

TERMS AND CONDITIONS FOR THE SUPPLY OF CONSULTANCY SERVICES

These terms and conditions shall apply to the provision of the Services by Kingfish Solutions Pty Ltd (ACN 113 111 470) ("Kingfish Solutions") to the applicable customer identified in a supplied quotation, proposal or statement of work document ("Customer"). The Customer accepts these terms and conditions by accepting the quotation, proposal or statement of work document.

The Customer's acceptance of the quotation, proposal or statement of work document subject to any other terms will be treated as a rejection of the quotation, proposal or statement of work and no services will be provided by Kingfish Solutions.

1 OVERVIEW

1. Kingfish Solutions agrees to provide the Services to the Customer in accordance with this Agreement.
2. This Agreement includes these standard terms and the details set out in a Proposal or Statement of Work.
3. In the event of any express inconsistency, the provisions in the Proposal or Statement of Work will prevail over these standard terms.

2 TERM

1. This Agreement commences on the Commencement Date and continues until the expiry of the Initial Term, unless terminated earlier in accordance with clause 9 or renewed under clause 2(b).
2. Prior to the expiry of the Initial Term, the Customer will have the option to extend the Agreement for the Renewal Term by providing Kingfish Solutions with no less than 14 days' written notice prior to the expiry of the Initial Term.

3 SERVICES AND DELIVERABLES

3.1 The Services

1. The Services are specified in a Proposal or Statement of Work.
2. Kingfish Solutions will provide the Services in a professional manner with due care and skill and in accordance with good industry practice.
3. In providing the Services, Kingfish Solutions will comply with all Laws, including Privacy Laws.
4. Kingfish Solutions will ensure that the Key Personnel nominated in a Proposal or Statement of Work will perform the Services.
5. Additional services may be provided under this Agreement where the parties agree to and sign a written addendum that specifies the additional services and states that those additional services are being provided pursuant to this Agreement.

3.2 The Deliverables

1. Any Deliverables to be provided by Kingfish Solutions to the Customer as part of the Services are also specified in a Proposal or Statement of Work.
2. Kingfish Solutions will ensure that the Deliverables are of high quality, are not second-hand or used, and will operate correctly and in accordance with the specifications and requirements in a Proposal or Statement of Work.
3. If the Deliverables include software, Kingfish Solutions will not include in the Deliverables:
 - i. any third party code or third party intellectual property without the Customer's prior written consent, or
 - ii. any viruses, timebombs, lockups or backdoors.
4. If the Deliverables include equipment, hardware or software, Kingfish Solutions will, upon request by Customer, provide the Customer with any documentation reasonably required to use and maintain the Deliverables.

3.3 Cooperation

1. Kingfish Solutions will act in a professional and cooperative manner when dealing with the Customer.
2. The parties will always act reasonably and in good faith when dealing with each other.
3. If Kingfish Solutions is required by the Customer to work with other suppliers or contractors of the Customer, Kingfish Solutions will act cooperatively and in a friendly manner when doing so.
4. If Kingfish Solutions attends the Customer's premises or sites, Kingfish Solutions must comply with the Customer's relevant policies and directions known or made known to Kingfish Solutions.

3.4 Timeframes

1. Kingfish Solutions will supply the Services and deliver the Deliverables to meet any timeframes set out in a Proposal or Statement of Work.
2. If Kingfish Solutions believes that Kingfish Solutions will be late or is late in meeting the timeframes in a Proposal or Statement of Work, Kingfish Solutions will notify the Customer as soon as reasonably practical.
3. If Kingfish Solutions requires the Customer to provide anything to Kingfish Solutions or to do anything so that Kingfish Solutions can provide the Services, then the Customer's obligations to do so are set out in a Proposal or Statement of Work and the Customer must fulfil these obligations. The Customer cannot make any claim against Kingfish Solutions, including for failure to meet any timeframes, if the Customer does not fulfil these obligations.

4 INTELLECTUAL PROPERTY

1. Unless explicitly stated to the contrary in a Proposal or Statement of Work, Kingfish Solutions will own all Intellectual Property Rights in the Deliverables. This includes Intellectual Property Rights in any documentation, reports, computer code, characters, artwork, logos and branding, and the look & feel of the Deliverables.
2. In furtherance of (a) above, Kingfish Solutions hereby grants a license to Customer to use the Deliverables. This license does not cover any software or computer code, which must be separately licensed from Kingfish Solutions.
3. Kingfish Solutions will not infringe any Intellectual Property Rights when performing the Services or in creating the Deliverables.
4. Kingfish Solutions warrants that the Customer's use of the Deliverables will not infringe any Intellectual Property Rights in Australia.
5. Kingfish Solutions indemnifies the Customer against any liability (including liability for reasonable legal costs) based on a claim that use of the Deliverables in Australia is an infringement of the Intellectual Property Rights of any third person.
6. Kingfish Solutions acknowledges and agrees that the Customer owns all rights, title and interests (including Intellectual Property Rights) in any materials provided by the Customer to Kingfish Solutions or that the Customer otherwise has the right to supply such materials to Kingfish Solutions, and nothing in this Agreement is intended to transfer ownership of or any interest in the Customer's works, trademarks or brands (including any Intellectual Property Rights) to Kingfish Solutions.
7. Kingfish Solutions has no right to use the Customer's trademarks or brands unless explicitly provided for in a separate trademark licence agreement or in a Proposal or Statement of Work.

5 FEES, PAYMENT AND GST

5.1 Fees and Payment

1. The Customer must pay the Fees set out in each invoice within 14 days of receipt, in accordance with this clause 5.
2. Kingfish Solutions may only issue invoices to the Customer in accordance with the terms of this Agreement and in accordance with any timeframes for invoicing or payment set out in a Proposal or Statement of Work.
3. If a Proposal or Statement of Work specifies that a Deliverable is subject to acceptance testing by the Customer, Kingfish Solutions may only invoice for that Deliverable once it has been accepted by the Customer.
4. The Customer may dispute an invoice. If so, the Customer may withhold payment of the amount in dispute until the dispute is resolved but must pay the undisputed portion of the invoice on time.
5. The parties have no right of set-off against each other.

6. The Customer will only reimburse expenses that are set out in a Proposal or Statement of Work as reimbursable expenses.

5.2 GST

1. If GST is payable on a supply made under or in connection with this Agreement, the party providing the consideration for that supply must pay as additional consideration an amount equal to the amount of GST payable on that supply.
2. Unless otherwise stated, all amounts referred to in this Agreement, including the Fees, are stated on a GST exclusive basis.
3. If an adjustment event occurs in relation to a supply made under or in connection with this Agreement, the GST payable on that supply will be recalculated to reflect that adjustment and an appropriate payment will be made between the parties.
4. In providing an invoice, a party shall provide proper tax invoices if GST is applicable to the Fees.
5. Terms which have a defined meaning in the A New Tax System (Goods and Services Tax) Act 1999 (Cth) shall have that meaning in this Agreement.

6 CONFIDENTIALITY

1. Each party agrees to keep strictly confidential, and not to disclose, the Confidential Information of the other party.
2. Each party agrees to use the Confidential Information of the other party solely to carry out its obligations or receive the benefits of this Agreement.
3. Notwithstanding the foregoing, a party may disclose Confidential Information of the other party:
 1. to its legal advisors, accountants, auditors on a confidential need-to-know basis;
 2. to its employees and contractors on a confidential need-to-know basis;
 3. in enforcing this Agreement or in a proceeding arising out of or in connection with this Agreement; or
 4. to the extent required by Law or pursuant to a binding order of a government agency or court.
4. The Customer must not disclose the terms of this Agreement to anyone other than to the Customer's legal advisors, accountants and auditors on a confidential basis.

7 PRIVACY AND SECURITY

1. Each party must comply with the Privacy Act (as though it were an entity bound by the Privacy Act and notwithstanding the small business

exception in the Privacy Act) and any other applicable Privacy Laws, in respect of any Personal Information that:

1. one party discloses to the other party; or
 2. comes into the possession or control of that party arising out of or in relation to the performance of this Agreement.
2. Kingfish Solutions must not, directly or indirectly, collect, store or use Personal Information of the Customer's customers.
 3. Kingfish Solutions must comply with all reasonable directions of the Customer regarding privacy and security. If there are extra costs to Kingfish Solutions in doing so, Kingfish Solutions will notify the Customer and the Customer must pay such extra costs.

8 FORCE MAJEURE

1. Subject to the requirement to give notice under this clause, if the performance by any party (*Affected Party*) of all or any of its obligations under this Agreement is prevented or delayed (in whole or in part) due to any Force Majeure Event, this Agreement will continue and remain in effect but the Affected Party will not be in breach of this Agreement for that reason only, and the Affected Party will be granted a reasonable extension of time to complete performance of its affected obligations.
2. The Affected Party must promptly after becoming aware of a Force Majeure Event, give written notice to the other party of the nature of the Force Majeure Event and the way and the extent to which its obligations are prevented or delayed and notify the other party of any material change in these matters and use its reasonable endeavours to limit the effects of the Force Majeure Event, and promptly carry out its obligations as soon as, and to the extent that, it is able to do so.

9 TERMINATION

1. Either party may terminate this Agreement with immediate effect by giving written notice to the other party at any time if:
 1. the other party experiences an Insolvency Event; or
 2. the other party breaches any material provision of this Agreement which is incapable of being remedied, or where the breach is capable of being remedied, fails to remedy the breach within 21 days after receiving written notice from the terminating party requiring it to do so.
2. The Customer may terminate this Agreement on 30 days' written notice for any reason and without cause. If the Customer does so, the Customer must pay Kingfish Solutions for all work done by Kingfish Solutions up until the end of that 30-day period.
3. The Customer may not suspend work on the Services without Kingfish Solutions's written consent.

10 WARRANTIES

Each party warrants that it:

1. has the authority to enter into and perform its obligations under this Agreement and that this Agreement has been duly executed and is a legal, valid and binding Agreement;
2. will comply at all times with applicable Laws; and
3. will not do anything or make any statement that could be reasonably expected to harm the reputation of the other party.

11 SUPPLIER WARRANTIES

1. Kingfish Solutions warrants that:
 1. Kingfish Solutions has all applicable licenses, permits and government authorisations required to perform its obligations in accordance with this Agreement; and
 2. the use by the Customer of any Deliverables will not infringe the rights (including Intellectual Property Rights) of any other person.
2. Kingfish Solutions acknowledges that the Customer has entered into this Agreement in reliance on the warranties in detailed in this clause.

12 LIMITATIONS ON LIABILITY

1. Neither party will be liable to the other whether in contract, tort (including negligence) or otherwise in connection with the Agreement, for loss or damage to the extent that the other party (or the other party's Personnel) contributed to the loss or damage.
2. Subject to clause 12(e), to the extent permitted by Law, neither party will be liable to the other party for any Consequential Loss suffered or incurred by the other party whether in contract, tort (including negligence) or otherwise in connection with the Agreement.
3. Subject to clause 12(e), to the extent permitted by Law, the maximum liability of Kingfish Solutions to the Customer, whether in contract, tort (including negligence) or otherwise in connection with the Agreement (including under an indemnity), is limited to amount specified in a Proposal or Statement of Work, and if no amount is specified in a Proposal or Statement of Work, then is limited to \$20,000.
4. Subject to clause 12(e), to the extent permitted by Law, the maximum liability of the Customer to Kingfish Solutions, whether in contract, tort (including negligence) or otherwise in connection with the Agreement, is limited to twice the Fees specified in a Proposal or Statement of Work.
5. The exclusions and limitations of liability in clauses 12(b), 12(c) and 12(d) do not apply to liability in relation to:
 1. personal injury, including sickness and death;
 2. loss of, or damage to, tangible property;

3. an infringement of Intellectual Property Rights;
 4. fraudulent act or omission; or
 5. any breach of any obligation under clause 6.
6. A party who suffers loss or damage must use reasonable steps to mitigate its loss. The other party will not be responsible for any loss, damage or expenses to the extent that the injured party could have avoided or reduced the amount of the loss, damage or expense, by taking reasonable steps to mitigate its loss.
 7. Kingfish Solutions's liability under this Agreement will be reduced proportionally to the extent to which any loss was caused or contributed to by any negligence or other wrongful act or omission of the Customer or its employees or agents.
 8. Notwithstanding any other clause of this Agreement and to the extent permitted by Law, Kingfish Solutions excludes liability to Customer whether in contract, tort (including negligence) or otherwise in connection with the Agreement (including under an indemnity) for:
 1. the way the Customer and its Personnel use any software provided by Kingfish Solutions or for the safety of road users;
 2. personal injury, death or property damage arising from or related to the use, failed use, misuse, non-operation or incorrect operation by the Customer of any software provided by Kingfish Solutions; or
 3. claims made by third parties against the Customer for, relating to or because of the use, failed use, misuse, non-operation or incorrect operation by the Customer of any software provided by Kingfish Solutions.

13 ASSIGNMENT AND SUBCONTRACTING

Kingfish Solutions must not assign or novate, directly or indirectly, any of its rights or obligations under this Agreement without the prior written consent of the Customer, except that Kingfish Solutions may assign this Agreement in connection with the sale or reorganisation of all or part of Kingfish Solutions's business, or due to a machinery of government change. Kingfish Solutions must not subcontract or delegate any of its obligations under this Agreement unless explicitly allowed in a Proposal or Statement of Work. Kingfish Solutions is a contractor of the Customer. Kingfish Solutions is not an agent or employee of the Customer. Kingfish Solutions has no authority to bind the Customer. The Customer has no authority to bind Kingfish Solutions.

14 SURVIVAL

Without limiting any other provision of this agreement, clauses 4, 6, 7 and 12 survive termination or expiry of this Agreement for any reason.

15 REPRESENTATIVES

A Proposal or Statement of Work set out the representatives of each party for the purposes of this Agreement. These representatives will be the first point of contact between the parties in relation to any matter relevant to the Agreement. The contact details of each representative may be updated from time to time by the party that appointed the relevant representative by notice in writing to the other party.

16 NOTICES

Any notice, demand, consent or other communication (a *Notice*) given or made under this Agreement:

1. must be in writing and signed by the sender or a person duly authorised by the sender;
2. must be addressed and delivered to the intended recipient by prepaid post or by hand or email to the address or email address of the representative of the party as specified in a Proposal or Statement of Work, or as last notified by the intended recipient to the sender; and
3. will be conclusively taken to be duly given or made when delivered, received or left at the above email address, or address. If delivery or receipt occurs on a day that is not a business day in the place to which the Notice is sent or is later than 4pm (local time) at that place, it will be conclusively taken to have been duly given or made at the commencement of business on the next business day in that place.

17 DISPUTE RESOLUTION

1. If a dispute arises out of or in relation to this Agreement, either party may notify the other in writing in which case a nominated representative of each affected party must promptly attempt in good faith to resolve the dispute. If the parties are unable to resolve the dispute within seven days of the written notification referred to in this clause, each party must promptly refer the dispute for resolution to one of the Managing Director, Chief Executive or Chief Operating Officer (*Senior Executive*) of that party.
2. If the parties are unable to resolve the dispute within 21 days following referral to the Senior Executive of the relevant parties, then either party may use such lawful dispute resolution procedures or seek such legal and equitable remedies as it considers necessary or appropriate in its sole discretion.
3. Nothing in this clause 17, shall prevent a party from seeking urgent injunctive relief before an appropriate court.

18 GENERAL

1. This Agreement contains the entire agreement between the parties with respect to its subject matter.
2. This Agreement may only be amended only by another written agreement executed by all the parties.
3. No failure to exercise or delay in exercising any right, power or remedy under this Agreement operates as a waiver. A single or partial exercise or waiver of the exercise of any right, power or remedy does not preclude any other or further exercise of that or any other right, power or remedy. A

waiver is not valid or binding on the party granting that waiver unless made in writing.

4. The rights, powers and remedies provided to a party in this Agreement are in addition to, and do not exclude or limit, any right, power or remedy provided by law or equity or any agreement.
5. Any provision of this Agreement which is prohibited or unenforceable in any jurisdiction is ineffective as to that jurisdiction to the extent of the prohibition or unenforceability. That does not invalidate the remaining provisions of this Agreement nor affect the validity or enforceability of that provision in any other jurisdiction.
6. Each party must bear its own costs arising out of the negotiation, preparation and execution of this Agreement.
7. This Agreement and, to the extent permitted by law, all related matters including non-contractual matters, is governed by the laws of Queensland. In relation to such matters each party irrevocably accepts the non-exclusive jurisdiction of courts with jurisdiction in Queensland and waives any right to object to the venue on any ground.
8. This Agreement may be executed in any number of counterparts. All counterparts will be taken to constitute one agreement.

19 DEFINITIONS AND INTERPRETATION

19.1 DEFINITIONS

The following definitions apply unless the context requires otherwise.

Commencement Date is defined in a Proposal or Statement of Work.

Confidential Information means all non-public business or technical information, in any form whether tangible or not, disclosed or communicated by a party to the other, or learnt or accessed by, or to which the other party is exposed as a result of entering into this Agreement.

Confidential Information does not include information which party can demonstrate by written records was:

1. already known to that party;
2. received by that party from a third party not under a duty of confidence; or
3. independently developed by that party by people who did not have access to the Confidential Information of the other party.

Consequential Loss means any indirect or consequential Loss, including any loss of profits, loss of revenue, loss of or damage to data, loss of contract value, loss of anticipated savings, loss of opportunity, and loss of reputation or goodwill.

Deliverables are any works, reports, materials or items that Kingfish Solutions is required by this Agreement to provide to Customer, including those deliverables specified in a Proposal or Statement of Work.

Fees means the fees and expenses set out in a Proposal or Statement of Work.

Force Majeure Event affecting a party means a circumstance beyond the reasonable control of that party causing that party to be unable to observe or perform on time an obligation under this Agreement, including acts of God, lightning strikes,

earthquakes, floods, storms, explosions, fires and any natural disaster, acts of public enemies, terrorism, riots, civil commotion, malicious damage, sabotage, revolution and acts of war and war, general strikes (other than of its own staff), embargo, pandemic, or power, water and other utility shortage.

Initial Term means the initial term set out in a Proposal or Statement of Work.

An **Insolvency Event** occurs in respect of a person where:

1. a party ceases, suspends or threatens to cease or suspend the conduct of all or a substantial part of its business or disposes of or threatens to dispose of a substantial part of its assets;
2. a party becomes unable to pay its debts when they fall due, or stops or suspends or threatens to stop or suspend payment of all or a class of its debts;
3. a party becomes or is (including under legislation) deemed or presumed to be insolvent;
4. a party has a receiver, manager, administrator, administrative receiver or similar officer appointed in respect of it or the whole or any part of its assets or business;
5. any composition or arrangement is made with any one or more classes of its creditors;
6. except for the purpose of solvent amalgamation or reconstruction, an order, application or resolution is made, proposed or passed for its winding up, dissolution, administration or liquidation;
7. a party enters into liquidation whether compulsorily or voluntarily; or
8. any analogous or comparable event takes place in any jurisdiction.

Intellectual Property Rights means all industrial and intellectual property rights of any kind including but not limited to copyrights (including rights in computer software), trade marks, service marks, designs, patents, trade secrets, semi-conductor or circuit layout rights, trade, business, domain or company names, rights in Confidential Information, know-how and other proprietary rights (whether or not any of these are registered and including any application, or right to apply, for registration) and all rights or forms of protection of a similar nature or having equivalent or similar effect to any of these, which may subsist anywhere in the world, but excludes moral rights, and similar personal rights, which by law are non-assignable.

Law means all applicable laws including rules of common law, principles of equity, statutes, regulations, proclamations, ordinances, by laws, rules, regulatory principles, requirements and determinations, mandatory codes of conduct and standards, writs, orders, injunctions and judgments, and includes any Privacy Laws.

Loss means any claim, loss, damage, liability, cost, charge or expense (including legal expenses on a full indemnity basis), however arising, and whether present or future, fixed or unascertained, actual or contingent.

Personal Information has the meaning given to that term in the Privacy Act.

Personnel means, in respect of a person, any officer, employee, contractor, servant, agent, or other person under the person's direct or indirect control and includes any subcontractors.

Privacy Laws means all legislation, principles, industry codes and policies, as amended or replaced from time to time, which relate to the collection, use, disclosure, storage or granting of access rights to Personal Information, and includes the Privacy Act 1988 (Cth), the Queensland Information Privacy Act 2009 and the Spam Act 2003 (Cth).

Related Body Corporate has the meaning given to that term in section 9 of the Corporations Act.

Renewal Term means the periods for which the Term shall successively renew, as set out in a Proposal or Statement of Work.

Services is defined in a Proposal or Statement of Work.

Term means the period from the Commencement Date until the end of the Initial Term or any applicable Renewal Term.

19.2 INTERPRETATION

Headings are for convenience only and do not affect interpretation. The following rules apply unless the context requires otherwise.

1. the singular includes the plural and conversely;
2. where a word or phrase is defined, its other grammatical forms have a corresponding meaning;
3. a reference to a person includes any body corporate, unincorporated body or other entity and conversely;
4. a reference to any party to this Agreement or any other agreement or document includes the party's successors and permitted assigns;
5. a reference to any agreement or document (including a reference to this Agreement) is to that agreement or document as amended, notated, supplemented, varied or replaced from time to time, where applicable, in accordance with this Agreement or that other agreement or document;
6. a reference to any legislation or to any provision of any legislation includes any modification or re-enactment of it, any legislative provision substituted for it and all regulations and statutory instruments issued under it;
7. a reference to conduct includes any omissions, statement or undertaking, whether or not in writing;
8. a reference to includes, means includes without limitation; and
9. all references to \$ are to Australian dollars, unless otherwise specified.