



MAXWELL BUILDING DESIGN PTY LTD TERMS OF BUSINESS

1. DEFINITIONS AND INTERPRETATION

1.1 In this Agreement:

"Agreement" means these terms and conditions together with the fee proposal;

"Applicable Laws" means applicable laws, enactments, decrees, orders (having the force of law), regulations, regulatory policies and guidelines, industry codes, regulatory permits and licences which are in force;

"MBD Fees" means the amounts set out in the Fee Proposal and including any Disbursements incurred by MBD arising from providing the Services.

"MBD" means any and all affiliates and/or related entities of Maxwell Building Designs Pty Ltd.

"MBD Intellectual Property Rights" means the Intellectual Property Rights owned by or licensed to the Client;

"Bespoke Intellectual Property Rights" means all Intellectual Property Rights created or developed specifically by MBD or any subcontractor in providing the Services other than the Client Intellectual Property Rights;

"Good Practice" means the exercise of reasonable skill and care as would be expected from a suitably skilled and experienced person providing similar services;

"Intellectual Property Rights" means

- (a) copyright, patents, database rights and rights in trademarks, designs, know-how and confidential information (whether registered or unregistered);
- (b) applications for registration, and the right to apply for registration, for any of these rights; and
- (c) all other intellectual property rights and equivalent or similar forms of protection existing anywhere in the world;

"Losses" means all loss, damages, liabilities, costs and expenses (including all reasonable legal fees and expenses);

"Fee Proposal" outlines the scope of work and associated fees;

"Services" means the services to be provided by MBD under this Agreement including, without limitation, those identified in the Fee proposal; and

"Services Disbursements" means any and all disbursements and third-party costs incurred by or on behalf of MBD in or

arising in connection with the performance of the Services and the other obligations under this Agreement, including search fees, lodgement fees, filing fees, costs for flights, hotel or other accommodation, transfers, reasonable per diem subsistence, and transport.

1.2 In this Agreement:

- (a) references to a "person" include an individual, a body corporate, and an unincorporated association of persons;
- (b) subject to clause 10, references to a party to this Agreement include references to the successors or assignees (immediate or otherwise) of that party.

1.3 If there is any conflict, ambiguity or inconsistency between a term in the terms and conditions of this Agreement and a provision in the Fee Proposal referred to or otherwise incorporated into this Agreement, the provision in the Fee Proposal of this Agreement shall take precedence.

2. SERVICES AND SERVICE QUALITY

2.1 The Commencement Date is the date upon which payment for the deposit is received, MBD will provide the Services in accordance with this Agreement.

2.2 MBD will provide the Services and perform its other obligations under this Agreement:

- (a) in accordance with the timelines set out in the Fee Proposal or timeline schedule or otherwise agreed between the parties from time to time;
- (b) in accordance with Good Practice;
- (c) in accordance with all Applicable Laws; and
- (d) using only personnel that are appropriately qualified, experienced and competent to perform the tasks allocated to them.

3. UNDERTAKINGS

3.1 MBD represents to the Client that:

- (a) it has full capacity and authority to enter into and perform its obligations under this Agreement and that a duly authorised representative of MBD executes this Agreement; and
- (b) While at or on the Client's premises, it shall conform to all reasonable policies and procedures applicable from time to time and ensure that its personnel do so.

4. FEES AND PAYMENT

4.1 The Client must pay the MBD Fees in accordance with this Agreement and as outlined in the Fee Proposal.

4.2 MBD will include such details as are reasonable for the Client to verify the accuracy of each invoice provided to the Client under this Agreement on or with the invoice.

4.3 MBD will maintain complete and accurate records of and supporting documentation for all amounts billable to and payments made by the Client under this Agreement in accordance with generally accepted accounting principles. It shall retain the records for each invoice for at least two (2) years from the date the Client received such invoice.

4.4 If you do not pay within 30 days of the invoice date, MBD reserves the right to charge interest on the amount outstanding from the due date until payment at the maximum rate as permitted by any Applicable Law. Interest is payable when we ask for it in writing.

4.5 If you do not pay our bills as agreed, MBD may stop work. If MBD proposes to stop work, MBD will give you reasonable notice, which may be as little as 24 hours in the circumstances.

4.6 If, at this stage, payment still isn't forthcoming, MBD will pass on the outstanding debt to a collection agency.

4.7 In the event that the Client fails to make payment as agreed and MBD refers the outstanding debt to a collection agency or legal representative, the Client shall be liable for all costs and commissions associated with the recovery of the debt, in addition to any interest charged under Clause 4.4.

5. INTELLECTUAL PROPERTY RIGHTS

5.1 All Intellectual Property Rights belonging to a party before the Commencement Date shall remain vested in that party.

5.2 No Intellectual Property Rights in MBD's trademarks, brands, or other materials can be used by the Client for any purpose without MBD's prior written consent.

5.3 The Client agrees and acknowledges that any Bespoke Intellectual Property Rights created under this Agreement are created as part of the Services. Upon creation, ownership of any Bespoke Intellectual Property Rights vest in MBD.

5.4 MBD grants to the Client a royalty-free, non-exclusive, non-transferable licence to use any Bespoke Intellectual Property Rights during the Term solely for the Client receiving the benefit of the Services.

5.5 This clause 5 shall remain in full force and effect notwithstanding any termination or expiry of this Agreement.

6. CONFIDENTIALITY AND ANNOUNCEMENTS

6.1 Each party ("Recipient") undertakes to the other party ("Disclosing Party") to treat as confidential all information in any medium or format (whether marked "confidential" or not) which the Recipient receives (either before or after the Commencement Date) from the Disclosing Party either directly

or from any person, firm, company or organisation associated with the Disclosing Party, which concerns the MAXWELL BUILDING DESIGN | TERMS OF BUSINESS 7 business, operations or customers of any or all of the Disclosing Party and its affiliates ("Confidential Information").

6.2 The Recipient may only use the Confidential Information for this Agreement.

6.3 The Recipient may, with the Disclosing Party's prior written consent, provide its employees, directors, subcontractors, and professional advisers ("Permitted Users") with access to the Confidential Information on a strict "need-to-know" basis for this Agreement only. The Recipient shall ensure that each of its Permitted Users is bound to hold all Confidential Information in confidence to the standard required under this Agreement.

6.4 Where the Recipient is the Client under this clause 6, it shall not (and shall procure that its Permitted Users do not) send, disclose, make available, export, or otherwise transfer in any way Confidential Information belonging to MBD without MBD's prior written consent.

6.5 This clause 6 shall not apply to any information which:
(a) enters the public domain other than as a result of a breach of this clause 6;
(b) is received from a third party which is under no confidentiality obligation in respect of that information; or
(c) is independently developed by the Recipient without the use of the Disclosing Party's Confidential Information.

6.6 The Recipient may disclose Confidential Information where required to do so by law or by any competent regulatory authority.

6.7 The Recipient shall immediately return to the Disclosing Party or itself destroy or permanently erase (and provide notice of such destruction or erasure, as the case may be) all documents and other material in its possession, custody, or control incorporating any Confidential Information:
(a) upon termination or expiry of this Agreement; or
(b) upon request, at any time, by the Disclosing Party.

6.8 This clause 6 shall remain in full force and effect notwithstanding any termination or expiry of this Agreement.

7. TERMINATION

7.1 Either party is entitled to terminate this Agreement at any time on giving the other party not less than 30 calendar days prior written notice.

7.2 Upon termination or expiry of this Agreement, the Client must, within 30 days after receipt of a final invoice from MBD, pay to MBD:

- (a) MBD Fees for Services performed by not yet paid by the Client;
- (b) MBD's reasonable and properly incurred costs arising from the termination of this Agreement;
- (c) MBD's reasonable and properly incurred costs in arising in anticipation of future performance of the Services; and
- (d) any other costs committed by MBD for the performance of the Services or its other obligations under this Agreement that cannot be refunded.

7.3 Any termination or expiry of this Agreement does not affect any accrued rights or liabilities of either party nor shall it affect the coming into force or the continuance in force of any provision of this Agreement which is expressly or by implication intended to come into force or continue in force on or after termination.

7.4 Within 7 days after termination (or expiry of this Agreement), the Client must return to MBD any and all materials, information, documents, and other data in its (or its Subcontractors' or personnel's) possession or under its (or its Subcontractors' or personnel's) control.

8. LIABILITY

8.1 Neither party excludes or limits liability to the other party for:

- (a) death or personal injury due to negligence, or
- (b) fraud or fraudulent misrepresentation, or
- (c) any other loss that cannot be excluded or limited under the governing law of this Agreement.

8.2 Subject always to clauses 8.1, the liability of MBD arising out of or in relation to this Agreement, whether for negligence, misrepresentation, breach of contract, or otherwise, shall not exceed one hundred percent (100%) of the MBD Fees paid to and received by MBD under this Agreement.

8.3 Neither party shall be liable to the other party for any indirect or consequential loss or damage or any loss of business or profits in each case whether arising from negligence, breach of contract, or otherwise.

9. NOTICES

9.1 Any notice or other document to be served under this Agreement may be delivered by hand or sent by email to the party to be served at its address set out in the Engagement Letter.

9.2 In proving service of a notice or document, it shall be sufficient to prove that delivery was made or that the email message was properly addressed and despatched (with an error-free transmission report being generated for that email), as the case may be.

10. ASSIGNMENT AND SUB-CONTRACTING

10.1 Subject to clause 10.2, neither party may assign, novate, or transfer any of its rights or obligations under this Agreement.

10.2 Nothing in this Agreement shall prevent or restrict MBD from assigning, novating transferring or otherwise disposing of any of its rights or from subcontracting, transferring, or otherwise disposing of any of its obligations under this Agreement to

- (a) an affiliate of MBD; or
- (b) any person acquiring the whole or any part of MBD's business or assets.

11. GENERAL

No partnership or agency

11.1 Nothing in this Agreement shall be deemed to constitute a partnership between the parties, nor constitute either party the agent of the other party for any purpose.

Counterparts

11.2 This Agreement may be executed in any number of counterparts. This has the same effect as if the signatures on the counterparts were on a single copy of this Agreement.

Waiver

11.3 The rights of each party under this Agreement:

- (a) may be exercised as often as necessary;
 - (b) are cumulative and not exclusive of rights or remedies provided by law; and
 - (c) may be waived only in writing and specifically.
- Delay in exercising or non-exercise of any such right is not a waiver of that right.

Amendments

11.4 Any amendment to this Agreement shall not be binding on the parties unless the parties agree in writing. MBD | TERMS OF BUSINESS 8

Third-party rights

11.5 Save as expressly set out in this Agreement, a person not a party to this Agreement may not enforce any of its terms.

Whole agreement

11.6 This Agreement constitutes the whole agreement between the parties relating to the transactions contemplated by this Agreement. It supersedes all previous agreements between the parties relating to those transactions.

11.7 Subject to clause 11.8, each party acknowledges that in entering into this Agreement, it has not relied on any representation, warranty, collateral contract, or other assurance (except those set out in this Agreement) made by or on behalf of any other party before the Commencement Date. Each party waives all rights and remedies which, but for this clause 11.7, might otherwise be available to it in respect of any such representation, warranty, collateral contract, or other assurance.

11.8 Nothing in clause 11.7 limits or excludes any liability for fraud.

Survival

11.9 Clauses that survive the expiry or earlier termination of this Agreement will survive such expiry or earlier termination, including clauses 1, 5, 6, 8, 11 and 12.

12. GOVERNING LAW AND JURISDICTION

12.1 This Agreement is governed and construed in accordance with the laws of the State of Queensland.

12.2 The parties agree that the courts of the State of Queensland are to have exclusive jurisdiction to settle any disputes which may arise in connection with this Agreement and that any proceedings arising in connection with this Agreement may be brought to those courts.