

## TERMS AND CONDITIONS OF ENGAGEMENT

### 1 ENGAGEMENT

- 1.1 These provisions set out the standard terms and conditions of engagement of Rowe Partners Certified Practicing Accountants, its partners, controlled companies and its employees, representatives, and agents (collectively referred to as "Rowe Partners"). The Engagement Letter and these terms and conditions, including any written variation (together called "this Agreement") will apply to all work to be performed for the Client. Rowe Partners will provide the services as described in the Engagement Letter or as otherwise agreed (the "Services").
- 1.2 This Agreement constitutes the entire agreement between Rowe Partners and the Client. Where there is any inconsistency between the Engagement Letter and these terms, the Engagement Letter shall prevail. The Client acknowledges that any special purpose for which the Client requires the Services has been recorded in these documents and that it is not acquiring the Services for any other purpose.
- 1.3 The Client acknowledges that Rowe Partners is engaged under this Agreement as an independent contractor.
- 1.4 In the event that any of the terms of this Agreement are or at any time become invalid, void illegal or unenforceable, that particular term will be severed from this Agreement and the remainder shall survive unaffected.
- 1.5 The offer contained in the Engagement Letter may only be accepted by the Client by written confirmation within 28 days from the date of issue, unless otherwise indicated, if not the offer shall lapse.
- 1.6 In the event that the Engagement Letter is addressed to persons other than or in addition to the Client, including related entities of the Client, ("**Addressees**") then as well as agreeing to these terms on its own behalf, the Client enters into this Agreement as the agent for each of the Addressees. The Client warrants that it has the authority to do so.

### 2 CLIENT OBLIGATIONS

- 2.1 The Client agrees to pay for the Services described in the Engagement Letter on the basis set out in the Engagement Letter.
- 2.2 You and your staff are responsible for the accuracy and completeness of the details and information you provide to us and disclosure of all material and relevant information. This includes informing us of any change in your circumstances and advising us of any subsequent event which may affect the accuracy and completeness of the information provided.
- 2.3 We may ask questions of you regarding the information provided. You are responsible for providing accurate and complete responses to our questions within a reasonable time. This should not be taken as meaning that we will verify the accuracy and completeness of the information provided.
- 2.4 The taxation law provides you with "safe harbors" from penalties for incorrect or late returns if you provide "all relevant taxation information" to us in a timely manner. Failure to discharge the responsibilities described above may mean that you are not eligible for that "safe harbor" protection.

### 3 ROWE PARTNERS OBLIGATIONS

- 3.1 We will advise you of your rights, obligations and options available to you under taxation laws. We may also provide you with advice on the application of taxation laws, including any possible

penalties and other consequences to enable you to make an informed decision of the course of action that may be taken.

- 3.2 Taxation laws change frequently. All advice will be based on the current law at the time the advice is provided. It is your responsibility to obtain updated advice in relation to actual or proposed transactions entered at a later time.
- 3.3 We will act in your best interests at all times, subject to the overriding requirement that we must comply with the law. For example, we would be unable to lodge a tax return for you that we knew to contain a false or misleading statement.
- 3.4 Our firm's quality control procedures have been established and maintained in accordance with APES 320 – Quality Control for Firms and, as a result, our files may be subject to review under the CPA Australia quality control review program. By accepting our engagement, you acknowledge that, if requested, our files relating to this engagement will be made available under this program. We will advise you if this should occur.
- 3.5 We may collect Personal Information about your representatives, your clients and others when we provide services to you. If we do, you agree to work with us to ensure that we both meet the obligations that we each may have under the Privacy Act 1988 (Cth) (as amended) (**Privacy Act**). The obligations may include notifying the relevant person to whom the personal information relates who we are and how we propose to use their personal information. Where you have collected personal information, you confirm that you have collected the 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 the personal information for the purpose/s we provide our services to you. We will handle personal information in accordance with the Privacy Act.

#### 4 CONFLICT OF INTEREST

- 4.1 Prior to entering the engagement and during the engagement we will attempt to ensure there is no conflict of interest.
- 4.2 You must immediately advise us if, during the engagement you become aware of any conflict of interest or potential conflict of interest or there is a change of circumstances which may result in a conflict.
- 4.3 If a conflict of interest does arise during the engagement, we will take appropriate steps to resolve the conflict as agreed by all parties involved and permitted by law.

#### 5 UNAVOIDABLE DELAYS

- 5.1 Rowe Partners shall not be liable for any failure or delay in providing the Services if that failure caused, or contributed to, by an act or event (including the non-performance of the Client's obligations) that is beyond the control of Rowe Partners or was not foreseen at the time of entering into this Agreement. Rowe Partners will advise the Client of the delay and cause. Rowe Partners shall be entitled to review its fees where such delays occur.

#### 6 SPECIFIED ENGAGEMENT PERSONNEL

- 6.1 The Client acknowledges that:
  - 6.1.1 Rowe Partners has an interest in retaining its employees for the purposes of carrying on its business.
  - 6.1.2 All of the persons who are, at the commencement of Rowe Partners' engagement by the Client, employed by Rowe Partners ("**the Employees**") have agreed with Rowe Partners that they will not be employed by, solicit or provide services to any person who, during the Employee's employment, was a current or former client of Rowe Partners.
- 6.2 The Client agrees that the Client will not solicit Employees who have been assigned to perform the Services for the Client to work for the Client or to otherwise procure or encourage any Employee to breach the Employee's contractual obligations with Rowe Partners whether or not the Client has

notice of the same. The Client's obligations pursuant to this clause continue for a period of 6 months following the end of Rowe Partners' engagement by the Client.

- 6.3 The Client may request in writing that Rowe Partners provide details as to a particular employee's contractual obligations to Rowe Partners insofar as they are relevant to the matters referred to in clause 6.2. Rowe Partners shall not be under any obligation to provide information in response to such a written request but, if it does not do so within 21 days then clause 6.2 will cease to apply that time not apply to any obligations of the employee of which the Client does not have actual or constructive notice.
- 6.4 In the event that the Client breaches clause 6.2 by procuring an employee of Rowe Partners to work for the Client in a role which involves the employee performing the same or similar duties to the duties performed by the employee while working with Rowe Partners, then without limiting any other remedies, the Client shall be liable for liquidated damages equal to 25% of that employee's annual remuneration when last employed by Rowe Partners.
- 6.5 Notwithstanding anything else in this clause 6, the Client will not have breached clause 6.2 by:
  - a) offering employment to an employee of Rowe Partners where the duties to be performed by the employee will be performed outside South Australia and where there is no substantial connection between the employee's employment by the Client and the state of South Australia;
  - b) offering employment to non-accounting employees of Rowe Partners;
  - c) any action done in relation to an employee whose employment has been terminated by Rowe Partners;
  - d) allowing a third party to provide Services to the Client where that third party has, without the Client's knowledge or encouragement, employed a former employee of Rowe Partners.
- 6.6 Where as part of our engagement, the services of an external consultant or expert are required, an estimated cost and timeframe involved will be provided to you for approval.

## **7 USE OF REPORT AND ADVICE**

- 7.1 All communication by Rowe Partners with the Client, its employees or agents, whether written or oral are provided solely for the use of the Client in connection with the engagement, and shall not be used for any other purpose or referred to in any document or made available to any other person (except the Client's lawyers or other professional advisors assisting in the engagement or as required by law) without Rowe Partners' prior written consent.
- 7.2 Where the Client requests to receive any report or correspondence electronically which contains opinions or advice, Rowe Partners will not be responsible for any unauthorised copying, interception, interference or delivery failure of the transmission. Rowe Partners also does not warrant that the electronic transmission is free of malicious software or that it will not harm the Client's computer systems. The Client agrees that it is responsible for taking precautions to ensure the integrity of its computer systems.
- 7.3 Written advice and final reports shall take precedence over any oral advice and interim reports. Rowe Partners is not responsible for updating any opinions, advice or reports subsequent to the issue of a final version.
- 7.4 The Client acknowledges that Rowe Partners will rely upon information provided to it by the Client in preparing documents pursuant to this Agreement.

## **8 PROFESSIONAL FEES AND PAYMENT TERMS**

- 8.1 The Client agrees to pay any tax or other charge imposed on Rowe Partners (now or in the future) in relation to any transactions arising in connection with, or as an outcome of, this Agreement. This includes (but is not limited to) any goods and service tax ("GST") imposed under the *A New Tax System (Goods and Service Tax) Act 1999 (Commonwealth)* as amended. Any fees charged by Rowe Partners under this Agreement will be initially calculated exclusive of GST. Where GST is payable

on any supply provided under this Agreement, the Client agrees that the fee payable for this supply will be increased by an amount equivalent to the GST applicable to that supply.

- 8.2 If it is necessary for Rowe Partners to terminate the engagement for the reasons set out in the Engagement Letter or for any other reason that Rowe Partners considers justifies termination, Rowe Partners shall be entitled to its fees incurred up to the engagement termination date. Rowe Partners will be entitled to charge for such time as its staff reasonably spend in bringing the engagement to an end, including notifying third parties of the end of the engagement and returning documents to the Client.
- 8.3 Expenses, including travel and subsistence, and goods and services purchased on the Client's behalf, are charged at cost. For travel, Rowe Partners standard policies apply which are to use economy class within Australia.
- 8.4 Rowe Partners will be entitled to require payments on invoicing once significant amounts of time have been incurred. Invoices are payable within 14 days of receipt except where the Engagement Letter states otherwise. The Client agrees to indemnify Rowe Partners for its legal or debt collection costs incurred in recovering any overdue amounts from the Client or otherwise enforcing its rights under this Agreement.
- 8.5 Long Term outstanding accounts may result in a "stop work" notice being issued. All outstanding work in progress will be billed at this time.
- 8.6 It is our requirement that the owners/directors of the business personally guarantee the payment of all accounts for professional fees, including out of pocket expenses rendered by us from time to time.

## **9 RETENTION OF RECORDS**

- 9.1 The final Financial Statements, and any other documents which we are specifically engaged to prepare, together with any original documents given to us by you, shall be the property of you. Any other documents brought into existence by us including general journals, working papers, the general ledger, draft financial statements and copies of tax returns, will remain our property at all times.
- 9.2 We will store accounting records that we hold on your behalf for a period of seven years after the applicable balance date. At the end of that period the records will be destroyed using a secure document destruction service.

## **10 CONFIDENTIALITY AND PRIVACY**

- 10.1 Rowe Partners may wish to obtain publicity for work undertaken on behalf of its clients. Permission to attribute work for a client publicly will always be obtained in advance. Notwithstanding this condition, Rowe Partners assumes the right to use references in proposals or other similar submissions made to other prospective clients, unless the Client expressly prohibits such disclosure.
- 10.2 Save as set out above or as required by law, Court or arbitration proceedings, regulations including those made under the Corporations Act, professional duty, or as is requested by regulatory authorities, or as is necessary to protect its own legitimate interests, Rowe Partners shall not disclose any confidential information relating to the Client which it obtains during the course of the engagement to any other person (except its own advisors).
- 10.3 In carrying out the engagement it may be necessary for Rowe Partners to obtain from the Client's records personal and sensitive information about employees of the Client or of other persons connected with the Client's business. The Client will make those persons aware that Rowe Partners has this information and the reasons for its collection and possible disclosure to Government or other body in carrying out the engagement. This authority is given on the understanding that Rowe

Partners will only deal with that information in accordance with its Privacy Policy and the National Privacy Principles under the Privacy Act (Cwth).

- 10.4 We utilise a cloud service provider Xero, to prepare your bookkeeping, payroll, BAS, financial statements and/or tax returns. The storage of your data through Xero is held on services located in the United States of America. Xero take seriously the protection of your data, you may read their Privacy Policy and what they do to protect your information at [www.xero.com/au/about/terms/privacy](http://www.xero.com/au/about/terms/privacy).
- 10.5 Where the outsourced service requires the disclosure of personal information to an overseas recipient a consequence of your consent is that Rowe Partners will be required to take reasonable steps to ensure that the Australian Privacy Principles are complied with by the overseas recipients of the Personal Information.
- 10.6 We also utilise a cloud service provider SuiteFiles, to store all documentation we receive and create relating to you and your business. The storage of your data through SuiteFiles is held on servers located in Australia. You can read their Privacy Policy at [www.suitefiles.com/about/privacy](http://www.suitefiles.com/about/privacy).

## **11 COPYRIGHT AND INTELLECTUAL PROPERTY**

- 11.1 Unless otherwise agreed, Rowe Partners retains copyright (and all other intellectual property rights) in all material provided to the Client or otherwise generated in the course of carrying out the engagement.
- 11.2 Rowe Partners retains copyright (and all other intellectual property rights) in, and the Client shall keep confidential, any methodologies and technology used by Rowe Partners to carry out an engagement.

## **12 LIMITATION OF LIABILITY**

- 12.1 The Client agrees that for all loss or damage sustained by the Client in relation to this Agreement or the provision of the Services by Rowe Partners that to the extent permitted by law the liability of Rowe Partners is limited to an amount equal to three times its fees (exclusive of GST) rendered for providing the Services. This limitation applies to any liability of Rowe Partners however arising, including (without limitation) liability arising under the Australian Consumer Law or Corporations Act 2001 (Cwth). This limitation is subject to the further limitations on the liability of Rowe Partners contained in clauses 12.4 and 12.6 below.
- 12.2 To the extent that clauses 12.1, 12.4 and 12.6 do not apply, in the event a liability for damages exceeding \$500,000 arises under this Agreement, the liability of Rowe Partners and its employees is limited to:
  - (a) \$500,000 (Where a multiple of 10 times the reasonable charge for the services Rowe Partners provides to the Client is less than \$500,000); or
  - (b) 10 times the reasonable charge for the services Rowe Partners provides to the client (Where a multiple of 10 times the reasonable charge of those services is more than \$500,000), to a maximum of \$20 million under the Professional Standards Act 1994 (NSW) ("PSA") or if applicable any similar legislation in any other jurisdiction in which Rowe Partners operates including without limitation the Professional Standards Act 2004 (SA) and the Accountants' Scheme approved under the Act.

If the Client requires further information or a copy of the Act or Scheme, please contact Rowe Partners.

- 12.3 To the extent that clauses 12.1, 12.4 and 12.6 do not apply and the PSA does not apply, the Client agrees that Rowe Partners liability, including without limitation liability for negligence, to the Client in respect of all causes of action arising in connection with the provision of the services under this engagement, shall be limited to the sum which would be payable if the PSA did apply.
- 12.4 Subject always to the aggregate limit of liability specified in clauses 12.1, 12.2 or 12.3 above, the liability of Rowe Partners in relation to this Agreement of the provision of the Services shall be limited to that proportion of the total direct and indirect loss and damage (including costs and

interest) that is attributable to the extent of responsibility of Rowe Partners for such loss and damage. The Client agrees that to the extent that any loss or damage suffered by the Client is attributable to fault, negligence or lack of care on the Client's part, or on the part of any person for whom the Client is responsible (including other advisors to the Client), Rowe Partners and its employees have no liability (in tort, contract or otherwise) for such loss or damage.

- 12.5 Where there is more than one Addressee, the limit of liability specified above will have to be allocated between the Addressees. It is agreed that such allocation will be entirely a matter for the Addressees, who shall be under no obligation to inform Rowe Partners of it, provided always that if (for whatever reason) no such allocation is agreed, no Addressee shall dispute the validity, enforceability or operation of the limit of liability on the ground that no such allocation was agreed.
- 12.6 Nothing in this clause shall seek to exclude, restrict or modify the application of any provisions of the Act. In the event that Rowe Partners breaches a consumer guarantee pursuant to the Australian Consumer Law then to the extent permitted by law the liability of Rowe Partners for that breach shall be limited, at the option of Rowe Partners, to:
- a) supplying the Services again; or
  - b) paying for the cost of the Services being provided again.
- 12.7 The limit of the liability of Rowe Partners applies in respect of any direct or indirect loss, however caused, excluding willful misconduct, which the Client may suffer under this Agreement. The limit of the liability of Rowe Partners applies to any liability for negligence arising from the breach of an express or implied term of this Agreement, or from the breach of a common law duty of care, including any duty of care which arose during the negotiation of this Agreement.
- 12.8 Rowe Partners shall not be liable for any loss suffered by the Client as a result of Rowe Partners withholding documents from the client on the incorrect but honestly and reasonably held belief that Rowe Partners was, or was likely to, have the right to retain those documents due to a breach of this Agreement by the Client, including non-payment of fees.
- 12.9 Our liability is limited by a scheme approved under Professional Standards Legislation. Further information on the scheme is available from the Professional Standards Council's website <http://www.psc.gov.au>.

### 13 INDEMNITIES

- 13.1 The Client agrees to indemnify Rowe Partners against all liabilities, claims, costs or expenses incurred by Rowe Partners in respect of any claim or action by any party other than the Addressee in connection with the provision of the Services. This indemnity does not apply to any liabilities, costs or expenses incurred in defending a claim by a third party which results from any willful misconduct by Rowe Partners, except when the Client is in breach of this Agreement.
- 13.2 The Client indemnifies Rowe Partners against any claim which is made against Rowe Partners by an Addressee who has relied upon any document prepared by Rowe Partners to the extent that the claim could not have been made if these terms were binding on the Addressee.
- 13.3 The Client agrees to indemnify Rowe Partners against all liabilities, claims, costs or expenses incurred by Rowe Partners as a result of a breach of this Agreement by the Client.
- 13.4 Rowe Partners shall not be liable for any losses, damages, costs or expenses arising out of errors due to the provision to it of false, misleading or incomplete information or documentation or due to any acts or omissions of any other person. The Client indemnifies Rowe Partners from any liability it may have to the Client or any third party as a result of any information supplied to Rowe Partners by the Client or any of its agents, where such information and documentation is false, misleading or incomplete in a material respect.

#### **14 TERMINATION**

- 14.1 In addition to any other right to terminate this Agreement, if the Client is in breach of this Agreement and, having been given 7 days written notice of the breach, has failed to remedy the breach, the party giving the notice may terminate this Agreement.
- 14.2 Either Rowe Partners or the Client may terminate this Agreement by written notice if the other is wound up in insolvency, has a liquidator appointed, has an administrator appointed to manage its affairs or has a receiver or receiver and manager appointed in respect of any of its properties.
- 14.3 In relation to any subsequent termination of our services, you are advised that we shall be entitled to retain all documents belonging to you and any related parties we act for until payment is received in full for all outstanding fees.

#### **15 COMPLAINT PROCEDURES**

- 15.1 It is Rowe Partners' aim to obtain, either formally or informally, a regular assessment of Rowe Partners performance and Rowe Partners will always be pleased to hear any suggestions as to how our service can be improved. If you wish to make a complaint, please call or write to Rowe Partners. If you are dissatisfied with the way your complaint is handled, you can report the matter to the CPA Australia.

#### **16 WAIVER AND VARIATION**

- 16.1 The failure or leniency by Rowe Partners to enforce any right arising out of this Agreement shall not be deemed to be a waiver of such right. A waiver of any right by Rowe Partners is effective only if made in writing.
- 16.2 No variation of this Agreement shall be binding unless recorded in writing.

#### **17 GOVERNING LAW AND JURISDICTION**

- 17.1 The agreement shall be governed and construed in accordance with the law of South Australia. Each party irrevocably and unconditionally submits to the nonexclusive jurisdiction of the Courts of South Australia for determining any disputes or proceedings arising out of or in connection with this Agreement.
- 17.2 We will conduct the services listed in the Engagement in accordance with the relevant professional and ethical standards issued by the Accounting Professional Ethical Standards Board (APESB) and the Tax Agent Services Act 2009. Our services are limited to those listed. If we are requested to provide other specific service(s) they will be the subject of a separate engagement letter and thus a separate fee.