



Terms of Engagement

1. Definitions and interpretation

Definitions

1.1 The following definitions apply in this agreement unless the context requires otherwise:

Authorised Third Party Disclosee means any Representative of a Disclosee to whom that Disclosee discloses Confidential Information in accordance with clause 7.

Charges means Fees and Expenses.

Claim means any claim, complaint, demand, proceeding, suit, litigation, action, cause of action or other legal recourse (whether in contract, tort, under statute or otherwise).

Client means the party that will receive the Services as named.

Company means Wight & Associates Pty Ltd (ACN 169 597 933).

Confidential Information means all information relating to a party, any customer, clients, suppliers, distributors or joint venture partners, of the party and/or any of the business or financial affairs of any of them, including:

- (a) any information that is specifically designated by any of them as confidential;
- (b) any information which, by its nature, may reasonably be regarded as confidential;
- (c) any information relating to any:
 - (i) agreements, arrangements or terms of trade with any existing or prospective customers, clients, suppliers, distributors or joint venture partners or other contractual counterparties;
 - (ii) customers, clients, suppliers, distributors, joint venture partners, employees, technologies, products, services, proposals, market opportunities, business or product development plans, pricing, financial position or performance, capabilities, capacities, operations or processes; or
 - (iii) intellectual property rights,of any of them; and
- (d) any note, calculation, conclusion, summary or other material derived or produced partly or wholly from any such information.

Corporations Act means the *Corporations Act 2001* (Cth).

Default Rate means a rate of interest of 10.00% per annum.

Disclosee means, in respect of any particular Confidential Information, any party that has received that Confidential Information (whether directly or indirectly) from another party.

Discloser means, in respect of any particular Confidential Information, any party that has disclosed or discloses that Confidential Information (whether directly or indirectly) to another party.

Engagement means each individual engagement for the Company to provide specific Services to the Client.

Expenses mean the expenses of the Company for which the Company is entitled to be reimbursed by the Client.

Fees has the meaning given in clause 4.1.

Fixed Price means, in respect of a particular Engagement, the price (inclusive of GST) for all of the Services.

Governmental Agency means any government or governmental, semi-governmental, administrative, fiscal or judicial body, department, commission, authority, tribunal, agency or entity whether foreign, federal, state, territorial or local.

GST has the same meaning given to that expression in the GST Law.

GST Act means *A New Tax System (Goods and Services Tax) Act 1999* (Cth), as in force from time to time.

GST Law has the same meaning given to that expression in the GST Act.

Hourly Rate means the hourly rate specified by the Company from time to time, if applicable.

Input Tax Credit has the meaning given in the GST Law.

Losses means any loss, damage, debt, cost, charge, expense, fine, outgoing, penalty, diminution in value, deficiency or other liability of any kind or character (including legal and other professional fees and expenses on a full indemnity basis) that a party pays, suffers or incurs or is liable for, including all:

- (a) liabilities on account of Tax;
- (b) interest and other amounts payable to third parties;
- (c) legal and other professional fees and expenses (on a full indemnity basis) and other costs incurred in connection with investigating, defending or settling any Claim, whether or not resulting in any liability; and
- (d) all amounts paid in settlement of any Claim.

Personal Information has the meaning given in the Privacy Act.

Privacy Act means the *Privacy Act 1998* (Cth).

Relevant IP means all intellectual property that the Company makes, develops or conceives in the course of, or arising out of, the provision of the Services, and/or the Engagement.

Representatives means, in respect of a person, the employees, officers, consultants, agents and professional advisers of that person.

Services means the services provided by the Company to the Client under this agreement in respect of each Engagement.

Start Date means the date of this agreement or such other date as the parties may agree in writing.

Tax Acts means the *Income Tax Assessment Act 1936* (Cth) and the *Income Tax Assessment Act 1997* (Cth).

Tax or **Taxation** means:

- (a) any tax, levy, impost, deduction, charge, rate, compulsory loan, withholding or duty by whatever name called, levied, imposed or assessed under the Tax Acts or any other statute, ordinance or law by any Governmental Agency (including profits tax, property tax, interest tax, income tax, tax related to capital gains, tax related to the franking of dividends, bank account debits tax, fringe benefits tax, sales tax, payroll tax, superannuation guarantee charge, group or Pay as You Go withholding tax and land tax);
- (b) unless the context otherwise requires, stamp duty and GST; and
- (c) any interest, penalty, charge, fine or fee or other amount of any kind assessed, charged or imposed on or in respect of the above.

Interpretation

1.2 The following rules of interpretation apply in this agreement unless the context requires otherwise:

- (a) headings in this agreement are for convenience only and do not affect its interpretation or construction;
- (b) no rule of construction applies to the disadvantage of a party because this agreement is prepared by (or on behalf of) that party;
- (c) where any word or phrase is defined, any other part of speech or other grammatical form of that word or phrase has a cognate meaning;
- (d) a reference to a document (including this agreement) is a reference to that document (including any schedules and annexures) as amended, consolidated, supplemented, novated or replaced;
- (e) references to recitals, clauses, subclauses, paragraphs, annexures or schedules are references to recitals, clauses, subclauses, paragraphs, annexures and schedules of or to this agreement;
- (f) in each schedule to this agreement, a reference to a paragraph is a reference to a paragraph in that schedule;
- (g) a reference to any statute, proclamation, rule, code, regulation or ordinance includes any amendment, consolidation, modification, re-enactment or reprint of it or any statute, proclamation, rule, code, regulation or ordinance replacing it;
- (h) an expression importing a natural person includes any individual, corporation or other body corporate, partnership, trust or association and any Governmental Agency and that person's personal representatives, successors, permitted assigns, substitutes, executors and administrators;
- (i) a reference to writing includes any communication sent by post, facsimile, email or text message;
- (j) a reference to time refers to time in Melbourne, Victoria and time is of the essence;
- (k) all monetary amounts are in Australian currency;
- (l) a reference to a "**liability**" includes a present, prospective, future or contingent liability;

- (m) the word “**month**” means calendar month and the word “**year**” means 12 calendar months;
- (n) the meaning of general words is not limited by specific examples introduced by “**include**”, “**includes**”, “**including**”, “**for example**”, “**in particular**”, “**such as**” or similar expressions;
- (o) a reference to a “**party**” is a reference to a party to this agreement and a reference to a “**third party**” is a reference to a person that is not a party to this agreement;
- (p) a reference to any thing is a reference to the whole and each part of it;
- (q) a reference to a group of persons is a reference to all of them collectively and to each of them individually;
- (r) words in the singular include the plural and vice versa; and
- (s) a reference to one gender includes a reference to the other genders.

2. Engagement

2.1 The Client hereby engages the Company to provide the Services to the Client, and the Company hereby accepts that engagement and agrees to provide the Services to the Client, in accordance with the terms of this agreement (the **Engagement**).

2.2 Standards and duties

The Company must, in providing the Services, comply with the standards and duties set out in Schedule 1.

3. Client obligations

3.1 Disclosure obligations

The Client is required to provide the Company with all information that:

- (a) it reasonably believes will be necessary for the Company to provide the Services; and
- (b) is reasonably requested by the Company in order for the Company to provide the Services.

3.2 Record keeping

It is the Client’s responsibility to keep full and accurate records of its Tax affairs.

3.3 Notify of changes

- (a) The Client must, as soon as practicable, notify the Company of any changes to the Client’s circumstances that may be relevant to the provision of the Services.
- (b) If the Client becomes aware that any information provided by the Client to the Company under clause 3.1 is inaccurate, incomplete or misleading, the Client must notify the Company of same as soon as possible.

3.4 Conflict of Interest

The Client must notify the Company if it becomes aware of any circumstances that may result in a conflict of interest or potential conflict of interest for the Company to provide the Services.

4. Pricing and invoicing

4.1 Pricing

In respect of each Engagement, the parties have agreed that the total price for the relevant Services (inclusive of GST and Expenses, and including a deposit where relevant) (the **Fees**) will be:

- (a) **(Fixed Price)** a Fixed Price applies – that Fixed Price payable in arrears upon completion of the Services to the reasonable satisfaction of the Client; and
- (b) **(Hourly Rate)** the Hourly Rate applies (for bookkeeping services only) – calculated on the basis of the time spent by the Company in exclusively providing those Services on an hourly rate basis at the Hourly Rate in accordance with clause 1.1 and payable in arrears upon completion of the Services to the reasonable satisfaction of the Client,

and the Company will invoice the Client by way of invoice for all relevant Charges following completion of all relevant work to the reasonable satisfaction of the Client.

5. Payment

5.1 Timing of payments

The Client must pay to the Company all Charges properly invoiced pursuant to clause 3 in full on or before the date that is 7 days from the date of the relevant invoice.

5.2 Method of payment

All amounts to be paid by a party to another party under or in connection with this agreement must be paid by credit card or electronic funds transfer into the account nominated by the other party.

5.3 No set-off or deduction

All amounts payable under or in connection with this agreement must be paid without set-off, counterclaim, withholding, deduction or claim to a lien whatsoever, whether or not any such set-off, counterclaim, withholding, deduction or lien arises under this agreement (unless otherwise required by law).

5.4 Default interest

- (a) If the Client fails to pay any sum payable by it under this agreement to the Company at the time and otherwise in the manner provided in this agreement, it must pay interest on that sum from the due date of payment until that sum is paid in full at the Default Rate, calculated daily on the basis of a 365-day year and compounded monthly. Interest will accrue from day to day and will be payable on demand. The payment of interest by the Client to the Company in respect of any late payment under this clause 5.4(a) is in addition to any other remedies that the Company may have in respect of such late payment.
- (b) If a liability of the Client to the Company under this agreement becomes merged in a judgement or order and the interest rate that applies under that judgement or order is lower than the Default Rate, the Client must, as an independent obligation, pay to the Company, at the same time and in the same manner as the sum that is the subject of that judgement or order is to be paid, such additional interest on that sum as is required to ensure that the total amount of interest that the Company receives in respect of that liability is equal to the Default Rate.

6. GST

6.1 Definitions regarding GST

In this clause 6:

- (a) expressions that are not defined, but which have a defined meaning in the GST Law, have the same meaning as in the GST Law;
- (b) any part of a supply that is treated as a separate supply for GST purposes (including attributing GST payable to tax periods) will be treated as a separate supply for the purposes of this clause 6; and
- (c) any consideration that is specified to be inclusive of GST must not be taken into account in calculating the GST payable in relation to a supply for the purpose of this clause 6.

6.2 Consideration is inclusive of GST

Unless expressly stated otherwise, any sum payable, or amount used in the calculation of a sum payable, under this agreement has been determined to include GST.

6.3 Receiving Party to pay additional amount

If GST is imposed on any supply made under or in accordance with this agreement, the recipient of the supply (**Receiving Party**) must pay to the supplier (**Providing Party**) an additional amount equal to the GST payable on the supply, subject to the Receiving Party receiving a valid tax invoice, or a document that the Commissioner will treat as a tax invoice, in respect of the supply at or before the time of payment. Payment of the additional amount will be made at the same time and in the same manner as payment for the supply is required to be made in accordance with this agreement.

6.4 Fines, penalties and interest

The amount recoverable on account of GST under this clause 6 by the Providing Party will include any fines, penalties, interest and other charges incurred as a consequence of any late payment or other default by the Receiving Party under this clause 6.

6.5 Adjustment events

If, at any time, an adjustment event arises in respect of any supply made by a party under this agreement, a corresponding adjustment must be made between the parties in respect of any amount paid to the Providing Party by the Receiving Party pursuant to clause 6.3 and payments to give effect to the adjustment must be made and the Providing Party must issue an adjustment note.

7. Confidentiality

7.1 Keep Confidential

Subject to clauses 7.3(a) and 7.3(b), a Disclosee must:

- (a) keep all Confidential Information confidential;
- (b) not use or exploit any Confidential Information in any way except in the proper performance of the Services in accordance with this agreement;
- (c) not disclose or make available any Confidential Information in whole or in part to any third party;

- (d) not copy, reduce to writing or otherwise record any Confidential Information except in the proper performance of the Services in accordance with this agreement (and any such copies, reductions to writing and records will be the property of the Discloser); and
- (e) ensure that any and all Authorised Third Party Disclosees:
 - (i) comply with the obligations in this agreement as if each of them was a party to this agreement in the place of the Disclosee; and
 - (ii) do not do, or omit to do, anything which, if done or omitted to be done by the Disclosee, would constitute a breach of this agreement by the Disclosee.

7.2 Third Party Disclosees

The Disclosee shall be responsible for, and liable to the Discloser in respect of, the actions or omissions of any and all of its Authorised Third Party Disclosees in relation to the Confidential Information as if they were the actions or omissions of the Disclosee.

7.3 Exceptions

- (a) The Disclosee may disclose Confidential Information to those of its Representatives who have an actual need to know the Confidential Information but only in the proper provision of the Services and performance of its duties under this agreement and provided that it informs such Representatives of the confidential nature of the Confidential Information before such disclosure.
- (b) Subject to clause 7.3(c), the obligations in clause 7.1 will not apply to any Confidential Information which (as shown by appropriate documentation and other evidence in the relevant Disclosee's possession):
 - (i) was already known to the Disclosee on a non-confidential basis prior to the time of its first disclosure by the Discloser to the Disclosee, unless it came to be so known as a direct or indirect result of having been:
 - (A) unlawfully obtained by the Disclosee, whether from a third party or otherwise; or
 - (B) received by the Disclosee from a third party that owed a confidentiality obligation to the Discloser in respect of that information at the time of such receipt, in circumstances in which the Disclosee knew, or ought reasonably to have known after due enquiry, that the third party owed that confidentiality obligation to the Discloser;
 - (ii) is or becomes generally available to the public, unless it became so generally available as a direct or indirect result of having been disclosed by any person:
 - (A) in circumstances that constitute a breach of this agreement by the Disclosee (for the avoidance of doubt, including any breach by the Disclosee of its obligations under clause 7.1(e) to ensure that its Authorised Third Party Disclosees comply with the obligations in this agreement as if they were parties to this agreement in the place of the Disclosee); or
 - (B) that owed a confidentiality obligation to the Discloser in respect of that information at the time of such disclosure, in circumstances in which the Disclosee knew, or ought reasonably to have known after due enquiry, that the person owed that confidentiality obligation to the Discloser;

- (iii) is, after the time of its first disclosure by the Discloser to the Disclosee, lawfully received by the Disclosee from a third party and the Disclosee reasonably believed, after due enquiry, that the information was not so received as a direct or indirect result of a breach by any person of a confidentiality obligation owed to the Discloser;
 - (iv) is required by law or court order to be disclosed, provided that the Disclosee must:
 - (A) promptly notify the Discloser in writing in advance of any such disclosure, if reasonably practicable; and
 - (B) reasonably assist the Discloser in obtaining confidential treatment for, or avoiding or minimising such disclosure of, the relevant Confidential Information to the extent reasonably requested by the Discloser;
 - (v) is independently developed by the Disclosee without any direct or indirect use of, reference to, or reliance on any Confidential Information; or
 - (vi) is authorised for release or use by the written pre-approval of the Discloser but only to the extent of such written pre-approval.
- (c) The exceptions in clause 7.3(b) shall not apply to any specific Confidential Information merely because it is included in more generally non-confidential information, nor to any specific combination of Confidential Information merely because individual elements, but not the combination, are included in non-confidential information.

8. Documents

8.1 Original documents

- (a) The Client will remain the owner of all original documents provided to the Company pursuant to clause 3.1.
- (b) The Company may use or reproduce any of the Client's original documents, and keep records of same, but only as required for the proper provision of the Services and the performance of its duties under this agreement.

8.2 Relevant IP

- (a) The Company will assign, transfer and convey to the client all current and future right, title and interest in any Relevant IP and acknowledges that all future Relevant IP will vest in the Client on and from creation.
- (b) The Client agrees and acknowledges that the Company's working notes and other documentation that does not form Relevant IP will remain the property of the Company.

8.3 Lien

The Company may exercise a legal right of lien over any documentation in its possession in the event of a dispute between the parties until such time as the dispute is resolved or the Company is otherwise required by law or court to release said documentation.

9. Liability and remedies

9.1 Indemnity

The Client shall have personal liability for, and hereby irrevocably indemnifies and covenants to

hold the Company harmless from and against, any and all Losses that may be suffered by the Company and which arise, directly or indirectly, in connection with any breach of this agreement by the Client (including but not limited to any breach of its disclosure obligations under clause 3) and/or any negligent or other tortious conduct in the provision of the Services.

9.2 Indemnities continuing

Each indemnity contained in this agreement is an additional, separate, independent and continuing obligation that survives the termination of this agreement despite any settlement of account or other occurrence and remains in full force and effect until all money owing, contingently or otherwise, under the relevant indemnity has been paid in full and no one indemnity limits the generality of any other indemnity.

9.3 Limitation of liability

To the maximum extent permitted by law, the Company and its Representatives expressly:

- (a) **(Disclaimer of warranties)** disclaim all conditions, representations and warranties (whether express or implied, statutory or otherwise) in relation to the Services, including any implied warranty of merchantability, fitness for a particular purpose or non-infringement. Without limitation to the foregoing, the Company and its Representatives make no representation, and provide no warranty or guarantee, that:
 - (i) the Client will achieve any particular results from the provision of the Services;
 - (ii) any particular individuals will perform the Services on behalf of the Company; or
 - (iii) the Services will be:
 - (A) error-free or that errors or defects will be corrected; or
 - (B) meet the Client's requirements or expectations; and
- (b) **(Limitation of liability)** limit their aggregate liability in respect of any and all Claims for any Losses that the Client and/or any of its Representatives may bring against the Company under this agreement or otherwise in respect of the Services to the following remedies (the choice of which is to be at the Company's sole discretion):
 - (i) re-supply of the Services;
 - (ii) payment of the costs of supply of the Services by a third party; or
 - (iii) the refund of any amounts paid by the Client to the Company under this agreement in respect to the Services,

even if the Company has been advised of the possibility of such Losses,

and the Client acknowledges and agrees that the Company holds the benefit of this clause 9.3 for itself and as agent and trustee for and on behalf of each of its Representatives.

9.4 Force majeure

To the maximum extent permitted by law, the Company and its Representatives expressly exclude liability for any damage and/or delay in the performance of any obligation of the Company under this agreement where such damage or delay is caused by circumstances beyond the reasonable control of the Company and the Company shall be entitled to a reasonable extension of time for the performance of such obligations, and the Client

acknowledges and agrees that the Company holds the benefit of this clause 9.4 for itself and as agent and trustee for and on behalf of each of its Representatives.

9.5 Remedies for breach

Each party acknowledges and agrees that, in the event of any breach by the other party of the provisions of clause 7 (Confidentiality), damages may not be an adequate remedy and the first-mentioned party may, in addition to any other remedies, obtain an injunction restraining any further violation by the other party and other equitable relief, without the necessity of showing actual damage and without any security being required, together with recovery of costs. Any Claims asserted by such other party against the first-mentioned party shall not constitute a defence in any such injunction action, application or motion.

10. Termination

Termination with notice

10.1 Either party may terminate this agreement at any time by giving written notice to the other party.

Effect of termination

10.2 In the event of any termination of this agreement in any circumstances and for any reason whatsoever:

- (a) the Client will remain liable to pay all Charges accrued up to and including the date of termination, whether or not invoiced prior to the date of termination; and
- (b) the Company will send to the Client a final invoice for the balance of any unbilled Charges accrued up to and including the date of termination and clause 5 will apply in respect thereof.

Partially completed deliverables

10.3 Upon the cessation of the Company's engagement under this agreement, subject to payment of all outstanding Charges by the Client in accordance with the terms of this agreement, the Company will deliver to the Client any and all partially completed deliverables that are included within the scope of the Services.

Accrued rights

10.4 Termination of this agreement will not affect any rights or liabilities that the parties have accrued under it prior to such termination.

Survival

10.5 The obligations of the parties under clause 7 (Confidentiality), clause 8 (Liability and remedies), and this clause 10 will survive the termination of this agreement.

11. General

Severability

11.1 If a provision of this agreement is invalid or unenforceable in a jurisdiction:

- (a) it is to be read down or severed in that jurisdiction to the extent of the invalidity or unenforceability; and

- (b) that fact does not affect the validity or enforceability of that provision in another jurisdiction, or the remaining provisions.

No waiver

- 11.2 No failure, delay, relaxation or indulgence by a party in exercising any power or right conferred upon it under this agreement will operate as a waiver of that power or right. No single or partial exercise of any power or right precludes any other or future exercise of it, or the exercise of any other power or right under this agreement.

Amendment

- 11.3 This agreement may not be varied except by written instrument executed by all of the parties.

Assignment

- 11.4 A party must not assign or otherwise transfer, create any charge, trust or other interest in, or otherwise deal in any other way with, any of its rights under this agreement without the prior written consent of the other party.

Governing law and jurisdiction

- 11.5 This agreement and any disputes or claims arising out of or in connection with its subject matter or formation (including non-contractual disputes or claims) are governed by, and shall be construed in accordance with, the laws of Victoria, Australia.
- 11.6 The parties irrevocably agree that the courts of Victoria, Australia have exclusive jurisdiction to settle any dispute or claim that arises out of, or in connection with, this agreement or its subject matter or formation (including non-contractual disputes or claims).

* * * *

Schedule 1 | Standard and duties

The Company must, in providing the Services:

1. **(Honesty and diligence)** be honest and diligent and provide the Services to it to the best of its knowledge and abilities;
2. **(Standards)** at all times maintain reasonable ethical, professional and technical standards;
3. **(Discrimination and harassment)** not unlawfully discriminate against, sexually harass or otherwise physically or verbally abuse any person; and
4. **(Privacy)** in relation to any Personal Information of any customer, client, supplier or Representative of the Client, any user or prospective user or any other person, comply with:
 - (a) the Privacy Act and any guidelines, information sheets and other relevant material issued from time to time by the Commonwealth Privacy Commissioner; and
 - (b) any approved privacy policy and procedures adopted from time to time by the Client.