

## Terms and Conditions

### Background

- A These Terms and Conditions will apply in respect of any agreement for the provision of Services by a Contractor to Australian Restoration and Construction Pty Ltd ACN 169 552 416.
- B By proceeding to provide Services to Australian Restoration and Construction Pty Ltd ACN 169 552 416, the Contractor agrees to be bound by these Terms and Conditions.

### Operative terms

#### 1 SUPPLY OF THE SERVICES

##### 1.1 Performance of the Services

- (a) From time to time, the Principal may request Services from the Contractor (**Request**).
- (b) Within a reasonable time of receiving the Request from the Principal, the Contractor may accept or reject to perform the Services specified in a Request by notice to the Principal.
- (c) Where the Contractor agrees to perform the Services specified in Request, the Contractor must perform the Services for the Principal contemplated by each Request:
  - (i) in accordance with the relevant Specifications (if any);
  - (ii) in compliance with all laws, mandatory industry codes and standards;
  - (iii) in accordance with all consents, permits and approvals which have been obtained in relation to the Services;
  - (iv) on or before the Completion Date (if any); and
  - (v) in accordance with the relevant Project Plan (if any), including to meet each milestone by the date specified in the Project Plan.
- (d) If the Principal requires the development of specifications for the Services and/or Deliverables, then the Contractor must develop those specifications in accordance with the Principal's requirements, submit the specifications to the Principal for approval, and make any changes to the specifications as reasonably requested by the Principal.
- (e) If the Principal requires the development of a project plan, then the Contractor must develop a project plan in accordance with the Principal's requirements, including milestones and timeframes, and submit the project plan to the Principal for approval, and make any changes to the project plan reasonably requested by the Principal.
- (f) Unless otherwise agreed in writing by the parties, the Contractor must obtain all consents, permits and approvals for completion of the Services as may be required by law.

##### 1.2 Completion

- (a) The Contractor must inform the Principal by notice as soon as the Services contemplated by a Request are complete.
- (b) Within a reasonable time of receiving a notice under clause 1.2(a), the Principal will inspect the Services and Deliverables and give the Principal notice that (acting reasonably):
  - (i) the Services have not been completed in accordance with the requirements under this agreement; or
  - (ii) the Services have been completed satisfactorily in accordance with the requirements of this agreement.
- (c) Where the Principal gives notice under clause 1.2(b)(i):
  - (i) the Principal must give the Contractor notice of:
    - (A) the reason why the Services have not been completed in accordance with the requirements under this agreement; and
    - (B) the steps that must be taken by the Contractor so that the Services are completed satisfactorily in accordance with the requirements of this agreement;
  - (ii) the Contractor must complete the steps notified under clause 1.2(c)(i)(B) at its own cost, within the time specified in the notice given under clause 1.2(c)(i), or if no time is specified, within 10 days of receipt of the notice; and
  - (iii) the Contractor indemnifies the Principal for any Loss suffered by the Principal as a result of the Contractor failing to perform the Services in accordance with the requirements of this Agreement by the Completion Date or the due date as specified in the Project Plan (as applicable).
- (d) Title and risk in a Deliverable passes to the Principal on delivery of that Deliverable to the Principal and the Principal providing notice under clause 1.2(b)(ii).

#### 1.3 Contractor Obligations

The Contractor must:

- (a) when on premises owned, occupied by or under the control of the Principal, comply with, and ensure that all persons involved in the provision of the Services comply with the:
  - (i) policies, directions and procedures relating to workplace health and safety;
  - (ii) security and confidentiality requirements; and
  - (iii) work standards, methodologies and procedures, of the Principal;
- (b) keep any premises on which the services are carried out clean, tidy and free of rubbish;
- (c) not interfere with or cause any harm or damage to the environment or the work of any other workers;
- (d) prevent nuisance and unreasonable noise and disturbance;
- (e) take all measures to protect people and property from, loss or damage;
- (f) observe the WHS Legislation; and
- (g) where the Services involve the hire of any equipment:
  - (i) the Contractor must rectify any such equipment that is not in good working order within one hour of receiving notification from the Principal (or such longer period as agreed between the parties; and
  - (ii) the Contractor will indemnify the Principal for any costs incurred by the Principal as result of any failure in the hired equipment.

#### 1.4 Contractor Acknowledgements

The Contractor acknowledges and agrees that:

- (a) where the Contractor does not comply with an obligation under clause 1.3 within a reasonable time of notice being given by the Principal, the Principal may carry out such obligation at the Contractor's cost and expense and recover the amount as a debt immediately due and payable;
- (b) the Principal does not commit to or guarantee to purchase any volume or value of Services over the Term;
- (c) the Contractor is not the exclusive supplier of services in the nature of the Services to the Principal;
- (d) the Principal may use the Services for its own benefit or resupply the Services to a third party;
- (e) the Principal may perform, or obtain from a third party, services in the nature of the Services;
- (f) acceptance of a Deliverable by the Principal does not limit the Contractor's liability for breaching the agreement including breaching a warranty under clause 2; and
- (g) the Principal may monitor and log all actual or attempted access and activities of the Contractor from the Contractor's computer when connected to the Authorised System, including any and all emails sent and received from an account with the domain issued by the Principal or such other domain used or licensed to the Principal as provided by the Principal to the Contractor, any logs of internet use and may block or restrict access to certain internet websites.

#### 1.5 Variations

- (a) The Contractor must not vary the Services except as approved by the Principal in writing.
- (b) A Variation may otherwise be agreed between the parties in writing.
- (c) A Variation approved under clause 1.5(a) or 1.5(b) will be binding on the parties as though the contents of the Variation were included in this agreement.

#### 1.6 Cost of Variation

- (a) The difference in cost (if any) caused by a Variation will be added to or deducted from the Fee as required, by a fair and reasonable amount for that Variation.
- (b) The fair and reasonable amount will be determined by the Principal adopting the following order of precedence:
  - (i) the prior or written agreement of the parties;
  - (ii) determined using rates and prices contained in this agreement (if any) to the extent it is reasonable to do so; and
  - (iii) using market standard and reasonable rates and prices which may include a reasonable amount for profit and overheads.

### 2 WARRANTIES

#### 2.1 Intellectual Property Rights warranties

The Contractor represents and warrants and it is a condition of this agreement, that:

## Terms and Conditions

- (a) the Contractor has the right and authority to give the Principal the rights described in clauses 5.1 and 5.2;
- (b) the Deliverables and receipt of the Services will not infringe the Intellectual Property Rights or other rights of any third party; and
- (c) the exercise of the rights described in clauses 5.1 and 5.2 will not infringe the Intellectual Property Rights or other rights of any third party.

### 2.2 Services warranties

The Contractor represents and warrants, and it is a condition of this agreement, that:

- (a) the Contractor and the Contractor's agents and subcontractors have the necessary facilities, equipment, software and qualified personnel available to perform its obligations under this agreement;
- (b) all work performed under this agreement will be carried out and completed efficiently, with due skill and care and to the best industry standards by qualified personnel trained and skilled in the performance of the specific Services involved, in a proper, diligent, safe, efficient and workmanlike manner and using materials suitable for the purpose;
- (c) the Contractor and the Contractor's agents and subcontractors will hold such licences, permits, registrations and insurances as are required under any State, Territory or Commonwealth legislation or regulation to carry out any work under this agreement and will provide a copy of such licences, permits, registrations and insurances upon request by the Principal;
- (d) the Services will be provided in accordance with the Project Plan, including in accordance with milestones specified in the Project Plan (if applicable);
- (e) the Services will be fit for the purpose for which they are sought and comply with all laws;
- (f) any materials that the Contractor uses to perform the Services will be free from defects in design, performance and workmanship;
- (g) the Contractor is the legal and beneficial owner of any materials that the Contractor uses to perform the Services, free of any third party interest or encumbrance; and
- (h) where the Services involve the hire of any equipment, such equipment shall be:
  - (i) supplied to the Principal in good working order; and
  - (ii) maintained in good working order by the Contractor for the specified hire period.

### 2.3 Contractor warranties:

The Contractor represents and warrants, and it is a condition of this agreement, that:

- (a) the Contractor is authorised to enter into this agreement;
- (b) the Contractor is operating under an Australian Business Number (ABN) under the *A New Tax System (Australian Business Number) Act 1999* (Cth) and:
  - (i) is running its own independent business under that ABN;
  - (ii) it will continue to have an ABN during the Term;
  - (iii) it will quote its ABN on each invoice it provides to the Principal;
  - (iv) it will advise the Principal in writing immediately if its ABN changes or its ABN is cancelled; and
  - (v) it will indemnify the Principal for any loss or damage suffered by the Principal or any tax, charge, fine, penalty or other impost which the Principal incurs or becomes liable to pay, as a result of its breach of any of the warranties contained in this clause 2.3(b);
- (c) the Contractor is responsible for and will ensure that all payments that are required to be paid to Contractor Personnel are paid as required by Law;
- (d) the Principal will be one of a number of clients that the Contractor provides services (that are the same or similar to the Services) to; and
- (e) for the purposes of the Payroll Tax Act 1971 (Qld) (as amended), the Contractor carries on a business of providing services of the kind being provided under this agreement and:
  - (i) where the Contractor is a company, the Services will be performed by two or more persons;
  - (ii) where the Contractor is an individual, the Services will be performed by either (i) the individual and one or more other persons or (ii) two or more persons, none of whom is the individual; or
  - (iii) where the Contractor is a partnership of natural persons, the Services will be performed by either (i) one or more partners and one or more other persons or (ii) two or more persons, none of whom is a partner, and in any case not by one or more partners alone.

### 2.4 Deliverable warranties

The Contractor represents and warrants, and it is a condition of this agreement that each Deliverable will:

- (a) be fit for the purpose for which it is sought;
- (b) comply with all laws, mandatory industry codes and standards;
- (c) comply with all permits and approvals, which have been obtained as required by law;
- (d) be free from material defects in design, performance and workmanship;
- (e) be of merchantable quality; and
- (f) comply with the relevant Specifications, including any the Principal requirements contemplated by the Specifications.

### 2.5 Accuracy and reliance warranties

(a) The Contractor represents and warrants, and it is a condition of this agreement, that:

- (i) all information given by the Contractor or on the Contractor's behalf to the Principal is accurate and is not, whether by omission of information or otherwise, misleading; and
- (ii) the Contractor has not withheld from the Principal any document, information or other fact material to the decision of the Principal to enter into this agreement; and

(b) Except where specifically provided within this agreement, each party represents and warrants and it is a condition of this agreement that that party does not rely on any representation made to them by the other party or any Related Body Corporate of the other party (if any) before entry into this agreement.

### 2.6 Acknowledgment

The Contractor acknowledges and agrees that:

- (a) the Principal, in entering into this agreement, is relying on the warranties and on the representations made in or under this agreement; and
- (b) the Contractor must not perform or attempt to perform services in the nature of the Services for any third party during the Term if the performance of such services will interfere with the ability of the Contractor to meet its obligations under this agreement.

## 3 FEES

### 3.1 Fees

- (a) Subject to the Contractor complying with this agreement and providing evidence of all items referred to in clause 2.2(c), the Principal must pay the Fees to the Contractor in accordance with clause 3.2(c).
- (b) The Contractor acknowledges and agrees that, apart from the Fees, the Contractor is not entitled to any other fees, payments, or any Entitlements from the Principal.

### 3.2 Invoices

- (a) The Contractor must invoice the Principal for the Fees within 14 days of the end of the month in which the Services completed and notice is given under clause 1.2(b)(ii).
- (b) An invoice for payment must:
  - (i) if the Fees are paid in relation to an hourly rate, detail an itemised list of all hours the Contractor has spent in performing the Services for the relevant period;
  - (ii) include:
    - (A) the work order number;
    - (B) the Contractor's name, contact details and ABN;
    - (C) the GST amount if applicable and only if the Contractor is registered for GST; and
    - (D) any other information reasonably requested by the Principal; and
  - (iii) be in a form approved by the Principal; and
  - (iv) be issued to the Principal's representative who issued the Request.

### 3.3 Dispute

If there is a dispute about whether a Fee, refund or other amount contemplated by this agreement is payable or available:

- (a) provided it has reasonable grounds, the Principal may withhold the amount in dispute without penalty until the resolution of the dispute; and
- (b) the Principal must pay any amount that is not in dispute as required by this agreement.

### 3.4 Set off

The Principal may set off against any amount payable by the Principal under this agreement any amount payable by the Contractor to the Principal, including any:

- (a) amount payable under an indemnity; and

## Terms and Conditions

- (b) amount attributable to loss or damage suffered or incurred by the Principal in connection with this agreement.

### 3.5 Resources

The Contractor must:

- (a) use resources efficiently when performing the Services; and  
 (b) perform the Services in the manner that is the most cost-effective for the Principal and which is consistent with the levels of quality and performance required of the Contractor under this agreement.

## 4 TERM AND TERMINATION

### 4.1 Term

This agreement commences on the Commencement Date and continues for the Term unless terminated earlier under clause 4.

### 4.2 Termination for breach

- (a) If:
- (i) either party (**Breaching Party**) commits a breach of this agreement (except for a breach contemplated by clause 4.2(b)), which is not remedied within 7 days of notice being given by the other party to the Breaching Party; or
  - (ii) an Insolvency Event occurs in relation to the a party (**Breaching Party**),
- then the other party may terminate this agreement by written notice to the Breaching Party in which case this agreement will terminate on the date specified in that written notice or, if no date is specified, immediately.
- (b) If the Principal has an overdue invoice issued by the Contractor:
- (i) which has been overdue for a period of at least four calendar months;
  - (ii) for which a demand has been made; and
  - (iii) which is not in dispute,
- and the Principal does not pay this amount within 60 days of receiving written notice from the Contractor requiring the Principal to do so then the Contractor may terminate this agreement by written notice to the Principal in which case this agreement will terminate immediately.

### 4.3 Termination by notice at end of period

Either party may terminate this agreement by giving at least one month's written notice to the other party before the expiry of the Term, in which case the termination is effective immediately upon the expiry of that period.

### 4.4 After termination or expiry

On termination or expiry of this agreement:

- (a) accrued rights or remedies of a party are not affected; and  
 (b) with respect to particular Requests which have not yet been performed, if:
- (i) the Principal requires; and
  - (ii) this agreement is not terminated by the Contractor due to a breach of the Principal;
- then this agreement will continue until the Contractor has performed the Services contemplated by those Requests.

### 4.5 Survival

Termination or expiry of this agreement will not affect any provision of this agreement which is expressly or by implication intended to come into force or continue on or after the termination.

## 5 INTELLECTUAL PROPERTY

### 5.1 Assignment

- (a) The Contractor assigns the Intellectual Property Rights (including future Intellectual Property Rights):
- (i) in the Deliverables; or
  - (ii) otherwise created by the Contractor in the performance of the Services,
- to the Principal.
- (b) The Contractor must sign all documents and do all things necessary to give effect to this clause 5.1.

### 5.2 Licence

The Contractor grants to the Principal an irrevocable, transferrable and royalty free licence to use any Intellectual Property Rights in the Contractor's Material or otherwise in connection with the Contractor's performance of the Services under this agreement, to the extent that such rights are not assigned to the Principal under clause 5.1.

### 5.3 Infringement

If the Contractor suspects or becomes aware that a Deliverable infringes any third party's Intellectual Property Rights then the Contractor must:

- (a) immediately notify the Principal that the Deliverable infringes or may infringe that third party's Intellectual Property Rights; and  
 (b) take any action required by the Principal in connection with the infringement or suspected infringement of that third party's Intellectual Property Rights.

### 5.4 Reputation

The Contractor must not perform any act or omission which damages or is likely to damage the reputation of the Principal or a Deliverable.

### 5.5 Acknowledgment

The Contractor acknowledges that:

- (a) the Principal retains the Intellectual Property Rights in the Principal Material; and  
 (b) nothing in this agreement is intended to give the Contractor any Intellectual Property Rights or other rights in any of the Principal Material.

### 5.6 Principal Material

- (a) The Contractor must only use the Principal Material as directed by the Principal and only to the extent necessary to perform the Services for the Principal.  
 (b) The Contractor must return the Principal Material to the Principal on the expiry of the Term or earlier termination of this agreement.  
 (c) The Contractor is responsible for the safe keeping and maintenance of any of the Principal Material given to the Contractor.

### 5.7 Use of names

The Contractor must not, and must ensure that its subcontractors, officers, employees and agents do not, use the names, trade marks or logos of the Principal except with the prior consent of the Principal.

### 5.8 Moral Rights

- (a) The Contractor must ensure that each author of a Deliverable genuinely and irrevocably consents to any acts or omissions of any person including the Principal in connection with any Deliverable, whether occurring before, on or after the Commencement Date, which might otherwise infringe the Moral Rights of the author.  
 (b) Without limiting clause 5.8(a), the Contractor must ensure that the authors of the Deliverables irrevocably and genuinely consent to use of any Deliverable without identification of the authors as the authors or creators of the Deliverable.  
 (c) Without limiting the warranties given under clause 2.1, the Contractor warrants and represents that the Contractor did not rely upon any statement or representation made by the Principal before granting the consent contemplated by clause 5.8(a).  
 (d) Without limiting clause 5.8(a), if requested by the Principal in a particular case, the Contractor agrees to ensure that the authors of the Deliverables consent to any specific act or omission nominated by the Principal that may otherwise infringe the Moral Rights of the authors.

## 6 ACCESS AND INSPECTION

### 6.1 Access and inspection

- (a) Provided that the Principal first gives reasonable notice, the Contractor must allow the Principal or its nominated representatives to:
- (i) access the Contractor's premises; and
  - (ii) inspect and copy the Contractor's relevant records, documents and equipment,
- at reasonable times for the sole purpose of verifying the Contractor's compliance with this agreement.
- (b) For the purposes of complying with clause 6.1, the Contractor must promptly give the Principal, or the Principal's authorised representatives, any reasonable assistance they require.

### 6.2 Costs

If the inspection or verification contemplated by clause 6.1 reveals the Contractor has failed to comply with this agreement, then the Principal's reasonable costs in connection with that inspection or verification must be paid by the Contractor.

## 7 DISENGAGEMENT

### 7.1 Handover

The Contractor must:

- (a) for such period before termination or expiration of this agreement:
- (i) do all things necessary to eliminate or minimise any disruption to the provision of the Services as a result of the handover of services to the Principal or an incoming contractor; and
  - (ii) give all reasonable assistance to the Principal and any incoming contractor to enable a smooth and efficient handover of the Services; and
  - (iii) ensure that there is no degradation of quality of the Services; and

## Terms and Conditions

- (b) within a reasonable time after termination or expiration of this agreement act reasonably to:
  - (i) eliminate or minimise any disruption to the provision of the Services as a result of the handover of services to the Principal or an incoming contractor; and
  - (ii) give assistance to the Principal and any incoming contractor to enable a smooth and efficient handover of the Services.

### 8 REPORTING AND DOCUMENTATION

#### 8.1 Reporting

Within a reasonable time of request from the Principal, the Contractor must:

- (a) give the Principal any reports or assessments reasonably requested by the Principal from time to time in relation to the Services in a format approved by the Principal;
- (b) give the Principal the Documentation in both printed and in appropriate soft copy formats (such as .docx or .pdf); and
- (c) maintain and update the Documentation throughout the Term.

### 9 CONFIDENTIAL INFORMATION

#### 9.1 Obligations of confidence

Each party agrees to keep confidential, and not to use or disclose, other than as permitted by this agreement, any Confidential Information of the other party provided to or obtained by that party before or after entry into this agreement.

#### 9.2 Exclusions

The obligations of confidence in clause 9.1 do not apply to Confidential Information:

- (a) that is required to be disclosed by applicable law, or under compulsion of law by a court or Government Agency or by the rules of any relevant stock exchange or regulator, as long as the disclosing party:
  - (i) discloses the minimum amount of Confidential Information required to satisfy the law or rules; and
  - (ii) before disclosing any information, gives a reasonable amount of written notice to the other party and takes reasonable steps (whether required by the other party or not) to maintain such Confidential Information in confidence;
- (b) that is in the public domain otherwise than as a result of a breach of this agreement or other obligation of confidence;
- (c) which relates to the 'pay secrecy' provisions of the Fair Work Act in relation to the Contractor's personnel; or
- (d) that is already known by, or rightfully received, or independently developed, by the recipient of that Confidential Information free of any obligation of confidence.

#### 9.3 Restriction on disclosure

Each party may use and disclose Confidential Information of the other party only:

- (a) with the prior written consent of the other party; or
- (b) to that party's directors, agents, professional advisors, employees, contractors and permitted sub-contractors solely for the exercise of rights or the performance of obligations under this agreement.

#### 9.4 Disclosure to other parties

If either party discloses Confidential Information under clause 9.3, that party must ensure that such information is kept confidential by the person to whom it is disclosed.

### 10 PRIVACY

#### 10.1 Use of Personal Information

The Contractor must process, use and disclose all Personal Information:

- (a) in compliance with the Privacy Laws (regardless of whether or not the Contractor is otherwise obliged to comply with the Privacy Laws); and
- (b) only for the purposes of performing its obligations under this agreement.

#### 10.2 Treatment of Personal Information

- (a) The Contractor must obtain any necessary consents from, and make any necessary disclosures to, all relevant individuals for the purpose of disclosing their Personal Information to the Principal under this agreement, and must otherwise comply in all respects with its obligations under the Privacy Act in respect of any Personal Information disclosed to the Principal.
- (b) The Contractor must provide all assistance required by the Principal from time to time in relation to compliance by the Principal with the Privacy Act, or any investigation, request or enquiry (formal or otherwise) from the Privacy Commissioner regarding the Personal Information disclosed to the Principal under this agreement.
- (c) The Contractor indemnifies the Principal against all costs, expenses, losses, proceedings and claims of whatsoever nature suffered, brought

or incurred directly or indirectly as a result of a breach by the Contractor of its obligations under this clause.

#### (d) The Contractor must:

- (i) comply with all reasonable directions of the Principal, in connection with the obligations of the parties under the Privacy Laws or in connection with policies (including privacy policy) developed by the Principal from time to time for the purpose of complying with the Privacy Laws;
  - (ii) comply with any direction of the Principal, or an individual to whom the Personal Information relates, regarding access to, or correction of, Personal Information;
  - (iii) comply with any request or direction of the Principal, arising directly from or in connection with the exercise of the functions of the Privacy Commissioner under the Privacy Laws, or otherwise including the issuing of any guideline concerning the handling of Personal Information; and
  - (iv) not disclose Personal Information overseas without the prior written consent of the Principal, and if that consent is provided, the Contractor must take reasonable steps to ensure the recipient complies with the Privacy Laws and is required to comply with the directions of the Principal, in relation to Personal Information.
- (e) The Contractor must immediately notify the Principal where it becomes aware that a disclosure of Personal Information may be required by law.

### 10.3 The Contractor's duty

The Contractor must take all necessary steps to ensure that Personal Information it uses and discloses is:

- (a) done in accordance with the Principal's privacy policy and Privacy Laws;
- (b) done solely for the purpose of providing the Services in accordance with this agreement; and
- (c) protected against loss and against unauthorised access, use, interference, modification, disclosure or other misuse and that only personnel authorised by the Principal have access to the Personal Information.

### 10.4 Notification

The Contractor must notify the Principal immediately if it becomes aware of a breach of any of clauses 10.1 to 10.3 by the Contractor or any employee, agent or subcontractor of the Contractor or employee of a subcontractor or agent.

### 11 INDEMNITY

#### 11.1 Contractor indemnity

The Contractor is liable for, and indemnifies the Principal from and against, all loss or damage (including legal costs) incurred or suffered by the Principal however caused in connection with:

- (a) any breach of this agreement by the Contractor;
- (b) the enforcement of the Principal's rights in connection with any alleged or actual breach of this agreement by the Contractor;
- (c) any claim or allegation by a third party, in connection with the Deliverables or the Services;
- (d) any claim or allegation that the Deliverables, exercise of the rights contemplated by clause 5.1 or the provision of the Services infringes the Intellectual Property Rights or other rights of any third party;
- (e) personal injury or death of any person (including the Contractor or any employee of the Contractor) at premises owned or occupied by the Principal or in connection with the provision of the Services;
- (f) any act or omission of the Contractor, its officers, employees or agents;
- (g) the Principal treating the relationship between it and the Contractor as one of independent contract in respect of which:
  - (i) PAYG tax need not be deducted;
  - (ii) fringe benefits tax and pay-roll tax need not be paid;
  - (iii) legislative and industrial instrument provisions dealing with employment are not applicable; and
  - (iv) the payment of Entitlements to the Contractor's employees subcontractors, officers, employees and are not the responsibility of the Principal,

except to the extent such loss or damage is caused by an act or omission of the Principal.

#### 11.2 Principal indemnity

The Principal is liable for, and indemnifies the Contractor from and against, all loss or damage (including legal costs) incurred or suffered by the Contractor however caused in connection with

- (a) any breach of this agreement by the Principal; or

## Terms and Conditions

- (b) the enforcement of the Principal's rights in connection with any alleged or actual breach of this agreement by the Contractor,  
except to the extent such loss or damage is caused by an act or omission of the Contractor.

### 11.3 Continuing obligation

Each indemnity contained in this agreement is a continuing obligation notwithstanding:

- (a) any settlement of account; or  
(b) the occurrence of any other thing,

and it is not necessary for the Principal to incur expense or make payment before enforcing or making a claim under an indemnity.

## 12 INSURANCE

### 12.1 Insurance required

The Contractor must effect and maintain from a reputable insurance company:

- (a) all insurances required by law, including workers compensation insurance;  
(b) public liability insurance for an amount of not less than \$20 million per claim;  
(c) professional indemnity insurance for an amount of not less than \$1 million per claim; and  
(d) any other insurance as is reasonably required by the Principal from time to time for any liability of the Contractor that may arise from the performance or exercise of its obligations or rights under this agreement.

### 12.2 Insurance policy

The Contractor must:

- (a) maintain the insurance policies referred to in clause 12.1 in a form and for a policy period acceptable to the Principal; and  
(b) if requested by the Principal, give the Principal a copy of these insurance policies and evidence of currency of the policies.

### 13 NO ASSUMPTION OF DUTY

The Contractor is solely responsible for the discharge and satisfaction of the Contractor's duties in connection with the Services and this agreement and neither the Principal nor any of its officers or agents assumes any duty to:

- (a) advise on, supervise or control the Contractor's performance of the Services;  
(b) detect, prevent or remedy any default of the Contractor;  
(c) ensure the proper performance of any obligations of the Contractor; or  
(d) exercise any discretion for the benefit of the Contractor.

### 14 REPRESENTATIVE

The Principal Representative will represent the Principal for the day to day purposes of this agreement.

### 15 LEGAL COSTS

Each party must meet or pay its own legal costs and disbursements in respect of the preparation, negotiation and execution of this agreement.

## 16 TAXES

### 16.1 Stamp duty

The Contractor must pay all stamp duty (including penalties and interest) assessed or payable in connection with this agreement.

### 16.2 Other taxes

Subject to clause 16, the Contractor must pay all taxes, duties, government charges and other taxes of a similar nature (including fines, penalties and interest) imposed or levied in Australia or overseas in connection with the performance of this agreement.

### 16.3 GST definitions

Any words capitalised in clause 16 and not already defined in clause 18 have the meaning given to those words in the GST Act.

### 16.4 Consideration does not include GST

Except under clause 16, the consideration for a Supply made under or in connection with this agreement does not include GST.

### 16.5 Taxable supplies

If a Supply made under or in connection with this agreement is a Taxable Supply, then at or before the time any part of the consideration for the Supply is payable:

- (a) the Recipient must pay the Supplier an amount equal to the total GST for the Supply, in addition to and in the same manner as the consideration otherwise payable under this agreement for that Supply; and  
(b) the Supplier must give the Recipient a Tax Invoice for the Supply.

### 16.6 Input tax credit

If either party has the right under this agreement to be reimbursed or indemnified by another party for a cost incurred in connection with this agreement, that reimbursement or indemnity excludes any GST component of that cost for which an Input Tax Credit may be claimed by the party being reimbursed or indemnified, or by its Representative Member, Joint Venture Operator or other similar person entitled to the Input Tax Credit (if any).

### 16.7 Separate supplies

Where a Supply made under or in connection with this agreement is a Progressive or Periodic Supply, clause 16.5 applies to each component of the Progressive or Periodic Supply as if it were a separate Supply.

## 17 GENERAL

### 17.1 Governing law

- (a) The laws of Queensland, Australia govern this agreement.  
(b) Each party irrevocably submits to the non-exclusive jurisdiction of the courts of Queensland, Australia and courts competent to hear appeals from those courts.

### 17.2 Assignment

- (a) The Contractor must not assign, in whole or in part, or novate the Contractor's rights and obligations under this agreement without the prior written consent of the Principal.  
(b) The Principal may assign its interest under this agreement.

### 17.3 No employment or agency relationship

- (a) This agreement does not create a relationship of employment, trust, agency or partnership between the parties.  
(b) The parties acknowledge that the Fee is an above market rate for the Services because the Fee includes consideration for all costs to be incurred by the Contractor in carrying out the Services, including the value of all Entitlements payable by the Contractor to its employees.  
(c) If at any time the Contractor or Contractor employees are found or otherwise deemed to be employees of the Principal, to the extent that the Principal is required to pay the value of Entitlements in relation to the Contractor or Contractor employees, the Principal may recover as a liquidated debt from the Contractor any amount paid to the Contractor by way of Fees which are determined to be Entitlements.

### 17.4 Severance

A clause or part of a clause of this agreement that is illegal or unenforceable may be severed from this agreement and the remaining clauses or parts of the clause of this agreement continue in force.

### 17.5 Entire agreement

This agreement supersedes all previous agreements about its subject matter and any agreements collateral to those agreements. This agreement embodies the entire agreement between the parties.

### 17.6 Contractor Personnel and Subcontracting

- (a) Subject to clause 17.6(b), the Contractor may use any competent and qualified director, officer, employee, agent or subcontractor (**Contractor Personnel**) to:
- (i) provide the Services (or any part of them); or
  - (ii) assist the Contractor to provide the Services (or any part of them).
- (b) If the Principal notifies the Contractor that the Contractor must not use a certain director, officer, employee, agent or subcontractor, the Contractor must comply with that notice at its expense.
- (c) If the Contractor uses Contractor Personnel for the performance of all or any part of its obligations under this agreement under clause 17.6(b)17.6(a) then the Contractor is liable for the acts and omissions of the Contractor Personnel as though they were acts and omissions of the Contractor.
- (d) The Contractor must ensure that the Contractor Personnel:
- (i) use their best efforts to do all things necessary to give full effect to this agreement;
  - (ii) refrain from doing anything that may hinder performance of this agreement;
  - (iii) act in accordance with this agreement;
  - (iv) are suitably competent and qualified;
  - (v) act with all due care and skill and to the best of their knowledge and expertise;
  - (vi) act in compliance with all applicable laws; and
  - (vii) act in a manner consistent with the Principal's best interests.

## Terms and Conditions

### 17.7 Waiver

A right under this agreement may only be waived in writing signed by the party granting the waiver, and is effective only to the extent specifically set out in the waiver.

### 17.8 Acceptance of Terms

The Contractor will be taken to have accepted the terms of this agreement by:

- (a) carrying out the Services or providing the Deliverables; or
- (b) by confirming (verbally or in writing) that you will carry out the Services or provide the Deliverables.

## 18 DEFINITIONS AND INTERPRETATION

### 18.1 Definitions

In this agreement:

**Authorised System** means a system or network of computers, computer programs, hosted software, software-as-a-service and/or other devices which are owned, operated or used by, or under the control of or licensed to, the Principal.

**Commencement Date** means the commencement date specified in writing between the parties or in a Request (as applicable).

**Completion Date** means the any Completion Date specified in a Request.

**Confidential Information** of a party means the terms of this agreement and any information:

- (a) relating to the business and affairs of that party;
- (b) relating to the customers, clients, employees, subcontractors or other persons doing business with that party;
- (c) which is by its nature confidential;
- (d) which is designated as confidential by that party; or
- (e) which the other party knows or ought to know, is confidential,

and includes all trade secrets, know-how, financial information and other commercially valuable information of that party, and in the case of the Principal, includes the Deliverables, the Principal Material, the identity of other customers of the Principal and any information of customers of the Principal, and the Fees.

**Contractor** means the contractor specified in writing between the parties or in a Request (as applicable).

**Contractor Personnel** has the meaning given in clause 17.6.

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

**Deliverable** means any Material given by the Contractor to the Principal in the performance of the Services as may be incidental to provision of the Services or otherwise specified in writing between the parties or in a Request (as applicable).

**Documentation** means the documentation required to allow the Principal to use the Deliverables and receive the Services.

**Entitlements** means any:

- (a) salary, wages, penalties, loadings, allowances, annual leave or payment in respect of annual leave, personal/carer's leave, long service leave, notice of termination or payment in lieu of notice of termination, severance pay, commissions, bonuses, reimbursement of expenses, superannuation and any entitlement which may be owed or payable under any award, agreement or other industrial instrument, statute or employment contract to which an employee may be entitled in respect of their employment or the termination of that employment; or
- (b) amounts that the Principal may be required to pay in respect of the employment of any employee or the termination of that employment, including any insurance premiums and taxes.

**Fees** mean the fees specified in writing between the parties or in a Request (as applicable).

**Government Agency** means:

- (a) a government or government department or other body;
- (b) a government, semi-governmental or judicial person; or
- (c) a person (whether autonomous or not) who is charged with the administration of a law.

**GST** has the meaning given to that term in the GST Act.

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

**Insolvency Event** means any of the following events:

- (a) a controller (as defined in the Corporations Act) is appointed to the party, or over any of the property of the party;
- (b) the party becomes bankrupt;
- (c) a controlling trustee is appointed to the party, or over any of the property of the party;

(d) the party or the party's property becomes subject to a personal insolvency arrangement under part X Bankruptcy Act or a debt agreement under part IX Bankruptcy Act;

(e) the party is unable to pay its debts when they become due and payable;

(f) the party ceases to carry on business; or

(g) any event happens in Australia or any other country or territory in respect of a party that is similar to any of the events or circumstances referred to in this definition.

Any event that takes place as part of a solvent reconstruction, amalgamation, merger, or consolidation, on terms approved in writing by the other party beforehand and in compliance with those terms is excluded from this definition.

**Intellectual Property Rights** means all industrial and intellectual property rights, both in Australia and throughout the world, and includes any copyright, Moral Right, patent, registered or unregistered trade mark, registered or unregistered design, registered or unregistered plant breeder's right, trade secret, know-how, right in relation to semiconductors and circuit layouts, trade or business or company name, indication or source or appellation of origin or other proprietary right, or right of registration of those rights.

**Loss** means any claim, loss, damage, liability, cost, charge or expense (including legal expenses on a full indemnity basis), however arising, and whether present or future, fixed or unascertained, actual or contingent.

**Material** includes software, source code, object code, designs, test cases, documents, equipment, reports, technical information, customer lists, studies, plans, charts, drawings, calculations, tables, trade marks, logos, schedules and data stored by any means.

**Moral Right** means:

- (a) the right of integrity of authorship;
- (b) the right of attribution of authorship; and
- (c) the right not to have authorship falsely attributed,

including those rights as conferred by the *Copyright Act 1968* (Cth), and rights of a similar nature anywhere in the world whether existing before, on or after the commencement of this agreement.

**Personal Information** has the meaning given to that term by the Privacy Act.

**Principal** means Australian Restoration and Construction Pty Ltd ACN 169 552 416.

**Principal Material** means any Material given by or to which access is given by the Principal to the Contractor for the purposes of this agreement.

**Principal Representative** means the Principal representative specified in writing between the parties.

**Privacy Act** means the *Privacy Act 1988* (Cth) and any ancillary rules, guidelines, orders, directions, directives, codes of conduct or other instruments made or issued there under, as amended from time to time.

**Privacy Laws** means:

- (a) the Privacy Act;
- (b) the Australian Privacy Principles (or APPs) contained in schedule 1 Privacy Act; and

all other applicable laws, regulations, registered privacy codes, privacy policies and contractual terms in respect of the processing of Personal Information.

**Progressive or Periodic Supply** means a Taxable Supply that satisfies the requirements of section 156-5 GST Act.

**Project Plan** means a plan for completion of the project which may include milestones for the Services, including any project plan contemplated by clause 1.1(c) and clause 1.1(e).

**Related Body Corporate** has the meaning given to that term by section 9 Corporations Act.

**Request** means a request contemplated by clause 1.1.

**Services** means the services specified in specified in writing between the parties or in a Request (as applicable).

**Specifications** means the specifications contemplated by clause 1.1(d) or otherwise specified in the Request.

**Supplier** means the entity making the Supply.

**Term** means the period commencing on the Commencement Date and ending on the date that the Services are fully performed in accordance with clause 1.2.

**Variation** means

- (a) an increase, decrease, substitution or omission of the Services;
- (b) a change in character or quality of the Services; or
- (c) any change in the method, sequencing or timing of the Services including an acceleration to reduce the time required to complete the

## Terms and Conditions

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Services by the Completion Date or the date specified in the Project Plan,

that is evidenced in writing but does not include work, which is within the general scope of this agreement, necessary or reasonably inferred as required in order to perform the Services.

**WHS Legislation** means the *Work Health and Safety Act 2011* (Qld) and any related work health and safety act applicable in any jurisdiction in which the Services are supplied and their associated regulations, and includes applicable codes of practice and industry standards.

### 18.2 Interpretation

In this agreement:

- (a) the meaning of any general language is not restricted by any accompanying example, and the words 'includes', 'including', 'such as' or 'for example' (or similar phrases) do not limit what else might be included;
- (b) this agreement is not to be interpreted against the interests of a party merely because that party proposed this agreement or some provision in it or because that party relies on a provision of this agreement to protect itself; and
- (c) a reference to a party is a reference to the Contractor or the Principal, and a reference to the parties is a reference to both the Contractor and the Principal.