

# Navigator Product and Consulting Services Standard Terms

Delivered by Impact Innovation Group Pty Ltd ACN 119 610 258 (we/us/our).

These Standard Terms (**Terms**) for the access to Navigator and Consulting Services (**Proposal**) which will form the basis of our agreement with you (collectively the **Agreement**).

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## 1. Acceptance

By the acceptance by you of our Proposal, including any quote or order form provided by us for the provision of Services, you are agreeing to accept our Services and agree to be bound by these Terms.

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## 2. Proposal

- (a) Where our Proposal specifies access to Navigator we will allow access by you to the Navigator tools.
- (b) Where our Proposal specifies Consulting Services, we will deliver consulting services as described in the Proposal.
- (c) Where our Proposal specifies a 'scoping' component, we reserve the right to adjust future work detailed in the Proposal, as a consequence of our immersion in the project, provided such adjustments are reasonable.
- (d) You must tell us immediately if you disagree at any time with anything contained in our Proposal or if you think we have misunderstood your requirements. If you do not let us know, we will continue carrying out the work as per the Proposal.
- (e) If there is any inconsistency between these Terms and our Proposal, our Proposal will prevail to the extent of that inconsistency.

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## 3. Navigator and Consulting Services

### 3.1 Provision of Consulting Services

- (a) We will provide Navigator our Consulting Services with reasonable skill and care of a competent contractor.
- (b) You acknowledge that we are not lawyers, accountants or financial planners and that no part of the Consulting Services or Navigator are to be construed as accounting, legal or financial advice. To the extent that the Consulting Services or Navigator contain a reference to, or content regarding, legal, accounting or financial matters, that content is not advice, and is provided for information purposes only. You acknowledge that it is your obligation to seek accounting, legal and financial advice from appropriately qualified professionals.

### 3.2 Access

We will only access your premises, facilities and systems for purposes approved in advance by you. In doing so, we will comply with your reasonable directions and usual industry practice. You must provide adequate and safe facilities for us if and when we work at your premises.

### 3.3 Your responsibilities

- (a) You must promptly provide us with any information, assistance, data, resources, materials or access that we may reasonably request to enable us to perform the Services, together with access to such personnel within your organisation that we need to interact with in order to perform the Services. You acknowledge that any delay in providing these resources to us may impact on the timing of our Services.
- (b) You are responsible for the completeness and accuracy of the information you supply to us.

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## 4. Variations

- (a) Either of us may request variations to the Consulting Services at any time. If both of us agree to the variation then we will update our Proposal to reflect the change which will then be deemed to form part of the Agreement.

- (b) The Consulting Services will be based on your instructions. Where further information or events are made known, we may reasonably update the Proposal to reflect such change.

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## 5. Contacts

- (a) Our Proposal will detail who will be responsible for the delivery of our Services and their contact information, however from time to time it may be necessary for us to substitute other members of our team to deliver the Services.
- (b) You must assign a contract administrator to manage your receipt of the Services and ongoing dealings with us. You agree that the contract administrator has your authority to make decisions regarding the Services and this Agreement on your behalf.

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## 6. Delay

- (a) Our Proposal is an estimate only and you agree that we are not liable for any delay in or change of instructions. We will take reasonable steps to mitigate and minimise delay on our part and the impact such delay may cause.
- (b) If we become aware of any delay (or likely delay) in delivery, we will endeavor to promptly notify you of the details of the delay and provide you with a revised Proposal.

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## 7. Engagement of Third parties

### 7.1 Referrals to third parties

- (a) As part of our Services we may recommend the engagement of third-party suppliers (whether of goods or services) (**Third Parties**) and may refer you to Third Parties for you to engage.
- (b) Where we have provided an introduction to Third Parties by way of a referral, you are responsible for all fees and costs relating to engaging those Third Parties, unless otherwise expressly agreed in writing by us.
- (c) We will not be responsible for any loss, cost or damage suffered by you as a consequence of engaging Third Parties that we have referred to you.
- (d) Where provided for in our Proposal, we will assist you in sourcing Third Parties, and will assist you to negotiate the terms of any engagement with them.

### 7.2 Our engagement of third parties

- (a) Where our Proposal provides for us engaging Third Parties at our cost to provide goods or services (including components of our Services) then you agree that we may engage those Third Parties in the manner described in our Proposal.
- (b) We agree in those circumstances that we will be responsible for the fees payable to those Third Parties.
- (c) We will not be responsible for any loss, cost or damage suffered by you as a consequence of any acts or omissions by those Third Parties that we have engaged.

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## 8. Non-solicitation

Neither party will for the duration of this Agreement and for a period of 12 months from the expiration or expiry of this Agreement, without the written consent of the other party, employ or engage or offer to employ or engage any employee, contractor or subcontractor of the other party that they became aware of or are introduced to because of this Agreement.

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## 9. Intellectual property

### 9.1 Intellectual property rights

Unless otherwise specified in the Proposal:

- (a) each party retains all right, title and interest in and to its pre-existing IPR's;
- (b) we own all IPR's in Navigator including improvements;
- (c) we own all IPR's in other materials that support Consulting Services including improvements;

- (d) to the extent that you need to use any of the benefit of Navigator or Consulting Services, we grant you a royalty free, world-wide license (but without the right to sublicense) to use and exploit the IPRs strictly for the purpose of benefiting from the Services or Navigator specified in the Proposal (**Purpose**);
- (e) nothing in these Terms prohibits us from using our pre-existing IPR's in Navigator to provide Consulting Services to third parties, even if they are the same or substantially the same as those provided to you; and
- (f) you specifically agree that you must not deal with the Proposal in any way other than with respect to the Purpose, and must not copy, reproduce, license or sublicense the use of Navigator in relation to any other aspect of your business except to the extent that to do so would be consistent with the Purpose.

## 9.2 Third party rights

You must ensure that we are permitted to use any third-party information or intellectual property rights that you require us to use to perform the Services.

## 10. Fees, charges and payments

### 10.1 Service Fees

As consideration for our delivery of the Services, you agree to pay us the Service Fees.

### 10.2 Initial deposit

We may require you to make payment of an initial deposit, in accordance with our Proposal, before we commence your access to Navigator or the provision of our Services. The initial deposit will be applied by us to the Proposal, following the issue of an invoice to you.

### 10.3 Quote or Order Form

We may issue you a quote or order form for the provision of Services. Quotes and order forms will be generated by us in accordance with the scope of work detailed in our Proposal. You acknowledge that quotations may be subject to change if additional work is required or you request us to provide Services in excess of our scope of works.

### 10.4 Rates

Where an hourly or daily rate is specified in the Proposal, this will be charged in accordance with the specified hourly or daily rates (as the case may be).

### 10.5 Scope

- (a) Services we provide on a fixed fee basis will be provided strictly in accordance with the scope of work detailed in our Proposal.
- (b) Any additional work that has not been specifically detailed in our Proposal will be charged in accordance with our daily or hourly rates (as may be applicable).

### 10.6 Expenses

Any costs and reasonable out-of-pocket expenses which are necessary to provide our Services (**Expenses**) will be paid or reimbursed (as the case may be) by you where we have received prior written approval from you regarding the incurring of the Expense. We will submit documentation and evidence as is reasonably required by you to verify the Expenses that have been incurred.

### 10.7 Invoicing

We will invoice you for the Navigator and Consulting Service Fees and Expenses in accordance with our Proposal or where they do not specify, each calendar month that we provide services. We will ensure each invoice contains sufficient detail to enable you to reference the services and corresponding Service Fees.

### 10.8 Payment

- (a) You must pay us all amounts outlined in our invoice in the manner reasonably nominated without set-off, counter-claim, holding or deduction.
- (b) Subject to 10.9, if you fail to pay any of our fees in accordance with sub-clause (a), we may charge you:

- (i) for all costs and expenses incurred by us in recovering our outstanding fees from you; and
- (ii) compound interest at a rate of 10% per annum on the overdue amount which will begin accruing on the first day that payment is overdue.

### 10.9 Disputed fee

- (a) If you dispute the whole or any portion of the amount claimed in an invoice, you must pay the portion of the invoice which is not in dispute (in accordance with sub-clause 10.8) and provide notice to us within 7 days of receipt of the invoice your reasons for dispute (**Invoice Notice**).
- (b) Upon receipt of your Invoice Notice, we will within a reasonable time provide you with evidence substantiating the Service Fees and Expenses and addressing your reasons of dispute, to enable a prompt and amicable resolution.
- (c) If the dispute cannot be resolved within 7 days of our substantiation under sub-clause (b), the dispute must be referred to the dispute resolution procedure in clause 12.

### 10.10 GST

- (a) Unless otherwise expressly stated in our Proposal, all amounts payable to us under this Agreement are exclusive of GST.
- (b) If GST is imposed on any supply made under or in accordance with this engagement and GST has not been accounted for in determining the consideration payable for the supply, then we may recover from you an amount on account of GST. That amount is equal to the value of the supply calculated in accordance with the *A New Tax System (Goods and services Tax) Act 1999* (Cth) multiplied by the prevailing GST rate.

## 11. Confidentiality and privacy

### 11.1 Recipient must keep Confidential Information confidential

Each party must:

- (a) keep confidential all Confidential Information;
- (b) only use Confidential Information for the purpose of providing access to Navigator or receiving (as the case may be) the Services; and
- (c) procure that its employees and contractors comply with sub-clauses (a) and (b).

### 11.2 Disclosure exceptions

The obligations in sub-clause 11.1 do not apply:

- (a) to the extent necessary to enable a party to make any disclosure required by law;
- (b) to the extent necessary to enable a party to perform its obligations under this Agreement;
- (c) where disclosure is required for any quality assurance or insurance purposes;
- (d) to any disclosure agreed in writing between the parties; or
- (e) in respect of any portion of the Confidential Information which has entered the public domain other than as a result of a breach of this Agreement.

### 11.3 Privacy

- (a) If we deal with any personal information (within the meaning of the Privacy Act), we must:
  - (i) comply with all applicable privacy laws in Australia; and
  - (ii) not do any act, engage in any practice, or omit to do any act or engage in any practice that would cause you to breach any Australian privacy law.
- (b) You acknowledge that we use third party data hosts (for example cloud service providers) to store data, and that the servers for such third party data hosts may be located outside of Australia. Whilst we use due care in selecting which third party data hosts we work with,

you acknowledge that as with any electronic data storage service, there is potential for data breaches to occur. In the event that a third party data host does experience a data breach, you acknowledge that such breach is the responsibility of the third party data host, is entirely out of our control and accordingly release us from any and all liability (howsoever arising) associated with that breach.

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## 12. Disputes

- (a) If a dispute (**Dispute**) arises between the parties to this Agreement which they cannot resolve, then the party claiming that a Dispute has arisen must deliver to the other parties a notice containing particulars of the Dispute (**Dispute Notice**).
- (b) During the period of 10 business days after delivery of the Dispute Notice, or any longer period agreed in writing by the parties to the Dispute (**Initial Period**), the parties must meet in good faith in an attempt to resolve the Dispute.
- (c) If the parties cannot resolve the Dispute within the Initial Period then unless they all agree otherwise, they must appoint a mediator to mediate the Dispute in accordance with the rules of the Resolution Institute. The parties must participate in the mediation in good faith.
- (d) The mediator must be agreed on by the parties within 10 business days after the Dispute Notice is given to the parties and if they cannot agree within that time the mediator will be nominated by the president of the Resolution Institute.
- (e) The mediation concludes when:
  - (i) all the parties agree in writing on a resolution of the Dispute; or
  - (ii) a party, not earlier than 20 business days after appointment of the mediator, has given 5 business days' notice to the other parties and to the mediator, terminating the mediation, and that 5 business days has expired without all the parties agreeing in writing on a resolution of the issue.

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## 13. Liability

### 13.1 Exclusion of other Terms

- (a) Subject to sub-clause (b), any condition, guarantee or warranty which would otherwise be implied in this Agreement is hereby excluded.
- (b) Liability for breach of a guarantee conferred by the Australian Consumer Law (other than those conferred by ss 51 to 53 of the Australian Consumer Law) is limited (at our election) to the provision of the Services again (including providing access to Navigator again) or the payment of the cost of having the Services supplied again.

### 13.2 Limit of liability

- (a) Unless otherwise required by law, our liability for damages arising from any breach of this Agreement or any issue with the Services or Deliverables we have provided in relation to it, in contract, tort or equity are limited to the amount that you have paid to us under this Agreement.
- (b) To the maximum extent permitted by law, we will not be liable or responsible for any loss of profit, loss of contract, loss of goodwill, loss of opportunity or any other consequential loss incurred by you or any other person whether directly or indirectly related to our engagement under this Agreement.
- (c) We will not be liable for any part of our Services that are conditional upon your instructions where further information or events make those instructions incorrect.

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## 14. Indemnity

You agree to indemnify us and keep us indemnified against any claim, loss, damage, liability, cost or expense that may be incurred by us arising from or in connection with:

- (a) any breach or default by you of these Terms;
- (b) a negligent act or omission by you or by a party you are responsible for;
- (c) your failure to comply with any law;

- (d) any claim made against us by any third party in connection with the information or documents that you have provided to us; or
- (e) the failure of a party you are responsible for in complying with any law or the terms of this Agreement.

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## 15. Term and termination

### 15.1 Term

These Terms commence on the date of your acceptance under clause 1 and continue until all Services specified in the Proposal are completed and all payments owed to us are received.

### 15.2 Termination for breach

- (a) If either party breaches any of these Terms and such a breach is capable of rectification, the other party must give the defaulting party written notice requesting that the breach be rectified within 5 business days (**Breach Notice**).
- (b) If a breach has not been rectified within 5 business days of the giving of a Breach Notice, the party giving the Breach Notice may terminate this Agreement immediately by notice in writing to the other.
- (c) If any party breaches a material term and the breach is not capable of rectification, the other party may terminate this engagement immediately by notice in writing to the party in breach.

### 15.3 Consequences of termination

- (a) Following termination you must:
  - (i) promptly pay all Expenses that have been incurred by us to date in accordance with sub clause 10.6 and all outstanding Service Fees in accordance with sub clause 10.8; and
  - (ii) return or delete all of our Confidential Information that has been provided to you during the provision of our Services.
- (b) Following termination we must:
  - (i) refund you the balance of any money that you have paid in advance, once we have set-off all of our outstanding fees and expenses; and
  - (ii) return or delete all of your Confidential Information that has been provided during the provision of our Services, except for one copy where required for quality assurance or insurance purposes.

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## 16. Notices

Any notice given under or in connection with this engagement:

- (a) must be in legible writing and in English;
- (b) must be addressed to a party's contact address as shown on the Proposal or as otherwise notified by a party to the other party from time to time;
- (c) must be:
  - (i) delivered to that party's address;
  - (ii) sent by pre-paid mail to that party's address; or
  - (iii) sent by email to that party's email address; and
- (d) will be deemed to be received by the addressee:
  - (i) if delivered by hand, at the time of delivery;
  - (ii) if sent by post, on the third business day after the day on which it is posted, the first business day being the day of posting; or
  - (iii) if sent by email, at the time that would be the time of receipt under the *Electronic Transactions Act 1999* (Cth).
- (e) Consent to electronic communication

The parties consent, pursuant to the Electronic Transactions Act, to all communications (including all notices, consents, approvals, requests and demands) under or in connection with this Agreement being given by an electronic communication.

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## 17. General matters

### 17.1 Interpretation

In interpreting this document:

- (a) Headings are for convenience only and will not affect interpretation of this Agreement;
- (b) words in the singular include the plural and words in the plural include singular, according to the requirements of the context;
- (c) a reference to a legislation or other law includes delegated legislation and consolidations, amendments, re-enactments or replacements of any of them;
- (d) a reference to any of the words "include", "includes" and "including" is read as if followed by the words "without limitation"; and
- (e) terms used that are defined in the *A New Tax System (Goods and Services Tax) Act 1999* (Cth) have the meaning given in that Act, unless the context otherwise requires.

### 17.2 Survival and essential terms

- (a) Clauses 7, 8, 10, 11, 12, 13, 14, 15.3, 17.5, 17.9 and 17.10 and are taken to survive this Agreement.
- (b) Clauses 9, 10 and 11 are essential terms of this Agreement.

### 17.3 Amendments

Any amendments to these Terms must be made in writing or if agreed verbally between us, must be confirmed in writing within a reasonable time after such verbal agreement.

### 17.4 Assignment

- (a) Subject to sub-clause 17.4(b), a party cannot assign, novate or otherwise transfer any of its rights or obligations under these Terms without the prior written consent of the other party.
- (b) You agree that if we merge or amalgamate with another company, business or otherwise, we may transfer your matter, including all materials, personal information, confidential information and ideas supplied by you, to that other company, business or other entity, provided they agree to be bound on terms equivalent to those contained in this Agreement.
- (c) You also hereby consent to us assigning, novating or transferring any of our rights or obligations under these Terms.

### 17.5 Further assurances

Each party must promptly do all further acts and execute and deliver all further documentation reasonably requested by the other party to give effect to the contemplations of this Agreement.

### 17.6 Consents

Unless these Terms expressly state otherwise, a party may in its absolute discretion, give conditionally or unconditionally or withhold, any consent under these Terms. To be effective any consent under these Terms must be in writing.

### 17.7 Force majeure

A party will not be liable for any failure or delay in the performance of its obligations under the Agreement to the extent that such failure or delay:

- (a) is caused by a circumstance not within the reasonable control of the party; and
- (b) could not have been reasonably avoided, prevented or circumvented by the party.

### 17.8 Waiver

The non-exercise of or delay in exercising a right of a party will not operate as a waiver of that right, nor does a single exercise of a right preclude another exercise of it or the exercise of other rights. A right may only be waived by written notice signed by the party to be bound by the waiver.

## 17.9 Jurisdiction

This engagement is governed by the law in force in the State of Queensland and each of us submit to the non-exclusive jurisdiction of the courts of Queensland.

### 17.10 Severability

Any provision of these Terms that is illegal, void or unenforceable will be severed without prejudice to the balance of the conditions which shall remain in force.

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## 18. Acknowledgement

You acknowledge that:

- (a) you have read, understood and agreed to be bound by these Terms and the Agreement;
- (b) you have received and will retain your own copies of these Terms and our Proposal; and
- (c) you have been informed by us that you should seek independent advice in relation to these Terms prior to accepting offer of Services.

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## 19. Definitions

In these Terms the following definitions apply:

**Confidential Information** means information that is by its nature confidential and:

- (a) is designated by a party as confidential;
- (b) is described in the Proposal as confidential; or
- (c) a party knows or ought to know is confidential,

but does not include information that:

- (d) is or becomes generally available in the public domain, other than through any breach of confidence;
- (e) is rightfully received from a third person other than as a result of a breach of confidence; or
- (d) has been independently developed by a party without using any Confidential Information of the other.

**Consulting Services** means the provision of facilitated Navigator workshops and Consulting Services.

**Electronic Transactions Acts** means:

- (a) the *Electronic Transactions (Queensland) Act 2001* (Qld); and
- (b) the *Electronic Transactions Act 1999* (Cth).

**IPR's** means all intellectual property rights of whatever nature including all rights conferred under statute, common law or equity, including all copyrights, patent rights, trade mark rights (including any goodwill associated with those trade mark rights), design rights and trade secrets together with any documentation relating to those rights but excluding moral rights.

**Navigator** means the Commercialisation Navigator, Innovation Navigator, or Skills Navigator tools as described in the Proposal that provide a structured process to deliver a roadmap (Gantt chart) that is provided to you for your use and the Commercialisation Readiness Assessment tool that provides a readiness score that is provided to you for your use.

**Navigator and Consulting Service Fees** means our fees for the provision of the Navigator and Consulting Services as described in the Proposal.