



These Standard Terms ("Terms") shall govern the Services provided by EMQ Pty Ltd ("EMQ") as set forth in the Services Agreement ("Services Agreement") executed by Client and EMQ to which these Terms are attached. These Terms, together with the Services Agreement, constitute the entire understanding and agreement between Client and EMQ with respect to the Services described in the Services Agreement, supersede all prior oral, written and e-mail communications, and may be amended, modified or changed (including changes in scope or nature of the Services or fees) only in writing when signed by both parties or by exchange of e-mail. If there is a conflict between the Services Agreement and these Terms the Services Agreement shall govern.

1) Fees, Expenses

Client shall pay EMQ the professional fees and the related expenses in accordance with the relevant Services Agreement. All prices and

rates exclude Australian Goods and Services Tax (GST) unless otherwise stated in the relevant Services Agreement.

2) Client Responsibilities

As a prerequisite to EMQ's delivery of Services, Client shall: (i) Fulfill the Client responsibilities and ensure that all assumptions are accurate; (ii) Provide EMQ with reliable, accurate and complete information, as required; (iii) Make timely decisions and obtain required management approvals. In addition, EMQ shall be entitled to rely on all Client decisions and approvals made. Nothing in this Agreement shall require EMQ to evaluate, advise on, modify, confirm, or reject such decisions and approvals, except as expressly agreed to in the Agreement.

3) Confidentiality and Privacy

Each party undertakes that it will not, either during or after the execution the Services (except in the proper course of its duties as part of the Services or as required by law or by the other party) disclose to any person any confidential information of or relating to the other party or the Services of which it has become possessed as a result of the Services or the negotiations preceding the Services including, but not limited to, the terms of this Agreement. Nothing within this Agreement prohibits disclosure of information which: (i) is in the public domain; (ii) after disclosure to a party becomes part of the public domain otherwise than as a result of the wrongful act of that party; (iii) is received from a third party provided that it was not acquired directly or indirectly by that third party from a party of this agreement; or (iv) is required to be disclosed by law or any government or governmental body, authority or agency having authority over a party; or (v) is related to other Projects not covered by this agreement and undertaken by either party.

The terms of this Agreement may be disclosed to: (i) any legal, financial and other adviser of a party; (ii) the auditor of a party; or (iii) a bona fide prospective purchaser of a party or the business of that party provided that such bona fide prospective purchaser agrees to keep the terms of this agreement confidential. Subject to the foregoing, EMQ may disclose Client's confidential information to its subcontractors and affiliates in order to undertake the services.

When Client gives EMQ personal information about other individuals, EMQ relies on Client to make the individuals aware that Client may provide their information to EMQ, the types of third parties we may provide it to, the relevant purpose EMQ and the third parties will use it for, and how they can access it. If Client has not done or will not do either of these things, Client must tell EMQ before client provides the relevant information. If Client notifies EMQ that they have not done and will not do either of these things, and EMQ is required to provide additional services in order to comply with Privacy legislation in the undertaking of the Services, Client will be deemed to have requested a variation under Section 5 of these Terms. In any case EMQ is bound by the Information Privacy Principles set out in the Information Privacy Act 2000 (as amended) in providing the services under this Agreement.

4) Deliverables

Client may, solely for its internal business purposes, use, copy, distribute internally, and modify the deliverable items specifically described in the Agreement (the "Deliverables"). Unless specifically provided for in the Services Agreement Client shall not, without EMQ's prior written or e-mail consent, disclose to a third party, publicly quote or make reference to the Deliverables. EMQ shall retain all right, title and interest in and to: (i) The Deliverables, including but not limited to all patent, copyright, trademark and other intellectual property rights therein; and (ii) All methodologies, processes, techniques, ideas, concepts, software, internet applications, trade secrets and know-how embodied in the Deliverables or that EMQ may develop or supply in connection with this Agreement (the EMQ Knowledge). Subject to the confidentiality restrictions contained in Section 3, EMQ may use the Deliverables and the EMQ Knowledge for any purpose.

Client shall accept Deliverables which conform to the requirements of the Agreement. Client will promptly give EMQ notification of any non-conformance of the Deliverables with such requirements ("non-conformance"), and EMQ shall have a reasonable period of time, based on the severity and complexity of the non-conformance, to correct the non-conformance. If Client uses the Deliverables before acceptance, fails to promptly notify EMQ of any non-conformance, or unreasonably delays the beginning of acceptance testing, then the Deliverable shall be considered accepted by Client.

5) Acceptance, Variations, Cancellation and Payments

(i) Acceptance: EMQ may vary the contents of an offer at anytime prior to acceptance. Unless otherwise stated in an offer, the offer remains valid for ninety (90) days after the issue date, but can be withdrawn by EMQ prior to Client acceptance.

An offer of acceptance may be in the form of the signed Services Agreement, a Purchase Order or a letter of intent. A letter of intent may be made in writing by Client or via e-mail. Client further agrees that no Client terms and conditions apply to the supply of products and/or services. EMQ need not respond in anyway to any attempt by Client to vary the content of an offer (including these Terms) unless a variation in writing from Client is signed on behalf of EMQ.

EMQ may, by notifying Client within five (5) working days after receipt of Client's acceptance of contract, reject the acceptance, in which case the acceptance is void "ab initio" and EMQ are not liable to Client in any way, whether in contract, tort or under statute.

(ii) Variations: If Client requests a variation to a Service Agreement then; EMQ will use its reasonable efforts to comply with the request; and (a) If EMQ can comply with the request; (b) Client must pay EMQ the amounts reasonably invoiced for the variation; and (c) EMQ will advise the Client of any delivery slippage resulting from the variation. EMQ may increase the price stated in a Service Agreement in order to cover extra costs incurred by EMQ attributable to Client's delay. EMQ may make changes to the product or services, their delivery or packaging: (a) Without notifying Client, if the changes improve the product or service or do not substantially deviate from the original specifications for the product or Services; or (b) In other cases, with Client's approval. All such variations will be confirmed in writing or by e-mail and documented by means of an EMQ issued Project Change Notice. Any attempt by Client unilaterally to vary the content of the Service Agreement (including these Terms and Conditions) whether orally or in writing, is void.

(iii) Cancellation: Client may not cancel a Service Agreement unless Client; (i) Obtains EMQ's prior written approval; and (ii) Pays EMQ all cost incurred or damages suffered by EMQ in connection with the Service Agreement (including without limitation any charges, duties, taxes, expenses, design costs, purchasing costs, or other outgoings paid or incurred).

(iv) Payment: Unless otherwise stated in the Services Agreement, fees and expenses will be billed to Client, at the end of each month. Client must pay EMQ within thirty (30) days after the date of issue of each invoice. Expenses incurred in the execution of agreed services will be invoiced at cost plus a handling/process fee (currently 10%). Interest is payable on all late payments, whether the late payment is agreed by EMQ or not, at the rate of 3% above the National Australia Bank Business Overdraft Indicator Lending Rate (or other rate notified in writing by EMQ to the Client from time to time) calculated daily from the due date until the date of payment. All expenses incurred by EMQ in collecting late payments must be paid by Client.

6) Warranty

(i) EMQ warrants that the services shall be performed with reasonable care in a diligent and competent manner. EMQ's sole obligation shall be to correct any non-conformance within this warranty, provided that Client gives EMQ written notice within thirty (30) days after the services are performed.

(ii) EMQ does not warrant and is not responsible for any third party products or services. Client's sole and exclusive rights and remedies with respect to any third party products or services are against the third party vendor and not against EMQ.

(iii) **TO THE FULLEST EXTENT PERMITTED BY LAW, THIS SECTION 6 IS EMQ'S ONLY WARRANTY CONCERNING THE SERVICES AND ANY DELIVERABLE, AND IS MADE EXPRESSLY IN LIEU OF ALL OTHER WARRANTIES AND REPRESENTATIONS, EXPRESS OR IMPLIED, INCLUDING ANY IMPLIED WARRANTIES OF MERCHANTABILITY, NON-INFRINGEMENT, OR FITNESS FOR A PARTICULAR PURPOSE, OR OTHERWISE.**

7) Risk Allocation

(i) EMQ's total liability relating to this Agreement shall in no event exceed the fees EMQ receives hereunder for the portion of the work giving rise to liability, or include any special, consequential, incidental or exemplary damages or loss (nor any lost profits, savings or business opportunity) and, to the extent that Client has contributed to its own loss, the amount Client may recover from EMQ, regardless of the grounds or nature of the claim asserted against EMQ, will be reduced to reflect the Client's share in the responsibility for the loss.

(ii) As EMQ is performing the services solely for the benefit of Client, Client will indemnify EMQ, its affiliates and their partners, principals and personnel against all costs, fees, expenses, damages and liabilities (including defence costs) associated with any third party claim, relating to or arising as a result of the services, Client's use of the Deliverables, or this Agreement.

(iii) EMQ will indemnify Client against any damage or expense relating to bodily injury or death of any person or damage to real and / or tangible personal property incurred while EMQ is performing the services and to the extent caused by the negligent or willful acts or omissions of EMQ's personnel or agents in performing the services.

(iv) The provisions of this Section 7 are intended to apply in all circumstances regardless of the grounds or nature of any claim asserted (including contract statute, any form of negligence, whether of Client, EMQ, or others, tort, strict liability or otherwise) and whether or not the party seeking indemnification was advised of the possibility of the damage or loss asserted, to the extent not contrary to applicable law.

(v) To the extent that Section 6 (iii) does not apply to exclude any warranties implied at law, EMQ's liability for breach of any such warranty is limited to: (a) In the case of the supply of goods or products, either the replacement of those goods or products or the cost of their replacement with similar goods or products; and (b) In the case of services, to the re-supply of those services or the cost of obtaining similar services.

Any action against EMQ must be brought within eighteen (18) months after the cause of action arises.

8) Personnel

(i) While EMQ shall attempt to comply with Client's request for specific individuals, EMQ shall be responsible for assigning and re-assigning its personnel, as appropriate, to perform the Services.

(ii) During the term of this Agreement, and for a period of six (6) months following the expiration or termination thereof, neither party will actively solicit the employment of the personnel of the other party involved directly with providing Services hereunder.

9) Termination

(i) This Agreement may be terminated at any time by either party upon thirty (30) days written notice to the other unless this term is superseded by other contracted terms as detailed in the relevant Services Agreement.

(ii) Client shall pay EMQ for all Services rendered and expenses incurred as of the date of termination, and shall reimburse EMQ for all reasonable costs associated with any termination.

(iii) Except for matters related to confidentiality or intellectual property rights, the parties shall first attempt to resolve any dispute or alleged breach internally by escalating it through management and, prior to pursuing litigation, use a mutually acceptable alternative dispute resolution process.

10) Force Majeure

(i) "Force Majeure Event" affecting a party means anything outside the reasonable control of that party, including without limitation, acts of God, fire, storm, flood, earthquake, weather conditions, explosion, accident, acts of the public enemy, war, rebellion, insurrection, sabotage, epidemic, quarantine restrictions, industrial or labour dispute, labour shortage, transportation, embargo or failure or delay in transportation, act or omission (including laws, regulations, disapprovals or failures to approve) of any other person (including a government, government agency, a supplier or a sub-contractor).

(ii) If a party is partially or wholly unable to perform its obligations (except an obligation to pay) because of a Force Majeure Event then: (a) as soon as reasonably practicable after the Force Majeure Event arises, that party must notify in writing the other party of the extent to which the notifying party is unable to perform its obligations; and (b) that party's obligations to perform those obligations will be suspended for the duration of the delay arising directly out of the Force Majeure Event.

(iii) If a delay affecting either party's ability to perform its obligations arising directly out of a Force Majeure Event continues for more than ninety (90) days either party may terminate the affected Service Agreement or Agreements with immediate effect by giving written notice to the other.

(iv) If a Service Agreement is terminated by EMQ under Clause 10.3: (a) Due to a Force Majeure Event affecting Client, Client must pay EMQ all costs incurred or damages suffered by EMQ in connection with the Service Agreement (including without limitation any charges, duties, taxes, expenses, design costs, purchasing costs or other outgoings paid or incurred); (b) The rights and obligations of the parties under that Service Agreement will cease; and (c) The accrued rights or remedies of the parties will not be affected.

11) General

(i) Neither party shall use the other party's name, trademarks, service marks, logos, trade names and/or branding except in the provision of the Services without such party's prior written consent. Notwithstanding anything herein to the contrary, EMQ may reference or list Client's name and/or a general description of the services/project. Client also agrees that upon reasonable prior notice from EMQ, Client will be willing to provide a reference for EMQ (e.g. in the form of analyst telephone calls, Client telephone calls, presentations and the like).

(ii) This Agreement may not be assigned or otherwise transferred without the prior express written consent of the other party. EMQ may assign this Agreement to an affiliate of its organisation or use suitable subcontractors to assist in the provision of the Services.

(iii) Any notices given pursuant to this agreement shall be in writing or by e-mail, delivered to the address set forth in the Agreement, and shall be considered given when received.

(iv) No term of this agreement shall be deemed waived, and no breach of this agreement excused, unless the waiver or consent is in writing signed by the party granting such waiver or consent.

(v) If any term or provision of this agreement is determined to be illegal or unenforceable, such term or provision shall be deemed stricken, and all other terms and provisions shall remain in full force and effect.

(vi) This agreement does not make either party an agent or legal representative of the other party, and does not create a partnership or joint venture. Both parties are independent contractors and principals for their own accounts.

(vii) Sections 3 through 11 of these Terms shall survive the expiration or termination of this Agreement.

(viii) The laws of the State of Victoria in Australia shall govern this Agreement.

(ix) Client acknowledges that: (a) EMQ and Client may correspond or convey documentation via Internet e-mail unless Client expressly requests otherwise; (b) Neither party has control over the performance, reliability, availability, or security of Internet e-mail; and (c) EMQ shall not be liable for any loss, damage, expense, harm or inconvenience resulting from the loss, delay, interception, corruption, or alteration of any Internet e-mail due to any reason beyond EMQ's reasonable control.