

TERMS AND CONDITIONS

The Supplier agrees to supply the Goods and/or Services to the Customer, and the Customer agrees pay the Supplier all Outstanding Amounts, on the Terms and Conditions of this Agreement.

1. Definitions and interpretation

1.1 Definitions.

In this Agreement:

- (a) **Additional Charge** means:
 - (i) fees or charges for additional work performed at the Customer's request or reasonably required as a result of the Customer's conduct, calculated in accordance with the Supplier's then current prices; and
 - (ii) Expenses and Disbursements incurred by the Supplier, at the Customer's request or reasonably required as a result of the Customer's conduct and/or as a result of the scope of the Goods and/or Services that are to be supplied by the Supplier.
- (b) **Agreed Other Location** means other location that is agreed in writing between the Supplier and the Customer during the term of this Agreement.
- (c) **Agreed Price** means the agreed price of the Goods and/or Services that is specified in the Purchase Order, and/or that is subsequently agreed to in writing between the parties.
- (d) **Amended Quote** means a quote that is amended by the Supplier in accordance with clause 4.6.
- (e) **Background IP** means all Intellectual Property owned by or licensed to a party as at the Commencement Date, or acquired or developed by a party during the term of this Agreement independently of the activities carried out under this Agreement, which that party has the right to license to third parties and which are necessary or desirable for the supply of the Goods and/or Services.
- (f) **Business Day** means a day which is not a Saturday, Sunday, public holiday or bank holiday in Victoria.
- (g) **Claims** means any and all legal proceedings, actions, suits, causes of action, proceedings, claims, accounts, demands, debts due, costs payable and expenses

whether or not currently known or made and whether or not presently in existence.

- (h) **Commencement Date** means the date that is agreed to be the Commencement Date between the Supplier and the Customer or the date that the Supplier commences supplying Goods and/or Services to the Customer, whichever is earlier.
- (i) **Compensation Amount** means:
 - (i) the amount of Agreed Price for the Goods and/or Services which remains unpaid at the relevant time; and
 - (ii) any and all Expenses and Disbursements that have been incurred by the Supplier.
- (j) **Completion Date** means the date on which the Supplier supplies the Goods and/or Services or the Termination Date, whichever is earlier.
- (k) **Confidential Information** means all know how, Intellectual Property, Background IP, Goods and Services IP, business, financial, technical and other commercially valuable or sensitive information of a party in whatever form (including, but not limited to, whether disclosed visually, orally, in writing or by electronic means) and whether disclosed before or after the Commencement Date.

This includes, but is not limited to, inventions (whether or not reduced to practice), trade secrets, methodologies, formulae, graphs, drawings, samples, biological materials, devices, models, business plans, policies and any other materials or information which the party regards as confidential, proprietary or of a commercially sensitive nature that may be in the possession of that party or its Related Bodies Corporate or its or their employees or officers.

Confidential Information of a party does not include information which:

- (i) is now in the public domain, or enters the public domain after the Commencement Date, through no fault of the other party;
 - (ii) can be shown by contemporaneous records of the other party to have been known to the other party at the time it is received pursuant to this Agreement;
 - (iii) is provided to the other party by a third party after the Commencement Date, lawfully and without violating any restriction on its disclosure; or
 - (iv) can be shown by contemporaneous records of the other party to have been independently developed by the other party without reference to the Confidential Information.
- (l) **Controller** has the meaning given in the Corporations Act.

- (m) **COVID-19 Confidential Information** means all information of any nature which the Supplier supplies to the Customer for the purpose of compliance with all COVID-19 Laws, both before the Supplier attends the Site and commences rendering the Services and after the Supplier has rendered the Services.

Without limiting the generality of this definition such information includes, but is not limited to, any information which the Supplier supplies to the Customer that is in the nature of contact details (for example, names, telephone numbers, addresses and email addresses), QR Code sign in data and all information about the vaccination status of any employees, officers, servants, contractors and/or other agents of the Supplier.

- (n) **COVID-19 Laws** means all applicable laws, regulations, health orders and/or Chief Health Officer Directions that apply in relation to COVID-19 from time to time.

- (o) **Corporations Act** means the *Corporations Act 2001* (Cth).

- (p) **Customer** means the Customer that is specified in the Purchase Order, to whom the Supplier supplies the Goods and/or Services.

- (q) **Expenses and Disbursements** means any and all out of pocket expenses and/or disbursements of any nature incurred by the Supplier in connection with the supply of the Goods and/or Services.

Without limiting the generality of this definition such out of pocket expenses and/or disbursements include, but are not limited to:

- (i) any out of pocket expenses incurred by the Supplier in obtaining any applicable work permits that are required in order to enable the Supplier to render the Services; and
 - (ii) any disbursements owing by the Supplier to sub-contractors in connection with the supply of the Goods and/or Services
- (r) **Goods** means the goods to be supplied to the Customer by the Supplier during the term of this Agreement, in accordance with the terms of this Agreement.
- (s) **Goods and Services IP** means all Intellectual Property created, conceived, developed or reduced to practice in the course of the Supplier supplying the Goods and/or Services respectively (as applicable).
- (t) **GST** means the tax imposed by the *A New Tax System (Goods and Services Tax) Act 1999* (Cth) and related tax imposition Acts of the Commonwealth of Australia.
- (u) **Guarantor/s** means the Guarantor or Guarantors specified in the Quote.
- (v) **Intellectual Property** means:

- (i) trademarks, logos, service marks, brand names, certification marks, assumed names, trade names and other indications of origin;
 - (ii) trade secrets and other confidential or non-public business information including ideas, formulae, compositions, inventions, discoveries, improvements, know-how, processes and techniques, research and development information (whether patentable or not);
 - (iii) drawings, specifications, designs, plans, proposals and technical data;
 - (iv) financial, marketing and business data, pricing and cost information, business and marketing plans and customer and supplier lists and information;
 - (v) patents, inventors' certificates and invention disclosures;
 - (vi) writings and other works of authorship, whether copyrightable or not, including computer programs, data bases and documentation, and all copyrights to any of the foregoing;
 - (vii) rights, title and interest in know-how, technical information, processes, practices and systems, whether or not protectable by patent, copyright or trade secret law;
 - (viii) moral rights;
 - (ix) rights to limit the use or disclosure of Confidential Information by any person;
 - (x) any similar tangible or intangible intellectual property or proprietary rights, information and technology;
 - (xi) registrations of, and applications to register, any of the foregoing with any governmental agency or authority and any renewals or extensions thereof;
 - (xii) Confidential Information;
 - (xiii) any and all other rights with respect to intellectual property; and
 - (xiv) the goodwill associated with each of the foregoing.
- (w) **Intellectual Property Rights Claims** means any Claims alleging infringement of any Intellectual Property Rights, and/or that directly or indirectly touch and/or concern any Intellectual Property Rights.
- (x) **Insolvent** means, in relation to any party:
- (i) if a corporation:

- (A) it is unable to pay its debts when they fall due;
 - (B) it is (or states that it is) an insolvent under administration or insolvent (each as defined in the Corporations Act);
 - (C) it is in liquidation, in provisional liquidation, under administration or wound up or has had a Controller appointed to its property;
 - (D) it is subject to any arrangement, assignment, moratorium or composition, protected from creditors under any law or dissolved (in each case, other than to carry out a reconstruction or amalgamation while solvent on terms approved by the Supplier);
 - (E) an application or order has been made (and, in the case of an application, it is not stayed, withdrawn or dismissed within 5 (five) Business Days), a resolution is passed, proposal put forward, or any other action taken, in each case relating to that person, which is preparatory to or could result in any of the events described in sub-clauses (i) (A) to (D) above;
 - (F) it is taken under section 459F(1) of the Corporations Act to have failed to comply with a statutory demand;
 - (G) it is the subject of an event described in section 459C(2)(b) or section 585 of the Corporations Act;
 - (H) it takes any steps or omits to take any steps or ASIC takes steps that result in or will result in the corporation being 'deregistered' as that term is defined in the Corporations Act;
 - (I) any expropriation, attachment, sequestration, distress or execution affects any assets of the corporation; or
 - (J) anything analogous or having a substantially similar effect to any of the events described above happens relating to that corporation under the law of any applicable jurisdiction; or
- (ii) if a natural person:
- (A) anything analogous or having a substantially similar effect to any of the events described above happens relating to that corporation under the law of any applicable jurisdiction;
 - (B) the person authorises a registered trustee or lawyer to call a meeting of their creditors or proposes or enters into a deed of assignment or deed of arrangement or a composition with any of their creditors;
 - (C) a person holding a Security Interest in assets of the person enters into possession of or takes control of any of those assets or takes any steps to enter into possession of or take control of any of those assets;

- (D) the person commits an act of bankruptcy; or
 - (E) anything analogous or having a substantially similar effect to any of the events described above happens relating to that person under the law of any applicable jurisdiction.
- (y) **Interest** means any right or interest of any nature, including any and all rights, benefits and privileges which the holder of such a right or interest may be entitled.
- (z) **Losses** includes but is not limited to, costs (including party to party legal costs and the Supplier's legal costs on an indemnity basis), expenses, lost profits, award of damages, personal injury and property damage.
- (aa) **Order** means an order for Goods and/or Services placed by a Customer in response to a Quote, and as varied in writing from time to time by the parties.
- (bb) **Outstanding Amount** means the following amounts owing to the Supplier by the Customer in respect of the Goods and/or Services:
- (i) all amounts which the Customer owes the Supplier for the Goods and/or Services;
 - (ii) any Additional Charge that applies;
 - (iii) all Expenses and Disbursements; and
 - (iv) all other amounts of any other nature that are payable to the Supplier pursuant to, or out of and in connection with, this Agreement.
- (cc) **Payment** means payment by the Customer to the Supplier of all Outstanding Amounts owing to the Supplier in accordance with this Agreement.
- (dd) **Payment Terms** means the timeframe of 30 (thirty) days, or such other timeframe that is specified in the Quote, within which the Customer is required to pay amounts due and payable under this Agreement in connection with the Goods and/or Services supplied by the Supplier.
- (ee) **PPSA** means *Personal Property and Securities Act 2009* (Cth).
- (ff) **Quote** means a quote issued by the Supplier to the Customer in accordance with clause 4, and includes an Amended Quote as applicable. A Quote shall contain a written description of the Goods and/or Services to be provided and an estimate of the Supplier's charges for the performance of the required work.
- (gg) **Security Interest** means any:
- (i) security interest under section 12 (1) or (2) of the PPSA or security for payment of money, performance of obligations or protection against default (including a mortgage, bill of sale, charge, lien, pledge, trust, power of title retention arrangement, right of sell-off, assignment of

income, garnishee order or monetary claim and flawed deposit arrangements); and

- (ii) thing or preferential interest or arrangement of any kind giving a person priority or preference over claims of other persons or creditors with respect to any property or asset.
- (hh) **Services** means the services to be supplied to the Customer by the Supplier during the term of this Agreement, in accordance with the terms of this Agreement.
- (ii) **Site** means the site specified in the Quote.
- (jj) **Supplier** means RAP.I.D Cam Pty Ltd (ACN 602 083 698).
- (kk) **Tax Invoice** means a tax invoice rendered by the Supplier to the Customer for any Outstanding Amount in respect of the Goods and/or Services.
- (ll) **Term** means the term of this Agreement.
- (mm) **Termination Date** means the date on which this Agreement is terminated pursuant to clause 15.
- (nn) **Website** means <https://www.rapidcam.com.au/>, or such other website that is current for the Supplier from time to time.

1.2 Interpretation

In this Agreement, unless the context otherwise requires:

- (a) headings are for convenience only and do not affect interpretation;
- (b) words importing the singular include the plural and vice versa;
- (c) a word importing a gender includes the other gender;
- (d) a reference to a person includes an individual, a partnership, a body corporate, a joint venture, an association (whether incorporated or not), a government and a government authority or agency;
- (e) a reference to a party or a person includes the party's or the person's executors, legal personal representatives, successors, transferees and assigns;
- (f) a reference to a section, schedule, part, clause or party is a reference to a part, clause of, or a party to, this Agreement;
- (g) A reference to this Agreement includes the recitals and any schedules, annexures, exhibits or attachments to this Agreement;

- (h) A reference to legislation includes any statutory modification or replacement and any subordinate or delegated legislation issued under such legislation;
- (i) If the day on which anything is to be done is not a Business Day it shall be done on the next Business Day; and
- (j) A reference to "\$" or dollars means Australian dollars and a reference to payment means payment in Australian dollars.

2. Goods and Services

- 2.1 The Customer engages the Supplier to supply the Goods and/or Services to it.
- 2.2 The Supplier must supply the Goods and/or Services to the Customer from the Commencement Date, in accordance with the terms of this Agreement.
- 2.3 In matters involving Services, the Supplier must render the Services on the Site, or at any Agreed Other Location.
- 2.4 The Supplier must supply the Goods and/or Services to the Customer with a high standard of care and diligence, and in accordance with all applicable laws.

3. Payment of Outstanding Amounts

- 3.1 The Customer must make Payment of all Outstanding Amounts owing to the Supplier in connection with Goods and/or Services, the Order and/or that are otherwise due and payable pursuant to the terms of this Agreement within the required Payment Terms.
- 3.2 Unless otherwise stated, all Outstanding Amounts do not include an amount for GST. If a supply by the Supplier to the Customer is subject to GST, the Customer must pay the applicable GST as a separate amount.
- 3.3 Until the Customer pays the Supplier any Outstanding Amount in full the Supplier shall be entitled to maintain an action against the Customer for the full Outstanding Amount at its absolute discretion.
- 3.4 The Customer acknowledges that the Supplier's entitlement to Payment of all Outstanding Amounts is not conditional upon the completion or success of the Goods and/or Services supplied.

4. Quote

- 4.1 The Supplier may provide the Customer with a Quote before supplying the Goods and/or Services.
- 4.2 Without limiting the generality of clause 4.1 and for the avoidance of doubt, in matters involving Services the Supplier may charge the Customer a fee for the Supplier obtaining any applicable work permit/s that are needed in order for the Supplier to be able to render the Services.
- 4.3 Unless previously withdrawn, any Quote issued by the Supplier is valid for the period stated therein or where no period is so stated, for 30 (thirty) days from the date of issue.
- 4.4 Unless otherwise expressly agreed in writing, a Quote does not include the cost of delivery or installation of the Goods.
- 4.5 Quotes are based upon the timely supply by the Customer of necessary access, material and instructions to the Supplier.
- 4.6 The Supplier reserves the right to issue an Amended Quote to the Customer at any time before it commences supplying the Goods and/or Services to the Customer, in the event that the changes are required as a result of:
- (a) any change to the scope of the Goods and/or Services to be supplied to the Customer;
 - (b) there being a rise or fall of any cost of any nature in supplying the Goods and/or Services;
 - (c) any fluctuation in the rate of exchange between any currency and the Australian Dollar if such foreign currency is used in the process of determining the Quote; and/or
 - (d) in matters involving Services:
 - (i) the Supplier requiring any applicable work permit/s that are needed in order for the Supplier to be able to render the Services;
 - (ii) any impediments, delays and/or difficulties experienced by the Supplier in accessing the Site or Agreed Other Location for any reason;
 - (iii) any relevant structures on the Site or Agreed Other Location having failed and/or being inaccessible for any reason;
 - (iv) any delays in the Supplier being able to render the Services due to inclement weather;
 - (v) any extra work carried out by the Supplier as a result of conditions any impediments, delays and/or difficulties experienced by the Supplier in accessing the Site or Agreed Other Location for any reason;

- (vi) any extra work carried out by the Supplier as a result of conditions on the Site or Agreed Other Location that were previously not known or unforeseen by the Supplier; and/or
 - (vii) vehicle and pedestrian management being required, in the context of the Supplier's CCTV vehicles needing to be set up as close to the pits on the Site or Agreed Other Location as possible. Unless specified otherwise in the Quote, the Supplier has not allowed for traffic control in the Quote.
- 4.7 In the event that the Supplier amends a Quote pursuant to clause 4.6, the Supplier will provide the Customer with an Amended Quote as soon as practicable, at which point the amended Quote will be the Quote in respect of the Goods and/or Services.
- 4.8 Prices in the Quote refer to the entirety of the Goods and/or Services to be supplied to the Customer by the Supplier, and are subject to change by the Supplier if only part of the Goods and/or Services in a Quote are later sought by the Customer.
- 4.9 An indication of the time frame for the supplying of the Goods and/or Services in a Quote is an estimate only, and is not a fixed time frame. Subject to any obligations in respect of consumer guarantees under the Australian Consumer Law, this estimate is not binding upon the Supplier.
- 4.10 Following provision of a Quote to the Customer, the Supplier is not obliged to commence work until the Quote has been accepted by the Customer. This occurs by the Customer signing a Quote and returning the completed and signed Quote to the Supplier.
- 4.11 A Quote is commercial in confidence, and not for distribution to any third parties.

5. Order

- 5.1 Following the provision of a Quote by the Supplier, the Customer may place an Order by submitting a completed and signed Quote to the Supplier.
- 5.2 An Order will only be deemed to be placed by the Customer if the Order clearly identifies the Goods and/or Services ordered. Any costs incurred by the Supplier in reliance on incorrect or inadequate information provided by the Customer in an Order may result in the imposition of an Additional Charge.
- 5.3 Each Order must:
 - (a) be submitted in writing by the Customer;
 - (b) be made by way of the Customer (or an authorised representative of the Customer in the event that the Customer is a corporation) signing the required place on the Quote to signify that the Customer has accepted the Quote; and

- (c) specify the date on which the Customer requires the Supplier to supply the Goods and/or Services.
- 5.4 The Supplier reserves the right to refuse an Order within 7 (seven) days of receipt of the Customer placing the Order for any reason, and the Supplier's absolute discretion.
- 5.5 Without limiting the generality of clause 5.4, the Supplier may in its absolute discretion refuse an Order where:
 - (a) any Goods are unavailable for any reason whatsoever;
 - (b) any Services are unable to be provided for any reason whatsoever;
 - (c) credit limits cannot be agreed upon or have been exceeded; or
 - (d) payment for any Goods and/or Services previously supplied by the Supplier to the Customer or any related corporation of the Customer or to any other party who is, in the reasonable opinion of the Supplier, associated with the Customer under the same or another Agreement, has not been received by the Supplier.
- 5.6 Placement of an Order by the Customer signifies acceptance by the Customer of the Quote and this Agreement.
- 5.7 The Customer may not cancel an Order without the prior written consent of the Supplier. Where an Order is cancelled, the Customer indemnifies the Supplier against any Losses incurred by the Supplier as a result of the cancellation. Without limiting the generality of this clause this includes, but is not limited to, loss of profit from other orders foregone as a result of the scheduling of the Order which is subsequently cancelled.

6. Variations

- 6.1 The Customer may request that its Order be varied by providing a request in writing to the Supplier. A request for a variation must be agreed to in writing by the Supplier in order to have effect.
- 6.2 If the Customer wishes to vary its requirements after a Quote has been prepared by the Supplier or after the placement of an Order, the Supplier reserves the right to vary the Quote to include any Additional Charge in respect of any extra costs incurred or additional work carried out due to the variation, in accordance with its then current charge rates. A revised Quote issued by the Supplier in respect of the requested variation supersedes the original Quote. If the revised Quote only specifies additional work, the Quote for that additional work will be in addition to the immediately preceding Quote for the Goods and/or Services or both.

- 6.3 The Supplier has an automatic extension of time for the provision of the Goods and/or Services equal to the delay caused by the variation.

7. Up front payment by the Customer

- 7.1 Before the Supplier commences supplying the Goods and/or Services to the Customer the Customer must pay the Supplier any up front amount that is specified in the Quote (hereinafter referred to as **Up Front Payment**).
- 7.2 The Supplier reserves the right to not commence supplying the Goods and/or Services to the Customer until it has received the required Up Front Payment in full in cleared funds.

8. Additional Charges

- 8.1 The Supplier may require the Customer to pay Additional Charges in respect of Expenses and Disbursements incurred by the Supplier as a result of reliance on inadequate or incorrect information or material provided by the Customer or information or material supplied later than required by the Supplier in order for it to provide the Goods and/or Services within the specified time frame (if any).
- 8.2 The imposition of Additional Charges may also occur as a result of:
- (a) cancellation by the Customer of an Order where cancellation results in Loss to the Supplier;
 - (b) storage costs for Goods not collected from the Supplier within 7 (seven) days of the date on which the Goods are manufactured, fabricated, created or formed;
 - (c) photocopying, courier, packing or handling charges not included in the Quote;
 - (d) Government or council taxes or charges not included in the Quote; and/or
 - (e) additional work required by the Customer or any other occurrence which causes the Supplier to incur costs in respect of the Customer's Order additional to the quoted cost.

9. Tax Invoices and suspension of Services

- 9.1 The Supplier will submit a Tax Invoice for any Outstanding Amount to the Customer on at least a monthly basis. The Customer must pay each Tax Invoice rendered by the Supplier in full within the required Payment Terms.

- 9.2 The amount payable by the Customer will be the amount set out in the Tax Invoice. This will be calculated as:
- (a) the amount for the Goods and/ or Services (or both) as set out in the Quote and any Additional Charges; or
 - (b) where no Quote has been provided by the Supplier, the Supplier's usual charges for the Goods and/or Services (or both) as described in the Order.
- 9.3 If Payment for the amount invoiced in the Tax Invoice is not received by the Supplier within the required Payment Terms, the Supplier will issue a reminder notice to the Customer (**Reminder Notice**) at such time as the Supplier considers fit in its absolute discretion.
- 9.4 The Supplier is entitled to charge interest at the interest rate set from time to time under the *Penalty Interest Rates Act 1983* (Vic) on any Outstanding Amount under Tax Invoice from the date a Tax Invoice is due and payable until the time Payment is made.
- 9.5 If any Tax Invoice is due but unpaid, the Supplier may withhold the provision of any further Goods and/or Services until overdue amounts are paid in full.
- 9.6 The Supplier may in its complete discretion apply any payment received from the Customer to any amount owing by the Customer to the Supplier.
- 9.7 The Customer is not entitled to retain any money owing to the Supplier regardless of any default or alleged default by the Supplier under this Agreement, including (but not limited to) the supply of allegedly faulty or defective Goods, provision of Services to an inadequate standard or a delay in the provision of Goods and/or Services. Nothing in this clause effects the Customer's rights for any alleged failure of a guarantee under the Australian Consumer Law.
- 9.8 The Customer and the Supplier agree to comply with their obligations in relation to GST.

10. Warranties, indemnity and insurance

- 10.1 The Supplier warrants that:
- (a) it will supply the Goods and/or Services with a high standard of care and diligence and in accordance with all applicable laws;
 - (b) it has the necessary skills, experience, qualifications, resources, capacity and know-how to supply the Goods and/or Services in accordance with this Agreement; and
 - (c) in undertaking the obligations under this Agreement it will not be in breach of any obligation owed to any other person.

- 10.2 The Supplier must during the term of this Agreement at its cost take out and maintain all necessary or prudent insurances in relation to the Goods and/or Services.

11. Responsibilities of the Customer

11.1 The Customer:

- (a) must, in the case of matters involving Services:
 - (i) provide the Supplier with all unimpeded access to the Site or Agreed Other Location which the Supplier reasonably requires for the purpose of carrying out all required inspections prior to rendering the Services; and
 - (ii) without limiting the generality of sub-paragraph (i), provide the Supplier with all unimpeded access to the Site or Agreed Other Location which the Supplier reasonably requires prior to rendering the Services for the purpose of:
 - (A) enabling the Supplier to confirm access to and the accessibility of any inspection points, pits, manholes, inspection openings; and
 - (B) confirming the eligibility of any asset for inspection via CCTV camera.
- (b) must, in the case of matters involving Services:
 - (i) provide the Supplier with all unimpeded access to the Site or Agreed Other Location which the Supplier reasonably requires in order to be able to render the Services;
 - (ii) locate, mark clearly on the Site or Agreed Other Location and notify the Supplier in writing of the position of all underground services on the Site or Agreed Other Location prior to the Supplier commencing rendering the Services.

Without limiting the generality of this requirement, such underground services include all electrical and telephone cables, fibre optic cables, gas services, water mains, storm water, sewerage and drainage pipes, sewer sludge mains, oil pumping mains, pumping services, irrigation pipes water irrigation systems, and similar obstructions that may be on the Site or Agreed Other Location.

For the purpose of this sub-clause (b), the Supplier warns the Customer that 'Dial Before you Dig' is, or may be, of limited use for the purpose of identifying the underground services on the Site or Agreed Other Location.

- (c) must obtain, at its own expense, all applicable work permits that are required in order to enable the Supplier to render the Services, unless agreed otherwise in writing;
- (d) must work co-operatively with the Supplier during the course of the Supplier supplying the Goods and/or Services, to the extent required by the Supplier;
- (e) must provide the Supplier with access to and/or copies of all books and records which the Supplier reasonably requires in order to be able to supply the Goods and/or Services;
- (f) must make decisions and provide all information and instructions required by the Supplier as soon as practicable following a request during the course of the Supplier supplying the Goods and/or Services, in order to ensure efficient and satisfactory progress in respect of delivery of the Goods and/or Services; and
- (g) permits the Supplier to take photographs, videos or other media of the Goods and/or Services supplied at its absolute discretion, and to use those photographs, videos or other media at its absolute discretion (including, but not limited to, for marketing purposes).

12. Intellectual property rights

- 12.1 Each party acknowledges that all Background IP remains the sole property of its owner as at the date of this Agreement. Each party acknowledges that it acquires no right, title or interest in or to the Background IP of the other party by virtue of this Agreement or the disclosure or use of the Background IP in the course of supplying the Goods and/or Services, other than as expressly set out in this Agreement.
- 12.2 All right, title and interest in the Goods and Services IP shall vest in and become the sole property of the party who created the Goods and Services IP, with effect from the creation of the Goods and Services IP.
- 12.3 The Customer grants to the Supplier a non-exclusive, royalty-free, non-transferable licence during the Term to use the Background IP and Goods and Services IP owned by it to the extent necessary and for the sole purpose of enabling the Supplier and its employees, officers, servants, contractors and other agents to supply the Goods and/or Services.
- 12.4 Neither party may directly or indirectly engage in any conduct which may prejudice and/or adversely effect the capacity of any Background IP or Goods and Services IP to be protected or challenge its ownership or validity.

13. Confidential Information

- 13.1 Each party may use and disclose the Confidential Information of the other party solely to the extent necessary for the supply of the Goods and/or Services or development in

accordance with this Agreement.

13.2 Subject to clause 13.3, each party must:

- (a) not use, and ensure that its employees, officers, servants, contractors and other agents do not use, any Confidential Information of the other party for any purpose other than compliance with its obligations under this Agreement;
- (b) take all action necessary to maintain the confidential nature of the Confidential Information of the other party, including keeping all records of that Confidential Information under lock and key or password protection;
- (c) not disclose any of the Confidential Information of the other party to any person other than those of its employees, officers, servants, contractors and other agents who need to have access to that Confidential Information for the purpose of supplying the Goods and/or Services in accordance with this Agreement, who are aware of the requirements of this Agreement, and who are bound by an enforceable obligation of confidentiality; and
- (d) destroy all documents and other materials in whatever form in its possession, power or control which contain or refer to any Confidential Information of the other party, on the earlier of expiry or termination of this Agreement, demand by the other party or the time they are no longer required for the purpose of supplying the Goods and/or Services in accordance with this Agreement.

13.3 Each party may disclose Confidential Information of the other party if legally compelled to do so by a judicial or administrative body. However, it must take all reasonably available legal measures to avoid such disclosure, and notifies the other party as soon as practicable after such disclosure is ordered so that the other party may seek an appropriate protective order or other remedy.

13.4 Each party acknowledges that:

- (a) the other party would be irreparably harmed by any actual or threatened breach of this clause 13;
- (b) monetary damages would be insufficient to remedy such actual or threatened breach, and the other party is therefore entitled to seek injunctive relief to prevent or limit breach of this clause 13.

14. COVID-19 Confidential Information

14.1 The Customer must comply with the following requirements in relation to all COVID-19 Confidential Information:

- (a) the Customer must at all times keep all COVID-19 Confidential Information strictly private and confidential;

- (b) the Customer must not use, and ensure that its employees, officers, servants, contractors and other agents do not use, any COVID-19 Confidential Information for any purpose other than compliance with the Customers' obligations under the COVID-19 Laws;
- (c) the Customer must at all times keep the COVID-19 Confidential Information in a safe and secure location, and in a location where the COVID-19 Confidential Information cannot be viewed by anyone other than people who require access to that information for the purpose of complying with the COVID-19 Laws;
- (d) outside of business hours, the Customer must store all COVID-19 Confidential Information under lock and key or password protection;
- (e) the Customer must take all action necessary to maintain the private and confidential nature of the COVID-19 Confidential Information, including (as applicable) keeping all records of that COVID-19 Confidential Information under lock and key or password protection;
- (f) the Customer must not disclose any of the COVID-19 Confidential Information of the other party to any person other than:
 - (i) in accordance with the requirements of the COVID-19 Laws; and
 - (ii) to those of its employees, officers, servants, contractors and other agents who need to have access to that COVID-19 Confidential Information for the purpose of complying with the COVID-19 Laws, who are aware of the requirements of this Agreement, and who are bound by an enforceable obligation of confidentiality;
- (g) the Customer must destroy all documents and other materials in whatever form in its possession, power or control which contain or refer to any COVID-19 Confidential Information of the Supplier as soon as practicable after this action is permitted by the COVID-19 Laws; and
- (h) the Customer must comply with all applicable privacy requirements that apply to the COVID-19 Confidential Information that apply under the applicable law. Without limiting the generality of this requirement, the Customer must comply with all requirements that apply to the COVID-19 Confidential Information pursuant to the *Privacy Act 1988* (Cth).

15. Term and termination

15.1 This Agreement commences on the Commencement Date and continues in force until:

- (a) the earlier of the Completion Date or the Termination Date; or
- (b) such further date that is agreed by the Supplier and the Customer in writing.

15.2 The Supplier may immediately cease supplying the Goods and/or Services and terminate this Agreement in the event that:

- (a) credit limits with the Customer cannot be agreed upon or have been exceeded;
- (b) Payment for any Goods and/or Services previously provided by the Supplier to the Customer has not been received by the Supplier within the required Payment Terms; and/or
- (c) any changes to the specifications for Goods and/or Services are required as a result of:
 - (i) any change to the scope of the Goods and/or Services to be supplied to the Customer;
 - (ii) a rise or fall in the cost of any nature of supplying the Goods and/or Services;
 - (iii) any fluctuation in the rate of exchange between any currency and the Australian Dollar if and to the extent that such foreign currency effects the costs of supplying the Goods and/or Services that are incurred by the Supplier; and/or
 - (iv) in matters involving Services:
 - (A) the Supplier requiring any applicable work permit/s that are needed in order for the Supplier to be able to render the Services;
 - (B) any delays and/or difficulties experienced by the Supplier in accessing the Site or Agreed Other Location for any reason;
 - (C) any relevant structures on the Site or Agreed Other Location have failed and/or are inaccessible for any reason;
 - (D) any delays in the Supplier being able to render the Services due to inclement weather;
 - (E) any extra work carried out by the Supplier as a result of conditions any impediments, delays and/or difficulties experienced by the Supplier in accessing the Site or Agreed Other Location for any reason; and/or
 - (F) any extra work carried out by the Supplier as a result of conditions on the Site or Agreed Other Location that were previously not known or unforeseen by the Supplier; and/or
- (d) in the case of matters involving Services, the Supplier is unable to gain such unimpeded access to the Site and any other Agreed Other Location which the

Supplier reasonably requires in order to be able to render the Services, for any reason.

15.3 The Supplier may terminate this Agreement immediately by giving written notice to the Customer if at any time:

- (a) a Customer commits a breach of any provision of this Agreement (other than a minor breach that causes no material harm) and, where the breach is capable of remedy, fails to remedy the breach within 14 (fourteen) days of receiving written notice to do so from the Supplier; or
- (b) the Customer becomes Insolvent, enters into liquidation or receivership, becomes subject to any form of external administration, makes a composition or arrangement with its creditors generally, or takes advantage of any statute for the relief of insolvent debtors.

15.4 In the event that the Supplier terminates this Agreement in accordance with this clause 15:

- (a) The Supplier shall notify the Customer of the termination of this Agreement in writing (**Termination Notice**).
- (b) The Customer must pay the Supplier the Compensation Amount within the required Payment Terms after the Supplier gives the Customer the Termination Notice. For the avoidance of doubt, the Customer acknowledges that the Compensation Amount is a genuine pre-estimate of the loss that will be suffered by the Supplier in the event that this Agreement is terminated pursuant to this clause 15.
- (c) The Customer must pay to the Supplier all amounts accrued or due pursuant to this Agreement but unpaid as at the date of termination.
- (d) The Customer will forfeit any amounts already paid to the Supplier on account of amounts owing pursuant to this Agreement.
- (e) If the Customer does not collect any Goods held by the Supplier within 14 (fourteen) days of the Supplier giving the Customer the Termination Notice:
 - (i) the Supplier may treat such Goods as abandoned goods; and
 - (ii) the Supplier may therefore dispose of such Goods in any manner in which the Supplier considers fit.

For the avoidance of doubt, the Supplier is not required to make any Goods available for collection by the Customer pursuant to this clause unless and until the Customer pays the Compensation Amount to the Supplier.

16. Acceptance of Goods.

16.1 If the Customer fails to advise the Supplier in writing of any fault in Goods or failure of

Goods to accord with the Customer's Order within 48 (forty eight) hours of delivery, the Customer is deemed to have accepted the Goods and to have accepted that the Goods are not faulty and accord with the Customer's Order. Nothing in this clause affects the Customer's rights for any alleged failure of a guarantee under the Australian Consumer Law.

17. Title and risk.

17.1 Risk in Goods passes to the Customer immediately upon delivery.

17.2 Property and title in Goods supplied to the Customer under this Agreement does not pass to the Customer until all money (including money owing in respect of other transactions between the Supplier and the Customer) due and payable to the Supplier by the Customer have been fully paid.

17.3 Where the Supplier supplies Goods to the Customer without receiving payment in full of all moneys payable in respect of the Goods and any Services provided in respect of those Goods, the Customer:

- (a) is a bailee of the Goods until property in them passes to the Customer;
- (b) irrevocably appoints the Supplier to be its attorney to do all acts and things necessary to ensure the retention of title to the Goods including the registration of any security interest in favour of the Supplier with respect to the Goods under applicable law;
- (c) must be able upon demand by the Supplier to separate and identify as belonging to the Supplier the Goods supplied by the Supplier from other goods which are held by the Customer;
- (d) must not allow any person to have or acquire any security interest in the Goods;
- (e) agrees that the Supplier may repossess the Goods at the Supplier's absolute discretion; and
- (f) the Customer grants an irrevocable licence to the Supplier or its agent to enter the Customer's premises in order to recover possession of Goods pursuant to this clause. The Customer indemnifies the Supplier for any damage to property or personal injury which occurs as a result of the Supplier entering the Customer's premises.

17.4 Where Goods are supplied by the Supplier to the Customer without payment in full of all moneys payable in respect of the Goods and any Services provided by the Supplier in respect of those Goods, and:

- (a) the Customer makes a new object from the Goods, whether finished or not;
- (b) the Customer mixes the Goods with other goods; or

(c) the Goods become part of other goods

(hereinafter referred to as **New Goods**)

the Customer agrees with the Supplier that the ownership of the New Goods immediately passes to the Supplier. The Customer will hold the New Goods on trust for the Supplier until payment of all sums owing to the Supplier whether under these terms of trade or any other contract have been made. The Supplier may require the Customer to store the New Goods in a manner that clearly shows the ownership of the Supplier.

17.5 For the avoidance of doubt, under clause 17.4, the ownership of the New Goods passes to the Supplier at the beginning of the operation or event by which the Goods are converted into, are mixed with or become part of other goods.

17.6 Despite clause 17.6, the Customer may transfer, sell or dispose of Goods, including New Goods, to a third party in the ordinary course of business. This is provided that:

- (a) where the Customer is paid by a third party in respect of Goods including New Goods, the Customer holds the whole of the proceeds of sale, less any GST, on trust for the Supplier in a separate account, until all amounts owned by the Customer to the Supplier have been paid; or
- (b) where the Customer is not paid by a third party, the Customer agrees to assign all of its rights against the third party to the Supplier upon the Supplier giving the Customer notice in writing to that effect and for the purpose of giving effect to that assignment the Customer irrevocably appoints the Supplier as its attorney.

18. Exclusions and limitations of liability

18.1 Nothing in this Agreement shall limit or exclude the liability of the Supplier for any liability which cannot be limited or excluded by the applicable law.

18.2 The Customer expressly agrees that use of the Goods and/or Services is at the Customer's risk. To the full extent allowed by law, the Supplier's liability for breach of any term implied into these terms of trade by any law is excluded.

18.3 Subject to sub-clause 18.1, the Supplier shall not in any circumstances have any liability to the Customer for any of the following types of loss or damage arising under or in relation to this Agreement, even if the Supplier has been advised of the possibility of such loss and damage:

- (a) any loss of profits, business, contracts, anticipated savings, goodwill, or revenue or any wasted expenditure (regardless of whether any of these types of loss or damage are direct, indirect or consequential); or
- (b) any indirect or consequential loss or damage whatsoever.

18.4 Subject to clauses 18.1 and 18.3, the total liability of the Supplier under or in connection with this Agreement whether in contract, tort (including negligence) or otherwise, shall be

limited in aggregate for all Claims to the amount equalling the sum paid or payable for the Goods and/or Services.

- 18.5 All information, specifications and samples provided by the Supplier in relation to the Goods and/or Services are approximations only and, subject to any guarantees under the Australian Consumer Law, small deviations or slight variations from them which do not substantially affect the Customer's use of the Goods and/or Services will not entitle the Customer to reject the Goods and/or Services or to make any Claim in respect of them.
- 18.6 The Supplier gives no warranty in relation to the Goods and/or Services provided or supplied. Under no circumstances is the Supplier or any of its suppliers liable or responsible in any way to the Customer or any other person for any loss, damages, costs, expenses or other Claims (including consequential damages and loss of profits or loss of revenues) as a result, direct or indirect of any defect, deficiency or discrepancy in the Goods and/or Services. This includes their form, content and timeliness of deliveries, failure of performance, error, omission, defect, including, without limitation, for and in relation to any of the following:
- (a) any Goods and/or Services supplied to the Customer;
 - (b) any delay in supply of the Goods and/or Services; or
 - (c) any failure to supply the Goods and/or Services.
- 18.7 Any advice, recommendation, information, assistance or service given by the Supplier in relation to Goods and/or Services is given in good faith and is believed to be accurate, appropriate and reliable at the time it is given. It is provided without any warranty or accuracy, appropriateness or reliability. The Supplier does not accept any liability or responsibility for any Loss suffered as a result of the Customer's reliance on such advice, recommendation, information, assistance or service.
- 18.8 The Customer acknowledges and agrees that the Goods and/or Services are not for personal, domestic or household purposes.
- 18.9 The Supplier shall not be liable for any Claim under this Agreement unless the Claim has been made by the Customer to the Supplier within 1 (one) month of the date on which such Claim became known, or ought reasonably have become known, to the Customer.

19. Consumer Guarantees

- 19.1 Except as provided in this Agreement, all express and implied warranties under statute or general law as to merchantability, description, quality, suitability or fitness of the Goods and/or Services for any purpose or as to design, assembly, installation, materials or workmanship or otherwise are expressly excluded to the fullest extent permitted by the applicable law.
- 19.2 All other conditions and warranties, statutory or otherwise and whether express or implied, are hereby excluded to the fullest extent permitted by the applicable law, and

no guarantee, other than that expressly herein contained and the statutory guarantee that cannot be excluded or limited under the applicable law, applies to the Goods and/or Services to which the guarantee relates, or any accessory or part thereof.

- 19.3 The Australian Consumer Law may give to the Customer certain consumer guarantees, which cannot be restricted, limited or varied.
- 19.4 In respect of the Goods, the Supplier's liability for a breach of or failure to comply with a guarantee under the Australian Consumer Law (other than section 51, 52 or 53) for the supply of goods is expressly limited to:
- (a) the replacement of the Goods or the supply of equivalent Goods;
 - (b) if applicable, the repair of the Goods;
 - (c) the payment of the cost of replacing the Goods or of acquiring equivalent Goods; and/or
 - (d) if applicable, the payment of the cost of having the Goods repaired.
- 19.5 In respect of the Services, the Supplier's liability for a breach of or failure to comply with a guarantee under Div I of Part 3-2 of *Schedule 2 of the Competition and Consumer Act 2010* (**Australian Consumer Law**) for the supply of the Services is expressly limited to:
- (a) the supplying of the Services again; or
 - (b) the payment of the cost of having the Services supplied again.

20. Indemnity

- 20.1 The Customer indemnifies and keeps indemnified the Supplier, its servants and agents against any and all Loss and/or liability incurred by the Company in connection with:
- (a) any and all past, present and/or future Claims initiated or commenced by any party (including, but not limited to, the Customer or any third party) against the Supplier, or for which the Supplier is liable or potentially liable, that arise from or are incidental to the provision of the Goods and/or Services, any Order or the subject matter of this Agreement, and/or which directly and/or indirectly touch and concern the subject matter of these matters;
 - (b) any breach of this Agreement by the Customer, including a breach of a warranty or representation by the Customer in this Agreement;
 - (c) any unauthorised express or implied warranty or representation under statute or general law as to merchantability, description, quality, suitability or fitness of the Goods and/or Services for any purpose or as to design, assembly, installation, materials or workmanship or otherwise made by any agent,

employee or representative of the Customer to a third party. For the avoidance of doubt, a warranty or representation will be unauthorised unless the warranty or representation has previously been made by the Supplier or authorised by it;

- (d) any negligence of or breach of law by the Customer;
 - (e) the death of, or injury to, any person that is caused by the Customer or occurs as a result of any conduct of the Customer;
 - (f) any damage to the Site or Agreed Other Location and/or property that is caused by the Customer or occurs as a result of any conduct of the Customer; and
 - (g) any damage to underground services on the Site or Agreed Other Location which the Customer has not precisely located and provided the Supplier with written notice of.
- 20.2 Without limiting the generality of clause 20.1 and without limitation (either directly or indirectly), for the avoidance of doubt the parties acknowledge and agree that the indemnity in clause 20.1 extends to the following:
- (a) all past, present and/or future Intellectual Property Rights Claims;
 - (b) any and all legal costs incurred by the Supplier in meeting and/or defending any Claims; and
 - (c) any and all legal costs incurred by any third party for which the Supplier is liable and/or pays to a third party in connection with any Claims made by that third party.
- 20.3 The indemnity in this clause 20.1 shall remain in force after the Termination Date.

21. Force majeure

- 21.1 Each party shall be excused from liability for the failure or delay in performance of any obligation under this Agreement by reason of any event beyond such party's reasonable control (**force majeure**), including but not limited to, any Acts of God, fire, flood, explosion, earthquake, other natural forces, pandemic, epidemic, lockdown imposed as a result of any pandemic and/or epidemic, government restrictions imposed as a result of any pandemic and/or epidemic, war, civil unrest, strike or labour disturbance, provided that the party has not caused such event(s) to occur.
- 21.2 The excuse from liability that is referred to in clause 21.1 shall be effective only to the extent and duration of the force majeure event(s) causing the failure or delay in performance.
- 21.3 Notice of a party's failure or delay in performance due to force majeure must be given to the

other party within 5 (five) calendar days after its occurrence. All Completion Dates under this Agreement that have been affected by force majeure shall be suspended for the duration of such force majeure.

21.4 In the event that a force majeure persists for 30 (thirty) days or more, either party may terminate this Agreement upon written notice to the other party.

21.5 In the event that this Agreement is terminated pursuant to clause 21.4:

- (a) The Customer must pay the Supplier the Compensation Amount within 7 (seven) days of this Agreement being terminated. For the avoidance of doubt, the Customer acknowledges that the Compensation Amount is a genuine pre-estimate of the loss that will be suffered by the Supplier in the event that this Agreement is terminated pursuant to this clause 21.
- (b) The Customer must pay to the Supplier all amounts accrued or due pursuant to this Agreement but unpaid as at the date of termination.
- (c) The Customer will forfeit any amounts already paid to the Supplier on account of amounts owing pursuant to this Agreement; and
- (d) If the Customer does not collect any Goods held by the Supplier within 14 (fourteen) days of the Supplier giving the Customer the Termination Notice:
 - (i) the Supplier may treat such Goods as abandoned goods; and
 - (ii) the Supplier may therefore dispose of such Goods in any manner in which the Supplier considers fit.

For the avoidance of doubt, the Supplier is not required to make any Goods available for collection by the Customer pursuant to this clause unless and until the Customer pays the Compensation Amount to the Supplier.

22. *Personal Property Securities Act 2009 (Cth)* (“PPSA”)

22.1 In this clause:

- (a) **financing statement** has the meaning given to it by the PPSA;
- (b) **financing change statement** has the meaning given to it by the PPSA;
- (c) **Security Agreement** means the Security Agreement under the PPSA created between the Customer and the Supplier by this Agreement;
- (d) **Security Interest** has the meaning given to it by the PPSA; and
- (e) **Purchase Money Security Interest** has the meaning given to it by the PPSA.

22.2 Upon entering into this Agreement the Customer acknowledges and agrees that this Agreement:

- (a) constitutes a Security Agreement for the purposes of the PPSA; and
- (b) creates a Security Interest and/or a Purchase Money Security Interest in:
 - (i) all Goods previously supplied by the Supplier to the Customer (if any); and
 - (ii) all Goods that will be supplied in the future by the Supplier to the Customer.

22.3 The Customer undertakes to:

- (a) promptly sign any further documents and / or provide any further information (such information to be complete, accurate and up to date in all aspects) which the Supplier may reasonably require to:
 - (i) register a financing statement or financing change statement in relation to a security interest and/or purchase money security interest on the Personal Property Securities Register;
 - (ii) register any other document required to be registered by the PPSA; or
 - (iii) correct a defect in a statement referred to in sub-clauses (i) or (ii).
- (b) indemnify, and upon demand reimburse, the Supplier for all expenses incurred in registering a financing statement or financing change statement on the Personal Properties Securities Register established by the PPSA or releasing any Goods charged thereby;
- (c) not register a financing change statement in respect of a security interest without prior written consent of the Supplier;
- (d) not register, or permit to be registered, a financing statement or a financing change statement in relation to the Goods in favour of a third party without the prior written consent of the Supplier; and
- (e) immediately advise the Supplier of any material change in its business practices of selling the Goods which would result in a change in the nature of proceeds derived from such sales.

22.4 **Exclusion of PPSA provisions**

- (a) to the extent the law permits, the Customer waives:
 - (i) its rights to receive any notice that is required by:
 - (A) any provision of the PPSA (including a notice of a verification statement); or

- (B) any other law before a secured party or Receiver exercises a right, power or remedy; and
 - (ii) any time period that must otherwise lapse under any law before a secured party or Receiver exercises a right, power or remedy.
- (b) If the law which requires a period of notice or a lapse of time cannot be excluded, but the law provides that the period of notice or lapse of time may be agreed, that period of lapse is 1 (one) day or the minimum period the law allows to be agreed (whichever is the longer).
- (c) However, nothing in this clause prohibits the Supplier or any Receiver from giving a notice under the PPSA or any other law.
- (d) For the avoidance of doubt, to the extent the law permits and for the purposes of sections 115(1) and 115(7) of the PPSA:
 - (i) the Supplier need not comply with sections 95 (Notice of Removal of Accession), 118 (Security Interest in accordance with Land Law Decision), 121(4) (Enforcement of Liquid Assets – Notice to Grantor), 125 (Obligation to Dispose of or Retain Collateral), 130 (Notice of Disposal), 132(3)(d) (Contents of Statement of Account after Disposal) or 132(4) (Statement of Account if no Disposal); and
 - (ii) sections 142 (Redemption of Collateral) and 143 (Reinstatement of Security Agreement) are excluded.
- (e) Unless otherwise agreed to in writing by the Supplier, the Customer waives its rights to receive a verification statement in accordance with section 157(3) of the PPSA.
- (f) If the PPSA is amended after the date of this document to permit the Customer and the Supplier to agree to not comply with or to exclude other provisions of the PPSA, the Supplier may notify the Customer that any of these provisions is excluded, or that the Supplier need not comply with any of these provisions, as notified to the Customer by the Supplier.
- (g) The Customer agrees not to exercise its rights to make any request of the Supplier under section 275 of the PPSA, to authorize the disclosure of any information under that section or to waive any duty of confidence that would otherwise permit non-disclosure under that section.
- (h) The Customer shall unconditionally ratify any actions taken by the Supplier under this clause.

23. *Personal Property Securities Act 2009 (Cth) - Accession*

- 23.1 This clause shall, in addition to other provisions, apply if the Goods are or will become an accession.

- 23.2 Accession has the meaning given to it by the PPSA.
- 23.3 The Customer must, at least 2 (two) Business Days before the scheduled delivery of the accession by the Supplier, provide to the Supplier the written statement of the person who has an interest in the other goods at the time when the Goods become an accession:
- (a) consenting to the Supplier's security interest in the accession; and
 - (b) confirming he has not entered into any agreement under which another person is entitled to remove the accession.

24. Guarantee and Indemnity

- 24.1 In consideration for the Supplier having agreed to supply the Goods and/or Services to the Customer, the Guarantor/s:
- (a) unconditionally guarantee the punctual payment to the Supplier of all Outstanding Amounts that are due and payable on the due date; and
 - (b) indemnify the Supplier against Losses, damage, costs, and expenses incurred by the Supplier as a result of any failure by the Customer to pay all Outstanding Amounts on the due date.
- (Guarantee and Indemnity).**
- 24.2 If the Customer does not pay all Outstanding Amounts to the Supplier on the due date:
- (a) the Guarantor/s must pay all Outstanding Amounts and any other amount referred to in clause 24.1 to the Supplier immediately on demand by the Supplier; and
 - (b) the Supplier may enforce the Guarantee and Indemnity against the Guarantor/s.
- 24.3 The Guarantee and Indemnity cannot be revoked by the Guarantor/s. The Guarantor/s remain bound by the Guarantee and Indemnity until a written release is given by the Supplier. The Supplier may release, or come to a separate arrangement with, any one or more of the Guarantor/s, without affecting the liability of the remaining Guarantor/s.
- 24.4 The Supplier need not enforce any rights against the Customer or anyone else before enforcing the Guarantee and Indemnity against the Guarantor/s.
- 24.5 The Guarantee and Indemnity:
- (a) continues and remains unaffected despite anything that happens to the Customer and despite the Supplier allowing the Customer time to rectify any default. For example, the Guarantee and Indemnity continues even if the Customer dies or is made bankrupt, if the Customer is a partnership and the partnership ends or the members change, or if the Customer is a company and it is dissolved or wound up;
 - (b) continues even if for any reason the Customer is not required to meet its obligation

to pay the Outstanding Amount. For example, the Guarantee and Indemnity continues in the event that this Agreement becomes unenforceable against the Customer;

- (c) continues despite any change in the Outstanding Amount that is owed by the Customer; and
 - (d) continues even if the terms and conditions of this Agreement are varied.
- 24.6 The Supplier does not lose the power to exercise any of its rights under the Guarantee and Indemnity because of any delay, any indulgence or extension of time which the Supplier gives the Customer, any written or verbal statement by the Supplier and/or by reason of anything else the Supplier does or any other conduct of the Supplier.
- 24.7 The Guarantor/s obligations under the Guarantee and Indemnity will continue until the expiry of at least 7 (seven) months after the Outstanding Amount is paid in full. After the expiry of 7 (seven) months after the Outstanding Amount is paid in full the Supplier will release the Guarantors from the Guarantee and Indemnity provided that the Supplier has not been subjected to any third party claims that relate to and/or touch and concern any payments received in connection with the Outstanding Amount that has been paid (including, without limitation, any clawback claims from a Bankruptcy Trustee, Administrator or Liquidator).

25. Dispute resolution

- 25.1 If a dispute arises between the parties under or in connection with this Agreement, the parties must negotiate in good faith for the purpose of attempting to resolve the dispute for the period of 14 (fourteen) days from the date of one party (**Aggrieved Party**) giving the other party (**Other Party**) written notice of the dispute (**Notice of Dispute**).
- 25.2 If the parties are unable to resolve the dispute within 14 (fourteen) days of the Aggrieved Party giving a Notice of Dispute to the Other Party, then either party may by notice in writing advise the other party that it seeks to have the dispute resolved by mediation (**Mediation Notice**).
- 25.3 Within 21 (twenty one) days of one party giving a Mediation Notice to the other party, the parties may refer the matter to a mutually agreed mediator. In the event that an agreement cannot be reached on an appropriate mediator, any party may refer the dispute to a mediator appointed by the Australian Commercial Disputes Centre or, if the Australian Commercial Disputes Centre has ceased to exist at the relevant time, by the Law Institute of Victoria.
- 25.4 Mediation must occur within 30 (thirty) days of the appointment of the mediator and the costs of the mediation are to be borne equally between the parties.
- 25.5 In the event that the dispute is not resolved at mediation, either party may take steps to resolve the dispute by way of litigation.
- 25.6 For the avoidance of doubt:

- (a) Each party must continue to perform its obligations under this Agreement.
 - (b) Nothing contained in this clause 25 shall deny a party the right to seek injunctive relief from an appropriate Court where failure to obtain such relief would cause irreparable damage to the party concerned.
- 25.7 The parties must keep confidential, unless otherwise required by law or at the direction of a court of competent jurisdiction, all information relating to the subject matter of the dispute that is disclosed during or for the purposes of dispute resolution. The parties acknowledge that the purpose of any exchange of information or documents or the making of any offer of settlement pursuant to this procedure is entirely "Without Prejudice" and carried out for the purpose of attempting to settle the dispute between the parties. No party may use any information or documents obtained through the dispute resolution process for any purpose other than an attempt to settle the dispute between the parties

26. General

26.1 Entire agreement

- (a) Subject to sub-clause (b), this Agreement contains the entire agreement between the parties as to its subject matter and may only be amended in writing signed by all parties.
- (b) The Supplier may vary the terms of this Agreement from time to time in its absolute discretion without notice to the Customer by posting amended Terms and Conditions on the Website.

26.2 Application and priority

- (a) This Agreement applies to all transactions between the Customer and the Supplier relating to the provision of Goods and/or Services. Without limiting the generality of this clause, this includes all quotations, contracts and variations.
- (b) This Agreement takes precedence over terms of trade contained in any document of the Customer or elsewhere.

26.3 Notices

In the case of the Supplier, notices must be given to the address that is specified in the definition of Supplier, or as otherwise notified by the Supplier in writing.

In the case of the Customer, notices must be given to:

- (a) the last address which the Customer has advised to the Supplier; or

- (b) alternatively, to the address of the Customer that is specified in any written Agreement between the Supplier and the Customer; or
- (c) alternatively, as otherwise notified by the Customer to the Supplier in writing.

Notices must be delivered in person or sent by fax or prepaid post (airmail if international). Notices will be deemed to have been received:

- (a) if delivered in person -- on the date of delivery;
- (b) if sent by fax -- on production of a transmission report from the sender's fax machine evidencing that the fax was successfully sent in its entirety;
- (c) if sent by prepaid post to or from a place within Australia, 3 (three) Business Days after posting; or
- (d) if sent by prepaid post to or from a place outside Australia, 7 (seven) Business Days after posting.

26.4 No assignment

A party must not assign any of its rights or obligations under this Agreement without the other party's prior written consent.

26.5 No waiver

No delay or indulgence by a party in enforcing this Agreement will prejudice or restrict the rights of that party, nor will a waiver of those rights operate as a waiver of a subsequent breach.

26.6 No disadvantage to party preparing Agreement

No part of this Agreement is to be construed to the disadvantage of a party because that party was responsible for its preparation.

26.7 No relationship

Nothing in this Agreement may be construed as creating a relationship of partnership, joint venture, employment, principal and agent or trustee and beneficiary.

26.8 Parties must do all things and sign all documents

A party, at the request of another party, must do all things and sign all documents necessary to give effect to this Agreement.

26.9 Severability

If any provision of this Agreement is or becomes invalid or unenforceable then, if the provision can be read down to make it valid and enforceable without materially changing its effect, it must be read down, and otherwise the offending provision must be severed and the remaining provisions will operate as if the provision had not been included.

26.10 **Jurisdiction**

This Agreement is governed by the laws of Victoria, Australia, and the parties submit to the non-exclusive jurisdiction of the courts of that state.

26.11 **Authority of parties**

Each signatory to the Quote and any other written Agreement between the Supplier and the Customer warrants that he or she has authority to bind the party that he or she is stated to represent.

26.12 **Counterparts**

The Quote and any other written Agreement between the Supplier and the Customer may be executed in any number of counterparts all of which taken together will constitute one agreement.