

ADR-Partner Agreement



1.1 Out of Court – ADR-Partner Agreement

PARTIES

This ADR-Partner Agreement (**Agreement**) is entered into between Out Of Court Pty Ltd (ABN 66 640 975 828) (**OutOfCourt**) and the entity that submitted an ADR-Partner Application Form to become a party to this Agreement (**Partner**). This Agreement comes into effect on the date that OutOfCourt communicates acceptance of the Partner’s application to receive Referrals, in writing.

Together called “the Parties” and each “a Party”.

BACKGROUND

A. OutOfCourt promotes, markets and advertises ADR Services;

B. The Partner provides ADR Services;

C. In consideration of OutOfCourt providing the Platform Services to the Partner the Partner agrees to pay OutOfCourt a Platform Fee and any Advertising Fee in accordance with this Agreement. OutOfCourt, in its full discretion, also agrees to refer Referrals to the Partner to increase business and the use of the Platform Services.

OPERATIVE PARTS

2 Definitions and Interpretation

2.1 Definitions

In this Agreement:

Additional Services means the additional services provided by the Partner under clause 7.4;

ADR Agreement means the agreement between the Partner and Customers for the provision of the Services;

ADR Provider means an entity that provides ADR Services;

ADR Fee means the fees payable to the Partner (excluding disbursements) for the Services under an ADR Agreement;

ADR-Partner Application Form means the form as amended from time to time which is to be completed by the Partner;

ADR Services means alternative dispute resolution services;

Advertising Fee means the fee payable by the Partner to OutOfCourt for Advertising Services;



Advertising Services means the services offered to the Partner and supplied by OutOfCourt to promote the Partner;

Business Day means a day which is not a Saturday, Sunday or bank or public holiday in Queensland Australia;

Case means a case submitted to OutOfCourt by a Customer or a potential Customer in respect of a particular Dispute;

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

Commencement Date means the date that OutOfCourt communicates acceptance of the Partner's ADR-Partner Application Form in writing including by online acceptance and this Agreement takes effect;

Confidential Information means the terms of this Agreement and all know-how, financial information, technical information and other commercially valuable or sensitive information whether in visual, oral, documentary, electronic, machine-readable, tangible, intangible or any other form, relating to a Party 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, which is marked as confidential or which a Party regards as confidential, proprietary or of a commercially sensitive nature but does not include information which:

- (a) is lawfully in a Party's possession prior to its disclosure to a Party by the other;
- (b) enters the public domain other than as a result of any unauthorised disclosure;
- (c) is or becomes lawfully available to a Party from a third party who has the lawful power to disclose such information to that Party on a non-confidential basis; or
- (d) is independently developed by a Party;

Conflict of Interest means circumstances in which, due to a direct or indirect relationship (commercial or otherwise and including any potential relationship or opportunity or



inducement and any such situation which comes into existence subsequent to the commencement of this Agreement) involving one party or its personnel and another person or entity, that party is unable to discharge its obligations under this Agreement in an objective and independent manner to the best of its ability.

Consequential Loss means any loss of actual or anticipated profits, loss of revenue, savings, opportunity, goodwill, customer, reputation, publicity, data or use;

Current Rate means the rate charged by the Partner for its Services as notified to OutOfCourt initially in the ADR-Partner Application Form and as amended under clause 8.3 below.

Customer means an entity submitting a Case to OutOfCourt and also any party or potential party to a Dispute, whether or not that person is identified or identifiable at the Referral Date and whether or not that entity is referred to the Partner by OutOfCourt;

Dispute means the dispute or disputes in association with a Case, whether or not the dispute is identified or identifiable at the Referral Date;

Estimates mean the estimates for the Services provided to the Customer by OutOfCourt for the Services;

Force Majeure means any event or circumstances beyond the reasonable control of a Party including any fire, lightning strike, flood, earthquake, natural disaster, sabotage, nuclear contamination, terrorism, war or civil riot that occurs to the extent that it:

(a) would be unreasonable to expect the affected Party to have planned for, avoided or minimised the impact of such circumstance by appropriate risk management, disaster recovery or business resumption plan; and

(b) results in a Party being unable to perform an obligation under this Agreement on time;

Insolvency Event means any of the following events or any analogous event in which a Party:

(a) disposes of the whole or any part of its assets, operations or business other than in the ordinary course of business;

(b) ceases, or threatens to cease, carrying on business;

(c) is unable to pay its debts as they fall due;



(d) makes or commences negotiations with a view to making a general re-scheduling of its indebtedness, a general assignment, scheme of arrangement or composition with its creditors;

(e) takes any corporate action or any steps are taken or legal proceedings are started for:

- I. its winding-up, dissolution, liquidation, or re-organisation, other than to reconstruct or amalgamate while solvent on terms approved by the other party (which approval will not be unreasonably withheld); or
- II. the appointment of a controller, receiver, administrator, official manager, trustee or similar officer of it or of any of its revenues and assets; or
- III. seeks protection or is granted protection from its creditors, under any applicable legislation;

Intellectual Property Rights means any and all intellectual and industrial property rights throughout the world, whether subsisting now or in the future and includes all copyright and analogous rights, all rights in relation to inventions (including patent rights), registered and unregistered trademarks, designs (whether or not registered or registrable), circuit layout rights, trade names, trade secrets and know-how;

Loss means any loss, damage, liability, charge, expense, outgoing or cost (including all legal and other professional costs on a full indemnity basis) of any nature or kind;

OutOfCourt Corporate Group means any Related Entity (as that term is defined by the *Corporations Act*) of Out Of Court Pty Ltd;

Partner Contributions mean content, information, documents or materials, whether displayed publicly or not, posted, submitted, uploaded, published, displayed or transmitted to any Platform by the Partner or its representative and includes its Profile;

Personnel means in relation to a Party, any employee, contractor, officer and agent of that Party;

Platform means any website owned or operated by OutOfCourt which advertises, promotes or markets ADR Services and includes any website providing features, functionality or tools to assist in the provision of ADR Services (or the administration thereof);

Platform Fee means the fee payable by the Partner to OutOfCourt for the Platform Services calculated as a percentage of the ADR Fee;



Platform Services means any use (no matter how minimal or extensive) of any Platform, as amended from time to time;

Policies mean the policies put down from time to time by OutOfCourt in respect of the Services;

Privacy Laws means the *Privacy Act 1988* (Cth), the *Spam Act 2003* (Cth) and any registered APP Code that binds a Party and any other laws, industry codes and policies relating to the handling of personal information;

Profile means the information about a Partner, publicly displayed on a Platform;

Qualified Referral means a Referral accepted by the Partner;

Referral means a bona fide potential customer for the Services for which OutOfCourt solicits and or refers to the Partner for a Case;

Referral Date means the date of transmission of a Referral by OutOfCourt to the Partner in accordance with this Agreement;

Services means the ADR Services supplied by the Partner in respect of a Case;

Term means the term of this Agreement and starts on the Commencement Date and continues until terminated as provided in the Agreement; and

2.2 Interpretation

In this Agreement, unless expressed to the contrary:

- (a) words in the singular include the plural and vice versa;
- (b) headings are for convenience and do not affect the interpretation of this Agreement;
- (c) any gender includes the other gender;
- (d) a reference to a clause, paragraph, schedule or annexure is a reference to a clause, paragraph, schedule or annexure, as the case may be, of this Agreement;
- (e) if any act which must be done under this Agreement is to be done on a day that is not a Business Day then the act must be done on or by the next Business Day;
- (f) a reference to any legislation includes subordinate legislation and all amendments, consolidations or replacements from time to time;
- (g) if a word or phrase is defined in this Agreement then any other grammatical form of the word or phrase shall have a corresponding meaning;
- (h) a reference to a natural person includes a body corporate, partnership, joint venture, association, government or statutory body or authority or other legal entity;
- (i) "includes" and similar words mean includes without limitation;



(j) no clause of this Agreement shall be interpreted to the disadvantage of a Party merely because that Party drafted the clause or would otherwise benefit from it;

(k) a reference to a Party includes the Party's legal personal representatives, successors, assigns and persons substituted by novation;

(l) a reference to this or any other agreement includes the agreement, all schedules and annexures as novated, amended or replaced and despite any change in the identity of the parties;

(m) a reference to a covenant, obligation or agreement of two or more persons binds or benefits them jointly and severally;

(n) a reference to time is to local time in Brisbane, Queensland; and

(o) a reference to "\$" or "dollars" refers to the currency of Australia from time to time.

3 Offer and Acceptance of this Agreement

3.1 Submission of the ADR-Partner Application Form by the Partner communicates that Party's acceptance of the terms of this Agreement and constitutes an offer to become a Partner and receive the Platform Services for the purposes of this Agreement.

3.2 If, following submission of the ADR-Partner Application Form but prior to written acceptance from OutOfCourt, a Partner wishes to withdraw its application it must do so in writing.

3.3 Nothing in this Agreement is binding between the Parties until acceptance is communicated by OutOfCourt to the Partner in writing including by online acceptance.

3.4 OutOfCourt reserves the right to accept or reject the Partner's offer at its sole discretion and is under no obligation to provide any reasons, explanation or other information to the Partner as to why its offer was accepted or rejected.

4 Provision of Services by OutOfCourt

4.1 Platform Services: In consideration of payment of the Platform Fees, OutOfCourt agrees to provide access to the Platform and provide the Platform Services under this Agreement.

4.2 Referral Services

(a) During the Term, OutOfCourt may, in its sole discretion, refer, to the Partner Referrals under the terms of this Agreement. The Partner agrees and acknowledges that the provision of a Referral is not guaranteed and not a guarantee of work, business or income from that referral.



- (b) **Acceptance or Rejection of Referral:** The Partner must accept or reject a Referral within the timeframe set down in the Policies. If it does not accept the Referral within the time frame stated in the Policies, the Referral will be deemed to be rejected.
- (c) **No Obligation:** The Partner may reject any Referral at its sole discretion or any reason or no reason.
- (d) **No Exclusivity:** This Agreement is not a commitment by either Party to work exclusively with the other Party regarding referrals of potential new business or any other business activities. To avoid doubt, subject otherwise to its terms, this Agreement does not restrain the Partner, during the currency of the Agreement, from providing its services to persons other than Customers obtained or referred to the Partner through OutOfCourt.

4.3 Media: The Partner permits OutOfCourt to publicly announce and publish (in any form) nature of the working relationship between the Parties for the purposes of positive public relations and new business generation for both Parties.

5 Provision of Services by the Partner

5.1 If the Referral is accepted by the Partner, subject to the terms of this Agreement:

- (a) the Partner must provide the Services to the Customer under a written ADR Agreement;
- (b) the Partner must always personally attend to the performance of the Services except as provided in this Agreement and must not delegate the performance of the Services to any other person without the prior written permission of OutOfCourt which may be rejected by OutOfCourt for any reason or no reason.

5.2 The Partner warrants:

- (a) it has, and will at all times maintain, the requisite skills, training, registrations, qualifications, insurances and accreditations to provide the Services;
- (b) it will provide the Services in a professional manner and in accordance with best practice within the industry;



- (c) it will act professionally and courteously in all dealings with OutOfCourt and Customers; and
- (d) it will comply with all relevant laws and industry standards that relate to or are applicable to the Services;
- (e) it will carry out the Services in a timely and competent manner in accordance with the Partner's obligations under this Agreement and the Policies;
- (f) it will suffer its own expenses in the provision of the Services;
- (g) it will follow all Policies set down by OutOfCourt and as amended from time, including (without limitation) the timeframes set down therein;
- (h) it will not act in any way that may adversely impact the reputation, brands or goodwill associated with OutOfCourt, any entity in the OutOfCourt Corporate Group or ADR Services.
- (i) If it becomes aware of any actual or potential conflict of interest between this Agreement and any other work it has been offered or is undertaking, it must immediately inform OutOfCourt in writing and take reasonable steps to resolve the conflict to its satisfaction, including ceasing any Referral work where appropriate.

5.3 The Parties agree that it may be necessary to appoint third parties as additional ADR Providers for a Case, for example and without limitation, the appointment of additional arbitrators or experts on an arbitration panel.

5.4 The appointment of those third-party ADR Providers must only be made with the prior written permission of OutOfCourt which may be withheld for any reason or none.

5.5 OutOfCourt will, amongst other things only grant permission to appoint a third party in the event that its rights are maintained including rights to obtain Platform Fees from those third parties.

5.6 The Partner must keep OutOfCourt fully informed in respect of each Case including providing it with a copy of the ADR Agreement and advising it of the steps taken in the case, the status of the case and future deadlines in the case.

6 Platform Standards of Use

6.1 The content standards in this clause 6 apply to the use of the Platform by the Partner and all Partner Contributions.



- 6.2** The Partner accepts and acknowledges that:
- (a) the Platform is a tool which is to be used to assist the Partner in a case;
 - (b) the Platform is evolving to include additional features but OutOfCourt is not required to add or keep any features of the Platform;
 - (c) the features of the Platform are to be used to the extent possible in respect of a case including case management, management of documentation, management of deadlines and reminders and correspondence with the customer;
 - (d) its appearance and placement on the Platform is at the discretion of OutOfCourt and may change from time to time without notice;
 - (e) Partner Contributions must in their entirety comply with all applicable federal, state, local and international laws and regulations;
 - (f) an Advertising Fee is payable to OutOfCourt by the Partner in respect of any advertising requested by the Partner under sub-clause 9.2; and
 - (g) an additional fee may be payable to OutOfCourt in respect of requests by a Partner for OutOfCourt to do an act that the Partner is otherwise able to do on the Platform. Any such fees will be subject to a separate agreement.
- 6.3** The Partner warrants:
- (a) the information it has provided in the ADR-Partner Application Form and provides in the Partner Contributions is true, correct, complete and accurate in every way and is not misleading or deceptive;
 - (b) it will only use the Platform, as it is intended to be used and only in accordance with the Policies set down by OutOfCourt as amended from time to time; and
 - (c) it will maintain the accuracy and completeness of its Partner Contributions.
- 6.4** The Partner warrants that the Partner Contributions will not:
- (a) contain any material which is defamatory, obscene, abhorrent, indecent, abusive, offensive, harassing, violent, hateful, inflammatory or otherwise objectionable;



- (b) contain or promote sexual or pornographic material, violence, or discrimination based on race, sex, religion, nationality, disability, sexual orientation or age;
- (c) infringe any patent, trade mark, trade secret, copyright or other intellectual property or other rights of any other person;
- (d) violate the legal rights (including the rights of publicity and privacy) of others or contain any material that could give rise to any civil or criminal liability under applicable laws or regulations or that otherwise may be in conflict with this Agreement and the OutOfCourt privacy policy;
- (e) be likely to deceive any person;
- (f) promote any illegal activity, or advocate, promote or assist any unlawful act;
- (g) cause annoyance, inconvenience or needless anxiety or be likely to upset, embarrass, alarm or annoy any other person;
- (h) impersonate any person, or misrepresent an identity or affiliation with any person or organisation, including with OutOfCourt;
- (i) involve commercial activities or sales, such as contests, sweepstakes and other sales promotions, barter or advertising;
- (j) give the impression that they emanate from or are endorsed by OutOfCourt or any other person or entity, if this is not the case;

6.5 Whenever the Partner makes use of a feature that allows it to upload content to a Platform, or to make contact with other users of the Platforms, it must comply with the content standards in this Clause 6.

6.6 The Partner warrants that any Partner Contribution complies with these standards, and it will be liable to OutOfCourt and indemnify OutOfCourt for any breach of that warranty. OutOfCourt may report any breach of the warranties under this Clause 6 to the relevant authorities and will co-operate with those authorities by disclosing the Partner's identity to them. In the event of such a breach, OutOfCourt has a right to immediately terminate this Agreement under Clause 13.5 and immediately terminate Partner's right to the Platform without liability to the Partner.

6.7 Profile information is considered non-confidential and non-proprietary. OutOfCourt is not obliged to publish any or all of the Profile information.



- 6.8** The Partner retains all of ownership rights in its Profile, however by providing any Profile information on the Platform or in the ADR-Partner Application Form, it grants to OutOfCourt the right to use, reproduce, modify, perform, display, distribute and otherwise disclose to third parties any such material.
- 6.9** OutOfCourt does not warrant that the Platform will be error-free, fit for purpose, free of any defects or will operate without interruption or that it will meet the requirements of any Customers or Partners.
- 6.10** The Partner represents and warrants that:
- (a) it owns or controls all rights in and to the Partner Contributions and has the right to grant the license granted above to OutOfCourt;
 - (b) all of its Partner Contributions do and will comply with this Agreement;
 - (c) it understands and acknowledges that it is responsible for any Partner Contributions it submits or contributes, and it (and not OutOfCourt) has full responsibility for such content, including its legality, reliability, accuracy and appropriateness.
 - (d) OutOfCourt is not responsible, or liable to any third party, for the content or accuracy of any Partner Contributions posted by the Partner or any other user of the Platform.
- 6.11** OutOfCourt has the right to remove, refuse to post or take any action with respect to any Partner Contributions for any or no reason in its sole discretion.

7 Qualifications, Quality Assurance Committee and Referral Ethics

7.1 Qualifications

- (a) The Partner must upon request by OutOfCourt and also within 7 days of renewal, provide written evidence to OutOfCourt that it has the requisite skills, training, registrations, qualifications, insurances and accreditations to provide the Services;
- (b) If at any time the Partner no longer holds the requisite skills, training, registrations, insurances and accreditations to provide the Services it must immediately notify OutOfCourt. In such event, OutOfCourt has a right to (in its full discretion) immediately suspend this Agreement under Clause 13.2, terminate this Agreement under Clause 13.5 and or immediately terminate Partner's right to access the Platform (or part thereof) without liability to the Partner;



7.2 Quality Assurance Committee

- (a) The Partner accepts and acknowledges that:
 - (i) quality standards must apply to the provision of the Services including awards and communication and correspondence with Customers;
 - (ii) OutOfCourt's reputation may be adversely affected by the quality of the Services provided by the Partner.
- (b) OutOfCourt may at any time during Business Hours audit the Partner or appoint an auditor or a Quality Assurance Committee to audit the Partner and its performance.
- (c) The Partner must give all assistance necessary to enable OutOfCourt, its auditor or the Quality Assurance Committee to carry out such inspection and verification, including by:
 - (i) providing to them (and where required giving them access to) all case notes, correspondence, notes, information reports, financial statements, books, and other records requested for the purposes of the audit and allowing them to take copies without cost;
 - (ii) responding to their questions and queries relating to the audit or the information and reports; and
 - (iii) facilitating and giving them access to the Partner for the purpose of interviewing them, where such access is required by OutOfCourt, its representatives or the auditor.

7.3 Referral Ethical Rules

- (a) The Partner accepts and acknowledges that:
 - (i) but-for the Referral, the Customer would not be a customer of the Partner;
 - (ii) referral rules apply to Referrals, Cases, Disputes and Customers;
 - (iii) the right to promote to, market towards or sell onto a Customer is fully reserved by OutOfCourt;
 - (iv) the Referral is provided to the Partner for the provision of the specific Services on each Case only;



- (v) referral rules apply whether or not the Case proceeds and whether or not an ADR Agreement is entered into.
- (b) The Partner must not, and must not aide, abet or assist any other entity to:
 - (i) promote, market or sell services (including without limitation legal services) to a Customer without the prior written permission of OutOfCourt which may be withheld for any reason or no reason;
 - (ii) accept any approach by a Customer for any services not related to the Case and must immediately refer the Customer back to OutOfCourt and notify OutOfCourt of the approach by the Customer (including providing full details of the approach);
 - (iii) refer the Case, Dispute or any Customer (or potential Customer) to any other entity (without limitation legal service firms) or any division or practice group within the Partner;
 - (iv) represent a Customer in respect of the Case or Dispute or offer to present a Customer in respect of the Case or Dispute. This obligation extends to whether an ADR Agreement was entered into or not;
 - (v) act in any way to reduce the amount of, or avoid, the:
 - 7.3.b.v.1 Platform Fees or any other benefits received by OutOfCourt under this Agreement; or
 - 7.3.b.v.2 any Platform Fees or benefits which would otherwise be payable to OutOfCourt under any other agreement; or
 - 7.3.b.v.3 any benefits that would be enjoyed by any entity within the OutOfCourt Corporate Group.

7.4 Subject to OutOfCourt's prior written consent (which will not to be unreasonably withheld), the Partner may bundle the Services for a Case with Additional Services which are appropriate to the Case so long as Platform Fees are paid on those Additional Services (**Additional Service Fees**). Additional Service Fees form part of the ADR Fees which are subject to Platform Fees under this Agreement.



- (a) Circumstances where it would be appropriate to bundle the Services with Additional Services include, without limitation, the hearing of a Dispute between Customers that address substantially the same subject matter;
- (b) Circumstances under which it would be reasonable for OutOfCourt to reject a request to provide Additional Services, include but are not limited to:
 - (i) the inappropriateness of the Additional Services in relation to the Case;
 - (ii) whether the Additional Services compete with services provided by any entity within the OutOfCourt Corporate Group; and
 - (iii) whether the provision of the Additional Services would cause harm to any entity within the OutOfCourt Corporate Group.

7.5 The Partner accepts and acknowledges that any breach of this Clause 6 is likely to cause OutOfCourt or entities within the OutOfCourt Corporate Group material harm, including but not limited to reputational damage, loss of Platform Fees that should otherwise be paid by third parties, other financial harm and possibly cause OutOfCourt to be in breach of its contractual obligations with others.

8 ADR Agreement and ADR Fees

8.1 ADR Agreement

- (a) The Partner agrees and accepts that OutOfCourt provides referral services and Platform Services only and it is the obligation of the Partner to enter the Customers into an ADR Agreement;
- (b) The Partner must ensure that the agreement for the provision of the Services to a Customer is recorded in a written ADR Agreement;
- (c) The ADR Agreement must comply with the applicable *Arbitration Act*; and
- (d) The Partner agrees and acknowledges that the provision of Services under the ADR Agreement is independent to this Agreement and OutOfCourt is not responsible, or liable to the Partner, nor any third party, for the provision of the ADR Services under the ADR Agreement.

8.2 ADR Fees: The Partner acknowledges and accepts that:



- (a) as a service to Customers, OutOfCourt provides Estimates to Customers, on the Platform, for the provision of the Services;
- (b) the Estimates are not binding on the Partner or OutOfCourt;
- (c) the Estimates are generated using information provided by a Customer and the Current Rate provided by the Partner;
- (d) it would materially harm OutOfCourt if the Estimates are inaccurate due to change to the Current Rate not previously notified to OutOfCourt; and
- (e) it would be misleading and deceptive of the Partner to charge a different rate to its Current Rate.

8.3 For the reasons set down in clause 8.2, the Partner when calculating the ADR Fees under an ADR Agreement (or otherwise) it must only charge fees at its Current Rate.

8.4 The Partner may amend its Current Rate at any time in writing to OutOfCourt on the Platform. The amendment to the Current Rate will not apply until OutOfCourt confirms the amendment in writing, including on the Platform. Any amendment to the Current Rate will apply to new Referrals and must not be applied to any Referrals with a Referral Date earlier to the date of confirmation of the amendment to the Current Rate by OutOfCourt.

9 Fees Paid to OutOfCourt

9.1 Platform Fees: In consideration of the Platform Services, OutOfCourt is entitled to receive the Platform Fee being 5% of the gross ADR Fees. Note the Platform Fee is payable regardless of the extent of use of the Platform.

9.2 Advertising Fees: From time to time the Partner may request on-line advertising services be provided by OutOfCourt. OutOfCourt is under no obligation to provide advertising services. Any advertising services provided by OutOfCourt will be subject to Advertising Fees.

9.3 The Partner must provide to OutOfCourt, with 5 Business Days of the end of each calendar month a Platform Fee Report which details the Platform Fees payable to OutOfCourt for ADR Fees invoiced to Customers for the Services and the calculations thereof. Any Platform Fee Report must contain sufficient information for OutOfCourt to determine the accuracy of the calculation of the Platform Fee and include copies of the invoices to Customers and invoices for disbursements.

9.4 OutOfCourt will issue a tax invoice calling for payment of the Platform Fees which must be paid in accordance with its terms. Any such tax invoice will be exclusive of GST unless otherwise stated.



- 9.5** Payments to OutOfCourt are not subject to or dependent upon a Customer's payment, part-payment or non-payment to the Partner of any fees.
- 9.6** The Platform Fees and Advertising Fees are non-refundable under any circumstances including (for example without limitation) if the ADR fails.
- 9.7** During the term of this Agreement and for a period of not less than six (6) years thereafter the Partner must keep and maintain accurate records as to ADR Fees and the Platform Fees.
- 9.8** The Partner must permit OutOfCourt or its nominated agent from time to time during ordinary business hours after first giving reasonable notice to inspect and verify the records maintained by the Partner under this Agreement. The Partner must give all assistance necessary to enable the Party to carry out such inspection and verification, and allow the Party or its nominated agent to take any copies of such records at no cost.
- 9.9** If any such inspection reveals a discrepancy in the calculation or payment of the Platform Fee during any year of 5% or more, without limiting OutOfCourt's other rights and remedies, the Partner must:
- (a) reimburse OutOfCourt for all reasonable costs associated with the inspection; and
 - (b) immediately pay to OutOfCourt the amount of any Platform Fee shown to be payable and outstanding as a result of such inspection.
- 9.10** Without limiting its other rights and remedies, if the Partner fails to pay any Platform Fee due to OutOfCourt on the due date for payment then the Partner must pay interest to OutOfCourt on such unpaid amount calculated at the rate of 5% per annum from the due date for payment until the payment is actually made.
- 9.11** **Variations:** The Partner acknowledges and agrees that the Advertising Fee and Platform Fee may change from time to time. OutOfCourt will give the Partner 30 days written notice of any change in the Platform Fee or calculation thereof. Any amendment to the Platform Fee will apply to Referrals provided to the Partner after the 30 day notice period of the amendment to the Platform Fee.

10 Confidential Information

- 10.1** Each Party will ensure that Confidential Information of the other Party is treated as confidential and will not, without the prior written consent of the other Party, disclose or permit it to be disclosed to any other person, unless authorised or required by law.



10.2 To avoid any doubt, Clause 10.1 does not prevent a Party from disclosing Confidential Information of the other Party, on a confidential basis, to an employee of the first mentioned Party who –

- (a) is in Australia; and
- (b) needs to know the Confidential Information (as part of the employee's employment with the first mentioned Party) in order for the first mentioned Party to be able to use the Confidential Information in accordance with this Agreement or to exercise any right of the first mentioned Party arising under this Agreement.

10.3 Clause 10.1 survives termination or expiry of this Agreement.

11 Privacy, Disclosure of Personal Information and Disclosure of information relating to Customer and Cases

11.1 Each Party and its Personnel agrees to comply with its obligations under the Privacy Laws and any other applicable legislation or privacy guidelines as amended from time to time in relation to Personal Information (as defined in the Privacy Law) collected, used or disclosed by that Party or its Personnel in connection with the Services and this Agreement.

11.2 The Partner must:

- (a) comply with all Privacy Laws in relation to Personal Information as if it were an entity regulated under those Privacy Laws;
- (b) only collect, store, use, disclose or otherwise deal with Personal Information as directed by OutOfCourt or as required to provide the Services, except to the extent that compliance with the direction would cause the Partner to breach any Privacy Laws;
- (c) only use, or disclose Personal Information for the purposes of providing the Services or as expressly permitted under this Agreement;
- (d) assist OutOfCourt to comply with its obligations under any Privacy Law;
- (e) take such steps as are reasonable in the circumstances to ensure that the Personal Information it uses or discloses as a Partner is up-to-date, complete and relevant having regard to the nature of the information related to Cases and Customers;
- (f) not do any act, engage in any practice or omit to do any act or engage in any practice that:



- (i) would result in a breach of Privacy Law if the Privacy Law applied to those things done, engaged in or omitted to be done by the Partner; or
- (ii) would cause OutOfCourt to breach or be taken to breach a Privacy Law.

11.3 Where OutOfCourt provides Personal Information (as that term is defined under *the Privacy Act*) or access to Personal Information, to the Partner under this Agreement, the Partner agrees and acknowledges it will:

- (a) use the Personal Information solely for the Services unless otherwise authorised or required by law; and
- (b) maintain any confidentiality attaching to the Personal Information.

11.4 Where the Partner provides Personal Information, information about a Customer or a Case to OutOfCourt, or OutOfCourt otherwise obtains such information, OutOfCourt agrees and acknowledges it will:

- (a) use the Personal Information solely for purposes associate with the Services and to ensure compliance with the terms of this Agreement, unless otherwise authorised or required by law; and
- (b) maintain any confidentiality attaching to the Personal Information.

12 Intellectual Property Rights

12.1 A Party's ownership of, or any right, title or interest in, any Intellectual Property Rights in an item which exists prior to the date of this Agreement (Pre-Existing Material) will not be altered, transferred or assigned by virtue of this Agreement.

12.2 As between the Parties, OutOfCourt will own all Intellectual Property Rights in and to the Platform and any other Intellectual Property Rights made available to the Partner on or behalf of OutOfCourt.

12.3 As between the Parties, the Partner will own all Intellectual Property Rights in and to any materials made available to OutOfCourt by or on behalf of the Partner.

13 Suspension and Termination

13.1 **Suspension by Partner:** At any time, the Partner may notify OutOfCourt, in writing, that it wishes to stop receiving Referrals (**Partner Trigger Suspension**). From the date of notification of a Partner Triggered Suspension, OutOfCourt will no longer provide Referrals



to the Partner unless instructed by the Partner it wishes to lift the Partner Triggered Suspension.

13.2 Suspension by OutOfCourt

- (a) In addition to any other rights under this Agreement, OutOfCourt may, by notice in writing to the Partner, suspend all or any part of this Agreement (**Suspension Notice**);
- (b) The Suspension Notice must specify:
 - (i) the details of the performance in relation to this Agreement which are suspended;
 - (ii) the period of suspension, which will be 30 days unless otherwise indicated by OutOfCourt (**Suspension Period**);
- (c) Upon receipt of the Suspension Notice, the Partner must cease performance to the extent specified in the Suspension Notice;
- (d) During the Suspension Period, the Parties must seek to agree on a course of action to address the suspension;
- (e) If the parties cannot agree on this course of action by the expiry of the Suspension Period, either party may terminate the Agreement under clause 13.3 of this Agreement;
- (f) For clarity, the parties must continue to perform any obligations in relation to the Agreement that are not suspended in accordance with the Suspension Notice;
- (g) No party will be liable to another party for any costs, losses or damages arising as a result of the suspension under this clause;
- (h) For clarity, despite any Suspension Period, the Platform Fees must be paid in full;
- (i) OutOfCourt may issue more than one Suspension Notice under this clause.

13.3 Breach: The Partner agrees if the Partner breaches any term of this Agreement, in OutOfCourt's complete discretion:

- (a) the Partner's profile may be removed from any Platform;
- (b) the Partner may not receive any further Referrals;
- (c) OutOfCourt may suspend performance under clause 13.2;
- (d) the Partner may be removed as an ADR Provider; and or



(e) this Agreement may be terminated under clause 13.5.

13.4 Termination at Will: This Agreement may be terminated by either party with 30 days notice to the other Party.

13.5 Termination for Cause: OutOfCourt may immediately terminate this Agreement if:

- (a) the Partner breaches any provision of this Agreement which indicates the Agreement can be terminated under this Clause;
- (b) the Partner fails to remedy a breach of this Agreement within 14 days of notification to remedy the breach (**breach notice**);
- (c) OutOfCourt has issued three or more breach notifications within 6 consecutive months regardless of remedy of those breaches;
- (d) an audit conducted by OutOfCourt, its
- (e) the Partner breaches any term of this Agreement incapable of breach; or
- (f) the Partner breaches any material clause of this Agreement and or clauses 5.2, 5.4, 5.6, 6,8.3 or 9 of this Agreement.

13.6 Termination for Insolvency: Either party may terminate this Agreement immediately by notice to the other party if the other party:

- (a) commits an act of insolvency;
- (b) has a controller, receiver, receiver and manager or administrator appointed;
- (c) goes into liquidation (other than for the purpose of reconstruction) or is declared bankrupt; or
- (d) is unable to pay its debts when due.

13.7 Effect of Termination: If this agreement is terminated for any reason:

- (a) upon termination of this Agreement, OutOfCourt will cease promoting the Partner as an ADR Provider;
- (b) the Partner must immediately pay to OutOfCourt any amount owed under this Agreement, including any amount in respect of any indemnities provided under this Agreement;
- (c) to the extent permitted by law, the Partner must continue to provide the Services in respect of any ADR Agreements entered into prior to the date of termination of this Agreement and for the sake of clarity the Partner will still be liable in respect of Platform Fees in respect of access to the Platform for those ADR Agreements;



- (d) each party must, at the other parties' option, return to that other party or destroy that other party's Confidential Information within its possession or control, save for any part thereof that the party is legally required to retain on its records (which must in any event be kept confidential at all times);
- (e) this clause and clauses 4.3, 5.1,6, 9, 10 and 11 survive termination or expiry of this Agreement; and
- (f) the termination will not affect any right of action which may have accrued to either party in respect of anything done or not done prior to such termination or expiration.

14 Limited Warranties and Disclaimers

14.1 Each Party warrants that:

- (a) it has the right, power, authority and entitlement to execute this Agreement and perform its obligations under this Agreement;
- (b) this Agreement constitutes a legal, valid and binding obligation and is enforceable in accordance with its terms by appropriate legal remedy;
- (c) in entering into and performing its obligations under this Agreement it has not, and will not, be in breach of any relevant law or any obligation owed to another person;
- (d) there is no current, pending or threatened litigation, arbitration, investigation, inquiry or proceeding in which it is involved and that will or may have an adverse effect on its ability to comply with this Agreement; and
- (e) it has all necessary licences, approvals, permits and consents to enter into and perform its obligations under this Agreement.

14.2 The Partner represents and warrants that:

- (a) there are no legal restrictions preventing it from providing the Services;
- (b) it will act with due care and skill and not engage in any unfair, deceptive or unethical business practice;
- (c) it will comply with any reasonable directions given to it by OutOfCourt from time to time;



- (d) it will act lawfully and will comply with any applicable licences, laws, regulations, industry codes of conduct, health and safety requirements and Australian standard in relation ADR Services;
- (e) it is not aware of any actual or potential conflict of interest in providing the Services (unless otherwise agreed in writing with OutOfCourt);
- (f) it will not register or seek to register any OutOfCourt logos, brand or other trade marks; and
- (g) if applicable, it is registered for GST purposes.

14.3 Except as required, permitted by or law as set out in this Agreement, the Partner must not, and must ensure that its Related Bodies Corporate do not give or make any undertaking, representation, guarantee or warranty to any person (including any Customers), including any representations or guarantees concerning the quality, performance, fitness for purpose or other characteristics of the Platform or OutOfCourt without OutOfCourt's prior written consent.

15 Indemnity

15.1 Each Party (Indemnifying Party) indemnifies the other Party (Indemnified Party) from and against any Claim or Loss arising out of or in connection with:

- (a) any fraudulent or unlawful act or omission of the Indemnifying Party or its Personnel;
- (b) any death or personal injury caused or contributed by any act or omission of the Indemnifying Party or its Personnel;
- (c) any damage to or loss or destruction of real or personal property caused or contributed to by any act or omission of the Indemnifying Party or its Personnel; and
- (d) any breach of confidentiality obligations by the Indemnifying Party or its Personnel.

15.2 The Partner indemnifies and agrees to compensate OutOfCourt on demand and keep OutOfCourt and OutOfCourt's Personnel indemnified from and against any Loss or Claim arising out of or in connection with:

- (a) the Services, including but not limited to any:
 - (i) act or omission by the Partner under this Agreement or in connection with the Services or ADR Agreement;



- (ii) claim based on or relating to any representation or warranty made by the Partner regarding the Platform or Services that was not specifically authorised in writing by OutOfCourt or was otherwise inconsistent with this Agreement;
- (b) any payment of taxes, duties, governmental charges and other like charges payable by the Partner for the Platform Fees;
- (c) any loss, damage or injury suffered by a third party, caused by any negligence or deliberate act by the Partner;
- (d) any breach of law including but not limited to Privacy Law by the Partner or its Personnel;
- (e) any breach of this Agreement by the Partner or its obligations and warranties under this Agreement by the Partner or its Personnel;
- (f) any failure in, defects, fault with or degradation of the Services provided by the Partner to any Customers if that failure, fault or degradation is attributable to or caused by any failure of the facilities or services of the Partner, its Personnel or Related Bodies Corporate; or
- (g) the Partner's failure to obtain any work, business or income from a referral or achieve a service level.

15.3 In no event will a Party be liable to the other for any Consequential Loss or any other consequential, indirect, special, incidental or punitive damages, regardless of the form of action, whether in contract, tort, strict product liability or otherwise, even if advised of the possibility of such damages and even if the damages were foreseeable.

16 Dispute Resolution

16.1 If a dispute arises out of or in relation to this Agreement, no party may commence court or arbitration proceedings (other than proceedings for urgent interlocutory relief) unless it has complied with this clause.

16.2 A Party to this Agreement claiming that a dispute has arisen under or in relation to this Agreement must give written notice to the other Party specifying the nature of the dispute. On receipt of that notice by the other Party, the Parties' representatives must endeavour in good faith to resolve the dispute expeditiously and failing agreement within 10 Business Days of the dispute, either Party, by giving notice to the other, may refer the dispute to the Parties' Chief Executive Officers or equivalent (or their nominees) who, each party must



ensure, must cooperate in good faith to resolve the dispute within 10 Business Days of the dispute being referred to them.

16.3 If the Chief Executive Officers or equivalent (or their nominees) fail to resolve the dispute within 10 Business Days of the dispute being deferred to them, the Parties must, at the written request of either party and within 10 Business Days of receipt of the request, submit to mediation, expert evaluation or determination or similar techniques agreed to by them.

16.4 If the Parties do not agree within 10 Business Days of receipt of the notice referred to in clause 15.3 as to the dispute resolution technique and procedures to be adopted, the time table for all steps in those procedures, and the selection of compensation of the independent person required for such a technique, then the Parties must mediate the dispute in accordance with the Mediation Rules of the Law Society of Queensland and the President of the Queensland Law Society or the President's nominee will select the mediator and determine the mediator's remuneration.

17 Insurance

17.1 The Partner (and its employees and agents) is not entitled to the benefit of any third party liability, public liability or indemnity policies of insurance or workers compensation policies that OutOfCourt may hold.

17.2 The Partner must effect and maintain at its own expense:

- (a) Professional indemnity insurance to the value of \$20 million per claim and in annual aggregate from the Commencement Date until no less than 3 years after the termination or expiry of this Agreement; and
- (b) Public liability insurance (on an occurrence basis) for not less than \$10 million per claim for the duration of the Term;

17.3 The Partner will, upon request, provide to OutOfCourt a certificate of currency for each insurance policy referred to in this Agreement.

18 GST

18.1 Taxable supply: If GST is payable on any supply made under this Agreement, the recipient of the supply must pay an amount equal to the GST payable on the supply. That amount must be paid at the same time that the consideration is to be provided under this Agreement and must be paid in addition to the consideration expressed elsewhere in this Agreement unless it is expressed to be inclusive of GST. The recipient is not required to pay any GST until the supplier issues a tax invoice for the supply.



18.2 Adjustment events: If an adjustment event arises in respect of any supply made under this Agreement, a corresponding adjustment must be made between the supplier and the recipient in respect of any amount paid by the recipient under this clause, an adjustment note issued if required, and any payments to give effect to the adjustment must be made.

18.3 Payments

- (a) If the recipient is required under this Agreement to pay for or reimburse an expense or outgoing of the supplier, or is required to make a payment under an indemnity in respect of an expense or outgoing of the supplier, the amount to be paid by the recipient is to be reduced by the amount of any input tax credit in respect of that expense or outgoing that the supplier is entitled to.

18.4 GST terminology

18.5 The terms “adjustment event”, “consideration”, “GST”, “input tax credit”, “recipient”, “supplier”, “supply”, “taxable supply” and “tax invoice” each has the meaning which it is given in the *A New Tax System (Goods and Services Tax) Act 1999* (Cth).

19 Notices

19.1 Form of notice: A notice or other communication must be in writing in English and may be:

- (a) delivered personally;
- (b) given by an agent of the sender;
- (c) left at a Party’s current delivery address for notices as set out in this Agreement;
- (d) sent by prepaid mail to a Party’s current postal address for notices as set out in this Agreement;
- (e) sent by email to a Party’s current email address for notices as set out in this Agreement.

19.2 Receipt of notice: A notice or communication is taken as having been given:

- (a) when left at a Party’s current delivery address for notices; or
- (b) if mailed within Australia to an Australian address, on the third Business Day after posting; or
- (c) if mailed outside of Australia to an Australian postal address or within Australia to an address outside of Australia on the tenth Business Day after posting; or



- (d) if sent by email, when the email is sent to the receiving party at the email address specified in this Agreement, unless the sending party receives a notification of delivery failure within 24 hours of the email being sent.
- (e) OutOfCourt's address for service is set out in the Party details at the start of this Agreement. The Partner's address for service included in the ADR-Partner Application Form . A Party may change its address for service of notices by written notice to the other Party.

20 General

- 20.1 Force Majeure:** OutOfCourt will not be liable to the Partner for any failure to provide Referrals, the Platform or for any other obligation under this Agreement if the failure or delay is caused or contributed to by Force Majeure.
- 20.2 Costs and Expenses:** Each Party must pay its own costs and expenses (including legal costs and expenses) in relation to the negotiation, preparation and execution of this Agreement and any variation or replacement of this Agreement.
- 20.3 Variation:** OutOfCourt may vary this Agreement from time to time by giving written notice to the Partner, which for the purpose of this clause includes publishing the variation on the Platform. If the Partner objects to the variation, the Partner may terminate this Agreement by providing written notice to OutOfCourt within seven (7) days of the variation. If the Partner does not object to a variation pursuant to this sub-clause, it will be deemed to have accepted the variation and shall be bound by the Agreement as amended.
- 20.4 Relationship of Parties:** The Partner must not describe themselves in any way as agents, contractor or employee for OutOfCourt. Despite the term Partner being used in this Agreement, this Agreement is not intended to create a relationship between the Parties of partnership, joint venture, agency or employer-employee.
- 20.5 Authority:** The Partner has no authority to create, assume or otherwise enter into any agreement that imposes rights or obligations on the part of OutOfCourt, and OutOfCourt has no authority to create, assume or otherwise enter into any agreement that imposes rights or obligations on the part of the Partner.
- 20.6 Assignment:** This Agreement is personal to the Partner. The Partner must not assign or deal with the whole or any part of its rights or obligations under this



Agreement without the prior written consent of OutOfCourt (such consent not to be unreasonably withheld). Any purported dealings in breach of this clause is of no effect.

- 20.7 Waiver or Variation of Rights:** Any failure or delay by a Party in exercising a power or right (either wholly or partially) in relation to this Agreement does not operate as a waiver or prevent that Party from exercising that power or right or any other power or right. A Party is not liable to any other Party for any loss, cost or expense that may have been caused or contributed to by the failure, delay, waiver or exercise of a power or right.
- 20.8 Power, Rights and Remedies:** Except as expressly stated to the contrary in this Agreement, the powers, rights and/or remedies of a Party are cumulative and are in addition to any other power, rights and remedies of that Party. Nothing in this Agreement merges, extinguishes, postpones, lessens or otherwise prejudicially affects any power, right or remedy that a Party may have at any time against the other Party or any other person.
- 20.9 Consents and Approvals:** Where this Agreement provides that a Party may conditionally or unconditionally give or withhold any consent or approval in relation to any matter in this Agreement, that Party may in its absolute discretion, and without being obliged to give reasons for doing so, withhold any consent or approval or give consent or approval conditionally or unconditionally.
- 20.10 Further Assurance:** Each Party agrees the purpose of this Agreement is to increase business and provide quality services to Customers. Each Party must from time to time and in a timely manner do all things reasonably required of it by another Party to give effect to this Agreement and the purpose including advising each other on appropriate changes to Policies and the Platform.
- 20.11 Severability:** If any provision (or part of it) in this Agreement is held to be unenforceable or invalid in any jurisdiction, then it will be interpreted as narrowly as necessary to allow it to be enforceable or valid. If a provision (or part of it) of this Agreement cannot be interpreted as narrowly as necessary to allow it to be enforceable or valid, then the provision (or part of it) must be severed from this Agreement and the remaining provisions (and remaining part of the provision) of this Agreement are valid and enforceable.



- 20.12 Advice:** Each Party acknowledges that the party has received legal advice or has had the opportunity of obtaining legal advice in relation to this Agreement.
- 20.13 Cumulative Rights:** The rights arising out of this Agreement do not exclude any other rights of either Party. Each indemnity in this Agreement is a continuing obligation that is separate and independent from the other obligations of the Parties under this Agreement. A Party is not obliged to take any action, or incur any expense, before enforcing any indemnity under this Agreement.
- 20.14 Entire Agreement and Understanding:** In respect of the subject matter of this Agreement: (a) this Agreement contains the entire understanding between the Parties; (b) all previous oral and written communications, representations, warranties or commitments are superseded by this Agreement and do not affect the interpretation or meaning of this Agreement; and (c) each of the Parties has relied entirely on its own enquiries before entering into this Agreement.
- 20.15 Governing Law and Jurisdiction:** This Agreement is governed by the laws of Queensland and the Commonwealth of Australia. Each Party irrevocably and unconditionally submits to the exclusive jurisdiction of the courts operating in Queensland.

