

## TERMS & CONDITIONS – MICHAEL FIELD

This agreement is between Michael Field Pty Ltd (A.C.N 132 831 157) (“**Michael Field**”) and the Client (“**Client**”) named to in the proposal prepared by Michael Field (the proposal prepared by Michael Field and these terms and conditions together form the ‘agreement’). If the Client is acting as trustee of any settlement or trust, then the Client enters into this agreement both in its personal capacity and as trustee of the relevant settlement or trust. In these terms and conditions, capitalised terms have the meaning given in clause 15.

### 1. Appointment and Term

The Client appoints Michael Field to provide the Services subject to the terms of this agreement. This agreement commences on a date that parties agree in writing as being the Start Date and will continue for the Term unless terminated earlier in accordance with this agreement.

### 2. Obligations

#### 2.1 Michael Field's obligations

Michael Field must, subject to this agreement, on a non-exclusive basis, perform the Services in accordance with this agreement and all reasonable and lawful directions given by the Client from time to time (which are not otherwise inconsistent with this agreement in any way).

#### 2.2 Client's obligations

The Client must while the Services are being supplied:

- provide Michael Field with all information in the Client's possession, power or control that Michael Field reasonably requires to perform the Services or any of its other obligations under this agreement;
- not unreasonably delay any action, approval, direction, determination or decision which is required of the Client under this agreement or for Michael Field to perform the Services; and
- actively engage with Michael Field and provide regular and constructive feedback on Michael Field's performance of the Services;
- without limiting any of the foregoing, notify Michael Field of any fact, matter or thing which comes to its attention which is material to the performance by Michael Field of the Services or any of its other obligations under this agreement;
- hold and maintain all required as well as appropriate and adequate insurances in relation to its business, taking into account the nature and operation of its business;
- if in connection with the supply of the Services, Michael Field is required to hold or maintain during the Term any Authorisation, then the Client must (at the Client's cost and expense) promptly procure the required Authorisation for Michael Field before the Services are supplied.

### 3. Services Fee, expenses and payment terms

The Client must pay Michael Field the Services Fee for the Services in the manner and subject to the payment terms specified in this agreement. If in connection with this agreement the Client is required to pay a deposit then the deposit will be specified in the proposal prepared by Michael Field and unless otherwise stated the deposit is non refundable. Michael Field may, in relation to the Services, issue the Client with a tax invoice at least monthly in relation to the Services Fee. The Client must pay the Services Fee within 7 days from the date of issue of the relevant tax invoice.

Michael Field may, without prejudice to its rights under this agreement and despite the provisions of any progress payment arrangement included in any proposal between Michael Field and the Client, invoice the Client in respect of any Services supplied at any time.

The Client must, in addition to the Services Fee reimburse Michael Field for any fees, charges or expenses reasonably incurred by Michael Field in supplying the Services. Michael Field will procure pre-approval from the Client in relation to any single fee, charge or expense that is greater than \$500.00 (or such other amount as is agreed between the Client and Michael Field from time to time). Michael Field is entitled to charge interest on the unpaid balance of any invoice not paid within 7 days from the date of its issue at the rate of 2% over the business overdraft (or equivalent) interest rate quoted by the Commonwealth Bank of Australia from time to time.

### 4. Representations and warranties

The Client represents and warrants to Michael Field that:

- (registration)** if it is a company, it is properly registered and validly exists;
- (power)** if it is a company, it has the power and the right to carry on its business, and to enter into and exercise its rights and perform its obligations under this agreement;
- (corporate authorisation)** it has taken the necessary corporate action to authorise its entry into and performance of this agreement (as well as the transaction contemplated by this agreement);
- (this agreement)** this agreement to which it is a party is valid, binding and enforceable against it in accordance with its terms;
- (solvency)** it is solvent and there are reasonable grounds to expect that, on execution of this agreement to which it is a party, it will continue to be able to pay all its debts as and when they become due and payable;
- (Authorisation)** except to the extent expressly disclosed to Michael Field in writing (in which case, the provisions of clause 2.2(f) apply) Michael Field is not, in connection with the supply of the Services, required to hold or maintain during the Term any Authorisation; and
- (required insurances)** it holds and maintains all required as well as appropriate and adequate insurances in relation to its business, taking into account the nature and operation of its business.

Each representation and warranty in this agreement is repeated on each day until the earlier of expiration of the Term or termination of this agreement.

### 5. Suspension

Should the Client fail to pay or cause to be paid any payment or any part thereof within 7 days from the date of issue of the relevant tax invoice, Michael Field may, without prejudice to its right to determine or terminate this agreement, suspend the Services. Michael Field may give notice of any suspension under this clause to the Client.

### 6. Termination

Either party may, by notice to the other party, terminate this agreement with immediate effect if:

- (failure to pay)** the other party fails to pay an amount when due in accordance with this agreement and, the other party does not pay the party within a further 7 days after the other party receives written notice from the party of the failure to pay the relevant amount;
- (obligation not complied with)** the other party fails to comply with any material obligation under this agreement (excluding in respect of clause 6(a)) and, if the failure is capable of remedy, it continues unremedied for 7 days after the other party receives a notice from the party of the failure;
- (non remediable default)** the other party does not comply with an obligation under this agreement, which is not capable of remedy; or
- (insolvency)** an Insolvency Event subsists in relation to the other party.

### 7. Confidentiality

#### 7.1 Confidentiality obligation

Each party must both during and after the later of the expiration of the Term or the termination of this agreement keep the Confidential Information of the other party confidential and agrees not to disclose the Confidential Information to any person except:

- for the purposes of this agreement including to that party's officers, employees or professional advisors who have a need to know for the purposes of this agreement (and only to the extent that each has a need to know) and are given access to the Confidential Information on a confidential basis on the same terms to that set out in this agreement; and
- subject to clause 7.2, to the extent a party is compelled by law (including under any tax law) to disclose any Confidential Information.

Despite any other provision to the contrary, Michael Field may for the purposes of promoting and marketing its business disclose to third parties the fact that the Client is or has been a 'client' of the business.



## 7.2 Permitted disclosure

If a party is required by law (including under any tax law) to disclose any Confidential Information to a person the relevant party must, where legally permissible, before doing so:

- (a) notify the discloser of the Confidential Information in writing setting out a description of the disclosure and the person to whom the disclosure is required to be made; and
- (b) give the discloser of the Confidential Information a reasonable opportunity to take any steps the discloser considers necessary or appropriate in order to protect the confidentiality of the Confidential Information; and
- (c) provide the discloser of the Confidential Information with reasonable assistance in order for the discloser to protect the confidentiality of the Confidential Information; and
- (d) notify the third person that the relevant information is the discloser's Confidential Information (if the discloser requests this to be done).

## 8. Non-compete

In this clause:

**engage** in means to carry on, participate in, provide finance or services, or otherwise be directly or indirectly involved as a shareholder, unitholder, director, consultant, adviser, contractor, principal, agent, manager, employee, beneficiary, partner, associate, trustee or financier.

**Prohibited Person** means, in relation to the Client any Related Body Corporate of the Client.

### 8.1 Covenants

The Client undertakes to Michael Field that it will not, and will procure that each Prohibited Person will not:

- (a) directly or indirectly interfere with the relationship between Michael Field and its employees, contractors or agents; or
- (b) induce or assist in the inducement of any employee, contractor or agent of Michael Field to leave that employment.

### 8.2 Duration of covenants

The undertakings in clause 8.1 begin on the date of this agreement and ends:

- (a) 2 years;
- (b) 1 year;
- (c) 9 months;
- (d) 6 months,

after the earlier of the expiration of the Term or termination of this agreement.

### 8.3 Interpretation

Clauses 8.1 and 8.2 have effect together as if they consisted of separate provisions, each being severable from the other. Each separate provision results from combining each undertaking in clause 8.1 with the period in clause 8.2. If any of those separate provisions is invalid or otherwise unenforceable for any reason, the invalidity or unenforceability does not affect the validity or enforceability of any of the other separate provisions or other combinations of those separate provisions of clauses 8.1 and 8.2.

## 9. GST

Words or expressions used in this clause 9, which are defined in the *A New Tax System (Goods and Services Tax) Act 1999 (Cth)* or, if not so defined, then which are defined in the *Competition and Consumer Act 2010 (Cth)*, have the same meaning in this clause. If a party (**Supplier**) makes a supply under or in connection with this agreement on which GST is imposed (not being a supply the consideration for which is specifically described in this agreement as **GST inclusive**):

- (a) the consideration payable or to be provided for that supply under this agreement but for the application of this clause (**GST exclusive consideration**) is increased by, and the recipient of the supply (**GST Recipient**) must also pay to the Supplier, an amount equal to the GST payable by the Supplier on that supply; and

- (b) the amount by which the **GST exclusive consideration** is increased must be paid to the Supplier by the GST Recipient without set off, deduction or requirement for demand, at the same time as the **GST exclusive consideration** is payable or to be provided.

If a payment to a party under this agreement is a reimbursement or indemnification, calculated by reference to a loss, cost or expense incurred by that party, then the payment will be reduced by the amount of any input tax credit to which that party is entitled for that loss, cost or expense.

## 10. Intellectual Property Rights

- (a) Michael Field owns all Intellectual Property Rights in the Michael Field Contract Materials. Unless Michael Field otherwise agrees, what it creates may be used by the Client for the matter for which it was created.
- (b) Subject to clause 10(a), the Client owns all Intellectual Property Rights in the Client Contract Materials. If the Client provides anything to Michael Field (for example, the Client Contract Materials or any other document or information for use in connection with the Services) the Client warrants that Michael Field's use of it will not infringe any other person's Intellectual Property Rights.

Each party shall report immediately to the other party any actual or apparent infringement of that party's Intellectual Property Rights by third parties, which come to its actual notice.

## 11. Indemnity

The Client indemnifies Michael Field including its directors, officers, employees, contractors and agents (together, the **Indemnified Parties**) against any Loss by the Indemnified Parties in respect of any of the following:

- (a) any negligent or wilful acts or omissions of the Client or its servants or agents; and
- (b) any breach by the Client of its obligations under this agreement.

The provisions of this clause 11 shall survive the termination or expiry of the Term of this agreement.

## 12. Australian Consumer Law

- (a) This clause 12 does not exclude or limit the application of any provision of any statute (including the Competition and Consumer Act 2010 (Cth)) ("**Australian Consumer Law**") where to do so would:
  - (i) contravene that statute; or
  - (ii) cause any part of this agreement to be void.
- (b) Subject to clause 12(a), Michael Field excludes all implied statutory guarantees, conditions, warranties except any implied statutory guarantee, condition or warranty the exclusion of which would contravene any statute or cause any part of this clause to be void ("**Non-excludable Condition**").
- (c) Subject to clause 12(a), Michael Field's liability to the Client for breach of any provision of this agreement or any Non-excludable Condition (other than an implied warranty of title) is limited, at Michael Field's option, to refunding the price of the Services in respect of which the breach occurred (except where the Client is a 'consumer' (as defined in section 4B of the Australian Consumer Law) in which case, Michael Field's liability is not limited under this clause).
- (d) Despite any other provision in this agreement to the contrary, Michael Field is not liable to the Client for:
  - (i) any damage, injury or loss to any person or property;
  - (ii) any Consequential Loss,

arising from or in any way connected with the provision or procurement of the Services.

## 13. Dispute resolution

Each party agrees not to commence court legal proceedings (except legal proceedings seeking interim or interlocutory relief) or arbitration in relation to any dispute relating to this agreement unless it has first attempted to resolve the dispute in accordance with the procedures as set out in this clause.

The dispute resolution procedure is as follows:



- (a) the party claiming that a dispute has arisen in relation to this agreement shall give the other party not less than 7 days written notice specifying in reasonable detail the nature of the dispute (which may or may not be given on a without prejudice basis) (**Dispute Notice**); and
- (b) within fourteen (14) days of receipt of the Dispute Notice (the **Resolution Period**), the parties must meet to hold discussions and negotiations in good faith (which may or may not be conducted on a without prejudice basis) in order to attempt to amicably resolve the dispute.
- (c) If following the expiration of the Resolution Period the parties are unable to resolve the dispute, then the provisions of this clause are of no further effect with respect to the particular dispute in issue.

Nothing in this clause limits the rights each party has to terminate this agreement in accordance with the terms of this agreement.

#### 14. General provisions

- (a) To the extent of any inconsistency or ambiguity between these terms and conditions and the proposal prepared by Michael Field, these terms and conditions will override the proposal to the extent of the inconsistency. For the avoidance of doubt, the Additional Conditions (if any) cannot override any of these terms and conditions.
- (b) During the Term of this agreement Michael Field must (at its own expense) enter into and keep current at all times adequate insurance in respect of its employees, including statutory workers' compensation insurance.
- (c) If either Party is required under this agreement to notify each other about anything, it must do so in writing.
- (d) A construction of this agreement that results in all provisions being enforceable is to be preferred to a construction that does not.
- (e) If, despite the application of paragraph 14(d), a provision of this agreement is illegal or unenforceable and it would be legal, enforceable and not have a contrary meaning if words were omitted, then those words are omitted and in any other case, the whole provision is severed and the remainder of this agreement continues in force. If the provision subsequently becomes legal and enforceable, the provision will be reinstated.
- (f) A consent or waiver by a party in relation to this agreement is effective only if in writing.
- (g) Nothing in this agreement will be construed or deemed to constitute a partnership, joint venture or employee, employer or representative relationship between the parties.
- (h) A variation of this agreement must be in writing and signed by or on behalf of each party to it.
- (i) The provisions of clauses 7, 8, 10 and 11 shall survive the termination of this agreement.
- (j) This agreement is governed by the laws of New South Wales and each party submits to the non-exclusive jurisdiction of the courts of New South Wales.

#### 15. Definitions and interpretation

In this agreement:

**Additional Conditions** means any additional conditions (if any) included in the proposal prepared by Michael Field.

**Authorisation** means any consent, authorisation, registration, filing, agreement, notarisation, certificate, permit, licence, approval, authority or exemption of granted or required by a Government Agency or required by any law. Where intervention or action of a Government Agency within a specified period would fully or partly prohibit or restrict something by law, Authorisation includes the expiry of that period without that intervention or action.

**Business Day** means a day in NSW that is not a Saturday, a Sunday or a gazetted public holiday in NSW.

**Client Contract Materials** means all things, materials and information, used, conceived, developed or generated by or on behalf of the Client, in connection with the Client's business, including the Services (including all inventions, software, databases, models, projections, drawings, plans, artwork, designs, logos, reports, proposal product disclosure documents and records).

**Confidential Information** means all information (whether or not it is described as confidential) in any form or medium concerning any past, present or future business,

operations or affairs of a discloser including, without limitation all information contained in this agreement, but excluding information that has come into the public domain other than by a breach of this agreement.

**Consequential Loss** means indirect or consequential loss or damage including in respect of loss of profits, loss of revenue, loss of anticipated profits, loss of opportunity, loss of contract or loss of any asset.

**Government Agency** means any government or governmental, semi-governmental, administrative, public, regulatory or judicial entity, body, department, commission, agency or authority.

**Insolvency Event** means, in respect of a party:

- (a) a person is or states that the person is unable to pay from the person's own money all the person's debts as and when they become due and payable;
- (b) a person is taken or must be presumed to be insolvent or unable to pay the person's debts under any applicable legislation;
- (c) an application or order is made for the winding up or dissolution or a resolution is passed or any steps are taken to pass a resolution for the winding up or dissolution of a corporation;
- (d) an administrator, provisional liquidator, liquidator or person having a similar function under the laws of any relevant jurisdiction is appointed in respect of a corporation or any action is taken to appoint any such person and the action is not stayed, withdrawn or dismissed within seven days;
- (e) a controller is appointed in respect of any property of a corporation;
- (f) a corporation is deregistered under the Corporations Act or notice of its proposed deregistration is given to the corporation;
- (g) a distress, attachment or execution is levied or becomes enforceable against any property of a person;
- (h) a person enters into or takes any action to enter into an arrangement (including a scheme of arrangement or deed of company arrangement), composition or compromise with, or assignment for the benefit of, all or any class of the person's creditors or members or a moratorium involving any of them;
- (i) a petition for the making of a sequestration order against the estate of a person is presented and the petition is not stayed, withdrawn or dismissed within seven days or a person presents a petition against himself or herself;
- (j) a person presents a declaration of intention under section 54A of the Bankruptcy Act 1966 (Cth);
- (k) anything analogous to or of a similar effect to anything described above under the law of any relevant jurisdiction occurs in respect of a person; or
- (l) a person stops or suspends payments to creditors generally.

**Intellectual Property Rights** means any and all industrial and intellectual property of any kind (whether or not in a material form) recognised anywhere in the world, including:

- (a) patents, trade marks, copyright (existing and future) and designs (whether registered or unregistered);
- (b) any application or right to apply for registration in respect of any of the rights described in paragraph (a) of this definition; and
- (c) eligible layout rights, database rights, software developments, rights subsisting, computer programs (including both source and object codes), processes, inventions, specifications, formulas, confidential information, know-how, research data, improvements in procedure, discoveries and any other similar rights.

**Loss** means a loss, claim, action, damage, liability, cost, charge, expense, penalty, compensation, fine or outgoing suffered, paid or incurred.

**Michael Field Contract Materials** means all things, materials and information, used, created, conceived, developed or generated by or on behalf of Michael Field (whether alone, or together with the Client or any of the Client's employees, agents or contractors), in performing the Services (including all inventions, software, databases, models, projections, drawings, plans, artwork, designs, logos, reports, proposals and records).

**Related Body Corporate** has the meaning given in section 50 of the Corporations Act.

**Services Fee** means, in relation to a Services, the service charge set out in the proposal prepared by Michael Field.

**Services** means services to be provided by Michael Field as set out in the proposal prepared by Michael Field.

**Start Date** has the meaning given in the as set out in the proposal prepared by Michael Field.

**Term** has the meaning given in the as set out in the proposal prepared by Michael Field.

In this agreement:

- (a) the singular includes the plural and vice versa;
- (b) words denoting any gender include all genders;
- (c) other grammatical forms of defined expressions have corresponding meanings;
- (d) a reference to a party to this agreement includes that party's successors and permitted substitutes and assigns;
- (e) if a reference to the Client includes two or more parties, then the obligations of the parties are, unless stated otherwise, joint and several;
- (f) a reference to a document or agreement includes that document or agreement as novated, altered, supplemented or replaced;
- (g) a reference to any thing includes any part of that thing and a reference to a group of things or persons includes each thing or person in that group;
- (h) references to clauses, schedules and annexures are references to clauses of and schedules and annexures to this agreement;
- (i) references to **persons** or words implying natural persons include bodies corporate, joint ventures, partnerships, trusts, associations, unincorporated bodies and Public Authorities;
- (j) a reference to any legislation or statutory instrument or regulation is construed in accordance with the *Acts Interpretation Act 1901* (Cth) or the equivalent State legislation, as applicable;
- (k) **including** and cognate expressions indicate what is included without limiting what may be included; and
- (l) headings are inserted for convenience and do not affect the interpretation of this agreement.

No provision or expression is to be construed against a party on the basis that the party (or its advisers) was responsible for the drafting of this agreement.