

Terms of Agreement for Professional Services

PART 1 - DEFINITIONS

Unless the context otherwise requires, then in construing the Agreement:

"Agreement" means the entire contractual agreement between the parties and includes these Terms of Agreement, any variation, and any other documents identified in the letter of acceptance as forming part of the Agreement.

"Consultant" means Interfuze Pty Ltd (ABN 99 630 040 863)

"Subconsultant" means and includes:

(a) Any person, firm, group or company engaged by the Consultant or with whom the Consultant may arrange for any work to be performed for the Client and

(b) Any person who is now or hereafter a servant, agent or subcontractor of the Subconsultant, and includes the successors and assigns of the Subconsultant.

"Client" means the party with whom the consultant contracts to provide Services.

"Project" means the work described in the Agreement in respect of which the Client has engaged the Consultant to provide Services.

"the Services" means those professional services specifically described in the Proposal.

"the Proposal" means the letters or other documents prepared by the Consultant and submitted to the Client to describe the scope of work to be undertaken, the personnel and equipment proposed to be utilised, and the amount or method of calculation of the fee and reimbursable expenses.

"Bespoke Software" means the software to be developed by the Consultant.

"The Hardware" means the hardware (if any) together with any relevant documentation and manuals which the Consultant has agreed to supply to the Client.

"Licensed Software" means the third party software (if any) including any Consultants software for which it holds intellectual property rights for.

"The Software" means the Licensed Software and the Bespoke Software.

PART 2 - ROLE OF THE CONSULTANT

2.1 Professional Standard of Care

In performing the Services, the Consultant shall exercise the degree of skill, care and diligence normally exercised by members of the Consultant's profession performing services of similar nature, in accordance with the ethics of the Consultant's profession.

2.2 Professional Duty of Independent Judgement

If the Consultant is required to exercise his professional judgement between the Client and a third party with whom the Client has a contract then he shall do so independently and as required by the terms of that contract.

2.3 Knowledge of Client Requirements

The Consultant shall use all reasonable efforts to inform himself of the Client's requirements for the Project and for

that purpose he shall consult the Client throughout the performance of the Services.

2.4 Additional Information Documents and Other Particulars

If the Consultant considers that the information, documents and other particulars made available to him by the Client are not sufficient to enable the Consultant to provide the Services in accordance with this Agreement the Consultant may advise the Client who shall then provide such further assistance, information, or other particulars as necessary, in the circumstances

2.5 Notice of Matters Likely to Change Scope or Timing of Services

If the Consultant becomes aware of any matter which will change or which has changed the scope or timing of the Services then he will give notice to the Client and the notice will contain, as far as practicable in the circumstances, particulars of the change.

2.6 Timely Provision of Services

The Consultant shall perform the Services in a timely manner to the extent that it is within his control to do so.

PART 3 - ROLE OF THE CLIENT

3.1 Provide Information, Documents and Other Particulars

The Client shall as soon as practicable make available to the Consultant all information documents and other particulars relating to the Client's requirements for the Project.

3.2 Arrange Access to the Site and Other Lands

The Client shall as soon as practicable make arrangements to enable the Consultant to enter upon the Site and other lands as necessary to enable the Consultant to perform the Services.

3.3 Obtain All Necessary Approvals

Unless the parties specifically agree otherwise, the Client shall as soon as practicable obtain all approvals, authorities, licences and permits which are required from governmental, municipal or other responsible authorities for the lawful implementation and completion of the Project.

3.4 Provide Additional Professional Services

The Client agrees that the Services do not include any services that are properly carried out by other professions such as legal or accounting and if other such professional services are required the Consultant shall obtain these services after consultation with the Client and at the Client's cost.

3.5 Supply Necessary Equipment and Facilities

The Client shall make available to the Consultant at the place and at the time specified in the Proposal the equipment and facilities specified in the Proposal.

3.6 Appoint a Representative

The Client shall appoint a person to act as his representative and give written notice to the Consultant of the name of the person so appointed.

The Client agrees that the person appointed shall have authority to act on behalf of the Client for all purposes in connection with this Agreement.

3.7 Give Notice of Matters Likely to Change Scope or Timing of Services

If the Client becomes aware of any matter, which may change the scope or timing of the Services or the Project then the Client will give written notice to the Consultant.

3.8 Comply With Additional Special Obligations

The Client shall carry out the additional special obligations set out in the Proposal.

3.9 Cooperate with Consultant

The Client shall co-operate with the Consultant and shall not interfere with or obstruct the proper performance of the Services.

PART 4 - PAYMENT TO CONSULTANT FOR SERVICES

4.1 Client to Make Payment

In consideration of the promise by the Consultant to perform the Services the Client promises to pay the Consultant the Fee and the Reimbursable Expenses in accordance with the Proposal at the times and in the manner set out in this Agreement.

4.2 Amount or the Method of Calculation of Fee

The amount or the method of calculation of the Fee for the Services is set out in the Proposal.

4.3 Reimbursable Expenses

In addition to the payment referred to in Clause 4.2 the Client agrees to indemnify the Consultant for all costs and expenses incurred by the Consultant in connection with the matters set out in the Proposal.

4.4 Timing of Payment

At or about the end of each payment period specified in the Proposal the Consultant will give to the Client an account for the Services performed, and for reimbursable expenses incurred, during the period. The Client shall pay the full amount owing in respect of each account by the due date for payment stated on the account. Unless otherwise agreed, the due date for payment shall be fourteen days after the date of issue of the account.

4.5 Failure of Client to Make Payment by Due Date

In the event that the Client fails to make payment by the due date, the Consultant reserves the right to cease work, or to withhold delivering up to the Client the documentation of any work which has been carried out. In the event that the Consultant exercises this right, then the Project shall be considered to be delayed, and Clause 4.8 shall apply.

4.6 Interest on Overdue Payment

The Client agrees that in addition to all other rights and remedies of the Consultant if the Client fails to pay all moneys as and when due, the Consultant shall be entitled to payment of interest on overdue accounts. The interest shall be calculated on daily balances at the current CBA Corporate Overdraft Reference Rate plus 2% per annum on all moneys which are not paid by the due date.

4.7 Disputed Claims

If the Client disputes the whole or any portion of the amount claimed in an account submitted by the Consultant he shall pay that portion of the amount stated in the account which is not in dispute and he shall notify the Consultant in writing of the reasons for disputing the account. If the parties are unable to reach agreement within seven (7) days of the Client's notice, the dispute may be determined in accordance with this Agreement. If it is resolved that some or all of the amount in dispute ought properly to have been paid at the time it was first claimed, then the Client shall

pay the amount finally resolved together with interest on that amount in accordance with Clause 4.6.

4.8 Payment of Costs if Project Delayed

If the performance of the Services is delayed beyond a reasonable period for any reason other than a breach of the Agreement by the Consultant, the Client shall be liable to the Consultant for loss and damage suffered, including loss of profits and consequential costs and expenses incurred as a result of the delay.

4.9 Effect of Termination on Right to Payment

If the engagement of the Consultant is terminated by any reason other than for breach of this Agreement by the Consultant, the Consultant shall be entitled to pro rata payment for the services carried out and the Client shall be liable to the Consultant for loss and damage suffered, including loss of profits and consequential costs and expenses incurred as a result of the termination.

4.10 Effect of Change of Circumstances.

The Fee for the Services performed under this Agreement has been calculated on the assumption of both parties that the Services are to be provided under circumstances normally pertaining to the carrying out of the type of project in question. The parties agree that if the Consultant is required to perform the Services in circumstances other than those normally pertaining to such a project or if there is a change in the scope, timing or order of the services, then the Consultant shall be entitled to additional payment of an amount which is reasonable in the circumstances.

4.11 Changes in Laws

If after the date of this Agreement there is any change to the laws, by-laws, regulations or ordinances of the Commonwealth of Australia or a State or Territory of Australia or any statutory authority and that change directly or indirectly increases or decreases the costs or reimbursable expenses incurred by the Consultant in performing the Services then the fee and reimbursable expenses otherwise payable to the Consultant under this Agreement shall be increased or decreased accordingly.

PART 5 - SCOPE OF LIABILITY

5.1 Direct and Indirect Loss

The liability to the Client of the Consultant and any subconsultants engaged by the Consultant, howsoever arising, whether out of the performance or non-performance of the Services, whether under the law of contract, tort or otherwise, shall be limited to the cost of rectifying the works comprising the Project. Under no circumstances, whether as a result of any act, neglect or default or otherwise howsoever, shall the Consultant have any liability for or in relation to any work, reports, information, plans, designs or specifications supplied or performed by any third party, including any subconsultant or any third party engaged by or at the suggestion of the Consultant.

The Consultant and any subconsultants engaged by the Consultant shall not be liable to the Client for any indirect consequential loss or damages or loss of profits.

5.2 Maximum Amount of Liability

The maximum liability to the Client of the Consultant and any subconsultants engaged by the Consultant, howsoever arising, whether out of the performance or non-performance of the Services, whether under the law of contract, tort, or otherwise shall be the actual fees paid for the Services but not exceeding \$50,000 unless some other amount is agreed in writing.

The Client shall indemnify and keep indemnified the Consultant and any subconsultants engaged by the Consultant from any suit, cost, demand or claim for damage which exceeds the maximum amount referred to above.

5.3 Third Party Claims

The Client will indemnify and hold the Consultant and the Consultant's subconsultants harmless against all claims, costs, suits and demands by third parties howsoever arising whether in respect of the Services or in respect of the performance or non performance of the Services or otherwise.

5.4 Duration of Liability

The Consultant and the Consultant's subconsultants shall be deemed to have been discharged from all liability in respect of the Services, whether under the law of contract, tort or otherwise, on the expiration of one year from the date of invoice in respect of the final amount claimed by the Consultant pursuant to Part 4, and the Client (and persons claiming through or under, the Client) shall not be entitled to commence any action or claim whatsoever against the Consultant or the Consultant's subconsultants (or any employee of the Consultant or the Consultant's subconsultants) in respect of the Services after that date.

5.5 Estimates of Project Cost

If the Services include giving to the Client an estimate of the likely costs for the project the Consultant warrants only that he will exercise the reasonable skill care and diligence of a consulting engineer in the preparation of his professional opinion of those costs.

5.6 Extent of Warranty

The Consultant does not give any warranty nor accept any liability in relation to the performance or non-performance of the Services except to the extent, if any, required by law or specifically provided for in this Agreement, if apart from this Clause any warranty would be implied whether by law, custom or otherwise that warranty is to the full extent permitted by law hereby excluded. Nothing herein contained shall be read or applied so as to purport to exclude, restrict or modify or have the effect of excluding, restricting or modifying the application in relation to the supply of any goods or services pursuant to this Agreement of all or any of the provisions of Part V of the Trade Practices Act 1974 (as amended) or any relevant State Act or Territorial Ordinance which by law cannot be excluded restricted or modified.

PART 6 - COPYRIGHT AND USE OF DOCUMENTS

6.1 Copyright

Copyright in all drawings, reports, specifications, bills of quantities, calculations and other documents provided by the Consultant in connection with Project shall remain vested in the Consultant.

6.2 Clients Right to Use Documents

The Client shall have a licence to use the documents referred to in Clause 6.1 for the purpose of completing the Project; however, the Client shall not use nor make copies of such documents in connection with any work other than work comprised in The Project unless express approval is given in advance by the Consultant.

6.3 Publication of Articles

The Consultant may with the consent of the Client publish, either alone or in conjunction with others, articles, photographs and other illustrations relating to the project.

6.4 Patents and Trademarks

(1) If during the course of providing the Services the Consultant develops, discovers, or first reduces to practice a concept, product or process which is capable of being patented, then such concept, product or process shall be and remain the property of the Consultant and the Client shall not use, infringe or otherwise appropriate the same without first obtaining the written consent of the Consultant. However, the Client shall be entitled to a royalty free license to use the same during the life of the works comprising the Project.

(2) The Client shall be bound by and shall at all times comply with the Software license(s) of any of the Licensed Software that is provided by the Consultant for the Project.

(3) In consideration of the payment by the Client of the charges to be levied by the Consultant as detailed in the Proposal, the Consultant hereby undertakes to design and develop the Bespoke Software [for use with the Hardware] and to assign to the Client all Intellectual Property Rights in the Bespoke Software other than those owned by or otherwise in the possession of the Consultant prior to its entering into the Agreement.

PART 7 - DISPUTE DETERMINATION

7.1 Conciliation

Any dispute, controversy or claim arising out of or relating to this Agreement or the breach, termination or invalidity thereof shall first be the subject of conciliation administered by the Australian Commercial Disputes Centre Limited (ACDC) conducted and held in accordance with the Conciliation Rules of ACDC in force at the date of this Agreement. Any conciliation meetings and proceedings shall be held in the capital city of the State or Territory in which the Agreement is made.

7.2 Arbitration

In the event that the dispute, controversy or claim has not been resolved within 28 days (or such other period as agreed to in writing between the parties hereto) after the appointment of the conciliator by the parties hereto, the dispute, controversy or claim shall be submitted to arbitration, administered by ACDC. The arbitrator shall be agreed between the parties from a panel suggested by ACDC or failing agreement an arbitrator appointed by the Secretary General of ACDC. Subject to the foregoing, arbitration shall be conducted and held in accordance with and subject to the laws of the State or Territory in which the Agreement is made. The arbitrator shall not be the same person as the conciliator. Any arbitration meetings and proceedings shall be held in the capital city of the State or Territory in which the Agreement is made.

7.3 Costs of Arbitration

The costs of any arbitration proceedings shall be borne as the arbitrator may direct.

PART 8 - TERMINATION OF SERVICES

8.1 Termination by Client

The Client may by notice in writing served on the Consultant terminate the Client's obligations under this Agreement:-

(1) If the Consultant is in breach of the terms of this Agreement and the breach has not been remedied within twenty-eight (28) days (or longer period as the Client may allow) of the service by the Client on the Consultant of a notice requiring the breach to be remedied;

or

(2) If the Client serves on the Consultant a notice requiring that this Agreement be terminated on a date specified in the notice being not less than sixty (60) days after the date of service of the notice.

8.2 Termination by Consultant

The Consultant may by notice in writing served on the Client terminate the Consultant's obligations under the Agreement:-

(1) If the Client is in breach of any of the terms and conditions of the Agreement; or

(2) If the Client is in breach of the terms and conditions of any other Part of the Agreement and the breach has not been remedied within twenty-eight (28) days (or such longer period as the Consultant may allow) of the service by the Consultant on the Client of a notice requiring the breach to be remedied; or

(3) If the Consultant serves on the Client a notice requiring that the Agreement be terminated on a date specified in the notice being not less than sixty (60) days after the date of service of the notice.

8.3 Termination Not to Affect Rights in Respect Of Prior Breaches

Termination shall be without prejudice to any claim, which either party may have against the other in respect of any breach of the terms of the Agreement, which occurred prior to the date of termination.

PART 9 - GENERAL MATTERS

9.1 Transfer and Assignment

(1) The Consultant and the Client each binds himself and his partners, successors, executors, administrators, assigns and legal representatives to the other party to this Agreement and to the partners, successors executors, administrators, assigns and legal representatives of the other party in respect of all covenants and obligations of this Agreement.

(2) Neither the Consultant nor the Client shall assign, sublet or transfer any right or obligation under the Agreement without the written consent of the other party. Unless specifically stated to the contrary in any written consent to an assignment, no assignment shall release or discharge the assignor from any obligation under the Agreement.

(3) The Consultant may at any time change the structure of his practice to or from that of an incorporated company in accordance with the rules of the Association of Consulting Engineers, Australia. In such a case the present Agreement shall be deemed to have been replaced by an identical agreement between the Client and the Consultant's practice in its new form.

(4) Nothing contained in this Clause shall prevent the Consultant from employing within his fee such persons or companies as he may deem appropriate to assist him in the performance of the Agreement.

9.2 Severability

If any provision of this Agreement shall be determined by any statute or any court having jurisdiction in relation thereto to be illegal invalid void or voidable the legality or validity of the remainder of this Agreement shall not be affected and the illegal, invalid, void or voidable provision shall be deemed deleted herefrom to the same extent and effect as if never incorporated herein but the remainder of this Agreement shall continue in full force and effect.

9.3 Subconsultants

If circumstances arise which require the services of a specialist or expertise outside the field of the Consultant the Consultant may with the prior approval of the Client engage the appropriate Subconsultant. The Subconsultant shall be engaged at the Client's expense and on his behalf. The Client's approval shall not be unreasonably withheld

9.4 Notices

A notice purported to be served under this Agreement shall be deemed to have been properly served if the same is in writing and is sent to the usual business address of the recipient by certified mail, telex message, personal delivery for which a receipt is obtained, or facsimile for which acknowledgment of receipt has been obtained.

9.5 Moneys

All reference to moneys in the Agreement shall be deemed to be references to Australian currency and all moneys to be paid shall be paid to the relevant party in places he may reasonably nominate in writing.

9.6 Governing Law

The Agreement and all arbitrations arising out of it is governed by the laws of the State or Territory of the Consultant's office as set out in the Proposal and the parties submit to the jurisdiction of courts of that State or Territory.

9.7 Headings

Headings have been inserted for guidance only and do not form part of the Agreement.

Based on "Guideline Terms of Agreement between Client and Consulting Engineer for Professional Services" prepared by the Association of Consulting Engineers Australia and modified by Interfuze Pty Ltd.