
DEFINITIONS

These Terms and Conditions govern your relationship with us throughout the provision of migration services to you. You will be bound by these Terms and Conditions when you sign the Agreement to Provide Migration Services.

In this document: **'we'**, **'our'** and **'us'** means Visascape Pty Ltd 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 in the Agreement (including the attached Schedule A, if applicable).

'Agreement' means the Agreement to Provide Migration Services, which details the migration services that we will provide to you. These Terms and Conditions, our Privacy Policy and any attached Schedules are all incorporated into the agreement.

'Application' means any application as provided for in the Agreement.

'Consumer Guide' means the consumer guide for registered migration agents issued by the Department of Home Affairs and can be found at www.mara.gov.au.

'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 review applications, this will be the Administrative Review Tribunal (ART); 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; for regional certification applications, this will be the relevant Regional Certifying Body and/or Designated Area Representative.

'Services' means the duties set out in the Scope of Services in the Agreement.

'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 by Schedule 2 of the *Migration Agents Regulations 1998* (Cth).
- b. The Code regulates the conduct of registered migration agents ('RMAs'), and its purpose is to protect clients of RMAs, and to strengthen the integrity of the immigration advice industry along with Australia's immigration system.
- 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, in accordance with the process for variation set out in clause 6 of these terms and conditions.

2. Our Obligations

As your migration agents, and subject to the Agreement, the Code and any other Commonwealth, State or Territory law, we will:

- a. Act professionally, competently, diligently, ethically, honestly and with integrity;
- b. Act in your legitimate best interests, having regard to your dependence on our knowledge and experience;
- c. Act in accordance with your lawful instructions and the Agreement (including these Terms and Conditions);
- d. Respond to your instructions, queries and requests in a timely manner;
- e. Notify you in writing when we lodge any Application, submission or representation with the Relevant Authority on your behalf, give you a copy of that Application, submission or representation, and promptly advise you of any material developments that occur in relation to it;
- f. Maintain sufficient knowledge and skills to give immigration assistance professionally and competently;
- g. Arrange for a qualified interpreter to assist you in your dealings with us, if required, and at your cost;
- h. Take all reasonable steps to ensure that the Services are completed (unless the Agreement is terminated prior to this point in accordance with clause 7 of these Terms and Conditions).

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; this includes providing information that is, to the best of your knowledge and belief, true and current, and documents that are genuine and authentic (you acknowledge that it is an offence to provide false or misleading information, falsified documents or inaccurate personal identity information to the DOHA or any other person or body exercising powers or performing functions under migration law);
- c. Treat us with respect and trust;
- d. Provide requested documents and information within the timeframes specified in our communications with you (you acknowledge that work on the application cannot commence until the Agreement has been signed and all other required documents and information have been provided to us);
- e. Ensure that any documents you provide are in the format that we have requested (for instance original documents, certified copies, scanned full-colour copies in PDF), and that they are provided via the required channel of communication (for example, we may request that these documents be uploaded to your client portal, attached to an email, or sent by post);
- f. Ask us questions should you not understand what is required;

- g. Promptly notify us of any changes in your circumstances, or the circumstances of any other person or entity that may be involved in the application;
- h. Advise us immediately if your address or contact details change;
- i. Notify us if you believe you will be uncontactable for two or more consecutive days during the provision of the Services;
- j. Notify us before you leave your employment, sell property, finalise any business or personal affairs, book flights to enter into or depart from Australia, or take similar steps in anticipation of completion of our Services or a decision regarding your application outcome;
- k. Take no other employment apart from the sponsored or nominated employment (for employer-sponsored or employer-nominated applications only);
- l. Make appointments in advance should you wish to meet with us in person, so that we can prepare any documents and/or information that you require;
- m. If you are represented by another agent or intermediary, provide your written consent to that agent or intermediary acting on your behalf, and comply with our requests to verify the identity of the agent/intermediary (as applicable).

4. Matters Impacting on Our Service

- a. We have provided you with a copy of the Consumer Guide, which sets out the standards and rules that a registered migration agent must follow. You understand that if your instructions are in direct contradiction of the Code of Conduct, we may be required to terminate the Agreement in accordance with clause 7 of these Terms and Conditions.
- b. You understand that 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.
- c. You bear the risk that changes to 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.
- 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. If we advise you in writing that, in our opinion, the Application would be futile (for instance, where we consider that the Application has little or no prospect of success), you will provide written acknowledgement of the receipt of this advice if, notwithstanding the advice, you still want us to lodge the Application.
- f. 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 in the required form and within the specified timeframe is likely to lead to the Application being refused.
- g. You acknowledge that we reserve the right to terminate the Agreement in accordance with clause 7 of these Terms and Conditions if six months has elapsed since the Agreement was signed by both parties, and you have failed to provide the information and/or documents that we have requested to support your Application.
- h. You are aware that providing false information or documents to the DOHA (or to any other person or body exercising powers or performing functions under the migration law) is likely to lead to the Application being refused, and that you may be sanctioned by the DOHA as a result.
- i. If we become aware that you (or a third person acting on your behalf, including a migration agent) have provided false or misleading statements, documents and/or information to (or concealed relevant information from) the DOHA, or any other person or body performing functions or exercising powers under the migration law, regardless of whether or not you were our client at the relevant time:
 - i. we will inform you in writing of the potential consequences of this matter, and discuss how it may be corrected; and
 - ii. you must agree in writing to the matter being corrected, and take all reasonable steps to correct the matter, before we continue to provide the Services to you; and
 - iii. should you fail to take the actions described in paragraph ii, we must terminate the Agreement in accordance with clause 7 of these Terms and Conditions.
- j. You understand that we are the sole contact with the Relevant Authority, and you agree to direct all communications to that Relevant Authority through our office.
- k. You will not contact the Relevant Authority without our consent, or attempt to access and/or change the Application in ImmiAccount. If you breach this clause, we have the right to terminate the agreement in accordance with clause 7 of these Terms and Conditions, or to charge additional fees at the rate of \$300.00 plus GST per hour for any further services required as a result of this breach.
- l. You will immediately notify us if you are contacted directly by the Relevant Authority in relation to the Application **or** any other matter.

5. Payment of Fees, Charges & Costs

- a. You will promptly pay our professional fees, the charges payable to the relevant authority, and any other costs associated with the application (see section B of the Agreement), in accordance with the terms of our invoice(s) (this includes any deposit requests).
- b. You are aware that if you do not pay our professional fees as and when requested, we may cease working on the Application. Should you fail to pay the fees by the due date, a general interest charge equal to the current Reserve Bank of Australia Cash Target Rate plus 3% will be applied to the outstanding balance at noon on each day that the requested amount remains outstanding. Once the fees have been paid in full, we will recommence work on the Application.
- c. If you make any payment via credit card, a merchant transfer fee may be imposed. This will be disclosed on the relevant invoice.
- d. You are aware that failing to promptly make the payments required by the Relevant Authority may lead to the Application being refused.

- e. Should exceptional circumstances arise that make it impracticable to perform some or all of the Services for the specified professional fee, we may vary our fees in accordance with clause 6 of these Terms and Conditions, in order to fairly and reasonably reflect the additional services or work that we are required to perform.
- f. The Relevant Authority and/or third parties that provide services to you during the Agreement period may from time to time increase their charges, costs and surcharges, including credit card merchant transfer fees (for instance, DOHA charges are generally indexed annually on 1 July, although charges may be increased at any time). We will notify you immediately in the event that we become aware of any increase in the charges, costs and surcharges associated with the application, in which case you must provide your written consent to the price increase before you are invoiced for the relevant increased amount.

6. Variation of Agreement

- a. A variation to the Agreement may be required where the Application will be materially altered or affected by a change to your circumstances, or if there are changes to immigration law after the Agreement has been signed. Situations in which a variation of the Agreement is required could include (but are not limited to):
 - i. a change to immigration law that affects your eligibility to make the relevant Application and/or to be granted the relevant visa;
 - ii. a change in your personal circumstances (for instance, where complex health or character issues arise), or to the circumstances of any third party that intends to endorse, nominate or sponsor your Application (if applicable), that affects your eligibility to make the relevant application and/or to be granted the relevant visa;
 - iii. the addition of a spouse/de facto partner, dependent child or other family member to the Application (or the removal of any applicant from the Application);
 - iv. a change in primary client (for instance, where the spouse/de facto partner listed in the Agreement becomes the primary client/visa applicant);
 - v. a request from you that we urgently prepare and lodge your Application with the Relevant Authority (where this service was not already included in the Agreement).
- b. A variation may also be required where you instruct us to perform additional services that fall outside the agreed Services (for instance, where we are required to provide further supporting information and/or documents to the Relevant Authority following lodgement of the Application).
- c. If a variation to the Agreement is required, we will give you written notice of the reason(s) for the proposed variation, and any resulting changes to the fees, charges and costs associated with, and/or the status of, the Application.
- d. You must provide your written consent to any proposed variation to the Agreement before any variation takes effect. Should you not consent to a proposed variation, and should such variation be required in order for us to continue providing the Services to you, we reserve the right to terminate the Agreement in accordance with clause 7 of these Terms and Conditions.
- e. You agree that unless otherwise specified in the Agreement or in these Terms and Conditions, only the primary client listed in the Agreement is required to provide written consent to a variation of the Agreement.
- f. Notwithstanding the above, if a variation relates to the addition or removal of an applicant, or a change in primary client, the written consent of each adult client is required.

7. Termination

- a. Either party may terminate this Agreement at any time by giving 14 days' written notice to the other party.
- b. We may terminate the Agreement immediately without any right to claim damages if you breach these Terms and Conditions.
- c. If the Agreement is terminated by either party, we will provide you with a written notice of termination, which will include any outstanding fees, charges and costs that you are required to pay for work that we have already performed. In this event, the following rules will apply:
 - i. the professional fees payable by you for the provision of Services 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. You will not be required to pay any fees for work that we have not yet performed;
 - ii. you must also reimburse us for any charges or costs we incurred on your behalf on or before 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.
- d. If we are holding funds in your client account at the date of termination, these funds will be itemised on your final invoice. Excess funds that are not required to pay our invoice will be refunded to your nominated account within 14 days of the date that written notice of the termination was provided.
- e. If the Agreement is terminated, we will notify the Relevant Authority that we no longer act for you and will advise you about how you may obtain further immigration assistance. You must sign any forms required to evidence the Agreement's termination to the Relevant Authority's satisfaction.
- f. When the Agreement is terminated, we must deal with your file in accordance with Divisions 4 and 5 of the Code and our Privacy Policy.

8. Refund Policy

- a. In the event of termination of the Agreement, any refunds of professional fees, charges and costs will occur in accordance with the rules set out by clause 7(c) of these Terms and Conditions.
- b. Any refunds of fees, charges and costs payable to you will be paid into your nominated bank account within 14 days of the time that they become payable. Should any bank fees or charges be incurred in making a refund, these will be payable by you.
- c. We are under no obligation to provide any refund of professional fees, costs and charges paid pursuant to the Agreement should the Application be refused by the Relevant Authority.
- d. Should we become aware that the amount of a charge or cost that you have paid to us for a service provided by the Relevant Authority or a third party is greater than the actual amount of that charge or cost (for instance, where our reasonable estimate of a charge or cost was in excess of the actual charge/cost, or where the Relevant Authority or third party has provided a refund to us), we will refund the excess to your nominated account within 14 days.
- e. We are not otherwise responsible for refunds of charges or costs that we have paid to the Relevant Authority or a third party provider on your behalf, or that you have paid directly. Should you wish to seek a refund of any such charge or cost, you will need to contact the relevant third-party provider directly, unless we agree otherwise.

9. 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 in accordance with clause 7(a) of these terms and conditions.

10. Retention of Documents

- a. In accordance with our Privacy Policy and divisions 4 and 5 of the Code, we will take all reasonable steps to keep secure all documents and communications related to your matter until the earlier of:
 - i. seven years after the date of the last action on your file; or
 - ii. the date that possession of your file has been transferred to another agent in compliance with your written instructions.
- b. After our obligation to retain your file ceases in accordance with clause 10(a), we may destroy the client file in a way that will maintain confidentiality.
- c. We will return your original documents (this includes personal documents such as passports and birth certificates, business documents such as financial statements, and any documents for which you paid, such as translations and police clearances) to you on the earlier of:
 - i. at any time, within 14 days of receiving a request made in writing; or
 - ii. following finalisation of the Application.
- d. You will provide us with a receipt acknowledging the return of any original documents.
- e. In accordance with our Privacy Policy, you have the right to receive a copy of your file upon written request. Should you require a paper copy of your file, we reserve the right to charge a fee of \$NO_DATA for archive retrieval and copying costs.

11. Privacy & Confidentiality

- a. Visascape Pty Ltd takes your privacy seriously. We will observe the provisions of our Privacy Policy, which can be viewed on the Privacy Policy page of our website, **NO_DATA**. Should you require a copy of our Privacy Policy, we will provide this to you upon request. Please ensure that you read and understand your rights and obligations set out by our Privacy Policy. In signing the Agreement, you consent to us processing personal information in accordance with this policy.
- b. The parties agree not to disclose these Terms and Conditions, or any details of fees, to any third party.
- c. 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.
- d. 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.
- e. Each party shall refrain from making negative comments about the other party, whether online or in person.

12. Electronic Communications

- a. By agreeing to be bound by these Terms and Conditions, you consent to receiving electronic communications from us.
- b. 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 the Services.
- c. 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.

13. Conflicts of Interest

- a. We will take all reasonable steps to avoid a conflict between our interests (pecuniary or otherwise), and the proper performance of our duties towards you, including the duty to act in your legitimate interests and in accordance with your instructions.
- b. Full details of any interest(s) we have that conflict (or could conflict) with the proper performance of our duties towards you are provided in the attached Schedule B, if applicable. In signing the Agreement, you consent to us providing the Services to you in full knowledge and awareness of any actual and/or potential conflict(s) of interest described in this Schedule.
- c. If after entering the Agreement we are made aware that we have an interest that conflicts (or could conflict) with your interests and/or the proper performance of our duties towards you, we will give you written notice of this interest, including:
 - i. the nature of the interest and how it conflicts (or could conflict) with the proper performance of our duties towards you; and
 - ii. the name of the person/body providing the interest and the reason it is/was provided (if applicable), and
 - iii. where the interest is pecuniary in nature, the amount, or a reasonable estimate of the amount, of the interest.
- d. In the event that we notify you of an actual or potential conflict of interest in accordance with clause 13(c), you must provide your written consent should you wish us to continue to provide the Services to you. Should you not consent to the provision of the Services despite the conflict of interest, we must terminate the Agreement in accordance with clause 7 of these Terms and Conditions.

- e. Notwithstanding the above, if there is an actual conflict of interest that could compromise our objectivity and/or our relationship of confidence and trust with you, or that is reasonably likely to lead to a breach of your confidentiality, we must terminate the Agreement regardless of your consent. We will not be responsible for any compensation to you in terminating the Agreement.

14. Limitation of Liability and Indemnity

- a. We make no warranty or guarantee regarding the likelihood of success of the Application. We will not be held liable for any refusal of the Application.
- b. Subject to this clause, and to the extent permitted by law, all terms, guarantees, warranties, representations or conditions which are not expressly stated in the Agreement are excluded.
- c. You acknowledge that the Application is dependent on third party review and processing, and we will not be held liable for any delay to the Application process, regardless of whether we give you an approximate timeframe at the commencement of the Application process.
- d. We indemnify you against any actions, suits, claims, demands, liabilities, costs, expenses, loss or damage directly caused by or contributed to by our failure to follow your instructions (except where your instructions are harmful, contrary to your best interests, or incomplete), our breach of any provision of these Terms and Conditions, or our negligent or willful act or omission.
- e. Subject to clause 14(c), we will not be liable to you for any special, indirect or consequential loss or damage (unless such loss or damage is reasonably foreseeable resulting from our failure to meet a law or the standards of the Code of Conduct), loss of profit or opportunity, or damage to goodwill arising out of or in connection with the Services or this Agreement (including as a result of not being able to use the Services or the late supply of the Services), whether at common law, under contract, tort (excluding negligence), in equity, pursuant to statute or otherwise.
- f. Our total liability arising out of or in connection with the Services or these Terms and Conditions, however arising, including under contract, tort (including negligence), in equity, under statute or otherwise, will not exceed the resupply, or the cost of the resupply, of the Services to you.
- g. Our Services come with guarantees that cannot be excluded under the Australian Consumer Law. Nothing in this Agreement limits or excludes any guarantees, warranties, representations or conditions implied or imposed by law, including the Australian Consumer Law (or any liability under them), which by law may not be limited or excluded. Where permitted by law, our liability under the Australian Consumer law is limited to the resupply of the Services to you, or the cost of having the Services resupplied to you.
- h. You agree to indemnify us, our affiliates, employees, agents, contributors and licensors from and against all actions, suits, claims, demands, liabilities, costs, expenses, loss and damage (including legal fees on a full indemnity basis) incurred, suffered or arising out of or in connection with your failure to follow our directions in relation to the Services, your failure to provide us with correct and current information, your failure to provide us with timely instructions, your breach of any provision of these Terms and Conditions, or your use of the Services in any way different to how we intend the Services to be received.

15. 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 first attempt in good faith to resolve the dispute with the aim of reaching a resolution within 21 days from notice of the dispute (or any such period that is otherwise agreed by the parties). Any resolution will be documented in writing, dated and signed by both parties.
- b. In the event that the dispute is not settled within 21 days (or such other period as agreed to between the parties in writing), the parties shall then submit the dispute for final resolution by arbitration administered by the Australian Disputes Centre ('the ADC') in NSW. In this event:
 - i. the arbitration shall be administered by the ADC and conducted in accordance with the ADC Rules for Domestic Arbitration operating at the time the dispute is referred to the ADC;
 - ii. any fees payable to the ADC (or to any person appointed by the ADC) will be paid by the parties equally;
 - iii. the parties agree that the terms of the ADC Rules for Domestic Arbitration are hereby incorporated into this Agreement.
- c. The parties agree that allowances will be made to accommodate the attendance of the parties during the arbitration process, for instance where you are outside Australia, or can establish that the DOHA requires you to immediately depart Australia.
- d. This clause shall survive termination of the Agreement.

16. Relevant Law and Jurisdiction

- a. These conditions and all aspects of our performance of the Services are governed by, and both parties agree to be bound by, the law of the state of NSW, and the Code. Both parties irrevocably submit to the exclusive jurisdiction of the courts of the state of NSW and/or the Office of the Migration Agents Registration Authority.
- b. If the agreement is inconsistent with any State, Territory or Commonwealth law, both parties agree to vary this Agreement to comply with the laws of that country, to the extent of any inconsistency, and in accordance with the process for variation set out in clause 6 of these Terms and Conditions.
- c. If part or all of any of the provisions of these Terms and Conditions are illegal or unenforceable, it will be severed from these Terms and Conditions, and will not affect the continued operation of the remaining provisions.