

## Terms of Business

### 1. Interpretation

1.1 In this Agreement:

"**Client**" means the person or entity listed in the Schedule and detailed in our proposal/offer.

"**Consultant**" means Phronis Pty Ltd

"**Contract Documents**" means any designs, reports, electronic records and other documents and concepts provided by the Consultant to the Client as part of or in connection with the Services.

"**Fee**" means the amount specified in the item 4 of the Schedule.

"**Legislative Requirements**" includes:

- (a) Acts, Ordinances, regulations, by-laws, orders, awards and proclamations of the Commonwealth and the State or Territory applicable to the Services; and
- (b) certificates, licenses, consent, permits, approvals and requirements of organizations having jurisdiction applicable to the Services.

"**Reimbursable Expenses**" means the cost plus 5% of all travel and accommodation, equipment use/hire, communications, printing, photocopying, third party fees and other out of pocket expenses incurred by the Consultant in the course of performing the Services.

"**Services**" means the services specified in Annexure A.

"**Program**" means the program attached to this proposal or the timeframe stated Item 3 in the Schedule

The word "**includes**" in any form is not a term of limitation.

1.2 The date of this Agreement is the date listed in the Schedule.

1.3 This Agreement may only be varied by a document signed by or on behalf of each party.

1.4 To the extent permitted by law, in relation to its subject matter, this Agreement and the Consultant's proposal to the Client in respect of the Services ("the Proposal"):

- (a) embodies the entire understanding of the parties, and constitutes the entire terms agreed by the parties; and
- (b) supersedes any prior written or other agreement of the parties.

1.5 In the event of any inconsistency between this Agreement and the Proposal, the terms of this Agreement shall prevail.

1.6 The agreement is subject to and is to be construed in accordance with the laws of the State identified in Item 6 of the Schedule.

### 2. Engagement

2.1 The Client engages the Consultant to provide the Services in accordance with this Agreement.

2.2 The Consultant will perform the Services in a timely manner and in accordance with any program for the provision of the Services attached to the Agreement or identified in Item 3 of the Schedule.

2.3 The Consultant will be entitled to an extension of time for the performance of the Services where it is delayed by an event beyond its reasonable control.

2.4 In providing the Services, the Consultant will exercise the degree of skill, care and diligence normally exercised by professional consultants performing services of a similar nature.

2.5 The Consultant will:

- (a) take all reasonable measures to inform itself of the Client's requirements in respect of the Services;
- (b) promptly inform the Client if it:
  - i. considers that it has insufficient information to enable it to satisfactorily perform the Services; or
  - ii. becomes aware of any matter (including any inaccuracies in information provided to it) which may materially affect the scope of the Services.

2.6 Where the Consultant informs the Client that it requires further information to enable it to satisfactorily perform the Services, the Client must promptly provide such further information to the Consultant.

2.7 The Consultant may engage another consultant to assist it in providing the Services.

2.8 The Consultant has implemented policies and procedures to identify and manage the risk of modern slavery in its operations and supply chain, in accordance with the Modern Slavery Act 2018 (Cth). The Consultant also undertakes reasonable due diligence on its clients, subcontractors, and suppliers in relation to modern slavery risk. To ensure mutual ethical alignment, the Consultant encourages the Client to give due consideration to the requirements and intent of the Modern Slavery Act 2018 (Cth), and to take reasonable steps to promote ethical labour practices within its own operations and supply chains. Upon request, the Consultant may provide the Client with further information about its approach to modern slavery compliance.

### 3. Fees and Scope of Services

3.1 The Fee is based on the Services specified in item 3 of the Schedule and/or Annexure A.

3.2 The Client may, by notice in writing, request that the Consultant change the scope of the Services. Any such change must be within the general scope of the Services. Unless it is not reasonably practicable for the Consultant to do so, the Consultant must give effect to any change to the Services requested by the Client which is within the general scope of the Services.

3.3 If a new Legislative Requirement or a change in a Legislative Requirement after the date of the Agreement, or any other event beyond the control of the Consultant, necessitates a change to the Services, the Consultant must provide details of the extent to which the Services need to change due to the Legislative Requirement or other event and seek the Client's approval to the change in the Services. For the avoidance of doubt, the approval of the Client is not required to entitle the Consultant to an extension of time to which it is entitled pursuant to clause 2.3. The Client must approve or reject the change within 10 days of receipt of the Consultant's notice. If the Client rejects the change the Consultant is not required to comply with the Legislative Requirement or event in performing the Services and may (in its absolute discretion) terminate this Agreement immediately.

3.4 Where a change to the Services:

- (a) requested by the Client under clause 3.2 is one which the Consultant must give effect to; or
- (b) is approved by the Client (including pursuant to clause 3.3), the Consultant will be entitled to:
  - i. an adjustment of the Fee by a reasonable amount reflecting the increased costs of performing the Services as a result of the change to the Services together with a reasonable amount for overheads and profit; and
  - ii. a reasonable extension of time for providing the Services.

### 4. Payment

4.1 The Client must pay to the Consultant the Fee and the Reimbursable Expenses.

4.2 The Consultant may render invoices:

- (a) every 4 weeks in arrears; and
  - (b) when the Services have been completed.
- 4.3 The Client must pay all amounts invoiced within 14 days after the date of the invoice. Any amount not paid within that period will attract interest at a rate of 2% above the Commonwealth Bank of Australia Benchmark Rate per annum from the date payment was due until the amount is paid in full. Payments received will be applied firstly against any interest owing under this clause and secondly against the outstanding invoice amount.

## 5. Insurance

5.1 The Consultant will:

- (a) maintain professional indemnity, public liability, motor vehicle and workers compensation insurance as required by law and the Consultant's own business requirements; and
- (b) if requested by the Client, provide certificates of currency evidencing such insurance.

## 6. Ownership, use and nature of materials

- 6.1 The Consultant retains title to and copyright and other intellectual property rights in the Contract Documents.
- 6.2 The Consultant is not required to provide the Client with an editable version of any of the Contract Documents. The Client must not, without the prior written approval of the Consultant, alter or authorize or permit the alteration of any editable version of the Contract Documents.
- 6.3 The Client has a licence to use the Contract Documents for the purposes for which those documents are prepared and provided to the Client. The Client must not use (including make copies) of the Contract Documents for any purposes other than that for which they were originally prepared.
- 6.4 The licence in clause 6.3 terminates on the termination of this Agreement by the Consultant pursuant to clause 11.3 or 11.4.
- 6.5 The Consultant, unless specifically instructed otherwise by the Client, is entitled to:
- (a) refer to the Services and any related project in respect of which the Services are provided; and
  - (b) identify the Client, for the purposes of promoting the services of the Consultant to third parties.

## 7. Liability and Indemnity

- 7.1 The liability of the Consultant to the Client arising out of or in connection with the performance or non-performance of the Services (whether under the law of contract, tort or otherwise) is limited to the lesser of:
- (a) \$1,000,000 or
  - (b) the Fee.
- 7.2 In no event will the Consultant be liable for liquidated damages or any loss of revenue, loss of profit, loss of any contract or any other economic or consequential loss (whether direct or indirect) of the Client arising out of or in connection with the performance or non-performance of the Services (whether under the law of contract, tort or otherwise).
- 7.3 Except as specifically provided in this Agreement, the Consultant does not give any warranty or accept any liability in relation to the performance or non-performance of the Services except to the extent, if any, required by law.
- 7.4 If, apart from clause 7.3, any warranty would be implied whether by law, custom or otherwise, that warranty is to the full extent permitted by law hereby excluded. Nothing in this Agreement shall be read or applied so as to purport to exclude, restrict or modify or have the effect of excluding, restricting or modifying the application in relation to the supply of any goods or services pursuant to this Agreement of all or any of the provisions of the Trade Practices Act 1974 (as amended) or any relevant State or Territory legislation which by law cannot be excluded, restricted or modified.
- 7.5 The Client:

- (a) releases the Consultant from and against all claims, costs, expenses, losses or damages suffered or incurred by the Client arising out of or in connection with any damage, loss, deterioration or destruction of any of the client's property.
- (b) indemnifies the Consultant from and against all claims, costs, demands, expenses, losses or damages suffered or incurred by the Consultant arising out of or in connection with:
  - i. any claims by any person that has contracted with the Client and for which the Services are being procured by the Client; and
  - ii. any claims arising out of or in connection with the Client using or permitting the use of the Contract Documents in a manner not authorized by this Agreement.

## 8. Construction Projects

- 8.1 Where the Services are provided in connection with a project involving the construction (including refurbishment) of works ("construction work") the Client must:
- (a) require any construction contractor it engages to include the Consultant as an additional insured on its contractors all risk and public liability insurance policies in respect of the construction work; and
  - (b) if any Legislative Requirements relating to occupational health and safety require the appointment of a person to be responsible for the overall management of safety at the site ("principal contractor") for the construction work, appoint or procure the appointment of the person responsible for the construction work as the "principal contractor" and notify the Consultant of that appointment.
- 8.2 If the Client fails to make or procure an appointment of a "principal contractor" as required by clause 8.1 the Client will be deemed to have appointed itself as the "principal contractor" for that construction work.
- 8.3 Any opinion of construction costs prepared by the Consultant (whether as part of the Services or otherwise) and provided to the Client is supplied for the general guidance of the Client only and the Consultant provides no guarantee as to the accuracy or suitability of any such opinion for any purpose.

## 9. Special Conditions

9.1 Any project-specific special conditions apply.

## 10. No Assignment

10.1 The Client cannot assign, novate or otherwise transfer any of its rights or obligations under this Agreement without the prior written consent of the Consultant.

## 11. Termination

- 11.1 Either party may terminate this Agreement for convenience by giving 30 days prior written notice to the other party.
- 11.2 The Client may terminate this Agreement if the Consultant is in substantial breach of this Agreement and that breach has not been remedied within 30 days after receipt by the Consultant of a written notice from the Client identifying the breach and requiring it to be remedied.
- 11.3 The Consultant may suspend the provision of the Services or terminate this Agreement:
- (a) if any money payable to the Consultant has been outstanding for more than 14 days;
  - (b) if the Client is in substantial breach of this Agreement and that breach has not been remedied within 14 days after receipt by the Client of a written notice from the Consultant identifying the breach and requiring it to be remedied; or
  - (c) immediately:
    - i. If the Client becomes an "externally administered body corporate" or a person or entity is appointed as a "controller"

of any of the Client's property (as those terms are defined in section 9 of the Corporations Act 2001);

- ii. if the Consultant has reason to believe that that the Client is or is likely to become not able to pay its debts as and when they fall due; or
- iii. in the circumstances specified in clause 3.3.

11.4 If the Consultant suspends the provision of the Services pursuant to clause 11.3 it may at any time thereafter:

- (a) if the event which entitled the Consultant to suspend the performance of the Services is remedied, recommence performance of the Services; or
- (b) otherwise terminate the Agreement at any time after commencing the suspension.

If the Consultant recommences the performance of the Services pursuant to paragraph (a) the Client must indemnify the Consultant against any costs, losses or expenses suffered or incurred by the Consultant arising out of or in connection with the suspension.

11.5 Upon termination of this Agreement the Consultant is:

- (a) immediately entitled to payment of that portion of the Fee and Reimbursable Expenses in respect of Services performed up to and including the date of termination, and any interest payable on that amount; and
- (b) where the Consultant has terminated the Agreement pursuant to clause 11.3 or 11.4, entitled to recover any costs, losses and damages suffered or incurred by it arising out of or in connection with any breach of contract by the Client or the termination of the Agreement.

11.6 Without limiting any other provision which as a matter of interpretation may survive the termination of this Agreement, the provisions of clauses 4, 6, 7 and 11 survive termination of this Agreement.

## 12. Disputes

12.1 If a difference or dispute (together called a "dispute") between the parties arises in connection with the subject matter of the Agreement, then either party may, by hand or by registered post, give the other party a written notice of dispute adequately identifying and providing details of the dispute. Notwithstanding the existence of a dispute, the parties must, subject to clause 11.5 continue to perform the Agreement.

12.2 Within 14 days after receiving a notice of dispute, the parties must confer at least once to resolve the dispute or to agree on methods of doing so. At every such conference each party will be represented by a person having authority to agree to such resolution or methods of resolution. All aspects of every such conference except the fact of occurrence will be privileged.

12.3 If the dispute has not been resolved within 28 days of service of the notice of dispute, the parties agree to Endeavor to settle the dispute by mediation administered by the Australian Commercial Disputes Centre ("ACDC") before having recourse to litigation. The mediation shall be conducted in accordance with the ACDC Guidelines for Commercial Mediation ("Guidelines") which are operating at the time the matter is referred to ACDC.

12.4 The Guidelines set out the procedures to be adopted, the process of selection of the mediator and the costs involved.

12.5 Nothing in this clause 11 will prejudice the right of a party to institute proceedings to enforce any payment due under the Agreement or to seek injunctive or urgent declaratory relief.