



### 1. DEFINITIONS

1.1 "ERL" shall mean Environmental Resources Limited, or any agents or employees thereof.

1.2 "Customer" shall mean the Customer, any person acting on behalf of, and with the authority of the Customer including clients, employees of clients, or any person browsing or inquiring about any aspect relating to ERL such as the website, purchasing products and services, and so on from ERL.

1.3 "Goods" shall mean all goods, products, services and advice provided by ERL to the Customer and shall include without limitation the supply of Consultancy, Training, Site Plans, and Products inclusive of all charges for labour, hire charges, insurance charges, or any fee or charge associated with the supply of Goods by ERL to the Customer.

1.4 "Price" shall mean the cost of the Goods as agreed between ERL and the Customer and includes all disbursements subject to clause 6 of this contract.

### 2. OVERVIEW

2.1 ERL offers all information, tools and services available to the Customer, conditioned upon the acceptance of all terms, conditions, policies and notices stated here. These terms apply to all Customers, including without limitation users who are browsers, vendors, customers, merchants, and/or contributors of content.

2.2 Any new features or Goods which are added shall also be subject to these Terms. ERL reserves the right to update, change or replace any part of these Terms of Service by posting updates and/or changes to our website. It is your responsibility to check this page periodically for changes. Your continued use of or access to ERL's services following the posting of any changes constitutes acceptance of those changes. These terms contain ERL's understanding of your requirements and records the terms and conditions upon which we will perform the Services.

2.3 ERL reserves the right to refuse service to anyone for any reason at any time

2.4 If there is a conflict between the terms and conditions including prices agreed between us in writing ("Specific Terms") and the Base Terms and Conditions, the Specific Terms shall take precedence.

2.5. In this Agreement, "we", "our", and "us" refer to ERL and "you" and "your" refer to the Customer as defined in clause 1.2.

### 3. ACCEPTANCE

3.1 Any instructions received by ERL from the Customer for the supply of Goods shall constitute a binding contract and acceptance of the terms and conditions contained herein.

### 4 COLLECTION AND USE OF INFORMATION

4.1 The Customer authorises ERL to collect, retain and use any information about the Customer, for the purpose of assessing the Customer's credit worthiness, enforcing any rights under this contract, or marketing any goods provided by ERL to any other party.

4.2. The Customer authorises ERL to disclose any information to any person for the purposes set out in clause 4.1.

4.3. Where the Customer is a natural person the authorities under clauses 4.1 and 4.2 are authorities or consents for the purposes of the Privacy Act 1993.

4.4 You agree:

a) to provide us free of charge and on a timely basis with all the information and documents we reasonably request or require to provide the Services (including, access to records, staff, premises and other systems);

b) that the information and documents provided by you (or on your behalf) will be accurate, complete and not misleading and, if you become aware that any information or document provided to us has become inaccurate, incomplete or misleading, you will promptly notify us;

c) that we may, and you acknowledge that we will (unless otherwise agreed), rely on the information and documents provided to us as accurate, complete and not misleading without seeking further independent verification or clarification; and

d) we will not be responsible or liable if the information (including documents) which is provided to us or we are instructed to obtain under or in relation to this Agreement is or becomes inaccurate, incomplete or misleading.

4.5 You warrant that all information provided to us complies with the Privacy Act 1993 and does not (and will not for the term of our engagement) breach the intellectual property rights of any third parties.

4.6 You will identify any information as confidential information at the time you provide it to us.

4.7 If you provide us with custody of any document in relation to this Agreement, we will retain that document for the term of this Agreement and endeavour to return it to you at the end of the term (unless its earlier return is requested).

4.8 We are required by law to keep documentary records including information you supply us which may be inspected by other parties which can demand access by law. We may retain copies of any correspondence and any documents for our records or to meet our legal obligations. We may also destroy any correspondence or documents if we believe they are no longer needed for legal reasons.

## **5. PAYMENT**

5.1. Payment for Goods shall be made in full on or before the 20th day of the month following the date of the invoice, or on receipt of delivery of Goods, whichever is the earlier ("the due date").

5.2. Interest may be charged on any amount owing after the due date at the rate of 2.5% per month or part month.

5.3. Any expenses, disbursements and legal costs incurred by ERL in the enforcement of any rights contained in this contract shall be paid by the Customer, including any reasonable solicitor's fees or debt collection agency fees.

5.4. Receipt of a cheque, bill of exchange, or other negotiable instrument shall not constitute payment until such negotiable instrument is paid in full.

5.5. A deposit may be required.

5.6 ERL reserves the right to refuse any future Goods sold should the Customer be in bad financial standing or holds bad debts with us (e.g outstanding invoices).

5.7 In the event of default in payment to us you shall pay the amount in default and all costs incurred by us, including our adviser's costs on a solicitor-client basis and debt collector's costs incurred in the recovery or attempted recovery of outstanding moneys and enforcement of any of the terms contained in this Agreement

## **6. PRICE**

6.1 Where no price is stated in writing or agreed to orally the Goods shall be deemed to be sold at the current amount as such Goods are sold by ERL at the time of the contract.

6.2. The price may be increased by the amount of any reasonable increase in the cost of supply of the Goods that is beyond the control of ERL and are subject to change without notice.

6.3 ERL reserves the right at any time to modify or discontinue the Service (or any part or content thereof) without notice at any time. We shall not be liable to you or to any third-party for any modification, price change, suspension or discontinuance of the Service.

## **7. QUOTATION**

7.1. Where a quotation is given by ERL for Goods:

7.1.1. Unless otherwise agreed the quotation shall be valid for thirty (30) days from the date of issue; and

7.1.2. the quotation shall be exclusive to Goods tax unless specifically stated to the contrary;

7.1.3. ERL reserve the right to alter the quotation because of circumstances beyond

its control.

7.2. Where Goods are required in addition to the quotation the Customer agrees to pay for the additional cost of such Goods.

## **8. PAYMENT ALLOCATION**

8.1 ERL may in its discretion allocate any payment received from the Customer towards any invoice that ERL determines and may do so at the time of receipt or at any time afterwards and on default by the Customer may reallocate any payments previously received and allocated. In the absence of any payment allocation by ERL, payment shall be deemed to be allocated in such manner as preserves the max value of ERL purchase money security interest in the Goods.

## **9. DIGITAL (ONLINE) TERMS**

9.1 You represent that you are at least the age of majority in your state or province of residence, or that you are the age of majority in your state or province of residence and you have given us your consent to allow any of your minor dependents to use this site.

9.2 You may not use our products for any illegal or unauthorized purpose nor may you, in the use of the Service, violate any laws in your jurisdiction (including but not limited to copyright laws).

9.3 You must not transmit any worms or viruses or any code of a destructive nature.

## **10. GOODS & SERVICES**

10.1 ERL reserves the right, but are not obligated, to limit the sales of our products or Services to any person, geographic region or jurisdiction. We may exercise this right on a case-by-case basis.

10.2 We reserve the right to limit the quantities of any products or services that we offer. All descriptions of products or product pricing are subject to change at anytime without notice, at the sole discretion of us.

10.3 We reserve the right to discontinue any product at any time. Any offer for any product or service made on this site is void where prohibited.

10.4 We do not warrant that the quality of any products, services, information, or other material purchased or obtained by you will meet your expectations, or that any errors in the Service will be corrected.

10.5 Cancellation or course transfers made within seventy-two (72) hours of the course date or non-attendance, once registered, without notification will incur full course cost. Anything made within a week will incur a 50% total invoice charge. For eLearning courses, once an account has been created, no refunds will be issued

## **11. THIRD-PARTY LINKS AND OPTIONAL TOOLS**

11.1 Certain Goods made available via our Service may include materials from third-parties.

11.1.1 Third-party links on this site may direct you to third-party websites that are not affiliated with us. We are not responsible for examining or evaluating the content or accuracy and we do not warrant and will not have any liability or responsibility for any third-party materials or websites, or for any other materials, products, or services of third-parties.

11.1.2 We are not liable for any harm or damages related to the purchase or use of goods, services, resources, content, or any other transactions made in connection with any third-party websites. Please review carefully the third-party's policies and practices and make sure you understand them before you engage in any transaction. Complaints, claims, concerns, or questions regarding third-party products should be directed to the third-party.

11.2 We may provide you with access to third-party tools over which we neither monitor nor have any control nor input.

11.2.1 You acknowledge and agree that we provide access to such tools "as is" and "as available" without any warranties, representations or conditions of any kind and without any endorsement. We shall have no liability whatsoever arising from or relating to your use of optional third-party tools.

11.2.2 Any use by you of optional tools offered through the site is entirely at your own risk and discretion and you should ensure that you are familiar with and approve of the terms on which tools are provided by the relevant third-party provider(s).

## **12. ERRORS, INACCURACIES AND OMISSIONS**

12.1 There may be information on our site or in the Service that contains typographical errors, inaccuracies or omissions that may relate to product descriptions, pricing, promotions, offers, product shipping charges, transit times and availability. We reserve the right to correct any errors, inaccuracies or omissions, and to change or update information or cancel orders if any information in the Service or on any related website is inaccurate at any time without prior notice (including after you have submitted your order).

12.2 We undertake no obligation to update, amend or clarify information in the Service or on any related website, including without limitation, pricing information, except as required by law. No specified update or refresh date applied in the Service or on any related website, should be taken to indicate that all information in the Service or on any related website has been modified or updated.

## **13. ELECTRONIC COMMUNICATION**

13.1 We strongly recommend that all clients use an up-to-date virus checker on their computers to avoid the transfer of viruses to other systems. If you provide us with a disk (including a USB) or e-mail attachments for use on our system and it contains a virus, we may require you to use our disks to transfer your information to us in future and seek reimbursement for costs we incur to fix issues created in our information technology systems by viruses on our system caused by you.

13.2 We each accept the risks inherent in electronic communications and cyber security and will each be responsible for protecting our own systems and interests in relation to electronic communications and cyber events. As such, neither you nor us (in each case including our respective partners, directors, employees, sub-contractors or agents) will have any liability to each other on any basis, whether in contract, tort (including negligence) or otherwise, in respect of any damage, loss or omission arising from or in connection with the cyber-events or electronic information transfers between us.

13.3 By engaging our Services, you consent to the receipt of our newsletter and any other business, related information we may send by way of email from time to time. Through our newsletter, we will provide updates regarding the Regulatory environment and updates to our Goods and Services.

## **14. CONFIDENTIALITY AND PRIVACY**

14.1 We will not disclose any confidential information or personal information that we obtain from you under or in relation to this Agreement to any other person without your permission except:

a) as required in the ordinary course of business to provide the Services to you in an efficient and effective manner;

b) if we are required to by law, regulation, Court or arbitration proceedings, regulatory authorities, professional duty or to otherwise protect our own interests (including to our professional advisors).

14.2 You agree that we (and any third party instructed on our behalf) may collect personal information from you and use it for the purposes of providing the Services to you, advancing our relationship with you, keeping you up-to-date in relation to our services and industry developments, and other purposes related to our business. You agree that we may, using reasonable security safeguards, store any personal information we hold at our address or through third party data storage providers. We will respond promptly (and within 20 business days) if you contact our Privacy Officer and General Manager to request we supply you with information we hold about you.

14.3 We may use the credentials obtained in doing work for you in internal and external publicity material. We will ask your permission before publicly claiming credit for our work for you.

14.4 Unless otherwise agreed in writing, we may:

a) refer to our work for you in proposals (or other similar submissions to prospective clients); and  
b) provide your information (on an anonymous basis) for statistical, research or benchmarking purposes, provided your information is not used or published in a way that could reasonably be expected to identify you.

14.5 Unless otherwise agreed in writing, you will not name us or refer to us in connection with written materials or publicly filed documents, other than to your professional advisers. Where you are permitted to disclose material we provide to you, you must not

edit or modify it.

14.6 You acknowledge that our processes, concepts and techniques are our property and confidential information. You will not disclose to third parties any confidential information relating to us or our processes, ideas, concepts or techniques, unless you are required to do so by law, in which case, to the extent permitted by law, you will inform us of the person(s) to whom you are required to disclose the information, the information that requires disclosure, and any other information we reasonably request.

## **15. LIMITATION OF LIABILITY**

15.1 We will only be liable to you for direct losses, damages, costs or expenses actually suffered by you and caused directly by our negligence or wilful default ("Losses"). You agree that:

- a) we shall have no other liability of any nature, whether in contract, tort or otherwise, for any other losses, whatsoever and howsoever caused, arising from or in any way connected with this engagement (including all indirect loss, consequential loss, loss of profits and any loss resulting from liability to any third party);
- b) we will not be liable if such Losses are due to any acts or omissions of any person other than us and we will only bear the part of any Losses that is proportionate to the Losses we have directly caused or contributed to. In determining responsibility for the Losses caused or contributed to, account shall be taken of any Losses to be reasonably attributable to any third party; and
- c) our maximum aggregate liability arising from or in any way connected with this engagement, whether to you and/or any other party, of whatever nature and whatsoever and howsoever caused, will be limited to the lower of (i) Losses suffered by you and (ii) four times the fee actually paid for the particular part of the Services giving rise to the claim.

15.2 You must make all claims in relation to this Agreement to us, in writing, and no later than one year after the date we completed the specific work to which the claim relates.

15.3 We each agree that nothing in this Agreement shall exclude, restrict (or prevent suit in respect of) any liability arising from fraud, dishonesty or any other liabilities which cannot lawfully be limited or excluded.

15.4 You further agree that any other company or subcontractor which we may involve in the provision of Services (and any partners, directors or employees of any such company or subcontractor) shall have the right to rely on and enforce this clause 15 of these terms as if he, she or it were a party to this Agreement in his, her or its own right and the provisions of the Contracts (Privity) Act 1982 shall apply for his, her or its benefit accordingly.

15.5 We each agree that the limitation of liability in this clause 15 extends to any variation and any

addition to the Agreement and to all claims, including any claims arising from breach of contract, negligence or in any other way.

## **16. INDEMNITIES**

16.1 You indemnify us and all officers, employees and/or agents of ERL, or such parties' successors and/or assignees (together, the "ERL Parties") against all actions, claims, proceedings, losses, damages, costs and expenses resulting from or in relation to:

- a) any breach of, or default under, this Agreement by you;
- b) any infringement or alleged infringement of any intellectual property in any information or documents provided to us or which we are instructed to obtain;
- c) our reliance on information provided to us or which we are instructed to obtain that is or becomes inaccurate, incomplete or misleading;
- d) a third party using or relying on our advice or information; and/or
- e) any reasonable costs or expenses (including legal costs and expenses on a solicitor and own client basis) that we or the ERL Parties may incur in respect of such loss or liability.

16.2 You agree that you will not bring any action against the ERL Parties and that you will indemnify on demand and hold the ERL Parties harmless against all actions, claims, proceedings, losses, damages, costs and expenses whatsoever and howsoever caused arising from or in any way connected with the Services, unless, and to the extent that, they have been finally and judicially determined (including by the conclusion of any appeal) to have been caused by the fraud, dishonesty, wilful default or negligence of a/an ERL Party.

16.3 The indemnities referred to above will be enforceable by us and the ERL Parties (individually or collectively) whether or not legal proceedings are instituted and, if legal proceedings are instituted, irrespective of the means of any settlement, compromise or determination.

16.4 All the provisions of this Agreement which refer to the ERL Parties are intended to be for the benefit of, and are enforceable against you by, the ERL Parties (individually or collectively) and us (if applicable), each in our own right, for the purposes of the Contracts (Privity) Act 1982. Despite this clause, this Agreement may be varied by written agreement between you and us.

## **17. OUR EMPLOYEES**

17.1 From time to time, our partners, employees and/or agents will be required to attend your premises. When they do, you will comply with all relevant statutes, bylaws, codes of practice and legal requirements in relation to them being on, and working from, your premises.

17.2 You will not offer employment to any of our employees or induce any of our employees to end their employment with us without our prior written permission. You also agree not to procure or assist anyone else to do this. In addition to breaching this



Agreement, you acknowledge that if you offer or induce any of our employees to end their employment with us you may be assisting or procuring a breach of a restraint of trade between ERL and the employee.

17.3 If you directly employ any of our employees within a period of twelve months after completing an assignment, you agree to pay us an introduction fee of 100% of the staff member's annual gross salary as paid by us (plus any benefits and GST) immediately upon their beginning employment with you. You acknowledge that this is a genuine pre-estimate of our loss, including the costs we will incur training and the loss of productivity caused by the loss of our employee.

## **18. HEALTH AND SAFETY**

18.1 We will each:

- a) comply with our obligations under the Health and Safety at Work Act 2015 and any applicable health and safety related regulations or codes of practices ("H&S Law"); and
- b) co- operate, consult and co-ordinate activities with each other and any other PCBU who has a duty under H&S Law in relation to this Agreement to ensure each party can comply with its H&S Law duties. "PCBU" has the meaning set out in the Act.

18.2 You will:

- a) where reasonably practicable, provide our staff with a health and safety briefing prior to commencing work or visiting your workplace; and
- b) comply with all reasonable instructions from us in relation to health and safety matters affecting our people.

## **19. COMMENCEMENT AND TERMINATION**

19.1 This Agreement is intended to be evergreen and will continue in force until the engagement ends or is terminated by either party. Performance of this Agreement will commence when an inquiry and subsequent booking is made for the Goods and Services.

19.2 We each may terminate this Agreement by giving 30 days' written notice to the other party. Additionally, we reserve the right to terminate the agreement immediately where you fail to meet your obligations, become insolvent or if we believe, in

our sole discretion, that immediate termination is warranted. Termination will not affect any accrued rights of a party. For the avoidance of doubt, we will be entitled to our fees incurred until the date of termination.

19.3 Any provision of this Agreement which is intended to apply after termination (including, but not limited to, provisions relating to confidentiality, indemnity, claims, limitation of liability, non-solicitation of employees, fees and termination) will continue to apply after termination.

## **20. VARIATION**

20.1 We may vary these terms and conditions at any time and will make them available to you on our website. If a booking for Services is made after such communication without objection by you, you will be deemed to have accepted those changes (in the absence of any other communications to the contrary) and accordingly that instruction and any subsequent instruction will be based on those updated terms.

## **21 SEVERABILITY**

21.1 If any terms or provisions of this Agreement (or parts thereof) are or become invalid, illegal or unenforceable, the remainder shall survive unaffected to the fullest extent permitted by law.

21.2 If a court holds that any provision of this Agreement or its duration is unenforceable, illegal, or invalid but any such provision would be enforceable if it was modified or limited, then that provision shall be so modified or limited to the extent necessary.

## **22. GST**

22.1 If goods and services tax (GST) is payable by us in relation to any supply made by us to you, you agree to pay to us that GST amount in addition to our fees and disbursements. We will provide you with a valid tax invoice where GST is payable by you to us.

## **23. NOTICES**

23.1 Notices given pursuant to this Agreement must be in writing and may be provided by letter sent to to our place of business addressed to the General Manager or other contact person as either of us may designate for correspondence.

## **Version History**

Version	Changes	Approved By	Last Review	Next Review
1.1	N/A	Roger Fleming	December 2020	December 2021
1.0	Policy created	Roger Fleming	N/A	December 2020