

BACKGROUND

- A. The Institute established and operates a Continuing Professional Development (CPD) program for its members called 'Refuel' (Refuel CPD Program).
- B. Subject to the Refuel CPD Program the Institute and accredited third parties provide CPD services and training to Institute members.
- C. The Provider wishes to be involved in the Refuel CPD Program by becoming an accredited member of the Institute's 'Refuel CPD Providers Network' to allow the Provider to provide CPD related services to members of the Institute.
- D. The Institute has agreed to allow the Provider to participate in the Refuel CPD Program subject to this Agreement.
- E. During the Term the parties wish to collaborate on the provision of suitable CPD for architects in accordance with the Joint Policy.

AGREEMENT CONDITIONS

1 Definitions and Interpretation

1.1 Definitions

In this Agreement:

Agreement means this Refuel Provider Agreement.

Business Day means a day that is not a Saturday, Sunday, a public holiday or bank holiday in Melbourne.

Claims means any claim, action, proceedings, demand, cost, damages, loss, expense or liability whatsoever and however arising whether or not presently discovered, immediate, future or contingent under clause 11.

CPD has the meaning given to that term in Item A.

CPD Materials means all materials the Provider prepares, recommends, gives, offers, displays, promotes, markets or licences to the Institute and the Institute's members in connection with the Refuel CPD Program or otherwise under this Agreement.

End Date means the date stated in Item 2 of the Schedule.

GST has the same meaning as defined in the *A New Tax System (Goods and Services Tax) Act 1999* (Cth).

Institute Materials as defined under clause 9.2.

Joint Policy means the AACA/RAIA Joint Policy on CPD (or equivalent from time to time).

Law includes any requirement of any statute, rule, regulation, proclamation, ordinance, by-law or other provision having the force of law present or future, and whether State, Federal or otherwise.

Provider Benefits means the benefits stated in Item 4 of the Schedule.

Provider Fee means the fees stated in Item 3 of the Schedule.

Refuel CPD Program means the program stated in Item A of the Background.

Schedule means the schedule given as a part of this Agreement.

Start Date means the date stated in Item 1 of the Schedule.

Term means the term of this Agreement starting on the Start Date and ending on the earlier of:

(a) the End Date; and

(b) the date the Agreement is ended in accordance with clause 2.

Trade Marks means the signs used, or intended to be used, by a party, either as owner or licensee, to distinguish its goods or services from those of others whether registered or not, and in whatever form.

1.2 Interpretation

In this Agreement, unless the context requires another meaning a reference to:

(a) the singular includes the plural and vice versa;

(b) a party means a party to this Agreement;

(c) Law includes any legislation, judgment, rule or common law or equity or rule of any applicable stock exchange, and is a reference to that law as amended, consolidated supplemented or replaced and includes a reference to any regulation, by-law or other subordinate legislation;

(d) time is Melbourne time; and

(e) if a payment or other act must (but for this clause) be made or done on a day that is not a Business Day, then it must be made or done on the next Business Day.

2 Termination

2.1 This Agreement will end on the End Date, or until otherwise in accordance with this Agreement.

2.2 The Institute may end this Agreement:

(a) for convenience by giving 20 Business Days' notice to the Provider;

(b) if the Provider fails to pay the Provider Fee subject to clause 3.1 by giving 10 Business Days' notice to the Provider; or

(c) immediately if the Institute reasonably anticipates detriment or damage to its reputation or commercial interests.

2.3 If the Institute has approved the CPD Materials under clause 6 before this Agreement ends under clause 2.2, the Institute will not refund the Provider Fee.

2.4 The rights to end this Agreement under clause 2.2 are in addition to, and do not replace, any other remedy a party may have in respect of a breach of this Agreement.

3 Provider Obligations

3.1 The Provider must:

(a) pay the Provider Fee to the Institute subject to Item 3 of the Schedule; and

(b) pay GST applicable to the Provider Fee provided the Institute has sent a GST invoice to the Provider.

4 Provider Benefits

- 4.1 The Institute will give the Provider Benefits in exchange for the Provider's obligations under clause 3.1.

5 Provider Warranties

- 5.1 The Provider warrants that all CPD Materials, or any part of the CPD Materials, are accurate, appropriate and will comply with all relevant Laws, standards and codes.
- 5.2 Any comment, direction or approval given by or on behalf of the Institute in relation to the CPD Materials will not release the Provider of liability for the CPD Materials or in respect of its warranties under clause 5.
- 5.3 The Provider acknowledges and agrees that if the Institute approves, publishes or promotes CPD Materials, the Institute is not approving, endorsing or is not otherwise responsible for the CPD Materials.

6 Approval of CPD Materials

- 6.1 The Institute will approve the CPD Materials if the Institute is satisfied the CPD Materials comply with the Joint Policy.

7 Renewal

- 7.1 The Provider may indicate to the Institute if it wants to renew this Agreement.
- 7.2 If the Provider indicates that it wants to renew the Agreement, then the parties must negotiate the new terms of agreement within 20 Business Days.
- 7.3 If the terms are agreed between both parties subject to clause 7.2, the Agreement will be renewed in accordance with those agreed terms.
- 7.4 If the terms are not agreed between both parties subject to clause 7.2, or if the Provider indicates it does not want to renew this Agreement, the Agreement will end on the End Date.

8 Other Providers

- 8.1 The Provider acknowledges and agrees that:
- (a) its rights and opportunity under this Agreement to participate in the Refuel CPD Program are not exclusive; and
- (b) the Institute may deal with and engage any other person or business (including those competing with the Provider) to the Refuel CPD Program without the consent of the Provider.

9 Trade Mark Usage

- 9.1 The Provider gives the Institute a non-exclusive licence to use its Trade Marks and business name(s) subject to this Agreement for purposes that include publicising Provider involvement in the Refuel CPD Program on the Institute's marketing materials and other publications. All goodwill and any other rights attaching to the Institute's use or application of the Provider's Trade Marks stay with the Provider.

- 9.2 Subject to clauses 9.3 and 9.4, during the Term, the Institute gives the Provider a non-exclusive and revocable licence to use the 'Refuel' name and the associated graphics, logos or other content specifically made available to the Provider by the Institute (**Institute Materials**) (subject to the Institute's usage guidelines) for the purposes of Refuel CPD Program. All goodwill and any other rights attaching to the use or application of the Institute's Trade Marks and other content by the Provider will stay with the Institute.

- 9.3 The Provider must get the Institute's written approval before publishing or otherwise using the Institute Materials in any marketing, promotional or other materials.

- 9.4 The licence provided under clause 9.2 excludes a right to use the Institute's mark known as the "Crest" and other logos.

- 9.5 The rights given under clause 9.2 exclude rights under section 26 of the *Trade Marks Act 1995* (Cth).

10 Confidentiality

- 10.1 The Institute and the Provider agree this Agreement is confidential and will not be used nor disclosed to third parties without the other party's prior written consent unless the use or disclosure is:

- (a) required by Law;
- (b) made confidentially to a party's professional adviser, or
- (c) made to a party's officers or employees who need to know the information for performing or enforcing that party's obligations or rights under this Agreement and those officers or employees agree to be bound by the confidentiality provisions contained in this clause.

11 Breaches

- 11.1 The Provider indemnifies the Institute for all claims, losses and damages arising out of breach of a condition or warranty in this Agreement, except to the extent that a claim, loss or damage is caused by the wrongful or negligent act or omission of the Institute.

- 11.2 The Institute is not liable to the Provider in any circumstances for indirect, economic or consequential loss suffered or incurred by the Provider.

12 Notices

- 12.1 All notices must be written in English and addressed to the recipient at the address detailed in this Agreement, or email address that a party may notify to the other.

13 Governing Law and Jurisdiction

- 13.1 This Agreement is governed by and construed in accordance with the laws in force in Victoria. The parties irrevocably submit to the exclusive jurisdiction of the courts of that state.