

RETAINER TERMS & CONDITIONS

1. Definitions

The following definitions apply to these Terms and Conditions:

Business Day means a day that is not a Saturday, Sunday or any other day that is a public holiday in Sydney, Australia;

Client, You, Your means the party requesting the Retainer Services;

Confidential Information means all information of a confidential nature, in any form whether tangible or not and whether visible or not, disclosed or communicated by a party to the other, or learnt or accessed by, or to which the other party is exposed as a result of entering into these Terms and Conditions and includes, without limitation, any information and material concerning the contractual or commercial dealings, financial details, products or services (current or proposed), customers, employees, internal policy, intellectual property or other proprietary information or material of a party or dealings under these Terms and Conditions and the Proposal, but does not include information or material which is or becomes known or generally available to the public;

Contract means the agreement under which Epiphany agrees to carry out the Retainer Services for You and includes these Terms and Conditions and the Proposal;

Epiphany, Our means Epiphany Training & Consulting Pty Ltd ACN 165 780 049;

Expenses means expenses or other out-of-pocket amounts payable by You, including but not limited to pre-approved travel expenses, if applicable, plus any incidental expenses;

Fees means the fees plus any reimbursable expenses which You must pay for the provision of Retainer Services under these Terms and Conditions;

Force Majeure Event means any circumstance not within the reasonable control of the party affected, but not limited to acts of God, natural disasters, wildfires, earthquakes, tornadoes, lightning, floods, high winds, civil disturbances, physical damage caused by third parties, terrorism, war (declared or undeclared), epidemics, pandemics, shortages of materials or transporters, national or local strikes, labour disputes, or transportation delays or accidents;

Proposal means the proposal provided to You setting out the details of the Retainer Services to be provided by Epiphany; and

Retainer Services means services provided by Epiphany to the Client as specified in the Proposal, including but not limited to human resources services, marketing services, safety services;

Terms and Conditions means this document and includes any schedules and annexures to it.

2. Retainer Services Objectives

To provide services to the Client that is outlined in the Proposal to facilitate development of the business of the Client.

3. General

- 3.1 These Terms and Conditions are applicable to any provision of Retainer Services by Epiphany. The Contract is the entire agreement and supersedes and replaces any previous proposals, correspondence, agreements or other communications, whether orally or in writing. Epiphany does not agree to the application of any of Your terms and conditions.
- 3.2 If these Terms and Conditions and the Proposal contain conflicting provisions, the provisions in these Terms and Conditions will prevail.
- 3.3 Any variation or modification of the Contract must be in writing and signed by both parties.

4. Retainer Structure

The number, duration and frequency of services will be as set out in the Proposal, or as agreed between the parties from time to time, and will depend on the type of Retainer Service in question. The Contract for Retainer Services will be ongoing unless terminated by either party in accordance with the termination provisions below.

5. Fees and Payment

- 5.1 \$[2,500] monthly (plus GST) to cover the cost of Retainer Services unless otherwise provided in the Proposal.
- 5.2 Epiphany has the right to adjust the Fee at any time by giving You 10 Business Days' written notice advising of that adjustment.
- 5.3 All Fees are exclusive of tax and other government levies, if any. Where applicable, GST is payable on our Fees and expenses and will be clearly shown on our tax invoice. By accepting these Terms and Conditions, You agree to pay Epiphany an amount equivalent to the GST imposed on these charges.
- 5.4 Our Fees will be invoiced and payable monthly in advance and in any event no later than the period set out in the Proposal or the invoice. Expenses will be invoiced at the end of the month.
- 5.5 Payments must be made to Epiphany in Australian Dollars and must be made by means of money transfer to a bank account nominated by Epiphany. Any objections to the amounts stated in an invoice does not exempt your obligation to pay.

6. Your Obligations

- 6.1 The Retainer Services are not to be used as a substitute for professional advice by legal, medical, financial or other qualified professionals. The Client will seek independent professional guidance for legal, medical, financial or other matters. All decisions in these areas are exclusively to be made by the Client.
- 6.2 The Client represents and warrants to Epiphany that it will, in a timely manner and without delay:
 - (a) provide all necessary information and facilities to enable Epiphany to perform the Retainer Services; and
 - (b) inform Epiphany of any facts and circumstances that might be relevant to the proper execution of the Contract.
- 6.3 If the Retainer Services or any part thereof is to be performed at Your premises, You will ensure a safe work environment and You agree to comply with all applicable occupational safety and health legislation.

7. Our Obligations

- 7.1 The Retainer Service program is designed to be ongoing unless these Terms and Conditions are terminated in accordance with the Contract.
- 7.2 Epiphany represents and warrants to the Client that the Retainer Services will be performed under the Contract in a competent and professional manner by skilled personnel. If the name of any Epiphany staff members is explicitly mentioned in the Proposal, Epiphany will endeavour to ensure that those staff members are available to perform the Retainer Services under the Contract.
- 7.3 Notwithstanding clause 7.1, Epiphany has the right to replace any staff member performing the Retainer Services in consultation with You. Should the Client request a change of staff member of Epiphany who is performing the Retainer Services, Epiphany may, at its discretion, provide a suitable replacement within a reasonable period.
- 7.4 For avoidance of doubt, Epiphany is not obliged to perform the Retainer Services or any part thereof at Your premises.

8. Limitation of Liability

- 8.1 In respect of claims of any kind:
 - (a) the Client and Epiphany agree that claims shall be subject to the qualifications, limitations, exclusions and caps contained in the Contract; and
 - (b) the sole remedies available to the Client against Epiphany, whether under these Terms and Conditions or at law shall be:
 - (i) at Epiphany's discretion, the resupply of the Retainer Service or to payment for the replacement or resupply of the Retainer Service; or
 - (ii) payment of compensation up to the liability cap prescribed in clause 8.2.
- 8.2 To the maximum extent permitted by law, the liability of Epiphany to the Client whether by way of indemnity, by reason

- of breach the Contract, in tort (including negligence or product liability), under warranty, under statute or otherwise howsoever arising from or in connection with the Contract, is limited to an amount equivalent of 6 months' Fees immediately preceding the occurrence of the liability.
- 8.3 Epiphany will not be liable in any manner whatsoever for delay or non-delay which is attributable to lockouts or any other cause including a Force Majeure Event.
- 8.4 Epiphany will not be liable under or in connection with the Contract or with respect to the Retainer Service provided to You for any loss of income, loss of actual or anticipated profits, loss of business, loss of anticipated savings, loss of, damage to, or corruption of data, loss of goodwill, loss of reputation or for any special indirect, incidental or consequential loss or damage of any kind in each case howsoever arising, whether such loss or damage was foreseeable in the contemplation of the parties and whether arising in or for breach of contract, tort (including negligence), breach of statutory duty, indemnity or otherwise.

9. Intellectual Property

Epiphany retains all copyright (and all other intellectual property rights) in everything developed by Epiphany either before or during the course of providing the Retainer Services to You including, without limitation, documents, reports and know-how.

10. Cancellation

Where any Retainer Services are cancelled by You or the Executive with less than 48 hours' notice, the Fee associated with those Retainer Services will not be refundable.

11. Termination

- 11.1 The Contract will continue subject to the following rights to terminate:
- either party may terminate the Contract by giving not less than 30 Business Days' prior written notice to the other party (after an initial 3-month period) if the party determines (in its absolute discretion) that it is not satisfied with the other party's performance;
 - either party may immediately terminate this Contract by giving written notice to the other if:
 - the other party is in breach of any material provision of this Contract and (where the breach is capable of remedy) has failed to remedy the breach within 10 Business Days of receipt of written notice describing the breach and calling for it to be remedied; or
 - the other party is in breach of any material provision of this Contract that is not capable of remedy; or
 - the other party resolves to become, or is under the threat of becoming, subject to any form of insolvency or administration; and
 - Epiphany may terminate the Contract where any amount that is due and payable under the Contract is not paid within 10 Business Days of the due date.
- 11.2 On termination of the Contract each party must immediately return to the other party all documents, information, equipment and materials or any other thing belonging to the other party or to which the other party is entitled. You agree to pay Epiphany for all Fees up to the date of termination.
- 11.3 The provisions of the Contract that expressly or by implication are intended to survive its termination or expiry, survive and continue to bind the parties.
- 11.4 You undertake to Epiphany that, during the currency of the Contract and a period of 12 months immediately after the termination of the Contract, you will not, either directly or indirectly, employ, entice away or endeavour to entice away from Epiphany any of Epiphany's employees, representatives or any other persons involved in the Retainer Services, other than with prior written consent from Epiphany.

12. Confidentiality and Privacy

- 12.1 You acknowledge that the content of the Contract and any conversation between Epiphany and You during the provision of the Retainer Services by Epiphany constitute Confidential Information.

- 12.2 Each party:
- may not, without the prior approval of the other party (which approval is to be within the other party's absolute discretion), make a record of or make public or disclose to any person any information about this Contract, the other party's Confidential Information or the other party's operations;
 - may disclose Confidential Information relating to the Retainer Services being performed under the Contract only to its employees, agents and contractors (**Authorised Persons**) who have a need to know and are aware that the Confidential Information must be kept confidential;
 - agrees that a failure by its Authorised Persons to comply with this clause will be deemed to be a breach of this Contract by that party; and
 - must ensure that the Authorised Persons engaged by it for the purposes of the Contract, do not make public or disclose information referred to in this clause.
- 12.3 The obligations of the parties under this clause are not to be taken to have been breached where the information referred to in this clause:
- is or becomes public knowledge other than by breach of the obligations under this clause;
 - is lawfully in the possession of the receiving party without restriction in relation to disclosure before the date of receipt from the disclosing party;
 - is legally required to be disclosed; or
 - has been independently developed or acquired by the receiving party (other than as a result of a breach of the Contract, any other agreement or any duty of confidentiality between the parties).
- 12.4 Epiphany is committed to protecting the personal information of the Client or persons working for or affiliated with the Client in accordance with the *Privacy Act 1988* (Cth) and the Australian Privacy Principles (**Privacy Laws**). You independently undertake to comply with the Privacy Laws and other legislation applicable to the processing of personal data by You, including the provision to Epiphany of personal information of the Client or persons working for or affiliated with You, or data originating from third parties or provided by third parties on Your instructions. To the fullest extent permitted by law Epiphany excludes all liability for Your non-compliance with this clause.
- ## 13. Notices
- 13.1 Any notice to be given under these Terms and Conditions must be in writing and must be delivered or sent by post or email to the address or email address of the party to whom it is sent as set out in the Proposal, or such other addresses and email addresses as notified in writing.
- 13.2 The party to whom a notice is sent will be deemed to have received the notice if:
- it is delivered, when it is left at the relevant address;
 - sent by post, 2 Business Days after it has been posted; or
 - if sent by email, either:
 - twenty-four (24) hours after the sender sends the email if no bounce or failure delivery report is received by the sender from the email program; or
 - when the sender receives a receipt notification if one is sent by the receiver.
 - If a party gives the other party 3 Business Days' notice in writing of a change of its address or email address, then any notice, consent, information, application or request is only given or made to that other party if it is delivered, posted or emailed to the notified address or email address, as applicable.

14. Governing Law

These Terms and Conditions will be governed by the law of the state of New South Wales.