

## Annexure 1 – Statement of Work

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**Client:**

Is the customer/organisation named on the quote, invoice or tender

**Work:**

Outlined through quotation, invoice or tender sent from Wired by West PTY LTD

**Exclusions:**

Unless otherwise stated in the Scope of Work in this Annexure 1, the Contractor is not responsible for, and is not required to carry out:

- (a) any design or design services;
- (b) construction coordination services relating to any safety precautions or to means, methods, techniques, sequences, or procedures required for any other contractor to perform its work;
- (c) shop drawings or as built drawings;
- (d) any patch or paintwork;
- (e) equipment hire;
- (f) work outside of 8am to 4pm, Monday to Friday.

The Client may request the Contractor to carry out any excluded Work, in which case clause 6 of the General Conditions applies.

## Annexure 2 – Compensation and Payment

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<b>Deposit payable:</b>	When work is valued at over \$2,500
<b>Deposit amount:</b>	20% of accepted quotation
<b>Progress payment:</b> <u>(if deemed necessary)</u>	Monthly on the last working day of the month for work carried out to that day or On the completion of the work
<b>Paid to:</b>	Acc Name: Wired by West PTY LTD BSB: 067 873 Acc No: 1814 8816

## GENERAL CONDITIONS

Now it is agreed as follows:

### 1 DEFINITIONS AND INTERPRETATION

#### 1.1 Definitions

Where they appear in this Agreement, the following words shall have the following meaning:

**Annexure [#]** means the document attached to these general conditions and styled Annexure [#].

**Agreement** means this Agreement as entered into by the Client and the Contractor;

**Consequential Loss** means loss of opportunity, loss of revenue, loss of actual or anticipated profit, loss of contract, loss of goodwill, damage to business reputation, liquidated sums, loss arising from business interruption, financing costs, loss of use, loss of production and any kind of indirect, special or consequential loss considered as being beyond the normal measure;

**Client** means the party nominated in Annexure 1, its successors and assigns or any person acting on behalf of and with the authority of the Contractor;

**Contractor** means Wired by West PTY LTD ABN 55 687 758 550, its successors and assigns or any person acting on behalf of and with the authority of the Contractor

**Direction** means any approval, assessment, authorisation, decision, determination, explanation, instruction, order, permission, rejection, request or requirement given or made by the Client;

**Fee** means the money payable under this Agreement for the performance of the Work as set out in Annexure 2 and as adjusted in accordance with this Agreement;

**GST** means the tax payable on a taxable supply under *A New Tax System (Goods and Work Tax) Act 1999* (Cth) and any related legislation;

**Legislative Requirements** means legislation and subordinate legislation of the Commonwealth of Australia or the state or territory applicable to the Work, and any instruments made under such legislation or subordinate legislation;

**Loss** includes any direct loss, damage, cost, charge, liability (including tax liability) or expense (including legal costs and expenses);

**Party or Parties** means the Client and the Contractor, as referred to individually or jointly, as the case may be;

**Personnel** means a Parties' affiliates, directors, officers, employees, agents, or advisors including contractors, consultants and subcontractors or subconsultants;

**Project** means the project set out in Annexure 1 for which the Work is to be provided;

**Project Documentation** means all documents and information relevant to the Project that may be relied on by the Contractor for performance of the Work, including reports, studies, surveys, and soils data used or developed as part of the Project;

**Work** means the work and services described in the Statement of Work in Annexure 1;

**Variation** means any addition to, deletion or omission from, change to, or difference from, the Work.

#### 1.2 Joint and Several

To the extent permitted by law, if the Client consists of one or more persons, this Agreement binds such persons and their respective executors, administrators, successors and permitted assigns jointly and severally and this Agreement must be read and construed accordingly.

### 2 NATURE OF AGREEMENT

2.1 The Contractor shall perform the Work the Client must pay the Contractor the Fee.

### 3 CLIENT'S RESPONSIBILITY

3.1 The Client shall provide at no cost to the Contractor all Project Documentation as may be requested by the Contractor, and to the extent such information is provided, the Client warrants such information is accurate, complete, and adequate.

3.2 The Contractor makes no representations concerning site conditions, existing or prior works or soil conditions and is not responsible for any liability that may arise out of the performance or failure to perform any such investigation and testing which is not expressly included in the Work.

3.3 The Client must provide full and free access to the Project site as reasonably required by the Contractor for the performance of the Work.

### 4 COMPENSATION AND PAYMENT

#### 4.1 Payment

- (a) The Contractor may require a deposit as set out in Annexure 2, in which case the deposit is payable before commencement of Work, and the Contractor is not required to commence Work until it is paid.
- (b) The Contractor may make claims for payment of the Work as set out in Annexure 2 in the form of a tax invoice.
- (c) Claims shall be based on the value of the Work the Contractor has completed at that time, or as otherwise indicated within this Agreement.
- (d) The Client shall pay the Contractor's claims for payment, in full and without deduction, within seven days after a claim for payment is made.

- (e) If the Client fails to make a payment that is due and payable:
  - (i) the Contractor may notify the Client that it will immediately suspend performance of the Work. The Contractor must promptly lift the suspension after the Client has made the payment (plus interest); and
  - (ii) interest on any overdue payments shall accrue daily from when the payment becomes due, until the date of payment, at the rate of 2% monthly.

## **5 GST**

If the Fee is stated to be GST exclusive, the Client must pay the Fee plus the applicable GST.

## **6 VARIATIONS**

- 6.1 Subject to this clause 6, the Contractor is not required to comply with any Direction that amounts to a Variation.
- 6.2 The Client may, at any time, request the Contractor to price a Variation. All such requests must be in writing and specify that they are given under this subclause 6.1.
- 6.3 If the Client communicates its acceptance of a Variation price, the Contractor will carry out the Variation and the Fee will be adjusted in accordance with subclause 6.5.
- 6.4 If:
  - (a) the Client otherwise gives the Contractor a Direction that requires a Variation; or
  - (b) in the absence of a Direction, the Contractor encounters a matter that amounts to a Variation,
 then the Contractor may, at its election:
  - (c) notify the Client in writing setting out why the Contractor considers the Direction requires a Variation, in which case clause 6.2 applies; or
  - (d) carry out the Work the subject of the Direction, and the Fee will be adjusted in accordance with subclause 6.5.
- 6.5 The Fee shall be adjusted for each Variation. Unless the amount of the adjustment is agreed, the adjustment must be calculated on the basis of applicable rates or fees in this Agreement or, if none, then reasonable rates or fees.
- 6.6 The Contractor is not obliged to perform a Variation that is outside the general nature of the Work.

## **7 DELAY**

- 7.1 The Contractor is not liable, and the Client has no claim against the Contractor, for any delay to the performance of Work caused by any matter outside of its direct

control (including weather conditions which, in the Contractor's opinion, prevent the carrying out of the Work).

## **8 INSURANCE**

The Contractor must effect and maintain Biz Cover Insurance, and the Client must effect and maintain any other insurance applicable to the Project.

## **9 LIMITATION OF LIABILITY**

- 9.1 Notwithstanding any other provision of this Agreement, the Contractor's maximum aggregate liability to the Client and its Personnel, arising under or in any way in connection with this Agreement or the Work, for all Loss, damages, liabilities, actions, suits, claims, demands, costs and expenses (including legal fees on a full indemnity basis) and howsoever arising whether in contract, tort (including for negligence), under statute, in equity or otherwise at law is limited to, and shall not exceed, the amount that is equal to 10% of the Fee paid by the Client to the Contractor.
- 9.2 Notwithstanding any other provisions of this Agreement, the Contractor has no liability to the Client for any Consequential Loss.
- 9.3 The Contractor shall be deemed to have been discharged from all liability in respect of the Work and this Agreement, whether under the law of contract, tort or otherwise, on the expiration of six months from the completion of the Work, and the Client shall not be entitled to commence any action or claim whatsoever against the Contractor in respect of this Agreement or the Work after that date.

## **10 SUSPENSION**

### **10.1 Suspension for Client Breach**

- (a) If the Client is in breach of any of its obligations under this Agreement, including its obligations under clause 4 relating to payment, the Contractor may immediately suspend the performance of the Work. The Client acknowledges and agrees that the Work may need to be rescheduled due to the suspension and the Contractor will have no liability due to such rescheduling.
- (b) If the Client's breach remains unremedied to the Contractor's satisfaction, and the suspension lasts longer than two (2) days, the Contractor may immediately terminate this Agreement.

## **11 TERMINATION**

### **11.1 Termination Due to Default by Either Party**

- (a) In the event of a substantial breach of this Agreement by either Party of any of its obligations in this Agreement, which are not

remedied within seven (7) days of the Party not in breach notifying the other Party of the breach, the Party not in breach may terminate this Agreement by notice in writing to the other Party.

- (b) If this Agreement is terminated pursuant to subclauses 10.1(b) or 11.1(a) by the Contractor, the Client must pay the Contractor:
  - (i) for Work carried out in accordance with this Agreement prior to termination; and
  - (ii) any other expense or costs that is directly incurred by the Contractor as a result of the termination; and
  - (iii) an amount equal to 20% of the balance of the Fee.
- (c) If this Agreement is terminated pursuant to subclause 11.1(a) by the Client, or subclause 12.1 by the Contractor, the Client must pay the Contractor:
  - (i) for Work carried out in accordance with this Agreement prior to termination; and
  - (ii) any other expense or costs that is directly incurred by the Contractor as a result of the termination.

## **12 TERMINATION FOR CONVENIENCE**

- 12.1 The Contractor may, at any time and for any reason, terminate the Agreement by written notice to the Client.

## **13 COMPLIANCE WITH LAWS**

- 13.1 The Parties must comply with all Legislative Requirements in effect at the date of this Agreement, including applicable non-Australian laws and regulations.
- 13.2 If a new, or a change in a Legislative Requirement:
  - (a) occurs after agreement of the Fee; and
  - (b) causes the Contractor to incur more or less cost than otherwise would have been incurred or expended,

then the difference in cost will be valued as a Variation in accordance with subclause 6.5 and added to the Fee.

## **14 INDEMNITY**

The Client indemnifies and must keep the Contractor indemnified in respect of any claims, costs, Losses, expenses or damages (including legal or debt recovery costs on a full indemnity basis) in respect of any breach, act or omission of the Client or its Personnel.

## **15 SEVERABILITY**

In the event that any of provision or part of a provision of this Agreement is held to be illegal, invalid, or unenforceable, such provision (or part of) shall be limited, eliminated, or severed to the minimum extent necessary so that this Agreement shall otherwise remain in full force and effect.

## **16 NOTICES**

- 16.1 All communications to be given by one Party to the other Party shall be in writing and served by email.

## **17 ENTIRE AGREEMENT**

- 17.1 This Agreement constitutes the entire agreement between the parties and supersedes all previous negotiations, understandings, commitments, proposals, agreements, or communications, whether oral or written, about its subject matter and Documents between the Parties except to the extent reproduced in this Agreement.
- 17.2 To the extent permitted by law, any statement, representation or promise made in any negotiation or discussion or obligation of good faith or fair dealing has no effect except to the extent expressly set out or incorporated by reference in this Agreement.
- 17.3 Each Party acknowledges and agrees that it does not rely on any prior conduct or representation by the other Party in entering into this Agreement.

## **18 AGREEMENT**

This Agreement is formed upon the Client's communication of acceptance, or on the commencement by the Contractor of the Work, whichever is the earlier.

## **19 AMENDMENT**

This Agreement may only be modified or amended in writing, duly executed by both Parties.

## **20 NO WAIVER**

- 20.1 No waiver of this Agreement will be binding upon either Party unless made in writing and signed by a duly authorised representative of such Party.
- 20.2 No failure or delay in enforcing any right will be deemed a waiver.