

1. Definitions

- 1.1 **“Agreement”** means the terms and conditions contained herein, together with any quotation, order, invoice or other document or amendments expressed to be supplemental to this Agreement.
- 1.2 **“Client”** means the person/s, entities or any person acting on behalf of and with the authority of the Client requesting EPS 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.
- 1.3 **“Confidential Information”** means information of a confidential nature whether oral, written or in electronic form including, but not limited to, this Agreement, either party’s intellectual property, operational information, know-how, trade secrets, financial and commercial affairs, Agreements, 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.
- 1.4 **“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 EPS’ 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.**
- 1.5 **“Documentation”** means any reports, surveys, opinions, information, or any other document provided, utilised, or created incidentally by EPS in the course of it conducting, or providing to the Client, any Services.
- 1.6 **“EPS”** means Evolve Planning Services Pty Ltd its successors and assigns or any person acting on behalf of and with the authority of Evolve Planning Services Pty Ltd.
- 1.7 **“Fee”** means the Fee payable (plus any GST where applicable) for the Services as agreed between EPS and the Client in accordance with clause 8 of this Agreement, and includes any documents, reports, plans or other materials (“Documentation”) provided, utilised, or created incidentally by EPS in the course of it conducting, or providing to the Client, the Services.
- 1.8 **“GST”** means Goods and Services Tax as defined within the “A New Tax System (Goods and Services Tax) Act 1999” (Cth).
- 1.9 **“IP”** means all present and future intellectual and industrial property, whether conferred by statute, at common law, or in equity (including, without limitation, patents, designs, copyright, trademarks, operational information, know-how, trade secrets, financial and commercial affairs, contracts, client information and pricing details), whether registered or not, or capable of being registered, and includes any application or right to apply for registration of any of these rights.
- 1.10 **“Services”** mean all Services supplied by EPS to the Client at the Client’s request from time to time.

2. Interpretation

- 2.1 In this Agreement, unless it is stated to the contrary or the context requires otherwise:
(a) words in the singular shall include the plural (and vice versa), words importing one gender shall include every gender, a reference to a person shall include any other legal entity of whatsoever kind (and vice versa) and where a word or a phrase is given a defined meaning in this Agreement, any other part of speech or other grammatical form of that word or phrase has a corresponding meaning;
(b) a reference to a statute, ordinance, code, or other law includes regulations and other statutory instruments under it and consolidations, amendments, re-enactments, or replacements of any of them (whether of the same or any other legislative authority having jurisdiction);
(c) a reference to dollars (\$), is a reference to Australian currency; and
(d) the following order of precedence (in descending order) applies to resolve any conflict, ambiguity, or discrepancy in this Agreement:
(i) this Agreement; and
(ii) any schedule or appendix attached hereto.
(e) any reference (other than in the calculation of consideration, or of any indemnity, reimbursement, or similar amount) to cost, expense or other similar amount is a reference to that cost exclusive of GST.

3. Acceptance

- 3.1 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 EPS.
- 3.2 In the event of any inconsistency between the terms and conditions of this Agreement and any other prior document or schedule that the parties have entered into, the terms of this Agreement shall prevail.
- 3.3 Any amendment to the terms and conditions contained in this Agreement may only be amended in writing by the consent of both parties.
- 3.4 The Client acknowledges that the supply of Services on credit shall not take effect until the Client has completed a credit application with EPS and it has been approved with a credit limit established for the account.
- 3.5 In the event that the supply of Services requested exceeds the Client’s credit limit and/or the account exceeds the payment terms, EPS reserves the right to refuse delivery.
- 3.6 Where the Client is acting on behalf of any third party, and the Client intends for that third party to be responsible for the payment of the Fee, then in the event that the third party does not pay the Fee when due, the Client acknowledges that they shall be liable for the payment of the Fee as if they had contracted with EPS for the provision of the Services on their own behalf.
- 3.7 Electronic signatures shall be deemed to be accepted by either party providing that the parties have complied with Section 9 of the Electronic Transactions Act 2000 or any other applicable provisions of that Act or any Regulations referred to in that Act.

4. Authorised Representatives

- 4.1 Notwithstanding clause 3.6 the Client acknowledges that EPS shall (for the duration of the Services) liaise directly with one (1) authorised representative, and that once introduced as such to EPS, that person shall have the full authority of the Client to order any Services and/or to

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request any variation thereto on the Client's behalf. The Client accepts that they will be solely liable to EPS for all additional costs incurred by EPS (including EPS' profit margin) in providing any Services or variation/s requested thereto by the Client's duly authorised representative.

5. The Commonwealth Competition and Consumer Act 2010 and Fair Trading Acts

- 5.1 Nothing in this Agreement is intended to have the effect of contracting out of any applicable provisions of the Fair Trading Acts in each of the States and Territories of Australia (including any substitute to those Acts or re-enactment thereof), except to the extent permitted by those Acts where applicable.
- 5.2 Where the Client purchases Services as a consumer these terms and conditions shall be subject to any laws or legislation governing the rights of consumers and shall not affect the consumer's statutory rights.
- 5.3 Liability of EPS arising out of any one incident for breach of warranty implied into these terms and conditions by the Competition and Consumer Act 2010 or howsoever arising, is limited to any of the following as determined by the EPS:
- (a) the supplying of the Services again; or
 - (b) the payment of the cost of having the Services supplied again; or
 - (c) where the Client is a consumer as defined in the Competition and Consumer Act 2010 then the Client may also be entitled to a refund.

6. Errors and Omissions

- 6.1 The Client acknowledges and accepts that EPS 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 EPS in the formation and/or administration of this Agreement; and/or
 - (b) contained in/omitted from any literature (hard copy and/or electronic) supplied by EPS in respect of the Services.
- 6.2 In the event such an error and/or omission occurs in accordance with clause 6.1, and is not attributable to the negligence and/or wilful misconduct of EPS; the Client shall not be entitled to treat this Agreement as repudiated nor render it invalid.
- 6.3 In circumstances where the Client is required to place an order for Services, in writing, or otherwise as permitted by these terms and conditions, the Client is responsible for supplying correct order information such as, without limitation, measurements and quantity, when placing an order for Services (whether they are made to order Documentation or not) ("**Client Error**"). The Client must pay for all Services it orders from EPS notwithstanding that such Services suffer from a Client Error and notwithstanding that the Client has not taken or refuses to take delivery of such Services. EPS is entitled to, at its absolute discretion to waive its right under this sub-clause in relation to Client Errors.

7. Change in Control

- 7.1 The Client shall give EPS 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 EPS as a result of the Client's failure to comply with this clause.

8. Fee and Payment

- 8.1 At EPS' sole discretion the Fee shall be either:
- (a) as indicated on any invoice provided by EPS to the Client; or
 - (b) EPS' estimated Fee (subject to clause 8.2) which will be valid for the period stated in the estimate, or otherwise for a period of thirty (30) days. The Client acknowledges that the final invoiced Fee can only be ascertained upon completion of the Services; however, variances of more than ten percent (10%) for work completed within the defined scope will be subject to the Client's approval. This Agreement do not provide for the following (unless otherwise stated in writing):
 - (i) any additional work required by the Council or Consenting Authority, or requested by external parties (including, but not limited to, the surveyor, contractor, architect, structural engineer, other professionals, or the Client in respect of work outside the scope and nature of the Services); and
 - (ii) attendance at site meetings, or meetings with council outside the requirements of the findings in the Documentation; and
 - (iii) any work requested by the Client or the Client's representative(s) which is outside of the defined scope of works.
 - (c) EPS' quoted Fee (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 EPS reserves the right to change the Fee:
- (a) to include any reimbursable expenses as per clause 9, including where the provision of the Services requires EPS to obtain products and/or services from a third party, and in this instance the Agreement shall incorporate, and shall be subject to, the conditions of supply of such products and/or services to EPS, and the Client shall be liable for the cost in full including EPS' margin of such products and/or services; or
 - (b) if a variation to the Services (including any variation to the Client's brief or specifications) is requested. Such variation shall be ascertained and calculated in accordance with the rates specified in the scope of services (if those rates are applicable to the nature and scope of the variation work required), or if those rates are not specified, at a rate agreed to by the Client and EPS; or
 - (c) where additional costs are incurred by EPS due to unexpected delays, or receipt of approvals or permits, access to an assessment area not being available as was agreed or when pre-arranged, and/or for additional Services which are outside of the agreed scope of works.
- 8.3 Variations will be charged for on the basis of EPS' quotation, and will be detailed in writing, and shown as variations on EPS' invoice. The Client shall be required to respond to any variation submitted by EPS within ten (10) working days. Failure to do so will entitle EPS 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 EPS, which may be:
- (a) on delivery of the Services; or
 - (b) by way of instalments/progress payments in accordance with EPS' payment schedule;
 - (c) the date specified on any invoice or other form as being the date for payment; or

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- (d) failing any notice to the contrary, the date which is seven (7) days following the date of any invoice given to the Client by EPS.
- 8.5 Payment may be made by cash, electronic/on-line banking, credit card (a surcharge may apply per transaction), or by any other method as agreed to between the Client and EPS.
- 8.6 EPS may in its discretion allocate any payment received from the Client towards any invoice that EPS determines and may do so at the time of receipt or at any time afterwards.
- 8.7 The Client acknowledges and agrees that the Client's obligations to EPS for the provision of the Services shall not cease (and where it is intended that any ownership of the Documentation shall pass, it shall not pass until:
- (a) the Client has paid EPS all amounts owing for the Services; and
 - (b) the Client has met all other obligations due by the Client to EPS in respect of all contracts between the parties.
- 8.8 Receipt by EPS 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 EPS' ownership or rights in respect of the Services, and this Agreement, shall continue.
- 8.9 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 EPS nor to withhold payment of any invoice because part of that invoice is in dispute. Once in receipt of an invoice for payment, if any part of the invoice is in dispute, then the Client must notify EPS in writing within three (3) business days, the invoice shall remain due and payable for the full amount, until such time as EPS investigates the disputed claim, no credit shall be passed for refund until the review is completed. Failure to make payment may result in EPS placing the Client's account into default and subject to default interest in accordance with clause 15.1.
- 8.10 Unless otherwise stated the Fee does not include GST. In addition to the Fee, the Client must pay to EPS an amount equal to any GST EPS must pay for any supply by EPS under this or any other agreement for providing EPS' 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. Reimbursable Expenses

- 9.1 EPS 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 EPS as being non-reimbursable. All reimbursable expenses (e.g., typing, copying, travel time, flights, kilometres, communications, couriers, etc.) will be charged and invoiced on a time charge basis for actual time and work hours spent on the Client's project. EPS shall maintain up-to-date records which clearly identify time and expenses incurred in providing the Services to the Client.

10. Provision of the Services

- 10.1 EPS shall:
- (a) perform the Services relating to the Client's project as recorded in this Agreement and the scope of the Services; and
 - (b) in providing the Services, perform the Services in an efficient and professional manner, engaging personnel with suitable training, experience, and expertise, and exercise the degree of care, skill and diligence reasonably required of a competent professional.
- 10.2 The Client shall:
- (a) provide to EPS, free of charge, as soon as practicable following any request for information, all information in its power to obtain, which may pertain to the Services;
 - (b) use their best endeavours to provide plans and locate all services at the nominated site (including power, telephone, gas, water, stormwater, and sewer) as soon as practicable following the request by EPS. If the Client does not provide the required information, EPS shall be entitled to obtain such from third parties at the Client's sole cost;
 - (c) where requested by EPS, obtain any approvals, authorities, licenses, consents, and permits which are required from governmental, territorial, statutory, or responsible authorities for the lawful implementation and completion of the Client's project (where such approvals etc are outside of the scope of EPS); and
 - (d) ensure that it, its employees, agents, and contractors cooperate with EPS, that EPS has access to the applicable locations that EPS may require, and provide all necessary instructions, technical information, and directions in relation to the Services in writing to EPS so as to enable EPS to properly provide the Services and perform its obligations under this Agreement and ensure that such information is complete and accurate. EPS will not accept any liability to the Client, or a third party, in connection with any information provided by the Client that is incomplete or inaccurate unless ensuring the adequacy and accuracy of the information is within the scope of the Services.
- 10.3 The Client may order variations to the Services provided these variations are made in writing or may request EPS to submit written proposals for variation to the Services.
- 10.4 Both parties shall make all reasonable effort to ensure the Services are provided in accordance with this Agreement and take all necessary reasonable steps to minimise any possible delay thereto. However, any time specified by EPS for provision of the Services is an estimate only, and EPS will not be liable for any loss or damage incurred by the Client as a result of any delay. In the event that EPS is unable to provide the Services as agreed solely due to any action or inaction of the Client, then the Client shall pay to EPS a reasonable sum of money to cover the consequential costs, expenses and liabilities suffered by EPS as a result of any delay or suspension.
- 10.5 The commencement date will be put back and/or the duration of the Services extended by whatever time is reasonable in the event that the Client requests a variation to the Services, or EPS claims an extension of time, by giving the Client written notice, or where provision of the Services is delayed or suspended (other than as a result of a breach of this Agreement by EPS, or a negligent act or omission of EPS) by an event beyond EPS' control.
- 10.6 If EPS is required to exercise their professional judgement between the Client and a third party with whom the Client has a contract, then EPS will do so independently and as required by the terms and conditions of that contract.

11. Subcontract

- 11.1 EPS shall be entitled, with the consent of the Client, to engage individuals on a subcontract or consultancy basis, whether or not operating under corporate structure, to assist in the provision of the Services pursuant to the contract.
- 11.2 EPS shall remain liable for the performance of all obligations under these terms and conditions including the Services that are subject of a subcontract.

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- 11.3 The Client agrees and understands that they have no authority to give any instruction to any of EPS' sub-contractors without the authority of EPS.
- 11.4 The Client acknowledges and accepts that the Client shall be responsible for all monies payable to other such subcontractor or consultant.
- 12. Compliance with Laws**
- 12.1 The Client and EPS 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 applicable health and safety laws and any other relevant safety standards or legislation. Furthermore, where the working environment is under the control of the Client, it agrees to provide a safe working environment for EPS and its employees, agents, and subcontractors for the purpose of the provision of the Services.
- Modern Slavery*
- 12.2 For the purposes of clauses 12.2 to 12.7:
- (a) **“Act”** means the *Modern Slavery Act 2018 (cth)*
- (b) **“Modern Slavery”, “Modern Slavery Statement”** and **“Reporting Entity”** have the meanings given by the Act.
- 12.3 If the Client is a Reporting Entity, it shall comply with all of its obligations under the Act.
- 12.4 Whether the Client is a Reporting Entity or not, the Client shall:
- (a) use reasonable endeavours to identify, assess and address risks of Modern Slavery practices in its operations and supply chains;
- (b) use its reasonable endeavours to ensure that the personnel responsible for managing the operations and supply chains used for the purposes of the Agreement have undertaken suitable training to identify and report Modern Slavery;
- (c) use its reasonable endeavours to ensure that if at any time the Client becomes aware of Modern Slavery practices in its operations and supply chains, the Client must as soon as reasonably practicable take all reasonable steps to address or remove these practices;
- (d) provide to EPS a copy of any Modern Slavery Statement that it submits under the Act within seven (7) days of so doing; and
- (e) within seven (7) days of EPS' request (or such longer period as EPS agrees), provide to EPS any information or assistance reasonable requested by EPS;
- (i) concerning the Client's compliance with the Act;
- (ii) concerning the Client's operations and supply chains;
- (iii) to enable EPS to prepare a Modern Slavery Statement or otherwise comply with the Act; or
- (iv) to enable EPS to assess and address risks of Modern Slavery practices in its operations and supply chains.
- 12.5 The parties agree that in the circumstances a breach arises pursuant to this clause or the terms of the Act, the parties will try and resolve the breach by way of remediation and EPS will be able to terminate the Agreement for any breach by the Client.
- 12.6 The Client warrants that any information supplied to EPS is true and accurate and may be relied upon for the purposes of the Act.
- 12.7 The Client shall indemnify EPS against any loss or liability suffered by EPS as a result of the Client's breach of this clause 12.
- 13. Personal Property Securities Act 2009 (“PPSA”)**
- 13.1 In this clause financing statement, financing change statement, security agreement, and security interest has the meaning given to it by the PPSA.
- 13.2 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 EPS to the Client;
- (b) all Documentation will be supplied in the future by EPS to the Client and the proceeds from such Documentation; 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 EPS for Services – that have previously been provided and that will be provided in the future by EPS to the Client.
- 13.3 The Client undertakes to:
- (a) promptly sign any further documents and/or provide any further information (such information to be complete, accurate and up-to-date in all respects) which EPS may reasonably require to;
- (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 13.3(a)(i) or 13.3(a)(ii);
- (b) indemnify, and upon demand reimburse, EPS 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 EPS;
- (d) not register, or permit to be registered, a financing statement or a financing change statement in relation to the Documentation or the proceeds of such Documentation in favour of a third party without the prior written consent of EPS.
- 13.4 EPS 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.
- 13.5 The Client waives their rights to receive notices under sections 95, 118, 121(4), 130, 132(3)(d) and 132(4) of the PPSA.
- 13.6 The Client waives their rights as a grantor and/or a debtor under sections 142 and 143 of the PPSA.
- 13.7 Unless otherwise agreed to in writing by EPS, the Client waives their right to receive a verification statement in accordance with section 157 of the PPSA.
- 13.8 The Client must unconditionally ratify any actions taken by EPS under clauses 13.3 to 13.5.
- 13.9 Subject to any express provisions to the contrary (including those contained in this clause 13), nothing in these terms and conditions is intended to have the effect of contracting out of any of the provisions of the PPSA.

14. Security and Charge

- 14.1 In consideration of EPS 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, and the Client grants a security interest in all of its present and after-acquired property for the purposes of, including but not limited to registering EPS' security interest over the Client on the PPSA, 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).
- 14.2 The Client indemnifies EPS from and against all EPS' costs and disbursements including legal costs on a solicitor and own client basis incurred in exercising EPS' rights under this clause.
- 14.3 The Client irrevocably appoints EPS and each director of EPS as the Client's true and lawful attorney/s to perform all necessary acts to give effect to the provisions of this clause 14 including, but not limited to, signing any document on the Client's behalf.

15. Default and Consequences of Default

- 15.1 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 EPS' sole discretion such interest shall compound monthly at such a rate) after as well as before any judgment.
- 15.2 If the Client owes EPS any money, the Client shall indemnify EPS from and against all costs and disbursements:
- (a) incurred; and/or
 - (b) which would be incurred and/or
 - (c) for which by the Client would be liable;
- in regard to legal costs on a solicitor and own client basis, internal administration fees, EPS' Agreement fees owing for breach of these terms and conditions', including, but not limited to, contract default fees and/or recovery costs (if applicable), as well as bank dishonour fees.
- 15.3 Further to any other rights or remedies EPS may have under this Agreement, if a Client has made payment to EPS, 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 EPS under this clause 15 where it can be proven that such reversal is found to be illegal, fraudulent or in contravention to the Client's obligations under this Agreement.
- 15.4 Without prejudice to EPS' other remedies at law EPS shall be entitled to cancel all or any part of any order of the Client which remains unfulfilled and all amounts owing to EPS shall, whether or not due for payment, become immediately payable if:
- (a) any money payable to EPS becomes overdue, or in EPS' 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 EPS;
 - (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.

16. Intellectual Property

- 16.1 EPS shall retain copyright of all IP prepared by EPS. The Client shall be entitled to use them or copy them only for the Client's project, and the purpose for which they were intended. The ownership of data and factual information collected by EPS shall lie with EPS. The Client may reproduce drawings, specifications, and other documents in which EPS has copyright, as reasonably required in connection with the Client's project, but not otherwise. The Client shall have no right to use any of the Documentation where any part, or all, of the Fee (including any reimbursable expenses payable to EPS) has not been paid in accordance with this Agreement. EPS reserves the right to withdraw the Documentation for Councils and territorial authorities' offices where payment has not been made in accordance with this Agreement.
- 16.2 The Client:
- (a) shall, in providing information to EPS, ensure compliance with the Copyright Act 1968 (cth); and
 - (b) warrants that all designs, specifications, information, and instructions to EPS will not cause EPS to infringe any patent, registered design, or trademark in the provision of the Services; and
 - (c) agrees to indemnify, defend, and hold EPS harmless from all loss incurred or suffered by EPS arising from any claims (including third party claims) or demands against them where such loss was caused by any infringement or alleged infringement of any person's IP rights by the Client during its use of the Services;
 - (d) agrees that EPS may (at no cost) use for the purposes of marketing or entry into any competition, any Documentation which EPS has created for the Client.

17. Confidentiality

- 17.1 Subject to clause 17.2, each party agrees to treat as confidential the other party's Confidential Information and agrees not to divulge it to any third party, without the other party's written consent. Furthermore, EPS shall not, without the Client's prior consent, use information provided by the Client for purposes unrelated to the Services.
- 17.2 Both parties agree to:
- (a) use the Confidential Information of the other party only to the extent required for the purpose it was provided; and
 - (b) not copy or reproduce any of the Confidential Information of the other party in any way; and
 - (c) only disclose the other party's Confidential Information to:
 - (i) employees and contractors who need access to the information and who have agreed to keep it confidential; and
 - (ii) its legal advisers and insurance providers if those persons undertake to keep such information confidential.
- 17.3 Either party must promptly return or destroy all Confidential Information of the other party in its possession or control at the other party's request, unless required by law to retain it.
- 17.4 Confidential Information excludes information:
- (a) generally available in the public domain, including, but not limited to, information disclosed at the time of lodgement of a resource consent application (without unauthorised disclosure under this Agreement); or
 - (b) required by law, any stock exchange or regulatory body to be disclosed; or

- (c) received from a third party entitled to disclose it; or
(d) that is independently developed.
- 17.5 The obligations of this clause 17 shall survive termination or cancellation of this Agreement.
- 18. Cancellation**
- 18.1 Without prejudice to any other remedies EPS may have, if at any time the Client is in breach of any obligation (including those relating to payment) under these terms and conditions EPS may suspend or terminate the supply of Services to the Client. EPS will not be liable to the Client for any loss or damage the Client suffers because EPS has exercised its rights under this clause.
- 18.2 EPS may cancel any Agreement 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 EPS shall repay to the Client any money paid by the Client for the Services. EPS shall not be liable for any loss or damage whatsoever arising from such cancellation.
- 18.3 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 EPS as a direct result of the cancellation (including, but not limited to, any loss of profits).
- 19. Dispute Resolution**
- 19.1 If a dispute arises between the parties to this Agreement, then either party shall send to the other party a notice of dispute in writing adequately identifying and providing details of the dispute. Within fourteen (14) days after service of a notice of dispute, the parties shall confer at least once, to attempt to resolve the dispute. At any such conference each party shall be represented by a person having authority to agree to a resolution of the dispute. In the event that the dispute cannot be so resolved either party may by further notice in writing delivered by hand or sent by certified mail to the other party refer such dispute to arbitration. Any arbitration shall be:
- (a) referred to a single arbitrator to be nominated by the President of the Institute of Arbitrators Australia; and
(b) conducted in accordance with the Institute of Arbitrators Australia Rules for the Conduct of Commercial Arbitration.
- 20. Privacy Policy**
- 20.1 All emails, documents, images, or other recorded information held or used by EPS is Personal Information, as defined and referred to in clause 20.3, and therefore considered Confidential Information. EPS 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 (“EEA”), under the EU Data Privacy Laws (including the General Data Protection Regulation “GDPR”) (collectively, “EU Data Privacy Laws”). EPS acknowledges that in the event it becomes aware of any data breaches and/or disclosure of the Client’s Personal Information, held by EPS that may result in serious harm to the Client, EPS 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.
- 20.2 Notwithstanding clause 20.1, privacy limitations will extend to EPS in respect of Cookies where the Client utilises EPS’ website to make enquiries. EPS 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 EPS when EPS sends an email to the Client, so EPS may collect and review that information (“collectively Personal Information”)
- If the Client consents to EPS’ use of Cookies on EPS’ website and later wishes to withdraw that consent, the Client may manage and control EPS’ privacy controls via the Client’s web browser, including removing Cookies by deleting them from the browser history when exiting the website.
- 20.3 The Client agrees for EPS 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 EPS.
- 20.4 The Client agrees that EPS 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.
- 20.5 The Client consents to EPS being given a consumer credit report to collect personal credit information relating to any overdue payment on commercial credit.
- 20.6 The Client agrees that personal credit information provided may be used and retained by EPS 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.
- 20.7 EPS 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.
- 20.8 The information given to the CRB may include:

- (a) Personal Information as outlined in 20.3 above;
 - (b) name of the credit provider and that EPS 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 EPS is a member of an approved OAIC 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 EPS has been paid or otherwise discharged and all details surrounding that discharge(e.g. dates of payments);
 - (g) information that, in the opinion of EPS, 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).
- 20.9 The Client shall have the right to request (by e-mail) from EPS:
- (a) a copy of the Personal Information about the Client retained by EPS and the right to request that EPS correct any incorrect Personal Information; and
 - (b) that EPS does not disclose any Personal Information about the Client for the purpose of direct marketing.
- 20.10 EPS 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 Agreement or is required to be maintained and/or stored in accordance with the law.
- 20.11 The Client can make a privacy complaint by contacting EPS via e-mail. EPS 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.

21. Service of Notices

- 21.1 Any written notice given under this Agreement 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 Agreement;
 - (c) by sending it by registered post to the address of the other party as stated in this Agreement;
 - (d) if sent by facsimile transmission to the fax number of the other party as stated in this Agreement (if any), on receipt of confirmation of the transmission;
 - (e) if sent by email to the other party's last known email address.
- 21.2 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.

22. Trusts

- 22.1 If the Client at any time upon or subsequent to entering in to the Agreement is acting in the capacity of trustee of any trust ("Trust") then whether or not EPS may have notice of the Trust, the Client covenants with EPS as follows:
- (a) the Agreement 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 Agreement 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 EPS (EPS 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.

23. Limitation of Liability

- 23.1 The Client indemnifies EPS for any costs or liabilities incurred as a result of a breach of any of the terms and conditions of this Agreement by the Client, and hereby irrevocably releases EPS from all claims (including any cost, expense, loss, damage, claim, liability, action or proceeding, whether or not presently ascertained, immediate, future or contingent, and includes legal costs on a full indemnity basis) suffered or incurred by the Client (or any person claiming through or on behalf of the Client) other than to the extent caused or contributed to by:
- (a) a negligent act or omission of EPS; or
 - (b) a breach of, or default under, this Agreement by EPS.
- 23.2 The liability of EPS to the Client in respect of the Services shall be limited to the greater of three (3) times the value of the Fee or the sum of one hundred thousand dollars (\$100,000). The Client acknowledges that EPS currently holds a policy of Professional Indemnity Insurance. EPS undertakes to take all reasonable endeavours to maintain a similar policy of insurance for six (6) years after completion of the Services.
- 23.3 Neither party shall be considered liable for any loss or damage resulting from any occurrence unless a claim is formally made on it within six (6) years from completion of the Services.
- 23.4 EPS shall only be liable to the Client, in contract or in tort, for direct loss or damage suffered by the Client as a result of a breach by EPS of its obligations under this Agreement and shall not be liable for any loss of profits. If either party is found liable to the other (whether in contract, tort or otherwise) and/or any third party has contributed to the loss or damage, the liable party shall only be liable to the proportional extent of its own contribution.
- 23.5 EPS has not and will not, during the term of this Agreement or any time after it, assume any obligation as the Client's agent or otherwise which may be imposed upon the Client from time to time pursuant to the work health and safety laws arising out of the engagement. EPS and the Client agree that, for the purpose of that law, EPS will not be the person who controls the place of work in terms of that law.

24. Other Applicable Legislation

- 24.1 At EPS' sole discretion, if there are any disputes or claims for unpaid Documentation and/or Services then the provisions of the Building and Construction Industry Security of Payments Act 1999 (New South Wales), may apply.
- 24.2 Nothing in this Agreement is intended to have the effect of contracting out of any applicable provisions of the Act listed in clause 24.1 (, except to the extent permitted by the Act where applicable.

25. General

- 25.1 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.
- 25.2 These terms and conditions and any Agreement to which they apply shall be governed by the laws of New South Wales and are subject to the jurisdiction of the courts in that state.
- 25.3 EPS may licence and/or assign all or any part of its rights and/or obligations under this Agreement without the Client's consent.
- 25.4 The Client cannot licence or assign without the written approval of EPS.
- 25.5 EPS may elect to subcontract out any part of the Services but shall not be relieved from any liability or obligation under this Agreement by so doing. Furthermore, the Client agrees and understands that they have no authority to give any instruction to any of EPS' sub-contractors without the authority of EPS.
- 25.6 The Client agrees that EPS may amend their general terms and conditions for subsequent future Agreements 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 EPS to provide Services to the Client.
- 25.7 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, including but not limited to, any Government imposed border lockdowns, etc, ("Force Majeure") or other event beyond the reasonable control of either party. This clause does not apply to a failure by the Client to make a payment to EPS.
- 25.8 Both parties warrant that they have the power to enter into this Agreement and have obtained all necessary authorisations to allow them to do so, they are not insolvent, and that this Agreement creates binding and valid legal obligations on them.
- 25.9 The rights and obligations of the parties will not merge on completion of any transaction under this Agreement, and they will survive the execution and delivery of any assignment or other document entered, for the purpose of, implementing any transaction under this Agreement.