

Operative Provisions

1. Definitions

- 1.1 The following words have these meanings in this agreement unless the contrary intention appears;
- "Agreement" means this document including any appendix schedule or annexure to it;
- "Charges" means the charge or charges for the services which are specified in the Service Agreement;
- "Default Rate" means 10% per annum or such other rate as may be specified by Dunbar Services by 60 days prior written notice;
- "Due Date" means the date specified in clause 5.1;
- "Effective Date" means the date of this agreement as specified in the Service Agreement;
- "Initial Term" means the period specified on the cover sheet (or if not so specified the period of 12 months) commencing on the effective date;
- "IAA" means the Institute of Arbitrators Australia;
- "Invoiced Amount" means the charges invoiced by Dunbar Services;
- "Services" means any or all of the actions specified in the Service Agreement;
- "Sub-Contractor" includes any person who under the contract or arrangement with any person (whether or not Dunbar Services) performs or agrees to perform the services.

2. Interpretation

- 2.0 If the customer consists of more than one person, this Agreement binds them jointly and each of them severally.
- 2.1 This Agreement binds, in addition to the parties, their respective successors and permitted assigns.
- 2.2 A reference to money is in Australian dollars (\$) unless otherwise stated.
- 2.3 Singular includes the plural and vice versa.

3. Agreement

- 3.0 Dunbar Services agrees to provide to the customer the services in accordance with the terms of this Agreement.
- 3.1 The customer acknowledges that this Agreement constitutes the entire agreement between the parties.
- 3.2 On the customer or authorised representative signing this agreement it will constitute a binding contract between Dunbar Services and the customer.

4. Terms of the Agreement

- 4.0 This agreement will commence on the effective date and continues for the initial term unless terminated earlier in accordance with clause.
- 4.1 Either party may terminate this agreement with effect from the end of the initial term by giving the other party written notice not less than 60 days before the end of the initial term.
- 4.2 If this Agreement is not terminated as at the end of the initial term, this Agreement continues automatically for equal succeeding periods (equivalent to the initial term) until it is terminated with effect from the end of the then current period by either party giving written notice to the other not less than 60 days before the end of that current period.
- 4.3 Without limiting their other rights under this Agreement, either party may terminate this Agreement with immediate effect by giving written notice to the other party if:
- An insolvency event occurs in respect of the other party or
 - The other party materially breaches this Agreement and fails to correct the breach within 14 days after notice of that breach from the non-breaching party.
- 4.4 Dunbar Services may immediately terminate this Agreement if the customer is in breach of or fails to comply with any of its obligations under this Agreement and fails to remedy that breach or non-compliance (if capable of remedy) or pay reasonable compensation to Dunbar

Services (if not capable of remedy) within 14 business days after receiving notice from Dunbar Services to remedy the breach or non-compliance.

- 4.5 The termination of this Agreement will not affect the rights and obligations of either party up to the date of termination, nor, any other right or remedy which Dunbar Services may have against the customer at the time of termination.

5. Payment

- 5.0 The customer agrees to pay Dunbar Services the charges at the rates specified in the Service Agreement.
- 5.1 The customer agrees to pay Dunbar Services the charges invoiced by Dunbar Services ("Invoiced Amount") within 14 days of the date of the invoice ("Due Date").
- 5.2 If the customer fails to pay an invoiced amount by the due date, the customer must pay to Dunbar Services interest at a default rate calculated on the invoiced amount, calculated and payable daily, computed from the due date until the invoiced amount is paid.
- 5.3 All fees and charges payable by the customer under this Agreement are exclusive of any taxes, fees and other Government charges or levies. The customer must pay all those taxes and other Government levies or charges immediately they become due and must fully pay an indemnity to Dunbar Services against all such payments.
- 5.4 On termination of this Agreement for any reason, the customer will not be entitled to a refund of any of the charges paid.

6. Variation of Charges

- 6.0 Dunbar Services may from time to time vary any or all of the charges (unless tenure is specified).
- 6.1 The variation shall be effective on the expiration of 30 days written notice of the variation.

7. Transport

- 7.0 If the nominated place of delivery is unattended on a nominated day or if delivery of service cannot otherwise be affected by Dunbar Services, the customer must pay an indemnity to Dunbar Services for the cost of re-delivery to the customer.
- 7.1 The customer is responsible to Dunbar Services for all labour expenses incurred by Dunbar Services arising from any delay in excess of 15 minutes in loading or unloading of equipment or filters.

8. Compliance with Laws

- 8.0 Dunbar Services agrees to perform its obligations under this Agreement only to the extent permitted by law.
- 8.1 This contract is governed by and is construed in accordance with the laws in force in Western Australia.

9. Sub-Contractors

- 9.0 Dunbar Services may engage a sub-contractor, and that sub-contractor may in turn engage another sub-contractor to perform any part of the services.
- 9.1 The customer agrees that each exemption, limitation, condition and liberty contained in the Agreement and every right, exemption from the liability, defence and immunity of whatever nature applicable to Dunbar Services or to Dunbar Services is entitled under this Agreement will be available to and extend to protect:
- All sub-contractors;
 - Every servant or agent of Dunbar Services of a sub-contractor;
 - Every other person (other than Dunbar Services) by whom the services or any part of them are provided and all persons who are or may be vicariously liable for the acts or omissions of those persons.

10. Limitation of Liability

10.0 To the extent permitted by law, all conditions and warranties not expressly included in the Agreement are excluded.

10.1 The liability of Dunbar Services in the case of a proven breach of an issued warranty provided by the Trade Practices Act 1974 (as amended), is limited to the payment of the cost of having the services supplied again.

10.2 Subject to clause 10.1, Dunbar Services is not liable for and the customer releases Dunbar Services from all liability in tort, contract, bailment or otherwise in respect of any loss, damage, expense, injury or death arising out of or in connection with the performance, non-performance breach or other matter arising out of this Agreement, including but not limited to, liability due to negligence, breach or the wilful act or default of Dunbar Service, its agents or employees or sub-contractors.

10.3 Despite any other clause of this Agreement, Dunbar Services is not liable for any direct economic or consequential losses arising out of or in connection with this Agreement.

10.4 To the extent that Dunbar Services' liability cannot be limited in the manner provided in clause 8.1-8.3, Dunbar Services' total maximum liability under this Agreement whether relating to direct or indirect loss (including liability due to negligence, breach or wilful act or default) in respect of:

- a) An event or related series of events shall not exceed \$2,500 and;
- b) All events occurring in any 12 month period shall not exceed the lesser of \$5,000 and an amount equivalent to the customer invoiced charges in the past twelve months.

10.5 The customer warrants that it has made its own enquiries as to the suitability and fitness of the services for its own purposes and has not relied on any representation made by Dunbar Services which has not been stated expressly in this Agreement.

11. Assignment

11.0 The customer must not assign any of its rights or obligation under this Agreement.

12. Conflict

12.0 If a dispute arises in connection with this Agreement, then either party may give notice of the dispute in writing to the other party. Any dispute, controversy or claim arising out of or relating to this Agreement, or the breach, termination or invalidity of this Agreement, shall first be subject to the conciliation administered by the IAA conducted and held in accordance with the conciliation rules of IAA in force at the date of this Agreement.

12.1 If a dispute, controversy or claim has not be resolved within 28 days (or such other periods as may be agreed in writing between the parties) after the appointment of a conciliation by the parties, the dispute, controversy or claim shall be submitted to arbitration administered by IAA. The arbitrator shall be agreed between the parties from a panel chosen by

IAA or failing agreement shall be an arbitrator appointed by the chairman of the IAA (WA division).

12.2 Subject to the foregoing, the arbitration shall be conducted and held in accordance with and subject to the Laws of the state of Western Australia. The arbitrator shall not be the same person as the conciliator.

13. Continuing Obligations

13.0 Each obligation and warranty of the party (except an obligation fully performed upon termination of this Agreement) shall continue in force despite termination of this Agreement.

14. Severability

14.0 If a court determines that a word, phrase, sentence, paragraph or clause is unenforceable, illegal or void then it shall be severed and the other provisions of the Agreement shall remain operative.

15. Variation

15.0 The variation of a provision of this Agreement shall be ineffective unless in writing and executed by the parties.

16. Waiver

16.0 A party's failure or delay to exercise a power or right does not operate as a waiver of that power or right.

16.1 The exercise of the power or right does not preclude its future exercises or the exercise of any power or right.

16.2 A waiver is not ineffective unless in writing.

16.3 The waiver of a power or right is effective only in respect of the specific instance to which it relates and for the specific purposes for which it is given.

17. Governing Law

17.0 The laws of Western Australia govern this Agreement.

17.1 The parties submit to the exclusive jurisdiction of the courts of Western Australia and the Commonwealth of Australia for all proceedings arising in connection with this Agreement.

18. Notices

18.0 A notice or other communication required or permitted to be given by a party to another, shall be in writing and delivered or sent by prepaid post or facsimile to the party's address or facsimile number set out in this Agreement or subsequently notified to each party from time to time.

18.1 A notice or other communications is deemed given;

- a) if delivered, upon delivery
- b) if mailed, on the expiration of two business days after posting; or
- c) if sent by facsimile, upon the receipt of a transmission from the sender's facsimile confirming the transmission and the number of pages in the notice or other communication.

19. Independence

19.0 The customer agrees that Dunbar Services is engaged as an independent contractor and that this Agreement does not create any relationships of master and servant between the customer and Dunbar Services.