

Provost - EA

From: O'Donnell, Matt <matodonnell@deloitte.com.au>
Sent: Friday, 2 August 2019 12:13 PM
To: Provost - EA; Provost
Cc: Appleton, Chris
Subject: Deloitte Engagement Letter
Attachments: Deloitte Engagement Letter - ANU Confidential investigation 02082019.pdf;
Deloitte Standard Terms and Conditions.pdf

Dear Professor Calford

Find attached the Deloitte engagement letter relating to the investigation services we discussed this morning. Also attached is the Deloitte standards terms and conditions.

If you are satisfied with the engagement letter could I ask that you complete page 6 of the letter and return this to me as confirmation of our engagement.

I can have someone attend your offices this afternoon (or Monday morning) to pick up the documents to commence the review.

If you have any questions please do not hesitate to give me a call. My mobile 0434 963 172 is the best contact.

Kind regards

Matt

Matt O'Donnell

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Deloitte.

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CONFIDENTIAL

2 August 2019

Professor Mike Calford
Provost
10 East Road, Chancelry Building
The Australian National University
Canberra ACT 2600

Dear Professor Calford

Provision of Confidential Investigation

Thank you for the opportunity for Deloitte Risk Advisory Pty Ltd (**Deloitte**) to provide the Australian National University (**ANU**) with a confidential audit. This Letter and our standard terms and conditions (the **Terms**) which are enclosed with this Letter set out the basis on which we will provide our services to you. If not defined in this Letter, capitalised terms in this Letter have the meaning given to them in the Terms.

1 Background

We understand that you require Deloitte to commence a confidential investigation into concerns relating to complaints submitted to the ANU under the Public Interest Disclosure Act 2013. In relation to one of these allegations specifically, we understand that this matter has already been investigated; however, the Ombudsman has instructed further investigation to occur.

The scope of our engagement is limited to the matters set out in this Letter. If you wish to change the scope of our Services in any way, please provide us with written instructions as soon as possible.

We understand that you will be your nominated contact and will instruct us on the matter.

2 Our Team

This engagement will be led by **Matt O'Donnell**, a partner in the Forensic team, and will be supported by **Chris Appleton** (Manager), a specialist in our Forensic team.

3 Our Services

The scope of the work is detailed below. Please note this scope is indicative and certain elements of it may change depending on ongoing developments. Any changes to this scope will be agreed with you in advance.

We have been provided with partial information in relation to this matter and therefore our understanding of the issues is limited. However, based on our understanding of the matter at the date of this letter, we anticipate that this engagement will be best undertaken in a "phased approach" as set out below. This will enable you to have more visibility over our work and findings, and the fees incurred.

Phase 1 – Document review

Phase 1 involves the acquisition and examination of related ANU documents and the Ombudsman report.

The purpose of this examination is to determine the procedures we will undertake in investigating the allegation submitted under the PID Act.

At the completion of Phase 1, we meet with you during the week of 12 August 2019 to discuss the findings from the document review and provide you with an investigation plan.

Phase 2 – Other procedures

We will complete the procedures detailed in the investigation plan.

Phase 3 – Reporting

We will deliver a draft report to the ANU outlining the results of our work. Following feedback (and incorporating any required changes), we will then provide a final report.

The scope of our engagement is limited to the tasks set out above. If the scope or the Services do not meet your needs, please let us know so that we can vary this Letter and our fees accordingly.

Matters not included at this time

This engagement is not intended to be an appointment of **Matt O'Donnell** as an expert witness. This means that our Work may not:

- Comply with any regulatory rules relating to the appointment of an expert witness, or
- Be appropriate for the purposes of an expert witness appointment.

We will not be responsible for:

- Any legal issues associated with this matter, or
- Providing evidence or producing any documents in respect of the Services (except in response to a subpoena) unless you engage us specifically to do so. If we are asked to do these tasks this will be the subject of a separate engagement with you.

Professional codes of conduct and protocols

The Services will be undertaken in accordance with professional statements, standards and guidelines issued by the Accounting and Professional Ethics Standards Board. Consequently, to the extent we are requested to reach conclusions or form opinions, we are obliged to do so without regard to the impact that our conclusions may have on the matter.

We will provide our Work on the following assumptions and conditions. These are in addition to any assumptions or conditions which may be included in our Work:

- Our Work will be based on the Information provided to us
- All Information will be provided to us in a timely manner
- Unless set out in our Work, we will not perform any audit, testing or verification of the Information supplied to us and we will assume that the Information provided is true, correct and complete and not misleading. If this is not the case, or the Information changes after we receive it, then our Work may be incorrect or inappropriate for you
- Our Work will be based on the prevailing laws, regulations and professional standards in effect at the date of the Work
- Our Work is not binding on the courts or any relevant regulator, and this is not a representation, warranty, or guarantee that the courts will agree with our Work

- We will not provide any assurance or opinion on the matter including for example, whether you should proceed with any form of formal action against a third party or disciplinary action against an employee or contractor
- The Services will be limited by the time available to us, the agreed scope, the Information available, the accessibility of Information sources and clarity or lack of clarity of your objectives
- We reserve the right to revise any opinion or conclusion in our Work if material information becomes known to us after the date our Work is issued, and
- There are no undue complications or delays in providing the Services.

We may be subject to a subpoena or request to produce our files in relation to this engagement from someone else, including a regulator. Where the law allows it, we will tell you about any such request before we produce any files. However, our work in meeting these requests does not form part of the scope of work in relation to this engagement. Accordingly, you agree that you will indemnify us for any reasonable costs or expense we may incur in complying with any subpoena or request to produce our files or to provide evidence in respect of our Work. This indemnity does not apply to the extent that such costs are paid by the party making the request.

To the extent that there is any inconsistency between the limits and conditions in this Letter and our Work, then the limits in the Work will prevail.

4 Our Work

As a part of our Services, we will provide you with certain pieces of Work which may include both written and verbal reporting. Our Services may also include additional scope items arising during the preparation of our Work or consequential to that Work. Such additional scope items, where significant, will only be undertaken at your request.

We intend, if time allows, sending you a copy of our draft report (which may be without any of our final opinions) for your review. If this occurs, we will ask you to advise us as to whether or not the facts stated appear to be accurate, to the best of your knowledge, and whether or not there are any material matters not set out in the report which you believe would have a bearing on our report.

Any Work we provide to you may be used only by you for the Purpose and in the manner described in the Terms.

It will be impractical to obtain instructions on every aspect of our involvement in this matter and there will often be instances where we will have to use our discretion in determining the Work to be performed.

In accordance with our policies we will destroy all files created by us seven years after the date of the final report. Upon completion of our Services we will retain, as part of our records, the draft reports provided to you.

5 Your Responsibilities

In addition to the responsibilities which are described in the Terms, you shall use your best endeavours to comply with our reasonable requests, suggestions and directions for the efficient conduct of the engagement.

You acknowledge that our ability to deliver the Services is dependent on you meeting your responsibilities, as well as you providing us with instructions and making timely decisions.

You shall be solely responsible for, among other things (a) making all management judgments and decisions, and assuming all management responsibilities, (b) designating an individual, preferably within senior management, to be responsible for your decisions and to oversee the Services, (c) providing oversight of the Services and evaluating the adequacy and results of the Services, and (d) accepting responsibility for the actions, if any, to be taken arising from the results of the Services.

6 Our Fees

(a) Fees

Our fees will be charged according to the time our team spends on providing the Services at the rates set out below. The actual fees charged by us will reflect the seniority and expertise of the staff involved as well as factors such as the time spent on the Services and the complexity of the Services.

The hourly rates that will apply in providing the Services are as follows:

Level	Hourly Rate (excluding GST)
Partner	[REDACTED]
Manager	[REDACTED]
Senior Analyst	[REDACTED]
Analyst	[REDACTED]

It is not possible to provide a meaningful estimate of our fees at this time. We shall provide you with a more definitive estimate once we have received the necessary information and a clearer assessment of the complexity of the engagement can be ascertained. We will discuss this with you during the meeting scheduled for the week of 12 August 2019.

Our Fee and payment of our Fee is not contingent on the final results and we do not warrant or predict the final results or developments in this matter.

(b) Billing

Our invoices will be issued on a monthly basis and on completion of the engagement. Professional Fees calculated as described above, plus Expenses, and all relevant government charges, taxes or imposts (including GST) will be shown on our invoice. Our terms require payment within 14 days of receipt of an invoice.

7 Timing

We understand the importance of this engagement to ANU. We will commence the engagement immediately and we will endeavour to complete our engagement in a timely manner.

8 Terms and conditions

In addition to the indemnity in clause 9.9 of the Terms, you agree to indemnify us against any Loss which we may suffer or incur in respect of any claim or action by a third party that arises as a result of the provision of the Services including as a result of any claim or action relating to defamation.

9 Acceptance

Please confirm that you agree to these terms by signing, dating and returning a copy of this letter to us. We will treat you as having accepted our engagement on the terms set out in this letter if you continue to instruct us after you receive this letter.

Please contact me on 0434 963 172 if you would like to discuss this letter and the terms of engagement with us.

We look forward to working with you.

Yours sincerely

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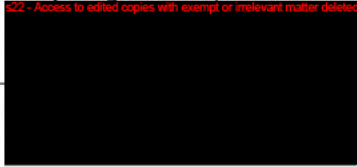
Matt O'Donnell

Partner

Deloitte Risk Advisory Pty Ltd

The Australian National University (**ANU**) agrees to the terms of this Agreement. Signed for and on behalf of the ANU by its duly authorised representative:

Signature



Name

Title

2-Aug-2019

Date

ANNEXURE 1 – [Deloitte Standard Terms and Conditions](#)

Standard Terms and Conditions

1. This Agreement

This Agreement sets out the terms on which we will provide the Services to you. 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

3.1 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.

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

4. Our team

4.1 We will use reasonable efforts to ensure that our Representatives named 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.

4.2 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.

5. About Deloitte

5.1 We are a Member Firm of DTTL. Accordingly, you acknowledge that:

- (a) each of the Member Firms is a separate and independent legal entity operating under the names "Deloitte", "Deloitte & Touche", "Deloitte Touche Tohmatsu" or other related names;
- (b) the Services are provided by us and not by DTTL or any other Member Firm; and
- (c) neither DTTL nor any of the Member Firms is liable for each other's acts or omissions.

5.2 Sometimes we may use other Member Firms to help us to provide the Services to you. Where this happens, we will be responsible for any work undertaken by another Member Firm and you agree that:

- (a) none of the Member Firms, apart from us, will be responsible to you; and
- (b) you will not bring any claim or proceedings in connection with the Services or this Agreement against any of the other Member Firms that we may use to provide the Services to you.

5.3 Any Member Firm that helps us to provide the Services to you will rely on subclause 5.2 and is, to the extent permitted by the Law of any relevant jurisdiction, an intended third-party beneficiary of, and entitled to enforce this Agreement as if it were a party to it.

5.4 If we provide you with Licensed Services, you acknowledge that:

- (a) the relevant Licensed Entity will provide the Licensed Services directly to you;
- (b) Deloitte enters into this Agreement as agent for the Licensed Entity; and
- (c) the terms of this Agreement apply to the Licensed Services.

6. Confidentiality

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

6.2 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 the Services to you or other services you may request.

6.3 Where relevant, we may use, disclose and transfer your Information to other Member Firms and our Representatives, who will use and disclose it only to provide the Services to you.

6.4 We may disclose your Information to our own professional advisers and insurers on a confidential basis.

6.5 Subject to subclause 6.6, 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, rules of any stock exchange or any professional obligations or requirements.

6.6 A party disclosing any Confidential Information under subclause 6.5 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.

6.7 You agree that we may aggregate your Information and use and disclose that information in de-identified form as part of research and advice, including, without limitation, benchmarking services.

6.8 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

7.1 We will handle Personal Information in accordance with the Privacy Act and our privacy policy available at http://www.deloitte.com/view/en_AU/au/privacy/index.htm.

7.2 You agree to work with us to ensure that both of us meet any obligations that each of us may 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 and disclose their information.

7.3 Where you provide us with any Personal Information, you confirm that you have collected the Personal Information in accordance with the Privacy Act, that you are entitled to provide the Personal Information to us and that we may collect, use and disclose the Personal Information for the purpose of providing the Services to you or as otherwise permitted by this Agreement.

8. Intellectual Property

8.1 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.

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

9. Our Work

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

9.2 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, on the terms discussed in subclause 9.3, or except to the extent permitted by subclause 6.5;
- (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.

9.3 You may provide a copy of our Report to:

- (a) your Professional Advisers and Auditor, provided that you ensure that each Professional Adviser and Auditor:
 - (i) is aware of the limits placed on the use of our Report by this Agreement, including that they may not rely on the Report;
 - (ii) for the Professional Adviser, uses our Report only to advise you in relation to the Services or, for the Auditor, uses our Report only in conducting the Audit; and

- (iii) treats our Report as confidential and does not use or disclose our Report in a manner that is not expressly permitted by this Agreement;
- (b) any other person who is acceptable to us, with our Consent, but only where that person has first executed an agreement provided by us.

- 9.4 We are not responsible to anyone (apart from you) who is provided with or obtains a copy of our Work without our Consent.
- 9.5 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.
- 9.6 You acknowledge that the final or signed copy of our Report is the definitive version.
- 9.7 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.
- 9.8 You acknowledge that any use of 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.
- 9.9 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.
- 9.10 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

- 10.1 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.
- 10.2 You agree to pay us the Fees for the Services in accordance with this Agreement.
- 10.3 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.
- 10.4 We will charge you at cost for any expenses we incur in providing the Services to you. We will tell you what these expenses are before we incur them if they are anything other than incidental.
- 10.5 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.
- 10.6 We will also charge you an administration, overhead and telecommunications charge, which is calculated at 5% of our Fees. This charge covers all our out-of-pocket expenses such as telecommunications, stationery and postage.
- 10.7 We will invoice you monthly in arrears for the Fees (unless we agree with you otherwise) and you agree to pay our invoice within 14 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.
- 10.8 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.

- 10.9 If we are required to provide Information about you or the Services to comply with a statutory obligation, court order or other compulsory process, you agree to pay all of our reasonable costs and expenses we incur in doing so.

11. What you agree to do

- 11.1 You agree to co-operate 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.
- 11.2 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.
- 11.3 You acknowledge that:
- (a) the Services may include advice and recommendations, but all decisions in connection with the 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; and
 - (d) we will not be liable for any default that arises because you do not fulfil your obligations.

12. Unexpected Delay

- 12.1 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.
- 12.2 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.

13. Our responsibility to you

- 13.1 We are subject to a limitation of liability scheme approved under Professional Standards Legislation. Our aggregate liability to you is limited in the manner provided by the scheme. Please contact us if you require a copy of the relevant scheme.
- 13.2 Where the law requires it, our liability to you will not be limited. Where our liability is not limited by a scheme our aggregate liability to you for any Loss or causes of action arising in relation to this Agreement, including for negligence, is limited to the amount that is the lesser of ten times our Fees and \$20 million.
- 13.3 We will be liable to you only for that proportion of the total Loss that we have caused or to which we have contributed and we will not be liable for any Consequential Loss.
- 13.4 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.
- 13.5 The limit of liability set out above applies to all Addressees as a group and 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.

14. 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.

15. 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.

16. Termination

16.1 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.

16.2 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.

16.3 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) except as set out in this Agreement, and only 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.

16.4 The provisions of this Agreement that survive its termination include those relating to clause 5, *About Deloitte*; clause 6, *Confidentiality*; clause 7, *Personal Information and privacy*; clause 8, *Intellectual Property*; clause 9, *Our Work*; clause 10, *Our Fees*; clause 13, *Our responsibility to you*; clause 15, *Insurance*; subclause 16.3, *Termination*; clause 17, *Dispute resolution*; and clause 18, *Disclosure of Tax Advice*.

17. Dispute resolution

17.1 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.

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

18. Disclosure of Tax Advice

In relation to Tax Advice and in compliance with Disclosure Laws, it is acknowledged and agreed that nothing contained in this Agreement shall be construed as limiting or restricting your disclosure of Tax Advice. It is also understood that none of your other advisers will or have imposed any conditions of confidentiality with respect to Tax Advice. Copies of any Tax Advice provided to others is on the basis that such recipients may not rely on such Tax Advice and that we owe no duty of care or liability to them, or any other persons who subsequently receive the same. Except as set out in this clause, all other terms of this Agreement remain unamended.

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

20.1 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.

20.2 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 Deloitte Australia 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 that 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 New South Wales and each party irrevocably submits to the jurisdiction of the courts exercising jurisdiction in that State.

25. 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 at http://www.deloitte.com/view/en_AU/au/index.htm or write to the Complaints Officer at complaints@deloitte.com.au.

26. General

26.1 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.

26.2 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.

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

27. 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) the word person includes an entity, a firm, a body corporate, an unincorporated association or an authority;
- (d) 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;
- (e) a reference to dollars or \$ means Australian dollars;
- (f) an Annexure forms part of this Agreement; and
- (g) 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.

28. 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 or attachment to it

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 a party or acquired by either of us solely as a result of the Services;
- (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; and
- (e) any Work we provide to you,

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 provided 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 or is developed by either of us independently;
- (d) is disclosed with the other's Consent; or
- (e) is required to be disclosed as contemplated by subclause 6.5.

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, loss or corruption of data or systems, or damage to goodwill however caused or arising as a result of the Services or this Agreement.

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

Deloitte Australia means the Australian partnership of Deloitte Touche Tohmatsu, each of the entities under its control and any of their respective predecessors, successors or assignees.

DTTL means Deloitte Touche Tohmatsu Limited, a UK private company limited by guarantee.

Disclosure Law means Rule 3501(c)(i) of PCAOB Release 2005-014, or US Internal Revenue Code sections 6011 and 6111 and related Internal Revenue Service guidance, or any equivalent legislation, statute or subordinate legislation or guidance in any relevant jurisdiction relating to the disclosure of Tax Advice which applies to you or any Tax Advice we may give you.

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 of, 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 and circuit layouts.

Law includes the *Corporations Act 2001* (Cth) and the rules of the United States Securities and Exchange Commission.

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

Licensed Entity means a Deloitte Australia entity that holds a licence or registration.

Licensed Services means that part of the Services that are required to be provided by a Licensed Entity.

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

Member Firm means a partnership or an entity that is a member of DTTL and each of that partnership's or entity's controlled entities, predecessors, successors, assignees, partners, principals, members, owners, directors, employees and agents.

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

Privacy Act means the *Privacy Act 1988* (Cth).

Professional Advisers means your professional advisers who are advising you in relation to the Services but excludes any investor, agent, intermediary, underwriter, syndicate participant, lender or other financial institution or anyone who may provide you with any credit enhancement or credit rating.

Professional Standards 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 and includes the *Professional Standards Act 1994* (NSW) and any similar legislation in each state and territory in Australia.

Purpose has the meaning given to it in the Letter or our Work, or where 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 subcontractor of either of us, who is involved in the activities to which this Agreement relates and in the case of Deloitte, 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 Deloitte, or both you and Deloitte, as the context requires.

we and **our** means Deloitte and, where applicable as the context requires, the members of Deloitte Australia 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 any Reports but 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.