

1. FAIR TRADING ACT DISCLOSURE

- 1.1 These terms and conditions of business (**Terms**) apply to the supply of all Services and Deliverables by us to you from the date that you accept these Terms.
- 1.2 For the purposes of section 47A of the *Fair Trading Act 1987* (NSW), we disclose to consumers (as defined under the ACL) the substance and effect of certain terms of these Terms:
- 1.2.1 clause 3.7 allows us to adjust the sum described in a Fee Proposal for any costs incurred by us in certain circumstances including but not limited to errors in information you provide us;
- 1.2.2 clause 5.2 requires you to pay any additional fees, if performing the Services is delayed for reasons beyond our control;
- 1.2.3 clause 6.2 allows us to, subject to your rights under law, reserve the right to vary the price provided in any Fee Proposal if:
- A there is any movement in the cost of supplying the Services and Deliverables specified in your Order, including any Charges; or
- B the Services and Deliverables specified in your Order are varied from the Services and Deliverables specified in our Fee Proposal,
- and we provide you reasonable notice of any such variation of price;
- 1.2.4 clause 7.4 allows us to charge an administrative fee of 2% on all credit card payments and payments made outside the credit period set out in each Invoice;
- 1.2.5 clause 7.5 allows us to charge for disbursements and any out of pocket expenses at cost plus a 10% surcharge;
- 1.2.6 clause 7.6 allows us to charge a 10% surcharge on any fees applicable, if we engage third party consultants to provide the Services and pay the fees on your behalf;
- 1.2.7 clause 7.7 allows us to charge additional fees where amendments to the SOW are required due to errors, omissions or variations caused by third parties;
- 1.2.8 clause 8.1.1 requires you to pay a fee if you fail to make any Payment later than 30 days from the date of the Invoice;
- 1.2.9 clause 8.3 allows us to recover from you any costs we incur to collect any Payment;
- 1.2.10 clause 8.4 requires you to pay an accounting fee per month of \$150 on any outstanding Payment due to us;
- 1.2.11 clause 8.7 allows us to terminate your credit account with us at any time;
- 1.2.12 clause 9.1 allows us to, if we delay or suspend (but not cancel) performance of our Services, as a consequence of your instructions:
- A require you to make payment in full for all work in progress relating to the relevant Order in the event of a suspension of our Services; and/or
- B vary the price for the uncompleted portion of the relevant Order;
- 1.2.13 clause 9.3 imposes certain limitations on you cancelling Orders;
- 1.2.14 clauses 9.4, 11 and 21.4 comprise certain limitations and exclusions of our liabilities;
- 1.2.15 clause 13.1 comprises the grant by you to us of a security interest in all of your present and after acquired property and in all of your present and future rights, title, estate and interest, whether legal and equitable, in relation to any personal property, including any debts owed to you in our favour to secure the performance of your liabilities and obligations under any Order or these Terms or on any account whatsoever;
- 1.2.16 clause 16.1 imposes an obligation on you to pay us a fee equal to 15% of the annualised base gross salary of every applicable Candidate in the event that you breach your non-solicitation obligations under clause 16;
- 1.2.17 clause 18 comprises an indemnity in our favour for certain claims; and
- 1.2.18 clause 19 allows us to terminate these Terms giving 7 days' written notice if there is a Default Event, and upon such termination, you must immediately pay any outstanding monies owed to us, including any monies that would ordinarily be payable at a date which falls after the date of termination, as well as an amount for loss of expectation of profit in contemplation of completing the Services and delivering the Deliverables set out in the Order.

2. OUTLINE

- 2.1 **Agreement:** The agreement between you and us with respect to relevant Services and Deliverables comprises:
- 2.1.1 these Terms;
- 2.1.2 the terms of the relevant Fee Proposal;
- 2.1.3 the terms of the relevant Order; and
- 2.2 the terms of any annexures or attachments to a Fee Proposal or Order (including for this purpose any document, attachment or SOW which carries the same identification number as may be relevant).
- 2.3 **Acceptance:** You accept these Terms when:
- 2.3.1 you sign and submit an Acceptance Form;
- 2.3.2 you submit an Order (either by email or by providing verbal instructions);
- 2.3.3 you accept delivery of, or any part of, the Services and Deliverables; or
- 2.3.4 you make Payment, or partial Payment, for any Services and Deliverables supplied by us, whichever occurs first.
- 2.4 **Third party acceptance:** If you accept these Terms on behalf of a third party, acting as that party's agent, you warrant that:
- 2.5.1 you have the authority of that third party to accept these Terms and/or instruct us on that third party's behalf;
- 2.5.2 that third party has read and has the authority to accept these Terms; and
- 2.5.3 you are liable for making payment for any Order you have made on behalf of that third party and any related costs. You must compensate us for any losses we suffer as a result of any conduct of that third party leading to a breach of these Terms as the third party is deemed to be a party to these Terms pursuant to this clause 1.
- 2.6 If you instruct a third party to accept these Terms on your behalf (as your agent), you grant us the right to disclose any information in relation to these Terms or an Order to that agent.

3. FEE PROPOSALS + ORDERS

- 3.1 **Requesting a Fee Proposal:** You may request a Fee Proposal from us relating to the potential supply of Services and Deliverables.
- 3.2 **Providing a Fee Proposal:** We may provide you a Fee Proposal for the potential supply of Services and Deliverables. The Fee Proposal may include:
- 3.2.1 the details of the Project Site (including but not limited to the address of the Project Site, Project Manager's name and contact details, Project Site phone number);
- 3.2.2 the estimated scope of work (specifying all Services and Deliverables required by you);
- 3.2.3 the price (including a breakdown of fees applicable for each Service and Deliverable);
- 3.2.4 Disbursements;
- 3.2.5 the timing of supply of the Services and Deliverables;

- 3.2.6 the standard hourly rates of staff; and
- 3.2.7 other relevant details.

3.3

Validity of Fee Proposal: A Fee Proposal is valid for 90 days only. We reserve the right to withdraw a Fee Proposal at any time before you place an Order.

3.4

Placing an Order: If our Fee Proposal is acceptable to you, you may place an Order for the supply of Services and the Deliverables. An Order is not binding until we have provided you in our absolute discretion our written acceptance of the Order, unless you have signed an Acceptance Form.

3.5

Timing: Any dates provided in a Fee Proposal are estimates only. We will use all reasonable endeavours to supply the Services and the Deliverables by the dates provided in a Fee Proposal where practicable in the circumstances to do so but are not liable to you for any delay whatsoever in performance of the Services.

3.6

Commencement of the supply of Services: The supply of the Services may only commence upon:

3.6.1

receipt of all relevant information from you as requested by us and required to supply the Services and the Deliverables; and

3.6.2

upon confirmation by us to you of the Commencement Date.

3.7

Change of scope: If you become aware of any matter which will change or has changed the scope or timing of the Services then you must as soon as practicable give notice to us of the matter and as far as practicable, details of the change. In any event, we are entitled to an adjustment to the sum described in a Fee Proposal for any costs incurred by us due to additional work necessary to rectify or overcome any error, omission, discrepancy or other defect in information provided to us by you as required to perform the Services. The applicable additional amount is calculated based on the staff standard hourly rates as set out in the Fee Proposal.

3.8

Additional conditions: Unless otherwise agreed by us in writing, these Terms will prevail over, and we will not be bound by, any conditions (express or implied) added or provided by you.

4. STAFF

4.1

Qualified Staff: We will provide experienced Staff to supply the Services and the Deliverables. The Staff will perform the Services and deliver the Deliverables to the standard of skill, care and diligence expected of a skilled and competent professional in similar circumstances and in accordance with industry standards.

4.2

Changes to the Staff: Members of our team may vary from time to time subject to availability, leave requirements, specific skill sets applicable to different Services set out in the Order and other factors which may arise.

5. PROJECT SITE

5.1

Site: Our Staff will not be required to comment upon the possible existence of noxious substances, landfill or mineral extraction, or other forms of contamination.

5.2

Delay: Any delays or rescheduling costs will incur an additional charge which must be agreed and specified in the Fee Proposal. Under no circumstances will any delay in providing the Services and/or Deliverables constitute a breach of contract and despite any delay on our part, you must continue to meet your obligations under these Terms. If progress in performing the Services is delayed for reasons beyond our control (such as a failure on your part to prepare the Project Site), we reserve the right to charge additional fees as appropriate in accordance with our applicable rates at the time the Services were scheduled to be performed.

5.3

Work, Health & Safety: You must ensure that the working area is safe and complies with all work, health and safety laws. Any possible dangers must be communicated to us before you provide us with entry to the Project Site.

5.4

Access: You must make suitable arrangements to ensure we have access to the Project Site. The fees in the Fee Proposal are provided on the assumption that access to the Project Site will be unhindered unless otherwise agreed and outlined in the Fee Proposal.

6. PRICE

6.1

Fees: The fee charged and payable for the Services and Deliverables shall be a fee calculated either on an hourly rate, fixed fee, budget estimate, capped rate or percentage of contract sum basis in Australian dollars together with any applicable taxes, Charges and delivery costs regarding the Services and the Deliverables as agreed in writing between the parties in relation to each Order.

6.2

Variation of price: Prices in any Fee Proposal for the supply of Services and the Deliverables are based on the costs prevailing at the time of the Fee Proposal. Subject to your rights under law, we reserve the right to vary the price if:

6.2.1

there is any movement in the cost of supplying the Services and Deliverables specified in your Order, including any Charges; or

6.2.2

the Services and Deliverables specified in your Order are varied from the Services and Deliverables specified in our Fee Proposal, and we provide you reasonable notice of any such variation of price.

7. PAYMENT

7.1

Invoices: Unless we otherwise agree, we will issue you an Invoice on a monthly basis until the Services are fully supplied and any Deliverables are fully delivered or sooner in the event of termination of any agreement of which these Terms forms part.

7.2

Payment terms: You must make all Payments, which are either a percentage of the total agreement, lump sum, budget, capped rate or hourly time charge basis as stated in the Fee Proposal, within 14 days of the date of the Invoice unless otherwise agreed in writing between the parties. All Invoices issued for the Services and Deliverables set out in an Order or SOW must be paid in full prior to the release of the Deliverables.

7.3

Payment method: You must make all Payments by cash, cheque, bank cheque, EFTPOS or direct credit to the bank account nominated by us in each Invoice or as otherwise indicated by us in writing.

7.4

Administrative fee: An administrative fee of 2% is applicable on all credit card payments and/or on payments made outside the credit period stipulated in each Invoice.

7.5

Disbursements/Out of pocket expenses: Disbursements and any out of pocket expenses will be charged to you at cost plus a 10% surcharge.

7.6

Consultants fee: If we engage third party consultants to provide the Services (**Consultants**), you must pay the fees applicable to the Consultants. We may agree to pay the Consultant's on your behalf in which case you must reimburse us for such fees plus a 10% surcharge.

7.7

Additional Chargeable Fees: Additional fees may be charged to you where amendments to the SOW are required due to errors, omissions or variations caused by third parties.

8.	PAYMENT DEFAULT	
8.1	Default Interest: If you fail to make a Payment in accordance with clause 7 (Payment), we may:	
8.1.1	charge Default Interest at the <i>Penalty Interest Rates Act 1983</i> (VIC) Interest rate plus 2% if payment is made later than 30 days from the date of the Invoice; and	11.5
8.1.2	suspend the supply of the Services and the Deliverables by giving at least 30 days' written notice to you of our intention to do so.	
8.2	Payment of Default Interest: Default Interest pursuant to clause 8.1 shall be:	
8.2.1	payable on demand; and	11.5.1
8.2.2	calculated daily from the due date to the actual date the Payment is made in full.	
8.3	Costs of enforcement: We may recover from you any costs we incur to collect any Payment.	11.5.2
8.4	Accounting fee: We are entitled to charge you an accounting fee per month of \$150 on any outstanding Payment due to us.	
8.5	Set off: You may not set off against any Payment any claims which you may have against us.	11.5.3
8.6	Default Interest amount credited first: Any Payment you make to us shall first be credited against any Default Interest accrued pursuant to this clause 8 to the actual date of Payment.	
8.7	Revocation of credit: We reserve the right to revoke at any time any credit extended to you because of your failure to make any Payment when due or for any other reason.	11.6
9.	SUSPENSION + CANCELLATION	
9.1	Suspension of Services by you: If, as a consequence of your instructions, we delay or suspend (but not cancel) performance of our Services for any amount of time, we may:	
9.1.1	request the payment in full for all work in progress relating to the relevant Order at the time of suspension; and/or	11.7
9.1.2	vary the price for the uncompleted portion of the relevant Order.	
9.2	Resumption of suspended Services due to a default in payment by you: If, in accordance with clause 9.1.2, we have suspended the provision of our Services, we reserve the right not to recommence services until 3 business days immediately following the day on which you make payment of the Payment due plus any applicable interest. If we incur a loss or expense due to the suspension of the provision of our Services, you are liable to reimburse us for such loss or expense. We accept no liability for any loss or damage suffered by you or any third party claiming through you, due to us not supplying the Services during the suspension.	
9.3	Cancellation by you: You may not cancel an Order, or any part of it, unless:	
9.3.1	we give our written consent; and	
9.3.2	you pay to us (if required by us in our absolute discretion) any and all costs reasonably incurred by us regarding the cancelled Order or the cancelled part of the Order to the date of cancellation.	
9.4	Cancellation by us: We may in writing cancel an Order or delivery of an Order without liability to you if:	
9.4.1	we reasonably form the opinion that you are insolvent or at material risk of insolvency;	
9.4.2	you fail to make a Payment on time; or	
9.4.3	we reasonably form the opinion that supplying Services and the Deliverables to you may have a negative impact upon our business or commercial reputation or image.	
10.	YOUR OBLIGATIONS	
10.1	Accurate information: You must provide accurate and correct information and directions in connection with the Services upon which we may rely and access to appropriate members of your staff, records, information technology systems and premises. You undertake to ensure full instructions are given to us and are provided in sufficient time to enable the required Services to be performed effectively and efficiently.	
10.2	Access: You agree to provide us with access to any relevant site in connection with our supply of the Services and the Deliverables.	
10.3	Insurance: You must take out and maintain in force insurance policies with a reputable and financially sound insurer and coverage limits as set out below during the Term:	
10.3.1	public and products liability insurance in an amount of not less than \$20 million per claim;	
10.3.2	professional indemnity insurance in an amount of not less than \$10 million per claim;	
10.3.3	cyber liability insurance with a minimum cover of \$20 million per claim;	
10.3.4	fidelity (including crime) insurance with a minimum cover of \$20 million per claim; and	
10.3.5	insurance against liability which may arise under relevant workers or accident compensation legislation.	
10.4	Cancellation of insurance: If for any reason an insurer cancels, or fails or declines to renew, one of the above policies, then you must immediately purchase a replacement policy, notify us immediately and provide us with a copy of the new certificate.	
10.5	Certificate of currency: You must ensure that we are acknowledged by the insurer under the certificate of currency for the public liability policy as a noted party and promptly provide us satisfactory evidence that required policies are in effect if required to do so by us.	
10.6	Third party consent: You must obtain any third party consent and/or approval necessary to permit us to use, copy and/or modify any software and/or other documentation reasonably required by us for the purpose of providing the Services.	
11.	EXCLUSIONS + LIMITATIONS	
11.1	ACL exception: The exclusions and limitations in this clause 11 are subject to clause 12 (<i>Statutory Rights</i>).	
11.2	Excluded rights: All express or implied representations, conditions, statutory guarantees, warranties and provisions (whether based on statute, common law or otherwise), relating to these Terms, that are not contained in it, are excluded to the fullest extent permitted by law.	
11.3	Limitations: We do not give any guarantee, indemnity or warranty or make any representation of any kind, express or implied, with respect to the supply by us of any goods or services in connection with these Terms or any Order, except as expressly stated in those agreements or as contemplated by clause 12 (as may be relevant).	
11.4	Regulation 90 Warranty: This warranty against defects is provided in addition to other rights and remedies you may have at law.	
11.4.1	Services only: Our Services come with guarantees that cannot be excluded under 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.	
		11.5
		11.5.1
		11.5.2
		11.5.3
		11.6
		11.7
12.	STATUTORY RIGHTS	
12.1	Statutory rights: Certain provisions of the <i>Competition and Consumer Act 2010</i> (Cth) (including, without limitation, the ACL) provide consumers (as that expression is used in the ACL) and others with certain rights (collectively, the consumer guarantees) in relation to goods or services purchased by consumers.	
12.2	No restriction: Nothing in these Terms excludes, restricts or modifies any condition, warranty, consumer guarantee, right or remedy implied or imposed by common law, statute or regulation which cannot be lawfully excluded, restricted or modified.	
12.3	Unfair contract: If section 23 of the ACL applies to any provisions in these Terms, any such provision(s) shall be void to the extent it is unfair within the meaning of section 24 of the ACL.	
13.	SECURITY INTEREST	
13.1	Security Agreement: You grant a security interest in all of your present and after acquired property and in all of your present and future rights, title, estate and interest, whether legal and equitable, in relation to any personal property, including any debts owed to you (Collateral) in our favour to secure the performance of your liabilities and obligations under any Order or these Terms or on any account whatsoever (Security Interest).	
13.2	PPSA Definitions: For the purposes of this clause and other relevant clauses in these Terms, PPSA means the <i>Personal Property Securities Act 2009</i> (Cth) and the expressions "accession", "collateral", "financing statement", "financing change statement", "security agreement", "security interest", "perfected security interest" and "verification statement" have the meanings given to them under, or in the context of the PPSA.	
13.3	Priority: You must not do or permit anything to be done that may result in the Security Interest ranking behind any other security interest.	
13.4	Sections 115(1) and 115(7) of the PPSA: To the fullest extent permitted by the PPSA, you agree to contract out of the application of the provisions listed in sections 115(1) and 115(7) and the sections listed therein shall not apply.	
13.5	Ranking: Subject to the priority rules set out in the PPSA, this Security Interest ranks in priority ahead of all other security interests in the Collateral.	
13.6	Continuing obligation: This Security Interest is a continuing security and your obligations under this Security Agreement continue until it has been validly and fully terminated.	
13.7	Perfection: You irrevocably give us authority to register a financing statement for the Security Interest on the PPSR. This clause does not prevent us from perfecting this Security Interest by any other means in accordance with the PPSA.	
13.8	Information: You must provide us with any information required for us to register a financing statement or a financing change statement for this Security Interest on the PPSR.	
13.9	Remedies: Until this Security Interest in the Collateral has been extinguished, if:	
13.9.1	you experience a Default Event; or	
13.9.2	you breach these Terms,	
	we may as we see fit and without notice to you, seize, retain or redeem the Collateral, or seek any and all remedies provided under Chapter 4 of the PPSA or any other remedies provided at law or in equity.	
13.10	Costs: You must pay all costs incurred by us (including costs on a solicitor-client basis and debt collector's costs) arising out of this Security Agreement, including costs regarding:	
13.10.1	seizure, retention, redemption or any other remedy exercised pursuant to this Security Agreement; and	
13.10.2	the enforcement of our rights under this Security Agreement (including matters incidental to it).	
13.11	Extinguishment: The Security Interest is extinguished only if all obligations under this Security Agreement have been satisfied.	
13.12	Waiver: Sections 95, 118, 121(4), 125, 130, 132 and 135 of the PPSA shall not apply to the extent that they impose obligations on us.	
13.13	Waiver of receipt of statements: You irrevocably waive your right to receive from us a copy of any financing statement, financing change statement or verification statement that is registered, issued or received at any time regarding this Security Agreement.	
13.14	Disclosure: The parties agree that neither party may disclose information that:	
13.14.1	can be requested under section 275(1) of the PPSA (subject to any exceptions that may apply under section 275(7) of the PPSA); or	
13.14.2	is protected against disclosure by a duty of confidence.	
13.15	Acknowledgement: You acknowledge due notice of this Security Agreement with acceptance of these Terms.	

<p>14. TRUSTEE</p> <p>14.1 If you are a trustee of a trust at the time of executing these Terms or any time thereafter (Trust), you warrant that:</p> <p>14.1.1 you will deliver to us a stamped copy of the Trust deed (and any amendments thereto) upon our request;</p> <p>14.1.2 you have full and valid power and authority to execute, or continue with your obligations under these Terms on behalf of the Trust;</p> <p>14.1.3 these Terms bind you in your capacity as trustee of the Trust;</p> <p>14.1.4 you have the right to be indemnified out of the assets of the Trust in accordance with the law of trusts and in accordance with the indemnity set out in the Trust deed;</p> <p>14.1.5 you are not in breach of the terms of the Trust and the execution, delivery and performance of obligations and assumption of liability under these Terms will not cause you to be in breach of or default under the terms of the Trust;</p> <p>14.1.6 you enter into these Terms for the proper administration of the Trust and for the benefit of all the beneficiaries of the Trust;</p> <p>14.1.7 there has been no resolution or direction to remove you as trustee of the Trust; and</p> <p>14.1.8 you are not aware of any action which has been taken to terminate or vest the Trust.</p> <p>15. INTELLECTUAL PROPERTY</p> <p>15.1 Our intellectual property: All of our Intellectual Property Rights in and relating to the production, development and supply of the Services and the Deliverables, including but not limited to proposals, tenders, surveys, reports, documents, estimates, schedules, drawings, illustrations, records, specifications, calculations, processes, designs, plans, data and other literature prepared by us in relation to the Services and the Deliverables (Data), remain our property and shall not be transferred, assigned, licensed, reproduced, disclosed or otherwise given to any other person by you without our prior written consent.</p> <p>15.2 Licence: We grant you a revocable, personal, non-assignable, non-exclusive licence to use the Data for the Permitted Purpose (Licence). The Data must not be transferred, assigned, sub-licensed, reproduced, disclosed or otherwise given to any third party without our prior written consent which may be withheld without us giving reasons. If you fail to pay an Invoice on time or are otherwise in breach of these Terms, we may revoke the Licence and you must return all documents referred to in clause 15.1 to us and all copies thereof. You must request our written permission prior to disclosing any of the Data to third parties. We may at our sole grant consent to such disclosure of the Data to third parties subject to conditions, including but not limited to the payment to us of a fee by you. You are entitled to PDF copies of the Data. Upon your request, we may provide you with a CAD or .rvt copy of the Data, subject to payment by you of an additional fee which we may decide upon at our discretion.</p> <p>15.3 Moral rights: We retain the rights in all copyright work (whether or not currently in existence) in the Data and own all moral rights in any Data to which moral rights are attached to the fullest extent permitted by the <i>Copyright Act 1968</i> (Cth) and <i>Copyright Amendment (Moral Rights) Act 2000</i> (Cth) and any future moral rights in that Data.</p> <p>15.4 Confidentiality: You must keep confidential and shall not use any of our Confidential Information without our prior written consent. You must hold our Confidential Information in strictest confidence and must not disclose the Confidential Information except as required by law, regulatory bodies and/or under a contract of insurance.</p> <p>16. NON-SOLICITATION</p> <p>16.1 You undertake (for valuable consideration received) that during the term of these Terms and for a period of 3 months following the termination or expiry of these Terms, you will not directly or by your agents or otherwise, induce or endeavour to induce any of our Staff to leave his or her employment with us for employment with you or any third party (Candidate). In the event that you contravene this clause, you must pay us a fee equal to 15% of the annualised base gross salary of every applicable Candidate. For every applicable Candidate, the annualised base gross salary is to be calculated by multiplying the applicable normal hourly pay rate of the relevant Candidate by the usual minimum weekly number of hours worked by an equivalent permanent full time employee, multiplied by 52. For example, in respect of a Candidate whose normal hourly pay rate is \$250, the calculation of the non-solicitation fee would be as follows: <i>The percentage specified above x \$250 (being the normal hourly pay rate) x 38 (being the usual minimum weekly number of hours worked by a permanent full time employee) x 52 weeks.</i> This fee must be paid to us within 1 month of the appointment (or the appointment of any third party) of every applicable Candidate.</p> <p>17. GST</p> <p>17.1 Prices exclusive of GST: Unless otherwise expressly agreed in writing to the contrary, prices are exclusive of GST.</p> <p>17.2 GST payable in addition: You must pay to us all GST in addition to any other amounts payable by you to us in respect of a taxable supply, which will be payable by you when required to pay for the Services and Deliverables.</p> <p>17.3 Issue of tax invoice: We will issue a tax invoice for any taxable supply to you, which will enable you, if permitted by the GST Law, to claim a credit for GST paid by you.</p> <p>17.4 Third party supplies: If GST is payable for a taxable supply by a third party, we will request that party to provide you with a tax invoice.</p> <p>18. INDEMNITY</p> <p>18.1 Indemnity: You agree to indemnify and keep:</p> <p>18.1.1 us indemnified in respect of all damages, losses, costs and expenses (including legal costs) that we may incur as a result of your breach or alleged breach of these Terms; and</p> <p>18.1.2 us, our directors, officers and employees indemnified against all Losses caused or contributed to by you or your personnel arising out of or in connection with:</p> <p>A the personal injury or death to any person, or damage to or loss of any tangible property, to the extent in each case caused by you or your personnel;</p> <p>B any claim that a Deliverable or its use infringes, or the Services or their use infringe, the rights (including any Intellectual Property Rights) of any person;</p> <p>C any breach of confidentiality obligations;</p> <p>D any fraudulent or unlawful acts or omissions, or wilful breach (in each case) in the performance of the supply of Services and delivery of the Deliverables in accordance with these Terms, by you or your personnel;</p> <p>E any failure by you or your personnel to comply with any industry workplace health and safety standards (in each case) in performance of your obligations under these Terms, except to the extent that Losses are caused by or the claim arises as a result of:</p> <p>(i) a negligent or fraudulent act or omission, default or neglect by us or our personnel; or</p> <p>(ii) the modification of a Service or Deliverable by any person other than you or your personnel and which was not made, authorised or approved by you in writing.</p> <p>18.2 The indemnity in this clause 18 extends to our liability arising under any agreement with a third party that is required for the provision of Services to you and includes all Losses suffered or incurred by the third party.</p> <p>19. TERMINATION</p> <p>19.1 Termination with cause: If a Default Event occurs:</p> <p>19.1.1 we may, without limiting any other right we have under these Terms, terminate any Order and any contract for the supply of Services and Deliverables to you by giving 7 days' written notice; and</p> <p>19.1.2 all Payments and any other monies due under these Terms, including any monies that would ordinarily be payable at a date which falls after the date of termination, as well as an amount for loss of expectation of profit in contemplation of completing the Services and delivering the Deliverables set out in the Order become immediately payable.</p> <p>19.2 Termination without cause: We may terminate an Order at any time without cause by giving 7 days' written notice.</p> <p>20. ADDITIONAL SECURITY</p> <p>20.1 Caveat: We reserve the right to lodge a caveat on the title of any of your property as additional security for payment of our Services and Deliverables as described in an Order.</p> <p>21. GENERAL</p> <p>21.1 Mitigation: If a party suffers Losses in connection with these Terms for which the other party is liable (including under an indemnity), the party suffering the Losses must use reasonable endeavours to mitigate its loss.</p> <p>21.2 SOP Legislation: Where applicable, both parties must observe and comply with the <i>Building and Construction Industry Security of Payment Act 2002</i> (VIC).</p> <p>21.3 Granting of security interest to you: We grant no security interest in your favour in relation to these Terms or any Order.</p> <p>21.4 Your instructions: We will not be liable for any error or omission in the Services where we have relied on a document provided by you nor for the consequences of late, incomplete, inadequate, inaccurate or ambiguous instructions from you, or your personnel.</p> <p>21.5 Lawful purpose: You must ensure any Data supplied by us is used only for lawful purposes and in accordance with applicable laws.</p> <p>21.6 Binding: These Terms bind our successors, administrators and permitted assigns and your executors and permitted assigns or your successors, administrators and permitted assigns (as applicable).</p> <p>21.7 Assignment: We may without notice to you assign, transfer and/or sub-contract our rights and/or obligations (in whole or in part) under these Terms. You may not assign, transfer, novate, hold on trust or otherwise delegate any of your rights or obligations under these Terms without our prior written consent. In the event that we agree to provide our consent in principle, we may require you to enter into a deed of assignment or deed of novation between you, us and the party to whom you wish to assign, transfer, novate or otherwise delegate your rights or obligations under these Terms.</p> <p>21.8 New Terms: If we adopt new terms and conditions for the supply of Services:</p> <p>21.8.1 you will be given written notice; and</p> <p>21.8.2 they will apply to the subsequent supply of the Deliverables.</p> <p>21.9 Variation by us: If we need to vary these Terms, we will notify you in writing and obtain your written agreement to the variation.</p> <p>21.10 Variation by you: You may not vary these Terms without our prior approval in writing signed by an authorised officer of KLM Spatial. Variation charges may apply for any meetings, briefings, calculations, plan checking, field survey work, quality assurance checks and processes, plans and/or sketches, delivery of data, filings and site visits.</p> <p>21.11 Force Majeure: If a Force Majeure Event occurs, we may:</p> <p>21.11.1 totally or partially suspend the Services to be provided pursuant to any Order or any supply of Deliverables during any period in which we may be hindered due to that Force Majeure Event; and</p> <p>21.11.2 elect to extend at our discretion the period for performance of an obligation under these Terms as is reasonable in all the circumstances.</p> <p>21.12 Severability: Each clause in these Terms is severable and if any clause is held to be illegal or unenforceable, then the remaining clauses will remain in full force and effect.</p> <p>21.13 Waiver: No failure, delay, relation or indulgence on our part in exercising any power, right or remedy precludes any other or further exercise of that or any other power, right or remedy.</p> <p>21.14 Disputes: If a dispute arises between the parties:</p> <p>21.14.1 the parties must, prior to the initiation of any legal proceedings, use their best efforts in good faith to reach a reasonable and equitable resolution;</p> <p>21.14.2 the dispute must be referred to a senior representative of each party by written notice giving full particulars of the nature and extent of the dispute; and</p> <p>21.14.3 the dispute has not been resolved within 10 days of a referral in accordance with clause 21.14.1-21.14.2, either party may within the succeeding period of 10 days submit the dispute for mediation in accordance with the Mediation Rules of the Resolution Institute by a single mediator in Sydney (or other place as agreed by the parties), and the parties must participate in that mediation; and</p> <p>21.14.4 if the dispute is not submitted to mediation in accordance with clause 21.14.3, or if the dispute has not been resolved (whether with mediation or otherwise) either party may commence legal proceedings.</p> <p>21.15 Continuation of obligations: Despite the existence of a dispute, the parties must continue to perform their respective obligations under these Terms.</p> <p>21.16 Urgent relief: Nothing in clause 21 will preclude either party from applying to a court to seek urgent relief.</p> <p>21.17 Governing law: These Terms shall be governed by the laws of Victoria and the parties irrevocably submit to the non-exclusive jurisdiction of Victoria.</p> <p>22. UNAUTHORISED USE OF BUILDING DESIGNER'S PRACTITIONER NUMBER</p> <p>22.1 Without obtaining our express prior written consent:</p> <p>22.1.1 You may not use our or our employee's RBPN and such consent must state the exact purpose for which the RBPN is to be used;</p> <p>22.1.2 You are not permitted to use, modify, reproduce or amend any building design plans we have provided as part of the Deliverables.</p>

23. INTERPRETATION + DEFINITIONS

23.1 Personal pronouns: Except where the context otherwise provides or requires:

23.1.1 the terms **we, us or our** refers to **KLM Spatial**; and

23.1.2 the terms **you or your** refers to any person or entity that places an Order with us and agrees (by conduct, notice or otherwise) to be bound by these Terms, including any related company, related party, officer and authorised person of the relevant person.

23.2 Defined terms: In these Terms, unless otherwise provided, the following terms shall have their meaning as specified:

Acceptance Form means a KLM Spatial acceptance form which states your details, the Fee Proposal and our Staff's hourly rates.

ACL means the Australian Consumer Law under the Consumer and Competition Act 2010 (Cth) as amended and other relevant State laws in Australia.

Building Practitioner means a building practitioner as defined under the *Building Regulations 2018* (VIC).

Charges means any sales tax, excise duties, customs duty, transfer duty, duties or charges applicable in respect of the provision of the Services and Deliverables.

Commencement Date means the date we commence the provision of the Services in accordance with any Order.

Confidential Information may be given or acquired in any form or media, directly or indirectly and before, on, or after the date of these Terms, and means:

- (a) all non-public, confidential or proprietary information belonging to KLM Spatial disclosed by KLM Spatial whether in oral, written, electronic or other form or media, tangible or intangible, and that:
 - (i) is marked, designated or otherwise identified as "confidential" or "proprietary"; or
 - (ii) due to the nature of its subject matter or circumstances surrounding its disclosure, would reasonably be understood to be confidential or proprietary;
- (b) any information including but not limited to any information or documents regarding KLM Spatial's organisational structure, activities, operating procedures, products and services, Intellectual Property, trade secrets and know how, finances, plans, transactions and policies;
- (c) all information which is marked or described as "confidential" or otherwise identified as confidential in writing before or at the time of disclosure at any point in time upon execution of this Deed; and
- (d) all Records and Derived Information.

Consequential Loss means any Losses suffered by a party to this agreement as a result of a breach of this agreement that cannot reasonably be considered to arise naturally from that breach including but not limited to loss of profits, revenue, loss or corruption of data, goodwill, bargain, opportunities and loss of anticipated savings however and whenever occurring.

Default Event means any one of the following events:

- (a) you fail to make any payment when due, whether for the Services and Deliverables or otherwise; or
- (b) an Insolvency Event.

Default Interest means as defined in clause 8.

Deliverable means any survey data, plans, reports, documentation or other material in whatever form as stated in an Order or SOW.

Delivery means the delivery of the Services and Deliverables in accordance with these Terms.

Derived Information means any information in any form or media which is derived or produced by you using Confidential Information in whole or in part.

Disbursements means:

- (a) fees, charges or levies paid by us to relevant statutory authorities;
- (b) fees paid by us to sub-consultants for plans, reports and advice;
- (c) the cost of advertisements and published notices in connection with the approvals, permits and works;
- (d) the cost of special presentation material and models not included in the Order;
- (e) the cost of provision of colour prints of any drawings or working documents other than those used by us;
- (f) the cost of photographic records or other special services authorised in writing;
- (g) mail/courier expenses;
- (h) the cost of travel outside of the state of Victoria, airfares, freight, reasonable car expenses and accommodation expenses;
- (i) title and survey searching fees, data licence fees;
- (j) telephone and other office costs;
- (k) supply of all necessary copies of drawings issued to you, authorities, tenderers and other client-appointed consultants;
- (l) any other costs that may be reasonably incurred by us in order to provide the Services and Deliverables stated in the Order.

Fee Proposal means a fee proposal or quote by us for the supply of particular Services and Deliverables containing details as specified in clause 3.2.

Force Majeure Event means circumstances beyond our reasonable control, which shall include, but not be limited to compliance with any laws, regulations, orders, acts, instructions or priority request of any government, or any department or agency, civil or military authority, acts of God, acts of the public enemy, your acts or omissions, fires, floods, strikes, lockouts, embargoes, wars, labour or material shortages, pandemics, riots, insurrections, defaults of our suppliers or subcontractors, delays in transportation, or instructions or lack of instructions from you.

GST and GST Law mean as defined in the *A New Tax System (Goods and Services Tax) Act 1999* (Cth).

Intellectual Property Rights means all forms of intellectual property rights (whether registered or unregistered) in copyright, designs, patents, trade marks, domain names, trade secrets, know-how, Confidential Information, and all other similar proprietary rights which currently exist and/or are recognised in the future.

Invoice unless otherwise agreed means the invoice issued upon the delivery of the Services and Deliverables specified in your Order.

Insolvency Event means:

- (a) for a person in Australia, where one or more of the following events occurs:
 - (i) a liquidator, provisional liquidator or receiver or receiver and manager, voluntary administrator, or administrator of a deed of company arrangement is appointed to all of the property of that person;

- (ii) a receiver, receiver and manager, voluntary administrator or an administrator of a deed of company arrangement, is appointed to, or a mortgagee takes possession of, all of the business or assets of that person;
 - (iii) that person makes any composition or arrangement or assignment with or for the benefit of its creditors;
 - (iv) that person or any creditor appoints a voluntary administrator or a resolution is passed for that person to execute a deed of company arrangement;
 - (v) that person ceases, or threatens to cease to carry on its business; or
 - (vi) that person becomes insolvent within the meaning of section 95A of the *Corporations Act 2001* (Cth); or
- (b) for a person in any other jurisdiction, that any event analogous or equivalent to the events described in paragraph (a) occurs in respect of that person.

KLM Spatial means Kayelle Development Consultants Pty. Ltd. trading as KLM Spatial (ACN 005 376 125) of Building 2, 3 Ordish Rd, Dandenong, South Victoria 3175.

Losses means all losses, liabilities, fines, penalties, damages, claims and interest, and all related costs and expenses (including any and all legal costs (on a full indemnity basis), and costs of investigation, litigation, settlement, judgment, appeal, interest and penalties) and including those which are prospective or contingent and those the amount of which for the time being is not ascertained or ascertainable.

Order means an order received by us from you in writing for Services and Deliverables set out in a Fee Proposal.

Moral rights has the meaning given in the Copyright Act 1968 (Cth), as amended or replaced from time to time.

Payment means payment of any amount relating to Services and/or Deliverables in accordance with these Terms.

Permitted Purpose means the purpose of completing the project for which the Services and Deliverables are necessary as specified in the Order or SOW.

PPSA means the *Personal Property Securities Act 2009* (Cth) as amended, including any regulations made pursuant to it.

PPSR means the Personal Property Securities Register.

Project Site means the site specified in the Fee Proposal or Order at which the Services are to be performed.

RBPN means a registered Building Practitioner's number issued by the Victorian Building Authority.

Record means a document or record (including a copy) in any form or media (visible or invisible) containing, referring to, or based on any Confidential Information or any analysis of it.

Security Agreement means the security agreement set out in clause 13 (*Security Interest*).

Services mean the services we provide from time to time, including the supply of town planning, surveying, civil engineering and build design services, and any other services we may provide from time to time, charged at the applicable hourly rate or at a fixed price project rate as agreed by the parties in an Order.

Staff means the appropriate professional(s) required to provide the Services and Deliverables as set out in the Order.

SOW or Statement of Work means a document setting out specific Services and Deliverables as agreed between the parties.

Term means from the date you submit an Order until the date of completion of supply of all Services and delivery of all Deliverables stated in an Order.

Victorian Building Authority means Victorian Building Authority (ABN 78 790 711 883) of Goods Shed North, 733 Bourke Street, Docklands, VIC 3008