



TERMS & CONDITIONS

Enhancing life safety during emergencies...

TERMS & CONDITIONS

These Terms apply to Services carried out and/or Products supplied by Pre-EMPT and should be read in conjunction with the Proposal. Unless agreed in writing by Pre-EMPT, these Terms will apply to the exclusion of any inconsistent terms and conditions which may appear on any order form or other document issued by the Client. For the avoidance of doubt, any subsequent terms provided by the Client are excluded and any acceptance or counter offer by the Client of these Terms will be deemed to be an acceptance of these Terms. These Terms will apply to any variations to the scope of the Services and Products which may be agreed by the Parties or ordered by the Client and to any supplementary services which may be agreed by the Parties.

The Client will be deemed to have accepted these Terms when the Client signs the Proposal (where indicated) or when Pre-EMPT commences the Services and/or supplies the Products at the request (written or otherwise) of the Client.

1. SERVICES AND PRODUCTS

1.1 Pre-EMPT will provide the Services to the Client at the:

- a. times;
- b. location;
- c. frequency;
- d. quantity; and
- e. manner,

as specified in the Proposal or otherwise agreed by the Parties.

1.2 Pre-EMPT will perform the Services in a competent and professional manner and in accordance with these Terms.

1.3 The Parties may require Variations to the Services and Products set out in the Proposal. Either party may issue a notice in writing specifying the Variations required to the Services and Products. Once served the parties will negotiate in good faith on the terms of that Variation including any change to the Proposal.

1.4 The Client will ensure that Pre-EMPT has access to all sites and buildings as required by or necessary for Pre-EMPT to undertake the Services. Notwithstanding any other provision in these Terms, Pre-EMPT will have no liability to the Client or any third party to the extent that the performance of the Services is not able to be undertaken (in whole or in part) due to access to any relevant sites or buildings being prevented or delayed due to the Client or their respective employees or contractors expressing safety or health concerns associated with such access.

1.5 This clause 2.5 will only apply if Pre-EMPT has agreed to supply Products to the Client under the Proposal:

- a. Pre-EMPT agrees to supply the Client with the Products for the applicable Fee.
- b. All Products sold or supplied by Pre-EMPT to the Client are sold subject to these Terms.
- c. Any delivery times under the Proposal are estimates only and Pre-EMPT will not be liable for any late delivery of Products and will not be liable for any loss, damage or delay occasioned from late delivery of the Products.
- d. Pre-EMPT's flat rate shipping fee may be subject to change where delivery of the Products is commercially unviable in Pre-EMPT's reasonable opinion.

- e. The risk of the Products passes to the Client upon delivery.
- f. Title in the Products will not pass from Pre-EMPT to the Client until such time as the whole of the applicable Fees have been received by Pre-EMPT in cleared funds. Until such time as the applicable Fees have been paid in full, the Client agrees that Pre-EMPT may enter the location at which the Products have been delivered without liability of any nature and re-take possession of the Products.
- g. Should the Products be re-sold by the Client, the Client agrees to hold such part of the proceeds of sale as represents the unpaid applicable Fees for the products as the beneficial property of Pre-EMPT and will pay such amount to Pre-EMPT upon request.
- h. The Client warrants that the Products are required for business purposes and not for personal, domestic or household use or consumption.

2. REPORTS

2.1 Where the Services include the provision of a report to the Client by Pre-EMPT, the Client acknowledges and agrees that:

- a. the report has been prepared for the purpose set out in the Proposal and/or report;
- b. unless otherwise specified in the Proposal or the report, the report has been prepared for the sole use of the Client;
- c. the Client may only use the report for the purpose for which it was prepared;
- d. the Client cannot disclose the report or permit the report to be disclosed to any other person without the prior written consent of Pre-EMPT;
- e. the Client must not permit any other person to use or rely on the report without the prior written consent of Pre-EMPT; and
- f. Pre-EMPT is not responsible to the Client or any other person for the implementation of any recommendation or preferred course of action identified or referred to in the report or otherwise in the course of providing the Services.

2.2 Pre-EMPT may issue preliminary findings or reports when undertaking the Services which require verification (either by Pre-EMPT or by third parties). Where Pre-EMPT issues preliminary findings or reports to the Client, the Client acknowledges and agrees that:

- a. the Client can only rely on the preliminary findings or reports to the extent specified in those findings or reports; and
- b. the decision to undertake further investigative activities as recommended by Pre-EMPT rests solely with the Client and Pre-EMPT accepts no responsibility in that regard.

2.3 Limitation of Reports

- a. All reports are prepared for the Client in general accordance with industry recognised standards and procedures recognised at the time of the work.
- b. Each report presents the results of the assessment based on the quoted Scope of Services (unless otherwise agreed in writing) for the specific purposes of the commission.
- c. No warranties expressed or implied are offered or provided to any third parties and no liability will be accepted for use of any report by any third parties.
- d. Information provided by third parties was assumed to be correct and complete.
- e. Pre-EMPT does not assume any liability for misrepresentation of information by any party or for matters not visible, accessible or present on the subject property during any site works conducted during the time of the work.
- f. Each report should be read in full. No responsibility is accepted for use of any part of a report in any other context or for any other purpose or by third parties.

- g. Opinions and judgments expressed in any report are based on Pre-EMPT's understanding of current regulatory standards and should not be construed as legal opinions.

3. TRAINING

3.1 In the event that the Services include training, upon arrival at the training venue at the agreed time, Pre-EMPT representative will attempt to commence the training session on time. If there are no attendees present, Pre-EMPT will do all that is reasonably possible to contact a responsible representative of the Client or its agent at the venue to assemble the required attendees. If the session is not able to commence within 30 minutes of the designated time, Pre-EMPT responsibility for delivery of the training Services will be deemed to have been fulfilled.

3.2 In the event that the representative of Pre-EMPT conducting the training Services is delayed in his or her arrival at the training venue for any reason or is unable to attend at the designated venue at the designated time, Pre-EMPT will contact the Client or its agent as soon as possible and if necessary, the session will be rescheduled at no further Fee to the Client.

3.3 The training Services will not be postponed in the event of inclement weather.

3.4 In the event that the Services include training and the Client or its agent cancels or varies the Training Date and such cancellation or variation takes place within 5 business days of the scheduled Training Date, Pre-EMPT may charge the Client a cancellation fee which is equivalent to 100% of the fee payable by the Client in respect of that training.

3.5 Should the Client cancel or vary the Training Date, location or time at which any of the Services are to be provided, the Client agrees to bear any reasonable costs or expenses suffered or incurred by Pre-EMPT as a consequence of such cancellation or variation.

3.6 Attendees may not satisfactorily complete a training session or necessarily achieve a standard of competence acceptable to the Client. The Client acknowledges and agrees that the successful completion of attendees to a training session is dependent upon the attendees' attitude, ability, motivation and efforts.

3.7 Pre-EMPT makes no representations or warranties that any particular attendees will successfully complete a training session or achieve a standard of competence acceptable to the Client.

4. EVACUATION DIAGRAMS

4.1 In the event that the Products and Services include the design and installation of evacuation diagrams, the Client acknowledges that the floor plans are representative only and not to scale.

4.2 Pre-EMPT will make all reasonable endeavours to capture the details required by the Client and industry recognised standards in its preparation of the evacuation diagrams.

4.3 Pre-EMPT is not liable for any Claim which relates directly or indirectly to:

- a. any errors in or omissions from the evacuation diagrams; or
- b. any liability, loss, damage, costs or expense incurred or suffered by the Client caused by the evacuation diagram falling, or otherwise becoming detached, from the wall it was affixed to during installation by Pre-EMPT.

5. CLIENT OBLIGATIONS

5.1 In addition to your obligations under clause 6.1, the Client will:

- a. make available all relevant information regarding or relevant to the nature of the particular Services and Products required to be provided, including the location of delivery of those Services and Products, at least 5 Business Days prior to the specified date in the Proposal;
- b. provide all assistance reasonably required by Pre-EMPT in a timely manner so that Pre-EMPT may perform the Services and supply the Products, including without limitation, using the Client's best endeavours to ensure that attendees are ready and available at the agreed Training Dates for the Services to be provided to them; and
- c. ensure that each location at which Pre-EMPT is required to provide the Services or supply the Products that there is a current policy of insurance in accordance with clause 16

6. FEES

6.1 The Client will:

- a. pay Pre-EMPT the Fee in consideration of Pre-EMPT providing the Services and Products; and
- b. reimburse Pre-EMPT for any out of pocket expenses authorised in advance by the Client and incurred in connection with the provision of the Services and Products.

6.2 Pre-EMPT may vary the Fee by notice to the Client if:

- a. Pre-EMPT undertakes additional Services and Products at the request by the Client;
- b. Pre-EMPT undertakes additional work or services which are required as a result of unexpected or undisclosed conditions encountered by Pre-EMPT whilst providing the Services and Products;
- c. the Services and Products are varied by agreement of the Parties in accordance with clause 2.3 of these Terms; and
- d. a change of Law or technological advance occurs during the provision of the Services and Products which (in Pre-EMPT's reasonable opinion) results in increased cost to Pre-EMPT in the provision of the Services and Products.

6.3 If the Proposal is not accepted by the Client within the validity period of the Proposal, Pre-EMPT may (in its sole discretion) vary the Fees set out in the Proposal at any time prior to acceptance of the Proposal by notice in writing to the Client.

6.4 The Client will pay all Tax Invoices without deduction or set off within 14 days of the date of the relevant Invoice.

6.5 Pre-EMPT may charge and the Client must pay interest on all amounts not paid by the Client on the payment due date at the Default Interest Rate. Interest will be calculated daily and may be capitalised monthly until full payment has been made by the Client.

6.6 Allowance to the Client of additional time to pay the Fee will not constitute a waiver by Pre-EMPT of any of these Terms.

6.7 In the event of non-payment of the Fee in accordance with these Terms, the Client will pay all reasonable collection expenses, legal costs and any other expenses incurred by Pre-EMPT in the event of non-payment.

6.8 Pre-EMPT may cease the Services or provision of Products immediately without notice to the Client if the Client fails to pay any Tax Invoice in accordance with these Terms. Pre-EMPT will not be obliged to recommence the Services or provision of Products until such time as the overdue amount is paid in full to Pre-EMPT.

6.9 Should the Client cancel or terminate the Services or provision of Products prior to the End Date, the Client agrees to pay the Fee which would have been paid by the Client through to the End Date.

7. GST

7.1 If an amount of GST is payable on a supply under these Terms:

- a. the recipient of the supply must pay, in addition to the other consideration payable or to be provided for the supply, an amount equal to the GST payable on the supply; and
- b. the recipient must pay the additional amount to the supplier at the same time as the other consideration, upon receipt of a tax invoice.

7.2 If for any reason the amount of GST payable on a supply varies from the GST amount paid to the supplier, the parties will account to each other for the difference.

7.3 If an amount paid by the supplier as and for GST under these Terms is overpaid, and Division 142 of the GST Act applies to that amount, then the amount is not recoverable from the supplier unless the supplier can recover that amount from the Commissioner.

7.4 Clause 6.9 and 7.1 do not apply to the extent that the GST on the supply is payable by the recipient under Division 83 or Division 84 of the GST Act.

7.5 If any party is entitled to payment of any costs or expenses by way of reimbursement or indemnity, the claim must exclude any amount for which that party (or representative member if the party is a member of a GST group) may obtain an input tax credit.

7.6 Unless clearly indicated to the contrary, all amounts referred to in these Terms, other than in clauses 6.9 to 7.4 (inclusive), are GST exclusive.

7.7 Unless clearly indicated to the contrary, GST and other terms used in this clause (and in other provisions of this Agreement referable to GST) have the meanings given to those terms by the GST Act.

7.8 This clause will continue to apply after expiration or termination of these Terms.

8. PRICE REVIEW

8.1 Subject to clause 5.3, the Fee is fixed for the first Contract Year.

8.2 Subject to clause 5.1, in each Contract Year, the Fee will be increased or decreased in accordance with the Annual Price Review Notice. Pre-EMPT will not issue more than one Annual Price Review Notice in respect of each Contract Year. Annual Price Review Notices issued in respect of:

- a. the current Contract Year: will take effect 30 days from the date of issue; and
- b. a future Contract Year: will take effect on the Effective Date.

8.3 Pre-EMPT is also entitled, by written notice to the Client, to increase or decrease the Fee in accordance with the Extraordinary Price Review Notice.

8.4 The Client shall be deemed to have accepted Pre-EMPT's Extraordinary Price Review Notice unless it provides notice in writing of its non-acceptance within 30 days of the date of the Extraordinary Price Review Notice. All accepted (or deemed accepted) Extraordinary Price Review Notices will take effect 5 days after the date of the acceptance (or deemed acceptance) of the Extraordinary Price Review Notice by the Client.

9. INDEMNITY AND LIABILITY

9.1 Pre-EMPT indemnifies the Client against any liability, loss, damage, costs or expense incurred or suffered by the Client arising from any negligent act or omission of Pre-EMPT, or an officer, employee, or agent of Pre-

EMPT in connection with the provision of the Services and Products, except to the extent that any such losses are caused or contributed to by the Client, the Client's attendees or any other person.

9.2 The Client is liable for and must indemnify Pre-EMPT in respect of any Claim which Pre-EMPT may suffer or incur arising out of:

- a. a breach of these Terms by the Client;
- b. an act or omission of the Client, the Client's attendees or any other person; and
- c. a breach of the Law by the Client, the Client's attendees or any other person,

except, in each case, to the extent that any such Claim is caused or contributed to by the negligent act or omission of Pre-EMPT.

9.3 Notwithstanding any other provision of these Terms, to the maximum extent permitted by law:

- a. neither party will be liable to the other party for or in connection with any Claim for Consequential Loss;
- b. Pre-EMPT is not liable for any Claim which relates directly or indirectly to:
 - i. Pre-EMPT following accepted guidelines in accordance with the Law when supplying the Services and Products to the Client;
 - ii. a change in Law (which was applicable during the period in which Pre-EMPT provided the Services and Products) or technological advance if such change in Law or technological advance occurred after the completion of the Services and Products by Pre-EMPT; or
 - iii. the failure of the Client to comply with any applicable Laws or recommendations provided by Pre-EMPT or any other negligent or wrongful act or omission of the Client;
- c. Pre-EMPT's liability in respect of defective Services and Products is limited to the re-supply of the defective Services and Products to the Client or refund of the Fee as set out in clause 7.1 below; and
- d. subject to clause 6.3(b), the maximum cumulative liability of Pre-EMPT to the Client in respect of, in connection with and in relation to any and all Claims arising out of or in connection with these Terms or the Services and Products is an amount equal to 100% of the Fee payable by the Client to Pre-EMPT under the Proposal.

10. DEFECTIVE SERVICES OR PRODUCTS

10.1 In the event that the Client determines (acting reasonably) that the Services and Products or any part of the Services and Products do not comply with description of the Services and Products set out in the Proposal or are defective, Pre-EMPT (in its absolute discretion) will either re-supply the defective Services and Products at no cost to the Client or refund the Fee (or a portion of the Fee) which relates to defective Services and Products.

11. TERMINATION

11.1 Pre-EMPT may terminate these Terms at any time and for any reason by giving 30 days written notice to the Client.

11.2 If either party breaches these Terms and the breach can be remedied, the Non-Defaulting Party may give the Defaulting Party no less than 30 days written notice to remedy that breach.

11.3 If the breach is not remedied within the period stipulated in the notice in accordance with clause 10.2, the Non-Defaulting Party may give the Defaulting Party a further written notice immediately terminating these Terms.

11.4 Either party may terminate these Terms by written notice to the other party immediately upon any of the following events:

- a. if the other party commits a serious breach of these Terms which cannot be remedied;
- b. if the other party ceases to do business as a going concern;
- c. if an Insolvency Event occurs in relation to the other party; or
- d. if the other party commits a serious criminal offence.

11.5 If these Terms are terminated pursuant to clauses 10.1, 10.3 or 10.4:

- a. Pre-EMPT will not be liable to the Client for any Claims by the Client relating to the termination of these Terms by Pre-EMPT, including any payment for losses or expenses incurred by the Client;
- b. the Client will pay Pre-EMPT all Fees relating to the Services and Products provided by Pre-EMPT up to the date of termination of these Terms; and
- c. in the event that the Services and Products have not been completed by Pre-EMPT as at the date of termination of these Terms, the Client acknowledges and agrees that it cannot use or rely upon any interim reports, results or findings issued by Pre-EMPT prior to the date of termination.

11.6 The Client must deliver to Pre-EMPT immediately upon request and on termination of these Terms, all facilities, plant and equipment, notes, and other records relating to the business or affairs of Pre-EMPT which Pre-EMPT may provide to the Client for the purposes of these Terms or which the Client may acquire during the Term.

12. INTELLECTUAL PROPERTY

12.1 Pre-EMPT owns all right, title and interest in Intellectual Property developed, owned or acquired by Pre-EMPT prior to the commencement of the Services and Products, including any modification or improvement on that Intellectual Property.

12.2 The Client owns all right, title and interest in Intellectual Property developed, owned or acquired by the Client prior to the commencement of the Services and Products.

12.3 The Client agrees that Pre-EMPT owns all right, title and interest in Intellectual Property made, written or developed by Pre-EMPT in the course of and for the purpose of providing the Services and Products in accordance with these Terms.

12.4 To enable the Client to enjoy the benefit or end result of the Services and Products, Pre-EMPT grants to the Client, on full payment of the applicable Fee, a non-exclusive, perpetual, irrevocable, worldwide, royalty free licence (with the no right to grant sub-licences) to use, solely for that purpose, such of Pre-EMPT's Intellectual Property as is strictly necessary to enjoy that benefit or end result.

12.5 If necessary to enable Pre-EMPT to undertake the Services and provide the Products, the Client grants to Pre-EMPT a non-exclusive, perpetual, irrevocable, worldwide, royalty free licence to use, solely for that purpose, such of the Client's Intellectual Property as is strictly necessary to undertake the Services and provide the Products.

13. EXCLUSIVITY AND NON-SOLICITATION

13.1 During the Term, the Client agrees to exclusively refer all of the Client's requirements for services and products the same as or similar to the Services and Products referred to in the Proposal and, in so doing, the Client agrees not to engage any person to supply services and products the same as or similar to the Services and Products specified in the Proposal.

13.2 During the Term and for a period of 12 months following the termination or expiration of these Terms, the Client will not, without the consent of Pre-EMPT, solicit, induce or otherwise attempt to persuade any employee, consultant or contractor of Pre-EMPT to cease working for Pre-EMPT and/or work for the Client.

13.3 During the Term and for a period of 12 months following the termination or expiration of these Terms, Pre-EMPT will not, without the consent of the Client, solicit, induce or otherwise attempt to persuade any employee, consultant or contractor of the Client to cease working for the Client and/or work for Pre-EMPT.

14. CONFIDENTIALITY

14.1 Each party owns all of its Confidential Information.

14.2 During these Terms and after termination of these Terms, each party can use or disclose the other party's Confidential Information only:

- a. to perform the Services or obtain the benefit of the Services;
- b. to provide the Products
- c. to professional advisors on a confidential basis for the purpose of obtaining advice;
- d. if the disclosing party has consented in writing; or
- e. if required by Law.

14.3 Upon the earlier of:

- a. the termination or expiry of these Terms; or
- b. a demand from the disclosing party, the recipient of Confidential Information must:
- c. at the disclosing party's discretion, deliver to the disclosing party or destroy all Confidential Information in the recipient's possession or under its control; and
- d. delete all Confidential Information held electronically in any medium in the recipient's possession or under its control.

15. DISPUTE RESOLUTION

15.1 Any Dispute is to be resolved in accordance with the procedure provided in clause 14.

15.2 In the event of a Dispute, the party seeking to have it resolved must issue to the other Parties a Dispute Notice.

15.3 Within 14 days of receipt of a Dispute Notice, the senior management of the Parties to the Dispute respectively must meet in Sydney, New South Wales (or such other place agreed by the Parties) to negotiate resolution of the Dispute unless the Parties agree to hold such discussions by teleconference or via other electronic means. The Parties agree that those negotiations must be conducted in good faith.

15.4 In the event that the Dispute is not resolved in accordance with clause 14.3, either party will be entitled to take the matter to litigation in the courts of New South Wales.

15.5 Nothing contained in clause 14 will prevent a party from seeking urgent interlocutory relief.

16. INSURANCE

16.1 The Client must at all relevant times effect and maintain, at its own cost, with reputable insurers and on terms consistent with prudent risk management:

- a. a public and products liability insurance policy that covers all Claims made in consequence of or in respect of bodily injury, death or damage to property and that provides coverage for an amount of not less than \$20 million for each and every Claim;
- b. workers' compensation insurance in the name of the Client covering all liabilities, whether arising under statute, common law or civil law, in relation to the death of, or injury to, employees or any person deemed to be an employee of the Client;

- c. insurance that provides cover against loss or damage resulting from any loss of, damage to, theft of, or destruction by any cause of any property of the Client's for which Pre-EMPT is responsible; and
- d. a motor vehicle policy in respect of liability to third parties for personal injury, death, disease or illness, or liability to third parties for loss of or damage to property.

17. FORCE MAJEURE

17.1 A party will not be liable for its inability to perform its obligations under these Terms as a result of a Force Majeure Event. If a Force Majeure Event occurs, the party suffering it will notify the other party of the occurrence and expected duration of that event. The party suffering the Force Majeure Event must use all reasonable endeavours to prevent the force majeure occurrence.

17.2 If a Force Majeure Event renders performance of these Terms impossible for a continuous period of at least 30 days, either party may, by notice to the other, terminate these Terms.

18. GENERAL

18.1 Severability

- a. Every provision of these Terms will be deemed severable as far as possible from the other provisions of these Terms.
- b. If any provision is found to be void, illegal or unenforceable for any reason, it will be deemed to be severed and omitted from these Terms. These Terms, with the offending provision severed and omitted and with any consequential amendment if necessary, will otherwise remain in full force.

18.2 Entire Agreement

- a. These Terms and the Proposal contain the entire agreement between the Parties in respect of the subject matter of these Terms and the Proposal.
- b. These Terms supersede any prior agreement or understanding (if any) between the Parties in relation to the subject matter of these Terms or the Proposal.

18.3 Further Assurances

Each party will take all steps and do all such things as may be reasonably requested by any other party to give effect to any of the transactions contemplated by these Terms.

18.4 Amendments

Any amendment to these Terms must be made in writing executed by the Parties.

18.5 Assignment

- a. Pre-EMPT may assign its interest under these Terms at any time.
- b. The Client can only assign its interest under these Terms with the prior written consent of Pre-EMPT, which must not be unreasonably withheld.

18.6 Notices

Any notice to or by a party:

- a. must be in writing addressed to the other party and signed by or on behalf of the party giving the notice; and
- b. is regarded as given by the sender and received by the addressee:
 - i. if by delivered in person, when delivered to the addressee;

- ii. if delivered by post, 2 Business Days after the date the notice is posted;
- iii. if delivered by facsimile, upon the sender receiving a transmission report from the sender's facsimile machine indicating that the facsimile has been successfully transmitted in full, and
- iv. if by email:
 - upon receiving an acknowledgment from the recipient party; or
 - (except where the sender is put on notice that the email may not have been successfully sent) upon the return receipt being delivered by the automated email system to the sender, but the delivery or receipt is on a day which is not a Business Day or is after 4.00pm (addressee's time) it is deemed to be given on the succeeding Business Day.

18.7 Relationship of Parties

The Parties are independent contractors. The Parties are not principal and agent, partners, trustee and beneficiary or employer and employee.

18.8 Governing Law and Jurisdiction

These Terms will be construed according to the laws of New South Wales and the Parties submit themselves to the non-exclusive jurisdiction of the courts of New South Wales and any competent appellate courts.

18.9 Reliance on Information Provided By Others

- a. The Client acknowledges and agrees that the investigations will rely on information provided to Pre-EMPT by the Client or other third parties.
- b. Pre-EMPT makes no representation or warranty regarding the completeness or accuracy of any descriptions or conclusions based on information supplied to it by the Client, its employees or other third parties during provision of the Services and Products.
- c. The Client releases and indemnifies Pre-EMPT from and against all Claims arising from errors, omissions or inaccuracies in documents or other information provided to Pre-EMPT by the Client, its employees or other third parties.

18.10 Waiver

- a. The Client releases and indemnifies Pre-EMPT in respect of any Claims arising from:
- b. alleged damage to building surfaces caused by the Services and Products;
- c. additional costs for specialised access requirements or isolations required for the investigation; and
- d. hazardous building materials in areas not accessed or accessible by Pre-EMPT.

19. DEFINITIONS

In these Terms:

19.1 **Annual Price Review Notice** means the notice by Pre-EMPT in writing to the Client to reflect movements in the average of the "Average Weekly Total Earnings - Australia" as published by the Australian Bureau of Statistics in its publication Catalogue No 6302.0 in Table 1 in respect of the previous Contract Year;

19.2 **Claim** means, in relation to any person, a damage, loss, cost, expense or liability incurred by the person or a claim, demand, action, proceeding or judgement made against the person, however arising, whether in contract, tort (including but not limited to negligence), equity, product liability, under any warranty or indemnity, by operation of statute or otherwise, and whether present or future, fixed or unascertained and actual or contingent;

19.3 **Client** means the client to which Pre-EMPT will provide the Services and Products as set out in the Proposal;

19.4 **Confidential Information** means any information obtained by one party concerning the other party or its business activities and that:

- a. by its nature is confidential;
- b. is designated by the disclosing party as confidential; or
- c. the recipient knows or ought to know is confidential; and
- d. includes details of the Proposal, including the Fee, but excludes information that:
- e. is publicly available, except as a result of a breach of these Terms; or
- f. was disclosed to the recipient by a third party who was not under a duty of confidentiality in relation to that disclosure.

19.5 **Consequential Loss** includes loss of profit, loss of revenue, loss of production, loss of or loss of use of any plant or facility, business interruption, loss of business opportunity or business contract (in each case whether direct or indirect) or any indirect, consequential, special, contingent or penal damage or loss;

19.6 **Contract Year** means each 12 month period commencing on the date on which the Services and Products are first provided by Pre-EMPT, and each anniversary thereof;

19.7 **Default Interest Rate** means the rate of interest equal to the National Australia Bank Indicator Lending Rate on amounts over \$100,000.00 plus 2% per annum (or if there is no such rate by that name, then an interest rate nominated by Pre-EMPT as charged by National Australia Bank or its successor);

19.8 **Defaulting Party** means a party who breaches these Terms;

19.9 **Dispute** means any dispute or agreement in relation to or in connection with these Terms or the Services and Products in any matter;

19.10 **Dispute Notice** means a notice setting out all details relevant to the Dispute;

19.11 **Effective Date** means the later of 30 days from the date of issue of the Annual Price Review Notice, or the first day of that future Contract Year;

19.12 **End Date** means the date upon which the Services and Products must be completed as specified in the Proposal (if any);

19.13 **Extraordinary Price Review Notice** means the notice by Pre-EMPT in writing to the Client where it forms the view (acting reasonably, and having regard to a number of factors, including but not limited to fluctuations in foreign exchange rates, labour costs, duties, tariffs or legislative changes) that the provision of Services and Products to the Client has become commercially unviable to Pre-EMPT;

19.14 **Fee** means the fee(s) payable by the Client to Pre-EMPT for the Services and Products (as applicable) as set out in the Proposal;

19.15 **Force Majeure Event** includes earthquake, flood, landslide, fire, explosion, war, invasion, act of foreign enemies, hostilities, civil war, rebellion, revolution, insurrection, military or usurped power, martial law or confiscation by order or any government or other authority, change in Law, strikes, lockouts, labour difficulties, rationing or unavailability of essential equipment, labour or supplies and disruption or unavailability of utilities and services which are beyond a party's control;

19.16 **GST Act** means A New Tax System (Goods and Services Tax) Act 1999 (Cth) as amended, superseded or replaced from time to time;

- 19.17 **Insolvency Event** means any of the following:
- the threatened or actual appointment of a voluntary administrator, liquidator, provisional liquidator, receiver, receiver and manager, controller, trustee in bankruptcy, administrator or other person of similar office, including any application to a court for such an appointment;
 - entry into or proposing an arrangement or compromise for the benefit of creditors;
 - the levy or enforcement of a writ of execution, order or judgment;
 - becoming unable to pay debts as and when they fall due for payment;
 - the taking of possession or control of any asset by a person under an encumbrance; or
 - failing to satisfy or to apply to have set aside a statutory demand, a bankruptcy notice or other similar form of statutory notice within the time specified in the demand or notice;
- 19.18 **Intellectual Property** means all intellectual property rights including, without limitation:
- patents, copyright (including future copyright), registered designs, rights in circuit layouts, trademarks, inventions, secret processes, discoveries and improvement and modifications of any kind;
 - the right to have Confidential Information kept confidential; and
 - any application or right to apply for registration of any of the rights defined in this clause;
- 19.19 **Law** includes all legislation, statutes, enactments, regulations, standards, by-laws, treaties, ordinances, equity and other such unwritten laws applicable to any act, omission, conduct, matter or thing for any reason;
- 19.20 **Non-Defaulting Party** means a party who has not breached these Terms;
- 19.21 **Parties** means Pre-EMPT and the Client;
- 19.22 **Pre-EMPT** means Pre-EMPT Pty Ltd ACN 162 880 917 or its subsidiary providing the Services and Products as set out in the Proposal;
- 19.23 **Products** means the goods or products referred to in the Proposal (or such other goods or products as Pre-EMPT may agree to provide the Client from time to time);
- 19.24 **Proposal** means the proposal to which these Terms are attached which sets out the Services and Products and the Fee(s);
- 19.25 **Services** means the services to be provided by Pre-EMPT as set out in the Proposal as varied in accordance with these Terms;
- 19.26 **Tax Invoice** means the invoice issued by Pre-EMPT in accordance with these Terms and has the respective meaning ascribed to it in the GST Act;
- 19.27 **Term** means the term of this agreement between Pre-EMPT and the Client, commencing on the date specified in the Proposal and ending on the End Date, unless terminated in accordance with clause 11;
- 19.28 **Training Date** means the agreed date on which training is to be provided by Pre-EMPT to the Client;
- 19.29 **Variation** means a variation to the Services and Products as set out in the Proposal.



THANK YOU

Pre-EMPT Pty Ltd
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