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1 Definitions and Interpretations

1.1 Interpretations

Headings are for convenience only and do not affect interpretation. The following rules apply unless the context requires otherwise.

- a) The singular includes the plural and conversely.
- 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 all 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) A reference to a Clause is a reference to a clause of, these General Conditions.
- h) A reference to an act or legislation includes a modification or re-enactment of it, a legislative provision substituted for it and a regulation or statutory instrument issued under it.
- i) A reference to use in the context of dealing with Intellectual property rights includes using, exploiting, copying, adapting, creating derivative works, developing, modifying, disclosing and communicating
- j) A reference to conduct includes, without limitation, an omission, statement or undertaking, whether or not in writing.
- k) 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.

1.2 Definitions

Associated Services means the services (if any) identified in the Purchase Order that are to be performed by the Supplier.

Business Day means a day on which banks are open for business in the place in respect of which an obligation is to be performed or, in respect of Clause 23, the place to which a Notice is sent.

Cancellation Date is defined in Clause 18.2(b) (iii).

Claim means any action, suit, proceeding or demand of any kind (including by or against any or all of the Purchaser, an End User or their respective Personnel by Personnel of the Supplier or any third party).

Confidential Information means the Contract, and any information (in whatever form) or Documentation of a confidential nature (or which the Supplier or its personnel ought reasonably to know to be confidential) which relates to the business, affairs or activities of Purchaser, an End User or members of the Purchaser Group (including in relation to the Supply) and which: (a) is disclosed to the Supplier or its Personnel by or on behalf of Purchaser; (b) is generated by the Supplier or its Personnel in performing the Supply; or (c) otherwise comes to the knowledge of the Supplier or its Personnel.

Contract is defined in Clause 2.1.

Contract Price is defined in Clause 7.1.

Corporations Act means the Corporations Act 2001 (Cth).

Customs Duties mean any tax or tariff imposed, claimed, levied or assessed by, or payable to, any Government Agency in relation to the import or export of Goods.

Defects Liability Period means (as applicable) the period identified as such in the Purchase Order or, where such period is not identified in the Purchase Order, the period stated in clause 5.2

Delivery Point means the place identified in the Purchase Order for delivery of the Goods.

Dispute is defined in Clause 19.1.

Dispute Notice is defined in Clause 19.1.

Dispute Representative is defined in Clause 19.2(a).

Documentation includes 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).

End User means an entity identified in the Contract (or notified to the Supplier) to whom the Purchaser provides goods and/or services comprising, or derived from, in whole or in part, the Supply.

Excise Duties means any tax imposed, claimed, levied or assessed by, or payable to, any Government Agency in relation to the production or manufacture of Goods.

Facilities mean any accommodation, sustenance, transportation, medical or toilet facilities.

Force Majeure means an event or cause which is beyond the control of the Party claiming force majeure, not able to be overcome by the exercise of reasonable care, proper precautions and the consideration of reasonable alternatives with the intention of avoiding the effects of the force majeure by that Party, and which could not have been reasonably foreseen, and includes but are not limited to (subject to satisfying the requirements of the foregoing): (a) an act of God (other than adverse weather); (b) cyclones, fire, flood; or (c) acts of war, acts of public enemies, pandemics, epidemics, economic or government lockdowns (shutdowns) terrorist acts, riots or civil commotions.

Goods mean the goods, materials, supplies, equipment or other items identified in the Purchase Order.

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

Indemnified Parties is defined in Clause 16.1.

Indirect Transaction Taxes means any value added tax, goods and services tax or similar tax including, without limit, sales, use or consumption taxes, imposed, claimed, levied or assessed by, or payable to, any Government Agency, but does not include 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.

Insurances is defined in Clause 15.1

Intellectual Property Rights means 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 works 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 registerable), rights in relation to registered or unregistered trademarks, 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.

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

Official includes: (a) any officer or employee of any Government Agency, or any person acting in an official capacity on behalf of any such Government Agency; (b) any officer, employee or official of a political party; (c) any candidate for political office; or (d) any officer or employee of a public international organisation (for example, the United Nations, IMF or World Bank).

Party means a party to the Contract.

Personal Information has the meaning given in the Privacy Act. **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 performance of the Supply; (b) in relation to Purchaser, an End User, any of its past or present officers, employees, agents (including, for the purposes of Clause 20, 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; and (c) in relation to a Sub-contractor, any of its employees, agents or representatives involved either directly or indirectly in the performance of the Supply.

Privacy Act means the Privacy Act 1988 (Cth).

Processing means collecting, holding, using, transferring, destroying and any other dealing.

Purchase Order means individual purchase orders as may be issued by the Purchaser to the Supplier in respect of the supply of Goods or the performance of Associated Services which shall be subject to the terms of the Contract.

Purchaser means the Party (as identified in the Purchase Order) responsible for receiving the Supply.

Purchaser's Default Notice is defined in Clause 18.2.1.

Purchaser Representative is defined in the Purchase Order.

Related Body Corporate has the meaning given in the Corporations Act.

Site means the Purchaser's premises identified in the Purchase Order.

Supplier means Schenck Process Australia Pty Limited

Supplier's Representative is, initially, as defined in the Purchase Order, and includes: (a) any person authorised by that representative to perform any of that representative's powers, duties, discretions or authorities.

Supplier's Personal Information means the Personal Information that the Purchaser transfers to the Supplier from time to time in connection with the Contract.

Specifications means the specifications for the Supply and any modification of those specifications as directed by the Purchaser's Representative in accordance with the Contract.

Sub-contractor means any person engaged by the Supplier in accordance with Clause 25 to perform all or any part of the Supply on behalf of the Supplier.

Supply Chain means all steps and processes involved in the provision of the Supply to the Purchaser, commencing with

the sourcing of the Goods and (if applicable) Associated Services and finishing with the use of the Goods and Associated Services by the Purchaser.

Supply means the supply of Goods and the performance of any Associated Services in accordance with the Contract.

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.

Tax or 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.

Tender means the Supplier's offer or counter-offer in writing to perform the Supply whether described as a "tender" or "proposal" or otherwise.

Termination Notice is defined in Clause 18.1.

2 Evidence of Contract and precedence of documents

2.1 Contract

The Contract consists of the following documents:

- a) the Purchase Order;
- b) special conditions agreed by the parties (if applicable)
- c) these Standard Terms and Conditions;
- d) any other document which is attached to, or incorporated by reference in, the Purchase Order from the Purchaser or these Standard Terms and Conditions.

2.2 Precedence of Contract documents

If there is any conflict or inconsistency between the documents constituting the Contract, unless otherwise provided, the documents will rank in order of precedence in accordance with the order in which they are listed in Clause 2.1.

2.3 Entire agreement

- a) The Contract contains the entire agreement between Supplier and the Purchaser with respect to its subject matter and supersedes all prior communications and negotiations between the Parties in this regard, unless those communications expressly form part of the Contract.
- b) no terms or conditions submitted by either party that are in addition to, different from or inconsistent with those contained herein or in the Purchase Order, including, without limitation, the Supplier's printed terms and conditions, and any terms and conditions contained in any Supplier's quotation, invoice, order acknowledgment, confirmation, Acceptance, bill of lading or other instrument, shall be binding upon either party unless specifically and expressly agreed to in a writing signed by duly authorised representatives of both parties.

2.4 Amendment to be in writing

No amendment or variation of the Contract is valid or binding unless made in writing and signed by both Parties

3 Accuracy of information

3.1 Purchaser's representation

The Purchaser has endeavoured and will continue to endeavour to ensure the accuracy of any information provided to, or obtained by, the Supplier or its personnel through a conducted Site visit, a pre-bid conference or otherwise obtained by the Supplier or its personnel.

Both Parties acknowledge that any information so provided is for the convenience of the Other Party only and does not form part of the Contract unless otherwise expressly agreed by the Parties in writing

3.2 Performance by Supplier

The Supplier shall perform the Supply in accordance with the terms of the Contract and in consideration of the payment of the Contract Price by the Purchaser

4 Supplier's warranties conditions

4.1 Supplier's warranties

The Supplier warrants that:

- a) the Supply will be of the highest quality and in accordance with the Supplier's specifications (where those specifications are made known to the Purchaser) or in the absence of such specifications, in accordance with any applicable standards set by the Standards Association of Australia;
- b) in relation to the performance of the Supply:
 - (i) the Supplier and its Personnel will exercise the standards of diligence, skill and care normally exercised by a similarly qualified and competent person in the performance of comparable work; and
 - (ii) any equipment used on-Site by the Supplier will be in safe working condition, will comply with all legislation which is applicable to such equipment and will be operated by suitably qualified and competent Personnel, to the satisfaction of Purchaser; and
- c) in relation to the provision of Goods as part of the Supply:
 - (i) the Goods will be new and of merchantable quality ((unless the parties agree that refurbished or free issued parts are to be used);
 - (ii) the Goods will be free from defects in design, materials and workmanship, and suitable for the relevant purpose of those Goods;
 - (iii) it has good and marketable title to the Goods and the Purchaser will receive title to the Goods free of any charge or encumbrance; and
 - (iv) it will obtain at its cost all usual trade warranties and any warranties specifically requested and on completion of the Supply it will assign the benefit of any such unexpired warranties to the Purchaser including any warranties obtained from the Supplier's Subcontractors.

4.2 Copies of trade warranties

Copies of trade warranties referred to in Clause 4.1(d)(iv) will be supplied upon request.

4.3 Warranty exclusions

Before mobilising the Supplier's personnel to investigate any claim, a Purchase Order must be supplied to cover any costs incurred, should the claim be proven not to be at the fault of the Supplier.

The following items are excluded from defects:

- (i) Defects caused by failure to provide a suitable installation environment or incorrect installation or a departure or warnings contained in the Equipment's Installation Operation & Maintenance Manual (IOM).

- (ii) Replacing or modifying without prior approval of the Supplier of any parts supplied under the Contract including if relevant, screening media with non Schenck Process products, before the end of the warranty period
- (iii) Damage or failures caused by use of the equipment for purposes other than those for which it was designed.
- (iv) Damage caused by Force Majeure events, including but not limited to fire, flood, wind, and lightning.
- (v) Damage or failures caused by negligence, misuse, ignorance, accidents, alteration or modification.
- (vi) Damage or failure as a result of abrasion, corrosion, or erosion, or the action of any radiation of any kind.
- (vii) Damage from inadequate storage of the Equipment prior to Commissioning.
- (viii) Commissioning not carried out by the Supplier and signed off by another party.
- (ix) All costs for repairing or replacing defects of the Goods supplied including the removal and replacement of the relevant parts, on site.
- (x) Labour costs of the Purchaser
- (xi) Free Issued items supplied from the Purchaser
- (xii) Normal wear and tear and consumables
- (xiii) Site cramage, scaffolding costs and logistics to carry-out repair or replacement

5 Defects liability

5.1 Warranty

The Supplier warrants each Good against any defect which arises during the Defects Liability (Warranty)Period.

5.2 Commencement of Defects Liability Period

The Supplier's defect liability period is 12 months from the date of dry commissioning or 18 months from the date of delivery of each item of equipment ex-works, whichever is earliest. This warranty will be voided if commissioning is not undertaken or signed off by the Supplier's employee or its approved representative.

5.3 Rectification of defects

The Purchaser shall provide written notice to the Supplier immediately within the warranty period of any failure of the equipment to conform to specifications or a defect in material or workmanship.

The Purchaser must provide to the Supplier with all information deemed necessary, including but not limiting to site operating conditions, material feed rates, known instances of over/under loading of equipment, condition monitoring data, maintenance and repair histories, and performance data, to help the Supplier identify the root cause of any inferred defect or equipment failure. This information will be used to assess if a Warranty claim exists for the Buyer.

The Purchaser must take all practical steps to avoid further damages to the part or parts claimed as defective. Continuing operations with a known defect may result in the rectification costs being apportioned between the Supplier and Purchaser.

Subject to the Warranty exclusion, in clause 4.3 the Supplier will correct any such failure or defect within a reasonable time after such notification and agreement, at a location designated by The Supplier. If the Supplier is unable to repair the part or equipment, the Supplier will, at their option: (a) replace the part or repair the equipment, or (b) refund the purchase price of the part or equipment, if a repair or replacement is not feasible. For option (b), the Purchaser must return the defective part(s) or equipment to the Supplier.

These remedies shall be the Purchaser's exclusive remedies for breach of warranty. Any claim for warranty must be advised immediately prior to the completion of the warranty period.

6 Delivery, title and risk

6.1 Delivery

The Supplier must deliver the Goods to the Delivery Point according to the Incoterms as dictated in the Purchase Order or if not specified, will be deemed ex-works.

6.2 Title

Full unencumbered title to each Good will pass to the Purchaser upon the later of:

- a) Purchaser making payment in full to the Supplier for that Good; or
- b) the Good being delivered to the Delivery Point, (if applicable) inspected in accordance with Clause 12 and accepted by the Purchaser's representative.

6.3 Risk

Risk in each Good will remain with the Supplier until its delivery to the Delivery Point.

7 Contract Price

7.1 Contract Price

The Contract Price means the aggregate amount payable (excluding Indirect Transaction Taxes in accordance with Clause 8) by the Purchaser to the Supplier in relation to the Supply pursuant to Clause 9.3

8 Taxes

8.1 Taxes (including Indirect Transaction Taxes)

- a) All amounts payable under or in connection with this Contract, (including any amount by way of reimbursement, indemnity, damages or otherwise) are:
 - (i) inclusive of Taxes; and
 - (ii) exclusive of Indirect Transaction Taxes, unless expressed otherwise.
- b) If Indirect Transaction Taxes are payable on a supply, transfer or sale (**supply**) made under or in connection with this Contract, and if the party making that supply (**Supplier**) 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**) shall pay to the Supplier an additional amount equal to the Indirect Transaction Taxes payable by the Supplier in respect of the supply.
- c) 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 does not apply to the extent that the consideration for the supply is expressed to be inclusive of Indirect Transaction Taxes.
- d) The Supplier shall 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, either pursuant to subclause (b) or as part of the consideration where that consideration is expressed to be inclusive of Indirect Transaction Taxes, until such time as a Tax Invoice is received.
- e) Any reference in:
 - (i) this 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 any Input Tax Credit entitlement of that party in relation to that Cost.

- f) 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.

8.2 Customs and Excise Duties

- a) Where the recipient elects to acquire Goods and the Supplier is the importer of record, the Supplier will:
 - (i) be responsible for, and remit payment of all Customs Duties assessed by or payable to any Government Agency as well as any other foreign shipping charges; and
 - (ii) use its best endeavours to ensure that any Goods are imported free of Customs Duties including, without limit, through the use of applicable bilateral free trade agreements (or the equivalent).
- b) The Supplier will, at the recipient's request, provide the recipient with all information and documentation necessary for the recipient to take or assess the Supplier's entitlement to make, in accordance with any applicable laws, applications or certifications for:
 - (i) a drawback, refund, rebate, remission or other reduction of Customs Duties or Excise Duties; and
 - (ii) Customs Duties or Excise Duties concessions, including, without limit, exemptions, reductions, duty-free access and preferential rates of duty available under bilateral free trade agreements (or the equivalent).
- c) The Supplier must make any application or certification requested by the recipient in a form that is satisfactory to the recipient. Where any such application or certification is successful, the Supplier will pass on to the recipient the full economic benefit of the exemption, reduction, concession, drawback, refund, rebate or remission of Customs Duty or Excise Duty, as appropriate, by way of a reduction in the Contract Price. This clause applies regardless of the shipping, insurance or freight terms used.

8.3 Survival

This clause will continue to apply after expiration or termination of this Contract.

9 Payments to Supplier

9.1 Method of payment

All payments made to the Supplier are to be made by electronic funds transfer into the Supplier's nominated bank account.

9.2 Invoices

The Supplier will provide an invoice, (unless progress payments have been agreed by the parties) at the time of delivery or completion of the Services calculated by reference to the prices, fees or other amounts specified in the Purchase Order.

- a) Invoices will contain the following information:
 - (i) the number of the Purchase Order to which the Invoice relates;
 - (ii) a brief description of the Supply provided in the period covered by the Invoice; and
 - (iii) any further verification or documentation in relation to the Invoice provided by the Supplier.

9.3 Payment of Invoices

The Supplier's credit department will set the payment terms prior to accepting an order from the Purchaser. Where:

- a) No credit is offered by the Supplier, the Purchaser will be required to pay cash prior to despatch
- b) Credit has been provided, the purchaser must pay to the Supplier the amount shown on terms on the Invoice within 30 days from the date of invoice

9.4 Disputed Invoices

If the Purchaser disputes any amount shown on an Invoice, it must notify the Supplier within 7 days of receipt of the Invoice and must pay any amounts not in dispute in accordance with Clause 9.3

9.5 Errors or exceptions in invoicing

Without limiting Clause 9.3, if the Purchaser discovers or is advised of any errors or exceptions relating to its invoicing for the Supply, the Supplier will review the nature of the errors or exceptions, and the Supplier must, if appropriate, take prompt corrective action and adjust the relevant invoice or refund overpayments.

10 Supplier Personnel

10.1 Supplier Personnel

The Supplier is required to supply all Personnel necessary for the proper performance of the Supply. Such Personnel must be appropriately qualified, competent and skilled to perform the relevant part of the Supply in respect of which they are engaged.

10.2 Engagement of Personnel

The Supplier must ensure that all Personnel of the Supplier engaged to provide any part of the Supply comply with Clauses 20 and 22 with respect to Confidential Information and Intellectual Property Rights.

10.3 Use of Subcontractors

- a) The Supplier may at its discretion engage or appoint subcontractors to perform a portion of the scope of Supply
- b) The Supplier will seek permission from the Purchaser. Consent cannot be unreasonable withheld if the Supplier continues to supervise the work carried out by the subcontractor
- c) The Supplier is not relieved of its obligation in performing its services under this Contract

11 Packing, despatch and transport

11.1 Supplier responsible

Subject to the agreed Incoterms of the Delivery Point, the Supplier is responsible, at its cost, for packing and transporting the Goods to the Delivery Point

11.2 Where the Supplier is responsible to arrange transport

If, pursuant to the terms of the Contract, the Supplier is obliged to arrange transport of all or some of the Goods, then the Supplier will notify the Purchaser's representative of the details of those Goods ready for despatch in sufficient time to enable transport to be arranged.

11.3 Preparation for transport

The Supplier must pack and protect all Goods ready for despatch in accordance with best practice having regard to methods of carriage and handling and to the weather conditions through which they will pass whilst being transported to the Delivery Point. The Supplier must provide and fit all lifting and handling devices required for lifting and handling the Goods in transit.

11.4 Notification of despatch dates

The Supplier will notify the Purchaser's Representative promptly of the date of despatch of each item and the estimated date of arrival at the Delivery Point.

12 Inspection

12.1 Inspection

The Purchaser's representative may inspect any of the Goods at any time to determine whether the Goods are in accordance with the Contract and are to the standard provided for in the Contract.

12.2 Access

The Supplier must ensure that Purchaser has access to the Goods at all times and the Supplier must provide all facilities necessary for the supervision, inspection and testing of all Goods at the Site or wherever the Goods are stored or in the course of manufacture. The Purchaser must provide adequate notice to the Supplier and ensure it meets the Supplier's Health and Safety requirements before entering the Supplier's site.

12.3 Refuse access to Purchaser

The Supplier may refuse entry to the Purchaser where its Personnel fail to comply with the Supplier's Health and Safety requirements.

12.4 Cost of inspections

- a) Subject to Clause 3(b), if upon inspection after a direction by the Purchaser's Representative to dismantle or open up any part of a Good, the Good so inspected is in accordance with the Contract, the whole of the expense incurred as a result of the dismantling or opening up and reassembly will be borne by Purchaser. If the Good is found not to be in accordance with the Contract the whole of the expense so incurred, including without limitation, any costs associated with putting that Good into a condition which is in accordance with the Contract, will be borne by the Supplier.
- b) If the Purchaser's Representative gives the Supplier reasonable notice to inspect any portion of a Good before it is assembled, and the Supplier has given the Purchaser adequate time to inspect (and fails to inspect), any expense incurred as a result of dismantling or opening up and reassembling that Good will be borne by the Purchaser.

12.5 Testing

The Supplier must conduct Factory Accepted testings of the Goods or parts of the Goods in accordance with the Contract and otherwise as required in accordance with the relevant standards set by the Australian Standards Association and any applicable industry codes. Where there are no such standards or codes, the tests must be carried out in accordance with generally accepted practices.

13 Acceptance or rejection of Equipment

13.1 Notification

Within the ten business days after:

- a) the later of:
 - (i) delivery; or
 - (ii) if applicable, completion of acceptance testing, or the date for completion of acceptance testing stated in Item 25, whichever first occurs; or
- b) the receipt of a notice given by the Supplier pursuant to subclause 13.6, the Purchaser shall give a written notice to the Supplier that the Equipment is acceptable or that it is rejected. If the Purchaser fails to so notify the Supplier, acceptance shall be deemed to have been notified

13.2 Details of notification

If notice of acceptance of the Equipment is given pursuant to subclause 13.1, the notice shall state the minor defects, if any, to be rectified by the Supplier.

If a notice of rejection of the Equipment is given pursuant to subclause 13.1, the notice:

- a) shall state the reasons for the rejection; and b) may either:
 - (i) direct the Supplier to submit a proposal under subclause 13.3; or
 - (ii) notify the Supplier that the Purchaser elects to accept the Equipment and claim damages.

13.3 Supplier to notify action

Within 14 days after receipt of a direction under subclause 13.2(b)(i), the Supplier shall notify the Purchaser in writing whether the Supplier proposes to:

- a) correct the Equipment where it is located; or
- b) recover and either:
 - (i) replace the Equipment; or
 - (ii) correct it, and, if so, where, and, in either event, also specify the:
- c) nature of the work involved;
- d) times when or during which the replacement or correction will take place;
- e) access which the Supplier will require and the disruption, if any, which might be caused to the Purchaser; and
- f) damages (other than for delay), if any, proposed by the Supplier to compensate the Purchaser for the Supplier's failure to comply with the Contract.

If the Supplier fails to so notify the Purchaser, subclause 13.7 shall apply as if a proposal by the Supplier had been rejected.

13.4 Purchaser's decision on Supplier's proposal

Within ten business days after receipt of the Supplier's proposal under subclause 13.3, the Purchaser shall by written notice to the Supplier:

- a) accept the Supplier's proposal;
- b) reject the Supplier's proposal;

If the Purchaser fails to give such notice to the Supplier, the Supplier's proposal shall be deemed to have been rejected by the Purchaser upon the expiration of this ten day period

13.5 Consequences of acceptance of proposal

Subject to the terms of the accepted proposal, if the Purchaser accepts the Supplier's proposal given under subclause 13.3, the Purchaser shall have no right to claim in connection with the failure of the Supplier to comply with the requirements of the Contract, as identified by the Purchaser in its notice rejecting the Equipment under subclause 13.1.

13.6 Compliance by Supplier

The Supplier shall promptly:

- a) comply with any proposal accepted by the Purchaser under subclause 13.4; and
- b) give written notice to the Purchaser upon the Supplier's compliance with that proposal whereupon subclause 13.1 shall apply.

13.7 Rejection of Supplier's proposal

If the Supplier's proposal under subclause 13.3 is rejected by the Purchaser under subclause 13.4, or the Supplier fails to notify the Purchaser under subclause 13.3, the Supplier shall:

- a) prior to removal of the rejected Equipment, repay to the Purchaser all moneys paid to the Supplier by the Purchaser for that Equipment;
- b) remove the Equipment from the Purchaser's possession within a reasonable period of time notified in writing by the Purchaser; and
- c) where appropriate, pay damages reasonably incurred by the Purchaser.

The rights and remedies given by this subclause are in addition to any other rights and remedies of the Purchaser.

13.8 Purchaser's right to use Equipment

Other than for the purposes of acceptance testing, the Purchaser shall not use the Equipment before acceptance without the written approval of the Supplier.

If the Purchaser uses the Equipment other than in accordance with this subclause, acceptance shall thereupon be deemed to be notified.

14 Force Majeure

14.1 Notice of Force Majeure

A Party will not be liable for any delay or failure to perform any of its obligations under the Contract (other than an obligation to pay money) if as soon as possible after the beginning of the Force Majeure affecting the ability of the Party to perform any of its obligations under the Contract, it gives a notice to the other party that complies with Clause 21.2.

14.2 Force Majeure notice

A notice given under Clause 14.1 must:

- a) specify the obligations the Party cannot perform;
- b) fully describe the Force Majeure;
- c) estimate the time during which the Force Majeure will continue; and
- d) specify the measures proposed to be adopted to remedy or abate the Force Majeure.

14.3 Obligation to remedy and mitigate

The Party that is prevented from carrying out its obligations under the Contract as a result of Force Majeure must:

- a) remedy the Force Majeure to the extent reasonably practicable and resume performance of its obligations as soon as reasonably possible; and
- b) take all action reasonably practicable to mitigate any Liabilities suffered by the other Party as a result of its failure to carry out its obligations under the Contract.

15 Insurances

15.1 Supplier Insurances

The Supplier is required, at its cost, to effect and maintain throughout the Term and any additional period specified in the Contract, each of the insurances described in Clauses 15.2, 15.3, 15.4, 15.5, 15.6, 15.7, 15.8 and 15.9 (Supplier Insurances) in relation to risks or occurrences arising, or which may arise, out of the performance of the Contract.

15.2 General and Product Liability Insurance

Insurance covering all Liabilities in respect of any injury to, or death of, any person not being a person who at the time of the occurrence is engaged in or upon the service of the insured under a contract of service or apprenticeship, or any loss, damage or destruction to property not belonging to nor in the care, custody or control of the insured, however caused. Such insurance will provide cover to an amount of not less than A\$10,000,000 for each and every claim.

15.3 Workers' Compensation and Employer's Liability Insurances

Workers' compensation and employers' liability insurances covering all Liabilities, whether arising under statute, common law or civil law, in relation to the death of, or injury to, any employee of the Supplier or any person deemed to be an employee of the Supplier.

15.4 Supplier's Plant and Equipment

If the performance of the Contract requires the Supplier to use or provide for use plant and equipment that will be used at the Site in connection with the Contract, the Supplier will maintain or require the owner of such plant and equipment (except where the owner of such plant or equipment is Supplier) to maintain insurance covering all loss and damage to the supplier's plant and equipment, for its replacement value.

15.5 Goods in Transit

If the performance of the Contract requires the Supplier to transport Goods to or from the Site the Supplier will maintain insurance covering loss of or damage to the Goods during transit,

15.6 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 motor vehicles, the Supplier will maintain or require the owners of such 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 such motor vehicles.

15.7 Professional Indemnity Insurance

If the performance of the Contract includes or is related to the provision of professional advice or services, the Supplier will effect and maintain throughout the Term or completion of the Supplier's obligations under the Contract, professional indemnity insurance in respect of any negligent acts, errors or omissions in the advice or services provided by the Supplier under the Contract. Such insurance will provide cover to an amount of not less than A\$5,000,000 for each and every claim.

15.8 Marine Insurance

- a) If the performance of the Contract requires or involves the use of watercraft, the Supplier will maintain or require the owners of such watercraft to maintain:
- b) marine hull & machinery insurance, including collision liability, on all watercraft so used, with a limit of cover not less than the market value of the watercraft; and
- c) protection and indemnity insurance including coverage for injuries or death of masters, mates and crews. Such insurance must provide cover to an amount of not less than A\$10,000,000 for each and every claim.

15.9 Survival of Clause

This Clause 15 will survive the expiry or earlier termination of the Contract.

16 Indemnities

16.1 Indemnity

Subject to cl16.2 and cl16.4, each Party will indemnify (and will keep indemnified up until the end of the Defect Liability Period) the other Party, each End User and their respective Personnel (**Indemnified Parties**) from and against all Liabilities that any Indemnified Party suffers, sustains or incurs, arising from any breach by the party or its Personnel

of any of the Supplier's obligations (including any warranty) under the Contract and/or any Purchase Order

16.2 Exclusions

The party providing an indemnity will not be liable under Clause 23.2 to the extent that the Liability was caused, or contributed to, by (as the case requires) the Other Party or its Personnel or an End User's negligent acts or omissions or wilful misconduct.

16.3 Exclusions of consequential losses

Neither party shall be liable to the other party whether by way of indemnity or breach of statutory duty or in contract or in tort (including negligence) or under any other legal theory for loss of profit, loss of use, loss of production, loss of contract or for any financial or economic loss or for any special, incidental, indirect or consequential damage

16.4 Limitation of liability

Irrespective of any deviating provisions contained in any documents of the Contract, each party's liability shall be limited to the value of the Aggregate Liability. The Supplier's limitation shall not apply to any claims which are caused by any wilful acts or omissions or claims for made for the injury or death of any person, breaches of confidentiality or intellectual property or the destruction of any third party property

16.5 Aggregate Liability

The Aggregate Liability to the Purchaser under the Contract will in no case exceed the aggregate sum stated in the Contract or, if no such sum is stated, the Contract Price. For framework agreement, the Aggregate amount is equivalent to the purchase of spare parts over a twelve month period.

17 No fault termination

17.1 Termination Notice

If the Purchaser terminates the Contract or any part of it , it must give the Supplier no less than 30 days' notice of its intention to do so (**Termination Notice**).

17.2 Obligations upon receipt of Termination Notice

Upon receipt of a Termination Notice, the Supplier will:

- a) immediately take all possible action at its cost to ensure the safety of all Personnel and the protection of all Goods;
- b) immediately take all possible action to mitigate any Liabilities incurred by it as a result of such termination; and
- c) take any other action reasonably required by the Purchaser in relation to the termination.

17.3 Obligations upon termination

On the date of termination specified in the Termination Notice, the Supplier will:

- a) immediately cease performance of the Supply in accordance with, but only to the extent specified in, the Termination Notice;
- b) provide the Purchaser with a detailed report in relation to the Supply performed up to and including the date of receipt of the Termination Notice;
- c) offer the Purchaser first right of refusal to purchase any of the Supplier's equipment used for the purposes of the Contract to be purchased or such other value as agreed by the Parties; and
- d) take any other action relating to the termination of the Contract as the Purchaser may reasonably require.
- e) Each party shall promptly release and return all security provided by the other

17.4 Supplier's compensation

Following termination of the Contract by the Purchaser pursuant to this Clause 18, the Purchaser shall pay the Supplier:

- a) the amount due to the Supplier evidenced by all unpaid invoices as assessed by the Purchaser
- b) the costs of material and equipment reasonably ordered by the Supplier which the Supplier is liable to accept, but only if they will become the Purchaser's property upon payment; and
- c) Any other costs reasonably incurred or anticipated to be incurred (including any out of pocket expenses) by the Supplier in expectation of completing the Contract

18 Defaults of a Party

18.1 Supplier Default Notice

If the Supplier breaches any term of the Contract, the Purchaser may serve a notice of default (**Supplier Default Notice**) on the Supplier containing the information specified in Clause 18.1.1

18.1.1 Supplier Default Notice requirements

A Supplier Default Notice must:

- a) either require that the breach be remedied within a specified period of not less than 30 days after service of the Supplier Default Notice on the Supplier or state that the breach is incapable of remedy; and
- b) state that if the breach is not remedied within the period specified in the Supplier Default Notice or is incapable of remedy, then the Purchaser may by further notice to the Supplier do one or more of the following:
 - (i) elect wholly or partly to suspend payment under the Contract until the breach has been remedied by the Supplier;
 - (ii) take reasonable action deems necessary to cure the breach (the cost of such action to being recoverable from the Supplier as a debt due to the Purchaser); or
 - (iii) terminate the Contract or any part of it with effect from a specified date (**Cancellation Date**)

18.1.2 Obligations upon termination

If the Purchaser gives notice pursuant to Clause 18.1.1(b)(iii), the Contract is terminated from the Cancellation Date and the Supplier must:

- a) cease performance of the Supply in accordance with, but only to the extent specified in, the Supplier Default Notice;
- b) immediately take all possible action at its cost to ensure the safety of all Personnel and the protection of all Goods;
- c) immediately take all possible action to mitigate any Liabilities incurred by it as a result of such termination;
- d) offer the Purchaser first right of refusal to purchase any of the Supplier's equipment used for the purposes of the Contract to be purchased by the Purchaser at its depreciated value or such other value as agreed by the Parties
- e) The Purchaser must return any security held to the Supplier

18.2 Purchaser Default

If the Purchaser breaches any term of the Contract, the Supplier may serve a notice of default (**Purchaser's Default Notice**) on the Supplier containing the information specified in Clause 18.2.1

18.2.1 Purchaser's Default Notice requirements

A Purchaser's Default Notice must:

- b) either require that the breach be remedied within a specified period of not less than 30 days after service of the Purchaser's Default Notice on the Supplier or state that the breach is incapable of remedy; and
- c) state that if the breach is not remedied within the period specified in the Purchaser Default Notice or is incapable of remedy, then the Supplier may by further notice to the Purchaser do one or more of the following:
 - (i) elect wholly or partly to suspend the performance of the Supply under the Contract until the breach has been remedied
 - (ii) take reasonable action deems necessary to cure the breach (the cost of such action to being recoverable from the Purchaser as a debt due to the Supplier); or
 - (iii) terminate the Contract or any part of it with effect from a specified date (**Cancellation Date**).

18.2.2 Obligations upon termination

If the Supplier gives notice pursuant to Clause 18.2.1(b)(iii), the Contract is terminated from the Cancellation Date and the Purchaser must:

- a) The Supplier shall be entitled to damages reasonably incurred by reason of the termination
- b) The Purchaser must return any security held to the Supplier

19 Dispute Resolution

19.1 Dispute

In the event of any dispute, question or difference of opinion between the Purchaser and the Supplier arising out of or under the Contract (**Dispute**), a Party may give to the other Party a notice (**Dispute Notice**) specifying the Dispute and requiring its resolution under this Clause 19.

19.2 Dispute Representatives to seek resolution

- a) If the Dispute is not resolved within 7 days after a Dispute Notice is given to the other Party, each Party must nominate one representative from its senior management to resolve the Dispute (each, a **Dispute Representative**).
- b) If the Dispute is not resolved within 30 days of the Dispute being referred to the respective Dispute Representatives, then either Party may commence legal proceedings in an appropriate court to resolve the matter.

19.3 Performance of obligations during Dispute

During the existence of any Dispute, the Parties must continue to perform all of their obligations under the Contract without prejudice to their position in respect of such Dispute, unless the Parties otherwise agree unless the Supplier gives notice to the Purchaser that it elects to have the dispute determined by an expedited arbitration, in which case the dispute shall be submitted to arbitration in accordance with, and subject to, Resolution Institute Arbitration Rules. Unless the parties agree upon an arbitrator, either party may request a nomination from the Chair of Resolution Institute.

19.4 Urgent interlocutory relief

Nothing in this Clause 19 prevents a Party from seeking any urgent interlocutory relief which may be required in relation to the Contract.

20 Confidentiality

20.1 Obligation of confidentiality

Each Party undertakes and agrees:

- a) to hold in strict confidence all Confidential Information and not to disclose or permit or cause the Confidential Information to be disclosed to any person other than any

of its Personnel who require the Confidential Information for the purposes of providing the Supply; and

- b) not to make use of the Confidential Information (including duplicating, reproducing, distributing, disseminating or directly or indirectly deriving information from the Confidential Information), except and solely to the extent necessary for the performance of the Supply, unless the either Party has obtained the prior written consent of the other party to do so (

20.2 Exceptions

Clause 20.1 does not apply to:

- a) information after it becomes generally available to the public other than as a result of the breach of this Clause 27 or any other obligations of confidence imposed on the Supplier; or
- b) the disclosure of information in order to comply with any applicable law or legally binding order of any court, Government Agency or recognised stock exchange, provided that prior to such disclosure the Supplier gives notice to the Purchaser with full particulars of the proposed disclosure.

20.3 Breach of consent

The breach of any of the conditions contained in a consent granted pursuant to Clause 20.1 will be deemed to be a breach of the Contract.

20.4 Indemnity

Without limiting Clause 16, each Party indemnifies the Other Party, each End User and each member of the End User Group, and must keep them indemnified, in respect of any Liabilities incurred or sustained by them resulting from a breach of this Clause 20 by the Supplier or its Personnel.

20.5 Additional obligations

The obligations in this Clause 20 are in addition to and do not diminish the obligations of the Other Party in respect of secret and confidential information at common law or under any statute or trade or professional custom or use.

20.6 Return of Confidential Information

If requested by the Disclosing party the Other Party, whether prior to or after the expiry or earlier termination of the Contract, the Other Party must promptly deliver to the Disclosing Party all Confidential Information in the custody, possession or control of the Supplier or any of its Personnel.

20.7 Survival of Clause

This Clause 20 will survive the termination of the Contract.

21 Public announcements

Except as required by any applicable law or regulatory requirement or as otherwise permitted by the Contract, the Supplier may not make any public announcements or disclosures as to the Contract, or otherwise in relation to the subject matter of the Contract, without the prior written consent of the Purchaser. In this regard, no media release or public announcement will be made in relation to the existence of the Contract without the Purchaser's written approval and should such approval be given, then the wording of such release and the manner of publication must first be approved in writing by the Purchaser

22 Intellectual Property Rights

22.1 Supplier Intellectual Property Rights

The Purchaser acknowledges that the Supplier retains ownership of all Intellectual Property Rights existing, used or created under the Contract and/or in the provision of the Services. To enable the Purchaser to enjoy the benefit of the Services for the purpose of or in connection with the

Purchaser's business the Supplier grants to the Purchaser a perpetual, non-exclusive, transferable, royalty free, irrevocable licence to use such Intellectual Property Rights for the purpose of this project. The Purchaser is prohibited from sublicensing the license, disclosing the licences to external parties or reengineering the Intellectual Property Rights of the Supplier without the express written approval of the Supplier

22.2 Third party Intellectual Property Rights

The Supplier warrants that to the extent that it uses or proposes to use the Intellectual Property Rights of any third party in the provision of the Supply, or to the extent the Purchaser will use or might propose to use the Intellectual Property Rights of any third party in the use and enjoyment of the Supply:

- a) it has obtained, or will obtain at no further cost to the Purchaser, from the relevant third party all necessary licences and consents to use, or assignments of, such Intellectual Property Rights; and
- b) that it will not breach any of the licences or assignments.

22.3 Indemnity

- a) Without limiting Clause 22, the Supplier indemnifies the Purchaser and keep the Purchaser indemnified in respect of any Liabilities incurred or sustained by the Purchaser resulting from any actual infringement of any Intellectual Property Rights of any third party arising out of or caused by:
 - (i) the performance of the Supply by the Supplier;
 - (ii) the performance or operations of any other plant, machinery, tools, equipment, process, work, material, matter, thing or method used or supplied by the Supplier; or
 - (iii) the use and enjoyment of the Supply by the Purchaser.
- b) The Purchaser must notify the Supplier immediately where becomes aware of a Claim being threatened or made against the Supplier in relation to any of the matters covered by the indemnity in Clause 22.3(a).
- c) The Purchaser may require the Supplier to conduct any litigation that may arise from a Claim referred to in Clause 22.3(b) and all negotiations for settlement of that Claim. However, any settlement or consent to judgment made by the Supplier will be made at the Supplier's absolute discretion

22.4 Procurement of Intellectual Property Rights

If the Purchaser is prevented from (as the case requires) operating or using the Goods and/or any Associated Services or any part of the Goods and/or any Associated Services as a result of any Claim in relation to an infringement of Intellectual Property Rights, the Supplier will (at its cost) take all reasonable steps to procure for the Purchaser the right to (as the case requires) operate or use the Goods and/or any Associated Services or the relevant part of the Goods and/or any Associated Services for the purpose for which it was intended.

22.5 Procedure where Intellectual Property Rights cannot be procured

If the Supplier cannot procure the rights referred to in Clause 22.4 within a reasonable time, it may notify the Purchaser accordingly and the Supplier may:

- a) alter the Goods or the relevant part of the Goods to avoid infringement or violation of the Intellectual Property Rights or any of them;
- b) replace the Goods affected or the relevant part of the Goods with work or Goods which do not infringe or violate the Intellectual Property Rights; or

- c) remove the Goods and reimburse the Purchaser any compensation and other moneys already paid to the Supplier and pay any costs or other expenses that may have been paid or incurred by the Purchaser in connection with the removed Goods.

23 Modern Slavery

23.1 Definitions

In this clause:

modern slavery includes human trafficking, slavery, servitude or forced labour or the exploitation of children or any other person in Australia or elsewhere; and

law includes:

a) the Modern Slavery Act 2018, and any other Applicable Acts, ordinances, regulations, by-laws, orders, awards and proclamations of the jurisdiction(s) where the Supply or the Supply Chain is being carried out; and

b) certificates, licences, consents, permits, approvals and requirements of relevant authorities in connection with the carrying out of the Supply.

23.2 Statutory Obligations/Compliance

The Purchaser warrants that:

a) neither it nor (to the best of the Purchaser's actual knowledge or belief) any of its subcontractors has anywhere in the world been charged with any offence at law relating to any form of modern slavery at law;

b) the Purchaser will use its best endeavours and be duly diligent to avoid the use in its business and its Supply Chains of modern slavery, and identify the parts of its business and Supply Chains and those of its subcontractors where there is a risk of modern slavery taking place and duly manage that risk;

c) the Purchaser will comply with all laws (and requests from the Supplier) in connection with the avoidance or reduction of modern slavery; and

d) the Purchaser will provide all information required by the Supplier about the Purchaser's business and Supply Chains in order for the Supplier to comply with its modern slavery obligations at law.

23.3 Acknowledgements

The Purchaser acknowledges that:

a) modern slavery takes various forms, all of which have in common the deprivation of a person's liberty by another in order to exploit them, very often for personal or commercial gain;

b) modern slavery is a gross violation of fundamental human rights;

c) the Supplier is committed to ensuring that there is no slavery or human trafficking in any part of its business or in its Supply Chains; and

d) the Supplier has zero-tolerance for modern slavery and is fully committed to preventing modern slavery and human trafficking (and to being transparent in its approach to tackling modern slavery throughout its Supply Chains).

24 Anti-Bribery and Anti-Corruption and Trade Sanctions

24.1 Definitions

In this clause:

Anti-Bribery and Anti-Corruption Legislation means any statute, law, code, regulation or similar instrument in connection with the prohibition of bribery and corruption applicable to the performance of this Contract (including by virtue of the place of domicile or operations of the parties and their related bodies corporate), and includes the Criminal Code Act 1995 (Cth), the Crimes Act 1914 (Cth), the Public Governance, Performance and Accountability Act 2013 (Cth), and the Corporations Act 2001 (Cth).

Associated Person means a person or entity that performs services for another, including as an employee, agent, contractor, representative or subsidiary of that other person or entity.

Australian Sanctions Laws means: (a) the United Nations Security Council (UNSC) sanctions pursuant to the Charter of the United Nations Act 1945 (Cth) and its associated regulations as part of Australia's international obligations; and (b) autonomous sanctions pursuant to the Autonomous Sanctions Act 2011 (Cth) and its associated regulations as part of Australia's independent foreign policy.

Facilitation Payment means a minor, often unofficial payment made to secure or expedite a routine government action by a government official or employee (but excludes a payment specifically authorised by the written domestic law of the country in which it is made).

International Sanctions Laws means any applicable sanctions laws or regulations administered or enforced from time to time by the U.S government (including OFAC, the US State Department or any other agency of the US government), the United Nations Security Council, the European Union or Her Majesty's Treasury or any other sanctions authority in a jurisdiction other than Australia.

Prohibited Act means any act which would breach any applicable Anti-Bribery and Anti-Corruption Legislation and any other legal prohibitions or money laundering, trade and control of sanctions, and the like, and includes offering, giving or agreeing to give to any person, or soliciting, accepting or agreeing to accept from any person (either directly or indirectly) anything of value in order to obtain, influence, induce or reward any improper advantage and Facilitation Payments.

Public Official is any person holding a legislative, administrative or judicial office, including any person employed by or acting on behalf of a public agency, a government controlled enterprise, a public international organisation, political parties, party officials and candidates for office, and any other person who, by reason of domestic law in any jurisdiction relevant to the Contract, would be considered or deemed to be a Public Official.

24.2 Anti-Bribery and Anti-Corruption

a) The Supplier is committed to operating in a manner consistent with the laws of the jurisdictions in which it operates, including Anti-Bribery and Anti-Corruption Legislation.

b) The Purchaser must not, and must take reasonable steps to ensure that any of its Associated

Persons do not, commit a Prohibited Act (Anti-Corruption Obligations) and:

- (i) must implement adequate policies and procedures to ensure compliance with its Anti-Corruption Obligations, and must disclose those policies and procedures to the Purchaser upon request; and
 - (ii) must use reasonable endeavours to require its Associated Persons to give an undertaking to and to implement adequate policies and procedures to ensure they will not commit a Prohibited Act and, if no such undertaking is forthcoming, will inform the Supplier and seek alternative persons(s) to perform those services.
- c) The Purchaser represents and warrants that except as otherwise disclosed in writing to the Supplier, at the date of execution of this Contract and during this term, no Public Official:
- (i) is or will become an Associated Person of the Purchaser;
 - (ii) is or will become involved in the management of the Purchaser, including being or becoming part of its board or other governing body;
 - (iii) holds or will hold a controlling or significant interest in the Purchaser; or
 - (iv) is an immediate family member of a member of the board or other governing body or senior management of the Purchaser.
- d) The Purchaser represents and warrants that it has not in the past 10 years:
- (i) been the subject of an investigation into its compliance with;
 - (ii) been convicted of any offence in connection with; or
 - (iii) entered into any settlement in connection with any alleged breach of,
- any Anti-Bribery and Anti-Corruption Legislation.
- e) The Purchaser will immediately notify the Supplier in writing if:
- (i) it becomes aware that any representations and warranties in clause 24.4(c) and (d) are false;
 - (ii) it breaches the Anti-Corruption Obligations;
 - (iii) any of its Associated Persons breaches the Anti-Corruption Obligations; or
 - (iv) it becomes aware of any breach, alleged breach or facts or circumstances which could reasonably be considered to constitute a breach of Anti-Bribery and Anti-Corruption Legislation by it or an Associated Person.
- f) Notification under clause 24.4(e) must set out:
- (i) particulars of; and
 - (ii) ongoing steps the Purchaser has taken and proposes to take to investigate and address,
- the breach, alleged breach, facts or circumstances, investigation, conviction or settlement notified.

g) If the Purchaser notifies under clause 24.4(e), or if the Supplier reasonably believes that the Purchaser or any of its Associated Persons may have breached the Anti-Corruption Obligations, the Purchaser must:

- (i) respond promptly to the Supplier's reasonable queries and cooperate with the Supplier in connection with its investigation into compliance with this clause 24 by the Purchaser or its Associated Persons; and
- (ii) allow the Supplier to access to its books, records and any other relevant documentation for the purpose of assessing or verifying compliance with this clause 24.

h) The Purchaser must answer the Supplier's reasonable questions and allow the Supplier access to records relevant to:

- (i) the Purchaser's performance of this Contract, for the purpose of assessing compliance with this clause 24;
- (ii) any ongoing background checks the Supplier may wish to make in relation to the Purchaser's compliance with the Anti-Corruption Obligations.

i) The obligations in this clause 24 continue for 3 years following expiry or termination of this Contract.

j) If the Purchaser is in breach of clause 9 or the Supplier reasonably believes such a breach has occurred or is imminent then the Supplier:

- (i) may suspend performance and payment under this Contract; or
- (ii) may immediately (without prejudice to any other rights it may have) terminate the Contract; and
- (iii) is not obliged to make any payment to the Purchaser in respect of goods, services or other benefits procured through, or related to, the breach.

k) The rights in subclause 24.11(j)(i), (ii) and (iii) are cumulative.

l) The Purchaser will indemnify the Supplier for any costs, losses, expenses, charges, damages or the like (including legal and other professional expenses) incurred by the Supplier and arising from or related to a breach or alleged breach by the Purchaser or any of its Associated Persons of the Anti-Corruption Obligations, provided that such losses are reasonably foreseeable and mitigated if practicable.

m) The rights under this clause are additional to any other rights the Supplier may have under this Contract.

24.3 Sanctions

a) The Purchaser represents and warrants that it will not do, or omit to do, anything that would cause the Supplier to breach Australian Sanctions Laws or International Sanctions Laws.

b) The Purchaser acknowledges that the Supplier may delay, block or refuse to make a Supply or take any other action where the Supplier reasonably considers it necessary to do so in order to avoid a breach of Australian Sanctions Law or International Sanctions Laws.

25 Notices

25.1 Form of Notices

Unless otherwise specified in the Contract, any notice, demand, consent or other communication (**Notice**) given or made pursuant to the Contract must:

- a) be in writing;
- b) be marked to the attention of "the Purchaser Secretary" for the Party to whom the Notice is addressed;
- c) where given by the Purchaser Secretary where given by the Supplier, be signed or authorised by either the Supplier Representative, a director or secretary of the Supplier, or a duly authorised representative of the Supplier; and
- d) be delivered by prepaid post, by hand or by facsimile to the Party to whom the Notice is addressed at its address shown in the Contract or such other address as that Party may have notified to the other Party.

25.2 Notices deemed given

A Notice will be taken to be duly given:

- a) in the case of delivery by hand, when delivered;
- b) in the case of delivery by post, 2 Business Days after the date of posting (if posted to an address in the same country) or 7 Business Days after the date of posting (if posted to an address in another country); or
- c) in the case of facsimile, on receipt by the sender of a transmission control report from the despatching machine showing the relevant number of pages and the correct destination fax machine number or name of the recipient and indicating that the transmission has been made without error, but if the result is that a Notice would be taken to be given or made on a day that is not a Business Day or the Notice is sent or is later than 4.00pm (local time) it will be taken to have been duly given or made at the commencement of business on the next Business Day.

26 Costs

26.1 Each Party to bear its own costs

Each Party must bear its own costs arising out of:

- a) the negotiation, preparation and execution of the Contract; and
- b) except as expressly provided otherwise in the Contract, any transaction contemplated by the Contract.

27 Status of Supplier

27.1 Independent contractor

At all times during the Term, and in the provision of the Supply, the Supplier is an independent contractor and will not act as, or be or be regarded as, an agent or employee of the Purchaser, and the Supplier and its Personnel will not be entitled to any benefits which would ordinarily accrue to any employee of the Purchaser by virtue of their status as an employee.

27.2 Partnership and joint venture suppliers

Where the Supplier comprises more than one person they will be bound jointly and severally and by executing the Contract accept joint and several liability for any loss or damage that may be suffered or occasioned and any sum that may be or may become payable to the Purchaser under the Contract.

27.3 Assignment and sub-contracting

27.4 Consent required

The Purchaser must pay for all debts due and payable to the Supplier before assigning all or any part of the Contract

27.5 Obligations survive assignment or sub-contract

The Supplier acknowledges that no permitted assignment or sub-contract in any way relieves the Supplier from the performance of any of its obligations under the Contract. The Supplier must seek the Purchaser's consent to subcontract any or all of this contract, the consent will not be unreasonably denied

27.6 Status of Sub-contractor

As between the Supplier and the Purchaser, the Subcontractor will be considered the agent and employee of the Supplier. For the purposes of the Contract, the acts and omissions of each Sub-contractor and its Personnel will be deemed to be the acts and omissions of the Supplier. Privacy and data protection

27.7 Personal Information

Each Party agrees to comply with their obligations under the Privacy Act in respect of Personal Information obtained by or disclosed to them pursuant to the Contract.

27.8 Warranty

Each Party warrants to the other Party that it has complied with the Privacy Act in obtaining any Personal Information disclosed by it pursuant to the Contract.

27.9 Data protection

In addition to its obligations under the Privacy Act, the Supplier agrees to:

- a) not disclose Personal Information to any other person without the Purchaser's prior written consent, unless the disclosure is required by law;
- b) immediately notify the Purchaser that the disclosure of Personal Information may be required by law;
- c) put into place and maintain appropriate technical and organisational measures against unauthorised and/or unlawful Processing of the Purchaser's Personal Information;
- d) put into place and maintain appropriate technical and organisational measures against unauthorised access, loss, destruction, misuse, modification, disclosure or damage to Purchaser's Personal Information; and
- e) take all necessary steps to ensure that its Processing of Purchaser's Personal Information will be fair and lawful and, for this purpose, the Supplier may reasonably enquire of Purchaser as to the manner in which the Personal information has been obtained

27.10 Individual complaints

- a) If an individual complains to Purchaser that the Supplier (or any of its Personnel) has, in the performance of the Contract, handled his or her Personal Information inappropriately, the Purchaser must promptly give the Supplier sufficient details about the complaint to minimise any further misuse.
- b) If an individual complains to the Supplier that the Supplier (or any of its Personnel) has, in the performance of the Contract, handled his or her Personal Information inappropriately, the Supplier must:
- c) promptly inform the Purchaser of the complaint; and (ii) provided the individual has consented, provide Purchaser with the Personal Information that is the subject of the complaint.

27.11 Supplier indemnity

Without limiting Clause 26, the Supplier indemnifies the Company and must keep the Company indemnified in respect of all Liabilities incurred by or awarded against the Company relating to any breach by the Supplier of its obligations under the Privacy Act or this Clause 26.

27.12 Survival of Clause

This Clause 26 will survive the termination of the Contract.

28 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.

29 Severability

29.1 Severability

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

29.2 Negotiation in good faith

Where a provision is prohibited or unenforceable, the Parties must negotiate in good faith to replace the invalid provision by a provision which is in accordance with the applicable law and which must be as close as possible to the Parties' original intent and appropriate consequential amendments (if any) will be made to the Contract.

29.3 Governing Law

The Contract is governed by the laws of New South Wales. Each Party submits to the non-exclusive jurisdiction of the Courts on matters concerning this contract