



Spatial Enterprises Pty Ltd

General Terms and Conditions

1. DEFINITIONS

1.1. In the following General Terms and Conditions ("Terms"):

- "Company", "Esk", "Esk Spatial" or "Esk Mapping and GIS" mean Spatial Enterprises Pty Ltd ABN 33 156 159 894.
- "EskDesk contract" means a contracted services agreement over an extended period of time and generally at a fixed monthly fee between the Company and a Principal.
- "Principal" means the person or organisation to whom the Company is contracted to provide services and where applicable, is that party who is responsible for payment.
- "Principal's Agent" means a person or organisation (e.g., The Principal Authorised Representative, Public Officer, CEO, Delegate, Government Officer or anyone with the authority of their organisation) who arranges or directs the services with respect to a Project on behalf of the Principal.
- "EskDesk" means a fixed term and or fixed price services and support contract delivered over the specified period at the agree billing frequency.
- "Statement of Works" means the various services and tasks listed under the heading "Statement of Works" in the Company's response to a request for services issued by the Principal.
- "Project" means the agreed shortform descriptor of the Statement of Works.

2. SCOPE

2.1. These Terms apply to all contracts for the provision of services by the Company and should be read in conjunction with the Company's written proposal or Statement of Works in response to a request for services to be supplied by the Company. Unless otherwise expressly agreed, these Terms shall exclude any contrary provisions appearing on any order form or other document issued by the Principal. They shall apply to any variations which may be agreed upon or ordered in the Statement of Works or the agreed support or

services contract and to any supplementary work on the Project which may be the subject of verbal instruction. To the extent any terms or conditions of a Statement of Works conflict with any terms or conditions of this Agreement, this Agreement shall take precedence, except to the extent the applicable Statement of Works expressly states an intent to supersede this Agreement concerning a specific provision.

3. ROLE OF THE PRINCIPAL

3.1. The Principal (or Principal's Agent) is required to provide Esk Spatial with (where relevant).

3.2. Acceptance of our proposal and Statement of Works and authority to proceed with the work.

3.3. Any upfront costs or commissioning fees as specified in our proposal or Statement of Works.

3.4. Approvals for access to any necessary site, data, database, special instructions, technical data and other necessary materials, advice and information upon request necessary to undertake the work.

3.5. Provide the Company with any information necessary to ensure the safety of its staff and contractors. The Company relies upon the Principal to provide its employees with a safe worksite and where necessary, a worksite risk management plan.

3.6. Provide all relevant information to the Company on which the Company can rely to quote or determine any variations to quotes accurately.

4. NON SOLICITATION

4.1. The Principal acknowledges the Intellectual Property and Expertise which has been created by the Company in order to supply the services in the Statement of Works. The Principal expressly undertakes not to discuss, offer, suggest or attempt to induce or in any way communicate regarding alternative employment opportunities with Esk employees, including working for the Principal or a contractor of the Principal during the term of this Agreement and then following, for a period of two (2) years following its expiration or termination.

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4.2. The Principal shall not directly approach, counsel, or attempt to induce any person who is then an employee of the Company or an employee of the Company's subcontractor to terminate his or her employment with or engagement with the Principal or other related party.

4.3. The Principal must pay the Company damages equivalent to 12 months salary of the employee on the basis that this represents a genuine pre-estimate of damage the Company may suffer in the loss of billable hours associated with the employee and or the cost of recruitment of a replacement employee.

4.4. Notwithstanding Clause 4.3., the Principal consents to an injunction to restrain the breach of the obligations imposed upon the Principal under these clauses 4.1. and 4.2., if in the reasonable opinion of the Company damages may not be an adequate remedy.

5. BASIS OF PROPOSAL

5.1. Unless specifically referred to as a lump sum, the Company's proposal is on a schedule of rates basis wherein charges will be based on the quantities of work performed. Where an estimate of the total cost is provided, it is based on the Company's understanding of the required scope of work and expectation of the availability and accuracy of existing cadastral and/or survey marks and sub-surface conditions and generally the good condition of data, datasets, third party imagery or other third-party inputs. The estimate, quote or Statement of Works could be exceeded if undisclosed or unexpected conditions are encountered.

5.2. The Company will endeavour to complete the work at a cost that is within the estimate as supplied and will advise the Principal and seek approval if there appears a need for the estimate to be materially exceeded. Proposals for a 'lump sum' are based on the scope of works and hours defined in a quote or Statement of Works or within the project's total cost.

5.3. Should any activity be required which is outside the scope of the Principal's original request of the proposal, the Company will charge for such additional work at the current standard hourly rates for personnel and equipment. If not quoted upon, reference will be made to the Principal for authority within the scope of works.

5.4. Any additional costs or disbursements incurred by the Company in delivery of the Project or services will be recovered from the Principal plus 10%. This includes but is not limited to, travel,

accommodation, meals, equipment hire, and licences and will be pre-approved by the Principal.

5.5. In some circumstances, an upfront commissioning fee prior to project commencement may be required. This will be described in the Company's statement of works.

5.6. The quoted fee and hourly rates are current for a period of two months from the date of the proposal and will thereafter be subject to variation.

6. TERMS OF CREDIT

6.1. Any proposal is subject to the creditworthiness of the Principal which is established to the satisfaction of the Company.

6.2. Tax invoices will be rendered monthly according to the schedule of works, completed work or on completion of the work and are due for payment in full, unless expressly stated in our billing schedule (clause 14 of this contract), within 30 days or as specified on the Tax Invoice.

6.3. All invoices issued are a payment claim made under the relevant law where such law requires a payment claim, and the Principal warrants that all payments will be made according to this agreement and the Company's Credit Terms.

6.4. The Company will charge interest at a cumulative rate of 2.0% per month on any Tax Invoice unpaid after 60 days, together with any costs, legal fees, etc. incurred as a consequence of default of the Principal.

6.5. Where payment for invoices is not made in accordance with the Company's payment terms, projects may be put on hold. Any works completed at that date may be invoiced as 'work to date', and project works suspended until overdue accounts are settled. Additional fees for project management may be incurred should a project be put on hold due to failure to pay within terms or any other reason determined by the Company.

6.6. The Company may elect to terminate any contract for services pursuant to this agreement with 30 days' written notice to the Principal for any breach of this agreement which shall remain unremedied unless some other agreement between the parties provides otherwise (as with an EskDesk contract determinable upon 90 days' notice).

6.7. All pricing is exclusive of GST unless clearly state otherwise.

7. RESPONSIBILITY AND LIABILITY

7.1. The Company undertakes to exercise reasonable skill, care and diligence following standards ordinarily exercised by members of its

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profession in similar circumstances in the supply of services pursuant to this agreement.

7.2. The liability of the Company to the Principal regarding work carried out on the project, in any circumstance, shall be strictly limited to the resupply of the services (if relevant) or \$30,000, whichever is the lesser.

7.3. The Principal agrees to indemnify the Company against claims from the Principal, its agent, contractors, directors, shareholders, employees and customers claiming through the Principal or otherwise such that the company's total aggregate liability for breach of this agreement and or damages for negligence shall not exceed the amount indicated in this clause 7.2.

7.4. No action shall be against the Company at the suit of the Principal after the expiration of six months from the Company's involvement in the project and damages in any event will not exceed those described in clause 7.2 of this agreement.

7.5. Unless such liability may not be excluded by Law, information supplied by the Company to the Principal is on an "as is" basis. The Company provides no warranty whatsoever, including expressed, implied, or statutory and, without limitation, any undertakings of the merchantability, fitness for a particular purpose, title, enforceability, or non-infringement.

7.6. The Company will not be responsible for the work or quality of work sourced independently or contracted by the Principal to any other party. The company will not be responsible for any failure, loss or consequential loss that would come about through the activity of any contractor, employee, agent, or representative of the Principal in any circumstance.

7.7. Should the Company make an error or oversight which may entitle the Principal to make a claim, the Principal will promptly notify the company of the circumstances of that claim not later than 60 days after the completion of the work or work part.

7.8. In addition, the Company shall not be responsible for, among other things:

- a. The failure of a contractor, retained independently by the Principal, to perform work required in support of the Project;
- b. The design of or defects in equipment supplied or provided by the Principal for incorporation into the Project;
- c. The design of or defects in data supplied or provided by the Principal for incorporation into the Project;
- d. Any decisions related to the Services and associated work products made by the

Principal, including but not limited to, decisions made without the advice of the Company or contrary to, or inconsistent with, advice supplied by the Company;

- e. Any consequential loss, injury or damages suffered by the Principal, including but not limited to loss of use, earnings, and business interruption; and
- f. The unauthorised distribution of any confidential document or report prepared by or on behalf of the Company for the Principal's exclusive use.

7.9. All materials or services produced as a result of the Project (hereinafter referred to as the "Deliverable") are prepared by the Company for the account of the Principal. The Deliverable reflects the judgment and opinion of the Company in light of the information available to it at the time of preparation. Any use which a third party makes of any Deliverable, or any reliance on or decisions to be made based on it, are the responsibility of such third parties. The Company accepts no responsibility for damages suffered by any third party due to reliance on the Deliverable. The Deliverable may not be used or relied upon by any other person unless the Company specifically name that person as a beneficiary of that advice. The Principal agrees to maintain the confidentiality of the Deliverable and reasonably protect the Deliverable from distribution to any other person.

8. COPYRIGHT

8.1. Copyright in all images, reports, specifications, calculations, computer disks and contained data, USB memory sticks, software and other documents provided by the Company shall remain the property of the Company. The Principal alone shall have a licence to use the documents referred to above in connection with the project for which they are prepared but shall not use or make copies of such documents other than in connection with the project without written consent from the Company.

8.2. The information provided is expressly for the use of the named Principal and is not to be passed on to any third party without the Company's written consent which will not be unreasonable withheld.

8.3. The licence granted is conditional upon payment of all amounts due to the Company. If the Principal is in breach of any obligation to make

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payment to the Company, the Principal shall cause to return to the Company all documents referred to above and all copies thereof. The licence extended to the Principal for the use of the above documents shall only be valid where the Principal has provided payment in full for all invoices and accounts sent to the Principal concerning the project.

8.4. Where payment in full has not been made to the Company, the Principal has no right to any information contained within the project document(s) or results and may not use the documents listed above for any purpose related to the project or for any other use.

8.5. Any software provided or granted access to is under licence and remains the property of the Company or unless otherwise agreed in writing between the parties within the Statement of Works.

9. DISPUTES

9.1. Any disputes between the Company and the Principal, shall first be the subject of mediation, provided that this provision shall not prevent the Company from instituting legal action at any time to recover monies owing.

9.2. The relationship between the Company and the Principal, and any relationship arising according to this document shall be governed by the laws of the State or Territory from which the Company's proposal letter/email has been prepared.

10. COMPUTER SOFTWARE AND SYSTEMS

10.1. Notwithstanding the prior provisions regarding copyright within this agreement, unless otherwise expressly agreed, all computer software systems, spreadsheets, digital maps, geographic data, layers and computer models developed by the Company concerning the project remain the property of the Company. These cannot be used, copied or sold by the Principal or any other person or organisation without a written licence agreement between the Company and the Principal.

11. SITE SERVICES

11.1. Where the Company provides site measurement, inspection, volumetric analysis, airborne activities or other field services during the project, that work is necessary to enable the Company access to the necessary data to complete the project. These services, including

verbal advice by site personnel, shall not relieve the Principal of its responsibility under any contract, especially regarding Clause 3 of this agreement.

11.2. The Company will not be liable or accept responsibility for its reliance upon the receipt of an erroneous or incomplete transmission of instructions or data or information from the Principal or Principal's representative.

11.3. The Principal warrants at all times that the information provided to the Company is accurate and dependable to support the efficient completion of this contract.

12. CONFIDENTIALITY

12.1. To the extent permitted by applicable law, the Parties shall maintain all information concerning this Agreement and any pending or subsequent negotiations between the Parties as confidential, disclosing information only to those individuals and representatives as designated by the other Party, provided that such individuals acknowledge and agree to maintain the confidentiality of such information.

13. GENERAL MATTERS

13.1. If circumstances require the services of a specialist or expertise outside the field of the Company, the Company may, with the Principal's prior approval, engage the appropriate consultant. The consultant shall be engaged at the Principal's expense and on his behalf. The principal's approval shall not be reasonably withheld.

13.2. Nothing contained in this Clause shall prevent the Company from employing such persons or companies as it may deem appropriate to assist it in performing the service within the costs set out in the Proposal or Statement of Work.

13.3. Where the Company is required to pay fees to an authority on the Principal's (or agent's) behalf, an administration fee equivalent to 10% of the amount paid will be charged to the Principal, in addition to the fee incurred. The Company will provide a full account of such charges.

14. PROJECT BILLING SCHEDULE

14.1. Project payments shall be made under the Statement of Works, in accordance with this Contract or, in their absence, as reasonably requested by the Company based on work completed. Where the project is delayed by the Principal and/or their agent for longer than two weeks, the Company reserves the right to invoice

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the project time to date as determined by the Company, acting reasonably.

15. TERMINATION OF CONTRACT

15.1. Except in the case of EskDesk contracts, either party may terminate contracts with 30 working days' written notice.

15.2. In the case of EskDesk Contracts, the Principle may terminate this contract by providing 90 days' written notice.

16. ACCEPTANCE AND AUTHORISATION

16.1. These Terms are the legally binding master agreement between the Principal and the Company and shall become effective upon the Principal's signing or consenting via email acceptance of any work.

16.2. The parties acknowledge that they have read and fully understand the General Terms and Conditions and enter this Agreement freely, voluntarily and without duress.

16.3. Except for work schedules, this agreement supersedes all prior negotiations, representations, understandings, and agreements between the parties, whether written or oral, relating to the subject matter hereof.

16.4. Any amendment or modification to this agreement must be in writing and signed by both parties.

16.5. This agreement shall be governed by and construed under the laws of the Commonwealth of Australia and the state of Tasmania. Any disputes arising out of or in connection with this agreement shall be resolved exclusively in the

courts of the Commonwealth of Australia and Tasmania.

17. DISPUTE RESOLUTION

17.1. If requested in writing by either the Principal or the Company, the Principal and the Company shall attempt to resolve any dispute between them arising out of or in connection with the Agreement by entering into structured non-binding negotiations. These negotiations may include the assistance of a mediator on a without prejudice basis, but only if both parties agree to the retention of a mediator. The cost of the mediation shall be borne equally between the parties. Any physical meeting requested by the mediator shall occur in Tasmania, Australia. If a dispute cannot be settled, other than the non-payment of account (per Clause 6 of this agreement), within a period of thirty (30) calendar days with the assistance of the mediator, and should either party wish to continue with the dispute resolution, such dispute, other than the non-payment of account, shall be resolved by arbitration pursuant to the Commercial Arbitration Act (2011) of the State of Tasmania, Australia.

Any such arbitration shall take place in Tasmania, Australia. The Laws of Australia shall govern all such disputes between the parties.