

PART 1 - ROLE OF CARDNO

- 1.1 Cardno shall perform the Services with reasonable skill, care and diligence.
- 1.2 Cardno shall communicate with the Client by and through Cardno's Representative, who shall have authority to bind Cardno in respect of all matters arising out of or in connection with the Agreement.
- 1.3 Cardno shall consult with the Client throughout the performance of the Services.
- 1.4 Unless otherwise agreed, Cardno may rely on and treat the Documentation and the directions provided by the Client as accurate and correct.
- 1.5 If Cardno considers that any Documentation made available to it by the Client is insufficient to enable Cardno to provide the Services or is incorrect, then Cardno shall notify the Client accordingly.
- 1.6 If Cardno becomes aware of any matter that will change the scope, character, quality, sequence or timing of the Services, then Cardno shall promptly notify the Client of that matter.
- 1.7 Cardno shall keep confidential any information disclosed by the Client which the client identifies in writing as being confidential, unless such disclosure is
 - (1) approved or agreed to by the Client; or
 - (2) required by law or operation of the Australian Stock Exchange Listing rules.

PART 2 - ROLE OF THE CLIENT

- 2.1 The Client shall promptly provide Cardno with all Documentation and directions necessary to enable Cardno to provide the Services, including all information relevant to safety risks and hazards (potential or real) that may impact upon the provision of the Services.
- 2.2 Unless otherwise agreed, the Client shall promptly obtain all access, approvals, authorities, licences and permits necessary to enable Cardno to provide the Services.
- 2.3 The Client shall communicate with Cardno by and through the Client's Representative, who shall have authority to bind the Client in respect of all matters arising out of or in connection with the Agreement.
- 2.4 If the Client becomes aware of any matter that will change the scope, character, quality, sequence or timing of the Services, then the Client shall promptly notify Cardno of that matter.
- 2.5 The Client shall cooperate with Cardno and shall not interfere with or obstruct the performance of the Services.
- 2.6 The Client shall ensure that adequate public liability and contract works insurances are obtained and maintained for the course of the Project. The policies shall name Cardno as an insured and shall contain a waiver of subrogation against co-insureds.

PART 3 - PAYMENT TO CARDNO FOR THE SERVICES

- 3.1 The Client shall pay Cardno the Fee as described in the Fee Proposal and, where stated in the Fee Proposal, the Reimbursable Expenses.
- 3.2 Unless agreed otherwise, where Cardno considers that an external consultant or contractor is required to enable Cardno to provide the Services, then Cardno may (with the approval of and as the agent of the Client) engage such a consultant or contractor on terms determined by Cardno. In respect of any such engagement, the Client acknowledges that the consultant or contractor is the agent of the Client and the Client indemnifies Cardno against all liability arising from the engagement including, without limitation, liability to third parties. Alternatively, if it is mutually agreed that Cardno engage the consultant or contractor as a sub-contractor to Cardno then the client shall pay Cardno an administration fee equal to 15% of the total cost of that consultant or contractor.
- 3.3 Unless agreed otherwise, Cardno shall issue progress claims at monthly intervals on the fifteenth (15th) day of the month and the Client shall pay each claim in full within 14 days of the date of the progress claim.
- 3.4 Cardno is entitled to charge the Client interest at the rate of 10% per annum on any overdue payments from the due date for payment up to an including the date of payment.

- 3.5 The Client shall pay all costs and expenses (including, without limitation, legal costs) incurred by Cardno in pursuing any overdue payments.
- 3.6 If the Client disputes a portion of a progress claim submitted by Cardno, then the Client shall pay the undisputed portion to Cardno within 14 days of the issue of that claim and shall notify Cardno in writing of the reasons for disputing the remaining portion. Cardno may then invoke the dispute resolution procedure in Part 6 of these Terms of Engagement.
- 3.7 If the performance of the Services is delayed by an act, omission or default of the Client or its employees, agents, consultants or contractors, then the Client shall pay Cardno for the costs and expenses incurred by Cardno as a result of the delay.
- 3.8 If the Client varies the scope, character, quality, sequence or timing of the Services, then Cardno may vary the Fee accordingly.
- 3.9 If after the date of the Agreement there is any change to the laws, by-laws, regulations or ordinances of the Commonwealth of Australia or a State or Territory of Australia (or any country or territory where the Project is located or Services are to be performed) or any Statutory Authority, and that change directly or indirectly increases or decreases the Fees or Reimbursable Expenses, then Cardno may vary the Fee and Reimbursable Expenses accordingly.
- 3.10 In addition to the Fee and, if applicable, the Reimbursable Expenses, the Client shall pay any Goods and Services Tax that may be payable in respect of the provision of the Services.

PART 4 - SCOPE OF LIABILITY

- 4.1 The maximum liability of Cardno arising out of the performance or non-performance of the Services, whether under the law of contract, tort or otherwise, shall be the lesser of \$200,000 or the Fee.
- 4.2 Cardno shall not be liable to the Client for:
 - (1) the acts, omissions or defaults of other contractors or consultants engaged by the Client (including consultants or contractors engaged by Cardno as agent for the Client);
 - (2) any changes, alterations or additions to the Services made by others without the express approval of Cardno;
 - (3) any Services that are not performed in accordance with the Agreement, unless Cardno is notified in writing of the non-performance within 1 year of the provision of those Services;
 - (4) the accuracy of any quantity and cost estimates;
 - (5) any loss of use, opportunity or production, loss of interest, earnings or profit, holding or financial costs, business interruption or any indirect or consequential losses; and
 - (6) any loss, damage or claim to the extent that such loss, damage or claim was caused or contributed to by the Client or its employees, agents, consultants or contractors.
- 4.3 Cardno shall not be liable to any third party for any claim whatsoever arising out of or in connection with the Services, and the Client indemnifies Cardno accordingly.
- 4.4 To the fullest extent permitted by law, all warranties implied by statute or otherwise are excluded. In the event of a breach by Cardno of a warranty implied under the *Trade Practices Act 1974* and which cannot be contractually excluded, Cardno's liability to the Client for such breach shall be limited to the cost of supplying the Services again.
- 4.5 Cardno shall be deemed to have been discharged from all liability in respect of the Services, whether under the law of contract, tort or otherwise, at the expiration of one year from the completion of the Services, and the Client (and persons claiming through or under the Client) shall not be entitled to commence any action or claim whatsoever against Cardno (or any employee contractor or sub-consultant of Cardno) in respect of the Services after that date.

PART 5 - COPYRIGHT AND USE OF DOCUMENTS

- 5.1 Copyright and the intellectual property in all drawings, reports, specifications, bills of quantities, calculations and other documents produced by Cardno in connection with the Services shall remain vested in Cardno.
- 5.2 Provided the Client pays Cardno in full for the Fee and, if applicable, the Reimbursable Expenses, the Client shall:
- (1) subject to paragraph (2), have a licence to use the intellectual property referred to in clause 5.1 for the purpose of completing the Project;
 - (2) be entitled to hard copies or pdf electronic copies of drawings, reports and other final documents, but shall not be entitled to other electronic versions, data, drafts or working documents.
- 5.3 Cardno may with the prior consent of the Client publish, either alone or in conjunction with others, articles, photographs and other illustrations relating to the Project.
- 5.4 If during the course of providing the Services Cardno researches, develops, discovers or first reduces to practice a concept, product or process which is capable of being patented or commercialised, then such concept, product or process shall be and remain the property of Cardno and the Client shall not use, infringe or otherwise appropriate the same without first obtaining the written consent of Cardno. Cardno shall be solely responsible for the cost of commercialisation of any such concept, product or process.

PART 6 - DISPUTE RESOLUTION

- 6.1 If a dispute arises out of or in connection with the Agreement, then either party may by notice in writing served on the other party require that such dispute be resolved in accordance with clause 6.2.
- 6.2 Within 14 days after service of a notice under clause 6.1, senior representatives of each party must meet and use their best endeavours to resolve the dispute or agree on a process for resolving the dispute. If the dispute is not resolved or a process for resolving the dispute is not agreed to within 28 days of service of the notice referred to in clause 6.1, then the dispute may be resolved through litigation.

PART 7 - TERMINATION OF SERVICES

- 7.1 The Client may by notice in writing to Cardno terminate the Agreement if:
- (1) Cardno is in breach of the terms of the Agreement and the breach has not been remedied within 14 days (or longer period as the Client may allow) of the service by the Client on Cardno of a notice requiring the breach to be remedied; or
 - (2) the Client serves on Cardno a notice requiring that the Agreement be terminated on a date specified in the notice being not less than 60 days after the date of issue of the notice.
- 7.2 Cardno may by notice in writing to the Client suspend the provision of the Services or terminate the Agreement if:
- (1) the Client is in breach of any of the obligations in Part 3 of these Terms of Engagement; or
 - (2) the Client is in breach of any other obligations under the Agreement and the breach has not been remedied within 14 days (or such longer period as Cardno may allow) of the service by Cardno on the Client of a notice requiring the breach to be remedied; or
 - (3) Cardno serves on the Client a notice requiring that the Agreement be terminated on a date specified in the notice being not less than 60 days after the date of the notice; or
 - (4) the Client becomes insolvent or appears unable to pay its debts.
- 7.3 If Cardno suspends the provision of the Services pursuant to clause 7.2, then Cardno may, at its sole discretion and at any time, either terminate the Agreement or recommence the Services by notice in writing to the Client.

- 7.4 All loss, damage, cost, expense or loss of profit incurred by Cardno as a result of suspension or termination under clause 7.2 shall be borne by the Client.
- 7.5 Termination shall be without prejudice to any claim that either party may have against the other in respect of any breach of the terms of the Agreement which occurred prior to the date of termination.
- 7.6 If the Agreement is terminated for any reason other than a breach of the Agreement by Cardno, then the Client shall pay Cardno for the Services carried out prior to the date of termination and all other costs and expenses incurred by Cardno as a result of the termination (including, without limitation, cancellation charges of external consultants).

PART 8 - GENERAL MATTERS

- 8.1 Unless the context otherwise requires:
- “Agreement” means the entire agreement between the Client and Cardno as evidenced by these Terms of Engagement and any documents expressly referred to within the Terms of Engagement.
- “Cardno” means Cardno Victoria Pty Ltd trading as Cardno Grogan Richards.
- “Cardno’s Representative” means such other person appointed by Cardno from time to time.
- “Client” means the entity that Cardno is to provide the Services to.
- “Client’s Representative” means such person appointed by the Client from time to time and advised to Cardno.
- “Documentation” means all relevant documentation, information, and particulars provided by the client to Cardno.
- “Fee” means as described in the Fee Proposal.
- “Project” means the work as described in the Fee Proposal.
- “Reimbursable Expenses” means all costs and expenses (in addition to the Fee) that are incurred by Cardno in the performance of the Services.
- “Services” means the services it means the services as described by Cardno in the Fee Proposal.
- 8.2 Cardno and the Client each binds itself and its partners, successors, executors, administrators, assigns and legal representatives to the other party to this Agreement and to the partners, successors, executors, administrator, assigns and legal representatives of the other party in respect to all covenants and obligations of this Agreement.
- 8.3 Neither Cardno nor the Client shall assign, sublet or transfer any right or obligation under the Agreement without the prior written consent of the other party. Unless specifically stated to the contrary in any written consent to an assignment, no assignment shall release or discharge the assignor from any obligation under the Agreement.
- 8.4 Nothing in clause 8.3 shall prevent Cardno from employing such persons or companies, as it may deem appropriate to assist it in the performance of the Services.
- 8.5 A notice purported to be served under this Agreement shall be deemed to have been properly served if the same is in writing and is sent to the usual business address of the recipient by mail, telegram, facsimile, email or telex message or personal delivery for which a receipt is obtained.
- 8.6 Where any ambiguity, inconsistency or discrepancy exists between these Terms of Engagement and any other document forming part of the Agreement, these Terms of Engagement shall take precedence.
- 8.7 Unless expressly agreed in writing, the terms and conditions contained in any subsequent purchase orders from the Client shall not form part of the Agreement.
- 8.8 The Agreement shall be governed by the law of the State in which the majority of the Services are provided, or the law of Queensland if the majority of the Services are performed outside Australia.