

Terms of Business

These terms of business apply to the services you have engaged us to provide under a Client Engagement Proposal. Our Client Engagement Proposal and these terms of business form the entire agreement between us about those services. They replace any earlier agreements, representations or discussions. If anything in these terms of business is inconsistent with our proposal, our Client Engagement Proposal takes precedence.

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1 Our services

- 1.1 **Scope** – We will perform the services described in our proposal letter with reasonable skill and care.
- 1.2 **Changes** – Either of us may request a change to the services, or anything else in this agreement. A change will not be effective unless we have both agreed to it in writing.
- 1.3 **Oral advice and draft deliverables** – You may only rely on our final written deliverables. If you wish to rely on something we have told you, please let us know so that we can prepare a written deliverable on which you may rely.
- 1.4 **Services for your benefit** – Our services are provided solely for your use for the purpose set out in our proposal letter or the relevant deliverable. Except as stated in our proposal letter or the relevant deliverable, as required by law, or with our prior written consent, you may not:
 - a) show or provide a deliverable to any third party or include or refer to a deliverable or our name or logo in a public document
 - b) make any public statement about us or the services.
- 1.5 **No liability to third parties** – We accept no liability or responsibility to any third party in connection with our services. You agree to indemnify us against any liability (including legal costs) that we incur in connection with any claim by a third party arising from your breach of this agreement.
- 1.6 **No legal services** – Our services under the attached proposal letter do not include legal services.

2 Your responsibilities

- 2.1 **Generally** – You agree to:
 - a) provide us promptly with all information, instructions and access to third parties we reasonably require to perform the services
 - b) provide reasonable facilities for us when we work at your premises
 - c) ensure we are permitted to use any third party information or intellectual property rights you require us to use to perform the services.
- 2.2 **Information** – You agree to:
 - a) ensure that information provided to us is accurate, complete and not misleading (we will rely on this information to perform the services and will not verify it in any way, except to the extent we have expressly agreed to do so as part of the services)
 - b) alert us to changes to information provided to us
 - c) let us know if you expect us to use information from other engagements in connection with this one (otherwise, we are not required to use that information and will not be deemed to know it for the purposes of this agreement).

- 2.3 **Interdependence** – Our performance depends on you also performing your obligations under this agreement. You agree that we are not liable for any default that arises because you do not fulfil your obligations.

3 Fees, expenses and costs

- 3.1 **Payment for services** – You agree to pay us fees for our services on the basis set out in our engagement letter, plus any GST we are required to pay in connection with the services.
- 3.2 **Expenses** – You agree to pay any reasonable expenses we incur in connection with the services, plus GST at the prevailing rate (to the extent applicable).
- 3.3 **Invoices and payment** – We will not invoice you. Ongoing monthly service payment is required in advance using Paypal. An invoice can be provided for tax record purposes if you request it. Other services may be paid by invoice if required. Invoice terms are 14 working days from receipt of invoice. Non receipt of payment within the invoice period may result in work being suspended.
- 3.4 **Fee scales** – Applicable only where hourly rates are quoted, We revise our fee scale every three months. Rates quoted to you remain in force until the next 30 June, 30 September, 31 December or 30 March, as the case may be. We may increase our fee for any work performed after that date.
- 3.5 **Compliance costs** – If we are required to provide information regarding you or the services to comply with a statutory obligation, court order or other compulsory process, you agree to pay the reasonable costs and expenses we incur in doing so. This includes time spent by professional staff and our reasonable legal costs.

4 Confidentiality, Privacy & Intellectual Property

- 4.1 **Confidential information** – We agree not to disclose each other's confidential information, except for disclosures required by law or confidential disclosures under our respective policies.
- 4.2 **Referring to you and the services** – We may wish to refer to you and the nature of the services we have performed for you when marketing our services. You agree that we may do so, provided we do not disclose your confidential information.
- 4.3 **Privacy** – Our approach to privacy is set out in our Privacy Policy, available at www.archgaia.com. You agree to comply with the Privacy Act 1988 (Cth) when providing us with information. We agree to co-operate with each other in addressing our respective privacy obligations in connection with the services.
- 4.4 Intellectual Property developed by Us for You is provided under licence for use only.
- 4.5 In regard to any Intellectual Property developed or provided by You in the performance of services that You license to Us the use of that Intellectual Property for the performance of the services and licence the use of that Intellectual Property by Us after the performance of the services following engagement for the purposes of marketing or creation of derivative works by Us as long as such derivative works do not conflict with Your business or Your service provision. The exclusion for any subsequent use or creation of derivative works of applies to Intellectual Property that is confidential information.

5 Liability

- 5.1 **Liability cap** – You agree that our liability for all claims connected directly or indirectly with the services (including claims of negligence) is limited to an amount equal to 10 times the fees payable for the services, up to an overall maximum of \$10 million dollars.
- 5.2 **Aggregate cap** – Where more than one client is named in our engagement letter, the limits on our liability in this clause 5 must be allocated between them. We do not need to know how a limit is allocated and, if it is not, you agree not to dispute a limit on our liability on the basis that you have not agreed how it is to be allocated.
- 5.3 **Consequential loss** – To the extent permitted by law, we exclude all liability for:
- a) loss or corruption of data
 - b) loss of profit, goodwill, business opportunity or anticipated savings or benefits
 - d) indirect or consequential loss or damage.
- 5.4 **No claims against employees** – You agree not to bring any claim (including in negligence) against any of our employees personally in connection with the services. This clause is for the benefit of our employees. You agree that each of our employees may rely on this clause 5.4 as if they were a party to this agreement. Each of our employees involved in providing the services relies on the protections in this clause 5.5 and we accept the benefit of it on their behalf.

6 Electronic communications and tools

- 6.1 **Electronic communications** – We each agree to take reasonable precautions to protect our own information technology systems, including implementing reasonable procedures to guard against viruses and unauthorised interception, access, use, corruption, loss or delay of electronic communications.
- 6.2 **Electronic tools** – We may develop or use electronic tools (eg spreadsheets, databases, software, videos, websites, social media, web 2.0, mobile apps, etc) in providing the services. We are not obliged to share these tools with you, unless they are specified as a deliverable in this agreement. If they are not a specified deliverable, and we do share them with you, you agree that:
- a) they remain our property
 - b) we developed them solely for our use
 - c) you use them at your own risk
 - d) you may not provide them to any third party.

7 Subcontractors

- 7.1 **Subcontractors** – We may use subcontractors including Associates of *archgaia* to provide the services to you. We remain liable for subcontracted services.
- 7.2 **Other Professional Services Associates**– We may use other Associates of *archgaia* to provide the services to you, or have them assist us in providing the services. Despite this, we remain solely responsible for the services.
- 7.3 **No claims against other Professional Services Associates** – You agree not to bring any claim (including in negligence) against another *archgaia* Associates (or their partners or employees) in connection with the services. Any partner or employee of another *archgaia* Associate who deals with you in connection with the services does so solely on our behalf.
- 7.4 **Benefit of clause 7.3** – Clause 7.3 is for the benefit of other *archgaia* Associates and their partners and employees (together 'the beneficiaries'). You agree that each of the beneficiaries may rely on clause 7.3 as if they were a party to this agreement. Each beneficiary that assists in providing the services relies on the protections in clause 7.3 and we accept the benefit of clause 7.3 on their behalf.
- 7.5 **Transfer of information** – Where subcontractors or Associates of *archgaia* are involved in providing the services, you consent to information being transferred to them.

8 Filing and destruction of documents

It is our practice to destroy our documents after seven years, unless the law requires us to retain them. If you leave documents or material with us, they will be filed and destroyed with our documents.

9 Performing services for others

Provided we do not disclose your confidential information, you agree that we may perform services for your competitors or other parties whose interests may conflict with yours.

10 Termination

- 10.1 **By notice** – Either of us may terminate this agreement by giving the other at least 14 days notice in writing (unless it would be unlawful to do so). This agreement terminates on expiry of that notice.
- 10.2 **Changes affecting independence** – Changes to the law or other circumstances beyond our reasonable control may mean that providing the services to you results in us ceasing to be able to provide services to you. If that happens, we may terminate this agreement immediately by giving you notice in writing.
- 10.3 **Fees payable on termination** – You agree to pay us for all services we perform before termination, within 14 days after receipt of our invoice. Where we agree a fixed fee for services, and the services are not completed before termination, you agree to pay us for the services that we have performed on the basis of the time spent at our then current hourly rates, up to the amount of the fixed fee.
- 10.4 **Clauses applying after termination** – The following clauses continue to apply after termination of this agreement: 1.3, 1.4, 1.5, 2.3, 3, 4, 5, 6.2, 7 (other than 7.5), 8, 9, 11, 12, 13, 14, 15, 16, and 17

11 Resolving disputes

If a dispute arises in connection with this agreement, you agree to meet with us to attempt to resolve it. If the dispute is not resolved through those negotiations, you agree we will both attempt to resolve the dispute through mediation in South Australia before commencing legal proceedings.

12 Relationship

We are your independent contractor. You agree that we are not in a partnership, joint venture, fiduciary, employment, agency or other relationship with you. Neither of us has power to bind the other.

13 Corporations Act prohibitions

Nothing in this agreement applies to the extent that it is prohibited by the Corporations Act 2001 (Cth).

14 Force majeure

Neither of us is liable to the other for delay or failure to fulfil obligations (other than an obligation to pay) to the extent that the delay or failure arises due to an unforeseen event beyond their reasonable control which is not otherwise dealt with in this agreement. Each of us agrees to use reasonable endeavours to remove or overcome the effects of the relevant event without delay.

15 Assignment

Neither of us may assign or deal with our rights under this agreement without the other's prior written consent.

16 Applicable law

Unless our proposal letter states otherwise, the law applying to this agreement is the law of South Australia. Both of us submit to the exclusive jurisdiction of the courts of that state and waive any right either of us may have to claim that those courts do not have jurisdiction or are an inconvenient forum.

17 Definitions

In this agreement the following words and expressions have the meanings given to them below:

archgaia— a business name formed in Australia, ABN 45 297 523 250".

this agreement – these terms of business and the Client Engagement Proposal to which they are attached

you – client named in our engagement letter

we – *archgaia*, ABN 45 297 523 250, a business name formed in Australia