

TERMS AND CONDITIONS OF TRADE

IMPORTANT NOTICE: *This document sets out the terms and conditions upon which Insight Control Services Pty Ltd ABN 76 160 561 973 (“We”, “Our”, “Us” and “the Company”) will provide Services and/or Products to its customers (“You”, “Your” and “Customers”). These terms and conditions create important legal rights and obligations upon us, as well as you. By agreeing to our Quotation, you offer to enter into the following terms and conditions with us. If you decide to use our Services and/or Products, these terms and conditions become a legally binding agreement between you and us. You expressly acknowledge that you have read this notice and understand the rights, obligations, terms and conditions set forth herein.*

1. Definitions and interpretation

Definitions

1.1 The following definitions apply in these terms and conditions unless the context requires otherwise:

ACL means the Australian Consumer Law (as set out in Schedule 2 to the *Competition and Consumer Act 2010* (Cth)).

Approvals means all approvals, authorisations, permits, consents, determinations and licences which are issued, or required to be issued, by any Governmental Agency to permit the full and proper performance of a party’s obligations under these terms and conditions.

Authorised Third Party Disclosee means any Representative of a Disclosee to whom that Disclosee discloses Confidential Information in accordance with clause 11.

BIF Act means the *Building Industry Fairness (Security of Payment) Act 2017* (QLD).

Business Day means a day (other than a Saturday, Sunday or public holiday) when banks in Brisbane, Queensland are open for business.

Change of Control means, in respect of a particular entity, a person who Controls that entity ceasing to do so or another person acquiring Control of it.

Charges means Fees and Expenses.

Claim means any actual, contingent, present or future claim, complaint, demand, proceeding, suit, litigation, action, cause of action or other legal recourse for any Loss, restitution, equitable compensation, account, injunctive relief, specific performance or any other remedy of whatever nature and however arising, whether in contract, tort (including but not limited to negligence), under statute or otherwise; whether direct or indirect;

Company means Insight Control Services Pty Ltd ABN 76 160 561 973.

Completion Date means the date the Company’s obligations to provide Services and/or Products complete pursuant to an Engagement, or such other date as the parties may agree in writing.

Confidential Information means all information relating to a party, any client, customers, suppliers, distributors or joint venture partners, of the party and/or any of the business or financial affairs of any of them, including:

- (a) any information that is specifically designated by any of them as confidential;

- (b) any information which, by its nature, may reasonably be regarded as confidential;
- (c) any information relating to any:
 - (i) agreements, arrangements or terms of trade with any existing or prospective clients, customers, suppliers, distributors or joint venture partners or other contractual counterparties;
 - (ii) clients, customers, suppliers, distributors, joint venture partners, employees, technologies, products, services, proposals, market opportunities, business or product development plans, pricing, financial position or performance, capabilities, capacities, operations or processes; or
 - (iii) Intellectual Property Rights,
 of any of them; and
- (d) any note, calculation, conclusion, summary or other material derived or produced partly or wholly from any such information;
- (e) negotiations in relation to, and the terms of, these terms and conditions,

whether that information is visual, oral, documentary, electronic, machine-readable tangible, intangible or any other form, relating to the Company or any Related Entity of the Company including but not limited to any specifications, formulae, know how, concepts, inventions, ideas, software, designs, copyright, trade secrets or any information relating to any business, products, markets, operations, processes, techniques, technology, forecasts, strategies or any other matter.

Contract means the contract between the Company and the Customer comprising the Engagement Documents and these terms and conditions.

Control has the meaning given in Section 50AA of the Corporations Act.

Copyright Act means the *Copyright Act 1968* (Cth).

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

Customer means the party that will receive the Services and/or Products from the Company.

Deadline Date means, in respect of a Quotation, the dates (if any) specified in the Quotation as the dates on or before which the Company must complete each Phase of the Engagement in accordance with clause 6.1.

Default Rate means a rate that is 10% above the most recent cash rate announced and published by the Reserve Bank of Australia.

Disclosee means, in respect of any particular Confidential Information, any party that has received that Confidential Information (whether directly or indirectly) from another party.

Discloser means, in respect of any particular Confidential Information, any party that has disclosed or discloses that Confidential Information (whether directly or indirectly) to another party.

Engagement has the meaning given in clause 3.1, being each individual engagement for the Company to provide specific Services and/or Products to the Customer further to a Quotation.

Engagement Documents means, unless the parties expressly agree otherwise:

- (a) where a written request is issued, the written document(s) issued by the Customer to the Company which:

- (i) detail the Customer's requirements for the provision of Services and/or Products by the Company; and
- (ii) either request the Company to provide, or accept the Company's offer to provide, those Services and/or Products to the Customer,

including all documents attached to or incorporated by reference into those written documents and which may include the Quotation; and

- (b) where a verbal request is made, means the information provided verbally, and the information contained in any documents to which the Company's attention is directed.

Event of Default means any of the following on the part of a party:

- (a) committing any material or persistent breach of these terms and conditions;
- (b) repudiating or, or, in the reasonable opinion of the Company, evincing an intention to repudiate, these terms and conditions;
- (c) if the Customer is a company, undergoing a Change of Control without the prior written consent of the Company;
- (d) misleading the Company in any material way; and/or
- (e) an Insolvency Event occurring in respect of the Customer.

Expenses mean the expenses of the Company for which the Company is entitled to be reimbursed by the Customer pursuant to clause 8.6.

Fees has the meaning given in clause 8.1.

Fixed Price means, in respect of a particular Engagement, if, as specified in the relevant Quotation:

- (a) the Services are not divided into Phases, the price (exclusive of GST) specified in the relevant Quotation for all of the Services;
- (b) the Services are divided into Phases, the price (exclusive of GST) specified in the relevant Quotation for each Phase respectively; or
- (c) the Product, the price (exclusive of GST) specified in the relevant Quotation for the Product.

Force Majeure Event means any act, event or cause (other than lack of funds) which is beyond the reasonable control of the affected party, including:

- (a) an act of God, war, sabotage, terrorism, riot, civil disorder, revolution, national or state emergency, martial law, fire, lightning, flood, cyclone, earthquake, landslide, storm or other adverse weather conditions, explosion, power shortage, strike or other labour difficulty (whether or not involving employees of the affected party), epidemic or quarantine; and
- (b) an action or inaction of any Governmental Agency (including any Court of competent jurisdiction), such as expropriation, restraint, prohibition, intervention, requisition, requirement, direction or embargo by legislation, decree or other legally enforceable order.

Governmental Agency means any government or governmental, semi-governmental, administrative, fiscal or judicial body, department, commission, authority, tribunal, agency or entity whether foreign, federal, state, territorial or local.

GST has the same meaning given to that expression in the GST Law.

GST Act means *A New Tax System (Goods and Services Tax) Act 1999* (Cth), as in force from time to time.

GST Law has the same meaning given to that expression in the GST Act.

Hourly Rate means the hourly rate set out in the relevant Quotation, if applicable.

Insolvency Event means, in respect of a party any of the following events or any analogous event:

- (a) where the party is an individual, that party commits an act of bankruptcy or is declared bankrupt or insolvent or that party's estate otherwise becomes liable to be dealt with under any law relating to bankruptcy or insolvency;
- (b) where the party is a company, a resolution is passed or court order made for the winding up of that party or an administrator is appointed to that party pursuant to any relevant law;
- (c) a receiver or manager or receiver and manager is appointed to the assets or undertaking of the party or any part thereof; or
- (d) the party is otherwise unable to pay its debts as and when they fall due.

In-Scope Work means work that has been expressly and specifically designated as being within the scope of the Services.

Input Tax Credit has the meaning given in the GST Law.

Intellectual Property Rights means patents, rights to inventions, copyright and related rights, moral rights, trademarks and service marks, trade names and domain names, rights in get-up, rights to goodwill or to sue for passing off or unfair competition, rights in designs, rights in computer software, database rights, rights

in confidential information (including know-how, trade secrets and marketing secrets) and any other intellectual property rights, in each case whether registered or unregistered and including all applications (or rights to apply) for, and renewals or extensions of, such rights and all similar or equivalent rights or forms of protection which subsist or will subsist now or in the future in any part of the world.

Land means the land on which the Works are to be carried out, as described in a Quotation.

Losses means any loss, damage, debt, cost, charge, expense, fine, outgoing, penalty, diminution in value, deficiency or other liability of any kind or character, whether arising in contract, negligence, tort, equity, statute or otherwise; and that a party pays, suffers or incurs or is liable for, including all:

- (a) liabilities on account of Tax;
- (b) interest and other amounts payable to third parties;
- (c) legal and other professional fees and expenses on a full indemnity basis and other costs incurred in connection with investigating, defending or settling any Claim; and
- (d) all amounts paid in settlement of any Claim.

Material means any data, plans, instructions, documents, descriptions, reports, advice, accounts, drawings, photographs or any other material.

Moral Rights has the same meaning as that term has in Part IX of the Copyright Act.

Non-Solicitation Period means each period of:

- (a) 3 months;
- (b) 6 months;
- (c) 9 months; and

(d) 12 months.

Notice means any notice or other communication by one party to the other party under these terms and conditions including but not limited to any request, demand, consent, waiver or approval.

Other Property means all property of the Customer that is not PPSA Personal Property (whether present or acquired after the execution of the Contract).

Out-of-Scope Rate has the meaning given in clause 8.2.

Out-of-Scope Work means any work that is not In-Scope Work, including the work specifically described as being out of scope in the Quotation (if any).

Personal Information has the meaning given in the Privacy Act.

Phase means any particular phase of the Services as agreed between the parties or as described in the Quotation (if any).

PPSA means the *Personal Property Securities Act 2009* (Cth).

PPSA Personal Property means all the Customer's:

- (a) present property and after-acquired property in which the Customer can be a grantor of a PPSA Security Interest including property in which the Customer has, or may in the future have, rights or the power to transfer rights; and
- (b) present and after-acquired PPSA retention of title property (as the term "PPSA retention of title property" is defined in the Corporations Act),

including present and after-acquired proceeds from the sale of any such property.

PPSA Security Interest has the meaning given to the term "security interest" in the PPSA.

PPSR means the Personal Property Securities Register.

Privacy Act means the *Privacy Act 1998* (Cth).

Product means any product or goods ordered by and supplied to the Customer by the Company.

Quotation means, in respect of a particular Engagement, the document headed "Quotation" or similar setting out the scope of the Services and/or provision of Products for that Engagement as provided by the Company to the Customer and accepted by the parties in accordance with these terms and conditions.

Related Entity has the meaning set out in the *Corporations Act 2001* (Cth).

Relevant Criteria means having regard to generally accepted practices or standards applied in the mechanical services industry and building industry (if applicable) for the materials, or any specifications, instructions or recommendations of manufacturers or suppliers of the materials.

Relevant IP means all Intellectual Property Rights that the Company makes, develops or conceives (whether alone or in conjunction with someone else, and whether during or outside normal working hours) in the course of, or arising out of, the provision of the Services and/or the Engagements, including any Intellectual Property Rights so made, developed or conceived:

- (a) using the premises, resources or facilities of the Customer or any of its clients, customers or suppliers; and
- (b) in the course of, as a consequence of, or in relation to, the provision of the Services and/or Products by the Company and/or the performance of the Company's duties and responsibilities to the Customer under the Contract or otherwise.

Representatives means, in respect of a person, the employees, officers,

consultants, agents and professional advisers of that person.

Secured Money means all money that the Customer (whether alone or with another person) is, or at any time may become, actually or contingently liable to pay to, or for the account of, the Company (whether alone or with another person) for any reason under or in connection with the Contract, including money (whether by way of principal, interest, fees, costs, charges, duties or expenses or payment of liquidated or unliquidated damages) for which the Customer is, or at any time may become, liable (whether as a result of any breach or default or pursuant to any guarantee or indemnity) under or in connection with the Contract. For the purposes of this definition, where the Customer would have been liable but for an Insolvency Event occurring in respect of it, it will be taken to remain liable.

Secured Obligations means all obligations and requirements, other than a liability to pay Secured Money, that the Customer (whether alone or with another person) is, or at any time may become, actually or contingently required to perform or observe to, or for the benefit of, the Company (whether alone or with another person) for any reason under or in connection with the Contract. For the purposes of this definition, whether the Customer would have been so required but for an Insolvency Event occurring in respect of it, it will be taken to remain so required.

Services means the services provided by the Company to the Customer under these terms and conditions in respect of each Engagement, as detailed in the Company's invoice.

Stamp Duty means any stamp, transaction or registration duty or similar charge imposed by any Governmental Agency and includes any interest, fine, penalty, charge or other amount in respect of the above, but excludes any GST.

Start Date means the date the Company's obligations to provide Services and/or Products arise pursuant to an Engagement, or such other date as the parties may agree in writing.

Tax Acts means the *Income Tax Assessment Act 1936* (Cth) and the *Income Tax Assessment Act 1997* (Cth).

Tax or Taxation means:

- (a) any tax, levy, impost, deduction, charge, rate, compulsory loan, withholding or duty by whatever name called, levied, imposed or assessed under the Tax Acts or any other statute, ordinance or law by any Governmental Agency (including profits tax, property tax, interest tax, income tax, tax related to capital gains, tax related to the franking of dividends, bank account debits tax, fringe benefits tax, sales tax, payroll tax, superannuation guarantee charge, group or Pay as You Go withholding tax and land tax);
- (b) unless the context otherwise requires, Stamp Duty and GST; and
- (c) any interest, penalty, charge, fine or fee or other amount of any kind assessed, charged or imposed on or in respect of the above.

Works means the whole of the work to be carried out by the Company under the Contract.

Interpretation

1.2 The following rules of interpretation apply in these terms and conditions unless the context requires otherwise:

- (a) headings in these terms and conditions are for convenience only and do not affect its interpretation or construction;
- (b) no rule of construction applies to the disadvantage of a party because these terms and

- conditions is prepared by (or on behalf of) that party;
- (c) where any word or phrase is defined, any other part of speech or other grammatical form of that word or phrase has a cognate meaning;
- (d) a reference to a document (including these terms and conditions) is a reference to that document (including any schedules and annexures) as amended, consolidated, supplemented, novated or replaced;
- (e) references to recitals, clauses, subclauses, paragraphs, annexures or schedules are references to recitals, clauses, subclauses, paragraphs, annexures and schedules of or to these terms and conditions;
- (f) in each schedule to these terms and conditions, a reference to a paragraph is a reference to a paragraph in that schedule;
- (g) a reference to any statute, proclamation, rule, code, regulation or ordinance includes any amendment, consolidation, modification, re-enactment or reprint of it or any statute, proclamation, rule, code, regulation or ordinance replacing it;
- (h) an expression importing a natural person includes any individual, corporation or other body corporate, partnership, trust or association and any Governmental Agency and that person's personal representatives, successors, permitted assigns, substitutes, executors and administrators;
- (i) a reference to writing includes any communication sent by post, facsimile or email;
- (j) a reference to time refers to time in Brisbane, Queensland and time is of the essence;
- (k) all monetary amounts are in Australian currency;
- (l) a reference to a "**liability**" includes a present, prospective, future or contingent liability;
- (m) the word "**month**" means calendar month and the word "**year**" means 12 calendar months;
- (n) the meaning of general words is not limited by specific examples introduced by "**include**", "**includes**", "**including**", "**for example**", "**in particular**", "**such as**" or similar expressions;
- (o) a reference to a "**party**" is a reference to a party to these terms and conditions and a reference to a "**third party**" is a reference to a person that is not a party to these terms and conditions;
- (p) a reference to any thing is a reference to the whole and each part of it;
- (q) a reference to a group of persons is a reference to all of them collectively and to each of them individually;
- (r) words in the singular include the plural and vice versa; and
- (s) a reference to one gender includes a reference to the other genders.

2. Contract

Contract

- 2.1 The Customer engages the Company under the Contract to provide the Services and/or Products to the Customer, and the Company accepts that engagement and agrees to provide the Services and/or Products to the Customer, in accordance with these terms and conditions.

Non exclusivity

2.2 The Company may at any time engage any third party, or use any member of the Company's staff, to provide goods and/or services similar or identical to the Services and/or Products to any person during the term.

Commencement and duration

2.3 The Company's engagement with the Customer will:

- (a) commence on the Start Date; and
- (b) end on the Completion Date.

Nature of relationship

2.4 Nothing in these terms and conditions gives a party authority to bind any other party in any way.

2.5 Nothing in these terms and conditions imposes any fiduciary duties on a party in relation to any other party.

2.6 The Company is an independent contractor of the Customer and nothing in these terms and conditions constitutes a relationship of employer and employee, principal and agent, partnership or joint venture between the parties.

3. Quotation and Engagement

Quotation

3.1 In respect of each individual engagement for the Company to provide Services and/or Products to the Customer under these terms and conditions (each an **Engagement**), the parties must first agree on a Quotation. The Company's obligation to provide the Services and/or Products that are the subject of each Engagement does not arise unless and until:

- (a) the Customer has notified the Company in writing of the Customer's acceptance of the relevant Quotation; and

- (b) the Company has confirmed in writing its agreement to be bound by such Quotation.

3.2 Unless otherwise specified, the Company's Quotations are valid for a period of thirty (30) days from the date of issue.

3.3 Any Fees or Expenses given in any Quotation are applicable to that Quotation only and will not apply in any other instance.

4. Provision of Services

Standards and duties in the provision of Services

4.1 The Company will, in providing the Services, comply with the following standards, duties and obligations:

- (a) at all times maintain reasonable ethical, professional and technical standards; and

- (b) in relation to any Personal Information of any client, customer, supplier or Representative of the Customer, any user or prospective user or any other person, comply with the Privacy Act and any guidelines, information sheets and other relevant material issued from time to time by the Commonwealth Privacy Commissioner.

4.2 The Company gives no warranties as to the legality and/or compliance of the Works to any local or state authorities, including but not limited to local councils or body corporates.

Equipment position

4.3 The selection and determination of a position or location on the Land for the installation of any mechanical equipment is the sole responsibility of the Customer. If the Company provides any advice regarding the position or location, the Company shall not be held liable for providing such advice.

5.

Commissioning service

- 5.1 In connection with the provision of the Services, the Company may carry out commissioning at the end of the installation of a mechanical equipment or at the end of a project. Commissioning is subject to full payment of the Charges by the Customer and the Customer making available correct and adequate power supply at the time of commissioning.
- 5.2 All commissioning services are to be carried out during normal working hours, and the Customer shall make prior written arrangement with the Company for the services.

Repair and maintenance

- 5.3 Unless otherwise quoted in a Quotation, the Services do not include repair or maintenance services.
- 5.4 If applicable, maintenance will be provided in accordance with the Company's maintenance agreement or proposal, or otherwise agreed with the Customer in writing.
- 5.5 It is the Customer's sole responsibility to ensure that any mechanical equipment or component installed by the Company is adequately maintained by the Customer in accordance with the manufacturer's warranty recommendations from the date of installation. The Customer shall contact the manufacturer directly about any manufacturer's warranty details.
- 5.6 Unless otherwise agreed by the parties under the Contract, any repair works or services, call outs to break downs or refurbishment works, if included as part of the Services, will be charged at our standard service charges as described in Schedule 1. The Customer acknowledges and agrees that such standard service charges may be updated and amended from time to time at our sole discretion.

Electrical Supply

- 5.7 The Services quoted in our Quotations are submitted on the basis that the existing electrical supply at the Customer's chosen installation position or location is of adequate size as to accommodate the connection of selected mechanical equipment or component, and there is current connection for the existing equipment.
- 5.8 The Company shall not be made liable for any failure in installation or provision of Services due to lack of or inadequate electrical supply. The Customer is solely responsible for ensuring electrical supply is adequate and readily available to accommodate the connection of the selected equipment and the existing connected equipment, and for the purposes of carrying out any Works by the Company.

Deadline Dates

- 5.9 If the Services for an Engagement are divided into Phases, the Company will ensure that the Services for each Phase of the Engagement are fully completed, acting reasonably, on or before the relevant Deadline Date.

Continuity of Uninterrupted Work Conditions

- 5.10 The Company's provision of Services requires continuity of uninterrupted work conditions. If continuity of uninterrupted work conditions cannot be provided by the Customer, further Charges may be incurred and payable by the Customer.

Documentation

- 5.11 Any drawings, sketches, designs, or other documentation in relation to the provision of the Services provided by the Company are indicative only and shall not be binding on the Company unless otherwise specified in writing by the Company.

Installation and workmanship warranty

- 5.12 The Company provides a period of twelve (12) months' installation and workmanship warranty from the date of installation of a mechanical equipment or component in

respect of installation of new mechanical equipment or component only. This 12-month warranty period does not apply if any failure in installation or workmanship is due to or caused by:

- (a) manufacture problems or defects of the new mechanical equipment or component which are covered by the manufacturer and are considered manufacture warranty conditions; or
- (b) problems other than a failure in the part of the Company or fault of the Company, including but not limited to:
 - (i) power spikes;
 - (ii) brown outs;
 - (iii) low or high voltage;
 - (iv) venom caused failure; or
 - (v) lack of maintenance, within the Customer's system.

5.13 For the avoidance of doubt, any Product that the Company supplies in connection with its Service, is a product manufactured by a third-party manufacturer. The Company does not provide warranty for the Product or repair of the Product manufactured by a third-party manufacturer, unless otherwise specified and agreed between the parties.

6. Supply of Products

6.1 The Fees, quantities and estimated delivery dates of the Products that the Company may supply under the Contract are stated in the Company's Quotation(s). Until the Company confirms in writing to enter into the Contract as quoted, the Company is not bound to supply the Products even if the Customer offers to accept the relevant Quotation.

6.2 The Products to be supplied to the Customer by the Company under the Contract will:

- (a) be suitable for the purpose for which they are used having regard to the Relevant Criteria; and
- (b) comply with all applicable statutory and regulatory requirements.

6.3 Other than those expressly set out in clause 5.2, the Company excludes all rights, representations, guarantees, conditions, warranties, undertakings, remedies or other terms in relation to the Products to the maximum extent permitted by law.

6.4 The risk of loss of, or damage to, the Products will pass on to the Customer on delivery to the Customer or its nominated agent.

6.5 Delivery is completed when a Product is delivered to a delivery location designated or nominated by the Customer.

6.6 Late delivery of a Product does not entitle the Customer to refuse to take delivery of the Product, claim damages or terminate the Contract.

6.7 The Company is not liable for any failure or delay in delivering a Product to the extent that any failure or delay is caused by the Customer's failure to comply with its obligations under the Contract.

6.8 Title to any Products delivered to the Customer will not pass to the Customer until the Customer has paid all amounts that it owes to the Company in full in respect of the Products. Until title to the Products passes to the Customer, the Customer must:

- (a) hold the Products as fiduciary and bailee for the Company;
- (b) store the Products properly and separately and in accordance with a system whereby the Customer can readily identify the Products as the Company's property; and
- (c) fully insure the Products against loss or damage, ensuring that the Company's interest as owner is noted on the insurance policy.

6.9 The Customer irrevocably authorises the Company at any time, to enter any premises upon which the Products are stored to enable the Company to inspect the Products and, if the Customer has breached the Contract or there is any Event of Default, to reclaim possession of the Products. The Customer indemnifies the Company against any liability to any person in connection with the entry or reclamation.

7. Customer's Obligations

7.1 The Customer must grant the Company uninhibited access to the Land and/or selected position/location on the Land where the Works are required to be carried out. Such access shall be a safe and clear serviceable access to all mechanical equipment and in compliance with applicable workplace health and safety regulations, including but not limited to access with adequate rigging facilities.

7.2 The Customer is solely responsible for choosing, ascertaining and instructing the Company about the position or location on the Land for the installation of a mechanical equipment which will be acceptable to the Customer, free from noise and vibration disturbances and comply with applicable noise and vibration control laws and regulations.

7.3 The Customer must not unreasonably obstruct, interfere with or hinder the carrying out of the Works and must take all reasonable steps to prevent all others from obstructing, interfering with or hindering the carrying out of the Works.

7.4 The Customer must maintain a clear and clean area in which the mechanical equipment or component are to be located or placed. Such area shall be clear and clean of extraneous materials and move contents, fixtures and partitions if required to perform Work.

7.5 The Customer is solely responsible and must ensure any works in relation to asbestos removal, testing and/or air

monitoring are complete prior to any installation Works by the Company.

7.6 If applicable, the Customer must ensure that all associated building works by other service providers are complete prior to any installation Works by the Company or otherwise suspended for the purpose of the installation Works by the Company.

7.7 If the Customer supplies any documents to the Company, the Customer:

(a) warrants that the documents or data are accurate and suitable for the purpose for which they are to be used;

(b) acknowledges that it is reasonable for the Company to rely on the documents or data;

(c) warrants that the documents or data does not infringe on a third party's copyright;

(d) indemnifies the Company against any loss or damages by reason of the data's inaccuracies or a breach of copyright or warranty; and

(e) must supply a sufficient number of copies to enable the Company to undertake the Works.

7.8 If the Customer supplies any products for incorporation into the Works, the Customer:

(a) warrants that the products supplied by the Customer is safe and suitable for its intended use; and

(b) will provide to the Company on request all required information for the product relevant to the suitability and installation of the product.

8. Pricing and invoicing

Pricing and invoicing

8.1 Subject to clause 3.1, in respect of each Engagement, the parties have agreed that the total price for the relevant Services and/or Products (exclusive of GST and Expenses, and including a deposit where relevant) (the **Fees**) will be, if as designated in the relevant Quotation:

- (a) **(Services – Not Phases)** the Services are not divided into Phases and:
 - (i) **(Fixed Price)** a Fixed Price applies – that Fixed Price payable in arrears upon completion of the Services; or
 - (ii) **(Hourly Rate)** the Hourly Rate applies – calculated on the basis of the time spent by the Company in providing those Services on an hourly rate basis at the Hourly Rate in accordance with clause 8.3 and payable in arrears upon completion of the Services,

and the Company will invoice the Customer by way of a single invoice for all relevant Charges following completion of all relevant work;

- (iii) **(Other costs)** The Company acknowledges the Fees and any Reimbursable Expenses are inclusive of and allow for all costs and expenses incurred by the Company, and any items supplied by the Company, in providing the Services and complying with the Company's obligations under the Contract and the Company will not be

entitled to payment of any amount in addition to the Fees and any Reimbursable Expenses, unless otherwise agreed between the parties;

- (b) **(Services – Phases)** the Services are divided into Phases and:
 - (i) **(Fixed Price per Phase)** Fixed Prices apply – the Fixed Price for each Phase payable in arrears at the end of each Phase respectively; or
 - (ii) **(Hourly Rate)** the Hourly Rate applies – calculated on the basis of the time spent by the Company in providing those Services on an hourly rate basis at the Hourly Rate in accordance with clause 8.3 and payable in arrears at the end of each Phase respectively,

and the Company will invoice the Customer for all relevant Charges for each Phase following completion of each Phase respectively; or

- (c) **(Products)** the Company will invoice the Customer for all relevant Charges for the supply of the Products on the delivery or at any time after delivery of the Products.

Out-of-Scope Work

8.2 Notwithstanding clause 8.1, the Customer will pay the Company at its standard hourly rates as set out in Schedule 1 (the **Out-of-Scope Rate**) for any Out-of-Scope Work.

Hourly Rates and Out-of-Scope Rates

8.3 Hourly Rates and Out-of-Scope Rates shall be proportionately charged for work involving periods of less than one hour and structured in 15-minute units, with 4 units

per hour – eg, the time charged for an attendance of up to 15 minutes will be 1 unit and the time charged for an attendance between 15 and 30 minutes will be 2 units.

- 8.4 The Company will keep and maintain accurate records of the number of hours of Services in respect of which the Hourly Rate and/or Out-of-Scope Rate applies and provide the Customer with a copy of such records upon reasonable notice as may be requested by the Customer from time to time.
- 8.5 The Customer acknowledges and agrees that the Company's Out-of-Scope Rate may be changed and updated from time to time at the Company's sole discretion.

Reimbursement of Expenses

- 8.6 The Customer will pay all reasonable expenses properly and necessarily incurred by the Company in the course of providing the Services and/or Products, provided that the Company:
- (a) obtains the Customer's written consent before incurring the expenses and
 - (b) provides the Customer with documentation evidencing the expense incurred.

9. Payment

Timing of payments

- 9.1 The Customer must pay to the Company all Charges properly invoiced pursuant to clause 8 in full and cleared funds on or before the date that is 10 Business Days after the Customer's receipt of the relevant invoice, or such other due date as specified in the invoice.
- 9.2 All amounts owed to the Company by the Customer under the Contract become immediately due and payable on termination of the Contract for any reason.

Method of payment

- 9.3 All amounts to be paid by a party to another party under or in connection with the Contract must be paid in cash or by way of electronic funds transfer into the account nominated in writing by the other party.

No set-off or deduction

- 9.4 Unless otherwise agreed in writing and subject to clause 9.5, all amounts payable under or in connection with the Contract must be paid without set-off, counterclaim, withholding, deduction or claim to a lien whatsoever, whether or not any such set-off, counterclaim, withholding, deduction or lien arises under the Contract.

- 9.5 If a party is required by law to make a deduction or withholding in respect of any sum payable under or in connection with the Contract to another party, it must, at the same time as the sum that is the subject of the deduction or withholding is payable, make a payment to the other party of such additional amount as is required to ensure that the net amount received by the other party will equal the full amount that would have been received by it had no such deduction or withholding been required to be made.

Default interest

- 9.6 If a party fails to pay any sum payable by it under the Contract to another party at the time and otherwise in the manner provided in these terms and conditions, it must pay interest on that sum from the due date of payment until that sum is paid in full at the Default Rate, calculated daily on the basis of a 365-day year and compounded monthly. Interest will accrue from day to day and will be payable on demand. The payment of interest by a party to another party in respect of any late payment under this clause 9.6 is in addition to any other remedies that the other party may have in respect of such late payment.
- 9.7 If a liability of a party to another party under the Contract becomes merged in a

judgement or order and the interest rate that applies under that judgement or order is lower than the Default Rate, that party must, as an independent obligation, pay to the other party, at the same time and in the same manner as the sum that is the subject of that judgement or order is to be paid, such additional interest on that sum as is required to ensure that the total amount of interest that the other party receives in respect of that liability is equal to the Default Rate.

BIF Act

- 9.8 Nothing in the Contract shall limit the Company's rights under the BIF Act, including the right to make progress payment claims during the course of a project against the Customer for whose benefit the Company has undertaken work, pursuant to section 70 of the BIF Act.
- 9.9 The Customer acknowledges and agrees that the time frame for a payment under the Contract is properly made and in accordance with section 73 of the BIF Act.
- 9.10 If the Customer does not agree with the amount claimed in a payment claim by the Company, the Customer shall, in response to such payment claim by the Company, provide a payment schedule in writing (as defined in section 69 of the BIF Act) in accordance with section 76 of the BIF Act within 10 Business Days after the payment claim is given to the Customer.
- 9.11 If any amount payable by the Customer under the Contract is not paid by its due date, it is a debt to the Company and the Company is entitled to obtaining summary judgments from a competent court.
- 9.12 Subject to clause 19 (Dispute Resolution), the Company is entitled to follow adjudication procedure as set out in Part 4 of Chapter 3 of the BIF Act, if the amount claimed by the Company is disputed by the Customer.

10. GST

Definitions regarding GST

- 10.1 In this clause 10:
- (a) expressions that are not defined, but which have a defined meaning in the GST Law, have the same meaning as in the GST Law;
 - (b) any part of a supply that is treated as a separate supply for GST purposes (including attributing GST payable to tax periods) will be treated as a separate supply for the purposes of this clause 10; and
 - (c) any consideration that is specified to be inclusive of GST must not be taken into account in calculating the GST payable in relation to a supply for the purpose of this clause 10.

Consideration is exclusive of GST

- 10.2 Unless expressly stated otherwise, any sum payable, or amount used in the calculation of a sum payable, under these terms and conditions has been determined without regard to GST and must be increased on account of any GST payable under this clause 10.

Receiving Party to pay additional amount

- 10.3 If GST is imposed on any supply made under or in accordance with the Contract, the recipient of the supply (**Receiving Party**) must pay to the supplier (**Providing Party**) an additional amount equal to the GST payable on the supply, subject to the Receiving Party receiving a valid tax invoice, or a document that the Commissioner will treat as a tax invoice, in respect of the supply at or before the time of payment. Payment of the additional amount will be made at the same time and in the same manner as payment for the supply is required to be made in accordance with the Contract.

Fines, penalties and interest

- 10.4 The amount recoverable on account of GST under this clause 10 by the Providing Party will include any fines, penalties, interest and other charges incurred as a consequence of any late payment or other default by the Receiving Party under this clause 10.

Reimbursement

- 10.5 If any party is required to pay, reimburse or indemnify another party for the whole or any part of any cost, expense, loss, liability or other amount that the other party has incurred or will incur in connection with the Contract, the amount must be reduced by the amount for which the other party can claim an Input Tax Credit, partial Input Tax Credit or other similar offset.

Adjustment events

- 10.6 If, at any time, an adjustment event arises in respect of any supply made by a party under the Contract, a corresponding adjustment must be made between the parties in respect of any amount paid to the Providing Party by the Receiving Party pursuant to clause 10.3 and payments to give effect to the adjustment must be made and the Providing Party must issue an adjustment note.

11. Confidentiality

- 11.1 Subject to clauses 11.3 and 11.4, a Disclosee must:
- (a) keep all Confidential Information confidential;
 - (b) not use or exploit any Confidential Information in any way except in the proper performance of the Contract in accordance with these terms and conditions;
 - (c) not disclose or make available any Confidential Information in whole or in part to any third party;
 - (d) not copy, reduce to writing or otherwise record any Confidential

Information except in the proper performance of the Contract in accordance with these terms and conditions (and any such copies, reductions to writing and records will be the property of the Discloser); and

- (e) ensure that any and all Authorised Third Party Disclosees:
 - (i) comply with the obligations in these terms and conditions as if each of them was a party to the Contract in the place of the Disclosee; and
 - (ii) do not do, or omit to do, anything which, if done or omitted to be done by the Disclosee, would constitute a breach of the Contract by the Disclosee.

- 11.2 The Disclosee shall be responsible for, and liable to the Discloser in respect of, the actions or omissions of any and all of its Authorised Third Party Disclosees in relation to the Confidential Information as if they were the actions or omissions of the Disclosee.

Exceptions

- 11.3 The Disclosee may disclose Confidential Information to those of its Representatives who have an actual need to know the Confidential Information but only in the proper performance of its duties under the Contract and provided that it informs such Representatives of the confidential nature of the Confidential Information before such disclosure.
- 11.4 Subject to clause 11.5, the obligations in clause 11.1 will not apply to any Confidential Information which (as shown by appropriate documentation and other evidence in the relevant Disclosee's possession):
- (a) was already known to the Disclosee on a non-confidential basis prior to the time of its first

disclosure by the Discloser to the Disclosee, unless it came to be so known as a direct or indirect result of having been:

- (i) unlawfully obtained by the Disclosee, whether from a third party or otherwise; or
 - (ii) received by the Disclosee from a third party that owed a confidentiality obligation to the Discloser in respect of that information at the time of such receipt, in circumstances in which the Disclosee knew, or ought reasonably to have known after due enquiry, that the third party owed that confidentiality obligation to the Discloser;
- (b) is or becomes generally available to the public, unless it became so generally available as a direct or indirect result of having been disclosed by any person:
- (i) in circumstances that constitute a breach of the Contract by the Disclosee (for the avoidance of doubt, including any breach by the Disclosee of its obligations under clause 11.1(e) to ensure that its Authorised Third Party Disclosees comply with the obligations in the Contract as if they were parties to the Contract in the place of the Disclosee); or
 - (ii) that owed a confidentiality obligation to the Discloser in respect of that information at the time of such disclosure, in circumstances in which the Disclosee knew, or ought reasonably to have

known after due enquiry, that the person owed that confidentiality obligation to the Discloser;

- (c) is, after the time of its first disclosure by the Discloser to the Disclosee, lawfully received by the Disclosee from a third party and the Disclosee reasonably believed, after due enquiry, that the information was not so received as a direct or indirect result of a breach by any person of a confidentiality obligation owed to the Discloser;
- (d) is required by law or court order to be disclosed, provided that the Disclosee must:
 - (i) promptly notify the Discloser in writing in advance of any such disclosure, if reasonably practicable; and
 - (ii) reasonably assist the Discloser in obtaining confidential treatment for, or avoiding or minimising such disclosure of, the relevant Confidential Information to the extent reasonably requested by the Discloser;
- (e) is independently developed by the Disclosee without any direct or indirect use of, reference to, or reliance on any Confidential Information; or
- (f) is authorised for release or use by the written pre-approval of the Discloser but only to the extent of such written pre-approval.

11.5 The exceptions in clause 11.4 shall not apply to any specific Confidential Information merely because it is included in more generally non-confidential information, nor to any specific combination of Confidential Information

merely because individual elements, but not the combination, are included in non-confidential information.

suffered by the Company which arise in connection with any breach of the Contract by the Customer and/or any negligent or other tortious conduct of the Customer.

12. Intellectual Property

- 12.1 The Company and its licensors will retain ownership of all Intellectual Property Rights arising out of or in connection with the provision of the Services and/or Products.
- 12.2 The parties agree that all Relevant IP will be owned by, and vest in, the Company.
- 12.3 The Company grants to the Customer, or procure the grant to the Customer of, a non-exclusive, non-transferrable and royalty-free licence during the term of the Contract of such Intellectual Property Rights of the Company for the sole purpose of receiving or using the Services and/or Products.
- 12.4 Where the Customer provides plans to be used in performance of the Contract, the Customer warrants the use of the plans and indemnifies the Company of any action or claim brought by any party claiming ownership or copyright of the plans.
- 12.5 The Customer agrees to keep the Company indemnified in full against all liabilities, costs, charges, or expenses, damages and losses and all interest, penalties and legal costs (calculated on a full indemnity basis) and all other professional costs and expenses suffered or incurred by the Company arising out of or in connection with any claim brought against the Company for actual or alleged infringement of a third party's Intellectual Property Rights arising out of, or in connection with, the receipt or use of the Services and/or Products.

13. Liability and remedies

Indemnity

- 13.1 The Customer irrevocably indemnifies and covenants to hold the Company harmless from and against all Losses that may be

Indemnities continuing

- 13.2 Each indemnity contained in the Contract is an additional, separate, independent and continuing obligation that survives the termination of the Contract despite any settlement of account or other occurrence and remains in full force and effect until all money owing, contingently or otherwise, under the relevant indemnity has been paid in full and no one indemnity limits the generality of any other indemnity.

Limitation of liability

- 13.3 To the maximum extent permitted by law, the Company and its Representatives expressly:
 - (a) **(Disclaimer of warranties)** disclaim all conditions, representations and warranties (whether express or implied, statutory or otherwise) in relation to the Services and/or Products, including any implied warranty of merchantability, fitness for a particular purpose or non-infringement. Without limitation to the foregoing, the Company and its Representatives make no representation, and provide no warranty or guarantee, that:
 - (i) the Customer will achieve any particular results from the provision of the Services and/or Products;
 - (ii) any particular individuals will perform the Services on behalf of the Company; or
 - (iii) the Services will be:
 - (A) error-free or that errors or defects will be corrected; or

- (B) meet the Customer's requirements or expectations; and
- (b) **(Limitation of liability)** limit their aggregate liability in respect of any and all Claims for any Losses that the Customer and/or any of its Representatives may bring against the Company under the Contract or otherwise in respect of the Services and/or Products to the following remedies (the choice of which is to be at the Company's sole discretion):

- (i) re-supply of the Services and/or Products;
- (ii) payment of the costs of supply of the Services and/or Products by a third party; or
- (iii) the refund of any amounts paid by the Customer to the Company under the Contract in respect to the Services and/or Products,

even if the Company has been advised of the possibility of such Losses,

and the Customer acknowledges and agrees that the Company holds the benefit of this clause 13.3 for itself and as agent and trustee for and on behalf of each of its Representatives.

- 13.4 The Company excludes any liability to the Customer, whether in contract, tort (including negligence) or otherwise, for any special, indirect or consequential loss arising under or in connect with this Contract, including any:

- (a) loss of profits;
- (b) loss of sales or business;
- (c) loss of production;
- (d) loss of agreements or contracts;

- (e) loss of business opportunity;
- (f) loss of anticipated savings;
- (g) loss of, or damage to, goodwill;
- (h) loss of reputation; and
- (i) loss of use or corruption of software, data or information.

13.5 Nothing in these terms and conditions is intended to have the effect of excluding, restricting or modifying the application of all or any of the provisions of Part 5-4 of the ACL, or the exercise of a right conferred by such a provision, or any liability of the Company in relation to a failure to comply with a guarantee that applies under Division 1 of Part 3-2 of the ACL to a supply of goods or services.

13.6 Nothing in these terms and conditions limits or excludes the Company's liability:

- (a) for death or personal injury caused by its negligence or wilful misconduct or that of its employees, as applicable;
- (b) for fraud or fraudulent misrepresentation by it or its employees, as applicable; or
- (c) where liability cannot be limited or excluded by applicable law.

Force majeure

13.7 To the maximum extent permitted by law, the Company and its Representatives expressly exclude liability for any damage and/or delay in the performance of any obligation of the Company under these terms and conditions where such damage or delay is caused by any Force Majeure Event or any event or circumstance that:

- (a) is not within the Company's reasonable control;
- (b) cannot reasonably be prevented by the Company by taking reasonable precautions and cannot reasonably be circumvented by the Company; or

- (c) prevents, hinders or delays the Company from performing any of its obligations under the Contract.
- 13.8 The Company, if affected by a Force Majeure Event, will not be in breach of the Contract or otherwise liable for any such failure, hindrance or delay in the performance of its obligations under the Contract. The relevant obligations will be suspended, and the time for performance of such obligations will be extended, until the time that those obligations are no longer affected by the Force Majeure Event.
- 13.9 The Customer acknowledges and agrees that the Company holds the benefit of this clause 12 for itself and as agent and trustee for and on behalf of each of its Representatives.

Remedies for breach

- 13.10 Each party acknowledges and agrees that, in the event of any breach by the other party of the provisions of clause 10 (Confidentiality), clause 11 (Intellectual Property) or clause 14 (Non-solicitation), damages may not be an adequate remedy and the first-mentioned party may, in addition to any other remedies, obtain an injunction restraining any further violation by the other party and other equitable relief, together with recovery of costs.

14. Termination

Termination for breach

- 14.1 Each party may terminate the Contract immediately by notice to the other party if an Event of Default occurs in respect of the other party.
- 14.2 If a party commits any material or persistent breach of the Contract (the **Defaulting Party**), the other party may (but is not obliged to) provide the Defaulting Party with a notice of breach in writing. If the Defaulting Party fails to remedy the breach within 10 Business Days, or such other period as agreed, after the date of its receipt of such notice, the

other party may terminate the Contract with immediate effect upon providing the Defaulting Party with a further notice of termination in writing.

Termination with notice

- 14.3 The Customer may, without limitation to its rights under clause 14.2, terminate the Contract at any time by giving at least 1 month's prior written notice to the Company.
- 14.4 The Company may, without limitation to its rights under clause 14.2, terminate the Contract at any time by giving at least 1 month's prior written notice to the Customer. The Customer may waive all or part of such notice period.

Effect of termination

- 14.5 In the event of any termination of the Contract in any circumstances and for any reason whatsoever:
- (a) the Customer will remain liable to pay all Charges accrued up to and including the date of termination, whether or not invoiced prior to the date of termination (for the avoidance of doubt, in the event of any termination of the Contract by the Customer, including Charges incurred by the Company for the purchase of materials for those Services prior to such termination); and
 - (b) the Company will send to the Customer a final invoice for the balance of any unbilled Charges accrued up to and including the date of termination and clause 9 will apply in respect thereof.

Partially completed deliverables

- 14.6 Upon the cessation of the Company's engagement under these terms and conditions, subject to payment of all outstanding Charges by the Customer in accordance with the Contract, the Company will deliver to the Customer any and all partially completed deliverables

that are included within the scope of the Services.

Legislation

14.7 If any provision of the Contract is otherwise unenforceable by virtue of the operation of the *Treasury Laws Amendment (2017 Enterprise Incentives No. 2) Act 2017* (Cth), upon the occurrence of an Insolvency Event in respect of a particular party, notwithstanding any other provision of the Contract, to the maximum extent permitted by law:

- (a) time is of the essence in respect of all obligations of that party under the Contract (whether falling due for performance before, upon or after the occurrence of that Insolvency Event); and
- (b) any breach of the Contract by that party (whether occurring before, upon or after the occurrence of that Insolvency Event), however minor, will (alone or, severally, in combination with the occurrence of that Insolvency Event) be deemed to be a material breach of the Contract,

and, if any such material breach has occurred or occurs, the parties acknowledge and agree that such provision will instead be enforceable by virtue of the occurrence of that material breach.

Accrued rights

14.8 Termination of the Contract will not affect any rights or liabilities that the parties have accrued under it prior to such termination.

Survival

14.9 The obligations of the parties under clause 10 (Confidentiality), clause 11 (Intellectual Property), clause 12 (Liability and remedies), clause 14 (Non-solicitation) and this clause 14 will survive the termination of the Contract.

15. Non-solicitation

15.1 During the Company's engagement with the Customer under the Contract and for each Non-Solicitation Period thereafter, the Customer must not, without the Company's prior written consent (which the Company may withhold or delay in its absolute discretion), directly or indirectly:

- (a) **(non-solicitation suppliers)** interfere with or disrupt, or attempt to interfere with or disrupt, any relationship, whether contractual or otherwise, between the Company and any of the Company's suppliers, distributors or joint venture partners, or identified prospective suppliers, distributors or joint venture partners; or
- (b) **(non-solicitation of staff)** induce, encourage or solicit any of the Company's officers, employees, contractors or agents to cease their employment, engagement or agency with the Company.

15.2 The Customer acknowledges and agrees that:

- (a) the restraints in clause 15.1 constitute several separate covenants and restraints consisting of each of clauses 15.1(a) and (b) combined with each separate Non-Solicitation Period severally;
- (b) each of those separate covenants and restraints is a fair and reasonable restraint of trade that goes no further than is reasonably necessary to protect the Company's goodwill and business;
- (c) the Customer has received substantial and valuable consideration for each of those separate covenants and restraints, including its receipt of the Services and/or Products; and

- (d) breach by the Customer of any of those separate covenants and restraints would be unfair and calculated to damage the Company's goodwill and business and would lead to substantial loss to the Company.
- 15.3 The parties intend the covenants and restraints under clauses 15.1 to operate to the maximum extent. If any of those separate covenants and restraints would, in the absence of this clause 15.3, be void as unreasonable for the protection of the interests of the Company but would not be so void if any part of the wording in this clause 15 was deleted or amended, the separate covenants and restraints will apply with the minimum modifications necessary to make them effective.

16. Grant of security

- 16.1 The Customer grants to the Company:
- (a) a PPSA Security Interest over all PPSA Personal Property; and
- (b) a fixed charge over all Other Property,
- to secure the complete and punctual payment of the Secured Money and performance of the Secured Obligations.
- 16.2 The Customer acknowledges that, for the purposes of section 20(2)(b)(ii) of the PPSA, the PPSA Security Interest over all PPSA Personal Property is taken in all of the Customer's present and after-acquired property.

17. Registration on the PPSR

- 17.1 Terms in this clause 16 that are defined in the PPSA have the same meaning as in the PPSA unless the context indicates otherwise. All other terms have the meanings set out in clause 1.1 of these terms and conditions.
- 17.2 The Customer acknowledges and agrees that if the Contract (or a transaction in connection with it) creates a PPS Security

Interest, including where applicable, a purchase money security interest (**PMSI**) in favour of the Company in any Company supplied items (however defined or described) under the Contract including, without limitation, any plant, equipment, machinery, fuel or any other personal property (**Collateral**) supplied by the Company to the Customer under the Contract:

- (a) each PPS Security Interest in the Collateral (and any proceeds) is registrable on the PPS Register;
- (b) the Contract constitutes a security agreement for the purpose of the PPSA; and
- (c) this clause 16 applies to each PPS Security Interest in favour of the Company.

- 17.3 The Customer consents to and grants the Company the right to register any applicable PPS Security Interest as described in clause 16.2.
- 17.4 The Customer further consents to the Company perfecting any security interest arising in connection with its agreement by registering a financing statement on the PPSR and any other applicable security registers in any manner it considers appropriate. The Customer agrees to do anything the Company reasonably asks to ensure that the security interest is enforceable, perfected and otherwise effective, and has priority over all other security interests.
- 17.5 The Customer agrees to pay or reimburse the Company for any fees or charges for the PPSR or other registrations contemplated by this clause 16.
- 17.6 The Customer waives its right to receive any notice (including notice of a verification statement) that is required by the PPSA unless the notice is required by the PPSA and cannot be excluded.
- 17.7 The Customer agrees not to exercise its rights to make any request of the Company under section 275 of the PPSA.

This does not limit the Customer's rights to request information other than under section 275 of the PPSA. Neither the Customer nor the Company will disclose any information of the kind mentioned in section 275(1) of the PPSA unless section 275(7) of the PPSA applies.

17.8 To the extent permitted by law, the parties contract out of and the Customer waives its rights under the following provisions of Chapter 4 of the PPSA:

- (a) section 95 (notice of removal of accession), to the extent that it requires the Company to give a notice to the Customer;
- (b) section 96 (when a person with an interest in the whole may retain an accession);
- (c) section 121(4) (enforcement of liquid assets - notice to grantor);
- (d) section 125 (obligation to dispose of or retain collateral);
- (e) section 130 (notice of disposal), to the extent that it requires the Company to give a notice to the Customer;
- (f) section 132(3)(d) (contents of statement of account after disposal);
- (g) section 132(4) (statement of account if no disposal);
- (h) section 142 (redemption of collateral); and
- (i) section 143 (reinstatement of security agreement).

18. Caveat

18.1 The Customer:

- (a) charges the Customer's interests in the Land with due payment to the Company of all amounts that may become due to the Company arising out of, or otherwise in connection with, the Contract;

- (b) must, if requested by the Company, promptly deliver an executed mortgage, in terms to the satisfaction of the Company, acting reasonably, in registrable form to secure the charge;

- (c) consents to the Company lodging a caveat over all or any part of the Land to secure the Company's interest in the Land;

- (d) must, if requested by the Company, do all things and sign all documents necessary to enable the Company to lodge a caveat; and

- (e) must pay to the Company, on demand, all stamp duty and registration fees that are payable or paid on the lodgement, withdrawal or release of any caveat or mortgage under this clause.

18.2 The Customer acknowledges and agrees that the Company relied on the terms of clause 17.1 when entering into the Contract with the Customer.

19. Privacy Statement and Consent

19.1 The Company collects customer information in order to determine whether to provide Services and/or Products. In ordering Services and/or Products from the Company, Customer agrees that the Company may:

- (a) use the personal information about the Customer and its Representative which the Customer or others have provided at any time to the Company in order to manage the Company's relationship with the Customer, and, where required, to comply with legislative and regulatory requirements; and

- (b) as appropriate, disclose such information to the Company's Related Entity, regulatory and law

enforcement bodies, debt collection agencies, any organisation proposing to fund the acquisition of, or acquire, any interest in any obligation the Customer may owe the Company, and to any person to the extent necessary, in the Company's view, to carry out any instruction the Customer give to the Company or to enforce any rights of the Company against the Customer.

19.2 The Customer acknowledges that, subject to the provisions of the Privacy Act, the Customer may access the information which the Company holds about it at any time by contacting the Company directly.

20. Dispute Resolution

20.1 If a dispute arises out of or in connection with the Contract, or the performance, validity or enforceability of it (**Dispute**) then the parties must comply with the procedure set out in this clause 19.

20.2 Either party may give to the other written notice of the Dispute, setting out its nature and full particulars (**Dispute Notice**), together with relevant supporting documents.

20.3 On receipt of a Dispute Notice:

- (a) The parties must attempt in good faith to resolve the Dispute;
- (b) If the parties are for any reason unable to resolve the Dispute within 30 days of it being referred to them, the parties agree to endeavour in good faith to settle the Dispute by mediation administered by the Australian Commercial Disputes Centre. To initiate the mediation, a party must serve notice in writing (**Mediation Notice**) to the other party to the Dispute, requesting a mediation. The mediation will start not later than 30 days after the date of the Mediation Notice.

20.4 Subject to clause 19.5, no party may commence any court proceedings in relation to the whole or part of the Dispute until 60 days after service of the Mediation Notice, provided that the right to issue proceedings is not prejudiced by a delay.

20.5 This clause 19 is not intended to prevent any party from seeking urgent injunctive or similar relief.

21. Notices

21.1 A Notice given to a party under the Contract must be:

- (a) in writing in English;
- (b) sent to the address, fax number or email address of the relevant party as the relevant party may notify to the other party from time to time; and
- (c) delivered/sent either:
 - (i) personally;
 - (ii) by commercial courier;
 - (iii) by pre-paid post;
 - (iv) if the notice is to be served by post outside the country from which it is sent, by airmail;
 - (v) by fax; or
 - (vi) by e-mail.

21.2 A notice is deemed to have been received:

- (a) if delivered personally, at the time of delivery;
- (b) if delivered by commercial courier, at the time of signature of the courier's receipt;
- (c) if sent by pre-paid post, 48 hours from the date of posting;
- (d) if sent by airmail, five days after the date of posting;
- (e) if sent by fax, at the time shown in the transmission report generated

- by the machine from which the fax was sent; or
- (f) if sent by e-mail, 4 hours after the sent time (as recorded on the sender's e-mail server), unless the sender receives a notice from the party's email server or internet service provider that the message has not been delivered to the party,

except that, if such deemed receipt is not within business hours (meaning 9:00 am to 5:30 pm on a Business Day), the notice will be deemed to have been received at the next commencement of business hours in the place of deemed receipt.

21.3 To prove service, it is sufficient to prove that:

- (a) in the case of post – that the envelope containing the notice was properly addressed and posted;
- (b) in the case of fax – the notice was transmitted to the fax number of the party; and
- (c) in the case of email – the email was transmitted to the party's email server or internet service provider.

22. General

Further assurances

22.1 Each party must (at its own expense, unless otherwise provided in these terms and conditions) promptly execute and deliver all such documents, and do all such things, as any other party may from time to time reasonably require for the purpose of giving full effect to the provisions of the Contract.

Third parties

22.2 The Contract is made for the benefit of the parties to it and their successors and permitted assigns and is not intended to benefit, or be enforceable by, anyone else.

Costs

22.3 All costs and expenses in connection with the negotiation, preparation and execution of the Contract, and any other agreements or documents entered into or signed pursuant to the Contract, will be borne by the party that incurred the costs.

Entire agreement

22.4 The Contract contains the entire understanding between the parties in relation to its subject matter and supersedes any previous arrangement, understanding or agreement relating to its subject matter. There are no express or implied conditions, warranties, promises, representations, obligations or other terms, written or oral, in relation to the Contract other than those expressly stated in it or necessarily implied by statute.

Severability

22.5 If a provision or the application of a provision of the Contract is invalid, prohibited, void, illegal or unenforceable in a jurisdiction:

- (a) it is to be read down or severed or be ineffective in that jurisdiction to the extent of the prohibition, invalidity voidness, illegality or unenforceability; and
- (b) this will not affect the validity or enforceability of that provision in another jurisdiction, or the remaining provisions.

No waiver

22.6 Any waiver of a right under the Contract must be in writing and signed by the party granting the waiver.

22.7 No failure, delay, relaxation, forbearance or indulgence by a party in exercising any power or right conferred upon it under the Contract will operate as a waiver of that power or right in any subsequent matter or prejudice or restrict the rights of the party. No single or partial exercise of any power or right precludes any other or future

exercise of it, or the exercise of any other power or right under the Contract.

Amendment

22.8 The Contract must not be varied except by written instrument executed by all of the parties.

Assignment

22.9 A party must not assign or otherwise transfer, create any charge, trust or other interest in, or otherwise deal in any other way with, any of its rights under the Contract without the prior written consent of the other party.

Counterparts

22.10 The Contract may be executed in any number of counterparts, each of which is an original and which together will have the same effect as if each party had signed the same document.

Electronic exchange

22.11 Delivery of an executed counterpart of the Contract by facsimile, or by email in PDF or other image format, will be equally effective as delivery of an original signed hard copy of that counterpart.

22.12 If a party delivers an executed counterpart of the Contract under clause 22.11:

- (a) it must also deliver an original signed hard copy of that counterpart, but failure to do so will not affect the validity, enforceability or binding effect of the Contract; and
- (b) in any legal proceedings relating to the Contract, each party waives the right to raise any defence based upon any such failure.

Governing law and jurisdiction

22.13 The Contract and any disputes or claims arising out of or in connection with its subject matter or formation (including non-contractual disputes or claims) are governed by, and shall be construed in accordance with, the laws of Queensland, Australia.

22.14 The parties irrevocably agree that the courts of Queensland, Australia have exclusive jurisdiction to settle any dispute or claim that arises out of, or in connection with, the Contract or its subject matter or formation (including non-contractual disputes or claims).