
This Service Agreement

is made on 27 November 2000 between the following parties:

1. **The Committee for Australia** ("CFA") as delegates for and on behalf of The Institute of Chartered Secretaries and Administrators, a Corporation incorporated by Royal Charter in the United Kingdom of 16 Park Crescent, London W1N 4AH (**The Institute**) acting by Russell J Barnier and Michael A Adams of Level 9, 70 Castlereagh Street, Sydney NSW 2000, the duly authorised signatories of the Committee for Australia

AND

2. **Chartered Secretaries Australia Ltd** ABN 49 008 615 950 of Level 9, 70 Castlereagh Street, Sydney NSW 2000 (the "**Company**")

Recitals

- A. The Institute is a corporation formed by royal charter in the United Kingdom, to promote and advance the efficient administration of commerce, industry and public affairs by the continued development of the study and practice of secretaryship and administration of companies and other bodies.
- B. The Company has for many years been an organisation comprising members of The Institute, incorporated as a company limited by guarantee in accordance with the law of Australia and recognised pursuant to the Bye-laws of The Institute as a "territorial company".
- C. Pursuant to an operating agreement between The Institute and the Company entered into in 1986, the Company has at the request or direction of a committee of The Institute called the "Committee for Australia" carried out administrative tasks and functions necessary to discharge responsibilities placed on the Committee for Australia by the Council of The Institute.
- D. The Company has, among other functions, admitted to membership of the Company those persons already admitted as members of The Institute who are resident in the Australian Division of The Institute. Under the arrangements between the parties since 1986, the Company has levied and collected subscriptions from members who are members of the Company and The Institute and has remitted to The Institute in the United Kingdom capitation fees and other levies as determined by the Council of The Institute.
- E. The parties have agreed to restructure their relationship by terminating the existing operating agreement by mutual consent and entering into a new service agreement with a view to providing members of the Australian Division of The Institute with a local organisation, structure and administrative services and conducting other activities for The Institute in Australia, including the provision of education for the purposes of admission to membership of The Institute and continuing education. The Institute also proposes to re-establish a Committee of The Institute for

Australia and delegate certain responsibilities and powers to it in relation to the affairs of the Australian Division and for the purpose of furthering the achievement in the Australian Division of the objects of The Institute as set out in clause 4 of its Royal Charter.

- F. ICSA has appointed members of the Committee for Australia as its agents to sign this agreement for and on its behalf and in accordance with the delegation contained in the Delegation Agreement. By resolution of the Committee for Australia, that Committee has appointed its President and a Vice President to sign this Agreement in accordance with that delegation.

The parties agree in consideration of, among other things, the mutual promises contained in this agreement:

1 Definitions and interpretation

1.1 Definitions

“Australian Division” means the Division of members of The Institute resident in Australia which has been designated by the Council, pursuant to the Bye-laws of The Institute, and which comprises those members of The Institute who are resident in Australia and its Territories, Papua New Guinea, the Solomon Islands and in such jurisdictions or territories as the Council may include in the Division from time to time, the designation of the Division being a recognition by The Institute that a separate committee or body should further the interests of Institute and its members resident in the Australian Division and service them in their capacity as members;

“CFA” means the Committee for Australia of the Council of The Institute reconstituted and appointed by the Council of The Institute, pursuant to new Bye-laws as adopted on 13 December 1999, with respect to the affairs of The Institute in its Australian Division and the members resident in the Australian Division;

“Council” means the Council of The Institute;

“Delegation Agreement” means the document executed by the Institute and the CFA in or around November, 2000 containing the terms of appointment, composition, basic constitution and delegations of responsibilities and powers by the Council to the committee of the Council appointed for the Australian Division and known as the “Committee for Australia”.

1.2 Interpretation

In this agreement, headings and boldings are for convenience only and do not affect the interpretation of this agreement and, unless the context otherwise requires:

- (a) words importing the singular include the plural and vice versa;
- (b) words importing a gender include any gender;
- (c) other parts of speech and grammatical forms of a word or phrase defined in this agreement have a corresponding meaning;

- (d) an expression importing a natural person includes any company, partnership, joint venture, association, corporation or other body corporate and any governmental agency;
- (e) a reference to any thing (including, but not limited to, any right) includes a part of that thing but nothing in this clause 1(e) implies that performance of part of an obligation constitutes performance of the obligation;
- (f) a reference to a part, clause, party, annexure, exhibit or schedule is a reference to a part and clause of, and a party, annexure, exhibit and schedule to, this agreement and a reference to this agreement includes any annexure, exhibit and schedule;
- (g) a reference to a statute, regulation, proclamation, ordinance or Bye-law includes all statutes, regulations, proclamations, ordinances or Bye-laws amending, consolidating or replacing it, and a reference to a statute includes all regulations, proclamations, ordinances and Bye-laws issued under that statute;
- (h) a reference to a document includes all amendments or supplements to, or replacements or novations of, that document;
- (i) a reference to a party to a document includes that party's successors and permitted assigns;
- (j) a reference to a document includes any agreement in writing, or any certificate, notice, instrument or other document of any kind and a reference to writing includes references to printing, photograph, facsimile or the reproduction of words electronically;
- (k) Unless the contrary intention appears, a word or expression in this agreement which is contained in the Constitution of the Company or in the Charter or Bye-laws of The Institute or in an instrument delegating powers to the CFA has the same meaning as in that document;
- (l) References to Bye-laws in this agreement refer to the Bye-laws of The Institute as adopted on 13 December, 1999.

2 Commencement

2.1 Commencement date

Subject to clause 2.3, this agreement shall commence on the first day of January 2001 or such other date as the parties mutually agree.

2.2 Termination of Operating Agreement

The Operating Agreement between The Institute and the Company of December 1986 is terminated by mutual agreement between ICSA and the Company, effective upon commencement of this agreement or the Delegation Agreement, whichever is the later.

2.3 Conditions precedent to commencement

The commencement of this agreement is subject to the conditions precedent that:

- (a) the Company, in a general meeting, has adopted a new Constitution, to come into force on or before 1 January 2001, in place of its Constitution in force in 1999, which new Constitution provides, in effect:
 - (i) that any person admitted to membership of the Company as from the time it comes into force will be admitted only if that person is or has become a member of The Institute in its Australian Division and will cease to be a member of the Company if he or she ceases to be a member of The Institute in its Australian Division, and that, to the extent permitted by law, or with the relevant member's consent, the membership of the Company of any person, who was a member prior to the new Constitution coming into force, will terminate on the member ceasing to be a member of The Institute in its Australian Division; and
 - (ii) that the constitution of the Company provides for The Institute, while this agreement or a similar agreement is in force between the parties, to be a member of the Company with the exclusive right to appoint its directors and a right to exercise all votes that may be cast at a general meeting of the Company on a resolution to remove a director pursuant to section 227 of the Corporations Law and with a non-exclusive right to convene general meetings of the Company and to cast one-third of the votes cast on any proposed resolution to amend the Constitution.
- (b) the Council by 31 December 2000 has signed an agreement which, with effect from 1 January, 2001 establishes a committee of the Council designated as the "Committee for Australia" with delegated powers and responsibilities with respect to the exercise of the rights and powers of The Institute granted to it by the constitution of the Company and the affairs of The Institute in its Australian Division and its membership, including the responsibility to notify the Company of persons who are, have become or ceased to be members of The Institute in its Australian Division.

3 The Company to provide the local vehicle and administrative organisation for the Australian Division

3.1 Administrative and management services for CFA and The Institute

Subject to the reasonable exercise by the Company of a discretion to do so (including by taking into its own financial position), the Company agrees to provide all organisational, administrative and management facilities and services reasonably requested by the CFA or The Institute or its Council for the purpose of the discharge of the functions and responsibilities of the CFA to service and assist the members of The Institute and generally to further the achievement of the objects of The Institute as set out in clause 4 of its Royal Charter, including but not limited to the following:

- (a) administrative services to convene and give notice of meetings of the CFA and of members of The Institute in its Australian Division, record and settle minutes of their meetings, manage elections for CFA members and in relation to meetings, the settlement of documents required, the conduct of polls and other services required in connection with meetings;
- (b) the preparation, storage and presentation of all documents, records and reports on the accounting and financial affairs of the Australian Division and the CFA, including but not limited to those in electronic form and those required to be kept by any law, including but not limited to laws as to taxation;
- (c) the preparation of and assistance with the CFA's correspondence, notices and other documents, including its communications with the Council, the Council's staff, members of The Institute and the Company;
- (d) the storage, management and retrieval of the records and documents of the CFA and of The Institute in relation to its Australian Division and its members resident in that Division;
- (e) assistance with such publications or representations as the CFA decides to issue or make;
- (f) assistance with and provision of computers and information technology including but not limited to electronic mail and with the storage and retrieval of information relevant to the affairs of the CFA and the Australian Division electronically;
- (g) arranging and providing facilities and accommodation for meetings, lectures, examinations, conferences, seminars and other activities and for the preparation, dispatch and sending and receipt of notices;
- (h) the keeping and maintenance of the register of members of The Institute in its Australian Division;
- (i) arranging and paying for, or contributing (whether with or without contributions from The Institute) a reasonable standard of travel and accommodation for CFA members;
- (j) generally assisting in managing the CFA's and the Australian Division's affairs and the activities and affairs of the Australian Division relating to membership and the activities of members in their membership capacity;
- (k) such other services as the CFA or the Council reasonably request, provided that they are part of or related to the affairs of The Institute and its members in its Australian Division; and
- (l) such other services, payments, supports and provisions to assist the CFA and the members of the Australian Division as the Company in its absolute discretion considers desirable.

3.2 Provision of an organisational structure, facilities and staff for the Australian Division and specific services

The Company agrees to provide or assist The Institute and the CFA with, or to provide, as required by the CFA:

- (a) courses of instruction, and lectures for applicants for membership of The Institute and the Company in accordance with requirements and standards set by the CFA and the Council;
- (b) the setting and conduct of examinations for applicants for membership of The Institute and the Company, in accordance with decisions of the Council as to what the examinations will be;
- (c) the assessment of the performance of applicants or candidates taking the examinations for membership of The Institute and assessment of whether an applicant has satisfied the qualifications for admission to membership, provided that all decisions to admit persons to membership of The Institute or that a person has ceased to be such a member or ceased to be resident in the Australian Division, must be made by CFA pursuant to delegated powers from the Council to do so, or by the Council;
- (d) the monitoring, implementation and observance of the professional standards required of a member as set by the Council pursuant to the Bye-laws of The Institute, provided that it is for the Council itself actually to monitor the professional standards;
- (e) a program of professional development and continuing education activities and a forum for considering matters with respect to the professional roles and learning of members and their advancement;
- (f) opportunities for structured and unstructured professional development and for meeting and discussing common issues with members of The Institute and the Company in the Australian Division and with others with an interest in the principles, law and practice of corporate governance, management, administration and secretaryship;
- (g) a program of publications with respect to matters falling within the objects and concerns of The Institute and the Company;
- (h) co-operation with, or through the CFA or in its own right, with a view to serving objects of The Institute, preparing or making public comment on topics of concern to company secretaries and administrators and on issues which arise from time to time in public or specialist debate and discussion;
- (i) assistance in promoting the recognition and status of Chartered Secretaries in the Australian Division;
- (j) itself as the corporate vehicle for holding the local assets devoted to the service of members of The Institute in the Australian Division and of the Company and for the management of the income, expenditure, assets and liabilities available to service the members of The Institute in its Australian Division and of the Company, from time to time;
- (k) the formulation and amendment from time to time of rules of the CFA, and such other services or provisions as the Company in its discretion can reasonably provide to further the achievement of the objects of The Institute as stated in clause 4 of its Royal Charter.

3.3 Services for members

The Company agrees to provide members of The Institute in its Australian Division and of the Company in their membership capacity, with the services, assistance and opportunities which are considered reasonably necessary and appropriate by the CFA, or by the Company on its own initiatives, at levels which are reasonable, having regard to the financial position, income and other responsibilities of the Company and so as not to create a risk that the Company might be in a precarious financial position.

4 Notices to the Company

4.1 Notice to the Company on membership

The CFA or the Council must promptly notify the Company:

- (a) of the decisions of The Institute or the CFA on whether an applicant for membership resident in the Australian Division has been admitted to membership of The Institute, or is a member of The Institute and as to whether that member is resident in the Australian Division;
- (b) when a person who has been a member of The Institute in its Australian Division and has ceased to be a member of The Institute or has ceased to be resident in the Australian Division;

and the Company must promptly amend its membership register to reflect the facts that each member of The Institute in its Australian Division is a member of the Company and that a member of the Company ceases to be such a member when he or she ceases to be a member of The Institute or ceases to be a resident in the Australian Division.

4.2 Company to be sole collector of membership subscriptions from members resident in the Australian Division

- (a) The Institute has delegated to the CFA the power to levy and collect subscriptions from its members in its Australian Division and has allowed the sub-delegation of that power to the Company, which may levy in its own right and seek to collect in a timely and efficient manner, all subscriptions payable by members of The Institute in its Australian Division and of the Company for membership of The Institute and the Company and that the subscriptions so collected are the property of the Company.
- (b) If a member's subscription payable to the Company pursuant to its power referred to in clause 4.2(a) to levy subscriptions is in arrears for more than the time specified by CFA from time to time, then the CFA in its discretion may decide that that person's membership of The Institute is terminated. The Company agrees that it will not terminate membership of the Company by reason of subscriptions payable to the Company being in arrears, unless and until the CFA, or The Institute acting through its Council or other organisation or delegate has terminated the person's membership of The Institute.

- (c) The Company agrees to consult with the CFA in setting the level of subscriptions payable by members of The Institute resident in its Australian Division and by members of the Company.
- (d) CFA will include in a form of application by a person for membership of The Institute a form of consent by the applicant to become a member of the Company and that person is to be bound by the Company's constitution .
- (e) CFA will use its best endeavours to ensure that any member who becomes resident in the Australian Division consents to become a member of the Company and to agree to be bound by the provisions of the Company's constitution.
- (f) Subject to any legal restriction on its right to do so, having regard to its financial position or otherwise, the Company shall pay out of the subscriptions which it collects such reasonable capitation fees as are fixed from time to time by The Institute.

5 Other activities of the Company

It is acknowledged by the parties to this agreement that the Company engages in activities other than those the subject of this agreement and those provided pursuant to the Delegation Agreement for The Institute, the CFA and the members of The Institute, including but not limited to the provision of education, courses of instruction and related services for the public, the publication of material whether in documentary form or by electronic means on subjects of interest or concern to the Company and agrees that nothing in this agreement or in any other arrangement the Company may enter into will preclude it from doing so, or from undertaking on the initiative of the Company activities of the type contemplated by clause 4 of the Royal Charter of The Institute or from levying charges or fees for such services, to be retained by the Company in its own right.

6 CFA

6.1 Delegation to CFA

It is acknowledged that CFA has been delegated adequate responsibilities and powers by The Institute in relation to its affairs and those relating to the members of The Institute in its Australian Division.

6.2 Appointment of corporate representative of The Institute at general meetings of the Company

It is acknowledged that The Institute will delegate to the CFA the power from time to time to appoint The Institute's corporate representative to represent it, as the Institute member of the Company under the Company's constitution, at general meetings of the Company.

6.3 Sub-delegation by CFA

The Institute has agreed that its delegations to CFA include a power from time to time for the CFA to sub-delegate to the Company as the CFA thinks fit, activities, tasks and responsibilities with respect to the management and administration, provided that the CFA will not be empowered to delegate:

- (a) decisions to elect and admit persons to membership of The Institute;
- (b) the power of deciding what the examinations, for persons applying to membership in the Australian Division, will be;
- (c) any power to grant exemptions from examinations, which is vested exclusively in the Council; and
- (d) power to determine and notify the Company in accord with its Constitution whether a person is or has ceased to be a member of The Institute and whether he or she is or is not resident in the Australian Division;
- (e) the setting of professional standards of The Institute for its Australian Division.
- (f) any disciplinary matter relating to members or students of the Australian Division.
- (g) any disciplinary matter relating to members or students of The Institute resident in the Australian Division's territory.

7 Termination and disputes

7.1 Agreement continues

This agreement continues indefinitely unless terminated by mutual agreement of the parties or otherwise in accordance with this clause.

7.2 Disputes

- (a) In the event that The Institute, the CFA, under power delegated to it by The Institute or the Company considers that there has been or is a breach of this agreement, then the party which holds that view must notify the other party of its concerns and shall submit a statement of those concerns in writing to that party.
- (b) The parties must then discuss what remedial action is possible and acceptable to both parties with a view to resolving any differences between them. In the event that remedial action satisfactory to both parties has not been achieved within a period of six calendar months from the date of the written submission of the reasons for concern or within such other time as the parties may agree, then the parties agree to refer their dispute to arbitration under the Commercial Arbitration Act 1984 of New South Wales.
- (c) On such a referral to arbitration pursuant to clause 8.2(b), the arbitration will be held in Sydney or any other place agreed by both parties.

- (d) The parties will appoint a person agreed between themselves to be the arbitrator of the dispute.
- (e) If the parties fail to agree on a person to be the arbitrator, under clause 8.2(d), then the parties must request the Australian Commercial Disputes Centre to appoint an arbitrator.
- (f) A party must not commence or maintain any legal action relating to any dispute unless and until an arbitrator appointed pursuant to this clause 6.2 has advised the parties that the differences between them are not capable of being resolved by arbitration.
- (g) The parties agree to use their best endeavours to continue the arrangements between them on a basis satisfactory to each and use their best endeavours to resolve any dispute in a spirit of reasonableness and compromise of their differences.
- (h) Each party must bear its own costs in respect of any negotiation between them with respect to their differences and with respect to the arbitration. Insofar as costs of the arbitration are for the accounts of both parties, the parties agree to share the liability to pay them equally.

8 Stamp duty

The Company will pay any stamp duty and other charges or fees and all expenses in connection with this agreement other than fees and expenses incurred by The Institute for legal, tax, accounting and other advice and services to it in connection with this agreement or its preparation.

9 Notices

- (a) Any notice or other communication including, but not limited to, any request, demand, consent or approval, to or by a party to this agreement must be made to the receiving party's advised or registered or recognised main office, and
 - (i) must be signed by a duly authorised Officer of the sender;
 - (ii) is regarded as being given by the sender and received by the addressee:
 - (A) if by delivery in person, when delivered to the addressee;
 - (B) if by post, on delivery to the addressee; or
 - (C) if by facsimile transmission, when received by the addressee; or
 - (D) if sent electronically, on receipt at an electronic address supplied from time to time by the addressee.
- but if the delivery or receipt is on a day which is not a Business Day or is after 4.00pm (addressee's time) it is regarded as received at 9.00 am on the following Business Day; and

- (iii) can be relied upon by the addressee and the addressee is not liable to any other person for any consequences of that reliance if the addressee believes it to be genuine, correct and authorised by the sender.
- (b) A facsimile transmission is regarded as legible unless the addressee telephones or sends a facsimile to the sender by the end of the business day after receipt and informs the sender that it is not legible.
- (c) In this clause 10, a reference to an addressee includes a reference to an addressee's Officers, agents or employees.

10 Prohibition and enforceability

- (a) Any provisions of, or the application of any provision of this agreement or any power which is prohibited in any jurisdiction is, in that jurisdiction, ineffective only to the extent of that prohibition.
- (b) Any provision of, or the application of any provision of, this agreement which is void, illegal or unenforceable in any jurisdiction does not affect the validity, legality or enforceability of that provisions in any other jurisdiction or of the remaining provisions in that or any other jurisdiction.
- (c) Where clause is void, illegal or unenforceable, it may be severed without affecting the enforceability of the other provisions in this agreement.

11 Waivers

- (a) Waiver of any right arising from a breach of this agreement must be in writing and signed by the party granting the waiver.
- (b) A failure or delay in exercise, or partial exercise, or a right arising from a breach of this agreement does not result in a waiver of that right.
- (c) A party is not entitled to rely on a delay in the exercise or non-exercise of a right arising from a breach of this agreement as constituting a waiver of that right.
- (d) A party may not rely on any conduct of another party as a defence to exercise of a right by that other party.
- (e) This clause may not itself be waived, except by writing.

12 Variation

A variation of any term of this agreement must be in writing and signed by the parties.

13 Assignment

Rights arising out of or under this agreement are not assignable by one party without the prior written consent of the other party.

14 Further assurances

Each party must do all things and execute all further documents necessary to give full effect to this agreement.

15 Counterparts

- (a) This agreement may be executed in any number of counterparts.
 - (b) All counterparts, taken together, constitute one instrument.
 - (c) A party may execute this agreement by signing any counterpart.
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11 October 2000

Executed as an agreement:

Chartered Secretaries Australia Limited

Signature

(Print name)

Director

Signature

(Print name)

Director/Secretary

Russell J Barnier and Michael)
A Adams as the duly authorised)
signatories of the Committee)
for Australia as delegate)
of the Institute of Chartered)
Secretaries and Administrators)

R J Barnier
President
Committee for Australia

M A Adams
Vice president
Committee for Australia