

DATED \_\_\_\_\_ 2010

**CAVALLINO HOLDINGS PTY LIMITED  
ACN 136 816 656  
ATF THE DAYTONA DISCRETIONARY TRUST  
T/A INSIGHT ACUMEN  
(Company)**

***[INSERT NAME OF SUBCONTRACTOR]***  
(Subcontractor)

## ***SUBCONTRACTING AGREEMENT***



reid commercial law

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THIS AGREEMENT dated

2010

## PARTIES

CAVALLINO HOLDINGS PTY LIMITED ACN 136 816 656 ATF THE DAYTONA DISCRETIONARY TRUST T/A INSIGHT ACUMEN of PO Box 100, EVERTON PARK QLD 4053 (Company)

**[INSERT NAME OF SUBCONTRACTOR]** PTY LIMITED ACN \_\_\_\_\_ of **[INSERT ADDRESS]** (Subcontractor)

## INTRODUCTION

- A. The Company wishes to engage the Subcontractor to provide certain services to the Company.
- B. The Subcontractor has agreed to provide services to the Company on the terms and conditions in this Agreement.

## OPERATIVE PARTS

### 1. DEFINITIONS AND INTERPRETATION

#### 1.1 Definitions

In this Agreement, unless the contrary intention appears:

**Agreement** means this Subcontracting Agreement as amended from time to time, including any annexure or schedule to, or Service Order issued under, this Agreement.

**Business Day** means a day on which banks are open for business in the State in which the Site is located.

**Claim** means any action, suit, cause of action, arbitration, debt, cost, loss, demand, verdict or judgment arising at law or in equity or under statute.

**Client** means the party named as Customer in the Consultancy Agreement and any other client or customer of the Company at any time within the 12-month period prior to the Termination Date.

**Commencement Date** means the date from which this Agreement takes effect, as specified in Schedule 1 or otherwise agreed by the Parties in writing.

**Confidential Information** means:

- (a) all software, information and documents (whether in written or electronic form or orally), research processes, correspondence, third party confidential information (including of suppliers or Clients) which belongs to or relates to the business of the Company or its Clients;

- (b) commercial, financial, legal and technical and other advice, correspondence, material, memoranda, opinions, know-how and information made available at any time (whether in written or electronic form or orally) by the Company or its Clients, including information relating to technology, processes, products, specifications, inventions or designs used or developed by the Company or its Clients as well as trade secrets, know-how and information of a commercially sensitive nature;
- (c) notes, summaries, compilations, conclusions, calculations, computer records (including data, copies, models, reproductions and recordings) or other material in whatever form made or derived in whole or in part by the Company or its Clients from, or from inspection or evaluation of, any information of the type referred to in paragraphs (a) and (b);
- (d) the potential and actual clients, client contacts and client lists of the Company or its Clients;
- (i) the contents of this Agreement or the Consultancy Agreement; and
- (j) any information (in whatever form) of a third party which the Company is bound to keep confidential.

**Consultancy Agreement** means the Consultancy Services Agreement (a copy of which is annexed in Schedule 2) under which the Company is contracted to provide the Consultancy Services.

**Consultancy Services** means the services which the Company is required to provide to the party named as Customer under the Consultancy Agreement.

**Intellectual Property** means all patents, trademarks, copyrights, registered designs, trade secrets, confidential information and other intellectual property at any time held by, or registered in the name of, a person at any time or which that person has the benefit of, has an interest in or is entitled to use.

**No Fault Event** means a circumstance beyond the reasonable control of a Party which results in a Party being unable to observe or perform on time an obligation under this Agreement, including without limitation forces of nature and action or inaction by a third party.

**Nominated Personnel** means the person(s) who must provide the Services on behalf of the Subcontractor, as named in Schedule 1 or otherwise approved by the Company from time to time.

**Party** means a party to this Agreement.

**Restraint Period** means the 12 month period from the Termination Date.

**Services** means the services to be provided by the Subcontractor under this Agreement, as specified in Schedule 1 or a Service Order or otherwise agreed by the Parties in writing from time to time.

**Service Fees** means the amounts payable by the Company to the Subcontractor for the Services, as calculated in accordance with Schedule 1 or otherwise agreed between the Parties in writing from time to time.

**Service Order** means a document setting out particulars of any further Services which the Subcontractor, at the request of the Company, agrees to provide in addition to the Services specified in this Agreement.

**Site** means the premises at which the Services are to be provided or delivered.

**Specifications** means the specifications for the Services to be provided by the Subcontractor under this Agreement, as identified in Schedule 1, a Service Order or otherwise agreed by the Parties in writing from time to time.

**Term** means the period of this Agreement from the Commencement Date and includes any extension or renewal of this Agreement as specified in Schedule 1 or as agreed by the Parties in writing from time to time.

**Termination Date** means the date on which the Term ends or this Agreement is terminated for any reason.

## 1.2 Interpretation

- (a) Clause headings and schedules are for ease of reference only and are not intended to affect interpretation of the relevant provision.
- (b) References to statutory provisions shall be construed as references to those provisions as amended or re-enacted (whether before or after the Commencement Date) from time to time.
- (c) The invalidity, illegality or unenforceability of any one or more of the provisions (or parts of provisions) of this Agreement shall not affect the validity, legality or enforceability of the remaining provisions (or parts of those provisions) of this Agreement which shall continue in full force and effect.
- (d) Unless the contrary intention appears:
  - (i) a reference to this document or any other document includes any variation or replacement of it;
  - (ii) a reference to a statute, ordinance, code or other law includes regulations and other instruments under it and consolidations, amendments, re-enactments or replacements of any of them;
  - (iii) the singular includes the plural and vice versa;
  - (iv) a reference to a person includes a reference to the person's executors, administrators, successors, transferees, substitutes (including persons taking by novation) and permitted assigns;

- (v) an agreement, representation or warranty on the part of or in favour of two or more persons binds, or is for the benefit of, them jointly and severally;
  - (vi) if a period of time is specified and commences from a given day or the day of an act or event, it is to be calculated exclusive of that day;
  - (vii) a reference to time shall mean Eastern Standard Time in Australia;
  - (viii) a reference to a "month" means a calendar month;
  - (ix) a reference to a calculation includes all forms of evidence in support of it;
  - (x) a term or definition incorporated by reference into this Agreement remains in force notwithstanding that the document from which it was incorporated may at any time be no longer in force.
- (e) If there is any inconsistency between the Consultancy Agreement and this Agreement, the terms of this Agreement shall prevail to the extent of the inconsistency.

## **2. APPOINTMENT OF SUBCONTRACTOR**

### **2.1 Appointment**

The Company appoints the Subcontractor to provide the Services, and the Subcontractor accepts the appointment, for the Term and otherwise on the terms and conditions set out in this Agreement.

### **2.2 Consultancy Agreement**

The Subcontractor acknowledges and agrees that:

- (a) the Company is required to provide the Consultancy Services under the Consultancy Agreement;
- (b) the Services to be provided by the Subcontractor under this Agreement include some or all of the Consultancy Services;
- (c) the Subcontractor shall:
  - (i) provide the Services in accordance with the requirements for provision of the Consultancy Services; and
  - (ii) comply with the obligations of the Company under the Consultancy Agreement to the extent they are applicable to the Services and the performance of the Subcontractor's obligations under this Agreement;
  - (iii) not do or omit to do anything that may result in, or contribute to, a breach by

the Company of its obligations under the Consultancy Agreement;

and the Subcontractor indemnifies and shall keep indemnified the Company against any loss or liability incurred by the Company as a result of a breach by the Subcontractor of its obligations under this clause 2.2(c).

### **2.3 No exclusivity**

The appointment of the Subcontractor under this Agreement is not exclusive and the Company expressly reserves the right to appoint any other person to provide services of the kind provided by the Subcontractor or as specified in the Consultancy Agreement.

## **3. PROVISION OF SERVICES**

### **3.1 Manner of performance**

The Subcontractor must provide the Services in a professional manner and ensure that the Nominated Personnel have the necessary skills and experience required to provide the Services.

### **3.2 Lawful directions**

The Subcontractor must comply with all reasonable directions given by the Company from time to time as to

- (a) the Subcontractor's use of or access to the Site or any facilities or services on the Site; and
- (b) the provision of the Services,

provided that nothing in this clause shall affect the Subcontractor's right to exercise its own judgement and to utilise its skills as it considers most appropriate in the provision of the Services.

## **4. SERVICE FEES AND EXPENSES**

### **4.1 Service Fees**

Subject to clause 4.2 and except as otherwise agreed by the Parties in writing, the Service Fees represent the total amounts payable by the Company for the Services, including the cost to the Subcontractor of all labour, materials, electricity, equipment, licensing fees and instruments used in providing the Services.

### **4.2 Expenses**

The Subcontractor must pay the costs of all expenses incurred in providing the Services except those expenses identified in Schedule 1 or a Service Order which the Company agrees in writing to reimburse.



### 4.3 Payment

The Company must pay:

- (a) the Service Fees within 30 days of receipt of a valid Tax Invoice from the Subcontractor;
- (b) any expenses which the Company has agreed to pay under clause 4.2, within 14 days after the Subcontractor submits a written request for payment together with such receipts or other evidence of the expenses incurred as reasonably required by the Company.

## 5. NOMINATED PERSONNEL

### 5.1 Provision of Services

The Services are to be provided solely by the Nominated Personnel unless otherwise agreed by the Company in writing.

### 5.2 Replacement personnel

If any of the Nominated Personnel become unavailable, the Subcontractor must appoint a replacement person or persons with the approval of the Company within 7 days.

## 6. INTELLECTUAL PROPERTY

### 6.1 Ownership

- (a) The Subcontractor acknowledges and agrees that all Intellectual Property in or associated with any software or other material (whether in electronic or printed form) developed during the course of providing the Services shall immediately be assigned to and vest in the Company.
- (b) The Subcontractor shall sign all documents and do all acts and things required by the Company to give effect to paragraph (a).

### 6.2 Third party rights

- (a) The Subcontractor warrants that any software or other material (whether in electronic or printed form) (**Relevant Material**) developed during the course of providing the Services does not infringe the Intellectual Property rights of any person and the Subcontractor indemnifies and shall keep indemnified the Company against any loss or liability arising out of a claim by a third party alleging that the Relevant Material infringes such Intellectual Property rights.
- (b) If it is agreed or determined that the Relevant Material does infringe the Intellectual Property rights of a third party, the Subcontractor shall at its sole expense:
  - (i) modify the Relevant Material in order to avoid continuing infringement;

- (ii) procure for the Company the right to continue the use or possession of the infringing Relevant Material; or
- (iii) if (a) or (b) cannot be achieved, remove the Relevant Material and compensate the Company for the loss incurred, which amount is to be agreed by the parties or, failing agreement, by an independent expert appointed by the Company (the costs of which shall be borne by the Subcontractor).

## **7. CONFIDENTIAL INFORMATION**

### **7.1 Obligations include Personnel**

In this clause, an obligation of the Subcontractor includes an obligation to take all steps necessary to ensure that, where appropriate, the Subcontractor's officers, employees, contractors, advisers and agents (**Personnel**) comply with the obligation.

### **7.2 Acknowledgements**

The Subcontractor acknowledges that:

- (a) it will have access to the Confidential Information during the course of providing the Services;
- (b) the Confidential Information comprises valuable assets of the Company and/or its Clients;
- (c) any misappropriation or unauthorised disclosure of the Confidential Information may result in substantial loss or damage to the Company.

### **7.3 No disclosure**

The Subcontractor shall not, without the prior written approval of the Company, disclose the Confidential Information and, without limitation, the Subcontractor must at all times:

- (a) maintain the strict confidentiality of the Confidential Information;
- (b) only disclose to its Personnel such parts of the Confidential Information as is necessary to comply with its obligations under this Agreement;
- (c) not make copies of the Information except to the extent necessary to comply with its obligations under this Agreement;
- (d) immediately notify the Company if it becomes aware of any unauthorised use, disclosure, access, possession or knowledge of the Confidential Information.

### **7.4 Permitted disclosures**

The Subcontractor will not be in breach of clause 7.3 if it discloses such of the Confidential Information as:

- (a) it is legally compelled to disclose;
- (b) was in the public domain at the time of the disclosure or becomes part of the public domain after the time of the disclosure (except if it becomes part of the public domain as a result of disclosure by the Subcontractor or its Personnel in breach of this Agreement);
- (c) was in the possession of the Subcontractor at the time of disclosure and was not acquired, directly or indirectly, from the Company or its Clients;
- (d) was developed independently of the Services without reliance in any way on the Company or the Confidential Information;
- (e) is disclosed to its related companies or advisers.

## **7.5 Confidentiality agreement**

The Subcontractor must, if requested by the Company, enter into or arrange for such of its Personnel to enter into a suitable confidentiality agreement with respect to the Confidential Information.

## **8. INSURANCE**

### **8.1 Obligation to effect insurance**

The Subcontractor must have adequate insurance against liability, loss or damage in relation to claims for:

- (a) property damage;
- (b) public liability; and
- (c) professional indemnity,

relevant to the performance of the Subcontractor's obligations and the warranties and indemnities given under this Agreement.

### **8.2 Evidence of insurance**

The Subcontractor must, on demand, produce evidence to the satisfaction of the Company of the insurances taken out under clause 8.1.

## **9. WARRANTIES**

### **9.1 Subcontractor's warranties**

The Subcontractor warrants to the Company that any software developed and other Services provided under this Agreement:

- (a) are and will be free from defects and errors;
- (b) are and will be properly installed;
- (c) comply with the specifications identified in this Agreement;
- (d) are and will perform in accordance with all relevant standards, whether or not expressed in this Agreement or a Service Order;
- (e) do not contain any viruses or any built-in, automatic or random expiry dates.

## **9.2 Rectification of breach**

If the Subcontractor becomes aware, or is notified by the Company, of any defect in the software or other Services provided by the Subcontractor, it must immediately and at its own expense rectify the default including, if necessary, replacing the defective software.

## **9.3 No merger**

This clause 9 shall survive termination of this Agreement.

## **10. LIABILITY**

### **10.1 Risk and release**

To the extent permitted by law, the Subcontractor agrees to provide the Services at its own risk and hereby releases the Company from any loss, damage or injury which may be suffered or incurred by the Subcontractor or the Nominated Personnel whether as a result of negligence or some other cause, arising from or in connection with the provision of the Services under this Agreement.

### **10.2 Indemnity**

The Subcontractor shall at all times indemnify and hold harmless the Company, its officers, employees and agents from and against any Claim which arises from or in connection with:

- (a) a breach by the Subcontractor of its obligations or any warranties given under this Agreement; or
- (b) any wilful, unlawful or negligent act or omission of the Subcontractor or the Subcontractor's officers, employees and agents.

## **11. NO FAULT EVENTS**

### **11.1 No liability**

Neither Party will be liable for any delay or failure to perform its obligations under this

Agreement if such delay or failure is due to a No Fault Event.

## **11.2 Consequences**

If a Party's delay or failure to perform its obligations under this Agreement is due to a No Fault Event:

- (a) that Party's obligations shall be suspended; and
- (b) if the delay or failure exceeds 60 days, either Party may terminate this Agreement by written notice to the other.

## **12. TERMINATION**

### **12.1 Termination by notice**

Either Party may terminate this Agreement by giving at least one month's written notice.

### **12.2 Termination for breach**

Without prejudice to any other rights a Party may have under this Agreement or at law, either Party may terminate this Agreement immediately by notice in writing if the other Party (**Defaulting Party**) is in breach of a term of this Agreement and:

- (a) if capable of remedy, such breach is not remedied within 21 days after the non-defaulting Party serves written notice requiring the Defaulting Party to rectify the breach; or
- (b) if not capable of remedy, the Defaulting Party fails to pay such compensation for the loss reasonably incurred by the non-defaulting party within 21 days after written request for payment.

### **12.3 Immediate termination**

Either Party may terminate this Agreement immediately by written notice to the other Party if that other Party:

- (a) becomes or threatens to become or is at risk of becoming subject to any form of insolvency administration;
- (b) being a natural person, dies;
- (c) commits a serious or persistent breach of this Agreement.

### **12.4 Consequences of termination**

If this Agreement is terminated for any reason, each Party:

- (a) must immediately return all documents and other materials of the other Party in its

possession or control;

- (b) the Company must pay the Services Fees and any expenses payable in relation to Services performed up to the Termination Date;
- (c) shall be regarded as discharged from any further obligations under this Agreement.

### **13. RESTRAINT**

#### **13.1 Terms of restraint**

The Subcontractor may not during the Restraint Period:

- (a) solicit for employment any person who is or was employed or contracted by the Company within the 12 months prior to the Termination Date; or
- (b) provide services for, contract with, or solicit for the custom of, a Client.

#### **13.2 Notification**

The Subcontractor must promptly advise the Company if a person who is or was employed or contracted by the Company within the 12 months prior to the Termination Date, seeks to:

- (a) be employed or contracted by the Subcontractor; or
- (b) provide services for, contract with, or solicit for the custom of, any Client.

### **14. CONFLICT OF INTEREST**

During the Term, the Subcontractor must not engage in any activity or business that may conflict with or compromise its ability to perform its obligations under this Agreement, without first obtaining the Company's written consent.

### **15. GENERAL PROVISIONS**

#### **15.1 Notices**

All notices, requests, demands, consents, approvals, agreements or other communications to or by a Party to this Agreement:

- (a) must be in writing addressed to the address of the recipient shown in this Agreement or to such other addresses as may be notified to the sender from time to time;
- (b) will be deemed to be duly given or made (in the case of delivery in person or by post, facsimile transmission or email) when delivered to the recipient at the address referred to in paragraph (a) but if such delivery or receipt is later than 4.00 pm (according to the local time of the recipient) on a business day in the place to which such communication is sent, it shall be deemed to have been duly given or made on the next business day in that place.

- (c) No failure, delay, relaxation or indulgence on the part of any Parties in exercising any power or right conferred upon such Party in terms of this Agreement shall operate as a waiver of such power or right, nor shall any single exercise of any such power or right preclude any other or future exercise thereof or the exercise of any other power or right under this Agreement.

## **15.2 Assignment**

No Party may assign its burdens or benefits under this Agreement without the prior written consent of the other Party.

## **15.3 Severance**

Wherever possible, each provision of this Agreement must be interpreted in such manner so as to be effective and valid under the governing law of this Agreement. If there is any provision of this Agreement, or the application of such provision to any Party, which is prohibited by or invalid ("prohibited or by or invalid"?) under the governing law of this Agreement, such provision will be ineffective to the extent of such prohibition or invalidity without invalidating the remainder of such provision or the remaining provisions of this Agreement or the application of such provisions to other Parties or circumstances.

## **15.4 Variation**

The provisions of this Agreement may not be varied except by agreement in writing signed by the Parties.

## **15.5 Governing law and jurisdiction**

This Agreement is governed by and to be interpreted in accordance with the laws of the State in which the Site is located and the Parties submit to the jurisdiction of the Courts of that State.

## **15.6 Entire agreement**

This Agreement constitutes the entire Agreement between the Parties in respect of its subject matter and no covenant, condition, agreement or arrangement, understanding, warranty, promise or inducement of or for or on behalf of any Party to any other not expressed in this Agreement shall affect, change, restrict or modify the operation of this Agreement or bind any of the Parties as it is the intention of the Parties that this Agreement supersedes all previous discussions, correspondence and writings between the Parties or any of them and between their legal and other advisers.

## **15.7 No waiver**

No variation, modification or waiver of any provision of this Agreement shall be of any force and effect unless confirmed in writing signed by the Parties and then such variation, modification, waiver or consent shall be effective only to the extent for which it may be made or given.

**Schedule 1**  
**CONTRACT DETAILS**

**Commencement Date:** 2010

**Term:**

**Extended term:**

**Nominated Personnel:**

**Site:**

**Services:**

**Service Fees**



**Schedule 2**

**CONSULTANCY AGREEMENT**

**EXECUTED** as an Agreement.

**EXECUTED** for and on behalf of )  
**CAVALLINO HOLDINGS PTY** )  
**LIMITED ACN 136 816 656 ATF THE** )  
**DAYTONA DISCRETIONARY TRUST** )  
**T/A INSIGHT ACUMEN** by authority of )  
the Directors: )

.....  
Signature of Sole Director/Secretary

.....  
Print name

**EXECUTED** for and on behalf of )  
**[INSERT NAME OF** )  
**SUBCONTRACTOR] PTY LIMITED** )  
**ACN** by authority of the )  
Directors: )

.....  
Signature of Director

.....  
Signature of Director/Secretary

.....  
Name of Director

.....  
Name of Director/Secretary