

Agreed terms

1. ENGAGEMENT OF CONTRACTOR

- a) The Customer engages the Contractor to provide the services set out in the Schedule Part A ("the **Services**") which the Contractor must carry out and complete in accordance with this Agreement.
- b) The Contractor is a VAE Group Pty Ltd subsidiary company hereinafter referred to as "**VAE**".
- c) The Agreement shall be deemed to be accepted by the Customer from the earlier of:
 - (i) the Customer signing and returning a copy the Agreement; or
 - (ii) the Customer providing the Contractor written or oral direction to proceed on the basis of the offer identified in the Schedule Part A ("the **Offer**"), or referencing our proposal without providing alternate terms and conditions to the Contractor.

2. COMMENCEMENT OF SERVICES

- a) The Contractor must commence the Services not later than the date set out in the Schedule Part A.
- b) Where the Services have been commenced prior to the date of this Agreement the provisions of this Agreement will apply retrospectively to the date of commencement of such services.

3. WORKING HOURS

Unless otherwise stated in the Schedule Part A, the Offer is made in contemplation of the Contractor carrying out and completing the Services within the working hours of 7:30am to 4:30pm Monday to Friday at the relevant site.

4. AGREEMENT DOCUMENTS

The parties agree only the Agreement Documents listed in the Schedule Part A form part of the Agreement between them.

5. CHANGE TO THE SERVICES

- a) The Customer may instruct the Contractor to make changes to or vary the Services, including a change to the method or sequence of performing the Services.
- b) No change or variation to the Services will invalidate this Agreement.
- c) Where in the Contractor's reasonable opinion the Fees set out in the Schedule Part B do not apply, and the changes to the Services, or the additional Services are substantial, the Contractor and the Customer will agree upon an appropriate fee for the changed or additional Services. If the Customer and the Contractor fail to reach agreement, the Contractor will be entitled to a reasonable fee for the changed or additional Services.

6. DUE CARE

The Contractor must exercise all the reasonable skill, care and diligence of a professional Contractor experienced in providing the services and must carry out all responsibilities in a thorough, skilful and professional manner and in

accordance with recognised and relevant professional standards and international and Australian standards.

7. CAPACITY TO PAY

- a) At any time with written notice to the Customer, the Contractor may require information and evidence satisfactory to the Contractor for evaluation of:
 - (i) a credit application submitted by the Customer; or
 - (ii) the Customer's ability to pay the unpaid balance of the Fees.

8. FEES AND PAYMENTS

- a) The Customer must pay the Contractor as follows:
 - (i) The fees for the Services set out in the Schedule Part B (the "**Fees**");
 - (ii) Invoices for services provided must be submitted by the Contractor to the Customer in accordance with the Schedule Part B and must be accompanied by information sufficient to allow the Customer to verify each invoice to its satisfaction.
- b) If the Customer proposes paying an amount less than the amount claimed in the Contractor's invoice, then within ten (10) calendar days of receipt of the invoice, the Customer will determine the amount payable to the Contractor and issue to the Contractor a schedule identifying:
 - (i) the claim to which the schedule relates;
 - (ii) the amount (if any) of any proposed payment; and
 - (iii) why the amount is less and if any payment or part thereof is withheld, the reasons for withholding payment.
- c) Within 30 days from the date of an invoice in accordance with clause 8(a), the Customer will pay the amount of the Contractor's invoice or the amount stated in the schedule under clause 8(b) which accounts for deductions that the Customer is entitled to make under this Agreement or at law.
- d) Interest on overdue payments will accrue at the 90-day bank bill rate plus two (2) per cent per annum.

9. LIABILITY AND INDEMNITY

- a) The Contractor indemnifies the Customer against:
 - (i) loss or damage to property, including existing property on or around the relevant site including property belonging to third parties;
 - (ii) claims against the Customer in respect of personal injury, death, or loss or damage to any property; and
 - (iii) claims against the Customer in respect of any infringement of any intellectual property or moral rights, arising out of carrying out and completing the Services.
- b) The Customer agrees the indemnities provided in clause 9(a):

- (i) only extend to loss or damage within the Contractor's control (arising from acts or omissions of the Contractor) and loss or damage caused by the Contractor;
 - (ii) are reduced proportionately to the extent the loss or damage is caused by the Customer or any other entity or person;
 - (iii) are subject to the Customer's obligation to use best endeavours to mitigate its loss; and
 - (iv) is limited to losses that were reasonably foreseeable at the time of the Agreement being entered into.
- c) The Customer agrees, to the extent applicable, and permitted by law, the Contractor's liability to the Customer under Schedule 2 of the *Competition and Consumer Act 2010* (Cth) ("the **Australian Consumer Law**") is limited to one or more of the following for a period of 12 months from the date of completion or delivery or as defined in the Schedule Part A:
- (i) for goods that form part of the Services:
 - (A) replacement of the goods or the supply of equivalent goods;
 - (B) repair of the goods;
 - (C) payment of the cost of replacing the goods or of acquiring equivalent goods;
 - (D) payment of the cost of having the goods repaired;
 - (ii) for services that form part of the Services:
 - (A) supplying of the services again; or
 - (B) payment of the cost of having the services supplied again.

10. LIMITATION OF LIABILITY

Notwithstanding any other term of the Agreement, the parties agree the total extent of the Contractor's and the Customer's liability to each other whether arising out of or in connection with the Agreement or the performance or non-performance of it or anything incidental to it, and whether by way of indemnity, by statute (to the extent possible to limit such liability), in tort (for negligence or otherwise) or on any other basis in law or in equity, is limited to an amount equivalent to the Fees.

11. EXCLUSION OF CONSEQUENTIAL LOSS

Notwithstanding any other term of the Agreement, neither the Contractor or the Customer will be liable to each other arising out of or in connection with the Agreement or the performance or non-performance of it or anything incidental to it, and whether by way of indemnity, by statute (to the extent it is possible to limit such liability), in tort (for negligence or otherwise) or on any other basis in law or in equity, for any loss of use, production, sales, opportunity, revenue, profit or anticipated profit or economic loss or for any kind of special, consequential, incidental or indirect or pure economic or financial cost, loss or damage whatsoever.

12. OWNERSHIP AND RISK

- a) Risk in the Services passes to the Customer on the earlier of completion or delivery as required by the Agreement.

- b) Risk in the Services passes to the Customer on the earlier of completion or delivery as required by the Agreement.
- c) Title in the Services remains with the Contractor until the Customer has paid for the Services in full and cleared funds.
- d) Until title in the Services passes to the Customer, the Contractor will hold them on trust and as bailee for the Customer.
- e) The Contractor reserves the right to register a security interest for the purposes, and within the meaning, of the *Personal Property Securities Act 2009* (Cth) ("the **PPSA**") in respect of any of the Services.
- f) The Customer agrees to provide the Contractor with all such information that the Contractor requires in order to register a security interest and to immediately advise the Contractor of any changes which may affect the Contractor's security interest.

13. DEFAULT AND TERMINATION

- a) If either party:
 - (i) being a person, becomes bankrupt or makes an assignment of its estate for the benefit of its creditors; or
 - (ii) being a company, becomes insolvent, has a liquidator, provisional liquidator, administrator or receiver appointed or takes or has taken or instituted against it any action which may result in the liquidation of the company or if it enters into any contract with its creditors,
 the other party may, without issuing a notice to show cause, terminate the Agreement by written notice.
- b) If either party commits a breach of this Agreement, the other party may issue to the party in breach a notice to show cause why this Agreement should not be terminated.
- c) If the party in breach fails to show reasonable cause within seven (7) calendar days of receipt of the notice, the other party may, by further notice in writing, terminate this Agreement.
- d) If the relevant breach under clause 13(b) is the Customer's failure to pay moneys owing to the Contractor under the Agreement, in addition to terminating the Agreement under clause 13(c), the Contractor may:
 - (i) retake possession of any part of the Services not paid for by the Customer;
 - (ii) suspend delivery or performance of any Services and/or refuse to deliver or perform any unfulfilled or incomplete Services;
 - (iii) enforce any security interests; and
 - (iv) require payment of any moneys held by the Customer in a separate account or otherwise.

14. CONFIDENTIALITY

- a) Except as provided in this clause, the Contractor must not without the Customer's prior written consent divulge or communicate to any person:
 - (i) any of the contents of this Agreement or any other agreement made available to the Contractor by the Customer;

- (ii) any information as to the operation or performance of this Agreement or any other agreement made available to the Contractor by the Customer;
 - (iii) any information which may come to its knowledge in the course of carrying out this Agreement as to the operations, business dealings or financial affairs of the Customer; or
 - (iv) any information provided to the Contractor by the Customer, that the Customer notifies as being confidential at the time of its provision.
- b) The restriction imposed by this clause does not apply to any disclosure of information:
- (i) which at the time of the disclosure was in the public domain other than by breach of this Agreement;
 - (ii) which is required by law to be communicated to a person who is authorised by law to receive that information; or
 - (iii) that is made pursuant to an order of a court or an arbitrator or an administrative tribunal (but subject to the Contractor giving the Customer as much prior notice as possible, requesting that any disclosure be subject to an undertaking to the Customer of confidentiality, and the disclosure being not more than required by the order).

15. ASSIGNMENT AND SUBCONTRACTING

Neither party may assign, delegate or subcontract this Agreement or any part thereof without the prior written consent of the other party, which shall not be unreasonably withheld.

16. NO WAIVER

The failure of a party to require full or partial performance of a term of the Agreement does not affect the right of that party to require performance subsequently.

17. SEVERABILITY

If any provision in this Agreement is voidable or unenforceable that provision will be severed and the rest of the Agreement will remain in full force and effect.

18. GOVERNING LAW AND JURISDICTION

- a) This Agreement and all questions arising in connection with it are governed by and will be construed according to the laws from time to time in force in the jurisdiction of the site for the Services.
- b) The parties irrevocably submit to the authority of the courts having jurisdiction in the jurisdiction referred to in clause 18(a).

19. GOODS AND SERVICES TAX

- a) Any terms capitalised in this clause 19 have the same meaning given to those terms in *A New Tax System (Goods and Services Tax) Act 1999* (Cth) ("the **GST Act**").
- b) It is agreed that the Fees in the Schedule Part B are exclusive of GST.

Notwithstanding any other clause in this Agreement, if any supply made under or in connection with this Agreement constitutes a taxable supply, then the recipient of the supply of goods or services ("the Recipient") must determine and pay to the supplier of the goods or services ("the Supplier") the amount of GST required to be accounted for by the Supplier to the Commissioner of Taxation in respect of the supply in addition to any amount or consideration expressed as payable elsewhere in this Agreement.

20. INSURANCES

Before commencing the Services, the Contractor will have in place the insurances as nominated in the Schedule Part A.

Schedule of Services

PART A – THE SERVICES

Item	Description	Details
1	The Services (clause 1(a))	[Name of Proposal or general description]
2	The Offer (clause 1(b))	[VAE Proposal no# dated]
3	Date for commencement of Services (clause 2(a))	[]
4	Working hours (clause 3)	7:30am to 4:30pm
5	Contractor Insurances (copies available on request) (clause 20)	Public Liability \$20M any one occurrence/unlimited in the aggregate Annual Contract Works \$15M Civil Liability (Professional Indemnity) \$10M any one claim and \$20M in the aggregate in respect of any one period of insurance Commercial Motor Fleet Workers Compensation
6	Agreement Documents (clause 4)	In order of priority: VAE Project Terms and Conditions [VAE Proposal no# dated] []
7	Time/s for claiming payment (clause 8(a))	[insert details of deposit, monthly reference date and/or milestone payments] If left blank, invoices will be submitted by the 25 th day of each month.
8	Warranty/Defects Liability Period (clause 9(c))	12 months

PART B – THE FEES

Item	Payment Method	Fees (Exclusive of GST)
1	Lump Sum	[]
2	Schedule of Rates	[]

Item	Payment Method	Fees (Exclusive of GST)
3	Hourly rates	[]
4	[Insert other if any]	[]

PART C – SPECIAL CONDITIONS

[VAE to insert, if applicable]