



[DRAFTING NOTE: There are drafting notes throughout this document indicating where an option must be selected. Ensure that after the necessary changes are made all drafting notes are removed]

Building Designer Engagement Agreement

(‘the Agreement’)

[Member’s Company]

and

[Client’s Name]

Reference: [insert]

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The Agreement consists of:

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Part 1 – The Project

Item		Part 5 Clause No.
1	The Parties	1
1.1	Building Designer: ACN/ABN: Choose an option for Building Designer's licence/registration: Address: Phone No: Email:	[Drafting note: this row only needs to be completed if Building Designer is required to be registered or licensed under state or territory law in order to provide the Design Services.]
1.2	Job Attribution Details:	
1.3	Client: ACN/ABN: Address: Phone No: Email:	
2	Date of Agreement	1, 3
3	Address of Works	2, 23
4	Description of Works	
5	Building Designer's Insurance Policies Public Liability Insurance Amount: \$20 million per occurrence Period to be maintained: until 13 calendar months after either the expiry of the Term or termination of this Agreement, whichever occurs first. Professional indemnity insurance Amount: \$10 million per occurrence Period to be maintained: until seven years after either the expiry of the Term or termination of this Agreement, whichever occurs first.	16
[DRAFTING NOTE: Item 5 should be reviewed and amended to reflect the type of policies and level of coverage held by the Building Designer]		

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Part 2 – Fee Schedule

All monetary amounts include GST unless specified otherwise.

Item		Part 5 Clause No.	
6	Basis of Payment	☐ Percentage ☐ Lump Sum ☐ Hourly	8
7	Percentage Basis Only:		8
7.1	Estimated Total Construction Cost	\$	
7.2	The Percentage to be applied to Estimated Total Construction Cost	 %	
8	Lump Sum Basis Only:		8
8.1	The Lump Sum Fee	\$	
9	Hourly Time Charge Basis Only:		8, 18
	- Principal	\$ per hour	
	- Senior Designer	\$ per hour	
	- Draftspersons	\$ per hour	
	- Support Staff – Technical	\$ per hour	
	- Support Staff – Administrative	\$ per hour	
	- Support Staff – Non-Technical	\$ per hour	
10	Stages of Payment:		8
	Deposit on signing of Agreement	(% or \$)	
	Preliminary Design Services	(% or \$)	
	Site Analysis Services	(% or \$)	
	Preliminary Design Development	(% or \$)	
	Design Development	(% or \$)	
	Town Planning Applications and Submissions	(% or \$)	
	Working Drawings and Specifications	(% or \$)	
	Interior Design	(% or \$)	
	Tendering and Negotiation of Contracts	(% or \$)	
	Site Attendance and Contract Administration	(% or \$)	
	Post Project Completion Services	(% or \$)	
	Total	(% or \$)	
11	Disbursements	B&W Colour	9
	Standard Plan repeats	\$ each	
	Photocopies – A3, single sided	\$ each	
	Photocopies – A4, single sided	\$ each	
	Prints – A1 size	\$ each	
	Printed Plan/Computer Plots – A1 size	\$ each	

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[INSERT YOUR LOGO HERE]

Printed Plan/Computer Plots – A2 size	\$	\$ each
Printed Plan/Computer Plots – A3 size	\$	\$ each
Printed Plan/Computer Plots – A0 size	\$	\$ each
Printed Plan/Computer Plots – B1 size	\$	\$ each
Travel	\$ Cents/km	
	\$	
	\$	
	\$	

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Part 3 – Design Services

Design services to be provided by the Building Designer under the Agreement

Preliminary Design Services

- Preparation of Brief ☐
- Production of Preliminary Layout Sketches ☐
- Preparation of Indicative Budget..... ☐
- Preliminary Feasibility Study ☐

Site Analysis Services

- Assistance in Selection of Site ☐
- Site Measure and Preparation of Existing Conditions Plan ☐
- Consultations with Relevant Authorities ☐
- Site Analysis ☐

Preliminary Design Development

- Preparation of Preliminary Concept Sketches suitable for subsequent detailed development ☐
- Budget considerations of anticipated Construction Cost ☐
- Consultation with Relevant Authorities..... ☐
- Discussions with Neighbours and other Interested Parties ☐
- Presentation/Marketing Drawings ☐
- Perspectives Presentation ☐

Planning Applications and Submissions

- Appointment of Consultants, where appropriate ☐
- Preparation of Presentation Drawings for Town Planning..... ☐

Description of Scope of Works for Town Planning

- Lodge Relevant Application Forms ☐
- Completion of statutory advertising requirements ☐
- Negotiation with Objectors re Town Planning ☐
- Assistance with Town Planning Appeals ☐

Design Development and Working Drawings

- Appointment of Consultants, where appropriate ☐
- Preparation of Advanced Stage of Design Development..... ☐
- Review and Refinement of Advanced Stage with Client ☐
- Preparation of Working Drawings ☐
- Preparation of Detailed Drawings of Internal Details..... ☐
- Preparation of Electrical Layout Plan ☐

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- Preparation of Project Specification and Schedule of Finishes (Sections nominated by the Client)..... ☐
- Interior Design, Selection and Co-ordination of Finishes, Colours and/or Furnishing..... ☐
- Preparation of Thermal Performance assessment..... ☐

Tendering and Negotiation of Contracts

- Completion of Tender Documents ☐
- Selection of Invited Tenderers ☐
- Call for Tenders ☐
- Analysis of Tenders including compliance and/or variations ☐
- Negotiation with Tenderers ☐
- Notification to Successful Tenderer and Unsuccessful Tenderers ☐
- Preparation of Contract Documents between Client and Builder ☐
- Preparation of Contract Documents between Client and Consultants ☐
- Liaison with Successful Builder and Client..... ☐
- Liaison with Consultants ☐
- Attendance at Contract Signing ☐

Site Attendance and Contract Administration

- Consultation with Relevant Authorities..... ☐
- Liaise with Consultants ☐
- Lodge Permit Application Forms..... ☐
- Co-ordinate all Relevant Documentation ☐
- Assistance with Building Appeals/Modifications..... ☐
- Attendance at Site to Monitor Progress of the Project ☐
- Monitoring of the Project to Ensure Consistency with the Design Requirements ☐
- Administration of the Contract between Client and Builder ☐

(Note: The services under the category of "Site Attendance and Contract Administration" do not include responsibility for the quality of the construction or for the builder's obligations under the provisions of the contract between the Client and the builder)

Post Project Completion Services

- Completion of all aspects of Contract Administration..... ☐
- Review of any Defects for the purpose of the Defects Liability Period under the Builder's Contract ☐
- Review of any applicable Warranties and Guarantees ☐

Other Services

.....

.....

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Part 4 – Nominated Consultants

The Client has engaged, or authorises the Building Designer to engage Consultant services selected below under Clause 11 of the Terms of Building Designer Engagement (Part 5)

Item

Part 5
Clause No
11

12 List of Consultants:

	To be engaged by:			
	Building Designer (as agent for client)		Client (directly)	
	YES	NO	YES	NO
Building Surveyor	☐	☐	☐	☐
Geotechnical Engineer	☐	☐	☐	☐
Land Surveyor	☐	☐	☐	☐
Landscape Designer	☐	☐	☐	☐
Structural Engineer	☐	☐	☐	☐
Town Planner	☐	☐	☐	☐
Cost Consultant/Quantity Surveyor	☐	☐	☐	☐
Electrical Engineer	☐	☐	☐	☐
Fire Services Engineer	☐	☐	☐	☐
Interior Design	☐	☐	☐	☐
Interior Decorator	☐	☐	☐	☐
Mechanical Engineer	☐	☐	☐	☐
Energy Assessor	☐	☐	☐	☐
Other Consultants				
BAL Assessor	☐	☐	☐	☐
	☐	☐	☐	☐
	☐	☐	☐	☐

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Part 5 – Terms of Building Designer Engagement

1. Parties and Date

This Agreement is made between the Building Designer and the Client named in Items 1.1 and 1.3 of Part 1 on the date stated in Item 2 of Part 1.

2. Definitions of Terms in this Agreement

In this Agreement, except where the context or subject otherwise requires:

Administrator means performing the roles selected under the heading of “Site Attendance and Contract Administration” in Part 3;

Agreement means this agreement between the Building Designer and the Client;

Building Designer means the person, partnership or corporation stated in Item 1.1 of Part 1;

Claim means any cause of action, allegation, claim, demand, debt, liability, suit or proceeding of any nature howsoever arising and whether present or future, fixed or unascertained, actual or contingent, or at law (including negligence), in equity, under statute or otherwise;

Client means the person, partnership or corporation stated in Item 1.3 of Part 1;

Client Default has the meaning given to this term in clause 20(a).

Client Information means all documents (including sketches, photographs, drawings, plans or concepts) supplied by the Client to the Building Designer upon which the Building Designer is to base the Design Services and/or Works;

Copyright means all rights in respect of the Documents arising under the Copyright Act;

Copyright Act means the *Copyright Act 1968* (Cth), as amended;

Corporations Act means the *Corporations Act 2001* (Cth), as amended;

Design Services means the services to be supplied by the Building Designer to the Client as selected in Part 3;

Documents means any works (as defined in the Copyright Act) created by the Building Designer in the course of providing Design Services including (without limitation) all plans, drawings, drafts, revisions and other documentation relating to the Works;

Estimated Total Construction Cost means the Client’s estimate of the Total Construction Cost as stated in Item 7 of Part 2;

Fee means the amount payable by the Client to the Building Designer set out in clause 8 and Items 6 to 10 in Part 2 as payable and adjusted (if at all) in accordance with this Agreement plus any disbursements payable under clause 9;

Governmental Agency means:

- (a) a body corporate or an unincorporated body established or constituted for a public purpose by Commonwealth or State legislation, or an instrument made under that legislation;
- (b) a body established by a Minister of a Federal, State or Territory government, including departments; or
- (c) an incorporated company over which a Federal, State or Territory government exercises control;

Insolvency Event means any of these events in relation to a party (**Defaulting Party**):

- (a) where the Defaulting Party is a body corporate:
 - (i) the Defaulting Party becomes an externally administered body corporate under the Corporations Act;
 - (ii) steps are taken by any person towards making the Defaulting Party an externally administered body corporate (but not where the steps taken consist of making an application to a court and the application is withdrawn or dismissed within 14 days);
 - (iii) a controller (as defined in section 9 of the Corporations Act) is appointed to any of the property of the Defaulting Party, or any steps are taken for the appointment of a controller (but not where the steps taken are reversed or abandoned within 14 days);
 - (iv) the Defaulting Party is taken to have failed to comply with a statutory demand within the meaning of section 459F of the Corporations Act; or
 - (v) a resolution is passed for the reduction of capital of the Defaulting Party or notice of intention to propose such a resolution is given, without the prior written consent of the other party to this Agreement;
- (b) where the Defaulting Party is a natural person:
 - (vi) the Defaulting Party authorises a registered trustee or solicitor to call a meeting of his or her creditors or proposes or enters into a deed of assignment or deed of arrangement or a composition with any of his or her creditors;
 - (vii) a person holding a security interest in assets of the Defaulting Party enters into possession of or takes

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control of any of those assets or takes any steps to enter into possession of or take control of any of those assets; or

(viii) the Defaulting Party commits an act of bankruptcy;

Intellectual Property Rights means any statutory and other proprietary right in respect of inventions, innovations, patents, utility models, designs, circuit layouts, mask rights, copyright (including future copyright), confidential information, trade secrets, know-how, trademarks and any other right in respect of intellectual property;

Legislation means:

- (a) acts, ordinances, regulations, by-laws, orders, awards and proclamations of a Federal, State or Territory government;
- (b) authorisations by a Governmental Agency or any other agencies or authorities which have the force of law; and
- (c) standards, codes and guidelines which have the force of law,

Moral Rights has the same meaning as prescribed in the Copyright Act.

Nominated Consultants means the consultants nominated by the Client as listed in Part 4;

Registration Number means a licence or registration number granted to the Building Designer by a Governmental Agency which authorises or otherwise relates to the performance of the Design Services;

Total Construction Cost shall include all of the following:

- (a) the final adjusted contract price payable to the building contractor under the building contract for the Works;
- (b) the final adjusted contract price payable to other contractors and/or consultants engaged to supply and complete the Works;
- (c) the final adjusted contract price payable to other contractors for any other associated site-works which the Building Designer was required to take into account in performing the Design Services; and
- (d) all fittings, fixtures and equipment relating to the Works,

Unexpected Event affecting a party means anything outside that party's reasonable control that the affected party is not able to either prevent or remove at reasonable cost, including strikes not involving its employees, fires, internet viruses or attacks, electrical outages, storms, floods, earthquakes, wars, riots, acts of terrorism or a pandemic declared by a Governmental Agency;

Works means the specific project or undertaking to be performed at the address stated in Item 3 of Part 1 in respect of which the Building Designer is engaged to supply the Design Services; and

Wrongful Conduct means any act or omission of a party which is:

- (a) negligent, deceitful or otherwise tortious;
- (b) misleading or deceptive or likely to mislead or deceive;
- (c) unconscionable;
- (d) in breach of its obligations or warranties under this Agreement or contrary to any representation made in this Agreement; or
- (e) in breach of any applicable law regulating the rights, liabilities and remedies of persons.

3. Nature of Agreement

- (a) The Building Designer's engagement under this Agreement shall:
 - (i) commence on the date stated in Item 2 of Part 1; and
 - (ii) conclude on the earlier of:
 - (1) the date the Design Services are completed;
 - (2) the date the Building Designer's final tax invoice is paid;
 - (3) the date the Works are complete; or
 - (4) the date of termination under clause 12(b) or clause 20.
- (b) The Building Designer shall perform the Design Services for the Client in accordance with this Agreement.
- (c) The Client shall pay the Fee to the Building Designer in accordance with this Agreement.

4. Design Services

- (a) The Building Designer shall supply the Design Services using the reasonable skill and care of an ordinary building designer in the circumstances of the Building Designer at the time the Design Services are supplied.
- (b) The Client shall ensure that all requests, decisions and instructions required by the Building Designer from the Client are supplied accurately and within a reasonable time so as not to cause delay to the Design Services provided under this Agreement.

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5. Appointment as Administrator

Where the Design Services include the Building Designer acting in the role of Administrator, the Building Designer shall act as the agent of the Client in respect of its role as Administrator at all times and not as an independent certifier or assessor.

6. Authority to Act as Agent

The Client expressly authorises the Building Designer to act on behalf of the Client for the purpose of making any application, appeal or referral as required under any applicable Legislation or by a Governmental Agency that affects the approval process or the scope of the Design Services.

7. The Works

- (a) The Client shall ensure that, prior to commencement of any on-site building work to which the Design Services relate, a building permit in relation to the Works has been issued and is in force as required by any applicable Legislation or any Governmental Agency.
- (b) The Building Designer does not warrant or represent to the Client that the design produced pursuant to this Agreement can be constructed for the Estimated Total Construction Cost. The Client will obtain its own independent advice as to the estimated and actual costs of constructing the design produced pursuant to this Agreement.

8. Payment of Fees

- (a) The Client shall pay to the Building Designer the Fee, on the basis specified in Item 6 of Part 2, which will be one of the following bases:

- (i) **Percentage Basis**

- Where the Fee payable is based on a percentage of the Estimated Total Construction Cost, the Fee shall be calculated in accordance with Item 7 of Part 2.

- Where the Total Construction Cost is higher than the Estimated Total Construction Cost, the Fee shall be increased so that the Fee is calculated as a percentage of the Total Construction Cost.

- Where the Total Construction Cost is lower than the Estimated Total Construction Cost, the Fee shall continue to be calculated as a percentage of the Estimated Total Construction Cost.

- (ii) **Lump Sum Basis**

- Where the Fee payable is based on a lump sum, the Fee shall be the lump sum amount stated in Item 8 of Part 2.

- (iii) **Hourly Time Charge Basis**

- Where the Fee is payable on an hourly time charge basis, the rates payable by the Client to the Building Designer shall be as stated in Item 9 of Part 1. The Building Designer shall keep accurate time records to substantiate the Fee claimed on an hourly time charge basis.

- (b) If the Fee is to be paid in stages, then the Fee will be paid at the stages and in the proportions or amounts specified in Item 10 of Part 2.
- (c) If the Fee is not to be paid in stages, then the Client must pay the Fee progressively. The Building Designer will submit an account to the Client on the 1st of each month for payment of a proportion of the Fee referable to the value of the Design Services supplied during the calendar month preceding the submission of the account plus all disbursements incurred during that month. Payment of the account shall be due and payable on the 15th day of the month.
- (d) If the Client does not pay the Fee in accordance with this Agreement, the Building Designer, after providing the Client with a Notice of Client Default, in addition to any other remedy which may be available against the Client, may by notice to the Client suspend supplying any further Design Services pending payment or may terminate this Agreement in accordance with clause 20.
- (e) The Client indemnifies the Building Designer in respect of all costs, losses and damage incurred in respect of non-payment of the Fee, including but not limited to the legal costs associated with recovering the Fee.

9. Disbursements

The Client shall reimburse the Building Designer for disbursements reasonably incurred as stated in Item 11 of Part 2 for the purposes of supplying Design Services in accordance with this Agreement.

10. Changes in Legislation

If a change in Legislation necessitates a change to the Design Services the difference shall be added to or deducted from the Building Designer's Fee in accordance with clause 18.

11. Nominated Consultants

- (a) Where the Client has not engaged the Nominated Consultants directly, the client authorises the Building Designer to act as the agent of the Client to engage the Nominated Consultants.
- (b) All Nominated Consultants engaged by the Client must be engaged pursuant to written contracts between the Client and the Nominated Consultants. The terms on which the Nominated Consultants are engaged shall not be inconsistent with the terms of this Agreement.

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- (c) The Client shall be responsible for all payments to Nominated Consultants.
- (d) If the Building Designer pays the Nominated Consultant on behalf of the Client, the Client shall reimburse the Building Designer for the payments, plus an account-handling fee calculated at 5% of the paid amount, as a disbursement under clause 9.
- (e) The Building Designer does not warrant or make any representation to the Client:
 - (i) that any Nominated Consultants are appropriate or suitable for the Works;
 - (ii) that the scope of the services to be provided by the Nominated Consultants is appropriate or suitable; or
 - (iii) the accuracy or quality of the Nominated Consultants' services.
- (f) The Building Designer shall have no liability to the Client in contract, tort, under statute or otherwise arising out of or in connection with the engagement of a Nominated Consultant or any services supplied by a Nominated Consultant. The Client shall not make any demand on the Building Designer or commence any legal proceedings against the Building Designer arising out of or in connection with any services supplied by a Nominated Consultant.

12. Engagement of consultants

If the parties have not nominated or provided for the engagement of Nominated Consultants in Part 4, and during the performance of the Agreement the Building Designer is of the opinion that a consultant or consultants should be engaged, the following conditions shall apply:

- (a) Where the Client provides written consent to the consultant being engaged, the consultant shall be engaged on the same basis as set out in clause 11 and clause 11 shall apply in respect of the engagement.
- (b) Where the Client does not agree to a consultant being engaged, either the Client or the Building Designer may terminate the Agreement by notice in writing to the other party. Where the Agreement is terminated in accordance with this clause 12(b), the Client shall pay to the Building Designer the sums due to date in accordance with this Agreement, together with an amount for loss of an expectation of a profit in contemplation of completing the Design Services.

13. Moral Rights, Copyright and Client's License to Use the Documents

- (a) The Client must not infringe any Intellectual Property Rights when supplying Client Information.
- (b) The Building Designer must not infringe any Intellectual Property rights when supplying the Design Services under this Agreement.
- (c) Each party shall take all necessary action to ensure that it does not cause the other party to infringe any other person's rights (including Moral Rights) under the Copyright Act.
- (d) Copyright in the Documents prepared by the Building Designer in accordance with this Agreement, is owned by the Building Designer and reproduction in whole or in part of the Documents without the permission of the Building Designer will constitute an infringement of copyright in accordance with the provisions of the Copyright Act.
- (e) The Client is granted an irrevocable license to only use the Documents prepared by the Building Designer to produce the Works for which they are intended for, at the site to which the design relates, provided that:
 - (i) the Client has paid all amounts due and payable to the Building Designer in accordance with this Agreement, regardless of termination of this Agreement by either party for any reason; and
 - (ii) the Building Designer has completed the Design Services commissioned by this Agreement.
- (f) Subject to further written permission from the Building Designer, the Building Designer does not grant the Client a licence to use the Documents other than in accordance with clause 13(e). No licence is granted to allow a third party who is a subsequent owner or developer of the site to use the Documents.
- (g) The Building Designer may consent to allow a third party who is a subsequent owner or developer of the site to use the Documents, such consent to be given at the sole discretion of the Building Designer and may be subject to the payment of an additional sum as determined by the Building Designer.
- (h) The Client shall ensure that clause 13(e) is included in any contract of sale of the site to which the Documents relate.
- (i) For the avoidance of doubt, the parties agree that:
 - (i) The Client shall not reproduce the Documents or reproduce the design in any manner or for any other purpose other than that contemplated by this Agreement without the prior written consent of the Building Designer, such consent to be given at the sole discretion of the Building Designer and may be subject to payment of an additional sum as determined by the Building Designer in its sole discretion.
 - (ii) The Client shall not make, or allow to be made, any modifications to the design of the Works (as embodied by the Documents) without the written consent of the Building Designer.
 - (iii) The Documents prepared by the Building Designer remain the property of the Building Designer. The Building Designer shall retain the Documents. The Client is entitled to one copy of the final set of the drawings which form part of the Documents, as a record of the Works. This copy will be provided either by hard copy or as an electronic (PDF) copy. The Client shall not be entitled to any electronic (CAD) file

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copy of any of the Documents, as the parties agree that electronic copies of the drawings forming part of the Documents will only be provided in PDF.

- (iv) In accordance with Part IX of the Copyright Act, the Building Designer shall be given full attribution for the design of the Works (as embodied by the Documents) and all promotional material, advertising and media releases prepared by the Client or the builder of the project shall identify the Building Designer.
- (v) It is acknowledged that the Building Designer has a right of integrity of authorship to the Documents and that all promotional material, advertising and media releases prepared by the Client, the Builder or any other third party relating to the Works shall not subject the Building Designer's work to derogatory treatment in accordance with the Copyright Act.

14. Unauthorised Use of Building Designer's Registration Number

- (a) The Client shall not be permitted to use the Building Designer's Registration Number (if the Building Designer holds a Registration Number) for any reason whatsoever without the express written consent of the Building Designer describing the exact purpose for which the Building Designer's Registration Number is to be used.
- (b) The Client shall not be entitled to use the Documents to which the Building Designer's Registration Number has been affixed without obtaining the express written consent of the Building Designer permitting the Client to use the Building Designer's Registration Number.

15. Indemnities and Limitations of Liability

- (a) Where the Client supplies Client Information to the Building Designer, the Client shall indemnify and keep indemnified, the Building Designer and its officers, employees and agents (**those indemnified**) at all times against all actions, proceedings, claims, demands, liabilities, either express or implied, whatsoever which may be taken against the those indemnified and for all costs, losses, losses of profit, damages and expenses incurred or which become payable by those indemnified, that result or arise from any claim for infringement of any patent, registered design, trademark, copyright, Moral Rights, or any other property interest of a third party which may result out of the use by those indemnified of the Client Information provided by the Client.
- (b) The Client indemnifies the Building Designer and its officers, employees and agents (**those indemnified**) from and against any:
 - (i) loss or liability incurred by those indemnified;
 - (ii) loss of or damage to property of those indemnified; or
 - (iii) loss or expense incurred by those indemnified in dealing with any Claim against it including legal costs and expenses on a party/party basis and the cost of time spent, resources used or disbursements paid by those indemnified,

arising from any Wrongful Conduct by the Client in connection with this Agreement.

- (c) The Client's liability to indemnify those indemnified under clauses 15(a) and 15(b) will be reduced proportionately to the extent that any Wrongful Conduct of those indemnified caused or contributed to the relevant liability, loss, damage, or expense.
- (d) The indemnities contained in this clause 15:
 - (i) are subject to and are not intended to limit the operation of or contract out of any law with respect to proportionate liability;
 - (ii) do not extend to that part of any loss or damage that arises from a separate causative event; and
 - (iii) do not require the Client to indemnify those indemnified in an amount which would exceed any limitation of liability contained in this Agreement.
- (e) The right of a party to be indemnified under this clause:
 - (i) is in addition to, and not exclusive of, any other right, power or remedy provided by law; and
 - (ii) does not entitle the party to be compensated in excess of the amount of the relevant liability, loss, damage, or expense.
- (f) The Client agrees that the Building Designer will be taken to be acting as agent or trustee for and on behalf of those indemnified.
- (g) The Building Designer shall have no liability to the Client for or in respect of any indirect or consequential losses (including without limitation loss of actual or anticipated profit or revenue, business interruption, delay costs, financing costs, holding costs and loss of opportunity), even if such loss or damage was reasonably foreseeable, arose naturally or was in the contemplation of the parties.
- (h) To the extent permitted by law, the Building Designer's total aggregate liability to the Client arising out of or in connection with the Design Services, whether under the law of contract, in tort (including negligence), in equity, under statute or otherwise, is limited to the Fee.
- (i) To the extent that the Building Designer has any liability to the Client, the Client must give notice of any Claim it may have against the Building Designer within two years from the date the Building Designer's engagement

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under this Agreement concludes in accordance with clause 3(a) and the Client shall not be entitled to commence any action or bring any Claim whatsoever against the Building Designer after that date, unless the Client issues legal proceedings against the Building Designer before that date.

- (j) If, and to the extent that, any of this clause 15 is void at law, then the Building Designer's liability for a breach of a condition or warranty is limited to:
 - (i) the supplying of the relevant Design Services again; or
 - (ii) the payment of the cost of having the Design Services supplied again.

16. Insurance

- (a) The Building Designer must take out and maintain valid and enforceable insurance policies of the types and for the coverage as specified in Item 5 of Part 1 of this Agreement.
- (b) The Client acknowledges that:
 - (i) all insurance policies are subject to the terms and conditions of the policies including but not limited to conditions, exclusions, sub-limits and other limitations;
 - (ii) where a type of cover is specified in this clause 16, the Building Designer will not be in breach of this clause 16 where the policy arranged provides cover of that type which is subject to such limitations;
 - (iii) where an amount of cover is specified in this clause 16, the Building Designer will not be in breach of this clause 16 where the policy arranged provides cover of that type amount subject to sub-limits;
 - (iv) cover provided by public liability policies in respect of death or bodily injury will generally exclude liability which is required by law to be insured under workers compensation insurance; and
 - (v) cover provided by public liability policies in respect of loss of property and damage to property will generally exclude liability in respect of property that is owned, hired, leased or rented to the insured.

17. Unexpected Events

- (a) If an Unexpected Event affecting a party precludes that party (**precluded party**) either partially or wholly from complying with its obligations under this Agreement then:
 - (i) as soon as reasonably practicable after that Unexpected Event arises, the precluded party must notify the other party of the Unexpected Event, how it is affecting the precluded party's performance (to the best of that party's knowledge), the anticipated period of delay and what the precluded party intends to do to either mitigate or remove the effect of the delay if possible; and
 - (ii) to the extent and for the period that the precluded party is precluded by the Unexpected Event from complying with its obligations under this Agreement, those obligations will be suspended.
- (b) The precluded party must act as promptly as possible to take all reasonable steps available to either mitigate or remove the Unexpected Event and its effect.
- (c) Clause 17(a) does not apply to any obligation to pay money.

18. Variations in Design Services

- (a) Where any variation in Design Services is required by the Client or the Design Services are varied due to causes beyond the control of the Building Designer, the Client must give the Building Designer written notice outlining the variation. The scope of the Design Services cannot be varied except by written notice delivered under this clause 18.
- (b) Within 7 days of receiving a notice under clause 18(a) the Building Designer must give the Client a notice that:
 - (i) states the effect the variation will have on the Design Services and the Works;
 - (ii) if the variation will result in any delays, states the Building Designer's reasonable estimate as to how long those delays will be; and
 - (iii) states the cost of the variation and the effect it will have on the Fee.
- (c) The Building Designer must comply with clause 18(b) prior to proceeding with the variation.
- (d) If both parties agree to proceed with the variation, the Fee shall be adjusted by the value of all variations, with the value ascertained based on the rates set out in Item 9 of Part 2.

19. Site Signage

The Client expressly authorises the Building Designer to erect temporary site signage that identifies the project as being designed or documented (as applicable), by the Building Designer. The form and positioning of the site signage shall be determined by the Building Designer, subject to any reasonable objection made by the Client. The Client shall allow the Building Designer to maintain the site signage until completion of the Works.

20. Termination of Agreement

- (a) By the Building Designer
 - (i) Should the Client:

Initials:



- (1) fail to pay the Building Designer any amounts payable in accordance with this Agreement; and/or
- (2) be in breach of any provisions of this Agreement; and/or
- (3) experience an Insolvency Event,

(a “**Client Default**”), the Building Designer may give the Client a written notice requiring that the Client remedy the Client Default within 7 days.

- (ii) If the Client fails to remedy the Client Default within 7 days of receiving the notice referred to in clause 20(a)(i) to the reasonable satisfaction of the Building Designer, the Building Designer, shall be at liberty to terminate this Agreement by giving 7 days’ notice in writing to the Client.
- (iii) Upon termination of this Agreement by the Building Designer, the Client shall pay all amounts payable in accordance with this Agreement for the Design Services executed up to the date of termination of this Agreement, together with an amount for loss of an expectation of a profit in contemplation of completing the Design Services.

(b) By the Client

- (i) Should the Building Designer:

- (1) fail to supply the Design Services with reasonable care and skill, and/or
- (2) be in breach of any provision of this Agreement; and/or
- (3) experience an Insolvency Event,

(a “**Building Designer Default**”), the Client may give the Building Designer a written notice requiring that the Building Designer remedy the Building Designer Default within 7 days.

- (ii) If the Building Designer fails to remedy the Building Designer Default within 7 days of receiving the notice referred to in clause 20(b)(i) to the reasonable satisfaction of the Client, the Client shall be at liberty to terminate this Agreement by giving 7 days’ notice in writing to the Building Designer.
- (iii) Upon termination of this Agreement by the Client, the Client shall pay all unpaid amounts due and payable to the Building Designer in accordance with this Agreement for the Design Services executed up to the date of termination of this Agreement.

21. Dispute Resolution Process

- (a) If any dispute or difference arises between the Building Designer and the Client in connection with this Agreement, either the Building Designer or the Client shall give the other a written notice of dispute identifying and providing details of the dispute.
- (b) Within 14 days of service of the written notice of dispute, the Building Designer and the Client shall confer at least once to resolve the dispute.
- (c) If the dispute is not resolved within 21 days of service of the written notice of dispute, and the amount in dispute is greater than \$10,000, then the dispute must be referred to mediation. If the parties cannot agree on the mediator then a mediator shall be selected by the President of the applicable Chapter of the Resolution Institute (being the Chapter in the State or Territory in which the Works are located, as set out in Item 3 of Part 1).
- (d) The parties must pay the mediator’s remuneration in equal shares. The Resolution Institute Mediation Rules, as amended and updated from time to time, shall apply to the mediation.

22. Interest

Any amount which is not paid by the date required in this Agreement shall entitle the creditor to interest on the amount at the rate of 5% over the Commonwealth Bank Bill Rate from the due date until payment.

23. Governing Law

The laws in force in the State or Territory in which the Works are located (as set out in Item 3 of Part 1) govern this Agreement and the parties submit to the non-exclusive jurisdiction of the courts in that State or Territory.

24. Entire Agreement, No Assignment, Variation, No Representations

- (a) This Agreement is the entire agreement between the parties on everything connected with the subject matter of this Agreement. This Agreement supersedes any prior agreement connected with that subject matter.
- (b) This Agreement cannot be varied unless the variation is in writing and signed by the parties.
- (c) The parties acknowledge that no reliance has been placed on any prior agreement or representation.
- (d) A party may not assign or sub-contract the whole or any part of its rights or obligations under this Agreement without the prior written consent of the other parties.
- (e) A waiver of any provision of, or right or obligation under, this Agreement must be in writing.
- (f) The parties warrant and represent that:
 - (i) The parties have been provided with an effective opportunity to negotiate the terms of this Agreement;

Initials:



and

- (ii) The terms of this Agreement are reasonably necessary to protect the legitimate interests of the parties to this Agreement.
- (g) All exclusions, indemnities and limitations of liability contained in this Agreement shall survive:
 - (i) termination of this Agreement; and
 - (ii) the conclusion of the Building Designer's engagement under this Agreement in accordance with Clause 3(a).

25. Additional Conditions of this Agreement

- (a) If there are any additional conditions applicable to this Agreement, then those conditions will be signed by both parties and attached to this Agreement. The additional conditions shall take precedence to the extent of any inconsistency.

26. Notice Requirements

- (a) Any notice, demand, approval or consent or other communication under this Agreement (**Notice**) must be in writing and must be delivered:
 - (i) personally;
 - (ii) by facsimile;
 - (iii) by prepaid registered post; or
 - (iv) by email,

to a party at:

- (v) the address of the party set out in Part 1 of this Agreement (**Nominated Contact Details**); or
 - (vi) such other contact details as the party may from time to time notify to the other parties for the purposes or, and in accordance with, this clause.
- (b) A notice given in accordance with clause 26(a) takes effect when received (or such later time as specified in it), and is taken to be received:
 - (i) if hand delivered, on delivery;
 - (ii) if sent by facsimile, when the sender's facsimile system generates a message confirming successful transmission of the total number of pages of the Notice, unless within four business hours (being a period of time between 9.00am and 5.00pm on a Business Day) after the transmission, the recipient informs the sender that it has not received the entire Notice;
 - (iii) if sent by prepaid post, three Business Days after the date of posting (or seven Business Days after the date of posting if posted to or from outside Australia); or
 - (iv) if sent by email to the email address set out in the Nominated Contact Details, when the email (including any attachment) is sent to the receiving party at that email address, unless the sending party receives a notification of delivery failure within 24 hours of the email being sent,

but if the delivery, receipt or transmission is not on a Business Day or is after 5.00pm on a Business Day, the Notice is taken to be received at 9.00am on the Business Day after that delivery, receipt or transmission.

- (c) For the purposes of this clause 26, "Business Day" means a day on which banks are open for business in the State of Territory in which the Works are located (as set out in Item 3 of Part 1), excluding a Saturday, Sunday or public holiday in such State of Territory.



[INSERT YOUR LOGO HERE]

Signing Page

Executed as an Agreement

Drafting note: amend/delete signature blocks as necessary depending on the type of entity

Signed by the **Client(s)**

INDIVIDUAL CLIENT:

SIGNED by **CLIENT NAME** in the presence of:

Signature of Witness

Signature

Name of Witness

COMPANY WITH TWO OR MORE DIRECTORS:

EXECUTED for and on behalf of **CLIENT NAME**
(ACN **XXX XXX XXX**) in accordance with Section
127(1) of the *Corporations Act 2001*:

Signature of Director

Signature of Director/Secretary

Name of Director

Name of Director/Secretary

COMPANY WITH SOLE DIRECTOR/SECRETARY:

EXECUTED for and on behalf of **CLIENT NAME**
(ACN **XXX XXX XXX**) in accordance
with Section 127(1) of the *Corporations Act 2001*:

Name of Sole Director and Sole Secretary

Signature of Sole Director and Sole Secretary

Initials:



[INSERT YOUR LOGO HERE]

Signing Page

Executed as an Agreement

Drafting note: amend/delete signature blocks as necessary depending on the type of entity

Signed by the **Client(s)**

INDIVIDUAL CLIENT:

SIGNED by **CLIENT NAME** in the presence of:

Signature of Witness

Signature of Director/Secretary

Name of Witness

COMPANY WITH TWO OR MORE DIRECTORS:

EXECUTED for and on behalf of **CLIENT NAME** (ACN **XXX XXX XXX**) in accordance with Section 127(1) of the *Corporations Act 2001*:

Signature of Director

Signature of Director/Secretary

Name of Director

Name of Director/Secretary

COMPANY WITH SOLE DIRECTOR/SECRETARY:

EXECUTED for and on behalf of **CLIENT NAME** (ACN **XXX XXX XXX**) in accordance with Section 127(1) of the *Corporations Act 2001*:

Name of Sole Director and Sole Secretary

Signature of Sole Director and Sole Secretary

Initials:



[INSERT YOUR LOGO HERE]