

STANDARD TERMS AND CONDITIONS FOR PROVISION OF SERVICES by knowITdigital PTY LTD (ABN 14 130 045 242)

1. Definitions and Interpretation

1.1 Definitions

The following definitions shall apply to the Agreement, unless the context otherwise requires:

“Agreement” means an Offer Letter accepted by the Subscriber together with these Standard Terms and Conditions, and includes any written variation of the Agreement from time to time;

“Applicable Laws” include any law, regulation, rule or authorisation of any governmental agency as may impact on the Agreement or the business of knowITdigital or the Subscriber and includes the Corporations Act 2001 (Cth), the Life Insurance Act 1995 (Cth), the Insurance Contracts Act 1984 (Cth), the Insurance (Agents and Brokers) Act 1984 (Cth) and any regulations made under them or any policies, circulars, rulings or recommendations issued by a regulatory authority binding upon or customarily complied with by holders of financial services licences or insurance intermediaries;

“Authorised User” means each person or category of persons named in the Offer Letter or specifically authorised in writing by knowITdigital from time to time;

“Charges” means any fees or charges payable from time to time by the Subscriber under the Agreement;

“Client” means any client of the Subscriber or an Authorised User;

“Commencement Date” means the date for commencement of Services as specified in an Offer Letter;

“Confidential Information” means any information, in whatever form, which is marked as, or agreed between the parties, to be “confidential”, or which by its nature and the circumstances of its disclosure, could reasonably be expected to be confidential, but does not include information which is in the public domain other than by reason of a breach of the Agreement or which a party is obliged to disclose by law or the order of a court of competent jurisdiction;

“Due Date” means the earlier of the due date for payment specified in invoices for the Charges or the last day of the previous quarterly period for which invoices have been provided by knowITdigital;

“GST” means goods and services tax within the meaning of A New Tax System (Goods and Services Tax) Act 1999;

“knowITdigital” means knowITdigital Pty Ltd (ABN 14 130 045 242);

“Offer Letter” includes any letter of offer from knowITdigital to the Subscriber which has been accepted in writing by the Subscriber named therein;

“Practice” means a financial planning practice comprising owners and staff located in a single geographical location

“Services” means those services listed in an Offer Letter or as may be agreed in writing by knowITdigital from time to time;

“Subscriber” means the party described as the Subscriber in an Offer Letter; and

“Term” Initial Term is a minimum of twelve (12) months. This contract shall automatically renew on a month by month basis.

“Third Party Provider” means a person or entity from whom knowITdigital obtains or sources any part of the Services.

“wealthdigital” means the website owned by knowITdigital that delivers the Services to the Client

1.2 Interpretation

In the interpretation of the Agreement, unless the context otherwise requires:

- (a) headings are for convenience only and do not form part of the context;
- (b) words importing the singular include the plural and vice versa;
- (c) words which are gender neutral or gender specific include each gender;
- (d) a reference to a natural person includes a body corporate, a partnership, a joint venture, an unincorporated body or other entity and conversely;
- (e) a reference to any party to the Agreement includes the successors and assigns of that party;
- (f) a reference to any law or provision thereof includes any modification or re-enactment of it or any law substituted for it and all regulations or statutory instruments issued under it;
- (g) a reference to dollars or \$ is to Australian currency; and
- (h) a word or expression as defined in the Corporations Act 2001(Cth) has the same meaning in the Agreement.

1.3 To the extent there is any inconsistency an accepted Offer Letter forming part of the Agreement shall take precedence over these standard terms and conditions.

2. Nature of Services and Relationship

2.1 The information provided by the Services is intended to be general information to assist with common financial and business issues and is not provided as advice. Subscribers and Authorised Users should only use that information as background information for organisational or personal purposes.

2.2 The Services may not be suitable for those seeking information in respect of the business and financial environment outside of Australia. Parties seeking information concerning the business and financial environment outside of Australia should seek appropriate information from alternative sources.

2.3 Nothing in the Agreement or arising out of the performance by the parties of their obligations under the Agreement shall create a relationship of a joint venture, principal and agent, partnership or financial services licensee or representative.

3. Provision of Services

3.1 knowITdigital will provide the Subscriber and Authorised Users with access to the Services from the Commencement Date. Provided the Charges are paid when due knowITdigital will continue to provide the Services until the Services are terminated in accordance with clauses 10.2 or 10.3.

3.2 knowITdigital shall be entitled to withhold access to the Services if the Charges are not paid by the Due Date.

3.3 The Subscriber is permitted to provide access to individual Authorised Users on the terms and conditions set forth below. No person who is not an Authorised User shall be allowed by the Subscriber to access the Services.

3.4 Only Authorised Users who have been given passwords may access the knowITdigital and wealthdigital websites.

3.5 The mode of access to the Services is as set forth in the Offer Letter.

3.6 The Subscriber must procure compliance by each Authorised User with the terms of the Agreement as if they were directly parties to it. The Subscriber is liable for its own acts or omissions and for those of each Authorised User as if the acts and omissions of an Authorised User were those of the Subscriber itself. The Subscriber must immediately notify knowITdigital if the Subscriber becomes aware of or reasonably suspects any non-compliance with the Agreement.

3.7 Receiving access to and the use of information from the Services shall be solely at the risk of the Subscriber and Authorised Users. Without limiting the generality of the foregoing that information and access is provided on condition that the Subscriber and the Authorised Users:

- (a) are solely responsible for the assessment and use of any material provided through the Services and in respect of the appropriateness and application of that material in relation to any Client;
- (b) are solely responsible for the provision of advice to Clients and that knowITdigital shall have no such responsibility;
- (c) are not representatives of knowITdigital and shall not hold out that they are representatives of knowITdigital;
- (d) do not provide access to the Services to any person other than Authorised Users;
- (e) must not disclose the passwords or access codes for the Services to any person other than Authorised Users; and
- (f) must immediately inform knowITdigital upon a person ceasing to be an Authorised User and ensure that no password or access code issued to an Authorised User shall be used by a person after they have ceased to be an Authorised User.

3.8 The Subscriber shall procure compliance by Authorised Users with requirements of clause 3.7. A non-compliance by an Authorised User with the provisions of clause 3.7 shall be deemed to be a breach of the Agreement by the Subscriber.

3.9 The Services are not exclusively provided to the Subscriber and may be provided by knowITdigital to other parties as knowITdigital sees fit.

3.10 knowITdigital from time to time at its discretion may arrange for Third Party Providers to provide part of the content of the Services. knowITdigital shall not be responsible for any failure or delay by a Third Party Provider where knowITdigital has taken reasonable care and diligence in the appointment of that Third Party Provider and where knowITdigital has taken reasonable steps to minimise or eliminate the cause of any such failure or delay.

4. Charges

4.1 The Subscriber will pay the Charges on or prior to the Due Date.

4.2 The Subscriber shall immediately notify knowITdigital if it wishes to provide access to the Services to an additional Authorised User so as to enable knowITdigital a reasonable time to consider whether it will agree to such access being given and arrange for a new password or other access arrangements.

4.3 If the number of Authorised Users is increased so as to exceed the number set out in the Offer Letter the Charges payable by the Subscriber shall be increased pro rata from the date on which the increased number of Authorised Users is required by the Subscriber.

4.4 No refunds or reductions in Charges will be made in respect of cancelled subscriptions or reductions in the number of Authorised Users.

4.5 knowITdigital reserves the right to vary the annual Charges at the expiration of the first 12 months of the subscription and thereafter on 1 months' notice.

5. Representations and Warranties

5.1 The Subscriber warrants and represents to knowITdigital that for the duration of the Agreement the Subscriber will ensure that it and Authorised Users:

- (a) comply with the requirements of the Applicable Laws so far as they relate to the businesses or callings of the Subscriber and Authorised Users; and

(b) do not act in any manner so as to bring the reputation or character of knowITdigital or any of their employees into disrepute.

5.2 knowITdigital makes no representation or warranty express or implied, and to the maximum extent permitted by law, excludes all warranties whether statutory or otherwise:

(a) as to the fitness of the Services for any particular purpose;

(b) as to the accuracy, reliability, completeness or security of information provided in the Services; and

(c) that the Services or the knowITdigital and wealtdigital website will be continuous, uninterrupted, up to date or error free.

6. Limitation of Liability

6.1 Services provided by knowITdigital are limited to general advice and should not be taken to be personal advice. Clients of subscribers should seek legal, accounting or financial advice when applying information to their own circumstances.

6.2 The Subscriber is to be solely liable for any claim by or damages incurred by Clients or Authorised Users except to the extent that such damage arises directly from the fraud or negligence of knowITdigital.

6.3 Except as provided in clause 6.2 knowITdigital shall not be liable for any loss, damage, liability or cost incurred directly or indirectly as a result of the provision of or reliance upon the Services or any act or omission on the part of knowITdigital its employers or Third Party Providers.

6.4 Without limiting the generality of clauses 6.2 and 6.3 the total amount of damages for which knowITdigital may become liable shall not exceed the Charges paid by the Subscriber in any one financial year.

7. Indemnity

7. In further consideration of knowITdigital providing the Services on the terms herein provided, the Subscriber agrees to indemnify knowITdigital and keep it indemnified from and against any losses, damages, costs, expenses or liabilities suffered or incurred by knowITdigital as a result of or in connection with or arising out of:

(a) advice given to clients by the Subscriber or any party authorised or permitted by the Subscriber whether or not an Authorised User;

(b) the Subscriber or an Authorised User allowing any other person gaining unauthorised access to the Services;

(c) any false or misleading conduct or statement or omission by the Subscriber or Authorised User concerning the Services or the information provided by the Services; and

(d) a breach of the Agreement by the Subscriber,

except to the extent such losses, costs, expenses or liabilities arise as a direct result of the fraud or negligence of knowITdigital.

8. Confidential Information and Intellectual Property

8.1 Each party agrees that Confidential Information shall be kept confidential between the parties and must not disclose permit or procure the disclosure of that information except as required by law or with the written consent of the other party.

8.2 The Subscriber must ensure that Confidential Information belonging to knowITdigital is not disclosed or permitted or procured to be disclosed by any Authorised User except as required by law or with the written consent of knowITdigital.

8.3 knowITdigital retains full ownership of the copyright to and all intellectual property in the knowITdigital and wealthdigital websites and all information and other material issued or published by knowITdigital or derived from any such information or material. No part of the copyrighted material or other intellectual property of knowITdigital may be used altered or dealt with except in accordance with the Agreement.

9. Insurance

9.1 The Subscriber must effect and keep current at all times a valid and effective professional indemnity insurance policy in respect of its business sufficient to meet all claims, suits, actions, losses, damages (including consequential loss) which the Subscriber may incur in the course of its business.

9.2 Upon request the Subscriber must forward to knowITdigital a certificate of currency of its professional indemnity insurance.

9.3 The Subscriber must forthwith notify knowITdigital if the Subscriber is without professional indemnity insurance cover.

10. Termination

10.1 Without limiting its other rights and remedies, knowITdigital may terminate a subscription and cease to provide the Services where:

(a) the Subscriber breaches the Agreement or any warranty express or implied arising out of the existence of the Agreement, and the breach is reasonably capable of being remedied, but is not remedied within 7 days of notice by knowITdigital as to the existence and nature of the breach;

(b) the breach is irreparable in the reasonable opinion of knowITdigital;
or

(c) unauthorised access to the Services has been given by the Subscriber or an Authorised User.

10.2 Notwithstanding the generality of clause 10.1 knowITdigital may at any time terminate a subscription without cause being shown by giving 1 month's notice in writing to the Subscriber.

10.3 The Subscriber may at any time terminate its subscription for the Services by giving 1 month's notice in writing to knowITdigital.

10.4 No delay in requiring remediation or cessation of a breach or in termination of the Agreement shall give rise to any waiver or estoppel.

10.5 A termination of the Agreement shall not affect the accrued rights of any party prior to the termination.

10.6 In the event of a termination under clause 10.2 knowITdigital shall refund prepaid Charges on a pro rata basis for that period following the termination. There shall otherwise be no refund of charges following a termination.

10.7 Upon termination of the Agreement the Subscriber and Authorised Users will not be entitled to access or otherwise use the Services and all hard and soft copies of material taken from the Services must be immediately destroyed.

11. General

11.1 All GST payable in respect of the Charges and all stamp duty, if any, payable in respect of the Agreement shall be paid by the Subscriber.

11.2 The Subscriber may not assign or sub-license the benefit of the subscription for the Services without the prior written consent of knowITdigital.

11.3 A variation of the Agreement must be in writing signed by each of the parties except as provided in clause 11.4.

11.4 From time to time knowITdigital may wish to update or vary these standard terms and conditions to reflect changes to the knowITdigital or wealthdigital website or its Services or in laws affecting the websites or Services. These standard terms and conditions shall be deemed modified upon notification of any changes to the Subscriber or the posting of those changes on the knowITdigital or wealthdigital websites. The Agreement shall thereupon be deemed to have been modified accordingly.

12. Proper Law, Jurisdiction and Dispute Resolution

12.1 The Agreement shall be governed and construed in accordance with the laws of New South Wales.

12.2 The parties submit to the non-exclusive jurisdiction of the courts of New South Wales in respect of any dispute arising in connection with the Agreement.

12.3 Before a party seeks external dispute resolution in relation to the Agreement it must give written notice to the other party of the existence and nature of the dispute and thereafter the parties must meet in good faith within 10 business days of the notification with a view to resolving the dispute. Nothing in this clause 12.3 prevents a party from seeking urgent interlocutory relief in the courts.

13. Notices

13.1 The Subscriber shall forthwith upon entry into the Agreement notify knowITdigital of an email address at which notices may be served on the Subscriber. A notice sent to that address by email shall be taken to have been duly served at the time of sending. The time of sending may be proved by a copy of the relevant email.

13.2 Any notice under the Agreement to be given to the Subscriber shall be taken to have been duly given if delivered to the address of the Subscriber as shown in the Offer Letter or at the address for service as may have been most recently notified by the Subscriber to knowITdigital.