

**GYPSY HUB PTY LTD (ACN: 625 049 309)
as trustee for the Gypsy Hub Trust (ABN: 87 694 455 223)**

(Supplier)

TO

THE CUSTOMER

SERVICES AGREEMENT



*96 Chifley Drive
Preston Vic 3072
Tel: (03) 9487 1170
www.gypsyhub.com.au*

THIS AGREEMENT

BETWEEN:

GYPSY HUB PTY LTD (ACN: 625 049 309) as trustee for the Gypsy Hub Trust (ABN: 87 694 455 223) of 96 Chifley Drive, Preston VIC 3172 ("the Supplier")

and

The **CUSTOMER** as defined in the Schedule or Quote ("Customer")

BACKGROUND

- A The Supplier has skills and experience in providing beverage manufacturing services, including recipe formulation, production, packaging and storage services ("the Services").
- B The Customer wishes to engage an independent contractor to provide the Services to the Customer.
- C The Supplier is willing provide the Services and the Customer is willing to appoint the Supplier to provide the Services in accordance with the terms of this **Agreement**.

OPERATIVE PROVISIONS

1 DEFINITIONS AND INTERPRETATION

1.1 Definitions

In this **Agreement** unless the context indicates otherwise, the following words have the following meanings.

Claims means all demands, claims, proceedings, penalties, fines and liability (whether criminal or civil, in contract, tort or otherwise).

Confidential Information includes any information marked as confidential and any information received or developed during the term of this **Agreement**, which is not publicly available and relates to processes, equipment and techniques used by either the Supplier or the Customer in the course of their business. This includes 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.

Customer means the person identified in the Schedule or quote, and includes any officers, employees, contractors, representatives or consultants of that person or entity.

Facilities means the Supplier's machines, apparatus, tools, or equipment of any kind located in the Supplier's Premises which may be required to be used to perform the **Services**.

Fees means the fees, and/or any rates set out in the Schedule or quote, as updated from time to time in accordance with clause 4.3.

GST Law means the same as in the A New Tax System (Goods and **Services** Tax) Act 1999 (Cth).

Intellectual Property includes trade marks, patents, copyrights, processes know-how, registered designs or other like rights or any right to apply for registration of any of the former.

Key Control Points means the items set out in Schedule or Quote C.

Laws means all common law, principles of equity, statute, legislation or subordinate legislation of the Commonwealth of Australia, the State of Victoria or local and other government regulations enforced in the State of Victoria, irrespective of where enacted.

Losses means all losses including financial losses, damages, legal costs and other expenses of any nature whatsoever.

Schedule means a Schedule or quote attached to this **Agreement**.

Parties means the Supplier and the Customer, and **Party** means either one of them.

Products means the goods manufactured in accordance with this **Agreement**.

Services means the beverage manufacturing services, including recipe formulation, production, packaging and storage services to be provided by the Supplier under this **Agreement**

Specification means the Customer's specific requirements (if any) for the **Services** communicated to the Supplier and set out in Schedule or quote B.

Supplier's Personnel means any person or persons that the Supplier designates to perform the **Services** on the Supplier's behalf.

Supplier's Premises means premises and facilities located at the following addresses:

(a) 96 Chifley Drive, Preston;

Termination Date means the earlier of:

- (a) the date of expiry of this Agreement; and
- (b) the date of termination of this **Agreement** by the Customer or the Supplier.

1.2 Interpretation

In this **Agreement** unless the context otherwise requires:

- (a) words importing any gender include every gender;
- (b) words importing the singular number include the plural number and vice versa;
- (c) words importing persons include firms, companies and corporations and vice versa;
- (d) references to numbered clauses, paragraphs, quotes and schedules are references to the relevant clause or paragraph in or schedule or quote to this **Agreement**;
- (e) reference in any schedule or quote to this **Agreement** to numbered paragraphs relate to the numbered paragraphs of that schedule;
- (f) 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;
- (g) the headings to the clauses and schedules of this **Agreement** are not to affect the interpretation;
- (h) any reference to an enactment includes reference to that enactment as amended or replaced from time to time and to any subordinate legislation or byelaw made under that enactment; and
- (i) the word "including" (and related forms including "includes") means "including without limitation".

2 SERVICES

- (a) In consideration for the Customer paying the Fees, the Supplier will provide the **Services**.
- (b) The Supplier and the Customer will agree on the time and place for the performance of the **Services**, subject to the availability of the Supplier's staff and agents.
- (c) The Supplier will use reasonable endeavours to complete the **Services** by the the date agreed by the Parties.
- (d) The **Services** will be performed by the employees or agents that the Supplier determines as most appropriate to carry out the **Services**.
- (e) The Supplier may agree to allow the Customer to provide assistance with provision of the **Services**.
- (f) The **Services** are to be performed as agreed by the Parties, subject to the provisions of this **Agreement**.

3 LOCATION

The Supplier will provide the **Services** in one of the Supplier's Premises, as the Supplier considers appropriate to the type and nature of the requirements of the Customer, or as agreed by the Parties from time to time.

4 FEES

4.1 Payment of Fees

- (a) In consideration of the provision of the **Services**, the Customer will pay the Supplier the Fees.
- (b) For the sake of clarity, additional **Services** may be requested by the Customer during the term of this Agreement and additional Fees will apply to those **Services**.
- (c) Where the Supplier's charges are based on an hourly rate, any time spent which is less than an hour is charged on a pro-rated basis.
- (d) The Customer acknowledges that the Fees are exclusive of any GST that may be charged by the Supplier to the Customer, and therefore, the Supplier will be entitled to add on GST.

4.2 Invoicing

- (a) The Supplier will provide the Customer with a tax invoice in accordance with the GST Law in relation to fees payable under this clause 4.
- (b) Payment will be made by the Customer to the Supplier within 7 days after receiving the Supplier's invoice. When making a payment, the Customer must quote relevant reference numbers and the invoice number.

4.3 Variation of Fees

The Supplier is entitled to vary the Fees during the term of this **Agreement** by providing written notice to the Customer as soon as is reasonably practicable prior to the change being implemented.

4.4 Costs and disbursements

In addition to the Fees, the Supplier is permitted to charge for all costs and expenses incurred in performing the **Services**, including travelling charges, courier and freight charges, postage charges, packaging materials required for finished packaging to be supplied by the Customer, all external laboratory analysis by third parties; all charges relating to the storage of finished packaged alcohol and any other expenses incurred in providing the **Services**.

4.5 Failure to pay

If the Customer does not make a payment by the date stated in an invoice or as otherwise provided for in the **Agreement**, the Supplier is entitled to do any or all of the following:

- (a) charge interest on the outstanding amount at the annual percentage rate equal to 4% per annum more than the rate from time to time fixed by the *Penalty Interest Rates Act 1983* (Vic), accruing daily;
- (b) require the Customer to pay, in advance, for any **Services** (or any part of the **Services**) which have not yet been performed;
- (c) not perform any further **Services** (or any part of the **Services**); and
- (d) retain possession of the Products.

4.6 Set Off

The Supplier may set off against any sum owing to the Customer under this Agreement in the amount then owing by the Customer to the Supplier.

5 CUSTOMER 'S OBLIGATIONS

- (a) During the term of this **Agreement**, the Customer will:
- (i) co-operate with and assist the Supplier as the Supplier reasonably requires;
 - (ii) provide any information, documents, ingredients, packaging, materials or anything else that the Supplier reasonably requires to provide the Services;
 - (iii) ensure that it does not enter the Supplier's Premises without prior approval of the Supplier. While at the Supplier's Premises, the Customer must work in a safe manner and must abide by all procedures and regulations as instructed by the Supplier, including all Occupational Health and Safety Procedures;
 - (iv) use the Facilities as approved and made available by the Supplier, and in accordance with the Supplier's instructions and requirements; and
 - (v) take full responsibility for their safety whilst at the Supplier's Premises and indemnify the Supplier to the fullest extent permitted by Laws from any injury, or claim arising from the Customer's attendance at the Supplier's Premises.
- (b) The Supplier is not required to commence provision of the **Services** until the Customer has complied with its obligations contained in this clause 5

6 NO PARTNERSHIP OR EMPLOYMENT RELATIONSHIP

- (a) The Parties agree that they are independent contractors entering into this **Agreement** and no partnership, joint venture, employment or other relationship is contemplated or created. It is the express intention of the Parties that any such relationships are denied.

7 USE OF SUBCONTRACTORS

- (a) The Supplier is permitted to use other persons to provide some or all of the **Services**.
- (b) The Supplier is responsible for the work of any of the Supplier's subcontractors and any work undertaken by any of the Supplier's subcontractors will be undertaken to the same standard as stated in this **Agreement**.

8 DISCLOSURE AND OWNERSHIP OF INTELLECTUAL PROPERTY

- (a) The Customer grants to the Supplier an exclusive royalty free licence to use the Customer's Intellectual Property for the purpose of performing the **Services**.
- (b) Except as permitted under this **Agreement**, the Supplier must not manufacture, or assist a third party to manufacture, the Customer's products.
- (c) Any discoveries, improvements and inventions made or conceived by the Supplier or the Supplier's Personnel (either solely or jointly with others) in the course of performing the **Services**, whether or not they contain intellectual property rights capable of protection, are and remain the sole and exclusive property of the Supplier, unless the Parties agree otherwise.
- (d) The Customer acknowledges that the Supplier (or its associated entities or persons) owns all Intellectual Property created by the Supplier in connection with the **Services**, that now exists or that later comes into existence, unless the Parties agree otherwise.
- (e) The obligations accepted by the Supplier and the Customer under this clause 8 survive termination or expiry of this **Agreement**.

9 CONFIDENTIALITY

- (a) Each party must, unless it has the prior written consent of the other party keep confidential at all times the Confidential Information of the other party.
- (b) Effect and maintain adequate security measures to safeguard the other party's Confidential Information from unauthorised access or use.
- (c) The Parties' obligations in relation to the Confidential Information will continue for as long as the Confidential Information is maintained on a confidential basis.
- (d) At the other party's request following termination or expiry of this **Agreement**, a party must promptly return to this other party or destroy all Confidential Information of the other party that is in the first party's possession or control.
- (e) The Customer agrees that the Supplier may require the Customer to sign a confidentiality agreement in a form that the Supplier approves, as a condition of this **Agreement**.

- (f) The Customer agrees to indemnify the Supplier fully against all liabilities, costs and expenses which the Supplier may incur as a result of any breach of this clause 9 by the Customer.
- (g) The obligations accepted by the Supplier and the Customer under this clause 9 survive termination or expiry of this **Agreement**.

10 WARRANTIES, LIABILITY AND INDEMNITIES

10.1 Warranties

- (a) Each Party warrants that it is entitled to enter into this **Agreement** and holds all licences, authorisations, consents and approvals of any kind required by applicable Laws in order to perform its obligations under this **Agreement**.
- (b) Each Party warrants that it is solvent, able to pay its debts when they are due, and is not under the control of an administrator, receiver or liquidator.
- (c) The Supplier warrants that it will use reasonable care and skill in performing the **Services**.
- (d) The Supplier warrants that it has suitably qualified employees to carry out the Services in accordance with this **Agreement**.
- (e) The Supplier warrants that all Products will be free from material defects in workmanship and will comply with the Specifications. If the Customer considers that any Products have a material defect, the Customer must provide the Supplier with written notice of the defect within 1 month of the date the Supplier completed performing the **Services**, and deliver the Products to the Supplier's Premises. If the Supplier determines the Products are materially defective, the Supplier will re-perform the relevant part of the **Services**, subject to clause 10.5.
- (f) The Customer warrants that it is responsible for any defects in the Products caused as a result of its recipe, or as a result of assistance which it provided in performing the **Services**.

10.2 Insurances

- (a) The Supplier must take out all insurances required by applicable Laws including worker's compensation insurance for the Supplier's Personnel and public liability insurance.

- (b) During the performance of the **Services**, the Customer acknowledges that its property, including the Products, its ingredients, equipment, will remain at the Customer's risk and will be the Customer's responsibility to take out insurances to cover such risks. Prior to commencement of the **Services**, if requested the Customer will immediately provide the Supplier with certificates of insurances required under this **Agreement**.

10.3 Compliance with all laws

During the performance of the **Services**, each Party must comply with all Laws at that party's own cost and expense.

10.4 No warranties in relation to completion

The Supplier provides no warranty that any result or objective can or will be achieved or attained at all or by a *given completion date* or any other date, whether stated in this **Agreement**, or elsewhere.

10.5 Limitation on liability

- (a) Except in the case of death or personal injury caused by the Supplier's negligence, the liability of the Supplier under or in connection with this **Agreement** whether arising in contract, tort, negligence, breach of statutory duty or otherwise must not exceed the Fees paid by the Customer to the Supplier under this **Agreement**.
- (b) If the Products, or part of the Products are defective, the Customer acknowledges its sole remedy, is that the Supplier will replace the Products or part of the Products and will be responsible for any delivery costs associated with transporting the Products.
- (c) Neither Party is liable to the other Party in contract, tort, negligence, breach of statutory duty or otherwise for any loss, damage, costs or expenses of any nature whatsoever incurred or suffered by that other Party of an indirect or consequential nature including any economic loss or other loss of turnover, profits, business or goodwill.

10.6 Indemnity

The Customer must indemnify and hold the Supplier harmless from and against all Claims and Losses arising from this **Agreement** including:

- (a) Losses, injury or liability of any kind caused to the Supplier;

- (b) infringement of third party intellectual property, or third party Losses by reason of or arising out of any information supplied to the Customer by the Supplier; and
- (c) Losses or damage caused to the Customer's products while in the Supplier's possession, custody or located at the Supplier's Premises.

10.7 **No reliance**

Each of the Parties acknowledges that, in entering into this **Agreement**, it does not do so in reliance on any representation, warranty or other provision except as expressly provided in this **Agreement**. Any conditions, warranties or other terms implied by statute or common law are excluded from this **Agreement** to the fullest extent permitted by applicable Laws.

10.8 **Survival of obligations**

The obligations accepted by the Supplier and the Customer under this clause 10 survive termination or expiry of this **Agreement**.

11 **TERMINATION**

- (a) The Supplier may terminate this **Agreement** by notice in writing to the Customer if the Customer:
 - (i) fails to observe any term of this **Agreement**; and
 - (ii) fails to rectify this breach, to the satisfaction of the Supplier, following the expiration of 7 days' notice of the breach being given in writing to the Customer.
- (b) Either Party may terminate this **Agreement** upon the happening of any of the following events:
 - (i) if the Customer enters into a deed of arrangement or an order is made for it to be wound up;
 - (ii) if an administrator, receiver or receiver/manager or a liquidator is appointed to the Customer pursuant to the Corporations Act 2001 (Cth); or
 - (iii) if the Customer would be presumed to be insolvent by a court in any of the circumstances referred to in the Corporations Act 2001 (Cth).
- (c) Upon termination of this **Agreement** any fees, expenses or reimbursements payable by the Customer to the Supplier in respect of any period prior to the

Termination Date must be paid by the Customer within 7 days after the Termination Date.

12 GENERAL

12.1 Force Majeure

- (a) Neither Party has any liability under or may be deemed to be in breach of this **Agreement** for any delays or failures in performance of this **Agreement** which result from circumstances beyond the reasonable control of that Party.
- (b) The Party affected by these circumstances must promptly notify the other Party in writing when such circumstances cause a delay or failure in performance and when they cease to do so.
- (c) If such circumstances continue for a continuous period of more than 6 months, either Party may terminate this **Agreement** by written notice to the other Party.

12.2 Amendment

This **Agreement** may only be amended in writing signed by duly authorised representatives of the Parties.

12.3 Entire Agreement

- (a) This **Agreement** contains the whole **Agreement** between the Parties in respect of the subject matter of the **Agreement**.
- (b) The Parties confirm that they have not entered into this **Agreement** on the basis of any representation that is not expressly incorporated into this **Agreement**.

12.4 Waiver

- (a) No failure or delay by the Supplier in exercising any right, power or privilege under this **Agreement** will impair the same or operate as a waiver of the same nor may any single or partial exercise of any right, power or privilege preclude any further exercise of the same or the exercise of any other right, power or privilege.
- (b) The rights and remedies provided in this **Agreement** are cumulative and not exclusive of any rights and remedies provided by applicable Laws.

12.5 Severance

If any provision of this **Agreement** is prohibited by law or judged by a court to be unlawful, void or unenforceable, the provision will, to the extent required, be severed from this **Agreement** and rendered ineffective as far as possible without modifying the remaining provisions of this **Agreement**, and will not in any way affect any other circumstances of or the validity or enforcement of this **Agreement**.

12.6 Notices

A notice or other communication connected with this **Agreement** has no legal effect unless it is in writing. The notice may be sent by pre-paid post to the address of the addressee as set out in this **Agreement**, or sent by email or fax to the email or fax number of the addressee.

12.7 Law and jurisdiction

This **Agreement** takes effect, is governed by, and will be construed in accordance with the laws from time to time in force in Victoria, Australia. The Parties submit to the non-exclusive jurisdiction of the courts of Victoria.

EXECUTED AS AN AGREEMENT on the following date:

Executed by GYPSY HUB PTY LTD (ACN: 625 049 309) as trustee for the Gypsy Hub Trust (ABN 87 694 455 223) in accordance with section 127(1) of the <i>Corporations Act</i> 2001(Cth)	
Sole director and sole Customer secretary	
Print Name	
Print usual address	

Signed, sealed and delivered by the CUSTOMER in the presence of:	
	(Signature)
Name of the authorised signatory of the Customer	
Witness Signature	
Witness Name	
Witness Address	

Name of the authorised
signatory of the Customer

Witness Signature

Witness Name

Witness Address
