Standard Terms of Business

1. Introduction

1.1 These Standard Terms of Business apply in relation to our engagement and, together with the relevant letter of engagement (**Letter**), (together, the **Agreement**) set out the entire agreement between the parties in connection with the Services set out in the Letter and extinguishes any prior understandings, representations or promises (including any previously executed confidentiality agreement).

1.2 Terms used in the Letter and defined in these Standard Terms of Business have the same meaning in both documents.

1.3 If there is any inconsistency between the Letter and these Standard Terms of Business, the Letter prevails to the extent necessary to resolve the inconsistency.

2. Services

2.1 During the Term, we will:

(a) provide and carry out the Services in an efficient and professional manner and in accordance with standards generally observed in profession for similar services; and

(b) use best endeavours to supply the Services without warranting that supply will be interruption or error free.

2.2 Despite anything else in these Standard Terms of Business, you acknowledge and accept that the Services may not be available in all circumstances.

2.3 You may rely on our Services and Deliverables unless we expressly state otherwise in writing case-by case basis.

3. Services not provided

3.1 Whilst our engagement may involve the analysis of financial information, it does not constitute an audit in accordance with Australian (or any other) Auditing Standards, a review in accordance with Australian (or any other) Auditing Standards applicable to review engagements and, accordingly, no such review, assurance or advice will be provided in our materials.

3.2 Any report, advice or deliverable that we provide in connection with our engagement must be considered in the context of the restrictions on the scope of our work (as set out in the Letter and in any of our reports and deliverables) and other relevant factors, commercial and otherwise, which come to your attention and/or to the attention of your advisers other than as a result of the commercial diligence procedures we perform.

3.3 Although we will provide you with recommendations relating to the type of other advisors we believe are necessary in respect of the Services, you are responsible for obtaining your own professional advice on all legal, accounting, taxation, operational, property, environmental and other specialist matters (including advisory matters which would require the adviser to hold an AFSL) outside our area of expertise.

3.4 We make no representations and give no guarantees as to whether the Scope of Work is sufficient for your purposes or will disclose all matters of significance to you.

4. Variation to Services

4.1 You can request to vary the scope of the Services (**Variation**) in writing to us at any time.

4.2 We will as soon as practicable provide you with the following details in writing:

(a) whether we can provide the Services as requested by the Variation;

(b) any impacts on the timing of the delivery of the Services;

(c) a revised estimate of fees for the Variation; and

(d) any changes to the terms that apply to the performance of the Services in respect of the Variation.

4.3 Within 5 Business Days after receiving the information in clause 5.2, you must notify us whether you wish to proceed with the Variation. If you wish to proceed, we will prepare a written variation to the Scope of Works which you must sign before we perform the varied Services.

4.4 If you agree in writing to the Variation, then

(a) we will perform the Services as varied by the Variation;

(b) you must pay the varied Fees in accordance with the Letter and these Standard Terms of Business; and

(c) these Standard Terms of Business are varied by the terms of the Variation.

5. **Your obligations**

5.1 During the Term, you are required to:

(a) comply with these Standard Terms of Business at all times;

(b) comply promptly with our reasonable directions in relation to the provision of the Services;

(c) comply with all Applicable Laws and guidelines concerning your use of the Services; and

(d) promptly provide all instructions that we may reasonably require in connection with the Services, and all relevant and accurate information, documents, facilities and assistance that we reasonably require in order to provide the Services. You agree that all information provided by you will be to the best of your knowledge, true, complete, accurate and not misleading.

5.2 Failure to comply with your obligations under clause 5.1 in a timely manner may result in delays in the provision of our Services. Such delays will be at no cost to us, and we will not be liable for any consequences arising from these delays.

5.3 You agree that we are not liable for any default to the extent it arises because you do not fulfil your obligations or because information supplied is, or becomes, inaccurate, stale or incomplete, except to the extent we have expressly agreed to verify its accuracy and completeness as part of the Services.

6. **Mutual warranties**

Each party represents and warrants to the other party that:

6.1 it has power and authority to enter this Agreement and to perform its obligations under the Letter and these Standard Terms of Business;

6.2 it is not the subject of a Distress Event; and

6.3 no information provided to the other party is false or misleading;

6.4 if it is a trustee of a trust (whether or not the other party knows about the trust):

(a) this agreement binds a Trustee and any succeeding trustee and any additional trustee personally and as trustee of the trust.

(b) it is the sole trustee of the trust; and

(c) it has power to execute this agreement and to perform its obligations under this agreement.

7. **Exclusion of warranties**

To the extent permitted by law, we make no warranty about our Services and excludes and disclaims all other express, implied, and statutory warranties and conditions except those that cannot be excluded by law.

8. **Invoicing**

8.1 You agree to pay the Fees and any Expenses (if applicable) in accordance with these Standard Terms of Business.

8.2 We will issue a Tax Invoice for Services carried out in the previous month to you each month in arrears.

8.3 You agree to pay our invoices within 14 days of the invoice date.

8.4 You agree to pay any reasonable expenses we incur in connection with the Services, including without limitation, any expenses set out in the relevant Letter.

8.5 If we are required to provide information regarding you or the Services to comply with a statutory obligation, court order or other compulsory or regulatory process, you agree to pay the reasonable costs and expenses we incur in doing so. This includes time spent by professional staff and our reasonable legal costs. This clause does not apply to the extent a process relates to our wrongdoing.

8.6 Our fees, expenses and charges exclude GST (unless stated otherwise). If a supply to you under this agreement is a taxable supply under *A New Tax System (Goods and Services Tax) Act 1999* (Cth), you agree to pay us an amount equal to the GST we are required to pay on the taxable supply.

9. Non-payment

Without limiting our other rights, if you do not pay any invoice by the time specified in clause 10.2, we may do any or all of the following:

9.1 charge the Interest Rate;

9.2 require payment advance for the whole or any part of the Services which have not yet been performed; and

9.3 suspend the performance of any further Services until the invoice has been paid in full.

10. Intellectual Property

10.1 We own all Intellectual Property Rights in any Deliverable, except to the extent the Deliverables incorporate your or third-party pre-existing Intellectual Property Rights, which you or they shall continue to own.

10.2 We grant you a non-transferable licence to use the Deliverables, including Intellectual Property Rights in the Deliverables.

11. Public announcement

11.1 We may refer to you and the nature of the Services we have performed for you when marketing our Services.

11.2 You may not refer directly or indirectly to us or name us in any public statement, except with our prior consent (such consent not to be unreasonably withheld or delayed)).

12. Confidentiality

12.1 During the Term, the parties may have access to information including financial information, trade secrets, company information, pricing information and confidential know-how which is developed by or on behalf of the other party and which is not publicly available, confidential or proprietary and identified as such (**Confidential Information**).

12.2 The parties agree to keep the Confidential Information confidential and not to disclose the Confidential Information to third parties without the prior written consent of the other party. We may use third party service providers to perform certain services on our behalf and may disclose Confidential Information to such service providers for the purpose of conducting such services, subject to us having obtained appropriate assurances concerning confidentiality.

12.3 A party may disclose Confidential Information only to those of its and its Related Body Corporate's officers, employees, consultants and advisers on a need-to-know basis (and only to the extent that each has a need to know), provided those persons have been directed by the disclosing party to keep the Confidential Information confidential on terms consistent with this clause 12.

12.4 The obligations of confidentiality set out in this clause 12 do not extend to information that:

(a) is in the receiving party's possession without actual or constructive knowledge of an obligation of confidentiality with respect to that information at or prior to the time of disclosure;

(b) is available in the public domain (otherwise that as a result of a breach of this clause 12.4);

(c) is required by law or requested by any regulatory authority to be disclosed; or

(d) both parties agree may be disclosed.

12.5 This paragraph 12 survives termination.

13. Privacy

The parties will in connection with the Letter and the Services:

13.1 observe the Privacy Laws in respect of all Personal Information that is collected or otherwise dealt with by it;

13.2 promptly follow any reasonable direction of the other party in relation to the treatment of Personal Information held by the other party;

13.3 only use and disclose Personal Information that is collected or otherwise dealt with by it for the purpose of furthering any necessary functions and activities of the other party and not for any other purpose;

13.4 ensure that all Personal Information is secure and take all reasonable steps to protect Personal Information held by it from misuse or Loss or any unauthorised access, modification, or disclosure;

13.5 ensure that all personnel having access to the personal information are aware of and comply with the parties' respective privacy policies and observe the Privacy Laws when obtaining, collecting or disclosing personal information; and

13.6 immediately inform the other party if a party becomes aware or suspects any breaches of privacy or receives any complaints or requests from customers for access to personal information held by either party in connection with the Letter or the Services.

14. Limitation of liability

14.1 To the extent permitted by law:

(a) all conditions, warranties, guarantees, rights, remedies, liabilities and other terms implied by statute, custom or the common law are excluded from this Agreement; and

(b) in no event will a party be liable in contract, tort (including negligence), under statute or otherwise for any incidental, consequential or indirect damages in relation to:

(i) loss of revenue, profits, savings, chance, business opportunity or reputation; or

(ii) beyond the normal measure of damages that every plaintiff in a like situation would suffer.

14.2 If the Australian Consumer Law as enacted under Schedule 2 of the *Competition and Consumer Act 2020* (Cth) applies and liability cannot be excluded, it will be limited to:

(a) re-supply of the Services; or

(b) refund of any amount paid for the Services.

14.3 Without excluding, restricting or modifying the rights and remedies to which you may be entitled under Australian Consumer Laws and without limiting any of the other provisions of this clause 14, you acknowledge and agree that our aggregate liability to you for Claims against us under or in connection with the provision of Services under the Letter or these Standard Terms of business (other than to the extent such Claims arise from our fraud or wilful misconduct) will be limited to the amount paid by you for the provision of the Services in the 12 months preceding the Claim.

15. Indemnity

15.1 You agree to indemnify us on demand against all Loss, Claims and expenses (including legal costs) incurred by us as a result of:

(a) any Deliverable provided to you; or

(b) any breach of this Agreement by you,

except to the extent caused or contributed to by us.

15.2 We indemnify you on demand against all losses, damages, liabilities, claims and expenses (including legal costs) incurred by you arising directly from our negligence or wilful misconduct, except to the extent caused or contributed to by you.

16. **Exclusivity**

16.1 Provided we do not disclose your Confidential Information, you agree that we may perform services for your competitors or other parties whose interests may conflict with yours.

16.2 You acknowledge and understand that where required, we maintain information barriers to preserve client confidentiality, to assist in the management of actual and potential conflicts of interest. You acknowledge and agree that we may have and may continue to have advisory relationships with persons other than you (including in your industry or having a business similar to yours), and that in the course of those relationships we may acquire information of interest to you.

16.3 You acknowledge that we will have no obligation to disclose that information to you or to use that information in any transaction on your behalf or otherwise for your benefit. Despite any conflicts of interest (actual or perceived) which may exist, you agree to allow us to continue to advise you and any such other person, other than in a case where the other person is an adverse party.

16.4 We will not disclose to you or use for your benefit information held by or known to us where doing so might expose us to a risk of breaching any confidentiality or other obligations, or being involved in a conflict of interest or breaching applicable legal or regulatory requirements.

17. **Termination**

Either party may terminate this agreement by:

17.1 giving the other at least 14 days' notice in writing; and [

17.2 immediately by written notice to the other party if the other party breaches this agreement and does not remedy the breach within 30 days of a written request to do so (or where the breach is incapable of remedy); and

17.3 immediately by written notice to the other party if the other party suffers a Distress Event.

18. **Effect of termination**

18.1 Termination of this Agreement for any reason shall be without prejudice to any rights that may have accrued before termination.

18.2 You agree to pay us for all services we perform per this agreement before termination, and any accrued fees and expenses up to such date, within 14 days after receipt of our invoice.

19. **Acknowledgements, representations and warranties**

19.1 You acknowledge that:

(a) we are acting as an independent contractor and not as a fiduciary;

(b) you do not require us to obtain any professional indemnity insurance in respect of the performance of our Services;

(c) any communication between the parties may only be relied upon by you and may not be used or relied on by any third party and must not be disclosed to any third party without our prior written approval (other than your professional advisers who must not in any event place any reliance on such advice); and

(d) we will not be liable to you for any failure or delay in the performance of the Services if such failure or delay arises from circumstances beyond our control, including the untimely performance by you of your obligations under the Letter.

19.2 You represent and warrant to us that:

(a) the Letter (including these Standard Terms of Business) is legally valid, binding and enforceable against you; and

(b) any instruction we receive from anyone who we reasonably believe to be a director, officer or any other person who is otherwise authorised by you for this purpose, is given by a person who is duly authorised to give such instructions.

19.3 Each party will do all things reasonably necessary to give effect to the Letter, including execution of all necessary documents.

20. Insurance

20.1 Each party must ensure that it maintains all insurances that a prudent business operator would maintain with a reputable and solvent insurer and on appropriate industry terms.

20.2 Without limiting paragraph 20.1, in the event that we provide Services to you at your premises, you must maintain adequate public liability insurance for those premises and provide us with a certificate of currency upon request.

21. General

21.1 (**No fiduciary relationship**) The rights and obligations under this Agreement do not merge on completion of any transaction contemplated by this Agreement.

21.2 (**Assignment**) Neither party may assign, novate or otherwise transfer any of its rights or obligations under this Agreement without the prior written consent of the other party (which must not be unreasonably withheld or delayed), except that a party may at any time assign its rights to a Related Body Corporate.

21.3 (**Subcontractors**) We may, with your prior written consent, use subcontractors to assist in delivering the Services. Despite this, we remain solely responsible for the Services.

21.4 (**No waiver**) A party may only waive a breach of this Agreement in writing signed by that party or its authorised representative, and such a waiver is limited to the circumstances referred to in writing.

21.5 (**Amendment**) This Agreement may only be amended in writing signed by the parties.

21.6 (**Costs**) Each party will bear their own costs and expenses in connection with the execution of this Agreement.

21.7 (**Governing Law**) This Agreement is governed by the law of South Australia, and the parties irrevocably submit to the non-exclusive jurisdiction of the courts of South Australia and the South Australian division of the Federal Court of Australia, and the courts of appeal from them.

21.8 (**Electronic Signature**) This Agreement and the Letter may be signed by electronic means, in any number of counterparts.

22. Definitions

AFSL means an Australian Financial Services Licence issued by the Australian Securities and Investments Commission;

Business Day means a day (other than a Saturday, Sunday or public holiday) on which banks are open for business in South Australia;

Claim means any claim, cost, damages, debt, expense, tax, liability, loss, allegation, suit, action, demand, cause of action, proceeding or judgment of any kind and **Claims** has a corresponding meaning;

Confidential Information means all information, whether written, oral or in any other form, that is disclosed by one party to the other in connection with this Agreement and that is marked or otherwise identified as confidential, or which by its nature is confidential, including but not limited to technical, commercial, financial, business, or strategic information, but does not include information that is in the public domain (other than as a result of a breach of this Agreement);

Deliverables has the meaning given in the Letter;

Distress Event means the happening of any of the following events in relation to a person:

(a) where the person is a body corporate:

(i) the body corporate becomes a Chapter 5 body corporate under the Corporations Act;

(ii) a controller, administrator, receiver, provisional liquidator, trustee for creditors in bankruptcy or analogous person is appointed to the body corporate or any of the body corporate's property;

(iii) any steps are taken (including, without limitation, the making or passing of an application, order or resolution) with respect to the appointment of a liquidator or provisional liquidator for the winding up of the body corporate (unless those steps are stayed, withdrawn or dismissed within 10 Business Days);

(iv) the body corporate is taken to have failed to comply with a statutory demand within the meaning of section 459F of the Corporations Act;

(v) the body corporate is or becomes, or its directors state that it is, or has become, unable to pay its debts as and when they become due and payable;

(vi) the body corporate is presumed to be insolvent under the Corporations Act;

(vii) any steps are taken to deregister the body corporate under the Corporations Act (except where the steps taken are reversed or abandoned within 10 Business Days); or

(viii) the body corporate ceases or threatens to cease to carry on its business or any major part of its business;

(b) where the person is a natural person:

(i) the person authorises a registered trustee or solicitor to call a meeting of his or her creditors or proposes or enters into a deed of assignment or deed of arrangement or a composition with any of his or her creditors;

(ii) a person holding a Security Interest in assets of the person enters into possession of or takes control of any of those assets or takes any steps to enter into possession of or take control of any of those assets;

(iii) the person commits an act of bankruptcy;

(iv) the person has a bankruptcy notice issued against them;

(v) a receiver or trustee for creditors or in bankruptcy is appointed to any of the person's property;

(vi) the person becomes an "insolvent under administration" within the meaning of the Corporations Act;

(vii) the person dies, is imprisoned or becomes incapable of managing his or her own affairs; or

(viii) anything analogous to having a substantially similar effect to any of the above events;

GST means goods and services tax as defined in the *A New Tax System (Goods and Services Tax) Act 1999* (Cth) and any related legislation and regulations;

Intellectual Property Rights means all intellectual property rights (whether registered or unregistered) including trade marks, service marks, trade names, company and business names, email addresses, telephone numbers, website addresses, domain names, proprietary software, facsimile numbers, social media accounts, copyright, designs, inventions, patents, know-how, the right to keep information confidential;

Interest Rate means 12% per annum, calculated daily;

Letter means the relevant letter of engagement as signed by the Client;

Loss means any loss, damage, liability, charge, cost, expense or obligation of any kind (whether actual, prospective or contingent) however and whenever arising and includes amounts which, for the time being, are not ascertained or ascertainable;

Personal Information has the meaning given in the *Privacy Act 1988* (Cth);

Privacy Laws means all applicable laws, regulations and codes in Australia relating to the protection of personal information, including the *Privacy Act 1988* (Cth) and the Australian Privacy Principles;

Related Body Corporate has the meaning given to that term in the *Corporations Act 2001* (Cth);

Scope of Work has the meaning given in the Letter;

Services means the Services as set out in the Scope of Work;

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

Variation has the meaning given in clause 4.1.