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BACKGROUND

- A. The Company wishes to engage the Labour Services Provider to provide the Services for the Service Fee and the Labour Services Provider agrees to provide those Services in accordance with the terms of this document.

OPERATIVE PROVISIONS

1. DEFINITIONS AND INTERPRETATION

1.1 Definitions

The following definitions apply in this document:

Affected Party means a party effected by a Force Majeure event.

Afternoon Rate means the applicable Afternoon Shift loading and times of application set out in the relevant Award or EBA

Award means the applicable Fair Work award in place onsite outlining pay and conditions

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

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

Commencement Date means the date in which labour hire services commence at the Company site.

Company means the business entering into the Terms and Conditions of Labour hire with the Labour Services Provider

Company Site means the companies address in which labour hire services will be provided.

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

- (a) the terms of this document;
- (b) the fact that this document exists;
- (c) all information and communications given by a party to another party in connection with this document;
- (d) correspondence, emails and facsimile transmissions of a party;
- (e) the content and subject matter of conversations between the parties;
- (f) information which is identified, whether orally or in writing, by a party as confidential;
- (g) information which a party ought to know is confidential;
- (h) information relating to a party's business interests, assets, methodology, processes, intellectual property, trade secrets, inventions and affairs, including:

- (i) information about a party's officers, employees and agents; information about a party's customers and suppliers;
 - (ii) manuals, policies, reports and decisions of a party;
 - (iii) strategies, forecasts and proposals of a party;
 - (iv) advice, opinions or reports given by a party's professional advisers;
 - (v) financial information of or about a party;
 - (vi) codes and passwords of a party used to access any thing;
- (i) information which would be of commercial value to a competitor of a party, or which if known by a competitor of a party, could be used to the commercial disadvantage of the party;
 - (j) any thing created by a party which embodies or is derived from Confidential Information;
 - (k) any thing created by a party in connection with this document;
 - (l) all other information capable of protection in equity as confidential information;

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

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

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

- (a) breach of a term of this document;
- (b) the rights or obligations of a party under this document;
- (c) interpretation of this document;
- (d) termination of this document;
- (e) any claim at law or in equity under or in connection with this document, except for a claim relating to personal injury or death of a person; or
- (f) a matter of fact, measurement or valuation.

EBA means the Enterprise Bargaining Agreement that the Customer has enforced onsite, outlining pay and conditions

Employee means an employee of the Labour Services Provider.

Employment Terms means, in respect of an Employee, the terms of the Employee's employment with the Labour Services Provider, including benefits the Employee is entitled to under any relevant modern award or enterprise agreement, common law contract or a Labour Services Provider policy.

Force Majeure means any one of the following:

- (a) war, act of terrorism, riot or sabotage;
- (b) fire or explosion;
- (c) lightning, earthquake, storm, cyclone, flood, tsunami or landslide;
- (d) labour dispute, strike or lockout;
- (e) embargo or boycott;
- (f) pandemic or epidemic;
- (g) power outage or telecommunications outage;
- (h) an order of a Government Authority made after the date of this document;
- (i) a law which commenced after the date of this document,

but does not include an event caused by or within the control of:

- (j) the Affected Party; or
- (k) any of the Affected Party's employees, officers, agents or contractors.

Government Authority means:

- (a) a local, state or federal government;
- (b) a minister, department or agency of any government in (a);
- (c) a corporation, authority or body that is constituted under statute or regulation for a public purpose;
- (d) a holder of a statutory office for a public purpose, or a person charged with the administration of a law; or
- (e) a court, tribunal or commission constituted under statute or regulation.

GST has the meaning given by the GST Law.

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

Insurance Policies means the insurance policies set out in clause 5.

Invoice means a tax invoice in accordance with GST Law.

Labour Hire Arrangement means an arrangement under which a Labour Hire Employee performs work for the Company in accordance with this document.

Labour Hire Arrangement Term means the period during which the Labour Services Provider supplies the services of a Labour Hire Employee to the Company.

Labour Hire Employee means an Employee whose work the Labour Services Provider facilitates for the Company under this document.

Labour Hire Employee Rate means, as at the date of this document, the rate per hour, or part thereof, (exclusive of GST) applicable to the Skill Level of the Labour Hire Employee and the circumstances under which the Labour Hire Employee has performed work for the Company during the Term, being either the:

- (a) Ordinary Time Earnings Rate; or
- (b) Afternoon Rate,

with the dollar amount for each Labour Hire Employee Rate provided in the table in Schedule 1.

Labour Hire Management System means a software system managed by the Labour Services Provider through which Labour Hire Employees record the hours of work they have performed for the Company under the Labour Hire Arrangement.

Labour Services Provider means Branched People Pty Ltd (ACN 657 000 247) – 7/475 Blackburn rd, Mount Waverley

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

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

- (a) an amount paid or payable:
 - (i) as damages;
 - (ii) pursuant to a judgement or order;
 - (iii) pursuant to an agreement that settles a dispute;
 - (iv) as a fine or penalty;
 - (v) as a debt;
- (b) the cost of:
 - (i) rectifying or repairing loss or damage;
 - (ii) replacing property that is lost or destroyed;
- (c) loss caused by diminution in the value of property;
- (d) consequential loss, including loss of profits;
- (e) loss or expense resulting from, or liability for, personal injury, illness or death; and
- (f) legal costs on an indemnity basis.

Night Rate means the applicable Night Shift loading and times of application set out in the relevant Award or EBA

Notice means a notice, demand, certificate, consent, approval, waiver or communication given under this document.

Ordinary Times Earning Rate means the rate per hour that applies to work performed by the Labour Hire Employee from 8:00am to 6:00pm

Payroll Tax Threshold means the prescribed payroll tax exemption threshold as imposed from time to time under the *Payroll Tax Act 2007* (Vic).

Services means the facilitation of the Labour Hire Arrangement, being the provision of Labour Hire Employees to perform work in accordance with one or more of the Skill Levels.

Service Fee means, for a week during the Term, exclusive of GST:

Service Fee = A + B.

Where:

A = the sum of (i *multiplied by* ii) for each Labour Hire Employee who has performed work for the Company in that week under the Labour Hire Arrangement, where:

i = the Labour Hire Employee Rate for the Labour Hire Employee; and

ii = the hours, including part hours, worked by the Labour Hire Employee; and

B = the Transition Fee for any Transitioning Employees who have become Transitioning Employees of the Company in the week to which the invoice relates.

Skill Level means the classification level of the Labour Hire Employee as listed in Schedule 1.

Suspension means a suspension of the Affected Party's obligation to perform its obligations under clause 8.1(b).

Term means the period commencing on the Commencement Date and ending on the date that this document is terminated.

Transitioning Employee means any Labour Hire Employee who ceases to be an employee of the Labour Services Provider and becomes an employee or contractor of the Company.

Transition Fee means the fee applicable to the Transitioning Employee set out in 0.

1.2 Interpretation

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

- (a) The Background (if any) and headings are for convenience only and do not affect the interpretation of this document.
- (b) A reference to:
 - (i) legislation (including subordinate legislation) is to that legislation as amended, re enacted or replaced, and includes any subordinate legislation issued under it;
 - (ii) a document (including this document), or a provision of a document (including a provision of this document), is to that document or provision as amended or replaced;

- (iii) a party to this document, or a party to any other document or agreement, includes that party's executors, administrators, permitted substitutes and permitted assigns;
 - (iv) a person includes any type of entity or body of persons, whether or not it is incorporated or has a separate legal identity, and any executor, administrator or successor in law of the person;
 - (v) anything (including a right, obligation or concept) includes each part of it;
 - (vi) property includes real, personal and intangible property;
 - (vii) any body or agency, if that body or agency ceases to exist, is renamed, reconstituted, replaced or has its powers or functions removed (**Defunct Body**), means the agency or body which succeeds to the Defunct Body's powers or functions, or performs most closely the functions of the Defunct Body;
 - (viii) AUD\$, A\$, \$A, dollar or \$ is to Australian currency; or
 - (ix) a clause, schedule or annexure is to a clause of, or schedule or annexure to, this document.
- (c) A singular word includes the plural, and vice versa.
- (d) A word which suggests one gender includes any other genders.
- (e) If a word is defined, another part of speech or grammatical form of that word has a corresponding meaning.
- (f) If an example is given of anything (including a right, obligation or concept), such as by saying it includes something else, the example does not limit the scope of that thing.
- (g) An obligation on, warranty by, or right of:
- (i) two or more persons; or
 - (ii) a party that comprises two or more persons,
- is the obligation, warranty or right (as the case may be) of those persons jointly and severally.
- (h) Time is reckoned as follows:
- (i) A reference to the date or time of day, is a reference to that date or that time of day in Victoria, Australia.
 - (ii) If a period expressed in days, beginning on a given day, act or event is provided or allowed for any purpose, the period is calculated by:
 - (A) excluding the day, or the day of the act or event; and
 - (B) including the day on which the purpose is to be fulfilled.

- (iii) If a period expressed in weeks, months or years, beginning on a given day, act or event is provided or allowed for any purpose, the period is calculated from:
 - (A) the day, or the day of the act or event; until
 - (B) the corresponding day in the next appropriate week, calendar month or year.
- (iv) If there is no corresponding day for the purposes of clause 1.2(h)(iii)(B), because of the differing number of days in calendar months, the corresponding day is taken to be the last day of the relevant calendar month.
- (v) If something is to be done on a particular day, it must be done by 5.00pm on that day.
- (vi) If something is to be done on a day which is not a Business Day then that thing must be done on the next Business Day.

2. SERVICES

From the Commencement Date:

- (a) the Labour Services Provider agreeing to provide the Services to the Company; and
- (b) the Company agreeing to engage the Labour Services Provider to provide the Services,

that is, the parties agree to the Labour Hire Arrangement.

3. SERVICE FEES

- (a) The Company must pay the Labour Services Provider the Service Fee in accordance with this document.
- (b) After the end of each week during the Term, the Labour Services Provider must submit to the Company an Invoice for the Service Fee for the preceding week, including any additional costs and GST clearly marked.
- (c) The Company must pay the Service Fee owing on each Invoice to the Labour Services Provider within 14 days of the date that the Company receives the Invoice.
- (d) Despite anything else in this document, the Service Fee is subject to change at any time by the Labour Services Provider, in particular, if there is a change to the relevant Fair Work Ombudsmen Award for the Labour Hire Employees or site EBA

4. MECHANISM FOR LABOUR HIRE ARRANGEMENT

4.1 General

- (a) Upon the Company's request, the Labour Services Provider will provide Labour Hire Employees to the Company during the Term.
- (b) Any Labour Hire Employee supplied to the Company under this document:
 - (i) remains an employee of the Labour Services Provider at all times; and

- (ii) will be responsible to, and must comply with the Company's supervision, direction and control in respect of their activities.
- (c) By entering into this document, the Labour Services Provider and the Company are taken to have reached agreement on the Labour Hire Employee Rates for each Labour Hire Employee.
- (d) Nothing in this document has the effect of making any Labour Hire Employee an employee of the Company.

4.2 Terms of each Labour Hire Arrangement

- (a) The Labour Services Provider and the Company will separately agree, by no later than 5 Business Days before the Labour Hire Arrangement Term is to commence on:
 - (i) the Labour Hire Arrangement Term;
 - (ii) the number of Labour Hire Employees required;
 - (iii) the Skill Level of the Labour Hire Employee/(s) required; and
 - (iv) the hours of work that the Labour Hire Employee will perform work for the Company during the Labour Hire Arrangement Term.
- (b) In relation to clause 4.2(a) above, unless otherwise agreed between the Labour Services Provider and the Company, for each Labour Hire Arrangement:
 - (i) the Labour Hire Arrangement Term will be for 7 days beginning on the Monday of that week (e.g. Monday to Sunday);
 - (ii) the Company must issue a Notice to the Labour Service Provider by the day that is no later than 5 Business Days before the Labour Hire Arrangement Term is to commence (e.g. Monday of the week prior to the Labour Arrangement Term commencing); and
 - (iii) by 5pm on the Business Day before the Labour Hire Arrangement Term is to commence (e.g. Friday of the week prior to the Labour Hire Arrangement commencing), the Labour Services Provider will provide a response in relation to:
 - (A) the number of Labour Hire Employees required;
 - (B) the Skill Level of the Labour Hire Employee/(s) required; and
 - (C) the hours of work that the Labour Hire Employee will perform work for the Company during the Labour Hire Arrangement Term,for that Labour Hire Arrangement Term.
- (c) The terms of each Labour Hire Arrangement that are detailed in this clause 4.2 may be altered at any time by written agreement between the Company and the Labour Services Provider.

4.3 Recording work performed by the Labour Hire Employees

For the purposes of managing the Labour Hire Arrangement and the Labour Services Provider issuing invoices in accordance with clause 3:

- (a) the Company and the Labour Services Provider agree that any Labour Hire Employee whose services are provided to the Company will record the hours of work that the Labour Hire Employee performs for the Company during the Labour Hire Arrangement Term in the Labour Hire Management System;
- (b) the Labour Services Provider will generate and issue a report for the Company to approve detailing:
 - (i) the hours of work that Labour Hire Employees have performed for the Company;
 - (ii) the Skill Level of each Labour Hire Employee who has performed work for the Company; and
 - (iii) the Labour Hire Employee Rate that applies to each Labour Hire Employee that has performed work;
- (c) the Company has 2 Business Days to respond to the report generated in accordance with clause 4.3(b), either approving the details of the report or disputing the details of the report, and if they do not respond within 2 Business Days the Company will be taken to have approved the details of the report;
- (d) upon either approval or deemed approval of the details of the report generated in accordance with clause 4.3(b), the Labour Services Provider shall issue an invoice for the Service Fee and the Company is liable for paying that Service Fee in accordance with clause 3;
- (e) if the Company provides Notice that it disputes the details of the report issued by the Labour Service Provider, the process for dealing with Disputes in clause 10 is to be followed.

4.4 Solicitation and Transition Fee

- (a) If any of the Labour Hire Employees become a Transitioning Employee, the Company agrees to pay the Transition Fee to the Labour Services Provider, which shall form part of the Service Fee in accordance with the calculation method for Service Fee provided in clause 1.1.
- (b) If any of the Labour Hire Employees becomes a Transitioning Employee, the Company must notify the Labour Services Provider of that position within 14 days of the Company becoming aware of the Labour Hire Employee becoming a Transitioning Employee.

4.5 Labour Services Provider obligations

The Labour Services Provider must use reasonable endeavours to ensure that each Labour Hire Employee:

- (a) is available at the times the Labour Hire Arrangement specifies, plus any reasonable additional overtime the Company requires;

- (b) has the necessary competence, experience, training and qualifications to perform the functions and duties the Company requires;
- (c) devotes the whole of his or her time, attention and skill during the Labour Hire Arrangement Term to the Labour Hire Arrangement; and
- (d) acts in accordance with the Company's reasonable requests and directions.

4.6 Objection to the use of particular Employees

The Company may:

- (a) require the Labour Services Provider to provide any information that the Company reasonably requires for the purposes of determining whether to object to the services being provided by a particular Labour Hire Employee, and the Labour Services Provider must provide this information if it is lawful to do so; and
- (b) object to any Labour Hire Employee that the Labour Services Provider proposes to provide or provides under this document, and notify the Labour Services Provider that the Company does not permit that Labour Hire Employee to work at the Company.

4.7 Acknowledgements by the Company

The Company acknowledges that:

- (a) each Labour Hire Employee will be responsible to the Company, and act under the Company's immediate direction;
- (b) it will only allocate work to Labour Hire Employees who have the necessary competence, experience, training and qualifications required to perform the functions and duties of the role allocated to him or her;
- (c) the work performed by a Labour Hire Employee must not, without the Labour Hire Employee's consent, involve:
 - (i) a reduction in the Labour Hire Employee's status; or
 - (ii) duties that would be unreasonable having regard to the Labour Hire Employee's skills, abilities and experience; and
- (d) a Labour Hire Employee's Employment Terms are as agreed between the Labour Services Provider and the Labour Hire Employee.

4.8 Compliance with Law

- (a) The Labour Services Provider warrants that:
 - (i) it employs the Labour Hire Employees; and
 - (ii) it will at all times comply with all Laws in connection with the employment of the Labour Hire Employees, including without limitation, immigration laws, employment laws, work health and safety laws and labour hire laws and the Labour Hire Employee's Employment Terms.
- (b) Without limiting the generality of clause 4.8(a) the Labour Services Provider acknowledges its liability for and further warrants that it will pay:

- (i) each Labour Hire Employees all the remuneration, payments and other benefits that they are entitled to by Law, including those payable in accordance with the *Fair Work Act 2009* (Cth), and the Labour Hire Employee's Employment Terms;
- (ii) all income tax and payroll tax payable under any other statute imposing any liability for taxation in respect of the Labour Services Provider or a Labour Hire Employee; and
- (iii) all superannuation contributions it is required to pay, on behalf of a Labour Hire Employee, in order to avoid the imposition of a charge under the *Superannuation Guarantee (Administration) Act 1992* (Cth).

4.9 Relationship

Except as expressly provided in this document:

- (a) nothing in this agreement is intended to constitute a fiduciary relationship, an employment relationship or an agency, partnership or trust between the Company and the Labour Services Provider or between the Company and the Labour Hire Employees; and
- (b) no party has authority to bind any other party.

4.10 Information

The Company must respond promptly to all reasonable requests by the Labour Services Provider for information relating to this document.

4.11 Access

The Company agrees to grant each Labour Hire Employee the rights and levels of safe access to the Company Site that are reasonably necessary for the Labour Hire Employee to perform the work required by the Labour Hire Employee.

4.12 Workplace health and safety

- (a) The Labour Services Provider must comply with all relevant work health and safety Laws in respect of the Labour Hire Employees, and require the Labour Hire Employees to comply with their workplace health and safety obligations, including (but not limited to) complying with all systems, inductions, procedures and processes the Company directs.
- (b) Each party will immediately notify the other party upon becoming aware of any health and safety incidents that occur in connection with the supply of the services of a Labour Hire Employee, or of any involvement by relevant health and safety authorities in matters relating to the supply of the services of a Labour Hire Employee.
- (c) If any Labour Hire Employee engages in conduct that, in the Company's reasonable opinion, causes a serious risk to health and safety, the Company may direct the Labour Services Provider to remove that person from any the Company Site and the Labour Services Provider must immediately comply with that direction.
- (d) During the Term, the Company must:

- (i) ensure the conduct of the Company's business and operations does not compromise the Labour Hire Employee's workplace health and safety; and
 - (ii) comply with all relevant work health and safety Laws in respect of the Labour Hire Employee.
- (e) If a Labour Hire Employee witnesses or otherwise has or possesses relevant information or knowledge relating to a safety incident which occurs at a Company Site, the Labour Services Provider must direct the Labour Hire Employee to fully participate in any investigation or reporting process the Company requests.
- (f) If a Labour Hire Employee causes or contributes to a safety incident at a Company Site, the Labour Services Provider must bear all costs and expenses in relation to any investigation that the Labour Services Provider wishes to conduct, unless otherwise the Company agrees otherwise.

4.13 Confidentiality

- (a) The Labour Services Provider and the Labour Hire Employee may have access to Confidential Information in the course of this Agreement. The Labour Services Provider must not, and must procure that the Labour Hire Employee will not, either during or after the Term, use or disclose, cause or permit to be used or disclosed, or allow or assist any person to observe or have access to, any Confidential Information, except:
- (i) with the prior written consent of the Company;
 - (ii) in the proper course of work as required under the Labour Hire Agreement; or
 - (iii) to the extent required by Law.
- (b) The Labour Services Provider must immediately notify the Company of any suspected or actual unauthorised use, copying or disclosure of Confidential Information.
- (c) If the Company requires, the Labour Services Provider will provide to the Company the Employment Terms of a Labour Hire Employee.

5. INSURANCE

5.1 Insurances required by both parties

From the date of this document and at all times during the Term, both the Company and the Labour Services Provider must:

- (a) take out and maintain the following Insurance Policies public liability insurance for at least \$20,000,000 for any single claim;
- (b) each party must:
 - (i) notify the other party and the relevant insurer in writing of all claims and events, which may or could invalidate any Insurance Policy or lead to the insurer cancelling or refusing to cover the parties for any claim under any of the Insurance Policies; and

- (ii) provide the other party evidence, if the other party requests, of the Insurance Policies and their currency.

5.2 Additional insurances required by the Company

- (a) In addition to the Insurance Policies and obligations imposed on both parties under clause 5.1, from the date of this document and at all times during the Term, the Company must take out and maintain professional indemnity insurance for at least \$20,000,000 for any single claim in respect of any obligations arising from a breach of any professional obligations under this document, to be maintained for at least three (3) years (or such longer period otherwise required under Law) after the date of termination of this document.
- (b) The Company must:
 - (i) notify the Labour Services Provider and the relevant insurer in writing of all claims and events, which may or could invalidate any Insurance Policy or lead to the insurer cancelling or refusing to cover the parties for any claim under any of the Insurance Policies; and
 - (ii) provide the Labour Services Provider with evidence, if the Labour Services Provider requests, of the Insurance Policies and their currency.

5.3 Additional insurance requirements for Labour Services Provider

- (a) In addition to the Insurance Policies and obligations imposed on both parties under clause 5.1, from the date of this document and at all times during the Term, the Labour Services Provider must:
 - (i) take out and maintain full workers compensation insurance to cover each Labour Hire Employee as required by Law; and
 - (ii) take out and maintain professional indemnity insurance for at least \$1,000,000 for any one loss and \$2,000,000 in aggregate for all losses in respect of any obligations arising from a breach of any professional obligations under this document, to be maintained for at least three (3) years (or such longer period) otherwise required Under Law) after the date of termination of this document.
- (b) The Labour Services Provider must:
 - (i) notify the Company and the relevant insurer in writing of all claims and events, which may or could invalidate any Insurance Policy or lead to the insurer cancelling or refusing to cover the parties for any claim under any of the Insurance Policies; and
 - (ii) provide the Company evidence, if the Company requests, of the workers compensation insurance and their currency.

6. GST

6.1 GST Exclusive Amounts

All amounts payable under or in connection with this document are exclusive of GST.

6.2 Payment of GST

- (a) A recipient of a taxable supply under or in connection with this document must pay to the supplier, in addition to the GST exclusive consideration for the taxable supply, an amount equal to any GST paid or payable by the supplier in respect of the taxable supply (**GST Amount**).
- (b) The recipient must pay the GST Amount to the supplier when the GST exclusive consideration or part of it is provided, except that the recipient need not pay the GST Amount unless the recipient has received a tax invoice (or an adjustment note) for that taxable supply.

6.3 Reimbursements

Where a supplier incurs a cost or expense for which it may claim payment, reimbursement or indemnity from another party under or in connection with this document, the amount to be paid or credited to the supplier is the cost or expense (reduced by the input tax credit that the supplier is entitled to claim in respect of that cost or expense) plus the amount in respect of GST payable by the recipient as calculated under clause 6.2.

6.4 Interpretation

Terms defined in the GST Law have the same meaning if used in clause unless the context makes it clear that a different meaning is intended.

7. PAYROLL TAX

- (a) The parties agree and acknowledge:
 - (i) the Company will not be required to pay payroll tax as part of the Service Fee if the total taxable wages payable by the Company to the Labour Services Provider under this Labour Hire Arrangement is less than the Payroll Tax Threshold; and
 - (ii) the Company will be required to pay payroll tax as part of the Service Fee if the total taxable wages under this Labour Hire Arrangement exceeds the Payroll Tax Threshold.
- (b) For the avoidance of doubt, in calculating the Labour Services Provider's payroll tax liability for the purpose of this clause, all sources of taxable wages, other than those calculated under this Labour Hire Arrangement, are to be excluded.

8. FORCE MAJEURE

8.1 Notice of Force Majeure and suspension of obligations

If a party (**Affected Party**) is prevented in whole or in part from performing its obligations under this document because of Force Majeure:

- (a) the Affected Party must promptly give notice to the other party specifying:
 - (i) details of the Force Majeure;
 - (ii) an estimate of the likely duration of the Force Majeure, if practicable;
 - (iii) the obligations under this document which are affected by the Force Majeure, and the extent to which performance of those obligations is affected; and

- (iv) steps taken, or steps proposed to be taken, to rectify the Force Majeure; and
- (b) subject to clause 8.2, the obligations of the Affected Party are suspended to the extent that they are affected by the Force Majeure (**Suspended Obligations**):
 - (i) from the date that notice under clause 8.1(a) is given;
 - (ii) until the Affected Party is no longer prevented by the Force Majeure from performing the Suspended Obligations.

8.2 Exceptions

The obligations of the Affected Party to pay any money are not suspended under clause 8.1(b).

8.3 Best endeavours

- (a) The Affected Party must use its best endeavours to:
 - (i) remove, overcome or minimise:
 - (A) the Force Majeure; and
 - (B) the effect of the Force Majeure on the Affected Party; and
 - (ii) mitigate any loss suffered by another party as a result of the Suspension.
- (b) Clause 8.3(a) does not oblige the Affected Party to:
 - (i) settle a labour dispute;
 - (ii) institute proceedings in a court or tribunal; or
 - (iii) contest the validity of a law or order of a Government Authority.

8.4 Alternative arrangements

- (a) During any Suspension, the other party may make alternative arrangements for the performance of the Suspended Obligations. This may include engaging another person to perform them.
- (b) The Affected Party must do whatever is reasonably necessary to facilitate those alternative arrangements.
- (c) A party making alternative arrangements under clause 8.4(a) does not incur liability to the Affected Party for doing so.

8.5 Termination

- (a) If a Suspension continues for a period exceeding three (3) months, a party (other than the Affected Party) may terminate this document by giving 28 days' notice to the Affected Party.
- (b) Termination under clause 8.5(a) does not affect rights accrued to a party up to the date of termination.

9. NOTICES

9.1 Service of Notice

A Notice must be:

- (a) in writing, in English and signed by the party giving it, or by their agent; and
 - (b) delivered or sent:
 - (i) by prepaid post;
 - (ii) by fax;
 - (iii) by email; or
 - (iv) via an electronic signature platform,
- to the party's address specified in this document, or any other address notified by a party to the other party as its address for service.

9.2 Effective Service

- (a) A Notice given in accordance with clause 9.1 takes effect when received, or at a later time specified in it.
- (b) A Notice is taken to be received at the time specified below:
 - (i) if hand delivered – when delivered;
 - (ii) if sent by prepaid post – on the third Business Day after the date of posting (or on the tenth Business Day after the date of posting if posted to, or from, a place outside Australia);
 - (iii) if sent by email – when, under the *Electronic Transactions (Victoria) Act 2000* (Vic), an electronic communication is taken to be received;
 - (iv) if sent via an electronic signature platform – when the electronic signature platform records that it was sent;
 - (v) if sent by fax – when the sender's fax system generates a message confirming successful transmission of the entire document.
- (c) However, if the time at which a Notice is taken to be received is not on a Business Day, or is after 5.00pm on a Business Day, it is taken to be received at 9.00am on the next Business Day.

9.3 Ineffective Service

A Notice is taken not to be received if:

- (a) in the case of service by post, the Notice is returned to sender because the postal service was unable to deliver it;
- (b) in the case of service by email, the party sending the Notice receives an automated email response specifying that the email containing the Notice was undeliverable;

- (c) in the case of service by fax, the sender's fax system generates a message stating that transmission was unsuccessful, or the Notice is not received in full and legible form.

9.4 Additional Provisions Regarding Email and Electronic Signature Platforms

- (a) A Notice given by email or via an electronic signature platform is taken to be in writing, even if it remains in digital form and is not printed.
- (b) A Notice may be an attachment to an email, or accessible by a link in the email.
- (c) A Notice given by email or via an electronic signature platform is taken to be signed by the party if:
 - (i) the party's name is typewritten into the Notice;
 - (ii) the party's handwritten signature (which may be a digital image or copy of the signature) appears in the Notice; or
 - (iii) a signature adopted by the party as its signature appears in the Notice.
- (d) If:
 - (i) the originator of an email requests a read receipt from the addressee; and
 - (ii) the originator receives a read receipt from the addressee specifying the time and date that the email was read or received,

the email is taken to be received no later than the time and date specified in the read receipt.

A read receipt does not by itself amount to an admission by the recipient regarding the content or effect of a Notice.

- (e) Nothing in this clause 7 affects the provisions of the *Electronic Transactions (Victoria) Act 2000* (Vic) regarding attribution of electronic communications.

10. DISPUTE RESOLUTION

10.1 Disputes and court proceedings

If a Dispute arises the parties must comply with this clause 10 before commencing court, tribunal or arbitral proceedings (**Proceedings**) in respect of the Dispute.

10.2 Dispute Notice

- (a) A party (**Claimant**) claiming that a Dispute has arisen must give notice (**Dispute Notice**) to the other party (**Respondent**) in accordance with clause 10.2(b).
- (b) The Dispute Notice:
 - (i) must specify details of the matter in dispute;
 - (ii) must specify the remedy or outcome the Claimant seeks;
 - (iii) must state that it is given under this clause 10; and

- (iv) may state that the Dispute will be referred to mediation if it is not resolved within 14 days after the Dispute Notice is given.

10.3 Negotiation

If a Dispute Notice is given under clause 10.2, the parties must endeavour to resolve the dispute by agreement within 14 days after the Dispute Notice is given.

10.4 Outstanding dispute

If the Dispute is not resolved within 14 days after a Dispute Notice is given, the Dispute must be dealt with by mediation in accordance with clause 10.5.

10.5 Mediation

- (a) The parties must mediate the Dispute in accordance with Resolution Institute Mediation Rules (**Rules**) which are current at the time the Dispute is referred to mediation.
- (b) The Rules are taken to be incorporated into this document. If there is an inconsistency between this document and the Rules, this document prevails to the extent of the inconsistency.
- (c) The parties may agree upon the appointment of a particular mediator for the mediation.
- (d) If the identity of the mediator has not been agreed between the parties within 7 days after one party notifies each other party of its preferred appointee, the parties or any one of them may request the Resolution Institute appoint a mediator for the mediation.
- (e) The mediation will be conducted in Melbourne.
- (f) Each party must co-operate with, and promptly abide by any reasonable directions given by, the mediator in respect of the mediation.
- (g) If a party is an individual, that individual must attend the mediation. If the party is a company, a representative authorised by the company to settle the Dispute must attend the mediation.
- (h) If the Dispute is not resolved within 21 days after a mediator is appointed to mediate the Dispute, either party may terminate the mediation by notice to the other parties and the mediator. Once mediation is terminated in accordance with this clause 10.5(h), a party may commence Proceedings in respect of the Dispute.
- (i) The parties are responsible in equal shares for:
 - (i) costs payable to the mediator and the Resolution Institute in connection with the mediation; and
 - (ii) incidental costs of the mediation, such as room hire.

If a party pays the mediator or Resolution Institute an amount which exceeds the share for which it is responsible, it may recover the excess as a debt from each other party in the appropriate shares.

- (j) Each party is responsible for its own costs in respect of the mediation, such as preparation, legal, consultant's and travel costs.
- (k) If the Dispute is resolved at the mediation the terms of settlement will be recorded in writing and signed by the parties or their representatives.

10.6 Contract Performance

The parties will, to the extent practicable, continue to perform their obligations under this document while endeavouring to resolve the Dispute under this clause 10.

10.7 Injunctive Relief

Clause 10.1 does not prevent a party from commencing Proceedings for injunctive or interim relief where failure to obtain such relief would cause the party immediate and irreparable damage.

10.8 Termination

This clause 10 does not prevent a party from lawfully terminating this document.

10.9 Survival

This clause survives termination or expiration of this document.

11. TERMINATION

11.1 Material Breach and Insolvency

Either party may terminate this document by written notice to the other party:

- (a) immediately if the other party breaches a material term of this document, which is not capable of remedy, or which is capable of remedy but is not remedied within 14 Business Days of receiving written notice of the breach; or
- (b) to the extent permissible by law, immediately if the other party is involved in solvency/insolvency proceedings.

11.2 Convenience

Either Party may terminate this document at any time for convenience upon 30 days' written notice to the other Party.

11.3 Rights unaffected

Termination of this document does not affect any accrued rights or remedies of either Party.

12. ANTI-BRIBERY

Each Party must:

- (a) at all times comply with all applicable laws, statutes, regulations and codes relating to anti-bribery and improper payments including but not limited to the *Criminal Code Act 1995* (Cth) (**Relevant Requirements**); and

- (b) have and maintain in place throughout the Term its own policies and procedures, including adequate procedures under the Relevant Requirements, to ensure compliance with the Relevant Requirements, and enforce them where appropriate.

13. MISCELLANEOUS

13.1 Assignment

A party may only dispose of, deal with, declare a trust over or otherwise create an interest in, its rights under this document with the prior consent of each other party.

13.2 Discretion in Exercising Rights and Giving Consents

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

13.3 No Warranty by Giving Consent

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

13.4 No Liability for Loss

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

13.5 Conflict of Interest

A party's rights and remedies under this document may be exercised even if it involves a conflict of interest or a party has a personal interest in their exercise.

13.6 Remedies Cumulative

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

13.7 Exclusion of Contrary Legislation

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

13.8 Amendment

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

13.9 Waiver

A right under this document can only be waived by notice signed by the party or parties waiving the right. A party does not waive its rights under this document because it grants an extension or forbearance to any other party. A waiver of a right on one or more occasions does not operate as a waiver of that right if that right arises again. The exercise of a right

does not prevent any further exercise of that right or of any other right. If a party does not exercise a right or remedy fully or at a given time, the party may still exercise it later.

13.10 No Merger

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

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

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

13.11 Survival of Rights and Obligations

The following survive termination or expiration of this document:

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

13.12 No Payment Required to Claim Indemnity

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

13.13 Giving Effect to this Document

Each party agrees, at its own expense, to do anything (including ensuring that its employees and agents do anything) that any other party reasonably requires (such as obtaining consents, signing and producing documents) as may be necessary or desirable to give full effect to the provisions of this document and the transactions contemplated by it.

13.14 Entire Agreement

This document embodies the entire agreement between the parties and supersedes all previous agreements, understandings, negotiations, warranties and representations on the subject matter of this document.

The parties acknowledge that they have not relied upon any representations or warranties in executing this document, except for those contained in this document.

13.15 Inconsistencies

If this document is inconsistent with any other agreement between the parties, this document prevails to the extent of the inconsistency.

13.16 Construction

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

13.17 Severability

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

13.18 Costs and Expenses

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

13.19 Execution under Power of Attorney or Agency

Each person who executes this document as:

- (a) attorney for a party, or
- (b) agent of a party,

warrants that he or she has authority to do so, and will produce written evidence of that authority to any party who requests it.

13.20 Governing Law

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

13.21 Counterparts

This document may be executed in any number of counterparts. A party may execute this document by signing any counterpart. All counterparts together are taken to constitute one instrument.

13.22 Formation of Contract by Electronic Communications

- (a) The parties consent to this agreement being entered into by electronic communication if a full and legible copy of this agreement, signed by each party, is sent by electronic communication to each other party.
- (b) A party may sign this agreement by an electronic signature that meets the requirements for signature in the *Electronic Transactions (Victoria) Act 2000 (Vic)*.
- (c) In this clause **electronic communication** includes email, fax or usage of an electronic signature platform.