

# SERVICE SCHEDULE – PROFESSIONAL CONSULTING SERVICE



This Service Schedule sets out the Service Description and service levels that apply to the Services.

## 1 SERVICE DESCRIPTION

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- 1.1 We will supply and you will purchase from us Services on the terms of this Agreement, including this Service Schedule and the relevant Statement of Work.

## 2 CHANGE REQUEST

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- 2.1 You and we may, at any time, request a change to the Services, a Deliverable or a Statement of Work. We then will provide you with a written proposal setting out:
- (a) any proposed amendments to the Statement of Work;
  - (b) any new or amended Fees; and
  - (c) any other information reasonably requested by us in relation to the change.
- 2.2 Any variation to the Services, a Deliverable or a Statement of Work under this clause 2 must be set out in a Change Request executed by you and us.

## 3 SERVICES AND DELIVERABLES

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- 3.1 You must provide Your Inputs by the dates specified in the Statement of Work or where no dates are specified as soon as possible upon our request.
- 3.2 We will perform the Services and deliver to you the Deliverables according to the Specifications.
- 3.3 We aim to perform Services and deliver Deliverables by the relevant Delivery Date, but we do not guarantee that we will do so.

## DELAY IN DELIVERY

- 3.4 In respect of any delay which is not caused solely by us:
- (a) we will not be responsible for any delay in delivering Services, a Deliverable or a subsequent Deliverable that depends on that Deliverable;
  - (b) the Delivery Date or due date for Deliverables and/or Services will automatically be extended by a period equal to the period of delay; and
  - (c) you must pay us
    - (i) the reasonable additional fees, at our Standard Rates, for additional work performed by Our Personnel; and
    - (ii) all additional out-of-pocket expenses incurred by us,as a consequence of the delay.

## 4 TITLE AND RISK

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- 4.1 Risk in a Deliverable passes to you when we deliver that Deliverable to you.
- 4.2 Subject to clause 9, property in and title to a Deliverable remains with us until you have paid us in full the applicable Fee for that Deliverable.
- 4.3 You must not pledge or encumber a Deliverable until title has passed to you.

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## 5 ACCEPTANCE OF DELIVERABLES

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5.1 The relevant Work Order will set out whether the Acceptance Process will apply to a Deliverable.

### ACCEPTANCE PROCESS

5.2 During the Acceptance Test Period, you may assess the Deliverable to ensure that it contains no Defects.

5.3 If there are no Defects in the Deliverable, you must sign the applicable Certificate of Acceptance on or before expiry of the Acceptance Test Period.

5.4 If the Deliverable contains a Defect, you must issue a Notice of Rejection on or before expiry of the Acceptance Test Period. The Notice of Rejection must contain sufficient information regarding the Defect to enable us to identify the Defect or, in the case of documentation, list any errors or omissions identified.

5.5 If you issue a Notice of Rejection in relation to a Deliverable, we will rectify the Defect and re-submit the rectified Deliverable for testing in accordance with the Acceptance Process. Clauses 5.2 to 5.6 will apply to the resubmitted Deliverable and the relevant Acceptance Test Period will be the same as the original Acceptance Test Period for that Deliverable.

5.6 Acceptance of a Deliverable occurs on the earliest of:

- (a) the date of delivery where the Statement of Work does not specify that the Acceptance Process applies;
- (b) the date you sign a Certificate of Acceptance;
- (c) the date you use the Deliverable in any way (except for test purposes); and
- (d) expiry of the Acceptance Test Period unless you have issued us with a valid Notice of Rejection.

## 6 DEFECTS

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6.1 We do not represent or warrant to you that each Deliverable will be free from defects.

6.2 If a Deliverable has a Defect, then your sole remedy for that Defect is that we must at no cost to you:

- (a) at our discretion, repair, replace or rectify, the Defect; and
- (b) deliver the repaired, replacement or rectified Deliverable to you.

6.3 Our liability under clause 6.2 will be reduced to the extent the Defect is a result of (a) Your Input and/or Your Material, (b) any action taken or inaction by you, or (c) misuse of or intentional damage to the Deliverable other than by us.

6.4 Deliverables presented for repair may be replaced by refurbished goods of the same type rather than being repaired. Refurbished parts may be used to repair the Deliverable.

6.5 If Deliverables you send to us for repair are capable of retaining user-generated data, please note that some or all of your stored data may be lost during the process of repair. Please ensure that you have saved this data elsewhere prior to sending to us for repair.

## 7 OUR PERSONNEL

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7.1 Where Our Personnel perform the Services at Your Premises, you must ensure that Your Premises comply with all health, safety, environment and community laws and regulations.

7.2 You must obtain any consents and fund any site access and induction fees that are necessary to enable Our Personnel to access Your Premises for the purpose of providing the Services to You.

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- 7.3 You must not, and must ensure that your related bodies corporate do not, during the term of each Statement of Work and for 3 months after the completion of the Services the subject of that Statement of Work (or such other period as set out in the Statement of Work), seek to employ or engage the services of any of our employees or contractors involved in providing the Services to you. This does not apply in relation to a person who responds to a genuine published advertisement. You acknowledge that the restraint in this clause 7.3 is reasonable in its extent and goes no further than is reasonably necessary to protect our interest in maintaining our personnel.

## 8 PAYMENT

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- 8.1 You must pay to us the Fees set out in the Statement of Work. You must reimburse us for all out-of-pocket expenses reasonably and actually incurred by us in performing the Services, provided that we:
- (a) first obtain verbal approval for each expense from Your Primary Contact; and
  - (b) produce a valid invoice or receipt when claiming the expense.

### TIME AND MATERIALS BUDGET LIMIT

- 8.2 If a Time and Materials Budget Limit applies to a Statement of Work and the Time and Materials Budget Limit is reached, then we will:
- (a) notify Your Primary Contact in writing and may suspend all work in relation to the Statement of Work; and
  - (b) inform Your Primary Contact of our estimation of the additional time and cost required to complete the Services under the Statement of Work;
  - (c) you will be responsible for payment in respect of all work undertaken to the date of the notice under sub-clause (b) regardless of whether the Services or Deliverables have been completed; and
  - (d) we will have no further obligation or liability to complete the Services and/or Deliverables.
- 8.3 Following a notice under clause 8.2, the parties will meet in an effort to agree to a revised Time and Materials Budget Limit for the relevant Statement of Work.

### TIMESHEETS

- 8.4 Where agreed in a Statement of Work, Our Personnel will maintain and submit timesheets. Upon receipt of a timesheet from Our Personnel, Your Primary Contact must, within 2 days:
- (a) sign and return the timesheet to Our Primary Contact; or
  - (b) notify Our Personnel why the timesheet has not been accepted, in which case Our Personnel will:
    - (i) confirm the timesheet submitted was accurate; or
    - (ii) submit a revised timesheet.
- 8.5 Any dispute in relation to timesheets will be dealt with in accordance with the dispute resolution procedures set out in the Agreement Terms. For the avoidance of doubt, any such dispute does not affect our rights to bill you, or your obligations to pay, for Services in accordance with this Agreement. If the dispute is resolved in your favour and gives rise to an adjustment to Fees already paid then we will refund or credit any such adjustment to you.

## 9 MATERIALS

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### LICENSED MATERIAL

- 9.1 We grant to you a non-exclusive, non-sub-licensable and non-transferable license to use, adapt and reproduce the Licensed Material incorporated in a Deliverable in the Territory solely for your internal business purposes.

# SERVICE SCHEDULE – PROFESSIONAL CONSULTING SERVICE



- 9.2 As between you and us, we retain all right, title and interest (including Intellectual Property Rights) in and to the Licensed Material, and you acquire no interest in or to the Licensed Material, other than the license set forth in Section 9.1.
- 9.3 Except to the extent expressly permitted by applicable law, you must not, and must not permit others to, copy, reproduce, adapt, merge with other software, modify, decompile, reverse-engineer, disassemble or translate all or any part of the Deliverables including any Licensed Material.
- 9.4 You must not use the Deliverables other than in accordance with the terms of this Agreement, any documentation provided with the Deliverables and our reasonable instructions.
- 9.5 You must not challenge or impair the validity of or our title to or interest in any Intellectual Property Rights in the Licensed Material.

## YOUR MATERIAL

- 9.6 You or your licensors retain ownership of the Intellectual Property Rights in Your Material. You grant us a royalty-free license to use Your Material for the sole purpose of performing our obligations under this Service Schedule including the right to:
- (a) copy, modify, adapt and make derivative works of Your Materials; and
  - (b) permit our subcontractors to use, copy, modify, adapt and make derivative works of Your Materials.
- 9.7 We acknowledge that the licence granted in 9.6 does not transfer to us any ownership rights (including Intellectual Property Rights) in any of Your Materials.
- 9.8 You warrant and represent that:
- (a) you have and will during the Service Schedule Term have full power and authority to grant the rights in respect of Your Material; and
  - (b) no rights of any third party will be infringed by our use of any of Your Materials in accordance with this Agreement.

## RESPONSIBILITY FOR YOUR MATERIALS

- 9.9 You must pay any loss, damage, liability, costs or expenses (“**Loss**”) incurred by us as a result of a claim that Your Material or its use by us in accordance with the terms of this Agreement and the Work Order infringes the Intellectual Property Rights of any person, except to the extent that the Loss is caused or contributed to by us (or our contractor’s) negligence or breach of contract. We will take reasonable steps to mitigate our Loss.

## 10 USE BY OR FOR THIRD PARTIES

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- 10.1 Unless expressly agreed otherwise in the Statement of Work, we are not responsible for the use by a third party or use by you for the benefit of a third party of the Services or any Deliverables.
- 10.2 You must pay any Loss incurred by us as a result of any use by a third party or use by you for the benefit of a third party of the Services or any Deliverables (unless such use is expressly permitted in the Statement of Work), except to the extent that the Loss is caused or contributed to by us (or our contractor’s) negligence or breach of contract. We will take reasonable steps to mitigate our Loss.

## 11 TERM AND TERMINATION

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- 11.1 This Service Schedule begins on the Service Start Date and continues for the Service Schedule Term unless terminated or renewed.
- 11.2 Each Statement of Work commences on the dated specified in the relevant Statement of Work and continues until all the Services are completed and all Deliverables are delivered unless terminated earlier.

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- 11.3 Upon expiry or termination of the Service Schedule Term, if there is any Statement of Work which has not been completed or terminated, that Statement of Work will continue on the terms set out in the Agreement Terms, this Service Schedule and the relevant Statement of Work until it is completed or terminated.

## TERMINATING A STATEMENT OF WORK

- 11.4 You may terminate a Statement of Work at any time by giving us not less than 14 calendar days' prior written notice (or such other notice as may be specified in the Statement of Work). We must cease work in accordance with that notice.
- 11.5 Upon termination of a Statement of Work under clause 11.4, you must pay to us the following Early Termination Charge:
- (a) the Fees for all work done before the date of termination of the Statement of Work; plus
  - (b) the amount of our unavoidable reasonable out of pocket expenses (including any third party costs),
- which will not exceed an amount equal to the remaining charges that would have been payable by you under the applicable Statement of Work if the termination had not occurred.
- 11.6 We will advise you of the amount of the Early Termination Charge calculated in accordance with clause 11.5 upon request.
- 11.7 You acknowledge that the Early Termination Charge is a genuine pre-estimate of the loss or damage we are likely to suffer as a result of termination of the Service prior to the expiration of the Service Term of the Service.

## 12 DEFINITIONS

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- 12.1 The following definitions apply in this Service Schedule, in addition to the definitions in the Agreement Terms, unless the contrary intention appears.

**Acceptance Process** means the process set out in clauses 5.2 to 5.6 or such other process set out in the Statement of Work.

**Acceptance Test Period** means the period set out in the Statement of Work or if no period is specified 14 days from the date the Deliverable is delivered to you.

**Agreement Terms** means the section of this Agreement with that title, to which this Service Schedule is attached.

**Certificate of Acceptance** means a written certificate issued by us and executed by you as confirmation that you accept a Deliverable.

**Change Request** means the document described in clause 2.

**Defect** means any characteristic which makes the whole or any part of the Deliverable materially inoperable or materially inconsistent with the Statement of Work.

**Deliverable** means an item (including, without limitation, any software or hardware) required to be provided to you or a task to be completed by us for you as specified in the Statement of Work.

**Delivery Date** means the date as specified in the Statement of Work for the completion of the development of, and the delivery to you of a Deliverable or provision of Services.

**Expenses** means all expenses specified in the Statement of Work.

**Fee** means the fees and charges set out in the Statement of Work.

**Fixed Price Fee** means the sum of all amounts payable to us as set out in a Fixed Price Statement of Work.

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**Fixed Price Statement of Work** means a Statement of Work where the amount payable under that Statement of Work is a specified fixed amount.

**Licensed Material** means all Material comprised in a Deliverable, including Material created or developed by us or on our behalf, supplied by us to you under this Service Schedule excluding Your Material.

**Material** means material in any form, including documents, reports, products, equipment, information, data, software, software tools and software development methodologies.

**Notice of Rejection** means a written notice setting out the Deliverable(s) that you do not accept and setting out the reasons for rejection.

**Our Personnel** means any person, company or other contracting party engaged to provide services to or on behalf of us under a contract of services, either directly or indirectly (for example, through a third party) and includes employees, agency workers, consultants, agents and suppliers who perform the Services.

**Our Primary Contact** means the person designated by us as responsible for managing the Statement of Work on our behalf.

**Services** means the professional services described in the relevant Statement of Work.

**Service Term** commence on the Service Start Date and continues until the date:

- (a) the Deliverables under all Statements of Work have been completed or delivered by us as agreed; or
- (b) when all Statements of Work under this Service Schedule have expired; or
- (c) when all Statements of Work under this Service Schedule have been terminated

whichever is earlier.

**Service Start Date** means the date the first Statement of Work is executed under this Service Schedule.

**Standard Rate** means the 'standard rate' for the work of Our Personnel as specified in the relevant Time and Materials Statement of Work.

**Specifications** means the specifications for a Deliverable set out in the Statement of Work.

**Statement of Work** means a statement of work in a form setting out the scope of the Services and each Deliverables and the corresponding Fees. A Statement of Work is an "Order" for the purposes of the Agreement.

**Territory** means the place(s) specified in the Statement of Work.

**Time and Materials Budget Limit** means the maximum amount of Time and Materials Fee payable by you in connection with a Time and Materials Statement of Work, as specified in such Statement of Work, unless varied in accordance with this Service Schedule.

**Time and Materials Fee** means the amount payable by you in connection with a Time and Materials Statement of Work calculated by reference to the Fees and, where requested, timesheets.

**Time and Materials Statement** of Work means a Statement of Work where the amount payable under that Statement of Work is on a time and materials basis.

**Your Input** means the goods, services and other assistance to be provided by you as specified in the Statement of Work.

**Your Material** means all Material that you provide us to enable us to perform our obligations under this Service Schedule.

**Your Premises** means a building, site or location other than ours where Our Personnel are required to perform the Services.

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**Your Primary Contact** means the person designated in the Statement of Work as responsible for managing your obligations under a Statement of Work on your behalf.