

TERMS AND CONDITIONS

Background

This Agreement sets out the terms and conditions that will apply to the Services provided by the Service Provider, through the Consultant, to you.

Terms and Conditions

1. Definitions and Interpretation

1.1 In this Agreement, unless the context otherwise requires:

Additional Fee means the additional fee specified in the Schedule to this Agreement;

Additional Services means the Additional Services specified in the Schedule to this Agreement;

Allocations, sessions means the meetings set out in the Schedule to this Agreement under the heading 'Allocations/Sessions'.

Agreement means this document as well as any schedule, appendices or annexure to it;

Business Day means a day that is not a Saturday, Sunday, public holiday or bank holiday in Melbourne, Victoria;

Client, you or your means the person or entity specified in the Schedule to this Agreement who has contracted to receive the Services;

Commencement Date means the date specified in the Schedule to this Agreement;

Confidential Information means:

- (a) the terms of this Agreement and its subject matter, including information (whether oral, graphic, electronic, written or in any other form) submitted or disclosed by either party relating to this Agreement;
- (b) information that at the time of disclosure by a party is identified as being confidential or that the recipient should otherwise reasonably understand to be confidential; and
- (c) all other information belonging or relating to a party, or a related entity of that party, that is disclosed and is not generally available to the public at the time of disclosure other than by reason of a breach of this Agreement or which was known, or ought reasonably to have been known, by the other party as being confidential to the other party or its related entity;

Consultant means the consultant specified in the Schedule to this Agreement;

Exclusions means:

- (a) all items that are not listed within the 'Scope of Services' section of the Schedule; and;
- (b) the items listed as 'Exclusions' in clause 26.

Fees means all amounts payable by the Client under this Agreement to the Service Provider including Additional Fees and Service Fees.

Force Majeure Event has the meaning defined in clause 16.

GST has the meaning given to that expression in the A New Tax System (Goods and Services Tax) Act 1999 (Cth);

Intellectual Property Rights means all present and future intellectual and industrial property rights conferred by statute, at common law or in equity and wherever existing, including:

- (a) any copyright, patents, patent applications, designs, design applications, trade marks, trademark applications, service marks, trade names, business names, domain names, eligible layout rights or similar rights, whether registered or not;
- (b) any invention, discovery, trade secret, know-how, computer software and confidential or technical information;
- (c) Confidential Information;
- (d) any other rights resulting from intellectual activity in any field; and
- (e) any grant of registration for or title to anything referred to in paragraphs (a) to (d) inclusive and all renewals and extensions of these rights;

Law means:

- (a) principles of law or equity established by decisions of courts;
- (b) statutes, regulations or by-laws of the Commonwealth, a State, a Territory or a government agency; and
- (c) requirements and approvals (including conditions) of the Commonwealth, a State, a Territory or a government agency that have the force of law;

Payment Method means the payment method specified in the Schedule;

Personal Information means any information or opinion about a natural person (whether or not true), as defined in the Privacy Law, which either party deals with in connection with performing its obligations under this Agreement;

Privacy Law means the Privacy Act 1988 (Cth) (including the National Privacy Principles under the Privacy Act 1988 (Cth)), and any other privacy or general legislation which binds the parties and which relates to the protection of Personal Information;

Privacy Policy means the privacy policy posted by us on our Website at www.tradecircle.com.au

Quarter means each calendar period ending 30 June, 30 September, 31 December and 31 March;

Services means:

- (a) the services specified in the Schedule to this Agreement under the heading 'Scope of Services' which the Service Provider agrees provide you under this Agreement; and
- (b) where relevant the incorporation of the Additional Services in accordance with clause 4 however expressly excludes the Exclusions;

Services Fee means the services fee specified in the Schedule to this Agreement;

Service Provider, we, our or **us** means the service provider specified in the Schedule to this Agreement;

Tax Invoice has the meaning given to that expression in the A New Tax System (Goods and Services Tax) Act 1999 (Cth);

Term means the term of the Agreement set out in clause 3; and

Website means our website, www.tradecircle.com.au

In this Agreement, except where the contrary intention is expressed:

- (a) the headings are used for convenience only and do not affect the interpretation of this Agreement;
- (b) a reference to a document includes the document as modified from time to time and any document replacing it;
- (c) if something is to be or may be done on a day that is not a Business Day then it must be done on the next Business Day;
- (d) the word "month" means calendar month and the word "year" means 12 months;
- (e) the words "in writing" include any communication sent by letter, facsimile transmission or email or any other form of communication capable of being read by the recipient;
- (f) a reference to all or any part of a statute, rule, regulation or ordinance (statute) includes that statute as amended, consolidated, re enacted or replaced from time to time;
- (g) wherever "include" or any form of that word is used, it must be construed as if it were followed by "(without being limited to)";
- (h) money amounts are stated in Australian currency unless otherwise specified; and
- (i) a reference to any agency or body, if that agency or body ceases to exist or is reconstituted, renamed or replaced or has its powers or functions removed (defunct body), means the agency or body that performs most closely the functions of the defunct body.

2. Term

This Agreement commences on the Commencement Date and continues until the term ends in accordance with clause 3 or is otherwise terminated in accordance with clause 14.

3. Review of Service Provider's Engagement

- (a) The initial term of the Agreement will be three calendar months from the Commencement Date (Initial Term).
- (b) Within 30 calendar days prior to the end of the Initial Term, the Client and Service Provider will meet to determine whether:
- (i) the Agreement should continue for a further three months (**Extended Term**);
 - (ii) there is any change to the Services or the Additional Services to be provided by the Service Provider or Consultant; and
 - (iii) there is any change to the Service Provider's Service Fee or Additional Fees.
- (c) If the Service Provider and Client agree to extend the Term of the Agreement as well as any change to the Service Fee or Additional Fee, then the Service Provider will send an extension notice by email that sets out:
- (i) the end date of the current Term;
 - (ii) the start date of the Extended Term;
 - (iii) the last date of the Extended Term;
 - (iv) a list of the Services and Sessions to be provided;
 - (v) a list of the Additional Services and Additional Fees to be provided; and
 - (vi) the Service Fees and Additional Fees applicable for the Extended Term.
- (Extension Notice)**
- (d) Subject to the preceding paragraph, upon receipt of the Extension Notice, the Client must confirm their acceptance of the Extension Notice in writing by reply email or by signing and returning the Extension Notice.
- (e) The acceptance of an Extension Notice is a variation to this Agreement.
- (f) Within 30 calendar days prior to the expiration of the Extended Term (and any subsequent Extended Term), the Service Provider and Client will follow the process in clause 3(b) and 3(c) and any agreement to extend the term will become the new "Extended Term".
- (g) The Initial Term and each accepted Extended Term is taken to be the Term for the purposes of this Agreement.

4. Provision of Services

- 4.1 The Service Provider, through the Consultant, will provide the Services and Sessions to you in accordance with this Agreement.
- 4.2 We will commence providing the Services to you on the Commencement Date.
- 4.3 In the event that the Client requests or necessitates the performance of Additional Services, whether initiated by the Client or identified during the provision of the Services, the Service Provider shall provide to the Client a list of such Additional Services and the corresponding Additional Fees via email. If the Client intends for the Service Provider to proceed with the Additional Services, the Client must confirm acceptance by email. The payment of the Additional Fees will be due on the same terms as payment of the Service Fees. The Service Provider is under no obligation to commence any Additional Services until the Client has provided written confirmation of their acceptance.
- 4.4 You agree and acknowledge that the Services are not a kind ordinarily acquired for personal, domestic or household use or consumption.
- 4.5 The Client acknowledges that:
- (a) anything not expressly listed in the Services; and
 - (b) the items listed in Exclusions;
- are hereby expressly excluded from the Services.
- 4.6 The Client is to obtain their own expert and independent advice:
- (a) on anything excluded from the Services under clause 4.4; and
 - (b) on any information or advice provided by the Service Provider or Consultant to the Client as a part of providing the Services.

4.7 Any advice provided by the Consultant or the Services Provider is general in nature only and is not to be taken as any form of expert opinion or advice. The Client is to make their own independent inquiries with appropriately qualified persons as to any advice provided by the Services Provider or Consultant. Any advice given by the Service Provider or Consultant to the Client is based on the then current circumstances of the Client as understood by the Service Provider and Consultant. Any change to the Client's circumstances or instructions may change the nature of the general advice provided by the Consultant or Service Provider.

4.8 Any introduction or recommendation made by the Service Provider or Consultant to the Client is for informational and introductory purposes only (**Third Party Introduction**). The Service Provider nor the Consultant does not make any warranty or representation as to the suitability of any Third Party Introduction. The Client must undertake their own due diligence and investigations as to the suitability of any Third Party Introduction and if the Client wishes to retain the services of that party, enter into any required arrangement with them.

5. Services Fee

5.1 In consideration of the provision of the Services you will pay us the Service Fees, Fees and Additional Fees at the time and in the method specified in the Schedule.

5.2 The Client agrees that the Services Fee will be paid in accordance with the Payment Method, unless otherwise agreed with the Service Provider.

5.3 We do not provide any refunds of the Service Fee for any portion of the Services, Additional Services, Sessions, or Allocations that are not used in a particular period.

5.4 You must pay any moneys owing to the Service Provider under this Agreement in full, and you must not set off such moneys against debts or liabilities owed or allegedly owed by the Service Provider to you.

5.5 In the event that you fail to pay the Services Fee in accordance with this clause 5, we may:

- (a) suspend the provision of the Services until such time as any outstanding Fees are paid in full; and
- (b) without prejudice to any other rights of the Service Provider pursuant to this Agreement or at law charge interest at the rate of two per cent (2%) higher than the rate for the time being fixed under section 2 of the Penalty Interest Rates Act 1983 (Vic) shall be payable on demand including the legal costs on an indemnity basis incurred by the Service Provider as a result of the breach.
- (c) The interest payable under clause 5.5(b):

(i) accrues from day to day from and including the due date for payment up to the actual date of payment after as well as before judgment; and

(ii) may be capitalised by the person to whom it is payable at monthly intervals.

5.6 In further consideration of the provision of the Additional Services you will pay us the Additional Fees as and when invoiced by us to you.

6. Services

6.1 Whilst we will make reasonable endeavors to provide the Services, we will not be required to provide the Services if:

- (a) a Force Majeure event has occurred in accordance with clause 16;
- (b) you or a third party contributed to the failure to provide the Services; or
- (c) elements of the affected Services provided are dependent on infrastructure or facilities outside the direct control of the Service Provider.

6.2 The Service Provider provides no warranties or guarantees in relation to:

- (a) the quality or outcomes of the Services or the timeliness of the provision of the Services;
- (b) any forecasts or projections used by the Consultant in providing the Services; and
- (c) any general advice provided by the Consultant;
- (d) the success or related outcome of the Services; and

6.3 We will not be liable to you for any delays or errors in our performance, or for non-performance of the Services due to any circumstances.

7. Client's Obligations

7.1 You acknowledge and agree that we require your (and if applicable, your officers, employees and agents) participation and cooperation to provide the Services, and that you will not provide the Consultant with any information that is false or misleading.

7.2 You agree to the Consultant recording the Sessions for the purposes of assisting the Consultant in providing the Services, and that all such recordings will be considered Confidential Information for the purposes of this Agreement.

7.3 You acknowledge and agree that:

(a) the provision of the Services by the Consultant could be adversely affected if you seek coaching and consulting services that are the same or similar to the Services from a third party provider during the Term (**Third Party Provider**);

(b) you will inform the Consultant of any current or proposed relationship a Third Party Provider during the Term; and

(c) we will not be liable for any adverse outcomes where a Third Party Provider has been engaged (whether directly or indirectly in connection with the Services).

8. Confidential Information

8.1 Each party (**Receiving Party**) receiving, possessing or otherwise acquiring Confidential Information of any other party (**Disclosing Party**) acknowledges that the Disclosing Party's Confidential Information is the property of and confidential to or a trade secret of the Disclosing Party. Subject to clause 9.2, the Receiving Party must:

(a) keep the Disclosing Party's Confidential Information confidential and not directly or indirectly disclose, divulge or communicate that Confidential Information to, or otherwise place that Confidential Information at the disposal of, any other person without the prior written approval of the Disclosing Party;

(b) take all reasonable steps to secure and keep secure all Disclosing Party's Confidential Information coming into its possession or control; and

(c) not memorise, use, modify, reverse engineer or make copies, notes or records of the Disclosing Party's Confidential Information for any purpose other than in connection with the performance by the Receiving Party of its obligations under this Agreement.

8.2 The obligations of confidentiality under clause 9.1 do not apply to any information that:

(a) is generally available to the public (other than by reason of a breach of this Agreement); or

(b) is required to be disclosed by any applicable Law.

8.3 Notwithstanding any provision of this Agreement, we may during and after the Term of this Agreement communicate in any media (including press releases, general announcements and print and online marketing materials), the following information:

(a) your name;

(b) a description of the Services provided to you under this Agreement; and

(c) your video or written testimonial in relation to the Consultant and the Services (if provided by you).

9. Privacy

We acknowledge and agree that we are responsible for the collection, use, storage and otherwise dealing with your Personal Information. We will comply with the requirements of any Privacy Law and our Privacy Policy in respect of all Personal Information collected, used, stored or otherwise dealt with under or in connection with this Agreement.

10. Intellectual Property Rights

10.1 All of the Intellectual Property Rights comprised in the Services and any equipment or materials used by us to provide the Services are, and remain, owned exclusively by us and/or our third party service providers.

10.2 Subject to clause 11.1, all Intellectual Property Rights generated during the course of the Services are retained by you and you grant us a non-exclusive, transferable, sublicensable, royalty-free licence to use the Intellectual Property Rights both during the Term and in the course of the Service Provider providing services to any other person (even after the termination or expiration of this Agreement) on a commercial basis or otherwise.

10.3 Where you provide any materials or works to us to be used in the provision of the Services (**Materials**), you warrant that you hold the Intellectual Property Rights in the Materials or otherwise have procured the rights to use the Materials in the provision of the Services from the third party who holds the Intellectual Property Rights.

11. Limitations of Liability

11.1 Any representation, warranty, condition or undertaking that would be implied in this Agreement by legislation, common law, equity, trade, custom or usage is excluded to the maximum extent permitted by Law.

11.2 Nothing in this Agreement excludes, restricts or modifies any condition, warranty, right or remedy conferred on the parties by the Competition and Consumer Act 2010 (Cth) or any other applicable Law that cannot be excluded, restricted or modified by agreement.

11.3 To the extent permitted by Law, and notwithstanding any other provisions of this Agreement, in no event will the Service Provider, Consultant or Client be liable to the other for loss of profits, loss of revenue, loss of reputation, loss of data, loss of use, loss of goodwill, failure to realise anticipated savings, anticipated profit or revenue or any indirect or consequential loss arising out of or in connection with this Agreement or the Services, howsoever caused.

11.4 Notwithstanding anything in this clause 13, in the event that the Service Provider is liable for a breach of this Agreement, the maximum extent of the Service Provider's liability is limited at its sole and absolute discretion to either supplying the Services again or the payment of the cost of having the Services supplied again.

12. Dispute Resolution

12.1 If there is any dispute between the parties concerning this Agreement or the provision of the Services, then the parties must attempt to resolve any such dispute through the procedure set out herein before resorting to alternative avenues, including litigation provided that nothing herein shall preclude a party from seeking urgent interlocutory relief from a court.

12.2 The dispute resolution procedure is as follows:

- (a) if a party believes that a dispute has arisen, it must serve a dispute notice on the other party;
 - (b) the dispute notice must state that a dispute has arisen and identify in sufficient detail what the dispute is;
 - (c) the dispute notice must be provided to a director or principal of other party (or his/her nominee) following receipt of which the respective directors/principals (or nominees) of the parties shall meet to seek to resolve the dispute;
 - (d) if the dispute is not resolved by the parties within 14 days of service of the dispute notice, the parties may jointly agree to the appointment of a mediator and failing agreement, either party may apply to the President of the Law Institute of Victoria to appoint a mediator;
 - (e) once the mediator has accepted the appointment, the parties must comply with the mediator's instructions;
- and

(a) the costs of the mediation must be borne equally by the parties.

12.3 If the dispute is settled, all parties must sign the terms of agreement and those terms are binding on the parties.

12.4 The mediation is confidential and statements made by the mediator or the parties as well as discussions between the participants to the mediation before, after or during the mediation cannot be used in any legal proceedings.

12.5 The parties agree that the mediator will act as an aid to assisting them to resolve the dispute and not as a determiner or decider of any matter.

12.6 If the dispute is not resolved within thirty (30) days of the appointment of the mediator, or any other period agreed by the parties in writing, the mediation ceases and the dispute may be referred to arbitration by either party. In any arbitration both parties will be entitled to be legally represented. If the parties fail to agree on the identity of the arbitrator, the parties agree that upon referral by either party, the Chairperson for the time being of the Resolution Institute in Victoria may appoint an arbitrator to hear and determine the dispute, and the costs of the arbitration must be borne equally by the parties.

13. Termination

13.1 Either party may end this Agreement immediately by written notice if:

- (a) the other party commits any material breach of any term of this Agreement and, which in the case of a breach capable of being remedied, is not remedied within 14 days written request to remedy it;
- (b) the other party commits any material breach of any term of this Agreement that is not capable of being remedied;
- (c) the other party is unable to pay its debts or otherwise becomes insolvent, or, if they are a person, you are declared bankrupt.
- (d) it becomes unlawful for either party to perform its obligations under this Agreement.

13.2 Upon termination or expiry of this Agreement for any reason you must pay us any outstanding Service Fees or Additional Fee that is due to us under this Agreement without set off or reduction.

14. Force Majeure

We will not be liable to you for any delays or errors in our performance, or for non-performance of the Services, due to any circumstances beyond our reasonable control including (without limitation) natural events, fire, lightning, earthquake, flood, storm, explosion, industrial dispute or acts of terrorism, epidemic or pandemic (whether declared or not), disease outbreak or any other form of trade or freedom of movement restriction imposed by a local authority.

15. Notices

All notices under this Agreement must be in writing and delivered personally, by registered post, facsimile transmission or electronic mail to the party's address, facsimile number or email address as set out in this Agreement or otherwise notified to the other parties and will be considered to have been received if:

- (a) delivered, on delivery;
- (b) sent by registered post, 4 days after posting, notwithstanding that it may subsequently be returned through the post office unclaimed;
- (c) sent by facsimile transmission, on production of a transmission control report indicating transmission without error. If the communication is sent by facsimile on a day, other than a Business Day, or after 5.00pm on a Business Day, the facsimile will be considered to have been received on the following Business Day; or
- (d) sent by email, on receipt of a delivery receipt, read receipt or reply email from the recipient.

16. GST

16.1 If GST is payable on a Taxable Supply made under, by reference to or connection with this Agreement, the party providing the Consideration for that Taxable Supply must also pay the amount of GST payable in respect of that Taxable Supply as additional Consideration.

16.2 No payment of any amount pursuant to this clause, and no payment of the GST Amount where the Consideration for a Taxable Supply is expressly agreed to be GST inclusive, is required until the supplier has provided a Tax Invoice or Adjustment Note as the case may be to the recipient.

16.3 This clause does not apply to the extent that the Consideration for the Taxable Supply is expressly stated to be GST inclusive. Any reference in the calculation of Consideration under this Agreement to a cost, expense or other liability incurred by a party, must exclude the amount of any Input Tax Credit entitlement of that party in relation to the relevant cost, expense or other liability.

16.4 Capitalised terms in this clause (excluding 'this Agreement') have the meaning given to those terms in the A New Tax System (Goods and Services Tax) Act 1999 (Cth).

17. Exclusion of Implied Relationships

The parties agree that:

- (a) their relationship is that of principal-independent contractor with respect to each other;
- (b) nothing in this Agreement constitutes or may be construed as constituting a party as the partner, agent, employee or representative of another party;
- (c) a party does not have power to incur obligations on behalf of or pledge the credit of the other party in any way; and
- (d) except as provided in this Agreement, a party does not have authority to act for or to create or assume any responsibility or obligation for the other party.

18. Severability

If anything in this Agreement is unenforceable, illegal or void then it is severed and the rest remains in force.

19. Amendment

Subject to anything else contained in this Agreement, this Agreement may only be amended in writing and signed by the parties.

20. Governing Law

This Agreement is governed by the laws of Victoria, Australia and each party submits to the non-exclusive jurisdiction of the courts of Victoria, Australia.

21. Waiver

A right may only be waived in writing, and must be signed by the party giving the waiver, and no other conduct of a party (including a delay in exercising, relaxation of or failure to exercise the right) operates as a waiver of the right or otherwise prevents the exercise of the right.

22. Entire Agreement

This Agreement constitutes the entire agreement between you and us.

23. Surviving Provisions

The provisions of this Agreement which are intended or capable of having effect after the expiration or termination of your agreement with us (including provisions relating to warranties, indemnities, liability, licence, Intellectual Property Rights and those with respect to payments that are accrued but unpaid at the time of termination) will remain in full force and effect following any suspension, expiration or termination of the Services.

24. Commissions

The consultant may, at times, be entitled to receive commission payments for the introduction of third parties. Commissions may continue to be received outside of the dates and terms of this agreement from third parties in regards with you as the “client”.

25. Subcontracting

The Service Provider or Consultant may subcontract out any part of the Services to be provided under this Agreement without requiring the consent of the Client.

26. Exclusions

Anything not expressly included under ‘Scope of Services’ is expressly excluded; and;

- (a) Financial advice
- (b) Taxation Advice
- (c) Insurance Advice
- (d) Legal advice
- (e) Accounting advice
- (f) BAS, PAYG or Superannuation lodgments or advice relating to same
- (g) Employment advice
- (h) Advice as to award entitlements or payment entitlements
- (i) Any fees, costs, taxes, excises, third party costs, licensing fees, application fees or any other charge or expense that the Client incurs by way of the Service Provider or Consultant providing the Services under this Agreement.