

**Provider** means Hopscotch Accounting Pty Ltd ATF Hopscotch Accounting Trust (ABN 92 899 497 533) of Level 1, 4/2-4 Merton Street, Sutherland NSW 2232, contactable on admin@haccounting.com.au.

**Client** means **Head Client** as defined in the engagement letter.

*Capitalised terms throughout this document are defined at the end of the document.*

## 1. Client entities

The Letter may describe more than one Entity. Each Entity engages Provider on the basis of this document and is bound by the Agreement. Entities are jointly and severally liable to pay Provider's accounts, regardless of which Entity those accounts are addressed to, and regardless of which Entity received the benefit of the work performed by Provider.

During the provision of the Services, a new entity may notify Client in writing of its addition as a new Entity. Provider is not obligated to provide Services to such an entity, but upon the provision of Services by Provider, such an entity will be deemed a new Entity for the purposes of the Agreement.

## 2. Professional disclosure

By entering the Agreement, Client agrees and acknowledges that Provider has communicated the document at Annexure A entitled "Clients' rights and obligations under the taxation laws" and that Client has read this document.

## 3. Agreement length

If the Letter describes a Minimum Period, the Agreement will bind the parties for the length of the Minimum Period. At the end of a Minimum Period, the Agreement will bind the parties for another Minimum Period with rolling term renewals. At the end of each Minimum Period, the Agreement will automatically renew for another Minimum Period unless a party to the Agreement gives the other party 30 days notice of cancellation.

## 4. Fees

Client will pay Provider the dollar amount(s) set out in the Letter in exchange for the Work Scope. On renewal of each minimum period the fees will increase by 5%.

## 5. Accounting services

Client agrees to the terms of the document entitled "[Our Service Terms](#)" provided by Provider.

## 6. Payment method

Client will pay Provider:

- the fees for the Services on the dates described in the Letter; and
- in accordance with the payment method described in the Letter.

## 7. Failure to pay

If Client fails to pay any amount due under the Agreement for more than 7 days, Provider may immediately, at its discretion:

- charge Client interest at 10% p.a. calculated daily; and
- suspend the provision of any part of the Services to Client.

## 8. Supplier control

Client agrees that parts of the Services are controlled by third party contractors, including:

- payment services; and
- software suppliers.

## 9. Setup

Provider is responsible for the setup and installation of the Services, except for the responsibilities of the Client described in the Letter.

## 10. Intellectual property protection

Provider reserves the right to alter any element of the Product IP at its discretion.

Client agrees not to reverse engineer any part of the Product IP.

No licence or right is granted over any Intellectual Property Rights in the Product IP unless explicitly described in the Agreement.

Client does not have any right to resell or sub-licence the Product IP unless the Agreement explicitly provides otherwise.

If Client provides Feedback to Provider, Client assigns all current and future Intellectual Property Rights of the Intellectual Property Rights in the Feedback (and any resulting enhancements to the Service) to Provider.

Client warrants and represents to Provider that it has the right to transfer the Intellectual Property Rights under this section.

Client agrees to do all things necessary to give effect to the assignment of Intellectual Property Rights in this section.

Client warrants that it will give and obtain any Moral Rights waivers and consents necessary to ensure Provider can deal in the Intellectual Property Rights in the Feedback in accordance with this clause without infringing Moral Rights.

## 11. Confidentiality

### *General obligation of confidentiality*

Client may disclose Confidential Information to Provider at the discretion of Client.

Provider agrees to keep the Confidential Information strictly confidential.

### *Permitted disclosures*

Provider may disclose Confidential Information to professional advisors, employees, agents, software suppliers and contractors.

Provider is also permitted to disclose Confidential Information if:

- the disclosure is necessary to enforce the Agreement;

- the disclosure is required by law or a binding order of a government agency or court, but Provider must not make such a disclosure without first notifying Client and giving Client a reasonable opportunity to object to the disclosure.

- Provider must comply with Client's reasonable requests with regard to any permitted disclosure.

## 12. Privacy

Provider will store and use the Personal Information of Client in accordance with Provider's Privacy Policy.

Client is responsible for its own compliance with privacy law. Provider does not promise that any use of the Services by Client complies with any privacy law.

## 13. Data rights

Ownership of the Data remains with Client.

Client provides an Irrevocable, transferrable, sub-licensable, perpetual royalty free and global licence over the Data to Provider in order to provide the Services and meet any other obligation under the Agreement.

Client warrants that Provider's legitimate exercise of the licensed Intellectual Property Rights for the purpose described above will not infringe the rights of any third party.

Client warrants that it will give and obtain any Moral Rights waivers and consents necessary to ensure Provider can use the Intellectual Property Rights for the purpose described above without infringing Moral Rights.

## 14. Data backup

Provider does not offer backups of Data as a component of the Service.

Only Client is responsible for backup of the Data.

## 15. Claim limits

Provider's liability is limited by a scheme approved under Professional Standards legislation.

To the extent that Provider's liability is not limited under Professional Standards legislation, Client deals with Provider in respect of the Services at its own risk. To the fullest extent permitted by law, Provider excludes all liability (including Consequential Loss) to Client for any liabilities connected directly or indirectly with the Client and Provider dealings in relation to the Services, including liabilities based on:

- contract law;
- tort law; or
- legislation,

and including liabilities caused by any of the risks described below.

**Digital risks**, including:

- failure of any software, hardware or network components provided by a third party;
- software or hardware that's inaccessible for any reason;
- faulty or lost data associated with the Services;
- digital security issues like software vulnerabilities and malware; and
- software in a testing phase like (or analogous to) beta and alpha software.

**Consulting risks**, including:

- reliance on advice or opinions communicated by Provider in whatever form;
- faulty technical advice or data; and
- failure to provide correct information or opinions.

**Risks relating to the Agreement**, including:

- any act or omission connected with the Agreement;
- breaches of the Agreement;
- the termination of the Agreement; and
- any delay in the provision of the Services.

## Implied Conditions

To the fullest extent permitted by the law, all terms and conditions implied by any other source of law in relation to dealings between Provider and the Client in respect of the Services are excluded from the Agreement.

## Compulsory Conditions

to the fullest extent permitted by the law, Provider's liability to the Client for breaching a Compulsory Condition in relation to the Services is limited to:

In a case where a breach is deemed to be a breach in respect of services:

- the resupply of the relevant services; or
- payment of a sum equal to the cost of resupplying the relevant services.

Provider will choose which of these options will apply.

## 16. Covering costs

To the fullest extent permitted by the law, Client indemnifies Provider and its directors, employees, agents and assigns, for all Costs suffered by them, however caused, in connection with each of the risks below.

#### **Risks on data**, including:

- Client's breach of any privacy law;
- Client's breach of any law in connection with spam;
- Client's storing of any third party data on the Services;
- a third party pursuing a right conferred by privacy law; and
- any legal action taken by a third party alleging intellectual property infringement by Client in connection with the Services.

#### **Risks relating to the Agreement**, including:

- Client's breach of the Agreement;
- any negligent act of Client connected with the Services;
  
- third party reliance on the Services under a contract with Client; and
- Client's use of the Services in connection with unlawful activity.

The Indemnities are subject to the application of any Non Excludable Laws. To the fullest extent permitted by the law, the parties exclude the application of Proportionate Liability Laws to the Indemnities.

#### **Scope of Indemnity**

Provider must use reasonable endeavours to mitigate any Cost that arises that is subject to an Indemnity.

#### **Separate indemnities**

Each risk described above will give rise to a separate indemnity in relation to that risk on the terms and conditions in this document.

#### **Indemnity details**

Any Indemnity created by the Agreement:

- will survive the termination of the Agreement; and
- will be additional to any contractual damages that Provider might otherwise be entitled to claim.

Provider may make a claim under any Indemnity before any liability is crystallised, loss sustained or cost incurred.

#### **17. Agreement changes**

Provider may change the Agreement by notifying Client in writing 10 days before the end of a renewing term, and the changes will take effect in the next term.

If Client does not agree to the Agreement changes, Client must cease using the Services before that next term begins.

#### **18. Cancellation for breach**

Either party may cancel the Agreement immediately if:

- a party notifies the other party of an Agreement breach; and
  - \* 7 days after the breach notification, the Agreement breach is not remedied.
  - \* Either party may also immediately cancel the Agreement if the other party becomes insolvent.

#### **19. Cancellation for convenience**

Provider may end the Agreement without giving reasons with 7 days of written notice. Client agrees that this is reasonable given the number of agreements of a similar nature that Provider has with other parties.

Where the Break Fee is applicable, Client may end the Agreement without giving reasons if it pays the Break Fee.

#### **20. End agreement**

##### *Inconsistency*

The terms in this document take precedence over the terms in the Letter to the extent of any inconsistency.

##### *Jurisdiction*

The governing law of the Agreement will be New South Wales, and the parties agree that this state will be the exclusive jurisdiction for any proceedings under the Agreement.

##### *Communications*

The parties may send Communications to other Agreement parties using the email addresses listed in the party details section of the Agreement.

##### *GST*

Client will be liable for all duties and taxes connected with the Agreement, including any tax incurred under GST Law.

##### *Independent Parties*

The parties enter the Agreement intending to be completely independent of each other, and not as a party to a joint venture, partnership or agency agreement.

##### *Further assurances*

The parties agree to do everything required to give full effect to the Agreement.

##### *Entire agreement*

The Agreement and any other document incorporated by reference constitute the entire legal agreement. The parties agree that they have not relied on any representation or statements outside the terms of the Agreement.

##### *Electronic signature*

The Agreement may be executed or entered into electronically.

##### *Counterparts*

The documents constituting the Agreement may be executed in multiple counterparts. The counterparts will be read as one legal document.

### *Waiver*

No right or obligation under the Agreement will be waived unless the waiver is explicitly waived in writing.

### *Severance*

Any unenforceable or invalid term of the Agreement will only be severed to the extent of the unenforceability or invalidity without affecting any other term in the Agreement.

### *Binding on successors*

The Agreement is binding on each party's successors and permitted assigns.

### *Agreement expenses*

The parties will cover their own expenses in preparing the Agreement documents.

## **21. Interpretation**

Unless the terms and conditions of the Agreement explicitly state otherwise, the Agreement will be interpreted as follows:

### *Parties*

- a reference to a party includes that party's permitted assigns, administrators, successors, executors, legal representatives and any novated party;

- any reference to a trustee includes any substituted or additional trustee;

### *Grammatical Forms*

- unless used for the usual grammatical purpose, inverted commas around a term indicate industry jargon that will be interpreted according to how that term would be understood by an individual with expertise in the relevant industry;

- "including", "includes" or any derivation of those words does not limit the matter in question to the things specifically mentioned in the applicable context;

- where a term is defined, other grammatical forms of that term will be taken to have the same meaning;

- headings are for convenience and will not affect interpretation;

- words in the singular will be taken to include the plural and also the opposite;

- "\$" means the Australian dollar;

### *Document References*

- a reference to a document will be to that document as updated, varied or amended;

- a document referenced by the Agreement will not take precedence over the referencing document;

- when any kind of legislative instrument is referenced, the reference will be taken to be that instrument as updated or substituted for by the legislative body in any way;

- Where a "URL" is mentioned, the non-operation of the "URL" will not render the rights and obligations associated with it invalid;

- any referenced digital resource may be replaced with another digital resource that is a "copy" of the original resource;

### *Rights and Obligations*

- a reference to a party's conduct includes omissions as well as acts;

- if a party is described as having discretion in a matter, the discretion in that matter will be interpreted as sole and absolute; and

- where a party is required to do "anything necessary", this includes executing agreements and other legal instruments.

## **22. Definitions**

### *Agreement*

means the agreement arising between the parties in accordance with this document and the Letter.

### *Break Fee, Break Fees*

means the amount of money stipulated in the Letter if the Client chooses to terminate the Agreement before the end of the Minimum Period.

### *Communication, Communications*

means any contractual communication in connection with the Agreement.

### *Compulsory Condition, Compulsory Conditions*

means any term or condition that by law cannot be limited or excluded.

### *Confidentiality Obligations*

means the obligations regarding Confidential Information that are set out in this document.

### *Confidential Information*

means all information:

- disclosed by Client to Provider; or

- which otherwise becomes to be known by Provider,

that could reasonably be regarded as confidential to Client, and includes information relating to:

- technology, processes, products, inventions or designs used or developed by Client;

- trade secrets and know-how; and

- commercially sensitive information.

### *Consequential Loss*

means any kind of consequential or indirect loss like loss of profits, pure economic loss or loss of opportunity.

### *Cost, Costs*

means any costs, expenses, losses, damages, claims, demands, proceedings, and other liability.

### *Data*

means any data or information conveyed to the Service or Provider by Client.

### *Entity, Entities*

means any entity listed in the Letter as a Client.

#### *Excluded Services*

means the work that does not form part of the Work Scope described in the section of the Letter entitled "Out of Scope".

#### *Feedback*

means any comments or suggestions on the Service by Client resulting from use of the Services by Client.

#### *GST Law*

means the A New Tax System (Goods and Services Tax) Act 1999 (Cth).

#### *Intellectual Property Rights*

means, with the exception of moral rights and other inalienable rights, all right, title and interest, in each of the following in Australia and throughout the world, whether registered, unregistered or pending registration, and whether conferred by statute, common law, equity or otherwise:

- copyright;
- trade marks;
- trade names, brand names or indications of source, appellation or origin;
- inventions including patents, utility patents, patent applications, utility patent applications, and utility models;
- circuit layout designs;
- registered or unregistered designs;
- rights in databases;
- topography rights;
- design rights;
- plant variety and plant breeder rights;
- domain name registrations;
- confidential information, trade secrets, and know how;
- any other intellectual property as defined in Article 2 of the Convention establishing the World Intellectual Property Organisation of July 1967;
- any application for the registration of any of the above, and any rights to make such an application;
- any right to take action to enforce any of the above rights; and
- any licence from a third party to use any of the above.

#### *Indemnity, Indemnities*

means any indemnity created via the terms and conditions of this document.

#### *Moral Rights*

means the rights commonly referred to as "moral rights", such as the right of attribution, which are recognised in the jurisdiction of the Agreement.

#### *Letter*

means the engagement letter sent to the Client on or around the date of this document by Provider.

#### *Minimum Period*

means a minimum length of time Provider will render the Services to the Client if described in the Letter.

#### *Non Excludable Laws*

means any condition, warranty or guarantee that the law does not permit to be excluded (such as the consumer guarantees under the Competition and Consumer Act 2010 (Cth)).

#### *Personal Information*

means any information that is categorised as "personal information" under privacy law.

#### *Privacy Policy*

means Provider's privacy policy published at <https://www.haccounting.com.au/privacy-policy/>

#### *Product IP*

means the Intellectual Property Rights in the Services provided by Provider.

#### *Proportionate Liability Laws*

means legislative provisions that apportion liability for Costs between parties in cases where more than one party caused the Cost, but which parties are permitted by law to contract out of, including the provisions in the following legislation:

*Civil Liability Act 2002 (NSW);*  
Law Reform (Contributory Negligence and Apportionment of Liability) Act 2001 (SA);

- Civil Liability Act 2002 (Tas);

- Wrongs Act 1958 (Vic);

- Civil Liability Act 2002 (WA);

- Civil Law (Wrongs) Act 2002 (ACT); and

- Proportionate Liability Act 2005 (NT).

#### *Service, Services*

means:

- tax agent services;
- accounting services;
- virtual accounting department services;
- business advice;
- advice on software use;

rendered by Provider to Client.

#### *Term*

means a time period of 12 months.

#### *Work Scope*

means Provider's scope of work as described in the Letter, which does not include Excluded Services.