

The Observership Program

Program Applicant Terms and Conditions

1 Agreement

- 1.1 This Agreement, together with the Application Form, sets out the terms and conditions under which the Applicant agrees to participate in a Placement.
- 1.2 Participation in a Placement is subject to this Agreement. Each Applicant agrees to be bound by this Agreement in the event they are granted a Placement.

2 Application

- 2.1 An Applicant may apply for a Placement by filling out the application form provided and returning it to The Observership Program (“the Company”).
- 2.2 Upon making such application, each Applicant warrants to the Company that it:
 - (a) is 25 years of age or over;
 - (b) makes the application on its own behalf and in its own name (and not on behalf of and/or in the name of a third person);
 - (c) is not an undischarged bankrupt;
 - (d) is not subject to a personal insolvency agreement or an arrangement under Part X of the Bankruptcy Act that has not been fully complied with;
 - (e) is not subject to a composition under Part X of the Bankruptcy Act and final payment has not been made;
 - (f) has not previously been convicted of any offence under or in connection with the Corporations Act;
 - (g) shall act in good faith and in accordance with this Agreement in connection to its participation in the Observership Program.
- 2.3 The Company’s acceptance of any application and the offer and granting of any Applicant with a Placement is at the sole discretion of the Company.

3 Placement

- 3.1 The Company may in its discretion offer a Placement to an Applicant (“**Offer**”).
- 3.2 The Applicant must respond to the Company either accepting or rejecting the Offer within 10 Business Days of receipt of the Offer.
- 3.3 If the Applicant rejects the Offer, the Company shall be under no obligation to make any further offer of a Placement to that Applicant (but may do so at its sole discretion).
- 3.4 The Placement shall be for a term of 12 months in accordance with the program notified to the Applicant by the Company.
- 3.5 During the course of the Placement, the Placed Applicant must:
 - (a) use its best endeavours to attend:

- (i) all board and/or board committee meetings of the Relevant Board; and
 - (ii) all training sessions and information seminars provided in connection with The Observership Program by the Company, its sponsors or corporate partners, or any third party as notified to the Participant from time to time;
- (b) maintain a professional standard of conduct reasonably expected of a participant on a Relevant Board, including adherence to all duties and obligations applicable to participants of the Relevant Board; and
- (c) observe all rules and guidelines applicable to participation on the Relevant Board as notified to the Participant by the Relevant Board or the Company from time to time.
- 3.6 The Participant acknowledges that its participation in a Placement shall be in its capacity as an observer of the Relevant Board only and the Placement does not constitute the appointment as a director to the Relevant Board or confer on the Participant any right to such appointment.

4 Confidential Information

- 4.1 During the course of the Placement, it is likely that a Placed Applicant will be provided with certain Confidential Information.
- 4.2 The Placed Applicant:
- (a) must keep the Confidential Information secret and confidential;
 - (b) must not disclose or cause or permit the disclosure of any Confidential Information to any person except to the extent required by law, and in which case the Recipient must:
 - (i) immediately notify the Non-Profit in writing and provide any assistance reasonably requested by the Non-Profit to oppose the disclosure of the Confidential Information;
 - (ii) use all reasonable endeavours when making disclosure to prevent disclosure of any Confidential Information into the public domain; and
 - (iii) only disclose so much of the Confidential Information as is legally required; and
 - (c) must notify the Non-Profit if it suspects, or becomes aware of, any loss or unauthorised use, storage, copying or disclosure of any Confidential Information, and must provide any assistance reasonably requested by the Non-Profit to prevent or minimise such breach including:
 - (i) the Placed Applicant using its best endeavours, at the Placed Applicant's own expense, to prevent or stop the breach and to minimise the detriment to the Non-Profit caused by the breach; and
 - (ii) providing any assistance reasonably requested by the Non-Profit in relation to any proceedings the Non-Profit may take against any person for any suspected, actual or deemed breach of this deed.

5 Intellectual Property

- 5.1 Other than as specifically stated in this Agreement, nothing in this Agreement confers upon the Applicant any right, licence or Intellectual Property in or related to the Information. The Information and any Intellectual Property related to the Information will at all times remain the exclusive property of the Company.

5.2 Except as otherwise expressly provided for in this Agreement, the Applicant must not at any time without the prior written consent of the Company:

- (a) assert rights of any nature in respect of; or
- (b) contest the Company's ownership of,

the Information and any Intellectual Property related to the Information.

6 Notice of Breach

The Applicant agrees to immediately inform the Company of any breach by the Applicant of this Agreement and of any conduct by any other person which the Applicant thinks may be a breach of this Agreement, whether the conduct has ceased, is continuing, or may occur in the future.

7 Limitation of liability

The Company shall be under no liability for, and there shall be no recourse against the Company in respect of, any Claim arising out of or in connection with a Placed Applicant's conduct in connection with or in relation to a Placement. Without limiting the preceding sentence, the Company will not be under any other liability in respect of any loss or damage however caused (whether by negligence or otherwise) which may be suffered or incurred or which may arise directly or indirectly in respect of any matter.

8 General

8.1 This Agreement along with the Application Form constitute the entire agreement between the Company and the Applicant in relation to their subject matter. All prior discussions, undertakings, agreements, representations, warranties and indemnities in relation to that subject matter are replaced by this Agreement and, therefore, have no further effect.

8.2 If this Agreement conflicts with any other document, agreement or arrangement, this Agreement prevails to the extent of the inconsistency.

8.3 The provisions of this Agreement will not merge on completion of any transaction contemplated in this Agreement and, to the extent any provision has not been fulfilled, will remain in force.

8.4 The Company may modify this Agreement at any time, and will give the Applicant notice by publishing the new this Agreement on the Company's website and/or by email to the address specified by the Applicant in the Application Form. Such modifications will take effect immediately upon notification being provided by the Company. By accepting this Agreement, the Applicant also agrees to accept and be bound by any changes made by the Company under this clause.

8.5 The Applicant may not assign, transfer or otherwise deal with this Agreement or any right under this Agreement without the prior written consent of the Company.

8.6 Part or all of any provision of this Agreement that is illegal or unenforceable will be severed from this Agreement and will not affect the continued operation of the remaining provisions of this Agreement.

8.7 Waiver of any power or right under this Agreement:

- (a) must be in writing and signed by the party entitled to the benefit of that power or right; and
- (b) is effective only to the extent set out in such written waiver.

- 8.8 This Agreement will be governed by and construed in accordance with the laws in force in the State of New South Wales and each party submits to the exclusive jurisdiction of the courts of that State.

9 Defined terms

In this Agreement, unless the context requires otherwise:

“Adviser” means, in relation to any entity, a financial adviser, corporate adviser, legal adviser, or technical or other expert adviser or consultant who provides advice to the entity in a professional capacity and who has been engaged by that entity.

“Agreement” means:

- (a) this document;
- (b) any amendments subsequently made to this document;
- (c) any replacement or novation of this document; and
- (d) terms and conditions incorporated into this document by reference, such as any other applicable terms and conditions.

“Applicant” means the person identified in the Application Form.

“Application Form” means the application form given by the Applicant.

“Bankruptcy Act” means the *Bankruptcy Act 1966* (Cth).

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

“Claim” means action, claim, costs, demand, damages, debt, liability, loss or proceedings of any kind by or of any person.

“Company” means The Observership Program Pty Limited.

“Confidential Information” means all of the Information other than any part of the Information that:

- (a) is or becomes part of the public domain, otherwise than through a breach or deemed breach of this deed, or other breach of confidentiality; or
- (b) the Applicant can demonstrate was:
 - (i) developed or created by the Applicant prior to the Applicant receiving the Information; or
 - (ii) received from a third party legally entitled to possess the Information and provide it to the Applicant.

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

“Information” means:

- (a) all information regardless of form that relates to the Non-Profit or the Relevant Board or their businesses or affairs and that, either before or after the date of this deed:
 - (i) is disclosed directly or indirectly by any means to the Applicant by the Company, the Relevant Board, the Non-Profit or any of their Representatives or Advisers;

- (ii) is obtained by the Applicant from the Company, the Relevant Board, the Non-Profit or any of their Representatives or Advisers or developed or created by the Applicant in conjunction with any of them; or
 - (iii) otherwise comes to the knowledge of the Applicant; and
- (b) any notes, reports and documents which contain or refer to the information described in paragraph (a).

“Intellectual Property” means all intellectual and industrial property rights of whatever nature (whether or not registered or registrable) including, but not limited to:

- (a) all technical information, know-how, trade and service marks, business names, domain names, copyright, designs, patents, logos, drawings, inventions, discoveries, research developments, trade secrets, rights in circuit layouts, rights in data bases and plant breeders rights;
- (b) any application or right to apply for registration of any of the rights in paragraph (a) and all renewals and extensions of those rights; and
- (c) the right to have confidential information kept confidential.

“Non-Profit” means the non-profit organisation applicable to the Relevant Board.

“Observership Program” means the program run by the Company through which participants are paired with the board of a non-profit organisation for a 12 month period, during which time the participant will use best endeavours to attend all board and/or committee meetings as non-voting members, and participate in training and information sessions about fundamental principles and functions of non-profit boards, the roles of board members, its decision making process, fiscal processes, and other governance priorities.

“Offer” has the meaning given to it in clause 3.1.

“Placed Applicant” means an Applicant who accepts an Offer and is granted a Placement.

“Placement” means the placement of an Applicant within the Observership Program.

“Related Body Corporate” has the meaning given to that term by section 9 of the *Corporations Act 2001* (Cth).

“Relevant Board” means the board of directors of the non-profit organisation on which a Placed Applicant is granted a Placement.

“Representative” means, in relation to an entity, a Related Body Corporate or a director, secretary, employee, contractor or consultant of that entity.