



TERMS OF ENGAGEMENT

Date of Entry:

1. ENGAGEMENT

- 1.1. These terms and conditions (**Terms**) will govern your engagement of Spruson & Ferguson Pty Ltd (**Spruson & Ferguson, we or us**) for all services supplied to you (Services). The Terms supersede any earlier terms of engagement provided by us to you and, unless we have agreed with you in writing, wholly replace any terms that you may have provided or provide to us.
- 1.2. By signing and returning these Terms to us, or by continuing to provide us instructions, you agree to be bound by these Terms and, if you are an individual signing these Terms on behalf of an organisation, warrant you have authority to bind your organisation.
- 1.3. Our company is an incorporated registered attorney. It and each individual registered patent and trade marks attorney providing the Services is bound by the *Code of Conduct for Trans-Tasman Patent and Trade Marks Attorneys 2018*, dated 14 December 2017 (the **Code**).
- 1.4. We will inform you of the specific registered patent or trade marks attorney or legal practitioner responsible for providing the Services to you, who will have the appropriate competency to perform the Services including (where relevant) by drawing on technical expertise. Where required under the Code and we have not previously done so, we will also inform you as to the procedures, costs and timing of undertaking the Services. If such matters become materially different we will inform you. Information about the competencies and qualifications of the registered attorneys or legal practitioners providing Services to you are on our website.

2. SCOPE OF OUR SERVICES

- 2.1. Our services are provided only to you as the client named in these Terms or any applicable engagement letter. We do not owe any duty or have liability to any other person, and no other person may use the advice we give you unless we have agreed in writing, and our engagement relates only to each particular matter in respect of which you engage us. Once that matter is at an end, we will not owe you any duty in respect of any related or other matters unless you specifically engage us in respect of them.
- 2.2. Our advice is not to be referred to in connection with any prospectus, financial statement or public document without our written consent.
- 2.3. Any advice provided as part of the Services is based on the facts of which we are aware, and is subject to any changes in the law after it is given. We are not liable for errors in, or omissions from, information provided by you or any third party.

3. OWNERSHIP GROUP

- 3.1. For the purposes of the Code, we advise you of the following with respect to our ownership and structure.
- 3.2. Spruson & Ferguson is a member of the IPH Limited group. IPH Limited is the holding company for a number of intellectual property professional services businesses operating under different brands across the Asia-Pacific region (each company or group of companies operating under a single brand is referred to in these Terms as a **Group Business**). For more information on the IPH Limited group, please see www.iphltd.com.au. Spruson & Ferguson and each other Group Business adhere to certain principles to ensure independence in provision to clients of attorney professional services, appropriate disclosure of group relationships and management of actual or potential conflicts of interest. For more information see our *Group Relationships Statement* on our website. (Note: we may from time to time engage or be engaged by other IPH Limited Group Businesses as a foreign agent or lawyer.)
- 3.3. For the purposes of the Code, Spruson & Ferguson is also considered to be a member of an 'ownership group'. Members of the 'ownership group' are Spruson & Ferguson Pty Ltd, Spruson & Ferguson Lawyers Pty Ltd, AJ Park IP Ltd (and affiliated company, AJ Park Law Ltd), Fisher Adams Kelly Pty Ltd, Cullens Pty Ltd^A, Practice Insight Pty Ltd and Pizzeys Patent and Trade Mark Attorneys Pty Ltd. Spruson & Ferguson also comprises patent and trade mark attorney entities outside Australia and New Zealand. For a diagram of all legal entities forming part of the IPH Limited group see www.iphltd.com.au/about-iph. ^AFisher Adams Kelly Pty Ltd and Cullens Pty Ltd will combine business operations with Spruson & Ferguson from April 2018 and be fully integrated into Spruson & Ferguson Pty Ltd in July 2018.
- 3.4. Each entity in the IPH Limited group is a separate legal entity and your engagement under these Terms is only an engagement of us, and no other group entity. We may from time to time engage another group entity on your behalf to assist in provision of services, for example as a foreign agent or lawyer.

4. YOUR INSTRUCTIONS

- 4.1. In order for us to provide the Services, you must provide us with full and detailed instructions, including information about any change in ownership of your relevant IP rights, and information about all other relevant matters including information concerning previously filed applications or publications known to you that relate to the same or a similar subject.
- 4.2. We will keep you informed of the progress of a matter. However, although we may provide to you reminders as to upcoming deadlines we do not undertake to do so in all cases, and you should ensure deadlines are noted in your own records and provide to us timely instructions.
- 4.3. You will, at our request, promptly provide us with any information or assistance we need to progress the matter in a timely manner. If you fail to do this it may jeopardise the validity or existence of the intellectual property rights involved and we will have no liability for failure to action instructions which are incomplete or not sufficiently in advance for us to meet relevant deadlines.
- 4.4. In most circumstances, we will not proceed until we receive your instructions. If, however, action is necessary to protect your rights or interests we may, at our discretion, act without referring to you or waiting for your instructions. Where we do so we will charge for our services and any related disbursements.
- 4.5. Whilst it may be desirable to conduct a search for the purposes of assessing potential infringement, the prior rights of others or prior art, we will not do this unless you specifically instruct us to do so.
- 4.6. When we prepare documents in respect of a matter and submit them to you, you must check they are accurate and, if not, contact us promptly to correct or clarify anything or raise any queries.
- 4.7. We have procedures in place to identify and respond to conflicts of interest or potential conflicts of interest. If a conflict of interest arises, we will advise you of this and follow the requirements and procedures set out in the Code. This may mean we form the view that we cannot act for you further in a particular matter, in which case we may terminate our engagement.

5. COMMUNICATION

- 5.1. All communications by us will be sent to the address you have nominated (including any email address). If we have an email address we will use that address as the primary means of correspondence and it is your responsibility to inform us in the event your email (or any other address) changes, or becomes unusable. If we are unable to reach you because you have not properly informed us of any changed address or contact details, we may act in accordance with clause 4.4, however, our obligation to act in the matter ceases.
- 5.2. Emails and facsimiles may lack security and jeopardise confidentiality of information, or may not be delivered due to technical problems, even if they appear to be delivered. We do not accept liability for non-receipt or late receipt by us or you of emails or facsimiles, or for corruption or unauthorised use or disclosure.
- 5.3. If your communication contains important instructions, in particular time dependent instructions, you should confirm receipt by us. We do not accept liability for any failure to act on such instructions where we have not acknowledged receipt.

6. OUR PROFESSIONAL FEES

- 6.1. We will charge you our professional fees and our disbursements for all Services provided to you in accordance with or as a result of your instructions from time to time, including other associated matters where we are required to act on your behalf such as answering subpoenas addressed to us in connection with you.
 - 6.2. Obtaining and maintaining intellectual property rights involves ongoing costs over a long period. In addition to any estimate provided by us, you should seek our advice on such costs from time to time so as to be aware of and budget for them.
 - 6.3. Our professional fees are charged in accordance with:
 - (a) our Scale of Charges for specific tasks such as filing applications; and
 - (b) our Hourly Rate Charges are for professional time incurred in providing the Services (including travelling time). Such charges accrue on the basis of minimum of six minute units and will vary according to the expertise and seniority of the professionals involved, as well as the work performed. These charges may be additional to Scale of Charges fees.
- Our Scale of Charges and standard hourly rates will be provided to you or are available on request on a confidential basis.
- 6.4. In certain circumstances, we may in writing agree with you different rates or fees for certain Services, in which case those rates fees will apply for such Services.

- 6.5. Where we provide you with an estimate of our charges it is a non-binding estimate only, given in good faith based on our knowledge at the time of the instructions, and actual charges may vary. If we become aware of circumstances that may materially affect an estimate we will endeavour to inform you. An estimate is not a fixed price or capped fee unless otherwise agreed in writing.
- 6.6. We may vary our professional fees from time to time by having regard to economic and financial factors and experience and expertise of our personnel which variations will apply to work performed after the date of change.
- 6.7. In some cases our professional fees may also be adjusted to take account of the urgency of the matter, such as work outside business hours is required.
- 6.8. We may from time to time require payment in advance on account of anticipated fees and disbursements. If so, we will notify you and will not undertake work until we have received the requested amount in cleared funds.

7. DISBURSEMENTS

- 7.1. We do not charge you for disbursements for telephone calls except where conference calls are organised through third party service providers. We do charge you disbursements for postage, photocopying, delivery charges and facsimile transmissions.
- 7.2. We will charge you for all third party disbursements we incur on your behalf, such as official Patent, Trade Marks or Designs Office fees, GST (where applicable), charges and disbursements of overseas associates, experts, solicitors, barristers, external copying and reasonable travelling/accommodation expenses.
- 7.3. Where we need to use the services of overseas associates or agents, we do so as your agents.
- 7.4. In order to cover our costs of dealing in a foreign currency, including currency conversion costs and exchange rate fluctuations we may charge an additional amount. In particular, where we receive charges from an overseas supplier or are required to convert our charges into a foreign currency prior to invoicing, we will convert amounts at an exchange rate calculated by us which will include an additional margin.

8. INVOICES AND PAYMENTS

- 8.1. We issue invoices or debit notes in Australian dollars for our services and disbursements, and third party disbursements unless another currency has been agreed with you. We may issue such invoices monthly, or as each stage of the Services is performed.
- 8.2. Our invoice operates as a tax invoice for the amount of any Goods or Services Tax (GST) (if applicable) arising as a result of supply of the Services or otherwise with respect to our engagement by you. All GST is payable as an additional amount. Where we engage third parties we will be entitled to pass on to you any GST.
- 8.3. Our accounts are payable free of any deductions (including bank charges and withholdings) within 14 days after the date of the invoice. If we have received a payment in advance or deposit from you, we may apply such amounts to the invoice at our discretion.
- 8.4. If you fail to pay an account when due, without restricting our other rights and remedies we may do any one or more of the following:
- not carry out any further work until paid in full;
 - retain custody of all materials in our possession (including samples, specimens, documents and files) until paid in full;
 - charge interest on amounts overdue at the rate of 8% per annum calculated from the due date; and
 - terminate our engagement.
- 8.5. If our fees and disbursements are not paid within 60 days of the date of our invoice and we have sought payment of that overdue amount from you, in accordance with clause 13.3, we may also report you to a credit reporting agency.

9. ABANDONMENT OF MATTERS

- 9.1. You will ensure that your instructions for maintaining or abandoning a matter are complete and clear. Services performed before your instructions to abandon can be implemented will continue to incur our charges.
- 9.2. If we do not receive instructions or a requested payment in time in relation to a matter for which action needs to be taken, we may conclude you wish to abandon the matter and act accordingly.

10. RENEWALS

- 10.1. Registered intellectual property rights will usually require renewal (or annuity) fees to be paid to the relevant government authority on a periodic basis. We ordinarily refer our clients to CPA Global Limited (CPA) of Jersey, Channel Islands (unless we are instructed otherwise). CPA is an established, independent specialist renewals business and our preferred partner for the renewal of our clients' intellectual property rights worldwide. Where your matters require renewal you may be contacted directly by CPA who will have received your case details from us. You agree that we may share relevant information with CPA to enable CPA to contact you and provide its renewal services.
- 10.2. There is no obligation upon you to use the services of CPA. Where CPA's services are used we may receive a case management or agency fee from CPA.

11. DIFFICULTIES

- 11.1. If, at any time, you have any concerns regarding the conduct of a matter, please contact the Principal responsible or our Managing Director Sydney/Melbourne Tracey Berger.

- 11.2. If you are not satisfied with the way we handle any query or dispute, you may make a written complaint to:

- Institute of Patent and Trade Mark Attorneys of Australia, Level 15, 1 Nicholson Street, Melbourne, VIC 3000; or
- the Trans-Tasman IP Attorneys Board (www.ttipab.gov.au).

- 11.3. If a dispute arises, other than a dispute regarding payment, you agree that we may prior to the commencement of any litigation, at our discretion, require the dispute to be submitted to mediation by the Australian Commercial Disputes Centre Limited in accordance with its rules and on the basis that each party will bear its own costs in relation to the mediation.

- 11.4. These Terms are governed by the laws of New South Wales, Australia and you agree to submit to the non-exclusive jurisdiction of the courts of that State.

12. WITHDRAWING REPRESENTATION

- 12.1. You may terminate your engagement of us at any time by providing clear notice to us. Such termination will be effective when received by us (within business hours).
- 12.2. We reserve the right to cease acting in a matter, or to withdraw from representing you and terminate your engagement of us at any time including where:
- you do not comply with a request for funds in advance;
 - we are unable to obtain adequate instructions;
 - you have not paid our accounts; or
 - in our opinion we should cease to act for reasons of conflict of interest, whether ethical, commercial or otherwise.
- 12.3. Termination of our engagement does not affect any accrued rights or remedies. Promptly upon receipt or provision of a notice of termination we will use reasonable endeavours to advise any foreign associate or agents of the termination. You remain liable for any fees or expenses for work performed by that associate. In the event that our engagement terminates we will comply with our obligations under the Code with respect to such termination.

13. PRIVACY

- 13.1. We collect, use, disclose and manage personal information in accordance with our Privacy Policy (as amended from time to time) available on our website, or sent to you on request.
- 13.2. Clause 8.1 of the Australian Privacy Principles ("APPs") contained in Schedule 1 of the *Privacy Act 1988 (Cth)* (**Privacy Act**) provides that if we disclose personal information about an individual to an overseas recipient, then we must take such steps as are reasonable in the circumstances to ensure the overseas recipient does not breach the APPs in relation to such information. An exception to this is if we obtain your consent. We intend to rely on this exception in the following way. If you sign these terms, or continue to instruct us in a matter, you will be taken to have consented to the disclosure by us of your personal information to overseas recipients on the basis that:
- clause 8.1 of the APPs will not apply to such disclosure;
 - the individual whose personal information is disclosed will not be able to seek redress under the Privacy Act;
 - the overseas recipient may not be subject to any privacy obligations or to any principles similar to the APPs;
 - the individual may not be able to seek redress in the overseas jurisdiction; and
 - the overseas recipient is subject to a foreign law that could compel the disclosure of personal information to a third party, such as an overseas authority.
- 13.3. If you are an individual, by signing these terms of engagement, you agree that we may also give information about you to a credit reporting agency for the purpose of allowing the credit reporting agency to create or maintain a credit information file containing information about you. This information is limited to the matters set out in section 18E of the *Privacy Act 1988* and may include identity particulars (such as your name and address), payments which we have notified you are overdue by more than 60 days and which we have taken steps to recover from you, and cheques drawn by you for \$100 or more which have been dishonoured more than once. This information may be given before, during or after the provision of our Services to you.
- 13.4. If you are an individual, by signing these terms of engagement, you agree that we may obtain a consumer credit report containing information about you from a credit reporting agency for the purposes either of assessing your creditworthiness prior to providing you with professional services, or collecting overdue payments owed by you relating to Services provided by us, and that disclosure by a credit reporting agency or our use of relevant information referred to in sections 18K(1) (b), (c), (e) and (h), section 18L(4) or section 18N(1)(b) of the Privacy Act may occur in assessing your creditworthiness. By signing these Terms you agree to the use of this information when used in accordance with those sections. This clause is not effective unless these Terms are signed by you, as required by section 18K(1)(b) or (h), as the case may be, of the Privacy Act.

14. FILE CONTENTS

- 14.1. When instructed to transfer work to another representative our services involved in the transfer of files, including photocopying fees, as appropriate may be charged. We may refuse to transfer files (and physical samples or specimens) over which we exercise a lien because of unpaid accounts.

- 14.2. We maintain electronic files. We may destroy files that are no longer current in accordance with our file destruction policy (which may vary from time to time) and after any ongoing work is required, after the file is "closed", or otherwise maintain electronic files only in lieu of physical files. If you would like a copy of our file destruction policy, please let us know.
- 14.3. Subject to these Terms, if you wish us to return to you any physical documents that may have been retained by us after the completion of a matter please let us know immediately, otherwise we will assume that you consent to the destruction of the file in accordance with our file destruction policy at the relevant time. **If you have any reason to believe the documents may be relevant to future litigation, please contact us immediately.**
- 14.4. We are prepared to retain documents on our file, upon request, beyond the time period set out in our policy, however we reserve the right to charge storage fees for those documents. Physical samples or specimens (if any) will only be retained until a file is closed and, unless you instruct us to the contrary, you are deemed to have provided your consent to their destruction. Files maintained by overseas associates on your behalf will be governed by their own file destruction policies and applicable laws. If you would like a copy of those associates' policies please let us know. If the files maintained by those overseas associates (to which you may be entitled) are to be returned to you upon the completion of the work please instruct us accordingly, otherwise we will assume your consent to the above.

15. CONSENT TO USE AND DISCLOSURE

- 15.1. In order for us to provide services to you we may need to disclose information provided by or with respect to you (**Information**) to third parties such as government authorities, courts, foreign patent and trade mark agents or lawyers, renewals agents, counsel and experts. You agree that we may disclose your information to such third parties for such purposes.
- 15.2. In order to provide our services we also rely upon back-office, non-professional services provided by non-attorney entities within the IPH Limited group including IT, insurance, finance and accounting service. Where reasonably necessary to satisfy corporate governance, management and reporting responsibilities, such as financial and regulatory reporting, compliance, corporate accountability and oversight and risk management responsibilities, we may also be required to share certain information with IPH Limited. You agree that we may disclose your information to group entities for such purposes. Any information shared for such purposes is disclosed only to the extent reasonably required, is used only for the purposes provided and remains subject to confidentiality. Non-public client information is not shared with any other professional services Group Business (unless engaged as a foreign agent or lawyer).
- 15.3. Sharing of information, materials and communications by us with the entities referred to or the utilisation by us of any back office services provided the IPH Limited group, including sharing of communications to and from our client, is not intended to constitute a waiver of applicable legal privilege that otherwise attaches to that information, material or communication.

16. LIABILITY

- 16.1. To the extent permitted by law all terms, conditions, warranties and guarantees by us not expressly included in these Terms are expressly excluded.
- 16.2. To the extent permitted by law, our aggregate liability to you (whether in contract, tort (including negligence), equity or otherwise) arising out of or in connection with our Services or our engagement by you under these Terms for any one event or connected series of events is limited to the amount recoverable by us with respect to such liability under our professional indemnity insurance (excluding taxes forming part of such amounts and amounts recoverable on account of our legal and other expenses).

17. VARIATION OF TERMS

- 17.1. We may vary these Terms from time to time by notice to you. Unless you advise us to the contrary within 14 days of notification or, in any event, by continuing to instruct us, you agree to be bound by such varied Terms.

If you have any questions, please contact us as soon as possible.

Acknowledged and agreed:

Company (if applicable): _____

Signed: _____

Name: _____

Position: _____

Date: ____/____/____