

# Spry Roughley

## Chartered Accountants

### Master Terms of Business

#### 1. This Agreement

This Agreement is a contract between us. It sets out the terms and conditions on which we will provide the Services to you. Where there is any inconsistency between the Letter and the Terms, the Letter will prevail. Where the Letter is addressed to more than one Addressee, each Addressee is a party to, and is bound by, the terms of this Agreement. We will treat you as having accepted this Agreement if you continue to instruct us after you receive it

#### 2. Term

This Agreement starts on the date you sign and return the Letter to us or when we first start work on the Services for you, whichever is first. Unless it is terminated earlier, this Agreement terminates when we have completed providing the Services to you and you have paid us our Fees.

#### 3. Our Services

- 3.1 We will provide the Services to you in accordance with this Agreement and with the degree of skill, care and diligence expected of professionals providing services of the same kind.
- 3.2 Either of us may request changes to the Services. Each of us agrees to work together to enable each of us to assess the impact of any requested changes on the cost, timing or any other aspect of the Services. Any material change will be documented in a replacement or supplementary Letter.  
Unless otherwise agreed in writing, any other services subsequently provided by us which are not described in the Letter will be provided by us in accordance with this Agreement.
- 3.3 We will use all reasonable efforts to complete the Services within any agreed time frame.

#### 4. Our Team

- 4.1 We will use reasonable efforts to ensure that our Representatives named in the Letter are available to provide the Services. However, if we need to, we may replace or reassign any Representative at any time on reasonable notice to you.
- 4.2 Each of us agrees that, during the term of this Agreement and for a period of six months after it ends, we will not directly or indirectly solicit for employment a Representative of the other. However, both of us may advertise or recruit generally in the media.

#### 5. Confidentiality

- 5.1 Each of us agrees to protect and keep confidential any Confidential Information that is given to us by the other.
- 5.2 We will only use or disclose your Confidential Information to provide the Services to you and, we may also disclose your Confidential Information:
  - (a) as required by law or our professional obligations (including the disclosure to any regulatory body in accordance with such obligations of our Working Papers); and
  - (b) to our own professional advisers and insurers on a confidential basis or to anyone else where you agree first that we may do so.
  - (c) to our associated professional service entities to facilitate the provision of our Services to you.
- 5.3 Where we are legally obligated or where we agree otherwise, you will keep confidential our Work, any methodologies and technology used by us to provide the Services and any Confidential Information we give to you in providing the Services. You may disclose our Confidential Information to your Professional Advisers and insurers on a confidential basis.
- 5.4 We will return your Confidential Information to you at any time at your request. We may also destroy it if you ask us to. However, we are entitled to retain one copy of any Confidential Information you provide to us or which forms part of our Working Papers, provided that we will continue to keep this Information confidential in accordance with this Agreement.

#### 6. Personal Information And Privacy

- 6.1 We may collect Personal Information and other relevant information about you for the purposes of providing the Services to you. If we do, you authorise us to hold, use and disclose such information as is necessary to effect the Purpose. We agree to handle all Personal Information about you in accordance with the Privacy Act and you may have access to and correct any such Personal Information as provided for under the Privacy Act.

- 6.2 In particular, we may collect Personal Information or other relevant information from you for credit assessment purposes. You authorise any person to provide us with such information we may require for credit assessment purposes and you also authorise us to disclose such information about you to any other person to the extent required for credit assessment purposes.
- 6.3 We may also collect Personal Information about your Representatives or your clients for the purposes of providing the Services to you. We agree to work together to meet any obligations we may each have under the Privacy Act including, where relevant, notifying the individual to whom the Personal Information relates of who we are and how we propose to use their information.
- 6.4 Where you provide us with any Personal Information of a third party, you confirm that you have collected this Personal Information in accordance with the Privacy Act, that you are entitled to provide this Personal information to us and that we may use and disclose this Personal Information for the Purpose. We agree to handle, all such third party Personal Information in accordance with the Privacy Act.

#### 7. Intellectual Property

- 7.1 Unless we agree otherwise, we will retain ownership of the Intellectual Property in our Work. We give you a royalty-free, non-exclusive, perpetual, worldwide licence to use and reproduce any Reports and where relevant, any Existing Material for the Purpose for which the Report was prepared and any related incidental internal purposes on the terms of this Agreement.
- 7.2 You agree we can use your logos and marks on our Work, unless you tell us otherwise.

#### 8. Our Work

- 8.1 Because our Work is for your exclusive use, it must be used only by you and only for the purpose for which it was prepared.
- 8.2 Except as stated in our engagement letter, unless we give our prior written consent:
  - (a) Work must not be used or disclosed for any other purpose, referred to in any document or made available to any other person, except your Professional Advisers, on the terms discussed in subclause 8.3;
  - (b) our Work and the Services may not be relied on by anyone other than you; and
  - (c) you will not name us or refer to us, our Work or the Services in any written materials (other than to your Professional Advisers), or any publicly filed documents unless required by law.
- 8.3 You may provide a copy of our Report to:
  - (a) your Professional Advisers, provided that you ensure that each Professional Adviser:
    - (i) is aware of the limits placed on the use of our Report by this Agreement, including that they may only use our Report for the purpose of advising you in relation to the Services; and
    - (ii) treats our Report as confidential and does not use or disclose our Report in a manner that is not expressly permitted by this Agreement; and
  - (b) any other person who is acceptable to us, with our prior written consent, but only where that person has first executed an agreement provided by us.
- 8.4 We are not responsible to anyone (apart from you) who is provided with or obtains a copy of our Work without our written agreement and you agree to indemnify us and any Member Firm against any third party claim arising from any release by you of our Work.
- 8.5 If we give you our Work in draft form or orally, we do so only on the basis that you may not rely on it in that form. Accordingly, we will not be responsible if you or anyone else relies on our draft Work or oral comments or advice.
- 8.6 You acknowledge that the signed copy of our Report is the definitive version.
- 8.7 Sometimes, circumstances may change after we have provided our final Work to you; unless we agree with you otherwise, we will not update any final Work we have provided to you.
- 8.8 To comply with our professional standards we must retain as our own property our Working Papers and other documents together with materials and copies of all Information provided to us in the course of us performing the Services. We will keep all Information confidential.

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8.9 In relation to our Services, should a third party, who is not party to this Agreement, make any claim against Spry Roughley and its Representatives (each is an Indemnified Person) or should any regulatory body undertake an investigation, you agree, to the extent permitted by law, to indemnify that Indemnified Person for any costs, damages or other losses incurred and the time spent in defending or responding to any such claim or investigation, except to the extent that such amounts are finally judicially determined to have been caused primarily from that Indemnified Person's fraud. We will use our best endeavours to agree with you the quantum of any such costs.

#### 9. Our Fees

- 9.1 The Fees and the basis on which they are calculated are set out in this Agreement. We may review the Fees where:
- an Unexpected Delay occurs;
  - there is a change in the scope of the Services we agreed to provide to you; or
  - you do not accept this Agreement within three months of the date of the Letter.
- 9.2 You agree to pay us the Fees for the Services in accordance with this Agreement.
- 9.3 Unless we state otherwise, our Fees exclude GST. You agree to pay any GST imposed on us, now or in the future, in relation to this Agreement. Where GST is payable on any taxable supply made under this Agreement, you agree that the Fee payable for this supply will be increased by an amount equivalent to the GST payable by us in respect of that supply.
- 9.4 We will charge you at cost for any expenses we incur in providing the Services to you. For example, any costs for travel associated with the Services or goods or services we buy on your behalf. We will tell you what these expenses are before we incur them if they are anything other than incidental expenses.
- 9.5 We will invoice you monthly in arrears for the Fees (unless we agree with you otherwise) and you agree to pay our invoice within 30 days of receiving it. You agree to pay any undisputed portions of an invoice even if there is a dispute between us about that invoice or another invoice. Where amounts remain due and unpaid we may charge you interest at an annual rate of 2% over the Official Cash Rate of the Reserve Bank of Australia ruling on the date payment is due. Without limiting any of our other rights, we are entitled to suspend or terminate the Services, in whole or part, or to retain or withhold any Information we may hold in relation to the Services or any Work we have done for you if you do not pay our invoices on time.

#### 10. What You Agree To Do

- 10.1 You agree to co-operate with us and provide us with all reasonable and necessary assistance so that we can provide the Services to you. This includes providing us with timely and reasonable access as appropriate, to your premises, facilities, Information and Representatives.
- 10.2 In addition to any responsibilities you may have that are set out in the Letter, you are responsible for:
- the performance of your Representatives;
  - making timely decisions in connection with the Services;
  - designating a competent employee to oversee the Services;
  - evaluating the adequacy of the Services, as they have been described in the Letter, for your particular purposes and needs;
  - providing us with accurate and complete Information. Where any Information that we require in order to provide the Services is to be provided by someone else, you are responsible for ensuring that Information is provided to us. You will need to give us all Information that is relevant to the Services, even if the same Information has been given to us previously during another engagement; and
  - updating any Information where there has been a material change to that Information, including telling us if any of your circumstances change during the course of the Services.
- 10.3 You acknowledge that:
- while the Services may include advice and recommendations, you are responsible for making any decisions in relation to our advice or recommendations and for their implementation, including any results or consequences:

- unless you engage us specifically to do so; you are responsible for managing all aspects of your business, making all decisions and operating all accounting, internal control or management information systems;
- our ability to provide the Services depends on your meeting your responsibilities under this Agreement and instructing us or responding to our requests in a timely and effective manner; and
- we are entitled to and will rely on your Information, the decisions you make and any approvals you give.

#### 11. Our Responsibility To You

- 11.1 Services for your benefit- Our services are provided solely for your use for the purpose set out in our engagement letter or the relevant deliverable. Except as stated in our engagement letter or the relevant deliverable, as required by law, or with our prior written consent, you may not:
- show or provide a deliverable to any third party or include or refer to a deliverable or our name or logo in a public document
  - make any public statement about us or the services
- 11.2 We will only be liable to you for that proportion of the legally payable amounts that we have caused or to which we have contributed.
- 11.3 We will not be liable for any loss of profits, indirect, consequential or exemplary losses suffered or incurred by you.
- 11.4 Any claim or proceedings of any nature against us relating directly or indirectly to the provisions of the Services must be brought, in writing, within 12 months of the earlier of the date that we complete providing the Services to you or this Agreement terminates. No claim may be made against us outside of this time limit.
- 11.5 We will not be liable for any Loss, or failure to provide the Services, which is caused by an Unexpected Delay or which arises as a result of us relying on any false, misleading or incomplete Information.
- 11.6 The limit of liability set out above applies to all Addressees as a group. It is up to you to agree how the limit is allocated between you. You agree not to dispute the limit if you are unable to agree on how it will be allocated between you.

#### 12. Your Feedback

We value your feedback. We aim to obtain, either formally or informally, a regular assessment of our performance and your client service partner will always be pleased to hear any suggestions as to how our service can be improved. If you wish to make a complaint, please contact The Managing Partner, Spry Roughley, PO Box 913, Parramatta, NSW 2124.

#### 13. Conflict Of Interest

- 13.1 We have relationships with many clients. This means that after this Agreement starts we may identify circumstances that could cause us to have a conflict of interest. If this happens, we will evaluate the potential conflict and, depending on the circumstances, apply appropriate safeguards to manage it. For example, we may notify you of a relationship that causes us a conflict and ask for your consent to continue to provide you with the Services. However, you acknowledge that we may need to terminate this Agreement if we are unable to resolve or manage a conflict of interest satisfactorily.
- 13.2 This Agreement will not prevent or restrict us from providing services to other persons or using or sharing any knowledge, experience and skills arising from providing the Services to you subject to the obligations of confidentiality set out in clause 5, Confidentiality, even if those other persons' interests are in competition with your interests. You agree that, to the extent we possess the Confidential Information of another client or other third party, we will not be obliged to disclose it to you or make use of it for the your benefit.

#### 14. Termination

- 14.1 Either of us may terminate this Agreement:
- at any time by giving the other 30 days written notice; or
  - immediately if the other becomes insolvent or otherwise ceases to carry on business or commits any material breach of this Agreement that is either incapable of being remedied or is not remedied within 14 days of receipt of a notice requiring the breach to be remedied.
- 14.2 We may terminate this Agreement if:
- you fail to meet your obligations under this Agreement including to pay our Fees within the time specified or to provide us with adequate Information or instructions; or

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(b) there is a change of circumstances beyond our reasonable control (such as auditor independence or regulatory related developments) that prevents us from providing the Services to you.

#### 14.3 If this Agreement is terminated:

- (a) you agree to pay us the Fees for any work we have done and any expenses we have incurred up to the date of termination;
- (b) where relevant, each of us will return to the other any documents or property of the other that it has, except that we may retain one copy of all information to allow us to satisfy our professional obligations and record keeping requirements; and
- (c) this does not affect any accrued rights of either of us or any provision of this Agreement that continues to apply.
- The provisions of this Agreement that survive its termination include those relating to clause 5, Confidentiality; clause 7, Intellectual Property; clause 8, Our Work; clause 11, Our responsibility to you; clause 15, Dispute resolution; and clause 18, Electronic communication.

### 15. Dispute Resolution

15.1 Each of us agrees to:

- (a) use reasonable endeavours to resolve any dispute that arises in connection with this Agreement by mediation before bringing a legal claim or starting legal proceedings against the other; and
- (b) comply with the Institute of Arbitrators and Mediators Australia (IAMA) rules for the conduct of mediation that are in force from time to time in relation to any mediation that may occur. The Chairperson of IAMA (or his/her nominee) will select the mediator and determine the mediator's remuneration.

Nothing in this clause 15, Dispute resolution, prevents either of us from seeking any equitable relief in relation to our rights under this Agreement.

### 16. Relationship Between The Parties

We are engaged as an independent contractor. Neither of us is an agent or representative of or has the authority to bind the other. Neither of us will act or represent ourselves, directly or by implication, as an agent of the other or in any manner assume or create any obligation on behalf of, or in the name of, the other. This Agreement is not intended and will not be taken to constitute a partnership, agency, employment, joint venture or fiduciary relationship between us.

### 17. Entire Agreement

This Agreement is the entire agreement between us. It supersedes all prior communications, negotiations, arrangements and agreements, either oral or written between us.

Any changes to this Agreement must be agreed to in writing by both of us.

### 18. Electronic Communication

18.1 Each of us agrees that we may communicate with each other electronically. You acknowledge that electronic transmissions are inherently insecure, can be corrupted or intercepted, may not be delivered and may contain viruses. Neither of us is responsible to the other for any loss suffered in connection with the use of e-mail as a form of communication between us.

18.2 We can inform you of other products and services or send you other electronic communication that may be Commercial Electronic Messages. You consent to receiving such messages until such time as you notify us in writing that you no longer wish to receive them.

### 19. Limitation of Liability

(a) Professional Standards Act 1994 [NSW]

Under the Professional Standards Act 1994 [NSW] and the Scheme approved under that Act, the liability of the firm, its partners, associates and employees or contractors is limited to a maximum sum of \$2,000,000, where the fee for the engagement is less than \$100,000, or where the fee exceeds \$100,000, the Limitation Amount shall be determined as set out as follows:

- Where the fee is between \$100,000 and \$300,000; limited to a maximum sum of \$5,000,000;
- Where the fee is between \$300,000 and \$500,000; limited to a maximum sum of \$10,000,000;
- For non-audit services, where the fee is greater than \$500,000; limited to a maximum sum of \$20,000,000.

- For audit services, where the fee is between \$500,000 and \$1,000,000; limited to a maximum sum of \$20,000,000;
- For audit services, where the fee is between \$1,000,000 and \$2,500,000; limited to a sum of \$50,000,000;
- For audit services, where the fee is \$2,500,000 or more; limited to a sum of \$75,000,000.

A copy of the Act and the Scheme are both available on the website of Chartered Accountants Australia and New Zealand.

- (b) The Scheme does not apply to limit our liability arising from any of the following:
- (i) death of or personal injury to a person;
  - (ii) negligence or other fault of a legal practitioner in acting for a client in a personal injury claim;
  - (iii) breach of trust
  - (iv) fraud or dishonesty; or
  - (v) liability which is the subject of proceedings under Part 14 of the Real Property Act 1900.

The exceptions listed hereinabove are not exhaustive and may include other situations such as members not meeting the requirements of the Act or the Scheme, for example, non-disclosure of the limitation of their liability, etc.

(c) Contractual Limitation

You agree, to the extent permitted by law, that the liability to you of the firm, its partners, associates and employees or contractors, in any way arising from or connected with this engagement including, without limitation, liability for negligence, will be limited to a maximum of \$2,000,000, where the fee for the engagement is less than \$100,000, or where the fee exceeds \$100,000, the Limitation Amount shall be determined as set out as follows:

- Where the fee is between \$100,000 and \$300,000; limited to a maximum sum of \$5,000,000;
- Where the fee is between \$300,000 and \$500,000; limited to a maximum sum of \$10,000,000;
- For non-audit services, where the fee is greater than \$500,000; limited to a maximum sum of \$20,000,000.
- For audit services, where the fee is between \$500,000 and \$1,000,000; limited to a maximum sum of \$20,000,000;
- For audit services, where the fee is between \$1,000,000 and \$2,500,000; limited to a sum of \$50,000,000;
- For audit services, where the fee is \$2,500,000 or more; limited to a sum of \$75,000,000

and you release and indemnify the firm, its partners, associates and employees or contractors from all claims arising from or connected with the performance or purported performance of any services arising from or connected with this engagement letter to the extent any such claim or claims made exceed those limits.

(d) Third Parties

Nothing produced by this firm, its partners, its employees or contractors is to be made available by you to other than your own employees in any way whatsoever without our written permission and, in any event, we accept no responsibility to any third party. You agree and undertake that you will make the provisions as to limitation of liability known to anyone, including your own employees, to whom you may disclose anything produced by us pursuant to this engagement letter:

(e) Your Knowledge of this Obligation

We have discussed with you the limitation of our liability created by this clause. You acknowledge that we have advised you that you may wish to obtain legal advice on all questions arising from the terms of our engagement letter and, in particular, the limitation of liability provisions, because they may impact on your legal rights.

#### Indemnity

In consideration of our agreement to supply you with the services described in this engagement letter, you agree to indemnify this firm, its partners, associates, employees, contractors and any other person who may be sought to be made liable in excess of the limit of liability described above in respect of any activity arising from or connected with this engagement letter in respect of any claim of whatever kind, including

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negligence, that may be made by any person and any costs and expenses that may be incurred by us.

#### Severability

We agree that each of the promises and undertakings given in this letter of engagement are independent from one another and severable.

## 20. Governing Law

This Agreement is governed by the laws of New South Wales and each party irrevocably submits to the exclusive jurisdiction of the courts of New South Wales.

## 21. General

- 21.1 A waiver by one of us of a breach by the other party of any term of this Agreement does not operate as a waiver of another term or a continuing breach by the other of the same or any other term of this Agreement.
- 21.2 We disclaim all warranties, either express or implied, in relation to the Services and the Work other than any written warranty made in the Terms.
- 21.3 The rights and remedies in this Agreement are cumulative and not exclusive of any rights or remedies provided by law.

## 22. Reading This Agreement

In this Agreement:

- (a) headings are for convenience only and do not affect how this Agreement is interpreted;
- (b) the singular includes the plural and conversely;
- (c) if a word is defined its other grammatical forms have a corresponding meaning;
- (d) the use of words such as includes or including to introduce a list does not limit what may be included in that list;
- (e) the word person includes an entity, a firm, a body corporate, an unincorporated association or an authority;
- (f) a reference to this Agreement or an act or instrument is to this Agreement, or that act or instrument as amended, varied, novated or replaced from time to time;
- (g) a reference to dollars or \$ means Australian dollars
- (h) a reference to an Annexure or clause or subclause is to an Annexure to, or clause or subclause in this Agreement;
- (i) an Annexure forms part of this Agreement; and
- (j) if there is any conflict between these Terms and any other part of this Agreement, the following order of priority will apply:
- (i) the Letter;
  - (ii) the Annexure; and
  - (iii) the Terms.

## 23. Definitions

In this Agreement the following words have the meanings set out below:

**Addressee** means each person to whom the Letter is addressed and includes, where relevant, any additional parties who may agree to the terms of this Agreement.

**Agreement** means the Letter and the Terms.

**Annexure** means a document which is annexed or attached to the Letter and identified as an annexure or attachment to it and includes a schedule, appendix or attachment to the Letter.

**Commercial Electronic Message** has the meaning given to it in the Unsolicited Electronic Messages Act.

**Confidential Information** means and includes:

- (a) the terms of this Agreement and the details of the Services;
- (b) any information or material which is proprietary to or deemed to be proprietary to a party;
- (c) any Intellectual Property and methodologies and technologies that:
- (i) you use in your business, and to which we are exposed in the course of providing the Services; or
  - (ii) we use to provide the Services;
- (d) trade secrets;
- (e) any information designated as confidential by either of us;
- (f) any Work we provide to you; and
- (g) any information acquired by either of us solely as a result of the Services,

but excludes any information that:

(a) is or becomes publicly available, except by a breach of this Agreement;

(b) is disclosed to either of us by a third party provided that the recipient reasonably believes the third party is legally entitled to disclose such information;

(c) was known to either of us before we received it from the other;

(d) is developed by either of us independently of any disclosures previously made by the other;

(e) is disclosed with the other's prior written consent; or

(f) is required to be disclosed by law, order of any court, tribunal, authority or regulatory body, rules of any stock exchange or any professional standard, provided that, to the extent permitted by law, the party disclosing the Confidential Information notifies the other of the requirement to disclose and only discloses the minimum Confidential information required to comply with the law or requirement.

**Existing Material** means any methodologies, technologies or other proprietary information either:

(a) in existence at or prior to the date of this Agreement; or

(b) developed by us independently of the Services, which is used by us or provided to you, in providing the Services

**Fees** means the fees for the Services as stated in, or calculated in accordance with, this Agreement.

**GST** means tax imposed by the A New Tax System (Goods and Services Tax) Act 1999 ("GST Act").

**Information** means any information, documents, materials, facts, instructions or Confidential Information provided to us by you or your Representatives or anyone else at your request, including from the use of your network and systems by our Representatives.

**Intellectual Property** means all industrial and intellectual property rights throughout the world and includes rights in respect of copyright, patents, trademarks, designs, trade secrets, know-how, our Confidential Information and circuit layouts in our Work.

**Letter** means the engagement letter between us to which the Terms are attached, including any replacement or supplementary engagement letter.

**Loss** means any liabilities, claims, damages, costs or expenses (including interest where applicable), or other legally payable amounts for losses caused or arising from the provision of the Services (whether in contract, tort or otherwise and including any loss of profits, direct, indirect, consequential or exemplary losses).

**Personal information** has the meaning given to it in the Privacy Act. Privacy Act means the Privacy Act 1988.

**Professional Advisers** means your lawyers or other professional advisers, such as your accountant, who are assisting you in relation to the Services but excludes any investor, agent, intermediary, underwriter, syndicate participant, lender or other financial institution or anyone who may provide you with any credit enhancement or credit rating.

**Purpose** has the meaning given to it in the Letter or our Work, or where both are silent on this, the purpose for which we provide our Work to you.

**Report** has the meaning given to it in the Letter or where the Letter does not set out a specific report, means any documents or reports we provide to you as a result of this Agreement including those consisting of advice or opinions.

**Representative** means any officer, employee, consultant, agent, contractor or subcontractor of either of us, who is involved in the activities to which this Agreement relates and in the case of Spry Roughley, includes a partner.

**Services** means the services described in the Letter, including any other services subsequently provided by us unless we have otherwise agreed in writing.

**Spam Act** means Spam Act 2003

**Spry Roughley** is a group designation that includes Spry Roughley Services Pty Limited ACN 003 845 832, Spry Roughley & Co ABN 27 962

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527 056, Spry Roughley Financial Planning Pty Limited ACN 133 808 643  
and Primrox Office Pty Limited ACN 178 871 342as appropriate to the  
service being provided.

**Terms** means these master terms of business.

**Unexpected Delay** means any delay in providing the Services that is  
caused or contributed to by an act or event (including the non-  
performance of your obligations) that is beyond our control or was not  
reasonably foreseeable by us at the date of this Agreement.

**us** means Spry Roughley or both you and Spry Roughley.

**we** and **our** means Spry Roughley.

**Work** means any advice or materials including any reports, documents,  
advice, opinions, e-mails, notes or other deliverables, whether in draft or  
final form, in writing or provided orally, that we prepare either alone or in  
conjunction with you or provide to you as a result of this Agreement and  
includes any Reports, Working Papers and Existing Material.

**Working Papers** means any files or working papers created by us as our  
record of the Services.

**you** and **your** means each Addressee and where applicable, each  
Addressee's Representatives or advisers,