

Indietech Services Agreement

We *always* have your best interests in mind. So this agreement is designed to protect both parties and nurture a solid on-going commercial relationship.

This section covers the general terms of service that continue throughout the “Term” of our dealings

1. Definitions

Acceptance Date means the date that the Customer accepts the Software and the outcomes of any Services specified in a Work Order.

Agreement means this agreement, any schedules and any annexures.

Business Day means any day except a Saturday, Sunday, public holiday or bank holiday in Victoria.

Change Request means a written request by a party substantially in the form set out in Schedule 2.

Commencement Date means the date specified in a Work Order, or, if none is specified, the date of this Agreement.

Confidential Information means all information belonging or relating to a party to this Agreement, whether oral, graphic, electronic, written or in any other form, that is not generally available to the public at the time of disclosure other than by reason of a breach of this Agreement or that is in fact, or should reasonably be regarded as, confidential to the party to whom it belongs or relates.

Content means all text, graphics, animation, audio or digital video components and all other components of a Website.

Customer Material means any Material provided by the Customer to the Contractor.

Development Services means the development services specified in a Work Order.

Exemption means circumstances or events specified in a Work Order.

Expiry Date means the date specified in a Work Order.

Fee means the fees specified in a Work Order.



GST has the meaning given to it in the *A New Tax System (Goods and Services Tax) Act 1999 (Cth)*.

Intellectual Property Rights means all present and future intellectual and industrial property rights conferred by Law and wherever existing, including:

- (a) patents, designs, copyright, moral rights, rights in circuit layouts, database rights, trade marks, know how, brand names, domain names, inventions, product names, trade secrets and any other rights subsisting in the results of intellectual effort in any field, whether or not registered or capable of registration;
- (b) any application or right to apply for registration of any of these rights;
- (c) any registration of any of those rights or any registration of any application referred to in paragraph (b); and
- (d) all renewals and extensions of these rights.

Law means any principle of law or equity, statute, regulation, ordinance, code, by-law, or requirement or approval of a government or governmental or semi-governmental body that has the force of law.

Maintenance Services means the maintenance services specified in a Work Order.

Material means any documents, data, software, video, digital images or other materials that are the subject of Intellectual Property Rights.

Other Services means any services other than the Services specified in a Work Order.

Personal Information means any information or opinion about a natural person (whether or not true), as defined in the *Privacy Act 1988 (Cth)*.

Personnel means any individual, agent, officer, employee, consultant or contractor.

Prescribed Rate means the rate that is 2% per annum above the rate fixed from time to time under section 2 of the *Penalty Interest Rates Act 1983 (Vic)*.

Privacy Legislation means any applicable Law which relates to privacy, including the *Privacy Act 1988 (Cth)*, the *Spam Act 2003 (Cth)* and the *Do Not Call Register Act 2006 (Cth)*.

Services means the Development Services, project services, Maintenance Services, access to the Software and Other Services to be provided by the Contractor as specified in a Work Order.

Site means the site (if applicable) specified in a Work Order.

Software means any software which is made available to the Customer under this Agreement or a Work Order, and also includes any update of, enhancement to, modification or derivative of or new releases of such Software.

Standard Rates means the Contractor's standard rates as altered by the Contractor from time to time. Provided that any change or alteration in the Contractor's standard rates must be notified to the Customer at least 30 days prior to the change taking effect.

Term means the term of the Agreement specified in clause 3.

Unavoidable Costs means reasonable costs incurred by the Contractor including Personnel costs, in connection with the performance of its obligations under this Agreement or a Work Order up to the date of termination which cannot be re-couped by the Contractor by way of cancellation, refund, re-allocation or other means.

Website means any website(s) created by or for the Customer under a Work Order.



Website Design means the layout, look, feel and functionality of a Website.

Work Order means a written order for the provision of a Service which is agreed in accordance with clause 4.1.

Work Order Term means the term of a Work Order.

2. Interpretation

In this Agreement, unless the context requires otherwise:

- (a) the headings are used for convenience only and do not affect the interpretation of this Agreement;
- (b) a reference to a document includes the document as modified from time to time and any document replacing it;
- (c) if something is to be or may be done on a day that is not a Business Day then it must be done on the next Business Day;
- (d) the word "month" means calendar month and the word "year" means 12 months;
- (e) a reference to all or any part of a statute, rule, regulation or ordinance (**statute**) includes that statute as amended, consolidated, re enacted or replaced from time to time;
- (f) wherever "include" or any form of that word is used, it must be construed as if it were followed by "(without being limited to)";
- (g) money amounts are stated in Australian currency unless otherwise specified; and
- (h) a reference to any agency or body, if that agency or body ceases to exist or is reconstituted, renamed or replaced or has its powers or functions removed (defunct body), means the agency or body that performs most closely the functions of the defunct body.

3. Term

3.1 Initial Term

This Agreement commences on the Commencement Date and continues for a period of 12 months, (the "**Term**") unless it is terminated earlier under clause 17.

3.2 Renewal of Agreement

- (a) Subject to clause 3.2(b), the Term of this Agreement will be extended, subject to the terms and conditions contained in this Agreement, for further successive periods of 12 months, until either party gives to the other party, not less than 3 months prior to the expiration of the Term, written notice stating that it does not wish for the Term to be extended by a further 12 month period.



- (b) This Agreement cannot be extended for a further period if the Customer is in default under the Agreement and such default remains un-remedied.
- (c) Each Work Order commences on the Commencement Date and expires on the Expiry Date unless terminated earlier in accordance with the terms of this Agreement.

4. Services

4.1 Work Orders

- (a) The Customer must raise a Work Order substantially in the form specified in Schedule 1 to order any Services.
- (b) The Contractor is under no obligation to accept a Work Order request from the Customer under clause 4.1(a). A Work Order, if agreed between the parties, is deemed to incorporate the terms of this Agreement and will be deemed to be a contract executed between the parties.
- (c) Where the Contractor reasonably requests, the Customer must complete a credit card authorisation for each Work Order.
- (d) Upon termination of this Agreement, the Contractor will, on a time and materials basis at its then current Standard Rates provide such reasonable assistance as it deems necessary to transfer the Services provided pursuant to this Agreement to another services provider (**New Services Provider**) or to the Customer. Such transition services will include "packaging up" the HTML, content and Website into a useable format to the Customer or the New Services Provider but will not include implementation or subsequent build activities which will be the responsibility of the Customer or New Service Provider. For the avoidance of doubt the transition services to be provided pursuant to this clause 4.1(d) will be available to the Customer for a period of not more than 3 months after the effective date of termination.

4.2 Services

- (a) Subject to clause 4.2(b), the Contractor will during the Term provide the Customer with the Services in accordance with a Work Order.
- (b) The Contractor will not be required to provide the Services where an Exemption applies. The Customer will be charged at the Standard Rates where Services are performed and an Exemption applies.
- (c) The Services will be provided in accordance with the service levels specified in a Work Order.

5. Change Requests

- (a) Either party may request a change in a Work Order (**Amending Party**) by preparing a Change Request at the Amending Party's cost.
- (b) The Amending Party must prepare the necessary amendments required to a Work Order and the Contractor will then provide the Customer with a written estimate of the cost of performing the Change Request.
- (c) If the parties are unable to sign off on the proposed amendments to a Work Order within 10 Business Days of the Contractor providing the estimate referred to in clause 5(b), the Change Request is deemed to be rejected.



6. Customer's obligations

Without limiting its obligations under the Agreement or any Work Order the Customer must:

- (a) if applicable, provide the Contractor with all necessary access to the Site(s) at the times and in the manner reasonably necessary to allow the Contractor to perform the Services;
- (b) do all things reasonably necessary within the specified timeframe, or within a reasonable amount of time if no timeframe is specified, to enable the Contractor to perform its obligations under this Agreement including performing any works, providing any equipment or connecting any services as directed by the Contractor from time to time;
- (c) appoint a Personnel who will be the primary contact for the Customer, will have overall responsibility for managing and coordinating the Services, and will have the authority to make decisions in the ordinary course of day-to-day management of the Services in accordance with this Agreement. The Customer must also appoint an alternate Personnel who will act in the place of the primary contact when the primary contact is not available;
- (d) if applicable, prepare the Site(s) in accordance with any specifications and within the timing set out in a Work Order; and
- (e) include links to the Contractor's website address indietech.com.au on each page of the Website. The Customer acknowledges that additional charges may apply where the links are removed or not incorporated in accordance with this clause 6(e).

7. Customer Material

- (a) The Customer hereby grants a non-exclusive, royalty-free licence to the Contractor to use the Customer Material to perform the Services during the Work Order Term. The Customer warrants that it has the necessary rights to grant the licence in this clause.
- (b) The Customer is responsible for any Material (including Customer Material) provided to the Contractor or made available via a Website or any other medium. The Customer acknowledges and agrees that it must not (and must not directly or indirectly allow, request, permit or facilitate any other person to) provide any such material or make such material available that:
 - (i) is defamatory, abusive, obscene, fraudulent, deceptive or misleading;
 - (ii) is in violation of any Intellectual Property Rights of another;
 - (iii) is in violation of any Law;
 - (iv) is offensive or otherwise unacceptable in the Contractor's sole discretion; or
 - (v) links to any material falling within the sub-paragraphs above.
- (c) The Customer will indemnify, defend and hold harmless the Contractor and keep the Contractor indemnified against any loss (including legal fees) arising out of any claim relating to or arising from the matters in clauses 7(a) and 7(b).



8. Software

8.1 Access and Licence

- (a) Subject to the payment of any applicable Fees, the Customer is hereby granted a non-exclusive, revocable licence to access and use the Software for the Term as specified in this Agreement, Work Order and any applicable third party terms. The Customer acknowledges that:
- (i) its use of the Software will be subject to the third party licensor's licence agreement;
 - (ii) all licences with respect to the Customer's use of the Software will be between the Customer and the Software licensor; and
 - (iii) the Customer is solely responsible for its compliance with the Software licence and the Contractor will not be responsible for, or have any obligation to ensure, that the Customer agrees to or complies with the terms of the Software licence.
- (b) If any other third party software or applications are required for the Services, unless otherwise specified in a Work Order the Customer is responsible for procuring the rights to such items and for any configuration, interoperability issues, maintenance and storage of the third party software.

8.2 Restrictions on use

Unless permitted in a Work Order the Customer agrees that it must not:

- (a) itself, or permit anyone else to, copy or duplicate the Software or any portion of the Software;
- (b) create or attempt to create, through reverse engineering or otherwise, the Software or any part of the Software;
- (c) modify the Software or any part of the Software;
- (d) rent, lease, sell, distribute or create derivative works of the Software or any part of the Software;
- (e) deal with the Software in a way that breaches any applicable terms of a third party Software vendor; or
- (f) give access to the Software to any other person without the express written authorisation of the Contractor.

9. Acceptance Testing

9.1 Acceptance

- (a) Where applicable, all testing will be conducted on the platforms set out in the Work Order.



- (b) Subject to clause 9.2, the Customer must confirm its acceptance of the Software and, if applicable, the outcomes of any Services by the relevant Acceptance Date (if any), or otherwise within 5 Business Days of supply or installation.
- (c) Notwithstanding anything in this Agreement, the Customer will be deemed to have accepted the Software or outcomes of the Services if:
 - (i) acceptance is not confirmed within any time period required under clause 9.1(b); or
 - (ii) any item developed pursuant to the Services is used by the Customer (or any third party authorised by the Customer) in a live or production environment.
- (d) Following acceptance of any Software or the outcomes of any Services, any further changes to those items, or further work required in relation to those items, will be scoped and charged in accordance with clauses 4.1 (Work Orders) or 5 (Change Requests), as appropriate.

9.2 Non-Acceptance

- (a) If any of the Software or outcomes of the Services are not acceptable to the Customer, by the Acceptance Date the Customer must provide to the Contractor notice of the reason(s) why it considers such Software or outcomes of the Services to not be acceptable and must provide all necessary and relevant information reasonably required by the Contractor in support of such reason(s).
- (b) If, after receipt of the notice referred to in clause 9.2(a), the Contractor in its reasonable opinion considers that the Customer's reason(s) for non-acceptance is/are:
 - (i) reasonable and not due to any act or omission of the Customer or any third party, or any cause outside the Contractor's reasonable control, the Contractor will endeavour to rectify the causes of the non-acceptance within 20 Business Days of notification by the Customer; or
 - (ii) not reasonable or is due to an act or omission of the Customer or any third party or any cause outside the Contractor's reasonable control, the Contractor shall identify the steps necessary to overcome the non-acceptance and shall be entitled to charge the Standard Rates reasonably required in order to implement those steps.

9.3 Delay

The Customer acknowledges that if the performance of any or all of the Services is delayed as a result of:

- (a) the Contractor having to perform the Services in circumstances other than those expressly or reasonably anticipated in this Agreement;
- (b) a change in the time or complexity of the provision of the Services as a result of an agreed change of scope or requirements; or
- (c) any act or omission by the Customer, its agents, contractors or suppliers,

then the dates for commencing and completing the Services (in whole or in part) will be delayed or changed as the Contractor in its reasonable discretion considers necessary and the Contractor will be entitled to charge at the Standard Rates for any additional work reasonably required for any such delay.



10. Credit

The Contractor may at any time set a credit limit for the Customer and require the Customer to provide or arrange a bond, guarantee or other security for the Fees. The Customer will authorise the Contractor to the full extent permitted by Law, including under the Privacy Legislation to give to and obtain from a credit reference organisation or other credit provider, information relating to the Customer's creditworthiness and to use that information.

11. Fees, payment and GST

- (a) In consideration for performance of the Services the Customer must pay the Contractor the Fees in the manner and at the times specified in a Work Order. Unless otherwise specified in a Work Order, payment of the Fees will be 7 days from the date of the invoice.
- (b) The Contractor is entitled to set off or reduce any amount due and owing to the Customer under a Work Order by any amount which the Contractor claims is owed to it by the Customer pursuant to the Work Order, any other Work Order or any other agreement between the Contractor and the Customer.
- (c) If any amount payable to the Contractor under this Agreement has not been paid by the Customer within 7 days of the due date for payment, the Contractor may do one or more of the following:
 - (i) charge interest on the outstanding amount at the Prescribed Rate from the due date for payment until such time as full payment of the outstanding amount is made by the Customer;
 - (ii) charge the Customer's credit card for the full outstanding amount of the invoice. Where applicable, the Customer must pay, in addition to the outstanding amount, any charges levied or imposed on the credit card transaction;
 - (iii) suspend performance of this Agreement or a relevant Work Order (in part or in full) until the outstanding amount is paid;
 - (iv) terminate this Agreement or a relevant Work Order; or
 - (v) take such other steps as are necessary to recover the outstanding amount until full payment has been made by the Customer.
- (d) Where applicable, the Customer must pay, in addition to the Fees, any GST levied or imposed upon the Contractor as a result of this Agreement. Unless otherwise expressly stated, all prices or other sums payable or fees to be provided under or in accordance with this Agreement are exclusive of GST.

12. Intellectual Property Rights

- (a) Nothing in this Agreement will alter or assign the ownership of Intellectual Property Rights belonging to the parties prior to the Commencement Date or which are wholly unrelated to the Services.



- (b) Subject to the Customer's ongoing compliance with this Agreement and upon payment of the Fees in full by the Customer, the Contractor hereby assigns to the Customer (including by way of present and future assignment of copyright) all right title and interest in the Intellectual Property Rights in the Content and Website Design created pursuant to the Services.
- (c) Unless otherwise specified in a Work Order as a special condition and subject to clause 12(b), the Customer acknowledges that all Materials including Software, as well as methods, processes, reports, documentation or other information or material (whether in electronic or material form), which are created by the Contractor (**Contractor Materials**) and all existing and future Intellectual Property Rights which are derived or arise from the creation or supply of any Contractor Materials, is the property of and will at all times remain vested in the Contractor.
- (d) The parties agree to do all things necessary or desirable, and will ensure its Personnel do all things necessary or desirable, to effect the assignment of any Intellectual Property Rights referred to in clauses 12(b) and 12(c).
- (e) Subject to the Customer's ongoing compliance with this Agreement including full payment of the Fees, the Contractor will provide the Customer with access to Contractor Materials necessary to receive the benefit of the Services, solely for the Customer's business.

13. Privacy Legislation

- (a) When receiving the benefit of the Services, or when dealing with any Personal Information in connection with use of or access to the Software or any Website, the Customer:
 - (i) must comply with all Privacy Legislation; and
 - (ii) acknowledges and agrees that it will not violate Privacy Legislation by advertising goods, services or property via the transmission of unsolicited mail, facsimiles, voice messages, text messages, e-mail or any other medium.
- (b) The Customer will indemnify, defend and hold harmless the Contractor and keep the Contractor indemnified against any loss (including legal fees) arising out of any claim relating to or arising from the matters in clause 13(a).
- (c) When dealing with any Personal Information collected on behalf of the Customer, the Contractor must comply with all Privacy Legislation.

14. Confidentiality

- (a) Each party (**Receiving Party**) receiving, possessing or otherwise acquiring Confidential Information of any other party (**Disclosing Party**) acknowledges that the Disclosing Party's Confidential Information is the property of and confidential to or a trade secret of the Disclosing Party. Subject to clause 14(b), the Receiving Party must:
 - (i) keep the Disclosing Party's Confidential Information confidential and not directly or indirectly disclose, divulge or communicate that Confidential Information to, or otherwise place that Confidential Information at the disposal of, any other person without the prior written approval of the Disclosing Party;
 - (ii) take all reasonable steps to secure and keep secure all Disclosing Party's Confidential Information coming into its possession or control; and



- (iii) not memorise, use, modify, reverse engineer or make copies, notes or records of the Disclosing Party's Confidential Information for any purpose other than in connection with the performance by the Receiving Party of its obligations under this Agreement.
- (b) The obligations of confidentiality under clause 14(a) do not apply to any information that is generally available to the public (other than by reason of a breach of this Agreement) or is required to be disclosed by any applicable Law.
- (c) The confidentiality obligations in this clause 14 do not prevent the Contractor from referring to the Customer as a customer in sales presentations and marketing activities.

15. Warranty and liabilities

15.1 Limitations on liability

- (a) Subject to this clause 15, the Contractor is not liable to the Customer or to any other person for:
 - (i) any wrongful, wilful or negligent act or omission of the Customer or any of its Personnel;
 - (ii) any indirect, incidental, special or consequential loss or damage, loss of profits or anticipated profits, economic loss, loss of business opportunity, loss of data or loss or damage resulting from the costs associated with time spent by internal resources, irrespective of whether:
 - (A) the loss or damage is caused by or relates to breach of contract, statute, tort (including negligence) or otherwise; or
 - (B) the Customer or any other person was previously notified of the possibility of the loss or damage; or
 - (iii) any loss relating to the Software. All claims in relation to the Software should be made in accordance with the third party Software terms.
- (b) Subject to clause 15.1(c), the maximum aggregate liability of the Contractor for all proven losses, damages and claims arising out of this Agreement, including liability for breach, in negligence or in tort or any other Law, is limited to the sum of the Fees paid by the Customer to the Contractor under this Agreement in the 6 months immediately preceding the claim.
- (c) Nothing in this clause 15 limits a party's liability with respect to damages for personal injury, including sickness and death.

15.2 Warranties

- (a) The Customer warrants that any Site(s) complies with all Laws including all occupational health and safety Laws.
- (b) Any representation, warranty, condition or undertaking that would be implied in this Agreement or a Work Order by Law, trade, custom or usage is excluded to the maximum extent permitted by Law.
- (c) Nothing in this Agreement or a Work Order excludes, restricts or modifies any condition, warranty, right or remedy conferred on the Customer by the *Competition and Consumer Act 2010 (Cth)* or any other applicable Law that cannot be excluded, restricted or modified by agreement.



- (d) To the fullest extent permitted by Law, the liability of the Contractor for a breach of a non-excludable condition or warranty referred to in clause 15.2(c) is limited, at the Contractor's option:
 - (i) in the case of Services to:
 - (A) the supplying of the Services again; or
 - (B) the payment of the cost of having the Services supplied again.

16. Dispute Resolution

- (a) If a dispute arises between the parties (**Dispute**) under this Agreement, the parties agree to negotiate in good faith to resolve the Dispute and will refer resolution of the Dispute to the senior officers of the parties, or their nominees.
- (b) If the Dispute has not been resolved by negotiation within a reasonable time then the parties must submit the Dispute to a mediator for consideration in accordance with the Mediation and Conciliation Rules of the Institute of Arbitrators and Mediators Australia, which Rules are taken to be incorporated into this Agreement.
- (c) If the Dispute has not been resolved within 60 days of referral to mediation, then either party is free to initiate proceedings in a court.
- (d) Nothing in this clause will prevent a party from seeking interlocutory relief through courts of appropriate jurisdiction.

17. Termination

17.1 Termination of the Agreement or a Work Order for cause

A party (the **Terminating Party**) may, by notice in writing to the other party (the **Defaulting Party**), immediately suspend or terminate a particular Work Order or this Agreement, without prejudice to any right or action or remedy which has accrued or which may accrue in favour of the Terminating Party, where:

- (a) the Defaulting Party has breached this Agreement or the terms of a Work Order and has failed to remedy the breach within 20 Business Days after being notified by the Terminating Party that it requires remedy; or
- (b) the Defaulting Party becomes insolvent.

17.2 Termination of a Work Order for convenience

Either party may terminate a Work Order at any time for any reason by providing 14 days' prior written notice to the other party.



17.3 Effect of Termination

- (a) Upon termination of a Work Order by either party:
- (i) the Customer will pay the Fees in full in relation to all Services provided up to and including the date of termination of the Work Order;
 - (ii) where a Work Order is terminated because of the Customer's breach, under clause 17.1, or by the Customer for convenience under clause 17.2 the Customer will pay the Contractor's Unavoidable Costs;
 - (iii) the parties will be regarded as discharged from any further obligation under the terminated Work Order;
 - (iv) the Customer will cease to have access, and will cease access, to the Software, any Website and any Materials and any licence granted to the Customer under the Work Order will immediately cease; and
 - (v) each party must immediately cease using the other party's Confidential Information and immediately return to the other party all Confidential Information of the other party relating to the terminated Work Order or, if it is not capable of return, destroy it.

For the avoidance of doubt, the parties' rights and obligations under this Agreement continue unaffected.

- (b) In relation to clause 17.3(a)(v), if the Confidential Information affects other Work Orders that are continuing, the parties will be entitled to continue using the Confidential Information in relation to those Work Orders.

- (c) Upon termination of this Agreement by either party:
- (i) all Work Orders are terminated unless otherwise agreed in writing by the parties;
 - (ii) the Customer will pay the Fees in full up to and including the date of termination of the Agreement for all Services provided under each Work Order correct at the date of termination. For the avoidance of doubt, the Fees for any Work Orders which the parties agree are not to be terminated pursuant to clause 17.3(c)(i) will not become immediately due and payable upon termination of this Agreement and will be paid in accordance with the Work Order;
 - (iii) the Customer will cease to have access, and will cease access, to the Software, any Website and any Materials and any licence granted to the Customer under this Agreement will immediately cease;
 - (iv) where a Work Order is terminated because of the Customer's breach, under clause 17.1, or by the Customer for convenience under clause 17.2 the Customer will pay the Contractor's Unavoidable Costs;
 - (v) each party must immediately cease using the other party's Confidential Information and immediately return to the other party all Confidential Information of the other party or, if it is not capable of return, destroy it;
 - (vi) subject to clause 17.4, the parties will be regarded as discharged from any further obligation under this Agreement; and
 - (vii) the termination will be without prejudice to any other remedies under this Agreement.

17.4 Clauses surviving termination

This clause 17.4 together with clauses 3, 12, 14, 15, 17.3, 18 and 19 survive termination or expiration of this Agreement or a Work Order.



18. Employee restraint

- (a) During the term of the Agreement and for a period of 12 months following the termination or expiry of this Agreement the Customer will not directly or indirectly:
 - (i) solicit or encourage any employee of the Contractor who was involved in performing the Work Order, to leave the employ of the Contractor; or
 - (ii) solicit or encourage any consultant or other contractor under contract with the Contractor who was involved in performing the Work Order, to cease work for the Contractor.
- (b) If the Customer breaches clause 18(a), it agrees to pay to the Contractor an amount equal to 12 month's remuneration of that person when last engaged, and agrees to pay such amount on demand. The parties agree that this amount is a genuine pre-estimate of the loss suffered by the Contractor as a result of a breach of this clause 18.
- (c) The Customer acknowledges that the restriction imposed by this clause 18 is reasonable in its extent (as to duration and restrained conduct) having regard to the interests of each party to this Agreement.

19. General provisions

- (a) **(Entire understanding)** This Agreement contains the entire understanding between the parties concerning the subject matter of the Agreement and supersedes all prior agreements and communications between the parties. Each party acknowledges that, except as expressly stated in this Agreement, that party has not relied on any representation, warranty or undertaking of any kind made by or on behalf of another party in relation to the subject matter of this Agreement.
- (b) **(No waiver)** A failure, delay, relaxation or indulgence by a party in exercising any power or right conferred on the party by this Agreement does not operate as a waiver of the power or right. A single or partial exercise of the power or right does not preclude a further exercise of it or the exercise of any other power or right under this Agreement. A waiver of a breach does not operate as a waiver of any other breach.
- (c) **(Severability)** Any provision of this Agreement which is invalid in any jurisdiction must, in relation to that jurisdiction, be read down to the minimum extent necessary to achieve its validity, and, if applicable, be severed from this Agreement or in any other case, without invalidating or affecting the remaining provisions of this Agreement or the validity of that provision in any other jurisdiction.
- (d) **(Successors and assigns)** This Agreement binds and benefits the parties and their respective successors and permitted assigns under clause 19(e).
- (e) **(Assignment and novation)** The Customer cannot assign or otherwise transfer the benefit of this Agreement without the prior written consent of the Contractor. The Contractor may assign its rights and/or novate its responsibilities under this Agreement at any time on written notice. If a novation by the Contractor requires the Customer to consent, the Customer hereby gives such consent and, if required by the Contractor, the Customer will execute an agreement giving effect to such a novation.
- (f) **(No variation)** This Agreement cannot be amended or varied except in writing signed by the parties.



- (g) **(Governing law and jurisdiction)** This Agreement is governed by and must be construed in accordance with the Laws in force in Victoria. The parties submit to the exclusive jurisdiction of the courts of that State and the Commonwealth of Australia in respect of all matters arising out of or relating to this Agreement, its performance or subject matter.
- (h) **(Conflicting provisions)** If there is any conflict between the main body of this Agreement and any Work Orders or annexures comprising it, then the provisions of the main body of this Agreement prevail.
- (i) **(Relationship of parties)** Unless this Agreement expressly provides otherwise, nothing in this Agreement may be construed as creating a relationship of partnership, of principal and agent or of trustee and beneficiary.
- (j) **(Subcontracting)** The Contractor may subcontract the performance of any of its obligations under this Agreement or a Work Order.
- (k) **(Notices)** Any notice or other communications to or by a party to this Agreement must be in writing, legible and in English addressed to the

