



1. DEFINITIONS AND INTERPRETATION

1.1 Definitions

In these General Conditions and elsewhere in the Contract unless a contrary intention appears:

Claim means any action, suit, proceeding or demand of any kind (including by or against the Company or its Personnel by Personnel of the Supplier or any third party and any claim against the Supplier or its Personnel by Personnel of the Company or any third party).

Clause means a clause of these General Conditions and **Sub-clause** means the relevant Sub-clause of the Clause indicated by its context.

Client means the party for whom the Company is performing work.

Commencement Date means the date of the Purchase Order (as varied in accordance with the Contract).

Communications includes all notices, notifications, invoices, certificates, approvals, appointments or representatives, consents, statements, reports, authorisations, ratifications, delegations, claims and other communications (other than day to day communications).

Company means Peritas Consulting Pty Ltd (ACN 131 388 326), its successors and assigns.

Company IP means the Intellectual Property Rights of the Company which:

- (a) are in existence at the date of the Contract; or
- (b) come into existence after the date of the Contract otherwise than in connection with the Contract.

Contract means the agreement between the Company and the Supplier evidenced by the Purchase Order, these General Conditions and any Schedules.

Contract IP means all Intellectual Property Rights (present or future) created, discovered or coming into existence as a result of, for the purpose of, or in connection with the provision of the Goods, the performance of any Services, or the Contract (including all Intellectual Property Rights in anything developed by the Company or the Supplier in supplying the Goods or performing any Services, and any Intellectual Property Rights in the Documentation provided by the Company to the Supplier or vice versa), for the avoidance of doubt excluding any Company IP and Supplier IP.

Contract Price means the amount payable, excluding Indirect Transaction Taxes, to the Supplier in relation to the provision of the Goods, and the performance of any Services, as set out in the Purchase Order, in accordance with Clause 4 or as varied in accordance with the Contract.

day means calendar day.

Default Notice means a notice under Clause 15.1 specifying a default and requesting the defaulting Party to remedy the default.

Defect means any defect, error or omission in the Goods or Services and any failure of the Goods or

Services to comply with the requirements of the Contract, and Defective has a corresponding meaning.

Delivery Date means the delivery date specified in the Purchase Order or as varied under the Contract.

Direction means any decision, demand, determination, direction, instruction, order, request or requirement which the Company representative may make, give or issue to the Supplier pursuant to the Contract but excludes any permission, acquiescence or forbearance, whether express or implied, oral or in writing, or partly oral and partly in writing.

Dispute means any dispute, question or difference of opinion between the parties concerning or arising out of the Contract, or its validity, construction, meaning, operation or effect, or concerning the rights, duties or Liabilities of either the Company or the Supplier.

Documentation includes, but is not limited to, plans, designs, drawings, calculations, engineering information, data, specifications, sketches, notes, samples, reports, maps, accounts, operating manuals, training materials and any other material specified in the Contract (and whether embodied in tangible or electronic form).

EFT means Electronic Funds Transfer.

General Conditions means these general conditions.

Goods means all materials, supplies, plant, equipment and other things to be supplied by the Supplier pursuant to the Contract.

Government Agency means any government or governmental, semi-governmental, administrative, municipal, fiscal or judicial body, department, commission, authority, tribunal, agency or entity.

Head Contract means the contract between the Client and the Company for the performance of works by the Company.

Indirect Transaction Taxes mean any relevant value added tax, goods and services tax, sales, use or consumption or similar tax or impost imposed, levied or assessed by any Government Agency or otherwise payable, but excludes any related penalty, fine or interest thereon.

Input Tax Credit means any entitlement to a credit for, or offset against, reduction in or refund of, Indirect Transaction Taxes, in relation to any acquisition or the receipt of any supply.

Intellectual Property Right means (in the context of a Party) all industrial and intellectual property rights whether protectable by statute, at common law or in equity, including all copyright and similar rights which may subsist or may hereafter subsist in the Goods, any Services, or any subject matter, rights in relation to inventions (including all patents and patent applications), trade secrets and know-how, rights in relation to designs (whether or not registrable), rights in relation to registered or unregistered trade marks, circuit layout designs and rights in relation to circuit layouts, but excludes non-assignable moral rights and similar non-assignable personal rights of authors and producers.

Law means any statute, regulation, order, rule, subordinate legislation or other document enforceable under any statute, regulation, rule or subordinate



legislation and includes a modification or re-enactment of it.

Liabilities means damages, Claims, demands, losses, liabilities, costs and expenses of any kind.

Party means a party to the Contract.

Perform includes execute, provide, supply, erect, do, rectify and complete, and performance has a corresponding meaning.

Person includes a firm or body corporate or unincorporated body as well as a natural person.

Personnel means:

- (a) in relation to the Supplier, any of its employees, Sub-contractors (including Sub-contractors' Personnel), agents and representatives involved either directly or indirectly in the supply of the Goods or performance of any Services; and
- (b) in relation to the Company, any of its past or present officers, employees, agents (including for the purposes of Clause 11, the entity entering into the Contract for and on behalf of joint venturers (if applicable) and that entity's past or present officers, employees, agents or representatives) or representatives.

Purchase Order means the document entitled "Purchase Order" which contains the details relevant to the Contract and the Goods to be supplied, and the performance of any Services, as issued by the Company to the Supplier.

Schedule means all or any of the schedules or appendices referred to in or annexed to the Purchase Order.

Security Agreement means the security agreement under the PPSA created between the Company and the Supplier under the Contract, and the following words have the meaning given to them by the PPSA:

- (a) Security Interest;
- (b) Purchase Money Security Interest;
- (c) Financing Statement;
- (d) Financing Change Statement;
- (e) Proceeds;
- (f) Accessions;
- (g) Verification Statement; and
- (h) Register.

Services means all services to be performed, developed, produced or performed by the Supplier pursuant to the Contract.

Site means the Company's premises or any other place owned or controlled by a member of the Company and designated in the Contract for the supply of the Goods or the performance of any Services.

Sub-contractor means any Person engaged by the Supplier to supply any portion of the Goods, or perform any part of any Services, under the Contract on behalf of the Supplier and, where context requires, includes

also the Sub-contractor's employees, agents, consultants and invitees.

Supplier means the Person, company or firm named in the Purchase Order who is required to supply the Goods and/or perform the Services, and includes its successors, permitted assigns and legal representatives.

Supplier IP means the Supplier's Intellectual Property Rights which:

- (a) are in existence at the Commencement Date; or
- (b) come into existence after the Commencement Date otherwise than in connection with the Contract.

Taxes means, unless the contrary intention is expressed, any and all taxes, including, without limitation, Indirect Transaction Taxes, excise, stamp, documentary, customs, import/export, payroll, personal, property, real property, interest equalisation, business, occupation, turnover, income, corporation, capital, profits, gains, gross receipts, or other taxes, fees, withholdings, imposts, levies, duties or other charges of any nature whatsoever or whensoever, together with any penalties, fines or interest thereon or similar additions thereto, imposed, levied or assessed by any Government Agency or otherwise payable.

Tax Invoice means an invoice or other document, including without limit a credit note or debit note, in a form that is valid under the applicable Law of the jurisdiction in which a liability to pay Indirect Transaction Taxes is imposed, claimed, levied or assessed, which must be held by a Person for that Person to be able to claim Input Tax Credits.

Warranty Period means the period of 12 months commencing on the date of delivery of the Goods or completion of any Services.

1.2 Interpretation

In these General Conditions, the following rules apply unless the context requires otherwise.

- (a) The singular includes the plural, and the converse also applies.
- (b) A gender includes all genders.
- (c) If a word or phrase is defined, its other grammatical forms have a corresponding meaning.
- (d) The meaning of general words is not limited by specific examples introduced by including or for example.
- (e) A reference to a Person, corporation, trust, partnership, unincorporated body or other entity includes any of them.
- (f) A reference to a Person or a Party, includes a reference to that Person's or Party's executors, administrators, successors, substitutes (including Persons taking by way of novation) assigns (in the case of a Person) and permitted assigns (in the case of a Party).
- (g) The Clause headings, Sub-clause headings and the index in these General Conditions are deemed not to be a part of the General



Conditions and must not be used in the interpretation or construction of the Contract.

- (h) A reference in the Contract to any Act of Parliament or part of an Act of Parliament will be deemed, unless the context is repugnant, to include a reference to any legislation, proclamation or order made under such Act and to any amendments or modifications made to such Act, part, legislation, proclamation or order from time to time.
- (i) A reference to conduct includes, without limitation, an omission, statement or undertaking whether or not in writing.
- (j) Where it is provided that the Supplier will Perform any act or provide any thing at its cost, this means the Supplier will not be entitled to any additional compensation for such act or thing and the cost will be deemed to be included in the Contract Price.
- (k) Where two or more Persons are named as the Supplier then the obligations on their part will bind and be observed and Performed by them jointly and each of them severally.
- (l) A reference to **dollars** and **\$** is to Australian currency.
- (m) Subject to clause 1.2(k), a reference to a right or obligation of any two or more people (for the avoidance of doubt, excluding any references to the 'Parties') comprising a single Party confers that right, or imposes that obligation, as the case may be, on each of them severally and each two or more of them jointly. A reference to that Party is a reference to each of those people separately.
- (n) Mentioning anything after 'includes', 'including', 'for example', or similar expressions, does not limit what else might be included.
- (o) Nothing in the Contract is to be interpreted against a Party solely on the ground that the Party put forward the Contract or a relevant part of it.

2. CONTRACT

2.1 Entire Agreement

The Contract, as amended from time to time in accordance with its provisions, represents the entire agreement between the Parties regarding its subject matter and supersedes all prior communications, arrangements, and negotiations.

2.2 Acknowledgement of Purchase Order

Subject to Clause 2.3, the Contract is formed upon the Parties, by their conduct, verbal or otherwise, permitting and/or supplying the Goods, or performing any Services, and once formed, is the only authority which the Parties will recognise for supplying the Goods or performing any Services.

2.3 Company's additional terms

The Parties hereby acknowledge that any terms and conditions attached to any communication between them shall not form part of the Contract unless expressly agreed otherwise in writing.

2.4 Severance

Any provision of the Contract that is prohibited or unenforceable in any jurisdiction is ineffective as to that jurisdiction to the extent of the prohibition or unenforceability. That does not invalidate the remaining provisions of the Contract nor affect the validity or enforceability of that provision in any other jurisdiction.

2.5 Discrepancies

- (a) If the Supplier finds any discrepancy, error or ambiguity in the Contract, it must inform the Company immediately and follow the directions of the Company. The Supplier will have no entitlement as a result of complying with any such direction.
- (b) The Supplier acknowledges and agrees that:
 - (i) some or all of the technical documents provided to the Supplier for the performance of its obligations under the Contract may have been prepared for the purpose of the Head Contract, including having been prepared using terminology relevant to the Head Contract (including having references to the Client and references to the Company as the contractor under the Head Contract);
 - (ii) to the extent that any of the technical documents provided to the Supplier for the performance of its obligations under the Contract were prepared for the purpose of the Head Contract, and to the extent relevant to the performance of the Supplier's obligations under the Contract:
 - (A) the Supplier must perform the obligations of the Company under the technical documents;
 - (B) the Company must perform, or procure the Client to perform, the obligations of the Client under the technical documents (but this clause 2.5(b)(ii)(B) does not apply to any obligations of the Client to pay money, to grant extensions of time or to indemnify);
 - (C) as between the Company and the Supplier, the Company has any rights of the Client under the technical documents; and
 - (D) the technical documents will otherwise be construed (including with due alteration of terminology) in a manner that makes them applicable to the Contract and the performance of the Supplier's obligations under the Contract; and
 - (iii) to the extent that any of the technical documents provided to the Supplier for the performance of its obligations under the Contract:



- (A) state that any matter or thing relevant to the Supplier's obligations under the Contract is to be performed or that any action relevant to the Supplier's obligations under the Contract is to be performed or organised, but do not state who is responsible for doing so, then unless the context requires otherwise, the Supplier must perform that matter or thing or perform or organise that action (as the case requires); or
- (B) state that any document, information or other matter or thing relevant to the Supplier's obligations under the Contract is to be submitted or approved, but do not state to whom or by whom the document, information, matter or thing is to be submitted or approved, then unless the context requires otherwise, the document, information or other matter or thing must be submitted to or approved by the Company (as the case requires).

3. PERFORMANCE BY SUPPLIER

3.1 Performance

The Supplier must supply the Goods, and perform any Services, in accordance with the terms of the Contract and in consideration of the Contract Price.

3.2 Supplier to provide all labour, equipment and other requirements

Unless otherwise provided in the Contract, the Supplier must supply all labour, supervision, tools, equipment, materials and safety equipment necessary for it to supply the Goods and perform any Services.

3.3 Independent Contractor

For the purposes of the Contract, the Supplier is an independent contractor and must be classified as an independent contractor and will not act as, or be regarded as, an agent or employee of the Company.

4. PAYMENT

4.1 Payment of Contract Price

In consideration of the satisfactory supply by the Supplier of the Goods, and performance of any Services, the Company must pay to the Supplier the Contract Price based on the rates or amounts set out in the Contract.

4.2 Payment claim

- (a) The Supplier may submit one payment claim per month to the Company on the 28th day of the month, for Goods delivered in accordance with the Contract, and/or Services completed in accordance with the Contract, in that month.
- (b) The Supplier's payment claim must include particulars of the Goods and/or Services supplied, and must include any details and substantiating documentation reasonably

- required by the Company. If Indirect Transaction Taxes are imposed on any supply made by the Supplier under or in connection with the Contract, the Supplier must provide the Company with a valid tax invoice before the Company will pay the Indirect Transaction Tax amount relating to that supply to the Supplier.
- (c) Any claim for payment which does not comply fully with this clause 4.2 is not a valid progress claim.
- (d) Within 15 Business Days after receipt of a valid progress claim, the Company must issue to the Supplier a payment certificate stating the amount of the payment due by the Company to the Supplier and the calculations employed by the Company to come to the amount certified.
- (e) If the progress certificate issued pursuant to clause 4.2(d) certifies an amount payable to the Supplier, within 5 Business Days after receiving the progress certificate, the Supplier must submit to the Company a tax invoice for the certified amount and which sets out separately any amount payable to the Contractor for Indirect Transaction Taxes.

4.3 Payment by Company

- (a) Subject to clause 4.3(b) and to the submission of a tax invoice in accordance with clause 4.2(e), within 25 Business Days after the date a relevant progress claim is made in accordance with clause 4.2, the Company must pay the Supplier the amount certified by the Company as being payable by the Company to the Supplier.
- (b) The Company may deduct from any money due or becoming due to the Supplier all debts and moneys due or becoming due by the Supplier to the Company.
- (c) If the progress certificate issued pursuant to clause 4.2(d) certifies an amount payable to the Company, then the Company may make a demand for payment of the amount in question. If the Company gives a demand for payment, the Supplier must pay the amount in question to the Company within 10 Business Days of receiving the notice, and if the Supplier fails to do so, then at the expiry of that period, and without prejudice to any other right that the Company may have, the Company is entitled to recover the amount in question from the Supplier as a debt that is immediately due and payable by the Supplier.
- (d) A payment made in relation to the Contract is not an admission of liability or an admission that any obligations performed by the Supplier are satisfactory, but is a payment on account only.

4.4 Payments by EFT

Unless otherwise agreed by the parties, all payments to the Supplier will be made by EFT to an Australian bank account as nominated by the Supplier.



5. TAXES

5.1 Taxes Generally

The Contract Price and all other amounts payable under the Contract (including any amount by way of reimbursement, indemnity, damages or otherwise) are:

- (a) inclusive of all Taxes; and
- (b) exclusive of Indirect Transaction Taxes, unless expressed otherwise.

5.2 Indirect Transaction Taxes

- (a) If Indirect Transaction Taxes are payable on a supply, transfer or sale (supply) made under or in connection with the Contract, and if the Party making that supply is liable under the applicable Law, to pay, or collect and remit the Indirect Transaction Taxes to the appropriate Government Agency, the Party receiving that supply (recipient) must pay to the supplier an additional amount equal to the Indirect Transaction Taxes payable by the supplier in respect of the supply. The recipient must pay the additional amount to the supplier on the date when the Contract Price (or part thereof) is provided to the supplier (subject to a Tax Invoice being received prior to payment date). This Sub-clause 5.2(a) does not apply to the extent that the consideration for the supply is expressed to be inclusive of Indirect Transaction Taxes.
- (b) The supplier must ensure that each invoice it presents to the recipient in respect of any Indirect Transaction Taxes is a Tax Invoice. If the supplier fails to provide the recipient with a Tax Invoice within the time period required by applicable Law of that jurisdiction, the recipient may withhold payment of the amount payable on account of Indirect Transaction Taxes until such time as a Tax Invoice is received.
- (c) Any reference in:
 - (i) the Contract to a cost, expense or other Liability (**Cost**) incurred by a Party; or
 - (ii) the calculation of consideration or of any indemnity, reimbursement or similar amount to a Cost;
 must exclude the amount of an Input Tax Credit entitlement of that Party in relation to that Cost.
- (d) Each Party will take all reasonable steps to cooperate with and provide all necessary assistance to the other Party to ensure so far as possible that the Taxes treatment is accepted by the relevant Government Agency, including the provision of invoices, proof of payment, proof of source and/or origination and other Documentation for this purpose.

5.3 Survival

This Clause 5 will survive the termination or expiry of the Contract.

6. WARRANTY

The Supplier warrants and undertakes that:

- (a) it will exercise all the skill, care and diligence that would be expected of a professional experienced supplier of goods similar nature to the Goods and services of similar nature to any Services; and
- (b) the Goods and any Services will comply with the Contract and all applicable Laws and Government Agency requirements; and
- (c) the Goods and any Services will be free of Defects and fit for their intended purpose.

7. QUALITY

- (a) The Goods shall, unless otherwise specified, be new and unused, of current manufacture, of the highest grade, free from all Defects or imperfections affecting performance, suitable for their respective purposes, and in accordance with the Contract and any applicable Australian Standards, codes and regulations.
- (b) The Supplier warrants and undertakes that the Goods and any Services are fit for the purpose for which the Goods are required.

8. WARRANTY PERIOD

- (a) If, during the Warranty Period, any of the Goods are found to be not in accordance with the Contract or otherwise Defective, the Company may:
 - (i) return the Goods to the Supplier; or
 - (ii) repair or make good the Defective Goods.
- (b) The Supplier must:
 - (i) repair or replace the Defective Goods or any Defective Services; or
 - (ii) reimburse the Company for any direct expenses incurred in repairing, re-performing or making good (as the case may be) any Defective Goods or Defective Services should the Supplier decline or fail in its obligations to do so, at the Supplier's cost and within 7 days of being requested, if requested to do so by the Company.
- (c) The provisions relating to any warranty or Defective Goods or any Services specified under the Contract shall be in addition to and without limiting any conditions or warranty expressed or implied by statute or common law or otherwise howsoever and in particular, without limiting the generality of the forgoing, the Supplier's liability under the Contract shall be in addition to any condition or warranty in the Company's favour implied by statute or common law as to the quality or the fitness for any particular purpose of the Goods, and Services, and each part thereof.
- (d) This Clause 8 will survive the termination or expiry of the Contract.



9. DELIVERY

- (a) The Supplier must deliver the Goods to the Site.
- (b) The Supplier must ensure that the Goods are suitably packed to avoid damage in transit or in storage.
- (c) Packages must be accompanied by a delivery note specifying the Contract number, item number, destination, contents, quantity and date.

10. TITLE AND RISK

- (a) All risk in the Goods shall, unless otherwise expressly agreed in writing by the Company, pass to the Company upon acceptance of the Goods by the Company following delivery.
- (b) All risk in any Services shall, unless otherwise expressly agreed in writing by the Company, pass to the Company upon acceptance of the Services by the Company following completion.
- (c) Title in each unit of the Goods shall pass to the Company upon the earlier of:
 - (i) payment of the relevant portion of the Contract Price; and
 - (ii) delivery of the Goods to the Company.
- (d) Title in any Services shall pass to the Company upon the earlier of:
 - (i) payment of the relevant portion of the Contract Price; and
 - (ii) completion of the Services.

11. INDEMNITY

The Supplier will indemnify and keep indemnified the Company and the Company's Personnel against all Liabilities suffered or incurred by the Company or the Company's Personnel, arising from any acts or omissions of the Supplier or the Supplier's Personnel in connection with the Contract, the supply of the Good and/or the performance of the Services.

12. INSURANCES

The Supplier is required to effect and maintain from the date of the Contract until the expiration of all applicable Warranty Period(s) each of the following insurances:

- (a) **Public Liability and Property Damage Insurance**
Insurance in respect of any injury to or death of any Person or any loss, damage or destruction to any property (including that of the Company) howsoever caused. These insurances must provide cover to an amount not less than A\$20,000,000 in the aggregate.
- (b) **Workers' Compensation / Employer's Liability Insurance**
Workers' compensation and employer's liability insurances in the names of the Supplier for its respective rights and interests covering all Liabilities, whether arising under statute or common law, in relation to the death of, or injury to, employees or any Person deemed to be an employee of the Supplier.

(c) **Supplier's Plant and Equipment**

If the Performance of the Contract requires the Supplier to use or provide for use plant and equipment, the Supplier must maintain or require the owners of the plant and equipment to maintain insurance covering all loss of and damage to the plant and equipment, for its replacement value.

(d) **Motor Vehicle / Automobile Third Party Liability Insurance**

If the Performance of the Contract requires the Supplier or its Personnel to use or provide for use of motor vehicles, the Supplier must maintain or require the owners of the motor vehicles to maintain third party liability insurance covering all Liabilities in respect of any injury to, or death of, any Person or any loss, damage or destruction to any property arising from the use of the motor vehicles.

(e) **Professional Indemnity**

If the Performance of the Contract requires the Supplier or its Personnel to perform any professional services, the Supplier must maintain professional indemnity insurance policy with a total aggregate cover of not less than A\$5,000,000 for any one occurrence and in the annual aggregate.

(f) **Before commencing the provision of any Goods and Services, and whenever requested in writing by the Company, the Supplier must promptly provide evidence satisfactory to the Company that it has obtained the insurances that it is obliged to obtain pursuant to the Contract.**

(g) **In the event that the Supplier fails to effect or maintain any of the insurances required pursuant to the Contract, the Company may, at its sole option and without being under any duty or obligation to do so, effect and maintain such insurances and deduct the costs of such insurances from any moneys due to the Supplier.**

13. PPSA

- (a) The Supplier acknowledges and agrees that the Contract:
 - (i) constitutes a Security Agreement for the purposes of the PPSA; and
 - (ii) creates a Security Interest in all Goods and their proceeds to secure the obligations of the Supplier to the Company under the Contract.
- (b) The Supplier irrevocably consents to the Company at any time effecting and maintaining a registration on the Register (in any manner the Company considers appropriate) in relation to any Security Interest (including any Purchase Money Security Interest) contemplated or constituted by the Contract in the Goods, and any Accession and the Proceeds.
- (c) The Supplier undertakes to:



- (i) promptly and at its own expense do all things and sign any further documents and/or provide any further assistance and/or provide any further relevant information (such information to be complete, accurate and up-to-date in all respects) which the Company may reasonably require to:
 - (A) obtain, register, maintain or perfect a Financing Statement or Financing Change Statement in relation to a Security Interest on the Register and/or enforce the Company's Security Interest in respect of any Goods in accordance with the PPSA;
 - (B) register any other document required to be registered by the PPSA; or
 - (C) correct a defect in a statement.
 - (ii) indemnify, and upon demand reimburse, the Company for all expenses howsoever incurred in registering a Financing Statement or Financing Change Statement on the Register or releasing any Goods charged;
 - (iii) not register, procure or permit to be registered a Financing Statement or Financing Change Statement in respect of a Security Interest contemplated or constituted by the Contract without the express prior written consent of the Company (which consent may be withheld for any reason in the Company's absolute discretion); and
 - (iv) not register, procure or permit to be registered a Financing Statement or Financing Change Statement in respect of any Goods or a Security Interest in favour of a third party without the express prior written consent of the Company (which consent may be withheld for any reason in the Company's absolute discretion).
- (d) The Company and the Supplier agree to contract-out of the PPSA in accordance with section 115 of the PPSA only to the extent that such contracting-out is for the benefit of the Company.
 - (e) The Supplier hereby waives its rights to receive notices under sections 95, 118, 121(4), 130, 132(3)(d) and 132(4) of the PPSA.
 - (f) To the fullest extent permissible by law the Supplier waives its rights as a grantor and/or a debtor under sections 142 and 143 of the PPSA.
 - (g) Unless otherwise expressly agreed to in writing by the Company, the Supplier waives its right to receive a Verification Statement in accordance with section 157(3)(b) of the PPSA.
 - (h) Unless otherwise expressly agreed to in writing by the Company, the Supplier must not disclose any information of the kind referred to in section 275(1) of the PPSA to an interested person, or any other person required by an interested person.
- (i) The Supplier shall not sell or grant a Security Interest in any Goods without the Company's express prior written consent.
 - (j) The Supplier shall unconditionally ratify any actions taken by the Company under this Clause 13.
- 14. LAWS AND REGULATIONS**
- The Supplier must at its own cost comply with all applicable Laws and Government Agency requirements in any way affecting or applicable to the:
- (a) Goods, the supply of the Goods, the safety of the Goods or the safety of Persons; and
 - (b) Services, the performance of the Services, the safety of the Services or the safety of Persons,
- and ensure that each of its Personnel does the same.
- 15. DEFAULT**
- 15.1 Notice of Default**
- If the Supplier fails to Perform or observe any of its obligations under the Contract the Company may send the Supplier a Default Notice. The Default Notice may not be unreasonably given and must specify that it is a notice under this Clause 15.
- 15.2 Remedy of Default**
- The Supplier must remedy the default in a proper manner and within 14 days of receipt of the Default Notice, failing which the Company may terminate the Contract upon written notice.
- 16. TERMINATION FOR CONVENIENCE**
- (a) In addition to the rights of the Company under Clause 15, the Company may at any time, in its absolute discretion (including for the purpose of having the Goods or similar goods supplied, or any Services or similar services performed, by a third party), terminate the Contract in whole or in part by giving the Supplier not less than 7 days' notice of its intention to do so.
 - (b) In the event that the Company terminates the Contract pursuant to Clause 16, the Supplier's sole and exclusive entitlement shall be payment by the Company to the Supplier for:
 - (i) Goods delivered and/or Serviced completed up to the date of termination;
 - (ii) the costs of materials ordered by the Supplier prior to the date of termination (in which case right and title to the materials shall vest in the Company upon payment); and
 - (iii) the costs of complying with any Directions given by the Company upon, or subsequent to, termination.
- 17. INTELLECTUAL PROPERTY**
- 17.1 Supplier IP**
- (a) The Company acknowledges that the Supplier remains the owner of all Supplier IP and that



nothing in the Contract prevents, limits or restricts the Supplier's subsequent use or exploitation of the Supplier IP.

- (b) The Supplier grants to the Company a non-exclusive, transferable, royalty free, worldwide, irrevocable and perpetual licence to use all Supplier IP for the purposes of operating, maintaining, repairing and enjoying the Goods and any Services.

17.2 Contract IP

- (a) The Supplier agrees that all Contract IP will be vested in the Company and will be the Company's property as and when created and the Supplier assigns and must ensure that all of its Personnel assign all their respective right, title and interest in and to the Contract IP (whether created before, on or after the Commencement Date) to the Company.
- (b) On the Company's request, the Supplier must execute any formal assignment or other document required to give effect to this Clause 17.

17.3 Company IP

- (a) The Supplier acknowledges and agrees that the Company remains the owner of all Company IP and that nothing in the Contract prevents, limits or restricts the Company's subsequent use or exploitation of Company IP.
- (b) The Company grants to the Supplier a non-exclusive, non-transferable, revocable licence to use the Company IP for the purpose of providing any Services in accordance with the Contract.

17.4 Supplier Warranty

The Supplier warrants that it has the right to:

- (a) grant to the Company the licence under Sub-clause 17.1(b); and
- (b) assign all Contract IP to the Company in accordance with Sub-clause 17.2(a).

17.5 General Obligations

The Supplier agrees to:

- (a) disclose to the Company all Contract IP as and when it is created;
- (b) notify the Company as soon as the Supplier becomes aware of any suspected, threatened or actual infringement or unauthorised use of any Intellectual Property Rights in the Contract IP and to provide all reasonable assistance in relation to that infringement; and
- (c) provide all reasonable assistance the Company may request to protect, perfect, enforce, defend or assert its interest in and right to use and exploit the Contract IP (including assisting the Supplier to take action against Persons infringing the Contract IP).

17.6 Survival

This Clause 17 will survive the termination or expiry of the Contract.

18. TIME

- (a) The Supplier must deliver the Goods to the Site on or before the relevant Delivery Date.
- (b) The Supplier must complete the Services on or before the relevant Delivery Date.
- (c) Time is of the essence in relation to the performance of the Supplier's obligations in the Contract.
- (d) To the extent that the Supplier's Performance of the supply and delivery of the Goods, or the performance of any Services, is delayed by a breach of the Contract by the Company, the Supplier shall be entitled to a reasonable extension to the Delivery Date, as determined by the Company, subject to the Supplier providing written notice to the Company within 5 days of the occurrence of the delay.
- (e) An extension to the Delivery Date shall be the Supplier's sole and exclusive entitlement for any delay to the Performance of the supply and delivery of the Goods and any Services (including in relation to any breach of the Contract by the Supplier), and the Supplier shall irrevocably waive its right and be time barred from an extension if it fails to strictly comply with Sub-clause 18(d).

19. VARIATION

The Company may, by notice to the Supplier vary the quantity, quality or description of the Goods or any Services, the Delivery Date or any other aspect of the supply of the Goods or any Services. The Contract Price will be altered as agreed by the Parties or, failing agreement, by a reasonable amount determined by the Company for that variation.

20. CONFIDENTIALITY

- (a) Each Party (**receiving Party**) must treat the Contract and the information provided by the other Party and its Personnel (**disclosing Party**) as confidential information. The receiving Party must only use such information to the extent necessary to enjoy (as the case may be) the Goods and any Services and must not use, disclose or turn to its advantage or in any way profit from the use of such information without the prior written consent of the disclosing Party. This undertaking does not apply to information which at the time of disclosure is available to the public or which must by Law be disclosed.
- (b) The receiving Party must ensure that each of its Supplier's Personnel and other Persons for whom it is responsible or over whom it is capable of exercising control complies with these confidentiality obligations.
- (c) The receiving Party shall indemnify and keep indemnified disclosing Party and its Personnel against all Liabilities associated with any breach of this confidentiality undertaking.
- (d) Immediately on completion of the supply of the Goods or any Services, or the termination of the Contract (whichever first occurs) the receiving Party will deliver to the disclosing Party all



confidential information (in whatever form) in the custody, possession or control of the receiving Party or any of its Personnel.

- (e) This Clause 20 will survive the termination or expiry of the Contract.

21. DISPUTE RESOLUTION

21.1 Dispute

If at any time there is a Dispute, the Parties will as a condition precedent to the commencement of any proceedings in respect of the Dispute (other than proceedings required on an urgent interlocutory basis), promptly (and no later than 7 days) following the occurrence of a Dispute, confer in an endeavour to settle the Dispute.

21.2 Representative

The Parties will ensure that a senior executive officer who has authority to bind its respective Party attends the conference.

21.3 Failure to Agree

If the Company and the Supplier fail to agree within 30 days after first conferring, either Party may commence legal proceedings in an appropriate court to resolve the Dispute.

21.4 Obligations Continue

Notwithstanding the existence of any Dispute, the Parties will continue to Perform all of their obligations under the Contract without limiting their position in respect of any Dispute.

21.5 Survival

This Clause 21 will survive the termination or expiry of the Contract.

22. NOTICES

22.1 Communications in Writing

All Communications must be in writing and in the English language.

22.2 Method of Sending Communications

- (a) Subject to any other specific provision to the contrary, where any Communication requires an act or thing to be Performed within a time specified, the Communication must be sent:
- (i) as a signed document attached to an email; or
 - (ii) by mail to, or be left at, the address of the Party or Person to whom or which the requirement specified in the Communication is directed.
- (b) The Communication referred to in Sub-clause 22.2(a) must be sent to or left at:
- (i) in the case of the Supplier or the Company – the relevant address referred to in the Purchase Order;
 - (ii) in the case of any other party or Person (being a body corporate) – its registered office or principal office for the time being in Western Australia; and

- (iii) in the case of any other party or Person – its address last known to the party or Person sending or leaving the Communication.

22.3 Serving and Giving of Communications

Except as provided in this Clause 22 and subject to anything elsewhere specifically provided to the contrary, and without limiting any other proper mode of service or giving the Communications, a Communication will be properly served or given:

- (a) if posted by mail to the Party's representative to the address (if any) nominated in the Contract as being the address of the Party's representative, or if left at that address;
- (b) if posted to the Party at its registered office in Western Australia, or if left at that registered office;
- (c) if handed to the Party's representative personally; or
- (d) if sent electronically as an attachment to an email to the Party or the Party's representative at the email address specified in the Contract.

22.4 Receipt of Communications

The Communications will be deemed to have been received:

- (a) if delivered personally, upon delivery;
- (b) if mailed to an address in the city of despatch, upon expiry of 2 working days after the day of despatch;
- (c) if mailed elsewhere within Australia on the expiry of 7 days after the day of despatch;
- (d) if mailed from overseas, on the expiry of 14 days after the day of despatch; or
- (e) if sent electronically as an email attachment:
 - (i) if it is transmitted by 5.00pm (Australian Western Standard Time) on a day – on that day; or
 - (ii) if it is transmitted after 5.00pm (Australian Western Standard Time) – on the next day.

22.5 Substitution of Address

Either Party may from time to time substitute a new address or email address for any of the addresses or email addresses of the Party and the Party's representative by notifying the other Party, for the purpose of this Clause 22.

23. GENERAL

23.1 Law applicable

The Contract is governed by the Law of the State of Western Australia and the Parties submit to the exclusive jurisdiction of the courts of the State of Western Australia and of any court which may hear appeals from any of those courts, for any proceedings in connection with the Contract.



23.2 Waiver in Writing

The waiver or relaxation partly or wholly of the terms of the Contract will be valid only if in writing and signed by the Company and will apply to a particular occasion and will not be continuing unless expressed so to be and further will not constitute a waiver or relaxation of any other condition or term.

23.3 No Alteration or Deviation Unless in Writing

The Supplier shall not alter the Goods or any Services in any way nor deviate from the Contract except as Directed or permitted in writing by the Company representative.

23.4 Further Assurances

Each Party agrees to do all things and execute all deeds, instruments, transfers or other documents as may be necessary or desirable to give full effect to the provisions of the Contract and the transactions contemplated by it.

23.5 Novation

- (a) The Supplier acknowledges that the Company may at any time assign its rights or novate its rights and obligations under the Contract to any third party, without the consent of the Supplier.
- (b) The Supplier must do all things and execute those documents as may reasonably be required by the Company to give effect to any assignment or novation.
- (c) The Supplier must not at any time assign its rights or novate its rights and obligations under the Contract to any third party, without the consent of the Company.BD-