

TERMS AND CONDITIONS FOR GOODS AND SERVICES

1. DEFINITIONS

“**ABC Law**” includes:

- (a) any anti-corruption law of the Commonwealth of Australia or the State of Western Australia (including any such law arising at common law, in equity, under any written law or other instrument made under written law or by any government agency);
- (b) the United States Foreign Corrupt Practices Act;
- (c) the UK Bribery Act 2010; and
- (d) any anti-corruption Law of a country other than Australia which applies to Company or any Co-Venturer from time to time in relation to the Contract.

“**ABC Law Violation**” means a situation where Contractor or a Subcontractor has:

- (a) directly or indirectly offered, paid, solicited or accepted bribes in any form including facilitation payments; or
- (b) otherwise breached any ABC Law,

in connection with the subject matter of the Contract or Subcontract as the case may be.

“**Aboriginal Cultural Heritage**” has the same meaning as given under the Aboriginal Cultural Heritage Act.

“**Aboriginal Cultural Heritage Act**” means the *Aboriginal Cultural Heritage Act 2021* (WA).

“**Aboriginal Cultural Heritage Legislation**” means the:

- (a) *Aboriginal Heritage Act 1972* (WA);
- (b) Aboriginal Cultural Heritage Act; and
- (c) *Aboriginal and Torres Strait Islander Heritage Protection Act 1984* (Cth).

“**Authorisation**” means any authorisation, permit, consent, order, approval, resolution, licence, exemption, agreement, permission, notarisation, recording, filing, registration or requirement, from, issued by, or made to, any Governmental Authority.

“**Background Intellectual Property**” means:

- (a) in respect of the Company, any Intellectual Property that is owned by, or licensed to, the Company independently of the Contract; and
- (b) in respect of the Contractor, any Intellectual Property that is used by the Contractor in the performance or supply of the Deliverables, incorporated into the Deliverables or otherwise made available to the Company under or in connection with the Contract, including Intellectual Property that is owned by or licensed to the Contractor (whether licensed to the Contractor by a Related Body Corporate of the Contractor or otherwise), but which exists prior to the date of the Contract or is otherwise developed or acquired by the Contractor independently of the Contract.

“**Business Day**” means a day other than a Saturday, Sunday or day that is a gazetted public holiday in Perth, Western Australia.

“**Claim**” means any cost, demand, legal proceeding, claim, action, fine, penalty, obligation, or liability of any nature (including legal costs on a full indemnity basis), whether actual or threatened, and howsoever arising, including under any statute, in equity or at law.

“**Clause**” means a clause of these Terms and Conditions for Goods and Services.

“**Code of Conduct**” means the Company’s ‘Business Conduct Standard’, as updated from time to time.

“**Company**” means:

- (a) where the Formation Document is in the form of a purchase order, the entity issuing the Formation Document; or
- (b) where the Formation Document is in the form of a document entitled ‘form of agreement’, the entity identified as the ‘Company’ in the Formation Document,

and its successors and assigns.

“**Company Equipment**” means all equipment supplied by the Company

to the Contractor (if any), to use in the performance or supply of the Deliverables.

“**Company Group**” means the Company, its Co-Venturers, its Company Invitees, its and their respective Related Bodies Corporate, and the foregoing’s respective agents, representatives, directors, officers and employees (including agency personnel), or, where the context so permits, any or each of the foregoing, but does not include any member of the Contractor Group.

“**Company Invitee**” means any person who is not the Company or a Co-Venturer or either of the foregoing’s Related Bodies Corporate, agent, representative, director, officer or employee (including agency personnel), but whose presence at the Worksite is by invitation of one of the foregoing (including representatives of Governmental Authorities).

“**Company Materials**” means all materials (if any) which are supplied by the Company to the Contractor to use in the performance or supply of the Deliverables or incorporate in the Deliverables.

“**Confidential Information**” means:

- (a) the Contract, including the fact of its existence and its terms;
- (b) all Deliverables (including any Data and any documentation forming part of the Deliverables) which the Contractor provides or makes available to the Company in connection with the Contract; and
- (c) any information (including technical information, know-how, Data, inventions, trade secrets, formulae, graphs, designs and other related information) in any form which the Contractor receives from or on behalf of the Company or its Co-Venturers, or learns about the Company or any member of the Company Group during or in connection with the negotiation or performance of the Contract.

“**Contract**” means the contract between Company and Contractor formed by the Contract Documents.

“**Contract Documents**” means the documents referred to in Clause 3.1.

“**Contractor**” means the entity to whom the Formation Document is issued (being, where the Formation Document is in the form of a document entitled ‘form of agreement’, the entity identified as the ‘Contractor’ in the Formation Document).

“**Contractor Group**” means the Contractor, its Subcontractors (of any tier), its Contractor Invitees, its and their respective Related Bodies Corporate, and the foregoing’s respective agents, representatives, directors, officers and employees (including agency personnel), or, where the context so permits, any or each of the foregoing, but does not include any member of the Company Group.

“**Contractor Invitee**” means any person who is not the Contractor or a Subcontractor or either of the foregoing’s Related Bodies Corporate, agent, representative, director, officer or employee (including agency personnel), but whose presence at the Worksite is by invitation of one of the foregoing.

“**Contractor Equipment**” means all tools and equipment that the Contractor supplies or is required to supply for the performance or supply of the Deliverables in accordance with the Contract, whether owned, leased or hired.

“**Co-Venturer**” means any other entity with whom the Company or a Related Body Corporate of the Company is or may be from time to time a party to a joint operating agreement, unitisation agreement, or other similar agreement relating to the operations for which the Deliverables are being performed or supplied or otherwise for whose benefit the Deliverables are being performed or supplied, including the successors in interest of such Co-Venturer or the assignees of any interest of such Co-Venturer.

“**Damage**” includes damage, loss or destruction.

“**Data**” means all data and information (in whatever form such data may exist or be presented) and includes any:

- (a) compilation of data, data set or database; and
- (b) raw versions of data as well as interpreted or otherwise modified versions of data.

“**Date for Delivery**” means:

- (a) where the Contract requires the Contractor to supply Goods, the date(s) upon which the Goods must be delivered to the Company at the Delivery Point;
- (b) where the Contract requires the Contractor to supply Rental Items as part of the Services, the date(s) by which the Rental Items must be delivered to the Company at the Delivery Point; and
- (c) where the Contract requires the Contractor to complete any Services (other than the supply of Rental Items) or provide any deliverables as part of the Services, the date(s) by which the Services must be completed, or the Services deliverables must be provided, as applicable,

in each case as specified in the Formation Document.

"Defect" means a:

- (a) defect, error, deficiency, fault, omission, failure, malfunction, irregularity or other aspect in or of the Deliverables; or
- (b) inadequacy in the design, performance, workmanship, quality, makeup or other aspect in or of the Deliverables,

in each case, which does not comply with the Contract, except to the extent caused by fair wear and tear, and **"Defective"** has a corresponding meaning.

"Deliverables" each deliverable to be supplied or performed by the Contractor under the Contract, including the supply of the Goods or performance of the Services (or both, as applicable).

"Delivery" means that stage in the supply of the Goods where the Goods:

- (a) have been delivered to, and received by, the Company at the Delivery Point;
- (b) are in accordance with the requirements of the Contract, and are free from Damage and Defects;
- (c) have passed, to the reasonable satisfaction of the Company, all acceptance tests (if any) that the Contract requires the Goods to pass as a precondition to Delivery; and
- (d) are accepted by the Company as provided in Clause 9.4.

"Delivery Point" means the location(s) specified in the Formation Document as the place(s) for delivery of the Goods or the Rental Items (or both, as applicable).

"Effective Date" means:

- (a) where the Contract is formed by the Company issuing to the Contractor a purchase order incorporating these Terms and Conditions for Goods and Services, the date on which the Company issued the purchase order to the Contractor; or
- (b) where the Contract is formed by way of a form of agreement, the date on which the form of agreement is executed by the last Party to do so.

"End Date" means the date (if any) that the Contract will expire, as specified in the Formation Document.

"Environment" has the same meaning as given to the term under the *Environmental Protection Act 1986* (WA).

"Environmental Requirements" means the requirements set out in the Contract and any of the following related to the protection of the Environment, land use, planning, Pollution, contamination and the handling or disposal of substances:

- (a) all Laws in relation to the Environment, including the *Environmental Protection Act 1986* (WA); and
- (b) approvals, consents, directions, notices and the like issued in accordance with any Laws.

"Formation Document" has the meaning given in Clause 3.1(a).

"Goods" means the goods (if any) to be supplied by the Contractor under and in accordance with (and as specified in) the Contract and any variations to those goods instructed by the Company pursuant to Clause 27(a), but does not include the Rental Items (if any).

"Good Industry Practices" means:

- (a) the practices that would be adopted by, and the exercise of that degree of care, skill, diligence, prudence and foresight that reasonably would be expected from a competent contractor in performing services or supplying goods similar in nature, size,

scope and complexity to the Deliverables and under conditions comparable to those applicable to the Deliverables;

- (b) compliance with the standards and codes specified in the Contract or (to the extent that they are not so specified) such national or international standards and codes as are most applicable in the circumstances; and
- (c) compliance with all applicable Laws.

"Governmental Authority" means a governmental department, authority, instrumentality or agency (including regulatory bodies) having jurisdiction over the relevant matter and includes any governmental department, authority, instrumentality or agency that replaces that Governmental Authority in its jurisdiction over that matter.

"Government Official" means any officer, employee, contractor or representative of any government or any Governmental Authority, semi-governmental or judicial entity or authority (including any stock exchange or any self-regulatory organisation under statute).

"Group" means in the case of the Contractor the Contractor Group, and in the case of the Company the Company Group.

"Insolvency Event" means any of the following:

- (a) the Contractor becoming bankrupt or making a composition or arrangement with its creditors;
- (b) an order for the Contractor's winding-up being made or (except for the purposes of a solvent amalgamation or reconstruction) a resolution for its voluntary winding-up being passed;
- (c) a provisional liquidator, receiver, administrator or manager of the Contractor's business or undertaking being appointed or presenting a petition, or having a petition presented, applying for an administration order to be made;
- (d) possession being taken by or on behalf of the holders of any debenture secured by a floating charge of any of the Contractor's property comprised in or subject to the floating charge; or
- (e) any equivalent act or thing being done or suffered under any Law applicable to the Contractor.

"Intellectual Property" means any invention, patent or application for a patent, design (registered or unregistered), trade mark (registered or unregistered), name, copyright (including future copyright), circuit layout, trade secret, know-how, proprietary information or other right in respect of any Data, information, process, work, material or method.

"Law" means any of the following which is in force from time to time:

- (a) any treaty, statute, directive, ordinance, by-law, rule, order, decree, regulation, warrant, or delegated legislation, in each case, of any nation, state, jurisdiction, intergovernmental or supranational organisation, or of any political subdivision of the foregoing, including any binding requirement, instruction, direction, order, Authorisation, warrant, franchise or scheme of a Governmental Authority or other body of competent jurisdiction; and
- (b) any notices, guidance notes, circulars and codes of practice issued, made or published under or in connection with any of the foregoing.

"Modern Slavery" has the meaning given in the *Modern Slavery Act 2018* (Cth).

"Modern Slavery Laws" means the *Modern Slavery Act 2018* (Cth), the *Modern Slavery Act 2018* (NSW), Divisions 270 and 271 of the *Criminal Code 1995* (Cth), and any other anti-Modern Slavery laws or regulations in force in Australia, and, where relevant, in other jurisdictions including anti-slavery and human trafficking Laws, and international anti-slavery and human trafficking Laws.

"New Intellectual Property" means any Intellectual Property that arises out of, or is created in the course of, the performance of the Contract, including (for clarity) any New Intellectual Property created prior to the Effective Date, but excluding any Background Intellectual Property.

"Notifiable Incident" means any act, event or circumstance which occurs in connection with the performance of the Contract which:

- (a) is required by the Work Health and Safety Requirements or Environmental Requirements (or both) to be notified to a regulator; or
- (b) results in, could have resulted in or still has the potential to result in, a serious injury to a person or Damage to the Environment.

"Party" means as the context requires either the Company or the

Contractor, and **"Parties"** means the Company and the Contractor.

"Person" means any natural person, corporation, company, partnership, trust, unincorporated organisation or other legal entity, including any Governmental Authority.

"Personal Information" has the meaning given to such term in the Privacy Act.

"Personal Injury" includes personal injury, death or disease.

"Pollution" has the same meaning as in the *Environmental Protection Act 1989* (WA) and **"Pollute"** has a corresponding meaning.

"Price" means the price payable to the Contractor in consideration for the provision of the Deliverables, as specified in the Formation Document.

"Privacy Act" means the *Privacy Act 1988* (Cth).

"Privacy Law" means the Privacy Act, the Australian Privacy Principles (as defined in the Privacy Act) and any other applicable Commonwealth or State legislation or guidelines in relation to privacy.

"Related Body Corporate" has the meaning given to it in the *Corporations Act 2001* (Cth).

"Rental Items" means each and every article, item or thing (if any) specified in the Formation Document to be rented by the Contractor to the Company under and in accordance with the Contract, or any part thereof, as varied by an instruction by the Company pursuant to Clause 27(a).

"Representative" in respect of a Party means that Party's then-current representative appointed in accordance with Clause 6.

"Restricted Person" means any person that is identified on any applicable restricted party list issued by a Governmental Authority.

"Sanctions" means any sanctions, restrictions or designations imposed under any laws or regulations of Australia, the European Union, the United States of America, the United Kingdom, or any other country with jurisdiction over the Contract.

"Services" means the services to be performed by the Contractor under and in accordance with the Contract, including:

- (a) any services specified in the Formation Document;
- (b) any part of the services so identified and particularised;
- (c) any ancillary services or services that are reasonably inferable from services expressly described in the Contract;
- (d) any services required to be performed to supply any Goods (where applicable);
- (e) the lease of any Rental Items to the Company (where applicable); and
- (f) any variations to the foregoing instructed by the Company pursuant to Clause 27(a).

"Site Rules" means all rules, regulations, directives and policies notified by the Company to the Contractor from time to time which are intended to be of general application to persons at a Worksite location controlled or managed by the Company.

"Subcontract" means an agreement, whether express or implied and whether oral or in writing, between the Contractor and a Subcontractor.

"Subcontractor" means a person or company of any tier engaged directly or indirectly by the Contractor to perform or supply any part of the Deliverables.

"Taxes" means all taxes, duties and imposts levied or assessed by any government or Governmental Authority.

"Third Party" means a person who is not a member of Company Group or Contractor Group.

"Wilful Misconduct" means any act or omission which is done or omitted to be done wilfully having regard to, or with reckless disregard for or wanton indifference to, its foreseeable and harmful consequences.

"Work Health and Safety Requirements" means the requirements set out in the Contract relating to work health and safety, and any of the following related to work health and safety, dangerous goods, chain of responsibility and electricity safety (to the extent applicable):

- (a) Laws;
- (b) codes of practice;

- (c) Australian Standards and compliance codes;
- (d) any such matters that the Contractor has been informed of by the Company (including any safety related instructions or directions), whether communicated orally, electronically or in writing;
- (e) directions, notices and the like issued in accordance with any Laws or by any Governmental Authority; and
- (f) any relevant policies,

and for the avoidance of doubt, includes the *Work Health and Safety Act 2020* (WA) and its associated regulations.

"Worksite" means the lands, waters and other places on, under, in or through which the Deliverables will be performed or supplied, including any place where the Goods will be used or stored, and the place of the Delivery Point.

2. INTERPRETATION

In the Contract the following rules of interpretation apply unless the contrary intention appears:

- (a) headings are for convenience only and do not affect the interpretation of the Contract;
- (b) the singular includes the plural and vice versa;
- (c) words that are gender neutral or gender specific include each gender;
- (d) other parts of speech and grammatical forms of a word or phrase defined in this agreement have a corresponding meaning;
- (e) a reference to any legislation includes all delegated legislation made under it and amendments, consolidations, replacements or re-enactments of any of them;
- (f) the words 'such as', 'including', 'particularly' and similar expressions are not words of limitation;
- (g) no rules of construction applies to the disadvantage of a Party because that Party was responsible for the preparation of the Contract or any part of it; and
- (h) each reference to Co-Venturer is only applicable to the extent the Company enters into the Contract as agent for and on behalf of any Co-Venturers (whether on a disclosed or undisclosed basis).

3. CONTRACT DOCUMENTS

3.1 Contract Documents

The following documents, taken together, form the Contract, and will be read and construed together as the Contract:

- (a) either:
 - (i) the document entitled 'form of agreement' executed by the Parties to which these Terms and Conditions for Goods and Services are appended; or
 - (ii) where no such form of agreement is executed, the purchase order issued by the Company to the Contractor that incorporates these Terms and Conditions for Goods and Services by reference,

in each case excluding any schedule, appendix or attachment thereto (the **Formation Document**);

- (b) these Terms and Conditions for Goods and Services, as amended by any special conditions contained in the Formation Document;
- (c) the Code of Conduct; and
- (d) any schedule, appendix, attachment or other documentation appended to, or provided to the Contractor at the same time as, the Formation Document.

3.2 Inconsistencies

- (a) Where there is an inconsistency, ambiguity or discrepancy in or between the Contract Documents, the inconsistency, ambiguity or discrepancy will be resolved in accordance with the order of precedence of the Contract Documents (being the order of those Contract Documents as they appear in Clause 3.1).
- (b) Where an inconsistency, ambiguity or discrepancy is not resolved under Clause 3.2(a), the Company will determine the interpretation that is the most consistent with the Parties' intentions as ascertainable from the Contract and that interpretation will apply.

4. INDEPENDENT CONTRACTOR

- (a) The Contractor is an independent contractor. The Contractor is not the Company's agent in any way and has no authority to, and will not purport to, represent or bind the Company in any way or do anything else that would or might obligate the Company to third parties, without the Company's prior written consent.
- (b) In carrying out their respective obligations under the Contract, each Party is acting independently of the other Party. Nothing in the Contract creates a partnership, trust or agency between the Parties, imposes any fiduciary duties on either Party in relation to the other, or creates an employer/employee relationship, unless expressly stated.

5. STATUS OF COMPANY

Where the Company enters into the Contract as agent for and on behalf of any Co-Venturers (whether on a disclosed or undisclosed basis) the following applies:

- (a) the Contractor agrees to look only to the Company for the due performance of the Contract and nothing contained in the Contract will impose any liability upon, or entitle the Contractor to commence any proceedings against, any Co-Venturer;
- (b) the Company is entitled to enforce the Contract itself and on behalf of each Co-Venturer. For that purpose, the Company may commence proceedings in its own name to enforce all obligations and liabilities of the Contractor and to make any claim which any Co-Venturer may have against the Contractor; and
- (c) all losses, Damages, costs (including legal costs) and expenses recoverable by the Company pursuant to the Contract or otherwise include the losses, Damages, costs (including legal costs) and expenses of the Company, the Co-Venturers and its and their respective Related Bodies Corporate except that such losses, Damages, costs (including legal costs) and expenses will be subject to the same limitations or exclusions of liability as are applicable to the Company or the Contractor under the Contract. Any and all limitations of the Contractor's liability set out in the Contract represent the aggregate cumulative limitation of the liability of the Contractor to the Company, the Co-Venturers and its and their respective Related Bodies Corporate.

6. REPRESENTATIVES

- (a) Each Party will appoint a Representative, who will be authorised to represent it in all matters relating to the Contract. As at the Effective Date, a Party's Representative will be the relevant person specified in the Formation Document as that Party's Representative (or, where no such person is specified, the person notified to the other Party in writing on or around the Effective Date). A Party may replace its Representative with another person by giving the other Party written notice.
- (b) An instruction given to the Contractor's Representative is deemed to be given to the Contractor.

7. TERM

The Contract starts on the Effective Date and will continue until the earlier of:

- (a) the End Date (if any);
- (b) the date the Contractor completes all of its obligations under the Contract; and
- (c) the date the Contract is terminated by a Party in accordance with its terms.

8. CONTRACTOR TO SUPPLY DELIVERABLES

8.1 General

The Contractor must:

- (a) provide the Deliverables:
 - (i) in a manner that is workmanlike, safe, and without risk to health and safety;
 - (ii) in accordance with all applicable Laws, Site Rules and Good Industry Practices;
 - (iii) with due expedition and without delay, and in accordance with any timing requirements set out in the

Contract; and

- (iv) otherwise in accordance with the requirements of the Contract;
- (b) if it gave the Company samples of the Goods or demonstrations of the Services before it entered into the Contract, ensure that the relevant Deliverables correspond in nature and quality with the samples and demonstrations (as applicable);
- (c) ensure the Deliverables are fit for the purposes specified in the Contract or, where no such purposes are specified, fit for their ordinary purposes;
- (d) without limiting Clauses 8.1(a)(iii), 9.3 and 10.2(b), where the Contract requires:
 - (i) any Services (other than the supply of Rental Items) to be completed; or
 - (ii) any deliverables to be provided as part of the Services, by a Date for Delivery, complete or provide those Services or Services deliverables (as applicable) by the Date for Delivery;
- (e) obtain all Authorisations required for the provision of the Deliverables; and
- (f) comply with all reasonable directions given by the Company in respect of the Contract and the Deliverables.

8.2 Quality of Goods and materials

The Contractor must ensure that any Goods, and any items (excluding Rental Items) which the Contractor uses or supplies in conjunction with the Services:

- (a) meet the Company's requirements in respect of the quality, quantity, workmanship and specifications as set out in the Contract and, to the extent that such requirements have not been set out in the Contract, are in accordance with Good Industry Practices; and
- (b) are:
 - (i) of proper and tradesman-like workmanship;
 - (ii) unless expressly permitted otherwise in the Contract, new; and
 - (iii) of merchantable quality, and free from faulty design and Defects.

8.3 Resources and equipment

- (a) Subject to clause 8.3(c), the Contractor must provide, at its expense, all personnel, materials, resources, Contractor Equipment, facilities and other things necessary to provide the Deliverables in accordance with the Contract.
- (b) The Contractor must ensure all Contractor Equipment is at all times:
 - (i) in good working order, safe, sound and suitable for use in the performance of the Services; and
 - (ii) without limiting Clause 8.3(b)(i), compliant with all applicable international or Australian standards and, where required by those standards, inspected and certified as being safe and compliant with those standards (as evidenced by appropriate industry tags).
- (c) If the Contract requires the Company to provide any Company Equipment or Company Materials to the Contractor, the Company must provide such equipment or materials.
- (d) If the Company provides any Company Equipment or Company Materials to the Contractor:
 - (i) title to that Company Equipment, and to those Company Materials, remains with the Company at all times;
 - (ii) that Company Equipment and those Company Materials may only be used by the Contractor for performing the Services;
 - (iii) the Contractor will bear risk in the Company Equipment and Contractor Materials until such time as they are returned into the custody and control of the Company; and
 - (iv) the Contractor must keep the Company Equipment and Company Materials in good order and condition, except for fair wear and tear.

8.4 Over supply

If the Contractor:

- (a) delivers more Goods than the quantity specified in the Contract, the Company may return any excess quantity of Goods provided by the Contractor to the Contractor at the Contractor's sole risk and expense; or
- (b) performs more Services than the quantity specified in the Contract, the Company is not liable to pay for the additional quantity.

9. GOODS SPECIFIC CONDITIONS

9.1 Application

This Clause 9 applies (in addition to the other terms and conditions of the Contract) to the extent that the Deliverables include the supply of Goods, whether in conjunction with the performance of Services or otherwise.

9.2 Packaging and documentation

- (a) The Contractor must ensure that the Goods:
 - (i) are properly packed, secured, labelled and supplied with all mandatory documentation and meet the requirements set out in the Contract; and
 - (ii) are prepared and manifested for transportation by an appropriately trained person as required under the Western Australian Chain of Responsibility legislation.
- (b) The Contractor must, by the Date for Delivery (or such later date as may be agreed by the Parties in writing), provide to the Company all drawings, certificates and other documentation relating to the Goods in the format and quantities specified in the Contract.

9.3 Time for delivery

- (a) The Contractor must
 - (i) deliver the Goods to the Company at the Delivery Point by the Date for Delivery;
 - (ii) unless the Contract expressly provides otherwise, promptly unload the Goods at the Delivery Point; and
 - (iii) leave the Delivery Point secure, clean, orderly and fit for immediate use having regard to the condition of the Delivery Point immediately prior to the delivery.
- (b) If the Contractor is unable to deliver the Goods by the Date for Delivery the Contractor must notify the Company at the earliest possible opportunity. The Parties will, without limiting the Company's rights under Clause 35, endeavour to agree a mutually acceptable revised Date for Delivery.

9.4 Acceptance of Goods

- (a) On receipt of the Goods, if a duly authorised representative of the Company considers the requirements for Delivery (other than the requirement that the Company has accepted the Goods in accordance with this Clause 9.4) have been achieved, it will accept the Goods.
- (b) Acceptance of the Goods by the Company under this Clause 9.4 does not constitute approval of the Goods and does not prejudice any Claim by the Company.

9.5 Risk and title in Goods

- (a) Title to the Goods passes to the Company upon the earlier to occur of payment of the Price applicable to the relevant Goods and Delivery, after which the Goods must be appropriately marked and identified as the property of the Company.
- (b) The risk of loss of, or Damage to, the Goods remains with the Contractor until Delivery.
- (c) The Contractor warrants that
 - (i) it has complete ownership of the Goods free of any liens, charges and encumbrances and will provide the Goods to the Company on that basis; and
 - (ii) the Company will be entitled to clear, complete and quiet possession of the Goods.

9.6 Goods warranties

The Contractor must ensure that:

- (a) the Company has the full benefit of any manufacturer's warranties that may be applicable to the Goods (and the Contractor must pursue any manufacturer's warranties on the Company's behalf if the Company requests);
- (b) the benefit of all manufacturer's warranties are assignable to the Company or its nominee; and
- (c) on Delivery, the benefit of the warranties referred to in Clause 9.6(a) is assigned to the Company or its nominee (and prior to that assignment, or if no assignment occurs, on request of the Company, it must pursue any Claim against the relevant manufacturer on behalf of the Company).

9.7 Hazardous materials

The Contractor must ensure that the Goods comply with Laws and to the extent that they contain toxic, corrosive or hazardous materials, the Contractor must ensure that a notice to that effect accompanies each consignment, together with appropriate care and handling instructions and the manufacturers safety data sheets (SDS).

10. RENTAL ITEMS SPECIFIC CONDITIONS

10.1 Application

This Clause 10 applies (in addition to the other terms and conditions of the Contract) to the extent that the Deliverables include the provision of Rental Items as a Service, whether in conjunction with the supply of Goods or other Services or otherwise.

10.2 Basic arrangement

- (a) The Contractor will lease the Rental Items to the Company for the period set out in Clause 10.5, and the Company will pay the Price to the Contractor for the Rental Items, in accordance with the terms of the Contract.
- (b) The Contractor must deliver the Rental Items to the Delivery Point by the Date for Delivery.

10.3 Rental Items

- (a) The Contractor is responsible for the delivery and all costs associated with the delivery of the Rental Items to the Delivery Point.
- (b) Unless specified otherwise in the Contract, the Contractor is responsible for the installation of the Rental Items.
- (c) The Contractor must ensure that the Rental Items:
 - (i) are of the best quality and workmanship, free from faulty design and Defects, and conform to the Contract requirements;
 - (ii) without limiting Clause 10.3(c)(i), are compliant with all applicable international or Australian standards and, where required by those standards, are inspected and certified as being safe and compliant with those standards (as evidenced by appropriate industry tags);
 - (iii) are properly packed to avoid damage during loading, transit, delivery, unloading or storage;
 - (iv) are free from all encumbrances, including security interests registered under the *Personal Property Securities Act 2009* (Cth), that could prevent them from being used by the Company in accordance with the Contract; and
 - (v) have been properly serviced, maintained and operated by appropriately qualified and experienced staff in accordance with Good Industry Practice.
- (d) The Contractor warrants to the Company that it has the right to lease the Rental Items to the Company for the period set out in Clause 10.5.
- (e) On delivery of the Rental Items to the Delivery Point (or at such earlier time as may be stated in the Contract), the Contractor must furnish to the Company all operating manuals and instructions for the Rental Items in accordance with the Contract.

10.4 Risk and retention of ownership

- (a) Risk in the Rental Items will be borne by:

- (i) the Contractor at all times prior to the Company taking custody and control of the Rental Items at the Delivery Point;
 - (ii) subject to Clauses 10.4(b) and 10.9, the Company on and from the time it takes custody and control of the Rental Items at the Delivery Point until such time as the Rental Items are returned to the Contractor's custody and control pursuant to Clause 10.10(a); and
 - (iii) the Contractor on and from the time that the Rental Items are returned to the Contractor's custody and control pursuant to Clause 10.10(a).
- (b) Notwithstanding Clause 10.4(a), where the Rental Items are, as part of the Services, to be operated by a member of the Contractor Group, risk in the Rental Items remains with the Contractor at all times.
- (c) As between the Company and the Contractor, the Contractor retains full title to the Rental Items, notwithstanding that the Rental Items may be:
- (i) leased to, and in the possession of, the Company; or
 - (ii) attached to any land or buildings.

10.5 Duration of lease

- (a) Any lease of Rental Items as a Service under the Contract will:
- (i) commence on the date that the Company takes delivery of the Rental Items at the Delivery Point; and
 - (ii) end on the earlier to occur of:
 - (A) the date or time specified in the Formation Document as the lease end date (or, where no such date or time is specified, on the expiry of the term of the Contract in accordance with Clause 7); and
 - (B) the date the Contract is terminated by a Party in accordance with its terms.
- (b) If the Company continues to retain possession of the Rental Items, with the Contractor's consent, beyond the period specified in Clause 10.5(a), the Company will be deemed to lease the Rental Items on a week to week basis on the same terms as the Contract, including any changes necessary to make the terms appropriate for a weekly tenancy.
- (c) The Company may terminate the arrangement in Clause 10.5(b) at any time by:
- (i) notifying the Contractor that it wishes to terminate the informal continuation; and
 - (ii) delivering the Rental Items to the Contractor at the collection point specified in the Contract (or, where no such collection point is specified, at the Delivery Point for those Rental Items),
- and for the avoidance of doubt, Clause 10.10 will apply.

10.6 No encumbrances

The Company must ensure that, at all times during the lease of the Rental Items to the Company under the Contract:

- (a) no Rental Items are sold or otherwise disposed of by any member of the Company Group;
- (b) possession of any Rental Items is not shared with or provided to, and no sub-rental, licence or sub-licence affecting any Rental Items is granted to, any person other than a Related Body Corporate of the Company; and
- (c) no encumbrance is created over any Rental Items by or on behalf of any member of the Company Group, without the consent of the Contractor.

10.7 Quiet enjoyment

If the Company complies with its obligations under the Contract relating to the Rental Items (and the Services comprising the lease of the Rental Items), the Company may peaceably possess and enjoy the Rental Items during the period of the lease without any interruption or disturbance from the Contractor or any person lawfully claiming through the Contractor.

10.8 Maintenance and repair

Except to the extent expressly provided otherwise in the Contract:

- (a) the Contractor will be responsible for carrying out all routine and non-routine (breakdown) maintenance of the Rental Items that may be required during the term of the lease; and
- (b) the Contractor will maintain the Rental Items in good and operable condition, and in accordance with Good Industry Practice.

10.9 Damage

- (a) The Company will endeavour to protect the Rental Items against loss or Damage. However, the Company will:
- (i) not be responsible for fair wear and tear given the conditions under which the Rental Items were employed; and
 - (ii) notwithstanding Clause 32.1(d), be responsible for accidental loss of or Damage to the Rental Items up to the amount of the deductible on any insurance policy effected by the Contractor as contemplated by Clause 10.9(b).
- (b) The Contractor is responsible for insuring (and must at all times insure) the Rental Items for their full replacement value against accidental loss or Damage.

10.10 Return of Rental Items

At the expiry of the term of the lease in accordance with Clause 10.5:

- (a) the Rental Items will be returned by the Company to the Contractor at the collection point specified in the Contract (or, where no such collection point is specified, at the Delivery Point for those Rental Items), and subject to fair wear and tear given the conditions under which the Rental Items were employed; and
- (b) all costs associated with the return and delivery of the Rental Items from the Company to the Contractor will be borne by the Contractor.

11. DEFECTS

11.1 Defects in Goods

- (a) Subject to Clause 11.1(b), the Contractor must, at its own cost, repair, replace or rectify (at the Company's election) any Goods (or any replacement Goods) which are Defective upon notification by the Company given to the Contractor prior to the date that is 24 months after Delivery.
- (b) The Contractor will not be responsible for the costs of remedying any Defect to the extent that such Defect was caused by the Company's failure to use the Goods in accordance with specific operating conditions set out in the Contract.
- (c) If the Contractor fails to repair, replace or rectify any Defect in Goods in accordance with the timeframe reasonably required by the Company, the Company may arrange to replace the Goods or have the Defect remedied by alternative means, and may recover the direct costs of doing so from the Contractor on demand, as a debt due and payable.
- (d) Notwithstanding Clause 11.1(c), if the Company reasonably considers that it is necessary to immediately rectify any Defect in any Goods, then the Company is not obliged to give the Contractor an opportunity to rectify the Defect or to replace the Goods before the Company does so.
- (e) Where risk in Goods that are Defective has previously passed to the Company, the Company will no longer be responsible for the care or custody of those Goods after the Contractor has been notified that they are Defective.
- (f) Where title in Goods that are Defective has previously passed to the Company and the Company elects to replace the relevant Goods and redeliver the Defective Goods to the Contractor in accordance with Clause 11.1(d) or 11.1(e), title to those Defective Goods will revert to the Contractor upon the Contractor reimbursing the Company the full amount of the Price paid by the Company for those Goods.

11.2 Defects in Services (other than Rental Items)

- (a) This Clause 11.2 applies to Services other than the provision of Rental Items.
- (b) The Contractor must, at its cost, reperform any Services which are Defective upon notification by the Company given to the

Contractor at any time during the term of the Contract and until the period ending 12 months after completion of the Services.

- (c) If the Contractor fails to reperform any Services which are Defective in accordance with the time frame reasonably required by the Company, the Company may arrange to have the Defective Services remedied by alternative means and may recover the direct costs of doing so from the Contractor on demand, as a debt due and payable.
- (d) Notwithstanding Clause 11.2(c), if the Company reasonably considers that it is necessary to immediately rectify any Defect in any Services, then the Company is not obliged to give the Contractor an opportunity to rectify the Defect before the Company does so.

11.3 Defects in Rental Items

- (a) This Clause 11.3 applies to Services to the extent they comprise the provision of Rental Items.
- (b) During the term of the lease, the Company must notify the Contractor as soon as reasonably practical after it discovers any Defect in the Rental Items.
- (c) If the Defect in the Rental Items is capable of being remedied, the Contractor must, at its own expense, and promptly upon receiving notice under Clause 11.3(b), do all things necessary to remedy the Defect and must reimburse the Company for any costs incurred in connection with the Defect.
- (d) If the Defect in the Rental Items cannot be remedied, the Contractor must make replacement Rental Items available to the Company at no additional cost, and in accordance with the terms of the Contract.
- (e) If the Contractor fails to remedy the Defect, or provide replacement Rental Items, as applicable, in accordance with the timeframe reasonably required by the Company, the Company may itself arrange for replacement rental items from an alternative supplier, and to the extent the cost of doing so exceeds the Price that otherwise would have been payable under the Contract in respect of the lease of those Rental Items, the amount in excess of the Price will be recoverable by the Company from the Contractor on demand, as a debt due and payable.

12. COMPLIANCE – MODERN SLAVERY ACT

- (a) The Contractor must:
 - (i) comply, and ensure its suppliers (including all Subcontractors) comply, with all Modern Slavery Laws, and acknowledges and understands that Modern Slavery is prohibited;
 - (ii) not commit or engage in, and ensure its suppliers (including all Subcontractors) do not commit or engage in, Modern Slavery;
 - (iii) not use any goods or materials in connection with performing its obligations under the Contract that it knows or should reasonably suspect have been sourced or made using Modern Slavery; and
 - (iv) not do anything that would, and must ensure its suppliers (including all Subcontractors) do not do anything that would, be in violation of or cause the Company to be in violation of any Modern Slavery Laws; and
 - (v) notify the Company as soon as reasonably practicable of any instance of Modern Slavery identified in the Contractor's operations or supply chains, and any steps the Contractor has taken, or proposes to take, in response to the instance of Modern Slavery.
- (b) Without limiting Clause 12(a), the Contractor agrees that it will:
 - (i) implement appropriate policies, codes of conduct, measures and processes (including due diligence, inspection and audit processes) to ensure compliance with Clause 12(a), and to identify and address the risks of Modern Slavery in its operations and supply chains;
 - (ii) keep records of the supply chains relevant to its performance of the Contract and its compliance with this Clause 12, and ensure that, to the best of its knowledge, those records are current, accurate and

complete; and

- (iii) include, or procure the inclusion of, rights in contracts with Subcontractors to enable the Contractor to comply with its obligations under this Clause 12.
- (c) Without limiting any obligation under this Clause 12, the Contractor must provide all reasonable assistance to the Company to enable it to comply with its obligations under the *Modern Slavery Act 2018* (Cth) and to identify and address the risks of Modern Slavery in its supply chains, including:
 - (i) permitting the Company or its nominee to inspect the Contractor's records referred to in Clause 12(b)(ii), and inspect the Contractor's facilities and operations; and
 - (ii) upon request by the Company, by providing to the Company any information reasonably necessary for the Company to assess the Contractor's compliance with Clause 12(a).
- (d) Any breach by the Contractor of Clause 12(a) will entitle the Company to terminate the Contract by written notice with immediate effect. Any such termination will be taken to be termination under Clause 35.

13. REPORTING AND RECORDS

The Contractor must:

- (a) provide periodic reports on the performance and progress of the Deliverables under the Contract with such frequency and in such format as the Company may reasonably require from time to time; and
- (b) keep full and accurate records relating to the performance of the Contract by both Parties (including all invoices submitted by the Contractor and all payments made by the Company) for a period of not less than 7 years after the expiry of the term of the Contract in accordance with Clause 7. The Company will be entitled to inspect and copy such records upon reasonable notice for the purposes of ensuring the Contractor's compliance with the Contract.

14. CONFIDENTIALITY AND INFORMATION SECURITY

(a) The Contractor must:

- (i) subject only to Clause 14(b), keep the Confidential Information:
 - (A) in strict confidence, and must not disclose or make available the same to any third party; and
 - (B) secure and protected from any use, disclosure or access which is not permitted by this Clause 14; and
- (ii) immediately notify the Company if it becomes aware of any breach of Clause 14(a)(i).
- (b) Subject to Clause 14(c), the Contractor may disclose Confidential Information:
 - (i) to the extent reasonably necessary for the proper performance of, or to exercise its rights under, the Contract;
 - (ii) to its professional advisers or insurers in relation to the Contract who are under a duty of confidence;
 - (iii) to the extent required by Law; or
 - (iv) with the prior written consent of the Company (which consent may be withheld by the Company in its discretion, or provided subject to conditions).
- (c) The Contractor must, where possible before disclosing Confidential Information under Clause 14(b), give the Company prior notice of the disclosure and consult with the Company regarding the form and content of the disclosure.
- (d) The Contractor must:
 - (i) ensure that any person that it discloses Confidential Information to under Clause 14(b)(i) or Clause 14(b)(ii) complies with the Contractor's obligations under this Clause 14 as if it were the Contractor; and
 - (ii) if requested by the Company, ensure that a person to whom the Contractor has or will disclose Confidential Information under Clause 14(b)(i) or Clause 14(b)(ii) executes and delivers to the Company a confidentiality undertaking on terms no less onerous than this Clause

14.

- (e) The Contractor must immediately return to the Company, or destroy or delete as the Company directs, all documents (including in electronic form) in the Contractor's possession, custody or control which comprise, contain, reproduce, are based on, utilise or relate to Confidential Information, at the earlier of the following:
- (i) on demand at any time by the Company; or
 - (ii) the expiry of the term of the Contract in accordance with Clause 7.

15. LAWS

The Contractor must, while providing the Deliverables and otherwise performing its obligations under the Contract:

- (a) comply with all applicable Laws; and
- (b) not cause or contribute to any breach by the Company of any Laws.

16. HEALTH SAFETY AND ENVIRONMENT

- (a) The Contractor is responsible for the management and control of health, safety and Environmental issues related to, and during the performance of, the Contract and must perform and supply the Deliverables, and ensure that the Contractor Group perform and supply the Deliverables, in accordance with any agreed health and safety management system or safety case (as applicable) and all applicable Work Health and Safety Requirements and Environmental Requirements.
- (b) The Contractor warrants that it understands and has the capability and resources to:
 - (i) comply with its duties and obligations under the Work Health and Safety Requirements and Environmental Requirements; and
 - (ii) perform and discharge the functions and duties referred to in this Clause 16.
- (c) The Contractor must assist the Company comply with its work health and safety and Environmental obligations applicable to the performance and supply of the Deliverables and must comply with any directions given by the Company to the Contractor necessary for the Contractor or the Company to comply with its work health and safety and Environmental obligations.
- (d) The Contractor must ensure that its personnel and Subcontractors are fit for work, and competent and suitably qualified and trained to safely perform their respective tasks in the supply and performance of the Deliverables.
- (e) The Contractor must:
 - (i) cease or not proceed with any work that it considers unsafe or that could result in the occurrence of a Notifiable Incident and, where applicable, will act in accordance with any agreed health, safety and environmental management system or safety case (as applicable);
 - (ii) immediately notify the Company of any Notifiable Incident that occurs in connection with the provision of the Deliverables;
 - (iii) immediately provide the Company with all the information that the Company requires in order to report the Notifiable Incident to a Governmental Authority; and
 - (iv) after the occurrence of any accident, injury, property damage, damage to the Environment or other work health and safety issue arising from or in connection with the supply and performance of the Deliverables, promptly (and in any case, within 24 hours) provide all relevant information and documents to the Company, including:
 - (A) a copy of any notice issued by a Governmental Authority requiring the Contractor to provide information or documents to the relevant Governmental Authority;
 - (B) a copy of any information provided by the Contractor to a Governmental Authority;
 - (C) details of any enforcement action taken against

the Contractor, including legal proceedings commenced against the Contractor; and

- (D) a copy of any investigation report prepared by or at the instruction of the Contractor.

(f) The Contractor must:

- (i) so far as is reasonably practicable, consult, cooperate and coordinate with the Company and any other person who has obligations under the Work Health and Safety Requirements or Environmental Requirements (or both, as applicable); and
 - (ii) provide all information and documents to the Company that are reasonably necessary to facilitate the process of consultation, coordination and cooperation.
- (g) The Company may at any time request the Contractor to supply health, safety or environmental information associated with the performance and supply of the Deliverables to the Company, and the Contractor must promptly comply with any such request.
- (h) The Contractor must not Pollute or cause Damage to the Environment at the Worksite, and must ensure that no Pollution emanates from Contractor Equipment in any manner that is not permitted under all applicable Laws. If any Pollution or Damage to the Environment occurs at the Worksite, or emanates from the Deliverables or the Contractor Equipment, then the Contractor must immediately notify the Company, comply with any directions of the Company and act in accordance with the requirements of all applicable Laws with regard to remediating, and preventing further, Pollution or Damage.
- (i) Without limiting the Company's rights under this Clause 16, if the Company considers:
- (i) that there is a risk to health, safety or the Environment, or a risk of damage to property, arising from the performance and supply of the Deliverables;
 - (ii) the Contractor's health, safety or Environment performance is below the standards stated in the Contract; or
 - (iii) that a person has directly or indirectly caused a risk to health, safety or the Environment,

the Company may take any action it considers necessary, such as directing the Contractor to change or cease an activity or remove any of the Contractor's personnel from the Worksite, and the Contractor must, at its cost, promptly comply with such direction.

- (j) Where the Company has given a direction under Clause 16(i) to remove a person engaged by the Contractor from the Worksite, the Contractor must immediately comply with such direction and ensure that the person does not work on the Worksite again without the Company's prior written consent.
- (k) If the Contractor fails to comply with a direction under Clause 16(i), then:
 - (i) without limiting any rights the Company has under the Contract, the Company may arrange for either the Company or another Person to carry out the direction; and
 - (ii) the cost incurred by the Company or other Person in carrying out the direction will be a debt due from the Contractor to the Company or other Person.

17. ABORIGINAL CULTURAL HERITAGE

- (a) The Contractor is responsible for the management and control of Aboriginal Cultural Heritage issues related to, and during the performance of, the Contract and must perform and supply the Deliverables in accordance with the Aboriginal Cultural Heritage Legislation.
- (b) The Contractor is responsible for obtaining and maintaining any Authorisation required under the Aboriginal Cultural Heritage Legislation required for the performance and supply of the Deliverables, and must comply with any such existing Authorisation notified to it.
- (c) The Contractor must cease or not proceed with any work that it considers may harm Aboriginal Cultural Heritage, and, where applicable, will act in accordance with any Authorisation or direction by a Governmental Authority in respect of Aboriginal

Cultural Heritage. The Contractor must notify the Company of any harm to Aboriginal Cultural Heritage that occurs in connection with the provision of the Deliverables as soon as practicable.

- (d) The Company may at any time request the Contractor to supply information pertaining to compliance with this Clause 17 associated with the performance and supply of the Deliverables to the Company, and the Contractor must promptly comply with any such request.

18. PRIVACY

The Contractor must, in relation to any Personal Information which it collects or has access to in relation to the Deliverables or the Contract:

- (a) comply with any Privacy Laws (whether or not it is otherwise bound to do so);
- (b) use the Personal Information only for the purposes of fulfilling its obligations under the Contract;
- (c) take all reasonable measures to ensure the Personal Information is protected against loss and unauthorised access, use, modification or disclosure;
- (d) not transfer, store or process any of the Personal Information outside Australia (including by way of a cloud storage arrangement which is hosted overseas) except with the Company's prior written consent; and
- (e) ensure that any person who is authorised by the Contractor to have access to the Personal Information is made aware of and complies with the Contractor's obligations under this Clause 18.

19. CONTRACTOR PERSONNEL AND SUBCONTRACTORS

- (a) The Contractor must not, without the Company's prior approval, Subcontract or appoint any agent or representative to perform or supply any part of the Deliverables.
- (b) Approval pursuant to Clause 19(a) to Subcontract or appoint an agent or representative does not relieve the Contractor from any liability or obligation under the Contract.
- (c) Without limiting Clause 41(b), the Contractor is liable to the Company for the acts and omissions of each Subcontractor and each Subcontractor's personnel as if they were acts or omissions of the Contractor.
- (d) The Contractor must ensure that any personnel engaged in the supply of the Deliverables, and any Subcontractors, agents and representatives appointed pursuant to Clause 19(a), comply with all Laws and Site Rules and are sufficiently competent, experienced and appropriately qualified to ensure the supply, performance and completion of the Deliverables in accordance with the provisions of the Contract.
- (e) The Contractor must ensure that the supervisory personnel of the Contractor and of its Subcontractors can read, write and speak fluent English.
- (f) The Contractor must ensure that all persons involved in the performance and supply of the Deliverables, at all times, hold the appropriate work permits, travel permits, employment passes, visas, licences, registrations and any other documents or permissions required for those individuals to lawfully perform the Deliverables.
- (g) If the Company considers that any Contractor Group person is not able to lawfully perform or supply the Deliverables in the country in which the Worksite is located, is negligent or incompetent, or has failed or is failing to comply with any Laws or the Site Rules or any other requirements of the Contract:
 - (i) the Company may require the Contractor to remove such person from the Worksite, and the Contractor must, at its cost, do so and replace such person without interruption to the Deliverables; and
 - (ii) the Parties agree that the Company will not be liable to the Contractor for any Claim or loss arising from the removal of any such person under this Clause 19(g).

20. EMPLOYEE AND INDUSTRIAL RELATIONS

- (a) The Contractor is responsible for managing its employee and industrial relations with, or in relation to, its personnel (including the employees of its Subcontractors at every tier) and must do so using a high standard of skill, care and diligence. The

Contractor must not hinder or adversely affect the employee and industrial relations of the Company or any other employer at the Worksite.

- (b) The Contractor must ensure that all personnel engaged in the supply or performance of the Deliverables, whether as employees of the Contractor or of a Subcontractor, are employed in accordance with and paid at rates prescribed by any relevant award, determination, judgement or order of any competent court, board, commission or industrial tribunal.

21. CUSTOMS

- (a) When applicable, the Company and the Contractor must each apply to the relevant Governmental Authorities for their respective import, export and re-import of materials, goods, tools, equipment and supplies required for the Contract, including (in the case of the Contractor) the Goods and the Contractor Equipment.
- (b) The Contractor undertakes to import, export and re-import any items (including those which are sold to the Company) for the Deliverables which are subject to customs control in such a way as to enable maximum advantage to be taken of customs procedures of relevant Governmental Authorities.
- (c) The Contractor must pay and make payment at such times when due and payable, all import/export Taxes on materials, goods, tools, equipment and supplies required for the Contract and imported or exported by the Contractor (including, where applicable, the Goods and Contractor Equipment). The Contractor will be responsible for ensuring that it holds the necessary import/export licences issued by the relevant Governmental Authorities prior to the commencement of performing or supplying the Deliverables.

22. EXPORT CONTROLS

- (a) The Contractor must:
 - (i) comply with all applicable Laws in relation to export and other foreign trade controls under Australian, U.S., United Kingdom, European Union and other countries' Laws restricting sales and transfers to other countries and parties of commodities, software or technical data; and
 - (ii) upon request, provide written certification that it has complied with all such Laws.
- (b) The Contractor represents and warrants that neither the Contractor, nor any person or entity that owns, controls or is a director, officer or employee of the Contractor, is a Restricted Person.
- (c) The Contractor must not lend, contribute or otherwise make available funds made available to it under, pursuant to or in connection with the Contract to any person or entity that is a Restricted Person.
- (d) The Contractor must not engage in any activity with any person that is or would be subject to or in violation of Sanctions or with any Restricted Person.

23. LOCAL CONTENT

The Contractor acknowledges that the Company may be subject to obligations (**local content obligations**) which may require the Company to give preference to local suppliers or contractors with regard to the acquisition of goods or services. The Contractor must, in relation to the Deliverables (including insofar as it is applicable to Subcontractors), comply with the local content obligations referred to in the Contract (if any) and with Laws in respect of local content, and must provide sufficient information and reasonable assistance to allow its compliance to be monitored or audited (or both, as applicable) by the Company.

24. CONTRACTOR'S INVESTIGATIONS

- (a) The Contractor will be deemed to have examined and taken into account all local and other conditions affecting the performance and supply of the Deliverables and all information which is relevant to the risks, contingencies and other circumstances which could affect its performance and supply of the Deliverables, whether provided by the Company or otherwise obtainable by the making of reasonable enquiries.

- (b) The Company gives no warranty of accuracy, sufficiency or completeness in relation to information provided to the Contractor and disclaims all responsibility for such information. The Company will not be liable to the Contractor, in contract or tort or under any Law, for any inaccuracy in, or inadequacy of, information provided to the Contractor in relation to the Deliverables.

25. INTELLECTUAL PROPERTY

- (a) Nothing in the Contract affects a Party's title to its Background Intellectual Property.
- (b) Subject to Clause 41(d), all New Intellectual Property subsisting in the Goods vests in the Contractor. All other New Intellectual Property vests in the Company on creation, and the Contractor hereby assigns to the Company any interest it may have in such New Intellectual Property.
- (c) The Contractor grants to the Company and each Co-Venturer (if any) a royalty free, irrevocable, non-exclusive, perpetual, sub-licensable (including the right to grant sublicenses), transferable, world-wide licence to use (including modify, adapt, copy and distribute (including electronically distribute)) the Contractor's Background Intellectual Property, and any Contractor's New Intellectual Property, for any purpose in connection with the use of the Deliverables in any manner, enjoying the full benefit of the Deliverables and any outputs of the Deliverables, and otherwise exercising its rights in relation to the Deliverables and the New Intellectual Property.
- (d) The Contractor will save, indemnify, defend and hold harmless the Company Group from and against all Claims for, or arising out of, any infringement or alleged infringement of:
 - (i) any of the Intellectual Property licensed by the Contractor to the Company and any Co-Venturers under this Clause 25 or contained in any information or Data supplied by the Contractor to the Company or otherwise used by the Contractor in performing or supplying the Deliverables; or
 - (ii) any Intellectual Property arising out of or in connection with the performance or non-performance of the obligations of the Contractor under the Contract.
- (e) The Company grants to the Contractor a royalty free, non-exclusive, non-transferable and sub-licensable worldwide licence to use the Company's Background Intellectual Property which is made available to the Contractor by the Company under the Contract and the Company's New Intellectual Property for the sole purpose of performing its obligations under the Contract.
- (f) Without limitation to any other provision of this Clause 25, if the Contractor provides any software to Company as part of or incorporated in the Deliverables or software is required to use the Deliverables, Contractor must:
 - (i) obtain the Company's written consent to procure third party software that may be required for the use or provision of the Deliverables; and
 - (ii) ensure that any software (including third party software) required for the Deliverables, entitles the Company to:
 - (A) use the software and extract any Data or other information that the Company may have entered into any database using such software or which is generated using the software;
 - (B) permit any person to assist the Company to do any of the things referred to in Clause 25(f)(ii)(A); and
 - (C) own any Data or other proprietary information generated in the course of Company using the software, operating the Goods or otherwise utilising the Deliverables.

26. INSPECTION AND TESTING

The Company and all persons notified by the Company to the Contractor have the right to carry out reasonable inspections and testing to ensure that the Deliverables are in compliance with the Contract. The Contractor will render such reasonable assistance (including access to any premises at which the Deliverables are being

performed or supplied, including those of the Contractor and its Subcontractors of any tier) as may be required to facilitate such inspections and testing.

27. VARIATIONS TO THE DELIVERABLES

- (a) The Company has the right to issue instructions to the Contractor at any time to make any variations to the Deliverables (including any additions or reductions to the scope of the Deliverables). The Contractor must comply with the Company's instruction without delay irrespective of whether any additional payment has been determined pursuant to Clause 27(b).
- (b) Any additional payment payable to the Contractor as a result of any variation will be valued at the applicable rates and prices included in the Contract or, in the absence of any applicable rates and prices, a fair valuation will be made by mutual agreement between the Parties, or (if such agreement is not reached within a reasonable period of time) as determined by the Company.
- (c) The Contractor is not entitled to any additional payment if:
 - (i) the instruction issued by the Company is a direction to the Contractor to comply with its existing obligations under the Contract in connection with the supply or performance of the Deliverables;
 - (ii) the Company requests the Contractor to perform remedial work due to any Defect or non-compliance with the Contract; or
 - (iii) the relevant variation is due to any default on the part of the Contractor.
- (d) The Contractor acknowledges and agrees that the Company may, from time to time, decrease the scope of, or wholly omit, any part of the Deliverables to be provided under the Contract in accordance with the process set out in this Clause 27. Nothing in this Clause 27 prevents the Company from itself supplying or performing, or engaging others to supply or perform, any such Deliverables, or procure any goods or services which are additional to the Deliverables (even if the Company has requested a quote from the Contractor for the additional goods or services).

28. RATES AND PRICES

- (a) In consideration for the provision of the Deliverables, the Company will pay the Contractor the Price as and when it becomes payable in accordance with the Contract.
- (b) The Price will be equal to the lump sum price(s) specified in, or will be derived from the rates specified in, the Contract, and will be the sole consideration for the Contractor's performance of its obligations under the Contract. The Price which the Company has agreed to pay for the Deliverables is exclusive of GST but includes:
 - (i) all other Taxes;
 - (ii) all charges and costs for the supply of the Goods in accordance with the Contract including packaging, packing, insurance and delivery of the Goods; and
 - (iii) all charges and costs for the performance of the Services, including the lease of any Rental Items, and the performance of any miscellaneous services or items which are commonly performed, used or supplied in conjunction with the Services.
- (c) The Contractor is responsible for all costs, expenses and liabilities incurred by the Contractor in connection with the performance and supply of the Deliverables.
- (d) The Price is (and all lump sum prices and rates specified in the Contract are), unless expressly provided otherwise, fixed for the term of the Contract, and will not be subject to any form of escalation or rise and fall.

29. INVOICING AND PAYMENT

- (a) As and when the Contractor becomes entitled under the Contract to apply for a payment of all or part of the Price, the Contractor must submit a tax invoice to the Company, accompanied by satisfactory documentary evidence of the validity of the tax invoice and amounts claimed in the form required by the

Company at the address for payment of invoices specified in the Contract.

- (b) Unless otherwise stated in the Contract, the Contractor will be entitled to render a tax invoice:
 - (i) upon Delivery of the Goods;
 - (ii) upon completion of the Services; or
 - (iii) where performance of the Services may exceed 30 days in duration, at the end of each calendar month during the term of the Contract.
- (c) Subject to the Contractor's compliance with Clause 29(a) the Company will pay the Contractor any undisputed amount due by no later than 20 Business Days after the date the Company receives a correctly prepared and validly issued tax invoice.
- (d) The Company has no obligation to pay to the Contractor any disputed amount or amounts withheld, set off, retained or deducted in accordance with Clause 29(f).
- (e) Payment by the Company of any amount under this Clause 29 is payment on account only, and does not constitute an acknowledgment by the Company that the provision of the Deliverables by the Contractor is in conformity with the requirements of the Contract.
- (f) The Company may set-off from any amount due and payable from the Company to the Contractor under or in connection with the Contract, any amount payable by the Contractor to the Company (whether in connection with the Contract or otherwise).

30. TAXES

- (a) The Contractor will comply with all Laws relating to taxation.
- (b) If the Company is required by Law to make withholdings or deductions from payments otherwise due to Contractor, then the Company may do so, and the amount so withheld will be deemed to have been paid to Contractor. The Contractor will have no claim against and releases the Company from and in respect of any sum of money lawfully withheld pursuant to this Clause.
- (c) For the purpose of import duties exemptions, the Contractor must do everything reasonably necessary to ensure all conditions are met and obligations fulfilled to facilitate the obtaining of Free Trade Agreement (FTA) approvals where goods, equipment and/or inputs are manufactured in a country which is a signatory to an FTA with Australia. Specifically, where FTA treatment is available and rules of origin requirements have been met, the Contractor must, and must ensure that its Subcontractors, obtain all required 'Certificates of Origins' in the approved formats, and any other documentation from relevant Governmental Authorities in a timely manner and ensure its availability to the Company upon request.

31. GST

- (a) Under the Laws of Australia, GST is payable on certain supplies of goods and/or services.
- (b) In this Clause:
 - (i) **GST** means the same as in the GST Law;
 - (ii) **GST Law** means the same as in the *A New Tax System (Goods and Services Tax) Act 1999* (Cth); and
 - (iii) words defined in the GST Law have the same meaning in this Clause unless specifically defined in this Clause.
- (c) All charges and amounts payable by one Party to another under the Contract are (unless expressly provided otherwise) stated exclusive of GST.
- (d) For each taxable supply under or in connection with the Contract:
 - (i) The supplier will be entitled to charge the recipient for any GST payable by the supplier in respect of the taxable supply.
 - (ii) The recipient must pay to the supplier the amount of the GST at the same time as the relevant charge applicable to the supply becomes payable under the Contract.
 - (iii) The supplier must provide a valid tax invoice (or a valid adjustment note) to the recipient in respect of the taxable

supply and will include in the tax invoice (or adjustment note) the particulars required by the GST Law. The recipient is not obliged to pay the GST unless and until the recipient has received a tax invoice (or an adjustment note) for that supply.

- (iv) If the actual GST liability of the supplier differs from the GST paid by the recipient, the supplier will promptly create an appropriate valid adjustment note, and the recipient will pay to the supplier any amount underpaid, and the supplier will refund to the recipient any amount overpaid.
- (v) If any Party is entitled to payment of any costs or expenses by way of reimbursement or indemnity, the payment must exclude any part of that cost or expense which is attributable to GST for which that Party or the Representative Member of any GST Group of which that Party is a Member is entitled to an Input Tax Credit.
- (e) Each Invoice issued under the Contract will be in the form of a tax invoice. Each Invoice issued under the Contract must show the GST payable on supplies covered by that Invoice.

32. INDEMNITIES

32.1 Indemnities

- (a) **Company's indemnity in respect of Personal Injury:** The Company will release, indemnify, defend and hold the Contractor Group harmless from and against any and all Claims in respect of Personal Injury to any member of the Company Group arising out of or in connection with the Contract from any cause whatsoever to the fullest extent permitted by Law.
- (b) **Contractor's indemnity in respect of Personal Injury:** The Contractor will release, indemnify, defend and hold the Company Group harmless from and against any and all Claims in respect of Personal Injury to any member of the Contractor Group arising out of or in connection with the Contract from any cause whatsoever to the fullest extent permitted by Law.
- (c) **Company Group property:** The Company will release, indemnify, defend and hold the Contractor Group harmless from and against any and all Claims in respect of Damage to Company Group property (excluding the Goods, Company Materials, Company Equipment and Rental Items (if any)) arising out of or in connection with the Contract from any cause whatsoever to the fullest extent permitted by Law.
- (d) **Contractor Group property:** The Contractor will release, indemnify, defend and hold the Company Group harmless from and against any and all Claims in respect of loss of or Damage to Contractor Group property (including Contractor Equipment and Rental Items (if any)) whether owned, supplied, leased, hired, chartered or borrowed by the Contractor Group, arising out of or in connection with the Contract from any cause whatsoever to the fullest extent permitted by Law.
- (e) **Third Parties:**
 - (i) The Contractor will release, indemnify, defend and hold the Company Group harmless from and against any and all Claims by a Third Party arising out of or in connection with the Contract to the extent that the said Claim is caused or contributed to by the default, negligence or breach of duty (whether statutory or otherwise) of the Contractor Group to the fullest extent permitted by Law.
 - (ii) The Company will release, indemnify, defend and hold the Contractor Group harmless from and against any and all Claims by a Third Party arising out of or in connection with the Contract to the extent that the said Claim is caused or contributed to by the default, negligence or breach of duty (whether statutory or otherwise) of the Company Group to the fullest extent permitted by Law.
- (f) **Indemnities in respect of Pollution:** Subject to Clauses 32.1(a) to 32.1(e) (inclusive):
 - (i) the Contractor will release, indemnify, defend and hold the Company Group harmless from and against any and all Claims for Pollution occurring on the premises of the Contractor Group or originating from Contractor Group property (including Contractor Equipment), arising from, relating to or in connection with the performance or non-

- performance of the Contract; and
 - (ii) the Company will release, indemnify, defend and hold the Contractor Group harmless from and against any and all Claims for Pollution that originates from Company Group property arising from, relating to or in connection with the performance or non-performance of the Contract.
- (g) **Indemnities in respect of Aboriginal Cultural Heritage:**
Subject to Clauses 32.1(a) to 32.1(e) (inclusive):
- (i) the Contractor will release, indemnify, defend and hold the Company Group harmless from and against any and all Claims for breaches of the Aboriginal Cultural Heritage Legislation or damage to Aboriginal Cultural Heritage, arising from, relating to or in connection with the performance or non-performance of the Contract; and
 - (ii) the Company will release, indemnify, defend and hold the Contractor Group harmless from and against any and all Claims for breaches of the Aboriginal Cultural Heritage Legislation or damage to Aboriginal Cultural Heritage that originates from Company Group arising from, relating to or in connection with the performance or non-performance of the Contract.

32.2 General provisions for indemnities

- (a) The indemnities in Clauses 32.1(a), 32.1(b), 32.1(c), 32.1(d) and 32.1(f) will not extend to:
 - (i) any fine or penalty or criminal prosecution; or
 - (ii) fraud or Wilful Misconduct by any indemnified Party or member of its Group.
- (b) All indemnities given under this Clause 32 (except as otherwise provided in Clauses 32.1(e) and 32.2(a)) will, to the maximum extent permitted by Law, apply irrespective of cause and notwithstanding the negligence or breach of duty (whether statutory or otherwise) of the indemnified Party or any member of its Group and apply irrespective of any claim in tort, under contract or otherwise at law.

33. INSURANCE

- (a) The Contractor must, unless expressly provided otherwise in the Formation Document, ensure that each of the following insurances are effected and maintained on and from the Effective Date and for the term of the Contract:
 - (i) public and products liability insurance with a limit of not less than \$20,000,000 per claim and unlimited in the aggregate. The Contractor will ensure the policy:
 - (A) is endorsed to include Company and such other parties as Company may nominate as 'principal' to the extent of liabilities assumed by the Contractor under the Contract; and
 - (B) provides a complete waiver by the insurer of all express or implied rights of subrogation against the Company and such other parties as the Company may nominate;
 - (ii) workers compensation insurance and employer's liability insurance as required by Law, including cover for common law liability for an amount of not less than \$50 million for any one occurrence in respect of workers of the insured. Where permitted by law and commercially available, the policy must be endorsed to include a principal's indemnity extension for the Company and such other parties as the Company may nominate as principals;
 - (iii) motor vehicle third party liability insurance as required by Law, and motor vehicle third party property Damage with a limit of not less than \$20,000,000 for any one occurrence;
 - (iv) insurance covering the Contractor's own property, equipment, materials owned, hired, leased or used by the Contractor for the purpose of the Contract; and
 - (v) any additional insurance required by the Contract or any applicable Law.

- (b) In addition to the insurances to be obtained by the Contractor pursuant to Clause 33(a) the Contractor may obtain such additional insurances at its own cost as it deems necessary to cover its liabilities that it has assumed under the Contract.
- (c) The Contractor must ensure that each insurance required under the Contract fully complies with all applicable Laws in the country that the Worksite is located.
- (d) The Contractor will at the request of the Company provide for inspection copies of all insurance policies and certificates of currency in respect of the insurances required to be taken out by the Contractor.
- (e) Subject to Clause 10.9(a)(iii), the Contractor must pay any deductible payable under any insurance required by Clause 33(a).
- (f) If the Contractor Subcontracts any part of the supply and performance of the Deliverables, the Contractor must ensure that every Subcontractor purchases and maintains all the insurances required by this Clause 33 which are applicable to that subcontracted part of the supply and performance of the Deliverables for the duration of the Subcontract.
- (g) The insurances contemplated by this Clause 33 are primary and not secondary to the indemnities referred to in the Contract.

34. TERMINATION FOR CONVENIENCE

- (a) The Company may at any time give written notice to the Contractor to terminate the Contract for the Company's convenience.
- (b) In the event of termination under this Clause 34, the Contractor will be entitled to payment under the Contract for the part of the Deliverables performed or supplied in accordance with the Contract up to the date of termination (the "**Payment for Deliverables Performed or Supplied**"), together with any such other termination for convenience payments specified in the Formation Document or, in the absence of any such provision, such direct costs which are reasonably and unavoidably incurred by the Contractor as a direct result of such termination and which are not allowed for in the Payment for Deliverables Performed or Supplied.

35. TERMINATION FOR DEFAULT

- (a) If the Contractor breaches any term of the Contract in any way whatsoever, or an Insolvency Event occurs, the Company may, by written notice, immediately terminate the Contract or all or any part of the Deliverables.
- (b) Without limiting the Company's rights at law or under the Contract, the Contractor will be liable to the Company for all additional costs reasonably incurred by the Company as a direct result of the Contractor's breach or Insolvency Event.
- (c) In the event of such termination, the Contractor will be entitled to payment under the Contract for the part of the Deliverables performed in accordance with the Contract up to the date of termination, provided that such payment will not become due to the Contractor until the costs of completing the performance or supply of the Deliverables and all other costs arising as a direct result of the Contractor's breach or Insolvency Event have been finally ascertained.
- (d) Any termination under this Clause or any other provision of the Contract will be without prejudice to any accrued rights of either Party.

36. BUSINESS ETHICS

36.1 Code of Conduct

The Contractor must at all times comply with the Code of Conduct.

36.2 Contractor's warranties

The Contractor represents and warrants that, with respect to or in connection with the subject matter of the Contract:

- (a) neither it nor any of its officers, directors, employees, related bodies corporate or agents have offered, authorised, promised, given, solicited or accepted and none of the foregoing will offer, authorise, promise, give, solicit or accept, to or from a Government Official or any other person, directly or indirectly, any payment, gift, service, thing of value or other advantage

where such payment, gift, service, thing of value or other advantage would be an ABC Law Violation, and
(b) it will otherwise comply with the ABC Laws.

36.3 Subcontractors

- (a) Before the award of any Subcontract, the Contractor must:
- (i) procure warranties in the same terms as set out in Clause 36.2 from such Subcontractor in favour of Contractor;
 - (ii) conduct, or procure the conduct of, a due diligence on the proposed Subcontractor's ability to comply with ABC Laws that a reasonable and prudent contractor subject to the ABC Laws would conduct under the circumstances to a standard that is proportionate to the identified risk; and
 - (iii) conduct, or procure that each of its Subcontractors conduct a due diligence on their proposed Subcontractors that satisfies Clause 36.2(b).
- (b) Each Subcontract must include any specific terms required by the Contract, and be on terms that enable the Contractor to comply with its obligations under the Contract.
- (c) Any contract with a Subcontractor must be in writing.

36.4 Books and Records

The Contractor must:

- (a) maintain adequate internal controls over all transactions in relation to the Contract;
- (b) properly record all transactions in relation to the Contract;
- (c) maintain accurate books and records in relation to each transaction for a period of no less than 7 years from the date of such transaction; and
- (d) procure each of its Subcontractors to do the same.

36.5 Right of Termination

- (a) Subject to Clause 36.5(b) below, if Contractor or any of its Subcontractors commits an ABC Law Violation then the Company may terminate the Contract for breach, by giving written notice of termination to Contractor. Any such termination will be taken to be termination under Clause 35.
- (b) The Company will not terminate the Contract pursuant to Clause 36.5(a) above for an ABC Violation where the ABC Law Violation was committed by a Subcontractor and the Contractor terminates or procures the termination of the relevant Subcontract as soon as reasonably practicable.
- (c) The Contractor must procure that each Subcontract includes a termination clause as described in this Clause 36.5.
- (d) Any right of termination under this Clause 36.5 is additional to any other right of termination the Company may have, either under the Contract or at Law.

36.6 Audit Rights

- (a) The Company may, on reasonable notice and at its sole expense, conduct an audit of books and records referred to in Clause 36.4 for the purpose of verifying compliance with the terms of the Contract or to determine whether an ABC Law Violation has occurred.
- (b) The Contractor agrees to obtain similar audit rights in each Subcontract, so that for any Subcontract that was entered into solely for the performance of the Contract, the Company or Contractor may audit the books and records of the Subcontractor, in the same manner as set out in this provision.

37. EXCLUSION OF CONSEQUENTIAL LOSS

- (a) For the purposes of this Clause 37 "Consequential Loss" means:
- (i) any loss not arising naturally according to the usual course of things; and
 - (ii) loss of or deferral of production or business, loss of product, loss of use, loss of goodwill, loss of revenue, and loss of profit, anticipated profit and the opportunity to earn profit, in each case whether direct or indirect to the extent that these are not already included in Clause

37(a)(i), and whether or not foreseeable at the Effective Date.

- (b) To the extent permitted by Law, despite any other provision of the Contract, but subject to Clause 37(c), neither Party is liable to the other for, and each Party hereby waives and releases the other from any claim for, Consequential Loss arising from, relating to or in connection with the performance or non-performance of the Contract.
- (c) Nothing in Clause 37(b) relieves:
- (i) a Party from its indemnities given under Clause 32 or the Contractor from its indemnity given under Clause 25;
 - (ii) a Party from any liability under Clauses 14 or 30;
 - (iii) a Party from any fine or penalty imposed, or liability in relation to any claim of a third party, under any applicable Law (other than common law or equity);
 - (iv) a Party from any liability arising from fraud or fraudulent misrepresentation or Wilful Misconduct or arising from its repudiation of the Contract.

38. GOVERNING LAW AND JURISDICTION

- (a) The Contract and all issues arising in connection with it are governed by and will be construed in accordance with the laws in force in the State of Western Australia. The Parties agree that any conflict of laws rule that may otherwise refer the interpretation of the Contract to the laws of another jurisdiction, will not apply to the Contract.
- (b) The Parties irrevocably submit to the non-exclusive jurisdiction of courts exercising jurisdiction in the State of Western Australia and all courts of appeal from them in respect of any proceedings arising out of or in connection with the Contract. Each party irrevocably waives any objection to the venue of any legal process in these courts on the basis that the process has been brought in an inconvenient forum.

39. DISPUTE RESOLUTION

- (a) If any dispute difference, controversy or claim whatsoever arises under or in relation to the Contract (**Dispute**):
- (i) either Party may give notice of the Dispute to the other Party (**Dispute Notice**) which must set out the nature of the Dispute and the relief that is claimed;
 - (ii) if the Dispute is not resolved within 5 Business Days of receipt of the Dispute Notice, the Dispute must be referred to the Parties' Representatives and the Representatives must endeavour to resolve the Dispute;
 - (iii) unless otherwise agreed in writing, all communications between the Parties' Representatives pursuant to this Clause 39(a) will be without prejudice and confidential;
 - (iv) any agreement reached under this Clause 39(a) must be in writing and signed by both Parties; and
 - (v) if the Dispute has not been resolved within 30 Business Days of receipt of the relevant Dispute Notice, then either Party may commence litigation.
- (b) Nothing in this Clause 39 prevents a Party from obtaining urgent injunctive or urgent declaratory relief from a court.

40. NOTICES

- (a) Except as otherwise stated in the Contract, any notice in respect of the Contract must be given in writing and delivered by hand, or sent by email or post to the relevant address specified in the Formation Document and copied to such other office or offices of the Parties as are from time to time nominated by them in writing to the other.
- (b) Any such notice will be effective:
- (i) if delivered by hand, at the time of delivery;
 - (ii) if sent by email, at the time of transmission unless transmitted after the close of normal business hours or on a non-Business Day, in which case it is effective on the next Business Day following the date of sending; or
 - (iii) if sent by post, on the third Business Day after the date of posting.

41. GENERAL

- (a) The Contractor will not be relieved from any responsibility, obligation or liability by any review, approval, authorisation, acknowledgement, test, inspection or the like, by the Company any person on its behalf or by any failure of the Company or any such person to do any of the foregoing.
- (b) The Contractor will be responsible under the Contract for all acts and omissions of the Contractor Group as if they were acts and omissions of the Contractor.
- (c) The Contractor must ensure that it and the Contractor Group cooperates with any other contractors (if any) on the Worksite, and does not obstruct, delay or interfere with or damage the work of other contractors on the Worksite.
- (d) Title to the outputs arising from the performance or utilisation of the Deliverables (including any Data) will vest in and be assigned to the Company as soon as preparation of those outputs commences.
- (e) Without limiting its other obligations under the Contract, the Contractor must ensure that the Company at all times has access to and copies of Data generated during the performance or supply of the Deliverables or utilising any outputs, Goods, Rental Item or other item supplied in connection with the performance of the Deliverables (in the form requested by the Company).
- (f) The Contractor must:
 - (i) ensure that all items provided or made available by the Contractor under the Contract (including all Data) are free from all liens, attachments, charges, other encumbrances and retention of title claims from any Third Party; and
 - (ii) take all required action to discharge or remove any such lien, attachment, charge, other encumbrance or retention of title claim.
- (g) The Contractor may not assign its rights, interests or benefits under, transfer its obligations under, or novate, the Contract or any part of it without the Company's prior written consent.
- (h) The Company may assign its rights, interests or benefits under, transfer its obligations under, or novate, the Contract or any part of it to any Person without the Contractor's prior written consent, but must, within a reasonable time after any assignment, give notice thereof to the Contractor.
- (i) The Contract constitutes the entire agreement between the Parties relating to the subject-matter hereof and supersedes all previous negotiations and communications.
- (j) The Contract may only be amended by written agreement between the Parties.
- (k) Each Party agrees, at its own expense, to do everything reasonably necessary to give full effect to the Contract and the transactions contemplated by it, including (if required) the execution of documents.
- (l) The Parties agree that Part 1F of the *Civil Liability Act 2002* (WA) is excluded from operation with respect to any dispute, claim, action, or any matter whatsoever arising out of or in connection with the Contract.
- (m) The Parties have agreed to exclude the application of the United Nations Convention on Contracts for the International Sale of Goods to the Contract.

END OF TERMS