

Annexure 1 – Engagement terms

Liability limited by a scheme approved under Professional Standards Legislation. Legal practitioners employed by Cross The T Pty Ltd are members of the scheme.

Contents	Page
1. Definitions and interpretation.....	1
2. Engagement.....	2
3. Services.....	3
4. Our team.....	3
5. Communications protocol	3
6. Confidentiality and conflicts of interest	4
7. Intellectual Property	4
8. Costs	4
9. Disclosures regarding costs	5
10. Invoicing and payments.....	5
11. Liability and obligations.....	6
12. Termination.....	7
13. GST	7
14. Notices	8
15. General	8

1. Definitions and interpretation

Definitions

1.1 The following definitions apply in this agreement unless the context requires otherwise:

Authorisation means any consent, authorisation, registration, filing, agreement, notarisation, certificate, permit, licence, approval, authority or exemption.

Business Day means a day (other than a Saturday, Sunday or public holiday) when banks in Melbourne, Victoria are open for business.

Claims means any claims including actions, complaints, debts, demands, dues, proceedings, suits or other legal recourse (whether in contract or tort (including negligence), at law or in equity or under any Legislation) and including any causes of action or rights to bring or make any such claim.

Consequential Loss means any indirect, special, punitive, exemplary or consequential Loss, including loss of profits or revenue, loss of goodwill or reputation, business interruption, loss of data and failure to realise any anticipated savings or benefits of any kind.

Control has the meaning given in Section 50AA of the Corporations Act.

Corporations Act means the *Corporations Act 2001* (Cth).

Costs means Fees and Disbursements.

Default Rate means, in respect of any particular invoice, a rate of interest equal to the Cash Target Rate specified by the Reserve Bank of Australia as at the date that invoice, plus 2.00%.

Disbursements means any and all reasonable out-of-pocket expenses, charges or other costs that we pay or incur on your behalf in connection with the Services, including:

- (a) printing and photocopying costs, word-processing charges, postage and express delivery charges, telephone call and facsimile transmission charges, filing and document lodgement fees and amounts charged for searches of public registers;
- (b) stamp duty and any other similar transaction or registration charges, including any interest, fine or penalty in respect thereof; and
- (c) Third Party Fees.

Fees means our professional fees for our provision of the Services to you under this agreement calculated in accordance with clause 8.

Fixed Price has the meaning given in clause 8.1.

Governmental Agency means any government or governmental, semi-governmental, administrative, fiscal or judicial body, department, commission, authority, tribunal, agency or entity whether foreign, supranational, federal, state, territorial or local.

GST has the same meaning given to that expression in the GST Law.

GST Act means *A New Tax System (Goods and Services Tax) Act 1999* (Cth), as in force from time to time.

GST Law has the same meaning given to that expression in the GST Act.

Intellectual Property Rights means patents, rights to inventions, copyright and related rights, moral rights, trademarks and service marks, trade names and domain names, rights in get-up, rights to goodwill or to sue for passing off or unfair competition, rights in designs, rights in computer software, database rights, rights in confidential information (including know-how, trade secrets and marketing secrets) and any other intellectual property rights, in each case whether registered or unregistered and including all applications (or rights to apply) for, and renewals or extensions of, such rights and all similar or equivalent rights or forms of protection which subsist or will subsist now or in the future in any part of the world.

Legal Profession Legislation means the *Legal Profession Uniform Law*.

Legislation means any statute, legislation, proclamation, rule, code, regulation, ordinance, constitutional provision, treaty, decree, convention or by-law.

Liability Cap has the meaning given in clause 11.2(a).

Loss means any loss, damage, debt, cost, charge, expense, fine, outgoing, penalty, diminution in value, deficiency or other liability of any kind or character that a party pays, suffers or incurs or is liable for, including any:

- (a) liabilities on account of any taxation of any kind, including indirect taxation;
- (b) interest, penalties and other amounts payable to third parties;
- (c) legal and other professional fees and expenses (on a full indemnity basis) and other costs incurred in connection with investigating, defending or settling any Claim, whether or not resulting in any liability; and
- (d) amounts paid in settlement of any Claim, and includes any Consequential Loss.

Matter means the matters to which the Services relate, as described in the Firm's fee proposal.

Out-of-Scope Services means any non-legal services and any legal services that do not fall wholly within the scope of the Services.

Privacy Act means the Privacy Act 1988 (Cth).

Professional Standards Legislation means the *Professional Standards Act 2003* (VIC) and the *Treasury Legislation Amendment (Professional Standards) Act 2004* (Cth).

Related Entity means, in respect of a party, any person under the Control of that party, any person that Controls that party, and any person under the Control of any of them.

Relevant IP means all Intellectual Property Rights that the Firm makes, develops or conceives (whether alone or in conjunction with someone else) in the course of, or arising out of, the Services, and all other Intellectual Property Rights of the Firm that the Firm uses in the course of providing the Services.

Representatives means, in respect of a person, its employees, consultants, agents and advisors and, in respect of a body corporate, includes its officers.

Services means the services that the Firm will provide under this agreement in accordance with clause 3.1, as set out in the Firm's fee proposal.

Sophisticated Client has the meaning given to the term "commercial or government client" in section 170 of the Legal Profession Legislation.

Standard Hourly Rates means, in respect of:

- (a) Tania White, principal lawyer, her hourly rate is \$330, which may be revised from time to time in accordance with clause 8.7; and
- (b) any additional and/or replacement staff who are appointed to our team in accordance with clauses 4.1 and 4.2, their standard hourly rates from time to time.

Third Party Fees means any and all fees, charges or other costs of any Third Party Service Providers.

Third Party Payer means any person, other than the Client, that has agreed or undertaken, or agrees or undertakes, to pay all or any part of the Costs on behalf of the Client.

Third Party Service Providers means any barristers, interstate law practices, search or registration agents, experts or other similar third parties that may need to be engaged on your behalf in connection with the Services.

Interpretation

1.2 The following rules of interpretation apply in this agreement unless the context requires otherwise:

- (a) headings in this agreement are for convenience only and do not affect its interpretation or construction;
- (b) no rule of construction applies to the disadvantage of a party because this agreement is prepared by, or on behalf of, that party;
- (c) where any word or phrase is defined, any other part of speech or other grammatical form of that word or phrase has a cognate meaning;
- (d) a reference to a document (including this agreement) is a reference to that document (including any schedules and annexures) as amended, consolidated, supplemented, novated or replaced;
- (e) references to recitals, clauses, subclauses, paragraphs, annexures, schedules and parts are references to recitals, clauses, subclauses, paragraphs, annexures, schedules and parts of or to this agreement;
- (f) a reference to any Legislation includes:
 - (i) that Legislation as amended, extended, consolidated, modified or applied by or under any other Legislation, whether before or after execution of this agreement;
 - (ii) any Legislation which that Legislation re-enacts, whether with or without modification; and
 - (iii) any subordinate Legislation made, whether before or after execution of this agreement, under:
 - (A) that Legislation, including (as applicable) that Legislation as amended, extended, consolidated, modified or applied as described in clause 1.2(f)(i); or

- (B) any Legislation which that subordinate Legislation re-enacts as described in clause 1.2(f)(ii);
- (g) a reference to any law:
 - (i) includes a reference to any Legislation, judgment, rule of common law or equity or rule of any applicable stock exchange; and
 - (ii) is a reference to:
 - (A) that law as amended, consolidated, supplemented or replaced; and
 - (B) any other law made under it;
- (h) an expression importing a natural person includes any individual, corporation or other body corporate, partnership, trust or association and any Governmental Agency and that person's personal representatives, successors, permitted assigns, substitutes, executors and administrators;
- (i) a reference to writing includes any communication sent by post, facsimile or email;
- (j) a reference to time refers to time in Melbourne, Victoria and time is of the essence; a reference to any Costs, including Fees and Disbursements, includes any interest owing thereon under clauses 10.9 and 10.10;
- (k) all monetary amounts are in Australian currency;
- (l) the word "**month**" means calendar month and the word "**year**" means 12 calendar months;
- (m) a reference to the "**date of this agreement**" is a reference to the date on which this agreement becomes binding in accordance with clause 2.2;
- (n) the meaning of general words is not limited by specific examples introduced by "**include**", "**includes**", "**including**", "**for example**", "**in particular**", "**such as**" or similar expressions;
- (o) a reference to a "**party**" is a reference to a party to this agreement, and a reference to a "**third party**" is a reference to a person that is not a party to this agreement;
- (p) a reference to a liability includes a present, prospective, future or contingent liability;
- (q) a reference to any thing is a reference to the whole and each part of it;
- (r) a reference to a group of persons is a reference to all of them collectively and to each of them individually;
- (s) words in the singular include the plural and vice versa; and
- (t) a reference to one gender includes a reference to the other genders.

2. Engagement

2.1 The Client hereby engages the Firm to provide, and the Firm hereby agrees to provide, the Services to the Client on the terms of this agreement.

Offer and acceptance

2.2 The provision of a copy of this agreement to the Client constitutes an offer by the Firm to provide the Services to the Client on the terms of this agreement. This agreement will be deemed to have been accepted and will become binding as between the Firm and the Client upon the earliest to occur of the Client:

- (a) duly executing a copy of this agreement and returning it to us;
- (b) otherwise communicating to us, whether in writing or verbally, its acceptance of that offer; and

- (c) giving us any instructions in connection with the Services after having received a copy of this agreement.

Authorisations

- 2.3 The Firm represents and warrants to the Client, and the Client represents and warrants to the Firm, that it has taken all necessary actions, and obtained all required Authorisations, to enable it to execute, deliver and perform its obligations under this agreement, and any such Authorisations are in full force and effect.

3. Services

Scope of the Services

- 3.1 Subject to clause 3.2, the scope of the Services is limited to the legal services described in the Firm's fee proposal and specifically excludes all Out-of-Scope Services.
- 3.2 The scope of the Services and the Out-of-Scope Services:
- (a) may be varied at any time by agreement in writing between the parties; and
 - (b) will not be taken to have been varied without such agreement.

Your cooperation

- 3.3 To perform the Services successfully, we require your timely co-operation. Accordingly, you must:
- (a) provide in a timely fashion all information, documents and instructions that we reasonably require to enable us to provide the Services;
 - (b) at all times tell us openly and honestly everything relevant to the Services;
 - (c) arrange access to third parties where applicable;
 - (d) ensure that appropriate back-up, security and virus checking procedures are in place for any computer facilities you provide;
 - (e) make senior executives available for consultation on request where applicable; and
 - (f) make decisions promptly to facilitate the performance of the Services.

Information that you give us

- 3.4 Our work will be based on the documentation and information that you provide to us and any documentation and information that third parties provide to us on your behalf. We rely on you to bring to our attention any changes in such documentation and information as originally presented, as it may affect our advice. We will not verify the accuracy or completeness of any such documentation or information. You hereby represent and warrant to us that, to the best of your knowledge and belief, all such documentation and information is and will be:
- (a) complete, true and accurate in all material respects; and
 - (b) not misleading in any material respect, nor rendered misleading in any material respect by any failure to disclose any other information.

Timetable

- 3.5 Unless expressly agreed otherwise in writing between the Firm and the Client, dates in any timetable for the provision of the Services are intended for planning and estimating purposes only and are not contractually binding. The timely completion of the Services requires your co-operation in accordance with clause 3.3. Estimates of time for completion of the Services are given on the assumption that we receive this co-operation. Any default or delay in providing this co-operation may result in additional Costs.

Obligations owed to the Client only

- 3.6 Unless expressly agreed otherwise in writing between the Firm and the Client:

- (a) the Services will be provided solely for the benefit and use of the Client and we accept no liability or responsibility to any third party in respect of the Services; and
- (b) our engagement to provide the Services for the Client pursuant to this agreement does not extend to include acting for any:
 - (i) Related Entities of the Client, or any Representatives of the Client or of any such Related Entities; or
 - (ii) Third Party Payers, and we take on no responsibilities, obligations or duties to any such third parties, and no lawyer-client or other fiduciary relationship exists between us and any such third parties.

- 3.7 Except as required by law, you must not provide any documentation or deliverables in respect of the Services to any third party (including the filing of information containing or referring to any of our reports with regulators or the inclusion of our reports in any public document) without our prior written consent.

4. Our team

Team members

- 4.1 The individuals who will be primarily responsible for providing the Services are those named as members of our service team in the Firm's fee proposal. We will use reasonable efforts to ensure that those individuals are available to perform the Services but we reserve the right to make changes to the service team at any time and for any reason.
- 4.2 If any changes to the service team are made, we will provide you with details of any additional and/or replacement staff. Such additional or replacement staff may have lower or higher hourly rates than the team members named in the covering engagement letter in line with any differences in their respective levels of productivity, skills and/or experience.

Support staff

- 4.3 All legal services will be provided by Australian legal practitioners. Other persons within the Firm who are not legal practitioners may assist in the provision of legal services under the direction of an Australian legal practitioner.

Subcontractors

- 4.4 We reserve the right to engage subcontractors and any reference in this agreement to our staff includes subcontractor staff. Unless you expressly agree otherwise, we will remain responsible to you for any of the Services that are provided by our subcontractors.

Non-solicitation

- 4.5 For the duration of this agreement and for a period of 12 months after the earlier of the termination of this agreement and the completion of the Services, you must not, without our prior written consent, employ, or procure any third party to employ, any employee of ours who has taken part in the performance of the Services.

5. Communications protocol

Instructions

- 5.1 We will accept instructions in connection with the Services from anyone who, in our reasonable opinion, has apparent authority to give us such instructions on your behalf, including any of the persons named as having such authority in the covering engagement letter. Any changes to the persons named as having such authority in the covering engagement letter must be agreed in writing between the parties.

Electronic communications

- 5.2 We may communicate with you electronically. Information transmitted electronically cannot be guaranteed to be private or free of viruses or errors and consequently such information could arrive late or be intercepted, corrupted, lost, destroyed or incomplete or otherwise be adversely affected or unsafe to use. We will use commercially reasonable procedures to check for viruses before sending information electronically, but we will not be liable to you in respect of any error or omission, or loss of confidentiality, arising from or in connection with the electronic communication of information to you. You hereby consent to our communicating with you electronically and to our exchange of electronic communications, including confidential documents, via unencrypted means. If you do not accept these risks, you must promptly notify us in writing that you do not want us to communicate electronically with you.
- 5.3 We may deliver our bills to you electronically. Your rights under applicable law to receive an original signed bill of costs signed will be satisfied by our preparing and manually signing the bill, having that signed bill imaged to create a digital file and sending that file to you by email or other electronic communication. If you ask us to do so, we will also post a signed hard copy original to you.

Privacy

- 5.4 You must only disclose personal information to us if:
- doing so is necessary for us to perform the Services; and
 - such disclosure will not infringe the protections afforded to any person by the Privacy Act.
- 5.5 We will collect personal information from you in the course of providing our legal services. We may also obtain personal information from third party searches, other investigations and, sometimes, from adverse parties. If personal information (within the meaning of the Privacy Act) is disclosed to us in the course of our provision of the Services:
- we will treat it in accordance with our legal obligations; and
 - if disclosed to us by a third party, it will be your responsibility to ensure that such disclosure to us is permitted by the Privacy Act (including by obtaining any appropriate consents).
- 5.6 If you do not provide us with the full name and address information required by law we cannot act for you. If you do not provide us with the other personal information that we request, our advice may be wrong for you or misleading.
- 5.7 You hereby authorise us to disclose personal information about you to others (both within and outside of the Firm) as we reasonably consider necessary in furtherance of the Matter. Depending on the nature of your matter, the types of bodies to whom we may disclose your personal information include the courts, the other party or parties to litigation, experts and barristers, the Office of State Revenue, other statutory bodies, the Registrar General and third parties involved in the completion or processing of a transaction.

6. Confidentiality and conflicts of interest

- 6.1 We undertake not to disclose or misuse your confidential information, subject only to applicable law and our professional and ethical obligations.

Confidentiality and conflicts of interest with other clients of the Firm

- 6.2 The Client acknowledges and agrees that, because we owe a duty of confidentiality to all of our clients, we will not disclose to it any information that we hold in confidence for other clients of the Firm, even where such confidential information would or may be relevant to our provision of the Services. Similarly, we will not disclose to other clients of the Firm any of your confidential information, even where

such disclosure would or may be relevant to our representation of those other clients.

- 6.3 The Firm will not be considered to have a conflicting interest merely because it acts for another client that is: (i) a business competitor, customer or supplier of yours; (ii) asserting through us legal positions or arguments that may be inconsistent with those you are asserting or may wish to assert; or (iii) in another matter, adverse in interest to an entity with which you have a relationship of any kind (whether through ownership, contract or otherwise).
- 6.4 Our entry into this agreement is on the basis that you hereby consent to our representation of other clients (including any person that is adverse to you in this Matter) in other matters that may be adverse to your interests, provided that:
- the other matter is not the same as, or materially related to, any matter in which we are then representing you or have previously represented you; and
 - we protect your confidential information. We may establish an internal information barrier for this purpose if we consider it appropriate to do so.

Your consent under this clause 6.4 means that, even while we are representing you in this Matter, we could represent, in an unrelated matter, another client that is adverse to your interests.

Disclosure to Third Party Payers

- 6.5 We may disclose to any Third Party Payer any information that it requires relating to the Costs.

Citing our experience

- 6.6 Subject to the professional and ethical obligations of confidentiality that we owe to you, we may cite the performance of the Services to other clients as an indication of our experience.

7. Intellectual Property

- 7.1 Unless expressly agreed otherwise in writing between the Firm and the Client:
- all Relevant IP will be owned exclusively by, and vest exclusively in, the Firm; and
 - you must not use or reproduce any Relevant IP, or any other Intellectual Property Rights of the Firm, without our prior written approval, other than for the purposes of completing the transactions that are contemplated in connection with this Matter and to which the Services relate.
- 7.2 You must not use the Firm name or logo on any website or in any public statement without obtaining our prior written consent.

8. Costs

Fixed Price

- 8.1 Subject to clauses 8.2, 8.3 and 8.4, our total Fees for the Services will be on a fixed price basis as set out in our fee proposal (excluding GST) (*Fixed Price*).

Out-of-Scope Services

- 8.2 Our Fees for any Out-of-Scope Services will be:
- calculated on the basis of the time spent by us in providing those Out-of-Scope Services on an hourly-rate basis at our Standard Hourly Rates; and
 - charged in addition to the Fixed Price.

Changes to the scope of the Services

- 8.3 The Fixed Price may be varied by agreement in writing between the parties, including in the event that any changes to the scope of the Services are agreed between the parties pursuant to clause 3.2. The Firm reserves the right to refuse any requested changes to the scope of the Services unless a

change to the Fixed Price is also agreed in writing between all parties.

Hourly rates may apply

- 8.4 If you terminate this agreement for any reason, or we terminate this agreement for any reason referred to in clause 12.2, then, if we so elect in our absolute discretion, our Fees for the Services provided up to and including the date of termination will be, in place of the Fixed Price and notwithstanding clause 8.1, at our election either:
- (a) calculated on the basis of the time spent by us in providing those Services on an hourly-rate basis at our Standard Hourly Rates; or
 - (b) a pro-rata amount of the Fixed Price based upon our reasonable estimate of the proportion that those Services represent in comparison with all of the Services contemplated by section 2 of Schedule 1.

Hourly rates

- 8.5 If any of our Fees are to be calculated on an hourly-rate basis, then clauses 8.6 and 8.7 will apply.
- 8.6 Hourly rates are proportionately charged for work involving periods of less than one hour. Our charges are structured in 6-minute units, with 10 units per hour – eg, the time charged for an attendance of up to 6 minutes will be 1 unit and the time charged for an attendance between 6 and 12 minutes will be 2 units.
- 8.7 We revise our fee scale periodically. The Standard Hourly Rates will remain in force until the next time our fee scale is revised. Rates quoted relate to particular grades of staff. Where we promote staff in the course of an engagement, the relevant rate for the new grade will apply.

Disbursements

- 8.8 Our Fees do not include Disbursements, which you will be required to pay in addition to our Fees.
- 8.9 Once we have paid a Disbursement on your behalf, you must reimburse us for it immediately upon demand by us, unless we elect in our absolute discretion to incorporate it into an invoice together with any Fees, in which case you will be required to pay for that Disbursement in accordance with the payment terms applicable to the invoice.
- 8.10 If it becomes necessary to incur any Third Party Fees that we consider to be significant or unusual, further disclosures and estimates of those Third Party Fees will be provided to you and we will obtain your approval before incurring any such Third Party Fees.
- 8.11 We reserve the right to forward the invoice for any Disbursement to you, in which case you will be responsible for payment of the invoice in accordance with its terms directly to the applicable third party.

Third Party Payers

- 8.12 The Client acknowledges and agrees that, even if a Third Party Payer has agreed or undertaken, or agrees or undertakes, to pay all or any part of the Costs on behalf of the Client, the Client remains responsible for the payment of those Costs and hereby guarantees to the Firm the full and punctual payment of those Costs.

9. Disclosures regarding costs

- 9.1 The Firm hereby discloses that you have the right to:
- (a) negotiate a costs agreement with us. This agreement is a costs agreement between us;
 - (b) receive a bill of costs from us;
 - (c) negotiate the method of billing (eg, task-based or time-based);
 - (d) request an itemised bill of costs within 30 days after a lump sum bill or partially itemised bill is payable. If you request an itemised bill and the total amount of the legal costs specified in it exceeds the amount

previously specified in the lump sum bill for the same matter, the additional costs may be recovered by us only if:

- (i) when the lump sum bill is given, we inform you in writing that the total amount of the legal costs specified in any itemised bill may be higher than the amount specified in the lump sum bill; and
 - (ii) the costs are determined to be payable after a costs assessment or after a binding determination under section 292 of the Legal Profession Legislation;
- (e) seek the assistance of the designated local regulatory authority (the Legal Services Commissioner of Victoria) in the event of a dispute about legal costs;
- (f) unless you are a Sophisticated Client, apply for costs to be assessed within 12 months if you are unhappy with our costs;
- (g) accept or reject any offer we make for an interstate costs law to apply to your matter; and
- (h) notify us that you require an interstate costs law to apply to your matter.
- 9.2 It is your obligation to ensure that any Third Party Payer (if any) is made aware of your rights as described in clause 9.1.
- 9.3 If, within the period of 12 months after the date of this agreement, you ask us to provide any legal services to you (under this agreement or otherwise), you waive your right to receive further disclosure of the matters referred to in clause 9.1 in connection with those legal services.

Cost assessment

- 9.4 You hereby acknowledge and agree (on your own behalf and as agent for and on behalf of any Third Party Payer) that:
- (a) if you are not a Sophisticated Client, you will not be entitled to apply for a review of the whole or any part of the Costs that are the subject of any invoice under this agreement unless you make that application within 12 months of the date of your receipt of that invoice;
 - (b) if you are a Sophisticated Client, notwithstanding Division 7 of Part 4.3 of the Legal Profession Legislation, you will not be entitled to apply for a review of the whole or any part of the Costs that are the subject of any invoice under this agreement in any circumstances whatsoever, and Division 7 of Part 4.3 of the Legal Profession Legislation does not apply in relation to any Costs.

10. Invoicing and payments

Invoicing and payment terms

- 10.1 Costs will be invoiced either in advance or in arrears upon final completion of the Services or termination of this agreement, or otherwise at such times as we see fit in our discretion during the course of the Matter. You will be taken to have received each invoice in accordance with the provisions regarding receipt of notices in clause 14
- 10.2 You must pay the Costs that are the subject of any invoice rendered under this agreement at the time and in the manner set out in the relevant invoice.
- 10.3 If you dispute part of an invoice, you must still pay the undisputed part as and when it is or becomes due and payable.

Suspension of Services

- 10.4 We may at any time suspend all work for you until payment in full of all of our outstanding invoices.

Method of payment

- 10.5 All amounts to be paid by a party to another party under or in connection with this agreement must be paid in cash or by

way of bank cheque or electronic funds transfer into the account nominated by the other party.

Recovery from third parties

- 10.6 You must pay all Costs in a timely manner, regardless of whether or not you have a right of indemnity, recovery or reimbursement from a third party or any payment due to you by a third party is delayed or not received.

No set-off or deduction

- 10.7 All amounts payable under or in connection with this agreement must be paid without set-off, counterclaim, withholding, deduction or claim to a lien whatsoever, whether or not any such set-off, counterclaim, withholding, deduction or lien arises under this agreement (unless otherwise required by law).
- 10.8 If a party is required by law to make a deduction or withholding in respect of any sum payable under or in connection with this agreement to another party, it must, at the same time as the sum that is the subject of the deduction or withholding is payable, make a payment to the other party of such additional amount as is required to ensure that the net amount received by the other party will equal the full amount that would have been received by it had no such deduction or withholding been required to be made.

Default interest

- 10.9 If a party fails to pay any sum payable by it under this agreement to another party at the time and otherwise in the manner provided in this agreement, it must pay interest on that sum from the due date of payment until that sum is paid in full at the Default Rate, calculated daily on the basis of a 365-day year and compounded monthly. Interest will accrue from day to day and will be payable on demand. The payment of interest by a party to another party in respect of any late payment under this clause 10.9 is in addition to any other remedies that the other party may have in respect of such late payment.
- 10.10 If a liability of a party to another party under this agreement becomes merged in a judgement or order and the interest rate that applies under that judgement or order is lower than the Default Rate, that party must, as an independent obligation, pay to the other party, at the same time and in the same manner as the sum that is the subject of that judgement or order is to be paid, such additional interest on that sum as is required to ensure that the total amount of interest that the other party receives in respect of that liability is equal to the Default Rate.

11. Liability and obligations

- 11.1 The Firm will use reasonable skill and care in providing the Services.

Limitation of liability

- 11.2 To the maximum extent permitted by law:
- (a) **(Liability Cap)** subject to clause 11.4, the aggregate liability of the Firm, together with its Related Entities and its and their Representatives, for any Losses arising directly or indirectly out of, or in connection with, the Services (including the use by you or any other person of any deliverable under this agreement) is capped at the value of the Fees that become payable under this agreement (the **Liability Cap**);
- (b) **(Disclaimer of warranties)** the Firm, its Related Entities and its and their Representatives:
- (i) exclude all warranties, conditions and guarantees of any nature in respect of the Services and/or the economic, financial or other results that you may experience as a result of the provision of the Services; and
- (ii) limit their liability for breach of any non-excludable warranty, condition or guarantee that is implied by virtue of any Legislation to the

supply of the Services again or the payment of the cost of having the Services supplied again (the choice of which is to be at the Firm's sole discretion); and

- (c) **(Exclusion of Consequential Loss)** the Firm and its Related Entities and its and their Representatives exclude all liability to you or any other person for any Consequential Loss arising directly or indirectly out of, or in connection with, the Services (including the use by you or any other person of any deliverable under this agreement), even if the Firm has been advised of the possibility of such Consequential Loss, and the Client acknowledges and agrees that the Firm holds the benefit of this agreement, including this clause 11.2, on its own behalf and as agent and trustee for and on behalf of its Related Entities and its and their Representatives, and each of them is entitled to enforce this agreement as it were a party to this agreement.

Professional Standards Legislation

- 11.3 Our liability is limited by a scheme approved under Professional Standards Legislation. Legal practitioners employed by the Firm are members of the scheme. Under the scheme, our maximum aggregate liability for any Losses arising in relation to the Services is capped at A\$1,500,000. Our coverage by the scheme does not derogate from our limitation of liability pursuant to clause 11.2.
- 11.4 If, under any applicable Professional Standards Legislation, the maximum liability of the Firm for Losses arising from or in relation to the Services would be:
- (a) a higher amount than the Liability Cap, then, to the maximum extent permitted by law, the Liability Cap will apply in place of the maximum that would otherwise apply under that Professional Standards Legislation; or
- (b) a lower amount than the Liability Cap, then the Liability Cap will be deemed to be equal to the maximum liability of the Firm under that Professional Standards Legislation.

Liability in relation to Third Party Service Providers

- 11.5 We will take reasonable care in providing instructions to any Third Party Service Providers but, to the maximum extent permitted by law, we take no responsibility for their work or how they carry out their instructions. In suggesting or selecting any Third Party Service Providers, we will rely on information that we are given as to their qualifications and experience but take no responsibility for such selections and give no warranty as to the ability of any Third Party Service Providers to appropriately carry out their work or as to the quality of their services.

Non-legal matters

- 11.6 You are solely responsible for satisfying yourself as to the commercial viability of the transactions contemplated in connection with this Matter, the bona fides of the other entities involved in such transactions and the financial matters relevant to, and the commercial soundness of, such transactions.

Apportionment of liability

- 11.7 If you make any Claim against us for any Loss arising out of, or in connection with, the Services or this agreement and some or all of that Loss was due to, or contributed to by:
- (a) your own acts or omissions or the acts or omissions of other persons for whose conduct you are responsible; or
- (b) the acts or omissions of one or more other persons, not being partners, employees or agents of the Firm for whose conduct we are responsible,
- then, to the maximum extent permitted by law, we will be liable only for that proportion of the Loss which our acts and

omissions bear in relation to the total conduct of all persons causing or contributing to that Loss.

Force majeure

11.8 A party will not be liable for any delay or failure to perform its obligations (excluding payment obligations) under this agreement to the extent that any such delay or failure arises from causes beyond its control, including fire, floods, acts of god, acts or regulations of any Governmental Agency, war, riot, terrorist activities, strikes, lockouts and industrial disputes.

Verbal comments and drafts

11.9 In the course of providing the Services, we may provide verbal comments and/or draft documents to you. You must not rely upon any such verbal comments or draft documents, nor any conclusions or advice contained in, or capable of being inferred from, such verbal comments or draft documents, as they may be subject to further work or revision and/or other factors that may mean that they are substantially different from any final written report or advice issued. The final results of our work will be set out in our final written report or advice.

Changes in law

11.10 Unless expressly agreed otherwise in writing between the Firm and the Client:

- (a) our advice will be provided on the basis of the law in force as at the time at which that advice is given, and no consideration will be given to any anticipated or future laws; and
- (b) we accept no responsibility to inform you of changes in the law or interpretations affecting advice previously given by us. Changes in the law may take place before our advice is acted upon or may be retrospective in effect.

Destruction of documents

11.11 Except in respect of any original executed documents that we have agreed in writing to retain on your behalf, you hereby consent to our destroying any documents that belong to you and which have been filed amongst our own papers after they are more than seven years old.

11.12 If you request any documents from your file after they have been placed into storage, we reserve the right to charge you a reasonable fee for their retrieval.

12. Termination

12.1 Either party may terminate this agreement immediately at any time and for any reason by notice to the other party.

Termination by us for cause

12.2 Without limitation to clause 12.1, we may terminate this agreement immediately by notice to you if you:

- (a) materially breach this agreement, including failing to:
 - (i) pay our bills in full or in a timely manner; or
 - (ii) provide us with adequate instructions within a reasonable time;
- (b) provide us with misleading, false or incomplete information;
- (c) fail to follow any advice given to you by us, or by any counsel acting in this Matter with your express or implied instruction or authorisation; or
- (d) engage another law practice to advise you in respect of the Matter without our consent.

Payment of Costs upon termination

12.3 If:

- (a) you terminate this agreement for any reason; or
- (b) we terminate this agreement under clause 12.2,

you will be liable to pay, immediately upon demand by us, all outstanding Costs (including any cancellation fees, hearing allocation fees, etc for which we remain responsible), calculated in accordance with clause 8.4 as we may so elect, accrued up to and including the date of termination.

12.4 If we terminate this agreement other than under clause 12.2, we will send you a final invoice for the balance of any outstanding Costs accrued up to and including the date of termination.

Lien over documents

12.5 On termination of this agreement by any party for any reason, we are entitled to retain possession of your papers and documents until all Costs that are due for the period up to and including the date of termination have been paid in full. If you instruct other solicitors to act for you, then we will be entitled to delay transferring your file to them until such Costs have been paid in full.

Correspondence following termination

12.6 If, after termination of this agreement, we send you any information on legal developments without charge or otherwise include you in any general mailings, that will not change the fact that our engagement has been terminated.

Accrued rights and obligations

12.7 Termination of this agreement will not affect any rights or obligations that the parties have accrued under it prior to such termination.

Survival

12.8 Provisions of this agreement that, expressly or by implication, are intended to survive its termination will survive and continue to bind the parties.

13. GST

Definitions regarding GST

13.1 In this clause 13:

- (a) expressions that are not defined, but which have a defined meaning in the GST Law, have the same meaning as in the GST Law;
- (b) any part of a supply that is treated as a separate supply for GST purposes (including attributing GST payable to tax periods) will be treated as a separate supply for the purposes of this clause 13; and
- (c) any consideration that is specified to be inclusive of GST must not be taken into account in calculating the GST payable in relation to a supply for the purpose of this clause 13.

Consideration is exclusive of GST

13.2 Unless expressly indicated otherwise, any sum payable, or amount used in the calculation of a sum payable, under this agreement has been determined without regard to GST and must be increased on account of any GST payable in accordance with this clause 13.

Receiving Party to pay additional amount

13.3 If we have assessed that no GST is payable in respect of our Fees and subsequently we change our assessment or the Australian Taxation Office assesses that GST is payable, then GST will be added to, and form part of, our Fees at the prevailing GST rate, and we reserve the right to recover any such GST from you

13.4 If GST is imposed on any supply made under or in accordance with this agreement, the recipient of the supply (**Receiving Party**) must pay to the supplier (**Supplier**) an additional amount equal to the GST payable on the supply, subject to the Receiving Party receiving a valid tax invoice, or a document that the Commissioner will treat as a tax invoice, in respect of the supply at or before the time of payment. Payment of the additional amount will be made at the same time and in the same manner as payment for the

supply is required to be made in accordance with this agreement.

GST on Disbursements

13.5 For the purposes of the GST Law, you (and not the Firm) will acquire the goods and services that constitute the Disbursements. You may therefore be entitled to an input tax credit for any GST included in any Disbursements, to the extent that you satisfy the requirements of the GST Law. We will supply you with details of the amounts invoiced by the relevant third parties and will retain the original tax invoices on your behalf. Whether or not such third parties should add GST on the amounts they charge for Disbursements provided on your behalf is a matter between you and those third parties. Where such a third party includes an amount on account of GST that we pay on your behalf, you must repay us the whole amount paid by us, including the GST component.

Fines, penalties and interest

13.6 The amount recoverable on account of GST under this clause 13 by the Supplier will include any fines, penalties, interest and other charges incurred as a consequence of any late payment or other default by the Receiving Party under this clause 13.

Reimbursement

13.7 If any party is required to pay, reimburse or indemnify another party for the whole or any part of any cost, expense, loss, liability or other amount that the other party has incurred or will incur in connection with this agreement, the amount must be reduced by the amount for which the other party can claim an input tax credit, partial input tax credit or other similar offset.

Adjustment events

13.8 If, at any time, an adjustment event arises in respect of any supply made by a party under this agreement, a corresponding adjustment must be made between the parties in respect of any amount paid to the Supplier by the Receiving Party pursuant to clause 13.3 and payments to give effect to the adjustment must be made and the Supplier must issue an adjustment note.

14. Notices

- 14.1 A notice given to a party under this agreement must be:
- (a) in writing in English;
 - (b) sent to the address, fax number or email address of the relevant party as set out in the covering engagement letter (or such other address, fax number or email address as the relevant party may notify to the other parties from time to time); and
 - (c) delivered/sent either:
 - (i) personally;
 - (ii) by commercial courier;
 - (iii) by pre-paid post;
 - (iv) if the notice is to be served by post outside the country from which it is sent, by airmail;
 - (v) by fax; or
 - (vi) by e-mail.
- 14.2 A notice is deemed to have been received:
- (a) if delivered personally, at the time of delivery;
 - (b) if delivered by commercial courier, at the time of signature of the courier's receipt;
 - (c) if sent by pre-paid post, 48 hours from the date of posting;
 - (d) if sent by airmail, five days after the date of posting;

- (e) if sent by fax, at the time shown in the transmission report generated by the machine from which the fax was sent; or
- (f) if sent by e-mail, 4 hours after the sent time (as recorded on the sender's e-mail server), unless the sender receives a notice from the Firm's email server or internet service provider that the message has not been delivered to the Firm,

except that, if such deemed receipt is not within business hours (meaning 9:00 am to 5:30 pm on a Business Day), the notice will be deemed to have been received at the next commencement of business hours in the place of deemed receipt.

- 14.3 To prove service, it is sufficient to prove that:
- (a) in the case of post – that the envelope containing the notice was properly addressed and posted;
 - (b) in the case of fax – the notice was transmitted to the fax number of the party; and
 - (c) in the case of email – the email was transmitted to the Firm's email server or internet service provider.

15. General

Relationship

15.1 The Firm is an independent contractor of the Client. Nothing in this agreement will constitute a partnership, joint venture or agency relationship between the parties. Except as may be expressly agreed otherwise in writing between the parties, no party will have the right to bind the other party without the other party's prior written consent.

Costs

15.2 All costs and expenses in connection with the negotiation, preparation and execution of this agreement will be borne the party that incurred the costs.

Further assurances

15.3 Each party must (at its own expense) promptly execute and deliver all such documents, and do all such things, as any other party may from time to time reasonably require for the purpose of giving full effect to the provisions of this agreement.

Entire agreement

15.4 This agreement contains the entire understanding between the parties in relation to its subject matter and supersedes any previous arrangement, understanding or agreement relating to its subject matter. There are no express or implied conditions, warranties, promises, representations or obligations, written or verbal, in relation to this agreement other than those expressly stated in it or necessarily implied by statute.

Severability

- 15.5 If a provision of this agreement is invalid or unenforceable in a jurisdiction:
- (a) it is to be read down or severed in that jurisdiction to the extent of the invalidity or unenforceability; and
 - (b) that fact does not affect the validity or enforceability of that provision in another jurisdiction, or the remaining provisions.

No waiver

15.6 No failure, delay, relaxation or indulgence by a party in exercising any power or right conferred upon it under this agreement will operate as a waiver of that power or right. No single or partial exercise of any power or right precludes any other or future exercise of it, or the exercise of any other power or right under this agreement.

Amendment

15.7 This agreement may not be varied except by written instrument executed by all of the parties.

Assignment

15.8 A party must not assign, transfer, sub-contract, create any trust over or otherwise deal in any way with any of its rights or obligations under this agreement without the prior written consent of each other party.

Counterparts

15.9 This agreement may be executed in any number of counterparts, each of which is an original and which together will have the same effect as if each party had signed the same document.

Electronic exchange

15.10 Delivery of an executed counterpart of this agreement by facsimile, or by email in PDF or other image format, will be equally effective as delivery of an original signed hard copy of that counterpart.

15.11 If a party delivers an executed counterpart of this agreement under clause 15.10:

- (a) it must also deliver an original signed hard copy of that counterpart, but failure to do so will not affect the

validity, enforceability or binding effect of this agreement; and

- (b) in any legal proceedings relating to this agreement, each party waives the right to raise any defence based upon any such failure.

Governing law and jurisdiction

15.12 This agreement and any disputes or claims arising out of or in connection with its subject matter or formation (including non-contractual disputes or claims) are governed by, and shall be construed in accordance with, the laws of Victoria, Australia.

15.13 The parties irrevocably agree that the courts of Victoria, Australia have exclusive jurisdiction to settle any dispute or claim that arises out of, or in connection with, this agreement or its subject matter or formation (including non-contractual disputes or claims).

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