

MIP Professional Services Agreement Terms and Conditions

These Professional Services Terms and Conditions are referred to in the MIP Quotation or Order Form signed by the Client, and apply to the Services detailed in that MIP Quotation or Order Form.

BETWEEN

The Client named in the MIP Quotation or Order Form (hereinafter referred to as “the Client”)

AND

MIP (Aust) Pty Ltd ABN 21 111 378 968 of Level 10, 275 George Street, Sydney NSW 2000, Australia, (hereinafter referred to as “the Service Provider”)

The parties agree from the date of this Agreement as follows:-

1. DEFINITIONS AND INTERPRETATION

1.1 Definitions

“**Agreement**” means this Professional Services Agreement and the MIP Quotation or Order Form, or any Statement of Work executed between the Client and the Service Provider.

“**Confidential Information**” means the terms of this Agreement and of any other agreement between the Service Provider and the Client, any software (including source code), all documentation, information relating to the business or financial affairs of either party or the Client's customers and any information, document or item which is designated by either party as confidential or relates to the Service Provider or the Client and is not in the public domain;

“**GST Act**” means A New Tax System (Goods and Services Tax) Act 1999 and related legislation and/or regulations;

“**Intellectual Property Rights**” means copyright, trade mark, design, patent, trade secret, Confidential Information, semiconductor or circuit layout rights;

“**Proprietary Software**” means all software owned, licensed or developed prior to or outside of the scope of the Services by the Service Provider;

“**Services**” means the services specified in any Statement of Work or the MIP Quotation or Order Form

“**Service Fee**” means the service fee specified any Statement of Work or the MIP Quotation or Order Form

“**Service Location**” means the address where the services are to be carried out specified in any Statement of Work or the MIP Quotation or Order Form

“**Statement of Work**” if a separate Statement of Work is required, this means an agreement between the Service Provider and the Client that specifies Services, Service Fees, Service Location, or any other pertinent conditions to the provision of Services, which once executed becomes a part of this Agreement

“**Standard Rates**” means rates charged by the Service Provider for the provisions of Services pursuant to this Agreement, as varied from time to time by notice to the Client.

1.2 Interpretation

The parties acknowledge and agree that business may be undertaken by the electronic exchange of information and the provisions of this Agreement will be read and construed to give effect thereto.

2. SERVICE PROVIDER'S OBLIGATIONS

2.1 The Service Provider agrees to supply the Services to the Client from the Commencement Date specified in any Statement of Work or the MIP Quotation or Order Form as agreed between the parties, according to the conditions of this Agreement.

2.2 The Services will be provided by the Assigned Consultants (specified in any Statement of Work or the MIP Quotation or Order Form) at the Service Location specified, or other consultants of equivalent skill as agreed with the Client.

2.3 The Service Provider must, in carrying out the Services:

- (a) comply with all law and statutory requirements and codes applicable to the Services;
- (b) comply with the Client's directions, procedures and policies including those relating to access and security;
- (c) perform the Services with the professional skill, care and diligence that would be expected of a professional consultant experienced in providing services similar to the Services; and
- (d) not do or omit to do anything in the performance of the Services which causes any loss of or damage to property of the Client or the Client to incur any liability to a third party.

2.4 The Service Provider must, at all times and for the term of this Agreement, maintain the insurance policies specified in the Statement of Work (which forms part of this Agreement), or otherwise acceptable to the Client.

2.5 Warranties

The Service Provider warrants that:-

- (a) it is entitled to enter into this Agreement and perform its obligations under this Agreement;
- (b) there are no actions, claims, proceedings or investigations pending or threatened against it or by it which may have a material effect on the subject matter of this Agreement;
- (c) it will provide and maintain appropriate resources to enable it to fulfil its obligations under this Agreement; and
- (d) it will at all times comply with any applicable Laws, and Regulatory and Industry Requirements.
- (e) The work that is provided under this Agreement is warranted for a period of 30 days from date of delivery of the work (usually the end of the Iteration). Issues that are caused by errors in the deliverables built by the Service Provider will be rectified at no cost during this time. Issues that arise due to incorrect communication of business rules and / or requirements can be rectified at any time but are not covered by warranty.

3. CLIENT'S OBLIGATIONS

The Client acknowledges that the Service Provider in providing services is acting at the Client's direction. Where a design statement or specifications are agreed by the parties the Client must determine whether they will meet the Client's business requirements.

4. PAYMENT

4.1 Payment/Invoices

- (a) The Client will promptly pay the Service Fee for Services to the Service Provider upon the dates set out in any Statement of Work or the MIP Quotation or Order Form and if not so specified then 30 days in arrears. Invoices will be sent monthly as the services are provided.

MIP Professional Services Agreement Terms and Conditions

4.2 Service Fees & Expenses

Unless otherwise stated in any Statement of Work, “Day” means an 8.0 hour day between 8.30 am and 5.30 pm, excluding weekends and public holidays. The hourly rate is the daily rate divided by 8.0. Consulting Services are subject to a minimum purchase of 1 day. The Client will reimburse the Service Provider at cost for expenses reasonably incurred in the course of providing the Services. Such expenses will not be incurred without prior approval of the Client.

4.3 Interest on Overdue Amounts

If any amount payable to the Service Provider under this Agreement has not been paid by the Client within 30 days of the due date for payment and is not subject to any dispute, the Service Provider may charge interest on the amount outstanding (at the rate of 7.5% per annum broken down into monthly charges) from the due date for payment until such time as full payment of the outstanding amount is made by the Client.

5. INTELLECTUAL PROPERTY

5.1 Upon receipt by the Service Provider of payment in full of the Service Fee, and any agreed additional charges, the Service Provider assigns to the Client a non-exclusive royalty-free perpetual license, for use only by the Client, to all software and supporting documentation developed and delivered as part of the Services but excluding Proprietary Software.

6. CONFIDENTIALITY

6.1 Except as required by law, each party must keep confidential and not disclose without the prior written consent of the other party any and all Confidential Information to any person, except to its employees, contractors and agents necessary for the purposes of this Agreement and who have first undertaken to keep the Confidential Information confidential and not to use it except for the purposes of this Agreement.

7. LIABILITY

The liability of the Service Provider to the Client for a breach of this Agreement or for any statutory causes of action, common law or tort (including negligence) in any way arising from this Agreement will be limited to the following extent:

7.1 The Service Provider agrees to defend Client and Client’s directors, officers, employees and representatives against and pay and bear all direct costs of doing so incurred by the Service Provider and all judgments, costs as adjudicated or awarded and/or settlement amounts resulting from the claims to the extent those claims arise from breaches by MIP of its obligations under this Agreement

7.2 The Service Provider will not be liable for any indirect lost profit or revenue, exemplary damages, deletion or corruption of electronically or digitally stored information, or without limiting the foregoing, any indirect or consequential loss or damage howsoever described or claimed;

7.3 The Client will indemnify the Service Provider and keep the Service Provider indemnified against all and any demands, claims, actions and proceedings whatsoever and howsoever arising made by any third person in connection with or arising out of the Client’s use of the Services and all and any losses, costs, expenses and damages whatsoever and howsoever incurred by the Service Provider in connection with or arising out of a breach by the Client of any provision of this Agreement, provided the service provider has not been negligent or contributed to the loss or breach;

MIP Professional Services Agreement Terms and Conditions

7.4 Nothing in this Agreement excludes, restricts or modifies any condition, warranty, right or remedy which is conferred on the Client by statute. Where the Service Provider breaches a condition or warranty which has been implied by statute, its liability for breach will be limited to (where permissible by statute):

- a) in the case of the supply of goods: the replacement of the goods or the supply of equivalent goods, or the repair of the goods, or the payment of the cost of replacing the goods or of acquiring equivalent goods, or the payment of the cost of having the goods repaired; and
- b) in the case of the provision of services: the supplying of the services again, or the payment of the cost of having the services supplied again;

whichever the Service Provider sees fit to provide.

7.5 The rights and remedies which the Client has under this Agreement are in addition to all the rights and remedies which it has under statute.

8. TERM AND TERMINATION

8.1 Term and Termination

- a) This Agreement commences on the date of the last signature on the MIP Quotation or Order Form and terminates on the successful completion of the Services unless otherwise terminated by this Clause 8
- b) The Service Provider or the Client in its discretion may terminate this Agreement earlier by giving 30 days written notice
- c) The Client may by notice in writing terminate this Agreement or any SOW with immediate effect if the Service Provider:
 - a. Commits a material breach of this Agreement or an SOW which it has not remedied within 14 days of receiving a notice from the Client requiring it to do so;
 - b. Engages in conduct which, in the reasonable opinion of the Client might tend to injure the reputation or business of the Client;
 - c. Becomes subject to an insolvency event

8.2 Consequences of Termination

- (a) If this Agreement is terminated in accordance with clause 8.1, the Client will remain liable to pay the Service Provider for Services rendered up to the date of termination.
- (b) Upon the termination or expiry of this Agreement for any reason, each party must return to the other party all the Confidential Information belonging to the other party, or, if it is not capable of return, destroy it.

8.3 Survival of Obligations

Clause 6 will survive expiration or termination of this Agreement and will continue to the benefit of and be enforceable by either party. Nothing in clause 7 shall limit a party's rights to obtain urgent, interlocutory or equitable relief including without limitation injunctive relief.

9. GENERAL

9.1 The failure of either party to insist upon a strict performance of any of the terms of this Agreement will not be deemed a waiver of any subsequent breach or default in the terms of this Agreement.

9.2 Each party will promptly execute all documents and do all things that the other party reasonably requires of it to give effect to the provisions of this Agreement and the transactions contemplated by it.

9.3 Each provision of this Agreement is severable from the others and no severance of a provision will affect any other provision.

9.4 This Agreement is governed by and will be construed in accordance with the laws of New South Wales. The parties irrevocably and unconditionally submit to the non-exclusive jurisdiction of the courts of New South Wales.

9.5 The parties will not assign any of its rights, benefits or obligations under this Agreement without the consent of the other party

9.6 This document and any Statement of Work embodies the entire understanding and agreement between the parties as to the subject matter of this Agreement.

MIP Professional Services Agreement Terms and Conditions

9.7 The parties will serve notices to each other to the addresses or numbers specified in any MIP Quotation or Order Form or Statement of Work or as notified by the other party from time to time.

9.8 No agreement or understanding that varies or extends this Agreement (including the scope of the Services or a change in the Service Fees) is legally binding on either party unless in writing and agreed to by both parties.

9.9 (i) The Service Provider may appoint sub-contractors to perform parts of the Services with the Client's prior written consent.

(ii) Appointment of a sub-contractor does not relieve the Service Provider of any of its obligations under this Agreement

9.10 Any accrued credit in respect of the provision of consulting or training services must be used within 90 days of such credit becoming created. Any credit not used within 90 days of creation will be forfeited.

10. TAXES

Unless expressly stated to the contrary, all fees, costs and charges referred to in this Agreement are exclusive of all taxes, duties and imposts. If the Service Provider is or will be liable for any taxes, duties or imposts (including GST) on or relating to this Agreement or anything done pursuant to this Agreement (excluding income tax) then the Client will pay the Service Provider an amount equal to that liability at the time that it pays any fees, costs or charges to which the liability relates.

11. RECRUITMENT OF EMPLOYEES AND CONSULTANTS

11.1 During the term of this Agreement and for a period of 12 months following its termination the Client shall not directly or indirectly do any of the following:

(a) Solicit or encourage any employee or consultant of the Service Provider with whom the Client has come into contact through this Agreement, to leave the employ of or cease work for the Service Provider.

(b) Hire or contract any employee or consultant of the Service Provider with whom the Client has come into contact through this Agreement

11.2 The Client acknowledges that the Service Provider invests substantial time and resources in its staff and consultants and accordingly the Client agrees that in the event that it breaches clause 11.1, it will pay the Service Provider 33% of the employee's or consultant's total annual salary package as a recruitment fee, unless otherwise agreed by the parties.