

**1. Definitions**

- 1.1 **“Contract”** means the terms and conditions contained herein, together with any quotation, order, invoice or other document or amendments expressed to be supplemental to this Contract.
- 1.2 **“AESG”** means Australian Essential Services Group Pty Ltd its successors and assigns or any person acting on behalf of and with the authority of Australian Essential Services Group Pty Ltd.
- 1.3 **“Client”** means the person/s, entities or any person acting on behalf of and with the authority of the Client requesting AESG to provide the Services as specified in any proposal, quotation, order, invoice or other documentation, and:
  - (a) if there is more than one Client, is a reference to each Client jointly and severally; and
  - (b) if the Client is a partnership, it shall bind each partner jointly and severally; and
  - (c) if the Client is a part of a Trust, shall be bound in their capacity as a trustee; and
  - (d) includes the Client’s executors, administrators, successors and permitted assigns.
- 1.4 **“Services”** mean all Services supplied by AESG to the Client at the Client’s request from time to time.
- 1.5 **“Documentation”** means all documents (including site plans, proposal, or reports), together with notes briefly describing the approach and their limitations, and any appendices created (and provided to the Client) incidentally by AESG in the course of it conducting, or providing to the Client, the Services.
- 1.6 **“Project”** means the Project as specified in the proposal that will read in conjunction with this Contract for which the Services are provided by AESG to the Client.
- 1.7 **“Site”** means the address nominated by the Client at which the Services are to be undertaken by AESG.
- 1.8 **“Confidential Information”** means information of a confidential nature whether oral, written or in electronic form including, but not limited to, this Contract, either party’s intellectual property, operational information, know-how, trade secrets, financial and commercial affairs, contracts, client information (including but not limited to, **“Personal Information”** such as: name, address, D.O.B, occupation, driver’s license details, electronic contact (email, Facebook or Twitter details), medical insurance details or next of kin and other contact information (where applicable), previous credit applications, credit history) and pricing details.
- 1.9 **“Cookies”** means small files which are stored on a user’s computer. They are designed to hold a modest amount of data (including Personal Information) specific to a particular client and website, and can be accessed either by the web server or the client’s computer. If the Client does not wish to allow Cookies to operate in the background when using AESG’s website, then the Client shall have the right to enable / disable the Cookies first by selecting the option to enable / disable provided on the website, prior to making enquiries via the website.
- 1.10 **“Fee”** means the price payable (plus any GST where applicable) for the Services as agreed between AESG and the Client in accordance with clause 8 of this Contract.
- 1.11 **“GST”** means Goods and Services Tax as defined within the “A New Tax System (Goods and Services Tax) Act 1999” (Cth).

**2. Acceptance**

- 2.1 The Client is taken to have exclusively accepted and is immediately bound, jointly and severally, by these terms and conditions if the Client places an order for, or accepts Services provided by AESG.
- 2.2 In the event of any inconsistency between the terms and conditions of this Contract and any other prior document or schedule that the parties have entered into, the terms of this Contract shall prevail.
- 2.3 Any amendment to the terms and conditions contained in this Contract may only be amended in writing by the consent of both parties.
- 2.4 The Client acknowledges that the supply of Services on credit shall not take effect until the Client has completed a credit application with AESG and it has been approved with a credit limit established for the account.
- 2.5 In the event that the supply of Services requested exceeds the Client’s credit limit and/or the account exceeds the payment terms, AESG reserves the right to refuse delivery.
- 2.6 None of AESG’s agents or representatives are authorised to make any representations, statements, conditions or agreements not expressed by the manager of AESG in writing nor is AESG bound by any such unauthorised statements.
- 2.7 New information, improved practices and changes in legislation may require the reinterpretation of Documentation, in whole or in part, after their original issue. AESG reserves the right to alter their conclusions and recommendations in the light of further information that may become available.
- 2.8 Electronic signatures shall be deemed to be accepted by either party providing that the parties have complied with Section 9 of the Electronic Transactions (Victoria) Act 2000 or any other applicable provisions of that Act or any Regulations referred to in that Act.

**3. Errors and Omissions**

- 3.1 The Client acknowledges and accepts that AESG shall, without prejudice, accept no liability in respect of any alleged or actual error(s) and/or omission(s):
  - (a) resulting from an inadvertent mistake made by AESG in the formation and/or administration of this Contract; and/or
  - (b) contained in/omitted from any literature (hard copy and/or electronic) supplied by AESG in respect of the Services.
- 3.2 In the event such an error and/or omission occurs in accordance with clause 3.1, and is not attributable to the negligence and/or wilful misconduct of AESG; the Client shall not be entitled to treat this Contract as repudiated nor render it invalid.

**4. Change in Control**

- 4.1 The Client shall give AESG not less than fourteen (14) days prior written notice of any proposed change of ownership of the Client and/or any other change in the Client’s details (including but not limited to, changes in the Client’s name, address, contact phone or fax number/s, change of trustees, or business practice). The Client shall be liable for any loss incurred by AESG as a result of the Client’s failure to comply with this clause.

**5. Authorised Representatives**

- 5.1 Unless otherwise limited as per clause 5.2 the Client agrees that should the Client introduce any third party to AESG as the Client’s duly authorised representative, that once introduced that person shall have the full authority of the Client to order any Services on the Client’s

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behalf and/or to request any variation to the Services on the Client's behalf (such authority to continue until all requested Services have been completed or the Client otherwise notifies AESG in writing that said person is no longer the Client's duly authorised representative).

- 5.2 In the event that the Client's duly authorised representative as per clause 5.1 is to have only limited authority to act on the Client's behalf then the Client must specifically and clearly advise AESG in writing of the parameters of the limited authority granted to their representative.
- 5.3 The Client specifically acknowledges and accepts that they will be solely liable to AESG for all additional costs incurred by AESG (including AESG's profit margin) in providing any Services, or variation/s requested by the Client's duly authorised representative (subject always to the limitations imposed under clause 5.2 (if any)).

### 6. Scope of the Services

- 6.1 The scope of the Services shall be defined by the task or matters given in AESG's proposal submitted to the Client in response to the Client's brief. Such proposal may be amended following consultation with a Client, in which case the scope of the Services shall then be AESG's proposal as modified by any amendments confirmed in writing to the Client.
- 6.2 AESG shall exercise reasonable skill, care and diligence in the performance of the Services.
- 6.3 If AESG is required to exercise their professional judgment between the Client and a third party with whom the Client has a contract then they shall do so independently and as required by the terms of that contract.
- 6.4 AESG shall use all reasonable efforts to inform themselves, of the Client's requirements for the Project and for that purpose they shall consult the Client throughout the performance of the Services.
- 6.5 If AESG considers that the information, documents and other particulars made available to them by the Client are not sufficient to enable AESG to provide the Services in accordance with this Contract. AESG may advise the Client who shall then provide such further assistance, information, or other particulars as necessary in the circumstances.
- 6.6 If AESG becomes aware of any matter which will change or which has changed the scope or timing of the Services then AESG will give notice to the Client and the notice will contain, as far as practicable in the circumstances, particulars of the change.
- 6.7 AESG shall perform the Services in a timely manner to the extent that it is within his control to do so.

### 7. Role of the Client and their Responsibilities

- 7.1 The Client shall:
- (a) as soon as practicable make:
    - (i) available to AESG:
      - (a) all information, documents and other particulars relating to the Client's requirements for the Project; and
      - (b) at the place and at the time specified in the Quotation or proposal, the equipment and facilities specified in the proposal.
    - (ii) make arrangements to enable AESG to enter upon the Site and other lands as necessary to enable AESG to perform the Services;
  - (b) carry out any additional special obligations set out in the proposal;
  - (c) co-operate with AESG and shall not interfere with or obstruct the proper performance of the Services.
- 7.2 Access for Site visits are to be made during normal working hours unless otherwise agreed to prior to acceptance by the Client of any proposal or quotation submitted by AESG.
- 7.3 Unless the parties specifically agree otherwise, the Client shall as soon as practicable obtain all approvals, authorities, licenses and permits which are required from governmental, municipal or other responsible authorities for the lawful implementation and completion of the Project.
- 7.4 The Client agrees that the Services do not include any services which are properly carried out by other professions such as legal or accounting and if other such professional services are required the Client shall obtain these services at their own cost.
- 7.5 The Client may appoint a person or persons to act as their representative and shall give written notice to AESG of the name of the person(s) so appointed. The Client agrees that the person(s) appointed shall have full authority to act on behalf of the Client for all purposes in connection with this Contract.
- 7.6 If the Client becomes aware of any matter which may change the scope or timing of the Services or the Project then the Client will give written notice of same to AESG.

### 8. Fee and Payment

- 8.1 At AESG's sole discretion the Fee shall be either:
- (a) as indicated on any invoice provided by AESG to the Client; or
  - (b) the Fee as at the date of delivery of the Services according to AESG's current price list; or
  - (c) AESG's quoted price (subject to clause 8.2) which will be valid for the period stated in the quotation or otherwise for a period of thirty (30) days.
- 8.2 AESG reserves the right to change the Fee:
- (a) if a variation to the Services which are to be supplied (including any applicable plans or specifications) is requested; or
  - (b) where there is any delay in the commencement or continuance of the Services, or the progress thereof, caused by the Client or any third party or additional Services are required due to the discovery of hidden or unidentifiable difficulties (including, but not limited to, poor weather conditions, limitations to accessing the Site, safety considerations, prerequisite work by any third party not being completed, or inaccurate measurements, plans or specifications provided by the Client, etc.) which are only discovered on commencement of the Services; or
  - (c) where additional costs are incurred by AESG due to unexpected delays, or receipt of approvals or certificates, etc.), which are beyond AESG's control.
- 8.3 Variations will be charged for on the basis of AESG's quotation, and will be detailed in writing, and shown as variations on AESG's invoice. The Client shall be required to respond to any variation submitted by AESG within ten (10) working days. Failure to do so will entitle AESG to add the cost of the variation to the Fee. Payment for all variations must be made in full at the time of their completion.
- 8.4 Time for payment for the Services being of the essence, the Fee will be payable by the Client on the date/s determined by AESG, which may be:
- (a) the date specified on any invoice or other form as being the date for payment; or
  - (b) failing any notice to the contrary, the date which is thirty (30) days following the date of any invoice given to the Client by AESG.

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- 8.5 Payment may be made by cheque, electronic/on-line banking, credit card (a surcharge may apply per transaction), or by any other method as agreed to between the Client and AESG.
- 8.6 AESG may in its discretion allocate any payment received from the Client towards any invoice that AESG determines and may do so at the time of receipt or at any time afterwards. On any default by the Client AESG may re-allocate any payments previously received and allocated.
- 8.7 The Client shall not be entitled to set off against, or deduct from the Fee, any sums owed or claimed to be owed to the Client by AESG nor to withhold payment of any invoice because part of that invoice is in dispute.
- 8.8 Unless otherwise stated the Fee does not include GST. In addition to the Fee, the Client must pay to AESG an amount equal to any GST AESG must pay for any supply by AESG under this or any other agreement for providing AESG's Services. The Client must pay GST, without deduction or set off of any other amounts, at the same time and on the same basis as the Client pays the Fee. In addition, the Client must pay any other taxes and duties that may be applicable in addition to the Fee except where they are expressly included in the Fee.
- 9. Disbursements**
- 9.1 AESG shall be reimbursed for all expenses reasonably and properly incurred in connection with the provision of the Services, except where such expenses are specifically stated in writing by AESG as being non-reimbursable. All reimbursable expenses (e.g. travel, communications, couriers, etc.) will be charged at the cost involved (excluding GST) to the Client plus an administration fee of up to ten percent (10%) thereof.
- 10. Provision of the Services**
- 10.1 At AESG's sole discretion delivery of the Services shall take place when the Services are supplied to the Client at the Client's nominated address.
- 10.2 Delivery of the Services to a third party nominated by the Client is deemed to be delivery to the Client for the purposes of this Contract.
- 10.3 AESG may deliver the Services by separate instalments. Each separate instalment shall be invoiced and paid for in accordance with the provisions in these terms and conditions.
- 10.4 Any time specified by AESG for delivery of the Services is an estimate only and AESG will not be liable for any loss or damage incurred by the Client as a result of delivery being late. However both parties agree that they shall make every endeavour to enable the Services to be supplied at the time and place as was arranged between both parties. In the event that AESG is unable to supply the Services as agreed solely due to any action or inaction of the Client then AESG shall be entitled to charge a reasonable fee for re-supplying the Services at a later time and date.
- 11. Extension of Contract Period**
- 11.1 AESG shall be entitled to claim an extension to the term of the Contract in the event of delays resulting from any matter whatsoever which is not entirely under the control of AESG. These matters shall include, but are not limited to delays caused by:
- (a) response(s) to information request(s) made by AESG to the Client or any third party not being available when expected or required;
  - (b) approval authorities response times for requests for preliminary decisions, information;
  - (c) changes to the scope of the Services being requested by the Client;
  - (d) time taken by any approval authority for the granting of relevant approvals or permits;
  - (e) assessment area not being available as was agreed or when pre-arranged; and
  - (f) any other variation to the Contract.
- 12. Compliance with Laws**
- 12.1 The Client and AESG shall comply with the provisions of all statutes, regulations and bylaws of government, local and other public authorities that may be applicable to the Services including any occupational health and safety (OHS) laws and any other relevant safety standards or legislation.
- 12.2 The Client shall obtain (at the expense of the Client) all licenses and approvals that may be required for the Services.
- 13. Title to Documentation**
- 13.1 AESG and the Client agree that where it is intended that the ownership of Documentation is to pass to the Client that such ownership shall not pass until:
- (a) the Client has paid AESG all amounts owing for the Services; and
  - (b) the Client has met all other obligations due by the Client to AESG in respect of all contracts between AESG and the Client.
- 13.2 Receipt by AESG of any form of payment other than cash shall not be deemed to be payment until that form of payment has been honoured, cleared or recognised and until then AESG's ownership or rights in respect of the Documentation shall continue.
- 14. Personal Property Securities Act 2009 ("PPSA")**
- 14.1 In this clause financing statement, financing change statement, security agreement, and security interest has the meaning given to it by the PPSA.
- 14.2 Upon assenting to these terms and conditions in writing the Client acknowledges and agrees that these terms and conditions constitute a security agreement for the purposes of the PPSA and creates a security interest in:
- (a) all Documentation previously supplied by AESG to the Client;
  - (b) all Documentation will be supplied in the future by AESG to the Client; and
  - (c) all the Client's present and after acquired property being a charge, including anything in respect of which the Client has at any time a sufficient right, interest or power to grant a security interest in for the purposes of securing repayment of all monetary obligations of the Client to AESG for Services – that have previously been provided and that will be provided in the future by AESG to the Client.
- 14.3 The Client undertakes to:
- (a) promptly sign any further documents and/or provide any further sign information (such information to be complete, accurate and up-to-date in all respects) which AESG may reasonably require to;

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- (i) register a financing statement or financing change statement in relation to a security interest on the Personal Property Securities Register;
  - (ii) register any other document required to be registered by the PPSA; or
  - (iii) correct a defect in a statement referred to in clause 14.3(a)(i) or 14.3(a)(ii);
  - (b) indemnify, and upon demand reimburse, AESG for all expenses incurred in registering a financing statement or financing change statement on the Personal Property Securities Register established by the PPSA or releasing any Documentation charged thereby;
  - (c) not register a financing change statement in respect of a security interest without the prior written consent of AESG;
  - (d) not register, or permit to be registered, a financing statement or a financing change statement in relation to the Documentation in favour of a third party without the prior written consent of AESG.
- 14.4 AESG and the Client agree that sections 96, 115 and 125 of the PPSA do not apply to the security agreement created by these terms and conditions.
- 14.5 The Client waives their rights to receive notices under sections 95, 118, 121(4), 130, 132(3)(d) and 132(4) of the PPSA.
- 14.6 The Client waives their rights as a grantor and/or a debtor under sections 142 and 143 of the PPSA.
- 14.7 Unless otherwise agreed to in writing by AESG, the Client waives their right to receive a verification statement in accordance with section 157 of the PPSA.
- 14.8 The Client must unconditionally ratify any actions taken by AESG under clauses 14.3 to 14.5.
- 14.9 Subject to any express provisions to the contrary (including those contained in this clause 14), nothing in these terms and conditions is intended to have the effect of contracting out of any of the provisions of the PPSA.
- 15. Security and Charge**
- 15.1 In consideration of AESG agreeing to supply Services, the Client charges all of its rights, title and interest (whether joint or several) in any land, realty or other assets capable of being charged, owned by the Client either now or in the future, to secure the performance by the Client of its obligations under these terms and conditions (including, but not limited to, the payment of any money).
- 15.2 The Client indemnifies AESG from and against all AESG's costs and disbursements including legal costs on a solicitor and own client basis incurred in exercising AESG's rights under this clause.
- 15.3 The Client irrevocably appoints AESG and each director of AESG as the Client's true and lawful attorney/s to perform all necessary acts to give effect to the provisions of this clause 15 including, but not limited to, signing any document on the Client's behalf.
- 16. Defects, Warranties and the Competition and Consumer Act 2010 ("CCA")**
- 16.1 The Client must inspect AESG's Services on completion of the Services and must within seven (7) days notify AESG in writing of any evident defect in the Services or Documentation provided (including AESG's workmanship) or of any other failure by AESG to comply with the description of, or quote for, the Services which AESG was to supply. The Client must notify any other alleged defect in AESG's Services or Documentation as soon as is reasonably possible after any such defect becomes evident. Upon such notification the Client must allow AESG to review the Services or Documentation that were provided.
- 16.2 Under applicable State, Territory and Commonwealth Law (including, without limitation the CCA), certain statutory implied guarantees and warranties (including, without limitation the statutory guarantees under the CCA) may be implied into these terms and conditions (**Non-Excluded Guarantees**).
- 16.3 AESG acknowledges that nothing in these terms and conditions purports to modify or exclude the Non-Excluded Guarantees.
- 16.4 Except as expressly set out in these terms and conditions or in respect of the Non-Excluded Guarantees, AESG makes no warranties or other representations under these terms and conditions including, but not limited to, the quality or suitability of the Services. AESG's liability in respect of these warranties is limited to the fullest extent permitted by law.
- 16.5 If the Client is a consumer within the meaning of the CCA, AESG's liability is limited to the extent permitted by section 64A of Schedule 2.
- 16.6 If AESG is required to rectify, re-supply, or pay the cost of re-supplying the Services under this clause or the CCA, but is unable to do so, then AESG may refund any money the Client has paid for the Services but only to the extent that such refund shall take into account the value of Services and Documentation which have been provided to the Client which were not defective.
- 16.7 If the Client is not a consumer within the meaning of the CCA, AESG's liability for any defective Services or Documentation is:
- (a) limited to the value of any express warranty or warranty card provided to the Client by AESG at AESG's sole discretion;
  - (b) otherwise negated absolutely.
- 16.8 Notwithstanding clauses 16.1 to 16.7 but subject to the CCA, AESG shall not be liable for any defect or damage which may be caused or partly caused by or arise as a result of:
- (a) the Client failing to properly maintain or store any Documentation;
  - (b) the Client using the Documentation for any purpose other than that for which they were designed;
  - (c) the Client continuing to use any Documentation after any defect became apparent or should have become apparent to a reasonably prudent operator or user;
  - (d) interference with the Services by the Client or any third party without AESG's prior approval;
  - (e) the Client failing to follow any instructions or guidelines provided by AESG;
  - (f) fair wear and tear, any accident, or act of God.
- 17. Use of Reports and Advice**
- 17.1 Any advice that AESG gives to the Client, its employees or agents is for the Client's exclusive use and must be used only for the purpose described in the scope of Services.
- 17.2 Unless AESG gives the Client prior written consent, the advice:
- (a) must not be used or disclosed for any other purpose, referred to in any document or made available to any other person, except the Client's lawyers or other professional advisor assisting in the Services; and
  - (b) may not be relied upon by any other party other than the Client.
- 17.3 AESG is not responsible to any other party other than the Client, who is provided with or obtains a copy of AESG's advice.

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- 17.4 AESG's advice may, on occasion, be given to the Client in draft form or orally only on the basis that the Client may not rely on advice in that form. Accordingly, AESG shall not be responsible if the Client or any other party relies on the advice or chooses to act, or refrains from acting, on the basis of any draft advice or oral comments or advice.
- 17.5 The Client acknowledges that the signed copy of AESG's final advice is the definitive version.
- 17.6 Sometimes circumstances may change after AESG has provided their final advice to the Client. If this happens AESG will not update any final advice it has provided to the Client under these terms and conditions. If the Client would like AESG to update their final advice, they must contact AESG and both parties can discuss a suitable term of engagement.

### 18. Intellectual Property

- 18.1 Where AESG has designed, drawn or developed Documentation for the Client, then the copyright in any Documentation shall remain the property of AESG. Under no circumstances may such designs, drawings and documents be used without the express written approval of AESG.
- 18.2 The Client warrants that all designs, specifications or instructions given to AESG will not cause AESG to infringe any patent, registered design or trademark in the execution of the Client's order and the Client agrees to indemnify AESG against any action taken by a third party against AESG in respect of any such infringement.
- 18.3 The Client agrees that AESG may (at no cost) use for the purposes of marketing or entry into any competition, any Documentation which AESG has created for the Client.

### 19. Confidential Information/Conflict of Interest

- 19.1 The Client assumes liability for all loss or damage suffered by AESG as a result of breach of confidentiality undertaken by itself, or its employees or agents.
- 19.2 Neither party will use the other party's Confidential Information without prior written consent (including manuals and other materials and aids), except strictly for the purposes contemplated by this Contract, and a party may only disclose the other party's Confidential Information:
- (a) if required by law;
  - (b) to exercise their rights under this Contract;
  - (c) if necessary to perform their obligations under this Contract;
  - (d) if the other party has provided their written consent to the disclosure;
  - (e) if the Confidential Information is already in the public domain (otherwise than as a result of disclosure in breach of this Contract).
- 19.3 AESG is obliged to remain vigilant to, and to advise the Client of, any conflict of interest that may potentially impact or harm the Client. To avoid conflict of interest and commercial sensitivities, it is agreed by AESG that any and all information regards the Client (and their business, commercial agenda and employees) shall remain confidential at all times and shall only be disclosed in the event of legal order or obligation.

### 20. Default and Consequences of Default

- 20.1 Interest on overdue invoices shall accrue daily from the date when payment becomes due, until the date of payment, at a rate of two and a half percent (2.5%) per calendar month (and at AESG's sole discretion such interest shall compound monthly at such a rate) after as well as before any judgment.
- 20.2 If the Client owes AESG any money the Client shall indemnify AESG from and against all costs and disbursements incurred by AESG in recovering the debt (including but not limited to internal administration fees, legal costs on a solicitor and own client basis, AESG's contract default fee, and bank dishonour fees).
- 20.3 Further to any other rights or remedies AESG may have under this Contract, if a Client has made payment to AESG, and the transaction is subsequently reversed, the Client shall be liable for the amount of the reversed transaction, in addition to any further costs incurred by AESG under this clause 20 where it can be proven that such reversal is found to be illegal, fraudulent or in contravention to the Client's obligations under this Contract.
- 20.4 Without prejudice to AESG's other remedies at law AESG shall be entitled to cancel all or any part of any order of the Client which remains unfulfilled and all amounts owing to AESG shall, whether or not due for payment, become immediately payable if:
- (a) any money payable to AESG becomes overdue, or in AESG's opinion the Client will be unable to make a payment when it falls due;
  - (b) the Client has exceeded any applicable credit limit provided by AESG;
  - (c) the Client becomes insolvent, convenes a meeting with its creditors or proposes or enters into an arrangement with creditors, or makes an assignment for the benefit of its creditors; or
  - (d) a receiver, manager, liquidator (provisional or otherwise) or similar person is appointed in respect of the Client or any asset of the Client.

### 21. Cancellation

- 21.1 Without prejudice to any other remedies AESG may have, if at any time the Client is in breach of any obligation (including those relating to payment) under these terms and conditions AESG may suspend or terminate the supply of Services to the Client. AESG will not be liable to the Client for any loss or damage the Client suffers because AESG has exercised its rights under this clause.
- 21.2 AESG may cancel any contract to which these terms and conditions apply or cancel delivery of Services at any time before the Services are commenced by giving written notice to the Client. On giving such notice AESG shall repay to the Client any money paid by the Client for the Services. AESG shall not be liable for any loss or damage whatsoever arising from such cancellation.
- 21.3 In the event that the Client cancels delivery of the Services the Client shall be liable for any and all loss incurred (whether direct or indirect) by AESG as a direct result of the cancellation (including, but not limited to, any loss of profits).

### 22. Privacy Policy

- 22.1 All emails, documents, images or other recorded information held or used by AESG is Personal Information, as defined and referred to in clause 22.3, and therefore considered Confidential Information. AESG acknowledges its obligation in relation to the handling, use, disclosure and processing of Personal Information pursuant to the Privacy Act 1988 ("the Act") including the Part IIIC of the Act being Privacy Amendment (Notifiable Data Breaches) Act 2017 (NDB) and any statutory requirements, where relevant in a European Economic Area

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- (“EEA”), under the EU Data Privacy Laws (including the General Data Protection Regulation “GDPR”) (collectively, “EU Data Privacy Laws”). AESG acknowledges that in the event it becomes aware of any data breaches and/or disclosure of the Client’s Personal Information, held by AESG that may result in serious harm to the Client, AESG will notify the Client in accordance with the Act and/or the GDPR. Any release of such Personal Information must be in accordance with the Act and the GDPR (where relevant) and must be approved by the Client by written consent, unless subject to an operation of law.
- 22.2 Notwithstanding clause 22.1, privacy limitations will extend to AESG in respect of Cookies where the Client utilises AESG’s website to make enquiries. AESG agrees to display reference to such Cookies and/or similar tracking technologies, such as pixels and web beacons (if applicable), such technology allows the collection of Personal Information such as the Client’s:
- (a) IP address, browser, email client type and other similar details;
  - (b) tracking website usage and traffic; and
  - (c) reports are available to AESG when AESG sends an email to the Client, so AESG may collect and review that information (“collectively Personal Information”)
- If the Client consents to AESG’s use of Cookies on AESG’s website and later wishes to withdraw that consent, the Client may manage and control AESG’s privacy controls via the Client’s web browser, including removing Cookies by deleting them from the browser history when exiting the site.
- 22.3 The Client agrees for AESG to obtain from a credit reporting body (CRB) a credit report containing personal credit information (e.g. name, address, D.O.B, occupation, driver’s license details, electronic contact (email, Facebook or Twitter details), medical insurance details or next of kin and other contact information (where applicable), previous credit applications, credit history) about the Client in relation to credit provided by AESG.
- 22.4 The Client agrees that AESG may exchange information about the Client with those credit providers and with related body corporates for the following purposes:
- (a) to assess an application by the Client; and/or
  - (b) to notify other credit providers of a default by the Client; and/or
  - (c) to exchange information with other credit providers as to the status of this credit account, where the Client is in default with other credit providers; and/or
  - (d) to assess the creditworthiness of the Client including the Client’s repayment history in the preceding two (2) years.
- 22.5 The Client consents to AESG being given a consumer credit report to collect overdue payment on commercial credit.
- 22.6 The Client agrees that personal credit information provided may be used and retained by AESG for the following purposes (and for other agreed purposes or required by):
- (a) the provision of Services; and/or
  - (b) analysing, verifying and/or checking the Client’s credit, payment and/or status in relation to the provision of Services; and/or
  - (c) processing of any payment instructions, direct debit facilities and/or credit facilities requested by the Client; and/or
  - (d) enabling the collection of amounts outstanding in relation to the Services.
- 22.7 AESG may give information about the Client to a CRB for the following purposes:
- (a) to obtain a consumer credit report;
  - (b) allow the CRB to create or maintain a credit information file about the Client including credit history.
- 22.8 The information given to the CRB may include:
- (a) Personal Information as outlined in 22.3 above;
  - (b) name of the credit provider and that AESG is a current credit provider to the Client;
  - (c) whether the credit provider is a licensee;
  - (d) type of consumer credit;
  - (e) details concerning the Client’s application for credit or commercial credit (e.g. date of commencement/termination of the credit account and the amount requested);
  - (f) advice of consumer credit defaults (provided AESG is a member of an approved QAIC External Disputes Resolution Scheme), overdue accounts, loan repayments or outstanding monies which are overdue by more than sixty (60) days and for which written notice for request of payment has been made and debt recovery action commenced or alternatively that the Client no longer has any overdue accounts and AESG has been paid or otherwise discharged and all details surrounding that discharge(e.g. dates of payments);
  - (g) information that, in the opinion of AESG, the Client has committed a serious credit infringement;
  - (h) advice that the amount of the Client’s overdue payment is equal to or more than one hundred and fifty dollars (\$150).
- 22.9 The Client shall have the right to request (by e-mail) from AESG:
- (a) a copy of the Personal Information about the Client retained by AESG and the right to request that AESG correct any incorrect Personal Information; and
  - (b) that AESG does not disclose any Personal Information about the Client for the purpose of direct marketing.
- 22.10 AESG will destroy Personal Information upon the Client’s request (by e-mail) or if it is no longer required unless it is required in order to fulfil the obligations of this Contract or is required to be maintained and/or stored in accordance with the law.
- 22.11 The Client can make a privacy complaint by contacting AESG via e-mail. AESG will respond to that complaint within seven (7) days of receipt and will take all reasonable steps to make a decision as to the complaint within thirty (30) days of receipt of the complaint. In the event that the Client is not satisfied with the resolution provided, the Client can make a complaint to the Information Commissioner at [www.oaic.gov.au](http://www.oaic.gov.au).

### 23. Service of Notices

- 23.1 Any written notice given under this Contract shall be deemed to have been given and received:
- (a) by handing the notice to the other party, in person;
  - (b) by leaving it at the address of the other party as stated in this Contract;
  - (c) by sending it by registered post to the address of the other party as stated in this Contract;
  - (d) if sent by facsimile transmission to the fax number of the other party as stated in this Contract (if any), on receipt of confirmation of the transmission;

- (e) if sent by email to the other party's last known email address.
- 23.2 Any notice that is posted shall be deemed to have been served, unless the contrary is shown, at the time when by the ordinary course of post, the notice would have been delivered.
- 24. Trusts**
- 24.1 If the Client at any time upon or subsequent to entering in to the Contract is acting in the capacity of trustee of any trust ("Trust") then whether or not AESG may have notice of the Trust, the Client covenants with AESG as follows:
- (a) the Contract extends to all rights of indemnity which the Client now or subsequently may have against the Trust and the trust fund;
  - (b) the Client has full and complete power and authority under the Trust to enter into the Contract and the provisions of the Trust do not purport to exclude or take away the right of indemnity of the Client against the Trust or the trust fund. The Client will not release the right of indemnity or commit any breach of trust or be a party to any other action which might prejudice that right of indemnity;
  - (c) the Client will not without consent in writing of AESG (AESG will not unreasonably withhold consent), cause, permit, or suffer to happen any of the following events:
    - (i) the removal, replacement or retirement of the Client as trustee of the Trust;
    - (ii) any alteration to or variation of the terms of the Trust;
    - (iii) any advancement or distribution of capital of the Trust; or
    - (iv) any resettlement of the trust property.
- 25. Disputes**
- 25.1 Any dispute or difference arising as to the interpretation of these terms and conditions or as to any matter arising herein, shall be submitted to, and settled by, mediation before resorting to any external dispute resolution mechanisms (including arbitration or court proceedings) by notifying the other party in writing setting out the reason for the dispute. The parties shall share equally the mediator's fees. Should mediation fail to resolve the dispute, the parties shall be free to pursue other dispute resolution avenues.
- 26. Liability Limitations**
- 26.1 Except as is specified in clause 16, the liability limitations of AESG, its partners, associates, and employees shall exclude any indirect loss and/or expense (including loss of profit) suffered by the Client arising out of a breach by AESG of these terms and conditions.
- 26.2 The maximum liability of AESG under this agreement shall at no time exceed the amount of Professional Indemnity insurance cover carried by AESG.
- 26.3 The Client agrees to indemnify AESG, (including its partners, associates or employees) and any other person who may be sought to be made liable in excess of the limit of liability described in clause 26.1 in respect of any activity arising from, or connected with this agreement in respect of any claim of whatsoever kind, that may be made by any person and any costs and expenses that may be incurred by AESG.
- 26.4 The liability of AESG to the Client shall expire twelve (12) months from the issue of the last invoice relevant to the particular project, unless in the meantime the Client has made a claim in writing to AESG, specifying a negligent act, omission or statement said to have caused alleged loss or damage sustained or sustainable.
- 26.5 Notwithstanding clauses 26.1 to 26.4 AESG shall not be liable for any loss or damage sustained or sustainable by a Client in relation to:
- (a) errors occurring in plans, designs or specifications not created or prepared by AESG;
  - (b) errors occurring in the course of construction work which are not the responsibility of AESG; and
  - (c) the use of any additional Services or drawings or other information of advice without the approval of AESG.
- 27. General**
- 27.1 The failure by either party to enforce any provision of these terms and conditions shall not be treated as a waiver of that provision, nor shall it affect that party's right to subsequently enforce that provision. If any provision of these terms and conditions shall be invalid, void, illegal or unenforceable the validity, existence, legality and enforceability of the remaining provisions shall not be affected, prejudiced or impaired.
- 27.2 These terms and conditions and any contract to which they apply shall be governed by the laws of Victoria in which AESG has its principal place of business, and are subject to the jurisdiction of the courts in that state.
- 27.3 AESG may licence and/or assign all or any part of its rights and/or obligations under this Contract without the Client's consent.
- 27.4 The Client cannot licence or assign without the written approval of AESG.
- 27.5 AESG may elect to subcontract out any part of the Services but shall not be relieved from any liability or obligation under this Contract by so doing. Furthermore, the Client agrees and understands that they have no authority to give any instruction to any of AESG's sub-contractors without the authority of AESG.
- 27.6 The Client agrees that AESG may amend their general terms and conditions for subsequent future contracts with the Client by disclosing such to the Client in writing. These changes shall be deemed to take effect from the date on which the Client accepts such changes, or otherwise at such time as the Client makes a further request for AESG to provide Services to the Client.
- 27.7 Neither party shall be liable for any default due to any act of God, war, terrorism, strike, lock-out, industrial action, fire, flood, storm, national or global pandemics and/or the implementation of regulation, directions, rules or measures being enforced by Governments or embargo, including but not limited to, any Government imposed border lockdowns (including, worldwide destination ports), etc, ("Force Majeure") or other event beyond the reasonable control of either party.
- 27.8 Both parties warrant that they have the power to enter into this Contract and have obtained all necessary authorisations to allow them to do so, they are not insolvent and that this Contract creates binding and valid legal obligations on them.