

# Terms and Conditions

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<https://solvingproblems.com.au/terms-and-conditions/>

## 1. Definitions and interpretation

### 1.1 Definitions

In this document:

**Agreement** means this Agreement for the provision of the Services and/or Products by Solving Problems to the Customer.

**Billing Dispute** means a disagreement between the Customer and Solving Problems as to Charges as detailed in an invoice provided to the Customer by Solving Problems in accordance with clause 5.3 which is to be resolved in accordance with clause 5.5.

**Billing Dispute Notice** means a notice provided by the Customer to Solving Problems in accordance with clause 5.6.

**Business Day** means any week day not being a proclaimed State or Australian public holiday.

**Charges** means the charge(s) in respect of a Product and/or Service as set out or provided for in the applicable Quote or Proposal, as varied from time to time in accordance with this Agreement.

**Commencement Date** means date of commencement of provision of Services or Products by Solving Problems to the Customer.

**Controller** has the meaning it has in section 9 of the Corporations Act.

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

**Customer's Representative** means the person representing the Customer as provided in the Quote or Proposal.

**Customer Representative's Nominated Email Address** means the email address of the Customer's Representative as provided in the Quote or Proposal.

**Customer's Site** means locations or facilities of the Customer as set out in the Quote or Proposal at which Solving Problems provides the Products and/or Services.

**End User** means the operator of the Customer's Services and/or Products.

**Solving Problems**, means, when noting a party to which this Agreement binds Solving Problems and the Customer, Solving Problems Pty Limited as specified in a Proposal or Work Order.

**Force Majeure** means a circumstance beyond the reasonable control of the Parties which results in a Party being unable to observe or perform on time an obligation under this Agreement. Such circumstances include but are not limited to:

(a) acts of God, lightning strikes, earthquakes, floods, storms, explosions, fires and any natural disaster;

(b) acts of war, acts of public enemies, terrorism, riots, civil commotion, malicious damage, sabotage and revolution; and

(c) industrial strikes.

**GST** means the goods and services tax, as defined in "A New Tax System (Goods and Services Tax) Act 1999".

**Initial Term** means a period of three (3) years from the Commencement Date

**Insolvent Event** means:

(a) a Controller, receiver, manager, receiver and manager, or similar officer is appointed in respect of a person or any asset of a person;

(b) a liquidator or provisional liquidator is appointed in respect of a corporation;

(c) any application is made to a court for an order:

(i) appointing a person referred to in paragraph (a) or (b);

(ii) winding up a corporation; or

(iii) proposing or implementing a scheme of arrangement other than under a solvent scheme of arrangement pursuant to Part 5.1 of the Corporations Act;

(d) a moratorium of any debts of a person, a personal insolvency agreement or any other assignment, composition or arrangement (formal or informal) with a person's creditors, or any similar proceeding or arrangement by which the assets of a person are subjected conditionally or unconditionally to the control of that person's creditors or a trustee, is ordered declared or agreed to; or

(e) a person becomes, or admits in writing that it is or is declared to be or is taken under any applicable law to be, insolvent or unable to pay its debts.

Interest Rate means, at a particular date, 1.5% above the Commonwealth Bank Corporate Overdraft Reference Rate published on the first day of the month in which that particular date falls.

Office Hours means during standard office opening times which are defined here as during 8:30am to 5:30pm on a Business Day. Services performed outside of Office Hours will be charged at 1.5 x the standard Office Hours rate in the Quote or Proposal on a weekday, and 2 x

the standard Office Hours rate in the Quote or Proposal on a weekend and public holiday.

Order for Service means an order for any Service that the Customer has submitted to Solving Problems in an order form signed by the Customer which may be sent via email from the Customer's Representative's Nominated Email Address, by mail or via facsimile to such email address, street address or facsimile number (as appropriate) as may be notified by Solving Problems to the Customer from time to time, and which has been accepted by Solving Problems. If not stated in the Order for Service, all Services will be completed during Office Hours.

Party means a party to this Agreement.

Personnel means officers, employees, agents, sub-contractors and representatives.

Product Fees means any fees designated in the Quote or Proposal as payable by the Customer to Solving Problems in relation to the provision of the Product, together with any fees charged by Solving Problems under clauses 5.2 and 5.3.

Products means the provision of the goods and information detailed in the Quote or Proposal specified as being provided by Solving Problems to the Customer.

Proposal means the document this Agreement forms part of, which outlines the scope of the length of engagement, pricing, Products and Services to be provided by Solving Problems.

Quote means the quotation for providing Products and or Services to the Customer on a form marked quote.

Related Bodies Corporate means a body corporate that is a holding company of a second body corporate, a subsidiary of that second body corporate or a subsidiary of a holding company of a second body corporate.

Service Fees means any fees designated in the Quote or Proposal as payable by the Customer to Solving Problems in relation to the provision of the Services, together with any fees charged by Solving Problems under clauses 5.2 and 5.3.

Services means the provision of the services and information detailed in the Quote or Proposal specified as being provided by Solving Problems to the Customer.

Term means either the Initial Term, together with any extension to the Initial Term as agreed by the Parties, or any other such Term as has been defined an agreed in the Quote or Proposal. The Term as defined in the Quote or Proposal will take precedence over the Initial Term if so defined.

Work Order means the document used to detail the Products and or Services provided by Solving Problems to the Customer on a form marked work order.

## 1.2 Interpretation

In this Agreement:

- (a) headings are for convenience: and unless the context indicates otherwise:
- (b) an obligation or a liability assumed by, or a right conferred on, 2 or more persons binds or benefits them jointly and severally;
- (c) a word or phrase in the singular number includes the plural, a word or phrase in the plural number includes the singular, and a word indicating a gender includes every other gender;
- (d) if a word or phrase is given a defined meaning, any other part of speech or grammatical form of that word or phrase has a corresponding meaning;
- (e) a reference to:

(i) a party, clause or schedule, is a reference to a party, clause, or schedule to or of this Agreement;

(ii) a party includes that party's executors, administrators, successors and permitted assigns, including persons taking by way of novation:

(iii) an agreement includes any undertaking, deed, agreement and legally enforceable arrangement whether in writing or not;

(iv) a document (including this Agreement) includes a reference to all schedules exhibits attachments and annexures to it and is to that document as varied, novated, ratified or replaced from time to time;

(v) legislation or to a provision of legislation includes any consolidation, amendment, reenactment, substitute or replacement of or for it, and refers also to any regulation or statutory instrument issued or delegated legislation made under it;

(vi) a person includes an individual, the estate of an individual, a corporation, an authority, an unincorporated body, an association or joint venture (whether incorporated or unincorporated), a partnership and a trust;

(vii) a right includes a power, remedy, authority, discretion or benefit;

(viii) conduct includes an omission, statement or undertaking, whether in writing or not;

(f) the word "includes" in any form is not a word of limitation;

(g) the words "for example" or "such as" when introducing an example do not limit the meaning of the words to which the example relates to that example or to examples of a similar kind;

(h) a reference to a day is to a period of time commencing at midnight and ending 24 hours later;

(i) if a period of time dates from a given day or the day of an act or event it is to be calculated exclusive of that day; and

(j) all warranties, limitations and exclusions of liability and indemnities are continuing and survive termination or expiry of this Agreement;

(k) in the event of any inconsistency between the terms of this Agreement, the order of priority will be as per the precedence outlined in clause 19.11; and

(l) in the event, and to the extent, of any inconsistency or where intended to be a replacement rather than an addition, the most recent Order for Service will prevail over any earlier Order(s) for Service.

## 2. Products and/or Services

### 2.1 Provision of the Products and/or Services

Subject to the terms of this Agreement, Solving Problems will provide the Customer with the Products and/or Services as detailed within the relevant Quote and/or Proposal.

## 3. Ordering and Acceptance Procedures

### 3.1 Order

(a) On signing or accepting by email or fax of a Quote/Proposal the parties agree to be bound by its terms.

(b) A payment by the Customer in accordance with a Quote or Proposal will be deemed as entire and unequivocal acceptance of the respective Quote or Proposal.

### 3.2 Additional Orders

During the Term, the Customer may order an additional Products and/or Service at any time

from Solving Problems via a Quote or Proposal subject to Solving Problems acceptance.

## 4. Non-Performance

Nothing in this Agreement requires Solving Problems to provide the Services and/or Products where this would place Solving Problems in breach of any law or any contract to which it is a party, provided that Solving Problems has used reasonable endeavours (excluding the payment of money or provision of other valuable consideration) to obtain all necessary consents and authorisations from third parties concerning the provision of the Services and/or Products. If Solving Problems is unable to provide the Services and/or the Products without breaching a contract to which it is a party Solving Problems will use reasonable endeavours to provide services and/or products which are equivalent to the Services and/or Products and the Charge for that Service and/or Product will apply.

## 5. Payment and Expenses

### 5.1 Charges for the Services

The Charges payable by the Customer for Product and Services are payable in accordance with this clause 5 and as set out as in the relevant Quote and/or Proposal or as otherwise agreed in writing between the Parties from time to time.

### 5.2 Payment

The Customer must pay all amounts owing by the Customer under this Agreement by EFT, direct debit, cash, cheque or credit card (which will incur an additional charge) and without set-off, counterclaim or deduction to Solving Problems.

### 5.3 Time of Payment

(a) Subject to clause 5.5(c), the Customer must pay all Charges (and any other amounts payable

in accordance with this Agreement) as set out in Solving Problems' invoice within 10 days of the date of the invoice, or as otherwise agreed between the parties. If the Customer fails to pay Solving Problems the Charges (and any other payable amounts) within this period, the Customer at Solving Problems' discretion may be liable to pay interest on the outstanding amount at the Interest Rate, which shall accrue daily from the due date for payment until the date payment in full is received by Solving Problems.

(b) Solving Problems will invoice the Customer monthly for Charges due under this Agreement or at a time as specified in the Quote or Proposal.

(c) The Customer shall pay into Solving Problems' account upon acceptance of the Quote or Proposal any pre-payment requested by Solving Problems in the respective Quote or Proposal on account of future Product or Services Fees and Charges.

#### 5.4 Taxes

(a) All prices quoted for supplies made and/or to be made under this Agreement are in Australian dollars and are exclusive of GST.

(b) If GST is applicable to any supply made by Solving Problems under this Agreement, Solving Problems is entitled to add to the amount otherwise payable an additional amount for the applicable GST.

(c) The Customer hereby agrees to pay Solving Problems such GST charge in the same manner and at the same time as the payment for the relevant supply.

(d) Solving Problems will issue tax invoices to the Customer for the purposes of GST.

(e) If required by applicable law, Solving Problems will give the Customer an adjustment note arising from the adjustment event relating to a taxable supply made under, or in connection with, this Agreement within 30 days after the date Solving Problems becomes aware of the adjustment event.

#### 5.5 Billing Dispute

(a) In the event of a Billing Dispute, the Customer may, by written notice provided to Solving Problems in accordance with clause 5.6, invoke the dispute resolution mechanism in this clause 5.5.

(b) A Billing Dispute must be initiated only in good faith.

(c) The Customer must pay the undisputed portion

of the invoice containing the disputed amount in accordance with 5.3.

(d) Solving Problems is not obliged to accept a notice of a Billing Dispute in relation to an invoice unless the Customer has complied with clause 5.5(c).

(e) Subject to clauses 5.6 and 5.7, Solving Problems will investigate a Billing Dispute within thirty (30) days of receipt by Solving Problems of a Billing Dispute Notice in accordance with clause 5.6, and will report to the Customer on Solving Problems' findings as soon as possible after completing such investigation.

(f) If the Billing Dispute cannot be resolved by agreement, the disputed amount shall be dealt with in accordance with clause 18.

#### 5.6 Notification of Billing Dispute

(a) The Customer must notify Solving Problems in writing of any Billing Dispute within fifteen (15) days of the date of receipt of the invoice to

which the dispute relates (in relation to which time is of the essence).

(b) Solving Problems will send the Customer a notice of receipt of the Billing Dispute Notice upon receipt of a request for such notice from the Customer.

(c) The Customer shall provide further details of the Customer's Billing Dispute to Solving Problems as requested by Solving Problems.

#### 5.7 Notification of Disputed Invoices

In the event that the Customer does not:

(a) notify Solving Problems of a Billing Dispute within the time period specified in clause 5.6(a); or

(b) provide the requested additional information to Solving Problems within 14 days of receipt of Solving Problems' request for further information under clause 5.6(c); or

(c) pay amounts (excluding any disputed amounts) in the invoice to which the Billing Dispute relates by the due date,

(d) then all amounts in the invoice to which the Billing Dispute relates will be deemed to be agreed and accepted by the Customer and acknowledged as a debt due and payable in accordance with the terms of clause 5.3.

#### 5.8 Provision of Information and Goods

(a) Should any pre-payment be required as per clause 5.3(c) Solving Problems may not commence provision of any Services / Products before full pre-payment is received.

(b) Where, during the course of providing any Services, Solving Problems is to provide any goods or information to the Customer, Solving Problems may require the Customer to enter into a separate agreement in relation to the goods or information. Solving Problems will be deemed not to be in breach of this Agreement

where Solving Problems fails to meet any of its obligations as a direct or indirect result of the Customer refusing or delaying its entry into any such agreement for any reason.

#### 5.9 Late Payment and Suspension of Services

(a) Where the Customer is late in paying any Product Fees and/or Service Fees, in addition to being liable to pay interest to Solving Problems under clause 5.3, Solving Problems may at its sole discretion suspend its provision of any or all of the Products and/or Services to the Customer until all late Product Fees and/or Services Fees have been paid. Solving Problems will be deemed not to be in breach of this Agreement where any breach arises directly or indirectly from the suspension by Solving Problems of the Products and/or Services pursuant to this clause 5.9.

(b) Solving Problems shall be entitled to retain by way of lien any funds, Products, equipment of the Customer which are from time to time in its possession or under its control until all late Product Fees and/or Services Fees, interest and other monies due Solving Problems have been paid.

(c) The Customer agrees that Solving Problems is irrevocably authorised to take out any security against the property / products / information / equipment in which the client may have an interest, as Solving Problems considers appropriate, including a caveat or a mortgage.

### 6. Implied Terms

#### 6.1 Implied Terms Excluded

Subject to clause 6.2, any condition or warranty which would otherwise be implied in this Agreement is hereby excluded. Any warranty or term that any Products or Services will be fit for their intended purpose are hereby expressly excluded.

## 6.2 Statutory Limitation of Liability

Where legislation implies in this Agreement any condition or warranty, and that legislation avoids or prohibits provisions in a contract excluding or modifying the application of, or exercise of, or liability under, such condition or warranty, the condition or warranty will be deemed to be included in this Agreement. However, where the statute permits liability to be limited, the liability of Solving Problems for any breach of such condition or warranty will be limited, at the option of Solving Problems, to one of the following:

(a) if a defect relates to goods:

(i) the replacement of the goods or the supply of equivalent goods;

(ii) the repair of the goods;

(iii) the payment of the cost of replacing the goods or of acquiring equivalent goods; or

(iv) the payment of the cost of having the goods repaired; and

(b) if a defect relates to fixed price Services:

(i) the supplying of the Services again; or

(ii) the supplying of labour to rectify any defect in relation to the Services. Liability under this clause is limited to defects identified within 10 days of acceptance of the relevant deliverable by the Customer.

## 7. Warranties

### 7.1 Mutual Warranties

Each Party represents and warrants to the other Party that:

(a) it is duly incorporated under the jurisdiction of its incorporation, with all requisite corporate power and authority to own, lease and operate its assets and to carry on its business as

currently owned, leased, operated and conducted;

(b) it has full power and all necessary rights to enter into this Agreement and to perform its obligations according to the terms of this Agreement; and

(c) No Insolvent Event has occurred nor is subsisting or threatened.

## 8. Liabilities

### 8.1 Exclusion of Liability

(a) Neither Party will be liable to the other Party for any consequential, special, indirect or punitive loss, damage, cost or expense whatsoever (including loss of profits, loss of data, liability to third parties and any other expectation benefit).

(b) Solving Problems does not warrant that the Products and/or Services will be free of interruptions, delays, faults or errors. Solving Problems will not be responsible for any loss and/or damage to the Customer's business and/or the Customer's End User(s) that may result from any interruptions, delays, faults or errors in the supply of the Products and/or Services.

(c) Solving Problems has no liability to the Customer, any of the Customer's End Users or to any other person, for:

(i) the acts or omissions of any third party, including the suppliers which have been engaged by Solving Problems for the purpose of supplying or maintaining a Product and/or Service supplied to the Customer under this Agreement;

(ii) faults or defects in Products and/or Services which are caused by the Customer's own conduct or misuse or the conduct or misuse by the Customer's End Users;

(iii) any loss of revenue or profits, loss of data, loss of bargain and damage to reputation or for any form of indirect or consequential loss, whether in respect of breach of contract, equity, intended conduct, tort or otherwise, arising out of, or in connection with, the provision of the Products and/or Services or this Agreement;

(iv) faults or defects in the Products and/or Services that arise due to equipment or cabling owned or leased by the Customer or an End User or otherwise in the Customer's control or the Customer's End User's control; or

(v) faults or defects in the Products and/or Services that arise due to failure by the Customer or any third party (other than a contractor or agent engaged by Solving Problems) to appropriately maintain any equipment or cabling relevant to the supply of the Product and/or Services.

## 8.2 Limitation of Liability

To the extent Solving Problems' liability has not been limited by clause 6.2 or excluded by clause 8.1 above, Solving Problems' liability to the Customer, Customer's Personnel and Customer's End Users in connection with the Services or this Agreement, whether under contract, tort, statute or otherwise, shall be limited to a maximum aggregate amount of 100% of the fees paid by the Customer to Solving Problems in the preceding 3 months. The amount hereof does not include any amounts paid by the Customer to Solving Problems for Products supplied by any third party.

## 9. Title and Risk

### 9.1 Title and Risk: Products

(a) Subject to clause 9.1(b), risk in the Products shall pass to the Customer upon delivery of the Products to the Customer and title shall pass to

the Customer upon payment of relevant Product Fees.

(b) Title to Products which are software shall remain with the applicable licensor(s) at all times.

### 9.2 Title and Risk: Specifically Developed Items

(a) Any rights to any pre-existing intellectual property that is owned by a party (including third parties) prior to this Agreement or developed independently outside of this Agreement, is retained by that party, and nothing in this Agreement transfers any rights in that pre-existing intellectual property to any other party, nor is any party entitled to any commercial exploitation of any pre-existing intellectual property in any way.

(b) Title to in all goods, work, items, materials and information produced or developed by or on behalf of Solving Problems (whether under the Customer's direction or otherwise), shall vest remain vested in Solving Problems, on them being produced or developed.

(c) Solving Problems grants to the Customer an irrevocable single end-user license in respect of any item, title to which has passed to or vested in Solving Problems pursuant to clause 9.2(b), to use that item for the purposes of using or modifying as required, the Products or Services. The Customer is not granted any rights to on sell, sub-license or commercially exploit any Products or Services for future commercial purposes.

(d) The Customer grants to Solving Problems an irrevocable license in respect of any of the Customer's preexisting intellectual property incorporated into any goods, work, items, materials and information, to use that intellectual property in the course of or for the purpose of providing the Products or Services pursuant to this Agreement.



### 9.3 PPSA

(a) Solving Problems claims and the Customer grants to Solving Problems, a Purchase Money Security Interest ("PMSI") [as defined in the Personal Property Securities Act 2009 (Cth) ("PPSA")] in the Products to secure payment of the Product Fees.

(b) Customer agrees not to do or permit anything to be done which creates or allows another in, or dispose or part possession with, any Products.

(c) To the extent the law permits, Customer waives its rights to receive any notice that is required by any provision of the PPSA or any time period that must otherwise lapse under any law before a secured party exercises a right, power or remedy. If a notice period or lapse of time cannot be excluded under any law but the law provides that the notice period or lapse of time may be agreed, that period is one day or the minimum period the law allows to be agreed, whichever is the longer.

(d) However, nothing in this clause prohibits Solving Problems from giving a notice under the PPSA.

(e) The Customer agrees to take such further steps which may be required by Solving Problems to perfect its security interest under the PPSA (including obtaining written consents, supplying information, executing documents or granting/procuring access to premises).

(f) The Customer must not lodge any financing statement on the Personal Property Securities Register in connection with this Agreement or any Products or Services without the prior written consent of Solving Problems.

## 10. Delivery

### 10.1 Place of Delivery

Solving Problems shall deliver the products to the place of delivery designated by the Customer and agreed to by Solving Problems.

### 10.2 Delivery by Instalments

Solving Problems may, at its discretion, deliver the products by instalments in any sequence. Where the products are so delivered by instalments, each instalment shall be deemed to be the subject of a separate contract and no default or failure by Solving Problems in respect of any one or more instalments shall vitiate the contract in respect of products previously delivered or undelivered products.

### 10.3 Delay

Any dates quoted by Solving Problems for the delivery of the products are approximate only and shall not form part of this Agreement. Solving Problems shall not be liable for any delay in delivery of the Products and/or Services, howsoever caused.

## 11. Confidentiality

### 11.1 Keep Confidential Solving Problems Material

The Customer will keep confidential all information or material belonging to Solving Problems or in Solving Problems' possession, power or control and which is obtained as a result of Solving Problems providing the Services, attending Solving Problems' premises or otherwise. This obligation shall not apply to information or material which is lawfully within the public domain, or to the extent disclosure is required by law or subject to clause 11.3.

### 11.2 Keep Confidential Customer Material

Solving Problems will keep confidential that information or material provided by the Customer to Solving Problems, where at the time of its provision, the Customer advised Solving Problems in writing that the relevant

information or material was to be kept confidential. This obligation shall not apply to information or material which is lawfully within the public domain, or to the extent disclosure is required by law or subject to clause 11.3.

### 11.3 Use of Confidential Information

A Party may make a disclosure of the other Party's Confidential Information (including the terms of this Agreement), if that other Party reasonably believes it necessary, to:

(a) its suppliers of professional services (including, without limitation, legal and financial advisers, financiers and insurance carriers) if those persons undertake to keep such disclosed information confidential;

(b) for credit purposes where the persons to whom such information is disclosed undertake to keep the disclosed information confidential;

(c) any of its employees to whom it is necessary to disclose such information if that employee has agreed to keep the disclosed information confidential; or

(d) comply with any applicable law or requirement of any governmental agency. Solving Problems may also provide Customer details to its vendors to enable the provision of Services.

### 11.4 Uncertainty

If there is any uncertainty by any Party regarding whether any information or material is in the public domain, they will treat that information or material as confidential until the other Party advises that Party in writing that it is not confidential.

## 12. Related Parties

### 12.1 Solving Problems' Related Parties

Solving Problems may:

(a) Provide Products and/or Services to the Customer through the use of any of Solving Problems' Related Bodies Corporate; and/or

(b) Invoice the Customer via any of Solving Problems' Related Bodies Corporate. The Customer acknowledges that any debt the Customer owes under this Agreement is a debt owed to Solving Problems and that Solving Problems may take any necessary action in relation to any such debt notwithstanding that the right or obligation giving rise to that debt has been satisfied by a Related Body Corporate of Solving Problems or that the invoice for that debt has been provided to the Customer by a Related Body Corporate of Solving Problems.

### 12.2 The Customer's Related Parties

(a) Solving Problems may, upon the Customer's written request and on such conditions as Solving Problems reasonably requires, provide Products and/or Services to the Customer's Related Bodies Corporate.

(b) If Solving Problems agrees to provide Products and/or Services to such Related Bodies Corporate, the Customer and the Customer's Related Bodies Corporate are jointly and severally liable to Solving Problems for performance of the obligations (including payment obligations) in relation to those Products and/or Services under this Agreement.

## 13. Force Majeure

### 13.1 No Liability for Force Majeure

Solving Problems will not be liable for any delay or failure to perform its obligations under this Agreement if such failure or delay is due (whether partially or wholly) to Force Majeure.

### 13.2 Solving Problems to Notify Customer

Solving Problems will notify the Customer as soon as practicable of any anticipated delay due to Force Majeure. The performance of Solving

Problems' obligations under this Agreement will be suspended for the period of the delay due to Force Majeure.

### 13.3 Delay

If a delay due to Force Majeure exceeds forty (40) Business Days, the Customer may terminate this Agreement immediately on providing notice to Solving Problems. If the Customer gives such notice to Solving Problems:

- (a) Solving Problems shall refund moneys previously paid by the Customer under this Agreement for which no Services have been provided; and
- (b) The Customer shall pay Solving Problems a reasonable sum in relation to services rendered or costs and expenses incurred prior to termination (as reasonably determined by Solving Problems) for which no payment has been made by the Customer.

### 14. Access to Information and Site

The Customer will, at its own cost, provide Solving Problems with:

- (a) all reasonable information, aid and assistance;
- (b) access to the Customer's sites, computer hardware and software, personnel and company information; and
- (c) floor space, communications, equipment and any ancillary support services at the Customer's sites, reasonably required by Solving Problems in order to provide the Products and/or Services (Solving Problems consultants will have their own laptop personal computers when working at the Customer's premises).

### 15. Service Period and Termination

#### 15.1 Service Period

The Services shall commence on the Commencement Date and continue for the Term.

#### 15.2 Termination

Without limiting the generality of any other clause in this Agreement or the law concerning termination of contracts, a Party (in this clause "Notifying Party") may terminate this Agreement immediately by notice in writing to the other Party (in this clause "Defaulting Party") if:

- (a) the Defaulting Party commits a material breach of this Agreement and the Defaulting Party:
  - (i) fails to commence action to remedy the breach within thirty (30) days after the Defaulting Party has served notice in writing requiring it to do so;
- or
- (ii) having commenced action to remedy the breach, fails to complete that action within the time frame agreed between the Parties or, failing agreement, a time that is reasonable having referred to all of the circumstances;
- (b) any payment due pursuant to this Agreement remains unpaid for a period of thirty (30) Days;
- (c) the Defaulting Party becomes, threatens or resolves to become or is in jeopardy of becoming subject to any Insolvent Event;
- (d) the Defaulting Party, being a partnership, dissolves, threatens or resolves to dissolve or is in jeopardy of dissolving; or
- (e) the Defaulting Party ceases or threatens to cease conducting its business in the normal manner.

#### 15.3 Additional Rights

If this Agreement is terminated for any reason,

Solving Problems may:

- (a) retain any moneys paid to Solving Problems by the Customer;
- (b) invoice the Customer a reasonable sum for Services provided in respect of work which no sum has been previously invoiced;
- (c) retake possession of all property of Solving Problems or its sub-contractors in the possession of the Customer;
- (d) be regarded as discharged from any further obligations under this Agreement; and
- (e) pursue any additional or alternative remedies available to it. Immediately after the termination of this Agreement, Solving Problems will, return to the Customer all of the Customer's property in Solving Problems' possession.

#### 15.4 Unpaid Sums

- (a) On termination of this Agreement, all unpaid sums owing by each Party will become due and payable to the other Party, and the Party owing any money not paid within 14 Business Days of the date of termination will be liable to reimburse the other Party for all reasonable legal costs and disbursements incurred by the other Party in the recovery of such sums.
- (b) This clause 15.4 will survive the termination of this Agreement.

#### 16. Variation

##### 16.1 Variation of the Proposal

- (a) If at any time the Customer requests a variation to the Quote or Proposal which Solving Problems is prepared to provide, the Parties must within reasonable time review the then current Products and/or Services and Fees and agree to the revised Products and/or Services and Fees based on the estimated increased/decreased costs incurred to provide

the revised Products and/or Services to the Customer. Once the Parties have agreed the revised Products and/or Services and the revised Fees, the Parties must replace the Quote or Proposal accordingly.

- (b) Any additional work required by the Customer outside the scope of work set out in the Quote or Proposal must be the subject of a request for additional Products and/or Services as provided for in clause 3.2.

#### 16.2 Variation of this Agreement

Except as otherwise provided in this Agreement, the provisions of this Agreement will not be varied, except by agreement in writing signed by the Parties.

#### 17. Notices

Each communication (including each notice, consent, approval, request and demand) under or in connection with this Agreement:

- (a) must be in writing;
- (b) must be addressed as follows (or as otherwise notified by that Party to the other Party from time to time in writing):

for Solving Problems, Name: Solving Problems Pty Ltd

Address: PO BOX 388,  
Hillarys, WA, 6923

For the attention of: The Company Secretary  
for the Customer Name: as specified in the Work Order or Proposal

Address: as specified in the Work Order or Proposal

Email: Customer Representative's Nominated Email Address

For the attention of: the Customer representative as specified in the Work Order or Proposal

(c) must be signed by the Party making it or (on that Party's behalf) by its solicitor or any attorney, director, secretary or authorised agent of that Party;

(d) must be delivered by hand or posted by prepaid post to the address, or sent by fax to the

number, or by email to the email address of the addressee in accordance with this clause 17; and

(e) is taken to be received by the addressee:

(i) (in the case of prepaid post sent to an address within Australia) on the fifth day after the date of posting;

(ii) (in the case of prepaid post sent to an address in outside of Australia) on the tenth day after the date of posting;

(iii) (in the case of fax) at the time in the place to which it is sent equivalent to the time shown on the transmission confirmation report produced by the fax machine from which it was sent;

(iv) (in the case of delivery by hand) on delivery; and

(v) (in the case of email), on the day it is sent, unless the sender receives a message that the email was not delivered to the addressee.

but if the communication is taken to be received on a day that is not a business day or after 5.00 pm, it is taken to be received at 9.00 am on the next business day ("business day" meaning any week day not being a proclaimed State or Australian public, and is a day on which banks are open for business generally, in the place to which the communication is posted, sent or delivered).

## 18. Dispute Resolution

### 18.1 Notice

If there is a dispute between the Parties in respect of any matter concerning this Agreement including its interpretation or application or the determination of any matter required to be determined pursuant to any provision of this Agreement (in this clause "Dispute"), a Party may give to the other Party notice in writing specifying that a Dispute has arisen and identifying the subject matter of the Dispute in adequate detail (in this clause "Dispute Notice").

### 18.2 No Court Proceedings

If there is a Dispute between the Parties, no Party may commence any court proceedings relating to the Dispute unless it has complied with the provisions of this clause 18. A Party may at any time apply to a court of competent jurisdiction for any urgent interlocutory or declaratory relief, despite anything contained in this clause.

### 18.3 Meeting of Management

Within ten (10) Business Days after receipt of a Dispute Notice, each of the Parties must procure its managing director (or a delegate of the managing director agreed to by the other Party) to meet and negotiate in good faith with each other to resolve the Dispute expeditiously and informally.

### 18.4 Mediation

(a) If resolution of the Dispute is not achieved within ten (10) Business Days after the first convening of the meeting referred to in clause 18.3, each of the Parties must ensure that the Dispute is referred to mediation in Perth to be administered by the Australian Disputes Centre (or another mediation organisation agreed to by the Parties) to appoint a mediator to facilitate the negotiation by the Parties of a

resolution of the Dispute and arrange a conference between the Parties in the presence of that mediator with a view to the resolution of the Dispute.

(b) Each Party must ensure that its representatives attend at any conference referred to in this clause 18.4. At any mediation conference referred to in this clause 18.4, the mediation will be conducted under and in accordance with such procedures and rules as may be agreed between the Parties and, failing agreement, in accordance with the mediation rules of the mediation organisation in force at the date of the mediation.

(c) Evidence of anything said, documents presented, admissions made or matters raised in the course of any conference with the mediator will be confidential to the Parties and the mediator and will not, unless the Parties consent, be admissible in any subsequent litigation proceedings. Failing any agreement to the contrary between the Parties, the costs of the mediation will be shared equally between the Parties.

#### 18.5 Expert Determination

Subject to clause 18.1, if the resolution of the Dispute is not achieved within 30 days after the first mediation conference, a Party may submit to expert determination in accordance with The Resolution Institute Expert Determination Rules. A copy of the rules can be found at the following address:

<http://www.resolution.institute/documents/item/1845>. The expert's decision shall be final and binding on all Parties and will give rise to a legal right capable of enforcement by the courts.

#### 18.6 Court Proceedings

Subject to clause 18.1, if the resolution of the Dispute is not achieved within thirty (30) days in

accordance with clause 18.4 and/or clause 18.5, either Party may commence court proceedings.

#### 18.7 Continuing Obligations

Despite the submission of a Dispute to the procedure under this clause 18, the Parties must continue to perform their obligations under this Agreement.

This clause 18 will survive termination of this Agreement.

### 19. General Provisions

#### 19.1 Assignment

The Customer will not dispose of, assign or encumber any right or obligation under this Agreement, including this Agreement, without Solving Problems' prior written consent, which shall not be unreasonably withheld.

#### 19.2 Entire Agreement

This Agreement embodies the entire understanding and agreement between the Parties as to the subject matter of this Agreement and supersedes any prior written or other arrangement of the Parties.

#### 19.3 Severability

Any provision of this Agreement that is illegal, prohibited or unenforceable in any jurisdiction is ineffective in that jurisdiction only to the extent of the illegality, prohibition or unenforceability. That does not invalidate the remaining provisions of this Agreement or affect the legality, validity or enforceability of that provision in any other jurisdiction. If any provision or part thereof of this Agreement is made ineffective in any jurisdiction in accordance with this clause 19.4, then that provision will be replaced, to the extent legally possible, with a legal, enforceable, and valid provision that is similar in tenor to the ineffective provision.

#### 19.4 Governing Law

This Agreement is governed by and takes effect and will be construed in accordance with the laws of Western Australia and the Parties irrevocably and unconditionally submit to the non-exclusive jurisdiction of the courts of Western Australia.

#### 19.5 Waiver

(a) Failure to exercise or enforce or a delay in exercising or enforcing or the partial exercise or enforcement, of a right provided by law or under this Agreement by a Party does not preclude or operate as a waiver of the exercise or enforcement, or further exercise or enforcement of that or any other right provided by law or under this Agreement.

(b) A waiver or consent given by a Party under this Agreement is only effective and binding on that Party if it is given or confirmed in writing by that Party.

(c) No waiver of a breach of a term of this Agreement operates as a waiver of another breach of that term or of a breach of any other term of this Agreement.

#### 19.6 Further Acts and Documents

Each Party must promptly do all further acts and execute and deliver all further documents (in form and content reasonably satisfactory to that Party) required by law or reasonably requested by the other Party to give effect to this Agreement.

#### 19.7 Consent

A consent required under this Agreement from a Party may not be unreasonably withheld, unless this Agreement expressly provides otherwise.

#### 19.8 No Representation or Reliance

(a) Each Party acknowledges that neither the other Party (nor any person acting on a Party's behalf) has made any representation or other inducement to it to enter into this Agreement except for representations or inducements expressly set out in this Agreement.

(b) Each Party acknowledges and confirms that it does not enter into this Agreement in reliance on any representation or other inducement by or on behalf of the other Party, except for representations or inducements expressly set out in this Agreement.

#### 19.9 Stamp Duties

The Customer must pay all stamp duties and any related fines and penalties in respect of this Agreement or the performance of this Agreement.

#### 19.11 Order of Precedence

It is to be noted that any conflicting terms should be read in the following order:

(a) Any Master Services Agreement signed between the Parties;

(b) Schedules associated with the aforementioned signed Master Services Agreement;

(c) Terms and conditions contained in any Quote or Proposal;

(b) These terms and conditions.

-----End of document-----