

1. Dictionary

1.1 Words used in this Contract have the following meanings:

Act of Prevention means:

- (a) an act or omission of the Principal or its Associates;
- (b) a Variation; or
- (c) an event outside the control of either party,

which delays the Contractor in performing the Services.

Associate means in relation to a party, any Related Body Corporate or Related Trust Entity of that party and any officer, employee, agent, contractor, consultant, nominee, licensee or adviser of that party or that Related Body Corporate or Related Trust Entity and:

- (a) in the case of the Contractor, includes its subconsultants and subcontractors, and their respective Associates (but does not include the Principal or any of its Associates); and
- (b) in the case of the Principal, does not include the Contractor or any of its Associates.

Business Day means a day other than a Saturday, Sunday or public holiday in the State or Territory where the Project is based.

Confidential Information means information (whether in oral, written, electronic or any other form) which is marked or notified as being proprietary or confidential or which, in the normal course of business, would be considered to be proprietary or confidential, including but not limited to information relating to this Contract, any expression of interest or tender, the Project and the operations, business dealings or financial affairs of a party.

Contract means these Terms and Conditions and the Quotation.

Contractor means party identified as such in the Quotation.

Contractors IP means any IP owned by the Contractor, or which the Contractor otherwise has the right to use, prior to the date of this Contract or IP coming into existence after the date of this Contract other than for the purposes of this Contract.

Created IP means IP created, discovered or coming into existence as a result of, for the purposes of, or in connection with, this Contract, other than the Contractors IP.

Contract Sum means the amount payable by the Principal for the Services as set out in, or calculated in accordance with, the Quotation, as adjusted in accordance with this Contract.

Corporations Act means the *Corporations Act 2001* (Cth).

Deliverables means any deliverables specified in the Quotation to be provided by the Contractor to the Principal as part of the Services.

GST means the same as in the GST Law.

GST Law means *A New Tax System (Goods and Services Tax) Act 1999* (Cth).

Insolvent means, in respect of a party, that it:

- (d) is, or states that it is, insolvent (as that term is defined in section 95A of the Corporations Act);
- (e) has a Controller (as that term is defined in section 9 of the Corporations Act) appointed to any part of its property;
- (f) is in receivership, in receivership and management, in liquidation, in provisional liquidation, under administration or wound up or has had a receiver or a receiver and manager appointed to any part of its property;
- (g) is subject to any arrangement, assignment, moratorium or composition, protected from creditors under any statute or, dissolved;
- (h) is taken (under section 459(F)(1) of the Corporations Act) to have failed to comply with a statutory demand;
- (i) is the subject of an event described in section 459(C)(2) or section 585 of the Corporations Act (or it makes a statement from which the other party to this Contract reasonably deduces it is so subject);

- (j) suspends, or threatens to suspend or stop, payment of all or a class of its debts or to carry on all or a material part of its business, or is otherwise unable to pay its debts when they fall due;
- (k) informs, in writing, its creditors or the other party, that it is insolvent or is for financial reasons unable to proceed with this Contract;
- (l) has entered into voluntary administration;
- (m) is otherwise unable to pay its debts when they fall due; or
- (n) takes any step toward entering into a compromise or arrangement with, or assignment for the benefit of, any of its members or creditors, unless this takes place as part of a solvent reconstruction, amalgamation, merger or consolidation.

IP means intellectual or industrial property of all types and in all forms, including:

- (a) a patent, trade mark or service mark, copyright, registered design, trade secret, or Confidential Information; or
- (b) a licence or other right to use or to grant the right to use any of the foregoing or to be the registered proprietor or user of any of the foregoing.

Principal means the party identified as such in the Quotation.

Principal IP means IP owned by the Principal, or which the Principal otherwise has the right to use.

Related Body Corporate has the meaning given to it in the Corporations Act.

Related Trust Entity means with respect to an entity which is a trustee, manager or

responsible entity of a trust or a managed investment scheme:

- (a) any Related Body Corporate of the trustee, manager or responsible entity;
- (b) any other trustee, manager or responsible entity of the trust or managed investment scheme (or Related Body Corporate) of such entity; or
- (c) any controlling unit holder of the trust or managed investment scheme (or Related Body Corporate) of such an entity.

Relevant Information means such information or documents, in whatever form, as the Contractor may require to enable it to perform the Services.

Relevant Resources means:

- (a) such resources or materials as are identified in the Quotation as being required to be provided by the Principal and anything ancillary thereto; and
- (b) such resources, facilities, materials and assistance, including utilities, at the Site, as the Contractor may require to enable it to perform the Services.

Services means the services to be performed by the Contractor under this Contract as more particularly described in the Quotation.

Site means, if applicable, the Principal's site where the Services are to be performed, as identified in the Quotation.

Site Regulations and Policies means the regulations and policies relating to health, safety and security at the Site, and such other corporate or Site specific policies of the Principal, as may be developed or amended from time to time.

Supplies means all goods, materials and equipment reasonably necessary for the proper performance of the Services.

Taxes means any and all taxes (excluding GST), stamp, documentary, business, occupation, excise, income, corporation, profits, gains, gross receipts, or other taxes, fees, withholdings, imposts, levies, duties or other charges of any nature whatsoever or whensoever, together with any penalties, fines or interest or similar additions, imposed, levied or assessed by any government, governmental, semi-governmental or

other relevant authority or otherwise payable on or in respect of this Contract.

Terms and Conditions means this document entitled *Terms and Conditions*.

2. Rules for interpreting this Contract:

- 2.1 Words importing:
- (a) the singular include the plural and vice versa; and
 - (b) any gender includes the other genders.
- 2.2 A reference to:
- (a) a person includes a firm, unincorporated association, corporation, body corporate, or a government or statutory body or authority;
 - (b) a person includes its legal personal representatives, successors and assigns;
 - (c) a statute, ordinance, code or other law includes regulations and other statutory instruments under it and consolidations, amendments, re-enactments or replacements of any of them;
 - (d) a right includes a benefit, remedy, discretion, authority or power;
 - (e) an obligation includes a warranty or representation and a reference to a failure to observe or perform an obligation includes a breach of warranty or representation;
 - (f) a reference to a clause, annexure or appendix is a reference to a clause, annexure or appendix to or of this Contract;
 - (g) a reference to this Contract includes all annexures and appendices to it, and
 - (h) "including" and similar expressions are not words of limitation.
- 2.3 Headings are for convenience only and do not affect the interpretation of this Contract.
- 2.4 A provision of this Contract will not be construed to the disadvantage of a party merely because that party was responsible for the preparation of this Contract or the inclusion of the provision in this Contract.
- 2.5 A reference to dollars or \$ is to an amount in Australian currency.
- 2.6 The documents comprising this Contract are taken to be mutually explanatory. If there is any discrepancy, inconsistency or ambiguity within or between the documents (or parts of the documents) comprising this Contract the discrepancy, inconsistency or ambiguity must be resolved by applying the following order of precedence:
- (a) the Quotation; and
 - (b) these Terms and Conditions.
- 2.7 Unless expressly provided for in the Quotation, this Contract excludes any terms and conditions contained in any request for quotation, purchase order or other document issued by the Principal in respect of the Services.

3. Contractor's general obligations

- 3.1 The Contractor will perform the Services:
- (a) in an efficient, timely, diligent, competent, professional and lawful manner in accordance with the requirements of this Contract;
 - (b) to the standard of skill and care expected of a contractor qualified and experienced in the provision of the Services;
 - (c) all applicable laws; and
 - (d) in accordance with the Principal's reasonable directions and instructions.
- 3.2 The Contractor will allocate personnel to the performance of the Services which it reasonably considers to have the skills,

competence, experience and qualifications to perform the Services they are retained to perform.

- 3.3 Unless otherwise specified in the Quotation or in this Contract, the Contractor will supply all Supplies required for the performance of the Services.

4. Principal's general obligations

- 4.1 The Principal must:
- (a) pay the Contract Sum, as and when required under this Contract; and
 - (b) provide the Contractor with:
 - (i) all Relevant Resources;
 - (ii) all the Relevant Information;
 - (iii) such access to the Site as the Contractor requires to enable it to perform the Services; and
 - (iv) all assistance to enable the Contractor to fulfil its obligations under this Contract, including promptly responding to requests under this Contract for information and giving instructions or directions where required under this Contract.

5. Warranties

- 5.1 Each party represents and warrants to other party that each of the following statements insofar as they are applicable to that party is true and correct at the time of entry into this Contract:
- (a) if it is a corporation or trust it has been duly incorporated or created as the case may be and validly existing under the laws of the place of its incorporation or creation;
 - (b) it has the power to enter into and perform its obligations under this Contract, to carry out the transactions contemplated by this Contract and to carry on its business as now conducted or contemplated;
 - (c) it has taken all necessary action to authorise the entry into and performance of this Contract and to carry out the transactions contemplated by this Contract;
 - (d) the execution and performance by it of this Contract and each transaction contemplated under this Contract did not and will not violate in any respect a provision of:
 - (i) a law or treaty or a judgment, ruling, order or decree of a government or governmental authority or agency binding on it;
 - (ii) its constitution; or
 - (iii) any other document or agreement which is binding on it or its assets.

6. Site, safety, security and care

- 6.1 The Principal must:
- (a) provide the Contractor with its Site Regulations and Policies before the Contractor or its Associates enter the Site;
 - (b) take such steps, including the provision of any necessary induction training, safety devices and warnings as may be necessary or desirable to enable the Contractor and its Associates to perform the Services safely and in accordance with this Contract;
 - (c) ensure that neither it, nor its Associates, interfere with or disrupt the work of the Contractor or its Associates on Site, except to the minimum extent necessary for the safety and security of the Contractor or its Associates.
- 6.2 The Contractor will make itself and its Associates available for any Site induction training and provided such assistance to the Principal as may be reasonably necessary to ensure the safety and security of the Contractor and its Associates on the Site.
- 6.3 The Principal warrants that, except as expressly set out in the Quotation, there is no impediment, defect or deficiency in:
- (a) the Site, its conditions or location; or

(b) any document or information provided by the Principal, which would prevent the Contractor from performing the Services or result in the Contractor incurring material cost.

7. Review of Deliverables

- 7.1 If requested by the Principal, the Contractor must provide the Principal the opportunity to review the Deliverables and provide reasonable comments thereon.
- 7.2 To the extent that the Principal reviews any Deliverable and does not comment thereon with 5 Business Days of the Contractor providing the Deliverable to the Principal, the Principal will be deemed to have approved the Deliverable for all purposes under this Contract.

8. Representatives

- 8.1 Each party must appoint a person to be its representative for the purposes of this Contract and must give written notice of that appointment (and any subsequent change) to the other party.
- 8.2 Any representative appointed under clause 8.1 is authorised to act for and on behalf of, and as agent for, that party, and may send and receive any notices, communications, documents or instructions on that party's behalf.

9. Meetings and Reports

- 9.1 The Principal may convene ad hoc or regular meetings at such times as the Principal reasonably requires, by providing the Contractor with no less than 5 Business Days' notice of any such meeting.
- 9.2 The Principal may, on no less than 5 Business Days' notice, request any ad hoc or regular written reports that the Principal reasonably requires, in a format that the Principal reasonably requires, to ensure that the Principal is reasonably informed as to the Contractor's performance of the Services.

10. Delay to the Services

- 10.1 Subject to clause 10.2, where this Contract provides for a date for completion and the Contractor is delayed in achieving completion by the date for completion by an Act of Prevention, the Principal must at the request of the Contractor:
 - (a) provide an extension to the date for completion, for a period no less than the period of the delay; and
 - (b) where the delay is caused by an event contemplated in paragraph (a) or Paragraph (b) of the definition of Act of Prevention and the Contractor incurs additional costs or expenses as a direct result of the delay, pay such additional costs and expenses to the Contractor.
- 10.2 In determining whether the Contractor will be delayed in reaching completion by the date for completion, the Principal must not have regard to whether the Contractor can complete the Services by the date for completion without an extension of time, or by committing extra resources or incurring extra expenditure to make up the time lost.

11. Variation

- 11.1 The Principal may direct the Contractor by written notice to carry out a Variation, except for the omission of Services.
- 11.2 Before instructing a Variation, the Principal must request the Contractor to provide a written proposal of the time and cost effect of the proposed Variation within 5 Business Days. The proposal must include:
 - (a) details of the impact of the proposed Variation upon the Services; and
 - (b) the additional costs of executing the proposed Variation to the Services, which may include a reasonable amount for overheads, as well as an amount for profit or loss of profit.
- 11.3 The Principal must:

- (a) accept the proposal and adjust the Contract Sum accordingly; or
- (b) withdraw the proposed Variation.

- 11.4 If the Contractor considers that a direction by the Principal constitutes a Variation, the Contractor may within 5 Business Days of receiving the direction, give written notice to the Contractor, that it considers the direction constitutes a Variation and in such notice include:

- (a) detailed particulars, including the date or dates, of the direction; and
- (b) the matters referred to in clause 11.2.

- 11.5 The Principal must:

- (a) accept the proposal and adjust the Contract Sum accordingly;
- (b) withdraw the direction.

12. Confidential Information

- 12.1 Each party must in relation to the Confidential Information of the other party:

- (a) use the Confidential Information solely for the purposes of complying with this Contract;
- (b) not disclose the Confidential Information to any person without the other party's prior written consent unless:
 - (i) it is for the purpose set out in clause 12.1(a);
 - (ii) it is required by law to disclose Confidential Information (in which case it must notify the other party of any actual or intended disclosure as soon as is reasonably practicable), or
 - (iii) the party discloses the Confidential Information to its professional advisor, in which case the party must ensure that the professional advisor complies with the requirements of this clause 12;
- (c) ensure that the Confidential Information in its possession is kept confidential and protected against unauthorised use and access; and
- (d) comply with all reasonable security measures or other confidentiality requirements notified by the other party.

- 12.2 Neither party must make or allow any public announcement, press release or public statement of any kind about this Contract, without the prior written consent of the other party.

13. Intellectual Property

- 13.1 The Principal acknowledges and agrees that:
 - (a) no rights are granted to the Principal in relation to the Contractors IP; and
 - (b) ownership of all Created IP vests in the Contractor on creation.
- 13.2 The Contractor grants to the Principal a non-exclusive, irrevocable, royalty-free licence (including the right of sub-licence) in the Created IP, to the extent reasonably necessary to enable the Principal to obtain the benefit of the Services.
- 13.3 The Principal grants to the Contractor an irrevocable, non-exclusive, perpetual, transferable, royalty-free licence (including the right of sub-licence), in the Principal IP to the extent necessary to enable the Contractor to perform the Services.

14. Insurance

- 14.1 Before commencing the Services, the Contractor will:
 - (a) insure against liability for death of or injury to persons employed by the Contractor including liability by statute and at common law.
 - (b) obtain a policy of public liability insurance with a total aggregate cover reasonably sufficient to cover its exposure as a result of performing the Services;

- (c) take out a professional indemnity insurance policy with a total aggregate cover reasonably sufficient to cover its exposure as a result of performing the Services.
- 14.2 Each policy must be maintained for the duration of this Contract, except for the professional indemnity insurance policy which must be maintained until the date which is 7 years after completion of the Services or termination of this Contract, whichever occurs earlier.
- 14.3 If requested by the Principal, the Contractor will provide reasonable evidence that it has taken out each insurance required under clause 14.1.
- 15. Payment**
- 15.1 The Principal will pay the Contractor the Contract Sum for performance of the Services.
- 15.2 The Contractor may submit to the Contractor on the 25th day of each month, a detailed payment claim together with a breakdown of payments claimed and copies of all supporting materials showing the value of the Services carried out during the period in respect of which payment is claimed.
- 15.3 Within 10 Business Days of receipt of the payment claim, the Principal must prepare and issue a payment schedule evidencing its assessment of the payment due to the Contractor, together with an explanation of any differences between the payment claim and the assessment.
- 15.4 If the Principal does not issue a payment schedule, the payment claim will be deemed to be the relevant payment schedule.
- 15.5 The Principal must within 15 Business Days after issuing a payment schedule, pay to the Contractor the amount certified in the payment schedule as being due to the Principal to the Contractor.
- 15.6 Where an amount is certified in a payment schedule as being due for payment to the Contractor to the Principal, the Contractor must pay the relevant amount to the Principal within 15 Business Days of receipt of the payment schedule.
- 16. GST**
- 16.1 Terms defined in the GST Act have the same meaning when used in this clause 16, unless expressly stated otherwise.
- 16.2 Unless expressly stated otherwise, any sum payable or amount used in the calculation of a sum payable under this Contract has been determined without regard to GST and must be increased, on account of any GST payable under this clause 16.
- 16.3 The recipient must pay the GST Amount in the same manner as making payment of any monetary consideration on which the GST is calculated.
- 17. Default and termination**
- 17.1 Upon the occurrence of a Contractor Default, the Principal may give the Contractor a written notice identifying the Contractor Default and:
- (a) in the case of a Contractor Default capable of remedy, requiring the Contractor to remedy the Contractor Default within a reasonable period (having regard to the nature of the Contractor Default) but which must not be less than 15 Business Days; or
- (b) in the case of a Contractor Default not capable of remedy, to make arrangements reasonably acceptable to the Principal to overcome the effect of the Contractor Default within a reasonable period (having regard to the nature of the Contractor Default) but which must not be less than 15 Business Days.
- 17.2 If:
- (a) the Contractor fails to remedy the Contractor Default or overcome the effect of the Contractor Default (as the case may be), within the time specified in the notice given by the Principal pursuant to clause 17.1; or
- (b) the Contractor is Insolvent,
- the Principal may terminate this Contract on written notice to the Contractor.
- 17.3 Upon the occurrence of a Principal Default, the Contractor may give the Principal a written notice identifying the Principal Default and:
- (a) in the case of a Principal Default capable of remedy, requiring the Principal to remedy the Principal Default within a reasonable period (having regard to the nature of the Principal Default) but which must not be less than 15 Business Days; or
- (b) in the case of a Principal Default not capable of remedy, to make arrangements reasonably acceptable to the Contractor to overcome the effect of the Principal Default within a reasonable period (having regard to the nature of the Principal Default) but which must not be less than 15 Business Days.
- 17.4 Where the Contractor delivers a notice under clause 17.3 the Contractor may also suspend the performance of the Services until the Principal Default has been remedied or its effects overcome (as the case may be).
- 17.5 If:
- (a) the Principal fails to remedy the Principal Default or overcome the effect of the Principal Default (as the case may be), within the time specified in the notice given by the Contractor pursuant to clause 17.3; or
- (b) the Principal is Insolvent,
- the Contractor may terminate this Contract on written notice to the Principal.
- 17.6 Without prejudice to any party's entitlement to claim damages, upon termination of this Contract for any reason the Principal must pay the Contractor for the Services performed in accordance with this Contract up to the date of termination, as well as the cost of any Supplies reasonably ordered by the Contractor for the performance of the Services and which orders cannot be cancelled..
- 18. Dispute resolution**
- 18.1 All disputes between the parties in connection with this Contract must be resolved in accordance with the provisions of this clause 18.
- 18.2 If a party considers that a dispute exists in connection with this Contract, that party must give the other party a notice detailing the nature of the dispute (**Notice of Dispute**). Upon receipt of a Notice of Dispute, each party must use its best endeavours to resolve the dispute.
- 18.3 Either party may give a notice to the other party, adequately identifying details of the dispute.
- 18.4 Within 5 Business Days of receipt of the notice specified in clause 18.3, senior personnel of the parties must meet to seek to resolve the dispute.
- 18.5 If the dispute is not resolved at the meeting under clause 18.4, the Managing Director (or equivalent) of the parties (or their nominated representatives) must meet within 10 Business Days to seek to resolve the dispute.
- 18.6 If the parties have not resolved the dispute or agreed an alternative means of resolving the dispute, within 10 Business Days of the dispute the parties' Managing Directors under clause 18.5, then either party may commence mediation:
- (a) by giving notice to the other party; and

- (b) referring the matter to the Institute of Arbitrators and Mediators Australia to appoint an appropriate mediator to mediate between the parties in relation to the dispute.
 - 18.7 The Mediation Rules of the Institute of Arbitrators and Mediators Australia apply to any mediation under this Contract and the parties must comply with those rules.
 - 18.8 If the parties have not resolved the dispute within 20 Business Days after referral of the dispute to mediation, then either party may commence litigation in respect of the dispute.
 - 18.9 Neither the existence of a dispute, nor any action taken by either party pursuant to this clause 18, diminishes or affects either party's performance of its obligations under this Contract.
 - 18.10 Nothing in this clause 18 prevents a party from instituting proceedings to enforce payment due under this Contract or to seek urgent injunctive or declaratory relief in respect of a dispute under this clause 18 or any matter arising under this Contract.
- 19. Liability**
- 19.1 If the Principal comprises two or more persons, each is jointly and severally liable for the Performance of the Principal's obligations and liabilities under this Contract.
 - 19.2 Notwithstanding any provision of this Contract:
 - (a) the Contractors' maximum liability to the Principal and its Associates under or arising out of this Contract will not exceed an amount equivalent to the Contract Sum; and
 - (b) no party will be liable to the other for any indirect or consequential loss, (including loss of opportunity, loss of profit, loss of anticipated profit, loss of business, loss of business opportunities, loss of revenue or any failure to realise anticipated savings) suffered by the other.
- 20. Taxes**
- 20.1 Unless otherwise expressly provided in this Contract, each party must pay all Taxes arising out of or relating to this Contract or the performance of its obligations under this Contract.
- 21. Notices**
- 21.1 A notice, consent or other communication under this Contract is only effective if it is in writing, signed by an authorised

representative of the sender and either left at the addressee's address or sent to the addressee by mail, email or fax. If it is delivered, it is taken to have been received when it has been left at the addressee's address. If it is sent by mail, it is taken to have been received 3 Business Days after it is posted. If it is sent by email, at the time shown on a delivery receipt generated by the sender's email system. If it is sent by fax, it is taken to have been received when the addressee actually receives it in full and in legible form.

- 21.2 A person's address, email address and fax number are those set out in the Quotation, or as the person notifies the sender from time to time.

22. Governing Law

- 22.1 The governing law of this Contract is the Law of the State or Territory of Australia in which the Site is located. Where the Site is located outside of Australia the governing law of this Contract is the Law of New South Wales. The parties submit to the non-exclusive jurisdiction of the courts of that State or Territory, and all courts competent to hear appeals from those courts.

23. Preservation of rights and obligations on termination or expiry

- 23.1 Any provisions in this Contract relating to express obligations on termination and clauses 12, 14, 15, 17, 19, 21 and 24.2, respectively survive termination of this Contract.

24. Assignment and subcontracting

- 24.1 Neither party may assign or novate its rights or obligations under this Contract without the prior written consent of the other party.
- 24.2 Notwithstanding clause 24.1, the Contractor may subcontract any of its obligations under this Contract to a subcontractor or subconsultant of its choice.

25. Severability

- 25.1 If any provision of this Contract is held to be void, illegal or unenforceable, then that provision will, to the extent possible, be deemed to be severed and omitted from this Contract.

26. Amendment to this Contract

- 26.1 This Contract may only be amended by written agreement between the parties.