



AGREEMENT FOR THE PROVISION OF AN EXTERNAL WHISTLEBLOWER SERVICE

THIS AGREEMENT dated _____ 202 is made by and between:

Emverio Workplace Complaints Pty Ltd, ACN 635523938 of Level 1, 31 Merivale Street, South Brisbane, QLD, 4101 (**Company**)

and

[Name] [ACN] of [address] (Client).

RECITALS

- A. The Client has certain obligations under the Corporations Act with respect to the protection of Eligible Whistleblowers and wishes to ensure that Eligible Whistleblowers have a safe, transparent, reliable and confidential way of disclosing Disclosable Matters with respect to the **client**.
- B. The Client wishes to appoint the Company to provide the Whistleblower Service which includes acting as an Eligible Recipient of Disclosable Matters disclosed by Eligible Whistleblowers.
- C. The Company has the skills, Personnel and capacity to provide the Whistleblower Service and has agreed to provide the Whistleblower Service to the **Client**.
- D. The **Client** and the Company have agreed that the Whistleblower Service will be provided to the Client by the Company in accordance with the provisions of this Agreement.

OPERATIVE PROVISIONS

1. Definitions and Interpretation

a) Definitions

In this Agreement unless the context otherwise requires, the following words shall have the meanings specified:

Agreement means this Agreement for the Provision of the Whistleblower Service;

Client's Confidential Information:

- (i) includes any information regarding or relating to the business, accounts, services, products, proposals, practices, plans and strategies, customers, clients or contracts of the client which is disclosed by or on behalf of the Client, as well as any other information which the Client designates as confidential or which, under the surrounding circumstances, ought to be regarded as confidential; and
- (ii) includes all information regarding or relating to the client and its Personnel that is disclosed to the Company by Eligible Disclosers and others pursuant to the Client's Whistleblower Policy or otherwise disclosed to or obtained by the Company in the course of its provision of the Whistleblower Service; but
- (iii) does not include information: which is generally available in the public domain otherwise than as a result of a breach of this Agreement by the Company; was known by the Company prior to disclosure to it; or which the Company is required by law to disclose;

Client's Whistleblower Policy means the Whistleblower Policy of the Client attached to this Agreement as Annexure A (as amended from time to time by the Client);

Commencement Date means _____;

Corporations Act means the Corporations Act 2001 (Cth);

Disclosable Matters means the matters described as Disclosable Matters in section 5.3 a) of the Client's Whistleblower Policy;

Eligible Discloser has the meaning set out in section 11 d) of the Client's Whistleblower Policy;

Eligible Recipient has the meaning set out in section 11 e) of the Client's Whistleblower Policy;

Eligible Whistleblower has the meaning set out in section 11 f) of the Client's Whistleblower Policy;

Fee(s) means refers to the fees set out in Schedule 2 to this Agreement;

GST Law means the same as in the A New Tax System (Goods and Services Tax) Act 1999 (Cth);

Loss means all loss and damage including financial loss, damages, legal costs and other expenses of any nature whatsoever;

Modern Slavery Laws means laws in Australia prohibiting the exploitation of any worker, human trafficking, slavery, servitude, forced labour, bondage or deceptive recruiting for labour or services or similar, including the *Modern Slavery Act 2018 (Cth)*;

The client means the Company and its Related Bodies Corporate including the Related Bodies Corporate of these companies;

Party means a party to this Agreement:

Personnel means the officers, employees, contractors, agents and other personnel of a Party:

Privacy Act means the Privacy Act 1988 (Cth);

Related Body Corporate has the meaning given in section 50 of the Corporations Act;

Termination Date means the earlier of:

- (i) the date of termination of this Agreement by the Client or the Company; and
- (ii) the date of expiry of this Agreement.

Whistleblower Laws means all applicable legislation, regulations, mandatory codes, common law rulings and other laws relating to the protection of whistleblowers including the relevant provisions of the Corporations Act; and

Whistleblower Service means the service described in Schedule 1 to this Agreement.

b) Interpretation

In this Agreement unless the context requires otherwise:

- (i) the words include, including, for example or such as are not used as, nor are they to be interpreted as, words of limitation; and
- (ii) the singular includes the plural and vice versa.

2. Whistleblower Service

- a) As and from the Commencement Date, the Company shall provide the Whistleblower Service to the Client in consideration for the Client paying the Fee to the Company.
- b) The Company shall provide the Whistleblower Service:
 - (i) competently and expeditiously with due care and skill;
 - (ii) in compliance with the Client's Whistle-Blowing Policy;
 - (iii) in compliance with all applicable laws and in particular (but without any limitation) the Privacy Act and Whistleblower Laws; and
 - (iv) in accordance with the Client's reasonable and lawful instructions and directions.
- c) The Whistleblower Service shall be performed by such Personnel of the Company that the Company may choose as most appropriate to carry out the Whistleblower Service.

3. Personnel of the Company

- a) The Company must ensure that all Personnel used to supply the Whistleblower Service:
 - (i) have the necessary training, knowledge, skills, experience, expertise and temperament to supply the Whistleblower Service as required under this Agreement;
 - (ii) receive formal training and ongoing professional development to ensure they maintain, the competencies they require to supply the Whistleblower Service as required under this Agreement; and
 - (iii) understand and are familiar and comply with the Client's Whistleblower Policy and Whistleblower Laws.
- b) The Company must, and warrants that it will, comply with all obligations to and with respect to its Personnel under industrial laws and other applicable laws including Modern Slavery Laws.

4. Fee(s)

- a) In consideration of the provision of the Whistleblower Service in accordance with this Agreement, the Client will pay the Company the Fee(s).
- b) The Client acknowledges that the Fee(s) shall be exclusive of any GST that may be

charged by the Company to the Client, and therefore, the Company will be entitled to add on GST.

- c) The Company shall provide the Client with a tax invoice in accordance with the GST Law in relation to fees payable under this clause 4, and payment shall be made by the Client to the Company within 21 days following receipt of the Company's invoice.
- d) The Company is permitted to charge for all costs and expenses reasonably incurred in performing the Whistleblower Service provided that the Company obtains the Client's authorisation prior to incurring such costs.
- e) When making a payment the Client shall quote relevant reference numbers and the invoice number.

5. Client's obligations

During the term of this Agreement the Client will:

- a) co-operate with the Company as the Company reasonably requires for the purposes of performing the Whistleblower Service;
- b) provide the information and documentation that the Company reasonably requires in order to perform the Whistleblower Service; and
- c) communicate with the Company as to the operation of the Whistleblower Service to ensure the effective provision of the Whistleblower Service.

6. Confidentiality

- a) Except as expressly permitted under this clause 6, or otherwise agreed by the Client in writing, the Company must keep strictly confidential the Client's Confidential Information and must not disclose any of this Confidential Information to any third party.
- b) The Company must not, and must ensure that its Personnel do not:
 - (i) do any act or thing involving the use or disclosure of the Client's Confidential Information (or any part of it) which may cause loss to the client; or
 - (ii) use, copy or disclose any Confidential Information of the Client other than in the performance of its obligations under this Agreement.
- c) The Company may only disclose the Client's Confidential Information or make it available to its Personnel:
 - (i) on a 'need to know' basis in order that they may perform their obligations with respect to the Whistleblower Service; and
 - (ii) on the basis that the Company ensures its Personnel comply with the obligations of confidentiality set out in this clause 6.
- d) If the Company is required by law to disclose the Client's Confidential Information of the Client, the Company must
 - (i) notify the Client as soon as practicable of any actual or anticipated requirement of the law to disclose the Client's Confidential Information; and

- (ii) use its best endeavours to delay and withhold the disclosure until the Client has had reasonable opportunity to lawfully oppose the disclosure.
- e) The Company must establish and maintain comprehensive security measures to ensure that any of the Client's Confidential Information that it holds is secure at all times.
- f) The obligations relating to the Client's Confidential Information survive the termination of this Agreement and continue until the Client's Confidential Information lawfully becomes part of the public domain.
- g) At the Termination Date or when earlier directed by the Client:
 - (i) all of the Client's Confidential Information must be returned to the Client, including all copies or extracts or summaries that the Company makes; and
 - (ii) the Company will must erase and destroy any copies of any software containing or comprising the Client's Confidential Information in the Company's possession or under the Company's control or that may have been loaded onto a computer possessed or controlled by the Company.

7. Warranties, liability and indemnities

- a) The Company warrants that it will perform the Whistleblower Service:
 - (i) competently and expeditiously with due care and skill;
 - (ii) in compliance with the Client's Whistle-Blowing Policy;
 - (iii) in compliance with all applicable laws and in particular (but without any limitation) the Privacy Act and Whistleblower Laws; and
 - (iv) in accordance with the Client's reasonable and lawful instructions and directions.
- b) The Company does not, however, provide a warranty that any specific result or objective can or will be achieved or attained at all unless specifically stated in this Agreement.
- c) To the extent permitted by applicable law, except in the case of death or personal injury to the extent caused or contributed to by the Company's negligence, breach of law or this Agreement or other wrongful act or omission, the liability of the Company under or in connection with this Agreement whether arising in contract, tort, negligence, breach of statutory duty or otherwise shall not exceed the higher of:
 - (i) six times the aggregate of the Fee(s) paid by the Client to the Company under this Agreement or,
 - (ii) to the extent the Loss is indemnified by an insurance policy required under this Agreement, the limit of the relevant policy insurance
- d) Neither Party shall be liable to the other Party in contract, tort, negligence, breach of statutory duty or otherwise for any Loss to the other Party of an indirect or consequential nature including any economic loss or other financial loss of turnover, profits, business or goodwill.
- e) Each of the Parties acknowledges that, in entering into this Agreement, it does not do

so in reliance on any representation, warranty or other provision except as expressly provided in this Agreement, and any conditions, warranties or other terms implied by statute or common law are excluded from this Agreement to the fullest extent permitted by law.

- f) The provisions under this clause survive termination or expiry of this Agreement.

8. Insurance

- a) Before supplying the Whistleblower Service, the Company must purchase, and maintain at all times and at its own cost, all necessary insurance policies to cover all risks and obligations under this Agreement including the following:
 - (i) Public liability insurance – of not less than 20 million dollars;
 - (ii) Professional indemnity insurance of not less than 10 million dollars; and
 - (iii) Worker’s compensation insurance – in accordance with applicable laws.
- b) The Company must:
 - (i) ensure that each insurance policy it maintains is with a reputable insurer; and
 - (ii) provide the Client with evidence of its insurances upon the Client’s request.

9. Termination

- a) Either Party may terminate this Agreement by notice in writing to the other if the Party notified fails to observe any term of this Agreement and fails to rectify this breach, to the satisfaction of the notifying Party, following the expiration of 14 days’ notice of the breach being given in writing by the notifying Party to the other Party.
- b) Either Party may terminate this Agreement upon the happening of any of the following events:
 - (i) the giving of at least one month's written notice by one Party to the other Party of the intention to terminate this Agreement;
 - (ii) if the Client enters into a deed of arrangement or an order is made for it to be wound up;
 - (iii) if an administrator, receiver or receiver / manager or a liquidator is appointed to the Client pursuant to the Corporations Act; or
 - (iv) if the Client would be presumed to be insolvent by a court in any of the circumstances referred to in the Corporations Act.
- c) The Client may, at its discretion, pay to the Company the equivalent amount of the fees payable by the Client to the Company during the notice period in lieu of any notice period relating to termination of this Agreement under paragraph.
- d) Upon termination of this Agreement any fees, expenses or reimbursements payable by the Client to the Company in respect of any period prior to the Termination Date must be paid by the Client within 30 days of the Termination Date.

10. Entire agreement

This Agreement contains the whole agreement between the Parties in respect of the subject matter of the Agreement and supersedes and replaces any prior written or oral agreements, representations or understandings between them relating to such subject matter. The Parties confirm that they have not entered into this Agreement on the basis of any representation that is not expressly incorporated into this Agreement.

11. Waiver

No failure or delay by a Party in exercising any right, power or privilege under this Agreement shall impair the same or operate as a waiver of the same nor shall any single or partial exercise of any right, power or privilege preclude any further exercise of the same or the exercise of any other right, power or privilege.

12. Rights Cumulative

The rights and remedies provided in this Agreement are cumulative and not exclusive of any rights and remedies provided by law.

13. Severance

If any provision of this Agreement is prohibited by law or judged by a court to be unlawful, void or unenforceable, the provision shall, to the extent required, be severed from this Agreement and rendered ineffective as far as possible without modifying the remaining provisions of this Agreement, and shall not in any way affect any other circumstances of or the validity or enforcement of this Agreement.

14. Law and jurisdiction

This Agreement takes effect, is governed by, and shall be construed in accordance with the laws from time to time in force in Queensland, Australia. The Parties submit to the non-exclusive jurisdiction of the courts of Queensland.

15. Counterparts

This Agreement may consist of a number of counterparts and, if so, the counterparts taken together constitute one and the same instrument. Counterparts may be delivered by electronic means.

THE NEXT PAGE IS THE SIGNING PAGE

SIGNING PART

EXECUTED as an agreement.

SIGNED for and on behalf of
Emverio Workplace Complaints
Pty Ltd ACN 635 523 938

Authorised Signatory

Authorised Signatory

Name

Name

SIGNED for and on behalf of
Name of client
ACN

Authorised Signatory

Authorised Signatory

Name

Name

SCHEDULE 1

WHISTLEBLOWER SERVICE

The Company will:

- Act as an Eligible Recipient under the Client's Whistleblower Policy and the Corporations Act
- Confidentially receive and review complaints, reports and other disclosures from Eligible Disclosers with respect to matters relating to the client via the following means:
 - **Online** - an online disclosure or complaints form (that can be lodged 24 hours a day) <https://workplacecomplaint.com.au/contact-us/>
 - **e Mail** – info@complaints.emverio.com (that can be lodged 24 hours a day)
 - An online form. All information collected in the [form](#) goes **directly to Emverio Workplace Complaints**.
 - **Telephone** – 1300 454 574 between 7.00 am and 8.00 pm (Australian Eastern Standard Time) Monday – Friday (excluding public holidays – reduced hours during holiday periods)
 - **Telephone** – NZ toll free 0800 682 001 between 7.00 am and 8.00 pm (Australian Eastern Standard Time) Monday – Friday (excluding public holidays – reduced hours during holiday periods)
 - **Telephone** – India toll free **000 800 050 3301** between 2.00 am and 2.00 pm Monday to Friday (excluding public holiday - reduced hours during holiday periods);
- Where the disclosures **do not** amount to disclosures of Disclosable Matters that attract the protections for Eligible Whistleblowers under the Corporations Act the following will apply;

The company will receive the details of the complaint and encourage the complainant to pursue the complaint via the clients internal process. These complaints are referred to as Enquiries (or Refer Back RB) complaints. No reports will be provided to the client for these matters. However, the number and type of complaints will be provided to the client (on an monthly, quarterly or annual basis).

- Where the disclosures **do not** amount to disclosures of Disclosable Matters that attract the protections for Eligible Whistleblowers under the Corporations Act but serious enough that it could be considered to breach another client Policy or Workplace Law then the following will apply;

The company will receive the details of the complaint and collect any relevant details and information and refer the complaint to a higher level within the client's business. These matters are referred to as level 1 (or RHL) matters.

- Where the disclosures amount to disclosures of Disclosable Matters that attract the protections for Eligible Whistleblowers under the Corporations Act the following will apply;

The company will receive the details of the disclosure and collect any information to determine whether there are reasonable grounds to suspect that a disclosable matter may have occurred and provide a report to the client. These matters are referred to as level 2 matters.

- Prepare and provide reports and/or participate in meetings about the Whistleblower Services, or any aspect with respect to the supply of the Whistleblower Services in such manner and such intervals as the Client may specify. The reports must include all information that the Clients reasonably requires.

SCHEDULE 2

FEES

One off setup fee	\$1000
Monthly retainer	\$250
Each complaint call/lodgment/enquiry level Enquires (Refer Back – RB)	\$150 per complaint
RHL – Refer to higher level complaints Level 1 Complaints	\$225
Receipt and processing of Level 2 (Whistleblower Complaints & Report)	\$299 per hour

Accounts (finance details) sent to	
Name	
Role	
Email	
Secondary Email	
Requirements for invoicing	One off set up fee (on subscription)
Monthly fee	Monthly <input type="checkbox"/> Quarterly <input type="checkbox"/> Annually <input type="checkbox"/>
Complaints received	We invoice complaints received monthly.
Monthly fees are set to be issued the month prior to the commencement of service.	