

Database Workflow Solutions - Terms and Conditions

1. DEFINITIONS

In these Terms, unless the context otherwise requires, capitalised words have the following meanings:

Business Day means a day on which banks are open for business in Adelaide, South Australia excluding a Saturday, Sunday or public holiday in that city.

Client means the recipient of the Services.

Client Material means all data, documentation or other information required to be provided by the Client to DBWF Solutions to enable DBWF Solutions to provide the Services.

Confidential Information means any information concerning a party or its affairs which is marked confidential or which is of a confidential nature, excluding information already known to the other party or which was publicly available at the time of disclosure.

Consequential Loss means loss of profits, loss of anticipated savings, economic loss, interruption of business or any other indirect or consequential loss.

Contract means these Terms and any Proposal (if applicable).

DBWF Solutions means DBWF Solutions Pty Ltd ACN 648 698 891.

Fees mean the fees specified in the Proposal to be paid by the Client for the provision of the Services by DBWF Solutions.

Insolvency Event means the happening of any of these events:

- (a) a party suspends payment of its debts generally;
- (b) a party is or becomes unable to pay its debts when they are due, or is or becomes insolvent within the meaning of the *Corporations Act 2001* (Cth);
- (c) a party enters into, or resolves to enter into, any arrangement, composition or compromise with, or assignment for the benefit of, its creditors or any class of them;
- (d) a receiver, receiver and manager or similar official is appointed over or in respect of any of the assets or undertakings of a party;
- (e) a liquidator or provisional liquidator is appointed in respect of a party;
- (f) an administrator is appointed in respect of a party;

- (g) a trustee is appointed in respect of any of the assets or undertaking of a party;
- (h) an application or order is made for the winding up or dissolution of a party, or a resolution is passed or any steps are taken to pass a resolution for the winding up or dissolution of a party, except for the purpose of an amalgamation or reconstruction which has the other party's prior consent;
- (i) a party goes bankrupt; or
- (j) a party ceases, or threatens to cease, to carry on business.

Intellectual Property includes all rights throughout the world in relation to patents, copyright (including moral rights), designs, registered and unregistered trade marks, trade secrets, know-how and confidential information and all other intellectual property and any right to register those rights, whether created before or after the date of the Contract, and in all cases for the duration of those rights and any renewal.

Liability means liabilities, losses, damages, actions, causes of action, arbitrations, claims, orders, judgments, outgoing costs (including legal costs calculated on a solicitor and own client basis) and expenses, whether present or future, actual or contingent.

Proposal means the proposal provided by DBWF Solutions to the Client setting out the scope of the Services to be provided and the Fees payable for the Services.

Services means the services specified in the Proposal or which are otherwise agreed between the parties to be provided to the Client by DBWF Solutions.

Terms means these standard terms and conditions.

2. CONTRACT

2.1 Application

- (a) The Contract applies to all Services supplied by DBWF Solutions to the Client whether before or after the date of the Proposal.
- (b) The Client is deemed to have read and agreed to be bound by the Contract by signing and returning a copy of the Proposal, instructing DBWF Solutions to perform the Services after receiving the Contract, paying the Fees and/or by otherwise confirming acceptance of the Contract in writing.
- (c) No other terms and conditions or other documents are relevant to the relationship

between the parties unless expressly acknowledged or referred to in, or attached to, the Proposal or these Terms.

2.2 Priority of documentation

In the event of an inconsistency between any Proposal and these Terms, the Proposal will prevail.

3. SERVICES

DBWF Solutions will provide the Services to the Client on the terms and conditions of the Contract.

4. CLIENT MATERIAL

The Client must:

- (a) provide the Client Material to DBWF Solutions in a timely manner to enable DBWF Solutions to provide the Services; and
- (b) ensure that the Client Material is accurate, complete and not misleading.

5. QUOTATION

- (a) All Fees quoted for the Services in the Proposal are valid for a period of 30 Business Days from the date the Proposal is provided to the Client. If the Client has not accepted the Proposal or otherwise become bound by the Contract in accordance with clause 2.1(b) within that period, DBWF Solutions reserves its right to vary the Fees quoted and re-issue a new Proposal.
- (b) The quotation provided in the Proposal is a quote only and not a fixed fee (unless stated otherwise). Fees will be charged in accordance with clause 6.
- (c) DBWF Solutions reserves the right to charge the Client for any work undertaken and/or costs incurred as a result of:
 - (i) the Client instructing DBWF Solutions to undertake work that differs from the Services described in the Proposal;
 - (ii) correcting any errors or omissions caused or contributed to by the Client;
 - (iii) where the Client requires urgent delivery of the Services (including any overtime costs); or
 - (iv) any dealings with third party suppliers to the Client (including IT support providers).
- (d) Any timeline for the completion of the Services provided for in the Proposal is indicative only and is not binding on DBWF Solutions (unless indicated otherwise).

6. FEES & PAYMENT

6.1 Fees

In consideration for the performance of the Services, the Client must pay to DBWF Solutions the Fees in accordance with this clause 6.

6.2 Pre-Payment of Fees

- (a) The Client must, unless specified otherwise in the Proposal, pre-pay the Fees in the blocks of time specified in the Proposal (**Prepaid Blocks**).
- (b) DBWF Solutions will issue an invoice to the Client for the Prepaid Blocks.
- (c) DBWF Solutions will provide:
 - (i) the Services up to the value of the Prepaid Blocks; and
 - (ii) a report to the Client following the end of each month giving details of the Services provided during the preceding month.
- (d) DBWF Solutions may suspend the provision of the Services if the Prepaid Blocks reach a nil balance until such a point in time that the Client purchases further Prepaid Blocks.

6.3 Invoices –

- (a) DBWF Solutions may, at its sole discretion, permit the Client to pay the Fees fortnightly in arrears.
- (b) DBWF Solutions will render the invoice to the Client by emailing a copy to the Client's nominated email address.
- (c) The Client must pay all invoices:
 - (i) by no later than 14 days following receipt of the emailed invoice;
 - (ii) by way of electronic funds transfer into the bank account nominated by DBWF Solutions from time to time; and
 - (iii) in full by the date due for payment without any setoff, withholding or deduction.

6.4 Late payment

If the Client fails to make any payment by the due date, without prejudice to any other right or remedy available to DBWF Solutions, DBWF Solutions may suspend the provision of any Services to the Client until such default is corrected and/or take any action to recover the outstanding amounts from the client.

6.5 Disbursements

- (a) DBWF Solutions may incur disbursements up to the limit specified in the Proposal without the Client's written approval.
 - (b) DBWF Solutions must obtain the Client's written approval before incurring any disbursements above the limit specified in the Proposal.
 - (c) DBWF Solutions may, in its discretion, recover the amount of any disbursements from the Client either by:
 - (i) deducting that amount from the balance of any Prepaid Block standing to the Client's credit; or
 - (ii) issuing an invoice to the Client for that amount.
- and Services Tax) Act 1999 (Cth) (GST Law) have the same meaning as in the GST Law.*
- (b) Unless *otherwise* expressly stated, all prices or other sums payable or consideration to be provided under the Contract are exclusive of GST.
 - (c) If GST is payable by a supplier on any supply made under the Contract, the recipient will (subject to receipt of a valid tax invoice) pay to the supplier an amount equal to the GST payable on the supply in addition to and at the same time that the consideration for the supply is to be provided under the Contract.

7. THIRD PARTY SOFTWARE & SERVICES

7.1 Filemaker Pro Licence

- (a) If the Client does not already possess a licence, DBWF Solutions will obtain a Filemaker Pro licence (**Licence**) for the Client.
- (b) DBWF Solutions will procure that the Licence is issued in the name of the Client.
- (c) DBWF Solutions will invoice the Client for the fees associated with the Licence on a periodic basis.
- (d) DBWF Solutions will not be liable for any loss of Client Material, downtime or any other Liability suffered or incurred by the Client as a result of or in connection with the Licence.

7.2 Hosting

- (a) If required by the Client, DBWF Solutions will establish an Amazon Web Services EC2 instance (**Instance**) on the Client's behalf.
- (b) DBWF Solutions will provide account details in respect of the Instance to the Client after the Instance has been established.
- (c) The Client will be directly and solely liable to adhere to Amazon Web Services terms of use and must pay any fees associated with the Instance direct to Amazon Web Services.
- (d) DBWF Solutions will not be liable for any loss of Client Material, downtime or any other Liability suffered or incurred by the Client as a result of or in connection with the Instance.

8. GST

- (a) Words and expressions used in this clause which are defined in *A New Tax System (Goods*

9. INTELLECTUAL PROPERTY

9.1 Ownership of Intellectual Property

- (a) DBWF Solutions will be the sole and exclusive owner of all right, title and interest in:
 - (i) all Intellectual Property owned by it at the time the Contract commences;
 - (ii) any amendments, improvements, developments, enhancements or adaptations to its Intellectual Property which are created or developed during the course of providing the Services;
 - (iii) any new Intellectual Property rights that are created or developed during the course of providing the Services; and
 - (iv) all advertisements, documents, designs, software or other Intellectual Property which have been specifically created for the Client in providing the Services,
- (DBWF Solutions IP).**

- (b) The Client will be the sole and exclusive owner of all right, title and interest in all Intellectual Property owned by it at the time the Contract commences.
- (c) To the extent that the Client has an interest in any DBWF Solutions IP at the time it is created, DBWF Solutions may request that the Client, at its own cost, enter into all necessary documentation to assign that interest to DBWF Solutions.

9.2 Licence to Use Client Material and Client's Intellectual Property

The Client grants to DBWF Solutions an non-exclusive, royalty-free, worldwide, licence to use, adapt and modify the Client Material and any other Intellectual Property belonging to the Client during any period in which DBWF Solutions performs the Services, for the

purpose of providing the Services specified in the Contract and for no other purpose.

9.3 Licence to Use DBWF Solutions IP

- (a) DBWF Solutions grants to the Client an irrevocable, perpetual, non-exclusive, royalty-free and non-sublicensable licence to use the DBWF Solutions IP only to the extent necessary to enjoy the benefit of the Services.
- (b) Notwithstanding any other provision in these Terms, the license specified in clause 9.3(a) survives termination of the Contract.

10. CONFIDENTIALITY

- (a) Each party will keep confidential the Confidential Information of the other party and will not disclose it to any third party or use the Confidential Information otherwise than:
 - (i) for the purpose of the Contract; or
 - (ii) as authorised in writing by the other party.
- (b) On termination of the Contract, each party will:
 - (i) return to the other party; or
 - (ii) destroy and warrant the destruction of (by way of statutory declaration if requested by the other party),

all documents or copies of documents containing information which is at the date of termination Confidential Information of the other party.

11. INDEMNITY

The Client indemnifies DBWF Solutions against any Liability which DBWF Solutions suffers, incurs or is liable for in connection with the Contract including, but not limited to:

- (a) any act of omission of the Client; and
- (b) any breach of the Contract by the Client.

12. LIMITATION ON LIABILITY

- (a) To the greatest extent permitted by law, DBWF Solutions will not be liable for any guarantee, warranty or representation as to the quality and fitness for purpose or otherwise of the Services, or in respect of their use by the Client.
- (b) None of the guarantees, conditions, warranties or other terms implied by the Commonwealth of Australia, State or Territory laws ('**Implied Terms**') apply to any Proposal or Contract except to the extent that the Implied Terms cannot be lawfully excluded.

- (c) The Client indemnifies DBWF Solutions against all Liabilities of any kind caused by any breach by the Client of the Contract.
- (d) DBWF Solutions' Liability for breach of any provision of the Contract or Implied Term is limited, at the sole discretion of DBWF Solutions, to either re-supplying the Services, or, paying the cost of re-supplying the Services.
- (e) In no circumstance whatsoever will either party be liable to the other or to any third party for any Consequential Loss.

13. TERMINATION

- (a) Subject to the all applicable laws (including, without limitation, the *Corporations Act 2001* (Cth), either party (**Terminating Party**) may immediately terminate the Contract by written notice to the other party if the other party (**Defaulting Party**):
 - (i) breaches the Contract in a material respect and, in the reasonable opinion of the Terminating Party, the breach:
 - (A) cannot be remedied; or
 - (B) can be remedied, but is not remedied by the Defaulting Party within 10 Business Days after the Terminating Party gives the Defaulting Party notice of the breach; or
 - (ii) suffers an Insolvency Event and, within five Business Days of receipt of notice under this clause 13 from the Terminating Party, the external administrator, liquidator or controller does not confirm in writing with the Terminating Party that the Defaulting Party will continue to perform its obligations under the Contract.
- (b) DBWF Solutions may terminate the Contract for any reason by giving the Client not less than 20 Business Days' written notice of the termination.
- (c) The Client must, within five Business Days after the date of expiry or termination of the Contract:
 - (i) pay DBWF Solutions all amounts it owes DBWF Solutions, whether due at that time or not; and
 - (ii) return all Confidential Information of DBWF Solutions to DBWF Solutions.

14. GENERAL

14.1 Entire Agreement

The Contract comprises all of the express terms of the agreement between the parties. To the extent permitted by law, the Contract supersedes all prior discussions, negotiations, understandings and agreements in respect of its subject matter.

14.2 Currency

A reference to **\$** or **Dollars** is a reference to Australian currency (unless specified otherwise).

14.3 Amendment

The Contract may only be amended in writing signed by all the parties (including by exchange of electronic communications) and may not be amended in any other manner.

14.4 Governing Law

The Contract is governed by the law in force in South Australia. The parties submit to the non-exclusive jurisdiction of the courts of that State and the South Australian Registry of the Federal Court of Australia in respect of all proceedings arising in connection with the Contract.

14.5 Assignment

- (a) DBWF Solutions may assign or transfer any of its rights or obligations under the Contract without the prior consent of the Client.
- (b) The Client may not assign or transfer any of its rights or obligations under the Contract without the prior written consent of DBWF Solutions, which is not to be unreasonably withheld but may be given subject to conditions.