

1. Definitions and Interpretation

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

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

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

'BCI IP' means any Intellectual Property Rights of BCI (or licensed to BCI by a third party) which BCI makes available, contributes, brings to or uses in connection with the Contract.

'BCI's Property' means any plant, equipment, tools, appliances, materials, drawings, data, specifications or other property and items that BCI provides to the Supplier to enable it to perform the Supplier's Obligations, including the equipment set out in Schedule 1.

'Completion' means:

- i. the Deliverables have been supplied and are substantially in accordance with the requirements of the Contract, except for minor Defects which do not prevent the Deliverables from being reasonably capable of being used for their intended purpose;
- ii. the Deliverables have passed all completion tests (if any) described in the Contract for the purposes of determining whether the Deliverables are Complete (or, where no such tests are set out in the Contract, any tests which are commonly required for deliverables of the same nature of the Deliverables have been carried out and passed); and
- iii. all warranties, certificates, approvals, manuals, documents and other information required under the Contract for Completion to be achieved have been supplied to BCI,

and **'Complete'** has a corresponding meaning.

'Confidential Information' means the Contract and all information (regardless of its form) which is disclosed directly or indirectly by BCI to the Supplier or Supplier's Personnel which is treated or designated as confidential, or which the Supplier or the Supplier's Personnel ought to know is confidential, but does not include information which is or becomes public knowledge (other than by the Supplier's disclosure or breach of the Contract).

'Contract' means the Purchase Order, these standard terms and conditions for the Purchase Order 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.

Corporate Social Responsibility Obligations means the Supplier's obligations set out in Schedule 8.

'COVID-19' means the coronavirus disease identified by the World Health Organisation on 11 February 2020 as COVID-19 and declared a pandemic by the World Health Organisation on 11 March 2020, and includes any and each mutation, variant or strain of the virus that causes the disease.

'Date for Completion' means the date for Completion specified in Schedule 1.

'Date for Delivery' means the date for delivery of the Goods specified in Schedule 1.

'Date of Completion' means the date that the Deliverables are Complete.

'Date of Delivery' means the date on which the Goods are delivered to the Delivery Point.

'Defect' in respect of a Deliverable, means any aspect of the Deliverable not in accordance with the Contract, or any damage, deficiency, fault or inadequacy in design, performance, workmanship, quality or makeup, and **Defective** has a corresponding meaning.

Defects Liability Period means a period of 12 months commencing:

- i. in respect of the Goods, on Date of Delivery; and
- ii. in respect of the Services, on the Date of Completion,

and, where relevant, any additional period of time specified in accordance with clause 15c.

'Deliverables' means each deliverable, including Goods or Services (or both), to be supplied by the Supplier under the Contract.

'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 the Goods.

'Equipment' means the equipment, mobile plant, tools, appliances and other property supplied by the Supplier for the purpose of supplying the Goods and / or performing the Services.

'Excluded Loss' means any loss of production, loss or revenue, loss of profit, loss of business reputation, business interruptions, loss of opportunities, loss of anticipated savings or wasted overheads.

'Force Majeure' means any of the following occurring in Australia:

- i. act of God, including cyclone, flood, earthquake, tsunami, bushfire, volcanic activity and sandstorm;
- ii. epidemic or quarantine by order of an Authority;
- iii. war, invasion, act of foreign enemies, hostilities (whether war is declared or not), civil war, act of terrorism, rebellion, riot, revolution, insurrection, martial law or confiscation by order of any Authority;
- iv. ionising radiations or contamination by radioactivity from nuclear fuel or nuclear waste resulting from the combustion of nuclear fuel; and
- v. industrial action or dispute which affects Western Australia or Australia generally and is not directed at the affected party or any of its Personnel,

to the extent it:

- vi. was not caused by an act or omission of the affected party or its Personnel;
- vii. was beyond the reasonable control of the affected party or its Personnel; and
- viii. could not have been avoided or overcome by the affected party or its Personnel taking reasonable precautions or steps.

'Good Industry Practice' means the practices, methods and acts engaged in or approved by a person which, in the conduct of its undertaking, exercises that degree of due diligence, prudence and foresight reasonably and ordinarily exercised by skilled and experienced persons, and in respect of the Supplier, performance as would ordinarily be expected of a competent contractor.

'Goods' means the goods identified in the Purchase Order to be delivered by the Supplier and includes any part of the specified goods.

'Gross Negligence' means a negligent act or omission resulting from a conscious or reckless disregard or indifference.

'GST' means goods and services tax or similar value added tax levied or imposed in Australia pursuant to *A New Tax System (Goods and Services Tax) Act 1999* (Cth).

'Health and Safety Management System' means BCI's health and safety management system set out in Schedule 7, as may be updated by BCI from time to time.

'HSMS' means the Supplier's health and safety management system which outlines the roles and operating procedures for the supply of Goods and performance of Services on the Site, so as to secure the health and safety of all persons affected by the work and services performed by or on behalf of the Supplier under the Contract.

'Insolvency Event' means, in respect of the Supplier, the following events: appointment of an administrator, appointment of a liquidator, appointment of a provisional liquidator, appointment of a controller (including any receiver or receiver and manager), insolvency, bankruptcy, winding up or any event analogous to these events.

'Intellectual Property Rights' means all intellectual and industrial property rights, including trade marks, copyright (including future copyright), inventions, patents, designs,

circuits and other eligible layouts, database rights, including any application or right to apply for registration of any of these rights.

'Invoice' means an invoice submitted by the Supplier in accordance with clause 17 which meets the requirements of a Tax Invoice for the purposes of *A New Tax System (Goods and Services Tax) Act 1999* (Cth).

'Law' means any law in force in Australia, whether common law, equity or any law under any statute, subordinate legislation, ordinance or code.

'Licence Instrument' has the meaning given in Schedule 5.

'Licence to Operate' has the meaning given in Schedule 5.

'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 or representatives, and any Related Body Corporate or Subcontractor, and any of their respective employees, agents and representatives, involved either directly or indirectly in the supply of the Deliverables; and
- ii. in relation to BCI, any Related Body Corporate, and any of their respective employees, agents or representatives (but excludes the Supplier's Personnel).

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

'Policies and Procedures' means BCI's policies and procedures that are:

- i. available on BCI's website or intranet;
- ii. provided by BCI to the Supplier in any format; and / or
- iii. set out or referred to in Schedule 6 of the Contract (if any),

(or any combination of the above) as amended and varied from time to time.

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

'PPS Law' means:

- i. the PPSA; and
- ii. any amendment made at any time to the *Corporations Act 2001* (Cth) or any other legislation as a consequence of the PPSA.

'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 none of paragraphs (i), (ii), or (iii) of this definition applies, the price for the Deliverables (exclusive of GST) set out 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 & Potash Project.

'Purchase Order' means the purchase order issued by BCI to the Supplier in respect of the supply of the Deliverables, and includes any schedules, 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).

'Representative' means the persons appointed by BCI and the Supplier to act on its behalf respectively in relation to the Contract as notified to the other party.

'Schedules' means the schedules attached to this Purchase Order and forming part of the Contract.

'Services' the services identified in the Purchase Order that are to be performed by the Supplier, including the delivery of any goods and performance of services ancillary to the Services.

'Site' means the location where the Services will be performed or the Goods will be used or stored by BCI, as set out in the Purchase Order, or as otherwise advised by BCI.

'Site Manager' means in respect of:

- i. a Site which is a 'mine' as that term is defined in the *Work Health and Safety (Mines) Regulations 2022* (WA), the person appointed from time to time as the 'site senior executive' or other 'Schedule 26 position' or 'key statutory position' (as applicable) at the Site for the purposes of the *Work Health and Safety (Mines) Regulations 2022* (WA); or
- ii. any other Site, any person appointed by BCI from time to time as the manager of the Site.

'Subcontractor' means any person engaged by the Supplier to supply all or any part of the Deliverables.

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

'Supplier IP' means any Intellectual Property Rights of the Supplier (or Intellectual Property Rights licensed to the Supplier by a third party) which:

- i. is in existence before the date of the Contract or comes into existence after the date of the Contract other than in connection with the Contract, the Goods or the Services; and
- ii. which the Supplier makes available, contributes, brings to or uses in connection with the Contract.

'Supplier LTO Obligations' has the meaning given in Schedule 5.

'Supplier LTO Obligations Register' has the meaning given in Schedule 5.

'Supplier's Obligations' means all of the Supplier's obligations under the Contract.

'Taxes' means any present or future tax, royalty, levy, impost, deduction, assessment, charge, excise, fee, withholding or duty of any nature imposed, assessed, charged, levied or collected by any government agency or other body authorised by Law, but does not include GST.

'Term' means the period from the date of the Purchase Order until the Date of Completion.

'Variation' means any addition, reduction or other change to any part of the Goods or Services (or both, where applicable) to be supplied or performed under the Contract.

'Variation Notice' means a notice issued by BCI under clause 23d directing the Supplier to carry out a Variation requested under clause 23b.

'Variation Proposal' means a written proposal from the Supplier which sets out the Supplier's additional costs or savings and the effect on the Goods Date for Delivery or the Services Date for Completion (as applicable) for performing a Variation requested under clause 23b.

b. The following rules apply unless the context requires otherwise:

- i. specifying anything after the words 'include' or 'for example' or similar expressions does not limit what else is included;
- ii. a reference to the Contract means the Contract as amended, novated supplemented, varied or replaced from time to time;
- iii. a reference to any legislation includes all sub-ordinate 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 the Contract;
- vi. a reference to any Party includes that Party's executors, administrators, substitutes, successors and permitted assigns;
- vii. a reference to a clause, Party, schedule or attachment is a reference to a clause, Party, schedule or attachment to the Contract;
- 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;
- xi. no rule of construction applies to the disadvantage of a Party on the basis that the Party was responsible for the preparation of the Contract or any part of it; and
- xii. Part 1F of the *Civil Liability Act 2002 (WA)* does not apply to the Contract.

2. Supply of Goods and Services

- a. The Supplier must perform the Supplier's Obligations and supply the Deliverables to BCI in accordance with the Contract.
- b. Unless expressly agreed to in writing by BCI, to the extent permitted by Law, no other terms or conditions, including the Supplier's own terms and conditions even where they have been provided to BCI or signed by a representative of BCI, will apply or have any legal effect in connection with the supply of the Deliverables or the performance of the Contract.

3. Supplier's Obligations

- a. The Supplier must, and must ensure that all Supplier's Personnel, in performing the Supplier's Obligations:
 - i. comply with all applicable Laws, applicable Policies and Procedures, and any reasonable instructions given by BCI;
 - ii. comply with all Corporate Social Responsibility Obligations;
 - iii. not interfere with BCI's activities or the activities of any other person at the Delivery Point, Site or any place where the Supplier provides the Services;
 - iv. carry out and perform the Supplier's Obligations in accordance with Good Industry Practice;
 - v. unless otherwise set out in the Contract, supply all plant, resources and Equipment necessary to perform the Services;
 - vi. provide all such information and assistance as BCI reasonably requires.
- b. The Supplier must:
 - i. provide all things and take all necessary measures to protect:
 - a. the health, safety and welfare of all personnel involved in the supply and performance of the Supplier's Obligations, including BCI's Personnel, Supplier's Personnel and third parties; and
 - b. the environment; and
 - ii. carry out and perform the Supplier's Obligations in a safe manner and in a way which does not prejudice safe working practices, safety and care of property or continuity of work.

4. Supplier's Personnel

- a. The Supplier must:
 - i. engage all personnel necessary for the supply of the Goods and Services; and
 - ii. employ or cause to be employed only personnel that are diligent, skilled and experienced to the degree ordinarily

- expected of personnel engaged in the supply of goods and / or services similar to the Goods and Services, acting in accordance with Good Industry Practice.
- b. No Supplier's Personnel may commence work on Site unless they have attended, at the Supplier's expense, the BCI's induction courses, including Site induction.
- c. The Supplier must, if requested by BCI, ensure that any Supplier Personnel that, in BCI's reasonable opinion:
 - i. has engaged in illegal, fraudulent or negligent conduct;
 - ii. has performed the Supplier's Obligations whilst under the influence of alcohol or illegally obtained drugs;
 - iii. does not satisfy, or has not acted in a manner which satisfies, the standards required by clause 14b; or
 - iv. is otherwise a risk to the safety of any person, property or the environment,has no further involvement in the performance of the Supplier's Obligations without BCI's prior written consent and will promptly remove such Supplier Personnel from the Site.
- d. BCI is not liable to the Supplier for any loss or claim arising from the removal of any Supplier Personnel from the performance of the Supplier's Obligations or the Site under clause 4, and to the extent permitted by Law, the Supplier:
 - i. waives all rights of recourse against BCI in respect of; and
 - ii. indemnifies BCI from and against, any such loss or claim.

5. Time for performance

- a. The Supplier must:
 - i. perform the Supplier's Obligations diligently, with due expedition and without delay;
 - ii. comply with the approved program set out in Schedule 4;
 - iii. deliver the Goods in full to the Delivery Point at the times stated in the Contract; and
 - iv. achieve Completion by the Date for Completion.
- b. If the Supplier considers that the Date for Completion has been, or is likely to be, delayed, the Supplier must immediately give BCI notice of the delay, including details of the nature, cause and the likely extent of the delay.

6. Site access

- a. BCI grants to the Supplier a non-exclusive and non-assignable licence to access the Site during the Term to perform the Supplier's Obligations in accordance with the Contract.
- b. The Supplier must comply, and must ensure that the Supplier's Personnel comply, with:
 - i. the site requirements for the Site that BCI advises the Supplier of from time to time, including completion of a Site induction (at the Supplier's cost); and
 - ii. any direction of BCI relating to those site requirements.
- c. The Supplier must:
 - i. at all times when on Site, immediately report to BCI any:
 - a. safety, aboriginal heritage or environmental incidents of any kind, including potential incidents and;
 - b. any damage to property; and
 - ii. clean up at its own cost any damage to the environment, any property or the Site caused by it or its Personnel in connection with the performance of the Supplier's Obligations.

7. Receipt, inspection and acceptance of Goods and Services

- a. The Supplier must allow BCI or a representative of BCI, at all reasonable times, to inspect, examine, review and witness tests of the Deliverables, or the performance of the Services, and to carry out site inspections at the Supplier's premises or wherever the Goods are stored or in the course of manufacture.
- b. Acceptance of the Deliverables occurs on the earlier of:
 - i. a representative of BCI notifying the Supplier in writing that the Deliverables have been accepted; or
 - ii. the lapse of 28 days after delivery of the Goods to the Delivery Point without BCI notifying the Supplier in writing that the Goods have been rejected.
- c. If BCI notifies the Supplier in writing that the Goods have been rejected prior to the expiry of the period specified in clause 7bii, the Supplier must, at its cost (including costs of collection and redelivery if applicable), promptly rectify or replace the Goods so that the requirements of the Contract are met. BCI has no liability to pay for Goods that are subject to a notice of rejection.
- d. Signed delivery documents are only confirmation of the number of packages or cartons delivered and will not constitute acceptance by BCI of the Goods.
- e. BCI is not obliged to accept delivery of the Goods to the Delivery Point prior to the Date for Delivery.
- f. Acceptance of the Deliverables by BCI does not constitute approval of the Deliverables or prejudice any claim BCI may have in connection with the Deliverables.

8. Packaging and marking

- a. The Supplier must ensure that the Goods are suitably packed in accordance with Good Industry Practice, to avoid damage in transit or in storage.
- b. Packaging must be designed to facilitate inspection and repacking for on-forwarding and storage.
- c. All Goods, delivery notes and other relevant documents must be clearly marked with the number of the Purchase Order pursuant to which those Goods were ordered, the material number (where applicable) and the Delivery Point specified in the Purchase Order.
- d. Failure to comply with this clause 8 entitles BCI to reject the Goods and return them to the Supplier, at the Supplier's expense.
- e. Prior to delivery or included within the packaging of the Goods at delivery of any Goods, the Supplier must provide to BCI all safety information, instruction manuals and other necessary or relevant data relating to BCI's use of the Goods, including material safety data sheets.

9. Risk and title

- a. Title to the Goods will pass from the Supplier to BCI upon the earlier of:
 - i. payment of the Price; and
 - ii. the Goods being delivered to the Delivery Point.
- b. The Supplier bears all risk in the Goods until acceptance of the Goods occurs in accordance with clause 7b, at which time risk passes to BCI.
- c. The Supplier warrants that title in the Goods will be transferred to BCI in accordance with clause 9a without any liens, charges, security interests or encumbrances.
- d. If BCI notifies the Supplier in writing that the Goods have been rejected prior to the expiry of the period specified in clause 7bii, then risk does not pass to BCI until the Supplier rectifies or replaces the Goods in accordance with clause 7c.
- e. Subject to clause 9b, risk and title in the Deliverables passes to BCI on the Date of Completion.

10. Health and Safety Management System

- a. The Supplier must at all times comply with either:
 - i. its HSMS as approved by BCI; or

- ii. where the Supplier does not have an HSMS, the Health and Safety System.
- b. The HSMS must not be inconsistent with the Health and Safety Management System and must be compatible with it such that it can, where there is a requirement to operate under a single safety and health management system, enable that to be achieved.
- c. The Supplier warrants that all Supplier's Personnel have been trained, and are competent and qualified to comply with its HSMS, or where clause 10aii applies, with the Health and Safety Management System.
- d. The Supplier warrants that the HSMS provided to BCI, complies with all Laws related to health and safety.
- e. To the extent that there is any discrepancy between the Health and Safety Management System (where applicable) and the HSMS:
 - i. the Health and Safety Management System applies;
 - ii. the Supplier must immediately notify BCI of such discrepancy; and
 - iii. as soon as practicable after becoming aware of the discrepancy the Supplier must propose an appropriate amendment to the HSMS so that such discrepancy is eliminated. Any change to the HSMS must first be agreed to by BCI in writing and will not constitute a variation.
- a. If the Supplier prepares, or is requested by BCI to prepare, a revised HSMS, the revised draft HSMS must be submitted to BCI for approval.
- b. Without limiting the Supplier's other obligations under the Contract, the Supplier must notify BCI and the Site Manager as soon as practicable, but in any event pursuant to the Policies and Procedures, of any accident, injury, loss or damage which occurs at the Site.

11. Licence to Operate and Supplier LTO Obligations

- a. The Supplier acknowledges the:
 - i. importance to BCI and the Project of the preservation of BCI's Licence to Operate; and
 - ii. obligations on BCI under the Licence Instruments, as back to backed to the Supplier in the Supplier LTO Obligations Register.
- b. The Supplier must comply, and must ensure that each Supplier's Personnel complies, with the Supplier LTO Obligations at all times in the performance of the Supplier's Obligations.

12. Industrial relations

The Supplier is responsible for:

- a. all industrial relations and employee relations management associated with all of the Supplier's Obligations;
- b. all time and cost implications arising out of or in connection with the management of all industrial relations matters or industrial actions relating to the Supplier's Obligations or the Site;
- c. all time and cost implications of the management of industrial relations; and
- d. using reasonable endeavours to maintain a harmonious industrial environment at the Site.

13. Equipment

- a. The Supplier agrees to supply the Equipment at its own risk and expense and to maintain such Equipment in a safe, operable, good working condition.
- b. BCI may reject any item of Equipment which it determines is unsafe or unsuitable for the purposes of the Contract. If any Equipment is rejected then it must be either repaired or replaced to the satisfaction of BCI within a time period specified by BCI in writing. The Supplier must provide all spare parts and consumable items for the Equipment.

- c. The Supplier must not use any of BCI's Property or remove BCI's Property from the Site without BCI's prior written consent.
- d. BCI's Property must only be used for the purposes of performing the Supplier's Obligations, and must be maintained and used in accordance with the manufacturer's specifications and operating instructions.
- e. The Supplier bears the risk in BCI's Property from the time it is supplied by BCI until BCI's Property is returned into the custody and control of BCI, unless such BCI Property is incorporated into the Deliverables, in which case risk in that BCI Property passes to BCI on the Date of Completion.

14. Warranties

- a. The Supplier warrants that the Deliverables will:
 - i. conform to the description and standards specified in the Contract;
 - ii. be free from Defects;
 - iii. be fit for their intended purpose as stated in, or as reasonably ascertainable from, the Contract and to the extent that the Deliverables include design Services, the works being designed will be fit for their intended purpose as stated in, or as reasonably ascertainable from, the Contract;
 - iv. the Deliverables will, if the Supplier gave BCI samples of the Goods, demonstrations of the Services, or represented that a result could be achieved by the Services before BCI entered into the Contract, correspond in nature and quality with the samples and demonstrations (as applicable) or the services that achieved that result (as the case may be); and
 - v. (in relation to any Goods) be new and of merchantable quality.
- b. The Supplier warrants that the Supplier's Personnel engaged in the supply of the Deliverables have all the necessary skills, training and qualifications to ensure full and proper supply of the Deliverables in accordance with the Contract.
- c. The Supplier must ensure that BCI has the full benefit of any manufacturer's warranties that may be applicable to the Goods (and the Supplier must, at its cost, pursue any manufacturer's warranties on BCI's behalf if BCI requests).

15. Defects

- a. At any time following delivery of any Goods or performance of Services, and prior to the expiry of the Defects Liability Period, the Supplier must, at its cost and at BCI's direction, promptly rectify all Defects (other than a Defect caused by the negligence of BCI).
- b. If BCI directs the Supplier to rectify a Defect and the Supplier fails to rectify that Defect within a reasonable time specified by BCI:
 - i. BCI may, without prejudice to any other rights BCI may have against the Supplier, rectify or engage another contractor to rectify the Defect; and
 - ii. the rectification costs incurred by BCI will be a debt due and payable on demand from the Supplier to BCI.
- c. Where any Defect has been rectified under the Contract, the rectification work will be subject to an additional Defects Liability Period commencing on the date the relevant rectification works are completed, to a maximum of 24 months in total.
- d. Nothing in this clause 14 prejudices any other right that BCI may have against the Supplier arising out of the failure of the Supplier to supply the Goods or perform the Services in accordance with the Contract.
- e. BCI has no liability to pay for Deliverables that are subject to a direction from BCI pursuant to clause 15a until the subject Defect has been rectified to the reasonable satisfaction of BCI.

16. Price

- a. In consideration of the Supplier supplying the Deliverables, BCI must pay the Supplier the Price.

- b. The Price is inclusive of all expenses and costs (including Taxes) relating to the Supplier's performance of the Supplier's Obligations, including packaging, freight, delivery, insurance, the cost of any miscellaneous services and compliance with the Contract, and no additional amounts will be payable by BCI.

17. Payment

- a. Subject to clause 17b, on or promptly after the later of the Date of Delivery of the Goods and the Date of Completion of the Services (as applicable), the Supplier must submit a payment claim or Invoice to BCI for the amount due to the Supplier.
 - b. If agreed in writing by BCI, the Supplier may submit a payment claim or Invoice to BCI at the end of each month for any Services performed during that month or any previous month, provided those Services have not already been included in a previous payment claim issued to BCI.
 - c. The Supplier must not submit more than one payment claim or Invoice each month.
 - d. A payment claim or Invoice submitted under clause 17a or 17b must include:
 - vi. the Purchase Order number;
 - vii. a description of the Goods delivered (if any), including the quantity of Goods and the Date of Delivery;
 - viii. a description of the Services performed (if any);
 - ix. the amount being claimed for the Goods and the Services (as applicable);
 - x. the amount of any applicable GST;
 - xi. proof of delivery of the relevant Goods or completion of the relevant Services; and
 - xii. any further information reasonably requested by BCI.
 - e. Within 10 business days after receipt of a payment claim or Invoice in accordance with clause 17d, BCI must assess the payment claim and may issue a payment schedule to the Supplier.
 - f. Any payment schedule issued under clause 17e must identify the payment claim to which it relates (if any) and set out:
 - i. the amount claimed which is payable to the Supplier; and
 - ii. the reasons for any difference (including, if applicable, the reasons for withholding or setting off any amount).
 - g. BCI may, at any time, issue a payment schedule correcting any error discovered in a previous payment schedule.
 - h. The Supplier must, within 2 business days after receipt of a payment schedule from BCI under clause 17e or 17f, give BCI an Invoice for the amount specified in the payment schedule.
 - i. Subject to clause 18, BCI must pay to the Supplier either:
 - i. the amount stated as due to the Supplier in a payment schedule within 8 business days after receipt of an Invoice in compliance with clause 17h; or
 - ii. the amount stated in any Invoice issued under clause 17d within 20 business days after receipt of an Invoice in compliance with clause 17d.
 - j. Payment under this clause 17 will not be taken as proof or admission that all, or any part of, the Goods or the Services have been delivered or performed (as the case may be) to the satisfaction of BCI, but will be taken to be payment on account only.
- ### 18. Set-off
- The Supplier agrees that BCI may:
- a. deduct from monies due to the Supplier any money due or which may become due from the Supplier to BCI under, or in connection with the Contract; and

- b. withhold payment of any amounts payable under the Contract pending resolution of any dispute

19. GST

- a. If GST is imposed on any supply made by the Supplier in connection with the Contract, the Supplier may recover from BCI, in addition to the Price, an amount equal to the GST payable in respect of that supply.
- b. The Supplier must first provide BCI with an Invoice before BCI will pay the GST amount to the Supplier.

20. Assignment and subcontracting

- a. The Supplier must not assign or novate the Contract, or assign any other right, benefit or interest under the Contract to any person or entity without the prior written consent of BCI.
- b. The Supplier must not, without the prior written consent of BCI, which consent must not be unreasonably withheld, subcontract any of the Supplier's Obligations. Any consent to subcontract does not relieve the Supplier from any liability or obligation under the Contract.
- c. The Supplier is liable to BCI for the acts and omissions of any subcontractor, its personnel and the Supplier's Personnel as if they were acts or omissions of the Supplier.
- d. 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.

21. Supplier's insurance

- a. Unless BCI agrees otherwise in writing, the Supplier must (at its own cost) effect and maintain with a reputable insurer and on terms consistent with prudent risk management:
 - i. **(plant and equipment)** insurance covering the Supplier's materials, plant and Equipment (if any) for their full replacement value;
 - ii. **(motor vehicle third party liability insurance)** for an amount of not less than \$30,000,000. The Supplier must, in addition, comply with all statutory requirements concerning the arrangement of compulsory motor vehicle third party liability insurance;
 - iii. **(workers' compensation insurance and employer's liability insurance)** which complies with applicable Laws, , including cover for common law liability and, for employer's liability, for an amount not less than \$50,000,000;
 - iv. **(public and product liability insurance):**
 - A. for public liability, for an amount of not less than \$50,000,000 in respect of each and every claim, unlimited as to the number of occurrences; and
 - B. for products liability, for an amount of not less than \$50,000,000 per claim and in the annual aggregate, which includes a cross liability clause, principal's indemnity extension and waiver of subrogation against BCI and its Related Bodies Corporate;
 - v. **(professional indemnity insurance)** where the Supplier is providing professional services, of not less than \$2 million for each claim and in the aggregate which must be maintained for a period of at least 7 years after the Date of Completion or the earlier termination of the Contract; and
 - vi. any additional insurance required by an applicable Law or reasonably requested by BCI.

The Supplier must provide to BCI, within 3 business days of a written request, certificates of currency for each of the insurance policies required under this clause 21.

- b. Subject to clause 20b if the Supplier subcontracts any part of the Supplier's Obligations, then the Supplier must ensure that every Subcontractor effects and maintains insurances required under this clause 21, as appropriate for the work being

performed by that Subcontractor, before the Subcontractor commences any of the Supplier's Obligations.

- c. If the Supplier fails to comply with any of its obligations under this clause 21, BCI may, by notice in writing to the Supplier, immediately suspend the Contract or refuse payment of any amount due to the Supplier until evidence of insurance required by this clause 21 is produced to BCI.

22. Indemnities and limits of liability

- a. The Supplier indemnifies BCI, each of BCI's Personnel and each of BCI's Related Bodies Corporate from and against any claims (including third party claims) and losses suffered or incurred by any of them arising out of, or in connection with, any negligent or wrongful act or omission of the Supplier or any of the Supplier's Personnel or the Supplier's presence on the Site. This indemnity will be proportionately reduced to the extent the claim or loss is caused by the negligence of BCI or BCI's Personnel.
- b. Neither Party is liable to the other for Excluded Loss.
- c. The exclusion of liability in clause 22b does not apply in respect of:
 - i. injury to, or illness or death of, any person;
 - ii. damage to, or loss or destruction of, any property;
 - iii. a breach of the party's obligations under the Contract relating to Intellectual Property Rights or confidentiality;
 - iv. liability for a third party's loss under an indemnity in clause 22a;
 - v. to the extent the liable party recovers insurance proceeds in respect of the liability from an insurance policy required to be effected in accordance with the Contract, or would have recovered insurance proceeds if it had complied with the Contract, complied with the terms of the relevant insurance policy, and taken all reasonable steps to diligently pursue any potential claim; or
 - vi. fraud, criminal offence, wilful default, wilful misconduct or Gross Negligence of the liable party or any of its Personnel.
- d. For the purposes of determining the amounts recoverable under clause 22cv, the exclusion of liability in clause 22b must be disregarded.

23. Variations

- a. The Supplier must not change the Deliverables, including an addition, reduction or omission to any part of the Deliverables except in accordance with this clause 23.
- b. If at any time BCI notifies the Supplier that it requires a Variation, the Supplier must promptly (and within no less than seven days) provide a Variation Proposal to BCI.
- c. The Supplier may initiate and submit a Variation Proposal to BCI for its convenience.
- d. If BCI accepts a Variation Proposal, BCI will issue a Variation Notice to the Supplier and:
 - i. the Supplier must then carry out the Variation;
 - ii. the Price will be adjusted by the amount set out in the relevant Variation Proposal;
 - iii. if the Variation is in respect of the Services, the Services Date for Completion will be adjusted as set out in the Variation Proposal; and
 - iv. if the Variation is in respect of the Goods, the Date for Delivery will be adjusted as set out in the Variation Proposal.
- e. The Supplier will not be entitled, in any circumstances, to an adjustment to the Price or any extension of time except as set out in a Variation Notice.

24. Intellectual Property Rights

- a. Subject to clause 23c, the Supplier IP remains vested in the Supplier and the BCI IP remains vested in BCI.
- b. BCI will own all Intellectual Property that the Supplier creates in the performance of the Services and the supply of the Goods.
- c. The Supplier grants to BCI a non-exclusive, perpetual, royalty-free, irrevocable, transferable, sub-licensable licence (with the right to grant sub-licenses on the same terms) to use the Supplier IP to the extent necessary to use the Goods and the Services (as applicable).

25. Confidentiality

The Supplier must not use any Confidential Information or disclose any Confidential Information other than to any of the Supplier's Personnel who need to know the information to perform the Services or deliver the Goods, to the Supplier's legal advisers or where required by Law.

26. Privacy

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

- a. comply with the *Privacy Act*; and
- b. 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.

27. Force Majeure

- a. A Party whose performance of its non-financial obligations under the Contract is or will be affected by an event of Force Majeure must, if it wants to claim the benefit of a suspension under clause 27b, promptly give the other Party a written claim detailing:
 - i. the nature and extent of the event of Force Majeure; and
 - ii. the effect the Party reasonably expects the event of Force Majeure will have on its obligations under the Contract.
- b. If a Party gives notice under clause 27a, the Party's non-financial obligations under the Contract are suspended to the extent that the event of Force Majeure prevents or delays their performance.
- c. As soon as reasonably possible after an event of Force Majeure ceases to prevent or delay a Party's performance of obligations suspended under clause 27b, the Party must notify the other Party in writing and resume performance of those obligations.
- d. Each Party must take reasonable steps to mitigate or overcome the effects that an event of Force Majeure has on its obligations under the Contract.

28. COVID-19

- a. Notwithstanding any other provision of the Contract, the Supplier must allow for the impacts of COVID-19 on the performance of the Supplier's Obligations of which the Supplier is aware as at the commencement of the Purchase Order (or would have been aware had it made all reasonable enquiries).
- b. Without limiting clause 28a, the Supplier warrants that, immediately before the commencement of the Purchase Order, it obtained written notice from each Subcontractor regarding the impacts of COVID-19 on the performance of the Supplier's Obligations to be subcontracted to that Subcontractor of which the relevant Subcontractor is aware (or would have been aware had it made all reasonable enquiries).
- c. The Supplier will not be entitled to make any claim as a result of the impacts of COVID-19 on the performance of the Supplier's Obligations to the extent the Supplier failed to allow for those impacts in breach of clause 28a.
- d. The Supplier must have in place, and comply with, and ensure its Personnel comply with:
 - i. BCI's COVID-19 Management Plan; and
 - ii. policies and procedures relating to the management of current and future epidemics, pandemics and public health emergency measures.

- e. The Supplier will not be entitled to make any claim as a result of the impacts of any quarantine or public health emergency measures to the extent the Supplier or its Personnel failed to have measures in place to manage and respond to future epidemics, pandemics and public health emergency measures in breach of clause 28d.

29. Termination

- a. BCI may terminate the Contract by notice to the Supplier:
 - i. at any time for any reason whatsoever on 24 hours written notice to the Supplier;
 - ii. immediately if the Supplier commits a breach of the Contract and fails to remedy that breach within the reasonable time period specified in a written notice of the breach from BCI or BCI, acting reasonably, does not believe the breach is capable of remedy; or
- i. immediately if an Insolvency Event occurs.
- b. On termination of the Contract, the Supplier must immediately cease performance of the Supplier's Obligations, promptly return to BCI any Confidential Information, property and documents which BCI owns or in which BCI has an interest, and comply with BCI's directions including any direction to protect BCI's property in the Supplier's possession.
- c. If the Contract is terminated under clause 29a.i:
 - i. BCI must pay the Supplier that part of the Price for any Supplier's Obligations performed prior to termination that have not already been paid by BCI; and
 - ii. the Supplier is not entitled to, and BCI is not liable for, any additional amounts whatsoever.
- d. Subject to clause 29c, termination of the Contract is without prejudice to the rights and obligations of the Parties under the Contract arising prior to the date the Contract is terminated or arising out of matters or circumstances occurring prior to that date.

30. Representatives

- a. Unless expressly provided otherwise, all directions or any permission given on behalf of BCI to the Supplier will be given by BCI's Representative (or BCI's Representative's delegate notified to the Supplier).
- b. The Supplier must comply, and ensure its Personnel comply, with the directions of BCI's Representative and Site Manager in relation to the Supplier's Obligations. In any matter pertaining to the safety of persons or property or the proper compliance with any Law which it is the Site Manager's duty to enforce, the Site Manager's decision will be final and any directions they may give must be obeyed in the manner directed.
- c. The Supplier's Representative will represent and act for the Supplier at all times during the Term. The Supplier is bound by the actions of the Supplier's Representative. Matters within the knowledge of the Supplier's Representative are deemed to be within the knowledge of the Supplier.

31. PPSA

- a. Words and phrases used in the Contract that have defined meanings in the PPS Law have the same meaning as in the PPS Law unless the context otherwise indicates.
- b. If BCI determines that the Contract (or a transaction in connection with it) is or contains a security interest for the purposes of the PPS Law, the Supplier agrees to do anything (including obtaining consents, signing and producing documents, getting documents completed and signed and supplying information) which BCI asks and considers necessary for the purposes of:
 - i. ensuring that the security interest is enforceable, perfected and otherwise effective; or
 - ii. enabling BCI to apply for any registration, complete any financing statement or give any notification, in

connection with the security interest so that BCI has the priority required by it; or

- iii. enabling BCI to exercise rights in connection with the security interest.
- c. If the Supplier holds any security interests for the purposes of the PPS Law and if failure by the Supplier to perfect such security interests would materially adversely affect the security interests BCI holds or affect its business, the Supplier agrees to perfect that security interest and to implement, maintain and comply in all material respects with, procedures for the perfection of those security interests. The Supplier must take all steps under the PPS Law to continuously perfect any such security interests including (without limitation) all steps necessary:
 - i. for it to obtain the highest ranking priority possible in respect of the security interest (such as perfecting a purchase money security interest or perfecting a security interest by control); and
 - ii. to reduce as far as possible the risk of a third party acquiring an interest free of the security interest (such as including the serial number in a financing statement for personal property that may or must be described by a serial number).
- d. Notwithstanding clause 25, neither BCI nor the Supplier will disclose information of the kind mentioned in section 275(1) of the PPSA and the Supplier will not authorise, and will ensure that no other party authorises, the disclosure of such information. This clause 31d does not prevent disclosure where that disclosure is required under section 275 of the PPSA because of the operation of section 275(7) of the PPSA.

32. Dispute resolution

- a. Neither Party may commence any action, bring any proceedings or seek any relief or remedy in a court, except interlocutory or equitable relief, from a court in respect of a dispute until they have complied with the dispute resolution process in accordance with this clause 31.
- b. If any dispute arises between the Parties, either Party must give written notice to the dispute to the other Party.
- c. A senior representative of each of the Parties will meet for the purpose of resolving the dispute within 21 days after the service of the notice provided under clause 31.
- d. If the dispute is not resolved within 28 days after the service of the notice provided under Clause 31, then either Party may commence court proceedings.
- e. The Supplier must continue to perform its obligations under the Contract notwithstanding the existence of any one or more dispute(s).

33. 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 respect of its subject matter.

34. Survival

The provisions of clauses 14, 21, 22, 23, 25, 39 and 40 survive the termination or expiry of the Contract.

35. Governing law and jurisdiction

The Contract is governed by the law in force in Western Australia and each Party irrevocably submits to the non-exclusive jurisdiction of courts exercising jurisdiction in Western Australia.

36. No waiver

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

37. 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.

38. 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.

39. Severability

Any provision in the Contract which is invalid or unenforceable will be ineffective to the extent only of that voidness or unenforceability without invalidating the remaining provisions.

40. 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.

41. Notices

Any notice or other communication relating to the Contract must be in writing, signed by or on behalf of the sender or its agent, and either hand delivered, sent by pre-paid post or emailed to the other Party at the address or email address set out in the Purchase Order or as otherwise notified by the relevant Party.