

Brightpart Terms and Conditions of Service

DEFINITIONS

These terms and conditions govern your relationship with us, and apply when we enter into an agreement to provide migration services to you.

In this document: **'we'**, **'our'** and **'us'** means Brightpart and/or the Registered Migration Agent(s) listed on page 1 of the agreement; whilst **'you'** and **'your'** means the client(s) to whom we have agreed to provide migration services, as listed on page 1 of the agreement.

'The agreement' means the document that details the migration services that we will provide to you, which both parties are to read, acknowledge and sign.

'The application' means the application covered by the agreement.

'The relevant authority' means the authority to which the application is to be submitted for assessment. For sponsorship, nomination and visa applications, this will be the DOHA (see below); for skills assessment applications, this will be the relevant skills assessing authority; for State or Territory nomination applications, this will be the relevant State or Territory government agency.

'The DOHA' means the Department of Home Affairs.

1. Code of Conduct

- a. We undertake to adhere to the Code of Conduct for registered migration agents ('the Code'), which is prescribed in Schedule 2 of the *Migration Agent Regulations 1998*.
- b. The Code regulates the conduct of registered migration agents ('RMAs'), and establishes the minimum attributes and abilities that a RMA must demonstrate.
- c. We will provide a copy of the Code to you upon request. The Code is also available online at www.mara.gov.au.
- d. If the Code is amended in a way that is inconsistent with this agreement, both parties agree to vary this agreement to comply with the new Code.
- e. If the Code is inconsistent with our obligations as a RMA or otherwise, or with the laws of the country in which we are operating, both parties agree to vary this agreement to comply with the laws of that country, to the extent of any inconsistency.

2. Our Obligations

As your migration agents, we will:

- a. Act lawfully, honestly and fairly in your best interests;
- b. Avoid conflicts of interest, and disclose any personal or professional interests or commissions;
- c. Follow any lawful instruction you give us that is consistent with the agreement (including these terms and conditions) and is within the scope of the agreed services.

3. Your Obligations

As our client(s), you will:

- a. Give us full and clear instructions;
- b. Be honest and lawful in your dealings with us (it is an offence to provide false or misleading information, a bogus document or inaccurate personal identity information to a relevant authority);
- c. Treat us with respect and trust;
- d. Provide documents and information within the timeframes specified in our communications with you (work on the application cannot commence until your Client Questionnaire has been completed in full, and all other required documents and information have been provided to us);
- e. Ensure that any documents you provide are in the format set out in our communications (for instance, original documents, certified copies and/or scanned full-colour copies in PDF);
- f. Understand the fees and costs associated with the application, and pay these as required under the agreement;
- g. Ask us questions should you not understand what is required;
- h. Keep us informed of any change in your address or contact details, or any other change in your circumstances (we will determine if the change is material to the application)
- i. Make appointments to see your migration agent, so that we can devote sufficient time to the application and prepare any documents for you as appropriate.

4. Matters Impacting on Our Service

- a. We are able to advise you about immigration law at a particular point in time, but are unable to predict subsequent changes in the law that may affect the application.
- b. We do not guarantee the success of the application, or that the application will be decided within a given period of time.
- c. We are under no obligation to provide any refund should the application be refused for reasons outside our control.
- d. We are under no obligation to lodge the application with the relevant authority until payment has been made in full of all fees due and payable at that stage (see section B of the agreement).
- e. We have provided you with a copy of the information pamphlet regarding the migration agent profession, the *Consumer Guide*.

- f. If we advise you in writing that, in our opinion, the application would be vexatious or grossly unfounded, you will provide written acknowledgement of the receipt of this advice if, notwithstanding the advice, you still want us to lodge the application.
- g. You bear the risk that changes in immigration law may cause the application to be refused or take longer to be processed. We are not liable for any loss that arises from changes to the law that affect the application.
- h. You will respond promptly to our requests for information or documents.
- i. You will not hold us responsible for delays caused by your failure to promptly provide information or documents, and you are aware that failing to provide documents as required is likely to lead to the application being refused.
- j. All information provided to us is, to the best of your knowledge and belief, true and current, and all documents supplied are genuine and authentic.
- k. You are aware that providing false information or documents is likely to lead to the application being refused, and that you may be sanctioned by the relevant authority as a result.
- l. You will respond promptly to our requests for payment of professional fees and other costs, including any fees payable to the relevant authority (see section B of the agreement.).
- m. You are aware that failing to promptly make the payments required by the relevant authority may lead to the application being refused.
- n. You will, during the processing of the application, promptly notify us of any material changes in your circumstances, or the circumstances of any other person/entity that may be involved in the application. Should your contact details change, you will advise us of this change within two weeks.
- o. You will not sell property, leave employment or finalise any business or personal affairs or take similar steps in anticipation of obtaining a visa without notifying us first.
- p. If the application is for an employer-sponsored visa, you will take no other employment apart from the sponsored employment.
- q. We are the sole contact with the relevant authority, and you will direct all communications to that authority through our office.
- r. You will not contact the relevant authority without our consent. If you breach this clause, we have the right to terminate the agreement, or to charge additional fees at the rate of \$NO_DATA plus GST per hour for any further services required as a result of this breach.
- s. You will immediately notify us if you are contacted directly by the relevant authority in relation to the application or any other matter.
- t. If you make any payment via credit card, a merchant transfer fee may be imposed and disclosed on the invoice (see section B of the agreement).

5. Termination

- a. Either party may terminate this agreement at any time by giving reasonable written notice to the other party. In the event that we terminate the agreement, we must comply with the requirements of Clauses 10.1A and 10.1B of the Code.
- b. We must terminate the agreement if a conflict of interest listed in Part 2 of the Code arises that is not declared in clause 12 of this document. In the event that such a conflict occurs, we will notify the relevant authority that we no longer act for you, and will advise you about appointing another agent.
- c. If the agreement is terminated, you must pay any fees, charges and costs outstanding, as detailed in the subparagraphs below, for work that we have already performed. In this event, the following rules will apply:
 - i. The professional fees payable by you will be calculated based on the percentage of work undertaken by us as of the date of the agreement's termination, as itemised in section B of the agreement. For example, if 50% of the required work has been performed as of the date of termination, then 50% of the total professional fees itemised in the agreement is payable to us;
 - ii. You must also reimburse us for any charges or costs incurred on your behalf as of the date of termination;
 - iii. We will provide you with a final invoice itemising the services we have performed and the resultant fees, charges and costs payable by you following the agreement's termination;
 - iv. You will not be required to pay any fees for work that we have not yet performed;
 - v. If applicable, any excess funds held in your client account will be itemised on your final invoice, and will be refunded to your nominated account.
- d. If the agreement is terminated, you must sign any forms required to evidence the agreement's termination to the relevant authority's satisfaction.
- e. When the agreement is terminated, we must deal with your file in accordance with Part 10 of the Code.

6. Force Majeure

- a. Neither party will be liable to the other for any failure to perform the party's obligations under this agreement by reason of circumstances beyond the party's reasonable control, including (but not limited to) natural disaster, health epidemic or pandemic, governmental actions or war ('force majeure event').
- b. The party prevented from carrying out its obligations must:
 - i. Notify the other party as soon as practicable after the force majeure event occurs, and provide information concerning the force majeure event, including an estimate of the time likely to be required to overcome it;
 - ii. Take all reasonable steps to overcome the force majeure event and mitigate its effects;
 - iii. Continue to perform its obligations as far as practicable.
- c. Irrespective of the above, if a force majeure event occurs and its effects continue for a period of 14 days, either party may terminate this agreement by providing reasonable written notice in accordance with clause 5(a).

7. Retention of Documents

- a. We agree to keep securely, and in a way that ensures confidentiality, all documents that you provide or pay for (or that are provided or paid for on your behalf) until the earlier of:
 - i. Seven years after the date of the last action on your file; or
 - ii. When the documents are returned to you or dealt with in accordance with your written instructions.
- b. We agree to keep all other records required by Clause 6.1 of the Code for 7 years after the date of the last action on your file. After this date, we may destroy the documents and records above in a way that will ensure confidentiality.
- c. You will collect your original documents from us within 21 days of the finalisation of the application. You will provide us with a receipt upon return of any original documents.
- d. You have the right to receive a copy of your file upon payment of \$NO_DATA for archive retrieval and copying costs.
- e. If we are required to respond to a subpoena, court order or other legal process for the production of documents or testimony relating to information obtained or prepared under the agreement, you will compensate us at the prevailing hourly rate (see Schedule of Fees), for the time that we expend in connection with such response, and you will reimburse us for all out-of-pocket costs that we incur in this regard.

8. Confidentiality

- a. We adhere to the underlying values contained in the Australian Privacy Principles contained in the *Privacy Act 1988*, as a matter of internal policy and in compliance with the Code.
- b. We will maintain the confidentiality of all information divulged under the agreement, except as required by law or as modified by the agreement.
- c. Your documents and information may be stored physically and/or electronically by us. In some cases, documents and information may be stored on third party servers that are located outside Australia. We will take all reasonable steps to ensure that your information is protected from unauthorised release or disclosure.
- d. The information that you provide to us is collected, used and disclosed to other entities in the furtherance of your application, where there is a reasonable expectation that it will be used and disclosed by us. Other entities to which your information may be disclosed include (but are not limited to):
 - i. The DOHA;
 - ii. Skills assessing authorities;
 - iii. Your sponsor, or the person whom you are sponsoring or nominating for a visa (for family sponsorship or employer sponsorship/nomination purposes). In particular, you expressly agree that any Information that may adversely affect the outcome of the application (for example, health, character or business-related issues) may be disclosed to your sponsor (or the person whom you are sponsoring or nominating);
 - iv. Dependent family members included in your application;
 - v. Regional Certifying Bodies (for subclass 187 applications);
 - vi. Educational institutions (for Student visa applications)

- vii. State or Territory Governments (for State or Territory sponsorship/nomination purposes);
- viii. The Australian Federal Police and/or foreign police services (where you request that we apply for police clearances on your behalf);
- ix. Any entity to which you have authorised disclosure of your information.

- e. We may use the information that you provide to conduct market research, determine website usage and for direct marketing purposes related to our business (for example, our regular newsletter service).
- f. We may search for your current visa entitlements using Visa Entitlement Verification Online ('VEVO') at any time during the term of this agreement, as we deem necessary to determine your status in Australia and your eligibility to lodge the application.
- g. You acknowledge that the DOHA monitors VEVO searches. We are not responsible for any actions taken by the DOHA towards you as a result of VEVO searches conducted within the scope of this agreement.

9. Dispute Resolution

- a. If a dispute arises out of or relating to the agreement, or the breach, termination, validity, or subject matter thereof, or as to any related claim in restitution at law, in equity or pursuant to any statute: the parties agree to discuss the dispute with the aim of reaching a concord that is acceptable to both sides. This will be documented in writing, dated and signed by both parties.
- b. If one party requests an opportunity to discuss the dispute, the parties should attempt to reach a concord within 21 days of that request (or a longer period if agreed between the parties).
- c. If the parties cannot reach a concord within 21 days, the parties agree to refer the dispute to the Australian Disputes Centre (ADC) for final settlement by a single arbitrator appointed in accordance with the Rules of the ADC, or by another dispute resolution process suggested by the ADC and accepted by the parties. The results of any such mediation will be binding only upon agreement of each party. It is expected that any fees payable to the ADC or to the person appointed by the ADC will be paid by the parties equally.
- d. If the parties have been unable to resolve their dispute through the ADC, either party may commence Court proceedings, but not before the expiry of 28 days from the date of referral to the ADC. Court proceedings are strictly limited to the State or Territory of our principal office.
- e. You may seek to vary the procedure set out in this clause if you can establish that the DOHA requires you to immediately depart Australia.

10. Electronic Communications

- a. We disclaim and waive any liability or responsibility whatsoever for interception or unintentional disclosure of emails transmitted by or to us in connection with our performance of services under the agreement.
- b. You agree that we bear no liability for any loss or damage to any person or entity resulting from the use of email transmissions or our website services, including any consequential, incidental, direct, indirect or special damages, such as loss of revenues or anticipated profits, or disclosure or communication of confidential or proprietary information.

11. Relevant Law and Jurisdiction

These conditions and all aspects of our performance of services under the agreement are governed by, and both parties agree to be bound by, the law of the state of VIC, and the Code. Both parties irrevocably submit to the exclusive jurisdiction of the courts of the state of VIC and/or the Migration Agents Registration Authority.

12. Disclosure of Interests

- a. To assist our clients, we have strategic alliances with a number of related service firms and organisations, including:
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- b. We disclose that these bodies may pay a commission or referral fee in some instances. In addition, in some instances (by prior arrangement) we may pay a referral fee to agents that introduce clients to our practice.
- c. As the amount of any such benefits, if applicable, are not known at this stage, we will advise you of any amounts received or paid either if and when this occurs, or at your request.
- d. You accept that we are not providing expert advice in relation to the subject matter of any contracts or arrangements that are the subject of this clause, and that we bear no liability for any loss or damage to any person or entity resulting from the provision of non-migration advice.