

# Consultancy Agreement

## Summary of Agreement

**Note: Any conflict between this summary and details below is unintended. In the event of a conflict the subsequent terms in this Agreement shall hold. Accepting this summary is equivalent to accepting the whole Agreement.**

- a) All materials provided are the property of IIPL and subject to copyright. No IIPL materials can be used if they are not a current member.
- b) No images to be removed, copied or reproduced from any documents, files or programs without prior consent in writing from IIPL.
- c) Consultants shall use a payment gateway specified by IIPL and you are required to keep sufficient monies in their account to allow the monthly fee to be debited.
- d) Failure of a payment owed shall result in the loss of the 3 (three) free license keys for that month (for professional subscription members).
- e) On the third payment failure (need not be successive) you will be asked for an annual license fee in advance (12 times the monthly payment and at the \$50 rate) to remain a merchant with us.
- f) All customers obtained via sales or subscriptions are jointly shared between the merchant and IIPL. IIPL retains the right to advertise to all customers, however, if a sale is made a percentage will be shared with the merchant.
- g) Termination:
  - i. IIPL retains the right to terminate a membership giving 30 days' notice.
  - ii. Merchants must give one months' notice of termination by email or calling the office.
  - iii. If you terminate this agreement all materials, programs and images owned or created by IIPL are to be removed from print publications, websites, electronic applications, virtual programs and anywhere else they have been placed.

## Date

This agreement commences on the date the Consultant first registers with Image Innovators Pty Ltd (IIPL). Such date is recorded in the IIPL Merchant Register.

## Parties

1. Image Innovators Pty Ltd - ABN 26 103 891 292 of 13 Parsons Road, Eltham, Victoria, 3190, Australia (**IIPL**)
2. The person specified in the registration details as recorded by the Consultant in the IIPL Merchant Register. If this party is a company, then the Owner/s of that company is/are also parties to this Agreement (**Consultant**)

## Background

1. IIPL is the owner and developer of the Software and Products.
2. The Consultant has requested and IIPL has agreed to grant the Consultant a non-exclusive right to operate the Consultancy Business on the terms set out in this Agreement.

## Operative Provisions

### 1. Definitions and interpretation

#### 1.1 Definitions

In this Agreement:

**Agreement** means this consultancy agreement including the Schedule and any annexures;

**Amount Outstanding** has the meaning given to that term in clause 10.2;

**Business Day** means a day on which trading banks are open for general banking business;

**Client** means any existing or prospective client of the Consultancy Business;

**Client Portfolio** means the products developed by I IPL known as “My Private Stylist” for women or “Men of Style” for men, including the printed version presented in a folder form, the printed version presented as the shopping guides and the web version referred to as the ePortfolio (or e-Portfolio);

**Colour Swatches** means the colour swatches developed by I IPL for women and men from time to time;

**Commencement Date** means the date on which the Consultant is first registered by I IPL in the I IPL Merchant Register;

**Confidential Information** means:

- (a) the terms of this Agreement and its subject matter, including information submitted or disclosed by I IPL to the Consultant during negotiations, discussions and meetings relating to this Agreement;
- (b) the Products;
- (c) translations of the Products and Software;
- (d) the Software including any revisions, enhancements and upgrades;
- (e) I IPL Merchant Management System;
- (f) information that at the time of disclosure by I IPL is identified to the Consultant as being confidential; and
- (g) all other information belonging or relating to I IPL or their Related Entities, that is not generally available to the public at the time of disclosure other than by reason of a breach of this Agreement or which the Consultant knows, or ought reasonably to be expected to know, is confidential to I IPL or their Related Entities;

**Consultancy Business** means the business of operating an image consultancy business pursuant to this Agreement under sub-licence from I IPL;

**Consultancy Fee** means the fee paid periodically to I IPL as advised to the Consultant via the I IPL Merchant Website;

**Consultancy Licence** has the meaning given to that term in clause 2.1;

**Corporations Act** means the *Corporations Act 2001 (Cth) of Australia*;

**Gross Revenue** means the sum of the prices charged or chargeable and any other remuneration received or receivable by the Consultant for Products sold or Services provided in relation to the operation of the Consultancy Business and includes the following:

- (a) mail, telephone, electronic mail, facsimile or similar orders received or filled;
- (b) interest charges made by the Consultant on any type of account which itself was or should have been included within Gross Revenue; and
- (c) the proceeds of the Consultant's interruption insurance.

The term Gross Revenue will not include, or if included there will be deducted:

- (a) any value added, consumption tax or other similar tax;
- (b) deposits and instalments received on account of credit sales which are refunded to Clients; and
- (c) returns of the Products to I IPL or the Consultant;

**Intellectual Property Rights** means:

- (a) the Name;
- (b) the Trade Marks; and
- (c) the Confidential Information;

**Manuals** means the manuals (including but not limited to papers, books, binders, videos, CD ROM and other methods of transfer of information such as electronic formats) that I IPL develops from time to time which contain details of the specifications, standards and procedures regarding the Products and the provision of the Services including the manuals published from time to time by I IPL.

**I IPL Entitlements** has the meaning given to that term in clause 10.3;

**Name** means 'Image Innovators', 'The Australian Image Company' or such other name specified by I IPL in writing from time to time;

**Products** means the products as listed on the Merchant Website provided by I IPL and such other products approved by I IPL from time to time;

**Purchase Order** means a written document or entry in the Merchant Website in the format prescribed by I IPL which specifies:

- (a) the date the order is placed;

- (b) the Products required, described in the manner in which the relevant Products have been identified to the Consultant by I IPL;
- (c) the required quantity of the Products;
- (d) the location to which the Products are to be delivered;

**Rate** means 5% per annum;

**Related Entity** has the meaning given to that term in the Corporations Act;

**Schedule** means the schedule to this Agreement;

**Services** means those services approved by I IPL from time to time;

**Software** means any software developed by I IPL from time to time including the software known as:

- (a) 'My Private Stylist' (for women); and
- (b) 'Men of Style' (for and men)

**I IPL** means Image Innovators Pty Ltd ACN 26 103 891 292 and its successor and assigns;

**I IPL Merchant Management System** means the web application developed by I IPL to manage the I IPL Merchant Register, Products, Product prices and Purchase Orders;

**Trade Marks** means all Trade Marks registered by I IPL, all patents, patent applications, discoveries, inventions, registered and unregistered designs, copyright, logos, symbols, get up, trademarks, trade names, service marks, brand names and similar rights, whether registered or unregistered, and all associated goodwill and similar rights owned or used at any time by I IPL in connection with the Products;

**Training Materials** means all training materials I IPL develops from time to time in relation to the provision of the Services, including papers, books, binders, videos, CD Rom and other methods of transfer of information such as electronic formats

## 1.2 Interpretation

In this Agreement, unless the context requires otherwise:

- (a) the singular includes the plural and vice versa;
- (b) a gender includes the other genders;
- (c) the index (if any) and the headings are used for convenience only and do not affect the interpretation of this Agreement;
- (d) a reference to a thing includes a reference to a part of that thing;
- (e) a reference to a document includes the document as modified from time to time and any document replacing it;
- (f) if something is to be done on a day which is not a Business Day then that thing must be done on the next or following Business Day;

- (g) the word "person" includes a natural person and anybody or entity whether incorporated or not;
- (h) the word "month" means calendar month, the word "year" means 12 months and the word "quarter" means a period 3 of months;
- (i) the words "in writing" include any communication sent by letter, telex, facsimile transmission, or telegram;
- (j) a reference to any statute, proclamation, rule, regulation or ordinance includes any amendments, consolidation, modification, re-enactment or reprint of it or any statute, proclamation, rule, regulation or ordinance replacing it. A reference to a specified section, clause, paragraph, schedule or item of any statute, proclamation, rule, regulation or ordinance means a reference to the equivalent section of the statute, proclamation, rule, regulation or ordinance which is for the time being in force;
- (k) money amounts are stated in the currency specified by IIPL, which depends on the Consultant's country as registered with IIPL; and
- (l) a reference to any agency or body, if that agency or body ceases to exist or is reconstituted renamed or replaced or has its powers or functions removed (**defunct body**), means the agency or body which performs most closely the functions of the defunct body.

## **2. Limited Licence**

### **2.1 Grant**

Subject to the terms and conditions of this Agreement, IIPL grants the Consultant a sub-licence to:

- (a) use the Intellectual Property Rights and Confidential Information in relation to the operation of the Consultancy Business;
- (b) market the Products; and
- (c) provide the Services

### **2.2 Exclusivity**

- (a) The Consultant acknowledges and agrees that the Consultancy Business is not exclusive to any region and that IIPL may without the Consultant's consent grant to any other person the right to manufacture and market the Products and provide the Services using the Intellectual Property Rights.

## **3. Exclusion of warranties and representations**

- (a) To the extent permitted by law, IIPL makes no warranties or representations of any nature whatsoever in relation to the conduct of the Consultancy Business.
- (b) Without limiting the generality of clause 3(a):
  - (i) any estimates which may have been furnished by IIPL to the Consultant during the course of the negotiations leading up to the conclusion of this

Agreement as to the costs of establishing, turnover, income, expenses or profitability of the Consultancy Business do not give rise to any liability on the part of I IPL if, for any reason whatsoever, those estimates prove to be incorrect or inaccurate;

- (ii) the Consultant acknowledges and confirms that it has conducted an independent investigation of the Consultancy Business and recognises that the nature of the Consultancy Business may change from time to time, that an investment in the Consultancy Business involves business risks, and that the success of the Consultancy Business is primarily dependent upon the business ability and efforts of the Consultant; and
- (iii) the Consultant acknowledges that the Consultancy Business and the Consultant is prepared to assume all risks with respect to conducting the Consultancy Business.

## **4. Duration of this Agreement**

### **4.1 Term**

This Agreement will commence on the Commencement Date and will continue for the Term, which shall end in accordance with clause 17.

## **5. Monetary obligations of the Consultant**

### **5.1 Consultancy Fee**

- (a) In consideration of the Consultancy Licence, on or before the Commencement Date, the Consultant must pay I IPL the Consultancy Fee.
- (b) Consultant shall use I IPL's payment gateway and keep sufficient credit in the relevant account to allow I IPL to debit the account for monthly Consultancy Fees.
- (c) Failure of a monthly debit will result in the loss of 3 free license keys for the applicable month.
- (d) On the third payment failure (need not be successive) to avoid termination, Professional Membership Consultant may be asked to make an annual Consultancy Fee payment (12 times the monthly payment) at an undiscounted rate. Subject to I IPL discretion, Consultant may return to monthly payments one (1) year following annual payment.

### **5.2 Products**

- (a) The Consultant must pay for all ordered Products supplied to the Consultant by I IPL by the due date for payment as specified in the invoice issued by I IPL.
- (b) If the Consultant in good faith disputes whether the whole or part of an invoice submitted by I IPL is payable:
  - (i) the Consultant must pay the full amount in the invoice by the due date for payment;
  - (ii) the Consultant must give written notice to I IPL within 10 days after receiving the invoice, of the amount disputed and reasons for the dispute;

- (iii) if I IPL and the Consultant are unable to resolve any dispute between them regarding the amount invoiced within 5 days of I IPL receiving the Consultant's notice under 5.2(b)(ii), they must invoke the dispute resolution process in clause 23; and
- (iv) the Consultant must comply with its other obligations under this Agreement until the dispute is resolved.

### **5.3 Training**

If the Consultant is required to undertake image consultancy training pursuant to clause 11.5, then the Consultant will be responsible for all costs and expenses associated with I IPL providing the training and the Consultant attending the training including, trainer fee, travel, accommodation and meals expenses incurred.

### **5.4 Marketing and promotional activities**

The Consultant must pay for all marketing, sales and promotional activities undertaken pursuant to clause 13.

### **5.5 Other payment obligations**

The Consultant must make all other payments and pay all other charges in accordance with the terms of this Agreement.

### **5.6 Payment method and currency**

- (a) All accounts payable by the Consultant under this Agreement must be paid into the payment gateway I IPL provides, or as otherwise directed by I IPL from time to time.
- (b) Consultant must keep sufficient credit in the relevant account to allow payment of all fees and product invoices; and
- (c) All payments must be made in full (free of all charges and deductions) in the currency specified by I IPL, which depends on the Consultant's country as registered with I IPL.

## **6. Software**

### **6.1 Sub-Licence**

During the Term, subject to the Consultant complying with the terms of this Agreement, I IPL hereby sub-licences the Consultant the right to use the Software in relation to the marketing and sale of the Products and provision of the Services.

### **6.2 Limitation of use of Software**

The Consultant must not copy, duplicate or modify the Software nor permit anyone else to copy, duplicate or modify the Software.

### **6.3 Upgrades**

The Consultant must at its own cost use and install onto its computer system any upgrades provided by I IPL from time to time in relation to the Software.

## **6.4 Warranty**

IPL warrants that the Software will conform to the specifications contained in the documentation delivered by IPL to the Consultant with the Software. The Consultant acknowledges and agrees that no other warranties, expressed or implied, are made, and all warranties of merchantability or fitness for any particular purpose are disclaimed.

## **6.5 Defects**

If on receipt of the Software by the Consultant, the Consultant is of the reasonable opinion that the Software is in any way defective or does not conform with the specifications provided by IPL, the Consultant must within 7 days of installation of the Software, provide IPL full details of the defect or other reasons for non-conformity in writing. If the Consultant does not advise IPL of the non-conformity in accordance with this clause the Consultant is deemed to have accepted the Software so received in all respects.

## **7. Products**

### **7.1 Stock Quantities**

Before the Commencement Date and during the Term, the Consultant must purchase the minimum amount of stock of the Products, which IPL believes is necessary for the conduct of the Consultancy Business. IPL will provide 3 free license keys for each monthly Consultancy (Professional Membership) Fee paid in full and on time.

### **7.2 Price**

- (a) On or before the Commencement Date and on 30 November each year, IPL will give the Consultant a price list covering all the Products.
- (b) Notwithstanding clause 7.2(a), IPL may increase or otherwise vary the price of any Product by giving not less than 30 days written notice to the Consultant of the price variation and the date on which the price variation is to take effect. For the avoidance of doubt, all outstanding Purchase Orders of the Products submitted to IPL will not be effected by the price variation (other than delivery and packaging costs) provided that the Purchase Order has been accepted by IPL before the written notice of the price variation.

### **7.3 Purchase Order**

The Consultant must order the Products by completing a Purchase Order and forwarding it by facsimile or e-mail to IPL or by entry in the Merchant Website.

### **7.4 Acceptance by IPL**

Each Purchase Order is subject to acceptance by IPL as indicated on the Merchant Website.

### **7.5 Cancellation or deferral of a Purchase Order**

Once placed, a Purchase Order cannot be cancelled or delivery deferred without IPL's prior written agreement and then only on terms that will fully indemnify IPL against any loss, damage, cost or liability suffered by it as a result of that cancellation or deferral.



## **7.6 Inability to fulfil Purchase Orders**

If I IPL is unable to deliver any item of the Products as a result of:

- (a) being unable, despite having taken all reasonable steps, to secure materials or supplies;
- (b) any act of God, war, strike, lockout or other labour dispute, fire, flood or legislation; or
- (c) any other cause wholly or partly beyond the control of I IPL,

I IPL will notify the Consultant as soon as is reasonably practicable and, notwithstanding anything to the contrary contained or implied in this Agreement, the Consultant will not have any claim of any nature whatsoever against I IPL and in particular, the Consultant will not be entitled to terminate this Agreement.

## **7.7 Quality of Products**

- (a) I IPL will use its best endeavours to ensure that all items of Products supplied to the Consultant conform fully in respect of Purchase Orders placed by the Consultant and accepted by I IPL.
- (b) If on receipt of the items of the Products by the Consultant, the Consultant is of the opinion that the items of Products are in any way defective or do not conform with the Purchase Order placed by the Consultant, the Consultant must within 7 days of receipt of the items concerned, provide I IPL full details of the defect or other reasons for non-conformity with the Purchase Order in writing. If the Consultant does not advise I IPL of the non-conformity in accordance with this clause the Consultant is deemed to have accepted the items of Products so received in all respects.

## **7.8 Changing the Products**

I IPL may do any of the following:

- (a) add to or delete from the list of Products it supplies; and
- (b) change the specification of any Products and in that event, I IPL is not obliged to make any change to any of the Products held in stock by the Consultant or previously supplied to the Consultant.

## **8. Delivery and packaging**

### **8.1 Delivery**

Subject to clause 7, I IPL will deliver (or procure the delivery of) the Products to the delivery location specified in the Purchase Order.

### **8.2 Packaging**

The Consultant is liable for all costs associated with the packaging and delivery of the Products under this Agreement.

## 9. Insurance

The Consultant must implement and maintain throughout the Term, at its own expense, any insurances that a reasonable and prudent person engaged in an image consultancy business would implement and maintain.

## 10. Risk and title

### 10.1 Risk

The risk of loss or damage to the Products is transferred from IIPL to the Consultant at the time of delivery of the Products in accordance with clause 8.

### 10.2 Title

Title to the Products subject of a Purchase Order remains with IIPL until all money due by the Consultant to IIPL in respect of those Products (**Amount Outstanding**) is paid in full (in cash or cleared funds).

### 10.3 Sale of Products

If the Consultant sells or otherwise disposes of any Products before title to them has transferred from IIPL to the Consultant:

- (a) that part of the proceeds of any sale or dealing as equals, in dollar amount, the Amount Outstanding or if the proceeds of sale or dealing are less than the Amount Outstanding, the whole of the proceeds of sale or dealing (**IIPL Entitlement**) must be held by the Consultant in a separate identifiable account on trust for IIPL; and
- (b) the Consultant, on demand by IIPL, must account to IIPL Entitlement.

## 11. Consultant's general obligations

### 11.1 Best endeavours

- (a) The Consultant must at its own cost use its best endeavours to promote and develop the sale and distribution of the Products.
- (b) Subject to clause 11.8 and prior written approval of IIPL (which approval will not be unreasonably withheld), the Consultant may promote and sell its own products during the Term.

### 11.2 Complete attention

The Consultant must devote sufficient time and attention, towards marketing and selling the Products and providing the Services.

### 11.3 Compliance with laws

- (a) The Consultant must comply with all relevant laws concerning the sale and marketing of the Products and Services.
- (b) Not limiting 11.2(a), the Consultant must ensure that any text, marking, notice and label on the Products comply with any applicable law or regulations. IIPL's approval

of any text, marking, notice or labelling will not be construed to mean I IPL has determined that such text, marking, notice or labelling conforms to the laws or regulations.

#### **11.4 Independent proprietor**

The Consultant must:

- (a) conduct the Consultancy Business as an independent proprietor. The Consultant acknowledges that it is not a representative or employee of I IPL and that the parties to this Agreement are completely separate entities and are not partners, joint venturers, or agents of the other in any sense and neither party has the power to bind the other party;
- (b) not incur any liability or obligation on behalf of I IPL or in any way pledge or purport to pledge I IPL credit or accept any order or make any contract binding or give or make or purport to give or make any warranty or representation on behalf of I IPL; and
- (c) use appropriate stationery, papers, letters and other identifying materials so as to clearly show independent proprietorship.

#### **11.5 Training**

- (a) The Consultant must at its cost complete such image consultancy training as provided by I IPL to I IPL's satisfaction. If I IPL determines that the Consultant requires additional initial training in image consultancy in order to operate the Consultancy Business.
- (b) The Consultant must (at its cost) attend ongoing training and development in relation to the Software, the Products and provision of the Services as reasonably directed by I IPL.

#### **11.6 Standards of service**

The Consultant must:

- (a) give prompt, courteous, friendly and efficient service to all Clients; and
- (b) in all dealings with Clients, I IPL and the public adhere to the highest standards of honesty, integrity, fair dealing and ethical conduct.

#### **11.7 Intellectual Property Rights**

The Consultant must not use the Intellectual Property Rights in the conduct of the Consultancy Business, except on the basis and in the manner set out in this Agreement.

#### **11.8 Non-competition**

The Consultant agrees that during the Term and for a period of 2 year after the termination, expiration or assignment of this Consultancy Licence, the Consultant, its owner, directors and shareholders will not:

- (a) have any direct or indirect interest whether as an owner, partner, director, lender, shareholder, officer, employee, consultant, representative, agent or in any other

capacity, in any product or service that operates in direct competition with the Products or Services;

- (b) engage, directly or indirectly, in the supply, promotion, advertising or distribution of any products which are competitive with the Products without IIPL's prior written consent;
- (c) divert or attempt to divert any business or Client of the Consultancy Business to any competitor;
- (d) perform directly or indirectly any act injurious or prejudicial to the goodwill associated with the Intellectual Property Rights; or
- (e) employ or seek to employ any person who is employed by IIPL or by a consultant.

### **11.9 Internet facility**

The Consultant must not establish or maintain a Web page without the prior written approval of IIPL (which approval will not be unreasonably withheld). IIPL may at any time acting reasonably withdraw such approval.

### **11.10 Refunds**

- (a) Subject to clause 11.10(b), if a Client returns a Product then:
  - (i) the Client will be refunded only such sum as was paid by the Client for the Product; and
  - (ii) the Product must at IIPL's direction be returned to IIPL or destroyed.
- (b) The Consultant must only accept a refund of a Product from a Client if:
  - (i) the Client is entitled to a refund; and
  - (ii) the Consultant has made every reasonable endeavour to encourage an exchange of the Product or re-supply of the Services (as the case may be).
- (c) If the Consultant is required to provide a refund to a Client, the parties will act reasonably in determining who will bear the costs of transporting any such returned Product unless IIPL directs the Consultant to destroy the Product.

### **11.11 Client complaints**

The Consultant must:

- (a) promptly report to IIPL in writing full particulars of all Client complaints which remain unresolved for a period in excess of 5 days after receipt of such complaint by the Consultant; and
- (b) if incurred, pay all costs incurred by IIPL in remedying bona fide Client complaints in relation to the supply of Products (or provision of the Services).

### **11.12 Trade shows**

The Consultant must not set-up a stall or otherwise attempt to promote the Services and the Products at any trade shows, home shows, or any public exhibitions without the prior written consent of I IPL, which consent will not be unreasonably withheld.

### **11.13 Manuals**

The Consultant must keep the Manuals up-to-date with replacement pages and additions as supplied by I IPL from time to time.

### **11.14 Litigation**

The Consultant must immediately advise I IPL of:

- (a) any litigation, threatened or other material dispute involving the Consultant; and
- (b) any formal demand, notice, threatened legal action or proceeding served or issued by a Client against the Consultant or I IPL, or any request for mediation or arbitration.

## **12. I IPL's general obligations**

### **12.1 Intellectual Property Rights**

- (a) During the Term, I IPL will sub-licence the Consultant the right to use the Intellectual Property Rights in the operation of the Consultancy Business.
- (b) I IPL will take all reasonable steps to maintain the integrity of the Intellectual Property Rights and to protect the Trade Marks against any action or infringement by any person.

### **12.2 Training**

- (a) Subject to clause 5.3, I IPL will provide the Consultant training in image consultancy if I IPL determines that the Consultant requires training in image consultancy in order to operate the Consultancy Business.

### **12.3 Ongoing training**

I IPL will provide such other training as I IPL in its absolute discretion deems necessary from time to time, all costs of which will be borne by the Consultant and payable on demand.

### **12.4 Assistance**

Subject to compliance by the Consultant of its obligations under this Agreement, I IPL will render to the Consultant all reasonable assistance in the provision of information, technical knowledge and price lists in relation to the Products and the Services.

### **12.5 Products**

I IPL will replace any defective Products supplied to the Consultant and will pay the freight in relation to transporting such replacement components in accordance with clause 7.

## **13. Advertising and promotion**

### **13.1 Local advertising**

The Consultant must (at its own cost) ensure that it conducts a sufficient amount of advertising on a regular basis.

### **13.2 I IPL advertising**

I IPL retains the right to advertise to all customers including those obtained by the Consultant. I IPL will use its best endeavours to ensure the Consultant benefits from such advertising.

### **13.3 Advertising materials**

- (a) The Consultant must ensure that all advertising, promotional material and promotional activities relating to the Products and the Services:
  - (i) comply with all applicable law. The Consultant must indemnify I IPL from any liability or loss arising from failure to comply with that law; and
  - (ii) are not deceptive, misleading, undignified or unethical.
- (b) I IPL may supply the Consultant with advertising and promotional materials for the Products and the Services as are at any time part of the advertising and promotional campaigns and activities of I IPL. If required by I IPL, the Consultant must pay to I IPL the cost of such materials as determined by I IPL within 30 days of the date of the invoice applicable to such materials.

## **14. Intellectual Property Rights**

### **14.1 Non-exclusive right**

Subject to the terms of this Agreement I IPL grants a non-exclusive sub-licence to the Consultant for the Term to use the Intellectual Property in relation to the operation of the Consultancy Business.

### **14.2 Right to use**

The Consultant acknowledges and agrees that its right to use the Intellectual Property Rights in the operation of the Consultancy Business is derived solely from this Agreement.

### **14.3 Third parties**

The Consultant must not grant any right, sub-sub-licence or authority to any third party whether at common law or otherwise to use the Intellectual Property Rights in relation to any goods or services.

### **14.4 I IPL's title**

The Consultant acknowledges I IPL's title to the Intellectual Property Rights and undertakes not to do any act which would or might:

- (a) invalidate or put in dispute I IPL's title;

- (b) invalidate the registration of the Intellectual Property Rights;
- (c) support an application to remove the registration of the Intellectual Property Rights from any register;
- (d) cause any registrar of trade marks or any other person to require a disclaimer of a monopoly in the Intellectual Property Rights; or
- (e) cause any persons directly or indirectly to engage in any of the above acts.

#### **14.5 Benefit**

The Consultant agrees that its usage of the Intellectual Property Rights and any goodwill established will be to IIPL's exclusive benefit.

#### **14.6 Obligations following expiry or termination**

The Consultant agrees that if this Agreement terminates, expires or is assigned, it will not directly or indirectly at any time or in any way identify any other business associated with IIPL or its Related Entity, or itself as a Consultant and it will not use any imitation, copy or derivation of any of the Intellectual Property Rights in any way for any purpose.

#### **14.7 Limitation on use of Intellectual Property**

The Consultant must:

- (a) use the Trade Marks as the sole marketing identification of the Consultancy Business. All current Trade Marks can be obtained from IIPL via the web;
- (b) not use any of the Trade Marks as part of any corporate name or business name or with any other prefix, suffix or modifying words, terms, designs or symbols other than as permitted in this Agreement;
- (c) not use any of the Intellectual Property in connection with the sale of any unauthorised goods or unapproved services or in any other manner not authorised in writing by IIPL; and
- (d) display all symbols and notifications as IIPL designates beside any of the Intellectual Property.

#### **14.8 Change of Trade Marks**

If, in IIPL's opinion, it becomes advisable at any time to change or discontinue the use of any of the Trade Marks, or use one or more additional or substitute names or marks (which will then be included in the definition of Trade Marks), the Consultant agrees that it will promptly do so and pay all costs of complying with this change.

### **15. Confidentiality**

#### **15.1 Confidential Information**

Subject to the terms of this Agreement, the Consultant covenants to keep strictly confidential all Confidential Information disclosed to the Consultant or acquired by the Consultant during the Term.

## 15.2 Exception

Nothing contained in this clause will prohibit the Consultant from disclosing the Confidential Information to its legal and other advisers or to any other person where it is required to do so by law.

## 16. IIPL's rights on default by Consultant

- (a) If any payment from the Consultant to IIPL is not paid when due or the Consultant breaches a term of this Agreement, IIPL may in its sole and absolute discretion:
  - (i) cancel or suspend any delivery or further delivery of Products to the Consultant under any Purchase Order;
  - (ii) charge the Consultant interest on all money due to IIPL at the Rate from the date the payment became due until actual payment is made in full;
  - (iii) suspend the Consultancy Licence; and
  - (iv) suspend performance of any or all of IIPL's obligations under this Agreement.
- (b) Subject to clause 16(a)(iii), the exercise of IIPL of any of its rights under 16(a) does not affect:
  - (i) the Consultant's obligations; and
  - (ii) any other rights or remedies IIPL may have at law, under this Agreement.

## 17. Termination

This Agreement may by written notice be immediately terminated at any time by either party giving to the other notice to that effect, setting out the grounds for termination which will be the happening of all or any of the following events:

- (a) on receipt of not less than 30 days written notice from either IIPL or the Consultant.
- (b) failure to pay three or more monthly Consultancy Fees, or an annual Consultancy Fee within 60 days of its due date;
- (c) the insolvency of the other party;
- (d) being in liquidation or provisional liquidation or under administration or having a Controller (as that term is defined in Corporations Act) or analogous person appointed to it or any of its property;
- (e) the inability of a party to pay its debts;
- (f) if within 14 days after written notification by a party of a breach of this Agreement, the other party fails, omits or refuses to rectify such breach of this Agreement being a breach capable of remedy; or



## **18. Obligations on expiry or termination**

### **18.1 Consequences generally**

Subject to clause 18.2, on the expiry or termination of this Agreement:

- (a) this Agreement is at an end as to its future operation except for the enforcement of any right or claim that arises on, or has arisen before, the expiry or termination;
- (b) the Consultant's rights to market and sell the Products and the Services immediately ceases;
- (c) All customer information derived by the Consultant from the Consultancy Business shall revert to I IPL as if those customers had been associated directly with I IPL at all relevant times.
- (d) I IPL may purchase from the Consultant and the Consultant must sell any of the Products then held in stock by the Consultant which are in good marketable condition, at the prices originally invoiced by I IPL to the Consultant; and
- (e) the Consultant at its expense must return to I IPL any property belonging to I IPL in its possession or control including signs, advertising and promotional material, Intellectual Property Rights and Confidential Information belonging to I IPL and furnished to the Consultant under this Agreement. The Consultant must discontinue using anything the subject of the Intellectual Property Rights and Confidential Information.

### **18.2 Clauses surviving expiry or termination**

Despite any other provision of this Agreement, this clause 18 and clauses 1 (Definitions and interpretation), 10 (Risk and title), 14 (Intellectual Property Rights), 15 (Confidentiality), 21 (Consultant's indemnity), 23 (Dispute resolution), and 24 (Miscellaneous) survive the expiry or termination of this Agreement.

### **18.3 Damages**

- (a) Notwithstanding that I IPL terminates this Agreement or I IPL accepts the Consultant's repudiation of this Agreement, during the Term the Consultant agrees to compensate I IPL if:
  - (i) the Consultant breaches any term of this Agreement;
  - (ii) the Consultant repudiates this Agreement; or
  - (iii) I IPL terminates this Agreement under clause 17 (clause 17(a) excepted).
- (b) The Consultant's obligation to compensate I IPL in clause 18.2(a) is subject to I IPL mitigating its damages, which for the avoidance of doubt will not oblige I IPL to grant any new licence and I IPL will be free to conduct the Consultancy Business itself if the Licence is terminated.

## **19. I IPL's right to transfer**

- (a) This Agreement is fully assignable by I IPL in whole or in part without seeking the consent of the Consultant and will continue to the benefit of any assignee or other

legal successor to IIPL's interest, provided that IIPL will remain liable for any non-performance, which occurred prior to the date of assignment. Written notification to the Consultant by IIPL and the assignee of such assignment will be sufficient evidence of such assignment.

- (b) If IIPL requests, the Consultant will provide IIPL within 10 days a declaration which:
- (i) ratifies this Agreement and all other agreements between the parties in relation to the Consultancy Business;
  - (ii) states the last day of the Term and all other agreements between the parties;
  - (iii) certifies that this Agreement and all other agreements between the parties in relation to the Consultancy Business are in full force and effect and have not been modified, amended or transferred;
  - (iv) certifies that all IIPL's obligations to date have been performed; and
  - (v) certifies that there are no defences or set-offs which will prevent IIPL enforcing this Agreement or any other agreement between the parties in relation to the Consultancy Business.

## **20. Consultant's right to transfer**

The Consultancy Licence is personal to the Consultant and may not be transferred or subdivided in any way. Any transfer of the Consultancy Licence whether by operation of law or otherwise without IIPL's prior written consent is void and constitutes a breach of this Agreement.

## **21. Consultant's indemnity**

The Consultant will, during the Term and after the termination or expiration of the Consultancy Licence, indemnify IIPL and hold IIPL harmless from and against all claims for which IIPL is held liable for which IIPL may incur (including solicitor and client legal costs on a full indemnity basis) in any litigation or proceeding as a result of or arising in any way out of:

- (a) the Consultant's breach of this Agreement or any other agreement between IIPL and the Consultant;
- (b) any injury to, or loss of property of, any person in the Consultancy Business;
- (c) any negligent or wilful act or omission whether committed by the Consultant, the Consultant's employees, agents, servants, contractors, Consultants or others for whom the Consultant is responsible legally; and
- (d) circumstances in which the Consultant holds itself out or appears to hold itself out as IIPL's agent or where the Consultant incurs any debt or liability in the course of conducting the Consultancy Business.

## **22. Liability**

### **22.1 Limitation of liability**

Subject to this clause 22, IIPL is not liable to the Consultant or to any other person for:

- (a) any loss or damage of any kind that is directly or indirectly caused by or results from any wrongful, wilful or negligent act or omission of the Consultant or any of its officers, employees, agents, contractors, Consultants; or
- (b) any direct, incidental, special or consequential loss or damage, loss of profits or anticipated profits, economic loss, loss of business opportunity, loss of data or loss or damage resulting from wasted management time irrespective of whether:
  - (i) the loss or damage is caused by or relates to breach of contract, statute, tort (including negligence) or otherwise; and
  - (ii) I IPL or any other person was previously notified of the possibility of the loss or damage.

## 22.2 Maximum liability

Subject to this clause 22, the maximum aggregate liability of I IPL for all proven losses, damages and claims arising out of this Agreement, including liability for breach, in negligence or in tort or for any other common law or statutory action, is limited to the sum of the Consultancy Fees paid for a period of no more than two (2) years.

## 23. Dispute resolution

### 23.1 Delivering a dispute notice

If a dispute arises between the parties relating to or arising out of this Agreement, including its construction, effect, the rights and obligations of the parties, the performance, breach, rescission or termination of this Agreement, the entitlement of any party to damages or compensation (whether for breach of contract, tort or any other cause of action) or the amount of that entitlement (**Dispute**), the party claiming that a Dispute has arisen must deliver to the other parties a notice containing particulars of the Dispute (**Dispute Notice**).

### 23.2 Parties must negotiate

During the period 10 Business Days after delivery of the Dispute Notice, or any longer period agreed in writing by the parties (**Initial Period**), each of the parties must use its reasonable endeavours and act in good faith to resolve the Dispute by discussion and negotiation.

### 23.3 Referral to third party

If the parties have been unable to resolve the Dispute within the period stated in clause 23.2, then the parties must submit the Dispute to a mediator for consideration in accordance with the Mediation and Conciliation Rules of The Institute of Arbitrators & Mediators Australia, which Rules are taken to be incorporated into this Agreement.

### 23.4 Legal action

Nothing contained in the dispute resolution procedures above will deny a party to this Agreement the right to take legal proceedings under the Agreement or to institute Arbitration Proceedings.

## **24. Miscellaneous**

### **24.1 Nature of obligations**

- (a) Any provision in this Agreement which binds more than one person binds all of those persons jointly and each of them severally.
- (b) Each obligation imposed on a party by this Agreement in favour of another is a separate obligation.

### **24.2 Time of the essence**

In this Agreement, time is of the essence unless otherwise stipulated.

### **24.3 Entire understanding**

- (a) This Agreement contains the entire understanding between the parties concerning the subject matter of the Agreement and supersedes all prior agreements and communications between the parties.
- (b) Each party acknowledges that, except as expressly stated in this Agreement, that party has not relied on any representation, warranty or undertaking of any kind made by or on behalf of another party in relation to the subject matter of this Agreement.

### **24.4 No adverse construction**

This Agreement is not to be construed to the disadvantage of a party because that party was responsible for its preparation.

### **24.5 Further assurances**

A party, at its own expense and within a reasonable time of being requested by another party to do so, must do all things and execute all documents that are reasonably necessary to give full effect to this Agreement.

### **24.6 No waiver**

- (a) A failure, delay, relaxation or indulgence by a party in exercising any power or right conferred on the party by this Agreement does not operate as a waiver of the power or right.
- (b) A single or partial exercise of the power or right does not preclude a further exercise of it or the exercise of any other power or right under this Agreement.
- (c) A waiver of a breach does not operate as a waiver of any other breach.

### **24.7 Severability**

Any provision of this Agreement which is invalid in any jurisdiction must, in relation to that jurisdiction:

- (a) be read down to the minimum extent necessary to achieve its validity, if applicable; and

(b) be severed from this Agreement in any other case,

without invalidating or affecting the remaining provisions of this Agreement or the validity of that provision in any other jurisdiction.

#### **24.8 Successors and assigns**

This Agreement binds and benefits the parties and their respective successors and assigns or permitted assigns (as the case may be) under clauses 19 and 20.

#### **24.9 Consents and approvals**

Where anything depends on the consent or approval of a party then, unless this Agreement provides otherwise, that consent or approval may be given conditionally or unconditionally or withheld, in the absolute discretion of that party.

#### **24.10 No variation**

This Agreement cannot be amended or varied except in writing signed by the parties.

#### **24.11 Costs**

Unless this Agreement expressly provides otherwise, each party must pay its own legal costs of and incidental to the preparation and completion of this Agreement.

#### **24.12 Duty**

- (a) Any duty (including related interest or penalties) payable in respect of this Agreement or any instrument created in connection with it must be paid by the Consultant.
- (b) The Consultant undertakes to keep IIPL indemnified against all liability relating to the duty, fines and penalties.

#### **24.13 Governing law and jurisdiction**

- (a) This Agreement is governed by and must be construed in accordance with the laws in force in the State of Victoria, Australia.
- (b) The parties submit to the exclusive jurisdiction of the courts of that State and the Commonwealth of Australia in respect of all matters arising out of or relating to this Agreement, its performance or subject matter except for those matters where the parties have agreed to mediate or arbitrate.

#### **24.14 Counterparts**

If this Agreement consists of a number of signed counterparts (facsimile or otherwise), each is an original and all of the counterparts together constitute the same document.

#### **24.15 Conflicting provisions**

If there is any conflict between the main body of this Agreement and any schedules or annexures comprising it, then the provisions of the main body of this Agreement prevail.

### **24.16 Non-merger**

A term or condition of, or act done in connection with, this Agreement does not operate as a merger of any of the rights or remedies of the parties under this Agreement and those rights and remedies continue unchanged.

### **24.17 Operation of indemnities**

Unless this Agreement expressly provides otherwise:

- (a) each indemnity in this Agreement survives the expiry or termination of this Agreement; and
- (b) a party may recover a payment under an indemnity in this Agreement before it makes the payment in respect of which the indemnity is given.

### **24.18 Set-off**

- (a) The Consultant agrees that it will not withhold payment of any amount properly due and payable under this Agreement because of IIPL's alleged non-performance of any of its obligations. In addition, no endorsement or statement on any cheque or payment of a sum less than the full sum due to IIPL will be taken to be an acknowledgment of payment in full or a satisfaction of the debt.
- (b) The Consultant agrees that IIPL may withhold payment of any amount properly due and payable under this Agreement to the Consultant, because of the Consultant's alleged non-performance of any of its obligations under this Agreement.

### **24.19 Relationship of the parties**

Unless this Agreement expressly provides otherwise, nothing in this Agreement may be construed as creating a relationship of partnership, of principal and agent or of trustee and beneficiary.

### **24.20 Notices**

Any notice or other communication to or by a party to this Agreement:

- (a) may be given by personal service, post or facsimile;
- (b) must be in writing, legible and in English addressed as shown in item 1 of the Schedule or to any other address last notified by the party to the sender by notice given in accordance with this clause;
- (c) in the case of a corporation, must be signed by an officer or under the common seal of the sender;
- (d) is deemed to be given by the sender and received by the addressee:
  - (i) if delivered in person, when delivered to the addressee;
  - (i) if posted, 2 Business Days (or 10 Business Days, if addressed outside of Australia) after the date of posting to the addressee whether delivered or not; or

- (ii) if sent by facsimile transmission, on the date shown on the transmission report by the machine from which the facsimile was sent which indicates that the facsimile was sent in its entirety and in legible form to the facsimile number of the addressee notified for the purposes of this clause,

but if the delivery or receipt is on a day which is not a Business Day or is after 4.00 pm (addressee's time) it is deemed to have been received at 9.00 am on the next Business Day.

## Schedule: Agreement Details

Item	Details	
<b>1. Notices</b> (clause 24.20)	<b>I IPL</b>	<b>If by post:</b>  Image Innovators Pty Ltd (ABN 26 103 891 292) 13 Parsons Road, Eltham, Victoria, 3190 Australia  <b>If by e-mail:</b> info@imageinnovators.com
	<b>Consultant</b>	Consultant contact details will match those entered by the Consultant in the IPL Merchant Register.

**This agreement is executed by the Consultant having submitted their information to IPL and checking the agreement box associated with the submission page.**