

1. Performance of the Services

- (a) S+S will carry out the Services during the Term generally in accordance with any program included in the Proposal or as otherwise agreed in writing by the parties.
- (b) If S+S is delayed in carrying out the Services for any reason other than S+S's default under this agreement the time for performance of any affected obligations will be rescheduled as reasonably required.
- (c) S+S will provide the Services during the Term using reasonable care, skill, and diligence in accordance with industry standards. However, the Client acknowledges and agrees that all advice, recommendations or information provided by S+S is strictly general in nature.
- (d) S+S does not represent, warrant or guarantee any specific or beneficial outcome, result or commercial success for the Client arising out of or in connection with the Services or any course of action recommended to or undertaken by the Client relating or pursuant to the Services.
- (e) The parties may agree at any time to vary the Services including any appropriate adjustment to the Fee and the Term. A Variation is not valid unless it is recorded in writing and details the adjustment to the Fee and the Term as applicable.

2. Obligations of the Client

- (a) The Client agrees to behave respectfully at all times when engaging with S+S in connection with the Services and S+S may immediately terminate this agreement on notice if the Client displays disruptive, abusive or inappropriate behaviour towards S+S or any third party participating in the Services.
- (b) The Client acknowledges that any benefits which may be realised from the Services will in part depend on the Client's commitment to the process including active participation, completion of tasks assigned and open and honest communication with S+S.
- (c) The Client must be available at the required times for performance of the Services but S+S will make reasonable efforts to reschedule any performance of the Services if the Client is unavailable due to unforeseen circumstances.
- (d) It is the responsibility of the Client to ensure that it has the appropriate technology to participate in the delivery of any Services at the required time. The Client must keep confidential and must not share with any one else any login, password or other credentials provided by S+S or are created by the Client which relate to the Services.

3. Confidential information and Copyright

- (a) The Client must keep confidential the details of this agreement, the Services and all information provided to it relating to the Services (**Confidential Information**) and not provide, disclose or use such Confidential Information except:
 - (i) with the prior written consent of S+S or if required by any law; and
 - (ii) to the extent the Confidential Information is in the public domain (other than by reason of the Client's breach of this agreement).
- (b) All documentation produced or provided by S+S and the Intellectual Property Rights in that documentation remains the property of S+S and can only be used by the Client strictly in accordance with this agreement.
- (c) The Client acknowledges that the material, content and deliverables provided to the Client by S+S as part of the Services are for the Client's personal or internal business use only and must not be shared, distributed, sublicensed or disclosed to any third party without the prior written consent of S+S.

4. Insurance

S+S maintains:

- (a) *professional indemnity insurance* with a limit of cover of \$1 million each claim and \$2 million in the annual aggregate in relation to breach of professional duty; and
- (b) *public and products liability insurance* with a limit of cover of \$20 million each and every occurrence.

S+S will provide the Client with a copy of the applicable certificate of currency for the above insurances promptly upon written request.

5. Payment

- (a) The Client must make payment to S+S of the Fee and any reimbursable costs in accordance with the Proposal and payment of the Start Up Payment is a condition precedent to any obligation on S+S to provide the Services.
- (b) The Client acknowledges that in entering into this agreement and paying the Start Up Payment the Client is reserving access to the Services which may not subsequently be able to be reassigned or recovered by S+S. Except at the discretion of S+S or as required by law, all Fees (including the Start Up Payment) are non-refundable once paid regardless of the participation or usage by the Client of the Services.
- (c) The Client must pay interest at the rate of 10% per annum on any overdue amount from the day after the payment is due until the day payment is made.

6. GST

- (a) In this clause, any expression used that is defined in GST Legislation has that defined meaning.

- (b) If the supply of goods or services by one party (**Supplier**) to another party (**Recipient**) under this agreement is a taxable supply, then the amount due to the Supplier for that supply is increased by the amount of GST payable by the Supplier.
- (c) The Recipient's obligation to pay to the Supplier the amount by which consideration is increased under this clause is subject to provision of a tax invoice conforming with the requirements of GST Legislation.
- (d) If a party becomes liable for any penalties or interest as a result of a late payment of GST, where that late payment is as a direct result of a failure of another party to comply with the terms of this clause, that other party must pay to the first party an additional amount on demand equal to the amount of those penalties and interest.

7. Termination

- (a) S+S may immediately suspend the Services if payment is not made by the Client on the due date.
- (b) Either party (**first party**) may terminate this agreement by written notice to the other (**second party**) if the second party:
 - (i) is, subject to (ii), in breach of the agreement and the breach continues for more than 10 Business Days after the first party gives the second party written notice requiring it to rectify the breach;
 - (ii) is in breach of an obligation to pay the other party money and that breach continues for more than 5 Business Days after the first party gives the second party written notice requiring payment to be made; or
 - (iii) is insolvent, cannot pay its debts when they fall due or has an administrator or liquidator appointed or a controller (as defined in section 9 of the *Corporations Act 2001* (Cth)) appointed over any property.

8. Disputes

- (a) Either party may give a notice in writing to the other giving formal notice and details of a dispute between the parties (**Notice of Dispute**).
- (b) Representatives of the parties having authority to settle the dispute must meet (as a condition precedent to commencing proceedings) to attempt to resolve the dispute within 21 days after service of the Notice of Dispute. If the representatives cannot do so within 42 days after the issue of a Notice of Dispute, either party may commence court proceedings in respect of the dispute.
- (c) Nothing in this clause prevents a party from commencing proceedings to enforce payment due under this agreement or to seek injunctive or urgent declaratory relief.
- (d) For the period any dispute, the parties obligations under this agreement are suspended.

9. S+S's liability

- (a) To the maximum extent permitted at law S+S's liability to the Client under or in connection with this agreement or the Services (whether arising under contract, tort (including negligence), equity, statute or otherwise):
 - (i) for actual or anticipated loss of profit or revenue, for loss of business opportunity or contract, for additional finance costs or loss of reputation or special, indirect or economic loss is excluded; and
 - (ii) other than as excluded under (i) is limited to the greater of:
 - (A) the Fee paid by the Client to S+S for the Services; and
 - (B) the amount recovered by S+S under any insurance policy described in clause 4.
- (b) The Client releases S+S from all liability (and has No Claim against S+S) on and from the date which is three months after the earlier of completion of the Services and the end of the Term.
- (c) S+S's liability to the Client under or in connection with this agreement or the Services is limited to the extent that S+S directly caused or contributed to the liability.

10. Generally

- (a) Capitalised terms not defined in this clause have the meaning given to them in the Details.
- (b) **Business Day** means any day that is not a Saturday, Sunday or gazetted public holiday in Brisbane.
- (c) **Fee** means the fee payable for the performance of the Services as set out in the Proposal, adjusted if at all under this agreement.
- (d) **GST Legislation** means the *A New Tax System (Goods and Services Tax) Act 1999* (Cth) and **GST** means any form of goods and services tax payable under it.
- (e) **include** or **including** are not words of limitation.
- (f) **Intellectual Property Rights** includes all rights, title and interest, together with all statutory and common-law rights attaching thereto in any patents, copyright, design, invention, eligible layout rights or discovery in any medium.
- (g) **No Claim** means no claim for costs, expenses, loss or damage or other relief on any basis whatsoever whether under this agreement, otherwise at law or in equity.
- (h) **Proposal** means the proposal issued by S+S to the Client for the Services which is referenced in the invoice for the Start Up Payment or any part of the Fee.

- (i) **Services** means the services to be carried out by S+S as described in the Proposal.
- (j) **Start Up Payment** means the start up payment set out in the Proposal.
- (k) **Term** means the period of time for the provision of the Services as set out in the Proposal.
- (l) A party cannot waive a right or benefit under this agreement except expressly in writing to the other party.
- (m) To the extent permitted by law, including under the *Competition and Consumer Act 2010* (Cth) and equivalent Queensland legislation, all express or implied warranties, representations or guarantees not expressly stated in this agreement are excluded.
- (n) These terms cannot be varied except by writing signed by both parties.
- (o) This is the entire agreement between the parties about the Services and supersedes any other agreement or negotiations between the parties.
- (p) A provision of these terms must not be construed to the disadvantage of a party merely because that party was responsible for the preparation of these terms or the inclusion of the provision.
- (q) This agreement is governed by the laws of Queensland and the parties submit to the jurisdiction of the courts of Queensland and the Commonwealth of Australia.
- (r) The Client may not assign, novate or otherwise deal with this agreement without the prior written consent of S+S.
- (s) Where any of these terms or conditions are void, illegal or unenforceable, they may be severed without affecting the enforceability of the other terms.
- (t) This agreement may be executed in any number of counterparts or by electronic signature. All counterparts taken together constitute one instrument.
- (u) Where the parties sign this agreement by electronic means, the parties agree that they have each consented to the agreed method of execution and may not subsequently challenge the validity of this agreement on the grounds of consent or effectiveness of the chosen method of execution.