



Terms and Conditions

for services provided by
P.J Oakden-Patch & A.T Patch
trading as "Aura Solar & Electrical"
(ABN 65 986 942 431)

Operative provisions

1. Definitions and interpretation

The Definitions and interpretation to be applied to this agreement are as contained in Schedule 1.

2. Parties

The parties to this agreement are P.J Oakden-Patch & A.T Patch trading as "Aura Solar & Electrical" (ABN 65 986 942 431) (**Aura**) and the Client.

3. Engagement of Aura

3.1 The Client hereby engages Aura, on a non-exclusive basis, to provide the Services to the Client, and Aura hereby accepts that engagement and agrees to provide the Services to the Client, in accordance with the terms of this agreement.

3.2 Aura's engagement with the Client will:

- (a) Commence on the Start Date; and
- (b) Continue indefinitely until the Services pursuant to the Quote are completed, or and until it is terminated in accordance with clause 14.

3.3 Aura 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 Aura to provide Services to the Client under this agreement (each an **Engagement**), the parties must first agree on a Quote.

4.2 Auras' obligation to provide the Services that are the subject of each Engagement does not arise unless and until the Client accepts the Quote by:

- (a) Signing the Quote, whether electronically or in hard copy; or

- (b) Continuing to request that Aura complete the Services for which the Quote has been provided, verbally or in writing; or
- (c) Otherwise indicating to Aura, through whatever format is used, that the Quote has been accepted, or that the provision of the Services is to be commenced.

Services

4.3 The Client must review the Quote in detail and ensure it agrees with all items and materials provided therein before accepting the Quote in accordance with clause 4.2.

4.4 If there are any issues with the Services provided to the Client, the Client must:

- (a) Within seven (7) days of the Services being completed, outline in written detail what the issues consist of; and
- (b) Allow Aura to respond within seven (7) days.

4.5 If the Client does not provide Aura with any notification within the time specified in clause 4.4, then the Client is taken to have irrevocably accepted the Services, and Aura's obligations under this agreement will be discharged, and to the extent permitted by law:

- (a) The Client shall be deemed to have unreservedly accepted the Services in accordance with the Quote;
- (b) The Client shall release Aura and Aura 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.

4.6 Clause 4.5 shall not apply in relation to any defect, non-conformity or failure which would not have been apparent upon a reasonably diligent inspection at the time of completion.

Deadline Dates

4.7 If the Services for an Engagement are divided into Phases, Aura must ensure that the Services for each Phase of the Engagement are fully completed to the reasonable satisfaction of the Client, on or before the relevant Deadline Date.

Standards and Duties

4.8 (**Delivery**) Any date or time quoted for delivery of goods and performance of the Services is an estimate only, and Aura shall not be liable (and the Client holds Aura harmless) for any loss or damage, howsoever arising even if arising out of the negligence of Aura for failure

to deliver the Services on or before the quoted, expected or anticipated date.

4.9 **(Address)** The address for delivery is as detailed in the Quote and/or on the execution page of this agreement, as the Clients delivery address for the purpose of delivering the Services. The Client agrees that they will:

- (a) Do all things reasonably required to allow Aura safe, suitable and unrestricted access to the property; and
- (b) Indemnify Aura against any loss arising from events occurring while gaining access or loss arising from storing any goods at the Clients delivery address.

4.10 Aura may refuse to deliver the goods or Services if it determines that the Client has failed to perform its obligations under clause 4.10(a) and the Client indemnifies the Company against any loss arising from the refusal.

4.11 **(Third parties)** Delivery of goods or the Services may be delayed due to supply issues by third parties, the Client acknowledges and holds harmless Aura for any delays in delivery.

4.12 **(Information)** The Client must take reasonable steps to ensure that all information provided by the Client to Aura is true and correct. The Client agrees and acknowledges that Aura will rely on the information the Client provides in providing the Quote and completing the Services. The Client must inform Aura immediately if it becomes aware that any information it provided is incorrect and indemnifies Aura for any costs, loss or damage suffered as a result of such incorrect information.

4.13

Force majeure

4.14 If by reason of any fact, circumstance, matter or thing beyond the reasonable control of Aura, Aura is unable to perform in whole or in part any obligation under this agreement, Aura shall be relieved of that obligation under this agreement to the extent and for the period that it is so unable to perform and shall not be liable to the Client in respect of such liability. Circumstances in this clause, may include but are not limited to:

- (a) Inclement weather;

- (b) Act of God, lightning, earthquake, cyclone, hurricane, tornado, storm, flood, tidal wave, landslide, explosion, fire, drought, water shortage or other natural disaster;
- (c) Plague, epidemic or pandemic, including restrictions for COVID-19;
- (d) Strike, lockout, industrial disturbance or industrial action;
- (e) War, military action, invasion, act of public enemy or act of terrorism;
- (f) Revolution, rebellion, riot, insurrection, civil commotion, civil disturbance, blockade, sabotage, vandalism or malicious damage;
- (g) Anything outside of the reasonable control of Aura;

(Force Majeure Event).

4.15 If a Force Majeure Event occurs in relation to a party, then:

- (a) that party must:
 - (i) promptly give written notice to other party providing full details about that Force Majeure Event and how it adversely affects that party's obligations under this agreement;
 - (ii) use its reasonable endeavours to minimise and remedy those adverse effects; and
 - (iii) promptly resume performance of the obligations adversely effected by that Force Majeure Event **(Affected Obligations)** as soon as reasonably possible after that Force Majeure Event ceases;
- (b) provided that that party complies with its obligations under clause 4.15(a):
 - (i) that party is not liable to other party for any delay or failure to comply with the Affected Obligations, to the extent that the delay or failure is due to that Force Majeure Event; and
 - (ii) the Affected Obligations are suspended until that Force Majeure Event ceases (and any date or period for the performance of an Affected Obligation is extended accordingly),

except that nothing in this clause relieves that party from any liability or obligation to pay money to the other party under and in accordance with this agreement.

5. Pricing and Invoicing

Pricing

5.1 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:

(a) **(Not Phases)** the Services are not divided into Phases and:

(i) **(Fixed Price)** a Fixed Price applies – that Fixed Price payable in advance. Aura will invoice the Client for all relevant Charges after completion of all relevant work; or

(ii) **(Hourly Rate)** the Hourly Rate applies – calculated on the basis of the time spent by Aura in exclusively providing those Services on an hourly rate basis at the Hourly Rate and payable in arrears upon completion of the Services to the reasonable satisfaction of the Client, and Aura will invoice the Client by way of a invoices for all relevant Charges during the works and following completion of all relevant work (if required) to the reasonable satisfaction of the Client; or

(b) **(Phases)** the Services are divided into Phases and:

(i) **(Fixed Price per Phase)** Fixed Prices apply – the Fixed Price for each Phase payable in advance. Aura will invoice the Client for all relevant Charges upon commencement of each Phase, which must be paid in full before the next Phase can commence; or

(ii) **(Hourly Rate)** the Hourly Rate applies – calculated on the basis of the time spent by Aura in exclusively providing those Services on an hourly

rate basis at

the Hourly Rate and payable in arrears at the end of each Phase respectively, and Aura will invoice the Client for all relevant Charges for each Phase prior to commencement of each Phase respectively (which must be paid prior to the commencement of the next Phase) to the reasonable satisfaction of the Client.

Out-of-Scope Work

5.2 Notwithstanding clause 5.1, the Client will pay Aura the hourly rate, as determined in Aura's sole discretion from time to time (the **Out-of-Scope Rate**) for any Out-of-Scope Work and shall be liable for Aura's reasonable Charges.

Hourly Rates and Out-of-Scope Rates

5.3 Aura 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.

Reimbursement of Expenses

5.4 The Client will pay all reasonable expenses properly and necessarily incurred by Aura in the course of providing the Services, provided that Aura:

- (a) obtains the Client's consent before incurring the expenses; and
- (b) provides the Client with acceptable documentation for the expenses incurred.

Risk

5.5 Unless otherwise agreed to in writing:

- (a) Risk in the materials and goods provided for the provision of the Services, shall pass to the Client at the time when the goods have been delivered to the Clients address;
- (b) Risk in the semi-completed or completed Services at all times is borne by the Client (except to the extent that loss is caused by Aura's negligence) and Aura shall bear no liability for damage to the Services that is outside of Aura's reasonable control;
- (c) Aura's Representative may inform the Client of certain post-completion requirements of the Services, that must be complied with for the product

to form for its intended purposes. If the Client does not comply with such requirements, Aura shall not be liable for any consequent damage or rectification costs; and

- (d) Aura is not liable for any damage to the goods or Services which the Client, or a third party has caused.

6. Payment

Timing of payments

- 6.1 The Client must pay to Aura all Charges properly invoiced pursuant to clause 5 in full on the date of the Client's receipt of the relevant invoice.
- 6.2 If the Services are in Phases, the Client shall pay Aura in accordance with the payment terms in the Quote or otherwise as follows:
- (a) 10% deposit upon acceptance of the Quote;
 - (b) 40% of balance on or prior to the Business Day immediately preceding the Start Date; and
 - (c) 50% of balance within 1 Business Day of completion of the Services.
- 6.3 All payments are non-refundable, notwithstanding that there may be variations or cancellations subsequently made to the Quote.
- 6.4 Aura reserves the right to amend the timing and amounts of payments required in the Quote.
- 6.5 Time is of the essence for all payments noted in this clause 6.

Method of payment

- 6.6 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 Aura from time to time.

No set-off or deduction

- 6.7 Unless otherwise agreed in writing and subject to clause 6.8, 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.
- 6.8 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.

Default interest

- 6.9 If a party fails to pay any sum payable by it under this agreement to another party at the time and otherwise in the manner provided in this agreement, it must pay interest on that sum from the due date of payment until that sum is paid in full at the Default Rate, calculated daily on the basis of a 365-day year and compounded monthly. Interest will accrue from day to day and will be payable on demand. The payment of interest by a party to another party in respect of any late payment under this clause 6.9 is in addition to any other remedies that the other party may have in respect of such late payment.
- 6.10 If a liability of a party to another party under this agreement becomes merged in a judgement or order and the interest rate that applies under that judgement or order is lower than the Default Rate, that party must, as an independent obligation, pay to the other party, at the same time and in the same manner as the sum that is the subject of that judgement or order is to be paid, such additional interest on that sum as is required to ensure that the total amount of interest that the other party receives in respect of that liability is equal to the Default Rate.

7. Cancellations

- 7.1 The Client may not cancel any Quote that has been accepted, unless Aura provides their prior written consent (which may be withheld absolutely).
- 7.2 Where the Client's acceptance of a Quote is cancelled by the Client, the Client is liable for, and indemnifies Aura against, any Losses incurred by Aura as a result of the cancellation, including but not limited to direct costs, and loss of profit from other orders foregone as a result of the scheduling of the Quote which is subsequently cancelled.
- 7.3 If the Client cancels the Quote, after Aura has already ordered materials for the Quote, then the Client is liable for Aura's cost of such materials, which Aura is entitled to sole legal title and ownership of and may collect any goods from the Clients delivery address.

8. Variations

Clients variation

- 8.1 Aura must consent to any such Client variation request in writing before it comes into effect.
- 8.2 Aura may give or withhold their consent in their absolute discretion.
- 8.3 If the Client wishes to vary requirements in the Quote after a Quote has been prepared or after the placement of an order for materials pursuant to a Quote, Aura reserves the right to vary the Quote to include any additional Charge in respect of any extra costs incurred due to the variation.
- 8.4 Aura has an automatic extension of time for the provision of the Services equal to the delay caused by the variation.

Aura's cancellation or variation

- 8.5 In certain circumstances, Aura may need to cancel or vary the Quote, for example where the materials required are not available or if there has been an error in the Quote.
- 8.6 If Aura needs to cancel or vary the Quote, Aura will endeavour to provide the Client with notification in writing as soon as reasonably practicable after the Client accepts the Quote.
- 8.7 The Client is responsible for any costs, expenses and Charges, reasonably incurred by Aura in cancelling or varying the Quote pursuant to clause 8.5 and 8.6.

9. GST

- 9.1 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.
- 9.2 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.
- 9.3 If, at any time, an adjustment event arises in respect of any supply made by a party under this agreement, a corresponding adjustment must be made between the parties in respect of any amount paid to the providing party and payments to give effect to the adjustment must be made and the providing party must issue an adjustment note.

10. Confidentiality

- 10.1 Subject to clause 10.2, a Disclosee must:
 - (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 to writing and records will be the property of the Discloser); and
- (e) ensure that any and all Authorised Third Party Disclosees:
 - (i) comply with the obligations in this agreement as if each of them was a party to this agreement in the place of the Disclosee; and
 - (ii) do not do, or omit to do, anything which, if done or omitted to be done by the Disclosee, would constitute a breach of this agreement by the Disclosee.

- 10.2 The Disclosee shall be responsible for, and liable to the Discloser in respect of, the actions or omissions of any and all of its Authorised Third Party Disclosees in relation to the Confidential Information as if they were the actions or omissions of the Disclosee.

Exceptions

- 10.3 Clause 10.1 does not apply to a party in relation to the other party's Confidential Information to the extent that:
 - (a) that Confidential Information is in the public domain at the time of receipt by the recipient party, or has subsequently come into the public domain otherwise than through a breach by that party of this clause;
 - (b) that party receives that Confidential Information from a third party who has a right to disclose it to that party; or
 - (c) that party can prove to the reasonable satisfaction of the other party that it:
 - (i) lawfully possessed that Confidential Information before obtaining it under or in connection with this agreement; or

- (ii) developed that Confidential Information independently without use of or reference to that other party's Confidential Information.

11. Non-disparagement

- 11.1 Subject to clause 11.2, on and from the date of this agreement, each party must not:
- (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
 - (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.
- 11.2 Clause 11.1 shall not prohibit any party from making any statement or disclosure as required by law or court order, provided that such party must:
- (a) promptly notify the other party in writing in advance of any such statement or disclosure, if reasonably practicable; and
 - (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.

12. Dispute resolution

- 12.1 The parties must comply with dispute resolution provisions before litigation or arbitration.
- 12.2 Subject to clause 12.3 and clause **Error! Reference source not found.**, a party must not commence litigation, court proceedings, tribunal proceedings or arbitration relating to a dispute arising under or in connection with this agreement (including a dispute relating to the interpretation of this agreement) (**Dispute**) without first complying with this clause 12 in relation to that Dispute.

- 12.3 Clause 12.2 does not prevent a party from seeking urgent injunctive relief or urgent interlocutory relief, provided that:
- (a) the party seeks relief in an Australian court of competent jurisdiction; and
 - (b) failure to obtain such relief would cause irreparable damage to that party.

Dispute Notice

- 12.4 A party claiming that a Dispute has arisen must give written notice (**Dispute Notice**) to each other party to the Dispute (each party to the Dispute being a **Dispute Party**).
- 12.5 A Dispute Party that gives a Dispute Notice in relation to a Dispute must ensure that the Dispute Notice:
- (a) sets out in detail the nature and subject matter of that Dispute and the outcome which that Dispute Party seeks in relation to that Dispute; and
 - (b) designates a person with authority to settle that Dispute as that Dispute Party's representative for the purposes of this clause 12.

Resolving Disputes by negotiation

- 12.6 Promptly after a Dispute Party has given a Dispute Notice in relation to a Dispute to each other Dispute Party under clause 12.4, each Dispute Party must use its reasonable endeavours to resolve that Dispute through mutual discussion and negotiation between the Dispute Parties (or their designated representatives).
- 12.7 If within 10 Business Days after each Dispute Party has received the Dispute Notice in relation to a Dispute (**Negotiation Period**), the Dispute Parties have not either:
- (a) resolved that Dispute; or
 - (b) agreed in writing an alternative dispute resolution process to resolve that Dispute, including:
 - (i) a timetable for that process;
 - (ii) the identity of an independent person to conduct that process; and
 - (iii) how the Dispute Parties will bear the costs of conducting that process,
- then clause 16.4 applies.

Resolving Disputes by mediation where negotiation fails

- 12.8 If this clause 1.4 applies in relation to a Dispute, then within 10 Business Days after the end of the Negotiation Period (**Referral Period**) for that Dispute, the Dispute Parties must refer that Dispute to mediation to be conducted:

- (a) by a mediator:
 - (i) agreed by the Dispute Parties; or
 - (ii) if the Dispute Parties do not agree on a mediator by the end of the Referral Period, appointed by the Australian Disputes Centre (ADC) (or the chair or other representative of that organisation); and
- (b) in accordance with the ADC Guidelines for Commercial Mediation applicable at the time of the referral.

Resolving Disputes by arbitration when negotiation fails

- 12.9 If this clause 16.5 applies in relation to a Dispute, then within 10 Business Days after the end of the Negotiation Period for that Dispute (**Referral Period**), a Dispute Party may refer that Dispute to arbitration to be conducted:
- (a) by an arbitrator (Arbitrator):
 - (i) agreed by the Dispute Parties; or
 - (ii) if the Dispute Parties do not agree on an arbitrator by the end of the Referral Period, appointed by the Resolution Institute; and
 - (b) in accordance with Resolution Institute Arbitration Rules applicable at the time of the referral.

13. Liability, Indemnity and Remedies

Indemnity

- 13.1 The Client irrevocably indemnifies and covenants to hold Aura harmless from and against all Losses suffered by Aura (including third party claims on Aura) which arise in connection with any breach of this agreement by the Client and/or any negligent or other tortious conduct of the Client.

Indemnities continuing

- 13.2 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.

Limitation of liability

- 13.3 (**Disclaimer of warranties**) To the maximum extent permitted by law and except as otherwise set out in this agreement, Aura 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.

- 13.4 (**Limitation of liability**) Where the conditions, representations and warranties referred to in clause 13.3 cannot be disclaimed or excluded by law, then the aggregate liability of Aura and its Representatives in respect of any Claim for Losses that the Client and/or any of its Representatives may bring against Aura in respect of the Services is limited, at Auras' 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 Aura under this agreement in respect of the Services.

13.5

Remedies for breach

- 13.6 Each party acknowledges and agrees that, in the event of any breach by the other party of the provisions of clause 10 (Confidentiality), or clause 10.3 (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.

14. Termination

Termination for breach

- 14.1 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.
- 14.2 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

- 14.3 The Client may, without limitation to its rights under clause 14.2, terminate this agreement at

any time by giving at least 1 month's notice to Aura.

- 14.4 Aura may, without limitation to its rights under clause 14.2, terminate this agreement at any time by giving at least 1 month's notice to the Client. The Client may waive all or part of such notice period.

Effect of termination

- 14.5 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 Aura for the purchase of materials for those Services prior to such termination); and
 - (b) Aura 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.

During notice period

- 14.6 In the event that Auras' engagement under this agreement is terminated upon notice by either party the Client may, at its absolute discretion, require Aura to refrain from providing the Services during the relevant notice period.

Partially completed deliverables

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

Legislation

- 14.8 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

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

Survival

- 14.10 The obligations of the parties under clause 10 (Confidentiality), clause 10.3 (Non-disparagement), clause 12 (Liability and remedies), and this clause 14 will survive the termination of this agreement.

15. Notices

- 15.1 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; or
 - (v) by e-mail.
- 15.2 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.

- 15.3 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.

16. General

Further assurances

- 16.1 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

- 16.2 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.

Costs

- 16.3 All costs and expenses in connection with the negotiation, preparation and execution of this agreement, and any other agreements or documents entered into or signed pursuant to this agreement, will be borne by the party that incurred the costs.

Entire agreement

- 16.4 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

- 16.5 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

- 16.6 Any waiver of a right under this agreement must be in writing and signed by the party granting the waiver.
- 16.7 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

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

Assignment

- 16.9 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

- 16.10 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.
- 16.11 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

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

Authorised Third Party Disclosee means any Representative of a Disclosee to whom that Disclosee discloses Confidential Information in accordance with clause 10.

Business Day means a day (other than a Saturday, Sunday or public holiday) when banks in Sydney, New South Wales are open for business.

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 Aura or any Related Entity of Aura 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).

Deadline Date means, in respect of a Quote, the dates (if any) specified in the Quote as the dates on or before which Aura must complete each Phase of the Engagement in accordance with clause 4.7.

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

Disclosee means, in respect of any particular Confidential Information, any party that has received that Confidential Information (whether directly or indirectly) from another party.

Discloser means, in respect of any particular Confidential Information, any party that has disclosed or discloses that Confidential Information (whether directly or indirectly) to another party.

Engagement has the meaning given in clause 4.1, being each individual engagement for Aura 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 Aura, 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 Aura;
- (d) misleading Aura in any material way; and/or
- (e) an Insolvency Event occurring in respect of the Client.

Expenses mean the expenses of Aura for which Aura is entitled to be reimbursed by the Client pursuant to clause 5.4.

Fees has the meaning given in clause 5.1.

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.

Material means any data, plans, instructions, documents, descriptions, reports, advice, accounts, drawings, photographs or any other material.

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 5.2.

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).

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

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 Aura 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 Aura 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.

Start Date means the date specified as the start date in the Quote, or such other date as the parties may agree in writing.

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

Tax or Taxation means:

- (a) any tax, levy, impost, deduction, charge, rate, compulsory loan, withholding or duty by whatever name called, levied, imposed or assessed under the Tax Acts or any other statute, ordinance or law by any Governmental Agency (including profits tax, property tax, interest tax, income tax, tax related to capital gains, tax related to the franking of dividends, bank account debits tax, fringe benefits tax, sales tax, payroll tax, superannuation guarantee charge, group or Pay as You Go withholding tax and land tax);
- (b) unless the context otherwise requires, Stamp Duty and GST; and
- (c) any interest, penalty, charge, fine or fee or other amount of any kind assessed, charged or imposed on or in respect of the above.

Interpretation

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 Sydney, New South Wales 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
- (s) a reference to one gender includes a reference to the other genders.