



GENERAL TERMS AND CONDITIONS

1.0 Definitions & Interpretation

In the Agreement, unless the context otherwise requires:

- 1.1 Additional Compliance Work** means additional compliance work in excess of what was included in the Agreement in order to comply with the development conditions within the WAPC Conditional Approval or to satisfy the Stakeholder Agencies named in the WAPC Conditional Approval. This may include entering into legal agreements with Stakeholder Agency(s) and the payment of Statutory Charges.
- 1.2 Agreement** means an agreement with the Company for the provision and supply of authorised surveys, the performance of which is bound by these general terms and conditions.
- 1.3 Claims** includes any claim, action, damage, loss, liability, demand, notice, proceedings, charge, expenses, outgoing, payment or liabilities of any nature including, without limitation, any costs, whether or not the subject of a court order, connected with or incidental to or arising from the Services, whether known or unknown at the date of the Agreement, whether arising at common law or in equity or under statute or otherwise.
- 1.4 Client** means the Registered Proprietor(s) of the Subject Lot(s), or the person(s) or company(s) authorised by the Registered Proprietor(s) to act on their behalf.
- 1.5 Commencement Date** means the date the Agreement is executed by the parties or, if executed on separate days, the date on which the Agreement is executed by the last party to do so.
- 1.6 Company** means Automated Surveys Pty Ltd ACN 009 303 931.
- 1.7 Consequential Loss** means loss beyond the normal measure of direct damages and includes without limitation and whether or not such loss would be within the normal measure of direct damages, indirect loss, loss of profit, loss of revenue, loss of business, loss of actual or anticipated savings, loss of bargain, loss of business reputation, loss of use, cost of capital or costs of substitute goods, facilities or services and loss of opportunity (including opportunities to enter into arrangements with third parties).
- 1.8 CPI** means the Consumer Price Index All Groups (Perth) as published or made available by the Australian Bureau of Statistics on the basis that:
 - (a) the reference base for the index is the fiscal year 1989/90;
 - (b) if the Australian Statistician updates the reference base of the index, appropriate arithmetical adjustments will be made to preserve the intended continuity of the calculation; and
 - (c) if the index is discontinued, references to and uses of the index in the Agreement will be replaced by the measurement or indicator which, according to the the Company's nominated accountant acting as an expert and not an arbitrator, most closely represents movements in economic inflation during the relevant period.
- 1.9 Fees** means any fees detailed in Schedule A (Survey Costs and Fees) or described in the Agreement, as varied in accordance with clause 4 in Schedule C and/or clauses 3.4, 3.6, 4.8 and 4.9 below.
- 1.10 Insolvency Event** means the happening of any of these events in relation to a party:

- (a) the party enters into a compromise or arrangement (or announces one) under section 411 of the *Corporations Act 2001* (Cth);
- (b) a managing controller is appointed over the whole (or substantially the whole) of the party's property; or
- (c) the party enters into voluntary administration.

1.11 Major Variation is a Variation that is not a Minor Variation.

1.12 Minor Variation is a Variation where the cost of which does not exceed thirty percent (30%) of the gross value of the project. The gross value of the project is described in the Agreement.

1.13 PCQ means a Price Contract Quotation in the form of an unsigned agreement including any schedule(s), or a written quotation for Services. In the case where an unsigned Agreement is provided to the Client, the PCQ subsequently becomes the Agreement upon signing.

1.14 Services means the services specified in Schedules A and C or described in the Agreement and any other services that the Client instructs the Company to undertake and the Company agrees to undertake.

1.15 Stakeholder Agency means a statutory authority with an interest in the subdivision. This includes but is not limited to Western Power, Water Corporation and Local Government Authority.

1.16 Statutory Charges means fees, charges and penalties payable to a Stakeholder Agency with respect to the Services provided.

1.17 Subject Lot(s) means the real property(s) referred to in the Agreement on which the Services are undertaken.

1.18 Variation means a written variation to the Agreement in terms of the Services and Fees.

1.19 WAPC means the Western Australian Planning Commission.

1.20 WAPC Conditional Approval means a subdivision approval which is subject to certain development conditions. This approval is issued by the WAPC and is valid for period of three (3) or four (4) years from the date of issue.

1.21 WAPC Preliminary Approval means WAPC Conditional Approval.

2. Services and PCQ

2.1 The Company agrees to provide the Services to the Client subject to the terms of the Agreement.

2.2 The Client's terms and conditions, howsoever provided, do not form part of the Agreement (even if any representative of the Company signs those terms and conditions and/or they are annexed to the Agreement or any quote or purchase order).

2.3 Any variation or changes to the Agreement (other than an update to the Agreement by the Company) may only be made if it:

- (a) is in writing;
- (b) is signed by authorised managers of both parties; and
- (c) expressly states that it is a variation to the Agreement, and

the parties agree and acknowledge that their representatives and employees that are not authorised managers as referred to in clause 2.2 above do not have the authority to vary the Agreement, or to agree that the Agreement do not apply to a supply to which the Agreement would otherwise apply.

2.4 The provisions of the Agreement shall take effect from the Commencement Date.

- 2.5 The PCQ is valid for a period of 30 days from the date of the PCQ (“**Validity Period**”). The Client agrees and acknowledges that if the PCQ is signed after the Validity Period, the Company may either:
- (a) elect not to undertake the Services by notifying the Client, in which case the PCQ and the Agreement shall terminate immediately; or
 - (b) review the prices quoted and make the necessary adjustments to these prices in order to ensure Fees and Statutory Charges are accurate and current at the Commencement Date, in

which case the PCQ and the Agreement shall remain in full force and operation.

- 2.6 The PCQ is based on information and instructions provided by the Client and the Client agrees and acknowledges that planning compliance criteria has not been verified as at the date of the PCQ.
- 2.7 Prices and costs quoted are, without exception, an estimate only. The Company reserves the right to vary such prices and costs once planning and surveying requirements are fully identified and confirmed. Such Variations shall be notified to the Client in writing and dealt with in accordance with clause 3.6 below.

3. Additional Compliance Work

- 3.1. Depending on the development conditions stipulated in the WAPC Conditional Approval and/or the Services as defined in the Agreement, the Company may be required to provide additional land surveying services in order to meet WAPC and/or Stakeholder Agency requirements for the development ("**Additional Compliance Work**").
- 3.2. Examples of such Additional Compliance Work include but is not limited to:
 - (a) encroachment surveys;
 - (b) identification surveys of one or more structures or features on the Subject Lot(s);
 - (c) surveys of Western Power high tension power lines & infrastructure;
 - (d) surveys to locate exact positions of sewer manholes to enable the drawing of sewer easement(s) on the plan; and
 - (e) "as-constructed" surveys as part of the works undertaken to provide utility services (such as sewer, power and water) to the Subject Lot, or the subdivided lots, whichever the case may be.
- 3.3. The Client agrees and acknowledges that Additional Compliance Work will generally incur further costs to the Client, which will be described in a Variation.
- 3.4. The Client agrees and acknowledges that it is extremely difficult to ascertain the likelihood of Additional Compliance Work being required until such time as the WAPC Conditional Approval is issued. These risk events therefore cannot be factored into the PCQ/Agreement and can only be dealt with by way of Variations.
- 3.5. The Company provides no warranty regarding the existence of or likelihood of any Additional Compliance Work and shall not be liable to the Client for any costs, loss, damage or expenses incurred by the Client howsoever and whatsoever arising from any Additional Compliance Work.
- 3.6. Variations are dealt with as follows:
 - (a) If Additional Compliance Work is required the Company shall provide the Client with a Variation which sets out the estimated cost of the Additional Compliance Work. Provision of the Services by the Company shall resume upon the Variation being accepted by Client.
 - (b) Where a Major Variation to the scope of work becomes necessary, the Company will prepare a Variation order setting out the change(s) to the Company's scope of work and the associated cost impact on the project. This Variation is forwarded to the Client for consideration and acceptance.
 - (c) The Company is obliged to proceed with a Major Variation only after:
 - (i) a signed Variation order has been received from the Client; or
 - (ii) instructions in writing from the Client to proceed are received after the Client has been provided with a Variation order,whichever is more expedient.
 - (d) In the case of a Minor Variation, the Company will provide the Client with an initial, verbal cost estimate. This is then followed up electronically (digitally), typically with an e-mail to the Client

with a firm estimate.

- (e) The Company is obliged to proceed with a Minor Variation only after the Client accepts the estimate by providing the Company with instructions in writing to proceed.
- 3.7. Subject to the receipt of a signed Variation order or instructions in writing to proceed, the Client authorises the Company to undertake any Additional Compliance Work. The Client also acknowledges and agrees that costs arising from these Variations are not included in the PCQ or Agreement and are additional costs for which the Client shall be liable to pay the Company, such costs to be itemised at the time of invoicing.
- 3.8. The Client must provide to the Company in writing all relevant documentation pertaining to any potential Additional Compliance Work or other issues that may affect the Services prior to the Commencement Date.

4. Fees and Other Charges

- 4.1. The Company may, in its discretion, require the Client to pay the Deposit in order to commence the Services. The Company reserves the right not to provide any Services until any required Deposit is paid in full.
- 4.2. Subject to clause 4.3, all Fees are payable strictly within 30 days of the date of an invoice provided by the Company to the Client.
- 4.3. Notwithstanding clause 4.2, all Fees must be paid in full and without deduction prior to the lodgement of any plans or documentation (including, but not limited to, subdivision plans) with Landgate and/or WAPC. For the avoidance of doubt, the Company reserves the right to withhold the lodgement or registration of such documents with Landgate or WAPC until the Fees have been paid to the Company in full.
- 4.4. The Client is required to pay for all Statutory Charges, including all increases to such Statutory Charges.
- 4.5. The Client authorises the Company to pay for any Statutory Charges specified in clause 4.4 directly as and when such charges become payable, although the Company is not required to do so.
- 4.6. The exception to clause 4.5 shall be in the case of the WAPC subdivision application fee, where the Client is required to pay the fee directly to the "Western Australian Planning Commission", when requested to do so by the Company.
- 4.7. An amount equal to the movement in CPI from the date of quotation may be applied (at the Company's discretion) to any Fees which incur GST at time of invoicing.
- 4.8. The Company may charge the Client interest calculated at the Reserve Bank of Australia Cash Rate Target plus 4% with respect to any monies that may be owing to the Company and unpaid when due, and such interest shall be calculated from the due date for payment until the date of actual payment.
- 4.9. The Client agrees and acknowledges that the Company reserves the right not to commence or continue the Services (as the case may be) until such time as the Client has paid all outstanding amounts in full.
- 4.10. Costs or expenses incurred by the Company in recovering any outstanding amounts including (but not limited to) all legal fees (on a solicitor client basis) or costs, debt collection costs and bank fees on dishonoured cheques are also payable on demand by the Client.
- 4.11. In consideration of the Company agreeing to provide the Services, the Client (both severally and jointly, as the case may be) agrees in the event that any monies the Client may owe the Company from time to time under the Agreement should not be paid within the time requirements specified in this clause 4, in addition to the Company's right to charge interest, the Client as the beneficial owner

charges in favour of the Company all its rights, title and interest in land (wherever situated) or any property (personal or real) owned by the Client (whether jointly or otherwise) to secure the payment of those monies and the Client acknowledges that the Company is entitled to register an absolute caveat over any land of which the Client is the registered proprietor and perfect any such security so as to ensure that such charge is enforceable as a security.

5. Timeframes

- 5.1. Any time frames provided to the Client for any Services to be provided are strictly (without exception) an estimate only and are subject to variation due to factors beyond the Company's reasonable control, including (but not limited to) an Event as defined in clause 10.2, resource availability, scheduling constraints, programmed equipment maintenance downtime, incomplete or inaccurate instructions from the Client, Additional Compliance Work, project stakeholder delays and Variations. Project duration estimates are based on the best information available to the Company on the date of the PCQ/Agreement was drafted.
- 5.2. The Company shall not be liable for any loss, cost expense, damage or any other amount that the Client may incur or suffer howsoever and whatsoever arising from any delay of a time frame provided to the Client or the delay of the provision of the Services (save and except delay caused by a negligent act or omission of the Company).

6. Provision of Documents

- 6.1. The Client warrants that any plans or other documents provided to the Company ("**Client Documents**") are accurate and complete, and do not infringe any intellectual property rights subsisting in third parties. The Client shall indemnify the Company against any Claims made against the Company, or costs or expenses incurred by the Company, arising from a breach of this warranty.
- 6.2. If any existing WAPC/Stakeholder Agency approvals or Client Documents contain errors, inaccuracies or are otherwise incomplete, the Company will not be liable for any defect in the performance of the Services arising from the use of said documents.
- 6.3. If the Company is required to verify any Client Documents, such work will constitute a Variation and will be dealt with in accordance with clause 3.7 above. For the avoidance of doubt, any costs or expenses attributable to the verification of any Client Documents shall be in addition to the Fee Estimate provided to the Client.

7. Termination

- 7.1 The Client may terminate the Agreement by providing the Company with at least 5 days' written notice provided that the Client has paid all issued accounts. The Client acknowledges that in such case, the Client shall:
 - (a) forfeit the Deposit; and
 - (b) compensate the Company for all fees for work performed by the Company up to the date of termination (to the extent they exceed the Deposit and haven't already been paid).
- 7.2. The Agreement may be terminated by the Company:
 - (a) if the Client breaches any term of the Agreement and fails to remedy the breach within 7 days after receiving written notice from the Company requiring the breach to be remedied. A breach may include, without limiting the generality of the following:
 - (i) a failure to pay any of the Company's invoices by the due date for payment;
 - (ii) a failure or refusal to sign a Variation; or
 - (iii) a failure to provide full disclosure of any information relevant to the Services, the Agreement, the PCQ or any agreed scope of work.

- (b) immediately by notice in writing if:
 - (i) a judgement, order or encumbrance is enforced, or becomes enforceable upon any of the Client's property;
 - (ii) an order for payment is made or judgment for an amount exceeding \$10,000 is entered or signed against the Client which is not satisfied within 7 days;
 - (iii) the Client suspends or delays payment of its debts;
 - (iv) the Client is unable to pay its debts as and when fall due or commits an act of bankruptcy;
 - (v) the Client (being a corporation) has a liquidator appointed to it, or has a mortgagee of the corporation assume control of, or a receiver appointed to any of the assets or undertakings of the Client (not being an Insolvency Event);
 - (vi) the Client (being a corporation) is deregistered; or
 - (vii) to the extent permitted by law, an Insolvency Event occurs in respect of the Client;
 - (c) by providing written notice to the Client where the Company forms the view (acting reasonably) that the Services cannot be performed or completed;
 - (d) a change occurs in the Client's circumstances which, in the Company's reasonable opinion, may have a material adverse effect on the Client's ability to comply with its obligations under this Agreement. Examples include (but are not limited to):
 - (i) a change in the Client's financial position up and until an Insolvency Event occurring;
 - (ii) the Client factoring its debts; or
 - (iii) the Client becoming party to litigation, arbitration or any other administrative proceeding.
- 7.3. The Client shall be liable for and will indemnify the Company against all damages, costs (including without limitation legal fees on a solicitor-client basis), losses and expenses reasonably incurred or suffered by the Company arising from the termination of the Agreement (save and except a termination under clauses 7.1 and 7.2(c)).
- 7.4. On termination of the Agreement, each party retains its rights against the other party in respect of any past breach, in addition to any other rights, powers or remedies provided by law.

8. Indemnification

- 8.1 The Client indemnifies the Company against any loss, damage, costs, Claim, suit or demand, suffered or incurred by the Company arising out of or in connection with:
- (a) any act, omission, failure or breach by the Client, the Registered Proprietor or their employees, agents or contractors;
 - (b) the provision of incorrect, inaccurate or invalidated instructions or information provided by the Client to the Company; or
 - (c) any Claims made by third parties against the Company arising directly or indirectly out of the provision of the Services.
- 8.2. The indemnity in clause 8.1 shall be reduced proportionately to the extent that a negligent act or omission of the Company (or its employees, contractors or agents) caused the loss or damage.
- 8.3. This clause 8 survives the termination of the Agreement.

9. Liability

- 9.1 Where the Client acquires Services from the Company for the purpose of on-supplying to another person ("**Consumer**") or otherwise permitted by the Australian Consumer Law, the Company shall not be liable for any consequential loss suffered by the Client unless otherwise stated in a contract or agreement. However, to the extent required by the Australian Consumer Law, the Company may be liable for any consequential loss suffered by a Consumer.
- 9.2. To the extent permitted by law, the Company's liability under any condition or warranty which cannot legally be excluded is limited to:

- (a) supplying the services again; or
 - (b) paying the cost of having the services supplied again,
- and otherwise is limited to 10% of the Fees paid to the Company.

10. Force Majeure

- 10.1. A party (**Affected Party**) is not liable for any delay or failure to perform an obligation (other than to pay money) under the Agreement caused by an act of God, fire, war, insurrection or other armed conflict, riot, vandalism or sabotage, strike, lockout, ban, transport or port accident or congestion, pandemic, epidemic, quarantine of persons or goods, limitation of work or other industrial disturbance or any law, rule, regulation, order, requirement or restraint imposed by any government or governmental agency whether local, state, national or international (other than an order, requirement or restraint resulting from the Affected Party's breach of any law, permit or authorisation).
- 10.2. The Affected Party must notify each other party as soon as practical of any anticipated delay or failure caused by an event specified in clause 10.1 (**Event**).
- 10.3. The performance of the Affected Party's obligation is suspended for the period of delay caused by the Event to the extent performance is prevented by the Event from the date notice is given under clause 10.2 and any such non-performance or delay in performance of the Agreement will not be a breach of the Agreement.
- 10.4. Any party may terminate the Agreement at the expiration of not less than 7 days' notice to the other party if prevention of performance of a material obligation by an Event, or a delay caused by the Event, exceeds 90 days.
- 10.5. If a party terminates the Agreement under clause 10.4, all money previously paid under the Agreement for which no goods, services or other consideration has been provided must be refunded.

11. Copyright, Records & Privacy

- 11.1 All project related plans, digital information, emails, and other documentation created by the Company or retained by the Company (other than original documents provided to the Company by the Client) ("**Records**") in connection with the provision of the Services shall remain the exclusive property of the Company and may be subject to copyright provisions.
- 11.1. The Company collects the Client's and/or the Registered Proprietor's personal information for the purpose of providing the Services and keeping a record of transactions on the Company's file. Personal information can include sensitive health information as required by the Company from time to time. Hard copies of the Company's Privacy Policy are available upon request or can be accessed online at <http://automatedsurveys.com.au/privacy-policy>.
- 11.2. The Company shall not disclose any Records or personal information to any person unless:
- (a) it is required for the purposes of providing the Services;
 - (b) it is required to do so by law; or
 - (c) specifically instructed to do so in writing by the Client.

12. GST

The consideration payable for any supply made or to be made under the Agreement is inclusive of any goods and services tax ("**GST**"), unless otherwise stated to the contrary, in which case the Client agrees that the consideration payable for any such supply shall be increased by an amount equal to the amount of GST payable by us in respect of that supply.

13. Miscellaneous

- 13.1 If any part of the Agreement is, or becomes, void or unenforceable, that part is, or will be, severed from the Agreement so that all parts that are not, or do not become, void or unenforceable remain in full force and effect and are unaffected by that severance.
- 13.1. The Agreement constitutes the entire agreement between the parties with respect to the subject matter of the Agreement and contains all of the representations, warranties, covenants and agreements of the parties in relation to the subject matter of the Agreement as at the date of the Agreement. Any previous understanding, agreement, representation or warranty relating to that subject matter is replaced by the Agreement and has no further effect.
- 13.2. The Agreement is governed by, and are to be construed according to the laws of Western Australia and the parties submit to the exclusive jurisdiction of the courts of Western Australia.
- 13.3. A failure to exercise or delay in exercising any right, power or privilege by any party will not operate as a waiver of that right, power or privilege. A single or partial exercise of any right, power or privilege will not preclude any other or further exercise of that right, power or privilege, or the exercise of any right, power or privilege.
- 13.4. The Agreement may be executed in any number of counterparts, all of which (taken together) constitutes one instrument. A party may execute the Agreement by signing any counterpart. A party who has executed a counterpart of the Agreement may exchange that counterpart with another party by faxing it or otherwise providing a copy to that party.