

1. **Services**

Technoweld Pty Ltd (A.C.N. 145 723 057) (and where the context permits, Technoweld WA Pty Ltd (A.C.N. 669 246 726), Technoweld QLD Pty Ltd (A.C.N. 669 247 205) and Technoweld NSW Pty Ltd (A.C.N. 669 246 940) (from hereon collectively and individually ‘Technoweld’)) shall provide to the Client the Services set out in the Technoweld letter of engagement under cover of which these Terms and Conditions are sent (from hereon collectively ‘the Technoweld Proposal’) to the Client, and upon acceptance by the Client of the within offer, Technoweld shall provide the Services from the Commencement Date (set out in the Technoweld Proposal) and shall continue to provide the Services for the Term (also set out in the Technoweld Proposal) or until either party terminates this Agreement in accordance with **clause 23**.

2. **Supervision, Work Health & Safety and Site Access**

2.1 Unless otherwise agreed with the Client (identified in the Technoweld Proposal) in writing, Technoweld will maintain control over Technoweld’s personnel when providing the Services.

2.2 The Client and its personnel will at all times co-operate with Technoweld and its personnel to ensure that:

2.2.1 All persons involved in the provision and receipt of the Services adhere, as a minimum, to all workplace health and safety requirements (as prescribed by the legislation and regulations of the jurisdiction in which the Services are being performed); and

2.2.2 Technoweld and its personnel have clear and unrestricted access to the site where the Services are to be provided and that such site is safe and complies with all workplace health and safety requirements (as prescribed by the legislation and regulations of the jurisdiction in which the Services are being performed).

2.3 The Client acknowledges and agrees that Technoweld may, in its sole discretion, suspend the provision of the Services until such time as the site where the Services are to be provided is safe and compliant with all workplace health and safety requirements (as prescribed by the legislation and regulations of the jurisdiction in which the Services are being performed).

2.4 The Client agrees that it will not approach Technoweld’s personnel and offer them employment or engagement as the providers of services of the same or similar nature to the Services for a period

of no less than twelve (12) months following the termination of this Agreement.

3. **Acceptance of Offer**

3.1 By accepting the Technoweld Proposal (including these Terms and Conditions), the Client will be regarded as having entered into a Consulting Agreement with Technoweld.

3.2 This means that the Client engages Technoweld to provide the Services and act as its agent in the provision of the Services in accordance with the terms and conditions set out herein.

3.3 Acceptance by the Client may be by any one of the following ways:

3.3.1 Signing and returning a copy of this document to Technoweld; or

3.3.2 Giving Technoweld instructions to provide the Services to the Client after receiving this document; or

3.3.3 Written acceptance communicated to Technoweld after receiving this document; or

3.3.4 Oral acceptance communicated to Technoweld after receiving this document.

4. **Subcontract**

4.1 Technoweld may, in its sole discretion, subcontract to one or more other parties all or any part of the Services to be performed by Technoweld under this Agreement.

4.2 Technoweld will ensure that all subcontractors appointed by it to perform Services under this Agreement are subject to similar terms and conditions as set out in this Agreement.

4.3 Where Technoweld has disclosed to the Client that the performance of some or all of the Services will be performed by a particular subcontractor(s), the amount(s) that Technoweld is entitled to charge are subject to change due to corresponding changes imposed by the particular subcontractor(s).

5. **Variation**

5.1 The Client acknowledges and agrees that a direction by the Client and or its personnel to change, vary, substitute or otherwise deviate from the strict scope of the Services will constitute a variation.

5.2 A request to vary the Services must be made in writing by the Client to Technoweld.

5.3 Technoweld may, in its sole discretion agree or refuse to provide the varied Services, such agreement to be in writing.

6. **Consulting Fee**
  - 6.1 The Client agrees to pay the Consulting Fee charged by Technoweld (set out in the Technoweld Proposal).
  - 6.2 Technoweld's Quote for the Services including a fee estimate is set out in the Technoweld Proposal.
  - 6.3 The Client acknowledges and agrees that any variation to the scope of the Services will also vary the Consulting Fee to be paid to Technoweld; such varied Consulting Fee to be agreed in writing between the parties prior to actioning the variation(s).
7. **Billing and Payment**
  - 7.1 Fees charged by way of hourly rate will be billed according to interim tax invoices that will itemise the type of Services provided, or hours performed by Technoweld, and/or provide a detailed job record for all travel expenses and disbursements incurred during that period.
  - 7.2 Client agrees to pay such tax invoices within thirty (30) days of the date of the tax invoice.
  - 7.3 Fees charged by way of a flat fee (lump sum) will be billed according to a Schedule of Payments that will itemise the amount of each instalment and its due date for payment.
  - 7.4 The Client agrees to pay each instalment in accordance with the Schedule of Payments (set out in the Technoweld Proposal).
8. **Deposit**
  - 8.1 Technoweld may in its sole discretion require the Client to pay a deposit for the Services that it will provide.
  - 8.2 A deposit will be paid as reasonable security for Technoweld's Fees.
  - 8.3 Deposits are non-refundable.
  - 8.4 The Client agrees to pay the deposit required by Technoweld (set out in the Technoweld Proposal).
9. **Disbursements**
  - 9.1 The Client is responsible for the payment of all disbursements.
  - 9.2 Technoweld shall not be obliged to pay any disbursements on behalf of the Client.
  - 9.3 Technoweld may require the Client to make prepayment of an amount (set out in the Technoweld Proposal) in anticipation of costs and disbursements.
  - 9.4 Technoweld acknowledges that it may only incur disbursements up to the limit imposed by the Client in writing.
- 9.5 Once the Client's limit for disbursements has been reached, Technoweld will immediately notify the Client and will only continue to incur disbursements on behalf of the Client with the written consent of the Client.
10. **Warranties**

The Services shall be provided by Technoweld in a proper and workmanlike manner and Technoweld shall exercise all due skill, care and diligence in accordance with the best industry practice and, without limiting the generality of the foregoing, in accordance with the Client's own internal standards and procedures.
11. **No Withholding or Offset**

The Client shall not withhold from any payment or offset against any payment due to Technoweld any amount in respect of any amount owed by or claim against Technoweld.
12. **Supplier(s) and Third party(ies)**
  - 12.1 The Client in its absolute discretion makes the final determination in respect of contracting/engaging/hiring supplier(s) and third party(ies) unless otherwise agreed in writing.
  - 12.2 The Client acknowledges that it must contract/engage/hire supplier(s) and third party(ies) in its own capacity and that Technoweld is not a party to that arrangement unless otherwise agreed in writing.
  - 12.3 The Client understands and acknowledges that it is responsible for the payment of supplier(s) and third party(ies) invoices and that any delay or default in respect of same may affect the delivery by Technoweld of the Services.
  - 12.4 Technoweld agrees to do the following unless otherwise agreed in writing:
    - 12.4.1 Recommend suppliers and third parties to the Client on an as required basis by the Client.
    - 12.4.2 Assist the Client in the selection of suppliers and third parties however Technoweld assumes no responsibility for the Client's choice of suppliers and third parties.
    - 12.4.3 Assist the Client with negotiating with suppliers and third parties.
    - 12.4.4 Assist in the supervision of the performance of obligations between the Client and the suppliers and third parties.
  - 12.5 Technoweld does not provide any warranties in respect of the quality of items or services provided by any suppliers and third parties retained by the Client.

- 12.6 Technoweld assumes no responsibility or liability for the obligations between the Client its suppliers and third parties including but not limited to any act, omission, negligence, conduct or misconduct on the part of suppliers and third party(ies) in the performance of his/her/their/its duties.
- 12.7 Technoweld assumes no responsibility or liability for the obligations imposed on the suppliers and third parties in respect of workplace health and safety in the suppliers and third parties provision and the Client's receipt of the Services.
13. **Acknowledgement, marketing and promotion of Technoweld's business**
- 13.1 The Client permits Technoweld to possess, distribute, display, use and retain any photograph, film or image in which the Client's Services under this Agreement appear for the purposes of marketing, and promoting Technoweld's business both in print and digital electronic media, upon prior approval by the Client.
- 13.2 The Client consents to the use of the Client's name, image, logo or otherwise for the promotion or marketing of the Services to which they engaged Technoweld for under this Agreement including representation on behalf of the Client.
- 13.3 The Client otherwise agrees to use of the Client's name, image, logo or otherwise in any of Technoweld's promotional and marketing information either in print and/or digital electronic media.
- 13.4 The Client agrees to use Technoweld's business name and logo to provide recognition of the Services provided by Technoweld.
14. **Limitation of Liability**
- 14.1 In this clause:
- 14.1.1 **'Consequential Loss or Damage'** means any indirect loss, damage, cost, liability or expense and includes consequential loss, expectation loss, loss of profits and other heads of loss recognised at law or equity which are not direct.
- 14.1.2 **'Loss or Damage'** means any loss, damage, cost, liability or expense however incurred.
- 14.2 **Limitation of Liability**
- The Client acknowledges and agrees that the liability of Technoweld for a breach of a provision of this Agreement, or any negligent or other act or omission by that party or its officers, employees and or agents in respect of the performance or non-performance by that party of this Agreement, is limited to an amount equal to the fees paid by the Client to Technoweld under this Agreement.
- 14.3 **Waiver in respect of Consequential Loss or Damage**
- The Client waives any right it may have, or may subsequently have, to claim against Technoweld or its officers, employees or agents for any Consequential Loss or Damage arising in respect of the performance or non-performance by the other party or any act or omission of them or its officers, employees or agents in respect of the performance or non-performance of this Agreement.
- 14.4 **Release and Discharge in respect of Consequential Loss or Damage**
- The Client releases and forever discharges Technoweld and its officers, employees and agents from all actions, suits, causes of action, proceedings, claims, accounts, demands, costs and expenses in respect of or comprising Consequential Loss or Damage however arising (including, without limitation, at law, in equity or pursuant to statute) which it may now have, or but for the presence of this clause, may at any time subsequently have against Technoweld which arises in respect of the performance or non-performance of this Agreement.
15. **Indemnity**
- Notwithstanding any other term of this Agreement, the Client shall indemnify, defend and hold harmless Technoweld and/or its employees and agents and their respective successors, heirs and assigns ('the Indemnitees'), against any claim, liability, cost, damage, deficiency, loss, expense or obligation of any kind or nature (including, but without limitation reasonable solicitors' fees and other costs and expenses of litigation) incurred by or imposed upon the Indemnitees or any one of them in connection with any claims, suits, actions, demands or judgments arising out of this Agreement (including, but not limited to, actions in the form of tort, warranty, or strict liability).
16. **Goods and Services Tax (GST)**
- The Client acknowledges and agrees that GST is payable by the Client on the fees and charges imposed by Technoweld in accordance with GST Law.
17. **Retention of Intellectual property rights**
- 17.1 Unless agreed between the parties in writing, Technoweld owns the intellectual property rights in any inventions that it may invent during the course of providing the Services or which arise in connection

- with providing the Services and/or with knowledge or information acquired during the course of providing the Services.
- 17.2 The Client will not at any time, whether during the Term or after, apply for any letters patent, design, registration, copyright or other form or protection whatever in Australia or elsewhere for any of those inventions.
- 17.3 The Client will assign to Technoweld any right that it may have to a grant of letters patent, design, registration, copyright or any other form of protection whatever in Australia or elsewhere in respect of the inventions.
- 17.4 The Client will retain intellectual property rights in its pre-existing intellectual property ('Client Background IP') and agrees to grant to Technoweld a perpetual, non-exclusive and royalty-free licence to freely use and exploit the Client Background IP to the extent that it may be incorporated in any intellectual property that Technoweld may develop during the course of providing the Services or which arise in connection with providing the Services.
18. **Ownership of documents and Services**
- 18.1 Unless agreed between the parties in writing, Technoweld owns all documents and services that it provides to the Client until such time as all amounts owing by the Client have been paid.
- 18.2 The Client acknowledges and agrees that it is not entitled to, nor will it, use the documents and services owned by Technoweld until all amounts owing by the Client to Technoweld have been paid in full (including Interest as the case may be).
- 18.3 The Client acknowledges and agrees that it is not entitled to, nor will it, on sell the documents and services provided by Technoweld to the client.
- 18.4 The Client acknowledges and agrees that the documents and services are sold to them on the basis it is for the client's use only.
19. **Typographical errors**
- 19.1 The Client acknowledges and agrees that in the event that any typographical error(s) are discovered in any document(s) produced by Technoweld and/or its officers, employees and agents, such typographical error(s) will be corrected by Technoweld without further cost to the Client provided such error(s) are communicated in writing to Technoweld within 90 days of the Clients receipt of the document(s).
- 19.2 Typographical error(s) communicated in writing to Technoweld after the passing of 90 days from the Client's receipt of the document(s) will be corrected by Technoweld subject to payment by the Client of further fees to Technoweld.
20. **Default**
- 20.1 If a party does not comply with a condition of this Agreement ('**Defaulting Party**') a party entitled to the benefit of that condition ('**Innocent Party**') may give written notice requiring that condition to be complied with within no less than **seven (7) days**.
- 20.2 If that condition is not complied with within the period stated in that notice; or a party is bankrupt or insolvent within the meaning of section 95A of the Corporations Act 2001 (Cth) – the Innocent Party may terminate this Agreement by written notice to the Defaulting Party.
21. **Interest**
- 21.1 A party who fails to pay any money payable under this Agreement by the due date must pay interest on that amount or the outstanding part of that amount until it is paid in full.
- 21.2 The interest rate will be two (2) percentage points above the cash rate target announced by the Reserve Bank of Australia from time to time.
- 21.3 That interest will accrue and be recoverable from day to day.
22. **Force Majeure**
- 22.1 **Obligations Suspended**
- 22.1.1 An obligation under this Agreement shall be suspended to the extent and for so long as the performance of that obligation is prevented or delayed by an event or circumstance which:
- 22.1.1.1 prevents a party from complying with any of its obligations under this Agreement; and
- 22.1.1.2 which that party did not cause, and is unable to control, influence, prevent or avoid through prudent management processes, policies, precautions or other reasonable steps ('**the Force Majeure**').
- 22.2 **Notification**
- The party whose obligation is suspended under **clause 22.1** must:
- 22.2.1 notify the other party as soon as it becomes aware of the effect of the Force Majeure upon its obligations;

- 22.2.2 use its best endeavours to work around or overcome the effect of the Force Majeure;
- 22.2.3 keep the other party informed of any changes in the Force Majeure and of the measures taken to comply with this clause; and
- 22.2.4 recommence performance of its obligations as soon as possible without delay.

**22.3 Performance of obligations**

The party whose obligation is unable to be performed or recommenced without delay or within a reasonable time under **clause 22.2**, must:

- 22.3.1 Use its best endeavours to subcontract its obligation; or
- 22.3.2 Recommend a substitute to the other party to perform the obligation; or
- 22.3.3 Terminate this Agreement in accordance with **clause 23**.

**23. Termination**

Either party may terminate this Agreement:

- 23.1 In accordance with **clauses 22** and/or **23** of this Agreement; or
- 23.2 Upon **seven (7) days** written notice of termination to the other party.

**24. Insolvency**

- 24.1 'Insolvency Event' means, in respect of a party, the occurrence of any one or more of the following events in relation to that party:

For a party that is a body corporate:

- 24.1.1 Except for the purpose of solvent reconstruction or amalgamation:
  - 24.1.1.1 An application is filed in a court of competent jurisdiction seeking an order that a party be wound up or that a Controller (as defined by the Corporations Act 2001 (Cth)) be appointed to it or any of its assets, unless the application is withdrawn, struck out or dismissed within 7 days of it being filed; or
  - 24.1.1.2 An order is made that it be wound up or that a Controller be appointed to its or any of its assets; or

- 24.1.1.3 A resolution that it be wound up is passed or proposed;

- 24.1.2 A liquidator, provisional liquidator, Controller or any similar official is appointed to, or takes possession or control of, all or any of its assets or undertakings;

- 24.1.3 An administrator is appointed to it, a resolution that an administrator be appointed is passed or proposed, or any other steps are taken to appoint an administrator to it;

- 24.1.4 It enters into, or resolves to enter into, an arrangement, compromise or composition with any of, or any class of, its creditors or members, or an assignment for the benefit of any of, or any class of, its creditors, or process of filed in a court of competent jurisdiction seeking approval of any such arrangement, compromise or composition;

- 24.1.5 A reorganisation, moratorium, deed of company arrangement or other administration involving one or more of its creditors is proposed or effected;

- 24.1.6 Any action is taken by the Australian Securities and Investments Commission ('ASIC') with a view to its deregistration or its dissolution, or an application is made to ASIC that any such action be taken; is insolvent within the meaning of section 95A of the Corporations Act 2001 (Cth), states that it is unable to pay its debts or it is presumed to be insolvent under any applicable law;

- 24.1.7 By operation of the Corporations Act 2001 (Cth), it is taken to have failed to comply with a statutory demand;

- 24.1.8 It stops or suspends or threatens to stop or suspend the payment of all or a class of its debts;

- 24.1.9 Any event or circumstance set out in section 461 of the Corporations Act 2001 (Cth) occurs in relation to it; or

- 24.1.10 Anything having a substantially similar effect to any of the events specified in paragraphs 24.1.1 to 24.1.9 of this definition happens to it under the law of any jurisdiction.

For a party that is an individual:

- 24.1.11 A bankruptcy notice is issued against the person;
- 24.1.12 A receiver or a trustee for creditors or in bankruptcy is appointed to any of the person property;
- 24.1.13 The person proposes or enters into an arrangement or composition with, or an assignment of the benefit of, any of the person's creditors;
- 24.1.14 The person proposes or effects a moratorium involving any of the person's creditors;
- 24.1.15 The person stops or suspends, or threatens to stop or suspend, the payment of all or a class of its debts;
- 24.1.16 The person is unable to pay all of the person's debts as they fall due or is presumed to be insolvent under any applicable law;
- 24.1.17 The person becomes an 'insolvent under administration' as defined in section 9 of the Corporations Act 2001 (Cth); or
- 24.1.18 Anything having a substantially similar effect to any of the events specified in paragraphs 24.1.11 to 24.1.17 of this definition happens to the person under the law of any jurisdiction.

24.2 If an Insolvency Event occurs, the parties acknowledge and agree that the innocent party may in its absolute and unfettered discretion and upon written notice terminate this Agreement in accordance with **clause 23** upon which the terminating innocent party shall be under no further obligation under this Agreement.

24.3 Any payment made by the Client which is subsequently avoided by any law relating to an Insolvency Event or insolvency generally shall be deemed not to have been paid.

## 25. Notice

### 25.1 Deemed to have been given

A notice under this Agreement is deemed to have been given if it is in writing and executed by the sender or its agent and is:

- 25.1.1 delivered or sent by pre-paid post to the address set out in the Technoweld Proposal (or any other address notified to all parties in writing);

25.1.2 sent by facsimile transmission to the recipient's last known facsimile number; or

25.1.3 sent or delivered to the recipient in accordance with the Corporations Act 2001 (Cth) or any other legislation.

### 25.2 When received

A notice given in accordance with this clause is deemed to have been received:

25.2.1 if delivered or transmitted by facsimile;

24.2.1.1 on the day of transmission or delivery if the transmission or delivery occurred before 5.00 pm on a Business Day, being any day that banks are generally open for business in Adelaide but not a Saturday, Sunday or a public holiday pursuant to the Holidays Act 1910 (SA); and

24.2.1.2 otherwise, on the next Business Day; and

25.2.2 if sent by pre-paid post, on the third Business Day after posting.

### 25.3 Two or more persons

Where two or more persons comprise a party, notice to one is effective notice to all.

## 26. General

### 26.1 Amendment

This Agreement may not be amended or supplemented except in writing and executed by all parties.

### 26.2 Assignment

The rights and obligations of each party under this Agreement are personal and cannot be assigned, charged or otherwise dealt with, without the prior written consent of all parties.

**26.3 Counterparts**

This Agreement and any document required by this Agreement may be executed in any number of counterparts each of which is taken to be an original. All of those counterparts taken together constitute one instrument. An executed counterpart may be delivered by email and/or facsimile.

**26.4 Entire agreement**

This Agreement records the entire agreement between the parties as to its subject matter. Any prior negotiations, agreements, arrangements, representations and understandings related to the subject matter of this Agreement are superseded by this Agreement.

**26.5 Further assurance**

Each party must promptly execute all documents and do all things that another party reasonably requests to effect, perfect or complete this Agreement and all transactions incidental to it.

**26.6 Governing law**

This Agreement is governed by the laws of South Australia and the Commonwealth of Australia.

**26.7 Jurisdiction**

The parties submit to the jurisdiction of the Courts of South Australia and the Commonwealth of Australia. Any proceeding brought in the Federal Court of Australia must be commenced in its South Australian District Registry.

**26.8 Relationship**

Unless otherwise specified nothing in this Agreement creates a relationship of employer and employee, partnership or joint venture between the parties.

**26.9 Severance**

Any provision of this Agreement that is invalid, unenforceable or illegal must be read down to the extent necessary to avoid that effect. If that is not possible, that provision must be excluded from this Agreement but only to the extent necessary to avoid that effect. All other provisions of this Agreement continue to be valid and enforceable.

**26.10 Waiver**

A right or obligation under this Agreement cannot be waived except by a document executed by the party waiving that right or obligation and specifying the waiver.