





TERMS AND CONDITION

These terms and conditions are between the parties as would be described in the Schedule accompanying the Consultancy Agreement, together the Parties and each a Party. These terms and conditions and the Schedule form the entire agreement under which we will provide the Services to you (together, the Agreement).

1. ACCEPTANCE

- 1.1 Your requested Services will be set out in a Schedule that would accompany the Consultancy Agreement, and you would accept this Agreement by:
- (a) signing and returning the Agreement;
 - (b) sending an email accepting the Agreement (expressly or impliedly); or
 - (c) instructing us to proceed with the Services or making any payment of the Price (including any deposit).
- 1.2 **Ensure you read any Agreement carefully and contact us if you have any questions.**

2. SERVICES

- 2.1 We agree to provide you the Services in accordance with any signed Consultancy Agreement and all relevant laws
- 2.2 You acknowledge and agree that any dates for completion notified by us are estimates only, and we will have no Liability to you for failing to meet any delivery or milestone date.
- 2.3 We may provide the Services to you using our Personnel, and they included in any signed Consultancy Agreement.
- 2.4 All variations to the Services must be agreed in writing between the Parties and will be priced in accordance with any schedule of rates provided by us, or otherwise as reasonably determined by us. If we consider that any instruction or direction from you constitutes a variation, then we will not be obliged to comply with such instruction or direction unless agreed in accordance with this clause 2.4.

3. PRICE AND PAYMENT

- 3.1 You agree to pay us the Price and all other reasonable expenses or disbursements properly incurred by us in the provision of the Services, in accordance with the Payment Terms. All amounts are stated in Australian dollars and are exclusive of GST (unless otherwise stated).
- 3.2 Unless otherwise agreed between the Parties, any deposit in the Schedule of a signed Consultancy Agreement must be paid before we commence the provision of the Services.
- 3.3 If any amounts are unpaid 7 days after the payment date, we may charge interest at a rate equal to the Reserve Bank of Australia's cash rate from time to time plus 8% per annum (calculated daily and compounding monthly) or we may suspend the provision of the Services until we receive payment.

4. YOUR OBLIGATIONS AND WARRANTIES

You represent, warrant, acknowledge and agree that:

- (a) there are no legal restrictions preventing you from engaging us, or agreeing to a Consultancy Agreement;
- (b) you will cooperate with us, and provide us with all documentation, information, instructions and access necessary to enable us to provide the Services, as requested by us, from time to time, and in a timely manner;
- (c) the information you provide to us is true, correct and complete;
- (d) you will not infringe any third party rights in working with us and receiving the Services;
- (e) you will provide us and our Personnel with sufficient access, free from harm or risk to health or safety, to any relevant premises (including any facilities at the premises), to enable us to provide the Services, including at the dates and times that we may reasonably request; and
- (f) you are responsible for obtaining, and providing to us if necessary, any access, consents, licences, approvals and permissions from other parties necessary for the Services to be provided, at your cost.

5. YOUR STATUTORY RIGHTS:

- 5.1 Certain legislation, including the Australian Consumer Law (**ACL**) in the *Competition and Consumer Act 2010* (Cth) and similar consumer protection laws and regulations, may confer you with rights, warranties, guarantees and remedies relating to the Services which cannot be excluded, restricted or modified (**Statutory Rights**). Nothing in this Agreement excludes your Statutory Rights as a consumer under the ACL.
- 5.2 You agree that our Liability for the Services is governed solely by the ACL and this Agreement.
- 5.3 Subject to your Statutory Rights, we exclude all express and implied warranties, representations and guarantees of any kind (whether under statute, law, equity or on any other basis) and all materials, work, goods and services (including the Services) are provided to you without warranties, representations and guarantees of any kind.

6. TERM AND TERMINATION

- 6.1 Signed Consultancy Agreements will commence on the Start Date, and will continue until the End Date, unless terminated earlier in accordance with its terms.
- 6.2 Either Party may terminate a signed Consultancy Agreement if the other Party breaches a material term of the Agreement, and that breach has not been remedied within 10 business days of being notified by the relevant Party.
- 6.3 On termination or expiry of a signed Consultancy Agreement, you agree that:
- (a) any amounts paid for Services rendered by us are non-refundable;
 - (b) you agree to pay us all amounts due and payable to us under this Agreement (including for all Services provided by us) up to the date of termination, as a debt immediately due and payable; and
 - (c) you agree to return or give us access to recover all property belonging to us on request (including any Intellectual Property or Confidential Information), and to give us or our Personnel such rights of access necessary to exercise our rights under this clause.
- 6.4 The accrued rights, obligations and remedies of the Parties are not affected by termination of a signed Consultancy Agreement.

7. LIABILITY, INDEMNITY AND EXCLUSIONS

- 7.1 **Limitation of liability:** Despite anything to the contrary, to the maximum extent permitted by law:
- (a) neither Party will be liable for any Consequential Loss;
 - (b) a Party's liability for any Liability under a signed Consultancy Agreement will be reduced proportionately to the extent the relevant Liability was caused or contributed to by the acts or omissions of the other Party (or any of its Personnel), including any failure by that other Party to mitigate its loss; and
 - (c) our maximum aggregate Liability in relation to the provision of the Services or a signed Consultancy Agreement will be limited to us repaying you the amount of the Price paid by you to us in respect of the provision of the relevant Services to which the Liability relates.

8. INTELLECTUAL PROPERTY

- 8.1 As between the Parties, all Intellectual Property Rights developed, adapted, modified or created by or on behalf of us or our Personnel in connection with a signed Consultancy Agreement or the provision of the Services, will at all times vest, or remain vested, in us.
- 8.2 You grant us a non-exclusive, revocable, worldwide, non-sublicensable and non-transferable right and licence, for the duration of any signed Consultancy Agreement, to use your and your Personnel's Intellectual Property for the performance of our obligations under this Agreement.
- 8.3 You agree that we own all Intellectual Property Rights in all Intellectual Property owned, licensed or developed by or on behalf of us or our Personnel before the Start Date and/or developed by us or our Personnel independently of a signed Consultancy Agreement and nothing in a signed Consultancy Agreement constitutes a transfer or assignment of any of our Intellectual Property Rights unless expressly stated.

9. CONFIDENTIALITY

- 9.1 Subject to clause 9.2, you must (and must ensure that your Personnel do) keep confidential, and not use or permit any unauthorised use of, all Confidential Information.
- 9.2 Clause 9.1 does not apply where the disclosure is required by law or the disclosure is to a professional adviser in order to obtain advice in relation to matters arising in connection with a signed Consultancy Agreement and provided that you ensure the adviser complies with the terms of clause 9.1.

10. GENERAL

- 10.1 **Disputes:** A Party may not commence court proceedings relating to any dispute, controversy or claim arising from, or in connection with, a signed Consultancy Agreement (including any question regarding its existence, validity or termination) (**Dispute**) without first meeting with a senior representative of the other Party to seek (in good faith) to resolve the Dispute. If the Parties cannot agree how to resolve the Dispute at that initial meeting, either Party may refer the matter to a mediator. If the Parties cannot agree on who the mediator should be, either Party may ask the law society of the State to appoint a mediator. The mediator will decide the time, place and rules for mediation. The Parties agree to attend the mediation in good faith, to seek to resolve the Dispute. The costs of the mediation will be shared equally between the Parties. Nothing in this clause will operate to prevent a Party from seeking urgent injunctive or equitable relief from a court of appropriate jurisdiction.
- 10.2 **Governing law:** This Agreement is governed by the laws of the State. Each Party irrevocably and unconditionally submits to the exclusive jurisdiction of the courts operating in the State and any courts entitled to hear appeals from those courts and waives any right to object to proceedings being brought in those courts.
- 10.3 **GST:** If and when applicable, GST payable on the Price will be set out in our invoice. You agree to pay the GST amount at the same time as you pay the Price.

- 10.4 **Notices:** Any notice given under a signed Consultancy Agreement must be in writing addressed to the relevant address last notified by the recipient to the Parties. Any notice may be sent by standard post or email, and will be deemed to have been served on the expiry of 48 hours in the case of post, or at the time of transmission in the case of transmission by email.
- 10.5 **Severance:** If any provision (or part of it) under a signed Consultancy Agreement is held to be unenforceable or invalid in any jurisdiction, then it will be interpreted as narrowly as necessary to allow it to be enforceable or valid. If a provision (or part of it) under a signed Consultancy Agreement cannot be interpreted as narrowly as necessary to allow it to be enforceable or valid, then the provision (or part of it) must be severed from the signed Consultancy Agreement and the remaining provisions (and remaining part of the provision) of the signed Consultancy Agreement is valid and enforceable.
- 10.6 **Survival:** Clauses 3, 5, 6.3, 7, 8, 9 and 10 will survive the termination or expiry of a signed Consultancy Agreement.

11. INTERPRETATION & DEFINITIONS

- 11.1 In a signed Consultancy Agreement, unless the context otherwise requires, capitalised terms have the meanings given to them in the Schedule, within these terms and conditions, and:

Confidential Information includes information which:

- (a) is disclosed to you in connection with the signed Consultancy Agreement at any time;
- (b) is prepared or produced under or in connection with the signed Consultancy Agreement at any time;
- (c) relates to our business, assets or affairs; or
- (d) relates to the subject matter of, the terms of and/or any transactions contemplated by the signed Consultancy Agreement,

whether or not such information or documentation is reduced to a tangible form or marked in writing as “confidential”, and howsoever you receive that information.

Consequential Loss includes any consequential, special or indirect loss, damage or expense including any real or anticipated loss of revenue, loss of profit, loss of use, loss of occupation, loss of benefit, loss of financial opportunity, or economic loss whether arising out of a breach of the signed Consultancy Agreement, at law, under any statute, in equity, or in tort (including negligence).

Intellectual Property means any copyright, registered or unregistered design, patent or trade mark rights, domain names, know-how, inventions, processes, trade secrets or Confidential Information; or circuit layouts, software, computer programs, databases or source codes, including any application, or right to apply, for registration of, and any improvements, enhancements or modifications of, the foregoing.

Intellectual Property Rights means for the duration of the rights in any part of the world, any industrial or intellectual property rights, whether registrable or not, including in respect of Intellectual Property.

Liability means any expense, cost, liability, loss, damage, claim, notice, entitlement, investigation, demand, proceeding or judgment (whether under statute, contract, equity, tort (including negligence), indemnity or otherwise), howsoever arising, whether direct or indirect and/or whether present, unascertained, future or contingent and whether involving a third party, a Party or otherwise.

Personnel means, in respect of a Party, any of its employees, consultants, suppliers, subcontractors or agents.

Schedule means the schedule to which the signed Consultancy Agreement is attached.