



COMMERCIAL IN CONFIDENCE

Terms & Conditions of Engagement

Last Updated October 2026

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TERMS AND CONDITIONS OF ENGAGEMENT

These Standard Terms and Conditions (Terms) apply to all management consulting and related services provided by Emergent Consulting Pty Ltd (ACN 608 733 679) of Level 1, 63-73 Ann Street, Surry Hills, NSW 2010 (Emergent Consulting).

In these Terms, Client means the entity named as the client in any proposal, statement of work, engagement letter or other ordering document issued by Emergent Consulting that incorporates or refers to these Terms (Engagement Document). By signing an Engagement Document, the Client agrees to be bound by these Terms.

Definitions

The following definitions apply to this agreement (unless the context otherwise requires):

'Acceptance Test' means any acceptance tests detailed or referred to in the Schedule (Acceptance Tests) or agreed in writing, which may include tests in a production environment, tests of integration, link testing, security testing, user acceptance testing and user performance testing. Acceptance Testing has a corresponding meaning.

'Agreement' means this agreement and any Schedule(s) as amended from time to time;

'Background IPR' means a party's IPR that existed prior to, or created independently of, this Agreement.

'Business Day' means a day that is not a Saturday, Sunday or public holiday in the state of South Australia;

'Client Data' means all data and information relating to the Client, and its operations, facilities, customers, personnel, assets and programs (including, but not limited to, financial and accounting data, reconciliations, summaries, client lists, sales data, employee data, business analytics, personal information) in whatever form that information may exist and whether entered into, stored in, generated by or processed through software or equipment by or on behalf of the Client.

'Commencement Date' means the date the Services are to commence as specified in Section 10 – Assumptions or such other date as determined by Emergent.

'Completion Date' means the date on which Emergent Consulting has completed delivering the Services to the Client.

'Confidential Information' means and includes any information that by its nature is confidential, is designated by a party as confidential, or the recipient knows or ought to know is confidential but does not include information which:

- a) is or becomes public knowledge other than by breach of this Agreement;
- b) was known by the recipient as at the date of this Agreement; or
- c) has been independently developed or acquired by the recipient without reference to the disclosing party's Confidential Information where the burden of establishing any of the exceptions referred to in (a) to (c) will be upon the recipient;

'Deliverables' means any Material that is created during the performance of the Services and delivered to the Client but does not include the Software.

'End User Licence Agreement' or 'EULA' means the agreement between the third party owning (or otherwise having the rights, title and interest in) the Software and the Client.

'Exclusions' means those exclusions to the Services specified in Section 9.

'Fee' means the money payable to Emergent Consulting for the Services and any incidental costs as set out in Section 8.

'Force Majeure Event' means an event beyond the control of the parties, and that could not be avoided by the exercise of due care and diligence, including without limitation acts of God, inclement weather, government actions, pandemics, industrial actions, acts of terrorism or war;

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'Intellectual Property Rights' or 'IPR' means all statutory and other proprietary rights in respect of copyright and neighbouring rights (including but not limited to rights in relation to software), all rights in relation to inventions (including registered and not yet registered patent rights), registered and unregistered trademarks, designs, the right to have Confidential Information (including trade secrets and know-how) kept confidential, and all other rights resulting from intellectual activity in the industrial, scientific, literary or artistic fields;

'Improvements' means a modification or improvement to the Deliverables created by a Party during the Term of this Agreement, and any IPR in that modification or improvement;

'Material' means, documentation or other material in whatever form, including without limitation any reports, specifications, business rules or requirements, user manuals, user guides, operations manuals, training materials and instructions, any software, firmware, documented methodology or process, tools, object libraries and the subject matter of any Intellectual Property Rights.

'New Releases' means any new version of the Software that contains significant differences from the previous versions as to be generally accepted in the marketplace as constituting a new product;

'Objectives' means the objectives of the project set out in Section 4;

'Personnel' means an employee, agent or subcontractor of Emergent Consulting that are employed or engaged to perform the Services;

'Services' means the services described in Section 5;

'Software' means the software referred to in Section 4;

'Software Vendor' means the vendor responsible for the supply and installation of the Software;

'Special Conditions' means the special conditions specified in Section 9 (if any);

'Updates' means a release of software that corrects faults, adds functionality or otherwise amends or updates the Software but that does not constitute a New Release.

1. Term and Extension

- 1.1 This Agreement will commence on the Commencement Date and continue until the Completion date (the 'Term') unless terminated earlier in accordance with clause 12.

2. Provision of the Services

- 2.1 During the Term Emergent Consulting will:
- (a) provide the Services to the Client;
 - (b) provide the Services to the Client with all due care and skill and in a professional manner consistent with generally-accepted industry standards; and
 - (c) deliver the Deliverables to the Client in a timely manner.

3. Client Obligations

- 3.1 The Client warrants that:
- (a) it owns the rights or has the right to use any software, hardware, systems, IP addresses, domain names and other items in the Client's ICT systems and infrastructure ('Infrastructure');
 - (b) its Infrastructure is in good working order and that it has sole responsibility for the availability and integrity of the Infrastructure;
 - (c) has put in place sufficient internal controls to ensure the accuracy and integrity of the Client Data;
 - (d) it will check the integrity of the Client Data on a regular basis; and
 - (e) it will use its best endeavours to honour its commitment to the project.

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- 3.2 For the avoidance of doubt, Emergent Consulting does not take any responsibility for the Client Data and it is the Client's sole responsibility to ensure the integrity of the Client Data.
- 3.3 During the term of this Agreement, the Client must:
- (a) Provide all necessary information to Emergent Consulting upon request;
 - (b) Provide access to locations, systems and Infrastructure including relevant data required by Emergent Consulting in order to perform the Services;
 - (c) Regularly backup its data and use appropriate and up-to-date malicious code and virus detection software for preventing and detecting any harmful code, and take all reasonable precautions to safeguard its business against loss or disruption;
 - (d) Provide other such access, documents, information or data as Emergent Consulting reasonably requires in order to perform the Services; and
 - (e) Comply with the terms and conditions of this agreement.
- 3.4 Where Emergent Consulting uses or accesses the Client's premises or facilities for the performance of the Services, Emergent Consulting will comply with all reasonable directions and procedures as communicated to Emergent Consulting by the Client in advance, relating to work health and safety and security in operation at those premises or facilities.
- 3.5 In addition to the obligations set out in Clause 3.3, the Client:
- (a) must notify Emergent Consulting in writing as soon as it becomes aware of:
 - i. any defect or potential defect in the operation of the Software; and
 - ii. any issues that the Client reasonably perceives could affect the outcome of the project;
 - (b) agrees Emergent Consulting may supply the Services remotely.
- 3.6 The Client agrees to follow all written instructions in relation to the Software from the manufacturer, Software Vendor or Emergent Consulting (as the case may be).

3A. Personnel Safety and Conduct

- 3A.1 During the Term, the Client must, so far as is reasonably practicable, ensure that the working environment (whether physical or virtual) in which Emergent Consulting's Personnel perform the Services is safe and free from risks to their physical and psychological health, including risks arising from:
- (a) bullying, intimidation, or aggressive behaviour;
 - (b) sexual harassment or sex-based harassment;
 - (c) gendered violence or threats of violence;
 - (d) victimisation;
 - (e) discrimination;
 - (f) any other prohibited conduct as defined under applicable Commonwealth or State anti-discrimination legislation and the *Fair Work Act 2009* (Cth), including conduct that creates a hostile working environment on the grounds of sex; and
 - (g) any other psychosocial hazard as defined under the *Work Health and Safety Act 2012* (SA) and associated regulations.
- 3A.2 The Client must ensure that its employees, officers, agents, contractors, and any other persons under its direction or control do not engage in any of the conduct described in clause 3A.1 directed at, or affecting, Emergent Consulting's Personnel in connection with the Services.
- 3A.3 The Client must:
- (a) notify Emergent Consulting in writing as soon as it becomes aware of any incident, complaint, or allegation of conduct described in clause 3A.1 involving or affecting Emergent Consulting's Personnel;
 - (b) cooperate fully and in good faith with Emergent Consulting to address or respond to such matters as appropriate to the circumstances, such as participation in any investigation conducted by Emergent Consulting (or its nominee) into such an incident, complaint, or allegation; and
 - (c) take all reasonable steps to address and remedy the conduct, including (where appropriate) implementing interim actions to avoid any escalation.

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- 3A.4 Where Emergent Consulting reasonably believes that any of its Personnel are at risk of harm as described in clause 3A.1, Emergent Consulting may, by written notice to the Client:
- (a) immediately withdraw the affected Personnel from the engagement or the Client's premises (whether physical or virtual);
 - (b) reassign the affected Personnel to other duties; and/or
 - (c) substitute alternative Personnel to perform the Services,
- and such withdrawal, reassignment, or substitution will not constitute a breach of this Agreement by Emergent Consulting, nor give rise to any claim by the Client for loss, damage, delay, or reduced service levels.
- 3A.5 Where Emergent Consulting has exercised its rights under clause 3A.4 and the Client has not, within 14 days of receiving written notice from Emergent Consulting, taken steps reasonably satisfactory to Emergent Consulting to address the risk, Emergent Consulting may suspend the provision of the Services (in whole or in part) until the risk has been adequately addressed. During any period of suspension:
- (a) the Client's obligation to pay Fees for Services already performed or otherwise due remains unaffected;
 - (b) any deadlines or milestones will be extended by the period of suspension; and
 - (c) Emergent Consulting will not be liable for any loss, damage, or delay arising from the suspension.
- 3A.6 The Client indemnifies, and keeps indemnified, Emergent Consulting, its officers, employees, agents, and contractors from and against all liability, losses, actions, claims (including claims by Emergent Consulting's Personnel), demands, proceedings, awards, settlements, compensation, damages, costs, and expenses directly or indirectly arising from or relating to:
- (a) any breach by the Client of its obligations under this clause 3A; or
 - (b) any conduct by the Client's employees, officers, agents, contractors, or any other persons under the Client's direction or control that causes physical or psychological harm or injury to Emergent Consulting's Personnel in connection with the Services, except to the extent that such claim, loss, cost, liability or expense is caused by the gross negligence or wilful default of Emergent Consulting.
- 3A.7 The Client acknowledges that Emergent Consulting has obligations under the *Work Health and Safety Act 2012* (SA), the *Sex Discrimination Act 1984* (Cth), the *Fair Work Act 2009* (Cth) and other related legislation to protect its Personnel from psychosocial hazards, sexual harassment, bullying, discrimination and other prohibited conduct. The Client agrees to consult, cooperate and coordinate with Emergent Consulting, so far as is reasonably practicable, in fulfilling these obligations, including by complying with its own obligations under equivalent legislation in the Client's jurisdiction.

4. Acceptance Testing

- 4.1 Where the Services include Software implementation, the Client agrees to conduct Acceptance Testing on each Deliverable to verify that it:
- (a) Meets the requirements for the Deliverable as set out in the Statement of Work; and
 - (b) Are of a professional standard.
- 4.2 The Acceptance Tests will be conducted in accordance with the timeframes specified in Section 5-6, and if not specified, on a timely basis.
- 4.3 If a Deliverable fails all or part of an Acceptance Test, the Client may:
- (a) Waive the requirement for the Acceptance Test to be satisfactorily completed by express written notification to Emergent Consulting;
 - (b) Conduct further reasonable tests;
 - (c) Conditionally accept the Deliverable or work with Emergent Consulting to deliver a work-around.
- 4.4 Where a Deliverable consistently fails all or part of an Acceptance Test, the Client agrees to notify Emergent Consulting in writing and the parties will work together to rectify any issues that arise during the process.
- 4.5 Where the Deliverable satisfies the Acceptance Test, the Client must promptly notify Emergent Consulting in writing.
- 4.6 The Client acknowledges the importance of Acceptance Testing, and agrees that the performance of Acceptance Testing is vital to the correct implementation of the Software and/or any Deliverables. Should the

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Client fail to conduct the Acceptance Testing, or fails to conduct the Acceptance Testing properly or against the advice of Emergent Consulting, the Client takes full responsibility of the Deliverables in its business and indemnifies Emergent Consulting (and keeps Emergent Consulting indemnified) against any loss, damage, cost or liability it incurs as a failure to adhere to its obligations under this clause.

5. Fee and Payment

- 5.1 The Fees for the Services are set out in Section 8.
- 5.2 All Fees are payable by the Client within 14 days of receiving a valid tax invoice from Emergent Consulting.
- 5.3 Unless otherwise indicated in Section 8 the Fee does not include goods and services tax ('GST'). In addition to and at the same time as payment of the Fee, the Client must pay to Emergent Consulting any GST relating to the Services.
- 5.4 If there is a change in the scope, timing or order of the Services, then Emergent Consulting may charge additional Fees based upon the rates set out in Section 8.
- 5.5 Where a payment falls overdue, Emergent Consulting may elect to charge interest at the rate of 2% over the cash rate set by the Reserve Bank, from the date the payment becomes overdue.
- 5.6 Where any payment is overdue by more than 45 days Emergent Consulting reserves the right to suspend the Services until payment is made. The Client must also pay Emergent Consulting any expenses incurred in the recovery of payment from the Client.
- 5.7 Where a payment is overdue by more than 90 days, Emergent Consulting has the right to terminate this Agreement in accordance with clause 12.
- 5.8 Any disbursements incurred as a result of providing the Services will be reimbursed in full to Emergent Consulting upon submission of receipts to the Client.

6. Service Exclusions

- 6.1 Unless otherwise agreed in writing, Emergent Consulting has no liability for, and is not required to provide Services under this Agreement if it relates to any Exclusions listed.
- 6.2 Emergent Consulting may choose to provide the services relating to the Exclusions at an additional cost to the Client at the per hour rates specified in Section 8 (which will be invoiced separately).

7. Confidentiality and Privacy

- 7.1 Subject to clause 7.1A, each party must at all times:
 - (a) maintain the secrecy and confidentiality of any Confidential Information of the other party;
 - (b) not divulge or disclose to any other person, firm, corporation or entity any Confidential Information of the other party;
 - (c) refrain from copying, transmitting, retaining or removing any Confidential Information of the other party, or attempting to do the same; and
 - (d) use its best endeavours to prevent the disclosure of any Confidential Information of the other party by or to third parties.
- 7.1A Despite clause 7.1, a party may disclose Confidential Information:
 - (a) with the prior written consent of the other party;
 - (b) to its professional advisor(s) on a confidential basis for the purpose of obtaining advice; or
 - (c) if required by law but, unless prevented by law, the party will notify the other party of the disclosure prior to such disclosure or if prior disclosure is not possible, then as soon as possible after that disclosure.
- 7.2 For the avoidance of doubt all methodologies, documentation and procedures used by Emergent Consulting during any project and in the provision of ongoing consulting or other services are classified as Emergent Consulting's Confidential Information and may only be disclosed to staff of the Client on a need-to-know basis. Disclosure to third parties of this Confidential Information is strictly prohibited unless Emergent Consulting provides its express written consent (which may be withheld in its absolute discretion).

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- 7.3 The Client agrees to comply with the Privacy Act 1988 in its dealings with Emergent Consulting. In particular, the Client warrants that it has made all necessary disclosures and obtained all consents required under the Act in respect of personal information given to or accessed by Emergent Consulting in connection with this Agreement. The Client indemnifies and keeps indemnified Emergent Consulting from and against all costs, losses, damages, claims and expenses arising from the Client's breach of this warranty.
- 7.4 Where a data breach occurs, the parties will work together to comply with the provisions of the Privacy Act 1988 (Cth) and immediately take any steps within their control to minimise any risk arising from or associated with the data breach.

8. Intellectual Property

- 8.1 Nothing in this Agreement affects ownership of the Client Data.
- 8.2 All Material created by Emergent Consulting during the provision of the Services or in connection with this Agreement is owned by Emergent Consulting immediately upon creation.
- 8.3 No Background IPR is transferred by virtue of this Agreement. Each party hereby grants to the other a royalty-free, non-exclusive, non-transferable license to use its Background IPR solely for the Objectives. Where Emergent Consulting contributes proprietary software or background IP for the purposes of providing the Services, the Client agrees that any license to Emergent Consulting's proprietary software will be negotiated under a separate written agreement and does not fall under the scope of the license to Background IPR provided above.
- 8.4 For the avoidance of doubt, the Client owns all IPR in the Client Data and grants Emergent Consulting a royalty-free right to use the Client Data for the provision of the Services and any other additional services that may arise during the Term.
- 8.5 All IPR in the Deliverables (including any Improvements created by Emergent Consulting) is owned by Emergent Consulting upon creation. Subject to the payment of the Fee, Emergent Consulting hereby grants the Client a royalty-free, non-exclusive, non-transferable license solely to use, modify and adapt the Deliverables for the Objectives.
- 8.6 The Client is expressly prohibited from sharing the Deliverables or any IPR in the Deliverables with parties external to the Client without the express consent of Emergent Consulting which may be withheld in its absolute discretion.
- 8.7 Where the Client creates any Improvements to the Deliverables, the IPR in the Improvements will be owned by the Client upon creation. The Client hereby grants to Emergent Consulting a royalty-free, fee-free, non-exclusive, perpetual, worldwide license to use, copy, modify, and adapt the Improvements for the purposes of this Agreement and for its internal business purposes.
- 8.8 If any Improvements incorporate any third party IPR, the Client must procure a license to that IPR in favour of Emergent Consulting on the same terms as set out in clause 8.7.
- 8.9 The Software is licensed to the Client on the terms of the EULA between the Client and the third-party Software provider. The Client agrees that it will conform with the requirements set out by the EULA and/or any other agreement with third party providers as they relate to the Services provided for under this Agreement.
- 8.10 The Client agrees to not copy, reproduce, export or deal in the Software and/or Deliverables or any part of them in any way except as expressly permitted by this Agreement.
- 8.11 The Client agrees not to decompile, reverse engineer, disassemble or otherwise reduce any part of the Software and/or Deliverables to human-readable form nor permit any third party to do so.
- 8.12 The Client indemnifies, and keeps Emergent Consulting indemnified against any loss, liability, claim, damage or expense Emergent Consulting suffers or incurs as a result of the Client's failure to comply with its obligations under this clause.
- 8.13 Without derogating clause 8.12 in any way, the Client acknowledges that damages may not be an adequate remedy for a breach of this clause by it and accordingly, in the event of a breach or threatened breach of the terms of this clause by the Client, Emergent Consulting (without limitation to any other remedies Emergent Consulting may have available to it) shall be entitled to an injunction restraining the Client from committing any breach of this clause 8 without showing or proving any actual damage sustained by Emergent Consulting.

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9. Warranties and Indemnities

- 9.1 Nothing in this Agreement is to be read as excluding, restricting or modifying the application of any legislation which by law cannot be excluded, restricted or modified.
- 9.2 Subject to clause 9.1, any representation, warranty, condition or undertaking in relation to the Software and/or the performance of the Services which (but for this clause) would be implied in this Agreement by law, is excluded.
- 9.3 Any liability Emergent Consulting may have for any failure to comply with a consumer guarantee imposed by the Australia Consumer Law, or any condition or warranty implied into this Agreement by legislation that cannot be excluded is not excluded but to the extent permitted by law is limited to (at Emergent Consulting's option) in the case of the Services:
- (a) re-supplying the Services; or
 - (b) paying the cost of re-supplying the Services.
- 9.4 Where the Client has implemented Software, the warranties in relation to the Software are provided to the Client through contractual arrangements with the Software Provider, and the Client acknowledges and agrees that Emergent Consulting makes no warranties or representations in relation to the fitness for purpose of the Software.
- 9.5 Further to clause 9.4 the Client agrees to contact the Software provider under the EULA (to which it is a party) to enforce any warranties provided under the Software license.
- 9.6 To the extent that Emergent Consulting's liability cannot be or is not otherwise limited according to this clause 9:
- (a) With the exception of negligence on behalf of Emergent Consulting, the maximum aggregate liability of the Emergent Consulting under this Agreement shall be limited to an amount equal to the total value of Fees paid by the Client under this Agreement.
 - (b) Where negligence has been proven on behalf of Emergent Consulting, the liability of Emergent Consulting shall be limited to an amount equal to 300% of the total value of Fees paid by the Client under the Agreement.
- 9.7 The Client assumes sole responsibility for the use of the Software and the Services in its business operations and hereby indemnifies (and keeps indemnified) Emergent Consulting, its officers, employees, agents, and contractors from and against all liability, losses, actions, claims (including third party claims), demands, proceedings, awards, settlements, compensation, damages, costs and expenses, directly or indirectly arising from, or relating to:
- (a) its use of the Software;
 - (b) the Client's use of, or reliance on, any part of the Services and/or Deliverables;
 - (c) any other person's use of, or reliance on, any part of the Services and/or Deliverables which were provided to that person directly or indirectly by the Client;
 - (d) a breach or failure to perform by the Client of its obligations under this Agreement; or
 - (e) any wilful, unlawful or negligent act or omission of the Client.
- 9.8 The Client's liability under clause 9.7 will be reduced proportionately to the extent that Emergent Consulting's negligent act or omission contributed to that loss or liability.
- 9.9 For the avoidance of doubt and to the fullest extent permitted by law, Emergent Consulting is not liable for:
- (a) any special, indirect or consequential loss including (but not limited to) loss of opportunity and/or loss of profits, savings, Clients, contracts, revenue, interest or goodwill, suffered or incurred by the Client as a result of its use of the Software and/or the provision of the Services under this Agreement; or
 - (b) any loss or damage suffered by the Client or any third party due to the Client's negligent or improper use of the Software.

10. Insurance

- 10.1 The Client must ensure that it has appropriate insurances in place to cover its obligations under this Agreement, including (but not limited to) Workers Compensation insurance, and agrees to provide certificates of currency as evidence of insurance cover to Emergent Consulting upon reasonable written request.

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11. Disputes

- 11.1 The parties must work in good faith to resolve any dispute between them arising from this Agreement.
- 11.2 Any dispute will initially be referred to the nominated representatives of each party for resolution. If it is not resolved within 7 days, it will be referred to a meeting of the Director/CEO or equivalent of each party.
- 11.3 If the dispute remains unresolved after a period of 60 days after the second meeting referred to in clause 11.2, the parties will agree upon an appropriate mediator. Failing agreement, the President of the Law Society of South Australia will appoint a mediator. Agreement as to the allocation of costs will be determined through mediation.
- 11.4 A party may not commence court proceedings until 30 days after referral to a mediator pursuant to clause 11.3 except that nothing in this clause will prevent any party from seeking urgent interlocutory relief through courts of appropriate jurisdiction.

12. Termination

- 12.1 Without limiting any other rights or remedies Emergent Consulting may have against the Client arising out of or in connection with this Agreement, Emergent Consulting may terminate the Agreement with immediate effect if the Client:
 - (a) commits a serious breach of this Agreement which can be remedied, and fails to remedy the breach within 30 days of receiving notice to do so; or
 - (b) commits a serious breach of this Agreement which cannot be remedied; or
 - (c) has not paid a correctly rendered invoice within 90 days of the date of that invoice; and
 - (i) has not notified Emergent Consulting that it disputes the charges specified under the invoice; and
 - (ii) has received a notice from Emergent Consulting notifying the Client that Emergent Consulting will terminate the Agreement if the invoice remains unpaid for more than 90 days from the date of the invoice; or
 - (d) becomes insolvent or enters into liquidation or receivership or makes a composition or arrangement with its creditors generally or takes advantage of any statutory relief for insolvent debtors; or
 - (e) has failed to comply with its obligations under clause 3A; and
 - (i) has not remedied the failure within 14 days of receiving written notice from Emergent Consulting requiring it to do so; or
 - (ii) in Emergent Consulting's reasonable opinion, the risk to its Personnel is so serious or immediate that continued provision of the Services would be inconsistent with Emergent Consulting's duty of care to its Personnel.
- 12.2 Without limiting any other rights or remedies the Client may have against Emergent Consulting arising out of or in connection with this Agreement, the Client may terminate the Agreement with immediate effect if Emergent Consulting:
 - (a) commits a serious breach of this Agreement which can be remedied, and fails to remedy the breach within 30 days of receiving notice to do so; or
 - (b) commits a serious breach of this Agreement which cannot be remedied; or
 - (c) becomes insolvent or enters into liquidation or receivership or makes a composition or arrangement with its creditors generally or takes advantage of any statutory relief for insolvent debtors.
- 12.3 A termination of this Agreement will not affect the Client's liability to pay Fees for Services already performed or otherwise due and payable in accordance with this agreement.
- 12.4 The provisions of clauses 3A, 7, 8, 11, 13, 9, 16, 17, 18 and this clause 12.4 survives termination or expiration of this Agreement.

13. Consequences of Termination – Liquidated Damages

- 13.1 Subject to any other provision of this clause 16, if this Agreement is terminated under clause 12.1(a), 12.1(b), 12.1(c) or 12.1(e), then the Client must pay the Liquidated Damages Amount as liquidated damages to Emergent Consulting for the loss suffered by Emergent Consulting (which amount the parties acknowledge to be a genuine pre-estimate of the loss suffered by Emergent Consulting). The Liquidated Damages Amount

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must be paid within ten (10) business days of the date of Emergent Consulting's notice that it claims the Liquidated Damages Amount.

13.2 In the event that:

- (a) a Court finds clause 13.1 unlawful or unenforceable; or
- (b) Emergent Consulting at its sole discretion, elects not to claim Liquidated Damages Amount,

then Emergent Consulting's entitlement to damages, and the Client's liability to pay damages, will be determined at law.

13.3 For the avoidance of doubt:

- (a) Exercise by Emergent Consulting of its rights pursuant to this clause will be without prejudice to any other right of action or remedy which has accrued or may accrue under this Agreement or at law, including under clauses 3A.6, 4.6, 7.3, 8.12 and 9.7 (Indemnity).
- (b) The Client's obligations under clause 12.3 (payment for Services already performed) remain in full force and are in addition to the Liquidated Damages Amount.

13.4 For the purposes of this clause, 'Liquidated Damages Amount' means the total amount of Fees that would be payable to Emergent Consulting had the Services been completed and all Deliverables delivered, less the Fees paid by the Client as at the date of termination or repudiation of this Agreement.

14. Special Conditions

14.1 The Special Conditions form part of this Agreement.

14.2 If a conflict exists between the Special Conditions and the provisions of this Agreement, the Special Conditions prevail to the extent of the inconsistency.

15. Independent Contractor

15.1 Emergent Consulting is an independent contractor and not an employee or agent of the Client.

15.2 The manner of performance of the Services will be at all times within the judgement and discretion of Emergent Consulting.

15.3 Neither Emergent Consulting nor any employee, contractor, representative, agent of Emergent Consulting will by virtue of this Agreement be deemed to be an employee of the Client.

15.4 The parties to this Agreement will not be or be deemed to be in any partnership, collaboration or joint venture and neither party will hold itself out as being in any way a partner or joint venturer of the other party and neither party will pledge the credit or warrant the authority of the other party.

16. Notices

16.1 Any notice or notification required to be sent to a party under this Agreement will be delivered to the address listed in Section 11, as updated by the parties from time to time.

16.2 Any notice to be given by one party to any other must be signed by the party giving the notice or by one of its officers or its duly authorised lawyer or agent and must be hand delivered or sent by prepaid post or email to the address, or email address (as the case may be) shown at the commencement of this Agreement (or any other address, or email address that a party may notify to the other) and will be deemed sufficiently given:

- (a) in the case of hand delivery, on the date of delivery;
- (b) in the case of prepaid Express post, 2 Business Days after being sent by prepaid Express post; or
- (c) in the case of email, on the day of transmission provided that the sender can give evidence of transmission and the intended recipient does not give evidence of non-receipt.

17. Non-Solicitation

17.1 During the term of this Consulting Agreement and for a period of two (2) years after its termination, the Client agrees not to directly or indirectly solicit, hire, employ, engage, or attempt to solicit, hire, employ, or engage any employee, contractor, consultant, or agent of Emergent Consulting without prior written consent from Emergent Consulting.

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- 17.2 The Client also agrees not to circumvent this non-solicitation provision by soliciting or hiring Emergent Consulting's Personnel through third parties, such as other consulting firms or intermediaries, during the specified non-solicitation period.
- 17.3 In the event of a breach of this non-solicitation clause, the Client agrees to pay Emergent Consulting an amount equal to one hundred and fifty percent (150%) of the annual salary of the solicited Emergent Consulting's Personnel as liquidated damages for each instance of non-compliance. This amount is agreed upon by the parties as a reasonable estimate of the damages that may be incurred by Emergent Consulting due to such breach.

18. Force Majeure

- 18.1 If a Force Majeure Event occurs that hinders or prevents Emergent Consulting from delivering the Services, Emergent Consulting is free from any obligation to provide the Services while a Force Majeure Event subsists. Emergent Consulting may (in its absolute discretion) elect to terminate this Agreement without penalty or keep the agreement on foot until the Force Majeure Event ends.

19. General

- 19.1 This Agreement contains the entire understanding between the Parties concerning the subject matter of the Agreement and supersedes all prior written or verbal communications.
- 19.2 This Agreement cannot be amended or varied except in writing signed by the Parties.
- 19.3 A Party must not assign or otherwise deal with its rights or obligations under this Agreement without the other Party's prior written consent.
- 19.4 Each Party must pay its own legal costs of and incidental to the preparation and completion of this Agreement.
- 19.5 Failure or neglect by either party to enforce at any time any of the provisions of this Agreement is not to be construed nor deemed to be a waiver of that party's rights under this Agreement nor in any way affect the validity of the whole or any part of this Agreement nor prejudice that party's rights to take subsequent action.
- 19.6 In the event that any of the terms, conditions or provisions contained in this Agreement are determined by any competent authority to be invalid, unlawful or unenforceable to any extent, such term, condition or provision is to that extent severed from the remaining terms, conditions and provisions which continue to be valid to the fullest extent permitted by law.
- 19.7 This Agreement is governed by and must be construed in accordance with the laws in force in the State of South Australia and the Parties submit to the exclusive jurisdiction of the Courts of South Australia.

Terms & Conditions of Engagement

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