

INFORMATION POINTS:

We have included 'information points' in these Works Agreement Terms which look like this:

i [Example information point for Vendor]

to help you understand the purpose of a term (**Information Points***). Information Points are for guidance only and do not form part of the terms of this Contract.

**DISCLAIMER: Information Points are guides only. They are not terms of your Contract. Information Points are not legal, commercial or financial advice to you. Do not rely on Information Points to decide whether to sign this Contract. If you are unsure about anything relating to this Contract, you should seek your own legal advice.*

THE PARTIES AGREE THAT:

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| <p>1. Agreement Structure and Priority</p> <hr/> <p>i The Works Agreement is made up of the documents set out in this clause.</p> <hr/> | <p>1.1. The Vendor agrees to perform the Works and associated services required by Programmed in accordance with the terms and conditions of this Works Agreement.</p> <p>1.2. This Works Agreement is made up of the following terms (only):</p> <ul style="list-style-type: none"> a. Contract Details (Schedule 1); b. Special Conditions & Customer Requirements (Schedule 3); c. Contract Administration & Superintendent Terms (Schedule 10) (if applicable); d. Works Agreement Terms (Schedule 2); e. Other Schedules and Annexures (of WA) Schedule 5); f. Applicable Order (excluding the Group Terms of Supply if the Vendor has an MVA); and g. The MVA (if a MVA has been executed by the parties). <p>1.3. If the terms of this Works Agreement are inconsistent they must be applied in the order of priority set out in clause 1.2 (unless the relevant clause or Schedule says otherwise).</p> <p>1.4. The Works Agreement reflects the entire agreement between the parties with respect to its subject matter and supersedes (i.e., replaces) all prior proposals, undertakings or other communications whether orally, electronically or in writing.</p> |
| <p>2. Interpretation</p> <hr/> <p>i How to interpret the Works Agreement.</p> <hr/> | <p>2.1. In this Contract (unless the context otherwise requires):</p> <ul style="list-style-type: none"> a. reference to the Contract means this Contract as amended, novated, supplemented, varied or replaced from time to time; b. a reference to 'including', 'includes' or 'include' must be read as if it is followed by '(without limitation)'; c. where a word or an expression is defined, any other part of speech or grammatical form of that word or expression has a corresponding meaning; |

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| | <ul style="list-style-type: none"> d. words in the singular include the plural and vice-versa and a gender includes all genders; e. a reference to any legislation or legislative provision includes amendments to, and re-enactments of, that legislation or legislative provision; f. a reference to any party includes that party's executors, administrators, substitutes, successors and permitted assigns; g. a reference to a 'day', 'month', 'quarter' or 'year' is a reference to a calendar day, calendar month, a calendar quarter or a calendar year; h. a reference to '\$', 'AUD' or 'dollar' is to Australian currency (unless specified and agreed otherwise); i. headings are for convenience only and do not affect interpretation of this Contract; and j. no rule of construction applies to the disadvantage of a party on the basis that the party put forward this Contract or any part of it. |
| <p>3. Term</p> <p>i How long does your engagement go for?</p> | <p>3.1. This Works Agreement starts on the Commencement Date and ends on the End Date (unless it is terminated before the End Date, or extended past the End Date, in accordance with these Works Agreement Terms) (the Term).</p> |
| <p>4. Performance and Standard of Works</p> <hr/> <p>i It is important that Works are completed in accordance with these standards.</p> <p>i Programmed is required to agree to the same or similar standards with its Customers.</p> <p>i You will need to comply with relevant policies and procedures.</p> <p>i You must ensure that the Works are completed on time.</p> <hr/> | <p>4.1. The Vendor must carry out the Works:</p> <ul style="list-style-type: none"> a. on and from the Start Date; b. in accordance with the requirements of the Works and this Contract; c. for the Price; d. in accordance with Programmed's reasonable and lawful directions; e. in accordance with applicable Laws and industry standards; and f. otherwise in accordance with the terms and conditions of the Contract. <p>4.2. Any Works (or part of them) performed prior to the Start Date will be deemed to have been supplied pursuant to the Contract.</p> <p>4.3. The Vendor must obtain, at the Vendor's expense, any necessary Licenses required to complete the Works.</p> <p>4.4. The Vendor must complete the Works by the Completion Date.</p> <p>4.5. The Contract does not prevent Programmed from entering into arrangements or agreements with third parties for the provision of equivalent or similar Works or services to any Works.</p> <p>4.6. The Vendor must, in performing the Works:</p> <ul style="list-style-type: none"> a. not unreasonably interfere with Programmed's activities or the activities of the Customer or any other person at the Site; b. be aware of and comply with and ensure that the Vendor's Personnel are aware of and comply with: <ul style="list-style-type: none"> i) all applicable Laws; ii) Programmed Policies and Customer Policies, standards and procedures relating to Site; and |

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| | <ul style="list-style-type: none"> iii) all reasonable and lawful directions and orders given by Programmed's Representative; c. prevent nuisance and unreasonable noise and disturbance; d. take measures necessary to protect people and property; e. be responsible for locating and protecting all existing services, lines, pipes, cables and fixtures, whether or not such information is shown on any drawings. In the event of any damages to such services, the Vendor will immediately notify the Programmed Representative; f. immediately notify Programmed of any damage caused to property at Site and make good any damage at the Vendor's cost; g. leave the Site reasonably clean, secure and orderly having regard to the condition of the Site immediately prior to the performance of the Works; h. keep Programmed fully informed of all design issues, design progress and any other matters which affect either or both of the Vendor's Design Obligations or the Design Documents (if applicable); and i. submit the Design Documents in accordance with the Program, or as Programmed may otherwise reasonably request (if applicable) |
| <p>5. Warranties</p> <hr/> <p>i It is important that you warrant certain items including the standard of the work.</p> <hr/> <p>i Programmed is required to agree to the same or similar warranties with its Customers.</p> <hr/> | <p>5.1. Each party warrants to the other that:</p> <ul style="list-style-type: none"> a. it has the power and authority to enter into the Contract; b. its performance of its obligations under the Contract will not contravene its constituent documents, or any contract or undertaking by which it is bound; c. the Contract has been duly signed and delivered on its behalf; and d. obligations it undertakes under the Contract are enforceable against it in accordance with the terms. <p>5.2. The Vendor warrants to Programmed that:</p> <ul style="list-style-type: none"> a. at all times it will be suitably qualified and experienced, and will exercise due skill, care and diligence in the carrying out and completion of the Works; b. it will use work methods that reflect the highest practical standards recognised by the applicable industry and that are in current use; c. it will use workmanship expected from a highly competent Vendor experienced in work of a similar, size, character and complexity to the Works; d. it will use materials which are new, of merchantable quality and fit for their purpose; e. it has examined any preliminary design included in the Project Requirements (if applicable) and that such preliminary design is suitable, appropriate and adequate for the purpose stated in Project Requirements; f. it will carry out and complete the Vendor's Design Obligations (if applicable) in accordance with the Contract; |

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| | <p>g. it will carry out and complete the Works in accordance with the Contract and the Design Documents so that the Works, when completed, will:</p> <ul style="list-style-type: none"> i) be fit for their intended purpose (as specified in or as can be reasonably inferred from the Contract); and ii) comply with the requirements of the Contract, including satisfying the minimum design load (if any); and iii) achieve the levels and standards of performance which, under the Contract, it is required to achieve; <p>h. the Works will have the minimum design life specified in the Contract and that throughout the minimum design life no undue degradation of the Works will occur;</p> <p>i. the Works will be safe, efficient and reliable and will have proven durability to withstand all hydrographical, hydrological, marine, climatic and geotechnical conditions that are likely to be experienced;</p> <p>j. it is satisfied that the Price covers the cost of performing the Works in all respects and includes sufficient contingencies to cover the cost of complying with any direction and all risks, obligations and liabilities of the Vendor under or arising from the Contract, at law or otherwise;</p> <p>k. it fully satisfied itself, obtained, verified and interpreted all information and documents provided to the Vendor by Programmed, as to the nature and extent of the Works and its other obligations arising from or under the Contract, at law or otherwise, and all risks, difficulties, contingencies and other matters and circumstances which may affect or influence the Price and the costs of and time for the proper completion of the Works in accordance with the Contract;</p> <p>l. Programmed provided it with an opportunity to inspect the Site;</p> <p>m. it carefully examined and fully understood the documents which form part of the Contract;</p> <p>n. any information given or representation, made to Programmed in connection with the Works is accurate, current and is not misleading or deceptive in any respect;</p> <p>o. it entered into the Contract relying solely on its own investigations, determinations, skills and judgment;</p> <p>p. it is satisfied as to the completeness and accuracy of any information provided to the Vendor by Programmed; and</p> <p>q. these warranties are in addition to any applicable statutory warranties.</p> <p>5.3. The Vendor warrants that all indemnities, representations and warranties given by the Vendor under the Contract:</p> <ul style="list-style-type: none"> a. will remain unaffected notwithstanding: <ul style="list-style-type: none"> i) that design work (including the preliminary design) has been carried out by or on behalf of Programmed and included in the Project Requirements; ii) any Variation; |
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| | <ul style="list-style-type: none"> iii) the Vendor’s engagement of any subcontractor for any part of the Works; or iv) that Programmed has carried out any inspection or tests in connection with the Works; <p>b. survive the expiry of the Contract;</p> <p>5.4. The Vendor acknowledges that in entering into the Contract, Programmed is relying upon:</p> <ul style="list-style-type: none"> a. the Vendor’s offer in respect to the tender or any proposal made by the Vendor (if applicable); b. the Vendor’s advice, skill and judgment in performing the Works; and c. each of the Vendor’s representations and warranties contained in the Contract. <p>5.5. The Vendor acknowledges and agrees that Programmed and its Personnel make no representation or warranty as to the accuracy or completeness of documents and information relating to the Works (including the Project Requirements).</p> |
| <p>6. Plant and Equipment</p> <hr/> <p>i You must supply labour, Plant and Equipment.</p> <p>i Where you use Programmed property, you must take responsibility.</p> <hr/> | <p>6.1. Unless this Contract provides otherwise, the Vendor must supply all labour and Plant and Equipment necessary to complete the Works, at the Vendor's expense.</p> <p>6.2. The Vendor will ensure that all Plant and Equipment brought onto the Site is safe and properly maintained before use and, if requested by Programmed, the Vendor must provide audit inspection records and documented evidence of certification and training records of its Personnel to operate the Plant and Equipment.</p> <p>6.3. If Programmed provides any Plant and Equipment to the Vendor, that Plant and Equipment remains Programmed’s property, and the Vendor may only use that Plant and Equipment by qualified and experienced operators for the purposes of fulfilling the Vendor's obligations under this Contract.</p> <p>6.4. The Vendor is responsible for all damage to and loss of the Plant and Equipment.</p> |
| <p>7. Access to Site</p> <hr/> <p>i You must inspect the conditions you are working in..</p> <hr/> | <p>7.1. Subject to clause 7.2, Programmed will give the Vendor access to the Site as necessary to enable performance of this Contract.</p> <p>7.2. Where Programmed does not have full control of a Site (e.g. where a Site is Customer-owned), Programmed will not be able to provide access greater than the access provided to Programmed by the Customer.</p> <p>7.3. Programmed does not make any representations or warranties to the Vendor about the Site or Plant and Equipment. The Vendor is responsible for inspecting the Site and/or Plant and Equipment and accepts the condition of the Site and Plant and Equipment.</p> |
| <p>8. Work Health and Safety (WHS)</p> | <p>8.1. The Vendor will be responsible for:</p> |

i You must comply with WHS requirements including the Subcontractor Handbook and other policies.

i See the Definitions section below for access to Programmed's Policies.

- a. complying with Programmed Policies, Customer Policies, the Site WHS policies requirements and any Directions from Programmed relating to occupational health and safety issued at its discretion from time to time;
- b. the health and safety of all Vendor Personnel or other people it invites on to the Site; and
- c. complying with all applicable occupational health and safety requirements required by Law.

8.2. The Vendor must comply with the health, safety and environment requirements of the Subcontractor Handbook including preparing a job specific risk assessment and specific Safe Work Method Statements (SWMS) for all high-risk construction works (these SWMS must be reviewed and signed on to by all members of the work crew including any subcontracted employees).

- 8.3. Before commencing any Works, the Vendor must:
- a. prepare a Site Specific Work Method Statement which is completed to the satisfaction of Programmed (acting reasonably) in respect of those Works;
 - b. ensure all Vendor Personnel have completed Programmed's vendor onboarding training and receive a Site specific induction, based on the Site Specific Work Method Statement. Where notified by Programmed, a nominated employee of Programmed will facilitate the induction as part of the first toolbox meeting; and
 - c. undertake a corporate induction designed by Programmed (and/or a Customer) during which the Vendor will be issued with appropriate current documentation by Programmed.

8.4. The Vendor must immediately notify Programmed of any occupational health and safety incidents, near misses, or hazards the Vendor is or becomes aware of at the Site.

8.5. The Vendor must comply with all occupational health and safety requirements (including but not limited to corrective actions) as notified by Programmed from time to time.

8.6. The Vendor shall ensure that all Hazardous Materials brought onto the Site are used, stored and removed safely.

8.7. Programmed (and/or a third party) may immediately access a Site to investigate a possible occupational health and safety risk and/or undertake any urgent action relating to the occupational health and safety of any person on the Site.

8.8. If Programmed takes any urgent action as a result of the Vendor's act, default or omission (or that of the Vendor's Personnel), then any costs of the urgent action incurred by Programmed will be a debt due from the Vendor to Programmed.

8.9. Programmed may investigate or appoint an independent third-party to investigate any occupational health and safety incident that has occurred and provide a report in relation to same. The Vendor must cooperate with the

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| | investigator’s reasonable requests including the provision of relevant Records and access to Vendor Personnel. |
| <p>9. Inspection and Information</p> <hr/> <p>i Programmed may inspect Works and some Records.</p> <hr/> | <p>9.1. At all reasonable times (including at relevant times during progress stages if applicable), Programmed may itself or through an agent and at its cost review, inspect, examine and witness tests of the Works, or the performance of any Works; and carry out inspections, at the Site or the Vendor’s premises.</p> <p>9.2. The Vendor must advise Programmed when any part of the Works has been completed and is ready for review, inspection, examination or testing.</p> <p>9.3. The Vendor must keep and maintain all Records in accordance with generally accepted accounting standards, principles and practices in Australia and in a form acceptable to Programmed for not less than seven (7) years after the termination or Completion Date of the Contract.</p> <p>9.4. At Programmed’s (or a Customer’s) reasonable request, the Vendor will give Programmed (or a third party selected by Programmed) access to the Records for the purpose of enabling Programmed to assess the Vendor’s compliance with its contractual obligations.</p> |
| <p>10. Price</p> <hr/> <p>i Programmed will pay the agreed Price.</p> <hr/> | <p>10.1. Programmed must pay the Vendor the Price specified in this Contract in accordance with clause 10.</p> <p>10.2. Unless this Contract provides otherwise, the Price is inclusive of:</p> <ul style="list-style-type: none"> a. the cost of any miscellaneous items of a kind which are commonly used or supplied in conjunction with the Works; b. the Vendor’s compliance with its obligations under this Contract; and c. all Taxes. <p>10.3. The Price may not be varied without Programmed’s prior written consent.</p> |
| <p>11. Invoice and Payment</p> <hr/> <p>i You must provide appropriate documentation to substantiate payment.</p> <hr/> | <p>11.1. On Completion or, where the Contract Details state that Programmed must make progress payments, as soon as reasonably practicable following the end of each calendar month (or other period specified in this Contract), the Vendor must provide to Programmed (at Programmed’s direction):</p> <ul style="list-style-type: none"> a. a statutory declaration or other documentary evidence to substantiate that all the Vendor’s Personnel have been paid all moneys due and payable to them in respect of their employment on the Works; b. a Vendor Reference Document which must include the information set out in clause 11.2; and c. a properly rendered Invoice which meets all the requirements for a Tax Invoice under the GST Law and must include the information set out in clause 11.2. <p>11.2. A Vendor Reference Document and any properly rendered Invoice must reasonably include the following details:</p> <ul style="list-style-type: none"> a. an Order number reference (if applicable); b. a description of the Works performed and completed, including the period in respect of which the Vendor Reference Document or Invoice relates; |

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| | <ul style="list-style-type: none"> c. the Price of the relevant Works; and d. the amount of any applicable GST. <p>11.3. Subject to clause 11.4, Programmed must pay all properly rendered Invoices within 30 days from End of Month (EOM), after receipt of a properly rendered Invoice by Programmed, except where Programmed:</p> <ul style="list-style-type: none"> a. is required by Law to pay within a shorter time frame, in which case Programmed must pay within that time frame; or b. exercises its right to withhold payment in circumstances where the Vendor fails to provide a statutory declaration or other documentary evidence in accordance with clause 11.1(a); or c. disputes the Invoice, in which case, Programmed: <ul style="list-style-type: none"> i) must pay any portion of the Invoice not in dispute; and ii) may withhold payment of any disputed portion of the Invoice pending resolution of the dispute; and iii) if the resolution of the dispute determines that Programmed must pay an amount to the Vendor, the Company must pay that amount within seven (7) days of the resolution of that dispute. <p>11.4. Unless otherwise specified in this Contract, any money payable under this Contract is to be paid by electronic funds transfer to the Vendor’s nominated bank account or by such other means as the parties agree.</p> |
| <p>12. Variations</p> <hr/> <p>i There is a process for varying the Contract and pricing any change. We may need some flexibility so that we can meet Customer expectations.</p> <hr/> | <p>12.1. Programmed may at any time direct in writing a Variation.</p> <p>12.2. Within five (5) Business Days of receipt of a notice in writing from Programmed notifying the Vendor of a proposed Variation under this clause 12 the Vendor will at its own cost:</p> <ul style="list-style-type: none"> a. notify Programmed of the effect which the Vendor anticipates that the Variation will have on the Program and the date for Completion; and b. provide an estimate of the increase or decrease in the Price of the proposed Variation. <p>12.3. Within ten (10) Business Days of receipt of the Vendor’s notice of proposed Variation, Programmed will direct the Vendor in writing to proceed with the Variation or not, or to provide additional information.</p> <p>12.4. Following receipt of the information in clause 12.2, the parties must seek to agree on the price of the Variation and the impact on the Price, Program and date for Completion.</p> <p>12.5. If the parties cannot agree there will be no Variation. Any Variation agreed by the parties must be documented in writing and signed by the parties.</p> |
| <p>13. Completion</p> <hr/> <p>i Please provide 5 business days’ notice of completion so that we can issue a certificate.</p> <hr/> | <p>13.1. The Vendor must give Programmed at least five (5) Business Days’ written notice of the date upon which the Vendor anticipates achieving Completion.</p> <p>13.2. If Programmed is of the opinion, acting reasonably, that Completion has been achieved, Programmed will issue a Certificate of Practical Completion.</p> |

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| | <p>13.3. If Programmed is of the opinion, acting reasonably, that Completion has not been achieved, it will notify the Vendor of the work needed to be carried out to achieve Completion.</p> <p>13.4. The Vendor will carry out the Works referred to in clause 13.3 and notify Programmed in accordance with clause 13.1 and clauses 13.2 or 13.3 once it achieves Completion.</p> |
| <p>14. Suspension of Works</p> <hr/> <p>i Programmed needs the ability to reasonably suspend the delivery of the services to protect its legitimate business interests.</p> <hr/> | <p>14.1. Programmed can, acting reasonably, suspend your delivery of the Works. We will also adjust any milestones or delivery dates as reasonably necessary to take the suspension into account.</p> <p>14.2. If you receive a direction from us to suspend the Works, you must stop providing the Works until further written notice from us.</p> <p>14.3. If the suspension is not due to the Vendor's act or omission, Programmed will reimburse you reasonable and unavoidable costs directly incurred by you as a result of the suspension (provided (i) that the suspension has put you in a worse off position had the suspension not occurred, (ii) you have experienced Loss notwithstanding the resumption of the supply of Services in the future, and (iii) you give us documented evidence of those costs).</p> |
| <p>15. Extension of Time</p> <hr/> <p>i You must monitor your progress and may be entitled to make a claim for an extension of time if your work is delayed.</p> <hr/> | <p>15.1. The Vendor will be entitled to make a claim for an extension of time to the Completion Date if:</p> <ul style="list-style-type: none"> a. the Vendor is or will be delayed in reaching the Completion Date by an Event of Delay; b. the delay was not caused by an act or omission of the Vendor; c. the Vendor gives Programmed, within three (3) Business Days of when the Vendor should reasonably have become aware of the Event of Delay, a written request for an extension of time outlining the details and cause of the delay (any written request for extension must be made and agreed to by Programmed prior to the target Completion Date). <p>15.2. Upon receipt of the written request, Programmed may grant an extension of time to the Completion Date for an amount of days as determined by Programmed (in consultation with its Customer where appropriate), acting reasonably, by written notification to the Vendor. The Vendor will not be entitled to additional amounts or costs for the extension.</p> |
| <p>16. Latent Conditions</p> <hr/> <p>i Please tell us if you discover Latent Conditions.</p> <hr/> | <p>16.1. If a Latent Condition is discovered by the Vendor, the Vendor must within seven (7) Business Days of becoming aware of a Latent Condition provide written notice to Programmed's Representative of the general nature and consequences of the Latent Condition, including any proposed Variation.</p> <p>16.2. The Vendor is entitled to an extension of time to the Completion Date for any delay suffered by the Vendor as a result of dealing with the Latent Condition.</p> <p>16.3. If it is necessary for the Vendor to undertake additional works as a result of dealing with the Latent Condition, the additional works will be treated as if it were a Variation.</p> |
| <p>17. Defects</p> | <p>17.1. If, following performance of any Works under this Contract, or during the Defects Liability Period, Programmed finds any Defect in the Works then, Programmed may provide the Vendor notice in writing of the Defect and</p> |

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| <p>i You must be responsible for defective works.</p> | <p>require the Vendor to make good the Defect within the time period stated in the notice.</p> <p>17.2. If the Vendor does not make good the Defect within the time period stated in a notice given pursuant to clause 17.1, then Programmed may by written notice to the Vendor:</p> <ul style="list-style-type: none"> a. accept the Works with the Defect, subject to its diminution in value (which will become a debt due and payable by the Vendor to Programmed); b. reject the Works with the Defect (in which case the Vendor must reimburse Programmed for all related costs); c. require the Vendor to re-perform the Works with the Defect free of charge; d. make good or engage another Vendor to make good the Defect (in which case the costs of making good the Defect will be a debt due and payable by the Vendor to Programmed). <p>17.3. Where the Vendor has made good any Defect, those Works will be subject to the same Defects Liability Period as the original Works, from the date the Vendor made good the Defect.</p> <p>17.4. If Programmed decides to accept any Works with a Defect, Programmed is not bound to accept any other Works with a Defect and it does not affect any of Programmed’s other rights under this Contract in respect of those Works.</p> |
| <p>18. Termination for Default</p> <p>i Your Contract can be terminated if you breach it (and you don’t or can’t rectify that breach).</p> | <p>18.1. Subject to clause 18.2, if either party commits a material breach (Breaching Party) of its obligations under this Contract or any part of it then the party that has not committed the relevant breach (Non-Breaching Party) can terminate a Contract (or any relevant part of it):</p> <ul style="list-style-type: none"> a. after 30 days if you do not remedy the breach within that time; or b. immediately if the Breaching Party cannot be remedy the breach following reasonable consultation between the parties. c. A party can terminate a Contract (or any relevant part of it), following providing the other party with an opportunity to comment, and without penalty if the other party: <ul style="list-style-type: none"> a. repeatedly breaches material terms of the Contract; b. breaches a warranty; c. commits a fraudulent act or omission; or d. become insolvent or bankrupt. <p>18.2. Programmed can terminate a Contract (or any part of a Contract) immediately (following providing you an opportunity to comment) and without penalty if you or any Vendor Personnel:</p> <ul style="list-style-type: none"> a. subcontract all or part of the Works without our consent; b. assign your rights or obligations under a Contract without our consent; c. repeatedly fail to achieve KPIs; |

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| | <ul style="list-style-type: none"> d. substantially change the nature of your business such that your ability to deliver the Works in accordance with the Contract is compromised; e. breach any work health and safety obligations, privacy and data-security obligations or non-compliance with any Law. <p>18.3. If we terminate a Contract (or part of it) under this clause 18 we are only required to pay you any outstanding portion of the Price for completed Works that is due and payable to you as at the time of termination of this Contract or relevant part of it. Any payment we make under this clause 18.3 does not affect any other right we may have to claim costs, expenses and/or Losses that we suffer as a consequence of terminating the Contract (or part of it).</p> <p>18.4. If we terminate a Contract (or part of it) under this clause 18, you are liable for and indemnify us against any Loss of whatever nature we incur in engaging other Vendors to complete the Works (but only to the extent which any such Loss exceeds the Price (or portion of the Price) that would have been payable to you for those Works) and any other Loss we suffer as a result of termination.</p> <p>18.5. If a purported termination for default under this clause 18 is determined by a competent authority not to be properly a termination for default, then that termination by Programmed will be deemed to be a termination for convenience under clause 19.</p> |
| <p>19. Termination for Convenience</p> <hr/> <p>i Programmed needs the ability to end a Contract with you to protect its legitimate business interests. If this occurs, you will be paid your reasonable costs of disengagement in accordance with this clause 19.</p> <hr/> | <p>19.1. You acknowledge and agree that we can terminate this Contract (or any part of this Contract) by giving you 30 days' notice in writing. You will be compensated in accordance with the clauses set out below.</p> <p>19.2. Without limiting our rights under clause 19.1, we may terminate this Contract or reduce the scope of the Works at any time without penalty and with immediate effect by written notice to you if, for any reason whatsoever:</p> <ul style="list-style-type: none"> a. the relevant Customer Contract expires or is terminated; b. the relevant Customer revokes its approval of you as a Vendor; or c. the scope of the Works under the relevant Customer Contract is changed such that the whole or a part of the Works are no longer required by Programmed. <p>d. You acknowledge that clauses 19.1 and 19.2 are necessary and reasonable requirements and part of the Commercial Model.</p> <p>19.3. If we terminate a Contract (or any part of a Contract) under clause 19, then we will pay your reasonable and unavoidable verified direct costs of disengagement that you actually incur (excluding any redundancy payments) and any existing portion of the Price for completed Works owing to you for Works already delivered or performed by you up to the date of termination and that remain outstanding (less any amount we are entitled to set-off for any reason), or as otherwise agreed in writing.</p> <p>19.4. If we terminate or reduce the scope of a Contract under clause 19.2, then we will pay your reasonable and unavoidable verified direct costs of disengagement that you actually incur (excluding any redundancy payments) but only to the extent that such costs are first recovered from the Customer and less any amount we are entitled to set-off for any reason. We will also</p> |

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| | <p>pay any existing portion of the Price owing to you for Works already delivered or performed by you up to the date of termination and that remain outstanding.</p> <p>19.5. You acknowledge that you must factor into your pricing risks and costs associated with termination.</p> |
| <p>20. Termination Generally</p> <hr/> <p>i These terms apply to termination for any reason.</p> | <p>20.1. If a Contract is terminated for any reason:</p> <p>20.2. termination does not affect each party's accrued rights, remedies or liabilities at the termination date;</p> <p>20.3. you must immediately repay any Service Charges or other fees that we have paid you in advance for any reason for Services or Goods that have not yet been provided as at the termination date;</p> <p>20.4. you are not entitled to any payment or compensation in relation to the termination other than as provided for in clauses 56 to 59.</p> <p>20.5. you must, at your cost, vacate the Site immediately (or on a date the parties agree in writing) and return to us all Intellectual Property, Confidential Information, Customer Equipment and Programmed Equipment in your possession or control (or in the possession of Vendor Personnel).</p> <p>20.6. and only a part of a Contract is terminated (e.g. an Engagement), then you must continue to perform the parts of your Contract (or other Contracts) that remain on foot.</p> |
| <p>21. Insurance</p> <hr/> <p>i We have our own strict insurance requirements under Customer Contracts (which must be reflected in our agreement with you having regard to the work you are doing).</p> <p>i Given the nature of the work we do it is critical for everyone's protection that all our vendors have adequate insurance coverage).</p> <p>i You give us a warranty that you are insured with an insurer with at least an A-rating.</p> | <p>21.1. Before the Commencement Date, the Vendor must have (and provide us with certificates of currency for) the following types of insurance):</p> <ul style="list-style-type: none"> a. liability insurance (including products and public liability cover) in respect of personal injury, death and property damage for not less than \$20,000,000 per occurrence. b. professional indemnity insurance (including cover for errors and omissions for not less than \$5,000,000 per claim, unless you are not carrying out Services that require professional indemnity insurance and Programmed approves that fact in writing; c. motor vehicle third party liability insurance for not less than \$10,000,000; d. insurance for physical loss and/or damage to all plant and equipment owned and/or hired and/or used by the Vendor and/or for which the Vendor is responsible for not less than \$2.5 million; e. workers compensation insurance as required by Law; f. any other insurance required under any Law, or any Engagement Document. <p>21.2. You warrant that you will obtain and maintain your insurances with a reputable insurer with a rating of at least A- as rated by Standard and Poor's (or an equivalent reporting agency). You also warrant that you will tell us if your insurance provider drops below this required rating or of any other changes to your insurance policies. You must obtain Programmed's written approval if</p> |

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| | <p>you breach this warranty, prior to carrying out any Services or providing any Goods.</p> <p>21.3. You must obtain and maintain the insurances referred to in clause 51.1 for the Term of this Contract (and in the case of professional indemnity insurance, until the date which is 7 years after the expiry or termination of this Contract). Where insurance is written on a claims basis, the insurance must be maintained until the end of the Term or the Defects Liability Period (whichever is longer).</p> <p>21.4. You must provide a certificate of currency for each policy at the commencement of a Contract, and on request from time to time by Programmed.</p> <p>21.5. You must tell us in writing as soon as possible about anything in connection with this Contract that may give rise to a claim under a policy of insurance required and must keep us informed of all subsequent developments concerning the claim.</p> |
| <p>22. Liability and Indemnity</p> <hr/> <p>i We typically have indemnities applying to us under Customer Contracts which in turn need to be reflected in the agreements we have with our Vendors.</p> <hr/> | <p>22.1. The Vendor indemnifies Programmed and each of its officers, employees, Vendors and Related Entities against all Losses or liability of any nature in connection with:</p> <ul style="list-style-type: none"> a. all physical loss or damage to property, including Customer property, arising out of or resulting from the performance of the Works; b. any damage to, or misuse, breach, destruction, degradation, or third-party or malicious infiltration of IT Systems and/or Programmed Data arising out of or resulting from the acts or omissions of the Vendor or its Personnel; c. illness, death or personal injury arising out of or resulting from the performance of the Works; d. negligent or unlawful acts or omissions, wilful misconduct or fraud of the Vendor or any Vendor Personnel; e. a breach of Privacy Law or your obligations in respect of Confidential Information; f. the Vendor’s performance of the Works (including as a result of any act or omission by the Vendor or its Personnel); g. the Vendor’s breach of the Contract (or by its Personnel); and/or h. a suspension under a Security of Payment Act. <p>22.2. The Vendor’s liability under any indemnity in this Contract is reduced to the extent that any such Loss or liability was directly caused or contributed to by any negligent act or omission or wilful misconduct of Programmed.</p> <p>22.3. This Contract excludes (to the extent permitted by law) the operation of Proportionate Liability Legislation.</p> |
| <p>23. Exclusion of liability</p> | <p>23.1. Subject to clause 23.2, the Vendor will not in any circumstances be liable for any indirect, consequential, incidental, special or exemplary damages, expenses, losses, or liabilities.</p> |

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| <p>i For your benefit (other than in the circumstances of clause 23.2), you are not responsible for certain liabilities (e.g., consequential loss).</p> | <p>23.2. Clause 23.1 does not exclude, restrict, or limit in any way the Vendor’s liability to Programmed:</p> <ul style="list-style-type: none"> a. in respect of any claim by, or Loss or liabilities suffered by, a Customer in connection with a head contract between Programmed and its Customer; b. that: <ul style="list-style-type: none"> i) is wholly or partly covered by insurance proceeds that are available under insurances required by this Contract; or ii) would have been wholly or partly covered by insurance proceeds under insurances required by the Contract but for any act or omission of the Vendor, including a failure by the Vendor to obtain or maintain the insurances in accordance with the Contract or a failure by the Vendor to claim and diligently pursue a claim under the relevant insurances in accordance with the Contract (or comply with the claims procedures under the relevant insurances); a failure by the Vendor or any Vendor Personnel to comply with any provision, obligation or duty under the relevant insurance policies; c. in relation to which the Vendor recovers, or would have recovered but for an act or omission of the Vendor, wholly or partly, an amount from a third party; d. in relation to personal injury or death, or damage to or loss of real or personal property; e. in relation to wilful misconduct, wilful default, wilful neglect, recklessness, gross negligence, fraud, or criminal acts or omissions of the Vendor or its Personnel; f. in relation to breaches of the Vendor’s confidentiality, privacy or data security obligations, or third-party intellectual property breaches; g. that cannot be excluded at law; h. the Vendor’s abandonment of its obligations under, or repudiation of, the Contract; and/or i. in relation to Liquidated Damages and any costs, losses, expenses or damages (whether liquidated or unliquidated) which we are liable to pay (or credit) to our Customer under any Customer Contract or otherwise, in respect of any failure to meet any agreed milestone, delivery date or performance regime (including KPIs or abatements), but only to the extent caused by you. |
| <p>24. Liquidated Damages</p> <hr/> <p>i Liquidated Damages are a genuine pre-estimate of loss we will likely suffer if you breach this contract or fail to deliver.</p> <p>i We are often subject to strict requirements under our Customer Contracts to meet agreed</p> | <p>24.1. If the Vendor fails to complete the Works by the Completion Date, then without limiting any other right or remedy that Programmed may have under this Contract, the Vendor must pay Programmed the liquidated damages at the rate stated in the Contract Details.</p> <p>24.2. The Vendor acknowledges that all sums payable to Programmed under this clause 24 represent Programmed’s genuine pre-estimate of the loss that is likely to be suffered by Programmed if the Works are not completed by the Completion Date and that those sums should not be constructed or treated as a penalty.</p> |

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| <p>milestones, KPI or performance regimes. We rely on you to comply with these regimes and expect you to take responsibility for any issues with Customers to the extent that were caused by you. You will not be responsible to the extent it was Programmed's fault</p> | <p>24.3. In addition to any other liability under this Contract, the Vendor indemnifies Programmed against any costs, losses, expenses or damages (whether liquidated or unliquidated) which Programmed are liable to pay (or credit) it's Customer under any Customer Contract or otherwise, in respect of any failure to meet any agreed milestone, delivery date or performance regime (including but not limited to KPIs or abatements), but only to the extent caused by the Vendor.</p> |
| <p>25. Security for Performance</p> <hr/> <p>i Security is not applicable unless it is listed.</p> <hr/> | <p>25.1. The Vendor's full compliance with its obligations to lodge security under this clause 25 is a condition precedent to the Vendor being entitled to make any claim for payment or receive payment under the Contract at any time.</p> <p>25.2. If indicated in the Contract Details, the Vendor must provide to Programmed security for the performance of its obligations in the form of an unconditional bank guarantee or retention monies, for the sum and in the form specified in the Contract Details.</p> <p>25.3. If the Vendor fails to comply with any requirement in this Contract, then without prejudice to any other rights that Programmed may have in respect of that non-compliance, Programmed is entitled to draw on the security or any part of it for Programmed's own use as compensation for any damages, loss, costs or failure or Programmed having to end the Contract or take over the Vendor's obligations.</p> <p>25.4. If Programmed makes a call on the security, Programmed may require the Vendor by notice in writing to re-establish that security to its original amount within 30 days of such notice.</p> |
| <p>26. Security of Payment Legislation</p> <hr/> <p>i Security of Payment Legislation provides protection for Vendors who carry out construction work through a process to recover payment.</p> <hr/> | <p>26.1. This clause applies to the extent that a Security of Payment Act applies to the Services.</p> <p>26.2. You must provide any and all written communication relating to the Security of Payment Act (including, without limitation, a payment claim under the Security of Payment Act), to our Representative.</p> <p>26.3. The date prescribed as the time for payment is the "reference date" under the Security of Payment Act (if applicable).</p> <p>26.4. A payment amount in a payment schedule which Programmed proposes to make to the Vendor is a 'progress payment' (as defined in the Security of Payment Act).</p> <p>26.5. If Programmed Representative fails to set out an amount which Programmed is entitled to retain, deduct, withhold or set-off from the amount which would otherwise be payable to the Vendor, this does not prejudice Programmed's right to subsequently exercise that right to retain, deduct, withhold or set-off any amount.</p> <p>26.6. Unless an earlier date is identified in this Contract, Programmed will pay the amount (if any) set out in a payment schedule in accordance with the timeframes required by the applicable Security of Payment Act.</p> |

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| | <p>26.7. The authorised nominated authority to adjudicate an application under the Security of Payment Act will be the Resolution Institute, the RICS Dispute Resolution Service or Rialto Adjudications (Adjudicator).</p> |
| <p>27. Confidential Information</p> <hr/> <p>i Mutual confidentiality obligations apply to both us and you.</p> <hr/> | <p>27.1. Each party must not, and must ensure that its Personnel do not, without the prior written approval of the other party:</p> <ul style="list-style-type: none"> a. use Confidential Information other than as necessary for the performance of this Contract; or b. subject to clause 27.2, disclose Confidential Information. <p>27.2. A party’s obligation not to disclose Confidential Information without the other party’s prior written approval does not apply to disclosures to the extent they are:</p> <ul style="list-style-type: none"> a. required by Law, including disclosure to any stock exchange or Authority; b. made to its professional advisors for Contractual advice; or c. required to enable the Vendor to perform its obligations or to make or defend any claim under this Contract. <p>27.3. The rights and obligations under this clause 27 continue after the End Date.</p> <p>27.4. Notwithstanding anything in this clause, Programmed may disclose Confidential Information to a Customer in connection with the Works or services if required.</p> |
| <p>28. Intellectual Property</p> <hr/> <p>i Each party continues to own its pre-existing IP.</p> <p>i Each party grants the other party a licence to use IP to the extent they need to under the Contract.</p> <p>i Ownership of project IP belongs to Programmed.</p> <hr/> | <p>28.1. Subject to the terms of this clause, all the Vendor’s pre-existing Intellectual Property Rights and Moral Rights remain vested in (i.e. the property of) the Vendor.</p> <p>28.2. The Vendor grants to Programmed a non-exclusive, transferable, royalty-free, irrevocable and perpetual licence to use its pre-existing Intellectual Property Rights and Moral Rights for the purposes of or in connection with the Works.</p> <p>28.3. The Vendor assigns to Programmed ownership of the Intellectual Property Rights of the Vendor developed or created under this Contract and/or in the course of the Works. Programmed grants to the Vendor a non-exclusive, transferable, royalty-free, irrevocable and perpetual licence to use such Intellectual Property Rights.</p> <p>28.4. The Vendor warrants that the Works and any design, materials, documents and methods of working provided by the Vendor and Programmed’s reasonably foreseeable use of them, will not infringe the Intellectual Property Rights or Moral Rights of any third party.</p> <p>28.5. The Vendor indemnifies Programmed and must keep Programmed indemnified in respect of any Losses or liability incurred or sustained by Programmed resulting from any actual or alleged infringement of any Intellectual Property Rights or Moral Rights of any third party arising out of or caused by the provision of the Works and any design, materials, documents and methods of working.</p> |

29. Privacy and Data Protection

i It is important that we all understand our privacy obligations at law and in this Contract. Legal penalties in Australia have increased and this is a fast-changing landscape. If you are unsure of your obligations, we suggest you seek independent legal advice.

i We all need to protect Personal Information and Programmed Data. Please see the Definitions section for detail on what is 'Programmed Data' and 'Personal Information'.

i It's important for your personnel to be trained and for your IT Systems to be set up and maintained safely (e.g. by aligning to a recognised industry standard). This will help prevent and respond to penetration by bad actors. We all need to be able to quickly respond to and contain a data breach or potential data breach.

i Please note: you don't need to be certified but your security measures must be consistent with good industry practice.

i Remember – you need our written permission to access or transfer Programmed Data overseas. This is important (1) to protect Personal Information and (2) because some Customer Contracts do not allow overseas data access or transfer. It is very important that you talk to us before any data goes offshore.

29.1. The Vendor must comply with all Privacy Laws in respect of Personal Information (and ensure that its Personnel comply with the same).

29.2. The Vendor and its Personnel are required to:

- a. only access or use Personal Information relating to Programmed, Customers or other suppliers for the purposes of fulfilling its obligations under this Contract (or with Programmed's prior written consent);
- b. not otherwise access, use, process, store, modify or disclose Personal Information;
- c. comply with Programmed's Policies (and applicable Customer Policies) concerning the collection, storage, security, use and disclosure of Personal Information and Programmed Data (including but not limited to its privacy policies). Programmed can update related Programmed Policies from time to time at its reasonable discretion (including without limitation to account for a Change in Law or pursuant to a government direction or Customer requirement) and can seek a related variation of the Contract if reasonably required;
- d. ensure that any person who is authorised to have access to any of that Personal Information and Programmed Data complies with this clause 29;
- e. notify Programmed if the Vendor is not, or ceases to be, bound by the Privacy Laws;
- f. immediately notify Programmed at privacy@programmed.com.au (or such other address as advised from time to time) if:
 - i) it knows of or suspects unauthorised access, use, copying or disclosure of Personal Information;
 - ii) it becomes aware that a disclosure of that Personal Information may be required by Law;
 - iii) any Law prevents or may prevent it from performing its obligations under this clause;
- g. provide all assistance reasonably required by Programmed to assist Programmed to comply with its obligations under any Privacy Law in respect of Personal Information; and
- h. obtain Programmed's (and if applicable, the Customer's) written consent before it accesses, transfers, or discloses Programmed Data to anyone in any overseas jurisdiction.

29.3. The Vendor must take (and ensure its third-party IT providers take) reasonable measures consistent with industry practice and that are aligned with recognised standards such as ISO27001, SOC2 or NIST Cybersecurity Framework or similar, and comply with all reasonable Directions issued by Programmed to:

- a. protect Programmed Data in the Vendor's (or its third-party IT provider's) possession or control or to which the Vendor has access in connection with this Contract against any loss, misuse, interference, unauthorised access, use, sale, modification or disclosure;

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| | <p>b. secure Programmed Data in the Vendor's (or its third-party IT provider's) possession or control including through (where reasonably appropriate) encryption, network protection (such as firewalls, segregation or other network configuration that limits access), security logging, monitoring and response plans, access controls, multi-factor authentication, privileged user access, API and integration protections, data anonymisation, and maintaining security systems and procedures that comply with the Privacy Laws; and</p> <p>c. if for any reason the Vendor no longer requires access to any of the Programmed Data, the Vendor (or its third-party IT provider) holds, then the Vendor must as soon as practicable:</p> <p>i) destroy or permanently de-identify that Programmed Data and (if directed by Programmed to do so) provide Programmed with satisfactory evidence that the Vendor has done so; or</p> <p>ii) if Directed to do so by Programmed, return the Personal Information to Programmed.</p> <p>29.4. The Vendor is required to:</p> <p>a. notify Programmed immediately (including by email to cyber@programmed.com.au) if the Vendor becomes aware of:</p> <p>i) any likely, suspected or actual misuse or loss of, interference with or unauthorised access to, modification of, or disclosure of, Programmed Data; or</p> <p>ii) a breach by the Vendor (or its Personnel) that relates to Programmed Data; or</p> <p>iii) an actual or suspected breach that is notifiable at Law,</p> <p>(each a Data Breach).</p> <p>b. comply with any reasonable Programmed Direction in relation to assessing, investigating, remedying and addressing a Data Breach. This includes (but is not limited to) providing information Programmed requests that relates to a breach notifiable at Law;</p> <p>c. not disclose anything relating to a Data Breach to any third-party without Programmed's express prior written approval;</p> <p>d. tell Programmed and cooperate with Programmed in the event of any breach or risk regarding the security of Programmed Data; and</p> <p>e. ensure that any person who the Vendor authorises to have access to Programmed Data complies with this clause in every respect.</p> <p>f. ensure that any subcontractor that the Vendor engages in connection with this Contract is engaged on terms that contain obligations no less onerous than the provisions in this clause 29.</p> <p>29.5. The Vendor acknowledges and agrees that it is liable for any breach by its subcontractor of the provisions of this clause and/or Privacy Laws.</p> <p>29.6. The Vendor's obligations under this clause 25 continue indefinitely after this Contract ends.</p> |
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| <p>30. Anti-Corruption and Modern Slavery</p> <hr/> <p>i You must comply with Anti-Corruption and Modern Slavery Laws and principles.</p> <p>i You must tell us if you breach these laws or principles.</p> <hr/> | <p>30.1. The Vendor must take (and must ensure that each of its Related Entities, Personnel and supply chains take) all reasonable steps to ensure that no slavery, forced labour, wage exploitation, involuntary servitude, debt bondage, human trafficking, child labour or other slavery like exploitation (Modern Slavery) is present or used to provide the Works.</p> <p>30.2. The Vendor warrants that neither it nor any of its Related Entities, Personnel or supply chains has engaged in any form of bribery or corruption under Anti-Corruption Laws (including in relation to this Contract), or has been convicted of, or has been the subject of any investigation, inquiry or proceedings regarding any form of bribery or corruption under Anti-Corruption Laws or any form of Modern Slavery.</p> <p>30.3. The Vendor must implement a system aligned with good industry practice to assess, monitor, evaluate and remediate Modern Slavery risk in its business and supply chains, and notify Programmed as soon as it becomes aware of any actual or suspected Modern Slavery or breach of Anti-Corruption Laws connected to the Contract.</p> <p>30.4. The Vendor must keep records evidencing its compliance with this clause 26, and when requested by Programmed, provide all reasonable assistance necessary for Programmed to prepare its modern slavery statements and otherwise comply with its Modern Slavery obligations at law (including providing access to Vendor’s records).</p> <p>30.5. Programmed may immediately terminate this Contract if the Vendor breaches this clause 30.</p> |
| <p>31. Taxes</p> <hr/> <p>i You must pay all Taxes.</p> <hr/> | <p>31.1. The Vendor must pay all Taxes to the relevant Authority. If the Vendor pays any Taxes on behalf of Programmed, the Vendor must provide Programmed with documentary evidence of the payment of those Taxes.</p> <p>31.2. Without limiting clause 31.1, the Vendor will be solely liable for income tax imposed on the Vendor in respect of income derived by the Vendor in the provision of the Works.</p> <p>31.3. Words defined in the GST Law have the same meaning in this clause, unless the context makes it clear that a different meaning is intended.</p> <p>31.4. Where the Price (or other consideration payable in relation to the taxable supply) is not expressed to be GST inclusive, the recipient of a taxable supply must, subject to the issue of a valid Tax Invoice by the supplier to the recipient, pay to the supplier in addition to the Price or other consideration payable an additional amount on account of any GST payable.</p> |
| <p>32. Subcontracting</p> <hr/> <p>i Due to the commercial model and Customer Contracts, Programmed needs to be able to manage if (and how) its Vendors use subcontractors.</p> | <p>32.1. The Vendor must not assign, transfer or otherwise deal with its rights or obligations under the Contract without Programmed’s prior written consent (which consent must not be unreasonably withheld).</p> <p>32.2. Programmed can assign, transfer or otherwise deal with any or all of its rights or obligations under the Contract at any time without the Vendor’s consent (including but not limited to a Related Entity or any government entity).</p> <p>32.3. The Vendor may only subcontract parts or all of the Work with Programmed’s prior written approval. As a condition of granting approval, Programmed may request the Vendor to provide a copy of the proposed subcontract including</p> |

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| <p>i You must include Customer Requirements in your subcontract.</p> <p>i You must exclude (to the extent you can under Law) Proportionate Liability Legislation.</p> <hr/> | <p>pricing, certificates of currency of insurance as well as other documents or information reasonably requested by Programmed.</p> <p>32.4. The Vendor must ensure that any agreement with its subcontractor contains:</p> <ul style="list-style-type: none"> a. a clause which makes it clear that the subcontract is aware of and will comply with the Vendor’s obligations under this Contract (unless agreed with Programmed in writing that these do not apply to the subcontract); b. warranties that are the same as the warranties provided by the Vendor under this Contract; c. a requirement to comply with the insurance requirements stipulated in this Contract having regard to the nature of the work to be performed by the subcontract; d. a clause which allows for the novation of the subcontract to Programmed or a nominee of Programmed; e. a clause which allows for the termination of the subcontract where this Contract is terminated or expires or where a Customer requires the subcontract to cease supplying services; f. any Special Conditions (if applicable); and g. excludes (to the extent permitted by law) the operation of the Proportionate Liability Legislation in relation to all and any rights, obligations and liabilities under such agreement (whether such rights, obligations or liabilities are sought to be enforced in contract, tort or otherwise). <p>32.5. Approval to subcontract shall not relieve the Vendor from any liability or obligation under this Contract. Except where this Contract otherwise provides, the Vendor shall be liable to Programmed for the acts and omissions of subcontractors and employees and agents of the subcontractor as if they were acts or omission of the Vendor.</p> |
| <p>33. Dispute Resolution</p> <hr/> <p>i The parties must work together in good faith to try to resolve dispute.</p> <hr/> | <p>33.1. If a dispute arises between the parties that relates to the Contract, then the parties agree to do the following things:</p> <ul style="list-style-type: none"> a. the party claiming a dispute as arising will give prompt written notice to the other party detailing the reasons for the dispute; b. the parties will act in good faith and use their best endeavours to resolve the dispute, including by referring the matter to their respective senior executives and, failing successful resolution within a reasonable timeframe, to their respective chief executives. Programmed may invite an affected Customer to participate in dispute resolution if reasonably required. c. If the dispute is not resolved within a reasonable time period (having regard to the circumstances, reason for and urgency of the dispute) the parties will seek to mediate the dispute. <p>33.2. Neither party will commence legal proceedings (excluding seeking urgent interlocutory relief if reasonably necessary) unless the parties have made reasonable attempts to resolve the dispute in accordance with clause 29.1.</p> |

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| | <p>33.3. Pending the resolution of any dispute, Programmed and the Vendor will continue to perform their obligations under the Contract without prejudice to their respective rights and remedies (except where those obligations are the subject of the dispute).</p> <p>33.4. Each party will bear their own costs of complying with clause 29 and will equally bear the cost of any mediator, joint independent expert or other third party engaged to mediate and/or resolve the dispute.</p> <p>33.5. If a dispute arises between Programmed and a Customer that relates to any aspect of the Works, the Vendor agrees to do all things required by Programmed (including providing any information, attending at meetings, mediation, arbitration or court) to assist Programmed to resolve the dispute.</p> <p>33.6. If a dispute arises between a Customer and a third party that relates to any aspect of the Works, the Vendor agrees to do all things required by the Customer (including providing any information, attending at meetings, meditation, arbitration or court) to assist the Customer to resolve the dispute.</p> |
| <p>34. Notices</p> <hr/> <p>i Formal notices will be in writing.</p> <hr/> | <p>34.1. Any notice, approval, consent or direction in relation to this Contract must be in writing, be issued or signed by an authorised person of the party giving the notice and delivered to the address specified in the Contract Details.</p> <p>34.2. A notice can be delivered by hand or posted to the other party's physical address, or sent by email to the email address set out for the relevant Representative specified in the Contract Details (or as updated in writing from time to time).</p> <p>34.3. A notice, approval, consent or direction is received:</p> <ul style="list-style-type: none"> a. if delivered by hand, on the date it is delivered to the addressee; or b. if mailed to an address in the city of dispatch, on the date which is three (3) Business Days after the date of dispatch; or c. if mailed to a city (other than the city of dispatch), on the date which is seven (7) Business Days after the date of dispatch; or d. if sent by email, at the time of that transmission. <p>34.4. A notice, approval, consent or direction received after 5pm in the place of receipt is taken to be received on the next Business Day in the place of receipt.</p> <p>34.5. A party may, from time to time, notify the other party in writing of any change to its details for receiving notices.</p> |
| <p>35. Governing Law</p> | <p>35.1. All Contracts are governed by the laws of the State of Victoria, Australia, unless the Goods or Services are provided exclusively in New Zealand in which case the Contract is governed by the laws of New Zealand.</p> |
| <p>36. Nature of the Relationship</p> | <p>36.1. The parties are independent Vendors and nothing in this Contract constitutes an employment relationship, joint venture, agency, partnership or other fiduciary relationship between the parties. The Vendor does not have authority to bind Programmed in any manner whatsoever without Programmed's written consent.</p> |

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| <p>37. Exercising Rights</p> | <p>37.1. Unless this Contract provides otherwise:</p> <ul style="list-style-type: none"> a. a party may exercise a right, remedy or power in any way that party considers appropriate; and b. the rights, powers and remedies provided by this Contract are in addition to any rights, powers and remedies provided by Law. |
| <p>38. Amendments and Waivers</p> | <p>38.1. Programmed can make non-material amendments (i.e. changes that do not impact your rights under this agreement) to these Works Agreement Terms without your consent.</p> <p>38.2. Otherwise, the terms of a Contract can only be amended in writing, signed by the parties.</p> <p>38.3. This Contract may only be amended, or its provisions waived, by agreement in writing, signed by the parties.</p> <p>38.4. The non-exercise of, or a delay in exercising, any power or right of a party does not operate as a waiver of that power or right, nor does any single exercise of a power or right preclude any other or further exercise of it or the exercise of any other power or right by a party.</p> |
| <p>39. Entire Agreement</p> | <p>39.1. This Contract constitutes the entire agreement between the parties in respect of its subject matter and supersedes all prior agreements, quotation requests, understandings, representations, warranties, promises, statements, negotiations, letters and documents in respect of its subject matter (if any) made or given prior to the date of this Contract.</p> |
| <p>40. Severability</p> | <p>40.1. If a clause is capable of being read in a way that fair, legal, enforceable, valid or reasonable, then it must be read in that way.</p> <p>40.2. If a clause is illegal, unenforceable or invalid and cannot be assisted by clause 40.1, then it is treated as removed from the Contract (but the rest of the Contract is not affected).</p> |
| <p>41. Counterparts</p> | <p>41.1. This Contract may be executed in any number of counterparts and all of those counterparts taken together constitute the same instrument.</p> <p>41.2. This Contract (or any part of it) can be executed (signed) electronically.</p> <p>41.3. This Contract (or any part of it) can be exchanged electronically by way of electronic counterparts.</p> |
| <p>42. Assignment and Change of Control</p> | <p>42.1. The Vendor must not assign any of its rights or obligations under a Contract (including by way of a change of control of the Vendor), unless the Vendor first obtains Programmed's prior written consent (which will not be unreasonably withheld).</p> <p>42.2. Programmed can assign its rights or obligations, or novate the Works Agreement without the Vendor's consent (including but not limited to an Affiliated Company or any government entity) and we will give you notification in writing.</p> |

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| <p>43. Survival</p> | <p>43.1. Clauses 4,5,6,8,9,13, 17 to 31 and 35 to 40 and the warranties and indemnities given by the Vendor under the Contract survive termination or expiry of the Contract.</p> |
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DEFINITIONS IN THESE WORKS AGREEMENT TERMS

In this Contract (unless the context otherwise requires):

Annexure means an annexure to this Contract.

Anti-Corruption Laws means any anti-corruption Law that applies to Programmed, its Related Entities, the Vendor, or this Contract (including but not limited to the *Criminal Code 1995 (Cth)*, *Foreign Corrupt Practices Act 1997 (US)* and the *Bribery Act 2010 (UK)*.

Authority means any national, state, local, regional, territorial or municipal government, ministry, governmental department, commission, board, bureau, agency, instrumentality, executive, legislative, judicial or administrative body.

Business Day means a day that is not a Saturday, Sunday or public holiday in the place in which the Works are undertaken (and if in more than one place, then Melbourne, Victoria).

Certificate of Practical Completion means a certificate verifying that Works are complete except for minor omissions and Defects that will not (and the rectification of which will not) prevent or impair the normal use of the Works.

Change in Law means a repeal of, a change to, the coming into effect, or implementation of Law which happens after the Start Date.

Completion means the completed performance of all the Works.

Completion Date means the relevant date for Completion specified in the Contract Details.

Confidential Information means the terms of the Contract and any information that concerns the business, operations, finances, plans or customers of a party (or Related Entities) and is disclosed to or acquired by the other party and which:

- a) is by its nature confidential;
- b) is designated as confidential; or
- c) the acquiring party knows or ought to know is confidential,

but does not include information which:

- i) is or becomes public knowledge other than by a breach of the Contract;
- ii) is in the possession of the acquiring party without restriction in relation to disclosure on or before the date on which it is disclosed to or acquired it; or
- iii) has been independently developed or acquired by the acquiring party.

Contract or **Works Agreement** means this agreement and includes the Contract Details, these terms and conditions, the Special Conditions, all Schedules, attachments and Annexures and any Purchase Order.

Contract Details means the specific details of this Works Agreement as set out or referred to in the "Contract Details" Schedule 1 of this Works Agreement.

Customer Requirements means prescribed terms in a Customer Contract that Programmed passes down to the Vendor so that it can engage the Vendor to perform the Works as part of Programmed's program of Customer work, as set out in Schedule 3.

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

Customer means a customer or client of Programmed.

Customer Contract means a contract between Programmed and its Customer in relation to Customer work.

Customer Policies means a Customer's policies and procedures which the Vendor is required to comply with as referenced in the Special Conditions, Schedule 6, or another Annexure to this Contract.

Defect means any aspect of the Works not in accordance with this Contract, or which is damaged, deficient, faulty, inadequate or incomplete in design, performance, workmanship, quality or makeup.

Defects Liability Period means the period stated as such in the Contract Details.

Design Documents means the drawings, specifications, studies, reports and other information, samples, models, patterns and the like required by the Contract and created (and including, where the context so requires, those to be created by the Vendor or the Vendor's Personnel) for the construction of the Works.

Direction means a written direction relating to the performance of the Works with which the Vendor must comply and Direct has the corresponding meaning as a verb.

Event of Delay means an event or situation that causes delay in the Vendor completing the Works.

End Date means the date that this Contract ends being the earlier of the Completion Date or the termination date determined pursuant to clause 17.

GST means the tax payable on taxable supplies under the GST Law.

GST Law means the *A New Tax System (Goods and Services Tax) Act 1999* (Cth), or the *Goods and Services Tax Act 1985* (NZ) as applicable and any related Act imposing such tax, and includes any subordinated legislation in respect of those Acts.

Hazardous Materials means all hazardous substances and harmful materials (including but not limited to pollutants and contaminants defined as such according to Law, asbestos and other disease or illness causing materials).

Insolvency Event means an event where:

- a) a party is unable to pay its debts as and when they become due and payable;
- b) a party is (or a court decides, a resolution is passed, or notice is given, that a party be) dissolved, deregistered or wound up;
- c) a party fails to comply with a statutory demand or pay a debt;
- d) a party ceases to carry on all or a material part of its business;
- e) a party appoints (or takes steps to appoint) a controller, receiver, manager, trustee in bankruptcy, provisional liquidator, administrator or like person of the whole or part of that party's assets, operations, or business; or
- f) a party is (or states that it is) insolvent or under insolvency administration.

Intellectual Property Rights means all rights in or to any:

- a) patent, copyright, database right, registered design or other design right, utility model, trademark (either registered or unregistered) and related rights in trade dress, brand name, service mark, trade name, eligible layout right, chip topography right; or
- b) other rights of a proprietary nature (or results of intellectual activity in) the industrial, commercial, scientific, literary or artistic fields (whether registerable or not) wherever they exist in the world; and
- c) renewals, extensions and revivals of, and all rights to apply for, any of the rights described in paragraphs (a) or (b).

Invoice means an invoice or claim submitted by the Vendor in accordance with clause 10.

IT System means any information management system or combination of systems nominated in writing by Programmed and/or a Customer (as applicable) from time to time, which the Vendor is required to interact with in accordance with the Contract.

Latent Conditions are physical conditions on the Site or its surroundings, including artificial things but excluding weather conditions, which differ materially from the physical conditions which should reasonably have been anticipated by the Vendor if the Vendor had:

- a) examined all information made available in writing by Programmed or obtainable by making reasonable enquiries;
- b) visually inspected the Site and its surroundings; and
- c) taken into account the warranties given under clause 5.

Law means any rules of common law, principles of equity, national, federal, state and local laws, statutes, legislation, rules, listing rules of an exchange on which a party's securities are listed, regulations, orders, proclamations, ordinances, by-laws or codes of Authorities applicable to the Works under this Contract (including without limitation any law relating to occupational health and safety, protection of the environment, payment of any tax, any worker's compensation laws, industrial relations, Privacy Laws, modern slavery and Anti-Corruption Laws and/or security of critical infrastructure laws).

Licences means all authorisations, licences, qualifications, registrations, permits and other statutory requirements necessary for the performance of the Works under this Contract.

Losses means all losses, liabilities, damages and all related costs and expenses (including reasonable legal fees, disbursements, costs of investigation, settlement, judgement, interest and penalties) and **Loss** has the corresponding meaning.

Master Services Agreement or MVA means the 'umbrella agreement' that appoints the Vendor to Programmed's supplier (i.e. vendor) panel and contains the terms under which the Vendor agrees to supply services to Programmed.

Modern Slavery has the meaning given to it in clause 26.

Moral Rights means any of the rights described in Article 6bis of the Berne Convention for the Protection of Literary and Artistic Works 1886 (as amended and revised from time to time), being "droit moral" or other analogous rights arising under any statute (including the *Copyright Act 1968* (Cth) or any other law, that exists or that may come to exist, anywhere in the world.

Personal Information has the meaning given to that term in the *Privacy Act 1988* (Cth) or the *Privacy Act 1993* (NZ) as the context requires.

Personnel means directors, employees, agents, vendors or subcontractors but a reference to **Programmed's Personnel** excludes the Vendor.

Plant and Equipment means plant, equipment, tools, appliances or other property and items the Vendor requires to fulfil the Vendor's obligations under the Contract.

Price means the price or rates specified as such in the Contract Details.

Privacy Laws mean:

- a) the *Privacy Act 1988* (Cth) or the *Privacy Act 1993* (NZ) (as the context requires) and any other legislation, regulations, legally binding orders, directions or principles made under such legislation or similar legislation, relating to the collection, use, disclosure, processing, storage and/or granting of access rights to Personal Information in Australia and New Zealand; and
- b) such principles, industry codes and policies relating to the collection, use, disclosure, processing, storage or granting of access rights to Personal Information by which Programmed or any Related Entity is bound (as notified in writing by Programmed from time to time).

Program means the design and construction program set out in Schedule 4 as may be amended from time to time.

Programmed or Company means the Programmed entity named in the Contract Details.

Programmed Data means data of any kind belonging to Programmed, its Customers or other suppliers, including (a) data which the Vendor accesses, stores or handles in relation to this Contract; and (b) any data which is Personal Information, Confidential Information, Records, accounts, corporate proprietary or financial information, data relating to a Customer, sensitive data, or any other information deemed to be personal, confidential or private

under the *Privacy Act 1998* (Cth), *Privacy Act 2003* (NZ) and/or the European Union General Data Protection Regulation 2016/679 and its amending acts (EU GDPR) and the *United Kingdom's Data Protection Act 2018* (UK GDPR).

Programmed Policies means all Programmed policies, procedures, statements, handbooks, resources (or similar) available on:

- a) the 'Vendor Essentials Page' at <https://programmed.com.au/Vendor-essentials/> (including but not limited to the Subcontractor Handbook available at: <https://programmed.com.au/Vendoressentials/resources/>); and
- b) the Company's general policy page at <https://programmed.com.au/policies/> including the Code of Conduct, or other Programmed or Customer policy or procedure annexed to the Contract, MVA or Order.

Programmed's Representative is the person named as such in the Contract Details or any replacement person notified to the Vendor.

Programmed's Technical Material means any Technical Material provided by Programmed to the Vendor for the purposes of this Contract, or which is copied or derived from Technical Material so provided.

Project Requirements means Programmed's (or the Customer's) written requirements for the Works as provided in Schedule 4 which may include the stated purpose for which the Works are intended and a preliminary design.

Proportionate Liability Legislation means Part 4 of the *Civil Liability Act 2002* (NSW), Part IVAA of the *Wrongs Act 1958* (Vic), Part 3 of the *Law Reform (Contributory Negligence and Apportionment of Liability) Act 2001* (SA), Part 2 of Chapter 2 of the *Civil Liability Act 2003* (Qld), Part 1F of the *Civil Liability Act 2002* (WA), Part 9A of the *Civil Liability Act 2002* (Tas), Chapter 7A of the *Civil Law (Wrongs) Act 2002* (ACT), Part 2 of the *Proportionate Liability Act 2005* (NT), Part IVA of the *Competition and Consumer Act 2010* (Cth), or Division 2A of Part 7.10 of the *Corporations Act 2001* (Cth) as applicable.

Purchase Order or **Order** or **Work Order** means a written order form that Programmed issues to the Vendor stating what goods, works and/or services are to be supplied.

Recipient Created Tax Invoice or **RCTI** has the meaning prescribed in the GST Law.

Records means books, accounts, records and other related information or documents relating to or connected with the Contract, including:

- a) any documents which a responsible Vendor should maintain;
- b) any documents which Programmed requires the Vendor to maintain; and
- c) any other records which the Vendor is obliged to maintain under the Contract.

Related Entity means any related body corporate as that term is defined in the Corporations Act.

Representative means Programmed's Representative or the Vendor's Representative, and a reference to **Representatives** is a reference to both of them. Each Representative is authorised to act on behalf of the party that appointed the Representative in relation to this Contract.

Schedule means a schedule to this Contract.

Security of Payment Act means the following legislation as it applies to the relevant Works:

- a) *Building and Construction Industry (Security of Payment) Act 2009* (ACT);
- b) *Building and Construction Industry (Security of Payment) Act 1999* (NSW);
- c) *Construction Contracts (Security of Payments) Act 2004* (NT);
- d) *Building Industry Fairness (Security of Payment) Act 2017* (Qld);
- e) *Building and Construction Industry Security of Payment Act 2009* (SA);
- f) *Building and Construction Industry Security of Payment Act 2009* (TAS);
- g) *Building and Construction Industry Security of Payment Act 2002* (VIC);
- h) *Building and Construction Industry (Security of Payment) Act 2021* (WA); and
- i) *Construction Contracts Act 2002* (NZ).

Site means the place/s described as such in the Contract Details as the place/s for the performance of the Works.

Site Specific Work Method Statement means a list of health and safety risks relating to the performance of the Works, and details of how to measure and control these risks.

Special Conditions means the special conditions set out in Schedule 3.

Start Date means the date specified as such in the Contract Details.

Tax Invoice has the meaning given to it in the GST Law.

Taxes includes all taxes, fees, levies, duties and charges imposed or assessed in respect of this Contract by all government authorities including income tax (including withholding for prescribed payments or group tax), payroll tax, statutory superannuation contributions and workers' compensation payments and contributions, sales tax, customs duty, excise tax, and stamp duty; but does not include GST.

Technical Material means models, software (including source code API's, plug-ins, integrations and object code versions), information, design concepts, audio, video, drawings (including "as built" drawings), programs, schedules, manuals, diagrams, graphs, charts, projections, specifications, estimates, records, concepts, accounts, plans, formulae, calculations, designs (including structural, mechanical, electrical and instrumentation designs) in any medium (including 2 dimensional and 3 dimensional computer assisted designs), methods, techniques and processes, including all copies of and extracts from them and data stored by any means.

Variation means any change to the Works, including any addition to, reduction in, omission from or change in the character or quality of the Works.

Vendor is the Vendor entity named as such in the Contract Details.

Vendor's Design Obligations means all tasks necessary to design and specify the Works required by the Contract, including preparation of the Design Documents and developing Programmed's preliminary design (if applicable).

Vendor's Representative is the person named as such in the Contract Details or any replacement person notified to Programmed.

Vendor's Technical Material means all Technical Material which is:

- a) prepared, or required to be prepared, by or on behalf of the Vendor under this Contract;
- b) delivered, or required to be delivered, by or on behalf of the Vendor to Programmed under this Contract; or
- c) incorporated into Technical Material described in paragraph (a) or (b).

Vendor Reference Document means a time sheet, claim form or such other source document which evidences the performance and completion of the Works.

Works means the works to be carried out and completed by the Vendor under the Contract and as specified in the Contract Details, including any part of the specified works, any ancillary goods and services, any variations provided for by the Contract and remedial work.