

## Engagement Terms

These Terms serve as the basis of Veterans First Consulting Pty Ltd ACN 660 011 263 (**'we'**, **'us'**, **'our'**, **'Veterans First Consulting'**) offering to enter an agreement with you (**'you'**) for the provision of the Services.

These Engagement Terms must be read in conjunction with the Engagement Proposal. By signing the Engagement Proposal, you accept the Engagement Terms and acknowledge that the Engagement Proposal and these Engagement Terms form our entire agreement with you (collectively **'Agreement'**).

### 1. DEFINITIONS

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In these Terms unless contrary intention appears:

**Act** means *Military Rehabilitation and Compensation Act 2004 (Cth)*;

**CSC** means Commonwealth Superannuation Corporation;

**Commencement Date** means the date set out in Item 4 our Engagement Proposal;

**Confidential Information** means any information in any form however disclosed to the by one party to the other relating to the Services or our agreement with you;

**Claim** means a Permanent Impairment Claim against DVA or CSC Retrospective Invalidity under the Act;

**DVA** means Department of Veterans' Affairs;

**Electronic Signature** means an electronic method of signing that identifies the person and indicates their intention to sign the contract;

**Eligible Young Person Payments** means additional payments for each eligible young person who is dependent on you for economic support and known interchangeably by DVA as Severe Impairment Payment;

**Engagement Proposal** means the document titled 'Engagement Proposal' to which these Terms are annexed.

**Fees** means the fees detailed in Item 6 of the Engagement Proposal;

**Incomplete Claim** means a Claim that has progressed to Registration of Permanent Impairment, DVA have accepted liability for the Claim and you for any reason have elected not continued to establishing Permanent Impairment;

**Payout** mean the final pay advice/s provided by DVA or related bodies (including any Eligible Young Persons Payments or lump sum CSC payments) upon completion of a Permanent Impairment Claim and/or retrospective invalidity application;

**Permanent Impairment** has the meaning given to it under the Act;

**Permanent Impairment Claim** has the meaning given to it under the Act;

**Registration of Permanent Impairment** means the process by DVA of confirming in writing that the claim is registered with the DVA and a claim number has been assigned;

**Services** means those services set out in Item 3 of the Engagement Proposal;

**Schedule** means any schedule annexed to this Terms;

**Successful Claim** means a successful Permanent Impairment Claim whereby DVA has accepted liability and agreed to a Payout;

**Term** means the date set out in Item 4 of our Service Agreement; and

**Terms** includes these Engagement Terms, its schedules, annexures and ancillary documents as amended from time to time;

**Unsuccessful Claim** means a Claim that has commenced but has not progressed to Registration of Permanent Impairment.

## 2. INTERPRETATION

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In these Terms unless the contrary is expressly provided:

- 2.1 headings are for ease of reference only and do not affect the meaning of these Terms;
- 2.2 the singular includes the plural and vice versa and words importing gender include other genders;
- 2.3 other grammatical forms of defined words or expressions have corresponding meanings;
- 2.4 a reference to a clause, paragraph, schedule or annexure is a reference to a clause or paragraph of or schedule or annexure to these Terms and a reference to these Terms includes any schedules and annexures;
- 2.5 a reference to a document or agreement, including these Terms, includes a reference to that document or agreement as novated, altered or replaced from time to time;
- 2.6 a reference to "A\$", "\$A", "dollar" or "\$" is a reference to Australian currency;
- 2.7 a reference to a specific time for the performance of an obligation is a reference to that time in the State, Territory or other place where that obligation is to be performed;
- 2.8 a reference to a party includes its executors, administrators, successors and permitted assigns;
- 2.9 words and expressions importing natural persons include partnerships, bodies corporate, associations, governments and governmental and local authorities and agencies;
- 2.10 a reference to any legislation or statutory instrument or regulation is construed in accordance with the *Acts Interpretation Act 1901* (Cth) or the equivalent State legislation, as applicable;
- 2.11 words and expression defined in the *Corporations Act 2001* (Cth) as at the date of these Terms have the meanings given to them in the *Corporations Act 2001* at that date; and

2.12 a reference to writing includes typewriting, printing, lithography, photography and any other method of representing or reproducing words, figures or symbols in a permanent and visible form.

### **3. ACCEPTANCE**

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3.1 You will be deemed to have accepted our offer if you:

- (a) sign, date and return a copy of the Engagement Proposal to us; or
- (b) provide us with instructions or continue to request (either orally or in writing) that we provide you with our Services or otherwise benefit from our Services.

3.2 Once you accept our offer, you acknowledge that you are satisfied with the terms, covenants and conditions contained in these Terms.

### **4. SERVICES**

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4.1 We will provide those Services set out in the Item 3 of the Engagement Proposal.

4.2 We agree to carry out the Services in a professional manner with due care, skill, diligence and in compliance with all applicable laws, including the *Privacy Act 1988* (Cth) and *Corporations Act 2001* (Cth).

### **5. VARIATIONS**

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5.1 The Services we provide may be varied by the parties by written agreement.

### **6. YOUR RESPONSIBILITIES & ACKNOWLEDGEMENTS**

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6.1 To enable us to properly perform the Services in accordance with these Terms, you must promptly provide us with:

- (a) Completed and signed authorisation or appointment forms necessary for us to act on your behalf;
- (b) Any information, reports, records, accounts and other relevant materials which support your Claim; and
- (c) Timely, clear, accurate and lawful instructions.

6.2 You acknowledge and agree:

- (a) The information you provide to us will be true, accurate, complete and not misleading;
- (b) You will otherwise comply with your obligations under these Terms;
- (c) You have obligations to maintain your own full and proper records of any documentation used to substantiate your Claim; and
- (d) Unless otherwise set out in these Terms, the Services are provided for your sole benefit and must not be relied upon by a third party or be used to benefit a third party.

### **7. DELAY**

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7.1 You acknowledge that any timeframes provided by us for delivery of our Services are an estimate only. We will take reasonable steps to mitigate and minimise any delay on our part and the impact such delay may cause.

- 7.2 We will also endeavor to promptly notify you of any delays or likely delays in progressing your Claim as soon as we become aware.
- 7.3 If you fail to adhere to any due dates or otherwise protract our delivery of the Services through your conduct, you will be liable for any reasonable additional costs incurred by us.

## **8. NO ADVICE**

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- 8.1 You acknowledge and agree that in providing our Services:
- (a) We are only supporting you with your Claim by passing on information relating to the practices, requirements and procedures of the DVA or Defence Force Ombudsman based on our experiences; and
  - (b) We are not providing you with any legal advice with respect to your Claim or medical advice relating to your physical and emotional well-being.
- 8.2 We recommend that you:
- (a) engage other relevant and qualified professionals to assist, advise and support you with those issues outside of our limited scope; and
  - (b) obtain independent legal advice as to the nature and effect of these Terms and your agreement with us.

## **9. NO GUARANTEE OF RESULTS**

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- 9.1 You acknowledge and agree:
- (a) That the success of your Claim is subject to assessment criteria internally created by government agencies which they may alter and which we have no control over;
  - (b) Our historical successes are not necessarily representative of our future outcomes; and
  - (c) With respect to the likely outcome of your Claim achieved from the provision of our Services:
    - (i) we do not make any guarantees; and
    - (ii) you should not rely on any representations we may make.

## **10. FEES**

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- 10.1 As consideration for the Services provided, you agree to pay us the Fees within seven (7) days of receipt of an invoice rendered in accordance with clause 10.3.
- 10.2 You may also be required to pay any costs and reasonable out-of-pocket expenses incurred by us which are necessary to provide our Services, which may include but are not limited to medical related costs ('**Expenses**').
- 10.3 We will invoice you for the Fees and any Expenses in accordance with Item 6 of the Engagement Proposal, or where the Service Agreement is silent as we reasonably determine.

- 10.4 For the avoidance of doubt, Fees will not be charged to you if you have an Unsuccessful Claim, however we reserve the right to recover Expenses from you regardless of the outcome of your Claim.

## 11. PAYMENT

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- 11.1 You must pay us all amounts outlined in our invoice within ten (10) days of receipt of our invoices, unless otherwise specified by us, in the manner reasonably nominated by us, without set-off, counter-claim, holding or deduction.
- 11.2 Subject to our agreement with you, if you fail to pay in accordance with these Terns, we may charge you:
- (a) For all costs and expenses incurred by us in recovering the debt from you; and
  - (b) Compound interest at a rate of 12% per annum on the overdue amount which will begin accruing on the first day that payment is overdue.
- 11.3 If we receive a payment on your behalf from a third party in finalisation of your Claim, you agree that we may apply the payment to our outstanding Fees and Expenses before paying the balance to you.

## 12. DISPUTED FEES

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- 12.1 If you dispute the whole or any portion of the amount in an invoice, you must pay the portion of the invoice which is not in dispute and provide notice to us within seven (7) days of receipt of the invoice your reasons for dispute (**'Dispute Notice'**).
- 12.2 Upon receipt of your Dispute Notice, we will within a reasonable time provide you with evidence substantiating the Fees and Expenses and addressing your reasons of dispute.
- 12.3 If the dispute cannot be resolved within fourteen (14) days of our response the dispute must be referred to a mediator, unless the parties agree otherwise.
- 12.4 If the parties agree to mediation but cannot agree on a mediator then a mediator will be nominated by the president of the Resolution Institute the costs of which are to be borne by you.
- 12.5 All parties must act in good faith in an attempt to resolve any dispute, and if mediation is needed the parties must participate in the mediation in good faith.

## 13. GST

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- 13.1 Unless otherwise expressly stated in these Terms or the Engagement Proposal, all amounts payable to us are exclusive of GST. If GST is imposed, we may recover that amount from you in accordance with these Terms.

## 14. CONFIDENTIAL INFORMATION

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- 14.1 The parties agree that each party must keep confidential all Confidential Information and only use Confidential Information for the purpose of providing or receiving (as the case may be) the Services.

## **15. PRIVACY**

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15.1 We will take reasonable steps to comply with our privacy policy when dealing with your personal information and any other data, information and material which you provide or make available to us in connection with the provision of our Services.

## **16. INDEMNITY AND LIMITATION OF LIABILITY**

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16.1 To the maximum extent permitted by law:

- (a) Our liability for damages arising from any breach of our agreement with you or any issue with the Services we have provided in relation to it, are limited to the amount that you have paid to us under any agreement; and
- (b) We will not be liable or responsible for any indirect economic loss, loss of income or profit, liability under other agreements or to third parties, loss of opportunity or any other special, indirect, remote or punitive loss or damage arising in connection with our agreement with you or the delivery of our Services, even if we were appraised of the likelihood of such loss occurring.

16.2 You agree to indemnify us and keep us indemnified against all loss, damage or cost that may be incurred by us arising from or in connection with:

- (a) Any breach or default by you of these Terms;
- (b) Any negligent act or omission by you or by a party you are responsible for or your failure to comply with any law; and
- (c) Any claim made against us by any third party in connection with the information or documents that you have provided to us.

16.3 To the extent that any claim or loss occurs as a result of any negligent act or omission caused by us, your liability under clause 16.2 will be proportionately reduced.

## **17. TERMINATION OF AGREEMENT**

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17.1 You may terminate your agreement with us at any time by providing us with fourteen (14) days written notice.

17.2 We may terminate our agreement with you at any time if:

- (a) You fail to pay any Fee or Expense within ten (10) days of our invoice; or
- (b) You fail to comply or are otherwise in breach of these Terms; or
- (c) You provide knowingly false information in relation to your Claim or ask us to act unlawfully or unethically; or
- (d) You fail to provide us with adequate instructions within a reasonable time; or
- (e) There is any other just or reasonable cause.

17.3 Following termination, we are entitled to all outstanding Fees and Expenses, and you must promptly pay any amount owing as noted below:

- (a) if you terminate the agreement pursuant to clause 17.1 before the Claim has progressed to Registration of Permanent Impairment then there is no fee; or

- (b) if you terminate the agreement pursuant to clause 17.1 after the Claim has progressed to Registration of Permanent Impairment but prior to completion of all permanent impairment assessments then a fixed fee of \$2,000 + GST will apply; or
- (c) if you terminate the agreement pursuant to clause 17.1 after the completion of all permanent impairment assessments but DVA has not agreed to a Payout, you will be liable to us in the sum of \$15,000 + GST which represents 5% of \$300,000, being the average payout by DVA on Permanent Impairment Claims

## **18. RETENTION OF DOCUMENTS**

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- 18.1 You acknowledge that upon termination of our agreement with you or completion of your Claim, we may be required to retain certain material provided during the provision of our Services (including Confidential Information) for a period specified by law.
- 18.2 We may also keep copies of documents where required for quality assurance or insurance purposes.

## **19. ASSIGNMENT**

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- 19.1 In the event that we assign our interest under our agreement with you, or Veterans First Consulting is purchased, merges or amalgamates with another entity, you agree that you will continue to be bound by all provisions of these Terms.

## **20. YOUR CONSUMER RIGHTS**

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- 20.1 Our Services come with guarantees that cannot be excluded under the Australian Consumer Law. For major failures with the Service, you are entitled:
  - (a) to cancel your service contract with us; and
  - (b) to a refund for the unused portion, or to compensation for its reduced value.
- 20.2 You are also entitled to be compensated for any other reasonably foreseeable loss or damage.
- 20.3 If the failure does not amount to a major failure you are entitled to have problems with the service rectified in a reasonable time and, if this is not done, to cancel your contract and obtain a refund for the unused portion of the contract.

## **21. ELECTRONIC MAIL**

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- 21.1 You consent and acknowledge that we may communicate with you electronically by way of email or facsimile as the case may be in accordance with the *Electronic Transactions (Queensland) Act 2001*, and by accepting to communicate electronically you acknowledge that we may send you all written correspondence electronically for your instructions. If you wish to limit this form of communication then you must instruct us accordingly.
- 21.2 You agree that we may issue our invoices and give these to you electronically, which you are taken to have received at such time as we have sent this to you electronically.
- 21.3 You agree to assume the risks which are associated with the above forms of communication and agree that we do not accept liability which may arise from such risks.

21.4 You agree to fully release and indemnify us from any claims which you may otherwise have as a result of another person intercepting or interfering with such communications or any other issue arising from the use of such communications.

## **22. SEVERANCE**

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22.1 In the event that the whole or any part of parts of any clause in these Terms is held to be void or unenforceable, it shall to that extent be severed from these Terms but the validity of these Terms will not be affected.

## **23. JURISDICTION**

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23.1 These Terms and our agreement with you are governed by the laws of Queensland. The parties submit to the non-exclusive jurisdiction of courts exercising jurisdiction there.

## **24. NO MERGER**

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24.1 No right or obligation of any party will merge on completion of any transaction contemplated by these Terms. Any indemnity given in these Terms survives the expiry or termination of our agreement with you and a party may enforce a right of indemnity at any time, including before it has suffered loss.

## **25. EXECUTION**

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25.1 The parties agree that signing may be effected electronically.

25.2 If the Engagement Proposal is signed by any person using an Electronic Signature, the parties:

- (a) agree to enter into the Engagement Proposal in electronic form; and
- (b) consent to either or both parties signing the Engagement Proposal using an Electronic Signature.