

## **STANDARD TERMS AND CONDITIONS OF AA**

### **1. IMPORTANT INFORMATION**

#### **Application of Terms and Conditions**

Unless otherwise stated these Terms and Conditions apply to and form part of all Engagements by Access Analytic Solutions Pty Ltd ACN 091 625 697 (AA) whether a printed version of these Terms and Conditions has been provided to You by AA or whether You have viewed them on AA's website located at [www.accessanalytic.com.au](http://www.accessanalytic.com.au).

#### **Modification of Terms and Conditions**

AA may modify the Terms and Conditions at any time on 30 days notice to You and such modifications shall be effective at the expiry of the notice period. The most current version of the Terms and Conditions can be reviewed by clicking on the "Terms & Conditions" hypertext link located at the bottom of AA's web site located at [www.accessanalytic.com.au](http://www.accessanalytic.com.au).

### **2. DEFINITIONS:**

"Client" means any corporation, organisation or person to whom AA either sells a product or provides a service or both.

"Engagement" means the agreement between AA and a Client whether written or otherwise whereby AA agrees to sell products or perform services or both for the Client and includes these Terms and Conditions.

"Fee" means the fee set out in the Schedule;

"Party" means a party to this Engagement and "Parties" has a corresponding meaning;

"Person" includes a natural person, body corporate or trust or any other entity capable of entering into an Engagement;

"Schedule" means the Schedule to this Engagement.

"Terms and Conditions" means these terms and conditions and any annexure attached hereto.

"Training Date" means the date as agreed between the Parties, on which the Training is to occur.

"We", "Us" and "AA" means AA or its employees, servants, agents or consultants as the case may be;

"You" means the Client and includes any servant, agent, employee or consultant of the Client as the case may be and "Your" has a corresponding meaning.

### **3. TRAINING:**

If AA agrees to provide Training:

#### **A. You Provide:**

For the purpose of any Training You must provide:

1. Training resources and facilities suitable for the number of attendees to be provided.
2. We suggest you provide attendees with meals and refreshments (including lunch, morning and afternoon tea).

#### **B. AA Provides:**

1. For the purpose of any Training AA will provide those items set out in Item 2 of the Schedule and will retain all proprietary rights in these items.
2. Any loss or damage to those items as a result of or arising out any action or conduct of the Client must be paid for by the Client.

#### **C. Attendance at Training:**

1. The Client agrees that any employee, servant, agent or consultant of the Client attending Training will be punctual and diligently apply themselves to the Training.
2. Any non-attendance or partial attendance at the Training will not remove, reduce or in any way affect the Fee payable by the Client.

### **4. EXCEL MODELS:**

If AA agrees to review your Excel modelling and Excel models:

- (a) AA will review and advise on the models and modelling as set out in the Schedule.
- (b) You will provide AA with access to the assumptions and other data used to construct the models and permit AA to conduct such testing of the models as AA thinks fit.
- (c) Unless AA specifically agrees in writing, the review of any Excel model does not constitute a representation or warranty by AA that the Excel model is fit for any purpose.

- (d) AA will retain such of the models and assumptions as provided for its files. The information and data as provided remains confidential unless AA is required to disclose at law or with Your consent.

## **5. POSTPONEMENT AND CANCELLATION POLICY:**

Written notification is required of any postponement or cancellation, or changes to the Training Date.

Any changes by the Client to the Training Date will incur a \$100 (ex GST) Administration fee.

If AA receives written notification of changes to the Training Date with less than 30 and more than 14 days notice from the Training Date, 30% of the Fees will also be charged.

If AA is notified of changes to the Training Date with less than 14 days notice from the Training Date, 100% of the Fees will also be charged.

Clients that provide AA with more than 30 days' notice when cancelling Training will be provided with a discount voucher to the value of 20% of the Fees. This voucher can be applied to any in-house course or open course within 6 months of the Training Date.

Any out-of-pocket disbursements incurred by AA in relation to the postponement or cancellation may also be charged to the Client at AA's discretion.

## **6. FORCE MAJEURE:**

Where either Party is unable, wholly or in part, by reason of force majeure, to carry out any obligation pursuant to the Engagement, and that Party:

- (a) gives each other Party prompt notice of that force majeure including reasonable particulars, and, in so far as known, the probable extent to which it will be unable to perform or be delayed in performing that obligation;
- (b) uses all possible diligence to remove that force majeure as quickly as possible, that obligation is suspended so far as it is affected by force majeure during the continuance of that force majeure and that Party shall be allowed a reasonable extension of time to perform its obligations.

If after a period of six months, the force majeure has not ceased, the Parties shall meet in good faith to discuss the situation and endeavour to achieve a mutually satisfactory resolution to the problem.

In this Engagement, "force majeure" means an act of God, strike, lockout or other interference with work, war (declared or undeclared), blockade, disturbance, lightning, fire, earthquake, storm, flood, explosion, governmental

or quasi governmental restraint, expropriation, prohibition, intervention, direction or embargo, unavailability or delay in availability of equipment or transport, inability or delay in obtaining governmental or quasi governmental approvals, consents, permits, licenses, authorities or allocations, and any other cause, whether of the kind specifically enumerated above or otherwise which is not reasonably within the control of the party affected.

**7. SUBSTITUTE TRAINER:**

For training courses, AA may substitute an alternative trainer if the staff specified are unable to provide the course.

**8. NON – EMPLOYMENT OF ACCESS ANALYTIC SOLUTIONS STAFF:**

During the period that AA provides services to You and, for a period extending for six months after the Engagement has been completed, You shall not directly or indirectly through any associated company employ or enter into any agreement with for the provision of services either as a consultant or independent contractor, or offer any position or employment to any AA employee, whether permanent or contracted with the written permission of AA.

You acknowledge that any breach of this provision will result in substantial damage to AA and You agree that in the event of breach of this provision You will pay to AA by way of liquidated damages, and not as a penalty, a sum equal to the gross annual salary for the AA employee at the rate of pay current at the time of breach.

**9. SCOPE OF EXCLUSIONS:**

The items listed below are **excluded** from the scope of services provided by AA pursuant to the Engagement unless otherwise expressly agreed in the Schedule:

- A. AA will make no attempt to ensure compliance with relevant Accounting Standards, tax laws, or proper record keeping.
- B. AA will make no audit or other verification of any data or information You provide to it.
- C. Although AA makes every effort to discover weaknesses and potential errors, due to the complex nature of large spreadsheets, it cannot guarantee that its work is free from error.
- D. AA will make no assessment of or express any view regarding the viability or otherwise of the projects You ask it to assist with.

**10. FEES:**

AA's Fees for services and products are exclusive of GST and are set out in the Schedule, or as otherwise agreed between the Parties in writing.

Disbursements will be charged at cost plus 10%. Any disbursements greater than \$100 will be agreed with You prior to incurring them.

**11. INVOICES:**

Invoices will be accompanied by a detailed timesheet where relevant and will be rendered monthly, payable within 14 days.

**12. OVERDUE ACCOUNTS:**

Interest will be charged on all accounts not paid within 14 days of the invoice due date at the rate charged by the Bank of Western Australia Limited on overdrafts of less than \$100,000.00, plus 3%. Interest will be calculated on a daily basis from the date of the account to the date of payment unless AA agrees to waive the interest claim in writing.

Each time interest is raised, an administration fee of \$50 will also be applied.

AA reserves the right to employ the services of a debt collection agency at its discretion for any account not paid within 45 days of the invoice due date. The Client will be liable for all costs incurred in collecting the outstanding account.

Late payments may also be reported to credit reporting agencies and this may affect Your ability to obtain credit in future.

AA may pursue all sources of legal action to recover overdue accounts.

**13. LIMITATION OF LIABILITY:**

Any potential claim against AA or its staff is limited to the lesser of ten times the total fees rendered by AA for this assignment, or \$250,000.

**14. INDEMNITY:**

The Client shall indemnify AA against all liabilities, claims, costs or expenses (including legal fees and disbursements) incurred by AA in respect of any third party claim which is related to, arises out of, or is in any way associated with the products or services provided by AA, except to the extent that such claims, costs or expenses arise out of the negligent, wrongful or wilful acts or omissions of AA..

**15. INTELLECTUAL PROPERTY:**

AA retains all rights over the use or reproduction of the intellectual property developed in this assignment until all invoices are paid in full, or otherwise agreed in writing by AA.

AA retains all rights over all code used in client projects. This may include code AA developed prior to this engagement, and any new code that is written during this engagement. AA may utilise any code component in other projects at its discretion.

Except for the ongoing, personal and non-transferable right to use the deliverables resulting from this Engagement, You shall not obtain or be granted any intellectual property rights to any deliverable or material supplied by AA.

You shall not take any action by way of copying, disseminating, transmitting, accessing, or use of any system that may infringe or may be inconsistent with the intellectual property rights of AA or its licensors.

For the purpose of this clause, intellectual property rights means without limitation, copyright, patent rights, design rights or trade secrets in connection with the deliverables and their source code, or any source code, scripts or interfaces supplied by AA and any methodologies or process involved in the performance of this assignment or any deliverable or materials (including training materials) provided by AA.

You are not permitted to sell or otherwise distribute the applications AA develops for You nor individual components without written authorisation from a Director of AA.

#### **16. COPYRIGHT:**

The Client acknowledges that AA owns copyright in all documents prepared by AA and that those documents must not be reproduced, published, copied, distributed or altered in any way without AA's prior written permission.

#### **17. CONFIDENTIALITY:**

During the course of this Engagement, You may provide AA with certain information of a confidential nature to enable it to complete the assignment.

1. AA acknowledges that all written and oral information furnished to it by You and your officers, employees, advisers or agents is valuable and confidential.
2. AA will not use the information except for the purpose of completing this Engagement or subsequent Engagements You may request of it.
3. Subject to Clause 17 5, AA agrees that:-
  - (a) except as permitted under clause 17. 2 or this clause, AA will not use or disclose any information without prior written consent from You;
  - (b) AA will only disclose the information on a "need to know" basis to our directors, officers, employees, and professional advisers; and
  - (c) AA will use its best endeavours to ensure that our directors, officers, employees and professional advisers to whom the

information is disclosed comply with the obligations imposed on it by clause 17.2 and this clause.

4. If this Engagement does not proceed for any reason whatsoever, AA will, within 7 days of receipt of a demand from You, return to You or destroy any information supplied by You which is in a physical form and which is in the possession, custody or control of AA.
5. Our obligations under this Engagement do not apply to any information which:-
  - (a) AA is required by law or by the listing rules of the Australian Stock Exchange Limited to disclose;
  - (b) is in or enters the public domain otherwise than by breach of this Engagement;
  - (c) is already known to AA; or
  - (d) is acquired by AA from a person who was not under an obligation of confidentiality relating thereto.
6. AA acknowledges that the value of the confidential information to you may be unique and therefore impractical or difficult to assess in monetary terms. Accordingly, if an actual or threatened violation of this Engagement occurs AA will consent to the enforcement of this Engagement by injunctive relief or specific performance without proof of actual damage.
7. These confidentiality provisions shall expire five years from the date of execution of this Engagement.

**18. CLIENT LIST:**

You agree that AA may add your organisation's name to the AA list of Clients for use by AA in sales material. AA agrees not to disclose information about your organisation or cause it to be used as a reference site, without your prior approval.

**19. SERVICES OUTSIDE THE SCOPE OF THIS ENGAGEMENT:**

You may request that AA performs additional services at a future date not contemplated by the Engagement. If this occurs, You may request that AA communicate with You regarding the scope and estimated cost of these additional services.

If You do not request an estimate, AA will provide its services to you on a time and materials basis, using the rates set out in the Schedule, as amended by AA from time to time.

Engagements for additional services may necessitate that AA issue a separate engagement letter to reflect the obligations of both Parties.

**20. TERMINATION BY AA:**

AA may terminate this Engagement, effective immediately, and stop acting for the Client if:

- (a) The Client does not comply with this Engagement;
- (b) AA forms the opinion that mutual confidence and trust do not exist between AA and the Client;
- (c) The Client requires AA to act in an unethical or unlawful manner;
- (d) Any type of insolvency administrator is appointed in respect of the property or affairs of the Client

These rights are in addition to any other rights of termination in this Engagement or at law.

This Engagement will be automatically terminated if the Fees remain unpaid, more than 180 days after the due date of the invoice, unless expressly agreed otherwise by AA.

All Fees payable by the Client (whether these have been invoiced or not) will remain payable following termination.

**21. VARIATION TO ENGAGEMENT:**

This Engagement may not be varied except in writing and with the consent of both Parties save as provided for in this Engagement. AA may send the Client written notice of a variation of this Engagement including any proposed increase in hourly rates and the Client's continued instruction of AA after the date of receipt of that notice shall constitute the Client's acceptance of that variation.

**22. CONTINUING ENGAGEMENTS:**

In the absence of a further set of terms and conditions, these terms and conditions will apply to any future engagement by the Client of AA.

**23. LIEN:**

AA retains ownership of its own files and the contents thereof and is entitled to retain all documents and personal property in its possession provided by the Client until the matter is completed and all the invoices for Fees are paid in full.

**24. JURISDICTION:**

The Engagement shall be governed by and construed in accordance with Western Australian law and any dispute, controversy or claim arising out of or in connection with this Engagement or the breach, termination or invalidity of

this Engagement shall be referred to the non-exclusive jurisdiction of the Supreme Courts of Western Australia.

**25. REASONABLE CARE:**

AA will take reasonable care in providing the products and services to the Client. If the Client makes a claim against AA for breach of contract and the loss, injury or damage the Client suffers as a result of AA's negligence and the Client's negligence, the Client's claim will be reduced as if the claim was based in negligence to the extent of the Client's contributory negligence.

**26. ASSIGNMENT:**

The Client shall not in any way assign or deal with interests under the Engagement without AA's prior written consent. Where the Client is a corporation it is deemed to have assigned the Engagement if there is a change in control of the shareholding in the Client

**27. WAIVER:**

AA shall not be deemed to have waived any of its rights under the Engagement unless such waiver is in writing.

**28. SEVERABILITY:**

If a clause or part of a clause can be read in a way that makes it illegal, unenforceable or invalid, but can also be read in a way that makes it legal, enforceable and valid, it must be read in the latter way. If any clause or part of a clause relating to service of documents, security or indemnity is illegal, unenforceable or invalid, that clause or part is to be treated as removed from this Engagement, but the rest of this Engagement is not affected.

**29. NOTICES:**

All notices which are required to be given under this Engagement shall be in writing and shall be sent to the address of the recipient set out in the Schedule or such other address as the recipient may designate by notice given in accordance with this clause. Any notice may be delivered by hand or by pre-paid letter or facsimile. Any such notice shall be deemed to have been served when delivered (if delivered by hand) or 48 hours after posting (except by pre-paid letter) or on transmission by the sender (if sent by facsimile).

**30. PRIVACY:**

The Client agrees that in providing products and performing services in accordance with this Engagement or unless it has authority from You to do so. AA may collect personal information (including sensitive and health information) about the Client and other persons. AA will only use this information for the purposes of providing the products and services to the Client unless is legally required.

If the Client provides AA with personal information collected from other individuals, the Client warrants to AA that that information is correct, has been collected in accordance with the applicable privacy legislation and that AA is authorised to receive that information from the Client and to use it for the purposes of providing the products and services to the Client.

In the course of acting for the Client, AA may disclose to the Client personal information about other individuals in which case the Client agrees that it will use, disclose, handle, store and transfer that information only in accordance with the Privacy Act 1988 (Cth). The Client also agrees that it will comply with AA requirements in relation to the protection of personal information.

**31. SECURITY CAPABILITIES AND TRANSMISSION OF PAYMENT CARD DETAILS:**

For credit card transactions, customer information is secured by using 128/256-bit SSL certificate (SSL) technology, which encrypts the information you input. This SSL security is provided by eWay's payment gateway platform. For additional information regarding eWay's security protocols and systems, visit [www.eway.com.au](http://www.eway.com.au)

Credit card details are not stored on AA's servers and are not available to any AA staff.

After a credit card payment has been made a message will appear on the screen confirming whether the payment was unsuccessful.

**32. DELIVERY:**

Services will be delivered by a suitably qualified AA representative in accordance with the delivery schedule set out in the Engagement letter.

Products ordered from AA will be delivered to the Client via courier, Australia Post, in person by an AA representative at AA's discretion.

Clients should note that some Products are supplied directly by the producer of those products. In this case, the producer's delivery policy will apply. This will be noted in the Engagement letter.

**33. REFUNDS/RETURNS:**

We are unable to accept the return of any Product. Clients are advised to fully test Products using the evaluation software versions available prior to purchase.

We will replace any defective media when this is returned to us.

Services are not refundable.

**34. DISPUTES:**

AA may elect to resolve any dispute, controversy or claim arising out of, relating to or in connection with this contract, including any question regarding its existence, validity or termination by arbitration in accordance with the ACICA Arbitration Rules. Any arbitration process entered into shall be Perth, Western Australia. The language of the arbitration shall be English. The number of arbitrators shall be one.

## **SCHEDULE**

Please refer to the Schedules in your proposal document.