

TERMS OF ENGAGEMENT



**WRIGHT EVANS PARTNERS
PTY LTD**

We have offered, or you have requested us to provide the services set out in our Proposal to you (the **Project Services**). We agree to provide the Project Services to you on the following terms. Irrespective of whether you sign these Terms, any Project Services that we supply to you will be supplied on these Terms:

1. EXCLUSION OF IMPLIED WARRANTIES

- 1.1 THE ONLY CONDITIONS AND WARRANTIES BINDING ON US IN RESPECT OF THE OF THE SERVICES SUPPLIED BY US TO YOU, OR IN RESPECT OF ANY ADVICE, RECOMMENDATIONS OR INFORMATION SUPPLIED BY US (OR OUR EMPLOYEES, SERVANTS OR AGENTS) TO YOU, ARE THOSE IMPOSED AND REQUIRED BY LAW TO BE BINDING ON US (INCLUDING THE TRADE PRACTICES ACT 1974 (CTH) AND APPLICABLE STATE FAIR TRADING LAWS). ALL OTHER CONDITIONS AND WARRANTIES, WHETHER EXPRESS OR IMPLIED BY LAW, IN RESPECT OF THE SERVICES WHICH MAY APART FROM THIS CLAUSE BE BINDING ON US ARE HEREBY EXPRESSLY EXCLUDED AND NEGATED.
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2. LIMITATION OF LIABILITY

- 2.1 TO THE FULLEST EXTENT PERMITTED BY LAW OUR LIABILITY (IF ANY) ARISING FROM THE BREACH OF ANY APPLICABLE CONDITIONS OR WARRANTIES SHALL, AT OUR OPTION, BE LIMITED TO AND COMPLETELY DISCHARGED IN THE CASE OF ADVICE, RECOMMENDATIONS, INFORMATION OR SERVICES, BY THE SUPPLYING OF THE ADVICE, RECOMMENDATIONS, INFORMATION OR SERVICES AGAIN.
- 2.2 EXCEPT TO THE EXTENT ALREADY SET OUT IN THIS CLAUSE WE WILL HAVE NO LIABILITY (INCLUDING LIABILITY FOR NEGLIGENCE OR RECKLESSNESS) TO ANY PERSON FOR ANY LOSS OR DAMAGE (CONSEQUENTIAL OR OTHERWISE) SUFFERED OR INCURRED BY ANY PERSON IN RELATION TO ANY ADVICE, RECOMMENDATIONS, INFORMATION OR SERVICES SUPPLIED BY US (OR ANY OF OUR EMPLOYEES, OFFICERS OR AGENTS).
- 2.3 WE SHALL NOT BE LIABLE FOR ANY LOSS OF PROFIT OR SPECIAL, INDIRECT OR CONSEQUENTIAL DAMAGES OF ANY KIND.
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3. SUPPLY

- 3.1 We agree to supply the Project Services to you in the manner and at the times provided in these Terms.
- 3.2 In providing the Project Services we will use our best endeavours to meet or exceed the agreed work requirements and timeframes.
- 3.3 Our Representative will meet with Your Representative on a regular basis to co-ordinate the supply of the Project Services.
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4. EXCLUSIVITY

- 4.1 We are free to provide similar Project Services to persons other than you.
- 4.2 If these Terms are stated to be non-exclusive, you are free to procure similar Project Services from persons other than us. Otherwise, you agree to deal with us on an exclusive basis in respect of Project Services of the same or a similar nature to the Project Services.
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5. SUPERVISION AND PERSONNEL

- 5.1 Unless otherwise agreed in writing, we will maintain control over our personnel when providing the Project Services. You and your personnel will at all times co-operate with us and our personnel.
- 5.2 You agree that you will not approach our personnel and offer them employment or otherwise engage them to provide Project Services of the same or similar nature to the Project Services for a period of no less than 12 months following the termination of these Terms.
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6. SUBCONTRACT

- 6.1 We may subcontract the provision of some or all of the supply of the Project Services to other persons.
- 6.2 We will ensure that all subcontractors appointed by us to supply Project Services under these Terms are subject to terms similar to these Terms.
- 6.3 If we have disclosed to you that the supply of some or all of the Project Services will be supplied by a particular subcontractor, the Fees that we are entitled to are subject to change due to corresponding changes imposed by our subcontractor.
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7. USE OF THE SITE

- 7.1 You will give us sufficient possession of the Site and accounting systems to enable us to supply the Project Services.
- 7.2 We acknowledge that others may have access to the Site and we agree to co-operate with these people.
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8. HOW WE WILL CHARGE

- 8.1 We will invoice you for the Project Services at the rates and in the manner set out in our Proposal in line with our usual charges and rates.
- 8.2 We may also agree that you will pay us a General Retainer, calculated at the rates and in the manner set out in our Proposal.
- 8.3 In consideration of us agreeing to provide the Project Services, you agree to promptly pay our Fees within our Trading Terms.
- 8.4 Our Fees are, unless otherwise explicitly stated, quoted exclusive of applicable goods and services tax (GST). GST will, where applicable, be added to our Fees.
- 8.5 The making of a payment by you will, in the absence of prior written notice to us, constitute approval of the Project Services supplied by us.

- 8.6 If you dispute any Fees, in whole or in part, you shall promptly notify us of the dispute, but shall not delay in paying the Fees within the agreed terms.
- 8.7 You must pay for the Project Services at our current scale of Fees .
- 8.8 Any allegation of overcharging or undercharging must be notified to the other party within 12 months of the date of our invoice.

9. APPLICATION OF PAYMENTS

Any payments tendered by you will be applied as follows:

- (a) first as reimbursement for any collection costs incurred by us;
- (b) secondly in payment of any interest charged to you in accordance with these Terms; and
- (c) thirdly in satisfaction of part satisfaction of the oldest portion of our Fees.

10. NO WITHHOLDING OR OFFSET

You shall not withhold from any payment or offset against any payment due to us any amount in respect of any amount owed by or claim against us.

11. DISCLOSE ALL RELEVANT INFORMATION

- 11.1 You must disclose all relevant information to us relating to the terms, conditions and circumstances in which we are to supply Project Services. Without limitation, you will disclose to us:
- (a) accurate, complete and sufficient information concerning the Project Services to allow us to comply with all laws and regulations concerning the supply of the Project Services; and
 - (b) .
- 11.2 You confirm that all information provided by you, including the Reference Materials, are true, accurate and complete in all material respects, and may be relied upon by us in the supply of the Project Services.
- 11.3 You indemnify us against all losses, costs, penalties and expenses which we pay or incur as a result of you failing to fully discharge the obligations in this Clause 11.

12. OWNERSHIP OF WORK PRODUCT

- 12.1 Subject to Clause 12.2, and unless otherwise agreed in writing by us, all Work Product designed, developed or produced by us in connection with the supply of the Project Services, shall be and remain our exclusive property.
- 12.2 You are entitled to retain one copy of the Work Product for your own use and records, as well as such additional copies as may be required by laws or regulations relating to the Project Services.
- 12.3 In the event that you do not pay our Fees in full, the actual or implied licence to use any Work Product shall terminate. You are required to return all original and copies of such Work Product to us within 7 days of being requested to do so.
- 12.4 All file notes and work papers created by us in the course of supplying the Project Services remain our property.

13. CONSUMABLES/DISBURSEMENTS

- 13.1 We agree to procure and provide to you such Consumables as may reasonably be required by you or us in connection with the supply of the Project Services.
- 13.2 You agree to reimburse us at our cost, or on the other basis agreed between us, for all Consumables procured by us in the supply of the Project Services.
- 13.3 Unless specifically incorporated into our Fees, you will reimburse us for any other out-of-pocket costs and expenses reasonably incurred by us in connection with the provision of the Project Services.

14. DURATION OF THIS AGREEMENT

- 14.1 We will supply the Project Services to you from the period set out in our Proposal to you. However, we may accept or reject any particular engagement or task directed by you (at our discretion).
- 14.2 If these Terms are stated to be for a fixed period, or in respect of the supply of certain discrete Project Services, then these Terms will terminate on the expiry of that period or completion of the supply and payment of our fees.
- 14.3 Subject to Clause 14.2, either of us may terminate these Terms by giving the other party written notice of termination of no less than the Termination Notice Period. On expiry of the Termination Notice Period these Terms terminates without prejudice to our respective rights accruing or accrued to the date of Termination.
- 14.4 If you ask us to supply further Project Services after the Termination of these Terms, and we commence to supply the Project Services without first agreeing with you different terms to these Terms, then the terms of these Terms will regulate the supply of those further Project Services.
- 14.5 Either of us may terminate these Terms immediately by written notice to the other party, if that other party:
- (a) commits a breach of any of the material provisions of these Terms, or is in default of any warranty or obligation under these Terms, and the defaulting party fails to remedy such breach or default within 21 (twenty one) days of receiving written notice specifying such breach or default;
 - (b) commits any act constituting an act of bankruptcy; or
 - (c) suffers a receiver, administrator or liquidator to be appointed to any of its assets or property or any part thereof; or

UNLESS that default is waived in writing by the other party, but without prejudice to any other rights or remedies available to the other party.

14.6 The expiry or termination of these Terms shall be without prejudice to any rights that have already accrued to either of us under these Terms.

15. MATERIALS MANAGEMENT

15.1 You may collect your Reference Materials within the period of 21 (twenty one) days following Termination of these Terms.

15.2 We may destroy or discard any of your Reference Materials that you do not collect from us on Termination of these Terms.

15.3 If we are required to store any of your Reference Materials you will be charged the costs of storage. You will also be charged any costs of retrieving your Reference Materials from storage.

15.4 All Reference Materials in our possession, both during and following the term of these Terms, are held by us at your risk. You are strongly encouraged to make your own insurance arrangements to cover the perceived value of your Reference Materials.

16. RISK OF LOSS

16.1 Unless otherwise agreed between us in writing, you are responsible for any loss or damage to your property during the supply of the Project Services.

16.2 You warrant to us that you have insurance to cover any loss or damage to property subject to Clause 16.1.

17. E-MAIL TRANSMISSIONS

We may correspond with both you and others by e-mail, where appropriate, unless you specifically instruct us to the contrary. As you are aware, e-mail is not secure and may be read, copied or interfered with in transit or impaired. Therefore, you agree to assume the risks associated with transmission and to release us from any claim you may have arising from transmission defects.

18. DISCLOSURE FOR PROMOTIONAL PURPOSES

Except as you may otherwise direct us, and subject to any confidentiality undertakings of which we are made aware between you and any other party with respect to particular Project Services, you agree that we may include, in a list of Project Services we have provided which we uses for promotional purposes, a summary description of all completed supplies of Project Services and any pending Project Services which we provide to you.

19. NATURE OF RELATIONSHIP

We shall supply the Project Services as an independent contractor and neither us nor any of our personnel shall (unless otherwise agreed by us) be, or be deemed to be in partnership or in a joint venture relationship with you, or your employee, servant or agent.

20. FORCE MAJEURE

20.1 Neither of us shall be liable for any delay or failure to perform its obligations pursuant to these Terms if such delay is due to Force Majeure.

20.2 If a delay or failure of a party to perform its obligations is caused or anticipated due to Force Majeure, the performance of that party's obligations will be suspended.

20.3 If a delay or failure by a party to perform its obligations due to Force Majeure exceeds 90 (ninety) days, either party may immediately terminate these Terms with notice in writing to the other party.

21. DISPUTE RESOLUTION

21.1 All disputes or differences that may arise between us in respect of the construction or effect of these Terms, or our respective rights, duties and liabilities, or any matter or event connected with or arising out of these Terms, shall initially be referred on notice to each other party.

21.2 Either of us may give notice to the other that the provisions of this Clause 21 apply to any dispute arising between us.

21.3 The notice referred to in Clause 21.2 shall include a summary of the issues in dispute and notification of a time within 14 days beginning 4 days after the service of the notice, and a place in the Capital of the State at which our representatives are to meet to try to resolve the dispute.

21.4 Our representatives shall meet at the time and place specified in the notice to try to resolve the dispute and shall, if necessary, continue to negotiate for 2 consecutive business days unless they otherwise agree to reconvene.

21.5 If the dispute has not been resolved by our representatives by the end of the meeting then either party may within 14 days thereafter apply to the Institute of Chartered Accountants or professional governing body of the accounting profession of the State to appoint a neutral adviser to assist in a further attempt by us in good faith to resolve the dispute by structured negotiations. Such person shall act as an expert not as an arbitrator and will be entitled to appoint such technical expert or experts as he or she considers necessary to assist in seeking to resolve the matter referred to them.

21.6 If we fail to appoint a neutral adviser within the 14 day period referred to in Clause 21.5 or we fail to reach agreement in the structured negotiations within 20 days of the neutral adviser being appointed, then any dispute may be referred to a court of competent jurisdiction. Neither party shall be deemed to be precluded from taking such interim formal steps as may be considered necessary to protect the party's position while the mediation or other procedure is pending or continuing.

21.7 The costs of the neutral adviser shall be borne equally between us.

22. PRIVACY AUTHORITY

Where Project Services are supplied to you on credit you irrevocably authorises us, our employees and agents to make such enquiries as we deem necessary to investigate your credit worthiness from time to time, including the making of enquiries of persons nominated as trade referees, your bankers or any other credit providers (the **Information Sources**). You hereby authorises the Information Sources to disclose to us such information concerning you which is within their possession and which is requested by us.

23. SPECIAL CONDITIONS

Any Special Conditions set out in our Proposal form part of these Terms.

24. INTEREST

All sums due from you to us which are not paid on the due date (without prejudice to our rights under these Terms) shall bear interest from day to day at the Default Rate.

25. SUCCESSORS AND ASSIGNS

25.1 These Terms shall apply to and bind the successors and assigns of the parties to these Terms.

25.2 Notwithstanding Clause 25.1, neither these Terms nor any right or obligation under these Terms are assignable in whole or in part by you, whether by operation of law or otherwise, without our prior written consent.

26. WAIVER

26.1 Any waiver or forbearance by us in regard to the performance of these Terms shall operate only if in writing and shall apply only to the specified instance, and shall not effect the existence and continued applicability of these Terms.

26.2 No failure or delay on our part in exercising any right, power or privilege under these Terms (and no course of dealing between or among any of the parties) shall operate as a waiver of any such right, power or privilege.

26.3 No waiver of any default on our part on any one occasion shall constitute a waiver of any subsequent or other default. No single or partial exercise or any such right, power or privilege shall preclude the further or full exercise of such right, power or privilege.

27. INVALID PROVISIONS

If any provision of these Terms are deemed or held to be illegal, invalid or unenforceable, these Terms shall be considered divisible and inoperative as to such provision to the extent it is deemed to be illegal, invalid or unenforceable. In all other respects these Terms shall remain in full force and effect.

28. COSTS

You will bear your own costs in reviewing and executing these Terms.

29. NOTICES

29.1 All notices must be in writing and must be given by any one of the following means:

- (a) by delivering it to the address of the party specified in these Terms on a business day during normal business hours;
- (b) by sending it to the address of the party by pre-paid post;
- (c) by sending it by facsimile transmission to the facsimile number of the party; or
- (d) by sending it by email transmission to the email address of the party.

29.2 A notice shall be deemed to be given and received:

- (a) if given in accordance with Clause 29.1(a) – on the next business day after the delivery in the place of delivery;
 - (b) if given in accordance with Clause 29.1(b) – 5 business days after the day of posting in the place of delivery;
 - (c) if given in accordance with Clauses 29.1(c) or 29.1(d) – upon receipt of electronic confirmation of delivery of the message.
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30. ENTIRE AGREEMENT

These Terms and the Annexures to these Terms comprise the entire agreement between us with respect to the subject matter of these Terms, and supersedes all prior negotiations, understandings, agreements, representations, warranties and correspondence (which cease to have any force or effect).

31. LEGAL EFFECT

The parties intend the provisions of these Terms to be legally binding and enforceable against us.

32. EXECUTION IN COUNTERPARTS

These Terms may be executed in two or more counterparts and execution by each of the parties of any one of such counterparts will constitute due execution of these Terms.

33. APPLICABLE LAW AND JURISDICTION

33.1 These Terms shall be governed by and construed in accordance with the laws of the State.

33.2 The parties irrevocably submit to the non-exclusive jurisdiction of the Courts of the State in respect of any claim, dispute or difference arising out of or in connection with these Terms.

34. INTERPRETATION

34.1 In these Terms unless the context indicates a contrary intention:

- (a) the singular includes the plural and conversely;
- (b) a gender includes all genders;
- (c) if a word or phrase is defined, its other grammatical forms have a corresponding meaning;
- (d) a reference to a person, corporation, trust, partnership, unincorporated body or other entity includes any of them;
- (e) a reference to a clause, schedule or annexure is a reference to a clause of, or a schedule or annexure to, these Terms;
- (f) a reference to an agreement or document (including these Terms) is to the agreement or document as amended, varied, supplemented, novated or replaced, except to the extent prohibited by these Terms or that other agreement or document;
- (g) a reference to a party to these Terms or another agreement or document includes the party's successors, permitted substitutes and permitted assigns (and, where applicable, the party's legal personal representatives);
- (h) a reference to legislation or to a provision of legislation includes a modification or re-enactment of it, a legislative provision substituted for it and a regulation or statutory instrument issued under it;
- (i) a reference to conduct includes, an omission, statement or undertaking, whether or not in writing;
- (j) a reference to an agreement includes any undertaking, deed, agreement and legally enforceable arrangement, whether or not in writing;
- (k) a reference to dollars and \$ is to Australian currency;
- (l) a reference to a right or obligation of any two or more persons confers that right, or imposes that obligation, as the case may be, jointly and severally;
- (m) the meaning of general words is not limited by specific examples introduced by including, or for example, or similar expressions;
- (n) references to agree, approve or consent are references to agreement, approval or consent (as the case may be) in writing; and
- (o) nothing in this agreement is to be interpreted against a party solely on the ground that the party put forward this agreement or any part of it.

35. DICTIONARY

In these Terms the following expressions have the meanings assigned to them respectively unless those meanings are repugnant to the context or subject matter:

- 35.1 **Accounting Services** means the services to be supplied in accordance with the proposal or agreement.
- 35.2 **Commencement Date** means the date hereof, or the other date (if any) agreed between us to be the date of commencement of the terms and conditions of these Terms;
- 35.3 **Confidential Information** means the contents and subject matter of these Terms, and any information coming to a party by virtue of being a party to these Terms, except so far as that information is then in the public domain other than as a result of a breach by the party of these Terms;
- 35.4 **Default Rate** means the annual rate of 4 per cent over the Reserve Bank of Australia indicated target cash rate with a minimum of 7% per annum, calculated and accrued on a daily basis;
- 35.5 **Fees** means our fees and charges for the supply of the Project Services, including the fees and charges set out in our Proposal, together with our General Rates and Charges
- 35.6 **Force Majeure** means a circumstance beyond the reasonable control of the parties that result in a party being unable to observe or perform on time an obligation under these Terms. Such circumstances shall include but shall not be limited to:
 - (a) acts of God, lightning strikes, earthquakes, floods, storms, explosions, fires and any natural disaster;
 - (b) acts of war, acts of public enemies, terrorism, riots, civil commotion, malicious damage, sabotage and revolution; and
 - (c) strikes;
- 35.7 **General Retainer** means the general periodic retainer set out in our Proposal;
- 35.8 **Intellectual Property** means all industrial and intellectual property rights including, without limitation, any copyright, patents, trademarks, service marks, design rights or eligible layout rights (whether registered or not), rights to apply for registration of any of these rights, innovations, drawings, discoveries, inventions, improvements, trade secrets, technical data, formulae, computer programs, data bases, logos, domain names, business and trade names, Confidential Information, know-how and advertising material;
- 35.9 **Key Performance Indicators** means the key performance indicators (KPIs) set out in our Proposal (if any);
- 35.10 **Our Representative** means the person nominated by us to represent us under these Terms;
- 35.11 **Project Services** means the services to be supplied in accordance with the Proposal and Statement of Work;
- 35.12 **Proposal** means our written proposal to you for the supply of services and extends to the more detailed Statement of Work, when one is in place;
- 35.13 **Statement of Work** means the detailed schedule of the services to be supplied by us to you;
- 35.14 **Reference Materials** means the materials provided by you to us for the purposes of us supplying the Project Services;

- 35.15 **Site** means any place under your control where Project Services are to be performed;
- 35.16 **State** means **South Australia**;
- 35.17 **Trading Terms/Schedule** means the period within or the basis on which you are required to pay our Fees, as set out in our Proposal;
- 35.18 **Termination** means the termination or expiry of these Terms on its terms;
- 35.19 **Termination Notice Period** means the termination notice period set out in our Proposal;
- 35.20 **Work Product** means all Intellectual Property in an associated with the Project Services and the product or outcome of our supply of the Project Services; and
- 35.21 **Your Representative** means the person nominated by you to represent you under these Terms.

End of terms