

Consultancy services agreement

Growth Mindset Pty Ltd
Trading As
Syncopate Consulting
ACN 164 607 970

Your Pty Ltd
ACN XXX XXX XXX

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THIS AGREEMENT is made on 7th June 2023

PARTIES:

A **Humanly Agile Pty Ltd (ACN 649 806 155) Trading as Syncopate Consulting** of 201 Queen St Brisbane 4000 (Company); and

B **Your Company** of [insert registered address] (**Contractor**).

RECITALS

- 1 The Company has engaged the Contractor to provide Services to the Company.
- 2 The parties wish to memorialise the terms of the provision of Services by the Contractor on the terms set out in this agreement.

IT IS AGREED AS FOLLOWS:

1 DEFINITIONS AND INTERPRETATIONS

1.1 Definitions

In this agreement:

Authorised Expenses means the expenses set out at Item 6 of Schedule 1.

Business Day means a day on which banks are open for business excluding Saturdays, Sundays and public holidays in New South Wales.

Claim means any cost, claim, expense, loss, damages, demand or liability of any kind.

Commencement Date has the meaning given in Item 1 of Schedule 1 (**Services Schedule**).

Confidential Information means and includes (without limitation):

- (a) information which belongs to the Company or any Related Body Corporate of the Company (regardless of form) or the Contractor and is regarded by the Company as confidential, or can reasonably be inferred to be confidential from the circumstances in which it is disclosed; or
- (b) information which is disclosed to the Company by the Contractor, the Nominated Consultant and/or the Contractor Personnel, or information which is disclosed to the Contractor or any of the Nominated Consultant and/or Contractor Personnel by or on behalf of the Company or its Related Bodies Corporate or any of their officers, employees, agents or representatives, whether before or after the date of this agreement, which is expressed to be confidential or provided on a confidential basis, or can reasonably be inferred to be confidential from the circumstances in which it is disclosed; and
- (c) each of the following:
 - (i) confidential information or Intellectual Property of any client of the Company or its Related Bodies Corporate (including, without limitation, any information labelled "confidential" or expressed by the client to be confidential or sensitive, or which it can be inferred is of a confidential or sensitive nature);
 - (ii) the Contractors and the Company's (or its Related Body Corporate's or any client of the Company's), research participant information (including personal information) and responses, recruitment, research, and analysis methodologies, psychological frameworks and applications, competitive strategies, business practices and strategies, other practices and strategies, trade secrets, know-how,

(together, items (c)(i) and (ii) are **Sensitive Confidential Information**); and

- (d) all information and data contained in the Project Materials.

The following are examples of Confidential Information:

- (e) details of employees, policies, processes, procedures, manuals, handbooks, contracts and agreements, forms designed, created or purchased by the Contractor or the Company or any Related Body Corporate of the Company, financial information, strategic information, information about current and future projects;

- (f) details or information of any client of the Contractor or of the Company, including (without limitation) client lists and contact information;
- (g) the affairs, ideas, business plans, activities and/or operations of the Contractor or of the Company or any Related Body Corporate of the Company, or of any party with whom the Contractor or the Company or its Related Body Corporate deals;
- (h) the terms of this agreement;
- (i) any Intellectual Property belonging to the Contractor or the Company or any Related Party of the Company;
- (j) any materials or information which is marked "confidential" or which is of a commercially sensitive nature, including information reasonably to be regarded as confidential from its nature and content;
- (k) information relating to existing and/or future developments, business opportunities and client or customer lists, or business practices of the Contractor or the Company or its Related Bodies Corporate, or of any party with whom the Contractor or the Company or its Related Body Corporate deals; and
- (l) all other matters relating to internal or external operations or plans of the Contractor or the Company or its Related Bodies Corporate.

Consulting Fees refers to the total revenue generated from any single engagement by the Nominated Consultant or Contractor Personnel on behalf of the Company when performing the Services.

Contractor Materials means all Intellectual Property and material that the Contractor created prior to the Commencement Date and material that the Contractor produces as part of the operation of the Contractor's business and which is not particular to this agreement.

Contractor Personnel means any person employed or otherwise engaged by the Contractor from time to time.

Corporations Act means *Corporations Act 2001* (Cth).

Exclusive Services mean the services set out at Item 3 of Schedule 1.

GST means a goods and services tax, or a similar value added tax, levied or imposed under the GST Law.

GST Law has the meaning given to it in the *A New Tax System (Goods and Services Tax) Act 1999* (Cth).

Insolvency Event means the occurrence of any one or more of the following events in relation to any person:

- (a) an application is made to a court for an order, or an order is made, that it be wound up, declared bankrupt or that a provisional liquidator or receiver or receiver and manager be appointed;
- (b) a liquidator or provisional liquidator is appointed;
- (c) an Administrator (as defined in section 9 of the Corporations Act) or a Controller (as defined in section 9 of the Corporations Act) is appointed to any of its assets;
- (d) it enters into an arrangement or composition with one or more of its creditors, or an assignment for the benefit of one or more of its creditors, in each case other than to carry out a reconstruction or amalgamation while solvent;
- (e) it proposes a winding-up, dissolution or reorganisation, moratorium, deed of company arrangement or other administration involving one or more of its creditors;
- (f) it is insolvent as disclosed in its accounts or otherwise, states that it is insolvent, is presumed to be insolvent under an applicable law (including under section 459C(2) or section 585 of the Corporations Act) or otherwise is, or states that it is, unable to pay all its debts as and when they become due and payable;
- (g) it becomes, or states that it is, an Insolvent under Administration (as defined in section 9 of the Corporations Act) or action is taken which could result in that event;
- (h) an order is made, a resolution is passed, proposal put forward or any other action taken, in each case which is preparatory to or could result in any of the matters referred to in paragraphs (a)–(g) inclusive;
- (i) it is taken to have failed to comply with a statutory demand as a result of section 459F(1) of the Corporations Act;
- (j) a notice is issued under sections 601AA or 601AB of the Corporations Act;

- (k) a writ of execution is levied against it or its property;
- (l) any step is taken by a mortgagee to enter into possession of or dispose of the whole or any part of the other party's assets or business;
- (m) it ceases to carry on business or threatens to do so; or

anything occurs under the law of any jurisdiction which has a substantially similar effect to any of the above paragraphs of this definition.

Intellectual Property has its ordinary meaning and includes (without limitation) any work, material, information or matter which may be the subject of any Intellectual Property Rights, including for the avoidance of doubt (and without limitation) any copyright works, patents, trade marks, patents, designs, trade secrets and know-how.

Intellectual Property Rights means all intellectual property rights of whatever nature including all rights conferred under statute, common law or equity, including (without limitation) all rights in copyright, patents, trade mark (including any goodwill associated with those trade mark rights), designs and trade secrets.

Moral Rights has the meaning given to that term in the *Copyright Act 1968* (Cth).

Nominated Consultant means the person identified at Item 2 of Schedule 1 or such other person from time to time agreed between the Contractor and the Company pursuant to clause 6.3.

Non-Exclusive Services means the services set out at Item 4 of Schedule 1.

Project Materials means any signs (including names, logos and labels), methodologies, tools, ideas, information, products, processes, documents (including working proofs), software, computer files, reports, drawings, photographs, videos, imageries, infographics, diagrams, concepts, techniques, music, sound or voice recordings, broadcasts, podcasts, publications (including, but not limited to, articles, blogs and social media content), know-how and any other material created, developed, modified or adapted by the Contractor, any Nominated Consultant and/or any Contractor Personnel during the course of the performance of the Services or in connection with this agreement, but does not include **Contractor Materials**.

Related Body Corporate has the means a "related body corporate" within the meaning of the Corporations Act.

Restrained Business has the meaning given to it in Item 9 of Schedule 1.

Restraint Area has the meaning given to it in Item 9 of Schedule 1.

Restraint Period has the meaning given to it in Item 9 of Schedule 1

Services means the Exclusive Services and the Non-Exclusive Services, and **Service** means any one or more of them as the context requires.

Service Fees means the fees set out next to each Service in Item 3 or Item 4 of Schedule 1 (as applicable)

in respect of a particular Service, means the fee set out next to that Service in Item 3 or Item 4 of Schedule 1 (as applicable).

Tax means any tax, levy, charge, franchise, impost, duty, fee, rate, deduction, compulsory loan or withholding, which is assessed, levied, imposed or collected by any government agency and includes capital gains tax, fringe benefits tax, income tax, value added tax, goods and services tax, sales or use tax, training guarantee levy, profits tax, undistributed profits tax, payroll or employment tax, group tax, PAYG or PAYE withholding tax, land tax, import or customs duty, excise, municipal rates, and any interest, fine, penalty, charge, fee or any other amount imposed on or in respect of any of the above.

Term means the period commencing on the Commencement Date and ending on the Termination Date (inclusive) and any extended or further term entered into in accordance with this agreement.

Termination Date has the meaning given in Item 1 of Schedule 1 (**Services Schedule**).

2

INTERPRETATION

In this agreement the following rules of interpretation apply unless the contrary intention appears:

- (a) headings are for convenience only and do not affect the interpretation of this agreement;
- (b) the singular includes the plural and vice versa;
- (c) a reference a gender or a gender neutral reference is a reference to every gender;

- (d) where a word or phrase is given a particular meaning, other parts of speech and grammatical forms of that word or phrase have corresponding meanings;
- (e) the words 'such as', 'including', 'particularly' and similar expressions are not used as, nor are intended to be, interpreted as words of limitation;
- (f) a reference to:
 - (i) a person includes a natural person, partnership, joint venture, government agency, association, corporation or other body corporate;
 - (ii) a thing (including, but not limited to, a chose in action or other right) includes a part of that thing;
 - (iii) a party includes its successors and permitted assigns;
 - (iv) a document includes all amendments or supplements to that document;
 - (v) a clause, term, party, schedule or attachment is a reference to a clause or term of, or party, schedule or attachment to this agreement;
 - (vi) this agreement includes all schedules and attachments to it;
 - (vii) a law includes a constitutional provision, treaty, decree, convention, statute, regulation, ordinance, by-law, judgment, rule of common law or equity or a rule of an applicable financial market and is a reference to that law as amended, consolidated or replaced;
 - (viii) an agreement other than this agreement includes an undertaking, or legally enforceable arrangement or understanding, whether or not in writing; and
 - (ix) a monetary amount is in Australian dollars;
- (g) an agreement on the part of two or more persons binds them jointly and severally;
- (h) when the day on which something must be done is not a Business Day, that thing must be done on the following Business Day;
- (i) in determining the time of day, where relevant to this agreement, the relevant time of day is:
 - (i) for the purposes of giving or receiving notices, the time of day where a party receiving a notice is located; or
 - (ii) in relation to the performance of an obligation, the time of day in the place at which the obligation is to be performed; or
 - (iii) for any other purpose under this agreement, the time of day in the place where the party required to perform an obligation is located; and
- (j) no rule of construction applies to the disadvantage of a party because that party was responsible for the preparation of this agreement or any part of it.

3

RELATIONSHIP OF PARTIES

- (a) The relationship between the Company and the Contractor is an independent contracting relationship.
- (b) Nothing in this agreement:
 - (i) renders the Contractor or any Nominated Consultant or Contractor Personnel an employee of the Company or of any Related Body Corporate of the Company;
 - (ii) creates an employment relationship between the Company and the Contractor;
 - (iii) creates an employment relationship between the Company and any Nominated Consultant or Contractor Personnel; or
 - (iv) is intended to constitute an agency, partnership or trust as between the Company and any other person.
- (c) The Contractor has no authority to bind the Company.

4 TERM

- 4.1 This agreement commences on the Commencement Date and continues for the Term unless terminated earlier in accordance with clause 14.
- 4.2 The Company may at any time prior to the Termination Date, or afterwards, in its sole and absolute discretion, offer to extend the Term for such period, and on such terms, as it thinks fit.
- 4.3 The terms of this agreement will apply to any extended or further term, except to the extent the parties expressly agree otherwise.

5 CONTRACTOR'S OBLIGATIONS

- 5.1 The Contractor will provide the Services to the Company.
- 5.2 The Contractor must, and must ensure that each Nominated Consultant and all Contractor Personnel:
- (a) perform the Services with due care and skill and in a proper and effective manner;
 - (b) act in good faith;
 - (c) undertake all travel within Australia and overseas as required to perform the Services;
 - (d) protect the Confidential Information and de-identify any Project Materials;
 - (e) comply with all laws, regulations and industry accepted standards applicable to the Services;
 - (f) maintain all permits, licences and other government or regulatory authorisations required for the delivery of the Services;
 - (g) comply with all of the Company's reasonable directions in connection with the provision of the Services;
 - (h) comply with all of the Company's applicable policies;
 - (i) report to the Managing Director or other representative nominated by the Company from to time, and provide all reports, briefs or other documents requested by the Managing Director or representative as part of the Services; and
 - (j) provide the Services to the Company to the reasonably satisfaction of the Company.
- 5.3 The Company shall provide the Contractor with the resources specified at Item 8 of Schedule 1. The Contractor must otherwise provide at its expense all equipment necessary for the provision of the Services in accordance with this agreement.
- 5.4 The Contractor must provide the Services at the location(s) specified at Item 7 of Schedule 1.
- 5.5 The Contractor must not and must ensure that the Nominated Consultant and the Contractor Personnel do not hold themselves out in any way to bind the Company except with the express authorisation of the Company from time to time.
- 5.6 The Contractor is not and the Nominated Consultant and any Contractor Personnel are not eligible for any employee or fringe benefits provided to employees of the Company including dental, medical, disability, hospitalisation, life insurance, vacation, travel benefits and any other employee welfare and benefit program maintained by the Company.
- 5.7 The Contractor will:
- (a) be solely responsible for withholding, paying and reporting any and all required Taxes and the Company will make no deductions or payments on behalf of the Contractor with respect to Tax or superannuation, and all contributions and payments required by law to be made to or in respect of the Contractor's employees, agents or contractors, the Nominated Consultant and any other Contractor Personnel, including (but not limited to) salary, wages, annual leave, sick leave, long service leave, superannuation, workers' compensation, Taxes, and accident and other insurances;
 - (b) comply with all laws, regulations and instruments in connection with the Contractor's employees, agents or contractors, the Nominated Consultant and any other Contractor Personnel, including by making all deductions from salary or wages in respect of income tax required by law to be made; and
 - (c) furnish upon request from the Company evidence of compliance with this clause 5.7 in respect of the Contractor's employees, agents or contractors, the Nominated Consultant and any other Contractor Personnel involved in the provision of the Services.

6 NOMINATED CONSULTANT AND CONTRACTOR PERSONNEL

- 6.1 The Contractor must provide the Exclusive Services personally (where the Contractor is a natural person) or through the Nominated Consultant for those Exclusive Services.
- 6.2 Nothing in clause 6.1 prevents the Contractor from performing:
- (a) Services, other than the Exclusive Services; and
 - (b) services ancillary to the Exclusive Services,
through Contractor Personnel.
- 6.3 The Contractor and the Company may from time to time agree to nominate a different Nominated Consultant to provide the Exclusive Services, or specific Exclusive Services. The Contractor must procure that a person nominated under this clause 6.3 duly executes an acknowledgement deed in the form of Schedule 3 before performing any of the Exclusive Services.

7 NON-SOLICITATION

7.1 Acknowledgements

The Contractor and the Nominated Consultant acknowledge that:

- (a) the undertakings in clause 7.3 are reasonable in scope and duration and necessary for the protection of the confidential information, goodwill and legitimate business interests of the Company;
- (b) the Company, the Contractor and the Nominated Consultant intend clause 7.3 to operate to its maximum extent; and
- (c) the remedy of damages at law for breach of clause 7.3 would be inadequate and that temporary and permanent relief by way of injunction against the Contractor and/or the Nominated Consultant may be granted in any proceedings which the Company may bring to enforce any of the provisions of those clauses without necessity of proof of actual damage suffered by the Company.

7.2 Certain conduct prohibited during the Term

During the Term, the Contractor and the Nominated Consultant must not, and must ensure that the Contractor Personnel do not, do any of the following things without the prior written consent of the Company (which will not be unreasonably withhold):

- (a) **no solicitation:** approach, solicit or entice away any customer, client, supplier or employee of the Company or its Related Body Corporate (who has been actively engaging with the Company or its Related Body Corporate within 18 months prior when the Contractor is introduced), for the purposes of encouraging or persuading any such person to reduce its business with the Company or its Related Body Corporate, or attempt to do any of the same, so long as the Contractor and the Nominated Consultant did not have any business dealings with the said customer, client, supplier or employee at any time during the preceding 12 months from the time of the introduction (Prior Customer);
- (b) **business:** accept from a customer, client or supplier referred to in paragraph 7.3(a) any business of the kind ordinarily forming part of the business of the Company, unless it was a Prior Customer in which case this clause 7.3(b) does not apply; or
- (c) counsel, procure or otherwise assist any person to do any of the acts referred to in sub-paragraphs (a) and (b).

7.3 Restraint Period Obligations

The Contractor and the Nominated Consultant must not, and must ensure that the Contractor Personnel do not, do any of the following things during the Restraint Period without the prior written consent of the Company (which will not unreasonably be withheld):

- (a) **customers:** approach, solicit or entice away any customer, client, supplier or employee of the Company or its Related Body Corporate with whom the Contractor, Nominated Consultant or Contractor Personnel were first introduced to by the Company and dealt directly with in the 12 months prior to termination of this agreement for the purpose of encouraging or persuading any such person to reduce its business with the Company or its Related Body Corporate;

- (b) **business:** accept from a customer, client or supplier referred to in paragraph (a) any business of the kind ordinarily forming part of the business of the Company, except where it is a Prior Customer of the Contractor or Nominated Consultant;
- (c) **employment:** induce or attempt to induce an officer, employee or consultant of the Company to terminate his or her engagement or employment; or
- (d) counsel, procure or otherwise assist any person to do any of the acts referred to in sub-paragraphs (a), (b) or (c).

(collectively known as the **Restraint Period Obligations**).

7.4 **Separate undertakings**

- (a) Each of the restraint obligations imposed on a party by clause 7.3, the Restraint Period Obligations, resulting from the combinations of Restrained Businesses, Restraint Periods and Restraint Areas, is a separate and independent obligation from the other restraint obligations imposed, but they are cumulative in effect.
- (b) If any part of an undertaking in clause 7.3 or the Restraint Period Obligations is unenforceable, it may be severed without affecting the enforceability of the rest of that undertaking or the other undertakings.

7.5 **Listed securities**

Nothing in this clause prevents the Contractor or the Nominated Consultant or their respective nominees holding less than 5% of the issued shares or units of a body corporate or a unit trust listed on an official stock exchange, or being regarded as holding that interest under the Corporations Act.

8 **PROJECT MATERIALS AND INTELLECTUAL PROPERTY**

8.1 **Company owns all rights**

- (a) The Contractor agrees that the Company shall own, and the Contractor hereby assigns, all rights, including all Intellectual Property Rights, in:
 - (i) all Project Materials;
 - (ii) all Intellectual Property created in, in performing, or in the course of performing, the Services; and
 - (iii) all Intellectual Property created for the Company by the Contractor for the purposes of providing the Services under this agreement, other than the Contractor Materials,
 (together, the **Contract IP**),

and ownership vests in the Company on creation (including partial creation) of that material or information, regardless of whether the rights, including Intellectual Property Rights, arise or arose during, before or after the Term, or after termination.
- (b) If any right in the Project Materials or other Contract IP (or any part of them) is or becomes owned by the Contractor, the Nominated Consultant or any of the Contractor Personnel (by operation of law or otherwise), then the Contractor and the Nominated Consultant must, and must ensure that the Contractor Personnel, as the case may be:
 - (i) hold those Project Materials or Contract IP, or rights in them, in trust for the Company; and
 - (ii) at the Company's written request:
 - (A) unconditionally assign (including as an assignment of future copyright), or procure the assignment of (as the case may be), all of the Contractor's rights, including Intellectual Property Rights, in the Project Material or Contract IP to the Company; and
 - (B) do all things and execute all documents which the Company determines are necessary to give effect to this assignment.
- (c) In the event that the Contractor or the Nominated Consultant fail to execute and deliver any document or do any act required by sub-paragraph (b) within 7 days of any request in writing from the Company, each of the Contractor and the Nominated Consultant irrevocably give the Company their power of attorney to execute the same for them.

- (d) For the avoidance of doubt, nothing in this agreement transfers, assigns or vests any of the Contractor Materials to the Company, and the Contractor, Nominated Consultant and Contractor Personnel are not compelled to comply with clause 8.1(b) insofar as it relates to the Contractor Materials.
- (e) Where any of the Contractor Materials are used in the Project Materials or Contract IP, the Contractor hereby grants to the Company a perpetual, irrevocable, worldwide, royalty-free, non-exclusive, transferable licence to use, reproduce, adapt, modify, translate, publish, publicly perform, publicly display, distribute or exercise the Intellectual Property Rights in the Contractor Materials (and to sublicense these rights).
- (f) The Company hereby grants to the Contractor a perpetual, revocable, worldwide, royalty-free, non-exclusive, transferable licence to use, reproduce, adapt, modify, translate, publish, publicly perform, publicly display, distribute or exercise the Intellectual Property Rights in the de-identified Project Materials (and to sublicense these rights).

8.2 Moral Rights

- (a) To the extent permitted by law, the Contractor and the Nominated Consultant waive, and must ensure that the Contractor Personnel waive any Moral Rights they may have in the Project Materials and Contract IP. For the avoidance of doubt, this clause 8.2(a) does not apply to the Contractor Materials.
- (b) The Contractor and the Nominated Consultant consent, and must ensure that the Contractor Personnel consent, to the Company doing any of the following in relation to the Project Materials and Contract IP:
 - (i) reproduction in any media;
 - (ii) publication in any media;
 - (iii) editing or other adaptation, including the deletion of parts of, or the addition of parts to, the Project Materials or Contract IP; and/or
 - (iv) re-use of the Project Materials and Contract IP, whether or not authorship of them is attributed to the Contractor, the Nominated Consultant and/or the Contractor Personnel.

8.3 Warranties as to Intellectual Property and notification of claims

- (a) The Contractor warrants that:
 - (i) all Intellectual Property or Intellectual Property Rights assigned, licensed or provided by or on behalf of the Contractor to the Company or any of its Related Bodies Corporate under this agreement or otherwise, and whether or not as part of the Services, **(Warranted IP Material)** are owned by the Contractor or are otherwise within the capacity of the Contractor, the Nominated Consultant or Contractor Personnel (as the case may be) to transfer, assign or license; and
 - (ii) the use by the Company, its Related Bodies Corporate and any of their officers, employees, agents or representatives of the Warranted IP Material, the Project Materials and any other material assigned, licensed or provided to the Company the Contractor, the Nominated Consultant or Contractor Personnel, or used by the Contractor, the Nominated Consultant or Contractor Personnel in performing the Services will not infringe or give rise to any Claim in respect of the Intellectual Property Rights of any person or entity.
- (b) The Contractor must notify the Company as soon as practicable upon becoming aware of any infringement by the Contractor, the Nominated Consultant or Contractor Personnel, or any Claim, or notification of intention to make or bring a Claim against the Contractor or the Company in respect of ownership or infringement of any Intellectual Property Rights in the Warranted IP Material or Project Materials.
- (c) The Contractor indemnifies the Company and its Related Bodies Corporate for any breach of this clause 8.

9 CONFIDENTIALITY

9.1 Confidentiality of the Contractor

Subject to clause 9.3, the Contractor must, and must ensure that the Nominated Consultant, Contractor Personnel and each other employee, agent, contractor or other representative of the Contractor:

- (a) keep confidential, and do not disclose to any other person, Confidential Information;

- (b) only use any Confidential Information for the purpose of providing or receiving (as the case may be) the Services or otherwise with the prior written consent of the Company;
- (c) not copy any document that contains Confidential Information or otherwise record or reproduce the Confidential Information in any material form except as is strictly necessary for the purpose of this agreement or otherwise with the Company's consent;
- (d) establish and maintain security procedures to prevent unauthorised access to or use of the Confidential Information or copying or reproducing of the Confidential Information;
- (e) acknowledge that they have no proprietary rights, title or interest in, and will not acquire any licence, rights, title or interest in, the Confidential Information of the Company except where clause 8.1(f) of this agreement applies;
- (f) following a request by the Company or when the Company's Confidential Information is no longer required for the purpose of the Contractor performing its obligations or exercising its rights under this agreement, must immediately return (or otherwise destroy) all Confidential Information and certify that no Confidential Information is retained; and
- (g) acknowledge and agree that a breach of this clause 9 may cause the Company irreparable damage for which monetary damages would not be an adequate remedy, and that, in addition to any other remedies that may be available, the Company may seek and obtain an injunctive relief against such a threatened breach.

9.2 Confidentiality of the Company

Subject to clause 9.3, the Company, its Related Body Corporate and each other employee, agent, contractor or other representative of the Company must, and must ensure that they:

- (a) keep confidential, and do not disclose to any other person, Confidential Information;
- (b) only use any Confidential Information for the purpose of providing or receiving (as the case may be) the Services or otherwise with the prior written consent of the Contractor;
- (c) not copy any document that contains Confidential Information or otherwise record or reproduce the Confidential Information in any material form except as is strictly necessary for the purpose of this agreement or otherwise with the Contractor's consent;
- (d) establish and maintain security procedures to prevent unauthorised access to or use of the Confidential Information or copying or reproducing of the Confidential Information;
- (e) acknowledge that they have no proprietary rights, title or interest in, and will not acquire any title or interest in, the Confidential Information contained in the Consultant Material, unless where 8.1(e) applies;
- (f) following a request by the Contractor or when the Contractor's Confidential Information is no longer required for the purpose of the Company receiving the Services from the Contractor, must immediately return (or otherwise destroy) all Confidential Information and certify that no Confidential Information is retained; and
- (g) acknowledge and agree that a breach of this clause 9 may cause the Contractor irreparable damage for which monetary damages would not be an adequate remedy, and that, in addition to any other remedies that may be available, the Contractor may seek and obtain an injunctive relief against such a threatened breach.

1.2 Disclosure required by law and public domain

The parties may disclose Confidential Information only as set out below:

- (a) to the extent necessary to enable a party to make any disclosure required by law;
- (b) to the extent necessary to enable a party to perform its obligations under this agreement by disclosing the Confidential Information to any officer, employee, agent or adviser, having first ensured that the third party agrees to keep the Confidential Information confidential on terms at least as restrictive as set out in this clause;
- (c) with the other parties' prior written consent, and subject to any conditions of that consent (which may be given or imposed in the Company's sole and absolute discretion); or

- (d) where a portion of the Confidential Information has entered the public domain other than as a result of a breach of this agreement by the other party or other agent or representative of, or person acting on behalf of or at the direction of, the other party, to that portion of the Confidential Information that has entered into the public domain.

Notwithstanding anything else in this clause 9.3, all Sensitive Confidential Information shall be deemed not to have entered into the public domain at any time.

1.3 Obligations relating to disclosure

If a party discloses or is required to disclose Confidential Information for any reason, and without prejudice to the other parties' rights under this agreement or otherwise, the disclosing party must:

- (a) take all reasonable steps to ensure that the person receiving the Confidential Information does not use or disclose that information except in the circumstances permitted by this clause 9; and
- (b) notify the other party as soon as practicable prior to making the disclosure or, if that is not possible, as soon as practicable afterwards.

2 FEES AND PAYMENT

2.1 Service Fees

In consideration of the Contractor providing the Services in accordance with this agreement, the Company will pay the Contractor the Service Fees in accordance with this clause 10.

2.2 Expenses

The Company will reimburse the Contractor for Authorised Expenses in accordance with this clause 10 either prior to the Authorised Expenses being incurred, or within 2 Business Days from the Contractor providing the Company with a tax invoice issued by the Contractor for the Authorised Expenses, or a third-party tax invoice with respect to the Authorised Expenses.

2.3 Invoicing and payment

- (a) Unless clause 10.2 of this Agreement applies, the Service Fees and Authorised Expenses are to be invoiced by the Contractor in accordance with Schedule 2 or as directed by the Company in accordance with GST Law. The Company must pay the Service Fees within 14 days of receipt of a valid tax invoice issued in accordance with this clause 10.3.
- (b) The Contractor and the Company have agreed in writing to a payment arrangement and the Contractor will invoice the Company in accordance with Schedule 2 or as directed by the Company in accordance with GST Law. Where the Contractor issues an invoice to the Company under this clause 10.3(b), the Company will make payment within 14 Business Days of the tax invoice.

3 INSURANCE

- (a) The Contractor must effect and maintain all insurances a prudent person or business carrying out the Services would maintain, including:
 - (i) workers' compensation insurance to the extent required by any applicable law;
 - (ii) professional indemnity insurance; and
 - (iii) public liability insurance; and
 - (iv) any insurances specified in Item 10 of Schedule 1,in relation to the performance of the Contractor's supply of Services pursuant to this agreement.
- (b) The Contractor must, on demand, produce evidence to the satisfaction of the Company of the insurance effected and maintained in accordance with this clause 11.

4 GOODS AND SERVICES TAX (GST)

4.1 Interpretation

For the purposes of this clause 12:

- (a) a term which has a defined meaning in the GST Law has the same meaning when used in this clause 12; and
- (b) each periodic or progressive component of a supply to which section 156-5(1) of the GST Law applies will be treated as though it is a separate supply.

4.2 Consideration GST exclusive

Unless expressly stated otherwise in this agreement, all amounts payable or consideration to be provided under this agreement are exclusive of GST.

4.3 Payment of GST

If GST is payable on any supply made under this agreement, for which the consideration is not expressly stated to include GST, the recipient agrees to pay to the supplier an additional amount equal to the GST payable at the same time that the consideration for the supply, or the first part of the consideration for the supply (as the case may be), is to be provided. However:

- (a) the recipient need not pay the additional amount until the supplier gives the recipient a tax invoice or an adjustment note;
- (b) if an adjustment event arises in respect of the supply, the additional amount must be adjusted to reflect the adjustment event and the recipient or the supplier (as the case may be) must make any payments necessary to reflect the adjustment; and
- (c) this clause 12.3 does not apply to the extent that the GST on the supply is payable by the recipient under Division 84 of the GST Act.

4.4 Calculation of payments

If an amount payable under this agreement is to be calculated by reference to:

- (a) the price to be received for a taxable supply then, for the purposes of that calculation, the price is reduced to the extent that it includes any amount on account of GST; and
- (b) the price to be paid or provided for an acquisition then, for the purposes of that calculation, the price is reduced to the extent that an input tax credit is available for the acquisition.

5 REPRESENTATIONS AND WARRANTIES

5.1 Mutual representations and warranties

Each of the Company and the Contractor warrant and represent to the other that as at the date of this agreement:

- (a) **incorporation:** in the case of the Company, it is a corporation having limited liability, incorporated (or taken to be incorporated) or registered and validly existing under the laws of its jurisdiction of incorporation;
- (b) **capacity:** it has full power and capacity to enter into and perform its obligations under this agreement;
- (c) **authorisations:** all necessary action has been taken to authorise its execution, delivery and performance of this agreement in accordance with its terms;
- (d) **binding obligations:** this agreement constitutes its legal, valid and binding obligations and this agreement is enforceable in accordance with its terms; and
- (e) **transaction permitted:** the execution, delivery and performance of this agreement by it does not and will not violate, breach, or result in the contravention of:
 - (i) any law, resolution or authorisation; or
 - (ii) its constitution.

5.2 Contractor's warranties

The Contractor represents and warrants to the Company that:

- (a) **competence:** the Contractor, the Nominated Consultant and the Contractor Personnel are suitably experienced, competent and have the necessary skills to provide the Services;
- (b) **availability:** the Contractor has satisfied itself as to the availability of the Nominated Consultant and the Contractor Personnel to provide the Services;
- (c) **due care and skill:** the Contractor, the Nominated Consultant and the Contractor Personnel will perform the Services with due care and skill, in a professional and effective manner and to a standard equivalent to standards of the performance exhibited by consulting organisations reasonably similar to the Contractor;
- (d) **fit for purpose:** the Services supplied to the Company by the Contractor will be fit for the purpose for which they were supplied;
- (e) **no infringement:** the Services supplied by the Contractor under this agreement do not and will not infringe the Intellectual Property Rights or confidentiality of any person, and that the Contractor has obtained all relevant third party clearances and consents, including in relation to Moral Rights; and
- (f) **compliance with laws:** the Contractor has complied with all its obligations imposed under the *Superannuation Guarantee (Administration) Act 1992* (Cth), the *Income Tax Assessment Act 1936* (Cth) and the *Income Tax Assessment Act 1997* (Cth), as an employer of the Nominated Consultant and the Contractor Personnel and will meet all its obligations under those Acts, and, if requested, will provide to the Company satisfactory evidence that it has met all its obligations in respect of the Nominated Consultant and the Contractor Personnel.

6 TERMINATION

6.1 Termination

- (a) Either party may terminate this agreement prior to the expiry of the Term or any extension of the Term, for any reason, by giving the other party four week's written notice..

6.2 Payment in lieu

- (a) The Company may make a payment in lieu of part or all of a notice period provided under clauses 14. of an amount equivalent to how much of the Service Fees would have been payable if the Services had continued during that period.
- (b) For all or part of the notice period, or at any time during the Term, the Company may direct the Contractor:
 - (i) not to provide the Services; or
 - (ii) provide the Services at a different location to where the Services are normally provided.
- (c) The obligations of the Contractor and the Nominated Consultant under this agreement continue to apply during any period contemplated under in this clause 14.

6.3 Consequences of termination

Upon the termination of this agreement for whatever reason, the Contractor must (and must ensure that the Nominated Consultant and any Contractor Personnel), and the Company must (and must ensure that its employees, agents or contractors):

- (a) either:
 - (i) to the extent possible return to the other party or its nominee all documents and material (originals and copies in machine readable or printed form) in relation to the other and its business including without limitation the Confidential Information and all copies of it; or
 - (ii) to the extent that return is not possible, destroy all copies of the other party's Confidential Information in their possession or control, provided that at least 7 days' prior written notice has been given to the other party;
- (b) deliver to the other party or its nominee all plant, equipment and all other property belonging to the other which are held by the other or which are otherwise in the possession, power, custody or control of the other or their respective employees, contractors, agents, servants or assigns.

7 INDEMNITY

7.1 Indemnity by the Contractor

The Contractor indemnifies the Company and must keep it indemnified against any Claim arising out of or referable to:

- (a) any wilful or negligent act or omission of the Contractor, the Nominated Consultant or any Contractor Personnel arising out of the performance by the Contractor, the Nominated Consultant or Contractor Personnel of the Contractor's obligations under this agreement;
- (b) a breach or default by the Contractor, the Nominated Consultant or the Contractor Personnel of the Contractor's obligations under this agreement, including:
 - (i) breach of any warranty given by the Contractor; or
 - (ii) any warranty given by the Contractor being false or misleading;
 - (iii) if the Intellectual Property Rights of any third party has been infringed by the Contractor's supply of the Services or the acts or omissions of the Contractor, the Nominated Consultant or Contractor Personnel; or
 - (iv) if the Nominated Consultant or the Contractor Personnel are employees of the Company at law or are claiming any benefit, payment or entitlement payable to employees.

8 No SUBCONTRACTING

The Contractor may not subcontract the performance of its obligations without the prior written consent of the Company (which will not be unreasonably withheld).

9 GENERAL

9.1 Entire agreement

This agreement is the entire agreement between the parties about its subject matter and replaces all previous agreements, understandings, representations and warranties about that subject matter.

9.2 Variation

No variation of this agreement is effective unless made in writing and signed by each party.

9.3 Third party rights

Except as expressly provided in this agreement, only those persons who execute this agreement have a right or benefit under it.

9.4 Further assurances

Except as expressly provided in this agreement, each party must, at its own expense, do all things reasonably necessary to give full effect to this agreement and the matters contemplated by it.

9.5 Survival and merger

- (a) No term of this agreement merges on completion of any transaction contemplated by this agreement.
- (b) 7, 8 and 9 survive termination or expiry of this agreement together with any other term which by its nature is intended to do so.

9.6 Severability

Any term of this agreement which is wholly or partially void or unenforceable is severed to the extent that it is void or unenforceable. The validity or enforceability of the remainder of this agreement is not affected.

9.7 Waiver

No waiver of a right or remedy under this agreement is effective unless it is in writing and signed by the party granting it. It is only effective in the specific instance and for the specific purpose for which it is granted.

9.8 Cumulative Rights

Except as expressly provided in this agreement, the rights of a party under this agreement are in addition to and do not exclude or limit any other rights or remedies provided by law.

9.9 Assignment

The Contractor and/or the Nominated Consultant must not assign this agreement or otherwise transfer the benefit of this agreement or a right or remedy under it, without the prior written consent of the Company (which will not be unreasonably withheld). Any such purported assignment in breach of this clause 17.9 shall be void, and shall constitute repudiation of this agreement by the Contractor.

9.10 Costs, Expenses and Duties

Except as expressly provided in this agreement, each party must pay its own costs and expenses of negotiating, preparing and executing this agreement and any other instrument executed under this agreement.

9.11 Governing Law

This agreement is governed by the laws of New South Wales.

9.12 Jurisdiction

Each party irrevocably and unconditionally submits to the non-exclusive jurisdiction of the courts of New South Wales.

9.13 Counterparts

- (a) This Agreement may be executed in any number of counterparts and all of which, when those counterparts taken together, shall constitute one and the same instrument.
- (b) This Agreement may be executed by any of manual execution of a hard copy document and execution by electronic signature of an electronic document using 'DocuSign' or any other electronic signature program that has been agreed to by the parties in writing.
- (c) Delivery of an executed counterpart of a signature page of this Deed by facsimile or by PDF file (portable document format file) shall be effective as delivery of a manually executed counterpart of this Agreement.

SCHEDULE 1

SERVICES

Item 1 Term

- (a) **Commencement Date:** [insert date]
- (b) **Termination Date:** [insert date OR 'From the Commencement Date for a period of 12 months, subject to any extension or earlier termination in accordance with clause 14 of the agreement']

Item 2 Nominated Consultant

Forde Smith

Item 3 Exclusive Services

Sub-Item	Service	Description	Fee (excluding GST)
			85% of Consulting Fees where the Nominated Consultant (XX) is performing the Services for the Company.

Item 4 Non-Exclusive Services

Services rendered by approved Contractor Personnel.

The Contractor will be entitled to 30% of the Consulting Fees for Non-Exclusive Services. For the avoidance of doubt, all services performed by Contractor Personnel (excluding the Nominated Consultant Forde Smith) are considered Non-Exclusive Services.

Item 5 Additional Fee

Not used.

Item 6 Authorised Expenses

Reasonable travel expenses within Australia and overseas at the request of the Company.

Item 7 Contractor Location

Not used.

Item 8 Provided Resources

Not used.

Item 9 Restraints

Restraint Period means:

- (a) 6 months,
following termination of this agreement.

Item 10 Insurance

Not used.

SCHEDULE 3
ACKNOWLEDGEMENT DEED

DATE: [insert date]

BY: XX XX of XXX (ACN XXX XXX XXX) trading as XXX (as needed) (**Contractor**)

FOR THE BENEFIT OF: Growth Mindset Pty Ltd (ACN 164 607 970) trading as Syncopate Consulting (**Company**)

BACKGROUND

- 3 **Contractor** is to provide certain services to the **Company** under the terms of a consultancy services agreement (**Agreement**).
- 4 Under the Agreement, the Nominated Consultant is nominated to perform Services (as defined in the Agreement) on behalf of the Consultant.
- 5 I have been nominated, and agree to being nominated, as the Nominated Consultant under the Agreement.
- 6 I understand that the Agreement imposes obligations on me as the Nominated Consultant, and agree to be bound by those obligations as set out in the Agreement and this deed.

I DECLARE as follows:

1 APPLICATION OF AGREEMENT

- (a) I have read and understand the terms and conditions contained in the Agreement.
- (b) By executing this deed poll, I agree to become the Nominated Consultant under, and within the meaning of the Agreement, and to become immediately bound by the terms and conditions in the Agreement insofar as they apply or refer to the Nominated Consultant, including (without limitation) obligations of confidentiality, restrained conduct, and provisions relating to intellectual property rights.
- (c) I acknowledge and agree to be bound by the terms of the Agreement that survive termination or expiry of the Agreement including (without limitation) 7 (Restraint), 8 (Project Materials and intellectual property) and 9 (Confidentiality) together with any other term which by its nature is intended to survive termination.

2 WARRANTIES

I warrant that I:

- (a) am skilled, trained, qualified and competent to perform the Services and that the information provided by me to the Contractor and/or the Company about my work experience and qualifications is true and correct; and
- (b) I will perform the Services with due care, skill and diligence.

3 NATURE OF RELATIONSHIP

I acknowledge that I will be paid in relation to my work as the Nominated Consultant or otherwise in connection with the Services by the Contractor and that nothing in this deed poll or in providing the Services is intended to give rise to a relationship of agency, employment or partnership between me and the Company.

EXECUTED as a deed poll

SIGNED, SEALED AND DELIVERED by **XXX XXX** in the)
presence of:)

Signature

Signature of Witness

Full Name of Witness
(BLOCK LETTERS)

EXECUTED by the parties as an agreement.

EXECUTED by Growth Mindset Pty Ltd (ACN 164 607 970))
trading as Syncopate Consulting in accordance with section)
127 of the Corporations Act 2001:)

Signature of Director

Signature of Director/Secretary

Print Name

Print Name

EXECUTED by XXX XXX in accordance with section 127 of)
the Corporations Act 2001:)
)

Signature of Director

Signature of Director/Secretary

Print Name

Print Name