

## F0206 Labour Hire Terms and Conditions

### 1. DEFINITIONS AND INTERPRETATION

#### 1.1. Definitions

In this agreement, unless the context otherwise requires:

**Accepted Day Rate** means, in respect of each supply of an IKAD Employee by IKAD to the Client, the day and/or hourly rate specified at Item 3 of the Purchase Order, or if not specified then as published by IKAD in its statement of rates as issued by IKAD from time to time.

**Accepted Disbursements** means, in respect of each supply of an IKAD Employee by IKAD to the Client, the disbursements specified at Item 3 of the Purchase Order.

**Agreement** means these Standard Terms & Conditions together with the accompanying Purchase Order for the supply of IKAD Employees for Labour Hire Services.

**Business Day** means a day other than a Saturday, Sunday, or public holiday in the State of Western Australia.

**Claim** means any claim, complaint, demand, proceeding, suit, litigation, action, cause of action or other legal recourse (whether in contract, tort, under statute or otherwise).

**Client** means the party listed at Item 1 of the accompanying Purchase Order.

**Confidential Information** means information and material relating to a party which comes into the possession or knowledge of the other party, whether orally, in writing or electronically, and whether directly or indirectly, including (without limitation) strategic information, corporate information, information about the financial and labour needs of a part, and information relating to the business, clients, members, sales, know-how and operations of a party, that is marked as "confidential" or which the recipient knows or should reasonably know is confidential.

**Fees** means the fees payable by the Client to IKAD in respect of the supply of the IKAD Employee for Labour Hire Services, as calculated in accordance with the Accepted Day Rate.

**IKAD Employee** means the worker who is an employee of IKAD and is supplied or to be supplied to the Client to perform Labour Hire Services.

**IKAD** means IKAD Engineering Pty Ltd.

**Labour Hire Services** means the services that the IKAD Employee is supplied to the Client to provide.

**Losses** means all losses, liabilities, damages, and claims (including taxes), and all related costs and expenses (including any and all legal fees and costs of investigation, litigation, settlement, judgement, interest, and penalties).

**Placement Fee** means the fee payable if an IKAD Employee is employed by the Client and calculated in accordance with clause 7.2 of these Standard Terms & Conditions.

**Purchase Order** means the Purchase Order for the supply of IKAD Employees for Labour Hire Services accompanying these Standard Terms & Conditions.

**Standard Terms & Conditions** means these Labour Hire of IKAD Employees Standard Terms & Conditions.

### 2. INTERPRETATION

#### 2.1. In this agreement:

- (a) headings are for convenience only and shall not be used in the interpretation or construction of this agreement; and
- (b) unless the context otherwise requires:
  - (i) words importing the singular include the plural and vice versa;
  - (ii) words importing any gender include the other genders;
  - (iii) including and similar expressions are not words of limitation;
  - (iv) month means calendar month and year means calendar year;
  - (v) references to currency are to Australian currency;
  - (vi) a reference to a party is a reference to a party to this agreement;
  - (vii) a reference to writing includes any communication sent by post, facsimile, or email;

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- (viii) if the day on or by which a person must do something under this Agreement is not a Business Day, the person must do it on or by the next Business Day;
- (ix) where a word or expression is given a particular meaning, other parts of speech and grammatical forms of that word or expression have a corresponding meaning;
- (x) a reference to a person includes a reference to a natural person, corporation, partnership, joint venture, association, authority, government, or governmental agency;
- (xi) a reference to a document (including this agreement) is a reference to that document (including any schedules and annexures) as amended, consolidated, supplemented, novated, or replaced; and
- (xii) references to the recitals, clauses, sub-clauses, paragraphs, items, schedules, or annexures are references to recitals, clauses, sub-clauses, paragraphs, items, schedules, and annexures respectively to or of this agreement.

### 2.2. Persons bound jointly and severally

Where a party comprises two or more persons, the covenants, and agreements pursuant to this agreement on the part of that party shall bind those persons jointly and each of them severally.

### 2.3. Agreement binding on heirs, executors etc.

This agreement shall be binding upon each party's heirs, executors, administrators, successors, substitutes, personal representatives and permitted assigns.

### 2.4. Contra Proferentem rule does not apply

In the interpretation of this agreement, no rule of construction applies to the disadvantage of a party on the basis that it put forward or drafted this agreement or any provision in it.

## 3. TERM AND APPLICATION

### 3.1. Term

This agreement commences on the Start Date specified at Item 2 of the Purchase Order and continues in full force and effect until the End Date specified at Item 2 of the Purchase Order or until terminated by either party pursuant to clause 12 (Term).

## 4. APPLICATION

Upon written acceptance of the completed Purchase Order by the Client, the Purchase Order, together with these Standard Terms & Conditions, shall form an agreement between IKAD and the Client, which shall not be varied unless in accordance with these Standard Terms & Conditions or as agreed in writing by the parties.

## 5. SUPPLY OF IKAD EMPLOYEES FOR LABOUR HIRE SERVICES

### 5.1. Purchase Order

As required, the Client's request for the supply of IKAD Employees for Labour Hire Services will be submitted in writing to IKAD in the form and containing the details in the Purchase Order accompanying these Standard Terms & Conditions.

### 5.2. IKAD may supply IKAD Employees

- (a) In response to a Purchase Order, IKAD may, but will not be obliged to, offer to supply Labour Hire Services to the Client.
- (b) If IKAD is willing and able to supply Labour Hire Services to the Client in response to a Purchase Order, it will give written notice to the Client by returning the completed Purchase Order.

### 5.3. Acceptance of IKAD's offer

- (a) If the Client wishes to proceed with IKAD's offer to supply Labour Hire Services contained in the completed Purchase Order, the Client will return the completed and executed Purchase Order to IKAD.

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- (b) In returning the completed and executed Purchase Order to IKAD, the Client accepts responsibility to pay IKAD fees on the basis of the Accepted Day Rate specified in the Purchase Order, and to reimburse to IKAD the amount of the Accepted Disbursements in respect of that supply.

### 5.4. Non-exclusive

For the avoidance of doubt, neither IKAD nor the Client is subject to any exclusivity requirement with respect to the supply and receipt of IKAD Employees for Labour Hire Services.

### 5.5. Replacement of IKAD Employee

If the Client is not satisfied with an IKAD Employee and wants a replacement, the Client agrees that the Client will speak to IKAD directly about replacement of the IKAD Employee and is not to communicate anything to the IKAD Employee indicating that the supply of their Labour Hire Services will be cancelled or words to that effect.

### 5.6. Communication after End Date

Unless IKAD agrees otherwise, the Client agrees that during the period of, or after an IKAD Employee has completed provision of Labour Hire Services with the Client, the Client will not contact the IKAD Employee directly or indirectly to offer them employment with the Client or any other organisation.

## 6. RELATIONSHIPS

- 6.1.** The Client engages IKAD to provide the Labour Hire Services as an independent contractor.
- 6.2.** No contractual relationship will exist between the Client and any IKAD Employee by virtue of this Agreement.
- 6.3.** Neither IKAD nor any IKAD Employee is the Client's employee, partner, legal representative, agent, joint venturer, or franchisee.
- 6.4.** The Client acknowledges that IKAD supplies its workers, at the Client's request, to perform the work that the Client has described.

## 7. IKAD'S CHARGES

- 7.1.** IKAD's charges will be based on the number of hours that IKAD Employees provide the Labour Hire Services, as recorded in IKAD's time sheets, and

signed for by the Client's representative. The Client agrees to have these time sheets checked and signed, so that IKAD Employees are able to submit them to IKAD promptly.

- 7.2.** If the Client fails to provide IKAD with the time sheets detailed at clause 6.1, IKAD may, in calculating the charges payable by the Client to IKAD relating to the supply of Labour Hire Services, rely on information provided to IKAD by the relevant IKAD Employee or otherwise undertake the calculations on the basis of IKAD's reasonable estimates.
- 7.3.** IKAD's charges are as set out in the Purchase Order or as otherwise agreed with the Client.
- 7.4.** The Client acknowledges that to the extent in the compilation of any quotation or communication of any charges, IKAD has relied upon information supplied by the Client, then should such information be incorrect in the reasonable opinion of IKAD, then IKAD may vary that quote or those charges for the Labour Hire Services without the Client's consent, and such variation shall be deemed to have been agreed to by the Client.
- 7.5.** Regardless of anything stated to the contrary in this Agreement or elsewhere, the Client is deemed to have ordered the Labour Hire Services for a period of 8 hours at least, or such longer time as may be nominated in any Award or Industrial Agreement covering the scope of work, as the minimum period of employment.
- 7.6.** Regardless of the period for which the Labour Hire Services are in fact provided to the Client, IKAD may render to the Client an Invoice for the provision of Labour Hire Services for the minimum period (at the least) and recover that amount from the Client.
- 7.7.** The parties agree that the imposition of the minimum period is to reasonably compensate IKAD for the expense incurred in providing the Labour Hire Services for any shorter period of time.
- 7.8.** The Client agrees to pay any statutory charges, levies, and taxes for which IKAD may become liable in respect of performing IKAD's obligations under these Standard Terms & Conditions by reason of such statutory charges, levies or taxes being introduced after the acceptance of

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the offer to supply Labour Hire Services.

writing from time to time.

### 8. EMPLOYMENT OF IKAD EMPLOYEE

**8.1.** If, following the supply of an IKAD Employee to the Client to perform Labour Hire Services by virtue of this Agreement or the introduction of an IKAD Employee to the Client, that IKAD Employee is employed by the Client (whether on a casual, part-time, or full-time basis), then in addition to any other moneys payable by the Client to IKAD pursuant to this Agreement, the Client will be liable to pay to IKAD a Placement Fee in accordance with clause 7.2.

#### 8.2. Placement Fee

- (a) The Placement Fee payable by the Client to IKAD shall, subject to clause 8.2(b), be the amount equal to 15 per cent (15%) of the Salary Package of the IKAD Employee with the Client, excluding GST.
- (b) The Placement Fee is payable within ten (10) Business Days of receipt of a tax invoice from IKAD following commencement of IKAD Employee's employment and is non-refundable.
- (c) For the purposes of this clause 7.2, Salary Package means the anticipated gross remuneration package payable to the IKAD Employee in the first year of their employment by the Client which includes gross annual salary, applicable benefits (including superannuation), commission, bonuses, allowances, joining inducements and the costs of provision and maintenance of a motor vehicle to or for the benefit of IKAD Employee.

### 9. INVOICES

- 9.1.** The Client agrees to pay each invoice within 14 days following the end of the week during which the services are provided.
- 9.2.** Payment is to be made to IKAD. The Client agrees not to pay any IKAD Employee directly for Labour Hire Services.
- 9.3.** All payments by the Client to IKAD of invoices under this Agreement must be made:
  - (a) without deduction or set-off;
  - (b) in immediately available funds; and
  - (c) by way of electronic funds to the bank account IKAD nominates in

### 10. IKAD RESPONSIBILITIES

**10.1.** IKAD is responsible for the following in relation to IKAD Employees whilst performing Labour Hire Services to the Client:

- (a) the payment of all amounts due to IKAD Employees under the terms of any relevant industrial instrument or contract;
- (b) If IKAD Employee is an employee, the payment of leave entitlements, including but not limited to annual leave, sick leave, parental leave, and long service leave;
- (c) subject to these Standard Terms & Conditions, the deduction of all appropriate Federal and State taxation, including but not limited to income tax, fringe benefits tax and payroll tax;
- (d) the payment of an amount as superannuation into a superannuation fund to avoid the imposition of a charge under the Superannuation Guarantee Charge Act 1992 (Commonwealth); and
- (e) such other matters or things as may be negotiated between the Client and IKAD.

**10.2.** IKAD will use its best endeavors to provide an IKAD Employee that meets the Client's skill-set requirements as advised to IKAD by the Client from time to time.

**10.3.** IKAD will advise the Client promptly of any failure on IKAD's part to meet the Client's requirements, either at the commencement, or during, the supply of Labour Hire Services.

**10.4.** Unless specified otherwise in the Purchase Order, IKAD does not provide or supply tools or equipment with, or as part of, the Labour Hire Services and is not responsible for and makes no representation concerning any tools or equipment supplied by any employee or the condition or the capacity of them. However, it is a requirement of all tradespersons assigned to a contract to supply and carry with them a standard tradesperson's toolkit.

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### 11. CLIENT RESPONSIBILITIES AND OBLIGATIONS

#### 11.1. Responsibility for IKAD Employee

The Client acknowledges and agrees that during the period the IKAD Employee is supplied to the Client, the supplied IKAD Employee is subject to the Client's control and direction unless stated otherwise in the Purchase Order.

**11.2.** The Client agrees and warrants and assumes all responsibility for the following:

- (a) to provide IKAD with full and accurate information about the job requirements relevant to the supply of Labour Hire Services by completing the Purchase Order and providing any other relevant information;
- (b) not to on-hire or re-supply IKAD Employees to any other person without the prior written consent of IKAD;
- (c) not to allocate tasks or responsibilities to IKAD Employees or require IKAD Employees to perform or participate in work, other than in accordance with the relevant Purchase Order for the supply of Labour Hire Services; or
- (d) not to request IKAD Employees to perform or participate in any work or use any equipment with which IKAD Employees are unfamiliar or in respect of which they are unqualified or have not received adequate training;
- (e) to supervise, instruct and direct IKAD Employees adequately at all times whilst they are supplying Labour Hire Services to the Client;
- (f) to supervise, instruct and direct the Client's own employees and contractors properly at all times whilst IKAD Employees are supplying Labour Hire Services to the Client;
- (g) to comply with the Client's obligations to IKAD Employees pursuant to relevant legislation, including legislation regarding Workplace or Occupational Health and Safety, discrimination and harassment; and
- (h) to maintain a safe work environment and safe systems of work for IKAD

Employees including:

- (i) establishing safe work practices;
- (ii) communicating safe work procedures to each IKAD Employee;
- (iii) ensuring that systems of work and the working environment of IKAD Employees are safe and without risks to health;
- (iv) ensuring that IKAD Employees are not exposed to risks to their health or safety or to hazards arising from carrying out the Labour Hire Services.
- (v) complying with all occupational health and safety requirements under all applicable statutes and regulations;
- (vi) maintaining plant and equipment and ensuring that all facilities and equipment provided for use by IKAD Employees in carrying out the Labour Hire Services are safe and without risks to health and safety when properly used;
- (vii) providing induction, information, instructions, training, supervision, and safety consumables to IKAD Employees where appropriate;
- (viii) informing IKAD Employees and IKAD promptly of any unusual workplace risk or practice or of any change in site or safety conditions that may present a hazard to IKAD Employees;
- (ix) complying with IKAD'S reasonable requests to ensure the workplace health and safety of workers;

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- (i) to notify IKAD of any injury sustained by any IKAD Employee on the Client's premises or otherwise during the time the IKAD Employee is performing Labour Hire Services for the Client.
- (j) to ensure that IKAD Employees will be covered by, and that IKAD will be a beneficiary of, the following insurance policies, taken out with an insurance office approved to undertake insurance business in Australia under the Insurance Act 1973 (Cth), or other suitable and permissible statutory Indemnity or self-insurance arrangement whilst performing Labour Hire Services for the Client:
  - (i) Public liability insurance to provide cover of at least \$20,000,000 and which covers acts or omissions of the supplied IKAD Employees;
  - (ii) Workers' compensation insurance that covers the supplied IKAD Employees;
  - (iii) Compulsory third party motor vehicle Insurance;
  - (iv) Fully comprehensive motor vehicle Insurance;
  - (v) travel Insurance (if applicable); and
  - (vi) any other insurance that IKAD reasonably considers necessary to ensure that the interests of IKAD are protected against any liability incurred through the performance of this Agreement.
- (k) to provide IKAD with evidence of the currency and suitability of all insurances, statutory indemnity or self-insurance arrangements that extend cover to IKAD Employees upon our request;
- (l) to notify IKAD immediately of any event that may give rise to a claim under any insurance policy, statutory indemnity or self-insurance arrangement that relates to an IKAD Employee whether such policy, indemnity or arrangement be held or established by the Client or by IKAD;
- (m) to report to IKAD in writing covering any performance issues in relation to IKAD Employees, so that IKAD can manage the feedback process to the relevant IKAD Employees;
- (n) to forward to IKAD promptly a written notification of any workplace incident that may give rise to a claim by, against or involving IKAD Employees;
- (o) to abide by all Federal and State laws that impose upon the Client any obligation to do, or refrain from doing, anything, or to make or pay any payment, deduction, premium, levy, allowance, compensation, damages, interest, or costs in respect of or in connection with the engagement of IKAD Employees under these Standard Terms & Conditions or any work done by them whilst on performing Labour Hire Services for the Client;
- (p) to maintain the confidentiality and privacy of information IKAD provides to the Client about IKAD Employees, whether written or verbal; and
- (q) to release IKAD from all claims which the Client or any other person claiming through the Client now have or has or might have in the future, in respect of IKAD's liability for any damage, loss or injury to or death of IKAD Employees, or any other person, to the extent that IKAD's liability is not required by law to be covered by insurance or other suitable and permissible statutory indemnity or self-insurance arrangement, or if not so required is not covered thereby.

### 12. EXCLUSIONS, INDEMNITY AND LIMITATION OF LIABILITY

**12.1.** IKAD makes no representation or guarantee that any IKAD Employee will achieve a certain level of performance, achieve a certain outcome, solve a particular problem, or attain a specific goal.

**12.2.** It is agreed that IKAD Employees will not attend work if:

- (a) their ability to function effectively and safely is limited, in which case IKAD may replace them with another

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IKAD Employee; or

- (b) it reasonably appears that the working environment is or has become unsafe for any reason, including that the Client:
- (i) has not established safe work procedures;
  - (ii) is not complying with safety standards, maintaining plant and equipment, or complying with any health or safety legislation or regulations; and/or
  - (iii) not otherwise complying with the Client's obligations under clause 10.

**12.3.** Subject to clause 11.8 IKAD will not be liable to the Client, whether for breach of contract, in tort (including negligence) or otherwise, in respect of any Claim against or damage, loss or injury of whatsoever nature or kind, however caused, whether by IKAD's negligence or misconduct, the negligence or misconduct of an IKAD Employee including loss of profit, revenue, production or reputation or any special punitive or exemplary damages, which may be suffered or incurred, whether direct, indirect or consequential, in respect of the supply of an IKAD Employee or the Labour Hire Services provided under this Agreement.

**12.4.** The Client agrees to indemnify and keep indemnified and hold harmless IKAD against any Losses suffered or incurred by IKAD, or Claims against IKAD, as a result of the IKAD Employee undertaking work for the Client, or any acts or omissions whatsoever of the IKAD Employee while the Labour Hire Services are being supplied to the Client.

### 12.5. Further Indemnity

The Client will indemnify and keep indemnified and hold harmless IKAD against any Losses that IKAD may suffer or incur, and any Claims against IKAD, as a result, whether directly or indirectly, of:

- (a) any breach of this Agreement by the Client; and
- (b) any negligent act or omission or willful misconduct of the Client.

### 12.6. Limitation of liability

If, notwithstanding this clause 11, IKAD is liable to the Client under or in relation to this Agreement, its liability shall be limited to the amount of any Fees payable under this Agreement.

**12.7.** The Client agrees to indemnify IKAD to the full extent of IKAD's liability for all damages, compensation (including damages and compensation for personal injury to or the death of an IKAD Employee or to any other person whatsoever), expenses, interest, and costs that we may have to pay to any person, as a result of any damage, loss or injury that has been caused by or contributed to, in any material degree, whether directly or indirectly, by:

- (a) a breach by the Client of any of the Client's obligations under these Standard Terms & Conditions; or
- (b) any act, error or omission of the Client or the Client's employees, agents, officers, or servants of the Client including, without limitation, any act, error, or omission that may contravene the provisions of any equal opportunity legislation.

**12.8.** Where any Act of Parliament implies in these Standard Terms & Conditions any term and that Act voids or prohibits provisions in a contract excluding or modifying the application or exercise of or liability under such term, such term shall be deemed to be included in these Standard Terms & Conditions. IKAD's liability for any breach of such term shall be limited, however, at IKAD's option to any one or more of the following:

- (a) providing the Labour Hire Services again; or
- (b) the payment of the cost of providing, the Labour Hire Services again.

## 13. TERMINATION, DEFAULT AND BREACH

**13.1.** Subject to clause 12.2, the supply of Labour Hire Services will end at the End Date specified at Item 2 of the Purchase Order.

**13.2.** IKAD can terminate this Agreement without notice and without incurring any liability to the Client for the following reasons:

- (a) a breach of these Standard Terms &

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Conditions; or

- (b) failure of the Client to pay any amounts outstanding to IKAD.

**13.3.** If the Client terminates a supply of Labour Hire Services other than as provided in these Standard Terms & Conditions, the Client agrees to indemnify IKAD for any liability, damages, compensation, expenses or costs that IKAD may incur as a result of any proceedings which may be commenced or Claim that may be made by an IKAD Employee arising out of, or in any way related to termination of the supply of Labour Hire Services.

### 13.4. Payment default

If the Client fails to make any payment to IKAD under this Agreement on or before its due date for payment, then without limiting any other right or remedy of IKAD under this Agreement, at law or in equity:

- (a) default interest will accrue on the outstanding amount on and from the due date for payment up to but excluding its date of payment, which default interest:
  - (i) will be calculated at 1.5% per month or part thereof on a daily basis for actual days elapsed;
  - (ii) will be compounded monthly until the invoice is paid in full; and
  - (iii) is payable on demand.
- (b) The Client must, on demand by IKAD, pay to, or as directed by, IKAD, and indemnify IKAD against, all costs and expenses (including all legal costs) paid or incurred by IKAD of or incidental to the default.

### 13.5. Liability for Fees and Accepted Disbursements survives termination

Termination of this Agreement does not relieve the Client of its obligation to pay IKAD any:

- (a) Outstanding Fees or Accepted Disbursements due and payable under this Agreement at the time of termination; or
- (b) Fees or Accepted Disbursements that become due and payable after termination of this Agreement in respect of any Labour Hire Services supplied prior to such termination.

## 14. CONFIDENTIALITY

### 14.1. Obligation to keep matters confidential

Subject to clause 13.2, the parties agree that neither party may disclose, or suffer or permit the disclosure of any Confidential Information of the other party.

### 14.2. Exceptions

Clause 13.1 does not prohibit the disclosure by a party of any Confidential Information of the other party:

- (a) to an employee, consultant, or professional advisor of that party, provided such person is subject to an obligation to maintain confidentiality in respect of the Confidential Information;
- (b) with the prior written consent of the other party;
- (c) where disclosure is required by any applicable law or requirement of any government agency; or
- (d) where the information is generally and publicly available other than as a result of a breach of this clause.

### 14.3. Obligations survive termination

The parties obligations pursuant to this clause 13 survive the termination of this Agreement.

## 15. GST

### 15.1. Amounts exclusive of GST

All amounts referred to in this agreement are exclusive of GST, unless otherwise specified.

### 15.2. Payment of GST

If any payment under or in connection with this agreement is the consideration for a taxable supply:

- (a) the recipient must pay the amount of the GST in respect of the taxable supply at the same time and in the same manner as the consideration for the taxable supply is payable; and
- (b) the supplier must provide the recipient a tax invoice in respect of the taxable supply.

### 15.3. Definitions

Unless the context otherwise requires, words used in this clause which are defined in the GST Law have the same meaning as in the GST Law.



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### 16. DISPUTE RESOLUTION

#### 16.1. No Court proceedings without compliance

A party must not commence court proceedings relating to any dispute between some or all of the parties arising from, or in connection with, this Agreement (**Dispute**) without first complying with this clause 15 unless:

- (a) The party is seeking urgent interlocutory relief; or
- (b) The Dispute relates to compliance with this clause 15.

#### 16.2. Parties must continue to perform obligations

Notwithstanding the existence of a Dispute, the parties must continue to perform their obligations under this Agreement.

#### 16.3. Dispute Notices

In the event of a Dispute:

- (a) The party claiming there is a Dispute must give written notice to the other party setting out the details of the Dispute and proposing a resolution (Dispute Notice); and
- (b) Within ten (10) Business Days following service of the Dispute Notice, each party must (if applicable by its senior executives or senior managers who have authority to reach a resolution on its behalf) meet at least once to attempt to resolve the Dispute in good faith. All aspects of every such conference, except for the occurrence of the conference, will be privileged.

#### 16.4. Mediation

If the parties are unable to resolve the Dispute within fifteen (15) Business Days after receipt of the Dispute Notice, either party may (by written notice to the other party) submit the Dispute to mediation administered by the Australian Disputes Centre (ADC), with such mediation to be conducted:

- (a) in good faith;
- (b) in Western Australia; and
- (c) in accordance with the ADC Mediation Guidelines.

#### 16.5. Costs of mediation

The mediator's costs in respect of the mediation are the responsibility of the parties equally, with each party to otherwise bear its own costs in relation to the mediation.

#### 16.6. Litigation if Dispute not settled

If the Dispute has not been settled within twenty (20) Business Days after the appointment of a mediator, or such other period as agreed in writing between the parties, any of the parties may (by written notice to the other party) commence litigation in respect of the Dispute.

### 17. GENERAL MATTERS

#### 17.1. Purchase Order

The Purchase Order accompanying these Standard Terms & Conditions forms part of the binding and operative provisions of this Agreement.

#### 17.2. Governing Law and Jurisdiction

- (a) this Agreement is governed by the law of the State of Western Australia.
- (b) the parties irrevocably submit to the jurisdiction of the courts and tribunals of the State of Western Australia.

#### 17.3. Entire Agreement

- (a) The parties agree that the whole of their agreement is expressed in this document. Any and all prior agreements, warranties or representations made by or on behalf of IKAD, either verbally or written are superseded by this Agreement.
- (b) There are no express or implied conditions, warranties, promises, representations, or obligations, written or oral, in relation to this agreement other than those expressly stated in it or necessarily implied by statute.

#### 17.4. Variation

This Agreement may only be varied by agreement between the parties in writing.

#### 17.5. Assignment

A party must not assign or otherwise transfer, create any charge, trust, or other interest in, or otherwise deal in any other way with, any of its rights under this agreement without the prior written consent of the other party.

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### 17.6. Waiver

If there is failure to, delay, relaxation or indulgence in enforcing or requiring strict or prompt compliance with IKAD's rights under these Standard Terms & Conditions, this will not waive or in any way limit IKAD's rights to exercise remedies IKAD has in respect of breaches.

**17.7.** No single or partial exercise of any power or right precludes any other or future exercise of it, or the exercise of any other power or right under this Agreement.

### 17.8. Costs

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

### 17.9. Notices

(a) A notice given to a party under this agreement must be:

- (i) in writing in English;
- (ii) sent to the address, fax number or email address of the relevant party as the relevant party may notify to the other party from time to time; and
- (iii) delivered/sent either:
  - A. personally;
  - B. by commercial courier;
  - C. by pre-paid post;
  - D. if the notice is to be served by post outside the country from which it is sent, by airmail;
  - E. by fax; or
  - F. by e-mail.

(b) A notice is deemed to have been received:

- (i) if delivered personally, at the time of delivery;
- (ii) if delivered by commercial courier, at the time of signature of the addressee's receipt;
- (iii) if sent by pre-paid post, 5 Business Days from the

date of posting;

- (iv) if sent by airmail, 10 Business Days after the date of posting;
  - (v) if sent by fax, at the time shown in the transmission report generated by the machine from which the fax was sent; or
  - (vi) if sent by e-mail, 4 hours after the sent time (as recorded on the sender's e-mail server), unless the sender receives a notice from the party's email server or internet service provider that the message has not been delivered to the party, except that, if such deemed receipt is not within business hours (meaning 9:00 am to 5:00 pm on a Business Day), the notice will be deemed to have been received at the next commencement of business hours in the place of deemed receipt.
- (c) To prove service, it is sufficient to prove that:
- (i) in the case of post – that the envelope containing the notice was properly addressed and posted;
  - (ii) in the case of fax – the notice was transmitted to the fax number of the party; and
  - (iii) in the case of email – the email was transmitted to the party's email server or internet service provider.

### 17.10. Trustee provision

If the Client enters into this Agreement in the capacity as trustee of a trust (whether or not it is expressed to enter into this agreement in that capacity), the Client:

- (a) is bound both in its personal capacity and its capacity as trustee of the trust; and
- (b) hereby represents and warrants that:

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- (i) it has power under the trust deed to enter into and execute this Agreement and to perform the obligations imposed under this Agreement as trustee;
- (ii) all necessary resolutions have been passed as required by the trust deed in order to make this Agreement fully binding upon it;
- (iii) the entering into of this Agreement is for the benefit of the trust;
- (iv) it is not in default under the trust deed;
- (v) there is not now, and it will not do anything by virtue of which there will be in the future any restriction or limitation on its right to be indemnified out of the assets of the trust; and
- (vi) there is no material fact or circumstance relating to the assets matters or affairs of the trust that might if disclosed be expected to affect the decision of IKAD acting reasonably to enter into this Agreement.

### 17.11. Authority

Each party represents and warrants to the other party that it has the power and authority to enter into and perform this Agreement and to execute the obligations assumed or imposed upon it under this Agreement.

### 17.12. Severability

If any part of this Agreement is or becomes void, voidable, or unenforceable, that part will be severed from this Agreement with all remaining parts of this Agreement to continue to have full force and effect.

### 17.13. Further assurances

The parties will do all acts and things reasonably required to give effect to this Agreement.

### 17.14. Relationship of the parties

Nothing in this Agreement, or any circumstances associated with it or its performance, gives rise to any agency or partnership between IKAD and the Client.

### 17.15. Counterparts

This Agreement may be executed in any number of counterparts. All counterparts taken together shall constitute one and the same instrument. A signature to this Agreement transmitted electronically shall have the same authority, effect, and enforceability as an original signature. Without limiting the foregoing, if the signatures on behalf of one party are on different counterparts, this shall be taken to be, and have the same effect as, signatures on the same counterpart and on a single copy of this Agreement.

### 17.16. Additional Provisions

The Additional Provisions in the Purchase Order are incorporated into this Agreement and to the extent they are inconsistent with any other provisions of this Agreement they will prevail.