



# TERMS & CONDITIONS

**We welcome your application and consideration of becoming part of the ForLife Counselling Team.**

Please Print, read and sign the terms and Conditions and return a signed copy with your application. Please also initial each page.

## 1. Definitions

1.1. In this agreement, unless inconsistent with the context:

<b>Client</b>	means the person described as such in the 'Parties' contact details section of this agreement.
<b>Consultant</b>	means the person described as such in the 'Parties' contact details section of this agreement.
<b>Contract Price</b>	means the contract price or other payment arrangement (as the case may be) specified in 'Investment'.
<b>Deliverables</b>	means the Seminars, Workshops, Training, Designs, Concepts, Reports, Project Management, Presentations, Plans/Strategies and other services relating to the Design Strategy to be provided by the Consultant, as specified in 'Services'.
<b>Delivery Date</b>	means the date by which the Consultant is to complete consultancy and resulting collateral.
<b>Licence</b>	means the licence referred to in clauses 4.2 or 4.3 (as the context requires).
<b>Plans and Strategy</b>	means any reports, plans and strategy (if any) produced as a result of this engagement
<b>Payments</b>	means the payment of any fees by the client upon invoice by the consultant.
<b>Secondary Consultant</b>	means the person/entity engaged by the Consultant and/or the Client (as the context may require) in relation to this agreement.

1.2. Reference to the singular includes reference to the plural and vice versa.

1.3. Reference to a party means a party to this agreement and includes the successors, executors, of that party

1.4. References to clauses, schedules and attachments are modifications agreed by both parties to this agreement (as the context may require).

1.5. Except as provided at law or elsewhere in this agreement, nothing in this agreement can be varied, waived, discharged or released, except with the Consultant's prior written consent.



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## **2. ENGAGEMENT**

- 2.1. The Client wishes to engage the services of the Consultant to provide the Deliverables.
- 2.2. The Consultant agrees to provide the Deliverables on the terms and conditions set out in this agreement.
- 2.3. This agreement records the entire agreement between the parties relating to the Deliverables, subject only to any agreed written variations between the parties.
- 2.4. The Consultant reserves the right to appoint any member of the Consultant's firm to work with or on this engagement.

## **3. TERM**

- 3.1 The term of this agreement shall commence on the date that it is signed by the Client and set out in 'Engagement Period' and shall, unless terminated earlier in accordance with clause 11, expire upon the Delivery Date.

## **4. INTELLECTUAL PROPERTY**

- 4.1. All intellectual property rights, including, without limitation, the copyright in the Process, Concepts, and Deliverables as well as all material arising out of the Deliverables, remain the property of the Consultant.
- 4.2. The Consultant grants a licence to the Client to use the Deliverables for the purpose of having the Design Strategy implemented and constructed and to make such copies of the copyright Deliverables as are necessary for such implementation but for no other purpose.
- 4.3. The Client acknowledges all of the Consultant's moral rights in the Deliverables and any reference to the Deliverables by the Client in future shall be accompanied by a full attribution of those rights to the Consultant.
- 4.4 The Client agrees to extend permission to the Consultant for the use of the Client's mark during this process as well as for the purposes of promotion on the Consultant's website as a case study.

## **5. SECONDARY CONSULTANT**

- 5.1. Where the Consultant has engaged the services of a Secondary Consultant, the Consultant shall not be responsible for any acts of the Secondary Consultant, other than to meet payment of the Secondary Consultant. The Consultant reserves the right to pass on any costs associated with the Secondary Consultant to the client and the Client agreed to pay and finalise any fee for the secondary Consultant as invoiced or forwarded by the Consultant.
- 5.2. Where the Client has engaged the services of a Secondary Consultant, the Client shall do so and accept responsibility for all acts of the Secondary Consultant and meet the payment of the Secondary Consultant.



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## **6. CONSULTANT'S WARRANTIES**

- 6.1 The Consultant warrants that, at the Delivery Date:
- (a) the Deliverables will be the unencumbered property of the Consultant.
  - (b) the Consultant will have full capacity to grant to the Client the rights to use of the Deliverables.

## **7. CONTRACT PRICE AND PROGRESS PAYMENTS**

- 7.1. The Contract Price shall be paid in accordance with clauses 7.2 to 7.6 (inclusive).
- 7.2. The Client will be liable to pay to the Consultant a Deposit payment of 40% of the Contract Price on the date of signing this agreement as Invoiced by the Consultant.
- 7.3. The Client will be liable to pay to the Consultant a Progress payment of 40% of the Contract Price on the date of an agreed Milestone (commensurate with 50% of the Project being completed) as Invoiced by the Consultant.
- 7.4. All payments made by the Client to the Consultant pursuant to this agreement shall be made without set off or deduction.
- 7.5. Without prejudice to any other rights and remedies which the Consultant may possess, if the Client fails to make any payment of any monies owing pursuant to this agreement within ten (10) working days of such payment being due, then the Consultant may, without notice to the Client, suspend the supply of the Deliverables.
- 7.6. If the supply of the Deliverables is suspended as a result of clause 7.5, and regardless of whether the Client reinstates the supply of the Deliverables by paying the monies due, the Consultant shall not be held responsible for any delay in completing the Deliverables.

## **8. INTEREST ON LATE PAYMENTS**

- 8.1 The Consultant may charge interest on any due but unpaid monies at the rate of 10% calculated on the outstanding amount per invoice up to the time that the unpaid monies and all interest are paid in full.

## **9. RELATED AGREEMENTS**

- 9.1 The parties acknowledge there are no related agreements affecting the deliverables and completion of this agreement.

## **10. CONSULTANT'S LIABILITY**

- 10.1 Except as otherwise prescribed by law, the liability of the Consultant to the Client in respect of the Deliverables shall be limited to the value of the Contract Price (exclusive of G.S.T) and or the sum of the immediate three invoices, whichever is the lesser.



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## 11. TERMINATION

- 11.1 In addition to any other right of termination or remedy conferred on the parties under this agreement or by law, this agreement may be terminated at any time and with immediate effect by written notice given by either party (referred to in this clause as "the First Party") to the other party (referred to in this clause as "the Second Party") if:
- (a) The Second Party has committed any material breach of this agreement and the breach, if capable of remedy, is not remedied within 5 working days of a written demand to do so; or
  - (b) The Second Party has committed any material breach of this agreement and the breach is not reasonably capable of being remedied within 5 working days; or
  - (c) The Second Party goes into liquidation or a receiver has been appointed in respect of the Second Party; or
  - (d) The Second Party suspends, for 10 working days or longer, or ceases, its principal business activities; or
  - (e) The Second Party makes any assignment to, or enters into an arrangement for the benefit of, its creditors.
- 11.2 Upon termination of this agreement for whatever reason:
- (a) such termination shall be without prejudice to the rights and remedies of either party in respect of, and shall not be deemed a waiver of, any antecedent breach of this agreement by the other party;
  - (b) the licence granted under clause 4.2 (as the case may be) shall be deemed to be cancelled,
  - (c) the Client shall promptly return to the Consultant all licensed materials including the Designs, Concepts, Reports, Plans, Strategy and Deliverables (and all copies of the above mentioned) received under this agreement.
  - (d) the provisions of clauses 4.1, 4.4, 7.1-7.6 (inclusive), 8, 10, 11, and 16.1 - 16.3 (inclusive), and any other provisions of this agreement which are incidental to, and required in order to give effect to those clauses shall remain in full force and effect.

## 12. ASSIGNMENT

- 12.1 Neither party shall assign any of the rights, entitlements or benefits under this agreement without obtaining the prior written consent of the other party. Such consent shall not be unreasonably withheld in the case of a solvent responsible assignee.

## 13. VARIATIONS

- 13.1 If a reasonable variation to the Deliverables is requested by the Client of the Consultant, then the Consultant shall use its reasonable endeavours to issue a variation order detailing the changes to the Deliverables and the resulting debit or credit adjustment to be made to the Contract Price.
- 13.2 The Client shall then have 5 working days to accept the variation order by written notice to the Consultant.





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## 14. FORCE MAJEURE

- 14.1 Neither party shall be liable for any act, omission or failure under this agreement if that act, omission or failure arises directly from an event beyond the reasonable control of the party concerned, provided that:
- (a) the party claiming protection of this clause shall, as soon as possible after becoming aware of such event or the likelihood of such event, give the other party written notice accordingly. Such notice shall describe the event and include the expected effect or duration of that event.
  - (b) each party shall continue to use all reasonable endeavours to perform its obligations as required under this agreement despite that event.
  - (c) in any such event, neither party shall be deemed to have accepted any extra costs, which may be incurred or sustained by the other party through a delay resulting from that event.
  - (d) If the event is of such magnitude or will be of such duration that it is either impractical or unreasonable, for a period of 60 working days or longer for the party claiming protection under this clause to comply with its obligations under this agreement, the other party may terminate this agreement by giving 10 working days notice.

## 15. GOOD FAITH

- 15.1 The parties shall act in good faith towards each other in respect of all dealings or matters under, or in connection with, this agreement.
- 15.2 The Client agrees to contribute in its entirety and honestly as the Deliverables are informed by the Clients information, direction, decisions and input.
- 15.3 The Client will indemnify the Consultant against any damages or claim made against or by the Client as a result of any use or implementation of the resulting Deliverables of this agreement.
- 15.3 Due to the nature of engagement the Consultant is reliant on Client information, direction, decision and input and therefore any resulting Deliverables do not constitute Advice by the Consultant to the Client.
- 15.4 The Client accepts that any Deliverable is not Advice or Expert Opinion and will seek independent advice on the resulting Deliverables and their implementation.

## 16. DISPUTE RESOLUTION

- 16.1 The parties agree to use all reasonable efforts to resolve any dispute which may arise under this agreement through good faith negotiations.
- 16.2 If the Client has entered into this agreement in trade, or has signed the acknowledgment set out in Schedule 7, then any dispute arising under this Agreement which cannot be settled by negotiation between the parties shall be referred to mediation.
- 16.3 The parties shall continue to perform their obligations under the agreement as far as possible as if no dispute had arisen pending the final settlement of any matter referred to adjudication



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## 17. GOVERNING LAW

17.1 This Agreement shall be deemed to be a contract made in Australia and its construction validity and performance shall be governed by Australian law.

## 18. JURISDICTION

18.1 The parties irrevocably agree subject to clause 16, that the Courts of Victoria will have non-exclusive jurisdiction to hear and determine all claims under or in connection with this Agreement.

## 19. AUTHORITY

Practitioner		ForLife Counselling Officer	
Signature		Signature	
Name		Name	George Nelson
Date		Date	

  

Witness Signature		Witness Signature	
Name		Name	
Date		Date	