

STANDARD TERMS AND CONDITIONS

1. This Agreement

This Agreement is a contract between us. It sets out the terms and conditions on which we will provide the Services to you. Where there is any inconsistency between the Letter and the Terms, the Letter will prevail. Where the Letter is addressed to more than one Addressee, each Addressee is a party to, and is bound by, the Terms of this Agreement. We will treat you as having accepted this Agreement if you continue to instruct us after you receive it.

2. Term

This Agreement starts on the date you sign and return the Letter to us or when we first start work on the Services for you, whichever is first. Unless it is terminated earlier, this Agreement terminates when we have completed providing the Services to you and you have paid us our Fees.

3. Our Services

We will provide the Services to you in accordance with this Agreement and with the degree of skill, care and diligence, expected of a professional providing services of the same kind.

We will use all reasonable efforts to complete the Services within any agreed time frame.

4. Our Team

We will use reasonable efforts to ensure that our Representatives names in the Letter are available to provide the Services. However, if we need to, we may replace or reassign any Representative at any time on reasonable notice to you.

Each of us agrees that, during the term of this Agreement and for a period of six months after it ends, neither of us will directly or indirectly solicit for employment any Representative of the other who is involved with the Services. However, both of us may advertise or recruit generally in the media.

5. About Ashdale

We are a licensed Security Firm under the *Security Providers Act 1993* and a member of the National Security Association, an approved Security Industry Association under the Queensland Office of Fair Trading.

6. Confidentiality

Each of us agrees to protect and keep confidential any Confidential Information that is given to us by the other.

Except as set out in this Agreement or where both of us agree otherwise in writing, we will only use or disclose your Confidential Information to provide Services to you.

Either of us may disclose any Confidential Information to the extent that it is required to be disclosed by Law, order of any court, tribunal, authority or regulatory body.

A party disclosing any Confidential Information must where practical and to the extent permitted by Law, notify the other of the requirement to disclose and only disclose the minimum Confidential Information required to comply with the Law or requirement.

We will return your information to you at any time at your request. We may also destroy it if you ask us to. However, we are entitled to retain a copy of any Information you provide to us or which forms part of our Work or our Working Papers, provided that we will continue to keep this Information confidential in accordance with this Agreement.

7. Personal Information and Privacy

We may collect Personal Information about your Representatives, your clients or others when we provide the Services to you. If we do, you agree to work with us to ensure that we both meet any obligations we may each have under the *Privacy Act* including, where relevant, notifying the individual to whom the Personal Information relates of who we are and how we propose to use their information. Where you provide us with any Personal Information, you confirm that you have collected this Personal Information in accordance with the *Privacy Act*, that you are entitled to provide this Personal Information to us and that we may use and disclose this Personal Information for the Purpose.

We will handle Personal Information in accordance with the *Privacy Act*.

8. Intellectual Property

Unless we agree otherwise, we will retain ownership of the Intellectual Property in our Work. We give you a royalty-free, non-exclusive, perpetual, world-wide licence to use and reproduce any Reports, for the Purpose for which the Report was prepared and any related incidental internal purposes in accordance with the terms of this Agreement.

We agree we can use your logos and marks on our Work, unless you tell us otherwise.

9. Our Work

Our Work is for your exclusive use and must be used only by you and only for the Purpose.

Unless we give our Consent:

- a. Our Work must not be used or disclosed for any other purpose or made available to any other person, except your Professional Advisers and Auditor;
- b. Our Work and the Services may not be relied on by anyone other than you; and
- c. You must not name us or refer to us, our Work or the Services in any written materials (other than to your Professional Advisers and Auditor), or any publicly filed documents, except as required by Law.

You may provide a copy of our Report to:

- a. Your professional Advisers and Auditor provided that you ensure they are aware of the limits placed on the use of our Report by this Agreement, including that they may not rely on the report. The use of our Report is only to advise you in relation to the Services and for the Auditor only to refer to it in conducting the Audit. The report is treated as confidential; and
- b. Any person who is acceptable to us, with our Consent, but only where that person has first executed an agreement provided by us.

We are not responsible to anyone (apart from you) who is provided with or obtains a copy of our Work without our Consent.

If we give you our Work in draft form or orally, we do so only on the basis that you may not rely on it in that form. Accordingly, we will not be responsible if you or anyone else relies on our draft Work or oral comments or advice.

You acknowledge that the final or signed copy of our Report is the definitive version.

Sometimes, circumstances may change after we have provided our final Work to you; unless we agree with you otherwise, we will not update any final Work we have provided to you.

You acknowledge that any use or reliance on our Work that is contrary to this Agreement may expose us to a claim from someone with whom we have no relationship or whose interests we have not considered in providing the Services.

Accordingly, you agree to indemnify us against any Loss we may suffer or incur in respect of any claim or action by a third party that arises as a result of:

- a. Any use or distribution of, or reliance on, our Work that is contrary to the terms of this Agreement or a Consent; or
- b. Any access to, or use of our Work, by any of your Professional Advisers or Auditor.

This indemnity does not apply to any Loss incurred in defending a claim or action by a third party:

- a. That results from any wilful misconduct or fraudulent act or omission by us;
- b. Where that third party has signed an agreement with us that provides that it can rely on our Work; or
- c. Where we have agreed in writing that our Work may be included in publicly available documents.

10. Our Fees

The fees and the basis on which they are calculated are set out in this Agreement. We may review the Fees where:

- a. An Unexpected Delay occurs;
- b. There is a change in the scope of the Services we agreed to provide to you; or
- c. You do not accept this Agreement within three months of the date of the Letter.

You agree to pay us the Fees for the Service in accordance with this Agreement.

Unless we state otherwise, our Fees exclude GST. You agree to pay any GST imposed on us, now or in the future in relation to this Agreement. Where GST is payable on any taxable supply made under this Agreement, you agree that the Fee payable for this supply will be increased by an amount equivalent to the GST payable by us in respect of that supply.

We will charge you at cost for any expenses we incur in providing the Services to you. For example, we will charge you for any costs for travel associated with the Services or for goods or services we buy on your behalf. We will tell you what these expenses are before we incur them if they are anything other than incidental.

Unless we agree with you otherwise, we will use business class (or equivalent) for travel overseas and between the east and west coasts of Australia, and economy class for travel within the rest of Australia.

We will invoice you monthly in arrears for the Fees (unless we agree with you otherwise) and you agree to pay our invoice within 7 days of receiving it. You agree to pay any undisputed portions of an invoice even if there is a dispute between us about that invoice or another invoice. Where amounts remain due and unpaid we may charge you interest at an annual rate of 2% over the Bank Bill Swap Rate published in the Australian Financial Review on the date payment is due.

Without limiting any other rights we may have, we are entitled to suspend or terminate the Services, in whole or part, or to retain or withhold any Information we may hold in relation to the Services or any Work we have done for you if you do not pay our invoices on time.

11. What you agree to do

You agree to cooperate with us and provide us with all reasonable and necessary assistance so that we can provide the Services to you. This includes providing us with timely and reasonable access as appropriate, to your premises, facilities, Information and Representatives.

In addition to any responsibilities you may have that are set out in the Letter, you are responsible for:

- a. The performance of your Representatives;
- b. Making timely decisions in connection with the Services;
- c. Designating a competent employee to oversee the Services;
- d. Evaluating the adequacy of the Services, as they have been described in the Letter, for your particular purposes and needs;
- e. Providing us with accurate and complete Information. Where any Information that we require in order to provide the Services is to be provided by someone else, you are responsible for ensuring that Information is provided to us. You will need to give us all Information that is relevant to the Services, even if the same Information has been given to us previously during another engagement; and

- f. Updating any Information where there has been a material change to that Information, including telling us if any of your circumstances change during the course of the Services.

You acknowledge that:

- a. The Services may include advice and recommendations, but all decisions in connection with that implementation of such advice and recommendations will be your responsibility, and made by you;
- b. Our ability to provide the Services depends on you meeting your responsibilities under this Agreement and instructing us or responding to our requests in a timely and effective manner; and
- c. We are entitled to and will rely on Information provided by you, the decisions you make and any approvals you give.

12. Our responsibility to you

Where the Law requires it, our liability to you will not be limited. In all other cases, our aggregate liability to you for any Loss or causes of action arising in relation to this Agreement, including for negligence, is limited as set out below:

- a. Where a scheme approved under Professional Standards Legislation applies, in the manner provided by that scheme; or
- b. Where a scheme or the Professional Standards Legislation does not apply, to the amount that is the lesser of ten times our Fees and \$20 million.

In either case, we will be liable to you only for that proportion of the total Loss that we have caused or to which we have contributed.

We will not be liable for any Loss, or failure to provide the Services, which is caused by an Unexpected Delay or which arises as a result of us relying on any false, misleading or incomplete Information.

Neither of us shall be liable to the other for any Consequential Loss.

The limit of liability set out above applies to all Addressees as a group. It is up to you to agree how the limit is allocated between you. You agree not to dispute the limit if you are unable to agree on how it will be allocated between you.

Please contact us if you require a copy of a scheme.

13. Your Feedback

We value your feedback. We aim to obtain, either formally or informally, a regular assessment of our performance. If you wish to make a complaint, please refer to the Complaints Management Policy available on our website (www.ashdale.com.au) or write to us (admin@ashdale.com.au).

14. Unexpected Delay

We are not responsible to you or anyone else for any failure in providing the Services caused by an Unexpected Delay. We will tell you if there is a delay that will affect the Services and the cause of the delay, if known. You acknowledge that this Agreement will be varied to include any change to the scope of the Services, the Fees or the timeframes for completion of the Services if any delay requires it.

If we are required to perform additional services because of an Unexpected Delay, then this Agreement will also be varied to include those additional services and any additional Fees that apply.

15. Conflict of Interest

We have relationships with many clients. This means that after this Agreement starts we may identify circumstances that could cause us to have a conflict of interest. If this happens, we will evaluate the potential conflict and, depending on the circumstances, apply appropriate safeguards to manage it. For example, we may notify you of a relationship that causes us a conflict and ask for your consent to continue to provide you with the Services. However, you acknowledge that we may need to terminate this Agreement if we are unable to resolve or manage a conflict of interest satisfactorily.

16. Insurance

We will maintain appropriate insurance in relation to the Services, including Professional Indemnity insurance in an amount of not less than \$10 million during the term of this Agreement and for a period of seven years after it ends.

17. Termination

Either of us may terminate this Agreement:

- a. At any time by giving the other 30 days written notice; or
- b. Immediately if the other suffers an Insolvency Event, is unable to pay all of its debts as and when they become due and payable, suspends payment of such debts or otherwise ceases to carry on business; or

- c. Immediately if the other commits any material breach of this Agreement that is either incapable of being remedied or is not remedied within 14 days of receipt of a notice requiring the breach to be remedied.

We may terminate this agreement if:

- a. You fail to meet your obligations under this Agreement including to pay our Fees within the time specified or to provide us with adequate information or instructions; or
- b. There is a change of circumstances beyond our reasonable control (such as auditor independence or regulatory related developments) that prevents us from providing the Services to you.

If this Agreement is terminated:

- a. You agree to pay us the Fees for any work we have done and any expenses we have incurred up to the date of termination;
- b. Where relevant, each of us will return to the other any documents or property of the other, except that we may retain one copy of all Information to allow us to satisfy our professional obligations and record keeping requirements;
- c. The termination does not affect any accrued rights of either of us or any provision of this Agreement that continues to apply.

The provisions of this Agreement that survive its termination include those relating to *About Ashdale, Confidentiality, Intellectual Property, Our Work, Our responsibility to you, Insurance, Dispute Resolution and Disclosure of Tax Advice*

18. Dispute Resolution

Each of us agrees to use reasonable endeavours to resolve any dispute that arises in connection with this Agreement by mediation before bringing a legal claim or starting legal proceedings against the other.

Nothing in this clause, *Dispute Resolution* prevents either of us from seeking any equitable relief in relation to our rights under this Agreement.

19. Relationship between the parties

We are engaged as an independent contractor. Neither of us is an agent or representative of or has the authority to bind the other. Neither of us will act or represent ourselves, directly or by implication, as an agent of the other or in any manner assume or create any obligation on behalf of, or in the name of the other. This Agreement is not intended and will not be taken to constitute a partnership, agency, employment, joint venture or fiduciary relationship between us.

20. Entire Agreement

This Agreement is the entire agreement between us for the Services. It supersedes all prior communications, negotiations, arrangements and agreements, either oral or written between us in relation to its subject matter.

Any changes to this Agreement must be agreed to in writing by both of us.

21. Assignment

Neither of us may transfer, assign or novate this Agreement without the Consent of the other. However, we may assign this Agreement to any entity in Ashdale or any successor to our business.

22. Electronic Communication

Each of us agrees that we may communicate with each other electronically. You acknowledge that electronic transmissions are inherently insecure, can be corrupted or intercepted, may not be delivered and may contain viruses. Neither of us is responsible to the other for any loss suffered in connection with the use of e-mail as a form of communication between us.

23. Severability

If any of the terms of this Agreement are not legally enforceable then the term or the relevant part of it will be either amended as appropriate to make it enforceable or ignored, but in all other respects this Agreement will have full effect.

24. Governing Law

This Agreement is governed by the Laws of Queensland and each party irrevocably submits to the jurisdiction of the courts exercising jurisdiction in that State.

25. General

A waiver by one of us of a breach by the other party of any term of this Agreement does not operate as a waiver of another term or a continuing breach by the other of the same or any other term of this Agreement.

To the extent permitted by Law, we disclaim all warranties, either express or implied, in relation to the Services and the Work other than any written warranty made in the Terms.

The rights and remedies in this Agreement are cumulative and not exclusive of any rights or remedies provided by Law.

26. Reading this Agreement

In this Agreement:

- a. Headings are for convenience only and do not affect how this Agreement is interpreted;
- b. The singular includes the plural and conversely;
- c. If a word is defined its other grammatical forms have a corresponding meaning;
- d. The use of words such as *includes* or *including* to introduce a list does not limit what may be included in that list;
- e. The word person includes an entity, a form, a body corporate; an unincorporated association or an authority;
- f. A reference to this Agreement or an act or instrument is to this Agreement, or that act or instrument as amended, varied, novated or replaced from time to time;
- g. A reference to dollar or \$ means Australian dollars;
- h. A reference to an Annexure or clause or subclause is to an Annexure to, or clause or subclause in this Agreement;
- i. An Annexure forms part of this Agreement; and
- j. If there is any conflict between these Terms and any other part of this Agreement, the following order of priority will apply:
 - i. The Letter;
 - ii. The Annexure; and
 - iii. The Terms.

27. Definitions

In this Agreement the following words have the meanings set out below:

Addressee means each person to whom the Letter is addressed and includes, where relevant, any additional parties who may agree to the terms of this Agreement.

Agreement means the Letter and the Terms.

Annexure means a document which is annexed or attached to the Letter and identified as an annexure of attachment to it and includes a schedule, appendix or attachment to the Letter.

Ashdale means the Ashdale entity or entities entering into the Agreement as identified in the Letter.

Audit means an audit under the Corporations Act 2001 (Cth) or an equivalent Law, conducted in accordance with relevant auditing standards.

Auditor means an auditor who is appointed to conduct an Audit of you.

Confidential information means and includes:

- a. The terms of this Agreement and the details of the Services;
- b. Any information or material which is proprietary to or deemed to be proprietary to a party;
- c. Any Intellectual Property and methodologies and technologies that:
 - i. You use in your business and to which we are exposed in the course of providing the Services; or
 - ii. We use to provide the Services;
- d. Any information designated as confidential by either of us;
- e. Any Work we provide to you; and
- f. Any information acquired by either of us solely as a result of this Services,

but excludes any information that:

- a. Is or becomes publicly available, except by a breach of this Agreement;
- b. Is disclosed to either of us by a third party provider that the recipient reasonably believes the third party is legally entitled to disclose such information;
- c. Was known to either of us before we received it from the other;
- d. Is developed by either of us independently of any disclosures previously made by the other;
- e. Is disclosed with the other's Consent; or
- f. Is required to be disclosed as contemplated by subclause 6.3

Consent means prior written consent which may be granted at the consenting party's discretion and which may be subject to conditions.

Consequential Loss means any loss or damage which is indirect, consequential, special, punitive, exemplary or incidental, including any loss of profit, revenue, anticipated savings or business opportunity, or damage to goodwill however caused or arising as a result of the Services of this Agreement.

Fees means the fees for the Services as stated in, or calculated in accordance with, this Agreement.

GST has the meaning given to it under *A New Tax System (Goods and Services Tax) Act 1999* (Cth)

Information means any information, documents, materials, facts, instructions or Confidential Information provided to us by you or your Representatives or anyone else at your request.

Insolvency Event means and includes:

- a. The making of an arrangement, compromise or composition with, or assignment for the benefit or, one or more creditors of a party;

- b. The appointment of administrators, liquidators, receivers, a bankruptcy trustee or analogous person to, or over, all or part of a party's business, assets or securities;
- c. An application being made, or a resolution being proposed, which seeks to effect such an appointment other than for a solvent reconstruction; and
- d. The existence of a legislative presumption of insolvency in relation to a party.

Intellectual Property means all industrial and intellectual property rights throughout the world and includes rights in respect of copyright, patents, trade marks, designs, trade secrets, know-how, our Confidential Information and circuit layouts.

Letter means the engagement letter between us to which the Terms are attached.

Loss means any losses, liabilities, claims, damages, costs or expenses (including interest where applicable and Consequential Loss), judgements or orders however caused or arising as a result of the Services of this Agreement.

Personal Information has the meaning given to it in the Privacy Act.

Privacy Act means the Privacy Act 1988 (Cth).

Professional Advisors means your Lawyers or other professional advisers, such as your accountant, who are advising you in relation to the Services.

Professional Standards Legislation or **Legislation** means a Law providing for the limitation of occupational liability by reference to schemes that are formulated and published in accordance with that Law.

Purpose has the meaning given to it under the Letter or our Work, or where both are silent on this, the purpose for which we provide our Work to you.

Report has the meaning given to it in the Letter or where the Letter does not set out a specific report, means any final form documents, reports or deliverables we provide to you as a result of the Services or this Agreement including those consisting of advice or opinions.

Representative means any officer, employee, consultant, agent, contractor or either of us, who is involved in the activities to which this Agreement relates and in the case of Ashdale, includes a partner.

Services means the services described in the Letter.

Tax Advice means any advice, whether written or oral, relating to tax, tax structuring or tax treatment provided by us as a result of the Services but excludes any tax due diligence Work which we prepare as a result of the Services.

Terms means these standard terms and conditions.

Unexpected Delay means any delay in providing the Services that is caused or contributed to by an act or event (including the non-performance of your obligations) that is beyond our control or was not reasonably foreseeable by us at the date of this Agreement.

us means Ashdale, or both you and Ashdale, as the context requires.

we and **our** means Ashdale and, where applicable as the context requires, the members of Ashdale and any of their Representatives.

Work means any advice or materials including any reports, documents, advice, opinions, e-mails, notes or other deliverables, whether in draft or final form, in writing or provided orally, that we prepare either alone or in conjunction with you or provide to you as a result of this Agreement and includes and Reports and excludes our Working Papers or any source code.

Working Papers means any files or working papers created by us as our record of the Services, in any form.

you and **your** means each Addressee, and where applicable as the context requires, each Addressee's Representative.