

Terms and Conditions (T&C's)

for services provided by

EMTARA Pty Ltd (ACN 690 372 457)



Operative provisions

1. Definitions and interpretation

- 1.1 The Definitions and interpretations to be applied to this agreement are as contained in 0.

2. Parties

- 2.1 The parties to this agreement are EMTARA Pty Ltd (ACN 690 372 457) (**EMTARA**) and the Client.

3. Engagement of EMTARA

- 3.1 The Client engages EMTARA to provide the Services to the Client, and EMTARA hereby accepts that engagement and agrees to provide the Services to the Client, in accordance with the terms of this agreement.
- 3.2 EMTARA's engagement with the Client will:
- (a) Commence on the Start Date; and
 - (b) Continue until the Services pursuant to the Quote are completed, or and until it is terminated in accordance with clause 9 or 16.
- 3.3 EMTARA is an independent contractor of the Client and nothing in this agreement constitutes a relationship of employer and employee, principal and agent, partnership or joint venture between the parties.

4. Provision of the Services

Quote

- 4.1 In respect of each individual engagement for EMTARA to provide Services to the Client under this agreement (each an **Engagement**), the parties must first agree on a Quote.
- 4.2 The Quote is valid from the date that is 30 days from its issue date, and after such time will automatically lapse.
- 4.3 EMTARA's obligation to provide the Services that are the subject of each Engagement does not arise unless and until the Client has accepted the Quote and the terms of this agreement by:
- (a) Signing the Quote, whether electronically or in hard copy; or
 - (b) Requesting that EMTARA complete the Services for which the Quote has been provided, verbally or in writing; or
 - (c) Otherwise indicating to EMTARA, through whatever format is used, and as confirmed by EMTARA in their sole discretion, that the Quote has been accepted, or that the provision of the Services is to be commenced.
- 4.4 The Client agrees that Quotes that require significant planning, strategizing, consulting or other extensive time requirements to prepare as determined by EMTARA may incur a fee for provision of the Quote, in an amount

determined by EMTARA, in their discretion, acting reasonably. EMTARA will notify the Client if this fee is payable, and the Client must pay it in advance prior to the Quote being provided.

- 4.5 The Client must review the Quote in detail and ensure it agrees with all items and specifications provided therein before accepting the Quote in accordance with clause 4.3.
- 4.6 The Services will be deemed to be accepted by the Client within 7 days of each item or Phase being completed. If there are any issues with the Services provided the Client must, within 7 days of each item or Phase being completed:
- (a) Outline in written detail their issues with the item or Phase; and
 - (b) Allow EMTARA to respond within 14 days.
- 4.7 The parties irrevocably agree that the assessment by EMTARA as to the provision of the Services and whether they are suitable and in accordance with the Quote is absolute and binding on both parties.
- 4.8 If the Client does not notify EMTARA of any issues with the Services or Phase within the time specified in clause 4.6 then:
- (a) The Client shall be deemed to have irrevocably accepted the Services in accordance with the Quote;
 - (b) EMTARA shall have no liability to the Client for loss in respect of any difference between the Quote and the Services provided; and
 - (c) The Client irrevocably waives all of its right to reject the provision of the Services referred to on the Quote.

Standards and duties

- 4.9 EMTARA must, in providing the Services:
- (a) (**Honesty and diligence**) be honest and diligent and provide the Services to it to the best of its knowledge and abilities;
 - (b) (**Standards**) at all times maintain reasonable ethical, professional and technical standards;
 - (c) (**Discrimination and harassment**) not unlawfully discriminate against, sexually harass or otherwise physically or verbally abuse any person; and
 - (d) (**Privacy**) in relation to any Personal Information of any customer, client, supplier or Representative of the Client, any user or prospective user or any other person, comply with:
 - (i) the Privacy Act and any guidelines, information sheets and other relevant material issued from time to time by the Commonwealth Privacy Commissioner; and
 - (ii) any approved privacy policy and procedures adopted from time to time by the Client.
 - (e) (**Delivery**) Any date or time quoted for delivery of goods and performance of the Services is an estimate only, and EMTARA shall not be liable (and the Client holds EMTARA harmless) for any loss or damage, howsoever arising even if arising out of the negligence of EMTARA for failure to deliver the Services on or before the quoted, expected or anticipated date.

Approvals

- 4.10 EMTARA is responsible for obtaining all necessary Approvals prior to the commencement of the Services and must

	provide evidence of such Approvals to the Client, upon written request.	5.6	EMTARA must keep and maintain accurate records of the number of hours of Services in respect of which the Hourly Rate and/or Out-of-Scope Rate applies and provide the Client with a copy of such records upon reasonable notice as may be requested by the Client from time to time.
4.11	The Client indemnifies and holds harmless EMTARA from any and all Claims, Losses and costs arising from the Client's failure to obtain the necessary Approvals.		
5.	Pricing and invoicing		Reimbursement of Expenses
Deposit		5.7	The Client will pay all reasonable expenses properly and necessarily incurred by EMTARA in the course of providing the Services including but not limited to costs of materials, supplies or other items required to complete the Services and travel related expenses such as flights, accommodation, food, petrol etc.
5.1	Unless otherwise detailed in the Quote, the Client shall pay EMTARA a 25% deposit, or such other amount as required by EMTARA in their discretion, acting reasonably, upon acceptance of the Quote (the Deposit).	5.8	Any Expenses invoiced are non-refundable.
5.2	The Deposit is non-refundable in any circumstances unless otherwise agreed in writing by EMTARA.	6.	Payment
Pricing		Timing of payments	
5.3	Subject to clause 4.1, in respect of each Engagement, the parties have agreed that the total price for the relevant Services (exclusive of GST and Expenses, and including a Deposit where relevant) (the Fees) will be, if as designated in the relevant Quote:	6.1	The Client must pay to EMTARA all Charges properly invoiced pursuant to clause 5 in full on or before the date that is 7 days after the Client's receipt of the relevant invoice, or such other date as mentioned in the invoice.
	(a) (Not Phases) the Services are not divided into Phases and:	6.2	If the Client has not made payment in accordance with clause 6.1, EMTARA may in their discretion, suspend provision of the Services, until such time as payment is made.
	(i) (Fixed Price) a Fixed Price applies – that Fixed Price payable in arrears upon completion of the Services; or	Method of payment	
	(ii) (Hourly Rate) the Hourly Rate applies – calculated on the basis of the time spent by EMTARA in exclusively providing those Services on an hourly rate basis at the Hourly Rate in accordance with clause 5.5 and payable in arrears upon completion of the Services,	6.3	All amounts to be paid by a party to another party under or in connection with this agreement must be paid by way of electronic funds transfer into the account nominated by the other party.
	and EMTARA will invoice the Client by way of invoice(s) for all relevant Charges following completion of all relevant work to the reasonable satisfaction of the Client; or	No set-off or deduction	
	(b) (Phases) the Services are divided into Phases and:	6.4	Unless otherwise agreed in writing and subject to clause 6.5, all amounts payable under or in connection with this agreement must be paid without set-off, counterclaim, withholding, deduction or claim to a lien whatsoever, whether or not any such set-off, counterclaim, withholding, deduction or lien arises under this agreement.
	(i) (Fixed Price per Phase) Fixed Prices apply – the Fixed Price for each Phase payable in arrears at the end of each Phase respectively; or	6.5	If a party is required by law to make a deduction or withholding in respect of any sum payable under or in connection with this agreement to another party, it must, at the same time as the sum that is the subject of the deduction or withholding is payable, make a payment to the other party of such additional amount as is required to ensure that the net amount received by the other party will equal the full amount that would have been received by it had no such deduction or withholding been required to be made.
	(ii) (Hourly Rate) the Hourly Rate applies – calculated on the basis of the time spent by EMTARA in exclusively providing those Services on an hourly rate basis at the Hourly Rate in accordance with clause 5.5 and payable in arrears at the end of each Phase respectively,	Late fees and penalties	
	and EMTARA will invoice the Client for all relevant Charges for each Phase following completion of each Phase respectively to the reasonable satisfaction of the Client.	6.6	If the Client fails to make payment due under this agreement or the Quote in the manner provided, then after the due date for payment, EMTARA shall be permitted to charge the Client interest at the Default Rate, on the amount outstanding until the date the sum is paid in full.
Out-of-Scope Work		6.7	The Clients payment of interest at the Default Rate, is in addition to any other remedies that EMTARA may have in respect of such late payment.
5.4	Notwithstanding clause 5.3, the Client will pay EMTARA a Fixed Price, or an Hourly Rate as determined in the Quote (the Out-of-Scope Rate) for any Out-of-Scope Work.	6.8	If the Client fails to pay EMTARA's invoice within the time required, EMTARA may, in their discretion, charge the Client an administration fee of \$100 (or another amount, as determined by EMTARA in their discretion, acting reasonably) on the date that payment becomes overdue and for each and every 30-day period thereafter that invoices are overdue or owing to EMTARA.
Hourly Rates and Out-of-Scope Rates			
5.5	Hourly Rates and Out-of-Scope Rates shall be proportionately charged for work involving periods of less than one hour and structured in 15 minute units, with 4 units per hour – eg, the time charged for an attendance of up to 15 minutes will be 1 unit and the time charged for an attendance between 15 and 30 minutes will be 2 units.		

7. GST		9.6	This may happen where the goods required are not available, Force Majeure, or if there has been an error in the Quote.
7.1	Unless expressly stated otherwise, any sum payable, or amount used in the calculation of a sum payable, under this agreement has been determined without regard to GST and must be increased on account of any GST payable under this clause 7.	9.7	If EMTARA needs to cancel or vary the Quote, EMTARA will endeavour to provide the Client with notification in writing as soon as reasonably possible after the Client accepts their Quote.
7.2	If any party is required to pay, reimburse or indemnify another party for the whole or any part of any cost, expense, loss, liability or other amount that the other party has incurred or will incur in connection with this agreement, the amount must be reduced by the amount for which the other party can claim an Input Tax Credit, partial Input Tax Credit or other similar offset.	9.8	The Client is responsible for any costs and Charges, reasonably incurred by EMTARA in cancelling or varying the Quote pursuant to this clause 9.
8. Variations		10. Working environment	
8.1	If the Client wishes to vary requirements in the Quote after a Quote has been prepared or after the placement of an order for goods pursuant to a Quote, this request must be made by the Client in writing and EMTARA reserves the right to vary the Quote to include any additional Charges in respect of any extra costs incurred due to the variation.	Right of access	
8.2	EMTARA may give or withhold their consent to the requested variation in their sole and absolute discretion.	10.1	The Client hereby grants to EMTARA, and their Representatives, temporary access to the Clients' property (as identified on the Quote) for the purpose of providing the Services.
8.3	A variation agreed to by EMTARA constitutes a new, revised Quote.	10.2	EMTARA agrees to minimise disruption and quiet enjoyment of the Client's property to the best of their ability.
8.4	A new, revised Quote issued by EMTARA in respect of the requested variation supersedes the original Quote.	10.3	The Client agrees that they will: <ul style="list-style-type: none"> (a) Do all things reasonably required to allow EMTARA safe, suitable and unrestricted access to the property; and (b) Indemnify EMTARA against any loss arising from providing the Services (including but limited to events occurring while gaining access or loss arising from storing any goods at the property).
8.5	If the new revised Quote only specifies the variation costs, the Quote for those variation costs will be in addition to the immediately preceding Quote.	Safe environment	
8.6	EMTARA has an automatic extension of time for the provision of the Services, equal to the delay caused by the variation.	10.4	EMTARA's health, safety, welfare and wellbeing are paramount. If EMTARA, in their sole discretion, deems the workplace to be unsafe, unhealthy or risky, they reserve the right to terminate the Services immediately or restrict the Services in the unsafe parts of the site.
9. Cancellations		10.5	This includes but is not limited to: <ul style="list-style-type: none"> (a) toxic materials, mould, asbestos, spiders/insects, sharp or jagged items, slippery or unstable surfaces, extreme dust, trip hazards; (b) threats, violence, abuse, argumentative behaviours or hostility from any person and/or animal onsite; (c) unhygienic, dirty or unclean items, facilities or areas; (d) temperatures that are unusually high or low (sufficient heating or cooling, insulation, and air flow is required); and (e) A safe and clean place for staff to break or eat.
Cancellation by the Client		10.6	If EMTARA is unable to commence or complete the Services due to unsafe working environment or accessibility to the property as outlined in this clause 10, then this will be deemed as cancellation by the Client and the provisions of clause 9 apply.
9.1	The Client may not cancel any Quote that has been accepted, unless EMTARA provides their prior written consent.	11. Confidentiality	
9.2	EMTARA may give or withhold consent to a Clients requested cancellation in their sole and absolute discretion.	11.1	Subject to clause 11.2 a party must: <ul style="list-style-type: none"> (a) keep all Confidential Information confidential; (b) not use or exploit any Confidential Information in any way except in the proper performance of the Services in accordance with this Agreement; (c) not disclose or make available any Confidential Information in whole or in part to any third party; (d) not copy, reduce to writing or otherwise record any Confidential Information except in the proper performance of the Services in accordance with this Agreement (and any such copies, reductions
9.3	Where the Clients acceptance of a Quote is cancelled by the Client: <ul style="list-style-type: none"> (a) EMTARA will retain the deposit in full; (b) EMTARA will invoice the Client for reasonable costs incurred as determined by EMTARA in their discretion, acting reasonably, which is payable in accordance with the payment terms in clause 6, to the extent that this exceeds the 25% deposit; and (c) The Client is liable for, and indemnifies EMTARA against, any Losses incurred by EMTARA as a result of the cancellation, including, but not limited to direct costs, administrative costs and loss of profit from other orders foregone as a result of the scheduling work and Services relating to the Quote which is subsequently cancelled. 		
9.4	If the Client cancels the Quote, after EMTARA has already ordered goods for the Quote, then the Client is liable for EMTARA cost of such materials, which EMTARA is entitled to sole legal title and ownership of and may collect any goods from the Clients Site Address.		
Cancellation by EMTARA			
9.5	In certain circumstances, EMTARA, acting reasonably, may need to cancel or vary the Engagement, pursuant to the Quote.		

	to writing and records will be the property of the Company).		selected by the President of the Law Society of New South Wales.
11.2	The parties agree that the following are exceptions to this clause:	13.3	The parties must comply with this clause, prior to any legal proceedings being commenced.
	(a) the party may disclose Confidential Information to those of its employees who have an actual need to know the Confidential Information but only in the proper provision of the Services and performance of its duties under this Agreement and provided that it informs such representatives of the confidential nature of the Confidential Information before such disclosure;	14. Insurance	
	(b) the Confidential Information is or becomes generally available to the public, unless it became so generally available as a direct or indirect result of having been disclosed by any person; or	14.1	EMTARA will at all times hold public liability insurance in the amount of not less than \$20 million per occurrence.
	(c) the Confidential Information is required by law or court order to be disclosed.	14.2	The Client must hold property insurance, workers compensation insurance and any other insurances deemed reasonably necessary by EMTARA. The Client must provide EMTARA with certificates of currency for all insurance, upon request by EMTARA.
12. Non-disparagement		15. Liability, Indemnity and Remedies	
12.1	Subject to clause 12.2, on and from the date of this agreement, each party must not:	Indemnity	
	(a) make, express, transmit, speak, write, verbalise or otherwise communicate in any way (directly or indirectly, in any capacity or manner) any remark, comment, message, information, declaration, communication or other statement of any kind (whether verbal, in writing, electronically transferred or otherwise) that might reasonably be construed to be critical of, or derogatory or negative towards, any other party or any Representative of any other party; or	15.1	Each party (Indemnifier) irrevocably indemnifies and covenants to hold the other party (Indemnified Party) harmless from and against all Losses suffered by the Indemnified Party (including third party claims on the Indemnified Party) which arise in connection with any breach of this agreement by the Indemnifier and/or any negligent or other tortious conduct of the Indemnifier in the provision of the Services, except to the extent that those Losses were caused by or contributed to by the Indemnified Party.
	(b) cause, further, assist, solicit, encourage or knowingly permit any other person to do so, or support or participate in any other person doing so, and must take all reasonable steps to prevent its Representatives from doing so.	15.2	For the avoidance of doubt, the indemnity under this agreement does not include and will not be extended by: (a) any consequential or indirect costs.
12.2	Clause 12.1 shall not prohibit any party from making any statement or disclosure as required by law or court order, provided that such party must:	Indemnities continuing	
	(a) promptly notify the other party in writing in advance of any such statement or disclosure, if reasonably practicable; and	15.3	Each indemnity contained in this agreement is an additional, separate, independent and continuing obligation that survives the termination of this agreement despite any settlement of account or other occurrence and remains in full force and effect until all money owing, contingently or otherwise, under the relevant indemnity has been paid in full.
	(b) reasonably assist the other party in obtaining confidential treatment for, or avoiding or minimising the dissemination of, such statement or disclosure to the extent reasonably requested by any party.	Limitation of liability	
13. Dispute Resolution		15.4	(Disclaimer of warranties) To the maximum extent permitted by law and except as otherwise set out in this agreement, EMTARA and its Representatives expressly disclaim all conditions, representations and warranties (whether express or implied, statutory or otherwise) in relation to the Services, including any implied warranty of merchantability and fitness for a particular purpose.
13.1	In the event of a dispute arising between the parties in respect of or in connection with this Agreement, the parties will, without prejudice to any other right or entitlement they may have pursuant to this Agreement or otherwise, explore whether the dispute can be resolved by agreement between them using informal dispute resolution techniques such as mediation, independent expert appraisal or any other alternative dispute resolution technique.	15.5	(Limitation of liability) Where the conditions, representations and warranties referred to in clause 15.4 cannot be disclaimed or excluded by law, then the aggregate liability of EMTARA and its Representatives in respect of any Claim for Losses that the Client and/or any of its Representatives may bring against EMTARA in respect of the Services is limited, at EMTARA's election, to one or a combination of the following remedies: (a) re-supply of the Services; (b) payment of the costs of re-supply of the Services by a third party; or (c) the refund of any amounts paid (either in full or part) by the Client to EMTARA under this agreement in respect of the Services.
13.2	The rules governing any such technique adopted will be as agreed between the parties or failing agreement as	Force majeure	
		15.6	To the maximum extent permitted by law, EMTARA and its Representatives expressly exclude liability for any damage and/or delay in the performance of any obligation of EMTARA under this agreement where such damage or delay

is caused by circumstances beyond the reasonable control of EMTARA. The Client acknowledges and agrees that EMTARA holds the benefit of this clause 15.6 for itself and as agent and trustee for and on behalf of each of its Representatives.

Remedies for breach

- 15.7 Each party acknowledges and agrees that, in the event of any breach by the other party of the provisions of clause 8 (Confidentiality), clause 12 (Non-disparagement), damages may not be an adequate remedy and the first-mentioned party may, in addition to any other remedies, obtain an injunction restraining any further violation by the other party and other equitable relief, together with recovery of costs.

16. Termination

Termination for breach

- 16.1 Each party may terminate this agreement immediately by notice to the other party if an Event of Default occurs in respect of the other party.
- 16.2 If a party commits any material or persistent breach of this agreement (the **Defaulting Party**), the other party may (but is not obliged to) provide the Defaulting Party with a notice of breach in writing. If the Defaulting Party fails to remedy the breach within 20 Business Days, or such other period as agreed, after the date of its receipt of such notice, the other party may terminate this agreement with immediate effect upon providing the Defaulting Party with a further notice of termination in writing.

Termination with notice

- 16.3 The Client may, without limitation to its rights under clause 16.2, terminate this agreement at any time by giving at least 2 weeks written notice to EMTARA.
- 16.4 EMTARA may, without limitation to its rights under clause 16.2, terminate this agreement at any time by giving at least 2 weeks' notice to the Client. The Client may waive all or part of such notice period.

Effect of termination

- 16.5 In the event of any termination of this agreement in any circumstances and for any reason whatsoever:
- (a) the Client will remain liable to pay all Charges accrued up to and including the date of termination, whether or not invoiced prior to the date of termination (for the avoidance of doubt, in the event of any termination of this agreement by the Client, including Charges incurred by EMTARA for the purchase of materials for those Services prior to such termination); and
 - (b) EMTARA will send to the Client a final invoice for the balance of any unbilled Charges accrued up to and including the date of termination and clause 6 will apply in respect thereof.

Partially completed deliverables

- 16.6 Upon termination of EMTARA's engagement under this agreement, subject to payment of all outstanding Charges by the Client in accordance with the terms of this agreement, EMTARA will deliver to the Client any and all partially completed deliverables that are included within the scope of the Services.

Legislation

- 16.7 If any provision of this agreement is otherwise unenforceable by virtue of the operation of the *Treasury Laws Amendment (2017 Enterprise Incentives No. 2) Act 2017* (Cth), upon the occurrence of an Insolvency Event in respect

of a particular party, notwithstanding any other provision of this agreement, to the maximum extent permitted by law:

- (a) time is of the essence in respect of all obligations of that party under this agreement (whether falling due for performance before, upon or after the occurrence of that Insolvency Event); and
- (b) any breach of this agreement by that party (whether occurring before, upon or after the occurrence of that Insolvency Event), however minor, will (alone or, severally, in combination with the occurrence of that Insolvency Event) be deemed to be a material breach of this agreement,

and, if any such material breach has occurred or occurs, the parties acknowledge and agree that such provision will instead be enforceable by virtue of the occurrence of that material breach.

Accrued rights

- 16.8 Termination of this agreement will not affect any rights or liabilities that the parties have accrued under it prior to such termination.

Survival

- 16.9 The obligations of the parties under clause 8 (Confidentiality), clause 12 (Non-disparagement), clause 13 (Liability and remedies), clause 17 (Non-solicitation) and this clause 16 will survive the termination of this agreement.

17. Notices

- 17.1 A Notice given to a party under this agreement must be:
- (a) in writing in English;
 - (b) sent to the address or email address of the relevant party as the relevant party may notify to the other party from time to time; and
 - (c) delivered/sent either:
 - (i) personally;
 - (ii) by commercial courier;
 - (iii) by pre-paid post;
 - (iv) if the notice is to be served by post outside the country from which it is sent, by airmail;
 - (v) by e-mail.
- 17.2 A notice is deemed to have been received:
- (a) if delivered personally, at the time of delivery;
 - (b) if delivered by commercial courier, at the time of signature of the courier's receipt;
 - (c) if sent by pre-paid post, 48 hours from the date of posting;
 - (d) if sent by airmail, five days after the date of posting; or
 - (e) if sent by e-mail, 4 hours after the sent time (as recorded on the sender's e-mail server), unless the sender receives a notice from the party's email server or internet service provider that the message has not been delivered to the party, except that, if such deemed receipt is not within business hours (meaning 9:00 am to 5:30 pm on a Business Day), the notice will be deemed to have been received at the next commencement of business hours in the place of deemed receipt.
- To prove service, it is sufficient to prove that:
- (a) in the case of post – that the envelope containing the notice was properly addressed and posted; and

- (b) in the case of email – the email was transmitted to the party's email server or internet service provider.

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SCHEDULE 1 | DICTIONARY

18. General

Further assurances

- 18.1 Each party must (at its own expense, unless otherwise provided in this agreement) promptly execute and deliver all such documents, and do all such things, as any other party may from time to time reasonably require for the purpose of giving full effect to the provisions of this agreement.

Third parties

- 18.2 This agreement is made for the benefit of the parties to it and their successors and permitted assigns and is not intended to benefit, or be enforceable by, anyone else.

Entire agreement

- 18.3 This agreement contains the entire understanding between the parties in relation to its subject matter and supersedes any previous arrangement, understanding or agreement relating to its subject matter. There are no express or implied conditions, warranties, promises, representations, obligations or other terms, written or oral, in relation to this agreement other than those expressly stated in it or necessarily implied by statute.

Severability

- 18.4 If a provision or the application of a provision of this agreement is invalid, prohibited, void, illegal or unenforceable in a jurisdiction:
- (a) it is to be read down or severed or be ineffective in that jurisdiction to the extent of the prohibition, invalidity voidness, illegality or unenforceability; and
 - (b) this will not affect the validity or enforceability of that provision in another jurisdiction, or the remaining provisions.

No waiver

- 18.5 Any waiver of a right under this agreement must be in writing and signed by the party granting the waiver.
- 18.6 No failure, delay, relaxation, forbearance or indulgence by a party in exercising any power or right conferred upon it under this agreement will operate as a waiver of that power or right in any subsequent matter or prejudice or restrict the rights of the party. No single or partial exercise of any power or right precludes any other or future exercise of it, or the exercise of any other power or right under this agreement.

Amendment

- 18.7 This agreement must not be varied except by written instrument executed by all of the parties.

Assignment

- 18.8 A party must not assign or otherwise transfer, create any charge, trust or other interest in, or otherwise deal in any other way with, any of its rights under this agreement without the prior written consent of the other party.

Governing law and jurisdiction

- 18.9 This agreement and any disputes or claims arising out of or in connection with its subject matter or formation (including non-contractual disputes or claims) are governed by, and shall be construed in accordance with, the laws of New South Wales, Australia.
- 18.10 The parties irrevocably agree that the courts of New South Wales, Australia have exclusive jurisdiction to settle any dispute or claim that arises out of, or in connection with, this agreement or its subject matter or formation (including non-contractual disputes or claims).

Definitions

- 18.11 The following definitions apply in this agreement unless the context requires otherwise:

Approvals means all approvals, authorisations, permits, consents, determinations and licences which are issued, or required to be issued, by any Governmental Agency to permit the full and proper performance of EMTARA's obligations under this agreement.

Business Day means a day (other than a Saturday, Sunday or public holiday) when banks in Brisbane, Queensland are open for business.

Change of Control means, in respect of a particular entity, a person who Controls that entity ceasing to do so or another person acquiring Control of it.

Charges means Fees and Expenses.

Claim means any actual, contingent, present or future claim, complaint, demand, proceeding, suit, litigation, action, cause of action or other legal recourse for any Loss, restitution, equitable compensation, account, injunctive relief, specific performance or any other remedy of whatever nature and however arising, whether in contract, tort (including but not limited to negligence), under statute or otherwise.

Client means the party that will receive the Services as named in the Quote.

Confidential Information means all information relating to a party, any customer, clients, suppliers, distributors or joint venture partners, of the party and/or any of the business or financial affairs of any of them, including:

- (a) any information that is specifically designated by any of them as confidential;
- (b) any information which, by its nature, may reasonably be regarded as confidential;
- (c) any information relating to any:
 - (i) agreements, arrangements or terms of trade with any existing or prospective customers, clients, suppliers, distributors or joint venture partners or other contractual counterparties;
 - (ii) customers, clients, suppliers, distributors, joint venture partners, employees, technologies, products, services, proposals, market opportunities, business or product development plans, pricing, financial position or performance, capabilities, capacities, operations or processes; or
 - (iii) Intellectual Property Rights, of any of them; and
- (d) any note, calculation, conclusion, summary or other material derived or produced partly or wholly from any such information;
- (e) negotiations in relation to, and the terms of, this agreement,

whether that information is visual, oral, documentary, electronic, machine-readable tangible, intangible or any other form, relating to EMTARA or any Related Entity of EMTARA including but not limited to any specifications, formulae, know how, concepts, inventions, ideas, software, designs, copyright, trade secrets or any information relating to any business, products, markets, operations, processes,

techniques, technology, forecasts, strategies or any other matter.

Control has the meaning given in Section 50AA of the Corporations Act.

Corporations Act means the *Corporations Act 2001* (Cth).

Default Rate means a rate of interest of 14.00% per annum.

Engagement has the meaning given in clause 4.1, being each individual engagement for EMTARA to provide specific Services to the Client pursuant to a Quote.

Event of Default means any of the following on the part of a party:

- (a) committing any material or persistent breach of this agreement;
- (b) repudiating or, or, in the reasonable opinion of EMTARA, evincing an intention to repudiate, this agreement;
- (c) if the Client is a company, undergoing a Change of Control without the prior written consent of EMTARA;
- (d) misleading EMTARA in any material way; and/or
- (e) an Insolvency Event occurring in respect of the Client.

Expenses mean the expenses of EMTARA for which EMTARA is entitled to be reimbursed by the Client pursuant to clause 5.7.

Fees has the meaning given in clause 5.3.

Fixed Price means, in respect of a particular Engagement, if, as specified in the relevant Quote:

- (a) the Services are not divided into Phases, the price (exclusive of GST) specified in the relevant Quote for all of the Services; or
- (b) the Services are divided into Phases, the price (exclusive of GST) specified in the relevant Quote for each Phase respectively.

Force Majeure means any act, event or cause (other than lack of funds) which is beyond the reasonable control of the affected party, including:

- (a) an act of God, war, sabotage, terrorism, riot, civil disorder, revolution, national or state emergency, martial law, fire, lightning, flood, cyclone, earthquake, landslide, storm or other adverse weather conditions, explosion, power shortage, strike or other labour difficulty (whether or not involving employees of the affected party), epidemic or quarantine; and
- (b) an action or inaction of any Governmental Agency (including any Court of competent jurisdiction), such as expropriation, restraint, prohibition, intervention, requisition, requirement, direction or embargo by legislation, decree or other legally enforceable order.

Governmental Agency means any government or governmental, semi-governmental, administrative, fiscal or judicial body, department, commission, authority, tribunal, agency or entity whether foreign, federal, state, territorial or local.

GST has the same meaning given to that expression in the GST Law.

GST Act means *A New Tax System (Goods and Services Tax) Act 1999* (Cth), as in force from time to time.

GST Law has the same meaning given to that expression in the GST Act.

Hourly Rate means the hourly rate set out in the relevant Quote, if applicable.

Insolvency Event means, in respect of a party any of the following events or any analogous event:

- (a) where the party is an individual, that party commits an act of bankruptcy or is declared bankrupt or insolvent or that party's estate otherwise becomes liable to be dealt with under any law relating to bankruptcy or insolvency;
- (b) where the party is a company, a resolution is passed or court order made for the winding up of that party or an administrator is appointed to that party pursuant to any relevant law;
- (c) a receiver or manager or receiver and manager is appointed to the assets or undertaking of the party or any part thereof; or
- (d) the party is otherwise unable to pay its debts as and when they fall due.

In-Scope Work means work that has been expressly and specifically designated as being within the scope of the Services.

Input Tax Credit has the meaning given in the GST Law.

Losses means any loss, damage, debt, cost, charge, expense, fine, outgoing, penalty, diminution in value, deficiency or other liability, whether arising in contract, negligence, tort, equity, statute or otherwise; and that a party pays, suffers or incurs or is liable for, including all:

- (a) liabilities on account of tax;
- (b) interest and other amounts payable to third parties;
- (c) legal and other professional fees and expenses on a full indemnity basis and other costs incurred in connection with investigating, defending or settling any Claim; and
- (d) all amounts paid in settlement of any Claim.

Notice means any notice or other communication by one party to the other party under the terms of this agreement including but not limited to any request, demand, consent, waiver or approval.

Out-of-Scope Rate has the meaning given in clause 5.4.

Out-of-Scope Work means any work that is not In-Scope Work, including the work specifically described as being out of scope in the Quote (if any).

Personal Information has the meaning given in the Privacy Act.

Phase means any particular phase of the Services as specified in the Quote.

Privacy Act means the *Privacy Act 1998* (Cth).

Quote means, in respect of a particular Engagement, the document headed "Quote" or similar setting out the scope of the Services for that Engagement as provided by EMTARA to the Client and accepted by the parties in accordance with this agreement.

Related Entity has the meaning set out in the *Corporations Act 2001* (Cth).

Representatives means, in respect of a person, the employees, officers, consultants, agents and professional advisers of that person.

Services means the services provided by EMTARA to the Client under this agreement in respect of each Engagement, as set out in the relevant Quote.

Stamp Duty means any stamp, transaction or registration duty or similar charge imposed by any Governmental Agency and includes any interest, fine, penalty, charge or other amount in respect of the above, but excludes any GST.

Tax Acts means the *Income Tax Assessment Act 1936* (Cth) and the *Income Tax Assessment Act 1997* (Cth).

(s) a reference to one gender includes a reference to the other genders.

Interpretation

- 18.12 The following rules of interpretation apply in this agreement unless the context requires otherwise:
- (a) headings in this agreement are for convenience only and do not affect its interpretation or construction;
 - (b) no rule of construction applies to the disadvantage of a party because this agreement is prepared by (or on behalf of) that party;
 - (c) where any word or phrase is defined, any other part of speech or other grammatical form of that word or phrase has a cognate meaning;
 - (d) a reference to a document (including this agreement) is a reference to that document (including any schedules and annexures) as amended, consolidated, supplemented, novated or replaced;
 - (e) references to recitals, clauses, subclauses, paragraphs, annexures or schedules are references to recitals, clauses, subclauses, paragraphs, annexures and schedules of or to this agreement;
 - (f) in each schedule to this agreement, a reference to a paragraph is a reference to a paragraph in that schedule;
 - (g) a reference to any statute, proclamation, rule, code, regulation or ordinance includes any amendment, consolidation, modification, re-enactment or reprint of it or any statute, proclamation, rule, code, regulation or ordinance replacing it;
 - (h) an expression importing a natural person includes any individual, corporation or other body corporate, partnership, trust or association and any Governmental Agency and that person's personal representatives, successors, permitted assigns, substitutes, executors and administrators;
 - (i) a reference to writing includes any communication sent by post, facsimile or email;
 - (j) a reference to time refers to time in Brisbane, Queensland and time is of the essence;
 - (k) all monetary amounts are in Australian currency;
 - (l) a reference to a "**liability**" includes a present, prospective, future or contingent liability;
 - (m) the word "**month**" means calendar month and the word "**year**" means 12 calendar months;
 - (n) the meaning of general words is not limited by specific examples introduced by "**include**", "**includes**", "**including**", "**for example**", "**in particular**", "**such as**" or similar expressions;
 - (o) a reference to a "**party**" is a reference to a party to this agreement and a reference to a "**third party**" is a reference to a person that is not a party to this agreement;
 - (p) a reference to any thing is a reference to the whole and each part of it;
 - (q) a reference to a group of persons is a reference to all of them collectively and to each of them individually;
 - (r) words in the singular include the plural and vice versa; and