

Terms and Conditions

for services provided by
Lux Coastal Electrical Pty Ltd
(ABN 78 671 818 689)

Operative provisions

1. Definitions and interpretation

The Definitions and interpretation to be applied to this agreement are as contained in Schedule 1.

2. Parties

The parties to this agreement are Lux Coastal Electrical Pty Ltd trading as "Lux Coastal Electrical" (ABN 78 671 818 689) (LCE) and the Client.

3. Engagement of LCE

3.1 The Client hereby engages LCE to provide the Services to the Client, and LCE hereby accepts that engagement and agrees to provide the Services to the Client, in accordance with the terms of this agreement.

3.2 LCE's engagement with the Client will:

- (a) Commence on the Start Date; and
- (b) Continue indefinitely until the Services pursuant to the Quote are completed, or and until it is terminated in accordance with clause 14.

3.3 LCE is an independent contractor of the Client and nothing in this agreement constitutes a relationship of employer and employee, principal and agent, partnership or joint venture between the parties.

4. Provision of the Services

Quote

4.1 In respect of each individual engagement for LCE to provide Services to the Client under this agreement (each an **Engagement**), the parties must first agree on a Quote.

4.2 LCEs' obligation to provide the Services that are the subject of each Engagement does not arise unless and until the Client accepts the Quote by:

- (a) Signing the Quote, whether electronically or in hard copy; or
- (b) Continuing to request that LCE complete the Services for which the Quote has been provided, verbally or in writing; or
- (c) Otherwise indicating to LCE, through whatever format is used, that the Quote has been accepted, or that the

provision of the Services is to be commenced.

Services

4.3 The Client must review the Quote in detail and ensure it agrees with all items and materials provided therein before accepting the Quote in accordance with clause 4.2.

4.4 If there are any issues with the Services provided to the Client, the Client must:

- (a) Within seven (7) days of the Services being completed, outline in written detail what the issues consist of; and
- (b) Allow LCE to respond within seven (7) days.

4.5 If the Client does not provide LCE with any notification within the time specified in clause 4.4, then the Client is taken to have irrevocably accepted the Services, and LCE's obligations under this agreement will be discharged, and to the extent permitted by law:

- (a) The Client shall be deemed to have unreservedly accepted the Services in accordance with the Quote;
- (b) The Client shall release LCE and LCE shall have no liability to the Client for loss in respect of any difference between the Quote and the Services provided; and
- (c) The Client irrevocably waives all of its right to reject the provision of the Services referred to on the Quote.

4.6 Clause 4.5 shall not apply in relation to any defect, non-conformity or failure which would not have been apparent upon a reasonably diligent inspection at the time of completion.

Standards and Duties

4.7 (**Delivery**) Any date or time quoted for delivery of goods and performance of the Services is an estimate only, and LCE shall not be liable (and the Client holds LCE harmless) for any loss or damage, howsoever arising even if arising out of the negligence of LCE for failure to deliver the Services on or before the quoted, expected or anticipated date.

4.8 (**Address**) The address for delivery is as detailed in the Quote and/or on an email from the Client, as the Clients delivery address for the purpose of delivering the Services. The Client agrees that they will:

- (a) Do all things reasonably required to allow LCE safe, suitable and unrestricted access to the property; and
- (b) Indemnify LCE against any loss arising from events occurring while gaining access or loss arising from storing any goods at the Clients delivery address.

- 4.9 LCE may refuse to deliver the goods or Services if it determines that the Client has failed to perform its obligations under clause 4.10(a) and the Client indemnifies LCE against any loss arising from the refusal.
- 4.10 **(Third parties)** Delivery of goods or the Services may be delayed due to supply issues by third parties, the Client acknowledges and holds harmless LCE for any delays in delivery.
- 4.11 **(Information)** The Client must take reasonable steps to ensure that all information provided by the Client to LCE is true and correct. The Client agrees and acknowledges that LCE will rely on the information the Client provides in providing the Quote and completing the Services. The Client must inform LCE immediately if it becomes aware that any information it provided is incorrect and indemnifies LCE for any costs, loss or damage suffered as a result of such incorrect information.

Force majeure

- 4.12 If by reason of any fact, circumstance, matter or thing beyond the reasonable control of LCE, LCE is unable to perform in whole or in part any obligation under this agreement due to Force Majeure, LCE shall be relieved of that obligation under this agreement to the extent and for the period that it is so unable to perform and shall not be liable to the Client in respect of such liability.
- 4.13 If a Force Majeure event occurs in relation to a party, then:
- (a) that party must:
- (i) promptly give written notice to other party providing full details about that Force Majeure event and how it adversely affects that party's obligations under this agreement;
 - (ii) use its reasonable endeavours to minimise and remedy those adverse effects; and
 - (iii) promptly resume performance of the obligations adversely effected by that Force Majeure event (**Affected Obligations**) as soon as reasonably possible after that Force Majeure event ceases;
- (b) provided that that party complies with its obligations under clause 4.13(a):
- (i) that party is not liable to other party for any delay or failure to comply with the Affected Obligations, to the extent that

- the delay or failure is due to that Force Majeure event; and
- (ii) the Affected Obligations are suspended until that Force Majeure event ceases (and any date or period for the performance of an Affected Obligation is extended accordingly),
- except that nothing in this clause relieves that party from any liability or obligation to pay money to the other party under and in accordance with this agreement.

5. Pricing and invoicing

Pricing

- 5.1 Subject to clause 4.1, in respect of each Engagement, the parties have agreed that the total price for the relevant Services (exclusive of GST and Expenses, and including a deposit where relevant) (the **Fees**) will be, if as designated in the relevant Quote:
- (a) **(Not Stages)** the Services are not divided into Stages and:
- (i) LCE reserves the right to charge a 10% deposit payable upon acceptance of the Quote;
 - (ii) **(Fixed Price)** a Fixed Price applies – that Fixed Price payable in advance. LCE will invoice the Client for all relevant Charges after completion of all relevant work; or
 - (iii) **(Hourly Rate)** the Hourly Rate applies – calculated on the basis of the time spent by LCE in exclusively providing those Services on an hourly rate basis at the Hourly Rate and payable in arrears upon completion of the Services to the reasonable satisfaction of the Client, and LCE will invoice the Client by way of a invoices for all relevant Charges during the works and following completion of all relevant work (if required) to the reasonable satisfaction of the Client; or
- (b) **(Stages)** the Services are divided into Stages and:
- (i) A deposit of 10% is payable upon acceptance of the Quote for all jobs that are completed in Stages;

- (ii) **(Fixed Price per Stage)** Fixed Prices apply – the Fixed Price for each Stage payable in arrears. LCE will invoice the Client for all relevant Charges upon completion of each Stage, which must be paid in full before the next Stage can commence; or
- (iii) **(Hourly Rate)** the Hourly Rate applies – calculated on the basis of the time spent by LCE in exclusively providing those Services on an hourly rate basis at the Hourly Rate and payable in arrears at the end of each Stage respectively, and LCE will invoice the Client for all relevant Charges for each Stage prior to commencement of each Stage respectively (which must be paid prior to the commencement of the next Stage) to the reasonable satisfaction of the Client.

Out-of-Scope Work

- 5.2 Notwithstanding clause 5.1, the Client will pay LCE the hourly rate, as determined in LCE's sole discretion from time to time (the ***Out-of-Scope Rate***) for any Out-of-Scope Work and shall be liable for LCE's reasonable Charges.

Reimbursement of Expenses

- 5.3 The Client will pay all reasonable expenses properly and necessarily incurred by LCE in the course of providing the Services.

Risk

- 5.4 Unless otherwise agreed to in writing:
- (a) Risk in the materials and goods provided for the provision of the Services, shall pass to the Client at the time when the goods have been delivered to the Clients address;
 - (b) Risk in the semi-completed or completed Services at all times is borne by the Client (except to the extent that loss is caused by LCE's negligence) and LCE shall bear no liability for damage to the Services that is outside of LCE's reasonable control;
 - (c) LCE's Representative may inform the Client of certain post-completion requirements of the Services, that must be complied with for the product to form for its intended purposes. If the Client does not comply with such requirements, LCE shall not be liable for

any consequent damage or rectification costs; and

- (d) LCE is not liable for any damage to the goods or Services which the Client, or a third party has caused.

6. Payment

Timing of payments

- 6.1 The Client must pay to LCE all Charges properly invoiced pursuant to clause 5 in full on the date of the Client's receipt of the relevant invoice.
- 6.2 All payments are non-refundable, notwithstanding that there may be variations or cancellations subsequently made to the Quote.
- 6.3 LCE reserves the right to amend the timing and amounts of payments required in the Quote.
- 6.4 Time is of the essence for all payments noted in this clause 6.

Method of payment

- 6.5 All amounts to be paid by a party to another party under or in connection with this agreement must be paid by way of electronic funds transfer into the account nominated by the LCE from time to time.

No set-off or deduction

- 6.6 Unless otherwise agreed in writing and subject to clause 6.7, all amounts payable under or in connection with this agreement must be paid without set-off, counterclaim, withholding, deduction or claim to a lien whatsoever, whether or not any such set-off, counterclaim, withholding, deduction or lien arises under this agreement.
- 6.7 If a party is required by law to make a deduction or withholding in respect of any sum payable under or in connection with this agreement to another party, it must, at the same time as the sum that is the subject of the deduction or withholding is payable, make a payment to the other party of such additional amount as is required to ensure that the net amount received by the other party will equal the full amount that would have been received by it had no such deduction or withholding been required to be made.

Default interest

- 6.8 If the Client fails to make payment due under this Agreement or the Quote in the manner provided, then after the due date for payment, LCE shall be permitted to charge the Client interest at the Default Rate, on the amount outstanding until the date the sum is paid in full.
- 6.9 The Clients payment of interest at the Default Rate, is in addition to any other remedies that LCE may have in respect of such late payment.

7. Cancellations

- 7.1 The Client may not cancel any Quote that has been accepted, unless LCE provides their prior written consent (which may be withheld absolutely).
- 7.2 Where the Client's acceptance of a Quote is cancelled by the Client, the Client is liable for, and indemnifies LCE against, any Losses incurred by LCE as a result of the cancellation, including but not limited to direct costs, and loss of profit from other orders foregone as a result of the scheduling of the Quote which is subsequently cancelled.
- 7.3 If the Client cancels the Quote, after LCE has already ordered materials for the Quote, then the Client is liable for LCE's cost of such materials, which LCE is entitled to sole legal title and ownership of and may collect any goods from the Clients delivery address.

8. Variations

Clients variation

- 8.1 LCE must consent to any such Client variation request in writing before it comes into effect.
- 8.2 LCE may give or withhold their consent in their absolute discretion.
- 8.3 If the Client wishes to vary requirements in the Quote after a Quote has been prepared or after the placement of an order for materials pursuant to a Quote, LCE reserves the right to vary the Quote verbally or in writing to include any additional Charge in respect of any extra costs incurred due to the variation.
- 8.4 LCE has an automatic extension of time for the provision of the Services equal to the delay caused by the variation.

LCE's cancellation or variation

- 8.5 In certain circumstances, LCE may need to cancel or vary the Quote, for example where the materials required are not available or if there has been an error in the Quote.
- 8.6 If LCE needs to cancel or vary the Quote, LCE will endeavour to provide the Client with notification in writing as soon as reasonably practicable after the Client accepts the Quote.
- 8.7 The Client is responsible for any costs, expenses and Charges, reasonably incurred by LCE in cancelling or varying the Quote pursuant to clause 8.5 and 8.6.

9. GST

- 9.1 Unless expressly stated otherwise, any sum payable, or amount used in the calculation of a sum payable, under this agreement has been determined without regard to GST and must be increased on account of any GST payable under this clause 6.8.

- 9.2 If any party is required to pay, reimburse or indemnify another party for the whole or any part of any cost, expense, loss, liability or other amount that the other party has incurred or will incur in connection with this agreement, the amount must be reduced by the amount for which the other party can claim an Input Tax Credit, partial Input Tax Credit or other similar offset.

- 9.3 If, at any time, an adjustment event arises in respect of any supply made by a party under this agreement, a corresponding adjustment must be made between the parties in respect of any amount paid to the providing party and payments to give effect to the adjustment must be made and the providing party must issue an adjustment note.

10. Confidentiality

- 10.1 Subject to clause 10.2 a party must:
- (a) keep all Confidential Information confidential;
 - (b) not use or exploit any Confidential Information in any way except in the proper performance of the Services in accordance with this Agreement;
 - (c) not disclose or make available any Confidential Information in whole or in part to any third party;
 - (d) not copy, reduce to writing or otherwise record any Confidential Information except in the proper performance of the Services in accordance with this Agreement (and any such copies, reductions to writing and records will be the property of the Company).
- 10.2 The parties agree that the following are exceptions to this clause:
- (a) the party may disclose Confidential Information to those of its employees who have an actual need to know the Confidential Information but only in the proper provision of the Services and performance of its duties under this Agreement and provided that it informs such representatives of the confidential nature of the Confidential Information before such disclosure;
 - (b) the Confidential Information is or becomes generally available to the public, unless it became so generally available as a direct or indirect result of having been disclosed by any person; or
 - (c) the Confidential Information is required by law or court order to be disclosed.

11. Non-disparagement

- 11.1 Subject to clause 11.2, on and from the date of this agreement, each party must not:
- (a) make, express, transmit, speak, write, verbalise or otherwise communicate in any way (directly or indirectly, in any capacity or manner) any remark, comment, message, information, declaration, communication or other statement of any kind (whether verbal, in writing, electronically transferred or otherwise) that might reasonably be construed to be critical of, or derogatory or negative towards, any other party or any Representative of any other party; or
 - (b) cause, further, assist, solicit, encourage or knowingly permit any other person to do so, or support or participate in any other person doing so,
- and must take all reasonable steps to prevent its Representatives from doing so.
- 11.2 Clause 11.1 shall not prohibit any party from making any statement or disclosure as required by law or court order, provided that such party must:
- (a) promptly notify the other party in writing in advance of any such statement or disclosure, if reasonably practicable; and
 - (b) reasonably assist the other party in obtaining confidential treatment for, or avoiding or minimising the dissemination of, such statement or disclosure to the extent reasonably requested by any party.

12. Dispute resolution

- 12.1 The parties must comply with dispute resolution provisions before litigation or arbitration.
- 12.2 In the event of a dispute arising between the parties in respect of or in connection with this Agreement, the parties will, without prejudice to any other right or entitlement they may have pursuant to this Agreement or otherwise, explore whether the dispute can be resolved by agreement between them using informal dispute resolution techniques such as mediation, independent expert appraisal or any other alternative dispute resolution technique.
- 12.3 The rules governing any such technique adopted will be as agreed between the parties

or failing agreement as selected by the President of the Law Society of New South Wales.

- 12.4 The parties must comply with this clause, prior to any legal proceedings being commenced.

13. Liability, Indemnity and Remedies

Indemnity

- 13.1 The Client irrevocably indemnifies and covenants to hold LCE harmless from and against all Losses suffered by LCE (including third party claims on LCE) which arise in connection with any breach of this agreement by the Client and/or any negligent or other tortious conduct of the Client.

Indemnities continuing

- 13.2 Each indemnity contained in this agreement is an additional, separate, independent and continuing obligation that survives the termination of this agreement despite any settlement of account or other occurrence and remains in full force and effect until all money owing, contingently or otherwise, under the relevant indemnity has been paid in full.

Limitation of liability

- 13.3 **(Disclaimer of warranties)** To the maximum extent permitted by law and except as otherwise set out in this agreement, LCE and its Representatives expressly disclaim all conditions, representations and warranties (whether express or implied, statutory or otherwise) in relation to the Services, including any implied warranty of merchantability and fitness for a particular purpose.
- 13.4 **(Limitation of liability)** Where the conditions, representations and warranties referred to in clause 13.3 cannot be disclaimed or excluded by law, then the aggregate liability of LCE and its Representatives in respect of any Claim for Losses that the Client and/or any of its Representatives may bring against LCE in respect of the Services is limited, at LCEs' election, to one or a combination of the following remedies:
- (a) re-supply of the Services;
 - (b) payment of the costs of re-supply of the Services by a third party; or
 - (c) the refund of any amounts paid (either in full or part) by the Client to LCE under this agreement in respect of the Services.

Remedies for breach

- 13.5 Each party acknowledges and agrees that, in the event of any breach by the other party of the provisions of this agreement, damages may not be an adequate remedy and the first-mentioned party may, in addition to any other

remedies, obtain an injunction restraining any further violation by the other party and other equitable relief, together with recovery of costs.

14. Termination

Termination for breach

- 14.1 Each party may terminate this agreement immediately by notice to the other party if an Event of Default occurs in respect of the other party.
- 14.2 If a party commits any material or persistent breach of this agreement (the *Defaulting Party*), the other party may (but is not obliged to) provide the Defaulting Party with a notice of breach in writing. If the Defaulting Party fails to remedy the breach within 20 Business Days, or such other period as agreed, after the date of its receipt of such notice, the other party may terminate this agreement with immediate effect upon providing the Defaulting Party with a further notice of termination in writing.

Termination with notice

- 14.3 The Client may, without limitation to its rights under clause 14.2, terminate this agreement at any time by giving at least 2 weeks' written notice to LCE.
- 14.4 LCE may, without limitation to its rights under clause 14.2, terminate this agreement at any time by giving at least 2 weeks' notice to the Client. The Client may waive all or part of such notice period.

Effect of termination

- 14.5 In the event of any termination of this agreement in any circumstances and for any reason whatsoever:
- (a) the Client will remain liable to pay all Charges accrued up to and including the date of termination, whether or not invoiced prior to the date of termination (for the avoidance of doubt, in the event of any termination of this agreement by the Client, including Charges incurred by LCE for the purchase of materials for those Services prior to such termination); and
 - (b) LCE will send to the Client a final invoice for the balance of any unbilled Charges accrued up to and including the date of termination and clause 6 will apply in respect thereof.

During notice period

- 14.6 In the event that LCEs' engagement under this agreement is terminated upon notice by either party the Client may, at its absolute discretion,

require LCE to refrain from providing the Services during the relevant notice period.

Partially completed deliverables

- 14.7 Upon the cessation of LCEs' engagement under this agreement, subject to payment of all outstanding Charges by the Client in accordance with the terms of this agreement, LCE will deliver to the Client any and all partially completed deliverables that are included within the scope of the Services.

Legislation

- 14.8 If any provision of this agreement is otherwise unenforceable by virtue of the operation of the *Treasury Laws Amendment (2017 Enterprise Incentives No. 2) Act 2017* (Cth), upon the occurrence of an Insolvency Event in respect of a particular party, notwithstanding any other provision of this agreement, to the maximum extent permitted by law:

- (a) time is of the essence in respect of all obligations of that party under this agreement (whether falling due for performance before, upon or after the occurrence of that Insolvency Event); and
- (b) any breach of this agreement by that party (whether occurring before, upon or after the occurrence of that Insolvency Event), however minor, will (alone or, severally, in combination with the occurrence of that Insolvency Event) be deemed to be a material breach of this agreement,

and, if any such material breach has occurred or occurs, the parties acknowledge and agree that such provision will instead be enforceable by virtue of the occurrence of that material breach.

Accrued rights

- 14.9 Termination of this agreement will not affect any rights or liabilities that the parties have accrued under it prior to such termination.

Survival

- 14.10 The obligations of the parties under clause 10 (Confidentiality), clause 10.1 (Non-disparagement), clause 12 (Liability and remedies), and this clause 14 will survive the termination of this agreement.

15. Notices

- 15.1 A Notice given to a party under this agreement must be:
- (a) in writing in English;
 - (b) sent to the address or email address of the relevant party as the relevant party

may notify to the other party from time to time; and

- (c) delivered/sent either:
 - (i) personally;
 - (ii) by commercial courier;
 - (iii) by pre-paid post;
 - (iv) if the notice is to be served by post outside the country from which it is sent, by airmail; or
 - (v) by e-mail.

15.2 A notice is deemed to have been received:

- (a) if delivered personally, at the time of delivery;
- (b) if delivered by commercial courier, at the time of signature of the courier's receipt;
- (c) if sent by pre-paid post, 48 hours from the date of posting;
- (d) if sent by airmail, five days after the date of posting; or
- (e) if sent by e-mail, 4 hours after the sent time (as recorded on the sender's e-mail server), unless the sender receives a notice from the party's email server or internet service provider that the message has not been delivered to the party,

except that, if such deemed receipt is not within business hours (meaning 9:00 am to 5:30 pm on a Business Day), the notice will be deemed to have been received at the next commencement of business hours in the place of deemed receipt.

15.3 To prove service, it is sufficient to prove that:

- (a) in the case of post – that the envelope containing the notice was properly addressed and posted; and
- (b) in the case of email – the email was transmitted to the party's email server or internet service provider.

16. General

Third parties

- 16.1 This agreement is made for the benefit of the parties to it and their successors and permitted assigns and is not intended to benefit, or be enforceable by, anyone else.

Entire agreement

- 16.2 This agreement contains the entire understanding between the parties in relation to its subject matter and supersedes any previous arrangement, understanding or agreement relating to its subject matter. There are no express or implied conditions, warranties, promises, representations, obligations or other terms, written or oral, in relation to this

agreement other than those expressly stated in it or necessarily implied by statute.

Severability

- 16.3 If a provision or the application of a provision of this agreement is invalid, prohibited, void, illegal or unenforceable in a jurisdiction:
 - (a) it is to be read down or severed or be ineffective in that jurisdiction to the extent of the prohibition, invalidity voidness, illegality or unenforceability; and
 - (b) this will not affect the validity or enforceability of that provision in another jurisdiction, or the remaining provisions.

No waiver

- 16.4 Any waiver of a right under this agreement must be in writing and signed by the party granting the waiver.
- 16.5 No failure, delay, relaxation, forbearance or indulgence by a party in exercising any power or right conferred upon it under this agreement will operate as a waiver of that power or right in any subsequent matter or prejudice or restrict the rights of the party. No single or partial exercise of any power or right precludes any other or future exercise of it, or the exercise of any other power or right under this agreement.

Amendment

- 16.6 This agreement must not be varied except by written instrument executed by all of the parties.

Assignment

- 16.7 A party must not assign or otherwise transfer, create any charge, trust or other interest in, or otherwise deal in any other way with, any of its rights under this agreement without the prior written consent of the other party.

Governing law and jurisdiction

- 16.8 This agreement and any disputes or claims arising out of or in connection with its subject matter or formation (including non-contractual disputes or claims) are governed by, and shall be construed in accordance with, the laws of New South Wales, Australia.
- 16.9 The parties irrevocably agree that the courts of New South Wales, Australia have exclusive jurisdiction to settle any dispute or claim that arises out of, or in connection with, this agreement or its subject matter or formation (including non-contractual disputes or claims).

* * * *

Schedule 1 | Dictionary

Definitions

The following definitions apply in this agreement unless the context requires otherwise:

Business Day means a day (other than a Saturday, Sunday or public holiday) when banks in Sydney, New South Wales are open for business.

Charges means Fees and Expenses.

Claim means any actual, contingent, present or future claim, complaint, demand, proceeding, suit, litigation, action, cause of action or other legal recourse for any loss, restitution, equitable compensation, account, injunctive relief, specific performance or any other remedy of whatever nature and however arising, whether in contract, tort (including but not limited to negligence), under statute or otherwise.

Client means the party that will receive the Services as named in the Quote.

Confidential Information means all information relating to a party, any customer, clients, suppliers, distributors or joint venture partners, of the party and/or any of the business or financial affairs of any of them, including:

- (a) any information that is specifically designated by any of them as confidential;
- (b) any information which, by its nature, may reasonably be regarded as confidential;
- (c) any information relating to any:
 - (i) agreements, arrangements or terms of trade with any existing or prospective customers, clients, suppliers, distributors or joint venture partners or other contractual counterparties;
 - (ii) customers, clients, suppliers, distributors, joint venture partners, employees, technologies, products, services, proposals, market opportunities, business or product development plans, pricing, financial position or performance, capabilities, capacities, operations or processes; or
 - (iii) Intellectual Property Rights, of any of them; and
- (d) any note, calculation, conclusion, summary or other material derived or produced partly or wholly from any such information;
- (e) negotiations in relation to, and the terms of, this agreement,

whether that information is visual, oral, documentary, electronic, machine-readable tangible, intangible or any other form, relating to LCE or any Related Entity of LCE including but not limited to any specifications, formulae, know how, concepts, inventions, ideas, software, designs, copyright, trade secrets or any information relating to any business, products, markets, operations, processes, techniques, technology, forecasts, strategies or any other matter.

Control has the meaning given in Section 50AA of the Corporations Act.

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

Default Rate means a rate of interest of 14.00% per annum.

Engagement has the meaning given in clause 4.1, being each individual engagement for LCE to provide specific Services to the Client pursuant to a Quote.

Event of Default means any of the following on the part of a party:

- (a) committing any material or persistent breach of this agreement;
- (b) repudiating or, or, in the reasonable opinion of LCE, evincing an intention to repudiate, this agreement;
- (c) if the Client is a company, undergoing a change of control without the prior written consent of LCE;
- (d) misleading LCE in any material way; and/or
- (e) an Insolvency Event occurring in respect of the Client.

Expenses mean the expenses of LCE for which LCE is entitled to be reimbursed by the Client pursuant to clause 5.3.

Fees has the meaning given in clause 5.1.

Fixed Price means, in respect of a particular Engagement, if, as specified in the relevant Quote:

- (a) the Services are not divided into Stages, the price (exclusive of GST) specified in the relevant Quote for all of the Services; or
- (b) the Services are divided into Stages, the price (exclusive of GST) specified in the relevant Quote for each Stage respectively.

Force Majeure means any act, event or cause (other than lack of funds) which is beyond the reasonable control of the affected party, including:

- (a) Inclement weather;
- (b) Act of God, lightning, earthquake, cyclone, hurricane, tornado, storm, flood, tidal wave, landslide, explosion, fire, drought, water shortage or other natural disaster;

- (c) Plague, epidemic or pandemic, including restrictions for COVID-19;
- (d) Strike, lockout, industrial disturbance or industrial action;
- (e) War, military action, invasion, act of public enemy or act of terrorism;
- (f) Revolution, rebellion, riot, insurrection, civil commotion, civil disturbance, blockade, sabotage, vandalism or malicious damage; and
- (g) Anything outside of the reasonable control of LCE.

Governmental Agency means any government or governmental, semi-governmental, administrative, fiscal or judicial body, department, commission, authority, tribunal, agency or entity whether foreign, federal, state, territorial or local.

GST has the same meaning given to that expression in the GST Law.

GST Act means A New Tax System (Goods and Services Tax) Act 1999 (Cth), as in force from time to time.

GST Law has the same meaning given to that expression in the GST Act.

Hourly Rate means the hourly rate set out in the relevant Quote, if applicable.

Insolvency Event means, in respect of a party any of the following events or any analogous event:

- (a) where the party is an individual, that party commits an act of bankruptcy or is declared bankrupt or insolvent or that party's estate otherwise becomes liable to be dealt with under any law relating to bankruptcy or insolvency;
- (b) where the party is a company, a resolution is passed or court order made for the winding up of that party or an administrator is appointed to that party pursuant to any relevant law;
- (c) a receiver or manager or receiver and manager is appointed to the assets or undertaking of the party or any part thereof; or
- (d) the party is otherwise unable to pay its debts as and when they fall due.

In-Scope Work means work that has been expressly and specifically designated as being within the scope of the Services.

Input Tax Credit has the meaning given in the GST Law.

Losses means any loss, damage, debt, cost, charge, expense, fine, outgoing, penalty, diminution in value, deficiency or other liability, whether arising in contract, negligence, tort, equity, statute or otherwise; and that a party pays, suffers or incurs or is liable for, including all:

- (a) liabilities on account of Tax;
- (b) interest and other amounts payable to third parties;

- (c) legal and other professional fees and expenses on a full indemnity basis and other costs incurred in connection with investigating, defending or settling any Claim; and
- (d) all amounts paid in settlement of any Claim.

Notice means any notice or other communication by one party to the other party under the terms of this agreement including but not limited to any request, demand, consent, waiver or approval.

Out-of-Scope Rate has the meaning given in clause 5.2.

Out-of-Scope Work means any work that is not In-Scope Work, including the work specifically described as being out of scope in the Quote (if any).

Stage means any particular stage, phase, or segment of the Services as specified in the Quote or in writing between the parties.

Quote means, in respect of a particular Engagement, the document headed "Quote" or similar setting out the scope of the Services for that Engagement as provided by LCE to the Client and accepted by the parties in accordance with this agreement.

Related Entity has the meaning set out in the Corporations Act 2001 (Cth).

Representatives means, in respect of a person, the employees, officers, consultants, agents and professional advisers of that person.

Services means the services provided by LCE to the Client under this agreement in respect of each Engagement, as set out in the relevant Quote.

Stamp Duty means any stamp, transaction or registration duty or similar charge imposed by any Governmental Agency and includes any interest, fine, penalty, charge or other amount in respect of the above, but excludes any GST.

Start Date means the date specified as the start date in the Quote, or such other date as the parties may agree in writing.

Tax Acts means the Income Tax Assessment Act 1936 (Cth) and the Income Tax Assessment Act 1997 (Cth).

Tax or Taxation means:

- (a) any tax, levy, impost, deduction, charge, rate, compulsory loan, withholding or duty by whatever name called, levied, imposed or assessed under the Tax Acts or any other statute, ordinance or law by any Governmental Agency (including profits tax, property tax, interest tax, income tax, tax related to capital gains, tax related to the franking of dividends, bank account debits tax, fringe benefits tax, sales tax, payroll tax, superannuation guarantee charge, group or Pay as You Go withholding tax and land tax);
- (b) unless the context otherwise requires, Stamp Duty and GST; and

- (c) any interest, penalty, charge, fine or fee or other amount of any kind assessed, charged or imposed on or in respect of the above.

Interpretation

The following rules of interpretation apply in this agreement unless the context requires otherwise:

- (a) headings in this agreement are for convenience only and do not affect its interpretation or construction;
- (b) no rule of construction applies to the disadvantage of a party because this agreement is prepared by (or on behalf of) that party;
- (c) where any word or phrase is defined, any other part of speech or other grammatical form of that word or phrase has a cognate meaning;
- (d) a reference to a document (including this agreement) is a reference to that document (including any schedules and annexures) as amended, consolidated, supplemented, novated or replaced;
- (e) references to recitals, clauses, subclauses, paragraphs, annexures or schedules are references to recitals, clauses, subclauses, paragraphs, annexures and schedules of or to this agreement;
- (f) in each schedule to this agreement, a reference to a paragraph is a reference to a paragraph in that schedule;
- (g) a reference to any statute, proclamation, rule, code, regulation or ordinance includes any amendment, consolidation, modification, re-enactment or reprint of it or any statute, proclamation, rule, code, regulation or ordinance replacing it;
- (h) an expression importing a natural person includes any individual, corporation or other body corporate, partnership, trust or association and any Governmental Agency and that person's personal representatives, successors, permitted assigns, substitutes, executors and administrators;
- (i) a reference to writing includes any communication sent by post, facsimile or email;
- (j) a reference to time refers to time in Sydney, New South Wales and time is of the essence;
- (k) all monetary amounts are in Australian currency;
- (l) a reference to a "*liability*" includes a present, prospective, future or contingent liability;
- (m) the word "*month*" means calendar month and the word "*year*" means 12 calendar months;
- (n) the meaning of general words is not limited by specific examples introduced by "*include*",

"*includes*", "*including*", "*for example*", "*in particular*", "*such as*" or similar expressions;

- (o) a reference to a "*party*" is a reference to a party to this agreement and a reference to a "*third party*" is a reference to a person that is not a party to this agreement;
- (p) a reference to any thing is a reference to the whole and each part of it;
- (q) a reference to a group of persons is a reference to all of them collectively and to each of them individually;
- (r) words in the singular include the plural and vice versa; and
- (s) a reference to one gender includes a reference to the other genders.