

Avisure general terms and conditions

Contractual agreement

Terms of agreement to perform services

1. Engagement

The parties agree Avisure will provide to the Client the Services on the terms set out in this Agreement.

2. Standard of services

(a) Avisure undertakes to perform the Services with reasonable care, in a competent manner and in accordance with the practices and methods generally recognised and adopted by reputable and competent organisations providing consulting services similar to the Services.

(b) The Client agrees that

(i) the Services are for the management and the strategy for the mitigation of risk;

(ii) Avisure does not guarantee nor provides any warranty that the Services will prevent the occurrence of bird strike or other wildlife hazard;

(iii) the Fee and the proper and timely provision and extent of the Services and the performance of the Agreement generally are subject to any Assumptions and Exclusions listed in the Proposal.

3. Directions, Information and Co-operation

(a) In performing the Services, Avisure will comply with all reasonable directions of the Client.

(b) Before or at the commencement of the Services the Client will provide Avisure with all pertinent information and any information requested by Avisure (including documents, maps, reports and data and any Approval) relating to the Services, and the Client warrants that such information (including documents, maps, reports and data) is accurate, free from defects, fit for purpose and not misleading .

(c) The Client shall notify Avisure if the Client becomes aware of any matter which may change the scope or timing of the Services.

(d) The Client shall cooperate with Avisure in all reasonable ways regarding the conduct of the Services.

4. Fee

(a) In consideration for the Services, the Client will pay Avisure the Fee as specified in item 9

("Agreed fee for services") of the Contract details.

(b) If the Client requests or requires work or services to be provided that are in addition to or more extensive than the Services, or information (including documents, maps, reports and data) provided to Avisure by the Client after entering into this Agreement gives rise to work additional or more extensive than the Services anticipated at the time of entering into this Agreement or the Client changes the scope or timing of the Services, such will be a Variation to the Services.

(c) Avisure shall not be obliged to undertake a Variation.

(d) Subject to clause 7, where Avisure agrees to undertake a Variation, the Client shall pay Avisure the value of the Variation in accordance with the breakdown of the Fee provided in the Proposal or Contract details and if no such breakdown is provided or the breakdown is not applicable to the Variation, as agreed.

5. Expenses

If the Client requires Avisure to incur any out of pocket expenses such as air travel and accommodation, Avisure will be reimbursed for such unusual and reasonable expenses. Avisure will produce all relevant receipts, vouchers, dockets or other appropriate evidence of the expense. All other costs and expenses associated with the performance of the Services will be paid by Avisure.

6. Invoicing

(a) Avisure will issue invoices according to the schedule in the Proposal.

(b) Subject to any lesser time periods that might be applicable where any Security of Payments Legislation applies to the Services, the Client shall pay the amount due to Avisure within 14 days after the receipt of the invoice unless the Client reasonably disputes that the work or part of the Services invoiced has not been performed in accordance with the Agreement and, within 14 days of receipt of the invoice, serves a Notice on Avisure detailing the nature of the dispute in relation to the invoice. In the event of a dispute over fees or invoicing, the parties agree to use reasonable endeavours to settle the dispute by negotiation.

(c) The Client agrees that if it fails to pay all monies claimed in an invoice, when such payment is due, Avisure will be entitled to a payment of interest on the monies outstanding calculated from the due date for payment at the Reserve Bank published annual Official Cash Rate at the time the payment is due, plus 4%. The parties agree that such interest is calculated as a genuine pre estimate as

to the cost to Avisure of late payment and is not a penalty.

7. Term of services

7.1 Subject to the time of the provision of all information and documents required to be provided by the Client, the Services will commence on the date specified in item 6 (“Commencement date”) of the Contract details. Subject to any earlier termination provided for under this Agreement, the Agreement will continue until the date specified in item 7 (“Period for provision of services”) of the Contract details or as agreed in writing between the parties. Either party may at any time terminate the Agreement by giving not less than 30 days written notice to the other party.

7.2 Where

- (a) The Commencement date is delayed by more than 3 months;
- (b) The Services are not completed within the Period for provision of services;

and such delay is not due to any act, error or omission of Avisure, Avisure will be entitled to increase that part of the Fee applicable to the Services delayed.

Avisure will seek to negotiate this increase with the Client based on the increased costs to Avisure but in the absence of agreement, Avisure will be entitled to terminate the Agreement.

7.3 Either party may terminate this Agreement, with immediate effect, by written notice to the other party if an Insolvency Event occurs with respect to that other party

7.4 Where the Agreement is terminated pursuant to this clause 7, the Client shall pay Avisure for that part of the Services rendered to the date of termination.

7.5 Termination of the Services pursuant to this clause 7 will be without prejudice to any rights and remedies existing immediately prior to the termination.

8. Termination for default

If a party (“defaulting party”) defaults in a material respect in the performance of its obligations under this Agreement, and fails to remedy the default within 14 days after notice from the other party (“non-defaulting party”) requiring the default to be rectified, then the non-defaulting party may terminate the Services by notice to the defaulting party. Termination of the Services will be without prejudice to any rights and remedies resulting from such termination.

9. Nature of relationship

Avisure is an independent contractor. Avisure does not

have authority to bind or to incur any obligation on behalf of the Client, by contract or otherwise, except with the express written instruction of the Client. Avisure is not an agent, partner or employee of the Client.

10. Sub-contractors

Avisure may engage sub-contractors or sub-consultants to assist in the provision of the Services.

11. GST

In this clause:

- a) “GST” has the meaning given to that term in the GST Law.

“GST Law” has the meaning give to that term in A New Tax System (Goods and Services Tax) Act 1999 (Cth).

“Taxable supply” has the same meaning as in the GST Law.

- b) If there is a taxable supply under or in connection with this Agreement, then the party making the taxable supply (“supplier”) will be entitled to charge the other party (“recipient”) for any GST payable by the supplier in respect of the taxable supply.
- c) The supplier will provide a tax invoice (or an adjustment note) to the recipient in respect of the taxable supply. The recipient will pay to the supplier the amount of the GST within 14 days thereafter.

12. Intellectual property

12.1 Definition

In this Agreement, Intellectual Property Rights means all intellectual property rights including all current and future registered and unregistered rights in respect of copyright, designs, trademarks, know-how, confidential information, patents, inventions and discoveries both in Australia and throughout the world.

12.2 Avisure intellectual property

Any Intellectual Property Rights held by Avisure prior to entry into this Agreement or developed independently of this Agreement and all Intellectual Property rights created as a result of the Services (Avisure’s IP) remain the property of Avisure. However, Avisure grants the Client a non-exclusive, perpetual, irrevocable, and royalty free licence to use Avisure’s IP only to the extent required to utilise any report, product, information or other deliverable created for the Client through provision of the Services.

13. Insurance

At all times during provision of the Services, Avisure will have

- i. A public liability with a limit of liability of \$50,000,000;
- ii. Workers’ compensation insurance as required by

law and

- iii. In respect of any professional services undertaken as part of the Services, a professional indemnity policy with a limit of indemnity of \$10,000,000 for any one claim or related claims and \$20,000,000 in the aggregate.

14. Liability

14.1 To the extent allowable by law, the liability of Avisure and its Personnel to the Client for or in respect of any Claim, excluding gross negligence or criminal conduct, is limited to (at the option of Avisure) the cost of resupply of the Services or to the resupply of the Services by Avisure.

14.2 Notwithstanding sub-clause 14.1 and to the extent permitted by law, Avisure and its Personnel in no event will be liable to the Client for or in respect of any Claim

- i. for or in respect of Consequential Loss incurred or suffered by the Client or for which the Client is or may be liable;
- ii. arising from or related to errors or omissions in plans, designs, specifications or other information provided to Avisure by the Client;
- iii. notified to Avisure after 12 months from completion of the Services or any earlier termination of the Agreement.

15. Notices

15.1 Method of Giving Notices

A notice, consent approval or other communication (each a Notice) under this Agreement must be in writing signed by or on behalf of the person giving it, addressed to the person to whom it is to be given.

15.2 Time of Receipt

A Notice may be given by personal delivery, pre-paid mail or email and is treated as having been given and received:

- a) If delivery to a person's address, on the day of delivery if a business day, otherwise on the next business day;
- b) If sent by pre-paid mail, on the third business day after posting; or
- c) If transmitted by email to a person's address, on the day of transmission if a business day, otherwise on the next business day.

15.3 Addresses for Notices

For the purpose of this Agreement, the addresses of the parties, for service of Notices or documents are set out in item 14 ("Avisure notice details") and item 15 ("Client notice details") of the Contract details.

16. Governing Law

16.1 This Agreement is governed by the law in force in Queensland.

16.2 The parties submit to the non-exclusive jurisdiction of the courts of the State or Territory referred to in clause 16.1 and any courts which may hear appeals from those courts in respect of any proceedings in connection with this Agreement.

17. Changes to the Agreement

Modifications and amendments to this Agreement must be in writing signed by each of the parties.

18. General and Definitions

In this Agreement:

- 18.1** "Avisure" means Avisure Pty Limited (ABN 26 131 545 054)
- 18.2** "Agreement" means this agreement including the Contract details.
- 18.3** "Act of Bankruptcy" means any of the events described in section 40 of the *Bankruptcy Act 1966* (Cth).
- 18.4** "Approval" means any authorisation, approval, consent, permit or other authority required by any relevant law or Government Authority necessary to carry out the Services.
- 18.5** "Approval Authority" means any Government Authority or other authority or body from which an Approval is required (including any relevant building certifier and/or local government).
- 18.6** "Claim" means any claim, action, cause of action, suit, demand, set off, defence, judgment, arbitration, adjudication, determination or proceedings of any description including (but not limited to) for or in respect of Loss.
- 18.7** "Client" means the party specified on the acceptance form of this Agreement or indicated in the Contract details.
- 18.8** "Consequential Loss" means pure economic loss, loss of actual or anticipated profits or revenues, any Loss associated with, arising out of or due to loss of production, goodwill, business, opportunity, contract, agreement, use or productivity, Loss by reason of shutdown, business interruption, business closure or non-operation or the cost or increased cost of borrowing, capital, financing or refinancing) howsoever caused, including (but not limited to) caused or contributed to by the negligence of Avisure or its Personnel.
- 18.9** "Fee" means the amount payable for the performance of the Services referred to in the Contract details.

- 18.10 “Insolvency Event”** means:
- a) in respect of a corporation:
 - i. the appointment of an administrator;
 - ii. the passing of a resolution in favour of a deed of company arrangement;
 - iii. the appointment of a liquidator;
 - iv. the appointment of a provisional liquidator;
 - v. the appointment of a Controller;
 - vi. the making of an application to the court for a winding-up order;
 - vii. the calling of a meeting of directors or members to consider a resolution for winding-up;
 - viii. the making of an application for approval of a compromise or arrangement among creditors (except for the purpose of solvent reorganisation);
 - ix. being Insolvent;
 - x. deregistration; or
 - xi. when either party informs the other party that it is not financially able to perform or continue to perform its obligations under this Agreement.
 - b) in respect of an individual:
 - i. an Act of Bankruptcy; or
 - ii. being Insolvent; and
 - c) in respect of a partnership, where any of the events in (a) or (b) occurs in relation to any corporation or individual who is a member of the partnership;
 - d) the party suspends payments of its debts generally;
 - e) the party is or states they are or is presumed by law to be insolvent;
 - f) the party takes a step for the purposes of entering into a compromise or arrangement with any of their creditors or with any of their members.
- 18.11** “Loss” includes any loss, damage, expense, liability, cost, damages, indemnity, fine or penalty present or future, fixed or unascertained, actual or contingent and whether arising under contract (including any breach of the Agreement), in equity (including breach of an equitable duty, breach of confidentiality or breach of fiduciary duty), under statute (including breach of statutory duty) (to the maximum extent possible), in tort (including, but not limited to, for negligence or negligent misrepresentation of Avisure or its Personnel) or otherwise (including in restitution and unjust enrichment).
- 18.12** “Personnel” includes all employees, officer holders, directors, sub-consultants sub-contractors and agents.
- 18.13** “Proposal” means the offer to perform the Services for the Fee as set out and to the standard and extent detailed therein.
- 18.14** “Security of Payments Legislation” means

Building and Construction Industry Security of Payment Act 1999 (‘NSW’)
Building and Construction Industry Security of Payment Act 2002 (‘Vic’).
Building and Construction Industry Security of Payment Act 2009 (‘SA’).
Building and Construction Industry Security of Payment Act 2009 (‘Tas’).
Building and Construction Industry (Security of Payment) Act 2009 (‘ACT’).
Building and Construction Industry (Security of Payment) Act 2021 (WA) and
Construction Contracts (Security of Payments) Act 2004 (‘NT’); or any other equivalent legislation applicable to the Services. that contain mandatory provisions in relation to payment claims and payment.

- 18.15** “Services” means the service referred to in the Contract details (as such Services may be amended by agreement).
- 18.16** “Variation” has the meaning given in clause 4 (b).
- 18.17** The parties’ representatives shall meet within 5 business days of a dispute arising under the Agreement in an attempt to resolve the dispute. Where the parties are unable to resolve a dispute, the dispute shall be referred to a mediator in accordance with the Mediation Rules of the Institute of Arbitrators and Mediators Australia and the parties will act in good faith in attempts to agree to a resolution of the dispute. If agreed in writing by both parties another form of resolution make be used.
- 18.18** The following clauses survive the expiry, completion or termination of this Agreement- the warranty given in clause 3 (b), clause 6 (c), clause 7, clause 12, clause 14.

Building Industry Fairness (Security of Payment) Act 2017 (‘QLD’)