



TERMS AND CONDITIONS

These Terms and Conditions govern the provision of services by Metis Concepts Pty Ltd (ABN 24 604 305 606) trading as SolVu Consulting ("SolVu") to the Client.

This Agreement will apply to the development of any software ("Product"), modification of the Client's existing software, provision of help desk services, or any other Service that is set out in the Quote or the Scope of Services (if any).

1 GENERAL

1.1 Definitions and Interpretation. In this Agreement, capitalised terms have the definitions given in the Quote or in these Terms or otherwise have their natural and generally accepted meaning.

1.2 Operation. This Agreement will apply for the Project and the Terms will apply to each occasion thereafter that the Client engages the services of SolVu.

1.3 Quote. All Quotes are open for acceptance for a period of 14 days from the date stated on the quotation unless specified otherwise. SolVu reserves the right to correct mistakes in any Quote by giving written notice to the Customer. The Customer is deemed to accept the corrected Quote unless it gives reasonable written notice to SolVu.

1.4 Relationship. SolVu is an independent contractor of the Client. Nothing in this Agreement constitutes a relationship of employer and employee, principal and agent or partnership between the Client and SolVu. The parties acknowledge and agree that this is fundamental to the basis on which they have entered into this Agreement.

2 SERVICES

2.1 Provision of Services. SolVu will:

(a) provide all professional skills and advice required for the carrying out of the Services and will comply with all reasonable directions of the Client that are consistent with the Scope of Services (if any);

2.2 Co-ordination of Performance of Services. SolVu will use reasonable endeavours to co-ordinate its performance of the Services with any other consultant, contractor, or employee engaged or employed by the Client, as reasonably required by the Client.

2.3 SolVu Capable of Performing Services. SolVu warrants that it is capable of performing the Services competently and to the best of its specialist abilities and knowledge.

2.4 Client Responsibilities. The Client must:

(a) pay SolVu the Fees in accordance with this Agreement;

(b) provide such information, documents, computer system access and other assistance as is necessary to enable SolVu to provide the Services;

(c) give timely written instructions, directions and decisions as are required by SolVu from time to time to facilitate the provision of Services.

2.5 Cessation of Services. SolVu may cease providing Services to the Client where:

(a) any amounts payable are overdue and outstanding;

(b) the Client is in breach of this Agreement; or

(c) the Client has refused to provide SolVu with a signed copy of this Agreement.

3 FEES, INVOICES AND PAYMENT

3.1 Payment of SolVu. The Client will pay SolVu the agreed Fees set out in the Quote as follows:

(a) within 28 days of receiving a tax invoice issued by SolVu.

3.2 Review. Fees for Additional Services will be reviewed not more than annually and will only be amended by at least one month's notice to the Client by SolVu.

3.3 Tax Invoices. SolVu will provide the Client with a tax invoice (including ABN details) for the Fees due and payable. The Client will pay the tax invoice by electronic transfer to SolVu's nominated bank account on the earlier of the date for payment specified on the invoice or within 14 days of receipt of a valid tax invoice.

3.4 GST. All Fees and other amounts payable to SolVu pursuant to the Quote are quoted exclusive of GST. In addition to Fees, the Client must pay to SolVu the GST amount which is payable by SolVu on any Fee or on any supply made or deemed to be made or other matter or thing under or in connection with this Agreement upon provision of a valid tax invoice.

3.5 Default. Upon a default in payment by the Client, interest will be payable to SolVu on all outstanding amounts at a rate of 15% per annum calculated daily. Any expenses, costs or disbursements incurred by SolVu in recovering outstanding amounts, including debt collection fees and solicitors' costs shall be paid by the Client on an indemnity basis.

3.6 Expenses. In addition to Fees, the Client will reimburse SolVu for all reasonable out-of-pocket expenses incurred by SolVu as a result of provision of the Services.

4 VARIATIONS

4.1 Client Variations. The Client may request variations of the Services to SolVu and SolVu will use best endeavours to accommodate such variations provided that:

(a) the variation is within the general scope of the Services and is not a fundamental change to the nature of the Services provided; and

(b) there is a reasonable adjustment of the Fees, Milestones and dates as reasonably required by SolVu.

4.2 SolVu Variations. SolVu may notify a variation to the Client where SolVu considers such variation to be reasonably necessary to perform the Services provided that such request is accompanied by an explanation of why the Variation is necessary,

a breakdown of the additional Fees proposed by SolVu and any necessary adjustment to Milestones and dates.

5 CONFIDENTIALITY

5.1 **Disclosure of Confidential Information.** Each party will treat each other party's information as confidential and will not, except as authorised in writing by the other Party disclose any confidential information to any third party.

5.2 **Period of Restriction.** This restriction will continue to apply after the termination of this Agreement without limitation in time.

6 INTELLECTUAL PROPERTY

6.1 **Rights to Intellectual Property.** Each party retains ownership of all its intellectual property used for the provision of Services. Any intellectual property arising in the course of the performance of the Services and any proprietary or other rights vesting in that intellectual property are hereby assigned to and are to be the absolute property of the Client, and the Client will grant to SolVu a perpetual, irrevocable but non-transferrable licence for that intellectual property to the extent necessary to allow SolVu to provide similar services to other parties, provided that there is no breach of the Client's confidential information.

6.2 **Transfer of Rights.** SolVu will at the request and expense of the Client or its nominee execute all documents and do all the things necessary to vest intellectual property protection and all right, title and interest in the intellectual property in the Client or its nominee absolutely as sole beneficial owner.

6.3 **Surviving Obligation.** The provisions of this clause will continue to apply after the termination of this Agreement but subject to laws governing intellectual property rights without limitation in point of time.

6.4 **Intellectual Property Warranty.** SolVu represents and warrants that any material used in the provision of the Services is fit for the purpose it is used and does not infringe any intellectual property rights of a third person. SolVu represents and warrants that it owns or has all required approvals to use the intellectual property rights in any material used in the provision and delivery of the Services throughout the world.

7 INSURANCES

7.1 **Insurances.** SolVu will hold and maintain any necessary insurance in relation to the Services which are regarded as sound commercial practice for SolVu to maintain.

7.2 **Certificates of Insurance.** Before commencing the provision of Services under this Agreement, and at any other time that the Client reasonably makes a request, SolVu will provide all certificates or other proof of currency of the insurances, which SolVu is required to hold under this Agreement.

8 WARRANTY AND LIABILITY

8.1 **Warranty.** For all Services, SolVu warrants that it will exercise due care and skill in the performance of the Services and shall perform the Services in accordance with relevant and generally accepted professional practices. SolVu's liability is at all times limited either (at its sole option) to rectification of the Services or a refund of the Fee for the Services to the Client.

8.2 **Liability.** The maximum liability of SolVu to the Client pursuant to this Agreement is limited to an amount equal to the Fee payable for the Services, and SolVu will not be liable for any special, indirect, consequential, incidental or punitive loss or damage including any economic loss or loss of anticipated profits or business interruption.

9 TERMINATION

9.1 **Termination of Continuing Services.** In respect of Continuing Services, either SolVu or the Client may terminate those Continuing Services with two months' prior written notice.

9.2 **Termination by Client.** For all Services, the Client may terminate this Agreement prior to the completion of the Services if SolVu:

(a) commits a breach of this Agreement (including any unreasonable delay in provision of Services), and does not remedy the breach within a reasonable period after the Client advises SolVu in writing of the breach;

(b) is guilty of fraud or negligence;

(c) enters into liquidation or receivership or a petition in bankruptcy is filed by or against it or if it makes an arrangement for the benefit of its creditors or it otherwise ceases carrying on business; or

(d) is no longer capable of performing the Services in accordance with this Agreement.

9.3 **Termination by SolVu.** SolVu may terminate this Agreement prior to the completion of the Services if the Client:

(a) fails to pay any Fee when due and payable and does not pay the Fee within a reasonable period of time after SolVu advises the Client in writing of the non-Payment;

(b) commits a breach of this Agreement including any unreasonable delay in providing instructions, directions or information and does not remedy that breach within a reasonable period after SolVu advises the Client in writing of the breach;

(c) becomes insolvent or enters into liquidation or receivership or a petition for bankruptcy is filed by or against it or it otherwise ceases carrying on business.

9.4 **Accrued Rights.** Termination pursuant to this clause does not affect the ability of either party to enforce a right which may have accrued to it under this Agreement prior to the date of termination.

9.5 **Return Of Client Property.** On termination of this Agreement, SolVu will deliver to the Client all Client property in SolVu's possession or control or the possession or control of SolVu's personnel including all Client equipment and all confidential information.

10 MISCELLANEOUS PROVISIONS

10.1 **Force Majeure.** Services may be totally or partially suspended by SolVu during any period in which SolVu may be prevented or hindered from provision of Services outside SolVu's reasonable control, including but not limited to strikes, lockouts or other labour difficulty, breakdown or unavailability of computer hosts and services, accidents or breakdowns of plant, machinery, software, hardware or communication network. SolVu shall not incur any liability to the Customer in respect of such suspension.

10.2 **Entire Agreement.** These Terms together with the Quote and the Scope of Services constitutes the entire agreement between the parties with respect to the subject matter. If there is any inconsistency or ambiguity, the order of precedence is:

(a) the Quote;

(b) the Scope of Services (If any); and

(c) these Terms.

- 10.3 Waiver.** Any waiver of any provision of this Agreement or consent to any departure from a provision of this Agreement shall only be effective in the specific instance and for the purpose for which it was given.
- 10.4 Reliance.** The Client acknowledges that it will make its own independent verification of the viability of the Services and relies solely on its own expertise and judgement in requesting the Services.
- 10.5 Exclusion.** To the extent permitted by law, all warranties representations and undertakings by SolVu outside of this Agreement are expressly excluded and the Client places no reliance on them.
- 10.6 Enforceability.** Any provision of, or the application of any provision of, this Agreement which is prohibited in any jurisdiction is, in that jurisdiction, ineffective only to the extent of that prohibition. Any provision of, or the application of any provision of, this Agreement which is void, illegal or unenforceable in any jurisdiction does not affect the validity, legality or enforceability of that provision in any other jurisdiction or of the remaining provisions in that or any other jurisdiction.
- 10.7 Applicable Law.** This Agreement will be governed by and construed in accordance with the laws of the State of Western Australia. Each party submits to the exclusive jurisdiction of the Courts of that State.
- 10.8 Severance.** The parties acknowledge and agree that the provisions of this Agreement are reasonable in all circumstances and that each provision is and will be deemed to be severable and independent and will not affect the validity or enforceability of the remaining provisions.
- 10.9 Assignment.** Neither party may assign the benefit of this Agreement without the prior written consent of the other party, which shall not be unreasonably withheld.
- 10.10 Amendment.** The terms and conditions of this Agreement can only be amended or replaced by another document signed by the Parties.