



MY REFUND AGENT

TERMS AND CONDITIONS

THIS AGREEMENT is made on the [day] [date] 2020.

PARTIES

1. **Denham Holdings PTY Ltd T/A Spencer Denham** (ABN 87 113 384 302) of PO Box 145 MIAMI QLD 4220 (the **Business**); and
2. The party listed in the Authority to Act (the **Account Owner or Account Owners Agent**).

(collectively referred to as the **Parties**)

RECITALS

- A. The Business is the owner and provider of www.spencerdenham.com.au (the **Website**).
- B. The Business agrees to act in the role of agent for the Account Owner or Account Owners Agent to locate, validate and administer the refund of lost, unclaimed, or forgotten monies in accordance with the Account Owner's (or an Account Owner's Agent's) directions (the **Services**).
- B. The Business has the skills, background and experience in providing the Services.
- C. The Account Owner has engaged the Business by signing and completing the Authority to Act form and the Account Owner has accepted provision of the Services on the terms and conditions set out in this Agreement.

OPERATIVE PROVISIONS

1. DEFINITIONS AND INTERPRETATION

1.1 Definitions

The following words have these meanings in this Agreement unless the contrary intention appears:

Account Owner means the party listed in Authority to Act and you, being an individual or individuals, a company, trust, or other entity that legally owns and is entitled to the lost money.

Account Owner's Agent means the person or persons authorised by the Account Owner to act on behalf of the Account Owner when using the Services and making a claim for a refund of lost monies.

Authority to Act Form means the form to be signed by the Account Owner in order to engage the Business for the provision of the Services.

Agreement means this Agreement including the Authority to Act, and any schedule or annexure;

Business Day means any day excluding Saturday, Sunday, a public holiday in Queensland and a Commonwealth public holiday;

Commencement Date means the date the Authority to Act is executed.

Confidential Information includes any information marked as confidential and any information received or developed by the Business or the Account Owner during the term of this agreement, which is not publicly available and relates to processes, equipment and techniques used by the Business in the course of the Business's business including all information, data, drawings,

specifications, documentation, source or object code, designs, construction, workings, functions, features and performance notes, techniques, concepts not reduced to material form, agreements with third parties, schematics and proposals and intentions, technical data and marketing information such as customer lists, financial information and business plans.

Intellectual Property Rights means all past, present and future rights in relation to copyright, trademarks, designs, patents or other proprietary rights, or any rights to registration of such rights, whether created directly or indirectly during the performance of the Services.

Material means any Intellectual Property Rights created, written, developed or otherwise brought into existence by the Business or the Account Owner during the course of this Agreement or otherwise brought into existence by the Business or the Account Owner whilst providing or receiving the Services, whether before the Commencement Date or after the Termination Date.

Refunded Money means all monies including monies held in shares, bonds, or in deceased estate identified as lost and unclaimed by the Business or directly claimed & refunded by the Business to the Account Owner.

Schedule means the schedule annexed to this Agreement and may be varied from time to time in writing between the Parties.

1.2 Interpretation

In this Agreement:

- (a) words importing a gender include other genders;
- (b) words in the singular include the plural and vice versa in accordance with the context of which that word used;
- (c) references to a person include an individual, firm or a body, whether incorporated or unincorporated;
- (d) references to numbered clauses, paragraphs and schedules are references to the relevant clause or paragraph in or schedule to this Agreement;
- (e) any obligation on any Party not to do or omit to do anything is to include an obligation not to allow that thing to be done or omitted to be done;
- (f) the headings to the clauses and schedules of this Agreement are not to affect the interpretation;
- (g) if the time of doing an act or thing under this Agreement falls on a day which is not a Business Day, then the time of doing that act or thing shall be deemed to be the next Business Day;
- (h) a reference to a statute, ordinance, code or law includes regulations and other instruments under it and any consolidations, amendments, re-enactments or replacements of any of them; and
- (i) the word "including" (and related forms including "includes") will be understood as meaning "including without limitation".

2. ACCEPTANCE OF THE AGREEMENT

- 2.1 You acknowledge and agree that by signing the Authority to Act Form, or instructing us to proceed with providing the Services you accept the terms and conditions contained in this Agreement.
- 2.2 The Account Owner's Agent warrants that they are authorised and have the capacity to enter into this agreement and to engage the Business to seek to recover the Refunded Money owed to the Account Owner.
- 2.3 The Account Owner or Account Owner's Agent warrants that upon signing of the Authority to Act Form, they have had the opportunity to read, review and accept the terms herein and are aware of their responsibilities and hereby agree to comply with the terms and conditions of this Agreement in full.

3. THE SERVICES

3.1 The Services

- (a) The Business agrees to perform the Services:
- (i) in a competent, professional, and timely manner, and in accordance with the terms and conditions in this Agreement;
 - (ii) with due diligence, skill and care to locate and return the Refund Money owing as quickly as possible;
 - (iii) in good faith in all its dealings with the Account Owner; and
 - (iv) in accordance with the Australian industry best standards for services similar in kind to the Services.
- (b) The Account Owner and Account Owner's Agent authorises the Business to undertake any necessary searches and procedures required for the recovery of lost monies and in the provision of the Services and are aware this can include obtaining personal information from third parties or third-party agencies for the sole purpose of having the claim for lost monies approved.
- (c) The Business agrees not to use the information provided for any purpose other than for the provision of the Services .

3.2 Compliance

In the performance of the Services, the Business covenants that it will do all acts necessary to comply with any law or regulation governing or applicable to the provision of the Services to the Account Owner.

3.3 Authority to Act

- (a) The Business covenants that it holds the prerequisite licenses, certificates and qualifications and is registered with the appropriate authorities (if required) to perform the Services to the Account Owner.

- (b) The Account Owner or the Account Owners' Agent acknowledges and agrees that the Business will not disclose the source of the lost monies or begin performing the Services if the Account Owner or Account Owner's Agent has not agreed to the Authority to Act Form.
- (c) The Account Owner or Account Owner's Agent acknowledges and agrees that a completed and signed Authority to Act Form or a written acknowledgement and instruction to proceed is an irrevocable instruction for the Business to investigate and seek to refund lost money for the Account Owner.

3.4 **No Employment Relationship**

The Account Owner or the Account Owner's Agent acknowledges and agrees that no employment relationship is created in substance or otherwise by way of this Agreement and covenants that the Account Owner will not make any representation to third parties that it is an employee or servant of the Business.

3.5 **Account Owner's Obligations**

- (a) The Account Owner or Account Owner's Agent acknowledges and agrees that it will provide correct, accurate and up-to date information on the Authority to Act Form and as requested by the Business. The Account Owner and Account Owner Agent will do all things and sign all document required for the Business to provide and fulfil the Services. A failure to do so may cause a delay in locating and refunding the lost monies and may lead to an unsuccessful claim. The Business will not be liable for any delays in recovering the monies due to the Account Owner or Account owners Agent failing to provide correct, accurate and up-to-date information.
- (b) The Account Owner or Account Owner's Agent acknowledges and agrees that it must not seek to deal directly with the holder of the funds or engage the services of another entity in competition with the Business once the source of Refunded Money is disclosed.

4. **TERM OF AGREEMENT**

4.1 **Commencement Date**

The Business will commence the Services on the Commencement Date.

4.2 **Termination Date**

This Agreement will continue until the business has provided the Services and may be terminated by the Business in accordance with clause 4.3 of this Agreement.

4.3 **Termination**

- (a) The Business may terminate this Agreement immediately without giving any notice to the Account Owner if the Account Owner has done any one or a combination of the following:
 - (i) committed serious or persistent misconduct;
 - (ii) committed fraud, theft, or dishonesty;
 - (iii) been convicted of a criminal offence during the course of this Agreement;
 - (iv) made inaccurate, misleading, or deceptive representations with respect to the

Account Owner's past work experience and knowledge;

- (v) been precluded from taking part in the management of a corporation under the provisions of Part 20 of the *Corporations Act 2011* (Cth);
 - (vi) persistent and repetitive breaches of any of the Business's policies or procedures;
or
 - (vii) been under the influence of drugs or alcohol during the Hours of Work.
- (b) The Business may terminate this Agreement for any reason at any time by providing seven (7) days' notice.
 - (c) Either party may terminate this Agreement effective upon written notice if a controller, manager, trustee, administrator or similar office, or a liquidator or provisional liquidator is appointed to the other party.
 - (d) The Account Owner may terminate this Agreement for any reason at any time by providing six (6) weeks notice to the Business.

4.4 **No Claim for Compensation**

The Account Owner will not be entitled to claim any amounts by way of compensation or damages or any other payments as a consequence of termination of this Agreement.

5. **COMMISSION**

- 5.1 The Account Owner acknowledges and agrees that the Business collects a commission fee of 15% of all monies, shares or assets recovered and refunded to the Account Owner plus GST, where applicable (the **Commission Fee**).
- 5.2 The Commission Fee does not include GST. Where GST is payable for the Services, the Business will charge you at the current GST rate of 10%.
- 5.3 The Account Owner or Account Owner's Agent understands that after having provided all the necessary documentation, if the claim for lost monies is not approved then the Business will not charge the Commission fee. The Account Owner or Account Owner's Agent agrees that in the event that the Account Owner or the Account Owner's Agent seeks to cancel or terminate this agreement, or knowingly does not provide information or documentation as required by the Business to complete the claim, or The Account Owner or Account Owner's Agent engages the services of another entity or seeks to deal direct with the holder of the funds in competition with the Business, then, notwithstanding any other clause here of, the Business can, but only after giving the Account Owner or Account Owner's Agent seven (7) days written notice of the Business's intention to, terminate this contract. Thereafter, the Business shall be entitled to issue the Account Owner or Account Owner's Agent with an invoice for the amount due had the claim been successful and the Refunded Money received by the Business. Any such invoice must be paid by the Account Owner or Account Owner's Agent within seven (7) days and any costs incurred by the Business in recovering our fees including legal costs are payable by the Account Owner or Account Owner's Agent.

6. **RECOVERY OF MONIES**

- 6.1 The Account Owner or the Account Owner's Agent acknowledges and agrees that when the claim for lost monies is approved and ownership is legally acknowledged, in the first instance the holding authority will send the Refunded Money to the Business as the representing agent.
- 6.2 The Refunded Money will be held in trust and the Account Owner or the Account Owner's Agent authorises the Business to have the Commission Fee deducted from the Refunded Money and to electronically transfer the balance to the bank account nominated by the Account Owner or the Account Owner's Agent as detailed in the Authority to Act Form.
- 6.3 If the holding entity forwards the Refunded Money directly to the Account Owner or the Account Owners Agent, the Account Owner or the Account Owners Agent agrees that the Commission fee will be paid in full within seven (7) days. Any unpaid amount will accrue interest at 15% per annum calculated daily.
- 6.4 The Business does not guarantee the recovery of any amount.

6.5 **Reimbursement**

- (a) The Account Owner will not claim reimbursement from the Business for any payment the Account Owner is required to make under any legislation, unless agreed between the Parties.
- (b) The Account Owner shall not claim reimbursement from the Business for goods and/or services purchased by the Account Owner without written consent from the Business in connection with providing the Consultancy Services, unless agreed otherwise between the Parties.

7. **INDEMNITY**

- 7.1 The Account Owner or the Account Owner's Agent acknowledges and agrees that usage of the Services is at their own risk. The Business excludes all implied conditions and warranties except for your rights, to the extent allowable by law, including under the provisions of the Australian Consumer Law.
- 7.2 The Account Owner and the Account Owner's Agent agrees to indemnify and keep indemnified the Business, its officers, employees, agents and independent contractors against any and all losses, damages, liabilities, and costs (including legal costs on a solicitor/client basis) sustained or incurred by the Business arising directly from or in connection with:
- (a) any breach of this Agreement by the Account Owner or the Account Owner's Agent;
- (b) any injury to or death of any person, or any loss or damage to any property caused by any gross negligence or wilful misconduct of the Account Owner or the Account Owner's Agent in the course of or related to the provision of the Services;
- (c) any fraud or dishonesty by the Account Owner or the Account Owner's Agent; or
- (d) any dispute, claim or action alleging infringement of any Intellectual Property of any third party arising solely from the act or omission of the Account Owner or Account Owner's Agent.
- 7.3 The Business agrees to indemnify and keep indemnified the relevant Account Owner or the Account Owner's Agent against any claim whatsoever and howsoever arising out of or in relation to the law or any determination including a claim for wages, salary, bonuses, leave, accrued leave, allowances, superannuation payments, expenses, loadings in relation to services provided by the Business.

- 7.4 The Account Owner and the Account Owner's Agent agrees to indemnify the Business, and its agents, employees, contractors, directors, and officers unconditionally from all actions, claims, demands, suits, proceedings, liabilities, sums of money, damages and costs no matter how it arose, except if caused solely by the Business, and on every account which now exists, or which would but for this Contract exist, connected with, arising from, or incidental to this Agreement or the Services.
- 7.5 The Business will not be liable for any loss arising from a delay caused by the Account Owner or the Account Owner's Agent, including failure to provide the required documentation, information or forms, or for any matters outside of its control, including government or other agency processing periods.
- 7.6 The Business cannot warrant the accuracy or completeness of any information provided by any third party which the Business provides to you. In providing the Account Owner or Account Owner's Agent with information regarding monies possibly due to the Account Owner, the Business have relied entirely upon information provided by a Government agency and the Business will not be liable for any loss arising from this reliance.

8. INTELLECTUAL PROPERTY

8.1 Confidential Information

- (a) By accepting this Agreement, the Account Owner acknowledges and agrees that they will not, during the course of this Agreement or thereafter, except with the consent of the Business, as required by law or in the performance of their duties, use or disclose any Confidential Information and any documents created by the Account Owner during the course of this Agreement.
- (b) The Confidential Information remains the sole property of the Business. The Account Owner shall not either during or after this Agreement, without the prior written consent of the Business, directly or indirectly divulge to any person or use the Confidential Information for his or her own or another's benefit.

8.2 Intellectual Property

- (a) The Account Owner recognises that all Intellectual Property Rights and the Material are the property of the Business and the Account Owner agrees to take all such steps as practicable to ensure that the Intellectual Property Rights will vest in, and remain vested, in the Business during and after the course of this Agreement with the Business.
- (b) The Account Owner assigns to the Business all and any Intellectual Property Rights created, written, developed or otherwise brought into existence by the Account Owner during the course of this Agreement or whilst using the Business's facilities, or otherwise.
- (c) The Account Owner and the Account Owner's Agent warrants that the Business owns the Intellectual Property created by the Account Owner and the Account Owner's Agent in the course of this Agreement and hereby expressly authorises the Business to use all or any such work and the Account Owner agrees that it does not have any right or interest in respect of any Intellectual Property currently being used or capable of being used in the Business's business.
- (d) The Account Owner and the Account Owner's Agent hereby indemnifies and agrees to keep indemnified the Business against all liability, losses or expenses incurred by the Business

in relation to, or in any way directly or indirectly connected with, any breach of this Agreement.

- (e) The Account Owner and the Account Owner's Agent agrees to sign all documents and take all steps to assign the Intellectual Property Rights to the Business when requested to do so by the Business.

8.3 **Moral Rights**

To the extent that the Account Owner and the Account Owner's Agent has Moral Rights in the Intellectual Property, the Account Owner gives Moral Rights Consent. For the purposes of this Agreement, "Moral Rights" means any moral rights including the rights described in Article 6 of the Berne Convention for protection of Literary and Artistic Works 1886 (as amended and revised from time to time) being "droit moral" or other analogous rights arising under any statute (including the *Copyright Act 1968* (Cth) or any law of the Commonwealth of Australia), that exist or that may come to exist, anywhere in the world. A "Moral Rights Consent" means a waiver of Moral Rights to the extent permitted by law and an unconditional consent to any act or omission in relation to the Intellectual Property Rights by or on behalf of the Business, its Personnel or any licensee or subsequent owner of copyright in the Material.

9. **DISPUTE RESOLUTION**

9.1 **Negotiation**

Except as is expressly provided for in this Agreement, if there is a dispute or difference between the Parties arising out of or in connection with this Agreement (**Dispute**), then within five (5) Business Days of a Party notifying the other Party in writing of the Dispute, a senior representative from each Party must meet and use all reasonable endeavours acting in good faith to resolve the Dispute by joint discussions.

9.2 **Mediation**

- (a) If the Dispute is not settled within five (5) Business Days of notification under clause 9.1 the Parties will, if mutually agreed, submit the Dispute to mediation administered by the Australian Disputes Centre.
- (b) The Australian Disputes Centre's Guidelines for Commercial Mediation apply to any mediation under this Agreement and the Parties must comply with those rules.
- (c) Any mediation meetings and proceedings under this clause must be held in Brisbane.

9.3 **Court proceedings and other relief**

A Party may not start court proceedings in relation to a Dispute until it has exhausted the procedures in this clause, unless the Party seeks injunctive or other interlocutory relief.

9.4 **Continuation of rights and obligations**

Despite the existence of a dispute or difference, each Party must continue to perform this Agreement.

10. **MISCELLANEOUS**

10.1 **Varied Agreement**

This Agreement may only be varied by mutual written Agreement between the Parties.

10.2 **Notice**

A notice or other communication pursuant to this Agreement may be delivered personally or sent to the address set out in this Agreement. Such notice or communication is deemed given or made when it is actually delivered personally or if sent by post, after two (2) Business Days of sending.

10.3 **Assignment**

(a) The Business may transfer, assign and/or sub-contract the rights and obligations conferred by this Agreement.

(b) The rights and obligations conferred by this Agreement cannot be transferred, assigned or sub-contracted by the Account Owner unless express written consent is provided by the Business.

10.4 **Counterpart**

This Agreement may be executed by counterparts and all such executed counterparts will constitute this Agreement. The Parties agree they will accept a scanned electronic version of a duly executed counterpart as an original counterpart to this Agreement.

10.5 **No partnership or agency**

Nothing contained or implied in this Agreement will create or constitute, or be deemed to create or constitute, a partnership between the parties. A party must not act, represent, or hold itself out as having authority to act as the agent of, or in any way bind or commit, the other party to any obligation.

10.6 **Waivers**

A waiver of any right, power or remedy under this Agreement must be in writing signed by the party granting it. A waiver is only effective in relation to the particular obligation or breach in respect of which it is given. It is not to be taken as an implied waiver of any other obligation or breach or as an implied waiver of that obligation or breach in relation to any other occasion. The fact that a party fails to do, or delays in doing something the party is entitled to do under this Agreement does not amount to a waiver.

10.7 **Governing Law & Jurisdiction**

This Agreement is governed by the laws of Queensland, Australia. In the event of any dispute arising out of or in connection with this Agreement, the Account Owner agrees that the exclusive venue for resolving any dispute shall be Brisbane, Queensland, Australia.

10.8 **Severance**

Any provision of this Agreement which is prohibited or unenforceable in any jurisdiction will, as to such jurisdiction, be ineffective to the extent of such prohibition or unenforceability without invalidating the remaining provisions of this Agreement or affecting the validity or enforceability of such provisions in any other jurisdiction.

10.9 Independent Legal Advice

The Account Owner acknowledges and agrees that they have been provided with an opportunity to seek independent legal advice and irrespective of whether the Account Owner has sought such advice, the Account Owners agrees that the terms and conditions of this Agreement on its own accord, without any coercion, undue pressure, or duress.

10.10 Entire Agreement and Modifications

Both the Business and the Account Owner confirm and acknowledge that:

- (a) This Agreement, including all Annexures and Schedules, shall constitute the entire Agreement between the Account Owner and the Business and shall supersede and override all previous communications, either oral or written, between the parties;
- (b) No Agreement or understanding varying or extending this Agreement shall be binding upon any party unless arising out of the specific provisions of this Agreement; and
- (c) If for whatever reason there is inconsistency between this Agreement and any other Agreement, this Agreement shall prevail.