

ANCHOR MARINE SERVICES PTY LTD

ABN: 36 152 801 119

TERMS & CONDITIONS FOR THE PROVISION OF SERVICES (CP-21)

1. DEFINITIONS & INTERPRETATION

- (a) In these terms and conditions the following words and phrases shall have the following meanings:

“Additional Services” shall mean the Additional Services referred to in Clause 7.

“Agreement” shall mean the agreement comprised in the Order and these terms and conditions.

“Company” means the party identified as the Company on the Order.

“Contract Price” shall mean the Contract Price for Services or Additional Services as calculated in accordance with Clause 4 or 7 as the case may be.

“Customer” means the party identified as the Customer on the Order.

“Date for Payment for Services” shall mean the Date for Payment for Services specified in the Order.

“Insolvency Event” shall mean official management, receivership, liquidation, provisional liquidation, compromise, arrangement, amalgamation, administration (voluntary or otherwise), reconstruction, winding up, dissolution, assignment for the benefit of creditors, arrangement or compromise with creditors, bankruptcy or death.

“Order” shall mean the Purchase Order on the reverse hereof or attached hereto.

“Party” or “Parties” shall mean the parties to this Agreement and may be used inter-changeably.

“Rates” shall mean the rates specified in the First Schedule.

“Services” shall mean all services provided by the Company to the Customer including the Services described in the Order.

“Sub-Contractor” shall include any person who pursuant to a contract or arrangement with any other person (whether or not the Company) supplies or agrees to supply the Services or any part thereof.

- (b) Words importing the singular include the plural and vice versa.
- (c) Words importing a gender include any gender.
- (d) An expression importing a natural person includes any company, partnership, joint venture, association, corporation or other body corporate and any Governmental authority or agency.
- (e) A reference to a statute, regulation, proclamation, ordinance or by-law includes all statutes, regulations, proclamations, ordinances or by-laws amending, consolidating or replacing it, and a reference to a statute includes all regulations, proclamations, ordinances and by-laws issued pursuant to that statute.

- (f) A reference to a Clause or Schedule is a reference to a clause or schedule of these terms and conditions.
- (g) A reference to a Party includes that Party's executors, administrators, substitutes, successors and permitted assigns.
- (h) A covenant or agreement on the part of two or more persons binds them jointly and severally.

2. TERMS OF SUPPLY

The Services and Additional Services supplied by the Company to the Customer are supplied exclusively on these terms and conditions.

3. SERVICES

The Company shall provide to the Customer the Services for the Contract Price.

4. CONTRACT PRICE

The Contract Price for the Services shall be the total of:

- (a) any price or prices agreed between the Parties for the Services; plus
- (b) the cost of any of the Services where a price has not been agreed between the Parties which costs shall be calculated in accordance with the Rates and shall be payable in accordance with Clause 6.

5. COMPANY'S QUOTATIONS

Unless previously withdrawn by the Company, any quotation(s) provided by the Company shall remain valid for the period stated therein or, when no period is so stated, for a period of seven (7) days only after the date of the relevant quotation(s). Quotations shall only be valid if in writing identified by number and duly executed by a duly authorised officer of the Company. The Company reserves the right to refuse any order based on any quotation(s) issued by it.

6. TERMS OF PAYMENT

- (a) Payment in full for the Services shall unless otherwise agreed between the Parties be made by the Customer on the Date for Payment for Services.
- (b) Notwithstanding the provisions of Sub-Clause (a) hereof the Company shall be entitled to withhold provision of the Services unless payment in advance is made by the Customer.

7. ADDITIONAL SERVICES

- (a) If during the provision of the Services the Customer wishes the Company to provide services in addition to the Services ("Additional Services") then the Customer shall provide a request in writing to the Company for such Additional Services.

- (b) The Company shall not be under any liability or obligation to provide to the Customer the Additional Services requested.
- (c) In the event that the Company receives a request from the Customer to provide Additional Services to the Customer and agrees to provide such Additional Services then such Additional Services shall be provided upon these terms and conditions mutatis mutandis and the Contract Price for such Additional Services shall be calculated in accordance with such rates as may be agreed between Parties for those Additional Services or if no rates are agreed then in accordance with the Rates.
- (d) The date for payment of Additional Services shall be as agreed between the Parties or in default of agreement within seven (7) days of the provision of the Additional Services.

8. CESSATION OF SUPPLY OF SERVICES OR ADDITIONAL SERVICES

In the event that the Customer refuses and/or fails to pay to the Company any monies due to the Company then the Company may immediately cease supplying and/or suspend any Services or Additional Services being provided by it to the Customer without prejudice to any other rights that it may have against the Customer including the right to recover from the Customer all direct and indirect costs incurred by the Company arising from such cessation in supplying or suspension of the Services or Additional Services.

9. ACCESS TO VESSEL

- (a) In the case of Services or Additional Services to be provided relating to a vessel safe and ready access to the vessel shall be given by the Customer to the Company and the vessel shall be, safely afloat and, unless otherwise agreed, gas free and/or inerted, free of cargo, slops, sludge, dirty ballast and any substances in the structure of the vessel which may during the provision of the Services or Additional Services be or become dangerous or harmful to health.
- (b) If for any reason safe and ready access to the vessel is not given by the Customer to the Company on the date(s) when the Company is to supply the Services or Additional Services the Company shall have the right to cancel this Agreement and to recover any costs and expenses which the Company has reasonably incurred in the performance of this Agreement up to the date of such cancellation.

10. HAZARDS

The Customer shall ensure that it informs the Company in advance of any hazards which may exist in relation to any vessel with respect to which Services or Additional Services are to be provided including, without limitation, any hazards associated with any cargo and/or machinery, appurtenances or equipment on such vessel and in the event that the Customer fails to comply with the provisions of this Clause and the Company becomes aware of any hazards the Company shall be entitled to forthwith suspend the provision of the Services or Additional Services to the Customer and the Customer shall be liable to reimburse the Company all monies lost or expended by the Company as a result of such suspension.

11. INTEREST ON OVERDUE MONIES

The Company shall be entitled to be paid by the Customer interest at the rate of Eleven per centum (11%) (calculated daily) over the amount charged by the Commonwealth bank for overdrafts of amounts in excess of One Hundred Thousand Australian Dollars (\$A100,000.00), on all monies payable pursuant to this Agreement which are not paid by the Customer to the Company strictly in accordance with this Agreement.

12. ACCURACY OF INFORMATION

The Customer warrants the accuracy of all specifications, drawings, particulars, weights, dimensions and other information submitted by it or its servants or agents to the Company for the purposes of the Company supplying the Services or Additional Services and shall indemnify, keep indemnified and hold harmless the Company and its servants, agents and sub-contractors from and against all actions, suits, claims, demands, losses and damages whatsoever including consequential loss and damage and liabilities suffered or incurred by the Company arising out of any breach by the Customer of the warranty contained herein.

13. DATE(S) FOR SUPPLY OF SERVICES OR ADDITIONAL SERVICES

Any details of date(s) for the supply of Services or Additional Services which are provided by the Company to the Customer shall be deemed to be estimates only and the Company shall not under any circumstances whatsoever be liable for any loss, damage, delay or consequential losses occasioned to the Customer arising out of or in any way relating to late or non-supply of the Services or Additional Services or any part thereof.

14. RIGHT TO SUB-CONTRACT

- (a) The Company and any Sub-Contractor shall be entitled to sub-contract on any terms the supply of the Services or Additional Services or any part thereof.
- (b) The Customer undertakes that no claim or allegation shall be made, whether by the Customer or any other person whomsoever against any person (other than the Company) by whom (whether as sub-contractor, principal, employer, servant, agent or otherwise) the Services or Additional Services or any part thereof are supplied which imposes or attempts to impose upon such person any liability whatsoever whether or not arising out of negligence on the part of such person, and if such claim or allegation should nevertheless be made, then to indemnify, keep indemnified and hold harmless the Company and the person against whom such claim or allegation is made against the consequences thereof. Without prejudice to the foregoing and for the purposes of this Clause the Company is or shall be deemed to be acting as agent or trustee on behalf of and for the benefit of all such persons and each of them and all such persons and each of them shall to this extent be or be deemed to be parties to this Agreement.

15. EXTENSION OF EXEMPTIONS TO SUB-CONTRACTORS

Every exemption, limitation, condition and liberty herein contained and every right, exemption from liability, defence and immunity of whatsoever nature applicable to the Company or to which the Company is entitled hereunder shall also be available and shall extend to protect:

- (a) all Sub-Contractors;
- (b) every servant or agent of the Company or of a Sub-Contractor;
- (c) every other person (other than the Company) by whom the Services or Additional Services or any part thereof are supplied;
- (d) all persons who are or might be vicariously liable for the acts or omissions of any person falling within Sub-Clauses (a), (b) or (c) hereof and for the purposes of this Clause the Company is or shall be deemed to be acting as agent or trustee on behalf of and for the benefit of all such persons and each of them and all such persons and each of them shall to this extent be or be deemed to be parties to this Agreement.

16. DISRUPTIONS

The date(s) on or by which the Services or Additional Services are to be provided shall be extended when any of the following events cause delay to the Company's provision of Services or Additional Services, namely:

- (a) acts of God;
- (b) any Government requisition, control, intervention, requirement or interference;
- (c) any circumstances arising out of war, threatened act of war or warlike operations, acts of terrorists or the consequences thereof;
- (d) riots, civil commotions, blockades or embargoes;
- (e) epidemics;
- (f) earthquakes, landslides, floods or other extraordinary weather conditions;
- (g) strikes, lockouts or other industrial action;
- (h) fire, accident, explosion (whether at the Company's premises or elsewhere);
- (i) failure of the Customer to review/approve technical information within a reasonable time;
- (j) suspension of the provision of Services or Additional Services pursuant to any other provision of this Agreement;
- (k) failure of the Customer to provide to the Company safe and ready access to any vessel as required under this Agreement; and
- (l) any other breach by the Customer of any of the terms or conditions of this Agreement.

17. DELAY

The Customer hereby authorises any delay in the or provision of the Services or Additional Services which the Company may in its absolute discretion deem desirable or necessary in the circumstances.

18. METHODS

If the Customer expressly or impliedly instructs the Company to use or it is expressly agreed that the Company will use a particular method of supplying the Services or Additional Services the Company will give priority to that method (provided that it is legal to do so) but if it cannot conveniently be adopted by the Company or if such method involves costs which are unacceptable to the Company the Customer hereby authorises the Company to supply the Services or Additional Services by such other method or methods as the Company may determine in its absolute discretion.

19. LIABILITY OF COMPANY

The provision of the Services or Additional Services shall in all respects be at the risk of the Customer and not the Company and the Company and its servants and agents shall not be liable in tort or contract or otherwise howsoever for any loss or damage of any nature or kind whatsoever including consequential or economic loss and including loss of or damage to any property whatsoever and including personal injury to or the death of any person whomsoever including the Customer its servants, agents or contractors caused by contributed to or arising out of or in the course of the supply or provision of the Services or Additional Services and whether or not such loss, damage, injury or death is due to the negligence or breach of contract on the part of the Company or its servants, agents or Sub-Contractors and this Clause shall apply to all such loss or damage or injury or death whether or not the same occurs in the course of performance by or on behalf of the Company of the Agreement or in events which are in the contemplation of the Company and/or the Customer or in events which are foreseeable by them or either of them or in events which could constitute a breach of this Agreement or a breach of a fundamental term thereof.

20. DESCRIPTION

The Services to be supplied by the Company shall be as described on the Order and any such description shall prevail over any descriptions previously provided by the Company or the Customer.

21. CANCELLATION

No order for the Services or Additional Services or any part thereof may be cancelled by the Customer except with the prior express written consent of the Company and then only upon terms to be agreed by the Company by which the Customer indemnifies the Company from and against all losses, costs, damages and expenses of whatsoever nature including consequential losses which may be suffered by the Company.

22. TERMINATION

- (a) The Company shall be entitled to terminate this Agreement by notice in writing to the Customer if:
 - (i) any monies payable by the Customer to the Company shall not be paid strictly in accordance with this Agreement;

- (ii) the Customer suffers an Insolvency Event or is deemed insolvent or is in default in performance or observance of any provision of this Agreement where such default is incapable of remedy or, if capable of remedy, such default is not remedied within fourteen (14) days after notice specifying such default is given by the Company to the Customer; or
- (iii) the Customer clearly indicates its intention not to perform this Agreement;

PROVIDED ALWAYS that the Company shall be entitled to recover any monies that relates to any Services or Additional Services performed up to the date of termination, together with any losses that the Company may suffer, or incur, by reason of the termination.

- (b) The Customer shall be deemed insolvent if it makes any voluntary arrangement with its creditors or becomes subject to an administration order or goes into liquidation (otherwise than for the purposes of amalgamation or reconstruction) or an encumbrancer takes possession of, or a receiver is appointed in respect of any of the Customer's property or assets or the Company reasonably apprehends that any of the events referred to herein is about to occur in relation to the Customer and, after notification to the Customer, is not reasonably satisfied as to the Customer's continuing creditworthiness and/or is not provided with suitable guarantees.

23. INDEMNITY

The Customer shall indemnify, keep indemnified and hold harmless the Company in respect of any actions, suits, claims, demands, damages, losses, costs, expenses and liabilities brought or made by any person whomsoever in respect of any personal injury to or the death of any person whomsoever or loss of and/or damage to any property whatsoever arising out of or as a consequence of any accident or circumstance involving the Services or Additional Services and whether or not such loss or damage or injury or death arises out of breach of contract or negligence on the part of the Company or its servants, agents or Sub-Contractors.

24. EARLY TERMINATION BY THE COMPANY

- (a) Notwithstanding execution of this Agreement by the Company, at any time prior to the time that the Services or Additional Services are to be provided by the Company to the Customer pursuant to this Agreement the Company may give notice to the Customer that it will not provide the Services or Additional Services and in such event the Company shall not be under any liability whatsoever to the Customer to provide the Services or Additional Services and shall not be liable for any loss or damage suffered or incurred by the Customer as a result of the Services or Additional Services not being provided.

- (b) In the event that the Company gives notice to the Customer pursuant to Sub-Clause (a) hereof the Company shall not be under any liability to provide to the Customer any reason why the Company will not provide the Services or Additional Services to the Customer.

25. VALUATION

Where all or part of the Services or Additional Services to be provided consist of an inspection of any ship or vessel or associated equipment or appurtenances ("Inspection") or valuation of any ship or vessel or associated equipment or appurtenances ("Valuation") then the Company and the Customer acknowledge and agree that:

- (a) the Inspection or Valuation shall only be for the purpose or the purposes specified in the Order;
- (b) the Inspection or Valuation shall only be for the use of the Customer and shall not be for the use of any other person;
- (c) the Company shall not be responsible to any third party who may make use of or rely upon the whole or any part of the Inspection or Valuation and in the event that any third party does make use of or rely upon such Inspection or Valuation and as a result thereof suffers any loss or damage whatsoever then the Customer shall indemnify, keep indemnified and hold harmless the Company from and against any claim or claims that may be brought against the Company as a consequence thereof;
- (d) the Inspection or Valuation will only be current as at the date of any report provided by the Company to the Customer with respect to such Inspection or Valuation;
- (e) the Company does not warrant that any Inspection or Valuation provided will not be affected by matters outside the knowledge or control of the Company;
- (f) unless expressly stated to the contrary by the Company, the Company has not carried out or had the benefit of any scientific, x-ray or ultrasound testing or activities with respect to the ship or vessel or associated equipment or appurtenances;
- (g) the Inspection or Valuation will be based upon such inspection as the Company shall have conducted of the ship or vessel or associated equipment or appurtenances with both the Customer and the Company acknowledging and agreeing that parts or areas of the ship or vessel or associated equipment or appurtenances that have not been inspected may have an affect, including a substantial affect, on the Inspection or Valuation.

26. PROVISIONS TO BE INCLUDED IN ANY REPORT CONCERNING ANY INSPECTION OR VALUATION

Without in any way limiting the provisions of Clause 25 the Parties acknowledge and agree that any report, provided by the Company to the Customer shall include the following:

"BASIS UPON WHICH REPORT OF INSPECTION &/OR VALUATION IS PROVIDED & DISCLAIMER

1. This report ("Report") has been provided on instructions of the person or entity to whom it is addressed ("Customer") and for the sole use of the Customer.
2. In the event that the Report contains details of any inspection of any ship or vessel or any associated equipment or appurtenances ("Inspection") or any valuation of any ship or vessel or any associated equipment or appurtenances ("Valuation") then:
 - (a) the Report of Inspection and/or Valuation shall only be for the purpose or the purposes specified in any order placed by the Customer with Anchor Marine Services Pty Ltd ("the Company");
 - (b) the Report of Inspection and/or Valuation shall only be for the use of the Customer and shall not be for the use of any other person;
 - (c) the Company shall not be responsible to any third party who may make use of or rely upon the whole or any part of the Report of Inspection and/or Valuation and in the event that any third party does make use of or rely upon such Report of Inspection and/or Valuation and as a result thereof suffers any loss or damage whatsoever then the Customer shall indemnify, keep indemnified and hold harmless the Company from and against any claim that may be brought against the Company as a consequence thereof;
 - (d) the Report of Inspection and/or Valuation will only be current as at the date of the Report;
 - (e) the Company does not warrant that the Report of Inspection and/or Valuation will not be affected by matters outside the knowledge or control of the Company;
 - (f) unless expressly stated to the contrary by the Company, the Company has not carried out or had the benefit of any scientific, x-ray or ultrasound testing or activities with respect to the ship or vessel or associated equipment or appurtenances;
 - (g) the Report of Inspection and/or Valuation is based upon such inspection as the Company shall have conducted of the ship or vessel or associated equipment or appurtenances the subject of the Report of Inspection and/or Valuation and parts or areas of the ship or vessel or associated equipment or appurtenances that have not been inspected may have an affect, including a substantial affect, on the Report of Inspection and/or Valuation.
3. The provision of the Report of Inspection and/or any Valuation is not and should not be considered as a recommendation in relation to:
 - (a) the purchase of any ship or vessel or any associated equipment or appurtenances;
 - (b) the charter of any ship or vessel or any associated equipment or appurtenances; or

- (c) the prudence of any person advancing any funds or providing any security or doing any other act, matter or thing in relation to any ship or vessel or any associated equipment or appurtenances.
4. In providing this Report of Inspection and/or Valuation the Company does not undertake to provide access to any additional information.
5. The Company reserves the right to amend or replace the Report of Inspection and/or Valuation at any time.
6. The Report of Inspection and/or Valuation is based on information provided by the Customer to the Company and upon such inspection as the Company shall have conducted of the ship or vessel or associated equipment or appurtenances the subject of the Report of Inspection and/or Valuation it being the case that parts or areas of the ship or vessel or associated or equipment or appurtenances that have not been inspected may have an affect, including a substantial affect on the Report of Inspection and/or Valuation and none of the Company or its related bodies corporate or any of its associates, officers, employees or advisors take responsibility for any information, statement or representation contained in the Report of Inspection and/or Valuation or any omission from it. The Company, its related bodies corporate and their associates, officers, employees or advisors have not carried out an audit or verification of the information contained in the Report of Inspection and/or Valuation and the Report of Inspection and/or Valuation does not purport to contain all of the information that the Customer may desire or require.
7. Any third parties should not rely on any material contained in the Report of Inspection and/or Valuation as a statement or representation of fact but should satisfy themselves as to the accuracy of material by such independent investigation as that third party or those third parties or their advisors think fit and such third parties should rely on their own enquiries and should also seek appropriate professional, including legal and technical advice.
8. No third party should expect the Company or its related bodies corporate or any of their associates, officers, employees or advisors to owe such third party any duty or responsibilities in connection with the purchase of any ship or vessel or any associated equipment or appurtenances or the charter of any ship or vessel or any associated equipment or appurtenances or the prudence of advancing any funds or providing any security in relation to any ship or vessel or any associated equipment or appurtenances.

9. To the maximum extent permitted by law and without limiting any disclaimer or exclusion of liability in any other document or agreement the Company and its related bodies corporate and their associates, officers, employees or advisors disclaim all liability for any loss or damage of whatsoever nature or kind (whether foreseeable or not) which may arise from any person acting on any information and/or opinions expressed in the Report of Inspection and/or Valuation or any information which is made available in connection therewith notwithstanding negligence, default or lack of care and no responsibility is accepted to inform any third party of any matter arising or coming to the notice of the Company or its related bodies corporate or any of their associates, officers, employees or advisors which may affect any information contained in the Report of Inspection and/or Valuation.
10. To the maximum extent permitted by law the Company and its related bodies corporate and their associates, officers, employees and advisors expressly disclaim any and all liability (including without limitation for negligence) for representations or warranties or in relation to the accuracy or completeness of any information, statements, opinions or matters express or implied, contained in, arising out of or derived from, or for omissions from the Report of Inspection and/or the Valuation or any other written or oral communications relating thereto.
11. Nothing in the Report of Inspection and/or Valuation constitutes a warranty, representation or undertaking by or on behalf of the Company or its related bodies corporate or any of their associates, officers, employees or advisors in relation to any ship or vessel or associated equipment or appurtenances.”

27. CONFIDENTIALITY

The Customer covenants, undertakes and agrees with the Company that the terms and conditions and other details contained in this Agreement are deemed to be confidential information (“Confidential Information”) and that the Customer shall not without the prior express written consent of the Company which consent may be withheld by the Company as it may in its absolute discretion think fit disclose the Confidential Information to any third party and the Customer shall take all steps whatsoever necessary in order to ensure that its employees, agents and contractors do not disclose any of the Confidential Information to any third party.

28. CONDITIONS TO HAVE FULL FORCE IN ALL CIRCUMSTANCES

All rights, immunities and limitations of liability in these terms and conditions shall continue to have full force and effect in all circumstances and notwithstanding any breach of this Agreement or any of the conditions thereof by the Company or any other person entitled to the benefit of such provisions.

29. VALIDITY OF TERMS & SEVERABILITY

In the event that any of the terms, conditions or provisions contained in this Agreement shall be determined invalid, unlawful or unenforceable to any extent, such term, condition or provision shall be severed from the remaining terms, conditions and provisions which shall continue to be valid to the fullest extent permitted by law.

30. COMPETITION & CONSUMER ACT & FAIR TRADING ACT

- (a) Notwithstanding anything herein contained the Company shall continue to be subject to any consumer guarantees provided by the Competition & Consumer Act, 2010 (Cwth) (as amended) ("the CCA"), and the Fair Trading Act, 2010 (WA) (as amended) ("the FTA") if and to the extent that those Acts or any of them is or are applicable to this Agreement and prevents the exclusion, restriction or modification of any such consumer guarantee.
- (b) Save for other conditions and warranties or consumer guarantees (if any) set out in these terms and conditions the only conditions and warranties or consumer guarantees which are binding on the Company in relation to its supply of the Services or Additional Services are those required by the CCA (if applicable) and the FTA (if applicable) and in the event that the Company is liable for breach of a consumer guarantee imposed by the CCA or the FTA the liability of the Company for a breach of such consumer guarantee shall be limited to the supplying of the Services or Additional Services again or the payment of the cost of having the Services or Additional Services supplied again and otherwise all conditions and warranties and all consumer guarantees whether express or implied by law and all representations, statements and obligations which would otherwise be binding upon the Company are hereby expressly excluded and negated.

31. LIMITATION OF LIABILITY

Subject to the other provisions of this Agreement the liability of the Company to the Customer shall be limited to the Contract Price for the Services or Additional Services.

32. NOTICES

If either Party shall desire to give to or serve on the other Party any notice, claim or demand hereunder or in connection herewith then such notice, claim or demand shall be sufficiently given if forwarded by registered post or facsimile transmission to such Party at his address stated herein or last known to the Party desiring to give such notice or in the case of any Party being a company to its registered office. Every notice shall be deemed to have been received and given at the time when in the ordinary course of post or transmission it should have been delivered or received at the address to which it was sent PROVIDED THAT if the day on which such notice or other communication as aforesaid is by this Clause deemed to have been received falls on a Saturday, Sunday or day which is a public holiday in the intended place of service or receipt, then the

notice or other communication aforesaid shall be deemed to have been received on the day next following which is not a Saturday, Sunday or public holiday as aforesaid irrespective of whether or not such notice or other communication has been accepted by the addressee thereof.

33. WAIVER

No waiver of any provision of this Agreement nor consent to any departure therefrom by any of the Parties shall be effective unless the same shall be in writing and then such waiver or consent shall be effective only in the specific instance and for the purpose for which it is given. No default or delay on the part of any of the Parties in exercising any rights powers or privileges hereunder shall operate as a waiver thereof or of any other right hereunder; nor shall a single or partial exercise thereof preclude any other or further exercise of any other right, power or privilege.

34. GOODS & SERVICES TAX

(a) In this Clause the following terms and expressions shall have the following meanings:

“Basic Consideration” means the Consideration to be paid or provided to the Provider for any Taxable Supply under this Agreement (other than GST payable pursuant to this Clause).

“Consideration” has the meaning which it bears in Section 195-1 of the GST Act.

“GST” shall mean the goods and services tax payable under the GST Act.

“GST Act” means the A New Tax System (Goods and Services Tax) Act, 1999 and any legislation substituted for, replacing or amending that Act.

“GST Law” has the meaning which it bears in Section 195-1 of the GST Act.

“Recipient” means any party who receives a Taxable Supply under this Agreement.

“Provider” means any person who provides a Taxable Supply under this Agreement.

“Taxable Supply” has the meaning which it bears in Section 195-1 of the GST Act.

“Tax Invoice” has the meaning which it bears in Section 195-1 of the GST Act.

(b) Unless expressly stated in this Agreement the Consideration payable is exclusive of GST.

(c) If GST is payable on the Basic Consideration or any part thereof or if the Provider is liable to pay GST in connection with any Taxable Supply provided to any Recipient under this Agreement, then:

(i) the Provider may increase the Basic Consideration or the relevant part thereof by an amount which is equal to the GST payable; and

(ii) the Recipient shall pay the increased Basic Consideration on the due date for payment by the Recipient of the Basic Consideration.

(d) Where the Basic Consideration is to be increased to account for GST pursuant to Sub-Clause (c), the Provider shall, upon receipt of such amount, issue a Tax Invoice to the Recipient.

35. GOVERNING LAW & JURISDICTION

This Agreement shall be governed by and construed in accordance with the laws for the time being of the State of Western Australia and the Parties hereby submit to the jurisdiction of the Courts of that State and all Courts which are competent to hear appeals therefrom.

36. VARIATIONS

No modification, variation or amendment of this Agreement shall be of any force or effect unless it is in writing and signed by all Parties hereto.