

TERMS AND CONDITIONS

BACKGROUND

- A. From time to time, the Recipient may require the Supplier to provide one or more of the Services to the Recipient and the Supplier will supply those Services to the Recipient for a Fee.
- B. In addition to the supply of the Services, as and when required, the Recipient may be required to supply additional Services for a term and fee negotiated between the Supplier and the Recipient prior to the date of supply.
- C. The Recipient and the Supplier have agreed to the terms and conditions of supply that will be applicable to the relationship between them. Each transaction for the supply of Services between the Recipient and the Supplier will be governed by the Purchase Order in respect of that of supply, this document and any variations to this document as agreed in writing between the parties.
- D. The terms governing the supply of the Services and the relationship between the Parties have been agreed and are set out in this document.

OPERATIVE PROVISIONS

1. DEFINITIONS AND INTERPRETATION

1.1 Definitions

The following definitions apply in this document:

Australian Qualifications Framework means the national policy for regulated qualifications in Australian education and training, governed by the Australian Government Department of Education.

Business Day means a day on which banks are open for retail banking, other than a Saturday, Sunday or public holiday, in Brisbane, Australia.

Claim means any claim, action, proceeding, investigation or prosecution.

Control means in respect of:

- (a) a company that is a Party to this document, means control of the company, as that term is understood in section 50AA of the Corporations Act;
- (b) a body corporate that is a Party to this document, means control of the body corporate, as that term is understood in section 47 of the Corporations Act;
- (c) a trust that is a party to this document, means the party that:
- (i) is the sole trustee of the trust;
 - (ii) can determine the composition of the board of directors of any trustee company of the trust is determined or has the capacity to do so;
 - (iii) the board of directors of any trustee company is accustomed to act in accordance with the instructions, directions or wishes of the party;
 - (iv) the party holds or owns (alone or with its Related Bodies Corporate or immediate family members):
 - (A) the majority of the issued shares of any trustee company;
 - (B) the majority of the issued shares of the ultimate holding company of any trustee company;
 - (C) the majority of any units, securities or other rights granted by the trust entitling holders to distributions from the trust;
 - (D) the party (alone or with its Related Bodies Corporate or immediate family members) has received 50% or more of the distributions made from that trust in the last three years before the date of the proposed event or transaction being considered.

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

Default Rate means 12%.

Dispute means a dispute between the parties under or in connection with this document, and includes a dispute in relation to:

- (a) breach of a term of this document;
- (b) the rights or obligations of a party under this document;
- (c) interpretation of this document;
- (d) termination of this document;

- (e) any claim at law or in equity under or in connection with this document, except for a claim relating to personal injury or death of a person; or
- (f) a matter of fact, measurement or valuation.

Event of Default means any of the following:

- (a) failure of the Recipient to pay the Fee or other moneys payable under this document on the Payment Date and the failure continues for more than five Business Days;
- (b) a party suffers an Insolvency Event;
- (c) a party fails to comply with its obligations set out in this document;
- (d) if this document is or becomes void, voidable or unenforceable;
- (e) if the Recipient suffers a change in Control or ownership which, in the opinion of the Supplier, adversely affects the Supplier's ability to perform its obligations under this document or a Purchase Order;
- (f) if the Recipient, without the Supplier's prior written consent, suspends payment generally or ceases to carry on its business;
- (g) if any event occurs or any circumstances exist which, in the Supplier's reasonable opinion, has or is likely to have a material adverse effect on the ability of the Recipient to meet any of its or their obligations under this document; or
- (h) the Supplier fails to maintain its registration under the *National Vocational Education and Training Regulator Act 2011* (Cth).

Fee means the fixed amount charged by the Supplier in relation to the supply of the Services in accordance with the Purchase Order for the particular Service or as varied by the Supplier and the Recipient from time to time.

GST Law has the meaning given to "GST law" in the *A New Tax System (Goods and Services Tax) Act 1999* (Cth).

GST has the meaning given by the GST Law.

Insolvency Event means any of the following events occurring in relation to a Party:

- (a) if an application is filed for the winding up of the Party (**Winding Up Application**) and the Winding Up Application is not dismissed or withdrawn within 10 Business Days of the application being filed;
- (b) if an order is made for the winding up of the Party and the winding up is not stayed indefinitely or terminated within 10 Business Days of the winding up order being made;
- (c) if the directors of the Party pass a resolution for its winding up;
- (d) if a receiver, receiver and manager, controller (as defined in section 9 of the Corporations Act), or a similar person is appointed to, or the holder of a security interest takes (or appoints an agent to take) possession of, any property of the party;
- (e) if a provisional liquidator is appointed to the Party;
- (f) if:
 - (i) the Party is placed into administration (as defined in section 9 of the Corporations Act) or enters into a deed of company arrangement (as defined in section 9 of the Corporations Act); or
 - (ii) the Party, or any other person takes any step towards placing the party into administration or towards entering into a deed of company arrangement;
- (g) if the Party:
 - (i) advises another Parties, the Board or the Parties that it is financially unable to proceed with or meet any of its obligations under this document;
 - (ii) without the written consent of the other Parties, the Board or the Parties, suspends payment of its debt other than as the result of a failure to pay a debt or Claim which is subject to a genuine dispute;
 - (iii) ceases or threatens to cease to carry on all or a material part of its business;
 - (iv) is or states that it is unable to pay its debts as and when they fall due and payable; or

- (v) is taken to fail to comply with a statutory demand under section 459F of the Corporations Act;
- (h) if the Party, without the consent of the other party:
 - (i) begins negotiations with one or more of its creditors seeking a general readjustment or rescheduling of its indebtedness to one or more of its creditors;
 - (ii) takes any steps toward entering into, or enters into, any compromised or arrangement with one (1) or more of its creditors under part 5.1 of the Corporations Act; or
 - (iii) makes any assignment or enters into any arrangement or composition generally for the benefit of one or more of its creditors;
- (i) if the Party:
 - (i) commits an act of bankruptcy under section 40 of the Bankruptcy Act; or
 - (ii) is made bankrupt;
- (j) if the Party becomes or takes any step that could result in the Party becoming insolvent under administration (as defined in section 9 of the Corporations Act); or
- (k) if the Party enters into or takes any step that could result in the party entering into a debt agreement under part IX of the Bankruptcy Act;
- (l) if the Party enters into or takes any step that could result in the party entering into a personal insolvency agreement under part X of the Bankruptcy Act
- (m) if execution is levied against the Party by a creditor; or if any matter relating to the Party becomes subject to a direction under, or has effect as if it were a direction under section 14 of the *Australian Securities Commission and Investment Act 2001* (Cth), or to an investigation under or taken to be under that act.

Law means any applicable statute, regulation, by-law, ordinance or subordinate legislation in force from time to time in Australia, whether made by a State, Territory, the Commonwealth, or a local government, and includes the common law and rules of equity as applicable from time to time, and any applicable industry codes of conduct.

Loss means loss, damage, cost, expense or liability, and includes:

- (a) an amount paid or payable:
 - (i) as damages;
 - (ii) pursuant to a judgement or order;
 - (iii) pursuant to an agreement that settles a dispute;
 - (iv) as a fine or penalty;
 - (v) as a debt;
- (b) the cost of:
 - (i) rectifying or repairing loss or damage;
 - (ii) replacing property that is lost or destroyed; and
- (c) legal costs on an indemnity basis.

Outsourcing Work means the analysis of capabilities to be placed, the identification and engagement of suitable candidates and the ongoing training, management and performance management of outsourced personnel including. The work may include the provision of coordination of peripheral services such as information technology or voice communication systems.

Party or Parties is a reference to a party to this document and includes its assignors and successors.

Payment Date means, in respect of an invoice, 14 days from the date of the invoice.

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

Purchase Order means a Purchase Order for a particular Service signed by the Recipient.

Recipient means the recipient of a Service or Services from the Supplier in accordance with this document and/or a Purchase Order.

Recruiting Services includes:

- (a) working with the Recipient to confirm the Recipient's recruitment needs and develop recruitment strategies;
- (b) identification of suitable candidates and shortlist for final interview.

Registered Training Organisation means Andrew Bridge and Da-en Preston, code number 32127, trading as Briston Training & Development.

Related Bodies Corporate has the meaning given to that term by section 9 Corporations Act.

Services means:

- (a) Outsourcing Work;
- (b) Training Design;
- (c) Training Delivery;
- (d) Training Consulting; and
- (e) Recruiting Services.

Supplier means Briston Training and Development Pty Ltd ACN 151 116 746 of Southgate, Box 6, 3350 Pacific Highway, Springwood, Queensland 4127 and the Registered Training Organisation, where relevant.

Term means the period from the date of this document until the earlier of:

- (a) termination under clause 7 or clause 7.2;
- (b) terminated on any other date agreed in writing between the parties.

Training Consulting includes:

- (a) RTO registration and compliance support including auditing, preparation of documentation, validation and moderation of resources etc;
- (b) auspice arrangements for delivery of courses and qualifications from the Registered Training Organisation's training scope by the Recipient's trainers for a fee;
- (c) quality review of operations;
- (d) conduct of training needs analysis and development of learning pathways and programs.

Training Delivery includes the delivery of training content to a student audience by either direct instruction, distance learning or online learning platforms. Training may be delivered directly by the Supplier's personnel or may be coordinated by the Supplier for delivery by the Recipient's own instructional staff. Training programs may be nationally accredited under the Australian Qualifications Framework through the Supplier's status as a RTO or may be non-accredited workshops or course programs which do not result in a formal qualification.

Training Design includes the analysis of a client's training requirements, the identification of competencies and training outcomes, and the design and development of training materials which may include assessment materials, marking guides, student manuals, eLearning modules, instructional videos or a range of other support resources.

1.2

Interpretation

This clause 1.2 specifies the rules for interpreting this document, except where the context makes it clear that a rule is not intended to apply.

- (a) The contents pages, the Background and headings are for convenience only and do not affect the interpretation of this document.
- (b) A reference to:
 - (i) legislation (including subordinate legislation) is to that legislation as amended, re enacted or replaced, and includes any subordinate legislation issued under it;
 - (ii) a document (including this document), or a provision of a document (including a provision of this document), is to that document or provision as amended or replaced;
 - (iii) a party to this document, or a party to any other document or agreement, includes that party's executors, administrators, permitted substitutes and permitted assigns;
 - (iv) a person includes any type of entity or body of persons, whether or not it is incorporated or has a separate legal identity, and any executor, administrator or successor in law of the person;
 - (v) anything (including a right, obligation or concept) includes each part of it;
 - (vi) property includes real, personal and intangible property;
 - (vii) any body or agency, if that body or agency ceases to exist, is renamed, reconstituted, replaced or has its powers or functions removed (**Defunct Body**), means the agency or body which succeeds to the Defunct

(viii) Body's powers or functions, or performs most closely the functions of the Defunct Body;
AUD\$, A\$, \$A, dollar or \$ is to Australian currency; or

(ix) a clause, schedule or annexure is to a clause of, or schedule or annexure to, this document.

(c) A singular word includes the plural, and vice versa.

(d) A word which suggests one gender includes any other genders.

(e) If a word is defined, another part of speech of that word has a corresponding meaning.

(f) If an example is given of anything (including a right, obligation or concept), such as by saying it includes something else, the example does not limit the scope of that thing.

(g) An obligation on, warranty by, or right of:

(i) two or more persons; or

(ii) a party that comprises two or more persons, is the obligation, warranty or right (as the case may be) of those persons jointly and severally.

(h) Time is reckoned as follows:

(i) A reference to the date or time of day, is a reference to that date or that time of day in Queensland, Australia.

(ii) If a period expressed in days, beginning on a given day, act or event is provided or allowed for any purpose, the period is calculated by:

(A) excluding the day, or the day of the act or event; and

(B) including the day on which the purpose is to be fulfilled.

(iii) If a period expressed in weeks, months or years, beginning on a given day, act or event is provided or allowed for any purpose, the period is calculated from:

(A) the day, or the day of the act or event; until

(B) the corresponding day in the next appropriate week, calendar month or year.

(iv) If there is no corresponding day for the purposes of clause 1.2(h)(iii)(B), because of the differing number of days in calendar months, the corresponding day is taken to be the last day of the relevant calendar month.

(v) If something is to be done on a particular day, it must be done by 5.00pm on that day.

(vi) If something is to be done on a day which is not a Business Day then that thing must be done on the next Business Day.

(i) Terms defined in the GST Law have the same meaning in this document unless the context makes it clear that a different meaning is intended.

2. SUPPLY OF SERVICES

(a) In consideration of the payment of the Fee, the Supplier agrees to provide the Services to the Recipient pursuant to a completed and signed Purchase Order.

(b) The Supplier will deliver the Services to the Recipient from the Supplier's premises or other premises requested by the Recipient and agreed to by the Supplier (**Premises**).

(c) The Supplier warrants to the Recipient that it will use its best endeavours to comply with all relevant legislation in respect of the provision of the Services to the Recipient.

3. REQUISITIONS, AUDITS AND COMPLIANCE WITH LAWS AND

(a) Where the Service being provided is Training Consulting or Training Design, the Recipient must, at the Recipient's own cost, comply with all relevant training policies and procedures of Briston Group (as updated and amended from time to time).

(b) The Recipient undertakes, at the Recipient's own cost, to assist the Supplier and to do all things which the Supplier reasonably requests of the Recipient in relation to:

(i) complying any Laws relating to the provision of the Services;

(ii) complying with any requisition, audit, investigations or information requests from the Australian Skills Quality Authority or any other regulator of the Supplier (whether during the period in which the Services are being provided or after the Services have been provided),

including but not limited to:

(iii) submitting training records;

(iv) permitting the Registered Training Organisation or its representatives to visit the Recipient's premises or other premises where the training is being provided, on reasonable notice to the Recipient.

(c) Where the Recipient fails to comply with clause 3(a) or 3(b), the Recipient:

(i) will be in default under this document and the Supplier may terminate this document under clause 7.1(a)(i)(A); and

(ii) irrevocably authorises the Supplier, or any person authorised by the Supplier, to do all things necessary, including signing documents and providing documents, in order for the Supplier to:

(A) comply with the Supplier's obligations under Law relating to the provision of the Services; and/or

(B) comply with any requisition or audit from the Australian Skills Quality Authority.

(d) For the sake of clarity, this clause does not merge on completion of the Services or termination of this document.

4. FEE AND REIMBURSEMENTS

4.1 Issue of invoices for the Fee

The Supplier will issue tax invoices for the Fee in respect of a Service in accordance with a Purchase Order or otherwise on a monthly basis by the last Business Day of each calendar month.

4.2 Fee

(a) The Recipient must pay into the Supplier's nominated bank account (free from all deductions), on or before the Payment Date, the Fee.

(b) Each payment paid to the Supplier in accordance with this clause 3 (and including any other moneys payable by the Recipient to the Supplier) must be made in full, free and clear of any deductions and withholdings and without any set-off (either at law or in equity) or counterclaim whatsoever, and in immediately available funds in Brisbane at or before 5.00 p.m. on the Payment Date, and otherwise in such manner as the Supplier from time to time reasonably directs in writing.

(c) If any part of the Fee or other moneys payable by the Recipient required to be paid under this document is not paid on the Payment Date, the Recipient must pay on demand to the Supplier interest at the Default Rate for any period for which any part of the Fee or other moneys are overdue, such interest to accrue on and from the day following the Payment Date for payment up to and including the date of actual payment and to be computed on a daily basis for actual days elapsed and compounded on the last Business Day of each month.

(d) The Recipient must not set off any amount due by the Recipient under this document against any amount due by the Supplier to the Recipient.

4.3 Reimbursements

(a) Any expenses incurred by the Supplier in providing the Services will be reimbursed upon the Supplier providing the Recipient with a tax invoice in respect of the expenses.

(b) The Supplier is not required to obtain the prior approval of the Recipient before incurring any expense for which the Supplier seeks reimbursement under this clause 4.3. The Recipient may not refuse to pay any tax invoice referable to reimbursement of an expense incurred by the Supplier in providing the Services to the Recipient.

5. INDEMNITIES AND RELEASE

The Recipient hereby assumes liability for, and indemnifies the Supplier against:

- (a) any Claims made by the regulator or the Supplier (currently the Australian Skills Quality Authority), the Recipient or beneficiary or recipient of the Services delivered by the Supplier up to and including the time of termination of this document;
- (b) any and all losses, theft, damages, injuries, claims, demands suffered by the Supplier in relation to the Services or incurred in the course of the Supplier providing the Services; and
- (c) all expenses, legal or otherwise (including court costs and legal fees on a solicitor client basis, reasonably incurred),

of whatsoever kind and nature (including claims for strict liability in tort) arising out of or in connection with the provision of the Services except where caused by any act or omission of the Supplier.

6. INSURANCE

- (a) The Recipient, at its own cost, will effect and maintain current at all times, from the date of this document and in full force and effect throughout the Term:
 - (i) public liability insurance (including liability to any person, third party or passenger in respect of personal injury, or damage to property owned by any person, both including any insured party) arising out of or in connection with the Services including in respect of the Supplier providing the Services at the Premises as and when required (as determined from time to time);
 - (ii) any other insurance arising from its obligations under the this document that may at any time be required by the law.
- (b) In the event of the Recipient becoming aware of any circumstances that might give rise to a claim by the Recipient under any of the insurance policies, the Recipient shall notify the Supplier of the claim and shall be deemed to act as the trustee of the Supplier in respect of its communications with the insurer in relation to the claim.
- (c) During the Term, the Recipient will punctually pay all premiums necessary to effect and maintain all the insurance policies and upon reasonable request will produce to the Supplier certified excerpts of the policies of insurance, together with any collateral documents, certificates of currency and evidence of the payment of premiums in respect of such insurance and a copy of the insurance policy document.
- (d) If the Supplier suffers any loss or damage directly or indirectly arising from, or as a consequence of entering into, this document and Recipient receives any payment from any insurer in respect to any claim made on the insurance policies and related to the loss or damage suffered by the Supplier, the Recipient will, from any insurance moneys and to the extent that the same may be insufficient, from its own moneys, compensate the Supplier for all of its loss or damage.

7. TERMINATION

7.1 Termination by the supplier

- (a) The Supplier may:
 - (i) Terminate this document upon the giving 30 day's written notice to the Supplier provided that:
 - (A) the Recipient has breached the terms of this document; and
 - (B) a period of 28 days has elapsed after the Recipient has been given written notice of the breach and the Recipient has failed to rectify the breach within five days.
 - (ii) Terminate this document at any time and for any reason by giving the Supplier six month's written notice at any time.
 - (iii) Terminate this document immediately on the occurrence of an Event of Default.
- (b) Upon termination of this document this under clause 7.1(a)(i), the Supplier, at its option, may:
 - (i) enforce issue court proceedings or take other legal action to enforce performance by the

Recipient of the applicable terms and provisions of the document or to recover damages for the breach concerned; or

- (ii) terminate the document or the Recipient's rights of possession and use of the any resources, documents or materials provided by the Supplier in the course of the provision of the Services.

7.2 Termination by the Recipient

The Recipient may terminate the agreement in respect of the Services, by giving 30 day's written notice to the Supplier provided that:

- (a) the Supplier has breached the terms of this document; and
- (b) a period of 28 days has elapsed after the Supplier has been given written notice of the breach and has failed to rectify the breach within 5 days.

7.3 Outstanding Purchase Orders

Upon termination of this document any Purchase Orders which have not been completed continue to be subject to the terms of this document as if it has not been terminated.

8. OBLIGATIONS OF THE PARTIES AFTER TERMINATION

- (a) Upon the termination of this document:
 - (i) the Supplier:
 - (A) will be entitled to retain the Fee and other moneys previously paid by the Recipient to the Supplier under this document;
 - (B) may recover from the Recipient the Fee and other moneys due and owing under this document; and
 - (C) may recover from the Recipient, any and all additional damages and expenses sustained by the Supplier by reason of such termination including a sum for reasonable legal costs (on a solicitor and own client basis) and expenses incurred by the Supplier in relation to enforcement advice or action; and
 - (ii) the Recipient must:
 - (A) deliver to the Supplier within two Business Days all information (including customer details and contacts) reasonably required by the Supplier to continue to provide the Services which have not yet been completed under Purchase Orders and under this document;
 - (B) continue to pay the Fee with respect to the Services until such time as each of the Services which have been agreed to be provided prior to termination, have been supplied.
- (b) Upon the exercise of any power or authority contained or implied in this document, no person dealing with the Supplier or any attorney appointed will be bound to enquire whether any Event of Default has occurred or as to the due appointment of any attorney or otherwise as to the propriety or regularity of the exercise of any power or authority hereunder, and any such person must not be affected by notice (express or otherwise) that any such exercise is unnecessary or improper and notwithstanding any irregularity or impropriety in the power or authority the exercise of it will, as regards the protection of other persons, be deemed authorised by that power and authority and will be valid and effectual accordingly.
- (c) Upon the termination of this document or the expiration of the Term, the Recipient will:
 - (i) pay any and all Fees owed by the Recipient to the Supplier in respect of the Services provided up to and including the time at which this document is terminated;
 - (ii) indemnify and continue to indemnify, the Supplier against any Claims made by the regulator or the Supplier (currently the

- Australian Skills Quality Authority), the Recipient or beneficiary or recipient of the Services delivered by the Supplier up to and including the time of termination of this document;
- (iii) where the Recipient terminates this document and the Services are provided under an auspice arrangement (as contemplated in the definition of Training Consulting and Training Delivery indemnify the Supplier for any Loss suffered by the Supplier whether as a result of any Claim from any person (including but not limited to the regulator or the Supplier (currently the Australian Skills Quality Authority), the Recipient or beneficiary or recipient of the Services delivered by the Supplier or creditors) as a result of the termination;
- (iv) at the Recipient's own cost and on reasonable notice from the Supplier, provide the Supplier, or a representative nominated by the Supplier, with access to all information about the Services being delivered by the Recipient; and
- (v) surrender possession of any resources, materials or documents in the Recipient's possession which have been provided by the Supplier.
- (d) Despite any other provision of this document, if:
- (i) this document is terminated by the Recipient or the Recipient suffers an Insolvency Event; and
- (ii) if the Supplier supplies Training Consulting or Training Delivery to the Recipient including under an auspice arrangement, which services have not been completed as at the date of termination,
- the Recipient must, on request by the Supplier:
- (iii) complete the obligations of the Supplier under the auspice arrangement (whether by the Recipient itself or by engaging an alternate registered training organisation), at no cost to the Supplier; or
- (iv) pay all costs and expenses of the Supplier to enable the Supplier to complete the services, based on the full fee prices of the Supplier as notified by the Supplier to the Recipient,
- and the Recipient:
- (v) indemnities the Supplier in respect of any cost, expense or other obligation which has or may be incurred, or has or may arise, as a result of:
- (A) the Recipient completing the Supplier's obligations under clause 8(d)(iii);
- (B) the Supplier completing the services under clause 8(d)(iv);
- (C) the termination of this document by the Recipient or as a consequence of the Recipient suffering an Insolvency Event;
- (vi) releases the Supplier in respect of any Claim which the Recipient may have against the Supplier including but limited to costs or expenses incurred by the Recipient in completing the Supplier's obligations under clause 8(d)(iii) or the Supplier completing the services under clause 8(d)(iv);
- (vii) pay any and all Fees owed by the Recipient to the Supplier in respect of the Services provided up to and including the time at which this document is terminated;
- (viii) indemnify and continue to indemnify, the Supplier against any Claims made by the regulator or the Supplier (currently the Australian Skills Quality Authority), the Recipient or beneficiary or recipient of the Services delivered by the Supplier whether before or after termination of this document;
- (ix) indemnifies the Supplier for any Loss suffered by the Supplier whether as a result

of any Claim from any person (including but not limited to the regulator or the Supplier (currently the Australian Skills Quality Authority), the Recipient or beneficiary or recipient of the Services delivered by the Supplier or creditors) as a result of the termination;

- (x) at the Recipient's own cost and on reasonable notice from the Supplier, provide the Supplier, or a representative nominated by the Supplier, with access to all information about the Services being delivered by the Recipient; and
- (xi) surrender possession of any resources, materials or documents in the Recipient's possession which have been provided by the Supplier.

9. REPRESENTATIONS AND COVENANTS

- (a) Any covenants of the Supplier and powers which may be implied in this document by virtue of or under any law for the time being in force in any place where any part of the Services may be performed during the term of this document do not apply to and must not be implied in this document, except insofar as:
- (i) such covenants and powers or some part or parts thereof are included in the covenants herein contained; and
- (ii) such covenants or powers are not capable of being excluded under any such law.
- (b) The Recipient affirmatively covenants as follows:
- (i) comply with all laws, regulations, rules, instructions and warranty requirements, and with the conditions and requirements of all policies of insurance relating to the Services;
- (ii) mark and identify any resources, documents or other materials with all information and in such manner as the Supplier or its assigns may request from time to time and replace promptly any such markings or identification that are removed, defaced, or destroyed.
- (c) The Recipient negatively covenants that it:
- (i) shall not voluntarily or involuntarily create, incur, assume, or suffer to exist any mortgage, lien, security interest, pledge or other encumbrance or attachment of any kind whatsoever upon, affecting or with respect to this document or the resources, documents and materials of the Supplier;
- (ii) shall not permit the name of any person, association or corporation other than the Supplier to be placed on the resources, documents or materials of the Supplier as a designation that might be interpreted as a claim of ownership or security interest;
- (iii) shall not part with possession or control of or suffer or allow to pass out of its possession or control any documents, resources or materials;
- (iv) shall not assign or in any way dispose of all or any part of its rights or obligations under this document.
- (d) The Recipient represents and warrants to and covenants with the Supplier, that at the date of this document, the execution, delivery or performance by the Recipient of the terms of this document does not:
- (i) breach, in any respect, any law, decree, rule or regulation or any determination, order or award of any court or any governmental, judicial or public body or authority applicable to the Recipient;
- (ii) cause any limitation (whether imposed by statute, decree, rule or regulation) on any of the powers of the Recipient or on its right or ability to exercise such powers to be exceeded; or
- (iii) conflict with or result in any breach of or require any consent or approval under any mortgage, agreement or other undertaking or instrument to which the Recipient is a party or which is binding upon it or any of its

assets, nor result in a mortgage, charge, lien or other encumbrance on any of its assets, other than in favour of the Supplier.

- (e) The Recipient further represents and warrants to and covenants that there is no subsisting Event of Default or event or occurrence which would, with the passage of time or the giving of notice or both, constitute an Event of Default.
- (f) The representations and warranties made by the Recipient pursuant to this clause 9 will be deemed to be repeated by the Recipient on and as of each Payment Date, as if made with reference to the facts and circumstances existing on each such date.
- (g) The Recipient must, throughout the Term:
 - (i) promptly and duly execute and deliver to the Supplier such further documents and assurances and take such further action as the Supplier may from time to time reasonably request in order more effectively to carry out the intent and purpose of this document; and
 - (ii) promptly following demand by the Supplier from time to time provide or procure the provision to the Supplier of a status report on the resources, materials and documents provided by the Supplier to the Recipient, containing such information as the Supplier may reasonably request (including their location, operation, use, insurance, registration, maintenance and condition).

10. PRIVACY

- (a) The Recipient:
 - (i) warrants to the Supplier that the Recipient has complied and continues to comply with the Recipient's obligations under the Privacy Act;
 - (ii) must provide to the Supplier, on demand, copies of the Recipient's policies, procedures and any other information or document which the Recipient is required to establish and maintain under the Privacy Act;
 - (iii) indemnifies the Supplier against, and will compensate the Supplier for, all Loss incurred by the Supplier as a direct or indirect result of any Claim against the Supplier in respect of the non-compliance with the Supplier (but only to the extent that the Supplier has relied on the representations, information and documents of the Recipient) or Recipient of any obligations under the Privacy Act.
- (b) For the purposes of this clause 10, the Supplier does not need to make a payment in order to establish that Loss has been incurred. It is sufficient if:
 - (i) a liability has arisen;
 - (ii) an amount has become payable;
 - (iii) an amount would be payable if the Supplier elected to rectify, repair or replace the Loss; or
 - (iv) Loss has been suffered in any other way.

11. DISCLAIMER

The Recipient:

- (a) acknowledges that the information provided to the Supplier prior to the signing of this document has not been verified or checked by the Supplier, or any of its representatives, or independently audited;
- (b) agrees that it has sought appropriate professional advice about this document and any affect that this document may have on the Recipient and the Recipient's business;
- (c) acknowledges that, subject to any Law to the contrary, and to the maximum extent permitted by Law, the Supplier, disclaims all liability for any Loss suffered by the Recipient in respect of the supply of the Services by the Supplier, whether or not the Loss arises in connection with any negligence, default or lack of care on the part of the Supplier or any other person or any misrepresentation or any other cause;
- (d) waives (to the maximum extent permitted by Law) all claims or rights of action against the Recipient in relation

to the supply of the Services to the Recipient by the Supplier;

- (e) agrees that the Supplier (to the extent permitted by Law) is not:
 - (i) subject to any express provision in this document to the contrary, makes or gives any representation, assurance or warranty, express or implied, in respect of the provision of the Services by the Supplier to the Recipient;
 - (ii) subject to any express provision in this document to the contrary, is under any obligation to notify the Recipient or any other person, or to provide any further information to the Recipient or any other person, if they or any of them become aware of an inaccuracy, incompleteness or change in the information, material, resources and documents provided by the Supplier;
 - (iii) (except so far as liability under any statute cannot be excluded) accepts responsibility arising in any way for errors in, or omissions from, the information, material, resources and documents provided by the Supplier, or in negligence;
 - (iv) accepts any liability for any Loss suffered by any person as a result of that person or any other person placing any reliance on any information, material, resources and documents provided by the Supplier; or
 - (v) assumes any duty of disclosure or fiduciary duty to any interested party.

12. CONFIDENTIALITY

12.1

Definitions

In this clause 12 these terms have these meanings:

Confidential Information means the following, whether written, electronic or in any other form:

- (a) the terms of this document;
- (b) the fact that this document exists;
- (c) all information and communications given by a party to another party in connection with this document;
- (d) correspondence, emails and facsimile transmissions of a party;
- (e) the content and subject matter of conversations between the parties;
- (f) information which is identified, whether orally or in writing, by a party as confidential;
- (g) information which a party ought to know is confidential;
- (h) information relating to a party's business interests, assets, methodology, processes, intellectual property, trade secrets, inventions and affairs, including:
 - (i) information about a party's officers, employees and agents;
 - (ii) information about a party's customers and suppliers;
 - (iii) manuals, policies, reports and decisions of a party;
 - (iv) strategies, forecasts and proposals of a party;
 - (v) advice, opinions or reports given by a party's professional advisers;
 - (vi) financial information of or about a party;
 - (vii) codes and passwords of a party used to access any thing;
- (i) information which would be of commercial value to a competitor of a party, or which if known by a competitor of a party, could be used to the commercial disadvantage of the party;
- (j) any thing created by a party which embodies or is derived from Confidential Information;
- (k) any thing created by a party in connection with this document;
- (l) all other information capable of protection in equity as confidential information;
- (m) all notes and records incorporating information referred to in (a) to (l) above; and
- (n) all copies of information referred to in (a) to (l) above,

but does not include information which is in the public domain. However, if Confidential Information enters the public domain because a party breached the terms of this document, it remains Confidential Information.

In this definition of 'Confidential Information', a reference to 'party' includes the party's officers, employees and agents.

Discloser means a party whose Confidential Information has been disclosed to, or come to the knowledge of, another party. A party may be a Discloser and a Recipient.

Purpose means fulfilling a party's obligations and exercising a party's rights under this document, and any other purpose permitted by this document.

Recipient means a party who has received disclosure of, or has knowledge of, Confidential Information of another party. A party may be a Recipient and a Discloser.

12.2 Restriction on disclosure and use of Confidential Information

Subject to clause 12.3, a Recipient:

- (a) may use Confidential Information only for the Purpose, and not for any other purpose;
- (b) must not copy or reproduce Confidential Information, unless necessary for the Purpose;
- (c) must not use Confidential Information to the commercial, financial or competitive disadvantage of the Discloser;
- (d) must not disclose Confidential Information to any person; and
- (e) must keep Confidential Information confidential.

12.3 Permitted disclosure of Confidential Information

- (a) A Recipient may disclose Confidential Information to:
 - (i) employees and officers of the Recipient, but only if:
 - (A) they have a need to know in connection with the Purpose; and
 - (B) they have agreed that Confidential Information must be kept confidential as required by this clause 12;
 - (ii) the Recipient's professional advisers for the purpose of obtaining advice in relation to this document, but only if those advisers are subject to a duty of confidentiality in favour of the Recipient;
 - (iii) a Government Authority, but only if:
 - (A) the Recipient is required by law to do so; or
 - (B) disclosure is necessary to obtain an approval, or do any thing, in connection with the Purpose; or
 - (iv) any other person, but only with the prior written consent of the Discloser. Consent may be given on terms determined by the Discloser.
- (b) Where Confidential Information has been disclosed by a Recipient under clause 12.3(a), the Recipient must:
 - (i) inform the person to whom disclosure was made that the Confidential Information is confidential; and
 - (ii) use reasonable endeavours to ensure that the person to whom disclosure was made complies with clause 12.2 as if that person were a Recipient.

12.4 Other rights and obligations

The rights and obligations contained in this clause 12 are in addition to the rights and obligations of the parties in respect of confidential information at common law or in equity.

12.5 Continuing obligation

This clause 12 survives termination or expiration of this document.

13. DISPUTE RESOLUTION

13.1 Disputes and court proceedings

If a Dispute arises the parties must comply with this clause 13 before commencing court, tribunal or arbitral proceedings (**Proceedings**) in respect of the Dispute.

13.2 Dispute Notice

- (a) A party (**Claimant**) claiming that a Dispute has arisen must give notice (**Dispute Notice**) to the other party (**Respondent**) in accordance with clause 13.2(b).
- (b) The Dispute Notice:
 - (i) must specify details of the matter in dispute;

- (ii) must specify the remedy or outcome the Claimant seeks;
- (iii) must state that it is given under this clause 13; and
- (iv) may state that the Dispute will be referred to mediation if it is not resolved within 14 days after the Dispute Notice is given.

13.3 Negotiation

If a Dispute Notice is given under clause 13.2, the parties must endeavour to resolve the dispute by agreement within 14 days after the Dispute Notice is given.

13.4 Outstanding dispute

If the Dispute is not resolved within 14 days after a Dispute Notice is given, the Dispute must be dealt with by mediation in accordance with clause 13.5.

13.5 Mediation

- (a) The parties must appoint, or cause to be appointed, a mediator for the mediation.
- (b) The parties may agree upon the appointment of a particular mediator.
- (c) If the identity of the mediator has not been agreed between the parties within seven days after one party notifies each other party of its preferred appointee, the parties or any one of them may request the President of the Queensland Law Society to appoint a mediator for the mediation.
- (d) If the mediator requires appointment by written agreement between the parties and the mediator, the parties will promptly execute that agreement.
- (e) The mediation will be conducted in Brisbane at a venue and time agreed to by the parties and the mediator. If the parties cannot agree on a venue and time, the mediator will nominate a venue and time and the parties are bound by the mediator's decision.
- (f) The mediator does not have authority to impose an award or settlement on the parties.
- (g) Each party must co-operate with, and promptly abide by any reasonable directions given by, the mediator in respect of the mediation.
- (h) If a party is an individual, that individual must attend the mediation. If the party is a company, a representative authorised by the company to settle the Dispute must attend the mediation.
- (i) Each party is entitled to bring to the mediation its legal representative and any other person with information or knowledge relevant to the resolution of the dispute. Unless the parties agree, at least seven days prior to the mediation each party must inform the mediator and the other parties who will be attending the mediation on its behalf.
- (j) During the mediation, the mediator may conduct joint and separate meetings with the parties if the mediator considers this appropriate.
- (k) The parties must keep all:
 - (i) communications made; and
 - (ii) information and documents disclosed or produced,
 during the mediation process (**Information**) confidential. A party may only use Information for the purposes of the mediation, and not for any other purpose.
- (l) During mediation, anything said or done by a party (including admissions and proposals for settlement) is said or done without prejudice and must not be produced in evidence by another party during Proceedings.
- (m) Documents created for the purpose of the mediation are privileged and:
 - (i) must not be produced in evidence; and
 - (ii) are not discoverable,
 in any Proceedings. Use or disclosure of such a document during mediation is not a waiver of privilege.
- (n) Clauses 13.5(k), 13.5(l) and 13.5(m) do not prevent a party:
 - (i) disclosing Information to its legal advisers, insurers and expert consultants, if necessary in connection with the Dispute, provided that they keep the Information confidential;
 - (ii) disclosing Information to another person if required by law;

- (iii) using Information for the purposes of performing its obligations under this document; or
 - (iv) if the Dispute is settled at mediation, producing the settlement agreement in evidence before a court for the purposes of enforcing the settlement agreement.
- (o) The parties are responsible in equal shares for:
- (i) costs payable to the mediator in connection with the mediation; and
 - (ii) incidental costs of the mediation, such as room hire.
 - (iii) If a party pays the mediator an amount which exceeds the share for which it is responsible, it may recover the excess as a debt from each other party in the appropriate shares.
- (p) Each party is responsible for its own costs in respect of the mediation, such as preparation, legal, consultant's and travel costs.
- (q) If the Dispute is resolved at the mediation the terms of settlement will be recorded in writing and signed by the parties or their representatives.
- (r) If the Dispute is not resolved within 60 days after it was referred to mediation, either party may terminate the mediation by notice to the other parties and the mediator. Once mediation is terminated in accordance with this clause 13.5(r), a party may commence Proceedings in respect of the Dispute.

13.6 Contract Performance

The parties will, to the extent practicable, continue to perform their obligations under this document while endeavouring to resolve the Dispute under this clause 13.

13.7 Injunctive Relief

Clause 13.1 does not prevent a party from commencing Proceedings for injunctive or interim relief where failure to obtain such relief would cause the party immediate and irreparable damage.

13.8 Termination

This clause 13 does not prevent a party from lawfully terminating this document.

13.9 Survival

This clause survives termination or expiration of this document.

14. INCONSISTENCY

In the event that the terms of a Purchase Order are inconsistent with the terms of this document, the terms of the Purchase Order will prevail to the extent of the inconsistency.

15. FORCE MAJEURE

The Supplier will make every effort to deliver the Services as required upon reasonable notice, but the Supplier shall not be held liable for loss or damage arising from late delivery or non-fulfilment of contract by reason of acts of God, fires, labour disturbances, strikes, delays in transportation, accidents, civil or military authority, or any other cause whatsoever which is unavoidable or beyond our reasonable control.

16. GST

- (a) All amounts payable under or in connection with this document are exclusive of GST.
- (b) A recipient of a taxable supply under or in connection with this document must pay to the supplier, in addition to the GST exclusive consideration for the taxable supply, an amount equal to any GST paid or payable by the supplier in respect of the taxable supply (**GST Amount**).
- (c) The recipient must pay the GST Amount to the supplier when the GST exclusive consideration or part of it is provided, except that the recipient need not pay the GST Amount unless the recipient has received a tax invoice (or an adjustment note) for that taxable supply.
- (d) Where a supplier incurs a cost or expense for which it may claim payment, reimbursement or indemnity from another party under or in connection with this document, the amount to be paid or credited to the supplier is the cost or expense (reduced by the input tax credit that the supplier is entitled to claim in respect of that cost or expense) plus the amount in respect of GST payable by the recipient.

17. NOTICES

- (a) A notice, demand, certificate, consent, approval, waiver or communication given under this document (**Notice**) must be:
 - (i) in writing, in English and signed by the party giving it, or by their agent; and
 - (ii) delivered or sent by prepaid post, email or fax to the party's address specified in the Details of Parties on page 1, or any other address notified by a party to the other party as its address for service.
- (b) A Notice given in accordance takes effect when received, or at a later time specified in it.
- (c) A Notice is taken to be received at the time specified below:
 - (i) if hand delivered – when delivered;
 - (ii) if sent by prepaid post – on the second Business Day after the date of posting (or on the tenth Business Day after the date of posting if posted to, or from, a place outside Australia);
 - (iii) if sent by email – when, under the *Electronic Transactions (Queensland) Act 2001* (Qld), an electronic communication is taken to be received;
 - (iv) if sent by fax – when the sender's fax system generates a message confirming successful transmission of the entire document.
- (d) However, if the time at which a Notice is taken to be received is not on a Business Day, or is after 5.00pm on a Business Day, it is taken to be received at 9.00am on the next Business Day.
- (e) A Notice is taken not to be received if:
 - (i) in the case of service by post, the Notice is returned to sender because the postal service was unable to deliver it;
 - (ii) in the case of service by email, the party sending the Notice receives an automated email response specifying that the email containing the Notice was undeliverable;
 - (iii) in the case of service by fax, the sender's fax system generates a message stating that transmission was unsuccessful, or the Notice is not received in full and legible form.

18. MISCELLANEOUS

18.1 Assignment

- (a) The Recipient may only dispose of, deal with, declare a trust over or otherwise create an interest in, its rights under this document with the prior consent of the Supplier.
- (b) Subject to clause 18.1(a), a party may dispose of, deal with, declare a trust over or otherwise create an interest in, its rights under this document without the consent of any other party.

18.2 Discretion in Exercising Rights and Giving Consents

A party may exercise a right or remedy or give or refuse its consent in any way it considers appropriate (including by imposing conditions), unless this document expressly states otherwise.

18.3 No Warranty by Giving Consent

By giving its approval or consent, a party does not make or give any warranty or representation as to any circumstance relating to the subject matter of the consent or approval.

18.4 No Liability for Loss

A party is not liable to another party for loss caused by the exercise or attempted exercise of, failure to exercise, or delay in exercising a right or remedy under this document.

18.5 Remedies Cumulative

The rights and remedies provided in this document are in addition to other rights and remedies given by law independently of this document, except to the extent that those other rights and remedies are expressly excluded in this document.

18.6 Exclusion of Contrary Legislation

Any legislation that diminishes the obligation of a party, or adversely affects the exercise by a party of a right or remedy, under or relating to this document is excluded to the full extent permitted by law.

18.7 Amendment

This document can only be amended, supplemented, novated or replaced by another document signed by the parties.

18.8 Waiver

A right under this document can only be waived by notice signed by the party or parties waiving the right. A party does not waive its rights under this document because it grants an extension or forbearance to any other party. A waiver of a right on one or more occasions does not operate as a waiver of that right if that right arises again. The exercise of a right does not prevent any further exercise of that right or of any other right. If a party does not exercise a right or remedy fully or at a given time, the party may still exercise it later.

18.9 No Merger

None of the rights and obligations of a party under this document merge:

- (a) on completion of any transaction contemplated by this document;
- (b) with any security interest, guarantee, judgement or other right or remedy that a party may hold at any time; or
- (c) as a consequence of anything done under this document,

and those rights and obligations at all times remain in full force and effect.

18.10 Survival of Rights and Obligations

The following survive termination or expiration of this document:

- (a) Rights accrued to a party up to the date of termination or expiration of this document.
- (b) Indemnities and obligations of confidence given by a party under this document.

18.11 No Payment Required to Claim Indemnity

It is not necessary for a party to incur expense or make payment before enforcing a right of indemnity under this document.

18.12 Entire Agreement

This document embodies the entire agreement between the parties and supersedes all previous agreements, understandings, negotiations, warranties and representations on the subject matter of this document. If this document is inconsistent with any other agreement between any of the parties (excluding the Purchase Order), this document prevails to the extent of the inconsistency.

18.13 Construction

No rule of construction applies to the disadvantage of a party because that party was responsible for the preparation of this document.

18.14 Severability

If the whole, or any part, of a provision of this document is void, unenforceable or illegal in a jurisdiction, it is severed for that jurisdiction. The remainder of this document has full force and effect, and the validity or enforceability of that provision in any other jurisdiction is not affected. This clause has no effect if the severance materially alters the nature or intended effect of this document.

18.15 Costs and Expenses

Each party will bear its own costs and expenses in relation to the negotiation, preparation, execution, delivery, registration and completion of this document and any related documentation.

18.16 Governing Law

This document is governed by the law in force in Queensland, Australia. Each party irrevocably submits to the non-exclusive jurisdiction of the courts exercising jurisdiction in Queensland, and any court that may hear appeals from any of those courts for any proceeding in connection with this document, and waives any right it may have to claim that those courts are an inconvenient forum.

18.17 Counterparts

This document may be executed in counterparts. All counterparts together are taken to constitute one instrument. A copy of this document which has been executed by a party (**Signatory**) may be relied upon by a party to the same extent as if it was an original of this document executed by the Signatory.