

Client Engagement Agreement

(Last Revised 12/10/2022)

1 Definitions

Client: refers to the client named in the related Scope and Fee Proposal.

JBA: means the appointed firm, Josh Byrne & Associates Pty Ltd trading as Josh Byrne & Associates (JBA).

Project: refers to project named in the related Scope and Fee Proposal.

Proposal: refers to the Scope and Fee Proposal that this agreement relates to.

Services: refers to the services requested by the Client in relation to the Project as outlined in the Proposal.

Agreement: refers to this document in its entirety.

2 Agreement

2.1 The Client accepts the Proposal.

2.2 The Client agrees to engage JBA in the capacity as outlined in the Proposal.

2.3 The Client agrees to the terms and conditions as outlined below.

3 Terms and Conditions of Service

3.1 JBA shall exercise all due care, diligence and skill in performing its obligations to the Client in completing the Project.

3.2 Where the project requires the delivery of landscape architectural services, JBA also abides by the [Australian Institute of Landscape Architects Code of Conduct](#).

3.3 JBA shall observe all applicable industrial laws and awards in connection with the Services and carry out the Services under this Agreement in accordance with the highest professional standards.

3.4 The Client shall be available to liaise with JBA regarding information about the Project and shall provide JBA with a detailed brief and all information required allowing JBA to fulfil its obligations within any prescribed timeframe for the Project.

3.5 JBA shall maintain appropriate insurance coverage including public liability, professional indemnity and workers compensation insurance in respect of the provision of services under this Agreement.

4 Invoicing and Payment

4.1 Invoices for services shall be billed monthly or at the discretion of JBA and sent by email and shall be payable within 14 days from the end of the month.

- 4.2 Invoices in arrears of more than 14 days constitute a breach of agreement by the Client and may result in JBA terminating its obligations under this Agreement.

5 Representations

- 5.1 The Client shall ensure, to the extent reasonably possible, that JBA's input into the Project is duly recognised in any publicity generated by the Client in respect to the Project.
- 5.2 The Client must seek approval from JBA for any marketing or promotional material that involves the use of JBA's name and or logo, or Josh Byrne's name or image.
- 5.3 JBA must be attributed in all information containing a 2- or 3-dimensional representation of the Project, or a part of it, whether the Project is complete or not.

6 Confidentiality and Rights

- 6.1 Both parties agree not to disclose any confidential information pertaining to either party, to any third party.
- 6.2 The Client acknowledges the provision of services by JBA for the Project is not given on an exclusive basis.
- 6.3 Copyright on all drawings, reports, specifications, bills of quantity, calculations, software, models, and other materials provided by JBA in connection with the Project shall remain the property of JBA until paid in full by the client.
- 6.4 Subject to Clause 6.5, the Client alone shall have a license to use the materials referred to in Clause 6.3 for the purpose of completing the Project, but the Client shall not use, sell or make copies of such materials in connection with any work not related to the Project.
- 6.5 If the Client is in breach of any of the obligations to make a payment to JBA, JBA may revoke the license referred to in Clause 6.4 and the Client shall then cause to be returned to JBA all materials referred to in Clause 6.4 and all copies thereof.

7 Dispute Resolution

- 7.1 Any dispute either party may have shall be made in writing to the other party.
- 7.2 A response in writing to the dispute shall be made by the other party within 30 days.
- 7.3 Any dispute by either party shall first be the subject of mediation, provided that this provision shall not prevent JBA from instituting legal action at any time to recover moneys owing by the Client to JBA.

8 Termination

- 8.1 Termination shall be without prejudice to any claim which either party may have against the other in respect to any breach of the terms of the Agreement which occurred prior to the date of termination. Either party may terminate its obligations under this Agreement:

- 8.1(a) In the event of substantial breach by either party of their obligations hereunder, where the breach has not been remedied within 30 days of written notice requiring the breach to be remedied; or
- 8.1(b) Upon giving 60 days written notice of its intent to do so; or
- 8.1(c) Should either party become insolvent.

9 Indemnification and Liability

As permitted by law:

- 9.1 JBA's liability to the Client arising out of or in connection with this Agreement (including the performance or non-performance of the services) whether under the law of contract, in tort (including negligence), in equity, under statute or otherwise shall be limited to the value of the Proposed Fee.
- 9.2 JBA is not liable to the Client in respect of any consequential or indirect loss or damages (including loss of profits or business opportunity or payment of liquidated sums or damages under any other agreement).
- 9.3 JBA shall be deemed to have been discharged from all liability in respect of the Services, whether under contract, in tort (including negligence), in equity, under statute or otherwise, on the expiration of 3 years from the completion of the Services.
- 9.4 If and to the extent that any of this clause is void as a result of section 68 of the Trade Practices Act 1974 (Cth) then JBA's liability for breach of a condition or warranty is limited to:
 - 9.4(a) The supplying of the relevant services again, or
 - 9.4(b) The payment of the cost of having the services supplied again.
- 9.5 JBA's liability to the Client for any loss or damage including a claim for damages for a breach of the Agreement by JBA shall be reduced to the extent that an act or omission of the Client or its employees, agents or consultants, contributed to the loss or damage.
- 9.6 The Client will indemnify JBA against all claims, costs, suits and demands by third parties arising in respect of the Services.

10 Assignments and Variations

- 10.1 The terms of the Agreement may not be varied otherwise than in writing signed by the Client and JBA.
- 10.2 Neither party may assign, transfer or sublet any obligation under this Agreement without the written consent of the other. Unless stated in writing to the contrary, no assignment, transfer or subletting shall release the assignor of any obligation under this Agreement.
- 10.3 If JBA considers it appropriate to do so, it may with the Client's prior approval, which shall not be unreasonably withheld, engage another consultant to assist JBA in specialist areas. The Client accepts responsibility for all monies payable to such other consultant.

11 Miscellaneous

- 11.1 The Agreement will be constructed and governed by the laws of the state of Western Australia.
- 11.2 The Agreement constitutes the whole agreement between the parties and any alteration must be in writing and signed by both parties.
- 11.3 Work will not commence on the Project by JBA until the Engagement Acceptance is signed by an authorised representative of the Client.