

## STANDARD AGREEMENT - PROVISION OF SERVICES CONTRACT TERMS & CONDITIONS

As at 12<sup>th</sup> April 2024  
Ref: ESMC\_SA\_120424\_001

Elevare Marketing Pty Ltd  
Abn 73661211561



Trading as:  
ELEVARE Strategic Marketing Consulting  
ELEVARE SMC / ESMC / ELEVARE

The below describes a *Standard Agreement* to be in place for the fair and mutually beneficial exchange between ESMC and its clients.

These terms of business (“Terms”) apply in respect to the provision of professional services (“Services”) to be performed by us (“ELEVARE Strategic Marketing Consulting” or “we”) for the client named on the Service Proposal (“Client” or “you”), both collectively referred to as the ‘parties’, and any subsequent Service Proposal to which these Terms apply.

The term “Service Proposal” is used to describe all formalised offer-of-service correspondence (“Estimate” “Proposal”, “Service Quotation”, “Quotation”, “Scope of Work”, “Letter of Engagement”, “Service Offer” etc.) we submit in good faith, to and for acceptance by the Client.

These Terms form the Contact (“Contract”) between the Parties for the Services.

Engaging or continuing to engage ELEVARE Strategic Marketing Consulting to provide the Services, will confirm your acceptance of this Contract.

### **1 Services**

ELEVARE Strategic Marketing Consulting will provide Services described in the ‘Service Proposal’.

### **2 Timescale**

ELEVARE Strategic Marketing Consulting will endeavour to carry out our obligations in accordance with the timescales set out in the Service Proposal ; where stated. However, unless both parties specifically agree otherwise in writing, the dates contained in the Service Proposal are indicative dates intended for planning and estimating purpose only and are not contractually binding. Any estimates of time for completion of the Services are given on the assumption ELEVARE Strategic Marketing Consulting receives co-operation, diligence and commitment from you. For the avoidance of doubt, ELEVARE Strategic Marketing Consulting

will not be liable for any failure or delay in performing the Services if that failure or delay arises from anything beyond ELEVARE Strategic Marketing Consulting's reasonable control.

### **3 Changes to Services**

Either of the parties may request changes to the Services. Both parties agree to work together to enable both parties to assess the impact of any requested changes on the cost, timing and any other aspect of the Services.

### **4 ELEVARE Strategic Marketing Consulting Team**

Where specific ELEVARE Strategic Marketing Consulting partners and staff are named in the Service Proposal, ELEVARE Strategic Marketing Consulting will use reasonable efforts to ensure that these people are available to provide the Services. Where any changes are necessary, ELEVARE Strategic Marketing Consulting will give you reasonable notice of the changes.

### **5 Information**

You agree to provide in a timely fashion all information and documents reasonably required to enable ELEVARE Strategic Marketing Consulting to provide the Services. ELEVARE Strategic Marketing Consulting will not independently verify the accuracy of such information and documents and will not be liable for any loss of damage arising from any inaccuracy or other defect in any information or documents supplied by you.

### **6 Fees and Payment**

ELEVARE Strategic Marketing Consulting's fees are calculated principally on the basis of time spent on the assignment by our staff (or business partners, if applicable) in accordance with hourly rates current at the time the Services are performed. Unless otherwise stated, any total quantum of fees indicated in the 'Service Proposal' are indicative estimates only based upon the preliminary information provided by you and our experience with similar and/or your previous engagements. Any fees quoted are not fixed, unless otherwise stated, and ELEVARE Strategic Marketing Consulting reserves the right to render fee invoices for an amount based upon time spent, significantly greater than any quantum indicated and agreed to in the Service Proposal.

### **7 Performance**

Naturally, ELEVARE Strategic Marketing Consulting's performance is dependent on you carrying out your responsibilities as set out in the Contract and you providing all information reasonably requested by ELEVARE Strategic Marketing Consulting in a complete and timely manner. Should this not occur, it may lead to an increase in fees depending upon the extent to which ELEVARE Strategic Marketing Consulting has to perform more work.

### **8 Expenses**

All charges are exclusive of expenses unless the Service Proposal states otherwise. You agree to pay ELEVARE Strategic Marketing Consulting's reasonable travel, subsistence and document handling costs (photocopying, scanning and imaging, printing, fax and courier, etc.) incurred in connection with the Services.

## 9 Payment of Invoices

ELEVARE Strategic Marketing Consulting's invoices will be issued as per the stated and agreed schedule found in the Service Proposal. If not stated, it will be issued immediately after the agreed Service in the Service Proposal has been completed. ELEVARE Strategic Marketing Consulting reserves the right to issue tax invoices at more or less frequent intervals if agreed or reasonably required. All tax invoices will be due for payment immediately on the due date provided on the tax invoice (typically 7 or 14 days). ELEVARE Strategic Marketing Consulting retains the right to charge interest on tax invoiced which are not paid by the due date. Interest will be calculated daily at a rate of 2% above the rate prescribed from time to time by law. ELEVARE Strategic Marketing Consulting reserves the right to recover all default costs and enforcement expenses in the event tax invoices are not paid by the due date and recovery action is necessary. You agree that ELEVARE Strategic Marketing Consulting will hold a general lien over all files, papers and documents belonging to you ("Documents") which are in ELEVARE Strategic Marketing Consulting's possession as security for all outstanding amounts owed by you to ELEVARE Strategic Marketing Consulting including without limitation unpaid tax invoices, interest, default costs and enforcement expenses ("Outstanding Amounts") until all Outstanding Amounts are paid in full to ELEVARE Strategic Marketing Consulting.

ELEVARE Strategic Marketing Consulting's fees and charges referred to in the Contract are exclusive of GST, unless stated otherwise.

## 10 Duration of Contract

This Contract will apply from the date that you are accepting our 'Service Proposal' and ask us to proceed with the Services. That date will be the "Commencement Date" if not otherwise stated in the Service Proposal. The Contract will continue until it is terminated in writing by either party on in accordance with the terms set out below.

## 11 Termination

The Contract may be terminated by either party by providing written notice. If the Contract is terminated prior to completion of the Services, ELEVARE Strategic Marketing Consulting shall be entitled to be paid for work that has been carried out or for where expenses have been incurred up to the date of termination.

## 12 Confidentiality

5.1 Subject to clause 5.2, both parties agree to take reasonable steps to maintain (within the respective organisations) the confidentiality of any proprietary or confidential information of the other. ELEVARE Strategic Marketing Consulting's privacy policy is contained on the ELEVARE Strategic Marketing Consulting website or can be provided to you upon request ("Privacy Policy"). If you wish to provide third parties with copies of ELEVARE Strategic Marketing Consulting reports, letters, information or advice, you must first obtain the written permission of ELEVARE Strategic Marketing Consulting to disclose the document(s) or information (please note our copyright as referred to in clause 13.1 herein). ELEVARE Strategic Marketing Consulting also reserves the right to:-

1. Set the terms on which those copies are given or used; or

2. Require the third party to enter into a direct relationship with ELEVARE Strategic Marketing Consulting or to enter a standard form deed poll of confidentiality.

5.2 Subject to section 275 (7) of the Personal Property Securities Act 2009 (Cth) (“PPS Act”), it is hereby agreed that neither party will disclose information of the kind mentioned in section 275 (1) of the PPS Act.

### **13 Exclusion and limitations of liability**

ELEVARE Strategic Marketing Consulting will use the objective standard of reasonable skill and care in the provision of the Services which would apply to similar professional firms providing business consultancy, project management, coaching, mentoring and presentation services.

Except only for those rights and remedies that you have in respect of the Services under the Competition and Consumer Act 2010 (Cth) (“CCA”) and similar state and territory laws applicable to Consumers which cannot lawfully be excluded, restricted or modified: all conditions, warranties and consumer guarantees, whether statutory or otherwise, are excluded in relation to the Services: and subject to clause 6.3 and otherwise to the greatest extent allowed by law, the liability of ELEVARE Strategic Marketing Consulting in respect of all claims, actions, demands, proceedings, liabilities, damages, amounts, costs and expenses (including legal costs and disbursements on a solicitor and own client basis) arising, paid, suffered or incurred by you (directly or indirectly) as a result of or in connection with a negligent act or omission by ELEVARE Strategic Marketing Consulting, or any breach or non-performance of any express or implied obligations by ELEVARE Strategic Marketing Consulting under these Terms shall be limited, at ELEVARE Strategic Marketing Consulting’s option, to either re-supplying the Services or paying the cost of having the Services re-supplied.

If you are a Consumer, the liability of ELEVARE Strategic Marketing Consulting will not be limited in the way set out in above if it is not ‘fair and reasonable’ for ELEVARE Strategic Marketing Consulting to rely on such limitation in accordance with sections 64A (3) and (4) of Schedule 2 of the CCA, if the Service supplied are services ‘of a kind ordinarily acquired for personal, domestic or household use or consumption’ as the expression is used in Schedule 2 of the CCA or in relation to any guarantee pursuant to any of sections 51,52 and 53 of Schedule 2 of the CCA.

This clause 6.4 only applies to the extent that clauses 6.2 and 6.3 do not apply. The parties acknowledge the Australian Professional Standards Legislation (“The Professional Standards Legislation”) including the Treasury Legislation Amendment (Professional Standards) Act 2004 (Cth), may apply in accordance with its terms in relation to our liability for loss or damage arising from our in relation to the Services. To the extent permitted by law, if, under any applicable Professional Standards Legislation, our maximum liability for loss or damage arising from or in relation to the Services would be:

- A higher amount than the Liability Cap, then the Liability Cap will not apply and our maximum liability will be calculated in accordance with the Professional Standards Legislation.
- A lower amount than the Liability Cap, then the Liability Cap will not apply and our maximum liability will be calculated in accordance with Professional Standards Legislation.

#### **14 Indemnity for Liability to third parties**

You agree to indemnify ELEVARE Strategic Marketing Consulting against all liabilities, claims, costs, losses, suits or expenses (including legal fees and disbursements) incurred by ELEVARE Strategic Marketing Consulting in respect of any third party claim which is related to, arises out of, or is in any way associated with, this engagement. However, the indemnity does not apply to any costs, charges and expenses in respect of any matters which are finally determined to have resulted solely and directly from ELEVARE Strategic Marketing Consulting's negligent or wilful acts or omissions.

You also agree to indemnify ELEVARE Strategic Marketing Consulting, 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 the Contract in respect of any claim of whatever kind, including negligence, that may be made by any person and any costs and expenses that may be incurred by us.

#### **15 Personal Property Securities Act 2009 ("PPS Law")**

For the purposes of this clause 8, "PPS Law" means:

- The PPS Act;
- Any regulations made at any time under the PPS Act;
- Any provision of the PPS Act or regulations referred to in (b) above;
- Any amendment to any of the above, made at any time; or
- Any amendment made at any time to any other legislation as a consequence of a PPS law referred to in (a) to (d) above.

If at any time we determine that this Contact (or any of the transactions contemplated by or under it creates a security interest over any of your personal property in our favour, then you must promptly, upon our request do all things necessary (including without limitation, completing, signing and providing documents, obtaining consents and supplying information) to:

- Protect any right, title and/or interest of ours in the relevant personal property;
- Ensure that any such security interest in favour of us;

Is enforceable, perfected (including, where applicable by control as well as by registration), maintained and otherwise fully effective; and

Ranks as a first priority security interest wherever that is possible;

- Enable us to prepare and register a financial statement or a financing change statement; and

- Enable us to exercise any of our rights or perform any of our obligations in connection with any such security interest or under the PPS law.

## 16 Access to working papers

The working papers for this engagement, including electronic documents and files, are the property of ELEVARE Strategic Marketing Consulting and constitute confidential information.

## 17 Privacy

We understand the importance of protecting the privacy of your personal information. In handling personal information, we comply with the Privacy Act 1988 (Cth) (Privacy Act), as amended from time to time, and with the 13 Australian Privacy Principles.

We collect, use, disclose, store and otherwise handle your personal information in accordance with our Privacy Policy, a copy of which can be found on our website or otherwise made available to you upon request.

The kinds of personal information we collect include your name, address, telephone number, email address, financial information, and any legal information, where relevant to the provision of the Services to you.

We may also use your personal information for the purpose of providing you with our newsletters and invitations to seminars or other events. You can unsubscribe yourself at any time without informing us.

To provide the Services, we may disclose your personal information to our business partners and associates and to third parties engaged to perform administrative or other services. We may also disclose your personal information if required or authorised by law.

You acknowledge that you have read and understood our Privacy Policy and you agree to us collecting, storing, using, disclosing and otherwise handling your personal information for the purposes of providing the Services to you and/or for any other purpose set out in the Privacy Policy or otherwise in accordance with the law.

## 18 Relationship with other clients

We provide Services to other clients, some of whom may be in competition with you or have interests which conflict with your own. We will not disclose any of your personal information, or any confidential information that may come into our possession as a result of the Contract, to those other clients. However, this will not prevent or restrict us from providing Services to other clients.

## 19 Intellectual Property Rights

All copyright and other intellectual property rights in all *materials and tools* (including software and working papers). Data, designs, models, mythologies, analysis frameworks, practices, ideas, concepts and

techniques brought to the engagement or created in the course of the engagement of ELEVARE Strategic Marketing Consulting shall remain and be irrevocably vested in ELEVARE Strategic Marketing Consulting absolutely. Naturally, this excludes concepts, designs, branding, product specifications etc. that are A. relating to the agreed services to be provided, and B. are given to the Client for its direct adoption and ownership, use, and benefit.

## 20 Severance

- If a provision in these Terms is held by a court to be wholly or partially void, illegal or unenforceable, then the provision or part thereof must, to the extent, be treated as deleted and severed from these Terms. This severance will not affect the validity or enforceability of the remainder of the provisions contained in the Contract.
- Clause 12.2 (a) above does not apply and has no effect if severance of the provision of these Terms in accordance with clause 12.2 (a) materially affects or alters the nature or effect of the parties' obligations under these Terms such that performance of those obligations is frustrated or impossible to perform.

## 21 Variation

These terms may only be varied by written agreement of the parties.

## 22 Non-Solicitation of Personnel

During the Contract, and for (6) months after it ends, you agree not to solicit for employment or contractual consultancy purposes, whether on a part time, full time or casual basis, or to independently contract the services of, any ELEVARE Strategic Marketing Consulting partner, employee or contractor of ELEVARE Strategic Marketing Consulting who is involved with performing the Services without ELEVARE Strategic Marketing Consulting's prior written consent. This prohibition applies to both contracts of service and contracts for services.

If:

- We provide you with our prior written consent;
- You offer an employment or consultancy contract to one of our partners, employees or contractors; and
- The partner, employee or contractor accepts your offer,

Then you will pay a recruitment fee to us, calculated at 30% of the relevant partner, employee or contractor's gross annual salary package.

## 23 Miscellaneous

ELEVARE Strategic Marketing Consulting will provide the Services as an independent contractor. Nothing in the Contract shall be construed to create a partnership, joint venture or other relationship between the parties. No party has the right, power or authority to oblige or contractually bind the other in any manner.

## 24 Governing Law & Jurisdiction

All aspects of the Services and the Contract are governed by, and construed in accordance with, the laws of Queensland, Australia in which this Terms and Conditions is issued and the parties irrevocably submit to the exclusive jurisdiction of the Courts of the State including Federal Courts.

## 25 Dispute Resolution

If there is a dispute relating to the Services or the Contract, the parties will submit to mediation before having recourse to any other dispute resolution process. Written notice of the dispute must be given to the other party for it to be submitted to mediation before a mediator chosen by the parties or, where the parties cannot agree on the identity or terms of engagement of a mediator, then as selected by the Australian Commercial Disputes Centre (“ACDC”). The parties will use their best endeavours to settle the dispute promptly. The mediation will be conducted in accordance with the ACDC Mediation Guidelines to the extent that they do not conflict with the provision of this clause. If the dispute is not resolved within 60 days after notice of the dispute or such further period agreed between ELEVARE Strategic Marketing Consulting and the Client, then the mediation will terminate.

## 26 Electronic Communication

We may communicate with you electronically from time to time, including sending you Commercial Electronic Messages (as that term is defined in the SPAM Act 2003 (Cth)). You consent to us sending Commercial Electronic Messages to you and you may opt out at any time if you no longer wish to receive these commercial messages from us. ELEVARE Strategic Marketing Consulting may communicate with you electronically. Electronically transmitted information cannot be guaranteed to be secure or error or virus free and it may be unsafe to use or cause damage to the effectiveness of your software or computer network or systems. ELEVARE Strategic Marketing Consulting will use commercially reasonable procedures to check for the most commonly known viruses before sending information electronically but will not be liable to you or any of your associates in respect of any error, virus or mission or loss of confidential information arising from or in connection with the electronic communication of information to you. You may elect, in writing, not to permit ELEVARE Strategic Marketing Consulting to communicate electronically with you.

## 27 Other Firms and entities part of ELEVARE Strategic Marketing Consulting network

You will not bring any claim (whether in contract, tort (including negligence) or otherwise) against any other ELEVARE Strategic Marketing Consulting network Firm or its personnel in respect of the Services. Any Partner or employee of another ELEVARE Strategic Marketing Consulting network firm who deals with you in connection with the Services does so solely on our behalf. This clause does not apply if prohibited by the Corporation Act 2001.

The benefit of clause 13.1 is expressly held by ELEVARE Strategic Marketing Consulting for the benefit of other ELEVARE Strategic Marketing Consulting network Firms and their personnel (together ‘the beneficiaries’). You agree that each of the beneficiaries has the right to rely on this clause as if they were parties to this Contract.



## 28 Health and Safety

We are required to comply with the provisions of relevant work, health and safety legislations (WHS Laws) by taking all practical steps to ensure the work, health and safety of our employees. However, the WHS Laws place the responsibility for their safety on you when our employees visit your site.

## 29 Contract

- 15.1 Clauses 15.1 (a) and 15.1 (b) shall not apply to a Consumer.
  
- These Terms:
- Supersede and exclude all prior and other discussions, representations (contractual or otherwise) and arrangements relating to the supply of the Services including, but not limited to, those relating to the performance of the Services or the results that ought to be expected from using the Services; and
- Override any quotes, invoices or other documentation exchanged between the parties whether or not such documents expressly provide that they override these Terms.
- Unless ELEVARE Strategic Marketing Consulting otherwise agrees in writing, these Terms are the only terms which shall apply to the Services supplied by ELEVARE Strategic Marketing Consulting. The specific terms of any Service Proposal and/or Update Schedule issues to advice of material variations from a previous Service Proposal that ELEVARE Strategic Marketing Consulting is engaged to provide Services for, will be deemed to be incorporated into these general Terms. In the event of any inconsistency, the specific terms contained in the 'Service Proposal' or Update Schedule will override these general Terms but only to the extent of the inconsistency.