

1. Definitions and Interpretation

a. In the Contract, unless the context requires otherwise:

'Associated Goods' means the goods (if any) identified in the Purchase Order (including any part of those goods).

'Background IP' means any intellectual property owned or licensed by a party which that party makes available, contributes, brings to or uses in connection with the Contract but which has not been created or come into existence as a result of, for the purposes of, or in connection with the performance of the Contract.

'BCI' means the entity identified on the Purchase Order.

'BCI Provided Items' are those items which are expressly specified in the Contract as being provided by BCI.

'Commencement Date' means the date for commencement of the Services as detailed in the Contract.

'Confidential Information' means the terms of the Contract and any information that concerns the business, operations, affairs or Personnel of BCI, or a Related Body Corporate of BCI, that is disclosed to, or otherwise acquired by, the Supplier at any time in connection with the Contract or the supply of the Services, but does not include information which:

- i. is or becomes public knowledge other than by a breach of the Contract or any other obligation of confidentiality; or
- ii. has been independently developed by the Supplier without breach of the Contract or acquired by the Supplier from a source which was not subject to a duty of confidentiality to BCI or its Related Bodies Corporate (but only if, to the Supplier's knowledge, the source is not prohibited from disclosing such Confidential Information to the Supplier).

'Contract' means the Purchase Order, the Key Items Schedule, these standard terms and conditions, and any Schedules (including any annexures to any Schedules) attached to, or incorporated by reference in, the Purchase Order or these standard terms and conditions.

'Defect' or 'Defective' means any aspect of the Services or Associated Goods not in accordance with the Contract, or any damage, deficiency, fault or inadequacy in design, performance, workmanship, quality or makeup of the Services or Associated Goods.

'Defects Liability Period' means the period commencing on the completion of the Services and ending 12 months from that date, or where there is a defects liability period identified as such in the Purchase Order ending on that date, each as extended under Clause 9f.

'Delivery Point' means the place identified under the heading, 'Delivery Instructions' in the Purchase Order or if no place is specified as directed by BCI for delivery of any Associated Goods.

'Force Majeure' means an event or cause beyond the reasonable control of the Party claiming force majeure, not able to be overcome by the exercise of due care, proper precautions and the consideration of reasonable

alternatives with the intention of avoiding the effects of the force majeure by that party, and which could not have been reasonably foreseen, excluding:

- i. strikes or industrial action of any kind (except industrial action of an industry wide nature);
- ii. adverse weather of any kind (other than to the extent that such adverse weather prevents road access to a relevant Site for a continuous period of no less than 14 days); and
- iii. any event or cause to the extent to which the risk for such event or cause has expressly been reserved or allocated to the affected party under the Contract.

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

'GST' has the meaning given to that term in the GST Act.

'GST Act' means the *A New Tax System (Services and Services Tax) Act 1999* (Cth).

'Intellectual Property Rights' means all intellectual or industrial property rights, all rights in relation to inventions (including patent rights), copyright, registered and unregistered trademarks, registered designs, rights in confidential information (including trade secrets), know-how, rights in relation to circuit layouts and similar rights (in each case whether or not registered) granted under any Laws anywhere in the world and including:

- i. all rights in all applications to register these rights; and
- ii. all renewals and extensions of these rights,

but excluding any non-assignable moral rights and similar non-assignable personal rights of an author and intellectual property has a corresponding meaning.

'Invoice' means an invoice submitted by the Supplier in accordance with Clause 4 which meets the requirements of a Tax Invoice for the purposes of the GST Act.

'Key Items Schedule' means the attached Key Items Schedule issued by BCI to the Supplier in respect of the performance of the Services including any specifications or special conditions that may be contained in it or annexed to it.

'Law' means:

- i. the present or future requirements of any statute, regulation, order, rule, subordinate legislation, common law, equity or other document enforceable under any statute, regulation, rule or subordinate legislation, common law or equity; and
- ii. the lawful requirements, directions or instructions of any Government Agency.

'Liabilities' or 'Liability' means damages, claims, losses, liabilities, costs and expenses of any kind (including legal costs on a full recovery basis).

'Licence to Operate' has the meaning as provided in **Schedule 2** to these Terms and Conditions.

'Licence to Operate Register' has the meaning as provided in **Schedule 2** to these Terms and Conditions, as may be updated by BCI from time to time.

'Party' means BCI or the Supplier and **'Parties'** means both of them.

'Personnel' means:

- i. in relation to the Supplier, any of its employees, agents and representatives, and any Subcontractors and any of the employees, agents and representatives of any Subcontractors, involved either directly or indirectly in the supply of the Services; and
- ii. in relation to BCI or a Related Body Corporate of BCI, any of their respective past or present officers, employees, agents or representatives.

'Personal Information' has the meaning given in the Privacy Act.

'Personal Property Securities Register' means as defined in the Personal Property Securities Act 2009.

'Policies' means the policies referred to in **Schedule 1** annexed to these Terms and Conditions.

'Price' means:

- i. where the Purchase Order states that the Price is based on a lump sum or lump sums, that lump sum or the aggregate of the lump sums;
- ii. where the Purchase Order states that the Price is based on rates, the sum ascertained by multiplying those rates by the quantities properly supplied in accordance with this Purchase Order;
- iii. where the Purchase Order states that the Price is based on a lump sum or lump sums and rates, the aggregate of the lump sum or lump sums and the sum ascertained by multiplying the rates by the quantities properly supplied in accordance with this Purchase Order; or
- iv. where neither (i), (ii) nor (iii) applies, the net amount stated in the Purchase Order.

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

'Processing' means, in relation to information, collecting, holding, using, disclosing, transferring, storing, accessing, viewing, destroying and any other operation which may be performed upon the information and 'processes' will be interpreted accordingly.

'Project' means the Mardie Salt and Potash Project near Karratha in the north west of Western Australia.

'Project IP' means all intellectual property (present or future) created, discovered or coming into existence as a result of, for the purpose of, or in connection with the performance of the Contract.

'Purchase Order' means the purchase order issued by BCI to the Supplier in respect of the supply of the Services and the Associated Goods and includes any specifications or drawings that may be contained in it or annexed to it.

'Related Body Corporate' has the meaning given to the term 'related body corporate' in the *Corporations Act 2001* (Cth).

'Services' means the work identified in the Purchase Order to be performed by the Supplier and includes any part of the specified services, any ancillary services and the supply of any Associated Goods in accordance with the Contract.

'Site' means any place made available by BCI to the Supplier for the Supplier to perform any of its obligations under the Contract including the Delivery Point and any place where the Services are performed.

'Subcontractor' means any person engaged by the Supplier in accordance with Clause 10 to supply all or any part of the Services on behalf of the Supplier.

'Supplier' means the supplier identified in the Purchase Order.

'Taxes' means all taxes, fees, levies, duties, imposts and charges imposed, related to (directly or indirectly) the Services or assessed in respect of the Contract including income tax (including withholding for prescribed payments or group tax), payroll tax, statutory superannuation contributions and workers' compensation payments and contributions, sales tax, customs duty, excise tax, stamp duty and costs of any carbon tax or scheme to reduce emissions of greenhouse gases as well as interest, penalties, charge, fee or other amount imposed on or in respect of any of the foregoing but does not include GST.

'Term' means, where the Contract, specified a period for which the Services must be performed, that period.

- b. The following rules apply unless the context requires otherwise:
 - i. the expressions 'including', 'includes' and 'include' have the meaning as if followed by 'without limitation';
 - ii. a reference to this Contract means this Contract as amended, novated supplemented, varied or replaced from time to time;
 - iii. a reference to any legislation includes all subordinate legislation made under that legislation and amendments, consolidations, replacements or re-enactments of any of them;
 - iv. words importing the singular include the plural (and vice versa);
 - v. headings are for convenience only and do not affect the interpretation of this Contract;
 - vi. a reference to any Party includes that Party's executors, administrators, substitutes, successors and permitted assigns
 - vii. a reference to a Clause is a reference to a Clause in these standard terms and conditions for the Purchase Order;
 - viii. where any word or phrase is given a defined meaning, any other part of speech or other

grammatical form of that word or phrase has a corresponding meaning;

- ix. references to \$ and dollars are to the lawful currency of the Commonwealth of Australia;
- x. a reference to 'day', 'month', 'quarter' or 'year' is a reference to a calendar day, calendar month, a calendar quarter or a calendar year; and
- xi. no rule of construction applies to the disadvantage of a Party on the basis that the Party was responsible for the preparation of this Contract or any part of it.

2. Agreement to perform Services

- a. The Supplier agrees to perform the Services and supply the Associated Goods in accordance with the terms of this Contract and in consideration of the payment of the Price by BCI.
- b. The Supplier agrees this Contract does not prevent BCI from entering into arrangements or agreements with third parties for the provision of any services or goods similar to the Services or Associated Goods.

3. Price

- a. In consideration of the due and proper performance of the Contract, BCI must pay the Price to the Supplier.
- b. Except to the extent otherwise expressly stated in the Contract, the Price is:
 - i. inclusive of all applicable Taxes (excluding GST);
 - ii. inclusive of all expenses and costs incurred by the Supplier in relation to the supply of the Services and any Associated Goods; and
 - iii. not subject to rise and fall, escalation or review.

4. Payment

- a. Unless BCI agrees otherwise, the Supplier must render an Invoice to BCI for the Price following completion of the Services and delivery of the Associated Goods to the Delivery Point.
- b. Subject to the other provisions of the Contract, and unless the Parties agree otherwise in writing, BCI must pay to the Supplier the Price within 30 days after the end of the month in which the Invoice was received by BCI.
- c. Each Invoice shall contain reasonable details of the Services performed and Associated Goods delivered and quote the number of the Purchase Order to which the Invoice relates.
- d. If BCI requests, the Supplier must provide BCI with all relevant records to calculate and verify the amount set out in any Invoice.
- e. If BCI disputes all or any part of the Invoice, BCI must pay the undisputed amount (if any) and notify the Supplier of the basis for disputing the balance in the time specified for payment of the invoice in Clause 4b. To the extent permitted by Law, BCI may withhold payment of the disputed part of the relevant Invoice pending resolution of the dispute.

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- f. The payment by BCI of any amount (whether in dispute or not) will not constitute acceptance of the Services or Associated Goods or admission of any liability or obligation to make that payment.

5. Set-off

BCI may deduct from moneys due or becoming due to the Supplier any money due or payable or claimed to be due or payable from the Supplier to BCI, including costs, charges, damages and expenses and any debts owed by the Supplier to BCI in relation to or in connection with the Contract, the Services or the Associated Goods. This does not limit BCI's right to recover those amounts in other ways.

6. GST

- a. Capitalised terms which have a defined meaning in the GST Act have that meaning in this Clause 6 except that Taxable Supply excludes the reference to Section 84-5 of the GST Act.
- b. If GST is payable on a Taxable Supply made under the Contract, the amount of GST payable in respect of that supply must be paid as additional consideration at the same time as payment is required to be made under the Contract in respect of the Taxable Supply. This Clause 6 does not apply to the extent that the Consideration for the Taxable Supply is expressly agreed to be GST inclusive.
- c. Any reference in the calculation of any amount payable under the Contract to a cost, expense or other Liability incurred by a party must exclude the amount of any Input Tax Credit entitlement in relation to that cost, expense or other Liability. A Party will be assumed to have an entitlement to full Input Tax Credits unless it demonstrates otherwise prior to the date on which payment must be made.
- d. Whenever an adjustment event occurs in relation to any taxable supply to which Clause 6b applies, if the GST component of that consideration differs from the amount previously paid, the amount of the difference must be paid by, refunded to or credited to the recipient (as the case may be).
- e. If either Party is entitled under the Contract to be reimbursed or indemnified by the other Party for a cost or expense incurred in respect of the Contract, the reimbursement or indemnity payment must not include a GST component for which an input tax credit may be claimed by the Party being reimbursed or indemnified.
- f. No amount is payable by the Recipient under the Contract until the Recipient of the supply has received a Tax Invoice.

7. Supplier's obligations

- a. The Supplier warrants that it and each of its Personnel is or are qualified and has or have the capacity, experience, resources, skill and expertise to perform the Services or supply the Associated Goods in accordance with the requirements of the Contract.

- b. The Supplier must, and must ensure that all its Personnel:
- i. at all times when on Site, comply with BCI's Policies and procedures and all applicable Laws relating to the Supplier's obligations under the Contract and the delivery of the Services;
 - ii. at all times when on Site, comply with all reasonable directions of BCI (including in relation to health and safety, industrial relations, aboriginal heritage and environmental matters);
 - iii. obtain and maintain, at the Supplier's expense, all licences or permits, qualifications, registrations and other statutory requirements necessary under all applicable Laws for the performance of the Supplier's obligations under the Contract;
 - iv. adhere to accepted safe working practices and take reasonable precautions against accident or damage occurring on or to any Site from any cause;
 - v. not harm or damage the environment in the course of performing the Services or delivering the Associated Goods;
 - vi. immediately report to BCI and clean up at its own cost any damage to the environment at a Site caused by it or its Personnel in connection with the performance of the Supplier's obligations under the Contract;
 - vii. at all times when on Site, immediately report to BCI any safety, aboriginal heritage or environmental incidents of any kind, including potential incidents and any damage to property;
 - viii. ensure the safe transportation, handling, storage and usage of all substances brought onto the Site in connection with the performance of the Supplier's obligations under the Contract; and
 - ix. provide all such information and assistance as BCI reasonably requires in connection with any health and safety, environment or community investigation in connection with the Contract.
- c. BCI expects the Supplier to be an "innovative supplier", delivering a pro-active approach to environmental management and accepting responsibility for management of the environmental performance of the Contract. To this end, the Supplier shall develop and adhere to the Environmental Management Plan (EMP) which is fully compliant with BCI's Environmental & Heritage Management System (EHMS).
- d. If the Supplier gave BCI a trial or demonstration of the Services or Associated Goods, the Services or Associated Goods (as applicable) must be of the same nature and quality as the trial or demonstration given, as applicable (unless agreed otherwise in writing).
- e. The Supplier acknowledges that it must provide all Personnel and resources, including equipment and tools, at its own cost in its performance of the Services.
- f. The Supplier acknowledges the obligations of BCI in respect to its Licence to Operate as further detailed in Schedule 2 to these Terms and Conditions.
- g. The Supplier must comply with the requirements of the Licence to Operate and the obligations set out in the Licence to Operate Register at all times when carrying out the Services in such a manner that will not cause BCI to be in breach of its Licence to Operate.
- h. The Supplier must use its best endeavours to ensure that whilst managing any subcontractors under their respective project contracts, that the subcontractors do not do anything inconsistent with the obligations of the Licence to Operate and the Licence to Operate Register.
- i. Any breach of clauses 7f to 7g will be considered a substantial breach of contract and will automatically entitle BCI to terminate the Contract.

8. Delivery of Associated Goods

- a. The Supplier must deliver the Associated Goods (if applicable) to the Delivery Point by the date specified in and in accordance with the Contract.
- b. The Supplier must perform the Services in accordance with the Contract from the Commencement Date:
- i. If there is a Term, for the Term; or
 - ii. If there is no Term:
 - A until completion of the Services; and
 - B complete the Services by the date specified in the Contract as extended under Clause 8d.
- c. Without limiting Clause 8a, if the Supplier is delayed or becomes aware of the likelihood of delay in the performance of the Services or delivery of any Associated Goods, the Supplier must as soon as possible after becoming aware of the delay or likelihood of delay notify BCI in writing of the circumstances resulting in the delay and the expected period of delay.
- d. The date for delivery of the Associated Goods or date for completion of the Services may be extended where the Supplier is delayed in the delivery of the Goods to the Delivery Point or completion of the Services by the required date by an act, omission or default of BCI (or its agents or employees), or for BCI's sole convenience. The period of any extension of time to the required date for delivery of the Associated Goods or completion of the Services to which the Supplier is entitled will be the reasonable period by which BCI determines the Supplier has been or will be delayed in effecting delivery of the Associated Goods or completing the Services by the required date as a consequence of BCI's act, omission or default
- e. Full unencumbered title to each Associated Good will pass to BCI upon the earlier of BCI making payment to the Supplier for that Associated Good and the Associated Good being delivered to the Delivery Point.
- f. Risk in each Associated Good will remain with the Supplier until the Associated Good is delivered to the Delivery Point.
- g. The Supplier must ensure that BCI has access to the Associated Goods for inspection at all times (including during the manufacture of the Associated Goods) or

wherever the Associated Goods are stored or in the course of manufacture. The Supplier must provide such assistance and samples and make accessible any part of the Associated Goods as may be required by BCI.

- h. Signed delivery documents are only confirmation of the number of packages or cartons delivered and will not constitute acceptance by BCI of the Associated Goods.
- i. BCI may reject the Associated Goods if the Associated Goods are Defective or damaged or do not comply with the requirements of the Contract.
- j. Without limiting any other provision of the Contract, BCI may inspect the Associated Goods after they have been delivered and before accepting them.
- k. BCI's rights to claim against the Supplier for Associated Goods that do not comply with the Contract is not limited or precluded by acceptance of the Associated Goods or by payment of any money to the Supplier.

9. Defects

- a. The Supplier warrants the Services and Associated Goods against any Defect which arises during the Defects Liability Period.
- b. If at any time prior to the expiry of the Defects Liability Period, BCI finds any Defect in the Services or Associated Goods, BCI may notify the Supplier of the Defect and require the Supplier to rectify the Defect within the reasonable period specified by BCI in the notice.
- c. The Supplier must, at its cost, promptly rectify the Defect notified by BCI pursuant to Clause 9b in the time and manner specified by BCI (and if no time or manner is specified, then within a reasonable time and manner) and to the satisfaction of BCI.
- d. If the Supplier fails to rectify the Defect in accordance with Clause 9c, BCI may:
 - i. reject the Services with the Defect, in which case the Supplier must re-perform the Services free of charge;
 - ii. reject the Associated Goods with the Defect and return them to the Supplier, in which case the Supplier must replace the Associated Goods at its cost and reimburse BCI for all costs and expenses BCI incurs as a result of the Defect;
 - iii. rectify or engage another contractor to rectify the Defect at the Supplier's risk and cost and all costs and expenses incurred by BCI will be recoverable from the Supplier as a debt due and payable.
- e. If the Supplier does not re-perform the Services pursuant to Clause 9d.i or replace the Associated Goods pursuant to Clause 9d.ii and BCI has:
 - i. paid the Supplier for the Services or Associated Goods with the Defect, the Supplier must repay BCI the Price for those Services or Associated Goods rejected under Clause 9d.i and 9d.ii; or
 - ii. not paid the Supplier for the Services or Associated Goods with the Defect, BCI is not liable to pay the Supplier for those Services or Associated Goods rejected under Clause 9d.i and 9d.ii.

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- f. Where the Supplier has made good any Defect under this Clause 9, those Services or Associated Goods will be subject to a Defects Liability Period commencing on the date the Supplier rectified the Defect.
- g. BCI's rights under this Clause 9 do not affect any of BCI's other rights under the Contract or at Law, including the right to claim for any damage or loss it may suffer because of the Supplier's failure to fulfil any of its obligations under the Contract.

10. Assignment and subcontracting

- a. The Supplier must not assign, transfer, charge or dispose of all or any part of its rights or obligations under the Contract, or subcontract all or any part of its obligations under the Contract (including the provision of the Services), without the prior written consent of BCI.
- b. BCI may assign its rights or delegate any obligation in respect of the Contract or novate the Contract to a Related Body Corporate or a party financially capable of complying with BCI's obligations under the Contract, and the Supplier irrevocably consents to such assignment, delegation or novation. The Supplier will execute any document reasonably required to give effect to the assignment, delegation or novation.
- c. The Supplier is liable to BCI for the acts and omissions of each Subcontractor and its Personnel as if they were acts and omissions of the Supplier. No permitted subcontracting or assignment will relieve the Supplier of its obligations under the Contract.

11. Supplier's Warranties

- a. The Supplier represents and warrants to BCI that:
 - i. all of the Services and the Associated Goods will be provided in accordance with all Laws;
 - ii. the Services performed will be of the highest standard and in accordance with any specifications identified in the Purchase Order or, in the absence of such specifications, in accordance with any applicable standards set by the Standards Association of Australia;
 - iii. the completed Services and Associated Goods delivered will be fit for any purpose which BCI has made known to the Supplier or which an experienced professional contractor would reasonably infer from the Contact and, in respect of the Associated Goods, are also fit for the purpose for which goods of a similar nature are commonly supplied or used;
 - iv. in performing the Services the Supplier and its Personnel will exercise the standards of diligence, skill and care expected of a skilled and experienced professional contractor and will act in a workmanlike, careful, safe and proper manner;
 - v. the Supplier will perform the Services with due expedition and without delay;
 - vi. immediately prior to delivery of the Associated Goods, the Supplier will have good and marketable title to the Associated Goods and BCI will receive

- good title to the Associated Goods, free and clear of all interests including any lien, charge or encumbrance;
- vii. the Associated Goods will comply with all the requirements of the Contract and correspond in all respects with the description in the Purchase Order and the representations made by the Supplier;
 - viii. BCI will have the full benefit of any manufacturer's or trade warranties that may be applicable to the Associated Goods or any part of the Associated Goods and on the expiry of the Defects Liability Period of the Associated Goods the Supplier will assign the benefit of any such unexpired manufacturer's or trade warranties to BCI;
 - ix. the Associated Goods will be new (unless otherwise specified), of merchantable quality and free from any defects in materials, workmanship and design;
 - x. the Associated Goods will have a life expectancy commensurate with what would be expected of similar goods provided for similar purposes by a competent and reputable supplier;
 - xi. the Associated Goods will comply with all Laws in force in the jurisdiction in which they are supplied; and
 - xii. the use of the Associated Goods by BCI, including resale, will not infringe any third party Intellectual Property Rights.
- b. The Supplier warrants to BCI and each Related Body Corporate of BCI that:
- i. it will comply with its obligations under the Contract; and
 - ii. any indemnity given by the Supplier under the Contract is given in favour of BCI and each Related Body Corporate of BCI, in respect of any Liabilities suffered or incurred by them respectively.
- c. BCI will hold the benefit of the warranty under, and indemnities referred to in, Clause 11b in favour of each Related Body Corporate of BCI as trustee for the benefit of each Related Body Corporate of BCI.
- d. The Contract does not exclude or in any way limit other warranties provided by Law in relation to the Services or Associated Goods.
- 12. Supplier's insurance**
- a. Unless BCI agrees otherwise in writing, the Supplier shall effect and maintain with a reputable insurer and on terms consistent with prudent risk management, at its cost:
- i. property insurance covering its materials, plant and equipment (if any) for their full replacement value;
 - ii. motor vehicle third party liability insurance in respect of all motor vehicles belonging to or under the physical or legal care custody or control of the Supplier for an amount of not less than \$30,000,000. The Supplier shall, in addition, comply with all statutory requirements concerning the arrangement of compulsory motor vehicle third party liability insurance in respect of the ownership, possession, operation or use of motor vehicles;
- iii. workers' compensation insurance and employer's liability insurance which complies with the relevant Laws, covering all Liabilities under any law relating to the death of or injury to the Supplier's Personnel and, for employer's liability, for an amount not less than \$50,000,000 and the workers' compensation policy must be endorsed to include a principals' indemnity clause in favour of BCI and include a waiver of subrogation from the insurer in favour of BCI for both Act benefits and common law; and
- iv. public and product liability insurance for an amount of not less than \$50,000,000 which covers the liability of the Supplier and any of the Supplier's Personnel in relation to death, bodily injury, disease or illness of any person, loss of property and damage to property and (where applicable) covers liability for the use of unregistered mobile plant and equipment used in connection with the Contract; and
- v. if the performance of the Contract involves the performance of professional services, professional indemnity insurance for an amount not less than \$10,000,000 in respect of acts, errors and omissions in the performance of professional services.
- b. The Supplier shall ensure that each policy of insurance effected by it as required by Clause 12a shall contain provisions acceptable to BCI that will (except in relation to workers' compensation and employer's liability insurance):
- i. include cross liability clauses and require the insurer to accept the term 'insured' as applying to each of the persons comprising the insured as if a separate policy of insurance has been issued to each of them (subject always to the overall sum insured or limit of indemnity not being increased thereby);
 - ii. include a principal's indemnity extension to cover BCI, its Related Bodies Corporate, and their respective directors, officers, employees, consultants and agents; and
 - iii. provide a waiver by insurers of all express or implied rights of subrogation against BCI, its Related Bodies Corporate, and their respective officers, employees, agents and representatives.
- c. Whenever required by BCI, the Supplier shall:
- i. make available for inspection by BCI any policy of insurance required by this Clause 12 to be effected by the Supplier or its Subcontractors; and
 - ii. produce certificates of currency or other evidence to the satisfaction of BCI of the insurance effected and maintained for the purpose of complying with its obligations under this Clause 12.
- d. In the performance of its obligations under this Clause 12, the Supplier shall not be required to do any act or thing which may constitute a breach of an insurance policy.
- e. If the Supplier fails to effect, or to keep in force, or to ensure that its Subcontractors effect or keep in force any

of the insurances required by this Clause 12, BCI may but is not obliged to:

- i. effect the nominated insurance and the cost of doing so will be a debt due and payable from the Supplier to BCI;
 - ii. refuse to make any further payments to the Supplier until the Supplier has complied with its obligations under this Clause 12; or
 - iii. withhold access to the Site.
- f. Where the rights or obligations of the Supplier under the Contract are to be exercised or performed by a Subcontractor, the Supplier shall ensure that the Subcontractor effects insurance required under this Clause 12 as if it was the Supplier.
- g. The effecting and keeping in force of insurance as required by the Contract shall not in any way limit the liabilities, responsibilities and obligations of the Supplier under other provisions of the Contract (including the Supplier's liability in relation to the indemnities in the Contract).

13. Indemnities and Liability

- a. Subject to Clause 13b, the Supplier must indemnify and keep indemnified BCI and each of BCI's Related Bodies Corporate from and against all Liabilities suffered or incurred by BCI or its Related Bodies Corporate, arising directly or indirectly from:
- i. any breach by the Supplier or the Supplier's Personnel of the Contract (including breach of any warranty);
 - ii. any negligent, reckless or intentional act or omission of the Supplier or the Supplier's Personnel;
 - iii. any breach of Law by the Supplier or the Supplier's Personnel;
 - iv. any claim made by the Supplier's Personnel in respect of relevant legislation concerning income tax, workers' compensation, annual leave, long service leave, superannuation or any applicable award, determination or agreement of a competent industrial tribunal; and
 - v. Intellectual Property Rights assigned or licensed, by the Supplier to BCI under or in connection with the Contract infringing the rights (including Intellectual Property Rights) of any person, and all claims alleging such infringement.
- b. The Supplier will not be liable under Clause 13a to the extent that the Liability was caused, or contributed to, by the negligent acts or omissions or wilful misconduct of BCI or any Related Body Corporate of BCI.
- c. The Supplier acknowledges and agrees that if it enters onto a Site, it does so at the Supplier's own risk. The Supplier must ensure that its Personnel are also aware that they enter onto a Site at their own risk.
- d. Without limiting this Clause 13, the Supplier accepts all Liability arising from a failure by it or any of its Personnel to take reasonable care.

14. BCI Provided Items

- a. Subject to Clause 14b, BCI must provide and make available the BCI Provided Items (if any) to enable the Supplier to perform the Services.
- b. The Supplier acknowledges and agrees that the BCI Provided Items:
- i. may be used by the Supplier for the performance of the Services but for no other purpose;
 - ii. are provided to the Supplier for use at the Supplier's and the Supplier's Personnel's own risk, and the use or reliance by the Supplier or its Personnel on the BCI Provided Items does not in any circumstances relieve the Supplier's obligations under the Contract; and
 - iii. must be returned by the Supplier to BCI in a clean and safe condition, in good working order and otherwise in the condition in which they were provided subject only to fair wear and tear.
- c. The Supplier acknowledges and agrees that where any BCI Provided Item is provided (whether by BCI or a third party), BCI will not be liable to Supplier for any liability, claim, cost, damages or expense suffered or incurred by the Supplier as a result of, or which may arise in connection with, the provision of the relevant BCI Provided Item.

15. Intellectual Property Rights

- a. Subject to the terms and conditions of this Clause 15, the Supplier's Background IP remains vested in the Supplier and BCI's intellectual property remains vested in BCI.
- b. The Supplier:
- i. grants BCI a worldwide, non-exclusive, royalty-free, irrevocable, perpetual, transferable licence to use the Supplier's Background IP as required to utilise the Services, the Associated Goods and the Project IP; and
 - ii. assigns to BCI all Project IP upon the creation of that Project IP.
- c. BCI grants the Supplier a non-exclusive, royalty-free, revocable, non-transferable licence to use the Project IP and any intellectual property provided to the Supplier by BCI to the extent required to perform the Supplier's obligations under the Contract.
- d. A reference to 'use' in the context of a licence of Intellectual Property Rights is a reference to 'use, copy, adapt, modify, exercise, test, install, operate, maintain, manage, support and repair' within the scope of the licence which is granted.

16. Confidentiality

- a. The Supplier must not advertise or issue any information, publication, document or article (including photographs or film) for publication or media releases or other publicity relating to the Services, the Contract or BCI's Confidential Information without the prior written approval of BCI.
- b. The Supplier must not, and must ensure that the Supplier's Personnel do not, without the prior written approval of BCI use Confidential Information for any

purpose other than as necessary for the supply of the Services under the Contract, or otherwise disclose any Confidential Information, other than to the extent such disclosure is expressly required by Law.

- c. The Supplier must, within 14 days (or any other period agreed in writing by the Parties) after a direction by BCI to do so, return or destroy all Confidential Information in the Supplier's possession, custody or control.

17. Privacy

Where the Supplier Processes Personal Information in connection with the Contract, the Supplier will:

- i. comply with the Privacy Act; and
- ii. take all appropriate technical and organisational measures against unauthorised or unlawful Processing of Personal Information and against accidental loss, disclosure or destruction of, or damage to, Personal Information.

18. Suspension

- a. BCI may immediately suspend the performance of any or all of the Services at any time and for any reason by giving written notice to the Supplier and if the Supplier receives a direction from BCI under this Clause 18a, the Supplier must immediately suspend the provision of the Services.
- b. BCI may at any time give the Supplier a written notice to resume performing the suspended Services. The Supplier must resume performing those Services as soon as practicable after the date of such a notice, and in any event no later than 5 Business Days after the date of the notice.
- c. Subject to Clause 19, if BCI suspends any of the Services under this Clause 18 for any reason other than breach of the Contract by the Supplier or any act or omission by the Supplier or the Supplier's Personnel not authorised by the Contract, the Supplier is entitled to payment of its reasonable and verifiable costs incurred directly as a result of complying with the direction issued by BCI under Clause 18a. The Supplier must mitigate any costs incurred as a result of complying with this Clause 18.
- d. Except to the extent provided in Clause 18c, the Supplier is not entitled to make, and BCI is not liable for, any claim for or in connection with a direction given pursuant to Clause 18a.

19. Force Majeure

- a. If a Party is prevented in whole or in part from carrying out its obligations under this Contract as a result of Force Majeure, it must promptly give a notice to the other Party that specifies the obligations affected by the Force Majeure event and describes the event of Force Majeure (including its nature and likely duration).
- b. Following the notice referred to above, and while the Force Majeure continues, the obligations which cannot be performed because of the Force Majeure will be suspended.
- c. The Party that is prevented from carrying out its obligations under the Contract as a result of Force

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Majeure must, at its cost, take all action reasonably practicable to mitigate the cause of, and the result of, the Force Majeure and to resume performance of its obligations as soon as reasonably possible (save that a Party is not required to settle any strikes or industrial disputes which constitute Force Majeure against its will).

- d. Each Party will bear its own costs of any Force Majeure and its own costs for any delays caused by any Force Majeure.

20. Termination

- a. BCI may terminate the Contract at any time for any reason whatsoever by giving 7 days' prior written notice to the Supplier, and Clause 20d will apply.
- b. BCI may terminate the Contract in whole or in part immediately by notice in writing to the Supplier if the Supplier:
 - i. commits a material breach of the Contract and that breach is not remedied within the reasonable time period specified in a written notice of the breach from BCI to the Supplier or BCI, acting reasonably, does not believe the breach is capable of remedy; or
 - ii. the Supplier is insolvent.
- c. Upon receiving a notice of termination pursuant to this Clause 20, the Supplier will immediately cease providing the Services and Associated Goods and comply with BCI's directions including, without limitation, any direction to protect BCI's property in the Supplier's possession.
- d. If BCI terminates the Contract under Clause 20a, subject to BCI's other rights under the Contract (including rights to withhold or set-off payment and to recover damages), BCI may engage other persons to supply the Associated Goods or perform the Services or both and, as the Supplier's sole and exclusive remedy in respect of BCI terminating the Contract, BCI must:
 - i. pay the Supplier for the Services performed and Associated Goods delivered prior to the date of termination which have not been paid for
 - ii. for Associated Goods which are in transit at the date of termination but not yet delivered, accept the Associated Goods when delivered and pay the Supplier for those Associated Goods; and
 - iii. otherwise, pay the Supplier its direct costs which have been unavoidably incurred by the Supplier as a result of compliance with this Purchase Order prior to the date of termination as evidenced by supporting documents but under no circumstances will the total of all amounts paid or to be paid to the Supplier under this Contract exceed the Price.
- e. If BCI terminates the Contract pursuant to Clause 20b then BCI is entitled to recover from the Supplier any costs, losses, damages and liabilities incurred or suffered by it or its Related Bodies Corporate as a result of, or arising out of, or in any way in connection with, the termination or any preceding breach.
- f. Except as set out in this Clause 20, BCI will not be liable for any other Liability suffered by the Supplier as a

consequence of or in connection with the Contract, the Services or the termination of the Contract.

- g. Under no circumstances will the Supplier be entitled to recover any damages for loss of actual or anticipated profits, loss of use, loss of overhead, unrecovered overheads, loss of opportunity or loss of revenue whatsoever.

21. PPSR

- a. The Supplier must not grant any other person a security interest in any personal property (as defined in the Personal Property Securities Act 2009) created by, or forming part of any deliverable related to, the Services or the Contract.
- b. The Supplier consents to BCI registering its interest in any personal property created by, or forming part of any deliverable related to, the Services or the Contract (whether or not the Services are complete) on the Personal Property Securities Register. The Supplier must sign all documents and provide all information and assistance required to effect that registration. The Supplier waives the right to receive a verification statement in relation to any such registration.

22. Entire agreement

The Contract comprises the entire agreement between the parties and supersedes all prior contracts, arrangements, understandings or representations (if any) between the parties in relation to the subject matter of this Contract.

23. Other terms and conditions

- a. To the extent that the Supplier's terms and conditions are supplied to BCI in respect of the Services or any Associated Goods (including as printed on delivery or consignment notes or other documents), such terms and conditions will be of no legal effect and will not constitute part of the Contract for the supply of the Services (notwithstanding the signing of those terms and conditions by a representative of BCI for any reason or the annexure of those terms and conditions to the Purchase Order).
- b. Where the Purchase Order relates to Services the subject of a contract between the Supplier and BCI, the terms of that contract take priority to these standard terms and conditions for the Purchase Order to the extent of any inconsistency.

24. Relationship of parties

The relationship between BCI and the Supplier is a relationship of principal and independent contractor. Nothing in the Contract will be construed to create a relationship of employment, agency or partnership. The Supplier does not have any authority to contract with third parties on behalf of BCI or to otherwise bind BCI, without BCI's prior written agreement.

25. Dispute resolution

- a. If any dispute, controversy or claim arises under the Contract, a Party may provide written notice to the other of the matters in dispute and the Parties will meet for the

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purpose of resolving the dispute within 21 days after the service of the notice provided under this Clause 25a.

- b. If the dispute is not resolved within 28 days after the service of the notice provided under Clause 25a, then senior representatives from BCI and the Supplier (**Senior Representatives**) must meet within a further 14 days for the purpose of resolving the dispute.
- c. If the dispute is not resolved within 14 days after the meeting of the Senior Representatives referred to in Clause 25.a, or the meeting has not occurred, then either Party may submit the dispute to mediation administered by the Resolution Institute, such mediation to be conducted in accordance with, and subject to, the Resolution Institute's Mediation Rules and the other Party must participate in the mediation. The mediator will be an independent person agreed by the parties or, failing agreement, a mediator will be appointed by the Resolution Institute. Any mediation meetings and proceedings under this Clause must be held at the Site or the capital city of the State in which the Site is located (at BCI's discretion).
- d. Without otherwise limiting Clause 25.c, the Parties may agree to an alternative dispute resolution procedure at the meeting between the parties pursuant to Clause 25.a or 25.b.
- e. Neither party may commence litigation, other than urgent interlocutory relief, unless and until the procedures in Clauses 25.a to 25.c have been complied with.
- f. The Supplier must continue to perform its obligations under the Contract notwithstanding the existence of any one or more dispute(s).

26. Survival

The provisions of Clauses 9, 11, 13, 15, 16, 27 and 32 survive termination of the Contract.

27. Governing law and jurisdiction

The Contract is governed and interpreted in accordance with the Laws in force from time to time in Western Australia and the parties unconditionally submit to the exclusive jurisdiction of the courts in Western Australia and any Court that may hear appeals from those Courts, except for the purposes of enforcing a judgment or arbitration award.

28. No waiver

No waiver of or variation to the Contract will be binding on the parties unless in writing signed by the parties.

29. Variations and Amendment

- a. BCI may by notice in writing, vary the quantity, quality or description of the Services or the Associated Goods. The Price will be altered by a reasonable amount determined by BCI for that variation
- b. The Contract will not be amended, modified, varied or supplemented except in writing signed by the parties.

30. Rights cumulative

Except to the extent that the contrary intention expressly appears, the rights and remedies of BCI provided in the Contract are cumulative and do not exclude any rights or remedies provided by any Laws.

31. Discretion on consent

Where the consent, approval or agreement of a party is required under the Contract, that consent, approval or agreement may be given conditionally or unconditionally, or withheld by that party in its absolute uncontrolled discretion, unless the Contract expressly provides otherwise.

32. Severability

Any provision in the Contract which is invalid or unenforceable in any jurisdiction is to be read down for the purposes of that jurisdiction, if possible, so as to be valid and enforceable, and is otherwise capable of being severed to the extent of the invalidity or unenforceability, without affecting the remaining provisions of the Contract or the validity or enforceability of that provision in any other jurisdiction.

33. Costs and stamp duty

Each party must bear its own costs arising out of the negotiation, preparation and execution of the Contract. All stamp duty that may be payable, including any related fines and penalties, in any relevant jurisdiction on, or in connection with, the Contract must be borne by the Supplier.

34. Notices

A notice must be in writing and will be taken to have been given if it is in writing and signed by or on behalf of the party giving the notice and is:

- i. delivered personally;
- ii. sent by ordinary pre-paid post to the other party at the address set out in the Purchase Order or another address advised in writing;
- iii. sent by facsimile transmission to the facsimile number specified in the Purchase Order or another facsimile number advised in writing; or
- iv. sent by e-mail to the email address specified in the Purchase Order.