



## BUILDINGPOINT CONSULTING TERMS

This agreement applies to Consulting Services (collectively the "Services") provided by BuildingPoint Australia Pty Ltd and BuildingPoint New Zealand Limited (as applicable) ("BuildingPoint") to customers in relation to certain software offerings ("the Offerings").

### 1. Scope of Services

- (a) BuildingPoint may, at the customer's request, agree to provide consulting and professional services to the customer from time to time in relation to the Offerings, for example, generation of reports, product configuration support, and training.
- (b) Subject to clause 1(c), this agreement constitutes the entire agreement between the parties regarding the supply of the Services. Unless expressly agreed in writing by BuildingPoint, no other terms and conditions (including those contained in any purchase order provided by the customer) apply to the supply of the Services.
- (c) If a written contract has already been entered into, and remains in effect, between BuildingPoint and the customer that applies to the supply of the Services covered by this Agreement, then the terms contained in that contract will apply and prevail over this agreement in the event of any inconsistency.
- (d) The Customer may request Services from time to time by email or otherwise in writing to BuildingPoint. In response to such request, BuildingPoint will advise the customer in writing of the scope of the services to be performed, the fees payable, and that the Services will be governed by these terms and conditions (for example, by issuing a Statement of Work or other proposal via email) ("**Proposal**"). This agreement will be formed in respect of the Services when the customer communicates acceptance of the Proposal and these terms and conditions in writing to BuildingPoint. If

there is any inconsistency between the terms set out in this Agreement and the terms in the Proposal, the terms in the Proposal prevail to the extent of the inconsistency.

- (e) If the customer has any overdue payments under this agreement or any other agreement with BuildingPoint, including for Offerings or other services, BuildingPoint may refuse to provide the Services, or may suspend the performance of the Services if already commenced, until all outstanding amounts are paid in full.

### 2. Fees

- (a) Unless otherwise agreed in writing by BuildingPoint, fees for Services are calculated on a time and materials basis. BuildingPoint's standard hourly or daily fee rates will be specified in the Proposal. If daily rates are specified, the rates for each individual are calculated on the basis of an eight-hour day, worked during business hours.
- (b) Unless otherwise specified in the applicable Proposal, the Client will pay BuildingPoint its customary rates for Services monthly based upon actual time spent. Payments are due to within 30 days (for BuildingPoint Australia) and 20 days (for BuildingPoint New Zealand) from the end of the month in which the invoice is issued if the customer has an approved credit account with BuildingPoint. If the Customer does not hold an approved credit account, payment is due within 14 days from the date of invoice. Payment must be received in full prior to the provision of any Deliverables.
- (c) The customer acknowledges that any estimated fees set out in a Proposal are provided for budgetary purposes only, and the fees for the Services will be billed based on the actual time spent by BuildingPoint performing the Services, at the rates set out in the Proposal.
- (d) The customer agrees to pay all expenses incurred by BuildingPoint in connection with the provision of the

Services, in accordance with, and to the extent specified in, the Proposal.

- (e) The commencement date of the Services will be scheduled by BuildingPoint in consultation with the customer. This agreement will continue to apply until such time as the Services have been completed, subject to earlier termination in accordance with this Agreement.

### 3. Timeframe for Performance

BuildingPoint will use commercially reasonable efforts to meet any deadlines or milestones specified in a Proposal for performance of the Services, but any such dates are estimates only and time for performance by BuildingPoint is not of the essence.

### 4. Subcontractors

BuildingPoint may appoint subcontractors to provide all or part of the Services.

### 5. Deliverables and Customer Materials

- (a) The customer must ensure that it completes any customer dependencies specified in the relevant Proposal. Should the customer's failure to take such actions result in a delay of BuildingPoint against a delivery schedule, or result in additional provable costs incurred by BuildingPoint, BuildingPoint shall not be considered to be delayed in its obligations, and BuildingPoint shall be entitled to payment of such additional costs.
- (b) Any deliverables provided to the customer as part of the Services will be deemed "**Deliverables**" under this Agreement.
- (c) The customer agrees to provide BuildingPoint with reasonable access to and a limited right to use the customer's technical data, computer programs, software, files, documentation, and/or other materials ("**Customer Materials**"), resources, personnel, equipment or facilities to the extent such access is necessary for the performance of Services. The customer will be responsible for and assumes the risk of any problems resulting from the content, accuracy, completeness, competence or consistency of Customer Materials or its personnel. To the extent that the customer does not provide the access, quality, level of detail and/or scope required for BuildingPoint to perform the Services or deliver the

Deliverables, BuildingPoint shall be excused from performance until such items/access are provided or the applicable deficiencies corrected.

### 6. Intellectual Property

- (a) The customer owns and will retain ownership (including all Intellectual Property Rights) in the Customer Materials. The customer grants to BuildingPoint a royalty-free, non-exclusive license to access and use the Customer Materials (including through subcontractors) as required for BuildingPoint's performance of the Services.
- (b) BuildingPoint hereby grants the Customer a perpetual, worldwide, royalty-free, non-exclusive, and non-transferable licence to use, copy, modify, and create derivative works of the Deliverables, strictly for the Customer's internal business purposes. The Customer must not commercialise, distribute, sublicense, or otherwise make the Deliverables available to any third party, except as expressly permitted in writing by BuildingPoint. This licence is further subject to any limitations or restrictions set out in the applicable Proposal. BuildingPoint owns and will retain ownership (including all Intellectual Property Rights) in and to the Deliverables (excluding any Customer Materials) and any modifications, improvements and derivative works thereof.
- (c) Other than Customer Materials, BuildingPoint owns all computer programs, utilities and intellectual property which aid BuildingPoint in performing the Services or which are produced as a result of the Services.
- (d) In this clause, **Intellectual Property Rights** means all intellectual property rights throughout the world, whether present or future, including rights in relation to copyright, trade secrets, know how, trademarks (whether registered or unregistered or whether in word or logo/ device form), brand names, designs, patents and patentable inventions, semiconductor or circuit layout rights, including the right to apply for registration of any such rights.

### 7. Limited Warranty

- (a) BuildingPoint warrants that:
  - (i) it has the requisite skills,

experience and expertise to carry out the Services in accordance with this Agreement;

- (ii) it will perform the Services in a professional and workmanlike manner.
- (b) BuildingPoint will, as its sole liability and obligation to the customer for failure to provide Services meeting the warranty in clause 7(a), if notified of a non-conformity within ten (10) days of delivery of the applicable Services, (a) re-perform the non-conforming Services or (b) re-deliver the non-conforming Deliverables at no additional cost to Customer, or if BuildingPoint determines such remedies to be impracticable within a reasonable period of time, (c) terminate the applicable Proposal and refund the portion of fees attributable to such non-conforming Services or Deliverables.
- (c) Without derogating from the above and to the maximum extent permitted by law:
  - (i) BuildingPoint shall not be liable for damages for loss of profit or revenue, data that is lost or corrupted, failure of security mechanisms, interruption of business, loss of goodwill, or any special, incidental, indirect, punitive, or consequential damages of any kind arising under or in connection with this Agreement; and
  - (ii) BuildingPoint's maximum liability for any and all Loss arising out of or related to this Agreement will not exceed in aggregate the amounts paid by the Customer to BuildingPoint for the relevant Services. In this clause, "**Loss**" means any damage, loss, liability, cost, charge, expense, penalty, outgoing or payment and includes legal costs and expenses on a solicitor/client basis.

## 8. Data Security Requirements

The customer must notify BuildingPoint in writing, prior to the commencement of the Services, of any data security requirements that apply to the Customer's IT systems, networks, or online environments where

the Services will be performed or accessed. If the customer imposes any data security requirements after the commencement of the Services that materially affect the manner, cost, or timing of the Services, BuildingPoint reserves the right to adjust the fees payable for the Services to reflect the impact of those requirements. Any such adjustment must be agreed in writing between the parties.

## 9. Termination

- (a) BuildingPoint may terminate this Agreement or a Proposal for any reason (or no reason) on providing 14 days' written notice to the customer
- (b) It is a "**Termination Event**" if:
  - (i) any amount payable by the customer to BuildingPoint is not paid when due, and the customer fails to make payment within five (5) business days of receiving notice by BuildingPoint to do so;
  - (ii) the customer breaches or fails to comply with any other term of this Agreement, and fails to remedy that breach within 10 days of receiving notice to do so;
  - (iii) the customer declares bankruptcy or is adjudicated bankrupt, becomes insolvent, is unable to pay its debts when due, or has an administrator, liquidator, receiver or trustee appointed to it for all or substantially all of its assets.
- (c) If a Termination Event occurs BuildingPoint is entitled (without prejudice to any other right or remedy) at its option to immediately do any one or more of the following:
  - (i) declare all amounts actually or contingently owing by the customer to BuildingPoint as immediately due and payable;
  - (ii) suspend BuildingPoint's provision of the Services; or
  - (iii) terminate all or any part of an unperformed Proposal or terminate this Agreement as a whole.
- (d) On termination of this Agreement, the customer must pay all amounts due and owing to BuildingPoint up to the effective date of termination.

**10. Change Control**

- (a) Any amendment, variation, or modification to a Proposal is effective only if made in writing and agreed by authorised representatives of both BuildingPoint and the customer.

**11. Variations**

BuildingPoint may, in its absolute discretion, vary the terms of this Agreement at any time by (a) providing written notice to the customer; or (b) by uploading the varied terms to <https://hergagroup.com/terms-and-conditions/> or such other website notified by BuildingPoint to the customer in writing. The acceptance of the next Proposal by the customer will be deemed to constitute acceptance of the amended

terms.

**12. Governing Law**

- (a) This Agreement is governed by and construed in accordance with:
  - (i) For Services provided by BuildingPoint Australia, the law of Queensland and the parties submit to the non-exclusive jurisdiction of the courts of Queensland.
  - (ii) For services provided by BuildingPoint New Zealand, the law of New Zealand and the parties submit to the non-exclusive jurisdiction of the courts of New Zealand