

# EDGEFIELD PROJECTS

## STANDARD TERMS OF APPOINTMENT

The Client hereby agrees with Jeff Thierfelder, Sole Trader, trading as 'Edgefield Projects' (herein referred to as 'EDGEFIELD'), that in consideration of EDGEFIELD agreeing to provide services the Client will perform and observe all the terms and conditions set out as follows:-

1. The Client shall as soon as practicable:
  - (a) make available to EDGEFIELD all information, documents and particulars relating to the Client's requirements;
  - (b) make arrangements to enable EDGEFIELD to enter upon any land necessary to enable EDGEFIELD to perform the services;
  - (c) obtain all approvals, authorities, licences and permits which may be required for the lawful implementation and provision of the services;
  - (d) appoint a person to act as its representative and give written notice to EDGEFIELD of the person appointed which person shall be deemed to have authority to act on behalf of the Client for all purposes in connection with this agreement; and
  - (e) if the Client becomes aware of any matter which may affect the scope or timing of the services, to give written notice of the matter to EDGEFIELD.
2. Except where otherwise specified in writing in the Service Brief the fee for the services provided by EDGEFIELD shall be calculated by reference to the applicable hourly charge rate for the person undertaking the services as specified in the Schedule of Charging Rates.
3. Unless otherwise specified in writing in the Service Brief the person to provide the services shall be determined by EDGEFIELD at its discretion.
4. Any estimate, quote or statement of range of the cost of services specified by EDGEFIELD will not limit the charges that may be charged by EDGEFIELD unless EDGEFIELD has in writing agreed to fix or limit charges by reference to an estimate, quote or range of cost, signed by a director of EDGEFIELD.
5.
  - (a) In addition to charges for services, the Client will pay disbursements incurred by EDGEFIELD including without limiting the generality of the foregoing travel, telephone, facsimile, courier, postage, accommodation, copying, application fees and sub contractor fees.
  - (b) The client agrees to pay for travelling expenses at the rate per business kilometre for travel of less than 5,000 km per annum applicable from time to time pursuant to the Income Tax Assessment Act 1936 as amended.
6.
  - (a) Accounts may be issued by EDGEFIELD on a monthly basis and are payable within 30 days of the date of account;
  - (b) Unless disputed in writing within 30 days of the date of the account the amount stated on accounts shall be deemed correct and conclusive.
  - (c) The Client agrees to pay accounts notwithstanding any counterclaim or set-off the Client may claim to have against EDGEFIELD.
7. Interest will be paid on any fees or disbursements due and payable which are outstanding for more than 30 days, calculated from the date of the account at 14% per annum on a daily basis, plus an accounting fee of \$30 per month for each month or part month that fees or disbursements are outstanding. Collection costs incurred in recovering overdue debts including, but not limited to, collection agency commission, summons fees, legal cost etc, will also be paid by the client.
8. EDGEFIELD reserves the right to require from time to time money on account of services to be provided and disbursements to be incurred.
9. EDGEFIELD retains copyright in all drawings, reports, specifications, bills of quantities, calculations and other documents produced, prepared or provided by EDGEFIELD to or for the use of the Client and the Client shall not publish nor use nor make copies of the said documents unless approval in writing is given by EDGEFIELD.
10. The Client shall have a licence to use the documents referred to in Clause 9 PROVIDED THAT if the Client at any time breaches this agreement then EDGEFIELD may immediately EDGEFIELD or suspend the licence until the breach is rectified and EDGEFIELD will not be liable for any loss or damage suffered by the Client in consequence of the revocation or suspension of the licence, absolutely.
11. EDGEFIELD has a lien over all documents being the property of the Client and held by EDGEFIELD until payment in full of all accounts issued by EDGEFIELD.
12. The Client may terminate this agreement at any time by written notice but without affecting the liability of the Client to pay for all the services provided and disbursements incurred by EDGEFIELD to the date of termination and (if applicable) any loss or damage suffered by EDGEFIELD in consequence of the termination.
13. EDGEFIELD may suspend performance of the services or terminate this agreement at any time if:-
  - (a) the Client breaches any provision of this agreement;
  - (b) the Client does not give necessary instructions and information within a reasonable time of requests to do so;
  - (c) EDGEFIELD has the opinion that mutual confidence and trust no longer exists between EDGEFIELD and the Client;
  - (d) EDGEFIELD decides that continuing to provide services may breach professional ethics or ethical rules of conduct;
  - (e) the Client being a company goes into liquidation or has a receiver or manager or administrator appointed;
  - (f) the Client being a person is declared bankrupt or becomes subject to Part X of the Bankruptcy Act;
  - (g) the Client gives written notice of dispute of an account issued.
14. The maximum liability of EDGEFIELD to the Client arising out of the performance or non-performance of the services by EDGEFIELD or arising out of this agreement or any other act or omission by EDGEFIELD pursuant to common law or equity or any statute, the amount agreed in writing between the Client and EDGEFIELD, or \$100,000.00, whichever is the lesser amount.
15. EDGEFIELD shall be deemed to have been discharged absolutely from all liability arising from the services or arising from any act or omission relating directly or indirectly to the services pursuant to common law or equity or by any statute, at the expiration of one year from the completion of the services or the occurrence of the act or omission from which the liability arises and the Client and any persons or entities claiming through or under the Client shall not be entitled to commence any action or claim whatsoever against EDGEFIELD or any employee or agent of EDGEFIELD in respect of services or acts or omissions after that date, with it being deemed the date of completion of the services is either the date the service which is the subject of an action or claim was completed, or the date of the invoice issued by EDGEFIELD for that service, whichever is the earlier date.
16. The Client shall indemnify and hold harmless EDGEFIELD from all liability arising from the services provided by EDGEFIELD or arising from any act or omission by EDGEFIELD relating directly or indirectly to the services pursuant to common law or equity or by any statute except to the extent caused or contributed to by breaches of this agreement by EDGEFIELD, and to the extent EDGEFIELD is liable to pay damages, compensation or expenses to the Client because of breaches of this agreement by EDGEFIELD the amount will be reduced by the extent the Client caused or contributed to the damages, compensation or expenses subject always to the limitations and exclusions expressed in Clauses 14 and 15 hereof.
17.
  - (a) EDGEFIELD does not give any warranty nor accept any liability in relation to the performance or non performance of the service, except to the extent, if any, required by law or specifically provided for in this agreement.
  - (b) Any warranty which is implied by law, custom or otherwise or by any statute is to the fullest extent permitted by law, hereby excluded.
18. If circumstances arise which require expertise outside the field of practice of EDGEFIELD then EDGEFIELD may with the written approval of the Client engage a subcontractor to provide the relevant service.
19. EDGEFIELD shall not have any liability in relation to work performed by any third party save where the third party is engaged or employed by EDGEFIELD and subject to that exception the Client shall indemnify and hold harmless EDGEFIELD against all claims, cost and demands by any third party in respect of or in connection with the work provided by any third party.
20. Where the Client is a company, the directors ('Guarantors') of the Client in consideration of EDGEFIELD agreeing to provide the services do hereby jointly and severally covenant and agree with EDGEFIELD:
  - (a) to guarantee to EDGEFIELD the due and punctual performance and observance by the Client of the express or implied obligations of the Client to be performed and observed pursuant to this agreement;
  - (b) to indemnify and keep indemnified EDGEFIELD from and against any loss or damage suffered or incurred by EDGEFIELD arising from any failure by the Client to perform or observe any of the express or implied obligations of the Client to be performed and observed pursuant to this agreement;
  - (c) the guarantee and indemnity in paragraphs (a) and (b) hereof are continuing and irrevocable;
  - (d) the Guarantors acknowledge this agreement will confer a commercial benefit and advantage on them;
  - (e) execution of the Service Brief or any other document to which these terms and conditions are attached by a Director shall be deemed to

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- be execution both as a Director and as a Guarantor; and
- (f) the guarantee and indemnity in paragraphs (a) and (b) hereof are valid and enforceable against each of the Guarantors executing this agreement notwithstanding non-execution by any one or more of the Guarantors.
21. (a) The Client for the purpose of further securing to EDGEFIELD the performance and observance of this agreement does hereby charge all land now or at any time hereafter owned by the Client with payment of any moneys that may become due and payable to EDGEFIELD and consents to registration of a caveat on any such land noting the interest of EDGEFIELD in the sale proceeds of the land.
- (b) The Client acknowledges Clause 21(a) entitles EDGEFIELD to be paid fees and disbursements from the sale proceeds of any land sold by the Client.
22. The Client and Guarantors jointly and severally represent and warrant to EDGEFIELD having obtained prior to the execution of this agreement independent legal advice as to the meaning and application of the provisions of this agreement and that they have had unlimited opportunity to obtain that advice.
23. (a) If either party is in breach of any of the express or implied provisions of this agreement then the party alleging the breach shall serve a default notice on the other party setting out the full particulars of the alleged breach and the acts required to rectify the breach.
- (b) Within 7 days of service of a default notice by the Client, EDGEFIELD shall be entitled to elect to have the dispute resolved by arbitration.
- (c) Unless EDGEFIELD serves written notice on the Client electing to resolve the dispute by arbitration then the dispute shall unless otherwise agreed in writing between the parties be resolved by litigation.
- (d) If a dispute is to be resolved by arbitration it shall be in accord with the provisions of the Commercial Arbitration Act 1985 with either party being entitled to be represented by a legal practitioner.
- (e) An election by EDGEFIELD pursuant to Clause 23(b) shall be binding and conclusive against the Client.
24. EDGEFIELD reserves the right to adjust its rates for services at July 1st in each year by an amount not less than the change in the Consumer Price Index (All Groups) Perth in the preceding year.
25. (a) In this agreement:
- **GST law** means A New Tax System (Goods and Services Tax) Act 1999 (Cth) as amended or replaced from time to time and any associated legislation including without limitation delegated legislation.
  - **GST** means the goods and services tax as provided for by the GST law.
  - Any expression used that is defined in the GST law has that defined meaning.
  - **rate of GST** means the rate of GST payable by EDGEFIELD under the GST law.
- (b) EDGEFIELD and the Client agree that the moneys payable by the Client under this agreement are exclusive of GST.
- (c) EDGEFIELD and the Client further agree that if EDGEFIELD is liable to pay GST in respect of services provided by EDGEFIELD under this agreement or in respect of moneys payable by the Client under this agreement, the amount payable by the Client will be increased by the amount calculated as  $A \times R$ , where:
- A is the amount on which EDGEFIELD is liable to pay GST;
  - R is the rate of GST
- (d) The Client must pay to EDGEFIELD the GST under clause 25 (c) within 30 days of the date of a tax invoice issued by EDGEFIELD, or, at the same time EDGEFIELD is required to pay any GST relating to this agreement, whichever is the earlier date.
- (e) A written statement given by the Client by EDGEFIELD of the amount of GST that EDGEFIELD is liable to pay under this agreement is conclusive between the parties except in the case of an obvious error.
26. Any omission by EDGEFIELD to enforce any of the provisions of this agreement shall not operate as a waiver by EDGEFIELD and will not prejudice the rights of EDGEFIELD to enforce any of the provisions.
27. Reference to:
- (a) the singular shall be deemed to include the plural and reference to the masculine shall be deemed to include the feminine.
- (b) any party to this agreement shall mean and include the party and the successor, administrator, personal representative, transferees and assigns of the party.
- (c) 'liability' means any claim, demand, action, suit, proceeding, loss or damage.
- (d) the 'Service Brief' means the document entitled "Service Brief" to which this agreement is annexed.
- (e) 'services' means the work to be carried out as described in the Service Brief.
28. A notice to be served under this agreement shall be deemed to have been duly served if in writing and sent to the usual business address or the registered office of the Client by certified mail, facsimile or personal delivery.
29. Neither party may assign, transfer or sub-let any obligation under this agreement without the written consent of the other.
30. Nothing in this agreement shall constitute or create the relationship of partnership, employment, agency or joint venture between EDGEFIELD and the Client.
31. If any provisions or part provisions of this agreement are invalid, unenforceable or illegal then it shall be deemed deleted from this agreement and the remaining provisions and part provisions continue to apply with full force and effect.
32. EDGEFIELD shall have the power to act as the Client's agent in emergency situations where danger to persons or damage to property appears imminent but EDGEFIELD shall be under no obligations to the Client to act as its agent.
33. These terms and conditions constitute the entire agreement between the Client and EDGEFIELD and apply to all work undertaken by EDGEFIELD for the Client.
34. On execution of the Service Brief the client covenants and agrees with EDGEFIELD to perform and observe the express and implied provisions of these terms and conditions.
35. An unexecuted Service Brief is valid for up to 3 months from date of issue. Beyond 3 months, EDGEFIELD reserves the right to revise and reissue the Service Brief to reflect any changes in market conditions.