

## 1.0 TERMS OF ENGAGEMENT

### Background

- A Client wishes for the AIC to provide the Services.
- B The parties have agreed that the AIC is to provide the Services to Client on the following terms and conditions.

### Agreed Terms

#### 1 Supply of the Services

##### 1.1 Supply

Subject to Client paying the Fees in accordance with clause 3, AIC must use its best endeavours to provide the Services to Client.

##### 1.2 Client requirements

- (a) Client must:
  - (i) provide the AIC with access to Client's information, assistance and access to premises as necessary to enable the AIC to provide the Services;
  - (ii) cooperate with the AIC and act reasonably in connection with this agreement and receipt of the Services.
- (b) Client acknowledges and agrees that if Client does not comply with clause 1.2(a) then the AIC is only obliged to endeavour to supply the Services to Client.

#### 2 Warranties

##### 2.1 Client warranty

Client warrants that use of Client Material by the AIC in accordance with this agreement will not infringe the Intellectual Property Rights of any third party.

##### 2.2 Accuracy and reliance warranties

Client represents and warrants, and it is a condition of this agreement, that:

- (a) all information provided by Client or on Client's behalf to the AIC is accurate and is not, whether by omission of information or otherwise, misleading;
- (b) Client has not withheld from the AIC any document, information or other fact material to the decision of the AIC to enter into this agreement; and
- (c) Client did not rely upon any representation made to Client by the AIC which is not specified in this agreement prior to entry into this agreement.

#### 3 Fees

##### 3.1 Fees

- (a) Client must pay the Fees to the AIC as specified in this agreement.
- (b) If there is a dispute about whether a Fee or other amount contemplated by this agreement is payable or available, Client must not withhold the amount in dispute.

##### 3.2 Invoices

- (a) The AIC must invoice Client from time to time for the Fees.
- (b) Client must pay an invoice issued under clause 3.2(a) within 30 days after the date of issue of the invoice.

##### 3.3 Deferral of performance

If Client fails to pay the Fees in accordance with this agreement, without limiting any other remedies available to the AIC, the AIC may defer performance of all Services until the outstanding Fees are paid.

#### 4 Term and Termination

##### 4.1 Term

This agreement commences on the Commencement Date and continues until the AIC notifies Client that the Services have been completed unless terminated earlier in accordance with this clause 4.

##### 4.2 Termination for breach

- (a) If:
  - (i) Client commits a breach of this agreement; or
  - (ii) an Insolvency Event occurs in relation to Client,
 then the AIC may terminate this agreement by written notice to Client in which case this agreement will terminate on the date specified in that written notice or, if no date is specified, immediately.
- (b) If the AIC:
  - (i) commits a material breach of this agreement that has a material and adverse affect on Client; and
  - (ii) fails to remedy that breach within 60 days of receiving written notice from Client requiring that the AIC remedy that breach,
 then Client may terminate this agreement by written notice to the AIC in which case this agreement will terminate immediately.

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##### 4.3 Termination for convenience

If due to unforeseen specified circumstances the AIC becomes unable to deliver the services specified in this agreement, the AIC may terminate this agreement by written notice to Client in which case this agreement will terminate on the date specified in that written notice or, if no date is specified, immediately.

##### 4.4 Waiver and acknowledgement

- (a) Client expressly waives any rights it may have to terminate this agreement other than as contemplated by clauses 4.2(b) or 4.3.
- (b) Client acknowledges that the AIC may terminate this agreement under this clause 4 without considering the impact of the termination on Client.

##### 4.5 After termination

On termination of this agreement:

- (a) accrued rights or remedies of a party are not affected; and
- (b) Client must deliver to the AIC any of the AIC's Confidential Information or other property in Client's care, custody or control.

##### 4.6 Survival

Termination of this agreement will not affect clauses 2, 4.5, 5.3, 6, 7 or 8 or any provision of this agreement which is expressly or by implication intended to come into force or continue on or after the termination.

#### 5 Intellectual property

##### 5.1 Deliverables

- (a) Client acknowledges and agrees that title to and Intellectual Property Rights in any Deliverables other than client confidential information will be retained by the AIC.
- (b) The AIC grants Client a non-exclusive, non-transferable licence of the Intellectual Property Rights that the AIC has the authority to license to use the Deliverables in relation to receipt of the Services by Client during the Term.
- (c) For clarity, the licence granted under clause 5.1(b) does not include the right to sublicense to third parties.

##### 5.2 No assignment

AIC Material remains the property of the AIC and nothing in this agreement grants Client any Intellectual Property Rights in the AIC Material or other Intellectual Property Rights of the AIC.

**5.3 Licence of customer material**

- (a) Client grants to the AIC a non-exclusive, irrevocable, global licence to exercise the Intellectual Property Rights in any Client Material in connection with the AIC providing Services to Client except for Confidential Information.
- (b) The licence granted under clause 5.3(a) includes the right to sublicense to third parties.

**5.4 No use of the AIC's marks**

Client must not, and must ensure that its officers, employees, agents and subcontractors do not, use the trade marks or logos of the AIC except with the prior written consent of the AIC except as expressly provided in this agreement.

**6 Confidential information**

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**6.1 Obligations of confidence**

Client agrees to keep confidential, and not to use or disclose, other than as permitted by this agreement, any Confidential Information of the AIC provided to or obtained by Client prior to or after entry into this agreement.

**6.2 Exclusions**

The obligations of confidence in clause 6.1 do not apply to Confidential Information:

- (a) that is required to be disclosed by applicable law, or under compulsion of law by a court or Government Agency, as long as Client:
  - (i) discloses the minimum amount of Confidential Information required to satisfy the law or rules; and
  - (ii) before disclosing any information, gives all available written notice to the AIC and takes all available steps (whether required by the AIC or not) to maintain such Confidential Information in confidence;
- (b) that is in the public domain otherwise than as a result of a breach of this agreement or other obligation of confidence; or
- (c) that is already known, rightfully received or independently developed, by Client free of any obligation of confidence.

**6.3 Restriction on disclosure**

- (a) Client may use and disclose Confidential Information of the AIC only with the prior written consent of the AIC.
- (b) If Client discloses Confidential Information under clause 6.3(a), Client must ensure that such information is kept confidential by the person to whom it is disclosed and is only used for the purpose of receiving the Services under this agreement.

**7 Limitation of liability**

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**7.1 Limitation**

- (a) Subject to clauses 7.2 and 7.4, any liability of the AIC for any loss or damage, however caused (including by the negligence of the AIC), suffered by Client in connection with this agreement is limited, at the election of the AIC to:
  - (i) the Fees paid by Client to the AIC under this agreement in the 12 months prior to Client first suffering loss or damage in connection with this agreement; or
  - (ii) re-performance of the relevant Services.
- (b) The limitation set out in clause 7.1(a) is an aggregate limit for all claims, whenever made.
- (c) Any claim by Client against the AIC for loss or damage however caused (including by the negligence of the AIC), suffered by Client in connection with this agreement must be made within one month of Client becoming entitled to make the claim and any claim not made within one month is absolutely barred.

**7.2 Consequential loss**

- (a) Subject to clause 7.4, the AIC is not liable for any Consequential Loss however caused (including by the negligence of the AIC), suffered or incurred by Client in connection with this agreement.

- (b) Consequential Loss in clause 7.2 means consequential loss and:

- (i) indirect loss;
- (ii) loss of revenues;
- (iii) loss of reputation;
- (iv) loss of profits;
- (v) loss of bargain;
- (vi) loss of actual or anticipated savings; and
- (vii) lost opportunities, including opportunities to enter into arrangements with third parties.

**7.3 Seriousness or nature**

For clarity, and without limiting clauses 7.1 and 7.2, the parties agree that clauses 7.1 and 7.2 are to apply in connection with a breach of this agreement, anticipated breach of this agreement and other conduct regardless of the seriousness or nature of that breach, anticipated breach or other conduct.

**7.4 Trade practices**

If the *Trade Practices Act 1974* (Cth) or any other legislation implies a condition or warranty into this agreement in respect of goods or services supplied, and the AIC's liability for breach of that condition or warranty may not be excluded but may be limited, clauses 7.1, 7.2, 8.1, 10(a) and 10(d) do not apply to that liability and instead the AIC's liability for such breach is limited to, in the case of a supply of goods, the AIC replacing the goods or supplying equivalent goods or repairing the goods, or in the case of a supply of services, the AIC supplying the services again or paying the cost of having the services supplied again.

**7.5 Application to indemnities**

For clarity and without limiting this clause 7, the limitations and exclusions of liability in this clause 7 apply to liability of the AIC under any indemnity given by the AIC under this agreement.

**8 Indemnity**

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**8.1 Client indemnity**

Client is liable for, and indemnifies the AIC from and against, all loss or damage (including legal costs) incurred or suffered by the AIC however caused in connection with any breach of this agreement by Client or any alleged or actual infringement of a third party's Intellectual Property Rights or other right in connection with Client Material or the Services.

**8.2 Continuing obligation**

Each indemnity contained in this agreement is a continuing obligation notwithstanding:

- (a) any settlement of account; or
  - (b) the occurrence of any other thing,
- and it is not necessary for the AIC to incur expense or make payment before enforcing or making a claim under an indemnity.

**9 Force majeure**

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The AIC will not be:

- (a) in breach of this agreement as a result of; or
  - (b) liable for,
- any failure or delay in the performance of the AIC's obligations under this agreement to the extent that such failure or delay is wholly or partially caused, directly or indirectly, by a Force Majeure Event or any act or omission of Client.

**10 Financial Services**

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Client acknowledges and agrees that:

- (a) the AIC is not liable for any loss or damage, however caused (including by the negligence of the AIC) suffered by Client in connection with any errors in the AIC's models or for any errors that may result from using those models;

- (b) the AIC's models are derived partially or substantially from information supplied by the Client, therefore any results or views deriving from any calculations made using the AIC's models should not be ascribed to the AIC;
- (c) Client must independently check any calculation or results, or any assumptions made in relation to those calculations or results, derived from the AIC's models;
- (d) the AIC is not liable for any loss or damage, however caused (including by the negligence of the AIC) suffered by Client in connection with the accuracy of any data used to calculate results using the AIC's models including results that are derived from data provided by Client or independent third parties; and
- (e) the information provided by the AIC under this agreement does not constitute the provision of financial product advice and neither the AIC nor its staff are licensed, or otherwise authorised, to provide financial product advice.
- (e) The AIC may assign its interest under this agreement if necessary in the sole view of the AIC to deliver the Service..
- (f) Time is not of the essence in the performance of obligations under this agreement except in relation to performance of payment obligations.
- (g) Unless expressly stated otherwise, this agreement does not create a relationship of employment, trust, agency or partnership between the parties.
- (h) Each provision of this agreement will be read and construed as a separate and severable provision or part and if any provision is void or otherwise unenforceable for any reason then that provision will be severed and the remainder will be read and construed as if the severable provision had never existed.
- (i) This agreement represents the parties' entire agreement, and supersedes all prior representations, communications, agreements, statements and understandings, whether oral or in writing, relating to its subject matter.

#### 11 Costs and taxes

- (a) Each party must meet or pay its own legal costs and disbursements in respect of the preparation, negotiation and execution of this agreement.
- (b) Client must pay all stamp duty (including penalties and interest) assessed or payable in connection with this agreement.
- (c) Subject to clause 12, Client must pay all taxes, duties and government charges imposed or levied in Australia or overseas in connection with the performance of this agreement.
- (j) The AIC may subcontract the performance of all or any part of the AIC's obligations under this agreement.
- (k) A right under this agreement may only be waived in writing signed by the party granting the waiver, and is effective only to the extent specifically set out in the waiver.
- (l) Without limiting any other remedies available to the AIC, if Client fails to pay any amount payable under this agreement, Client must pay Interest on that amount.

#### 12 GST

- (a) In this clause 12:
  - (i) 'GST Act Supplier' means the entity making the Supply; and
  - (ii) other capitalised terms used that are not defined in clause 14 have the meaning given in the *A New Tax System (Goods and Services Tax) Act 1999* (Cth).
- (b) Except under this clause 12, the consideration for a Supply made under or in connection with this agreement does not include GST.
- (c) If a Supply made under or in connection with this agreement is a Taxable Supply, then at or before the time the consideration for the Supply is payable:
  - (i) the Recipient must pay the GST Act Supplier an amount equal to the GST for the Supply (in addition to the consideration otherwise payable under this agreement for that Supply); and
  - (ii) the GST Act Supplier must give the Recipient a Tax Invoice for the Supply.
- (d) If either party has the right under this agreement to be reimbursed or indemnified by another party for a cost incurred in connection with this agreement, that reimbursement or indemnity excludes any GST component of that cost for which an Input Tax Credit may be claimed by the party being reimbursed or indemnified, or by its Representative Member, Joint Venture Operator or other similar person entitled to the Input Tax Credit (if any).
- (m) In this agreement:
  - (i) the meaning of any general language is not restricted by any accompanying example, and the words 'includes', 'including', 'such as' or 'for example' (or similar phrases) do not limit what else might be included;
  - (ii) no rule of construction applies in the interpretation of this agreement to the disadvantage of the party preparing the document on the basis that it put forward this document or any part of it; and
  - (iii) a reference to a party is a reference to the AIC or Client, and a reference to the parties is a reference to both the AIC and Client.

#### 13 General

- (a) The laws of Queensland, Australia govern this agreement.
- (b) Each party irrevocably submits to the non-exclusive jurisdiction of the courts of Queensland, Australia and courts competent to hear appeals from those courts.
- (c) Where this agreement contemplates that the AIC may consent to, elect, determine, approve, nominate, decide or consider any matter or thing, the AIC may provide such consent or make such election, determination, approval, nomination, decision or consideration in its absolute discretion and conditionally or unconditionally without being required to give reasons or act reasonably, unless this agreement expressly requires otherwise.
- (d) Client must not assign, in whole or in part, or novate Client's rights and obligations under this agreement without the prior written consent of the AIC.

**14 Definitions**

In this agreement:

- AIC Material** means any Material provided by or to which access is given by the AIC to Client for the purposes of this agreement.
- Client** means the client specified in Item 11.0 Engagement Agreement of the Proposal.
- Client Material** means any Material provided by or to which access is given by Client to the AIC for the purposes of this agreement.
- Commencement Date** means the date the Proposal is executed by the parties.
- Confidential Information** of a party means this agreement and any information:
  - (a) relating to the business and affairs of that party;
  - (b) relating to the customers, clients, employees, sub contractors or other persons doing business with that party;
  - (c) which is by its nature confidential;
  - (d) which is designated as confidential by that party; or
  - (e) which the other party knows or ought to know, is confidential,
 and includes all trade secrets, knowhow, financial information and other commercially valuable information of that party, and in the case of the AIC, includes the AIC Material.
- Consequential Loss** has the meaning given in 7.2(b).
- Corporations Act** means *Corporations Act 2001* (Cth).
- Fees** mean the fees specified in Item 6.0 Proposed Pricing and Timing of the Proposal.
- Force Majeure Event** means any occurrence or omission outside a party's control and includes:
  - (a) a physical natural disaster including fire, flood, lightning or earthquake;
  - (b) war or other state of armed hostilities (whether war is declared or not), insurrection, riot, civil commotion, act of public enemies, national emergency (whether in fact or in law) or declaration of martial law;
  - (c) epidemic or quarantine restriction;
  - (d) ionising radiation or contamination by radioactivity from any nuclear waste or from combustion of nuclear fuel;
  - (e) confiscation, nationalisation, requisition, expropriation, prohibition, embargo, restraint or damage to property by or under the order of any government agency;
  - (f) law taking effect after the date of this agreement; and
  - (g) strike, lock-out, stoppage, labour dispute or shortage including industrial disputes that are specific to a party or the party's subcontractors.

- Insolvency Event** in the context of a person means:
  - (a) a liquidator, receiver, receiver and manager, administrator, official manager or other controller (as defined in the Corporations Act), trustee or controlling trustee or similar official is appointed over any of the property or undertaking of the person;
  - (b) the person or the person's property or undertaking becomes subject to a personal insolvency arrangement under part X *Bankruptcy Act 1966* (Cth) or a debt agreement under part IX *Bankruptcy Act 1966* (Cth);
  - (c) the person is or becomes unable to pay its debts when they are due or is or becomes unable to pay its debts within the meaning of the Corporations Act or is presumed to be insolvent under the Corporations Act;
  - (d) the person ceases to carry on business; or
  - (e) an application or order is made for the liquidation of the person or a resolution is passed or any steps are taken to liquidate or pass a resolution for the liquidation of the person, otherwise than for the purpose of an amalgamation or reconstruction.
- Intellectual Property Rights** means all industrial and intellectual property rights, both in Australia and throughout the world, and includes any copyright, moral right, patent, registered or unregistered trade mark, registered or unregistered design, registered or unregistered plant breeder's right, trade secret, knowhow, right in relation to semiconductors and circuit layouts, trade or business or company name, indication or source or appellation of origin or other proprietary right, or right of registration of such rights.
- Interest** means interest on any payment owing under this agreement calculated:
  - (a) at the rate which is 2% in excess of the published Australia and New Zealand Banking Group Limited variable interest rate for personal loans or, if lower, the maximum rate permitted by applicable law; and
  - (b) daily from the date on which such payment was due to the date on which the payment is made (both inclusive) including the relevant Interest.
- Material** includes documents, equipment, reports, technical information, studies, plans, charts, drawings, calculations, tables, trade marks, logos, schedules and data stored by any means.
- Proposal** means the proposal to which this agreement is annexed.
- Related Body Corporate** has the meaning given to that term by section 9 Corporations Act.
- Services** means the services specified in Item 2.0 Scope of Work and Methodology of the Proposal.
- Term** means the term contemplated by clause 4.1.