



## Standard Terms of Engagement

### 1. Agreement

All services supplied to you or expenses and disbursements incurred on your behalf under the engagement by **Banyan Consulting Pty Limited (ACN 079 063 308) ATF The MJM Trust (ABN 91 360 149 798) ("the firm/we")** are supplied on these terms and conditions ("Standard Terms of Engagement"), which may be varied by the firm at any time.

### 2. Who may instruct us

You confirm that you, and any other person you nominate in writing from time to time (provided we have acknowledged such nomination), are authorized to give us instructions and information on behalf of all persons we are acting for and to receive our advice and documents on their behalf.

If we are acting for a business, and we receive conflicting advice, information or instructions from different persons, we may refer the matter to the board of directors, partners or proprietors (as applicable) and act only as requested by them.

### 3. You and your [spouse/partner]

We will advise you and your [spouse/partner] on the basis that you are a family unit with shared interests. We may deal with either of you and may discuss with either of you the affairs of the other. If you wish to change these arrangements, please let us know.

### 4. Know your customer

We may be required to verify your identity for the purposes of the anti-money laundering laws. We may request from you such information as we require for these purposes and make searches of appropriate databases.

You hereby authorise and unconditionally grant consent to the firm obtaining from a credit reporting agency or any other person or company information from time to time. You further authorise and consent to the firm obtaining and disclosing information about your credit worthiness to and from credit reporting agencies and credit providers.

### 5. Professional obligations

We will comply with the professional and ethical standards of the Accounting Professional and Ethical Standards Board, available at [apesb.org.au](http://apesb.org.au). This includes APES 110 *Code of Ethics for Professional Accountants (including Independence Standards)*, which among other things contains provisions that apply if we become aware of any actual or potential 'non-compliance with governing laws or regulations' (NOCLAR). Where any such non-compliance poses substantial harm (such as serious adverse consequences to investors, creditors, employees, auditor, group auditor or the public), we may be required to disclose the matter to an appropriate authority.

## **6. Conflicts of interest**

We will inform you if we become aware of any conflict of interest in our relationship with you (including between the various persons this engagement letter covers) or in our relationship with you and another client. Where conflicts are identified which cannot be managed in a way that protects your interests then we will be unable to provide further services to some or all of the persons to whom this engagement applies. If this arises, we will inform you promptly.

We may act for other clients whose interests are not the same as or are adverse to yours, subject to the obligations of conflicts of interest and confidentiality referred to above.

## **7. Credit Granting**

All engagements are accepted by the firm subject to your satisfactory credit approval and are governed by the firm's Standard Terms of Engagement in force at the time of engagement. Credit approval once granted may be withdrawn at any time. Where credit approval has not been granted, or is withdrawn, payment for all services supplied or expenses incurred is required on acceptance of the engagement. If a fixed fee has been provided, the amount due is the fixed fee. If a fixed fee has not been provided, the estimated fee outlined in the Letter of Engagement, or an estimate proved by the firm is the amount due.

Where credit has been granted, payment for the services supplied or expenses incurred and disbursements, is to be made on or before fourteen (14) days from the date of each invoice raised. It is a condition of the firm's services that when performing work for companies, whether in their own capacity or as a corporate trustee, the firm is instructed by the directors of such entities personally. On this basis such directors are jointly and severally liable for payment of the firm's fees in the event that the company fails to pay the invoice within the prescribed credit terms.

## **8. Fees and staffing**

Where a fixed fee has been provided, the fee shall be as provided. If it becomes apparent to us, due to unforeseen circumstances, that a fixed fee is inadequate, we may notify you of a revised figure and seek your agreement to it.

Where the engagement is not on a fixed fee basis, it shall be on an hourly rate basis.

If we have provided you with an estimate of our fees for any specific work, this is an estimate only and our actual fees may vary.

Unless agreed otherwise, hourly rates are as per the scale detailed in the Standard Fees and Expenses **Schedule**. Time is recorded in a minimum of ten (10) minute intervals. All attendances continuing up to ten (10) minutes will be charged as a full ten (10) minutes. All attendances continuing for more than ten (10) minutes will be charged for each ten (10) minute interval or part thereof.

Time spent on the telephone and computer sending or receiving emails are treated in the same way as consulting. However, as a matter of policy the firm does not charge for "5-minute phone calls" or "information only" emails. The staff involved in your engagement will be determined by the firm and may change from time to time.

The firm shall, when requested, provide an estimate of unbilled fees and costs incurred or fees and costs likely to be incurred.

In some cases, you may be entitled to assistance with your professional fees, particularly in relation

to any investigation into your tax affairs by the ATO. Assistance may be provided through insurance policies you hold or via membership of a professional or trade body.

Other than where such insurance was arranged through us, you will need to advise us of any such insurance cover that you have. You will remain liable for our fees regardless of whether all or part are to be paid by someone else.

Any disbursements and expenses we incur in the course of performing our services will be added to our invoices where appropriate.

## **9. Goods and Services Tax (GST)**

All fees and costs referred to in these Standard Terms of Engagement and detailed in the Standard Fees and Expenses Schedule include Goods and Services Tax (GST).

## **10. Billing**

Fees are rendered progressively as work is undertaken, or at month end, or at specific times where mutually agreed, or at such times at the discretion of the firm. The firm will send you a tax invoice for the firm's fees, expenses, and disbursements. Where the firm has your email address, the invoices shall be emailed, otherwise posted. You agree to notify the firm immediately if you change your address.

## **11. Payment\***

Payment may be made by cash, cheque, electronic transfer, or credit card. Cash will be accepted at the firm's office during business hours. The firm's bank details for electronic transfers are included on the firm's invoices. Cheques will be credited to your account only after bank clearance. If applicable, fees incurred by the firm for any of your returned cheques, shall be added to your account. Credit cards payments are accepted subject to a service fee per **Clause 12**. The firm accepts Visa and MasterCard. Please refer to the (\*) subsection in the last page for credit card authorisation terms.

## **12. Credit Card recovery of costs**

A service fee may apply to any payments made by credit card. The fee applicable to each credit card is detailed in the Standard Fees and Expenses Schedule.

## **13. Qualifications on our services**

To the extent our services involve the performance of services established by law, nothing in the engagement letter or these terms reduce our obligations under such law.

You must not act on advice given by us on an earlier occasion without first confirming with us that the advice is still valid.

Our services are limited exclusively to those you have engaged us to perform. Unless otherwise specified in the engagement letter, our services cannot be relied upon to disclose irregularities and errors, including fraud and other illegal acts, in your affairs. Neither an audit nor a review will be conducted and, accordingly, no assurance will be expressed.

Where our engagement is recurring, we may amend our engagement letter and these terms where we consider it is necessary or appropriate to do so. If you do not accept such amendments, you must notify us promptly in which case you may terminate our engagement in accordance with **Clause 31** below and those amendments will not apply prior to such termination.

#### **14. Reliance on advice**

We will endeavour to record all advice on important matters in writing. Advice given verbally is not intended to be relied upon unless confirmed in writing. If we provide verbal advice (for example during a meeting or telephone conversation) that you wish to rely on, you must ask us to confirm the advice in writing.

#### **15. Claims, disputes and complaints**

If you in good faith dispute any invoiced charge, you may withhold the disputed amount, but only if on or before payment due date for payment, the undisputed amount is paid in full and notice in writing of the dispute is given to the firm, setting out the details of the amount disputed, the reasons for the dispute, and the basis for calculating the disputed amount. The firm will investigate all disputes.

If the amount is found to be payable (in whole or in part) then you must pay the amount within **7 days** of receiving notice on the basis of the decision.

Invoiced charges that are not disputed in good faith **within 14 days** of the date of an invoice will be deemed to be correct.

If you have any concerns about our costs or services, please speak to the person responsible for this engagement, who is identified in our engagement letter.

To resolve your concerns we have policies and procedures in place to deal appropriately with complaints and will use best endeavours to resolve a complaint or dispute to the mutual satisfaction of the parties involved.

We may require you to detail your complaint in writing to allow us to fully investigate any concerns that you raise.

#### **16. Refunds**

Should any advance or estimated payment exceed the amount of fees, expenses and disbursements billed, the firm shall, on completion of the engagement, refund the balance to you.

#### **17. Consequences for delayed or non-payment**

If you fail to pay for the engagement within the time for payment of the invoices issued to you, the firm may at its sole discretion:

- a. charge interest on all amounts not paid by you at a rate of 3% per calendar month accruing each calendar month until the date of payment;
- b. cancel any provision of credit to you;
- c. require cash prepayment for further engagements;
- d. start proceedings against you and any guarantors for all outstanding amounts;
- e. suspend our services or cease supplying services on giving written notice;
- f. terminate any engagement with you; and
- g. exercise any other rights at law.

Where we refuse further service, this may include not lodging income tax returns. The firm will not be held responsible for any fines or penalties arising from non-lodgement of your return in these circumstances.

If you default in payment of any invoice when due and payable, you shall indemnify the firm from

and against all costs and disbursements incurred by the firm in pursuing the debt including legal costs on a solicitor and own client basis and the firm's mercantile agency costs.

In addition, you authorise the firm, at our discretion, to direct funds from the Australian Taxation Office to the firm's Trust account, where we may deduct any fees expenses and disbursements, outstanding from you or any related entities or associates.

### **18. Security and Lien**

In the event of a dispute, or non-payment of any invoices within the time for payment of the invoices the firm has a legal right of lien over any client documents in our possession.

As security for payment of the invoices issued by the firm, the client and any guarantor(s) agree to charge, and hereby do charge, all of their its interest in all present and after-acquired property (including real property and personal property) with payment of all fees, costs and disbursements incurred by the client and due to the firm and hereby consents to the firm lodging with the appropriate land titles registry a caveat in respect of any charged real property, registering a security interest in any respect of any charged personal property in the Personal Property Securities Register, in which case the client and any guarantor(s) hereby waive any right under section 157 of the Personal Property Securities Act 2009 (Cth) to receive notice of any such registration, and maintaining those interests, lodgements and registrations until the firm's fees, costs and disbursements have been paid in full and any contingent liability has been provided for.

The client and any guarantor(s) further agree that if demand is made on them by the firm, they will immediately execute a mortgage or other instrument of security as required by the firm to better secure the obligations of the client and the guarantor(s) under this agreement. In the event that the client and any guarantor(s) fail to comply with any such request by the firm within a reasonable time, the client and the guarantor(s) hereby irrevocably appoint the firm, or any solicitor or other person nominated by the firm to act as the attorney of the client or the guarantor(s) to execute and register such instrument(s).

### **19. Client responsibilities**

You are responsible for the accuracy and comprehensiveness of the details and information you provide to the firm. The firm requires that our correspondence and any requests for information be promptly attended to so that the engagement can be proceed efficiently. Similarly, you are required to attend to statutory and legal obligations timely e.g. the filings with ASIC and settlement of obligations with the Australian Taxation Office.

### **20. Authorisation to act**

In circumstances that it is necessary for the firm to act on your behalf, e.g. for the lodgement of returns with the Australian Taxation Office or for accessing bank information, you agree to provide authorisation to the firm on request.

### **21. Privacy and Confidentiality**

You must make all necessary notifications and obtain any necessary consents for us to process personal information you provide to us. We collect and use that personal information for the

purposes of providing the services described in the engagement letter to you and we will comply with the *Privacy Act 1988* (Cth) when processing that personal information.

Information acquired by the firm during this engagement is subject to strict confidentiality and we will not disclose that information to other parties except as required or allowed by law, or with your written consent.

We will take all reasonable steps to keep your information confidential, except where:

- we need to disclose your information to our service providers (including auditors of client monies if applicable) or regulatory bodies in performing the services, our professional advisers or insurers or as part of an external peer review from time to time. Our files may also be subject to review as part of the quality review program of Chartered Accountants Australia and New Zealand. By accepting this engagement you acknowledge that, if requested, our files relating to this engagement will be made available under this program. We will take reasonable steps to ensure any such recipient (other than a regulatory body) keeps such information confidential on the same basis;
- we are required by law, regulation, a court of competent authority, or those professional obligations referred to in section 5 above, to disclose the information;
- from time to time, we may be asked to provide copies of the financial statements, income tax returns or other information produced in the course of this engagement. If we are requested to provide this information (including to a third party such as a financial institution), any one person subject to this engagement can provide this authorisation. For example, if one person subject to this engagement requests information regarding the company or individuals involved then we have authority to provide this information to them without seeking further authorisation.
- we provide limited information (but only to the extent reasonably necessary) to potential purchasers (or their professional advisors) of our practice but we will take reasonable steps to ensure that any such recipient keeps the disclosed information confidential; or
- you give us permission to disclose the information.

We may retain your information during and after our engagement to comply with our legal requirements or as part of our regular IT back-up and archiving practices. We will continue to hold such information confidentially.

We may mention that you are a client for promotional purposes.

## **22. Ownership of Materials**

All original documents obtained from you in respect to this engagement shall remain your property; however, the firm reserves the right to make copies of original documents for the firm's records. Ownership of the documents, reports, returns, etc produced as part of this engagement will vest in you.

All other documentation produced by the firm in respect of the engagement will remain the property of the firm.

We own the copyright and all other intellectual property rights in everything we create in connection with this engagement. Unless we agree otherwise, anything we create in connection with this agreement may be used by you only for the purpose for which you have engaged us.

### **23. Limitation of Liability**

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 <https://www.psc.gov.au/>

You agree not to bring any claim against any of our principals, partners, directors, shareholders or employees in their personal capacity.

To the maximum extent permitted by law, we are not liable to you for:

- indirect, special or consequential losses or damages of any kind; or
- liability arising due to the acts or omissions of any other person or circumstances outside our reasonable control, or your breach of these terms.

### **24. Limitation of third-party rights**

Our advice and information is for your sole use, and we accept no responsibility to any third party, unless we have expressly agreed in the engagement letter that a specified third party may rely on our work.

### **25. Third party responsibilities**

We may utilise cloud computing service providers, including:

- Accounting software providers (Xero, MYOB, etc)
- Documents management platforms (MYP, HowNow)

To perform the services, we may provide these third parties with access to your data to the extent this is required to perform the services.

Your data may be stored in our server physically located in our office in Australia (unless otherwise specified) and in accordance with the security practices of the third party service provider and our Privacy Policy.

### **26. Jurisdiction**

The Terms are governed by and will be construed in accordance with the laws of NSW and the parties agree to submit to the exclusive jurisdiction of the Courts of the State of NSW.

### **27. No Waiver**

The failure by the firm to exercise, or delay in exercising, any right, power, or privilege available to it under the Standard Terms of Engagement will not operate as a waiver thereof or preclude any other or further exercise thereof or the exercise of any right or power.

### **28. Acceptance of offer**

You may accept the offer of engagement orally, in writing, by signing the Letter of Engagement and returning it to the firm, or by conduct. If you accept the offer to enter into the Engagement terms, you will be regarded as having entered into the Engagement terms.

Whilst not essential, we would appreciate you returning a signed copy of the Letter of Engagement.

Where you instruct us (including instructions to carry out further work) after receipt of the Engagement terms, that is agreement by conduct and you thereby agree that the Engagement

terms apply, even where you do not sign the Engagement Proposal or Letter.

### **29. Client monies**

We maintain a trust account for dealing with client monies on their behalf. We can only accept money into our trust account on your behalf if you have provided us with a written trust account authority letter which details the authority given to us in relation to that trust money.

### **30. Communication**

You must advise of any changes to your contact details. We may send any communications to the last contact details you have provided. Unless you instruct us otherwise we may, where appropriate, communicate with you and with third parties via email or by other electronic means. The recipient is responsible for virus checking emails and any attachments. There is a risk of non-receipt, delayed receipt, inadvertent misdirection, or interception by third parties in any form of communication, whether electronic, postal or otherwise. We are not responsible for any such matters beyond our control.

### **31. Termination**

You may terminate the engagement in writing at any time with **at least 30 days' notice**. However, if you do so you will be required to pay the firm's fees, expenses, and all disbursements, incurred up to the time of termination. The firm may terminate any engagement with you and cease supplying services:

- a. if you default in payment of any invoice when due and payable;
- b. if you fail to attend to requests for correspondence and information on a timely basis;
- c. if there are any ethical grounds which the firm considers requires the firm to cease supplying services to you, e.g. a conflict of interest; or
- d. for any other reason outside the firm's control which has the effect of compromising the firm's ability to perform the work required within the required timeframe.

The firm will give you at least 30 days' notice of the firm's intention to terminate the engagement, together with the grounds upon which the intention to terminate is based.

If you fail to cooperate with us or we have reason to believe that you have provided us or any other person with misleading or factually inaccurate information, in which case we may terminate this agreement immediately. Termination will not affect any accrued rights.

You will be required to pay the firm's fees, expenses and all disbursements incurred up to the time of termination.

### **32. Variation**

We may, at our sole discretion, vary or modify these Engagement terms. You will have 14 days of issuance of the renewed Engagement terms to dispute the varied or modified Engagement terms. Any subsequent instructions which you provide to us after those 14 days have elapsed will constitute an acceptance of those modifications.

### **33. Interpretation**

If any provision of the engagement letter or these terms is void, that provision will be severed and the remainder will continue to apply. If there is any conflict between the engagement letter and these terms, these terms prevail.

### 34. General

The firm may serve any notice or Court documents on you by forwarding them by pre-paid post to your last known address.

If any provision of these Standard Terms of Engagement shall be invalid, void, illegal or unenforceable, the remaining provisions shall be unaffected, not prejudiced or nor impaired. You shall not be entitled to set off against or deduct from the price of services or expenses any sums owed or claimed to be owed to you by the firm.

The firm may licence or subcontract all or any parts of its work, rights, and obligations without your consent. A certificate of debt duly signed by a representative of the firm shall be evidence and proof of money owing by you to the firm at that time.

#### Subsection of Clause 11

##### **\*Credit card authorisation terms:**

- By providing your credit card information, you are stating that you are an authorised user of the credit card and that the associated information entered (account holder name, account number, billing address, etc.) is accurate.
- By providing your credit card information, you authorise **Banyan Consulting Pty Limited (ACN 079 063 308) ATF The MJM Trust (ABN 91 360 149 798) ("the firm/we")** to charge the credit card indicated in this authorisation form according to the terms outlined above. You understand that all recurring and/or one-time costs and fees (including the services and all related miscellaneous charges incurred) will be charged to the credit card on the payment due dates stated in invoices, and no prior notice will be issued. If the payment dates fall on a weekend or holiday, you understand that the payments may be executed on the next business day. You also understand that this authorisation will remain in effect until you **cancel in writing of any changes in the account information provided or termination of this authorisation at least 15 days prior to the next billing date.**
- If you set up automatic payments, then you authorise **Banyan Consulting Pty Limited (ACN 079 063 308) ATF The MJM Trust (ABN 91 360 149 798) ("the firm/we")** to charge the amount due for the invoices being paid to the credit card.

##### **Charges:**

- For each transaction, in addition to the charge you have authorised, your credit card issuer and network may assess their customary transaction or handling charge, if any.
- If a charge is declined or reversed by the credit card issuer or network, you agree to pay us a service charge and to reimburse us for all reasonable costs of collection. Your credit card issuer may also assess its customary charge for such transactions.

##### **Dishonored Requests for Payments:**

If your credit card issuer or network does not honour an online payment transaction,

- **Banyan Consulting Pty Limited** has the right to charge the amount of any such transaction to your account or to collect the amount from you.
- **Banyan Consulting Pty Limited** may terminate any or all Service, and we may cancel your right to participate in the online payment program.

##### **Privacy & Confidentiality:**

- Your credit card information will be kept strictly confidential and will not be forwarded to third parties uninvolved in the payment processing for any reason.

-END OF DOCUMENT-