



PCCI Sponsorship Agreement

between

Peel Chamber of Commerce & Industry Incorporated
(ABN 40 321 346 342)

and

[Shire of Serpentine Jarrahdale:]
(ABN 98 924 720 841)

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Date _____

Parties

Chamber	Peel Chamber of Commerce & Industry Incorporated (ABN 40 321 346 342) Address: 37 Dollyup Street, Stake Hill WA 6207 Email: [Chamber - email address:] (the <i>Chamber</i>)
Sponsor	[Shire of Serpentine Jarrahdale (ABN 98 924 720 841) Address: [6 Paterson Street Mundijong WA, 6123 Email: [info@sjshire.wa.gov.au] (the <i>Sponsor</i>)

Recitals

- A The Chamber is a not for profit association aimed at enhancing the capability of business, and promoting and fostering economic growth and diversity in the Peel Region.
- B The Sponsor is a business/community group/ industry participant/stakeholder operating in the Peel Region who supports the objects of the Chamber.
- C The Sponsor has agreed to sponsor the Chamber to provide the Sponsorship Fee or Sponsorship Services to the Chamber and the Chamber has agreed to accept the sponsorship of the Sponsor on the terms of this agreement.
- D This agreement is intended to be legally binding and the parties agree to give effect to the arrangements contemplated by it.

Operative provisions

1. Definitions and interpretation

Definitions

- 1.1 The following definitions apply in this agreement unless the context requires otherwise:

Approvals means all approvals, authorisations, permits, consents, determinations and licences which are issued, or required to be issued, by any Governmental Agency to permit the full and proper performance of the Consultant’s obligations under this agreement.

Authorised Third Party Disclosee means any Representative of a Disclosee to whom that Disclosee discloses Confidential Information in accordance with clause 7.

Brand Guidelines means any branding guidelines, style guide, or written direction with respect to the use and composition of the Chamber's brand, provided to the Sponsor on the commencement of this agreement or as updated from time to time.

Business Day means a day (other than a Saturday, Sunday or public holiday) when banks in Perth, Western Australia are open for business.

Change of Control means, in respect of a particular entity, a person who Controls that entity ceasing to do so or another person acquiring Control of it.

Charges means Fees and Expenses.

Claim means any actual, contingent, present or future claim, complaint, demand, proceeding, suit, litigation, action, cause of action or other legal recourse for any Loss, restitution, equitable compensation, account, injunctive relief, specific performance or any other remedy of whatever nature and however arising, whether in contract, tort (including but not limited to negligence), under statute or otherwise.

Confidential Information means all information relating to a party, any customer, clients, suppliers, distributors or joint venture partners, of the party and/or any of the business or financial affairs of any of them, including:

- (a) any information that is specifically designated by any of them as confidential;
- (b) any information which, by its nature, may reasonably be regarded as confidential;
- (c) any information relating to any:
 - (i) agreements, arrangements or terms of trade with any existing or prospective customers, clients, suppliers, distributors or joint venture partners or other contractual counterparties;
 - (ii) customers, clients, suppliers, distributors, joint venture partners, employees, technologies, products, services, proposals, market opportunities, business or product development plans, pricing, financial position or performance, capabilities, capacities, operations or processes; or
 - (iii) Intellectual Property Rights,
- of any of them; and
- (d) any note, calculation, conclusion, summary or other material derived or produced partly or wholly from any such information;
- (e) negotiations in relation to, and the terms of, this agreement,

whether that information is visual, oral, documentary, electronic, machine-readable tangible, intangible or any other form, relating to the Chamber or any Related Entity of the Chamber including but not limited to any specifications, formulae, know how, concepts, inventions, ideas, software, designs, copyright, trade secrets or any information relating to any business, products, markets, operations, processes, techniques, technology, forecasts, strategies or any other matter.

Control has the meaning given in Section 50AA of the Corporations Act.

Copyright Act means the *Copyright Act 1968* (Cth).

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

Default Rate means a rate of interest of 12.00% per annum.

Disclosee means, in respect of any particular Confidential Information, any party that has received that Confidential Information (whether directly or indirectly) from another party.

Discloser means, in respect of any particular Confidential Information, any party that has disclosed or discloses that Confidential Information (whether directly or indirectly) to another party.

Equipment means the equipment used or supplied by the Chamber or the Chamber's representative for the purposes of providing the Sponsorship Benefits.

Event of Default means any of the following on the part of a party:

- (a) committing any material or persistent breach of this agreement;
- (b) repudiating or, or, in the reasonable opinion of the Chamber, evincing an intention to repudiate, this agreement;
- (c) undergoing a Change of Control without the prior written consent of the Chamber;
- (d) misleading the Chamber in any material way;
- (e) an Insolvency Event occurring in respect of the Sponsor; and/or
- (f) any act or omission in respect of the Sponsor that is contrary to the Objects of the Chamber, and is reasonably likely to damage the goodwill, reputation, image, or good name of the Chamber.

Expenses mean the expenses of the Chamber for which the Chamber is entitled to be reimbursed by the Sponsor pursuant to clause 4.6.

Fees has the meaning given in clause 4.1.

Force Majeure means any act, event or cause (other than lack of funds) which is beyond the reasonable control of the affected party, including:

- (a) an act of God, war, sabotage, terrorism, riot, civil disorder, revolution, national or state emergency, martial law, fire, lightning, flood, cyclone, earthquake, landslide, storm or other adverse weather conditions, explosion, power shortage, strike or other labour difficulty (whether or not involving employees of the affected party), epidemic or quarantine; and
- (b) an action or inaction of any Governmental Agency (including any Court of competent jurisdiction), such as expropriation, restraint, prohibition, intervention, requisition, requirement, direction or embargo by legislation, decree or other legally enforceable order.

Governmental Agency means any government or governmental, semi-governmental, administrative, fiscal or judicial body, department, commission, authority, tribunal, agency or entity whether foreign, federal, state, territorial or local.

GST has the same meaning given to that expression in the GST Law.

GST Act means *A New Tax System (Goods and Services Tax) Act 1999* (Cth), as in force from time to time.

GST Law has the same meaning given to that expression in the GST Act.

Hourly Rate has the meaning given in clause 4.1.

Insolvency Event means, in respect of a party any of the following events or any analogous event:

- (a) where the party is an individual, that party commits an act of bankruptcy or is declared bankrupt or insolvent or that party's estate otherwise becomes liable to be dealt with under any law relating to bankruptcy or insolvency;
- (b) where the party is a company, a resolution is passed or court order made for the winding up of that party or an administrator is appointed to that party pursuant to any relevant law;
- (c) a receiver or manager or receiver and manager is appointed to the assets or undertaking of the party or any part thereof; or
- (d) the party is otherwise unable to pay its debts as and when they fall due.

In-Scope Work means work that has been expressly and specifically designated as being within the scope of the Sponsorship Benefits.

Input Tax Credit has the meaning given in the GST Law.

Intellectual Property Rights means patents, rights to inventions, copyright and related rights, moral rights, trademarks and service marks, trade names and domain names, rights in get-up, rights to goodwill or to sue for passing off or unfair competition, rights in designs, rights in computer software, database rights, rights in confidential information (including know-how, trade secrets and marketing secrets) and any other intellectual property rights, in each case whether registered or unregistered and including all applications (or rights to apply) for, and renewals or extensions of, such rights and all similar or equivalent rights or forms of protection which subsist or will subsist now or in the future in any part of the world.

Losses means any loss, damage, debt, cost, charge, expense, fine, outgoing, penalty, diminution in value, deficiency or other liability, whether arising in contract, negligence, tort, equity, statute or otherwise; and that a party pays, suffers or incurs or is liable for, including all:

- (a) liabilities on account of Tax;
- (b) interest and other amounts payable to third parties;
- (c) legal and other professional fees and expenses on a full indemnity basis and other costs incurred in connection with investigating, defending or settling any Claim; and
- (d) all amounts paid in settlement of any Claim.

Material means any data, plans, instructions, documents, descriptions, reports, advice, accounts, drawings, photographs or any other material.

Moral Rights has the same meaning as that term has in Part IX of the Copyright Act.

Non-Solicitation Period means each period of time specified in 0.

Notice means any notice or other communication by one party to the other party under the terms of this agreement including but not limited to any request, demand, consent, waiver or approval.

Objects means the Objects of the Chamber as set out in the Peel Chamber of Commerce Constitution available at [Constitution URL on our website].

Out-of-Scope Rate has the meaning given in clause 4.2.

Out-of-Scope Work means any work that is not In-Scope Work, including the work specifically described as being out of scope in paragraph 4 of Schedule 1.

Personal Information has the meaning given in the Privacy Act.

Privacy Act means the *Privacy Act 1998* (Cth).

Related Entity has the meaning set out in the *Corporations Act 2001* (Cth).

Relevant IP means all Intellectual Property Rights that the Chamber makes, develops or conceives (whether alone or in conjunction with someone else, and whether during or outside normal working hours) in the course of, or arising out of, the provision of the Sponsorship and/or Chamber's engagement with the Sponsor, including any Intellectual Property Rights so made, developed or conceived:

- (a) using the premises, resources or facilities of the Sponsor or any of its customers, clients or suppliers;
- (b) in the course of, as a consequence of, or in relation to, the provision of the Sponsorship Services or Sponsorship Benefits by the parties and/or the performance (whether proper or improper) of each party's duties and responsibilities under this agreement or otherwise;
- (c) as a direct or indirect result of any person's access to any Confidential Information or Intellectual Property Rights of the Chamber or any of its customers, clients or suppliers; or
- (d) in respect of any of the products or services of the Chamber or any of its customers, clients or suppliers, or any alterations, additions or methods of making, using, marketing, selling or providing such products or services.

Representatives means, in respect of a person, the employees, officers, consultants, agents and professional advisers of that person.

Sponsorship Benefits means the services or benefits that the Chamber has agreed to provide to the Sponsor under the terms of this agreement, as more particularly described in Part 3 of Schedule 1.

Sponsorship Event means any event organised or carried out for or on behalf of the Chamber, whether solely or in partnership with any other entity, which the Sponsor has agreed to Sponsor under the terms of this agreement.

Sponsorship Services means the services that the Sponsor has agreed to provide to the Chamber under the terms of this agreement, as more particularly described in Part 2 of Schedule 1.

Stamp Duty means any stamp, transaction or registration duty or similar charge imposed by any Governmental Agency and includes any interest, fine, penalty, charge or other amount in respect of the above, but excludes any GST.

Start Date means the date of this agreement or such other date as the parties may agree in writing.

Tax Acts means the *Income Tax Assessment Act 1936* (Cth) and the *Income Tax Assessment Act 1997* (Cth).

Tax or **Taxation** means:

- (a) any tax, levy, impost, deduction, charge, rate, compulsory loan, withholding or duty by whatever name called, levied, imposed or assessed under the Tax Acts or any other statute, ordinance or law by any Governmental Agency (including profits tax, property tax, interest tax, income tax, tax related to capital gains, tax related to the franking of dividends, bank account debits tax, fringe benefits tax, sales tax, payroll tax, superannuation guarantee charge, group or Pay as You Go withholding tax and land tax);
- (b) unless the context otherwise requires, Stamp Duty and GST; and
- (c) any interest, penalty, charge, fine or fee or other amount of any kind assessed, charged or imposed on or in respect of the above.

Works means all programs and programming and literary, dramatic, musical and artistic works within the meaning of the Copyright Act.

Interpretation

1.2 The following rules of interpretation apply in this agreement unless the context requires otherwise:

- (a) headings in this agreement are for convenience only and do not affect its interpretation or construction;
- (b) no rule of construction applies to the disadvantage of a party because this agreement is prepared by (or on behalf of) that party;
- (c) where any word or phrase is defined, any other part of speech or other grammatical form of that word or phrase has a cognate meaning;
- (d) a reference to a document (including this agreement) is a reference to that document (including any schedules and annexures) as amended, consolidated, supplemented, novated or replaced;
- (e) references to recitals, clauses, subclauses, paragraphs, annexures or schedules are references to recitals, clauses, subclauses, paragraphs, annexures and schedules of or to this agreement;
- (f) in each schedule to this agreement, a reference to a paragraph is a reference to a paragraph in that schedule;
- (g) a reference to any statute, proclamation, rule, code, regulation or ordinance includes any amendment, consolidation, modification, re-enactment or reprint of it or any statute, proclamation, rule, code, regulation or ordinance replacing it;
- (h) an expression importing a natural person includes any individual, corporation or other body corporate, partnership, trust or association and any Governmental Agency and that person's personal representatives, successors, permitted assigns, substitutes, executors and administrators;
- (i) a reference to writing includes any communication sent by post, facsimile or email;

- (j) a reference to time refers to time in Perth, Western Australia and time is of the essence;
- (k) all monetary amounts are in Australian currency;
- (l) a reference to a ***“liability”*** includes a present, prospective, future or contingent liability;
- (m) the word ***“month”*** means calendar month and the word ***“year”*** means 12 calendar months;
- (n) the meaning of general words is not limited by specific examples introduced by ***“include”, “includes”, “including”, “for example”, “in particular”, “such as”*** or similar expressions;
- (o) a reference to a ***“party”*** is a reference to a party to this agreement and a reference to a ***“third party”*** is a reference to a person that is not a party to this agreement;
- (p) a reference to any thing is a reference to the whole and each part of it;
- (q) a reference to a group of persons is a reference to all of them collectively and to each of them individually;
- (r) words in the singular include the plural and vice versa; and
- (s) a reference to one gender includes a reference to the other genders.

2. Grant of Sponsorship

Grant

2.1 The Sponsor wishes to sponsor the Chamber, and the Chamber hereby accepts that Sponsorship, in accordance with the terms of this agreement.

Non exclusivity

2.2 Subject to the Chamber's obligations under this agreement and providing there is no conflict with any competitor of the Sponsor, the Chamber may enter sponsorship agreements with any other person during the term.

Commencement and duration

2.3 The Chamber’s engagement with the Sponsor will:

- (a) commence on the Start Date; and
- (b) continue for the term set out at Part 1 of Schedule 1, unless earlier terminated in accordance with clause 11 of this agreement.

2.4 If the parties agree before the end of the period set out in Part 1 of Schedule 1, that this agreement may be extended, then this agreement may be varied in writing on such terms and conditions as agreed between the parties.

Nature of relationship

2.5 The Sponsor is an independent contractor of the Chamber and nothing in this agreement constitutes a relationship of employer and employee, principal and agent, partnership or joint venture between the parties. The Sponsor does not have, and will not hold out the

Sponsor as having, any authority to bind the Chamber in any matter including but not limited to any contracts, commitments, expenses, liabilities or obligations of any nature.

3. Sponsorship Obligations

Standards and duties

- 3.1 The Parties must, in carrying out their obligations under this agreement, comply with the standards, duties and obligations set out in Schedule 2.

Marketing and Branding

- 3.2 As soon as practicable after the Commencement Date, the Parties will discuss and agree to Brand Guidelines relating to promotional material (including all branding, advertising, and media releases) with respect to the Sponsorship (the Guidelines).
- 3.3 The Chamber and the Sponsor must conform to the Guidelines for all promotional material or public representation.
- 3.4 Unless otherwise agreed in writing between the parties (including any express term to the contrary in this agreement), the party producing the promotional materials in relationship to the Sponsorship must pay for the production of those materials.

Sponsor Obligations

- 3.5 The Sponsor must exercise the rights and pursue the opportunities granted under this agreement in a manner consistent with the objects, good name, goodwill, reputation, and image of the Chamber, and in compliance with all applicable laws, regulations, and industry standards.
- 3.6 Only the Sponsor may exercise the rights granted under this agreement. For the avoidance of doubt the rights under this agreement may not be exercised by a Related Body Corporate, related organisation, agent, or contractor of the Sponsor unless otherwise agreed in writing by the Chamber.
- 3.7 The Sponsor must comply with any Brand Guidelines provided by the Chamber when using the Chamber's background Intellectual Property or the Relevant Intellectual Property.
- 3.8 The Sponsor:
- (a) Grants the Chamber a non-exclusive royalty free licence to use the Sponsor background intellectual property to promote and market the Sponsorship or any sponsored event under this agreement; and
 - (b) Warrants that it owns, is licensed to use, or is solely entitled to use the Sponsor background intellectual property in Australia.

Chamber Obligations

- 3.9 The Chamber will use reasonable endeavours:
- (a) to promote the Sponsor's role as sponsor of the Chamber or role in any Sponsored Event;
 - (b) Give the Sponsor reasonable notice of any promotional activity planned by the Chamber in relation to the Sponsorship or any Sponsored Event

- (c) Ensure agreed publications (including but not limited to invitations, banners, signage, promotional products, and merchandise) acknowledge the Sponsorship of the Sponsor; and
- (d) Recognise, as agreed from time to time, the promotional requirements and interests of the Sponsor.

4. Pricing and invoicing

Pricing

- 4.1 In consideration for the provision of the Sponsorship Benefits by the Chamber, the Sponsor will pay the Chamber Sponsorship Fee set out in Part 2 of Schedule 1 (the **Fees**). The Chamber will invoice the Sponsor for all relevant Charges at the end of each month or at such other interval agreed by the parties in writing.

Out-of-Scope Work

- 4.2 Notwithstanding clause 4.1, the Sponsor will pay the Chamber an hourly rate set out at Part 4 of Schedule 1 (the **Out-of-Scope Rate**) for any services or benefits the Sponsor requests the Chamber to carry out that are not otherwise included within the scope of the Sponsorship Benefits set out at Part 3 of Schedule 1 (Out-of-Scope Work).

Hourly Rates and Out-of-Scope Rates

- 4.3 Hourly Rates and Out-of-Scope Rates shall be proportionately charged for work involving periods of less than one hour and structured in 15 minute units, with 4 units per hour – eg, the time charged for an attendance of up to 15 minutes will be 1 unit and the time charged for an attendance between 15 and 30 minutes will be 2 units.
- 4.4 The Chamber must keep and maintain accurate records of the number of hours in respect of which the Hourly Rate and/or Out-of-Scope Rate applies and provide the Sponsor with a copy of such records upon reasonable notice as may be requested by the Sponsor from time to time.
- 4.5 The Hourly Rate and Out-of-Scope Rate may only be changed by way of written notice to all parties providing not less than 40 days' notice prior to the amendment taking effect.

Reimbursement of Expenses

- 4.6 The Sponsor will pay all reasonable expenses properly and necessarily incurred by the Chamber in the course of providing the Sponsorship Benefits, provided that:
- (a) the Chamber:
 - (i) obtains the Sponsor's written consent before incurring the expenses;
 - (ii) provides the Sponsor with acceptable documentation for the expenses incurred; and
 - (iii) complies with any applicable expenses policy of the Sponsor in force from time to time, provided that a copy of the policy has been provided to the Chamber by the Sponsor prior to the relevant expense being incurred.

5. Payment

Timing of payments

- 5.1 The Sponsor must pay to the Chamber all Charges properly invoiced pursuant to clause 4 in full on or before the date that is 15 Business Days after the Sponsor's receipt of the relevant invoice.

Method of payment

- 5.2 All amounts to be paid by a party to another party under or in connection with this agreement must be paid in cash or by way of bank cheque or electronic funds transfer into the account nominated by the other party.

No set-off or deduction

- 5.3 Unless otherwise agreed in writing and subject to clause 5.4, all amounts payable under or in connection with this agreement must be paid without set-off, counterclaim, withholding, deduction or claim to a lien whatsoever, whether or not any such set-off, counterclaim, withholding, deduction or lien arises under this agreement.
- 5.4 If a party is required by law to make a deduction or withholding in respect of any sum payable under or in connection with this agreement to another party, it must, at the same time as the sum that is the subject of the deduction or withholding is payable, make a payment to the other party of such additional amount as is required to ensure that the net amount received by the other party will equal the full amount that would have been received by it had no such deduction or withholding been required to be made.

Default interest

- 5.5 If a party fails to pay any sum payable by it under this agreement to another party at the time and otherwise in the manner provided in this agreement, it must pay interest on that sum from the due date of payment until that sum is paid in full at the Default Rate, calculated daily on the basis of a 365-day year and compounded monthly. Interest will accrue from day to day and will be payable on demand. The payment of interest by a party to another party in respect of any late payment under this clause 5.5 is in addition to any other remedies that the other party may have in respect of such late payment.
- 5.6 If a liability of a party to another party under this agreement becomes merged in a judgement or order and the interest rate that applies under that judgement or order is lower than the Default Rate, that party must, as an independent obligation, pay to the other party, at the same time and in the same manner as the sum that is the subject of that judgement or order is to be paid, such additional interest on that sum as is required to ensure that the total amount of interest that the other party receives in respect of that liability is equal to the Default Rate.

6. GST

Definitions regarding GST

- 6.1 In this clause 6:
- (a) expressions that are not defined, but which have a defined meaning in the GST Law, have the same meaning as in the GST Law;

- (b) any part of a supply that is treated as a separate supply for GST purposes (including attributing GST payable to tax periods) will be treated as a separate supply for the purposes of this clause 6; and
- (c) any consideration that is specified to be inclusive of GST must not be taken into account in calculating the GST payable in relation to a supply for the purpose of this clause 6.

Consideration is exclusive of GST

- 6.2 Unless expressly stated otherwise, any sum payable, or amount used in the calculation of a sum payable, under this agreement has been determined without regard to GST and must be increased on account of any GST payable under this clause 6.

Receiving Party to pay additional amount

- 6.3 If GST is imposed on any supply made under or in accordance with this agreement, the recipient of the supply (**Receiving Party**) must pay to the supplier (**Providing Party**) an additional amount equal to the GST payable on the supply, subject to the Receiving Party receiving a valid tax invoice, or a document that the Commissioner will treat as a tax invoice, in respect of the supply at or before the time of payment. Payment of the additional amount will be made at the same time and in the same manner as payment for the supply is required to be made in accordance with this agreement.

Fines, penalties and interest

- 6.4 The amount recoverable on account of GST under this clause 6 by the Providing Party will include any fines, penalties, interest and other charges incurred as a consequence of any late payment or other default by the Receiving Party under this clause 6.

Reimbursement

- 6.5 If any party is required to pay, reimburse or indemnify another party for the whole or any part of any cost, expense, loss, liability or other amount that the other party has incurred or will incur in connection with this agreement, the amount must be reduced by the amount for which the other party can claim an Input Tax Credit, partial Input Tax Credit or other similar offset.

Adjustment events

- 6.6 If, at any time, an adjustment event arises in respect of any supply made by a party under this agreement, a corresponding adjustment must be made between the parties in respect of any amount paid to the Providing Party by the Receiving Party pursuant to clause 6.3 and payments to give effect to the adjustment must be made and the Providing Party must issue an adjustment note.

7. Confidentiality

- 7.1 Subject to clauses 7.3 and 7.4, a Disclosee must:
- (a) keep all Confidential Information confidential;
 - (b) not use or exploit any Confidential Information in any way except in the proper performance of the Sponsorship Services or Sponsorship Benefits in accordance with this agreement;

- (c) not disclose or make available any Confidential Information in whole or in part to any third party;
- (d) not copy, reduce to writing or otherwise record any Confidential Information except in the proper performance of the Sponsorship Services or Sponsorship Benefits in accordance with this agreement (and any such copies, reductions to writing and records will be the property of the Discloser); and
- (e) ensure that any and all Authorised Third Party Disclosees:
 - (i) comply with the obligations in this agreement as if each of them was a party to this agreement in the place of the Disclosee; and
 - (ii) do not do, or omit to do, anything which, if done or omitted to be done by the Disclosee, would constitute a breach of this agreement by the Disclosee.

7.2 The Disclosee shall be responsible for, and liable to the Discloser in respect of, the actions or omissions of any and all of its Authorised Third Party Disclosees in relation to the Confidential Information as if they were the actions or omissions of the Disclosee.

Exceptions

7.3 The Disclosee may disclose Confidential Information to those of its Representatives who have an actual need to know the Confidential Information but only in the proper provision of the Sponsorship Services or Sponsorship Benefits and performance of its duties under this agreement and provided that it informs such Representatives of the confidential nature of the Confidential Information before such disclosure.

7.4 Subject to clause 7.5, the obligations in clause 7.1 will not apply to any Confidential Information which (as shown by appropriate documentation and other evidence in the relevant Disclosee's possession):

- (a) was already known to the Disclosee on a non-confidential basis prior to the time of its first disclosure by the Discloser to the Disclosee, unless it came to be so known as a direct or indirect result of having been:
 - (i) unlawfully obtained by the Disclosee, whether from a third party or otherwise; or
 - (ii) received by the Disclosee from a third party that owed a confidentiality obligation to the Discloser in respect of that information at the time of such receipt, in circumstances in which the Disclosee knew, or ought reasonably to have known after due enquiry, that the third party owed that confidentiality obligation to the Discloser;
- (b) is or becomes generally available to the public, unless it became so generally available as a direct or indirect result of having been disclosed by any person:
 - (i) in circumstances that constitute a breach of this agreement by the Disclosee (for the avoidance of doubt, including any breach by the Disclosee of its obligations under clause 7.1(e) to ensure that its Authorised Third Party Disclosees comply with the obligations in this agreement as if they were parties to this agreement in the place of the Disclosee); or
 - (ii) that owed a confidentiality obligation to the Discloser in respect of that information at the time of such disclosure, in circumstances in which the

Disclosee knew, or ought reasonably to have known after due enquiry, that the person owed that confidentiality obligation to the Discloser;

- (c) is, after the time of its first disclosure by the Discloser to the Disclosee, lawfully received by the Disclosee from a third party and the Disclosee reasonably believed, after due enquiry, that the information was not so received as a direct or indirect result of a breach by any person of a confidentiality obligation owed to the Discloser;
- (d) is required by law or court order to be disclosed, provided that the Disclosee must:
 - (i) promptly notify the Discloser in writing in advance of any such disclosure, if reasonably practicable; and
 - (ii) reasonably assist the Discloser in obtaining confidential treatment for, or avoiding or minimising such disclosure of, the relevant Confidential Information to the extent reasonably requested by the Discloser;
- (e) is independently developed by the Disclosee without any direct or indirect use of, reference to, or reliance on any Confidential Information; or
- (f) is authorised for release or use by the written pre-approval of the Discloser but only to the extent of such written pre-approval.

7.5 The exceptions in clause 7.4 shall not apply to any specific Confidential Information merely because it is included in more generally non-confidential information, nor to any specific combination of Confidential Information merely because individual elements, but not the combination, are included in non-confidential information.

8. Non-disparagement

8.1 Subject to clause 8.2, on and from the date of this agreement, each party must not:

- (a) make, express, transmit, speak, write, verbalise or otherwise communicate in any way (directly or indirectly, in any capacity or manner) any remark, comment, message, information, declaration, communication or other statement of any kind (whether verbal, in writing, electronically transferred or otherwise) that might reasonably be construed to be critical of, or derogatory or negative towards, any other party or any Representative of any other party; or
- (b) cause, further, assist, solicit, encourage or knowingly permit any other person to do so, or support or participate in any other person doing so,

and must take all reasonable steps to prevent its Representatives from doing so.

8.2 Clause 8.1 shall not prohibit any party from making any statement or disclosure as required by law or court order, provided that such party must:

- (a) promptly notify the other party in writing in advance of any such statement or disclosure, if reasonably practicable; and
- (b) reasonably assist the other party in obtaining confidential treatment for, or avoiding or minimising the dissemination of, such statement or disclosure to the extent reasonably requested by any party.

9. Intellectual Property

Background Intellectual Property

- 9.1 The Chamber grants to the Sponsor a non-exclusive, non-transferable, royalty free licence for the Term to use the Chamber's Background Intellectual Property as agreed under clause 3.2 for the sole purpose of the performance of this agreement.
- 9.2 The Sponsor grants the Chamber a non-exclusive, non-transferable, royalty free licence for the Term to use the Sponsor's Background Intellectual Property as agreed under clause 3.2 for the sole purpose of the performance of this agreement.
- 9.3 Each party acknowledges that the other party's background Intellectual Property is the property of the owning party, and that it has no right, title, or interest in or to that background Intellectual Property of the other party except as expressly set out in this agreement and agreed under clause 3.2.
- 9.4 Each party must obtain from all persons who have Moral Rights in connection with any promotional materials which it contributes under this Agreement all necessary written consents such that the use of the materials in the manner contemplated by this Agreement or in any other way by a party, its licensees, successors in title and anyone authorised by any of them to do acts comprised in the copyright in the materials will not infringe any person's Moral Rights.

Assignment

- 9.5 The parties agree that all Relevant IP created or arising out of the Sponsorship will be owned by, and vest in, the Chamber.
- 9.6 The Sponsor hereby assigns, transfers and conveys to the Chamber all current and future right, title and interest in all Relevant IP and acknowledges that all future Relevant IP will vest in the Chamber on and from creation.

Permitted use

- 9.7 The Sponsor may not use or reproduce any Relevant IP or any other Intellectual Property Rights of the Chamber or any of the Chamber's customers, clients or suppliers without the Chamber's prior written approval, except in the proper provision of the Sponsorship Services and performance of its duties under this agreement.

Disclosure of Relevant IP

- 9.8 The Sponsor must immediately disclose in writing to the Chamber any Intellectual Property Rights that the Sponsor makes, develops or conceives that might reasonably be regarded as Relevant IP.

Moral rights

- 9.9 The Sponsor consents to the doing of any acts, or making of any omissions, by the Chamber or any of the Chamber's employees, officers, contractors, agents, licensees or assigns that infringes its Moral Rights in any Works that constitute Relevant IP, including:
- (a) not naming the Sponsor as the author of a Work; or
 - (b) amending or modifying (whether by changing, adding to or deleting/removing) any part of a Work but only if the Sponsor is not named as the author of the amended or modified Work,

whether those acts or omissions occur before, on or after the date of this agreement. The Sponsor acknowledges that its consent pursuant to this clause 9.9 is genuinely given without duress of any kind and that it has been given the opportunity to seek legal advice on the effect of giving that consent.

Non-infringement

9.10 In providing the Sponsorship Services, the Sponsor must not infringe any rights in any Intellectual Property of any third parties and must not, without proper authorisation, make any use of, or bring into the Chamber's computer systems or onto the Chamber's premises, any Intellectual Property of any third party.

10. Liability and remedies

Indemnity

10.1 The Sponsor irrevocably indemnifies and covenants to hold the Chamber harmless from and against all Losses suffered by the Chamber (including third party claims on the Chamber) which arise in connection with any breach of this agreement by the Sponsor and/or any negligent or other tortious conduct of the Sponsor, except to the extent that those Losses were caused by or contributed to by the Chamber.

10.2 For the avoidance of doubt, the indemnity under this agreement does not include and will not be extended by:

- (a) any consequential or indirect costs.

Indemnities continuing

10.3 Each indemnity contained in this agreement is an additional, separate, independent and continuing obligation that survives the termination of this agreement despite any settlement of account or other occurrence and remains in full force and effect until all money owing, contingently or otherwise, under the relevant indemnity has been paid in full.

Limitation of liability

10.4 **(Disclaimer of warranties)** To the maximum extent permitted by law and except as otherwise set out in this agreement, the Chamber and its Representatives expressly disclaim all conditions, representations and warranties (whether express or implied, statutory or otherwise) in relation to the Sponsorship Benefits, including any implied warranty of merchantability and fitness for a particular purpose.

10.5 **(Limitation of liability)** Where the conditions, representations and warranties referred to in clause 10.4 cannot be disclaimed or excluded by law, then the aggregate liability of the Chamber and its Representatives in respect of any Claim for Losses that the Sponsor and/or any of its Representatives may bring against the Chamber in respect of the Sponsorship Benefits is limited, at the Chamber's election, to one or a combination of the following remedies:

- (a) re-supply of the Sponsorship Benefits;
- (b) payment of the costs of re-supply of the Sponsorship Benefits by a third party; or
- (c) the refund of any amounts paid (either in full or part) by the Sponsor to the Chamber under this agreement in respect of the Sponsorship Benefits.

Force majeure

- 10.6 To the maximum extent permitted by law, the Chamber and its Representatives expressly exclude liability for any damage and/or delay in the performance of any obligation of the Chamber under this agreement where such damage or delay is caused by circumstances beyond the reasonable control of the Chamber. The Sponsor acknowledges and agrees that the Chamber holds the benefit of this clause 10.6 for itself and as agent and trustee for and on behalf of each of its Representatives.

Remedies for breach

- 10.7 Each party acknowledges and agrees that, in the event of any breach by the other party of the provisions of clause 7 (Confidentiality), clause 8 (Non-disparagement), clause 9 (Intellectual Property) or clause 12 (Non-solicitation), damages may not be an adequate remedy and the first-mentioned party may, in addition to any other remedies, obtain an injunction restraining any further violation by the other party and other equitable relief, together with recovery of costs.

11. Termination

Termination for breach

- 11.1 Each party may terminate this agreement immediately by notice to the other party if an Event of Default occurs in respect of the other party.
- 11.2 If a party commits any material or persistent breach of this agreement (the **Defaulting Party**), the other party may (but is not obliged to) provide the Defaulting Party with a notice of breach in writing. If the Defaulting Party fails to remedy the breach within 20 Business Days, or such other period as agreed, after the date of its receipt of such notice, the other party may terminate this agreement with immediate effect upon providing the Defaulting Party with a further notice of termination in writing.

Termination with notice

- 11.3 The Sponsor may, without limitation to its rights under clause 11.2, terminate this agreement at any time by giving at least 28 Business Days' notice to the Chamber.
- 11.4 The Chamber may, without limitation to its rights under clause 11.2, terminate this agreement at any time by giving at least 28 Business Days' notice to the Sponsor. The Sponsor may waive all or part of such notice period.

Effect of termination

- 11.5 In the event of any termination of this agreement, the Sponsor will not have any liability to make any further payments to the Chamber except that, if such termination takes effect part of the way through a particular month of the Sponsorship Services or Sponsorship Benefits, the Sponsor will remain liable to pay the pro rata proportion of the Charges for that month accrued prior to the date on which such termination takes effect, subject always to receipt of an appropriate invoice from the Chamber under clause 4 and clause 5 will apply in respect thereof.

During notice period

11.6 In the event that the Sponsorship set out in this agreement is terminated upon notice by either party the Chamber, at its absolute discretion, require the Sponsor to refrain from providing any sponsorship Services or Sponsorship Benefits during the relevant notice period.

Partially completed deliverables

11.7 Upon the cessation of this agreement, subject to payment of all outstanding Charges by the Sponsor in accordance with the terms of this agreement, the parties will deliver to each other party any and all partially completed deliverables that are included within the scope of the Sponsorship Services or Sponsorship Benefits (if any).

Legislation

11.8 If any provision of this agreement is otherwise unenforceable by virtue of the operation of the *Treasury Laws Amendment (2017 Enterprise Incentives No. 2) Act 2017* (Cth), upon the occurrence of an Insolvency Event in respect of a particular party, notwithstanding any other provision of this agreement, to the maximum extent permitted by law:

- (a) time is of the essence in respect of all obligations of that party under this agreement (whether falling due for performance before, upon or after the occurrence of that Insolvency Event); and
- (b) any breach of this agreement by that party (whether occurring before, upon or after the occurrence of that Insolvency Event), however minor, will (alone or, severally, in combination with the occurrence of that Insolvency Event) be deemed to be a material breach of this agreement,

and, if any such material breach has occurred or occurs, the parties acknowledge and agree that such provision will instead be enforceable by virtue of the occurrence of that material breach.

Accrued rights

11.9 Termination of this agreement will not affect any rights or liabilities that the parties have accrued under it prior to such termination.

Survival

11.10 The obligations of the parties under clause 7 (Confidentiality), clause 8 (Non-disparagement), clause 9 (Intellectual Property), clause 10 (Liability and remedies), clause 12 (Non-solicitation) and this clause 11 will survive the termination of this agreement.

12. Non-solicitation

12.1 During the Chamber's engagement with the Sponsor under this agreement and for each Non-Solicitation Period thereafter, the Sponsor must not, without the Chamber's prior written consent (which the Chamber may withhold or delay in its absolute discretion), directly or indirectly:

- (a) **(non-solicitation suppliers)** interfere with or disrupt, or attempt to interfere with or disrupt, any relationship, whether contractual or otherwise, between the Chamber and any of the Chamber's suppliers, distributors or joint venture partners, or identified prospective suppliers, distributors or joint venture partners; or

- (b) **(non-solicitation of staff)** induce, encourage or solicit any of the Chamber's officers, employees, contractors or agents to cease their employment, engagement or agency with the Chamber.

12.2 The Sponsor acknowledges and agrees that:

- (a) the restraints in clause 12.1 constitute several separate covenants and restraints consisting of each of clauses 12.1(a) and (b) combined with each separate Non-Solicitation Period severally;
- (b) each of those separate covenants and restraints is a fair and reasonable restraint of trade that goes no further than is reasonably necessary to protect the Chamber's goodwill and business;
- (c) the Sponsor has received substantial and valuable consideration for each of those separate covenants and restraints, including its receipt of the Sponsorship Benefits; and
- (d) breach by the Sponsor of any of those separate covenants and restraints would be unfair and calculated to damage the Chamber's goodwill and business and would lead to substantial loss to the Chamber.

12.3 The parties intend the covenants and restraints under clauses 12.1 to operate to the maximum extent. If any of those separate covenants and restraints would, in the absence of this clause 12.3, be void as unreasonable for the protection of the interests of the Chamber but would not be so void if any part of the wording in this clause 12 or **Error! Reference source not found.** was deleted or amended, the separate covenants and restraints will apply with the minimum modifications necessary to make them effective.

13. Notices

13.1 A Notice given to a party under this agreement must be:

- (a) in writing in English;
- (b) sent to the address, fax number or email address of the relevant party as set out in the list of parties that starts on page 3 of this agreement (or such other address, fax number or email address as the relevant party may notify to the other party from time to time); and
- (c) delivered/sent either:
 - (i) personally;
 - (ii) by commercial courier;
 - (iii) by pre-paid post;
 - (iv) if the notice is to be served by post outside the country from which it is sent, by airmail;
 - (v) by fax; or
 - (vi) by e-mail.

- 13.2 A notice is deemed to have been received:
- (a) if delivered personally, at the time of delivery;
 - (b) if delivered by commercial courier, at the time of signature of the courier's receipt;
 - (c) if sent by pre-paid post, 48 hours from the date of posting;
 - (d) if sent by airmail, five days after the date of posting;
 - (e) if sent by fax, at the time shown in the transmission report generated by the machine from which the fax was sent; or
 - (f) if sent by e-mail, 4 hours after the sent time (as recorded on the sender's e-mail server), unless the sender receives a notice from the party's email server or internet service provider that the message has not been delivered to the party,

except that, if such deemed receipt is not within business hours (meaning 9:00 am to 5:30 pm on a Business Day), the notice will be deemed to have been received at the next commencement of business hours in the place of deemed receipt.

- 13.3 To prove service, it is sufficient to prove that:
- (a) in the case of post – that the envelope containing the notice was properly addressed and posted;
 - (b) in the case of fax – the notice was transmitted to the fax number of the party; and
 - (c) in the case of email – the email was transmitted to the party's email server or internet service provider.

14. General

Further assurances

- 14.1 Each party must (at its own expense, unless otherwise provided in this agreement) promptly execute and deliver all such documents, and do all such things, as any other party may from time to time reasonably require for the purpose of giving full effect to the provisions of this agreement.

Third parties

- 14.2 This agreement is made for the benefit of the parties to it and their successors and permitted assigns and is not intended to benefit, or be enforceable by, anyone else.

Costs

- 14.3 All costs and expenses in connection with the negotiation, preparation and execution of this agreement, and any other agreements or documents entered into or signed pursuant to this agreement, will be borne by the party that incurred the costs.

Entire agreement

- 14.4 This agreement contains the entire understanding between the parties in relation to its subject matter and supersedes any previous arrangement, understanding or agreement relating to its subject matter. There are no express or implied conditions, warranties, promises, representations, obligations or other terms, written or oral, in relation to this agreement other than those expressly stated in it or necessarily implied by statute.

Severability

- 14.5 If a provision or the application of a provision of this agreement is invalid, prohibited, void, illegal or unenforceable in a jurisdiction:
- (a) it is to be read down or severed or be ineffective in that jurisdiction to the extent of the prohibition, invalidity voidness, illegality or unenforceability; and
 - (b) this will not affect the validity or enforceability of that provision in another jurisdiction, or the remaining provisions.

No waiver

- 14.6 Any waiver of a right under this agreement must be in writing and signed by the party granting the waiver.
- 14.7 No failure, delay, relaxation, forbearance or indulgence by a party in exercising any power or right conferred upon it under this agreement will operate as a waiver of that power or right in any subsequent matter or prejudice or restrict the rights of the party. No single or partial exercise of any power or right precludes any other or future exercise of it, or the exercise of any other power or right under this agreement.

Amendment

- 14.8 Subject to any contrary term of this agreement, this agreement must not be varied except by written instrument executed by all of the parties.

Assignment

- 14.9 A party must not assign or otherwise transfer, create any charge, trust or other interest in, or otherwise deal in any other way with, any of its rights under this agreement without the prior written consent of the other party.

Counterparts

- 14.10 This agreement may be executed in any number of counterparts, each of which is an original and which together will have the same effect as if each party had signed the same document.

Electronic exchange

- 14.11 Delivery of an executed counterpart of this agreement by facsimile, or by email in PDF or other image format, will be equally effective as delivery of an original signed hard copy of that counterpart.
- 14.12 If a party delivers an executed counterpart of this agreement under clause 14.11:
- (a) it must also deliver an original signed hard copy of that counterpart, but failure to do so will not affect the validity, enforceability or binding effect of this agreement; and
 - (b) in any legal proceedings relating to this agreement, each party waives the right to raise any defence based upon any such failure.

Governing law and jurisdiction

- 14.13 This agreement and any disputes or claims arising out of or in connection with its subject matter or formation (including non-contractual disputes or claims) are governed by, and shall be construed in accordance with, the laws of Western Australia, Australia.

14.14 The parties irrevocably agree that the courts of Western Australia, Australia have exclusive jurisdiction to settle any dispute or claim that arises out of, or in connection with, this agreement or its subject matter or formation (including non-contractual disputes or claims).

* * * *

Schedule 1 | Particulars of Sponsorship

1 Initial Term

Ten (10) Year Long Term Agreement as per Council Resolution 15 June 2020.

This agreement will be reviewed annually to ensure the objectives and terms remain relevant and effective.

2 Sponsorship Fee/Services

Provides the Peel CCI an amount of \$11,000 (Including GST) per annum for platinum membership of the Peel CCI through to June 2030 with the remaining years to incorporate CPI and yearly reviews:

Annual CPI Adjustment

The Sponsorship Fee will increase annually in line with the Perth Consumer Price Index (CPI) as published by the Australian Bureau of Statistics (ABS). If discontinued, a comparable index will be used.

Annual Review

The fee will be reviewed annually. Any increase beyond CPI must be mutually agreed upon; otherwise, the CPI-adjusted amount will apply.

3 In-Scope Sponsorship Benefits

A Platinum membership with the Peel CCI will enable the Peel CCI to provide support to the Shire of Serpentine Jarrahdale and provide local businesses with advisory and business development services.

Platinum membership provides the most comprehensive opportunities to access these services and also gives the Shire ex-officio status on the Peel CCI Board, allowing the Shire to further advocate for economic and business development in Serpentine Jarrahdale.

The Peel CCI:

- Formally relinquishes any ownership of intellectual property of two Forrest Highway Billboards to the Shire of Serpentine Jarrahdale.
- Agrees to host and provide resources for an annual business event, aimed at fostering networking opportunities and business initiatives, in collaboration with the Shire of Serpentine Jarrahdale
- Agrees to host and provide resources for the opening of the annual Serpentine Jarrahdale Career and Enterprise Expo, aimed at facilitating networking opportunities and supporting career development initiatives in collaboration with the Shire of Serpentine Jarrahdale and the Byford Secondary College and or equivalent provider.

- Agrees to host and provide resources for two additional business / community support events annually, aimed at supporting business mentoring and development initiatives.
- Agrees to collaborate and provide mutual support in advocacy initiatives aimed at promoting sustainable economic development and support of grant funding applications.
- Agrees to maintain open communication and coordinate through meetings as required to ensure the effective implementation of this agreement.
- Agrees to collaborate on communication and marketing efforts ensuring consistent messaging and joint promotion of initiatives outlined in this agreement.
- Complimentary tickets to Peel CCI events with attendance nominated by the Shire of Serpentine Jarrahdale.

4 Out-of-Scope Work

Nil.

Schedule 2 | Standard duties and obligations

The Parties must, in carrying out their respective obligations under this agreement:

1. **(Honesty and diligence)** be honest and diligent and provide the Services to it to the best of its knowledge and abilities;
2. **(Standards)** at all times maintain reasonable ethical, professional and technical standards;
3. **(Discrimination and harassment)** not unlawfully discriminate against, sexually harass or otherwise physically or verbally abuse any person; and
4. **(Privacy)** in relation to any Personal Information of any customer, client, supplier or Representative of the Sponsor, any user or prospective user or any other person, comply with:
 - (a) the Privacy Act and any guidelines, information sheets and other relevant material issued from time to time by the Commonwealth Privacy Commissioner; and
 - (b) any approved privacy policy and procedures adopted from time to time by the Sponsor.

Execution

EXECUTED as an agreement and **DATED** _____ 2024.

Executed for and on behalf of **Peel Chamber of Commerce & Industry Incorporated (ABN 40 321 346 342)** in accordance with its constitution:

Full Name	Capacity (e.g. director)	Signature and Date

Executed for and on behalf of **[Shire of Serpentine Jarrahdale:] (ABN 98 924 720 841)** in accordance with section 127 of the Corporations Act by:

Full Name	Capacity (e.g. director)	Signature and Date