



## Declaration of Independence, Relevant Relationships and Indemnities (DIRRI)

**Mr Chris Marco, AMS Holdings (WA) Pty Ltd in its own right and as trustee for the AMS Holdings Trust (Receivers and Managers Appointed) (In Liquidation)  
Together, the Scheme (Receivers and Managers Appointed) (In Liquidation)  
ACN 164 700 485**

The *Corporations Act* and professional standards require the Practitioner/s appointed to an insolvent entity to make a declaration as to:

- A. their independence generally;
- B. relationships, including
  - a) the circumstances of the appointment;
  - b) any relationships with the Company and others within the previous 24 months;
  - c) any prior professional services for the Company within the previous 24 months;
  - d) that there are no other relationships to declare; and
- C. any indemnities given, or up-front payments made, to the Practitioner.

This declaration is made in respect of ourselves, our partners, the firm McGrathNicol, which for the purpose of this declaration includes the McGrathNicol Partnership, the McGrathNicol Advisory Partnership and McGrathNicol Services Pty Ltd.

### **A. Independence**

We, Robert Brauer and Robert Kirman, of the firm McGrathNicol have undertaken a proper assessment of the risks to our independence prior to accepting the appointment as Receivers and Managers and Liquidators of the Scheme in accordance with the law and applicable professional standards. This assessment identified no real or potential risks to our independence. We are not aware of any reasons that would prevent us from accepting this appointment.

### **B. Declaration of Relationships**

#### **(i) *Circumstances of appointment***

Mr Brauer was contacted by the Australian Securities and Investments Commission (**ASIC**) on 9 December 2019 to complete a conflict check in regards the parties involved in the Federal Court proceedings WAD 481/2018 (**Proceedings**) and to provide a consent to act as court appointed receivers or liquidators, as required in the Proceedings.

Over the following months, limited updates were received from ASIC to advise of the progress of the Proceedings and relevant Court dates. On 25 May 2019, ASIC advised that judgement in the Proceedings would be delivered on 27 May 2019. On that date, Mr Brauer and Mr Kirman were appointed as interim receivers and managers over the individual property and corporate property of the defendants in the proceedings (**Interim Receivers**). The Interim Receivers provided a report to the Court on 24 July 2019.

Following a two day hearing in the Proceedings in October 2020, the Federal Court made final orders in the Proceedings on 7 December 2020, declaring that:

- Mr Marco and AMS Holdings (WA) Pty Ltd (**AMS**) contravened the provisions of section 911A of the Corporations Act, i.e. that a financial services business was conducted without an Australian Financial Services Licence between 1 January 2014 and 31 October 2018; and



- Mr Marco and AMS operated a scheme (the **Scheme**) in contravention of section 601ED(5) of the Corporations Act in circumstances where the Scheme was required to be registered.

As a result, the Court ordered:

- the appointment of Mr Brauer and Mr Kirman as joint and several receivers and managers of the property of Mr Marco, AMS in its own right and as trustee for the AMS Holdings Trust (**Receivers**);
- that the Scheme be wound up;
- that pursuant to section 532 of the Corporations Act leave be granted for Mr Brauer and Mr Kirman be appointed as joint and several liquidators of the Scheme and of AMS (**Liquidators**);
- that the appointment of Cameron Shaw, Richard Albarran and Marcus Watters of Hall Chadwick as liquidators of AMS be terminated; and
- the asset preservation orders dated 1 November 2018 be vacated.

We believe the referral of the matter to McGrathNicol by ASIC does not result in a conflict of interest or duty and has not impeded our independence in acting as Receivers or Liquidators because:

- these appointments are entirely unconditional;
- although ASIC refers insolvency engagements to McGrathNicol from time to time, each referral by ASIC in relation to a particular entity is conducted on an entirely separate basis and is commenced only after full regard is given to potential conflicts of interest in relation to all interested parties; and
- no prior engagements have been undertaken by McGrathNicol in relation to Mr Marco, AMS or the Scheme.

We have provided no other information or advice to ASIC, Mr Marco, AMS or its directors prior to our appointment beyond that outlined in this DIRRI.

**(ii) *Relevant Relationships (excluding professional services to the Insolvent)***

Neither we, nor our firm, have, or have had, within the preceding 24 months, any relationships with the Scheme, an associate of the Scheme, a former insolvency practitioner appointed to the Scheme or any person or entity that has security over the whole or substantially whole of the Scheme's property.

**(iii) *Prior professional services to the Insolvent***

Neither we, nor our firm, have provided any professional services to Mr Marco, AMS or the Scheme, in the previous 24 months.

**(iv) *No other relevant relationships to disclose***

There are no other known relevant relationships, including personal, business and professional relationships, from the previous 24 months with the Scheme or AMS, an associate of the Scheme or AMS, a former insolvency practitioner appointed to the Scheme or AMS or any person or entity that has security over the whole or substantially the whole of the Scheme or AMS's property that should be disclosed.

**C. *Indemnities and Up-front Payments***

We have not been indemnified in relation to this external administration, other than any indemnities that we may be entitled to under statute, or in accordance with the orders of the Federal Court of Australia dated 7 December 2020, and we have not received any up-front payments in respect of our remuneration or disbursements.

Although not a form of payment that is required to be disclosed in this DIRRI, we note that we have received payment of \$183,435 (plus GST) from ASIC in relation to the report prepared for the Court in our capacity as Interim



Receivers. Payment was received in arrears. A request for the balance of our reumeration as Interim Receivers is currently being considered by the Court.

Dated: 23 December 2020

Handwritten signature of Robert Brauer in black ink.

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**Robert Brauer**

Handwritten signature of Robert Kirman in black ink.

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**Robert Kirman**

Note:

- 1 If the circumstances change or new information is identified, we are required under the Corporations Act 2001 and the ARITA Code of Professional Practice to update this Declaration and provide a copy to creditors with our next communication, as well as table a copy of any replacement Declaration at the next meeting of the insolvent's creditors.
- 2 Any relationships, indemnities or up-front payments disclosed in the DIRRI must not be such that the Practitioner is no longer independent. The purpose of components B and C of the DIRRI is to disclose relationships that, while they do not result in the Practitioner having a conflict of interest or duty, ensure that creditors are aware of those relationships and understand why the Practitioner nevertheless remains independent.

Please note that the presentation of the above information is in accordance with the standard format suggested by ARITA.