



BEST MIGRATION SERVICES GLOBAL PTY LTD

ABN 73 167 593 160

trading as IBA PARTNER

(Supplier)

and

[Recipient, hereinafter referred to as the "Recipient," may include any entity, person, or company obtaining services from the Supplier through this Supply Agreement.]

(Recipient)

INFORMATION TECHNOLOGY SUPPLY AGREEMENT



Table of Contents

INFORMATION TECHNOLOGY SUPPLY AGREEMENT	1
INFORMATION TECHNOLOGY SUPPLY AGREEMENT Agreement dated	1
PARTIES	1
RECITALS	1
PROVISIONS.....	1
THE PARTIES AGREE:	1
1 INTERPRETATION	1
1.1 Capitalised Definitions	1
1.2 Dictionary Definitions	7
1.3 Interpretational Rules	7
1.4 Performance	8
2 SERVICES SUPPLY	8
2.1 Supply and Acceptance	8
2.2 Contractual Relationship	8
2.3 Supply Licence	9
2.4 Supply Period Extension	9
3 SUPPLY SCOPE	10
3.1 Services Specification	10
3.2 Supply Contract Documents	10
4 SUPPLY PAYMENT	10
4.1 Recipient Liability	10
4.2 Payment Procedure	10
4.3 Recipient Payment	11
4.4 Disputed Claims	12
4.5 GST	13
5 SUPPLY PERFORMANCE	14
5.1 Performance Compliance	14
5.2 Supplier Decision	14
5.3 Support Services	15
5.4 Supplier Access	15
5.5 Deliverable Defects	15
5.6 Deliverable Errors	16



5.7	Force Majeure	16
6	SUPPLY DELIVERY	17
6.1	Delivery Performance	17
6.2	Acceptance Testing	17
6.3	Acceptance Criteria	17
6.4	Recipient Availability	17
6.5	Supplier Assistance	17
6.6	Supplier Participation	17
6.7	Acceptance Test Completion	17
6.8	Acceptance Notification	18
6.9	Rejection Notification	18
6.10	Acceptance Completion	18
6.11	Title Retention	18
7	SUPPLY VARIATION	19
7.1	Performance Variation	19
7.2	Services Variation	19
7.3	Deliverable Modification	20
8	REPRESENTATIONS	20
8.1	General Representations	20
8.2	Supplier Representation	21
9	SUPPLY LIABILITY LIMITATION	21
9.1	Support Disclaimer	21
9.2	Deliverable Use Acknowledgment	21
9.3	Defect Disclaimer	22
9.4	Representation Exclusion	22
9.5	Loss Disclaimer	22
9.6	Implied Terms Exclusion	22
9.7	Statutory Terms	22
9.8	Statutory Liability Limitation	23
10	RECIPIENT USE UNDERTAKINGS	23
10.1	Positive Undertakings	23
10.2	Negative Undertakings	24
11	INTELLECTUAL PROPERTY	25
11.1	Recipient Assets	25
11.2	Future Assets	26
11.3	Recipient Assurance	26



11.4	Licence Exclusion	26
12	CONFIDENTIALITY	26
12.1	Confidentiality Liability	26
12.2	Agency Disclosure	27
12.3	Agency Compliance	27
12.4	Permitted Exemptions	27
13	TERMINATION	27
13.1	Voluntary Termination	27
13.2	Recipient Default Termination	28
13.3	Supplier Default Termination	29
13.4	Notice Effect	29
13.5	Termination Effect	29
13.6	Recipient Remedies	29
13.7	Supplier Remedies	29
14	POST-TERMINATION LIABILITY	30
15	INDEMNITIES	30
15.1	Recipient Indemnity	30
15.2	Software Indemnity	30
16	DISPUTE RESOLUTION	32
16.1	Disputes	32
16.2	Dispute Negotiation	32
16.3	Urgent Relief	32
16.4	Continued Performance	33
17	COSTS	33
18	DUTIES	33
18.1	Payment	33
18.2	Indemnity	33
19	ASSIGNMENT	33
19.1	Supplier Assignment	33
19.2	Recipient Assignment	34
20	NOTICES	34
20.1	Form	34
20.2	Service Method	34
20.3	Receipt	34
20.4	Service Details	34



21	GOVERNING LAW AND JURISDICTION	35
21.1	Governing Law	35
21.2	Jurisdiction	35
21.3	Submission	35
22	GENERAL PROVISION	35
22.1	Amendments	35
22.2	Third Parties	35
22.3	Pre-Contractual Negotiation	35
22.4	Further Assurance	35
22.5	Continuing Performance	36
22.6	Waivers	36
22.7	Remedies	36
22.8	Severability	36
22.9	Counterparts	36
23	DICTIONARY	36
SCHEDULE 1: SUPPLY SPECIFICATION		47
SCHEDULE 2: SUPPLY PAYMENT.....		49
SCHEDULE 3: SUPPLY PERFORMANCE		50



INFORMATION TECHNOLOGY SUPPLY AGREEMENT

Agreement effective as of the date of acceptance of the T&C

PARTIES

- 1 **BEST MIGRATION SERVICES GLOBAL PTY LTD** ABN 73 167 593
160, trading as IBA Partner, a company registered in South Australia of Level
25, 108 St Georges Terrace, PERTH WA 6000 (“**Supplier**”); and
- 2 [Recipient, hereinafter referred to as the "Recipient," which may include any
entity, person, or company obtaining services from the Supplier through this
Supply Agreement.] (“**Recipient**”).

RECITALS

- A The Supplier performs the business activity of supplying computer software
deliverables comprising [a platform for the preparation and submission of
applications for visas of Australia] [a platform for the servicing of applicants for
visas of Australia] and associated support services.
- B The Recipient wishes to receive supplies of the deliverables and associated
support services from the Supplier upon and subject to the provisions of this
Agreement.

PROVISIONS

THE PARTIES AGREE:

1 INTERPRETATION

1.1 Capitalised Definitions

Meanings apply to capitalised terms used in this Agreement as specified in
this provision, unless the context otherwise requires:



“Acceptance Criteria” means the criteria to be applied in the performance of any Acceptance Test, as specified under the **caption Acceptance Criteria in schedule 1** (Supply Specification);

“Acceptance Notification Period” means the period specified under the **caption Acceptance Notification Period in schedule 1** (Supply Specification);

“Acceptance Period” means the period for performance by the Recipient of any Acceptance Test in relation to any Supply Deliverables following delivery by the Supplier to the Recipient, as specified under the **caption Acceptance Period in schedule 1** (Supply Specification), or any other period agreed at any time by the Supplier and the Recipient;

“Acceptance Test” means any test to be performed by the Recipient in relation to any Supply Deliverables following delivery by the Supplier to the Recipient, as specified under the **caption Acceptance Tests in schedule 1** (Supply Specification);

“Deliverable Modification” means any modification, alteration or variation to any Supply Deliverable by:

- (a) the Supplier at the request of the Recipient; or
- (b) with the prior written consent of the Supplier, the Recipient or any third person;

“Delivery Period” means the period following execution of this Agreement for delivery of the Supply Deliverables, as specified under the **caption Delivery Period in schedule 1** (Supply Specification);

“Extra Supply” means any extra, additional or supplementary supply by the Supplier to the Recipient at any time of any goods or services under any provision of this Agreement;

“Initial Supply Period” means the period commencing on the Supply Commencement Date and ending on the Initial Termination Date;

“Initial Termination Date” means the date when either party to this Agreement willing to terminate this Agreement;

“Modified Deliverable” means any Supply Deliverable subject to any Deliverable Modification effected in compliance with this Agreement;

“Payment Claim” means any written claim made, or to be made, by the Supplier to the Recipient requiring any Supply Payment under **clause 4** (Supply Payment);

“Payment Date” means the due date for payment of any Supply Payment by the Recipient to the Supplier under **clause 4** (Supply Payment), being:



- (a) in relation to any Supply Charge, the payment date or dates specified in relation to the Supply Charge under the **caption Supply Charge Payment**; and
- (b) in relation to any Service Charge, the last day of the period of days following the Supply Date of the Support Service for which that Service Charge is due, specified under the **caption Payment Date Period**,

in **schedule 2** (Supply Payment);

“**Performance Site**” means any business premises of the Recipient, as specified under the **caption Performance Site** in **schedule 3** (Supply Performance);

“**Recipient Agent**” means:

- (a) the Recipient;
- (b) any employee or agent employed or engaged by the Recipient; and
- (c) any director, secretary or chief or senior executive officer of the Recipient;

“**Service Charge**” in relation to any Support Service, means any amount calculated at the Service Charge Rate applicable to that Support Service, as specified under the **caption Service Charges** in **schedule 2** (Supply Payment);

“**Service Charge Rate**” in relation to any Support Service, means:

- (a) any price, fee, rate, charge or cost specified under the **caption Service Charges** in **schedule 2** (Supply Payment) for that Support Service; or
- (b) if not specified, chargeable at any reasonable standard or current rate by the Supplier at any time for the supply of equivalent services or goods in the normal performance of business activity;

“**Specification Document**” means:

- (a) any agreement or document specified under the **caption Specification Documents** in **schedule 1** (Supply Specification); and
- (b) any other agreement or document agreed at any time by the parties to be a specification document for the purposes of this Agreement;

“**Specified Deliverable**” means any goods or services specified under the **caption Specified Deliverables** in **schedule 1** (Supply Specification);



“Specified Equipment” means any equipment specified under the **caption Specified Equipment** in **schedule 1** (Supply Specification);

“Specified Information” means any confidential information held by, or connected with, the Supplier, as specified under the **caption Specified Information** in **schedule 3** (Supply Performance);

“Specified Rate” means interest at any rate specified under the **caption Specified Interest Rate** in **schedule 2** (Supply Payment);

“Specified Service” means any service or goods supplied, or to be supplied, by way of maintenance, support, assistance or training relating to any Supply Deliverable, as specified under the **caption Specified Services** in **schedule 1** (Supply Specification);

“Supplier Agent” means:

- (a) the Supplier;
- (b) any related entity or associate entity of the Supplier;
- (c) any employee or agent employed or engaged by the Supplier or any related entity or associate entity of the Supplier; and
- (d) any director, secretary or chief or senior executive officer of the Supplier or any related entity or associate entity of the Supplier;

“Supplier Direction” means any lawful direction, regulation or requirement of the Supplier relating to the performance of this Agreement, as notified in writing at any time by the Supplier to the Recipient;

“Supplier Information” means:

- (a) any confidential information comprising Specified Information;
- (b) any other confidential information which at any time is in the knowledge or possession of the Supplier relating to any business activity of the Supplier disclosed by any Supplier Agent to, or otherwise obtained or received by, any Recipient Agent; and
- (c) the fact of the creation of this Agreement or any present or future provision of or action under this Agreement;

“Supply Charge” in relation to any Supply Deliverable, means the lump sum amount, or periodic amount, including any amount payable upon extension of the Supply Period under **clause 2.4** (Supply Period Extension), as specified under the **caption Supply Charge Payment** in **schedule 2** (Supply Payment) as the price, fee, rate, charge or cost for that Supply Deliverable;



“Supply Commencement Date” means the date of acceptance of the Terms & Condition by the Recipient;

“Supply Contract Document” means each of:

- (a) this Agreement; and
- (b) each Specification Document;

“Supply Date” means:

- (a) in relation to any Supply Deliverable, the date of delivery of actual possession of that Supply Deliverable by the Supplier to the Recipient; and
- (b) in relation to any Support Service, the date of actual performance of that Support Service by the Supplier;

“Supply Deliverable” means:

- (a) any Specified Deliverable;
- (b) any Modified Deliverable; and
- (c) any goods or services supplied, or to be supplied, at any time under this Agreement by the Supplier in compliance with any Supply Variation in effect at that time;

“Supply Documentation” means:

- (a) any Specification Document; and
- (b) any other document containing information or instructions relating to the use and operation of the Supply Deliverables;

“Supply Licence Area” means the area specified under the **caption Supply Licence Area in schedule 1** (Supply Specification);

“Supply Payment” in relation to any Supply Service, means the consideration for the supply by the Supplier of that Supply Service, including:

- (a) the Supply Charge; and
- (b) the Service Charge,

in each case as varied at any time under any provision of this Agreement or any other agreement between the parties;

“Supply Period” means:



- (a) the Initial Supply Period; and
- (b) that period as extended at any time under **clause 2.4** (Supply Period Extension);

“Supply Purpose” means the purpose specified under the **caption Supply Purpose** in **schedule 1** (Supply Specification);

“Supply Service” means:

- (a) any Supply Deliverables; and
- (b) any Support Service;

“Supply Specification” means any written specification for the supply of goods or services to be supplied by the Supplier to the Recipient under this Agreement, comprising:

- (a) **schedule 1** (Supply Specification);
- (b) any Supply Documentation; and
- (c) any Supply Variation;

“Supply Termination Date” means the later of:

- (a) the Initial Termination Date; and
- (b) any subsequent date of termination of this Agreement as extended under **clause 2.4** (Supply Period Extension);

“Supply Variation” means any variation or addition to or deletion of any Specified Deliverable, Modified Deliverable or Specified Service, or any variation or addition to or deletion of any previous variation, addition or deletion, under any provision of this Agreement;

“Support Service” means:

- (a) any Specified Service;
- (b) any Extra Supply; and
- (c) any service or goods supplied, or to be supplied, at any time under this Agreement in compliance with any Supply Variation in effect at that time; and

“Warranty Period” means the period of 90 days commencing on the date of this Agreement.



1.2 Dictionary Definitions

Meanings apply to words and expressions used in this Agreement as specified in **clause 23** (Dictionary), unless the context otherwise requires.

1.3 Interpretational Rules

Rules of interpretation apply to this Agreement as specified in this provision, unless the context otherwise requires:

- (a) **(headings)**: headings and subheadings are for convenience only and do not affect interpretation;
- (b) **(plurality)**: words denoting the singular number include the plural, and the converse also applies;
- (c) **(gender)**: words denoting any gender include all genders;
- (d) **(variants)**: a defined word or expression has corresponding effect in relation to its other grammatical forms;
- (e) **(parties)**: any reference to a party to any agreement or document includes its executors, administrators, legal personal representatives, successors and permitted assigns and substitutes by way of assignment or novation;
- (f) **(amendments)**: any reference to any agreement or document includes that agreement or document as amended, ratified, supplemented, novated or replaced at any time;
- (g) **(provisions)**: any reference to a provision, comprising a clause, schedule, annexure, exhibit or attachment, is a reference to a provision of this Agreement, including each clause, subclause, paragraph and subparagraph of that provision, and any reference to this Agreement includes all provisions of this Agreement;
- (h) **(legislation)**: any reference to any legislation includes a reference to that legislation as amended, re-enacted, consolidated or replaced at any time;
- (i) **(inclusions)**: the words “**include**”, “**including**”, “**for example**”, and similar expressions are used without limitation;
- (j) **(components)**: any reference to any whole or collective item includes any part of that item;
- (k) **(time)**: the expression “**at any time**” includes reference to past, present and future time and the performance of any action from time to time and any liability at all times during any specified period; and



- (l) **(liability)**: any liability, representation or warranty undertaken by, or right conferred on, 2 or more persons binds or benefits all of those persons jointly and each of them severally.

1.4 Performance

Any action required to be performed under any provision of this Agreement on or before a day which is not a business day must be performed on or before the immediately following business day.

2 SERVICES SUPPLY

2.1 Supply and Acceptance

The Supplier must perform and the Recipient must accept the Supply Services during the Supply Period for the Supply Payment upon and subject to the provisions of this Agreement.

2.2 Contractual Relationship

- (a) **(Independent contractor)**: The Supplier acts in the capacity of an independent contractor, as between the Supplier and the Recipient, in the performance of the Supply Services or any liability under this Agreement.
- (b) **(Exclusions)**: This Agreement does not create, and must not be construed to create, any express or implied relationship between the Recipient and the Supplier of:
 - (i) employment;
 - (ii) principal and agency;
 - (iii) partnership; or
 - (iv) joint venture.
- (c) **(Contractual freedom)**: Subject to clause 2.2(d), this Agreement does not prohibit any party from executing any agreement with any third person relating to the supply or acquisition of goods or services, whether in the nature of or similar to the Supply Services or otherwise, as decided by that party, subject to compliance with any liability of that party under any other provision of this Agreement.
- (d) **(Restraint of Trade)**: Notwithstanding any other provision of this Agreement, the Recipient must not:
 - (i) supply or acquire any goods or services which is in the nature of or similar to the Supply Services; or



- (ii) supply, perform or deliver any product or service which is, or is similar to or associated with, the preparation and submission of applications for visas (of any country) or the servicing of applicants for visas (of any country),

other than pursuant to this Agreement and through the platform provided by the Supplier during the Supply Period or within a 2 year period after the end of the Supply Period.

2.3 Supply Licence

The Supplier grants to the Recipient a non-exclusive, irrevocable and non-transferable licence to possess and use the Supply Deliverables and the Supply Documentation at any time during the Supply Period within the Supply Licence Area for the Supply Purpose. The Recipient acknowledges and agrees that the Recipient may not use the Supply Deliverables or the Supply Documentation for the provision of any service or product that is not in the Supply Licence Area.

Supply Period Extension

- (a) **(Requested extension):** The Recipient may in its decision request the extension of the Supply Period for a period equal to the Initial Supply Period beyond the Supply Termination Date by written notice to the Supplier given no later than 30 days before the Supply Termination Date.
- (b) **(Supplier response):** The Supplier must, following receipt of the extension request of the Recipient, notify the Recipient in writing whether the Supplier accepts or rejects that extension request.
- (c) **(Supplier acceptance):** The Supply Period is extended for a period equal to the Initial Supply Period commencing from the then current Supply Termination Date, in the event of the notified acceptance by the Supplier of the extension request of the Recipient, upon and subject to the provisions of this Agreement.
- (d) **(Payment terms):** Any new Supply Payment specified under the **caption Extension Period Payments in schedule 2** (Supply Payment) applicable to the period of the extension request, or otherwise agreed between the parties, applies instead of the then current Supply Payment.
- (e) **(Requested extension failure):** This Agreement terminates upon the then current Termination Date, in the event that the parties fail to agree to any extension, or any proposed new Supply Payment applicable following extension, of the Supply Period.
- (f) **(Termination rights):** This provision does not prejudice or restrict any right of termination of any party under **clause 13** (Termination).



3 SUPPLY SCOPE

3.1 Services Specification

The Supplier must supply to the Recipient under this Agreement goods, whether in the nature of equipment, inventory or materials, services or mixed goods and services comprising the Supply Services, including:

- (a) **(initial equipment)**: the Supply Deliverables;
- (b) **(modified equipment)**: any Modified Deliverables;
- (c) **(support services)**: the Specified Services; and
- (d) **(variations)**: goods or services to be supplied at any future time in compliance with any Supply Variation or other provision of this Agreement.

3.2 Supply Contract Documents

- (a) **(Conflict)**: The provisions of each Specification Document are incorporated into this Agreement and prevail over any provision of this Agreement not comprising a Specification Document in the event of any conflict.
- (b) **(Interpretation)**: No Supply Contract Document must be interpreted or construed to the prejudice or disadvantage of any party by reason only that that Supply Contract Document was drafted, prepared, or proffered or delivered to the other party, by that party, or any employee or agent of that party.

4 SUPPLY PAYMENT

4.1 Recipient Liability

The Recipient is liable to pay to the Supplier:

- (a) **(supply deliverables)**: the Supply Charge for any Supply Deliverables; and
- (b) **(support services)**: the Service Charge for any Support Service, as the Supply Payment for that Supply Service in compliance with this provision.

4.2 Payment Procedure

- (a) **(Payment claim)**: The Supplier must deliver to the Recipient a Payment Claim for any Supply Payment due by the Recipient to the Supplier under this Agreement.



- (b) **(Claim period):** The Supplier may present a Payment Claim:
 - (i) in relation to any Supply Deliverables, not earlier than 30 business days before the Payment Date; and
 - (ii) in relation to any Support Services, not earlier than the date of the month next following the applicable Supply Date specified under the **caption Payment Claim Period in schedule 2** (Supply Payment).
- (c) **(Claim details):** Any Payment Claim must specify:
 - (i) that it is a GST tax invoice;
 - (ii) the ABN of the Supplier;
 - (iii) the Supply Services for which the Supply Payment is due;
 - (iv) the Supply Dates for those Supply Services;
 - (v) the aggregate total amount of the claim for the Supply Payment;
 - (vi) any other amount then due and payable to the Supplier; and
 - (vii) the GST amount comprised in the total amount of the Payment Claim.
- (d) **(Tax invoice compliance):** The Payment Claim must comply with any GST law relating to the form or content of GST tax invoices, in addition to any other requirement of this provision.
- (e) **(Information):** The Supplier must promptly upon request by the Recipient provide any documentary evidence or other information reasonably requested by the Recipient to substantiate or verify any Payment Claim.

4.3 Recipient Payment

- (a) **(Payment):** The Recipient agrees that any and all payments by clients or customers of the Recipient will be made directly to the Supplier and, such amounts will include the Recipient's fees, Supply Payments and other amounts. The Supplier must pay to itself any Supply Payment on the later of the Payment Date applicable to that Supply Payment and the date being 10 business days after receipt of the Payment Claim for that Supply Payment. The Supplier must pay any amount due to the Recipient (after deduction of any and all other amounts due to third parties) after the payment to the Supplier is made.



- (b) **(Client refunds):** The Recipient agrees that, if, in the event a client or customer of the Recipient is entitled to a refund of any amounts they have paid to the Supplier and the client or customer of the Recipient receives the refund from the Supplier or the Supplier's bank, then the Recipient must pay upon demand to the Supplier an amount equal to the Supply Payment, any loss or damage suffered by the Supplier and any other amounts due to the Supplier in relation to the client or customer of the Recipient. The Recipient agrees that the forementioned payment can be made at the discretion of the Supplier by the Supplier withholding any amounts due to the Recipient during the next billing cycle or when the next payment is due to be made by the Supplier to the Recipient.
- (c) **(Dispute between Recipient and Recipient's client or customer):** The Recipient agrees that any dispute between the Recipient and the Recipient's client or customer does not have any effect on this Agreement or any arrangement between the Recipient and the Supplier. The Recipient remains fully liable for all of its obligations under this Agreement notwithstanding any dispute between the Recipient and the Recipient's client or customer.
- (d) **(Interest):** The Recipient must pay interest on any Supply Payment or other amount that is not paid on or before the due Payment Date for that Supply Payment at the Specified Rate, to accrue from day to day from the due date up to and including the actual date of payment in full.
- (e) **(Method):** Any payment to be made by any party under this Agreement must be made by electronic funds transfer or any other manner agreed between the Supplier and the Recipient.

4.4 Disputed Claims

- (a) **(Dispute application):** This provision applies to any Payment Claim where the Recipient disputes the total or any partial amount of the Supply Payment by the Supplier claimed in that Payment Claim ("**disputed claim**").
- (b) **(Dispute notification):** The Recipient must in relation to any disputed claim:
 - (i) notify the Supplier of the disputed claim within the period following receipt by the Recipient of that Payment Claim specified under the **caption Disputed Claims Period in schedule 2** (Supply Payment);
 - (ii) specify in reasonably sufficient detail the reasons of the Recipient for the disputed claim; and



- (iii) pay any undisputed amount of the Payment Claim in compliance with this provision.
- (c) **(Consultation):** Each party must promptly consult and cooperate with the other party to resolve any disputed claim.
- (d) **(Dispute resolution process):** The provisions of **clause 16** (Dispute Resolution) apply in the event that the parties fail to resolve the disputed claim within the period following notification of the disputed claim specified under the **caption Disputed Claim Resolution Period in schedule 2** (Supply Payment).
- (e) **(Interest):** The Recipient must pay interest under **clause 4.3** (Recipient Payment) as from the due Payment Date in relation to the amount of any disputed claim, in the event that amount is resolved or decided under this Agreement to have been properly payable by the Recipient to the Supplier as at that Payment Date.

4.5 GST

- (a) **(GST inclusive pricing):** Any Supply Payment calculated under this Agreement is GST inclusive.
- (b) **(Supplier liability):** Any GST liability resulting from or in relation to any supply of any Supply Service by the Supplier, or any Supply Payment by the Recipient, is the sole liability of the Supplier, to the exclusion of the Recipient.
- (c) **(Escalation exclusion):** The Recipient is not under any circumstance liable for payment of any GST, or to increase or escalate any Supply Payment because of any GST liability of the Supplier, resulting from any supply of any Supply Service by the Supplier or payment of any Supply Payment by the Recipient.
- (d) **(Indemnity):** The Supplier must at any time indemnify the Recipient against any loss incurred by the Recipient resulting from any liability of the Recipient for GST connected with:
 - (i) the execution, performance, continuation or administration of this Agreement;
 - (ii) any purchase, use, possession, repair, rectification, reinstatement, improvement or sale of, or other dealing or action relating to, any right or property connected with this Agreement;
 - (iii) the carrying on of any business activity connected with, and to the extent of, any supply under this Agreement; or



- (iv) any penalty or interest payable by the Recipient for late payment of GST because of any default under any provision of this Agreement by the Supplier.
- (e) **(Input tax credits):** The Supplier must at any time deduct from any cost which:
 - (i) has been incurred by the Supplier in connection with this Agreement or any Supply Service;
 - (ii) is reimbursable, wholly or partly, by the Recipient to the Supplier under this Agreement; and
 - (iii) includes any GST payable by any supplier of any supply to the Supplier comprised in the cost amount payable by the Recipient, the amount of any input tax credit to which the Supplier is entitled for any acquisition connected with that cost or, as applicable, to the extent of the relevant part of that cost.
- (f) **(Legal compliance):** Each party must at any time comply with any GST law in performing this Agreement.
- (g) **(Tax invoices):** The Supplier must, upon request by the Recipient, issue to the Recipient tax invoices in proper form and in compliance with any GST law connected with any supply of any right, property or services by the Supplier under this Agreement.
- (h) **(Assistance):** The Supplier must at any time perform any action, including provision of any copy invoice and other documents, information and assistance in form and content sufficient, to enable the Recipient to verify or calculate any input tax credit or other fact relating to any supply or acquisition of any right, property or services under or connected with this Agreement.

5 SUPPLY PERFORMANCE

5.1 Performance Compliance

The Supplier must perform the Supply Services in compliance with:

- (a) **(contract):** this Agreement; and
- (b) **(specification):** the Supply Specification.

5.2 Supplier Decision

The Supplier may decide the most appropriate and effective method of performance of the Supply Services, subject to performance of any other liability of the Supplier under this Agreement.



5.3 Support Services

- (a) **(Recipient request):** The Supplier must perform the Support Services upon request at any time by the Recipient or otherwise as specified in this Agreement.
- (b) **(Timing):** The Supplier may supply the Support Services on any business day and during any business hours as the Supplier decides to be necessary and appropriate for performance of its liability under this Agreement, subject to compliance with any performance period specified under the **caption Performance Criteria in schedule 3** (Supply Performance).
- (c) **(Specific responses):** The Supplier is not liable to attend at any Performance Site at any specific time, despite any request by the Recipient, except to the extent specified under the **caption Performance Criteria in schedule 3** (Supply Performance).

5.4 Supplier Access

The Recipient must assist the Supplier at any time during the continuance of this Agreement in any reasonable manner that the Supplier decides to be necessary to perform the Supply Services, including the provision of:

- (a) **(access):** full and safe access to any Performance Site, including any necessary security clearance;
- (b) **(facilities):** facilities, services and accessories;
- (c) **(information):** information and advice to any Supplier Agent on any supply, access, security procedure or other requirement or matter within the knowledge and control of the Recipient; and
- (d) **(personnel):** attendance by an appropriately authorised, qualified, informed and instructed Recipient Agent at the time of performance by any Supplier Agent on any Supply Date.

5.5 Deliverable Defects

- (a) **(Defect notification):** The Recipient may notify the Supplier at any time during the Warranty Period that the Recipient decides that there is any defect in any Supply Deliverables in default under **clause 8.2** (Supplier Representation), because the Supply Deliverables are not, or cannot be used, in compliance with the Supply Specification.
- (b) **(Supplier investigation):** The Supplier must promptly investigate any notified defect.
- (c) **(Supplier rectification):** The Supplier must within a reasonable time following investigation rectify or remedy any verified defect, at the full cost of the Supplier in all respects.



- (d) **(Recipient cost):** The Recipient is liable to the Supplier, as an Extra Supply, for any cost incurred by the Supplier resulting from any defect investigation by the Supplier, which ascertains that no defect in fact exists, calculated in compliance with this Agreement.

5.6 Deliverable Errors

- (a) **(Error notification):** The Recipient may notify the Supplier at any time during the continuance of this Agreement of any material error in the Supply Deliverables in default under **clause 8.2** (Supplier Representation).
- (b) **(Supplier rectification):** The Supplier must within a reasonable time following notification, at the full cost of the Supplier in all respects:
 - (i) rectify or remedy any notified material error;
 - (ii) provide any necessary training to the Recipient connected with that rectification or remedy;
 - (iii) procure continued compliance of the Supply Deliverables with the Supply Specification; and
 - (iv) make any necessary amendment to the Supply Documentation connected with that rectification or remedy.

5.7 Force Majeure

- (a) **(Liability exclusion):** Neither party is liable to the other party for any loss incurred by that other party as a direct result of either party failing or being prevented, hindered or delayed in the performance of its liability under this Agreement by reason of a force majeure event.
- (b) **(Notification):** The party affected by a force majeure event must as soon as practicable notify the other party in writing of any anticipated delay due to that force majeure event and use all reasonable endeavours to perform its liability under this Agreement.
- (c) **(Termination):** Either party may terminate this Agreement immediately on providing written notice to the other, if the delay due to the force majeure event continues for a period in excess of the period of days from the date of notification specified under the **caption Force Majeure Period in schedule 3** (Supply Performance).
- (d) **(Refund):** The Supplier must refund to the Recipient any Supply Payment paid by the Recipient under this Agreement for any unperformed Supply Services, in the event of termination under this provision before any Supply Date of those Supply Services.



6 SUPPLY DELIVERY

6.1 Delivery Performance

- (a) **(Timing):** The Supplier must deliver the Supply Deliverables and the Supply Documentation to, and if necessary, install the Supply Deliverables at, the Performance Site between the hours of 9.00 am to 4.00 pm on any business day during the Delivery Period or as otherwise agreed between the Supplier and the Recipient.
- (b) **(Cost):** The Supply Payment is inclusive of, and without liability by the Recipient for, any additional or separate delivery cost, except where specified under the **caption Delivery and Installation Costs in schedule 2** (Supply Payment).

6.2 Acceptance Testing

The Recipient must perform any Acceptance Test following delivery of the Supply Deliverables within the Acceptance Period in compliance with the Acceptance Criteria.

6.3 Acceptance Criteria

The Recipient is liable for the preparation, reliability and effectiveness of any data, methodology or process for any Acceptance Test, as specified in or relevant to the Acceptance Criteria.

6.4 Recipient Availability

The Recipient must procure that a Recipient Agent, being duly authorised and properly qualified, informed and instructed, is available at the time of delivery of any Supply Deliverables to receive delivery and give any instruction necessary for prompt commencement of any Acceptance Test.

6.5 Supplier Assistance

The Supplier must provide all reasonable cooperation and assistance to the Recipient to enable the Recipient to perform any Acceptance Test.

6.6 Supplier Participation

The Supplier is entitled to observe and, to the extent reasonable, participate in the performance of any Acceptance Test.

6.7 Acceptance Test Completion

The Recipient must upon request by the Supplier provide a written test notification to the Supplier specifying:

- (a) **(summary):** a written summary of any Acceptance Test; and
- (b) **(results):** the results achieved from that Acceptance Test.



6.8 Acceptance Notification

The Recipient must notify the Supplier within the Acceptance Notification Period following expiry of the Acceptance Period that the Recipient has:

- (a) **(acceptance)**: accepted delivery of any Supply Deliverables, in the event of satisfactory completion of any Acceptance Test; or
- (b) **(rejection)**: rejected delivery of any Supply Deliverables, in the event of:
 - (i) delivery of Supply Deliverables which are not in good order and condition; or
 - (ii) unsatisfactory completion of any Acceptance Test.

6.9 Rejection Notification

The Recipient must in any rejection notice provide instructions to the Supplier relating to the removal, replacement, modification, rectification, remedy or redelivery of any rejected Supply Deliverables.

6.10 Acceptance Completion

The Recipient must be treated as having accepted delivery of any Supply Deliverables in the event that the Recipient:

- (a) **(original delivery)**: notifies the Supplier that the Recipient has accepted the Supply Deliverables in compliance with this provision;
- (b) **(replacement delivery)**: notifies the Supplier that the Recipient has accepted any rejected Supply Deliverables following replacement, modification, rectification, remedy or redelivery by the Recipient in compliance with any instruction by the Supplier;
- (c) **(test failure)**: fails to perform any Acceptance Test within the Acceptance Period for any reason, except for any delay resulting from any action of the Supplier; or
- (d) **(notification failure)**: fails to notify to the Supplier delivery rejection of the Supply Deliverables within the Acceptance Notification Period.

6.11 Title Retention

The Supplier at any time retains the full, absolute and entire legal and beneficial right, title and interest to or in any Supply Deliverable or Supply Documentation, including:

- (a) **(codes)**: the source code and object code; and
- (b) **(upgrades)**: any modification, update or new release,



of any Supply Deliverable.

7 SUPPLY VARIATION

7.1 Performance Variation

- (a) **(Performance difficulty):** The Recipient is liable to pay to the Supplier, as an Extra Supply, any cost incurred by the Supplier resulting from:
 - (i) any delay in delivery or installation of any Supply Deliverables;
 - (ii) any change in timing or complexity, or any fact affecting performance, of any Supply Service by the Supplier, which could not be reasonably anticipated or associated by the Supplier in relation to or with the performance or supply of any goods or services similar to that Supply Service,for any reason of any nature or description, excluding any default by the Supplier under this Agreement.
- (b) **(Payment increase):** The Supplier may increase the Supply Payment for any Extra Supply under this provision by an amount calculated in compliance with this Agreement.

7.2 Services Variation

- (a) **(Variation request):** Any party may at any time during the Supply Period by written notice propose to the other party any variation to the Supply Services or Supply Specification.
- (b) **(Variation details):** The party proposing any variation must specify details of the variation in the variation notice.
- (c) **(Supply adjustments):** The Supplier must promptly notify the Recipient of:
 - (i) any increase in the Supply Payment; or
 - (ii) delay in delivery of Supply Deliverables or performance of any other Service Supplies,assessed by the Supplier in, or in response to, any variation notice.
- (d) **(Variation response):** The party receiving any variation notice must within the period specified under the **caption Variation Response Period in schedule 3** (Supply Performance) notify the proposing party that the recipient party approves, rejects or requires any variation to or additional information or explanation relative to any proposed variation.



- (e) **(Consultation):** Each party must reasonably consult with and cooperate with the other party to resolve and adopt any variation proposal by mutual agreement.
- (f) **(Variation document):** Any variation agreed under this provision must be effected by a variation document created and executed by the parties.
- (g) **(Variation failure):** Each party must continue to perform this Agreement in compliance with its then current provisions, in the event of any failure by the parties to agree to any variation proposal or variation document.

7.3 Deliverable Modification

- (a) **(Recipient liability):** The Recipient has the sole liability for any cost resulting from or connected with any Deliverable Modification or the investigation or testing of any proposed Deliverable Modification.
- (b) **(Supplier cost):** The Recipient is liable to the Supplier, as an Extra Supply, for any cost incurred by the Supplier in performing any Deliverable Modification requested by the Recipient.
- (c) **(Recipient indemnity):** The Recipient must indemnify the Supplier at any time against any loss incurred by the Supplier resulting from any Deliverable Modification for any reason, including any infringement of any intellectual property of any third person.
- (d) **(Title retention):** The Supplier at any time retains the full, absolute and entire legal right, title and interest to or in any Modified Deliverable, whether effected by a Deliverable Modification in compliance with this Agreement or otherwise.
- (e) **(Recipient assurance):** The Recipient must at any time upon request by the Supplier execute any document and perform any action necessary or desirable to transfer to the Supplier any intellectual property in any Deliverable Modification.

8 REPRESENTATIONS

8.1 General Representations

Each party represents and warrants to the other party as an accurate statement that as at the date of this Agreement:

- (a) **(corporate status):** that party is a corporation duly incorporated and validly existing under the law of the country or jurisdiction of its incorporation or registration;



- (b) **(corporate powers)**: that party has the corporate power to own its assets and perform any business activity as contemplated at any time by this Agreement;
- (c) **(legal compliance)**: the execution or performance of this Agreement by that party does not contravene any provision of:
 - (i) the constitution of that party;
 - (ii) any agreement created by that party;
 - (iii) any law; or
 - (iv) any governmental consent relating to that party or its assets;
- (d) **(corporate compliance)**: that party has full power, and has procured all corporate consents, for the execution by that party of this Agreement, which has been executed in compliance with its constitution and any applicable law; and
- (e) **(solvency)**: no insolvency event has occurred and continues in relation to that party.

8.2 Supplier Representation

The Supplier represents and warrants to the Recipient, subject to **clause 9** (Supply Liability Limitation), that the Supply Deliverables will operate in compliance with the Supply Specification at any time during the Warranty Period.

9 SUPPLY LIABILITY LIMITATION

9.1 Support Disclaimer

The Supplier does not at any time during the Supply Period have any liability to provide to the Recipient any support or support service of or in relation to any Supply Deliverable, whether by way of advice, training, rectification or remedy of any error or defect, maintenance, modification, alteration, variation, update, enhancement or new release, except where the Supply Specification or this Agreement expressly provides to contrary effect.

9.2 Deliverable Use Acknowledgment

The Recipient expressly agrees with the Supplier that at any time during the Supply Period:

- (a) **(use responsibility)**: the Recipient has sole and exclusive liability for the use, supervision, management, control and security of the Supply Deliverables; and



- (b) **(information)**: the Supply Documentation contains sufficient information for the adequate use by the Recipient of the Supply Deliverables, except where the Supplier has notified the Recipient of any fact, defect or variation decided by the Supplier to be necessary for the proper use of the Supply Deliverables.

9.3 Defect Disclaimer

The Supplier is not liable at any time under or in relation to this Agreement for any defect in any Supply Deliverable resulting from any action or omission by the Recipient or any third person, including any failure to maintain the operating environment specified in, or use of that Supply Deliverable in compliance with, the Supply Specification or Supply Documentation for the Supply Purpose.

9.4 Representation Exclusion

The Recipient expressly agrees with the Supplier that for the purposes of the creation of this Agreement:

- (a) **(non-reliance)**: the Recipient has not relied upon any representation or warranty by the Supplier; and
- (b) **(independent assessment)**: the Recipient has made its own independent assessment of any information connected with or relevant to this Agreement or the performance of the Supply Services and relied exclusively upon that assessment,

except for any representation or warranty by the Supplier under **clause 8.2** (Supplier Representation).

9.5 Loss Disclaimer

The Supplier is not liable at any time during or after the Supply Period for any loss incurred by the Recipient resulting from any supply by the Supplier of any Supply Services or any failure by the Supplier to perform any liability of the Supplier under this Agreement.

9.6 Implied Terms Exclusion

Any agreement that would be implied into this Agreement by any law is excluded, to the fullest extent permitted by law.

9.7 Statutory Terms

This Agreement contains any agreement as an implied provision to the extent that its implication is compelled by any law, despite anything in this provision to contrary effect.



9.8 Statutory Liability Limitation

The liability of the Supplier for any default under any implied agreement compelled by any law is limited in the event of any default, in the decision of the Supplier:

- (a) **(deliverables)**: relating to any Supply Deliverables, to:
 - (i) replacement or the supply of equivalent goods;
 - (ii) rectification or remedy;
 - (iii) payment of replacement cost or the acquisition cost of equivalent goods; or
 - (iv) payment of rectification or remedy cost; and
- (b) **(services)**: relating to any Support Services, to:
 - (i) resupply of the services; or
 - (ii) payment of that resupply cost.

10 RECIPIENT USE UNDERTAKINGS

10.1 Positive Undertakings

The Recipient must at any time during or after the continuance of this Agreement in connection with the Supply Services:

- (a) **(operating procedures)**: use any Supply Deliverables only for the Supply Purpose and in compliance with the Supply Documentation and any normal operating procedures as notified by the Supplier;
- (b) **(possession)**: possess and use any Supply Deliverables to the exclusion of any other person;
- (c) **(location)**: use the Supply Deliverables only at the Performance Site;
- (d) **(copies)**: procure that any permitted copy of any Supply Deliverables contains a notice specifying the intellectual property of the Supplier in those Supply Deliverables, in compliance with any Supplier Direction as to the form and content of that notice;
- (e) **(notifications)**: notify upon request by the Supplier any Recipient Agent, or other authorised user of the Supply Deliverables under the control and direction of the Recipient, of the liability of the Recipient, and any civil or criminal consequence resulting from default, under this provision in compliance with any Supplier Direction as to the form and content of that notice;



- (f) **(protection)**: protect the Supply Deliverables from misuse, damage, destruction, loss or unauthorised use of any nature or description;
- (g) **(records)**: keep accurate records of any use, copying, modification or disclosure of the Supply Deliverables;
- (h) **(inspection)**: permit the Supplier access to the Performance Site or other premises of the Recipient during any usual business hours and to inspect any Supply Deliverables, and inspect and take copies of any records kept by the Recipient under this provision;
- (i) **(directions)**: comply with any Supplier Direction in relation to:
 - (i) the use of the Supply Deliverables in compliance with, or the performance of any liability of the Recipient under, this Agreement; and
 - (ii) the security of any intellectual property of the Supplier connected with the Supply Deliverables or the Supply Documentation; and
- (j) **(default rectification)**: permit any Supplier Agent to perform any action necessary or desirable to rectify or remedy any default under this Agreement by the Recipient to the satisfaction of the Supplier, without liability or prejudice to any other right of the Supplier and at the full cost of the Recipient in all respects.

10.2 Negative Undertakings

The Recipient must not at any time during or after the Supply Period, directly or indirectly, without the prior written consent of the Supplier:

- (a) **(confidential information)**: disclose or use, or attempt to disclose or use, any Supplier Information:
 - (i) known to any Recipient Agent by reason or as a result of the engagement of the Supplier under this Agreement or otherwise, except in compliance with this Agreement; or
 - (ii) to the actual or potential detriment of the Supplier,
subject to **clause 12** (Confidentiality);
- (b) **(intellectual property)**: use any intellectual property held by the Supplier, including any use for the purpose of any communication to any client, customer, supplier, employee or agent of the Recipient, except in strict compliance with **clause 2.3** (Supply Licence);



- (c) **(financial liabilities)**: borrow any credit, incur any financial liability or create any other liability on behalf of the Supplier, except under an express general or special authority by the Supplier;
- (d) **(agency holding out)**: represent or hold out to any person in any manner that any Recipient Agent is an employee, agent or partner of the Supplier;
- (e) **(deliverable use)**: use the Supply Deliverables in or on any equipment other than the Specified Equipment, except at the sole risk of the Recipient for alternative equipment in the event that the Specified Equipment is temporarily inoperable because of malfunction, maintenance or change of installation site;
- (f) **(document copies)**: copy or reproduce any Supply Documentation, except in compliance with this Agreement;
- (g) **(deliverables copies)**: copy, reproduce, alter or modify, or merge with any other software, any Supply Deliverables;
- (h) **(reverse engineering)**: reverse compile or assemble any Supply Deliverables;
- (i) **(business capacity)**: perform any action restricted under this provision in any manner or by any means:
 - (i) in any business capacity;
 - (ii) personally or by or through any other person;
 - (iii) on account of the Recipient or any other person; or
 - (iv) verbally, directly or by telephone, electronically or in writing by any letter, circular, advertisement or document; or
- (j) **(procurement)**: procure, counsel or, to the extent of the power and control of the Recipient, permit any person to perform, or attempt to perform, any action restricted under this provision.

11 INTELLECTUAL PROPERTY

11.1 Recipient Assets

All the legal right, title and interest to or in any intellectual property comprised in the Supplier Information held by the Recipient at any time during this Agreement is at any time retained by and remains vested in the sole, exclusive, absolute and entire legal and beneficial ownership of the Supplier.



11.2 Future Assets

All the legal right, title and interest to or in any intellectual property comprised in any asset or confidential information:

- (a) **(recipient source)**: created, developed or derived from the Supplier Information; or
- (b) **(supplier creation)**: originally or exclusively created, developed, written, conceived or implemented for the Recipient or during or resulting from performance of the Supply Services under this Agreement,

at any time by any Recipient Agent, whether in compliance with or in default under this Agreement, is and becomes vested in the sole, exclusive, absolute and entire legal and beneficial ownership of the Supplier.

11.3 Recipient Assurance

The Recipient must in relation to each Recipient Agent at any time execute any document and perform any action necessary or desirable to transfer any intellectual property specified **clause 11.2** (Future Assets) to the Supplier.

11.4 Licence Exclusion

The Supplier must not be treated under this Agreement as granting or otherwise creating any licence of any nature or description, whether exclusive, transferable, revocable or otherwise, to use, disclose or adapt the intellectual property comprised in any Supplier Information to any Recipient Agent, except in strict compliance with this Agreement.

12 CONFIDENTIALITY

12.1 Confidentiality Liability

Any party who receives confidential information during the Supply Period, and after termination or expiration of this Agreement, for any reason must keep that information confidential and must:

- (a) **(disclosure restriction)**: not publish or disclose the confidential information to any person except with the prior written consent of the disclosing party or as permitted under this provision;
- (b) **(performance use)**: not use the confidential information for any purpose, except where strictly necessary for the performance of its liability under this Agreement; and
- (c) **(legal compliance)**: comply with all applicable privacy and consumer laws.



12.2 Agency Disclosure

The recipient party may disclose the confidential information to any employee or agent of that party to the extent reasonably necessary or desirable for the purposes of this Agreement during the Supply Period.

12.3 Agency Compliance

The recipient party must procure that any employee or agent of the recipient party will be informed of, and comply with, the confidentiality liability of the recipient party under this Agreement.

12.4 Permitted Exemptions

This provision does not apply to any confidential information which:

- (a) **(public information)**: at the date of this Agreement is in, or at any time subsequent comes into, the public domain, except through default under this Agreement by the recipient party or any employee or agent of the recipient party;
- (b) **(prior knowledge)**: can be shown by the recipient party to the satisfaction of the disclosing party to have been known by the recipient party before disclosure by the disclosing party to the recipient party;
- (c) **(third party access)**: subsequently comes lawfully into the possession of the recipient party from a third party;
- (d) **(legal process)**: is required by compulsion of law to be disclosed to a third party; or
- (e) **(future information)**: in relation to the Recipient, is subject to **clause 11** (Intellectual Property).

13 TERMINATION

13.1 Voluntary Termination

- (a) The Supplier may terminate this Agreement at any time before, on or after the Initial Termination Date by written notice to the Recipient with immediate effect. After termination under this clause, the Supplier may exclude the Recipient from using any and all Supply Deliverables or any other electronic program, website or platform.
- (b) The Recipient may terminate this Agreement at any time on or after the Initial Termination Date by written notice of not less than 3 months to the Supplier to that effect.



13.2 Recipient Default Termination

The Supplier may immediately terminate this Agreement at any time before or after the Supply Termination Date by written notice to the Recipient, effective immediately or upon the date specified in the notice upon the occurrence of any default by, or fact relating to, the Recipient, comprising:

- (a) **(performance default)**: any default under this Agreement resulting from:
 - (i) destruction, transfer or loss of possession of the Supply Deliverables by the Recipient for any reason;
 - (ii) failure to comply with any Supplier Direction within a reasonable period; or
 - (iii) failure to perform any provision of, or liability under, this Agreement,except for a rectifiable or remediable default, which is rectified or remedied within 30 days following written notice from the Supplier requiring rectification or remedy;
- (b) **(attachment)**: the fact of any attachment, execution, writ of execution, distress, distraint, garnishee order, charging order, or similar legal process being enforced or levied against any asset of the Recipient;
- (c) **(security enforcement)**: the enforceability of any security interest over any asset of the Recipient securing payment for any amount after the occurrence of any default by the Recipient under that security interest;
- (d) **(receivership)**: the appointment of any receiver, manager or receiver and manager over, or possession taken by any secured party of, any asset of the Recipient;
- (e) **(insolvency)**: cessation of payment generally by the Recipient, the occurrence of any insolvency event of or in relation to the Recipient or the inability of the Recipient, or the Supplier reasonably deciding that the Recipient is unable, to pay all its debts as and when they become due and payable;
- (f) **(administration)**: the appointment of any administrator of the Recipient;
- (g) **(liquidation)**: any legal action, not being in the reasonable decision of the Supplier a legal action being wholly disputed by the Recipient on reasonable and substantial grounds, being commenced, judicial order made or resolution passed for the liquidation of the Recipient;



- (h) **(debt arrangement)**: the creation by the Recipient of any debt arrangement with its creditors generally or any class of creditors; or
- (i) **(business cessation)**: the cessation or proposal for cessation of business generally by the Recipient.

13.3 Supplier Default Termination

The Recipient may immediately terminate this Agreement at any time before or after the Supply Termination Date by written notice to the Supplier, effective immediately or upon the date specified in the notice, upon the occurrence relative to the Supplier of:

- (a) **(default)**: any material default under this Agreement, except for a rectifiable or remediable default which is rectified within 30 days following written notice from the Recipient requiring rectification or remedy; or
- (b) **(liquidation)**: the fact of any legal or other action proposing or initiating liquidation.

13.4 Notice Effect

This Agreement terminates upon expiry of the notice period, or immediately, as specified in any termination notice given by any party under, and in compliance with, this provision.

13.5 Termination Effect

Termination of this Agreement releases any party from any further performance of any liability under this Agreement but does not:

- (a) **(continuing liability)**: affect any provision of this Agreement expressed to operate or have effect after termination; or
- (b) **(accrued rights)**: have any prejudicial effect on any accrued right of any party in relation to any default under this Agreement by the other party occurring before termination.

13.6 Recipient Remedies

The Recipient, following termination of this Agreement under this provision, retains any right against the Supplier under this Agreement in relation to any default by the Supplier, in addition to any other right provided by law, except to the extent that the liability of the Supplier is excluded or limited under any provision of this Agreement.

13.7 Supplier Remedies

- (a) **(Accrued payments)**: The Supplier, following termination of this Agreement under this provision, retains the right to receive any unpaid Supply Payment which has accrued due on or before the



termination date, in addition to any other right against the Recipient provided under this Agreement or by law.

- (b) **(Damages exclusion):** The Supplier, to the fullest extent permitted by law, has no liability of any nature or description to the Recipient for any damages, compensation or additional payment, whether arising in contract or tort or under any legislation or otherwise, for any loss incurred by the Recipient resulting from any termination of this Agreement by the Supplier under this provision.
- (c) **(Specific relief):** The Recipient acknowledges that monetary damages alone would not be a sufficient remedy for a default under **clause 10.2** (Negative Undertakings), **clause 11** (Intellectual Property) or **clause 12** (Confidentiality) and, in addition to any other legal remedy, the Supplier is entitled to any interim, interlocutory or permanent injunction to prevent default under, or compel specific performance of, that provision, without prejudice to any right of enforcement of any other provision.

14 POST-TERMINATION LIABILITY

The Recipient must at any time after termination of this Agreement, whether before or after the expiry of the Supply Termination Date:

- (a) **(redelivery):** promptly deliver to the Supplier in the manner and at the time as specified in any Supplier Direction all Supply Deliverables and all copies of any Supply Documentation possessed by the Recipient; and
- (b) **(supplier access):** grant to or procure for any Supplier Agent an irrevocable licence to have access to any business premises of the Recipient during usual business hours and take possession of any Supply Deliverables and Supply Documentation and exercise any right of the Supplier under any Supply Contract Document.

15 INDEMNITIES

15.1 Recipient Indemnity

The Recipient must indemnify any Supplier Agent against any loss incurred by that Supplier Agent resulting from any default by the Recipient under or in connection with this Agreement or the performance of the Supply Services.

15.2 Software Indemnity

- (a) **(Supplier indemnity):** The Supplier must indemnify the Recipient against any loss incurred by the Recipient resulting from engagement in any legal action by any third party on the grounds that the supply by the Supplier or the use by the Recipient of any Supply Deliverables



under this Agreement constitutes an infringement within the Supply Licence Area of any intellectual property of that third party in those Supply Deliverables, in compliance with this provision.

- (b) **(Preconditions):** The liability of the Supplier to indemnify the Recipient under this provision is subject to each condition that the Recipient has:
- (i) incurred the loss following a final decision in the legal action by a court of competent jurisdiction, after exercise of any available right of appeal by the Recipient;
 - (ii) given written notice to the Supplier as soon as practicable following receipt of actual notice by the Recipient of any actual or potential infringement, or suspected or alleged infringement;
 - (iii) permitted the Supplier before initiation of the legal action to decide to control and conduct the defence to the legal action, at the full cost to the Supplier in all respects;
 - (iv) provided reasonable assistance to the Supplier in the control and conduct of the defence to the legal claim; and
 - (v) permitted the Supplier to perform any Deliverable Modification, or procure any contractual consent from any person, sufficient to eliminate any continuing infringement, at the full cost of the Supplier in all respects.
- (c) **(Exclusions):** The liability of the Supplier to indemnify the Recipient under this provision is excluded by the fact that the Recipient has, without the prior written consent of the Supplier:
- (i) used the Supply Deliverables in combination in any manner or form with other goods or for a purpose not reasonably contemplated under this Agreement; or
 - (ii) modified, altered or performed any other action in any manner or form which fails to comply with this Agreement.
- (d) **(Recipient default indemnity):** The Recipient must indemnify the Supplier against any loss incurred by the Supplier, directly or indirectly, resulting from any default by the Recipient under this provision.



16 DISPUTE RESOLUTION

16.1 Disputes

This provision applies to any dispute or difference (“**dispute**”) arising between the parties in relation to:

- (a) (**interpretation**): this Agreement or its interpretation;
- (b) (**rights**): any right or liability of any party under this Agreement; or
- (c) (**action**): the performance of any action by any party under or arising out of this Agreement, whether before or after its termination.

16.2 Dispute Negotiation

- (a) (**Litigation restriction**): A party must not commence legal action, unless that party has complied with this provision.
- (b) (**Dispute notification**): A party claiming that a dispute has arisen must notify the other party specifying details of the dispute.
- (c) (**Negotiation**): Each party must use its best efforts to resolve the dispute through negotiation within 5 business days following the dispute notification or longer period agreed between the parties.
- (d) (**Corporate referral**): Each party must within the specified period refer the dispute to its chief executive officer for consideration, in the event of any previous failure by the parties to resolve the dispute.
- (e) (**Mediation**): Each party must following any previous negotiation or reference use its best efforts to resolve the dispute by agreement or through an agreed mediation procedure.
- (f) (**Process termination**): A party in compliance with this provision may terminate the dispute resolution process by notice to the other party at any time after 5 business days following initial notification.
- (g) (**Restriction release**): A party is not required to comply with this provision in relation to any dispute where the other party is in default under this provision in relation to that dispute.

16.3 Urgent Relief

A party may at any time apply to a court of competent jurisdiction for any equitable or other remedy for reasons or urgency, despite anything contained in this provision.



16.4 Continued Performance

The Supplier must continue to perform the Supply Services in compliance with this Agreement relating to any issue in dispute, despite and during any dispute negotiation being conducted under this provision.

17 COSTS

Each party must pay its own costs in relation to:

- (a) **(documentation)**: the negotiation, preparation, execution, performance, amendment or registration of, or any consent given or made; and
- (b) **(performance)**: the performance of any action by that party in compliance with any liability arising,

under this Agreement, or any agreement or document executed or effected under this Agreement, unless this Agreement provides otherwise.

18 DUTIES

18.1 Payment

The Recipient must promptly within the initial applicable period prescribed by law pay any stamp or other duty or similar tax payable in relation to the execution, performance and registration of this Agreement, or any agreement or document executed or effected under this Agreement.

18.2 Indemnity

The Recipient must indemnify the Supplier against any loss incurred by the Supplier in relation to any duty or tax specified in this provision, whether through default by the Recipient under this provision or otherwise.

19 ASSIGNMENT

19.1 Supplier Assignment

The Supplier may at any time during the continuance of this Agreement in relation to the supply of the Supply Services, without the prior written consent of the Recipient:

- (a) **(rights)**: transfer, or create any security interest affecting or relating to, all or any part of this Agreement, or any right of the Supplier under this Agreement;
- (b) **(subcontracts)**: create any subcontract with any Supplier Agent relating to the performance of all or any Supply Services; or



(c) **(liabilities):** novate or transfer this Agreement, or any liability of the Supplier under this Agreement,

to or with any related entity or associate entity of the Supplier or any other person.

19.2 Recipient Assignment

The Recipient must not at any time transfer any right or liability under this Agreement without the prior written consent of the Supplier.

20 NOTICES

20.1 Form

Any notice to or by a party under this Agreement must be in writing and signed by the sender or an authorised officer of the sender or under the seal of or any power of attorney conferred by the sender.

20.2 Service Method

Any notice may be served by delivery in person or by post or facsimile transmission to the address or number of the recipient specified in this provision or most recently notified by the recipient to the sender.

20.3 Receipt

Any notice is effective for the purposes of this Agreement upon delivery to the recipient or production to the sender of a facsimile transmittal confirmation report before 4.00 pm local time on a business day in the place in or to which the written notice is delivered or sent or otherwise at 9.00 am on the next business day following delivery or receipt.

20.4 Service Details

Details initially specified for service of notice comprise:

Supplier:

Address: Level 25, 108 St Georges Terrace, PERTH WA 6000

Facsimile: Not applicable

Attention: Burzin Nanavatti

Recipient:

Address: Not applicable

Facsimile: Not applicable



Attention: Not applicable

21 GOVERNING LAW AND JURISDICTION

21.1 Governing Law

This Agreement is governed by and construed under the law in the State of South Australia.

21.2 Jurisdiction

Any legal action in relation to this Agreement against any party or its property may be brought in any court of competent jurisdiction in the State of South Australia.

21.3 Submission

Each party by execution of this Agreement irrevocably, generally and unconditionally submits to the non-exclusive jurisdiction of any court specified in this provision in relation to both itself and its property.

22 GENERAL PROVISION

22.1 Amendments

Any amendment to this Agreement has no force or effect, unless effected by a document executed by the parties.

22.2 Third Parties

This Agreement confers rights only upon a person expressed to be a party, and not upon any other person.

22.3 Pre-Contractual Negotiation

This Agreement:

- (a) **(entire agreement)**: expresses and incorporates the entire agreement between the parties in relation to its subject-matter, and all the terms of that agreement; and
- (b) **(collateral agreement)**: supersedes and excludes any prior or collateral negotiation, understanding, communication or agreement by or between the parties in relation to that subject-matter or any term of that agreement.

22.4 Further Assurance

Each party must execute any document and perform any action necessary to give full effect to this Agreement, whether before or after performance of this Agreement.



22.5 Continuing Performance

- (a) **(Merger exclusion):** The provisions of this Agreement do not merge with any action performed or document executed by any party for the purposes of performance of this Agreement.
- (b) **(Representation):** Any representation or warranty in this Agreement survives the execution of any document for the purposes of, and continues after, performance of this Agreement.
- (c) **(Indemnity):** Any indemnity agreed by any party under this Agreement:
 - (i) constitutes a liability of that party separate and independent from any other liability of that party under this Agreement or any other agreement; and
 - (ii) survives and continues after performance of this Agreement.

22.6 Waivers

Any failure or delay by any party to exercise any right under this Agreement does not operate as a waiver and the single or partial exercise of any right by that party does not preclude any other or further exercise of that or any other right by that party.

22.7 Remedies

The rights of a party under this Agreement are cumulative and not exclusive of any rights provided by law.

22.8 Severability

Any provision of this Agreement which is invalid in any jurisdiction is invalid in that jurisdiction to that extent, without invalidating or affecting the remaining provisions of this Agreement or the validity of that provision in any other jurisdiction.

22.9 Counterparts

This Agreement may be executed in any number of counterparts, all of which taken together are deemed to constitute one and the same document.

23 DICTIONARY

Specified words and expressions for the purposes of this Agreement comprise:

“**accuracy**” in relation to any representation or warranty made, any information or fact disclosed, reply to any inquiry or requisition, or to any original or duplicate copy of any document delivered, by or on behalf of any



person to any other person, means that that representation, warranty, information, fact or document:

- (a) is true, accurate, complete and up-to-date in all respects; and
- (b) is not rendered untrue, inaccurate, incorrect, incomplete, out-of-date, false, misleading or deceptive or likely to mislead or deceive in any respect by any other representation, warranty, information, fact or document;

“advance” in relation to any credit, includes the making or extension of that credit at any time and in any manner or by any means;

“agreement” includes any present or future agreement, contract, deed, security interest, guarantee or other legally enforceable arrangement, whether in writing or otherwise;

“assessment” includes assessment, investigation, appraisal, estimate, valuation, decision, determination, calculation, review, inquiry or report;

“associate entity” in relation to any person, means any company, trust or other person in or in relation to which that person, or a related entity of that person:

- (a) is a member, shareholder or director;
- (b) holds any marketable securities; or
- (c) in practice or effect controls the business activities of that company or other body corporate, trust, other person or entity,

excluding any holding of marketable securities, not exceeding in total 5% of that class of marketable securities in, or any directorship of, a company which is admitted to the official list of ASX Limited;

“authorised officer” in relation to any company for the purposes of any agreement at any time, means any director, secretary or person notified in that capacity by that company in or under any provision of that agreement to any party to that agreement, without withdrawal or cancellation of that notification as at that time;

“borrowing” in relation to any credit, includes the borrowing of or raising moneys or incurring financial liability under or in relation to that credit in any manner or by any means;

“business capacity” in relation to any performance of any business activity by any person, means the performance of that business activity by that person, whether directly or indirectly, or through any interposed entity or person:



- (a) as a principal or on its own account;
- (b) in partnership, joint venture or association with any other person;
- (c) as an agent for any other person;
- (d) as a secured party or holder of any guarantee in relation to, or person making any credit advance to, any other person;
- (e) as a trustee of or beneficiary or unitholder under any trust; or
- (f) as a director or other agent or shareholder in any company;

“business day” means any day on which trading banks generally are open for business in the place of receipt of any written notice, payment of any moneys or performance of any liability by any party contemplated or required under any agreement, excluding a Saturday, Sunday or public holiday in that place;

“claim” includes any claim, demand, request, requisition, notice, direction or allegation;

“company” includes any company, body corporate, corporation, trust, partnership, joint venture, or any other incorporated or unincorporated body, association, society, organisation or entity;

“confidential information” in relation to any person, means information which at any time is in the knowledge, possession or control of that person, or any related entity, associate entity, employee or agent of that person, relating to the business, assets, operations or affairs of that person, or any related entity or associate entity of that person, which is confidential by its nature or which is or has been marked or otherwise specified by any means as being confidential, including information relating to:

- (a) corporate or business development and expansion plan or strategy;
- (b) corporate or business structure;
- (c) financial, taxation and accounting matters;
- (d) any relationship or arrangement with any agent;
- (e) inventions, discoveries, trade secrets, knowhow, technology, techniques, processes, systems, information, data, formulae, ideas or concepts, whether or not reduced to material form, drawings, specifications, designs, plans, diagrams, models, and scientific, technical and product information;
- (f) source and object codes;
- (g) business, financial and marketing plans, forecasts and projections;



- (h) customer information, customer lists and customer information proprietary to customers;
- (i) agreements and arrangements with third parties, whether legally enforceable or otherwise; and
- (j) computer software and set-up, configuration and data files of computer software;

“consent” includes any consent, approval, permit, licence, authorisation, resolution, release, registration, filing, lodgement, notification or expiry of any period without any relevant objection, prohibition or restriction, by any person necessary or desirable:

- (a) for the execution, performance, validity, enforceability, priority effectiveness or transfer; or
- (b) to prevent default, invalidation or a prejudicial effect,

of, under or in relation to any present or future agreement, document, action, activity or asset;

“contractual consent” means any consent, notice, certificate or transfer from or by any lessor, licensor, bank, financial institution, insurer, secured party or other contracting party;

“control” in relation to any person, includes the legal or practical ability of any other person to control the outcome of any decision of that person or entity, whether alone or in combination with others, direct or indirect, whether under any legally enforceable arrangement or otherwise, and whether or not control is subject to any condition or restraint;

“corporate consent” means any corporate or other consent of, from or by any company, or its directors or shareholders, including any resolution or minutes or extracts from minutes, of any meeting, written resolution or power of attorney;

“cost” includes any cost, charge, expense, disbursement, fee, commission, outgoing, premium, tax, levy, fine, penalty or loss incurred at any time, whether directly or indirectly;

“credit” includes any present or future loan, advance, credit facility or other financial accommodation;

“customer” includes customer, client, contact, buyer or purchaser, or any employee or agent of any customer within any previous meaning;

“debt arrangement” in relation to any person, means any compromise, composition, moratorium, scheme of arrangement or reconstruction, suspension of any payment or right, restriction on any right or enforcement of



any right, property transfer for the benefit of creditors, management, administration, voluntary administration, company arrangement or deed of company arrangement agreed or effected by or in connection with that person, or any creditor, asset, debt or other liability of that person;

“decision” includes any decision, vote, resolution, determination, discretion, opinion, assessment, appraisal, computation, calculation, valuation, certificate, certification or notice;

“default” includes:

- (a) any default, breach, non-performance, non-compliance with or repudiation;
- (b) any fraud, breach of duty, or other prejudicial action, neglect, delay or omission; or
- (c) the occurrence of any fact which in itself, or which with the giving of notice, expiry of time or fulfilment of any condition, whether or not within the control of any person, would constitute any default within any previous meaning, or create any acceleration of liability, termination, cancellation, prepayment or similar event;

“disclosure” in relation to any document or information by any person to any other person, means delivery of that document or disclosure of that information by or on behalf of that person, or any employee or authorised agent of that person, to that other person, or any employee or authorised agent of that other person;

“dollar” or **“\$”** means the lawful currency of the Commonwealth of Australia at any time;

“entity” includes any company, trust, fund, partnership, society, association or other incorporated or unincorporated body or trustee of any trust in that capacity for the beneficiaries of the trust;

“equipment” includes fixtures, fittings, furniture, plant, machinery, appliances, equipment, telecommunications equipment, computer or electronic hardware, software, tape or disk, cabling, printing plate, motor vehicles, and any spare parts and accessories for any equipment within any previous meaning, whether fixed, moveable or detachable;

“execution” includes delivery;

“fact” includes any fact, matter, thing, event, circumstance, cause, consequence, action or omission, and the occurrence or existence of, or any change in, any fact within any previous meaning;

“financial liability” means any liability in relation to:



- (a) moneys borrowed or raised;
- (b) any financial accommodation of any nature or description;

“force majeure event” in relation to any person, means any fact beyond the reasonable control of that person which prevents, hinders or delays that person from or in the performance of any liability of that person under any agreement, including:

- (a) any act of God, peril of the sea or unavoidable accident of navigation;
- (b) war or hostilities, whether declared or undeclared, terrorist action, sabotage, riot, insurrection, civil commotion, malicious damage or national, federal, state, district or local emergency, whether factual or legal;
- (c) fire, flood, storm, cyclone, lightning strike, earthquake or landslide;
- (d) explosion, epidemic, quarantine, radiation or radioactive contamination;
- (e) failure, breakdown or shortage of any power, water, communications or other supplies or services from any public utility or supply of fuel, labour or material; and
- (f) any governmental requisition or illegality due to change of law,

but excluding any fact resulting from any action, or omission, of default of that person, or any employee or agent of that person;

“governmental agency” means any governmental, semi-governmental, administrative, fiscal, municipal, local, judicial or regulatory agency, department, instrumentality, body, utility, authority, commission, court or tribunal;

“governmental consent” means any consent from, by or with any governmental agency;

“governmental requisition” means any consent, requirement, claim, notice, requisition, order, direction, action, appropriation, restraint, restriction, prohibition, intervention or law of, required by or from, or made, imposed or issued by any governmental agency at any time;

“GST” means any tax under any GST law as defined in section 195-1 of *A New Tax System (Goods and Services Tax) Act 1999*;

“guarantee” includes any present or future guarantee, indemnity, letter of credit, suretyship arrangement, irrevocable offer, put option or similar liability;



“inquiry” includes inquiry, requisition, inspection, investigation, review or audit;

“insolvency event” in relation to any person, means the fact of that person:

- (a) being, or stating that that person is, an insolvent under administration or insolvent, within the meaning of the *Corporations Act 2001*;
- (b) being in liquidation;
- (c) having any asset in the possession or control of any secured party resulting from any default by that person;
- (d) being taken to have failed to comply with any statutory demand, within the meaning of section 459F(1) of the *Corporations Act 2001*;
- (e) being subject to or affected by any fact specified in section 459C(2) or section 585 of the *Corporations Act 2001*;
- (f) being, or stating that that person is, unable to pay all the debts of that person as and when they become due and payable; or
- (g) being subject to or affected by any fact factually similar to or analogous with any previous item under the law of any country or jurisdiction;

“intellectual property” in relation to any person, means any intellectual, industrial or commercial property, right or interest of that person, whether within or outside Australian, including:

- (a) any patent, trade mark, service mark or design;
- (b) any copyright, including any future copyright or analogous or similar right;
- (c) any utility model, eligible layout right or plant variety right;
- (d) any business, trade or commercial name or designation, brand name, domain name, logo, symbol, source indication or origin appellation;
- (e) any confidential information;
- (f) any other industrial, commercial, agricultural or extractive right derived from intellectual knowledge or activity of any industrial, scientific, literary or artistic nature or description, whether relating to any manufactured or natural product or otherwise, including any works or subject-matter other than works;
- (g) any division or extension of, or analogous right to, any previous item;



- (h) any legal action relating to any previous item;
- (i) any exclusive or non-exclusive licence, licence agreement or other right to use or grant the user of, or to become the registered proprietor or user of, any previous item;
- (j) any application for registration, right to apply for or maintain any registration or other right arising under any legal action in relation to any previous item; and
- (k) any document of title, letters patent, deed of grant or other document or agreement relating to any previous item,

whether registered or unregistered or recorded or unrecorded, stored or incorporated in any medium of any nature or description;

“invalidity” includes invalidity, nullity, voidability, avoidance, setting aside, unenforceability, illegality, irrecoverability, suspension or failure, whether total or partial, or liability to invalidity or invalidation within any previous meaning;

“inventory” includes any stock, stock-in-trade, work-in-progress, finished product, spare parts, raw or worked materials, whether before or after any other work or fabrication, component parts, stock or materials in transit, undelivered stock or materials, and indirect materials used generally in any manufacturing, fabrication or construction and not forming part of any finished product, owned, held, manufactured, fabricated, constructed, purchased or ordered by any person for the purpose of or in relation to any business activity performed by the person;

“judicial order” means any judgment, order, decree, declaration, ruling, award or determination of any court or tribunal of competent jurisdiction, arbitrator, mediator or expert binding on any person or assets of that person;

“law” means any legislation, rule of the general law, including common law, equity and bankruptcy, judicial order or consent or requisition from, by or with any governmental agency;

“legal action” means any claim, legal action, application, proceeding, suit, dispute or litigation initiated in or by any governmental agency, arbitration, mediation or dispute resolution process, whether actual, current, anticipated, threatened or potential;

“legislation” including as applicable any reference to the specific name of any legislation, means:

- (a) any statute, enactment, ordinance, code or other legislation;
- (b) any order, regulation, rule, by-law, proclamation, or statutory instrument made or issued under that legislation;



- (c) any section or provision of that legislation within any previous meaning; and
- (d) any amendment, modification, consolidation, re-enactment or replacement of, or substitution for, any legislation within any previous meaning at any time;

“liability” includes any liability, debt, indebtedness, damages, compensation, duty or obligation, whether statutory, legal or equitable, present or future, actual, contingent or prospective, primary, secondary or vicarious, and whether alone, severally, jointly or jointly and severally;

“liquidation” includes receivership, debt arrangement, merger, amalgamation, reconstruction, winding up, dissolution, bankruptcy, death or administration under any law relating to individual health or welfare;

“loss” includes any loss, cost, liability, damage, destruction, injury or accident, whether direct or indirect, actual or potential;

“marketable security” means:

- (a) any debenture, stock, share, option, bond or promissory note created or issued by any company or governmental agency;
- (b) any interest in a managed investment scheme as defined in the *Corporations Act 2001*, including any interest in a unit trust;
- (c) any interest or share in a partnership or joint venture; or
- (d) any right or option in relation to any marketable security within any previous meaning,

but excludes any cheque, payment order and bill of exchange, other than a promissory note;

“materials” includes any report, correspondence, form, list, article, document, artwork, film, design or training, promotional or marketing material, aid or tool;

“month” means calendar month;

“person” includes any natural person, company, trust, entity or governmental agency;

“property” includes any money, goods, thing in action, right, land, business undertaking, intangible asset, intellectual property and any other real or personal property of any nature or description, whether present or future, tangible or intangible, vested or contingent and any legal, equitable or statutory right, title, estate, interest, income, revenue or benefit in, under or derived from or incidental to that property;



“public utility” includes any supplier of communications, telecommunications, drainage, electricity, gas, sewerage, water, transportation, or any similar supplies or services, whether or not that supplier is a governmental agency;

“purchaser” includes any purchaser, transferee, lessee or secured party;

“related entity” includes a company, body corporate, trust or person and in relation to:

- (a) a company or body corporate, means a related body corporate within the meaning of Division 6 of Part 1.2 of the *Corporations Act 2001*;
- (b) a trust, means a trust that would be a related body corporate within that meaning assuming that the trust were a body corporate and that a subsidiary meant a subsidiary for the purposes of that meaning; and
- (c) any person, means any other person having control over that person, or other person under the control of that person;

“report” includes report, review, audit, assessment, advice, opinion, inquiry, inspection, investigation, valuation or survey;

“right” includes any right, equity, interest, entitlement, benefit, option, power or remedy;

“secured party” means any person holding or entitled to any security interest, or any right under any security interest;

“security interest” means any security interest in connection with any asset which in substance, whether or not in form, is a security for the payment or performance of any liability, including:

- (a) any security interest within the meaning of, and as defined in, the *Personal Property Securities Act 2009*;
- (b) any mortgage, charge, pledge, lien, trust or power created or conferred in relation to any asset;
- (c) any title retention interest or other legal or equitable proprietary title or interest retained or reserved in any asset, including any credit or conditional sale agreement, hire purchase agreement, finance lease or bailment; or
- (d) any other right conferred on, or agreement with, any creditor to be paid in priority or preference to other creditors by recourse to any asset or its proceeds;

“subsidiary” in relation to:



- (a) a body corporate, means a subsidiary within the meaning of Division 6 of Part 1.2 of the *Corporations Act 2001*;
- (b) a trust, means a trust that would be a subsidiary within that meaning if it were a company equating for this purpose:
 - (i) shares with the beneficial interests or units held in the trust; and
 - (ii) the board of directors with the trustee; and
- (c) a body corporate or subtrust owned or held as an asset of a trust, means a subsidiary within any previous meaning which would be applicable if the trust were a body corporate;

“supplier” in relation to the delivery of any goods or provision or performance of any services, means any supplier, manufacturer, wholesaler, retailer, distributor, repairer or any other person performing any business activity connected with that delivery, provision or performance;

“tax” includes any tax, duty, charge or rate imposed or assessed under any legislation or by any governmental agency, together with any associated interest, penalty, fine, fee or other charge;

“termination” in relation to any right, consent, agreement or document, includes any termination, rescission, cancellation, discharge, determination, release, avoidance, setting aside, invalidity, invalidation, surrender, repudiation, disclaimer, abandonment, forfeiture, loss, writing off, redemption, forgoing, expiry, extinguishment, repeal, discontinuance, revocation or withholding of that right, consent, agreement or document, or any acceptance of any termination within any previous meaning;

“transfer” in relation to any asset, includes any conveyance, transfer, assignment, assurance, factoring, discounting, bailment, delivery of possession, payment, sale, purchase, vesting, realisation, exchange or disposal of, or dealing with, that asset;

“validity” in relation to any agreement, document, right or consent, includes the validity, subsistence, enforceability, legality, recoverability, propriety, regularity and maintenance in full force and effect of that agreement, document, right or consent;

“waiver” includes waiver, indulgence, forbearance or extension of time; and

“writing” means any method or means of communication or reproduction of words in a tangible and permanently visible form, including facsimile transmission.



SCHEDULE 1: SUPPLY SPECIFICATION

Part A - Specification Documents

Not applicable

Part B - Specified Deliverables

The deliverables will be the suppliers' services which the Recipient will agree upon by accepting the terms of the contract.

Part C - Specified Services

Not applicable"

Part D – Specified Equipment

Not applicable

Part E - Supply Licence Area

South Australia

Part F – Supply Purpose

The purpose of assisting the Recipient provide migration and visa services to its clients and customers.



Part G – Supply Delivery

1 Delivery Period

The intended date for the Supply delivery period will be the term for which the Recipient propose the tenure for the supply services, also till the termination of the agreement by the Supplier.

2 Acceptance Tests

The Recipient will use the Supply Deliverables immediately upon delivery.

3 Acceptance Criteria

The Supply Deliverables will be deemed to be accepted by the Recipient if the Supply Deliverables function as intended.

4 Acceptance Period

Within 12 hours of delivery of the Supply Deliverables.

5 Acceptance Notification Period

Within 24 hours of the end of the Acceptance Period.



SCHEDULE 2: SUPPLY PAYMENT

Part A – Supply Charges

1 Supply Charge Payment

[The single lump sum amount of the Recipient’s contract value for the supply payable on the date of Recipient entering the contract.]

2 Delivery and Installation Costs

Applicable as per the Supply Cost and other inclusive cost as mentioned on the Supplier’s platform.

3 Extension Period Payments

An extension fees will be payable by Recipient immediately upon each acceptance by the Supplier of any extension request by the Recipient under **clause 2.4** (Supply Period Extension).

The amount of the extension fees has to be paid per month, and is payable in [advance] [arrears] by the 1st week of each month during the Supply Period after the Initial Supply Period [or increased amount notified by the Supplier as its then current supply charge rate].

Part B – Service Charges

The Service Charges payable as per the updated fees structure at the time of signing the contract.

Part C - Payment Claims

1 Payment Claim Period

Within 7 days from the date of Payment Claim.

2 Payment Date Period

[Calendar monthly in arrears.]

3 Disputed Claims Period

Within 2 business days of a Payment Claim.

4 Disputed Claim Resolution Period

Within 15 days of notification of a disputed claim.

5 Specified Interest Rate

“Not applicable”



SCHEDULE 3: SUPPLY PERFORMANCE

Part A - Performance Site

Cloud based.

Part B - Performance Criteria

“Not applicable”

Part C - Specified Information

Any specific information which is deemed to be confidential to the Supplier and that must be kept confidential by the Recipient.

Part D - Force Majeure Period

90 days

Part E - Variation Response Period

30 days



EXECUTED as an agreement.

AGREEMENT ACCEPTANCE CLAUSE:

By accessing or using the Supplier's Services and the Platform, you agree to be bound by the terms and conditions outlined in this document. Your use of the Supplier Services and the Platform constitutes your acceptance of these terms, and you acknowledge that you have read, understood, and agree to be bound by the terms and conditions set forth herein.

If you do not agree to these terms, please refrain from using the Supplier's Services and/or Platform.

**EXECUTED and DELIVERED by
BEST MIGRATION SERVICES
GLOBAL PTY LTD** (trading as IBA
PARTNER) **ABN 73 167 593 160** in
accordance with section 127 of the
Corporations Act 2001 (Cth).