security Payment;
 - ii. one month of Services in advance;
 - iii. any costs associated with the supply of equipment; and
 - iv. the Recruitment of Employee Fee.
- b. The Company and Client agree that the Company will be paid for the duration of this Agreement in accordance with:
 - i. the Supply Rate or Package Selected for the Services provided under the Schedule; and
 - ii. any equipment costs under the Schedule.
- c. The Client will pay the Recruitment of Employee Fee when an Employee has been chosen by the Client for the provision of Services (including additional Services commencing after the Commencement Date of this Agreement).
- d. The Recruitment of Employee Fee will not apply if the purpose of the recruitment is to replace an Employee who has ceased their role with the Client within three (3) months of their commencement of providing Services with the Client. That is, if the Employee ceases to provide Services to the Client, for any reason, within their first three (3) months, they will be replaced by the Company without charge.
- e. The Company will provide to the Client a monthly tax invoice for all Services provided under this Agreement, one month in advance.
- f. The Client will pay all tax invoices within seven (7) days of the date of the invoice.
- g. Where the Client objects to any aspect of a tax invoice issued by the Company, the Client must issue to the Company a notice detailing in full the basis for the objection and the proposed resolution of same.
- h. The Company and Client agree and understand that should the Employee's wages or entitlements rise over time, then the Company and Client will negotiate an amended rate for the Services, to be evidenced in writing between them.

8. RELATIONSHIP OF THE PARTIES

- a. The parties acknowledge that this Agreement is intended as an Agreement for the provision of services and not any other relationship. In particular this is, not the relationship of employer and employee, principal and agent or partnership.
- b. This Agreement does not create a relationship of employment, agency or partnership between the Client and the Company, Third Party or Employee.
- c. The Client warrants that it will not attempt to induce the Employee to provide Services directly for them or provide any services other than those forming part of this Agreement either during the operation of this Agreement or at any time after the Termination of this Agreement.

9. NO LIABILITY

- a. Except in the case of a negligent act or omission on the part of the Company, to the maximum extent permitted by law, the Company will not be liable under any circumstances for any loss to the Client in revenue, profits, gains, benefits, costs or damages, whether direct or indirect, arising from this Agreement or any Service provided hereunder or any action or inaction of the Company, Third Party or Employee.
- b. The Client indemnifies and shall hold harmless the Company, and all related parties, from any loss or damage as a result of any potential breach of privacy as a result of provision of any information that is provided to the Company, or by the Company to the Third Party or Employee for the purposes of this Agreement.

10. TERMINATION AND VARIATION

- a. This Agreement can be terminated by either party for any reason whatsoever by way of thirty (30) days' notice in writing from one to the other.
- b. If the Client ever falls one (1) month in arrears for the payment of Services, the Company may do any of the following:
 - i. Cease contact between the Employee and the Client (including disabling any equipment including the telephone line);
 - ii. Terminate this Agreement with immediate effect; or
 - iii. Charge interest on the arrears at a rate of 15% per annum until the full amount outstanding is repaid.
- c. The Services to be provided under this Agreement can be varied by the Client by way of thirty (30) days' notice in writing from it to the Company.
- d. For clarity, this means that the Client may choose to reduce their Services under this Agreement, and need not terminate the entire Agreement in doing so.
- e. The Company may unilaterally vary, change or amend any term of this Agreement without notice or agreement of the Client.
- f. The Schedule may only be changed, amended or varied by way of written agreement between both Parties.
- g. The client may only vary, change or amend the terms of this Agreement by way of written agreement between both Parties.

11. ASSIGNMENT

Neither Party to this Agreement can assign, transfer or dispose of this Agreement or their rights under this Agreement without first obtaining the written consent of the other Party to this Agreement.

12. CONFIDENTIALITY

- a. The Parties shall during the currency of this Agreement and thereafter, strictly maintain the confidentiality of any financial or other information in connection with the Parties and shall not disclose any such information to any third party save and except for as permitted under this Agreement or in obtaining legal or financial advice from a Legal Practitioner or Accountant.
- b. Nothing in this Agreement shall prevent disclosure as required by law.

13. STATUTORY OBLIGATIONS, INSURANCES AND REGISTRATIONS

- a. The Company undertakes and guarantees that the Third Party will comply with its statutory obligations in respect of the employment of the Employee, including but not limited to compliance with:
 - i. Any applicable industrial awards and agreements;
 - ii. Minimum terms and conditions of employment including those in respect of long service leave, annual leave, parental leave and sick leave;

- iii. Applicable industrial relations and anti-discrimination legislation; and
- iv. Occupational health and safety and workers compensation legislation.

- b. The Company will ensure the Third Party has and maintains valid and enforceable insurance policies as required for the Employment of staff in the Philippines.
- c. The Company acknowledges that it and the Third Party are solely responsible for all remuneration, expenses, taxes, leave entitlements, superannuation, workers compensation and other insurances in respect of itself or its employees and agents.

14. COSTS

Each Party shall bear their own legal and other costs, charges and expenses incurred in relation to the negotiation, preparation or execution of this Agreement.

15. NOTICES

- a. Any Party wishing to give notice to another Party for any purpose under this Agreement must do so in writing by:
 - i. Hand delivering or posting to the other Party's Address for Notices; or
 - ii. Sending to the facsimile number or email address of the other Party.
- b. A notice given in accordance with this Agreement is taken to be received:
 - i. If hand delivered – on delivery;
 - ii. If sent by post – three (3) business days after the date of posting;
 - iii. If sent by facsimile – when the sender's facsimile system generates a message confirming successful transmission of the total number of pages of the notice; and
 - iv. If sent by email – immediately upon sending unless the sender receives a response generated by the recipient's mail system indicating the transmission was not successful.
- c. Notices given after 5:00pm will be treated as given on the next Business Day.

16. GOVERNING LAW

This Agreement is governed by the law in force in Queensland and the parties irrevocably consent and unconditionally submit to the non-exclusive jurisdiction of the courts of that state.

17. FORCE MAJEURE

The failure or delay in the performance of any obligation under this Agreement by either Party will not be deemed to be a breach of this Agreement if that failure or delay is due to Force Majeure.

18. EXECUTION BY ELECTRONIC EXECUTION

- a. The parties hereby agree and consent to the giving, sending and receiving of documents and information including, but not limited to, this Agreement by electronic transmission pursuant to Section 11 and Section 12 of the *Electronic Transactions (Queensland) Act 2001*.
- b. The Parties hereby further agree that this Agreement will be binding on the Client by it selecting the checkbox on the Smart Online Staff application and submitting to the Company.