

PSG Services Australia Pty Ltd Terms and Conditions of Engagement

1. Parties

1.1 PSG Services Australia Pty Ltd (ABN:67 636 183 803) and the organisation whose name and address is specified in the Engagement Letter ('the Client').

2. Terms of Engagement

These provisions set out the standard terms and conditions of engagement of PSG Services Australia Pty Ltd and any of its directors and employees (collectively referred to as "PSG"). The Engagement Letter and these terms and conditions, including any written variation (together called 'this Agreement') will apply to all work to be performed for the Client.

This Agreement constitutes the entire agreement between PSG and the Client. Where there is any inconsistency between the Engagement Letter and these terms, the Engagement Letter shall prevail.

The Client acknowledges that PSG is engaged under this Agreement as an independent contractor.

The offer contained in the Engagement Letter may only be accepted by written, verbal or email confirmation within 28 days from the date of issue, unless otherwise indicated, otherwise it will lapse.

3. Definitions

3.1 For the purposes of this Agreement, the following definitions apply:

'Commencement Date' means the date of commencement of this Agreement specified in the Engagement Letter;

'Consultant's Premises' means the address of PSG specified in the Engagement Letter;

'Consultancy Services' means the services to be performed by PSG under this Agreement specified in the Engagement Letter;

'Confidential Information' means information that is by its nature confidential but does not include:

(a). information already known to the receiving party at the time of disclosure by the other party; or

(b). information in the public domain other than as a result of disclosure by a party in breach of its obligations of confidentiality under this agreement;

'Client's Site' means the address of the Client as specified in the Engagement Letter;

'Engagement Letter' means the letter setting out the further terms of the engagement between PSG and the Client;

'Force Majeure' means an act, omission or circumstance over which PSG could not reasonably have exercised control.

'GST' means:

(c). the same as in the GST Law;

(d). any other goods and services tax, or any tax applying to this agreement in a similar way; and

(e). any additional tax, penalty tax, fine, interest or other charge under a law of such a tax.

'GST Law' means the same as 'GST law' in A New Tax System (Goods and Services Tax) Act 1999 (Cth);

'Intellectual Property Rights' means all present and future rights conferred by statute, common law or equity in or in relation to any copyright, trade marks, designs, patents, circuit layouts, business and domain names, inventions, and other results of intellectual activity in the industrial, commercial, scientific, literary or artistic fields;

'Moral Rights' means:

(f). a right of attribution of authorship; or

(g). a right not to have authorship falsely attributed; or

(h). a right of integrity of authorship; or

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(i). a right of a similar nature; which is conferred by statute, and which exists or comes to exist anywhere in the world in a deliverable form comprised within this Agreement.

3.2. In this Agreement unless the contrary intention appears:

(a). a reference to this Agreement or another instrument includes any variation or replacement to them;

(b). a reference to a statute, ordinance code or other law includes regulations and other enactments under it and consolidations, amendments, re-enactments or replacements of any of them;

(c). the singular includes the plural and vice versa;

(d). the expression "person" includes an individual, the estate of an individual, a body politic, a corporation and a statutory or other authority or association (incorporated or unincorporated);

(e). a reference to a person includes a reference to the person's executors, administrators, successors and assigns.

4. Scope of Agreement

The Client shall employ PSG and PSG shall serve the Client as a consultant to perform the Consultancy Services as set out in the Engagement Letter.

5. Duration

This agreement will commence on the Commencement Date and will continue in effect for the period stated in the Engagement Letter or until otherwise terminated under this Agreement whichever is the earlier.

6. Obligations of PSG Services Australia Pty Ltd

6.1 PSG shall provide the Consultancy Services using a standard of care normally exercised by professional consulting firms providing comparable service under similar conditions.

6.2 PSG will use best endeavours to complete the Consultancy Services in the timeframe set out in the Engagement Letter, subject to a Force Majeure event.

7. Charges and payment

7.1 The Client shall pay PSG the consultancy fee specified in the Engagement Letter for the Consultancy Services.

7.2 The Client shall pay the consultancy fee within 7 days after the date of PSG invoice. Invoices will be issued relative to work completed and must be paid into listed bank account on supplier Document.

7.3 If the Client is in arrears in any payment due to PSG under this agreement, the Client shall pay, in addition to the arrears, interest at the rate of 12 per cent per annum on all arrears for each day during which the default continues.

7.4 If the Client disputes the whole or any part of the amount claimed in an invoice submitted by the supplier pursuant to this agreement, the Client will pay the undisputed portion on the due date. The dispute regarding the remainder may be referred to the dispute resolution procedure prescribed by this Agreement. If it is subsequently resolved that a further amount is payable, the Client will pay that amount together with interest at the rate of 12 per cent per annum.

7.5 Words defined in the GST Law have the same meaning in this clause, unless the context makes it clear that a different meaning is intended.

7.6 In addition to paying the consultancy fee and any other amount payable in connection with this Agreement (which is exclusive of GST), the Client will pay to PSG an amount equal to any GST payable as required under the GST Law for any supply by PSG in respect of which the consultancy fee or any other amount is payable under this Agreement.

8. Expenses

8.1 The Client shall reimburse PSG the amount of all expenses (plus 10% administration fee) reasonably and properly incurred by it in the performance of its duties under this Agreement, including but not limited to travel expenses between

PSG Premises and the Client's Site, accommodation and subsistence expenses, and all other expenses incurred or required to be incurred by PSG to promptly and efficiently provide the Consultancy Services.

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9. Title and use

9.1 The Client agrees that any works, items, materials or information of whatever nature produced or developed by PSG or under PSG direction pursuant to or in the course of providing the Consultancy Services shall remain the sole and complete property of PSG whether such property is tangible or is in the nature of industrial and Intellectual Property Rights (including copyright and rights of confidential information).

9.2 If the Client has fully complied with this Agreement and if the works, items, materials or information referred to in clause 9.1 have been produced by PSG as part of the Consultancy Services, PSG grants the Client a non-exclusive and non-transferable licence to use such works, items, materials and information for such purposes as the parties reasonably contemplate at the commencement date.

9.3 There is no assignment of Intellectual Property Rights by PSG to the Client pursuant to this agreement. Nothing in this agreement affects the Moral Rights in any works, items, materials or information supplied pursuant to this Agreement.

All communications by PSG with the Client, its employees or agents, whether written or oral are provided solely for the use of the Client in connection with the engagement. No other party is entitled to rely on PSG reports or advice for any purpose whatsoever. PSG disclaims any responsibility to any such third party who has had the report or advice communicated to them.

9.4 Where the Client receives electronically any report or correspondence containing opinions or advice, PSG will not be responsible for any unauthorised copying, interception, interference or delivery failure of the transmission. PSG also does not warrant that the electronic transmission is virus free or will not harm the Client's computer systems.

9.5 The Client should not rely upon any opinions or advice transmitted electronically unless confirmed by letter signed by a director of PSG. Written advice and final reports shall take precedence over any oral advice and interim reports. PSG is not responsible for updating any opinions, advice or reports subsequent to the issue of a final version, unless specifically agreed otherwise.

10. Confidentiality

10.1 A party will not, without the prior written approval of the other party, disclose the other party's Confidential Information.

10.2 A party will not be in breach of clause 10.1 in circumstances where it is legally compelled to disclose the other party's Confidential Information.

10.3 Each party will take all reasonable steps to ensure that its employees and agents, and any sub-contractors engaged for the purposes of this Agreement, do not make public or disclose the other party's Confidential Information.

Notwithstanding any other provision of this clause, a party may disclose the terms of this Agreement (other than Confidential Information of a technical nature) to its related companies, solicitors, auditors, insurers and accountants.

This clause will survive the termination of this Agreement.

11. Privacy

11.1 PSG will not use or disclose any personal information for a purpose other than discharging its obligations under this Agreement. PSG further agrees to comply at all times with the National Privacy Principles contained in Sch 3 to the Privacy Act 1988 (Cth) (or an applicable privacy code approved by the Federal Privacy Commissioner pursuant to that Act) in the same way and to the same extent as the Client would have been required to comply had it been directly responsible for performing the act or practice concerned.

PSG will take all necessary steps to protect personal information in its possession against misuse or loss and it will return all such information to the Client (or if requested by the Client, destroy or de-identify such information) upon termination or expiry of this Agreement. This clause will survive the termination or expiry of this Agreement.

11.2 For the purpose of this clause, 'personal information' means information or an opinion about an individual as defined in s 6 of the Privacy Act 1988 (Cth) which is collected, used, disclosed, stored or handled by the supplier for the purposes of this Agreement.

12. Liability of PSG Services Australia Pty Ltd

12.1 In no event will PSG be liable for any special, incidental, punitive or consequential damages whatsoever, including loss of profits,

whether arising in contract, tort or otherwise, even if PSG has been advised of the possibility of such damages.

12.2 Notwithstanding anything herein to the contrary the limit of PSG liability (whether in contract, tort, warranty, negligence, strict liability, by statute or

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otherwise) concerning PSG performance or non-performance, or in any manner related to this Agreement, for any and all claims will not in total exceed the fees the Client has paid to PSG under this Agreement.

13. Implied terms

13.1 Subject to clause 13.2, any condition or warranty which would otherwise be implied in this Agreement is hereby excluded.

13.2 Where legislation implies in this Agreement any condition or warranty, and that legislation avoids or prohibits provisions in a contract excluding or modifying the application of or liability under such condition or warranty, the condition or warranty will be deemed to be included in this Agreement. However, the liability of PSG for any breach of such condition or warranty will be limited, at the option of PSG Services Australia Pty Ltd, to one or more of the following:

(j). if the breach relates to goods:

(i). the replacement of the goods or the supply of equivalent goods;

(ii). the repair of such goods;

(iii). the payment of the cost of replacing the goods or of acquiring equivalent goods;
or

(iv). the payment of the cost of having the goods repaired; and

(k). if the breach relates to services:

(v). the supplying of the services again; or

(vi). the payment of the cost of having the services supplied again.

14. Indemnities

The Client agrees to indemnify PSG and its directors and employees against all liabilities, claims, costs or expenses incurred by PSG in respect of any claim or action by a third party in connection with the provision of the Consultancy Services. This indemnity does not apply to any liabilities, costs or expenses incurred in defending a claim by a third party which results from any wilful

misconduct by PSG or its directors and employees, except when the Client is in breach of clause 9.5.

PSG shall not be liable for any losses, damages, costs or expenses arising out of errors due to the provision to it of false, misleading or incomplete information or documentation or due to any acts or omissions of any other person. The Client indemnifies PSG from any liability it may have to the Client or any third party as a result of any information supplied to PSG by the Client or any of its agents, where such information and documentation is false, misleading or incomplete in a material respect.

15. Force Majeure

15.1 PSG shall not be liable for any delay or failure to perform its obligations if such failure or delay is due to Force Majeure.

15.2 PSG shall notify the Client as soon as practical of any anticipated delay due to Force Majeure. The performance of PSG obligations under this Agreement shall be suspended for the period of the delay due to Force Majeure.

15.3 If a delay due to Force Majeure exceeds 30 days, the Client may terminate this agreement immediately on providing notice to PSG. If the Client gives such notice to PSG:

(b) the Client shall pay PSG a reasonable sum in relation to services rendered or costs and expenses incurred prior to termination for which no payment has been made by the Client.

16. Termination

16.1 Without limiting the generality of any other clause in the agreement, PSG may terminate this Agreement and any licence granted pursuant to this Agreement immediately by notice in writing if:

(l). any payment due from the Client to PSG pursuant to this Agreement remains unpaid for a period of 30 days; or

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(m). the Client breaches any clause of this Agreement and such breach is not remedied within seven days of written notice by PSG.

16.2 Notwithstanding the preceding clause PSG may terminate this agreement and any licence granted pursuant to this agreement immediately on notice in writing to the Client if:

(n). the Client becomes, threatens or resolves to become or is in jeopardy of becoming subject to any form of insolvency administration;

(o). the Client, being a partnership, dissolves, threatens or resolves to dissolve or is in jeopardy of dissolving;

(p). the Client, being a natural person, dies; or

(q). the Client ceases or threatens to cease conducting its business in the normal matter.

16.3 Notwithstanding the preceding paragraphs, PSG may terminate this agreement by giving 30 days' notice to the Client.

16.4 If notice is given to Client pursuant to the preceding clauses, PSG may, in addition to terminating the Agreement:

(r). retain any moneys paid;

(s). charge a reasonable sum for work performed in respect of work which no sum has been previously charged;

(t). retake possession of all property of PSG in the possession of the Client;

(u). be regarded as discharged from any further obligations under this agreement; and

(v). pursue any additional or alternative remedies provided by law.

16.5 The Client may terminate this agreement if PSG breaches any term of this Agreement and such breach is not remedied within 14 days of written notice by the Client.

17. Assignment

17.1 Neither party shall assign, whether in whole or part, the benefit of this agreement or any rights or obligations hereunder, without the prior written consent of the other party.

18. Sub-contracts

PSG may sub-contract for the performance of this Agreement or any part of this Agreement.

19. Waiver

No forbearance, delay or indulgence by a party in enforcing the provisions of this agreement shall prejudice or restrict the rights of that party, nor shall any waiver of those rights operate as a waiver of any subsequent breach.

20. Poaching

The Client agrees that it is prohibited from poaching employees and sub-contractors of PSG. Any approach shall be made through the Management of PSG in the first instance. Approval may be granted by PSG and may be on the condition that suitable remuneration is paid to PSG for loss of earnings. The Client can, however, employ a person who has resigned from PSG, only after written approval of PSG.

21. Variation and change control

20.1 The provisions of this Agreement may not be varied except by agreement in writing signed by both parties.

20.2 If a proposed variation relates to the scope of this Agreement (including but not limited to specifications, performance levels, key dates or charges), the proposing party must include in its submission a change control report which addresses in full detail:

(w). a description of the proposed change;

(x). an assessment of the benefits and risks to each party associated with the proposed change;

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- (y). a time frame for the proposed implementation;
- (z). a description of any disruption which may result from the change;
- (aa). any consequential changes which may be required; and
- (bb). such other matters as are specified in the schedule in relation to change control.

22. Entire agreement

This Agreement supersedes all prior agreements, arrangements and undertakings between the parties and constitutes the entire Agreement between the parties relating to the Consultancy Services. No addition to or modification of any provision of this Agreement shall be binding upon the parties unless made by written instrument signed by a duly authorised representative of the party.

23. Headings

Headings used in this Agreement are for convenience and ease of reference only, are not part of this Agreement and shall not be relevant to or affect the meaning or interpretation of this Agreement.

24. Severability

23.1 Should any part of this Agreement be or become invalid, that part shall be severed from this Agreement. Such invalidity shall not affect the validity of the remaining parts of the Agreement.

25. Governing law

This Agreement shall be governed by and construed in accordance with the laws for the time being in force in the State of Western Australia and the parties agree to submit to the jurisdiction of the courts and tribunals of that State.

26. Disputes

Any dispute or difference arising in connection with this agreement shall be submitted to arbitration in accordance with, and subject to, the Rules for the Conduct of Commercial Arbitrations of the Institute of Arbitrators and Mediators, Australia. During such arbitration, both parties may be represented by a duly qualified legal practitioner.