

Invitation to Tender TRI-0012 Framework Agreement for Supply of Goods

Dated 24.09.2014

For the Translational Research Institute Pty Ltd as trustee for the
Translational Research Institute Trust ABN 58 155 991 662 ("**Principal**")

in relation to Laboratory Equipment.

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Invitation to Tender

TRI-0012

Framework Agreement for Supply of Goods

Contents

Part A - Conditions	1
1 Introduction	1
1.1 Timetable	1
1.2 Right to vary Timetable	1
2 Interpretation	1
2.1 Tender Documents	1
2.2 Acceptance of terms	2
2.3 Definitions	2
2.4 Reference to clause	3
3 Specifications	3
3.1 Purpose and Objectives	3
3.2 Background to Project	3
3.3 Principal's requirements	4
4 Content of Tender	4
4.1 Tender format	4
4.2 Tender content	5
4.3 Execution of Tender	6
5 Site Inspection & Timelines	6
5.1 Site Inspection with the Principal	6
5.2 Further Site Inspection	6
5.3 Indemnity	6
6 Further Information and Addenda	6
6.1 Request by Principal	6
6.2 Addenda	7
6.3 Changes to Tender Documents or Tender process	7
7 Submission of Tender	8
7.1 Lodgement and Closing Date	8
7.2 Electronic format	8
8 Tender Review Process	8
8.1 Review of tenders	8
8.2 Assessment of tenders	9
8.3 Discussions and negotiations	2
8.4 Various approaches	3
8.5 Acceptance of Tenders	3
8.6 Contract	3
8.7 Contract execution	3

9	General Tender Conditions	4
9.1	Tenderer to be fully informed	4
9.2	Validity period	4
9.3	Verbal advice	4
9.4	Collusive tendering	4
9.5	Costs	4
9.6	Changes to process	5
9.7	Confidentiality	5
9.8	Use of information	5
9.9	Disclaimer	6
9.10	Reliance on statements	6
9.11	Inclusion of this Invitation to Tender and proposal in contract	6
10	Principal as Trustee	6
10.1	Principal as Trustee	6
10.2	Liability must be limited	7
11	National Code of Practice Requirements	7
	Part B – Goods	8
	Part C – Tender Form	10
	Part D – Tender Format	12
	Part E – Tender Schedules	15
	Tender Schedule 1 – Tenderer’s Details	16
	Tender Schedule 2 – Prices and Additional Pricing Information	18
	Tender Schedule 3 - Commercial and Legal Terms	20
	Tender Schedule 4 – Insurance	24
	Tender Schedule 5 – Principal’s Requirements	25
	Tender Schedule 6 – Project Plan	26
	Tender Schedule 7 – Program Requirements	27
	Tender Schedule 8 - WHS	28
	Tender Schedule 9 – Quality Assurance Plan	29
	Tender Schedule 10 – Security or Parent Company Guarantee	30
	Tender Schedule 11 – Additional Information	31
	Tender Schedule 12 – Statutory Declaration	32
	Part F – Draft Contract	42

Invitation to Tender

TRI-0012

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Part A - Conditions

1 Introduction

1.1 Timetable

Event	Date
Invitation to Tender:	24/09/2014
Cut-off for acceptance of information/clarification questions:	01/09/2014
Closure of Invitation:	15/10/2014
Commence evaluation process:	17/10/2014
Award Contract:	20/10/2014
Delivery and Installation date:	TBD – Subject to Radiation Health QLD permit approvals

1.2 Right to vary Timetable

The Principal reserves the right to vary the timetable set out in clause 1.1 (Timetable) and the nature and number of milestone events in its absolute discretion at any time. Unless provided otherwise in this Invitation to Tender, the Principal may do so without notifying the Tenderers.

2 Interpretation

2.1 Tender Documents

The Tender Documents are:

- (a) the Conditions, contained in Part A of this Invitation to Tender;
- (b) the Specification contained in Part B of this Invitation to Tender;
- (c) the Tender Form contained in Part C of this Invitation to Tender;
- (d) the Tender Format contained in Part D of this Invitation to Tender;
- (e) the Tender Schedules contained in Part E of this Invitation to Tender;
- (f) the Draft Contract contained in Part F of this Invitation to Tender; and
- (g) all addenda to any of the above documents which are issued by the Principal to the Tenderer before the Closing Date.

2.2 Acceptance of terms

If a Tenderer does not accept the terms of this Invitation to Tender the Tenderer must immediately notify the Principal and must return or destroy all copies of this Invitation to Tender. Even if the Tenderer does not accept the terms of this Invitation to Tender, the Tenderer is put on notice that the Tender Documents are confidential information of the Principal and must be treated as confidential by the Tenderer.

2.3 Definitions

Unless otherwise specified, capitalised terms used in this Invitation to Tender have the following meaning:

Closing Date means 4.00 pm on 15th October 2014 or as amended in accordance with clause 7 of this Invitation to Tender.

Code Monitoring Group has the same meaning as given to that term in the Australian Government Implementation Guidelines for the National Code of Practice for the Construction Industry, May 2012.

Contract means the contract (if any) ultimately entered into by the Principal and the Successful Tenderer for the Project.

Draft Contract means the contract contained in Part F of this Invitation to Tender.

Goods means the items described in the Specification .

Invitation to Tender means this invitation to tender prepared by the Principal for the Supply of the Goods in connection with the Project.

Lodgement Place means 37 Kent Street, Woolloongabba Q 4102.

National Code of Practice Requirements means the requirements set out in Tender Schedule 14 (National Code of Practice Requirements).

Principal means the Translational Research Institute Pty Ltd as trustee for the Translational Research Institute Trust ABN 58 155 991 662.

Project means the Translational Research Institute described in clause 3.2.

Purchase Order means a written order, substantially in the form set out in the Draft Contract, to be sent by the Principal to a Successful Tenderer in accordance with the Contract.

Related Entity has the same meaning as given to that term in the Australian Government Implementation Guidelines for the National Code of Practice for the Construction Industry, May 2012.

Site means any premises of the Principal where the Project is to be located.

Specification means the specifications and requirements of the Goods set out in Part B (Specification) of this Invitation to Tender.

Successful Tenderer means the Tenderer, if any, who is selected by the Principal (in the Principal's sole discretion) to enter into the Contract.

Supply means to do all things necessary to supply Goods to the Principal , including where applicable, construct, test, transport, deliver, install, commission and maintain the Goods (or components of the Goods).

Tender means a tender in the form prescribed in clause 4 and lodged by a Tenderer in accordance with this Invitation to Tender.

Tender Documents means the documents referred to in clause 2.1.

Tender Form means the form contained in Part C of this Invitation to Tender.

Tender Format means the format requirements of the Tender contained in Part D of this Invitation to Tender.

Tenderer means any contractor tendering for the Project (together the Tenderers).

Tender Period means the period commencing on the date of this Invitation to Tender and expiring on the date the Contract is signed by the Principal.

Tender Schedules means the schedules contained in Part E of this Invitation to Tender.

Trust Property means the property held by the Translational Research Institute Trust.

All other capitalised terms have the meanings given to them in the Draft Contract.

2.4 Reference to clause

Unless otherwise specified, reference in this Invitation to Tender to a clause is a reference to a clause of this Invitation to Tender.

3 Specifications

3.1 Purpose and Objectives

The Principal requires the supply of a Ultra High Resolution Digital Radiography System to support its research. The system should be an X-Ray cabinet based system capable of ultra or high resolution for pre-clinical imaging to supplement a Micro CT System. The instrument should be automated and capable of a wide energy range and allow a broad range of samples to be imaged both in vivo and ex vivo. The system should have automatic exposure control and a suitable viewing window and magnification capability. The system should have the capability to store images in multiple formats to allow digital manipulation and can be annotated. The system should be supplied with a 3-5 year Service and Maintenance agreement and rapid response to breakdowns due the expected high use of the system. Please refer to system specification as detailed in clause 8.2.

To this end, the Principal is seeking to enter into an offer framework agreement with selected Tenderer. Under the offer framework agreement, the Principal would issue a Purchase Order to a Successful Tenderer for the supply of some or all of the Goods which the Principal may require. As such the supply of goods are to be in accordance with the terms of the agreement.

The Tenderer should complete the Tender Form and Tender Schedules as part of their Tender response.

3.2 Background to Project

The Principal is a new multi-institute biomedical research enterprise, developing novel interventions to prevent and treat human disease. The Translational Research Institute, with facilities across hospital campuses in south Brisbane, will bring together leading researchers from several existing research institutes focused on translating biomedical research into practical outcomes for patients.

The Principal combines institutes from the University of Queensland - UQ Diamantina Institute, The Mater Medical Research Institute, the Queensland University of Technology - Institute of Health and Biomedical Innovation, The University of Queensland Faculty of Health Sciences School of Medicine, and Queensland Health at Princess Alexandra (PA) Hospital.

The Translational Research Institute will be an Australian first; one of the southern hemisphere's largest facilities of its kind; and one of a few places in the world where new biopharmaceuticals and treatments can be discovered, produced, clinically tested, and manufactured in one location.

The Principal has a major new wet lab research facility located on the Princess Alexandra Hospital teaching campus. It houses over 650 researchers and students and opened in late-2012, with further clinically focused Principal facilities at the Queensland Children's Hospital Academic and Research Facility located in south Brisbane and at the PA hospital campus opening in 2015. Researchers at these facilities will work closely with clinicians in all areas of health care. Details of the research interests of current academic staff may be accessed on the Institute's web site at www.tri.edu.au. This open Tender is in response for our requirement for the goods as detailed in the specification located in clause 8.2.

3.3 Principal's requirements

- The Specification sets out the Principal's requirements for the Goods and categorises those requirements, where applicable to the Principal, as being mandatory, highly desirable, desirable and indicates where further information is required. The Specification also details, those types or classes of Goods for which the Principal may require additional or supporting services, such as installation or maintenance. The Principle upon awarding the contract is required to apply for a licence to possess a radiation apparatus and submit a Radiation Safety and Protection Plan for approval by the governing authority. This process could take up to 90 days to complete. After this period the Principle is required to submit an "Approval to Acquire" such goods and this process could take up to 2 weeks. The apparatus can be delivered into the TRI facility within the 30 days that the Approval to Acquire is valid. Once the apparatus is in position it must be certified against NM002:2010 Standard for cabinet radiation apparatus used to carry out fluoroscopic or radiographic imaging of inanimate objects
by the selected tenderers qualified person prior completion of instalation.

4 Content of Tender

4.1 Tender format

- (a) Tenderers must format their Tenders according to the following guidelines and using the structure set out in Part D (Tender Format). The Principal will regard Tenders as non-compliant if a Tenderer fails to adhere to these requirements.
- (b) Tenderers should provide any necessary explanatory or extra material with Tenders. Tenders should be complete without cross-references to information previously supplied to the Principal. Where such previously-submitted information is relevant, Tenderers should resubmit it to the Principal with Tenders.
- (c) Tenders must address this Invitation to Tender clearly and concisely, and Tenders must be free of irrelevant marketing material. Tenderers

must identify all products and services needed to meet the Principal's required outcomes, together with their costs.

- (d) Tenderers should base Tenders on the best information available at the time of preparing the Tenders. The Principal will rely on Tenderers' knowledge and expertise as expressed in their Tenders.

4.2 Tender content

The Tender must include:

- (a) a fully completed, dated and executed Tender Form; and
- (b) all of the following information, which must be incorporated into the Tender Schedules:
 - 1 Tenderer's details
 - 2 Prices and Additional Pricing Information
 - 3 Commercial and Legal Terms
 - 4 Insurance
 - 5 Principal's Requirements
 - 6 Project Plans
 - 7 Program Requirements
 - 8 WHS
 - 9 Quality Assurance Plan
 - 10 Security and Parent Company Guarantee
 - 11 Additional Information
 - 12 Statutory Declaration
 - 13 Site Plan
 - 14 National Code of Practice Requirements
 - 15 Declaration of Compliance with National Code of Practice Requirements
- (c) If the Tenderer is a corporation, it must enclose the following documents with its Tender:
 - (i) a certified copy of the current constitution of the corporation;
 - (ii) a copy of its certificate of incorporation; and
 - (iii) evidence of any change of name.

The full registered name and address of the corporation must also be given.
- (d) If the Tenderer is:
 - (i) a corporation, the Tender must be signed by two company directors or a director and a company secretary, or by a senior executive of the corporation possessing the authority of the corporation to sign on its behalf. The position held by the signatory in the corporation must be stated;
 - (ii) an individual, the Tender must be signed by the individual, in the presence of a witness, who must also sign the Tender; or

- (iii) a partnership, the Tender must be signed by two partners.

4.3 Execution of Tender

The Tenderer must validly execute its Tender. A copy of the authorisation of the person by the corporation to execute the Tender must be submitted with the Tender or under seal.

Where two or more persons or corporations lodge a joint Tender, each party must properly execute the Tender. Each party will be jointly and severally bound by the Tender (and by the Contract if the Tenderer is the Successful Tenderer).

5 Site Inspection & Timelines

5.1 Site Inspection with the Principal

The Principal's Representative may arrange a Site inspection for Tenderers that are short-listed after the initial evaluation process. Tenderers will be informed of the time and place of such inspection.

5.2 Further Site Inspection

If the Tenderer requires any further Site inspection the Tenderer must contact the Principal and obtain its prior written approval.

5.3 Indemnity

In relation to any Site inspections the Tenderer:

- (a) releases the Principal, its officers, employees, agents and contractors from any liability in respect of:
 - (i) loss of or damage to any real or personal property;
 - (ii) personal injury, disease or illness to, or death of, any person; or
 - (iii) financial loss or expense,arising from that Site inspection; and
- (b) must indemnify the Principal, its officers, employees, agents and contractors against all damage, expense, loss or liability of any nature suffered or incurred by the Principal, its officers, employees, agents and contractors arising from that Site inspection.

6 Further Information and Addenda

6.1 Request by Principal

The Principal reserves its right to seek further information from Tenderers on any matter and at any time (including after the Closing Date) by requesting:

- (a) presentations from Tenderers;
- (b) structured interviews with Tenderers;
- (c) written responses from Tenderers; and/or
- (d) Site visits with Tenderers.

At the time of tender, the Principal anticipates as a minimum that it will require a presentation during a structured interview with the Tenderers and, when

necessary, written responses. Site visits may be deemed necessary by the selection panel and the Tenderer will be informed of such requests in a timely manner.

6.2 Addenda

- (a) The Principal may at any time amend or supplement the Tender Documents by issuing addenda.
- (b) Tenderers may request further information or clarification of any matter arising in respect of the Tender Documents or the Project, no later than the time listed for “acceptance of information / clarification questions” in clause 1.1. Any such communication by a Tenderer must be in writing and addressed to:

Dr Kate Johnston,
Translational Research Institute,
37 Kent Street
Woolloongabba
QLD 4102

Email: tenders@tri.edu.au

- (c) Responses to any query (together with the query) will be simultaneously issued by e-mail to all Tenderers in the form of an addendum and will be deemed to be comprised in the Tender Documents.
- (d) All Tenderers must nominate a contact person who will be the only person authorised to contact (and be contacted by) the Principal in relation to the tender process. Tenderers should not otherwise initiate contact with the Principal or any of its employees in relation to their Tenders.
- (e) The Principal may amend this Invitation to Tender at any time prior to the Closing Date. Any amendment will be simultaneously issued in writing to all Tenderers in the form of an addendum and will be deemed to be comprised in the Tender Documents.
- (f) All addenda issued by the Principal pursuant to this clause 5 will be numbered consecutively.

6.3 Changes to Tender Documents or Tender process

- (a) The Principal may at any time, including after the Closing Date:
 - (i) amend any aspect of the Tender Documents;
 - (ii) amend, delete or vary the Goods required by the Tender;
 - (iii) amend any part of the Tender process or these Tender Conditions; or
 - (iv) cancel the Tender process.
- (b) The Principal may, in respect of any of the matters referred to in clause 6.3(a), require the Tenderers to supplement or modify their Tender or provide additional information.

7 Submission of Tender

7.1 Lodgement and Closing Date

Tenders shall be lodged in accordance with the following requirements:

- (a) Tenders must comply with clause 4.
- (b) Tenders must be sealed and addressed to the Principal and endorsed with the description as follows:

Tender for TRI- 0012

Attn. Dr Kate Johnston,

Translational Research Institute,
37 Kent Street
Woolloongabba
QLD 4102

- (c) Tenders must be received by the Principal at the Lodgement Place by the Closing Date.
- (d) The Principal may, in its absolute discretion, extend the Closing Date by giving written notice to all Tenderers.
- (e) The Principal in its absolute discretion may consider or reject a Tender received after the Closing Date.
- (f) Subject to any agreement made pursuant to clause 7.2, Tenders sent or transmitted by telephonic or telegraphic devices, email, facsimile or other electronic means, will not be considered by the Principal.
- (g) Tenderers must submit five hard copies and one soft-copy on a USB key of their Tender. All copies must be identical.
- (h) Tenders will not be subject to a public opening.

7.2 Electronic format

The Principal may at any time require all or part of a Tender to be submitted electronically only, in which event the Principal will advise the Tenderers of the email address for lodgement. It will be the Tenderers responsibility to ensure that any email is received in full by the Principal prior to the closing time for Tenders.

The Principal may deliver all or any Tender Documents or any addenda in electronic format to the Tenderers.

8 Tender Review Process

8.1 Review of tenders

The Tenders will be checked initially by the Principal for compliance with the requirements set out in this Invitation to Tender. Any Tender which does not fully comply with the requirements of, or which contain provisions not required by, the Tender Documents ("**Non-conforming Tender**") may be rejected or considered by the Principal, in its absolute discretion.

8.2 Assessment of tenders

The assessment of the Tenders will include assessment against the following criteria and weightings (if indicated) and such other criteria as the Principal in its absolute discretion may determine from time to time.

The weightings ascribed to each criterion will be applied consistently to Tenders. If weighting is not indicated, criteria are not necessarily listed in order of importance, and the Principal may give such weight to the criteria as it considers appropriate.

Specific criteria

(a) Please note:

- Goods will need to be available for inspection
- Warranty periods, terms and conditions need to be supplied
- All electrical items must be electrically safe and conform with Australian electrical standards and if from an overseas manufacturer/supplier, must have CE certification.
- Full service manual.

Specifications:

Invitation to Tender

TRI-0012

Framework Agreement for Supply of Goods

1: Digital Radiography System

Ultra High resolution radiography instrument	Essential and optional requirements
X-Ray cabinet system	Essential
Fully Shielded System	Essential
High sensitive radiosopic imaging	Minimum energy range 0-50kv / or greater
Resolution	Greater than 25 LP/mm
Magnification capability for high resolution	3-6 X Geomettric
Sample imaging in vivo and ex vivo	Essential
Automatic exposure control	Essential
High resolution image lense zoom capability	Essential/ optional Multimodal capability
Multiple image storage formats to allow digital manipulation and can be annotated	Essential
Minimum 5yr warranty	Essential
Maintenance agreement minimum 3yr-5yr	Essential
Breakdown rapid response	Essential

; and

- (b) Conforming to specifications.

General criteria

- (a) Tender price;
- (b) Value for money;
- (c) Tenderer's financial capacity to perform the Contract;
- (d) Tenderer's proposed program (if applicable);
- (e) Tenderer's requests to amend the Draft Contract contained in Part F of this Invitation to Tender;
- (f) Qualifications, experience and track record of the Tenderer's nominated key personnel (including technical and project/management skills) to be allocated to the work;
- (g) Tenderer's past experience in similar types of work and evidence of capacity;
- (h) Tenderer's ability to meet the commercial, functional and technical requirements of the Principal;
- (i) Tenderer's compliance with this Invitation to Tender and contractual terms;
- (j) The quality management system to be followed for any maintenance and support; and
- (k) Environmental sustainability, including carbon footprint.

The assessment process may also involve discussions with Tenderers, references, financial and corporate checks, a demonstration from short-listed Tenderers and Site visits.

The Principal reserves the right to short-list Tenders during the assessment process.

The Tenderer acknowledges and agrees that the Principal may, in its absolute discretion and without giving reasons, decline to consider or, after consideration, not accept any Tender which is non-compliant with Part D (Tender Format) or non-compliant with any of the requirements set out in Part E (Tender Schedules) (as that term is defined in clause 3(a) of Part D (Tender Format)) or which lists any exceptions or qualifications in Schedule 3.

8.3 Discussions and negotiations

Detailed evaluation may also involve:

- (a) preliminary discussions or negotiations with one or more proponents (whether simultaneously or otherwise);
- (b) visits to reference sites and/or contact with referees (which may include sites and referees other than those provided by the Tenderer); and
- (c) Tenderers presenting their proposal to the Principal. Members of the evaluation panel and selected advisers may attend the presentation.

The evaluation panel may record the presentation for reference during the evaluation process.

8.4 Various approaches

Principal may at any time and in its absolute discretion:

- (a) negotiate with any of the Tenderers, or any other person;
- (b) request any Tenderer to submit an improved or an alternative offer;
- (c) cease negotiations or recommence negotiations with any Tenderer;
- (d) accept a proposal by any Tenderer;
- (e) accept only part of a proposal by any Tenderer; or
- (f) reject all proposals.

For the avoidance of doubt, a proposal is not accepted unless and until the Principal executes a binding written contract for the provision of the goods or services the subject of the proposal.

8.5 Acceptance of Tenders

- (a) The Principal does not bind itself to accept any Tender, including, without limitation, the Tender with the lowest offered price. The Principal may at any time during the Tender Period accept or reject a Tender in its absolute discretion and will have no obligation to provide reasons to any Tenderer for any acceptance or rejection. The Principal reserves the right to negotiate with any one or more Tenderers after the Closing Date.
- (b) A Tender will be only be deemed to have been accepted on the date of issue by the Principal of a written acceptance of Tender addressed to the Successful Tenderer. The Principal will notify all unsuccessful Tenderers in writing.
- (c) Nothing in this Tender should be construed as binding or obliging the Principal to appoint the Successful Tenderer to perform any work in relation to the development of the Project, other than the works under the Contract.

8.6 Contract

- (a) The parties agree that the Successful Tenderer will be appointed by the Principal to in relation to the Project under and in accordance with the Contract.
- (b) Execution of the Contract by the Successful Tenderer and the Principal will be a condition precedent to the commencement of obligations under or in connection with the Contract.

8.7 Contract execution

- (a) The Successful Tenderer must duly execute and deliver to the Principal the Contract (in duplicate).
- (b) The Contract must be in the form prescribed in Part F (Draft Contract) and as may be otherwise amended by agreement between the Successful Tenderer and the Principal during the Tender Period.

- (c) The Principal will return one copy of the Contract to the Successful Tenderer once signed by the Principal.

9 General Tender Conditions

9.1 Tenderer to be fully informed

By submitting its Tender, a Tenderer warrants that it has fully familiarised itself and satisfied itself of all matters relating to, and all requirements of, the Tender Documents and the Project, including the Site and that it has made due allowance for these matters in its Tender.

9.2 Validity period

- (a) Subject to paragraph (b), each Tender will constitute an irrevocable offer and remain open for acceptance by the Principal for a period of 90 days from the Closing Date, or such longer period as agreed by the Tenderer.
- (b) A Tenderer may only withdraw its Tender prior to the expiration of 90 days from the Closing Date (or such longer period as agreed by the Tenderer) with the prior written consent of the Principal.

9.3 Verbal advice

The Principal shall not be bound by or be bound to consider or have regard to any verbal advice given or information furnished by any employee or agent of the Principal.

9.4 Collusive tendering

- (a) With the exception of joint Tenders the particulars of which are disclosed in writing to the Principal and lodged in accordance with this Invitation to Tender, the Tenderer must not enter into any agreement or arrangement with any other person or association in relation to the preparation of any Tender. Without limitation to the foregoing, the Tenderer must not, in its pricing of the Tender, take account of any amount to be paid to any unsuccessful Tenderer.
- (b) If the Principal becomes aware of any form of collusive tendering or other improper practice by any Tenderer in relation to the Tender process:
- (i) the Principal may reject some or all Tenders in the Principal's absolute discretion; and
 - (ii) if a Tender has already been accepted, the Principal may terminate the Contract with the Successful Tenderer with no liability to the Successful Tenderer pursuant to such termination.
- (c) Tenderers found by the Principal to be involved in collusive tendering or other improper practice may be barred by the Principal from tendering for further contracts for any such period as determined by the Principal.

9.5 Costs

- (a) Each Tenderer will be liable for its own costs associated with any part of the Tender process, including without limitation, any costs of third party advisers or consultants retained by the Tenderer and any discussions or negotiations with the Principal occurring either before or during the Tender Period.
- (b) The Tenderer will have no claim against the Principal for any costs incurred by the Tenderer in connection with this Invitation to Tender or

the preparation and submission of a Tender or any part of the Tender process.

9.6 Changes to process

The Principal may change the procedures set out in this Invitation to Tender from time to time. The Principal will generally try to notify Tenderers of any material changes that may affect Tenderers but will not necessarily provide reasons.

Without limiting the previous paragraph, the Principal reserves the right, in its absolute discretion, to do all or any of the following at any stage of the tender process:

- (a) request information from a Tenderer;
- (b) change the format, structure or timing of the tender process;
- (c) change the scope or requirements of the goods or services the subject of the Tender Documents; or
- (d) vary, amend, suspend or terminate the tender process or individual Tenderers' participation in it.

9.7 Confidentiality

- (a) This Invitation to Tender, and all documents, information, drawings, specifications, technical information and other material and information, whether written or otherwise, provided to a Tenderer (whether before or after the issue of this Invitation to Tender):
 - (i) is the confidential information of the Principal and remains the property of the Principal;
 - (ii) must not be used for any purpose other than the purpose of preparing a Tender;
 - (iii) must not be disclosed to any party other than a party who is assisting the Tenderer in preparing its Tender (and the Tenderer shall ensure that party's adherence to this duty of confidentiality); and
 - (iv) must be returned by any unsuccessful Tenderer to the Principal within 7 days of being notified by the Principal that the Tender was unsuccessful.
- (b) The Tenderer undertakes to indemnify the Principal at all times against any damages, losses, liability, costs or expenses incurred by the Principal or for which the Principal becomes liable in respect of any breach by the Tenderer of this clause 9.7.

9.8 Use of information

- (a) The Principal will not provide copies of Tenders to any other Tenderers without the relevant Tenderer's permission.
- (b) Despite clause 9.8(a), no Tenderer or any other person claiming through a Tenderer is entitled to make any claim against, or receive any compensation from, the Principal or any other person if the Principal or any other person discloses ideas, issues and design concepts raised in a Tender with other Tenderers during the Tender process.

- (c) Tenderers release the Principal from any claim arising directly or indirectly from:
 - (i) the Principal retracting the Tender; or
 - (ii) any other matter arising out of or in relation to the Tender process.
- (d) The copies (both in hard and electronic form) of the Tenders submitted to the Principal will become the property of the Principal. This does not affect Tenderers ownership of any intellectual property that may exist in the Tender. Tenderers grant the Principal the right to reproduce, transmit or otherwise deal with the Tender for the purposes of evaluation, clarification and anything else related to these purposes. The Principal will retain copies of the Tenders, evaluation information and other materials as it considers appropriate.

9.9 Disclaimer

The Tender Documents contain statements based on information or data that at the date it was obtained by the Principal, the Principal believed to be reliable. The Principal makes no representation or warranty, express or implied, as to the accuracy or completeness of any information or data or statement given or made in the Tender Documents. Tenderers are responsible for forming their own independent judgements, interpretations, conclusions, and deductions about any information or data in the Tender Documents, and should examine all information relevant to the risks, contingencies and other circumstances that could affect their Tender. The Principal will not be liable to Tenderers if they rely on any information or data in the Tender Documents or otherwise provided as part of the tender process.

9.10 Reliance on statements

The Principal may rely on any statements made by Tenderers (including Tenderers employees, contractors, advisors and agents), including in relation to the Principals decision to enter into a contract with a Tenderer and the terms of that contract. The statements the Principal may rely on include those contained in the Tender, those made in any written or verbal communications and in any negotiations with the Principal. If the Principal believes a Tenderer has made any false or misleading statements, the Principal may in its absolute discretion, exclude that Tenderer's Tender from the evaluation process at any time.

9.11 Inclusion of this Invitation to Tender and proposal in contract

The Principal may include any part or the whole of this Invitation to Tender, the Tender and any other written or verbal statements made by the Successful Tenderer (including by the Successful Tenderer's employees, contractors, advisors or agents) in any resulting contract that the Principal may enter into in respect of the subject of the Tender.

10 Principal as Trustee

10.1 Principal as Trustee

- (a) The Principal enters into this Invitation to Tender in its capacity as trustee of the Translational Research Institute Trust and is only liable in its capacity as trustee.
- (b) The Principal's liability to any person (including the Tenderers) in connection with this Invitation to Tender (or any transaction in connection with it) is limited to the extent to which the liability can be satisfied out of the Trust Property by the Principal exercising its right of indemnity out of the Trust Property.

- (c) Payment by the Principal of an amount equal to the amount (if any) it receives under its right of indemnity in respect of any such liability constitutes a complete discharge by the Principal of that liability.

This clause 10.1 ("Principal as Trustee") applies despite anything else in this deed.

10.2 Liability must be limited

The Principal is not obliged to do or not do anything in connection with this Invitation to Tender (including enter into any transaction or incur any liability) unless the Principal's liability is limited in a manner which is consistent with this clause 10 (Principal as Trustee).

11 National Code of Practice Requirements

To the extent that the Supply of the Goods may involve or entail work which is the subject of the National Code of Practice Requirements or renders the National Code of Practice Requirements applicable, the Tenderer:

- (a) acknowledges that the National Code of Practice Requirements apply to the Project and to this Tender; and
- (b) agrees to comply with the National Code of Practice Requirements.

Invitation to Tender

TRI-0012

Framework Agreement for Supply of Goods

Part B – Goods

Please see Clause 8.2 Assessment of tenders for specific selection criteria and item specifications. Please include the lead time for delivery of the Digital Radiography System as detailed in the specification.

Specification	Description	Delivery & Installation	Maintenance	Level of Compliance C/D/P/N	Unit Price (excl. GST)	Quantity	Total Price (excl. GST)	Total Price (inc. GST)
Digital Radiography System						1		
Out of hours delivery and installation (including weekends 7am – 3pm), based on scheduled delivery dates provided and including delivery to the point of use within the TRI building as well as the removal of all rubbish.								
Installation Costs - Give detail with each item where applicable								
Maintenance Costs - Give detail with each item where applicable								
Taxes, duties or other charges and their details associated with the Goods and/or Services applicable to the Contract								
TOTAL								

Invitation to Tender

TRI-0012

Framework Agreement for Supply of Goods

Installation & Maintenance

The item of equipment will require Delivery, Installation and Certification; all to be provided by the Supplier.

Additionally optional maintenance should be quoted for.

After certification TRI will employ an independent certifier to test the certification, if any faults remain the Supplier will fix these at their own cost, including the cost of subsequent testing that may be necessary, until they pass the external testing.

Payments

Items included in this tender will be purchased by the Translational Research Institute Pty Ltd as trustee for the Translational Research Institute Trust ABN 58 155 991 662.

Scheduling of payments

The payment schedule will be within 30 days of receiving a correctly rendered invoice. Maintenance payments will be made as needed. TRI will make its payments to the supplier in accordance with the final agreed Delivery Schedule by electronic funds transfer. TRI will supply the transfer receipt as proof of payment i.e. the transfer may take longer to go through.

Proposed Delivery Schedule

Please note that the installation schedule will closely reflect the Delivery schedule. Where equipment requires sterilisation prior to installation the installation dates will be scheduled with the supplier.

Delivery will be to point of use on the Premises. All packaging is to be removed from the Premises. Delivery will be during 2014 – exact dates to be determined based on lead times for the equipment.

Warranty

Please provide details of the warranty period, terms and conditions.

Invitation to Tender

TRI-0012

Framework Agreement for Supply of Goods

Part C – Tender Form

I/We, _____

[Insert full name of tenderer – person, company or partnership and ABN) (the Tenderer]

of _____

[insert full address of Tenderer]

tender to Supply the Goods to Translational Research Institute Pty Ltd as trustee for the Translational Research Institute Trust ABN 58 155 991 662 (the Principal) at the Principal's facility in Woolloongabba, Queensland.

- 1 We offer to Supply those Goods described in our completed Tender Schedule 5 (Principal's requirements) in accordance with the Tender Documents and, in respect of those Goods, to perform the obligations which under the Tender Documents are required to be performed by the Contractor for the contract price set out in Tender Schedule 2 (Prices and Additional Pricing Information).
- 2 Our offer includes all terms of the Tender Documents as completed by me/us pursuant to the Invitation to Tender.
- 3 This offer is made in good faith without any connection, comparison of figures or arrangement with any other Tenderer.
- 4 I/We make this offer based on our own investigations and determinations and acknowledge that prior to submitting this offer I/we have fully informed ourselves of all matters in respect of the Project (including the Site, if applicable) and that we know of all limitations relating to the Site which may affect the execution of the Project.
- 5 We expressly acknowledge that the Principal will not be liable for any information provided to us prior to our submission of this Tender or for any errors in or omissions from such information, and that the information was provided by the Principal for the convenience of the Tenderers.
- 6 We enclose with this offer the Draft Contract, and the Tender Schedules to the Invitation to Tender, completed in accordance with the Invitation to Tender.
- 7 Our address for service of notices is specified at the top of this Tender Form.
- 8 Unless otherwise specified, capitalised terms used in this Tender Form have the meaning given to those terms in the Invitation to Tender.

9 We confirm that our lump sum contract price for the works is as follows:

Total Lump Sum Contract Price for the Contract (excl GST) is:

or

At the rates contained in Tender Schedule 2 for the calculated Contract Price of (excl GST) is:

Executed by Tenderer

Invitation to Tender

TRI-0012

Framework Agreement for Supply of Goods

Part D – Tender Format

Please provide your Tender using the following format.

1 Executive summary

You should include a high-level summary of your Tender, including:

- (a) an overview of your approach;
- (b) factors which you consider important for the Principal to consider.

2 Company profile

You should complete Tender Schedule 1 (Tenderer's Details) and include the information requested in this Tender Schedule.

3 Tender Schedule requirements

You should respond to the requirements by completing the Tender Schedules in Part E to this Invitation to Tender indicating the extent of compliance with the relevant requirement and providing the information requested.

- (a) For the purpose of completing the Tender Schedules, the following definitions apply:
 - (i) **Compliant (C)** means your response fully conforms to the requirement now.
 - (ii) **Deviates (D)** means your response partially conforms to the requirement but also imposes different, modified or additional terms with respect to that requirement or involves a different solution or solutions to the requirement.
 - (iii) **Planned (P)** means that your response or solution does not meet the requirement but that you have plans to make the solution compliant. If compliance is planned you must specify the date by which this compliance is expected.
 - (iv) **Non-compliant** and **Not Planned (N)** means an inability or refusal to meet a requirement on any terms.

Where you state "Deviates" you should provide full details of the extent of the compliance, the additional or different terms imposed and any alternatives offered.

- (b) Where a response schedule includes a question, please provide full details and information in response to that question.

- (c) In all cases, you should provide information as to how you propose to meet each requirement described in the requirements in sufficient detail to enable us to assess your understanding of, and ability to meet our requirements and objectives.
- (d) You should also clearly identify capabilities that need to be developed to meet our requirements and objectives.
- (e) If you need to provide additional material to explain your response to a particular requirement, you may do so in an attachment. Please ensure that any such attachment is clearly identified as relevant to the applicable Tender Schedule and appropriately cross-referenced to the relevant requirement.

4 Pricing basis and schedule

Please provide pricing information in the format set out in Tender Schedule 2 (Prices and Additional Pricing Information). You should provide prices on a GST inclusive basis and include all other taxes. You should state all amounts in Australian dollars.

Please ensure that you structure your pricing proposal in the manner set out in Tender Schedule 2 (Prices and Additional Pricing Information). In addition, you may propose alternative pricing structures for the Principal's consideration.

5 Response to proposed contract

We have attached a Draft Contract which we propose as the basis of the contract for provision of the goods/services if you are chosen as the successful proponent.

Tender Schedule 3 (Commercial and Legal Terms) should include a confirmation of your agreement to the terms set out in the Draft Contract.

If you require changes to the Draft Contract, you should include these in your response to Tender Schedule 3 (Commercial and Legal Terms) to show your proposed alternative wording by way of a mark up (clearly showing all changes in tracking) to the Draft Contract. You must not simply add your standard trading terms to the Draft Contract. You should bear in mind that we prefer changes to the Draft Contract to be kept to a minimum and that changes you make to the Draft Contract may negatively affect our assessment of your proposal.

We will not consider a request to discuss any particular clause to be a sufficient or acceptable response.

6 Response to Specification

In Tender Schedule 5 (Principal's requirements), you should provide details of which Goods you are able to Supply on the terms of the Specification.

You should complete Tender Schedule 5 (Principal's requirements) by listing the Goods in the same order and sequence as the Specification, and addressing the requirements of the Specification on an item-by-item basis, using the definitions and guidelines described in clause 3 (Tender Schedule requirements) of this Part D – Tender Format.

We will not consider a request to discuss any particular requirement of the Specification to be a sufficient or acceptable response.

7 References

You should list organisations who are prepared to provide a reference for you and to whom you have provided goods and services of a similar nature and scope as those the subject of this Invitation to Tender. It is preferable if these referees include customers who have recently acquired those goods or services.

Please provide the following information for each referee:

- (a) name of the organisation;
- (b) name, title, address and telephone number of the person we can contact;
- (c) goods and services provided;
- (d) organisation's industry; and
- (e) scale of operations in terms of quantity of goods and services, dollar value and any other relevant factors.

Please note that we may contact your nominated referees or other customers for reference checking without advising you.

8 Other parties

If the proposal involves other parties, you should include the following information about those other parties in this section:

- (a) full name, ACN and ABN of the company;
- (b) description of the involvement of that company in your proposal;
- (c) description of your relationship with that company; and
- (d) details of that company's track record in performing the role envisaged in your proposal.

This information can be included directly in the relevant response schedules where applicable.

9 Other information

Insert any other information that you consider is relevant to your Tender in accordance with Tender 11 (Additional Information).

10 Attachments

The Tender Schedules should be completed and attached to your Tender in line with the numbering given to those Tender Schedules in Part E (Tender Schedules).

Invitation to Tender
TRI-0012
Framework Agreement for Supply of Goods
Part E – Tender Schedules

Invitation to Tender

TRI-0012

Framework Agreement for Supply of Goods

Tender Schedule 1 – Tenderer's Details

A. Company Details

1	Name of Tenderer:	_____
2	Address of Tenderer:	_____
3	Contact Person:	_____
4	Telephone Number:	_____
5	Fax number:	_____
6	E-mail address:	_____
7	ACN and ABN numbers:	_____

B. Company Background

The Tenderer shall submit:

- a brief company history including (if relevant) a certificate of incorporation;
- company's office locations in Australia and number of employees in each office; and
- strategic direction of the company.

C. Financial Details

The Tenderer shall submit the financial details set out below. The financial details must be submitted for each joint venture partner or consortium partner.

1	Registered Business Name:					
2	Annual value of work over the last 5 years:					
		2013	2012	2011	2010	2009
	Australia					
	Overseas					
3	Audited accounts for the last financial year.					
4	Annual revenue from sales of products/services similar to those sought in this Invitation to Tender over the last 3 years.					

D. Relevant Experience

Relevant company experience should be provided including:

- overview of products and services provided by the company;
- past experience in similar types of work and evidence of capacity, and also outline the company's experience in the sectors relevant to the Principal more generally; and
- number of years in business as a provider of products/services similar to those sought in this Invitation to Tender.

E. Organisational Structure

The Tenderer shall submit a proposed organisation structure with the names of personnel occupying management, supervisory, administrative and control positions. The personnel nominated may only be changed with the agreement of the Principal.

The proposed organisation structure shall include all supervisory personnel proposed for the contract including consultants and main subcontractors where applicable.

F. Disputes

The Tenderer must provide details of:

- any current litigation or threatened litigation or whether it anticipate any litigation;
- any contract with a customer in the last 10 years terminated by the customer before the end of the term, including the reasons for termination; and
- any customer contract terminated by the Tenderer in the last 10 years before the end of the term, including the reasons for termination;

The Tenderer to indicate whether it has ever:

- been sued;
- had a dispute with a customer or is aware of any breach or default, or alleged breach or default by it of any of its agreements; or
- had an agreement terminated for breach by Tenderer,

and provide details of these instances.

Invitation to Tender

TRI-0012

Framework Agreement for Supply of Goods

Tender Schedule 2 – Prices and Additional Pricing Information

Please supply details for the proposed delivery date estimates (earliest possible and latest possible dates given manufacturing and shipping timeframes). These are to be indicative and are subject to negotiation with the Principal. At this point estimates are required so that we can logistically manage the delivery process.

Please use the tables provided in Part B – Goods in this section.

Invitation to Tender

TRI-0012

Framework Agreement for Supply of Goods

Discount and Rebate

Tenderers are required to provide details of any proposed discount or rebate arrangements. Please provide sufficient detail, including situations where the discount/rebate offered will not apply and circumstances under which a discount becomes applicable.

Proposed Delivery schedule

Proposed Installation schedule

Proposed Maintenance or Servicing schedule

Other costs

Please indicate any costs not included above.

Invitation to Tender

TRI-0012

Framework Agreement for Supply of Goods

Tender Schedule 3 - Commercial and Legal Terms

All terms capitalised below have the meaning given to them in the Invitation to Tender or the Draft Contract as relevant.

#	Section	Requirement	Details or Response
C1 General commercial			
C1.1	Other Principal contracts	Tenderer to indicate whether it has, has had, or is in the process of negotiating, any contracts with the Principal, Mater Medical Research Institute, University of Queensland, Queensland University of Technology or the Queensland Government/Queensland Health. If so, please identify relevant details.	
C1.2	Ethics and social responsibility	<p>Tenderer to detail:</p> <ul style="list-style-type: none"> any accusations that have been made against it, or any reason it is aware of that an accusation could be made against it, in relation to its ethics, social responsibility, environmental responsibility, its fairness in its dealing with its employees or any similar matter; and any matters that, if generally known, may damage the reputation of the Tenderer, or of the Principal for entering into dealings with the Tenderer. 	
C1.3	Future impacts	Tenderer to detail any matters of potential future impact on the provision of the services as proposed in its tender response (eg proposed takeovers, current and potential conflicts of interest, pending departure of key staff, perceived financial difficulties).	
C2. Contract			
C2.1	Contract terms	<p>Tenderer to confirm acceptance in full of all the terms and conditions of this Invitation to Tender.</p> <p>If “no” Tenderer must immediately notify the Principal and must return or destroy all copies of this Invitation to Tender. (See clause 2.2 of this Invitation to Tender.)</p>	Yes <input type="checkbox"/> No <input type="checkbox"/> (mark appropriate box)
C2.2	Contract Terms	<p>Tenderer to confirm acceptance in full of all the terms and conditions of the Draft Contract (see clause 5 of Part D (Tender Format) of this Invitation to Tender).</p> <p>If NO, complete the following table by giving details of:</p> <ul style="list-style-type: none"> each and every aspect of non-compliance with the 	Yes <input type="checkbox"/> No <input type="checkbox"/> (mark appropriate box)

		<p>terms and conditions of this Invitation to Tender;</p> <ul style="list-style-type: none"> any variations to the terms and conditions of this Invitation to Tender you wish to propose; and any additional conditions you wish to propose. <p>(Attach extra page/s if necessary)</p>							
		<table border="1"> <tr> <th>Clause Reference Number</th><th>Detail of Non-Compliance or Variation</th></tr> <tr> <td>Eg clause 3</td><td>Inclusion of clause 3: "The Contractor..."</td></tr> <tr> <td></td><td></td></tr> </table>	Clause Reference Number	Detail of Non-Compliance or Variation	Eg clause 3	Inclusion of clause 3: "The Contractor..."			
Clause Reference Number	Detail of Non-Compliance or Variation								
Eg clause 3	Inclusion of clause 3: "The Contractor..."								
C2.3	Contracting Party	Tenderer to provide details of the entity which will enter into the Contract if it becomes the Successful Tenderer.							
C2.4	Corporate structure	<p>Tenderer to confirm whether the contracting entity is the parent company in its corporate group.</p> <p>If "no", Tenderer to indicate that the parent company will provide the Parent Company Guarantee in the form prescribed in the Draft Contract.</p> <p>(See also Tender Schedule 10 (Security and Parent Company Guarantee)).</p>	<p>Yes <input type="checkbox"/> No <input type="checkbox"/> (mark appropriate box)</p> <p>Yes <input type="checkbox"/> No <input type="checkbox"/> (mark appropriate box)</p>						
C2.5	Contract negotiations	<p>Tenderer to indicate how long it expects it will take to negotiate a contract for the project with the Tenderer, if the Tenderer is selected as the preferred tender.</p> <p>What internal processes are applicable to you, and how long do you anticipate it will take to obtain approval to enter a contract?</p> <p>What lead time will be required from contract execution to commencement of the project?</p>							
C2.6	Notices	Tenderer to provide details of the person within the contracting entity to whom notices should be provided.							
C2.7	Representation	Tenderer to provide details of the person within the contracting entity who will be Tenderer's Representative.							
C2.8	Draft Contract Schedules	<p>Tenderer to provide all other information required to enable the Draft Contract Schedules to be completed.</p> <table border="1"> <tr> <th>Schedule Attachment Number</th><th>Information Required to Complete Schedule Attachment</th></tr> <tr> <td></td><td></td></tr> <tr> <td></td><td></td></tr> </table>	Schedule Attachment Number	Information Required to Complete Schedule Attachment					
Schedule Attachment Number	Information Required to Complete Schedule Attachment								
C3. Risk and security									
C3.1	Insurance	Tenderer to provide details of its current insurance policies (including type of insurance, level of coverage and sum insured).							

		(See Tender Schedule 4 (Insurance)).	
C3.2	Financial Security	<p>The Principal may require financial security for this project. Tenderer to indicate what financial security, for example, a bank guarantee, it would be prepared to offer for this project, by type and value (where applicable). Tenderers must specify whether there will be an additional cost for the financial security, and if so, what that cost will be.</p> <p>(See also Tender Schedule 10 (Security and Parent Company Guarantee)).</p>	
C3.3	Confidentiality and security	<p>The Tenderer may have access to information considered to be sensitive and valuable to the Principal in the performance of the Contract. Tenderer to detail the security measures it has in place to minimise the risk of unauthorised access to the Principal information by its employees, contractors or third parties using its systems.</p>	
C4. Principal Inputs			
C4.1	Principal inputs	Tenderer to describe all items required from the Principal to enable it to install and commission the Goods.	
C4.2	Principal Personnel	<p>Tenderer to describe its requirements for availability of the Principal's personnel to enable it to install and commission the Goods including:</p> <ul style="list-style-type: none"> the skills and/or roles required (e.g. project manager, administrative personnel for testing, etc.); and <p>the number of hours (or % of time over a given period) for each type of resource.</p>	
C4. Personnel and subcontractors			
C5.1	Personnel	Tenderer to provide details of staff who will be involved in the installation and commissioning of the Goods, and their previous experience installing and commission the Goods in a similar environment.	
C5.2	Local staff	Tenderer to advise if any of the staff assigned to the project in different roles are located in Brisbane.	
C5.3	Non-local staff	<p>For staff located outside of Brisbane, Tenderer to set out its proposal in relation to travel and other expenses in Tender Schedule 2 (Prices and Additional Pricing Information).</p> <p>Tenderer to detail the degree to which travel and other expenses are expected to be incurred in the performance by the Tenderer of the Project Plan proposed.</p> <p>(See also Tender Schedule 6 (Project Plan))</p>	
C4.1	Sub-contractors	Tenderer to detail any subcontractors, and provide their individual CVs where relevant, it proposes to use for the Supply of the Goods	

C5. Project management and implementation			
C5.1	Performance management	<p>Delivery on time and to the required Specification is critical to the Principal for this project. On this basis, the Principal will require liquidated damages be payable for delays in the project (other than delays by the Principal, or resulting from an Event of Force Majeure on the terms of the Draft Contract).</p> <p>While the Principal is still assessing the loss that is likely to arise out of a delay in the Project, Tenderer must confirm that it will commit to delivery in accordance with the agreed Project Plan, that it will accept liquidated damages for delay, and the value of liquidated damages it would be prepared to accept.</p>	
C6.2	Contract Management	Tenderer to provide details of the contract management approach and plan including communication and reporting to the Principal.	
C7. Support and other services			
C7.1	Training	<p>Principal may require training in the safe use and operation of Goods.</p> <p>Tenderer to provide details of the training it will or can provide.</p>	
C7.2	On-going Services	The Principal requires on-going services following delivery and installation either through a Services Agreement or a Preventative Maintenance Agreement. Tenderer to indicate whether it will enter into a Services Agreement or a Preventative Maintenance Agreement and attach its preferred contract for its chosen option.	
C6. Price and payment			
C6.1	Fixed Price	The Price included in the response must be a fixed price and the total price payable under the terms of the Draft Contract. Tenderer to confirm that the pricing in Tender Schedule 2 (Prices and Additional Pricing Information) is on a fixed, all-inclusive basis.	
C6.2	Payment terms	Tenderer to provide payment terms not less than 30 days from receipt of a correctly rendered tax invoice. Tenderer to confirm.	

Invitation to Tender
TRI-0012
Framework Agreement for Supply of Goods
Tender Schedule 4 – Insurance

Please provide details of insurance as requested in the Draft Contract including the cost of that insurance to Principal.

Invitation to Tender
TRI-0012
Framework Agreement for Supply of Goods
Tender Schedule 5 – Principal's Requirements

Having regard to the Goods in described in Part B (Goods) which the Principal requires to be Supplied, please provide details of which Goods are able to be Supplied to the standard required by the Principal.

Invitation to Tender

TRI-0012

Framework Agreement for Supply of Goods

Tender Schedule 6 – Project Plan

Tenderer to provide a project, installation, maintenance and payment plan to apply to the Project (to the extent possible at this stage). Tenderer to identify in the project plan any risks and assumptions associated with the installation, commission and maintenance of the Goods and how it intends to manage those risks.

Invitation to Tender
TRI-0012
Framework Agreement for Supply of Goods
Tender Schedule 7 – Program Requirements

Tenderer to provide a program for the Project.

Invitation to Tender
TRI-0012
Framework Agreement for Supply of Goods
Tender Schedule 8 - WHS

Tenderer to provide a copy of a workplace health and safety plan for the Supply of the Goods.

Invitation to Tender
TRI-0012
Framework Agreement for Supply of Goods

Tender Schedule 9 – Quality Assurance Plan

Tenderer to provide details of the quality management plan addressing quality management processes and assurance for Supply of the Goods.

Invitation to Tender
TRI-0012
Framework Agreement for Supply of Goods
Tender Schedule 10 – Security or Parent
Company Guarantee

The Principal may require a bank guarantee or parent company guarantee depending on the Tenderer. Please confirm that Tenderer would be prepared to provide security of this type on request.

Name of bank the Tenderer proposes to use to for a bank guarantee if requested.

Bank: _____

Address: _____

Name of a party that has agreed to guarantee the performance and obligations of the Tenderer under the Contract if requested by Principal. By nominating a party the Tenderer represents and warrants that the proposed guarantor has agreed to sign a schedule of guarantee in the relevant form to be attached to the Draft Contract.

Name: _____

Invitation to Tender

TRI-0012

Framework Agreement for Supply of Goods

Tender Schedule 11 – Additional Information

The Tenderer may provide additional information in its Tender to assist the Principal to determine whether the Tenderer will be able to Supply the Goods under the Draft Contract in accordance with the Draft Contract.

Invitation to Tender

TRI-0012

Framework Agreement for Supply of Goods

Tender Schedule 12 – Statutory Declaration

The Tenderer must complete and execute the following statutory declaration:

I, **[insert name of declarant]** do solemnly and sincerely declare that:

1. Definitions

In this Statutory Declaration:

Bidders means tenderers for the Contract and includes the Tenderer.

the **Contract** means the contract that the Tender to which this Statutory Declaration is annexed pertains.

Industry Association means any organisation of which Bidders are members.

the **Tenderer** means **[insert name of company, other body corporate, firm, or individual]**.

Tender Price means the amount indicated by a Bidder as the lowest amount for which that Bidder is prepared to perform the Contract.

2 Introduction

- (a) I hold the position of **[insert Managing Director or other title]** of the Tenderer and am duly authorised by the Tenderer to make this declaration on its behalf.
- (b) I make this declaration on behalf of the Tenderer and on behalf of myself.

3 No knowledge of Tender Prices

Before the Tenderer submitted its Tender for the Contract, neither the Tenderer, nor any of its employees or agents, had knowledge of the Tender Price or proposed Tender Price of any other Bidder who submitted, or of any person, company, other body corporate or firm that proposed to submit, a Tender for the Contract.

4 Disclosure of Tender Price

Before close of Tenders for the Contract, neither the Tenderer, nor any of its employees or agents, disclosed the Tenderer's Tender Price to:

- (a) any other Bidder who submitted a tender for the Contract;
- (b) any person, company, other body corporate or firm proposing to submit a tender for the Contract; or
- (c) any person or organisation connected or associated with a Bidder, person, company, other body corporate or firm for the purpose of assisting in the preparation of a Tender for the Contract.

5 Provision of Information

Neither the Tenderer, nor any of its employees or agents, has provided information to:

- (a) any other Bidder who has submitted a tender for the Contract;
- (b) any person, company, other body corporate or firm proposing to submit a tender for the Contract; or
- (c) any other person, company, other body corporate or firm for the purpose of assisting in the preparation of a Tender for the Contract.

6 Genuine Competition

The Tenderer is genuinely competing for the Contract.

7 Industry Association Agreements

Neither the Tenderer, nor any of its employees or agents, has entered into any contract, agreement, arrangement or understanding, other than as disclosed to the Principal in the Tenderer's tender, that the successful Bidder for the Contract will pay any money to, or provide any other benefit or other financial advantage to, an industry association in respect of the Contract.

8 Unsuccessful Tenderer's Fees

Neither the Tenderer, nor any of its employees or agents, has entered into any contract, agreement, arrangement or understanding that the successful Bidder for the Contract will pay any money to, or provide any other benefit or other financial advantage to, any other Bidder who unsuccessfully tendered for the Contract.

9 Qualifications to Tenders

Neither the Tenderer, nor any of its employees or agents, has entered into any contract, agreement, arrangement or understanding that Bidders for the Contract would include an identical or similar condition or qualification in their Tenders for the Contract.

I acknowledge that this declaration is true and correct and I make it in the belief that a person making a false declaration is liable to the penalties of perjury.

DECLARED at [place] on [date] before me:)
)
)
.....)
Signature of authorised witness)
)
)
.....)
Name of authorised witness)
(block letters)) Signature of declarant
)
)
.....)
Address of authorised witness)
)
)
.....)
*Capacity in which authorised witness takes the)
statutory declaration)

Invitation to Tender
TRI-0012
Framework Agreement for Supply of Goods
Tender Schedule 13 – Site Plan

To be provided on request.

Invitation to Tender

TRI-0012

Framework Agreement for Supply of Goods

Tender Schedule 14 – National Code of Practice Requirements

1. The Tenderer's attention is drawn to the National Code of Practice for the Construction Industry ("**Code**") and the Australian Government Implementation Guidelines for the National Code of Practice for the Construction Industry, May 2012 ("**Guidelines**"). Copies of the Code and Guidelines are available at www.deewr.gov.au/building.
2. By submitting an expression of interest or Tender to undertake the Work under the Agreement, the Tenderer:
 - (a) will be deemed to have read; and
 - (b) agrees to comply with,

the Code and Guidelines.

Notwithstanding any other provisions of the Tender Documents, Tenderers hereby consent to the disclosure of information concerning compliance with the Code and Guidelines, including details of whether or not a sanction (see Section 8.2 of the Guidelines) has been imposed. This consent extends to disclosure by the Commonwealth, its agencies and ministers, and disclosure to others for the purposes of facilitating compliance with the Code and Guidelines and the exercise of their statutory and portfolio responsibilities. Tenderers must ensure that their proposed subcontractors and consultants are also aware of, and agree to comply with, these rights of use and disclosure.

3. Tenderers should be aware that the Code and Guidelines apply to:
 - (a) the Project which is the subject of these Tender Documents; and
 - (b) all construction and building work undertaken by the Tenderer and its Related Entities, including work on all new privately funded construction projects in Australia. For further information on the definition of privately funded construction projects, see section 3.4 of the Guidelines.
4. Tenderers are required to comply with the Code and Guidelines. As part of their Tender, Tenderers must submit a signed "Declaration of Compliance" attached as Tender Schedule 15 (Declaration of Compliance with National Code of Practice Requirements).
5. Each Tenderer must indicate in its Tender response:
 - (a) whether the Tenderer or a Related Entity of the Tender has ever been subject to a sanction imposed under the Code and Guidelines;
 - (b) whether the Tenderer has had an adverse court or tribunal decision (not including decisions under appeal) for a breach of workplace relations law, work health and safety law, or workers' compensation law and the Tenderer has not fully complied, or is not fully complying, with the order.
 - (c) whether the Tenderer has had any adverse court, tribunal, industrial relations commission or Fair work Australia finding, order or penalty awarded against them in the last two years (and if so provide details);

- (d) how the Tenderer and its Related Entities have complied with the Code and Guidelines in the past (if the Tenderer has undertaken Australian Government funded construction work in the past);
 - (e) how the Tenderer intends to comply with the Code and Guidelines in performing the Contract, should it be the Successful Tenderer; and
 - (f) where the Tenderer proposes to subcontract an element of the Project, either:
 - (i) the information detailed in the above subclauses (a) and (b) in relation to each subcontractor, or
 - (ii) how the Tenderer intends to ensure each subcontractor complies with the Code and Guidelines.
 - (g) where the Tenderer has an enterprise agreement made under the *Fair Work Act 2009* (Cth) on or after 1 May 2012, Australian Government agencies must require the Tenderer to confirm, in their submission, that that enterprise agreement includes genuine dispute resolution procedures.
6. While acknowledging that value for money is the core principle underpinning decisions on Government procurement, Tenderers should note that when assessing Tenders, preference may be given to Tenders that demonstrate a commitment to:
- (a) adding and/or retaining trainees and apprentices;
 - (b) increasing the participation of women in all aspects of the industry; or
 - (c) promoting employment and training opportunities for indigenous Australians in regions where significant indigenous populations exist.

Invitation to Tender

TRI-0012

Framework Agreement for Supply of Goods

Tender Schedule 15 – Declaration of Compliance with National Code of Practice Requirements

Declaration of Compliance with the National Code of Practice for the Construction Industry and the Australian Government Implementation Guidelines, May 2012.

Name of Australian Government project tendered for: [●]

Name of Tenderer, ABN and ACN: [●]

1. The Tenderer confirms that it has complied with the National Code of Practice for the Construction Industry (“**Code**”) and the Australian Government Implementation Guidelines for the National Code of Practice for the Construction Industry, May 2012 (“**Guidelines**”), in preparing this Tender.
2. The Tenderer undertakes that it complies with Code and Guidelines, and has complied with the Code and Guidelines from the time of lodgement of this Tender, and that it will require compliance by its Related Entities.
3. The Tenderer undertakes to ensure compliance from all subcontractors and consultants engaged on this Project, should it be the Successful Tenderer. All contracts must expressly require compliance with the Code and Guidelines.
4. The Tenderer agrees that it and its subcontractors and its Related Entities will provide the Commonwealth or any person authorised by the Commonwealth, including a person occupying a position in the Office of the Australian Building and Construction Commissioner, with access to:
 - (a) inspect any work, material, machinery, appliance, article or facility;
 - (b) inspect and copy any record relevant to the Project or Work under the Agreement;
 - (c) interview any person; and
 - (d) any document requested under this contract. The document must be provided within the period specified either in person, by fax or by post,as is necessary to demonstrate its compliance with the Code and Guidelines.
5. The Tenderer acknowledges that it is aware the Commonwealth or Minister for Employment and Workplace Relations may impose a sanction on a Tenderer or Contractor that does not comply with the Code and Guidelines.

The sanction imposed may include but is not limited to:

 - (a) the reporting of the breach to an appropriate statutory body or law enforcement agency (if there is evidence that the breach may also be a breach of a Commonwealth or State law), or industry association;
 - (b) issuing of a formal warning that future breaches may lead to more significant sanctions;
 - (c) preclusion from tendering for any Commonwealth funded building and construction work for a specified period;

- (d) communication of sanction details to all Commonwealth agencies to ensure a 'whole-of-Government' approach;
 - (e) publication of details of the breach and identification of the party committing the breach; and
 - (f) a reduction in the number of tendering opportunities that are given (see Section 8.2.2 of the Guidelines).
6. The Tenderer is to select which of the following clauses in italics is appropriate and delete the remaining clause:
- (a) *The Tenderer hereby gives its consent, and confirms that its Related Entities give their consent, to disclosure by the Commonwealth, its agencies and ministers, of information concerning the Tenderer's and its Related Entities' compliance with the Code and Guidelines and whether or not a sanction has been imposed on the Tenderer and/or Related Entity of the Tenderer, for the exercise of their statutory and portfolio responsibilities (the "Purposes").*
- OR
- (b) *The Tenderer has previously given its consent, and confirms that its Related Entities have previously given their consent, to disclosure by the Commonwealth, its agencies and ministers, of information concerning the Tenderer's and its Related Entities' compliance with the Code and Guidelines and whether or not a sanction has been imposed on the Tenderer and/or a Related Entity of the Tenderer for the exercise of their statutory and portfolio responsibilities (the "Purposes"), and confirms that the Tenderer and its Related Entities have not revoked that consent.*
7. The Tenderer has obtained or will obtain the consent of each subcontractor and consultant proposed in its Tender to disclosure by the Commonwealth, its agencies and ministers, of information concerning the proposed subcontractors, compliance with the Code and Guidelines and whether or not a sanction has been imposed on any proposed subcontractor, for the Purposes.
8. The Tenderer acknowledges that the consents provided in paragraph 6 above, are not limited to this Tender process as the Tenderer is expected to comply with the Code in future projects.
9. The Tenderer will:
- (a) describe how the Tenderer has complied with the Code and Guidelines in the past (if the Tenderer has undertaken Australian Government funded construction work in the past) and how it will comply if successful. For example, the Tenderer will:
 - (i) comply with the Code and Guidelines;
 - (ii) require compliance with the Code and Guidelines from all subcontractors before doing business with them;
 - (iii) apply the Code and Guidelines to privately funded projects that commence after they first lodge an expression of interest or Tender for Australian Government projects if the expression of interest or Tender occurs on or after 1 November 2005;
 - (iv) ensure that contractual documents allow for a person occupying a position in the Office of the Australian Building and Construction Commissioner to access sites, documents and personnel to monitor

compliance with the Code and Guidelines, including privately funded construction sites;

- (v) ensure project managers or head contractors establish appropriate processes to ensure freedom of association;
 - (vi) ensure there is a work health safety and rehabilitation (WHS&R) plan for the Project;
 - (vii) respond to requests for information concerning Code-related matters made on behalf of Code Monitoring Group (“**CMG**”);
 - (viii) where practicable, ensure contractors or subcontractors initiate voluntary remedial action aimed at rectifying non-compliant behaviour when it is drawn to their attention;
 - (ix) ensure that CMG secretariat is notified of any alleged breaches, voluntary remedial action taken or other Code-related matters within 21 days of the party becoming aware of the alleged breach; and
 - (x) be aware that and ensure that sanctions applied under the Code are enforced including the exclusion of identified parties from work opportunities in accordance with decisions advised by CMG.
- (b) Where the Tenderer proposes to subcontract an element of the work, the Tenderer is either to:
- (i) provide the information detailed at (a) in relation to each subcontractor; or
 - (ii) detail how the Tenderer intends to ensure compliance with the Code and Guidelines by each subcontractor.
- (c) Ensure that where threatened or actual industrial action occurs on a project, contractors, subcontractors, consultants or project managers report such action to the relevant Government funding agency.

10. Where the Tenderer has a *Fair Work Act 2009* (Cth) enterprise agreement that was approved on or after 1 May 2012 that enterprise agreement includes a genuine dispute resolution procedure that includes the following:

- the ability for employees to appoint a representative in relation to the dispute;
- in the first instance procedures to resolve the dispute at the workplace level;
- if a dispute is not resolved at the workplace level, the capacity for a party to the dispute to refer the matter to an independent third party for mediation or conciliation; and
- if the dispute is still not resolved, the capacity for an independent third party to settle the dispute via a decision binding on the parties.

Privately Funded Projects:

11. The Tenderer declares that, in respect to privately funded projects:

- (a) The Tenderer and its Related Entities will comply with the Code and Guidelines on all the Tenderer's and its Related Entities' future privately funded projects.
- (b) The Tenderer must maintain adequate records of compliance with the Code and Guidelines by the Tenderer, its subcontractors and Related Entities.
- (c) The Tenderer agrees that it and any of its Related Entities will provide the Commonwealth or any person authorised by the Commonwealth, including a

person occupying a position in the Office of the Australian Building and Construction Commissioner, with access to:

- (i) inspect any work, material, machinery, appliance, article or facility;
- (ii) inspect and copy any record relevant to the Project the subject of this Contract; and
- (iii) interview any person,

as is necessary to allow validation of its compliance with the Code and Guidelines.

- (c) The Tenderer agrees that the Tenderer and its Related Entities will agree to a request from the Commonwealth or any person authorised by the Commonwealth, including a person occupying a position in the Office of the Australian Building and Construction Commissioner, to produce a specified document within a specified period, in person, by fax or by post.
- (d) The Tenderer will ensure that the Tenderer and its Related Entities permit the Commonwealth or any person authorised by the Commonwealth, including a person occupying a position in the Office of the Australian Building and Construction Commissioner, to have access to records and to the Related Entities' and subcontractors' premises (to inspect and copy records), as is necessary to ensure that the subcontractors and Related Entities are complying with the Code and Guidelines.

[To be signed by Tenderer—insert appropriate signature block.]

Part F – Draft Contract

Please refer to draft contract TRI-0012 below

Standing Offer for Supply, Installation and Maintenance of Goods

Dated

2014

Translational Research Institute Pty Ltd as trustee for the Translational Research Institute Trust ABN
58 155 991 662 (“**Purchaser**”)

and

[insert Supplier name and ABN] (“**Supplier**”)

King & Wood Mallesons

Level 30 Waterfront Place 1 Eagle Street
Brisbane Qld 4000 Australia
T +61 7 3244 8000
F +61 7 3244 8999
DX 311 Brisbane www.mallesons.com

Standing Offer for Supply, Installation and Maintenance of Goods

Contents

Details		1
General terms		1
1	Definitions and Interpretation	1
1.1	Definitions	1
1.2	Interpretation	7
2	General Obligations	8
3	Documents and order of precedence	8
3.1	Agreement	8
3.2	Purchase Order Contract	9
4	Agreement and Purchase Order Contracts	10
5	Site	11
6	Inspection	12
7	Delivery and ownership	12
8	Acceptance Testing	13
9	Risk	14
10	Acceptance	15
11	Installation	15
12	Completion	16
13	Maintenance services	16
14	Purchaser-Supplied Information	17
15	Security	18
15.1	Security for deposit	18
15.2	Performance security	18
15.3	Replacement of guarantees	19
15.4	Parent company guarantee	20
15.5	Condition precedent	20
16	Purchase Price and Unscheduled Maintenance Charges	20
17	Payment	21
17.1	Deposit	21
17.2	Payment Claims for Purchase Price	21

17.3	Payment Claims for Unscheduled Maintenance Services	21
17.4	Payment of invoices	22
17.5	Security of payment	22
17.6	Subcontractors' Charges	24
18	Warranties	24
19	Environment	26
20	Workplace Health & Safety	26
21	National Code of Practice for the Construction Industry	28
22	Intellectual Property rights	29
22.1	Supplier to obtain all necessary rights	29
22.2	Licence of Project IP to Purchaser	29
22.3	Licence of Background IP	29
22.4	Intellectual Property warranty	29
22.5	Intellectual Property indemnity	29
22.6	No third party payments	29
22.7	Return of material forms of Project IP	30
22.8	Moral Rights	30
22.9	Intellectual Property protection	30
22.10	Survival obligations	30
23	Suspension	30
24	Extension Of Time	31
25	Delay Liquidated Damages	32
26	Variations	33
27	Indemnity and Liability	35
28	Defects	36
29	Dispute Resolution	36
30	Termination	37
31	GST	38
32	Notices	39
33	Purchaser as trustee	40
33.1	Purchaser as trustee	40
33.2	No proceedings	40
33.3	Liability must be limited	40
34	Insurance	40
35	Confidentiality	42
36	Personal Property Securities Act 2009	43

36.1	Further steps	43
36.2	Cost of further steps and undertaking	43
36.3	Negative pledge for the purposes of the PPSA	44
36.4	Exclusion of PPSA provisions	44
37	General	44
37.1	General Representations and Warranties	44
37.2	Further steps	45
37.3	Counterparts	45
37.4	Amendments	45
37.5	Assignment	46
37.6	Construction	46
37.7	Costs	46
37.8	Entire Agreement	46
37.9	Governing Law	46
37.10	Time of the Essence	46
37.11	Waiver	46
Signing page		47
Attachment 1 – General Terms		48
Attachment 2 - Goods		49
Attachment 3 - Purchase Order		50
Appendix 1 to Purchase Order Specification		53
Appendix 2 to Purchase Order Delivery Schedule		54
Appendix 3 to Purchase Order Installation Schedule		55
Appendix 4 to Purchase Order Maintenance Schedule		56
Appendix 5 to Purchase Order Rates and prices		57
Attachment 4 - Site		58
Attachment 5 – National Code of Practice Requirements		59
Attachment 6 – Guarantee		61
Attachment 7 – Parent Company Guarantee		63
Signing page		69

Standing Offer for Supply, Installation and Maintenance of Goods

(a) Details

Parties	Purchaser and Supplier	
Purchaser	Name	Translational Research Institute as trustee for the Translational Research Institute Trust
	ABN	58 155 991 662
	Address	Translational Research Institute 37 Kent Street Street Woolloongabba QLD 4102
	Fax	+61 7 3443 7779
	Attention	Mark Eaton
	Email	mark.eaton@tri.edu.au
Supplier	Name	[TBA]
	ABN	[●]
	Address	[●]
	Fax	[●]
	Attention	[●]
	Email	[●]
Recitals	<p>A The Purchaser requires the Supplier to provide the Goods from time to time, on the terms and conditions set out in this Agreement.</p>	
	<p>B The Supplier has agreed with the Purchaser to supply the Goods from time to time, on the terms and conditions set out in this Agreement.</p>	
Governing law	Queensland	
Date of Agreement	See Signing page	

Standing Offer for Supply, Installation and Maintenance of Goods

(b) General terms

1 Definitions and Interpretation

1.1 Definitions

In this Agreement, unless the subject or context is inconsistent, each of the following expressions shall have the meaning assigned to it below:

Acceptance has the meaning provided for in clause 10, and **Accepted** has a similar meaning.

Acceptance Tests means the tests to be carried out and completed as required by clause 8.

Agreement means this agreement in writing between the Purchaser and the Supplier for the performance of the Work under the Agreement, comprising the documents set out in clause 3.1.

Authorised Officer means a director or a secretary of a party or any other person appointed by a party to act as an Authorised Officer for the purposes of this Agreement.

Authorised Person has the meaning given in clause 6.

Authority means any national, state, provincial, regional, territorial, local or municipal government, ministry, governmental department, commission, board, bureau, agency, instrumentality, executive, legislative, judicial or administrative body.

Business Day means any day that is a Monday, Tuesday, Wednesday, Thursday or Friday, except where that day is a public holiday in Brisbane.

Certificate of Completion means the certificate issued by the Purchaser in accordance with clause 12.

Claim includes any action, claim, demand or proceeding.

Code Monitoring Group has the same meaning as given to that term in the Australian Government Implementation Guidelines for the National Code of Practice for the Construction Industry, May 2012.

Completion means that stage of the Work under the Agreement (excluding any Maintenance Services) when the following has occurred:

- (a) the Goods have been Delivered (and if applicable, Installed) in accordance with the Agreement;
- (b) the Goods have been Accepted;
- (c) the Supplier has provided the Purchaser with all documents and information required under the Agreement to be supplied by the Supplier prior to Completion (including any as-built drawings and operations and maintenance manuals) or otherwise necessary for the proper, safe and convenient use, operation and maintenance of the Goods; and
- (d) the Supplier has satisfied any other conditions which the Agreement requires to be satisfied prior to Completion.

Confidential Information means all information of the Purchaser (whether of a scientific, engineering, industrial, mining, technical, business or financial nature or otherwise) in whatever form, including:

- (a) any information provided as part of the tender process leading to the execution of this Agreement;
- (b) the terms and contents of this Agreement and each Purchase Order Contract;
- (c) information relating to the business or operations of the Purchaser which is created or developed by the Supplier in the performance of this Agreement;
- (d) all information disclosed by or on behalf of the Purchaser to the Supplier at any time or learnt by the Supplier in the performance of this Agreement and each Purchase Order Contract, including all Purchaser-Supplied Information; and
- (e) all information and documents designated or marked as “confidential” or “proprietary” and disclosed by or on behalf of the Purchaser to the Supplier,

but does not include information that:

- (f) is or becomes generally known to the public otherwise than through a breach of this Agreement or other obligation of confidentiality owed to the Purchaser or a third party;
- (g) is obtained by the Supplier from a third party without breach by that third party of any obligation of confidence concerning that information; or
- (h) was already in the Supplier's possession (as evidenced by written records) when provided by or on behalf of the Purchaser.

Contract Formation has the meaning given in clause 4(c).

Corporations Act means *Corporations Act 2001* (Cth) as amended and any of its regulations.

Date for Completion means the date specified in Item 7 of a Purchase Order, being the date by when the Supplier must achieve Completion.

Date of Agreement means the date which appears on the front page of this Agreement, or if no such date is inserted, then the date on which this Agreement is executed by the last party to execute it.

Date of Completion means, in respect of a Purchase Order Contract, the date certified by the Purchaser in a Certificate of Completion to be the date upon which the Supplier achieved Completion.

Date(s) of Delivery means the date upon which the Supplier achieves Delivery in accordance with this Agreement and the relevant Purchase Order Contract.

Date(s) for Delivery means the date, or if the Goods are being Delivered in stages, the dates, specified in Item 6 of a Purchase Order by which the Goods must be delivered to the Delivery Point, as may be extended in accordance with this Agreement.

Defect means any aspect of the Goods not in accordance with this Agreement or a Purchase Order Contract, or any damage, deficiency, fault or inadequacy in the design, performance, workmanship, quality or make-up of the Goods.

Defects Correction Period means, in respect of a Purchase Order Contract, the period of 12 months (unless otherwise specified in Item 9 of the Purchase Order) commencing on the Date of Completion.

Delay Liquidated Damages means the liquidated damages specified in Item 12 of the Purchase Order which are payable by the Supplier in accordance with clause 25.

Deliver means packaging, transporting and unloading the Goods.

Delivery means to Deliver the Goods to the Delivery Point in accordance with this Agreement and a Purchase Order Contract.

Delivery Point means the location or address for Delivery of the Goods specified in Item 2 of a Purchase Order (or if more than one, as specified in Appendix 2 (Delivery Schedule) to the Purchase Order) or other location as agreed between the parties in writing.

Delivery Schedule means the schedule for Delivery set out in Appendix 2 (Delivery Schedule) to the Purchase Order.

Deposit means, in respect of a Purchase Order Contract, the amount described in Item 13 of the relevant Purchase Order, if any.

Deposit Guarantee has the meaning given in clause 15.1(a).

Details means the section of this Agreement headed "Details".

Environmental Incident means an act or omission which gives, or has the potential to give, rise to a breach of Environmental Law or which amounts to a non-compliance with:

- (a) any Site specific environmental requirements; or
- (b) the Purchaser's environmental management system.

Environmental Law means any Law regulating or otherwise relating to the environment, including matters concerning planning and development, building, conservation, heritage, natural resources, contamination or any other aspect of the environment, whether in existence at the Date of Agreement or Contract Formation of a Purchase Order Contract (as the case may be) or coming into existence after the Date of Agreement or Contract Formation of a Purchase Order Contract (as the case may be).

Event of Force Majeure means:

- (a) an act of God, lightning strike, earthquake, flood, tempest, mud slide, washaway, explosion, fire and any natural disaster (other than adverse weather, even if severe);
- (b) expropriation or confiscation;
- (c) an act of war, act of public enemies, terrorism, riot, civil commotion, malicious damage, sabotage or revolution;
- (d) epidemic or pandemic; or

- (e) a combination of the events listed in paragraphs (a) to (e),

which is beyond the reasonable control of, and which occurs without the fault or negligence of a party and/or its Personnel, and which could not have been avoided using all reasonable efforts and which results in a party being unable to observe or perform on time an obligation under this Agreement or any Purchase Order Contract.

Events has the meaning given in clause 24.

Existing Operations means all improvements on or about the Site and the operations of the Purchaser carried out on or about the Site at any time.

General Conditions means the terms and conditions of this Agreement between the Purchaser and the Supplier for the performance of the Work under the Agreement, excluding the Attachments.

Good Industry Practice means the exercise of a degree of skill, diligence, care, foresight and operating practice which would reasonably be expected from a world class skilled contractor, experienced in the supply, Installation and maintenance of goods of the same or similar kind as the Goods.

Goods means the goods or items to be supplied by the Supplier under any Purchase Order Contract, as specified in Item 1 of the Purchase Order.

Government Approval means any authorisation, consent, approval, licence, lease, ruling, permit, exemption, filing, variance, order, judgment, decree, publication, notice to, declarations of or with or regulation by or with any Authority relating to the Work under the Agreement or the Goods.

GST Law has the same meaning as in section 195-1 of the *A New Tax System (Goods and Services Tax) Act 1999* (Cth).

Guarantee means the unconditional undertaking so described in clause 15.2(a). **Indemnified Parties** means any occupiers, licencees and invitees upon the Site. **Insolvency Event** means the occurrence of any of the following:

- (a) a party informs the other party in writing or creditors generally that the party is insolvent;
- (b) a party commits an act of bankruptcy;
- (c) a bona fide bankruptcy petition is presented against a party, who does not have a reasonable defence to the petition;
- (d) a party is made bankrupt;
- (e) a meeting of creditors of a party is called with a view to entering a scheme of arrangement or composition with creditors or placing the party under official management;
- (f) a party enters a scheme of arrangement or composition with creditors;
- (g) a resolution is passed at a meeting of creditors to place a party under official management;
- (h) a party is placed under official management;
- (i) a receiver of the property or part of the properties of a party is appointed;

- (j) an application is made to a court for the winding up of a party and not stayed within 14 days;
- (k) a winding up order is made in respect of a party; or
- (l) execution is levied against a party by creditors, debenture holders or trustees under a floating charge.

Install means install, test and commission.

IP Rights mean all intellectual and industrial property rights throughout the world, both present and future, including rights in respect of or in connection with any confidential information, trade secrets, copyright (including future copyright and rights in the nature of or analogous to copyright), moral rights, inventions (including patents and patentable inventions), trade marks, service marks, designs, semiconductors, circuit layouts, plant breeder's rights, formulae, know-how and performance protection (whether or not now existing and whether or not registered or registrable) and all other intellectual property as defined in article 2 of the convention establishing the World Intellectual Property Organisation 1967 and includes any right to apply for the registration of such right.

Law means:

- (a) legislation including regulations, by-laws, orders, awards and proclamations with which a Party is legally required to comply;
- (b) common law and equity (if applicable); and
- (c) Authority requirements, guidelines, consents, certificates, licences, permits and approvals (including conditions in respect of those consents, certificates, licences, permits and approvals) with which a Party is legally required to comply.

Maintain means performance of the Maintenance Services.

Maintenance Services means the Scheduled Maintenance Services and the Unscheduled Maintenance Services.

National Code of Practice Requirements means the National Code of Practice Requirements set out in Attachment 5.

Parent Company Guarantee means the unconditional undertaking so described in clause 15.4.

Person with Management or Control of the Workplace has the meaning given to it in the WH&S Act.

Personnel means:

- (a) in relation to the Purchaser, the Purchaser's employees, agents, consultants and contractors (other than the Supplier); and
- (b) in relation to the Supplier, the Supplier's employees, agents, consultants, subcontractors, invitees and their respective employees, agents, consultants, contractors and invitees.

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

Project IP means all IP Rights arising out of or created by the Supplier in the performance of its obligations under this Agreement and any Purchase Order Contract, but does not include the Supplier Background IP.

Purchaser means the party described as such in the Details.

Purchaser's Representative means the person so described in the Details, as replaced and notified to the Supplier from time to time.

Purchase Order means a written order, substantially in the form set out in Attachment 3, sent by the Purchaser to the Supplier in accordance with clause 4(b).

Purchase Order Contract has the meaning given in clause 4(c) and comprises the documents referred to in clause 3.2(a).

Purchase Price means the amount payable by the Purchaser to the Supplier as specified in or calculated in accordance with Item 5 of a Purchase Order.

Purchaser-Supplied Information means any information in any form supplied or made available to the Supplier by or on behalf of the Purchaser at any time, and whether or not contained in the documents comprising this Agreement and the Purchase Order Contract.

Records includes originals or copies, whether recorded in a document or any other form of media such as tapes, computer disks and CD ROMs, of material, manuals, books, documents and information disclosed or made available in connection with the Agreement or a Purchase Order Contract.

Related Entity has the same meaning as given to that term in the Australian Government Implementation Guidelines for the National Code of Practice for the Construction Industry, May 2012.

Required Credit Rating means a rating of (or equivalent to) A- by Standard and Poor's (Australia) Pty Limited (ABN 62 007 324 852) or any other rating approved by the Purchaser in its absolute discretion.

Scheduled Maintenance Services means the periodic maintenance and repairs to the Goods, to be performed on the dates and within the timeframes nominated in the Specification or the relevant Purchase Order Contract, so as to keep the Goods maintained, in good repair and condition and fit for their intended use.

Security means the unconditional undertakings to be delivered by the Supplier pursuant to clause 15.2(a).

Security of Payment Act means *the Building and Construction Industry Payments Act 2004* (Qld).

Site means the site or premises where the Delivery Point is located, as set out in Attachment 4 (Site).

Specification means the specification for the Goods contained in Attachment 2 (Goods) or as otherwise contained in a Purchase Order.

Supplier means the party named as such in the Details.

Supplier Background IP means all IP Rights owned by or licensed to the Supplier (including know-how and technical information) which existed prior to the Date of Agreement or Contract Formation of any Purchase Order Contract, or is developed or acquired by the Supplier independently of this Agreement or any Purchase Order Contract which is used by the Supplier in the performance of its obligations under this Agreement and any Purchase Order Contract or otherwise made available to the Purchaser under or in connection with this Agreement and any Purchase Order Contract, but does not include the Project IP.

Tax Invoice has the same meaning as in the GST Law.

Taxes includes any and all sales, use, personal, property, real property, value added, consumption, stamp, documentary, business, occupation, excise, income, corporation, profits, gains, gross receipts, or other taxes, import duties, fees, withholdings, imposts, levies, duties or other charges of any nature whatsoever or whensoever, together with any penalties, fines or interest or similar additions, imposed, levied or assessed by any Authority or otherwise payable on or in respect of the Goods or the Work under the Agreement, but excludes GST.

Term means the term of the Agreement commencing on the Date of Agreement and expiring on the later of:

- (a) the date set out in Item 1 of Attachment 1 (General Terms) (if any);
- (b) termination by the Purchaser in its absolute discretion, pursuant to clause 30(a)(i) (or termination otherwise in accordance with the terms of this Agreement); and
- (c) the date on which the latest Purchase Order Contract made in accordance with the Agreement is terminated or discharged.

Trust has the meaning given in clause 33.

Unscheduled Maintenance Charges means the amounts payable to the Supplier for the performance of the Unscheduled Maintenance Services, calculated in accordance with the Specification or the relevant Purchase Order Contract.

Unscheduled Maintenance Services means any maintenance and repairs to the Goods which are required to keep the Goods maintained, in good repair and condition and fit for their intended use, which are not Scheduled Maintenance Services.

Variation means any change in the scope, character or quality of the work required to be performed under the Agreement or a Purchase Contract, including:

- (a) the quantity of the Goods to be supplied;
- (b) the specification of some or all of the Goods;
- (c) the Delivery Point;
- (d) the scope of the Installation work or the Maintenance Services; and
- (e) the methodology or other circumstances of Delivery.

WH&S Act means the *Work Health and Safety Act 2011* (Qld), as amended and any of its regulations.

Work under the Agreement means all of the work which the Supplier is required to carry out under any Purchase Order Contract, including the supply, Delivery, Installation, testing and commissioning of the Goods and the performance of the Maintenance Services.

1.2 Interpretation

In the Agreement and each Purchase Order Contract, unless the context otherwise requires:

- (a) the singular includes the plural and vice versa;
- (b) the clause headings of this Agreement and each Purchase Order Contract shall not in any way affect their interpretation;
- (c) all references to “dollars” and “\$” are to Australian dollars;
- (d) all references to the “Supplier” shall also include the Supplier’s successors and assigns and all references to “Purchaser” shall also include the Purchaser’s successor’s and assigns;
- (e) ”includes” means includes without limitation;
- (f) where a word or phrase is given a particular meaning, other parts of speech or grammatical forms of that word or phrase have corresponding meanings;
- (g) references to a “document” includes but is not limited to, any drawing, specification, material, record or any other means in which information can be stored or reproduced; and
- (h) a reference to an Item in a clause, Attachment or appendix in the Agreement or a Purchase Order is a reference to an Item in the Attachment, appendix or the Purchase Order.

2 General Obligations

- (a) The Supplier must perform the Work under the Agreement and all other obligations of the Supplier under this Agreement and any Purchase Order Contract at its own risk and in accordance with this Agreement, the Purchase Order Contract (as the case may be), all Laws and Good Industry Practice.
- (b) The Supplier must, in performing the Work under the Agreement:
 - (i) Deliver the Goods under each Purchase Order Contract to the Delivery Point by the Date for Delivery; and
 - (ii) if Installation is required:
 - (A) Install the Goods under each Purchase Order Contract; and
 - (B) achieve Completion by the Date for Completion; and
 - (iii) if Maintenance Services are required, Maintain the Goods under each Purchase Order Contract in the stipulated timeframes.
- (c) The Purchaser must pay the Supplier the Purchase Price and the Unscheduled Maintenance Charges in accordance with this Agreement and each Purchase Order Contract and perform all of the Purchaser’s other obligations under this Agreement and each Purchase Order Contract (as the case may be).

3 Documents and order of precedence

3.1 Agreement

- (a) This Agreement comprises and consists of the following:
 - (i) these General Conditions;

- (ii) the Attachments; and
 - (iii) any other document forwarded by the Purchaser to the Supplier before the Supplier executes the Agreement and expressly stated by the Purchaser to form part of the Agreement.
- (b) Where any inconsistency, ambiguity or discrepancy exists in or between the documents listed in clause 3.1(a), that inconsistency, ambiguity or discrepancy will be resolved as follows:
 - (i) firstly, by reading the documents in descending order of precedence as set out in clause 3.1(a);
 - (ii) where paragraph (i) does not resolve the inconsistency, ambiguity or discrepancy, the Supplier shall comply with the highest quality or standard specified or perform the more onerous obligation; and
 - (iii) where neither paragraph (i) nor (ii) resolves the inconsistency, ambiguity, discrepancy, the Supplier shall request and comply with the Purchaser's direction as to the interpretation and construction to be followed in respect of the inconsistency, ambiguity or discrepancy.
- (c) The Supplier shall not be entitled to make any Claim, or receive any compensation whatsoever, in relation to any inconsistency, ambiguity or discrepancy in or between any of the documents constituting the Agreement, or as a result of any direction by the Purchaser under clause 3.1(b)(iii).

3.2 Purchase Order Contract

- (a) Each Purchase Order Contract constitutes a separate contract which comprises and consists of the following:
 - (i) the Agreement, which will be construed so as to apply to the Purchase Order Contract;
 - (ii) the Purchase Order; and
 - (iii) any other document forwarded by the Purchaser to the Supplier before Contract Formation and referred to in Item 13 of the Purchase Order.
- (b) Where any inconsistency, ambiguity or discrepancy exists in or between the documents that comprise a Purchase Order Contract, that inconsistency, ambiguity or discrepancy will be resolved as follows:
 - (i) firstly, by reading the documents in the following descending order of precedence:
 - (A) the Purchase Order;
 - (B) this Agreement (excluding the Attachments);
 - (C) the Specification;
 - (D) the Attachments;
 - (E) any appendices; and

- (F) any document specified in Item 14 of the Purchase Order;
- (ii) where paragraph (i) does not resolve the inconsistency, ambiguity or discrepancy, the Supplier shall comply with the highest quality or standard specified or perform the more onerous obligation; and
- (iii) where neither paragraph (i) or (ii) resolve the inconsistency, ambiguity or discrepancy, the Supplier shall request and comply with the Purchaser's Representative's direction as to the interpretation and construction to be followed in respect of the inconsistency, ambiguity or discrepancy.
- (c) The Supplier shall not be entitled to make any claim, or receive any compensation whatsoever, in relation to any inconsistency, ambiguity or discrepancy in or between any of the documents constituting the Purchase Order Contract, or as a result of any direction by the Purchaser's Representative under clause 3.2(b)(iii).

4 Agreement and Purchase Order Contracts

- (a) The Supplier offers to Deliver (and if applicable, Install and/or Maintain) the Goods during the Term on the terms of the Agreement.
- (b) If the Purchaser wishes to acquire Goods from the Supplier and, if applicable, require the Supplier to Install and/or Maintain the Goods, it will deliver a Purchase Order to the Supplier substantially in the form contained in Attachment 3.
- (c) A contract ("**Purchase Order Contract**") will be formed when the Purchaser delivers a Purchase Order to the Supplier and the Purchase Order is signed by both parties and returned to the Purchaser ("**Contract Formation**").
- (d) The Supplier must not commence supplying or Delivering the Goods specified in a Purchase Order until Contract Formation.
- (e) The Supplier must:
 - (i) Deliver the Goods by the Date(s) for Delivery; and
 - (ii) if Installation is required, Install the Goods and achieve Completion by the Date for Completion; and
 - (iii) if Maintenance Services are required, Maintain the Goods, in accordance with the relevant Purchase Order Contract.
- (f) The Supplier will complete and perform any work necessary to Deliver (and if necessary, Install and/or Maintain) the Goods in accordance with all relevant Laws and at its own risk.
- (g) The Supplier acknowledges and agrees that the Purchaser:
 - (i) is under no obligation to, and makes no representation that it will, acquire any Goods from the Supplier unless and until the parties enter into a Purchase Order Contract in respect of specific Goods;

- (ii) may issue Purchase Orders in its absolute discretion and as it requires;
- (iii) has made no guarantee or representation regarding the number or volume of Goods that will be acquired from the Supplier;
- (iv) is not bound to use the Supplier to Deliver, Install or Maintain the Goods; and
- (v) may at any time deliver, install or maintain goods itself or engage others to deliver, install or maintain goods.

5 Site

- (a) The Supplier must Deliver the Goods to the Delivery Point and perform all other Work under the Agreement at the Site or at such other place or places as the Purchaser may from time to time authorise or direct and subject to such reasonable conditions as may be imposed by the Purchaser.
- (b) Where the Supplier is required to access the Site for the purpose of performing the Work under the Agreement, the Supplier must, when on Site, comply with all reasonable directions and procedures of the Purchaser (or any contractor of the Purchaser who has been appointed as 'principal contractor' under the WH&S Act), including those relating to security, the environment and workplace health and safety.
- (c) The Supplier is required to use all reasonable endeavours to coordinate its performance of the Work under the Agreement with that of all other contractors of the Purchaser, any Indemnified Parties, Authorised Persons or Authorities on the Site.
- (d) The Supplier warrants and acknowledges that it has investigated the Site and the Existing Operations to the full extent necessary for performing its obligations under the Agreement and any Purchase Order Contract and is familiar with and has satisfied itself of the conditions at the Site and the Existing Operations, including:
 - (i) the general and local ground and climatic conditions, all buildings and improvements, all means of access to the Site and all other matters which could affect the progress or performance of the Work under the Agreement;
 - (ii) all parts of the Site and the Existing Operations and the areas adjacent to the Site;
 - (iii) the resources and equipment necessary to perform the Work under the Agreement;
 - (iv) the supply and conditions affecting the availability and quality of resources and equipment necessary to perform the Work under the Agreement;
 - (v) all access, operational and other requirements, restrictions and charges that may be imposed by any Authority relative to and/or affecting the performance of the Work under the Agreement;
 - (vi) the suitability and availability of the access routes and any permissions that may be required from the relevant Authorities for the use of such routes; and

- (vii) all other information as to risks, contingencies or other circumstances, which could affect performance of the Work under the Agreement.
- (e) The Supplier will not be entitled to any increase in the Purchase Price or the Unscheduled Maintenance Charges or any extension to the Date for Completion based in whole or in part upon:
 - (i) the actual conditions at the Delivery Point or the Site encountered by the Supplier; or
 - (ii) any cost, expense or delay in any way caused or arising out of the actions or omissions of any contractors of the Purchaser, Indemnified Parties, Authorised Persons or Authorities on the Site.

6 Inspection

- (a) The Purchaser and any persons authorised in writing by the Purchaser (collectively “**Authorised Persons**”) may inspect the Goods (and any records or material related to the Goods) prior to Delivery. The Supplier must ensure that the Authorised Persons are permitted to attend at any premises where the Goods are being manufactured or stored or any Work under the Agreement is being undertaken or completed by the Supplier, for the purpose of carrying out an inspection. The Supplier must cooperate fully with the Authorised Persons in respect of such inspection and provide the Authorised Persons with access to such premises for such purpose.
- (b) Neither the Purchaser nor any Authorised Person is obliged to inspect, or arrange for the inspection of, the Goods before Delivery.
- (c) Inspection of the Goods will not relieve the Supplier of any obligations which it has under this Agreement or any Purchase Order Contract in relation to the Goods.

7 Delivery and ownership

- (a) The Supplier shall:
 - (i) promptly notify the Purchaser in writing as soon as the Supplier is aware of Delivery being delayed;
 - (ii) bear all costs of packaging, freight, insurance and all charges and expenses associated with the Delivery of the Goods;
 - (iii) provide the Purchaser with such reports as prescribed in the Specification (in terms of content, format and frequency); and
 - (iv) do all things necessary to fulfil its obligations under this Agreement and any Purchase Order Contract.
- (b) Where the Purchaser requires the Goods to be delivered in stages:
 - (i) the Purchaser will complete the Delivery Schedule;
 - (ii) those parts of or items of Goods which have been specified in the Delivery Schedule as relating to a particular stage must be delivered on the Date for Delivery specified for that stage in the Delivery Schedule; and

- (iii) all other obligations under this Agreement and the relevant Purchase Order Contract in relation to Delivery must be performed by the latest Date for Delivery specified in the Delivery Schedule.
- (c) The Purchaser is not bound to accept Delivery of the Goods at a date or time earlier than the Date for Delivery, and may elect to return the Goods to the Supplier, or hold the Goods at the Supplier's risk, cost and expense.
- (d) Unless otherwise directed, the Goods must be unloaded at the Delivery Point by the Supplier in accordance with all Laws. The Purchase Price includes all costs of Delivery of the Goods.
- (e) The Supplier must, at its own risk, cost and expense, handle all imported Goods (or part(s) of the Goods) at the point(s) of import (if any) and any formalities for customs clearance, and if any Law requires any application or act to be made by the Purchaser or in its name, the Supplier must assist the Purchaser to comply with that Law.
- (f) Delivery is not complete until the Goods have achieved Acceptance in accordance with this Agreement.
- (g) Ownership of the Goods Delivered by the Supplier shall immediately pass to the Purchaser upon the earlier of:
 - (i) Delivery of the Goods; or
 - (ii) payment of the Purchase Price.
- (h) Despite any payment by the Purchaser, or any taking of Delivery of the Goods by the Purchaser, the Goods and Acceptance of the Goods remain subject to inspection and testing of the Goods in accordance with clauses 6 and 8, and the Specification, such inspection and testing which must be to the Purchaser's absolute satisfaction.

8 Acceptance Testing

- (a) The Supplier will carry out such tests of the Goods as are required by this Agreement, the relevant Purchase Order Contract or as the Purchaser may reasonably require, at the Supplier's premises (or the premises of its subcontractors) in order to determine whether the Goods comply with the requirements of the Agreement ("**Acceptance Tests**"). The Goods will not achieve Acceptance unless all Acceptance Tests are passed to the satisfaction of the Purchaser in accordance with this Agreement and the relevant Purchase Order Contract.
- (b) The Supplier must give the Purchaser at least 3 weeks' notice of the Supplier's intention to perform any Acceptance Tests and allow any Authorised Persons access to the Supplier's (or its subcontractors') premises for the purposes of viewing the Acceptance Tests.
- (c) The notice given under clause 8(b) must include details of:
 - (i) the Goods or parts of the Goods to be tested or inspected;
 - (ii) the Acceptance Test(s) to be performed;
 - (iii) a comprehensive test plan for the performance of the Acceptance Test(s); and
 - (iv) the proposed date and location of the Acceptance Test(s).

- (d) The results of any Acceptance Test performed by the Supplier must be presented in a written report produced by the Supplier and delivered to the Purchaser within 3 days of the completion of the Acceptance Test. The results will be evaluated and approved by the Purchaser in its absolute discretion.
- (e) If an Acceptance Test is interrupted or terminated for any reason, such Acceptance Test must be re-started from the beginning, unless otherwise approved by the Purchaser.
- (f) The Supplier or the Purchaser can order the interruption or termination of any Acceptance Test if damage to the Goods or other property, or personal injury, is likely to result from continuation.
- (g) If the Goods being tested fail to pass any Acceptance Test or if any Acceptance Test is stopped before its completion and the Acceptance Test is being carried out by the Supplier, the Supplier must adjust and modify the Goods as necessary to ensure compliance with the Agreement and the relevant Purchase Order Contract and, at its own risk, cost and expense, repeat the Acceptance Test as soon as practicable (subject to giving the Purchaser at least 24 hours prior written notice). All appropriate adjustments and modifications to the Goods are to be made by the Supplier efficiently, as a priority relative to the Supplier's other work and at its own cost and expense before the repetition of any Acceptance Test.
- (h) Unless otherwise provided in the Agreement or the relevant Purchase Order Contract, the Supplier must provide, calibrate, maintain and be responsible for the accuracy of all test instrumentation and equipment required for the Acceptance Tests.
- (i) The Supplier must bear the cost and expense of all tests (including the Acceptance Tests) and inspections required under the Agreement and relevant Purchase Order Contract (including retests) other than tests and inspections that are expressly stated to be at the Purchaser's cost and expense.
- (j) Without limiting the other provisions of this clause, the Purchaser may carry out, or request the Supplier to carry out, any test not described in the Agreement or the relevant Purchase Order Contract and which the Supplier would not otherwise have carried out and the Supplier must arrange or permit such test or inspection as soon as practicable. The Supplier will be entitled to be reimbursed its extra costs necessarily and reasonably incurred as a direct consequence of carrying out any such test, unless the Goods or part of the Goods fail any such test, in which event the Supplier shall be responsible for such costs.
- (k) The Supplier agrees that neither the performance of any test (including an Acceptance Test) nor the passing of any test (including an Acceptance Test) releases the Supplier from any of its responsibilities, obligations or liabilities under this Agreement and the relevant Purchase Order Contract.

9 Risk

The Goods shall be at the risk of the Supplier from the Date of Agreement until Acceptance of the Goods by the Purchaser.

10 Acceptance

- (a) The Purchaser may require the Supplier to provide evidence, acceptable to the Purchaser that the Goods are in accordance with this Agreement and the Purchase Order Contract.
- (b) The Supplier must provide such evidence as required under clause 10(a) in response to such a request by the Purchaser.
- (c) Evidence under clause 10(a) must be provided within the time prescribed in the request or such longer time as may be agreed.
- (d) The production of evidence by the Supplier under clause 10(a) will not relieve the Supplier of any obligations which it has under this Agreement and the Purchase Order Contract in relation to the Goods.
- (e) The Goods will be deemed to be accepted by the Purchaser when the Purchaser notifies the Supplier in writing that the Goods have been Accepted ("**Acceptance**").
- (f) If the Purchaser reasonably determines that:
 - (i) the Goods do not comply with this Agreement and/or the Purchase Order Contract; or
 - (ii) the Supplier has breached any of the terms of this Agreement and/or the Purchase Order Contract,

the Purchaser may reject the Goods by giving a written rejection notice to the Supplier.

- (g) A determination by the Purchaser in accordance with this clause 10 is final and binding on the Supplier.
- (h) If Goods are rejected by the Purchaser, it may, at the Supplier's cost, store the Goods for a maximum period of 30 days after the date of the rejection notice and, if the Supplier does not repossess the Goods within the 30 day period, the Purchaser will be entitled to sell or otherwise dispose of the Goods at the Supplier's cost and expense.
- (i) The Purchaser may, by notice in writing, require the Supplier to reimburse the Purchaser for any costs or expenses incurred by the Purchaser as a consequence of the rejection of the Goods.
- (j) A reimbursement notice that is served in accordance with clause 10(i) is conclusive evidence of the costs and expenses incurred by the Purchaser, and the Supplier must reimburse the Purchaser for those costs and expenses within 21 days of the date of the notice.
- (k) The Purchaser's right to reject the Goods or otherwise Claim against the Supplier for Goods that do not comply with this Agreement and/or the Purchase Order Contract is not limited or precluded by acceptance of the Goods or by payment of any money to the Supplier.

11 Installation

Where required by a Purchase Order Contract, the Supplier must Install the Goods at the Site, in accordance with the Specification, the Agreement and the Purchase Order Contract.

12 Completion

- (a) As soon as the Supplier considers that Completion has been achieved, the Supplier must give written notice to the Purchaser to that effect.
- (b) The Purchaser must, within 10 Business Days after receipt of the Supplier's notice under clause 12(a), either issue a Certificate of Completion stating the date on which Completion was achieved or notify the Supplier that there are omissions or Defects in the Work under the Agreement or Goods.
- (c) Subject to and without limiting the Purchaser's rights under the Agreement and the relevant Purchase Order Contract, if the Purchaser notifies the Supplier that there are omissions or Defects in the Work under the Agreement or Goods, the Supplier must immediately correct the omissions or Defects and the procedures in this clause 12 must be repeated until the Purchaser issues a Certificate of Completion.
- (d) The Supplier acknowledges and agrees that no partial or entire use or occupancy of the Site or the Goods by the Purchaser in any way constitutes an acknowledgement by the Purchaser that Completion has occurred, nor does it operate to release the Supplier from any of its warranties, obligations or liabilities under the Agreement and the relevant Purchase Order Contract.

13 Maintenance services

- (a) Where required by a Purchase Order Contract, the Supplier must:
 - (i) carry out and perform the Scheduled Maintenance Services in accordance with the Specification and the relevant Purchase Order Contract;
 - (ii) carry out and perform any Unscheduled Maintenance Services within 15 days' receipt of the Purchaser's written request for same (or such other time as the Purchaser may request in its absolute discretion);
 - (iii) use its best endeavours to minimise the incidence, severity and duration of any interruption to the Purchaser's operations as a result of performing the Maintenance Services.
- (b) The Purchaser and the Supplier agree that:
 - (i) the Scheduled Maintenance Services:
 - (A) form part of the Work under the Agreement;
 - (B) are included in the Purchase Price; and
 - (C) shall not be the subject of any Claim which would result in any increase in the Purchase Price;
 - (ii) the Unscheduled Maintenance Services are not included in the Purchase Price; and
 - (iii) the Unscheduled Maintenance Charges are the compensation payable to the Supplier for the performance of the Unscheduled Maintenance Services.

- (c) The Supplier must provide all equipment, tools, parts, consumables, materials, technical supervision, Personnel and other things required to perform the Maintenance Services, the cost for which is deemed to be included in the price payable for those Maintenance Services under this Agreement and the Purchase Order Contract.
- (d) Any Authorised Person may, at any time whilst Maintenance Services are being performed by the Supplier, observe the Maintenance Services.
- (e) The Supplier:
 - (i) shall be responsible for the care of:
 - (A) all Goods which are the subject of Maintenance Services;
 - (B) all things entrusted to the Supplier by the Purchaser for the purpose of carrying out the Maintenance Services; and
 - (C) all things brought onto the Site by the Supplier for the purpose of carrying out Maintenance Services,

whilst the Maintenance Services are being performed; and

- (ii) must ensure that it does not damage the Site in performing the Maintenance Services.
- (f) If loss or damage occurs to the Goods or the Site as a result of the Supplier's acts or omissions in performing the Maintenance Services, the Supplier must, at its own cost, rectify such loss or damage so that:
 - (i) the Goods conform in every respect with the provisions of this Contract; or
 - (ii) the Site is restored to its previous condition,

(as the case may be).

14 Purchaser-Supplied Information

- (a) The Supplier acknowledges and agrees that:
 - (i) the Purchaser makes no representations or warranties as to the sufficiency, accuracy or completeness of any of the Purchaser-Supplied Information;
 - (ii) the Purchaser-Supplied Information has been provided to the Supplier only to assist the Supplier with its performance of the Work under the Agreement and the Supplier must not rely on that information for any purpose;
 - (iii) any error or omission in the Purchaser-Supplied Information will have no effect on:
 - (A) the warranties provided by the Supplier under this Agreement or a Purchase Order Contract; or
 - (B) the other obligations of the Supplier under this Agreement or a Purchase Order Contract;

- (iv) the Supplier has not and will not rely on the Purchaser-Supplied Information for any purpose unless the Supplier has first, at its own cost and expense, independently verified the accuracy of the Purchaser-Supplied Information;
 - (v) in performing the Work under the Agreement, the Supplier must assess the Purchaser-Supplied Information and draw its own conclusions as to the accuracy and sufficiency of the Purchaser-Supplied Information and must, at its own cost and expense, make its own enquiries and determinations as to the accuracy and adequacy of such information; and
 - (vi) the Supplier will have no Claim arising from or in connection with the inaccuracy, incompleteness or inadequacy of the Purchaser-Supplied Information or the non-provision of information by the Purchaser.
- (b) Notwithstanding clause 14(a), the parties agree that the Supplier may rely upon the Purchaser-Supplied Information referred to in Item 8 of the relevant Purchase Order for the purposes of performing the Work under the Agreement.
 - (c) The Supplier obtains no rights in the Purchaser-Supplied Information and, unless otherwise agreed, the Purchaser-Supplied Information may only be used by the Supplier for the purpose of performing the Work under the Agreement.

15 Security

15.1 Security for deposit

- (a) At the same time as the Supplier submits its invoice for the Deposit under clause 17.1 (if applicable), the Supplier must provide the Purchaser with an unconditional undertaking for the same amount of the Deposit which complies with the requirements of clauses 15.2(a) and 15.2(b) ("**Deposit Guarantee**").
- (b) The Purchaser may make demand on and utilise the Deposit Guarantee to recover the Deposit if the Purchaser is entitled to repayment of the Deposit under clause 30(e)(i).
- (c) The Purchaser will return the Deposit Guarantee to the Supplier upon Delivery being achieved.

15.2 Performance security

- (a) Within 15 Business Days of the Date of Agreement, the Supplier must provide the Purchaser with 2 unconditional undertakings in the form set out in Attachment 6, each for the amount specified in Item 3 of Attachment 1 ("**Security**").
- (b) Each unconditional undertaking referred to in clause 15.2(a) must be issued by a bank satisfactory to the Purchaser and authorised under section 9 of the *Banking Act 1959* (Cth) which at all times holds at least the Required Credit Rating and which has its principal place of business in Australia.
- (c) The Purchaser may make demand on and utilise the Security:
 - (i) to pay for any costs, expenses or damages which the Purchaser claims that it has incurred, or might in the future incur, as a consequence of any negligent act or omission of the Supplier or

which the Purchaser asserts constitutes a breach of the Agreement by the Supplier;

- (ii) to satisfy any amount which the Purchaser asserts is payable by the Supplier pursuant to the Agreement and which the Supplier has not yet paid;
 - (iii) pursuant to clause 15.1 or 15.3(b); or
 - (iv) in the event of:
 - (A) a termination of the Agreement by the Purchaser pursuant to clause 30(a)(ii); or
 - (B) an Insolvency Event affecting the Supplier,
- (d) If the Purchaser makes a demand on the Security, the Purchaser:
 - (i) does not hold the amount received under the demand on trust for the Supplier and the Supplier does not have ownership of, or any proprietary interest in, such amounts;
 - (ii) is not required to hold the proceeds in any definable account; and
 - (iii) is not obliged to pay the Supplier interest on that amount.
- (e) Subject to any demands made under clause 15.2(c), the Purchaser must release the Security as follows:
 - (i) one unconditional undertaking shall be returned to the Supplier within 10 Business Days after receipt of a written request from the Supplier, which request may only be made after the Goods which are the subject of the last Purchase Order Contract have been Accepted; and
 - (ii) the remaining unconditional undertaking shall be returned to the Supplier within 10 Business Days after receipt of a written request from the Supplier, which request may only be made after the later of:
 - (A) the rectification of all Defects notified to the Supplier during the last Defects Correction Period under the last Purchase Order Contract; or
 - (B) the final resolution of any dispute between the parties.

15.3 Replacement of guarantees

- (a) If any of the Security or the Deposit Guarantee (if applicable) contain an expiry date, the Supplier must provide a replacement unconditional undertaking in the same form as the original Security or Deposit Guarantee (if applicable) on or before the date which is 15 Business Days before the expiry date and which complies with clauses 15.2(a) and 15.2(b).
- (b) If the Supplier fails to provide a replacement unconditional undertaking in accordance with clause 15.3(a), then the Purchaser may make a demand on the original unconditional undertaking and the Purchaser will hold the proceeds arising from such demand absolutely. The Purchaser may apply amounts so held in respect of any claim it would have been

entitled to bring in relation to the original unconditional undertaking. Upon receipt of the replacement unconditional undertaking, the Purchaser shall pay the remaining balance without interest to the Supplier.

- (c) The Supplier is responsible for all stamp duty (including penalties, if applicable) payable in connection with:
 - (i) the Security and the Deposit Guarantee (if applicable); and
 - (ii) any demands made on the Security and the Deposit Guarantee (if applicable).

15.4 Parent company guarantee

Within 15 Business Days of the Date of Agreement, the Supplier must provide the Purchaser with a guarantee given by the Supplier's ultimate holding company (as that term is defined in the *Corporations Act 2001* (Cth)) in the form set out in Attachment 7 ("**Parent Company Guarantee**").

15.5 Condition precedent

Notwithstanding anything to the contrary in this Agreement, provision by the Supplier of the Deposit Guarantee (if applicable) and the Security and the Parent Company Guarantee to the Purchaser is a condition precedent to the Supplier's entitlement to payment under this Agreement.

16 Purchase Price and Unscheduled Maintenance Charges

- (a) Subject to the Supplier complying with its obligations under this Agreement and the relevant Purchase Order Contract, the Purchaser will pay the Supplier:
 - (i) the Purchase Price for Delivery, (and if applicable, Installation and/or Scheduled Maintenance) of the Goods which will be:
 - (A) for Goods for which the Purchaser accepted a fixed sum, the fixed sum specified in Item 5 of the relevant Purchase Order; and
 - (B) for Goods for which the Purchaser accepted rates, the amount ascertained by multiplying the quantity of each item of the Goods provided under the Purchase Order Contract by the rate specified or referred to in Item 5 of the relevant Purchase Order,

adjusted by any additions or deductions made pursuant to the Purchase Order Contract;

- (ii) the Unscheduled Maintenance Charges for the performance of the Unscheduled Maintenance Services; and
- (iii) any additional amounts or deductions provided for by this Agreement and the relevant Purchase Order Contract,

as adjusted by any additions or deductions made pursuant to this Agreement.

- (b) The nature of a Purchase Order Contract will be as specified in Item 5 of the relevant Purchase Order.

- (c) The Purchase Price and the Unscheduled Maintenance Charges are inclusive of all Taxes but exclusive of GST, unless otherwise specified in the Purchase Order. No additional charges will be made on account of new or existing or increased Taxes, government levies or charges applicable to the Goods or the Maintenance Services or the Agreement or a Purchase Order Contract.
- (d) Except as expressly provided by this Agreement or a Purchase Order Contract, the Supplier must provide all resources necessary to perform the Work under the Agreement, and is not entitled to use the Purchaser's resources or seek reimbursement in respect of the cost of providing resources, except with the Purchaser's prior written approval.

17 Payment

17.1 Deposit

- (a) If a Deposit is nominated in Item 13 of the relevant Purchase Order, the Supplier shall submit a valid Tax Invoice for the Deposit to the Purchaser within 7 days after Contract Formation of the Purchase Order Contract, and the Purchaser shall pay the Deposit to the Supplier within 20 Business Days after delivery of that invoice.

17.2 Payment Claims for Purchase Price

- (a) The Supplier must submit invoices to the Purchaser for the Purchase Price in accordance with this Agreement and the relevant Purchase Order Contract, such invoices to be submitted within 7 days of the end of each month for Goods Delivered during that month.
- (b) The date referred to in clause 17.2(a) is the 'reference date' for the purposes of the Security of Payment Act.
- (c) An invoice must be supported by such information as necessary to enable the Purchaser to verify the amount of the invoice, and must:
 - (i) be in the form of a tax invoice describing the Goods Delivered in the previous month and showing the total amount payable and the GST payable;
 - (ii) be accompanied (where necessary or where requested by the Purchaser) by verifying documentation; and
 - (iii) identify the Purchase Order Contract to which it relates.

17.3 Payment Claims for Unscheduled Maintenance Services

- (a) Where the Supplier is required to perform Unscheduled Maintenance Services, the Supplier must submit invoices to the Purchaser for the Unscheduled Maintenance Charges in accordance with this Agreement and the relevant Purchase Order Contract, such invoices to be submitted within 7 days of the end of each month for Unscheduled Maintenance Services performed during that month.
- (b) The date referred to in clause 17.3(a) is the 'reference date' for the purposes of the Security of Payment Act.
- (c) An invoice must be supported by such information as necessary to enable the Purchaser to verify the amount of the invoice, and must:

- (i) be in the form of a tax invoice describing the Unscheduled Maintenance Services performed in the previous month and showing the total amount payable and the GST payable;
- (ii) be accompanied (where necessary or where requested by the Purchaser) by verifying documentation; and
- (iii) identify the Purchase Order Contract to which it relates.

17.4 Payment of invoices

- (a) Upon receipt of an invoice the Purchaser may require the Supplier to provide additional information to assist the Purchaser to determine whether or not an amount is payable.
- (b) Subject to clauses 17.4(c) and 17.4(g), the Purchaser will pay correctly rendered invoices within 30 days of the Purchaser receiving the invoice.
- (c) Without limiting clause 17.4(g) or any other rights of the Purchaser, the Purchaser may withhold payment of an invoiced amount if the Purchaser reasonably considers that the Work under the Agreement to which that invoiced amount relates has not been provided in accordance with this Agreement or the relevant Purchase Order Contract, or if the Purchaser otherwise disputes the invoiced amount in good faith. The Supplier must promptly provide or complete again any Work under the Agreement (or any part of the Work under the Agreement) not provided in accordance with this Agreement or the relevant Purchase Order Contract.
- (d) Payment of the invoice or any part thereof, will not be evidence of the value of the Work under the Agreement provided or an admission of liability or evidence that the Goods comply with the Agreement and the relevant Purchase Order Contract, or that the Work under the Agreement has been provided satisfactorily but will be a payment on account only.
- (e) If an invoice is found to have been incorrectly rendered prior to its payment then the Purchaser will notify the Supplier and the Supplier will issue a correctly rendered invoice.
- (f) If an invoice is found to have been incorrectly rendered after payment, any underpayment or overpayment will be recovered by or from the Supplier by payment to or by the Supplier or offset against any subsequent invoice. This clause does not limit any other available means of recovery of an incorrect payment.
- (g) Without prejudice to any other rights or remedies of the Purchaser, the Purchaser may withhold, retain or set off from any amount Claimed by the Supplier or from any payment due to the Supplier under this Agreement or a Purchase Order Contract, any amounts payable to the Purchaser and any amount which the Purchaser deems necessary to protect it against any costs, charges, expenses or damages for which the Supplier may be liable to the Purchaser under or in connection with this Agreement or any Purchase Order Contract.

17.5 Security of payment

- (a) The parties agree that the Purchaser's Representative is the agent of the Purchaser for the purposes of:
 - (i) accepting service of payment claims served by the Supplier under the Security of Payment Act;

- (ii) assessing payment claims served by the Supplier under the Security of Payment Act; and
 - (iii) providing the Supplier with payment schedules under the Security of Payment Act.
- (b) If the Supplier delivers or arranges to deliver to the Purchaser any written communication in relation to the Security of Payment Act, the Supplier must ensure that a copy of the written communication is provided to the Purchaser's Representative at the same time.
- (c) Without affecting the Purchaser's right to issue payment schedules itself, the Purchaser authorises the Purchaser's Representative to issue payment schedules on the Purchaser's behalf. If within the time allowed by the Security of Payment Act for service of a payment schedule by the Purchaser, the Purchaser does not:
 - (i) issue the required payment schedule itself; or
 - (ii) notify the Supplier that the Purchaser's Representative does not have authority from the Purchaser to issue the payment schedule on its behalf,

then a payment certificate issued by the Purchaser's Representative under the Agreement or a Purchase Order Contract which relates to the relevant period shall be taken to be the payment schedule for the purpose of the Security of Payment Act, whether or not it is expressly stated to be a payment schedule.

- (d) The Supplier must:
 - (i) promptly give the Purchaser and the Purchaser's Representative a copy of any notice the Supplier receives from any subcontractor; and
 - (ii) ensure that each subcontractor promptly gives the Purchaser and the Purchaser's Representative a copy of any notice that the subcontractor receives from another person,

under section 33 of the Security of Payment Act.

- (e) If the Purchaser becomes aware that a subcontractor is entitled to suspend work under section 33 of the Security of Payment Act, the Purchaser may (in its absolute discretion) pay the subcontractor any money that is or may be owing to the subcontractor for work forming part of the Work under the Agreement and the Purchaser may recover any amount paid as a debt due from the Supplier.
- (f) The Supplier indemnifies the Purchaser against any cost, loss, expense or damage of any nature suffered or incurred by the Purchaser arising out of direct payment by the Purchaser to a subcontractor as a result of subcontractor exercising its rights under the Security of Payment Act.
- (g) If the Supplier makes a payment claim under the Security of Payment Act and the Supplier applies for adjudication of the payment to be made, the prescribed appointor for the purposes of section 21 of that legislation is the Institute of Arbitrators & Mediators Australia.
- (h) If the Supplier intends to exercise its right under the Security of Payment Act to suspend the Work under the Agreement, it must give notice to the

Purchaser of no less than 5 Business Days prior to the Supplier exercising that right.

17.6 Subcontractors' Charges

- (a) The Supplier must promptly give the Purchaser's Representative a copy of any notice of a charge lodged under the *Subcontractors' Charges Act 1974* (Qld) received by the Supplier.
- (b) If the Purchaser makes a payment as a consequence of a subcontractor lodging a charge under the *Subcontractors' Charges Act 1974* (Qld), the Purchaser may:
 - (i) recover the amount of such payment as a debt due and payable from the Supplier; or
 - (ii) have recourse to the Security.
- (c) The Supplier shall indemnify the Purchaser against any loss, cost, damage, liability or expense suffered or incurred by the Purchaser as a result of any charges lodged under the *Subcontractors' Charges Act 1974* (Qld).

18 Warranties

- (a) Information, descriptions and claims as to the performance or suitability of the Goods given by the Supplier or any Supplier's Personnel, or the effects of the Goods, specified in the Supplier's catalogues, brochures, descriptive literature, tender or quotations or specified by the Supplier or its agents in pre-agreement discussions, constitute representations made by the Supplier to the Purchaser (upon which the Purchaser has relied) and are binding on the Supplier but do not lessen any of the Supplier's obligations or warranties otherwise contained in this Agreement or in a Purchase Order Contract.
- (b) The Supplier warrants and represents to the Purchaser that:
 - (i) it has the expertise, skill, competence, experience and ability necessary to perform the Work under the Agreement in accordance with this Agreement and each Purchase Order Contract;
 - (ii) it has all resources and Personnel necessary to perform the Work under the Agreement;
 - (iii) the Work under the Agreement will, as a minimum, be performed in accordance with Good Industry Practices;
 - (iv) it has examined this Agreement, the Purchase Order Contract and all Purchaser-Supplied Information and that information is suitable, appropriate and adequate for the performance of the Work under the Agreement;
 - (v) it will ensure that its performance of the Work under the Agreement does not adversely affect the Existing Operations or the operation and use of the Site except to the extent authorised by this Agreement or the Purchase Order Contract, or agreed to by the Purchaser;
 - (vi) it and its Personnel are registered and hold all Government Approvals, requisite licences and registrations required by Law

and that are necessary to properly perform the Work under the Agreement and that such Government Approvals, registration or licences will remain current for the Term of this Agreement;

- (vii) it will not infringe the IP Rights of any third party or otherwise breach any Law or obligation to any third party in performing the Work under the Agreement; and
 - (viii) the performance of the Work under the Agreement and the use by the Purchaser of the Goods as contemplated by this Agreement or a Purchase Order Contract will not infringe the IP Rights of any third party.
- (c) The Supplier warrants and represents to the Purchaser that the Goods:
 - (i) shall conform to the requirements of this Agreement (including the Specification) and or the relevant Purchase Order Contract;
 - (ii) are suitable for the Site;
 - (iii) are suitable and fit for the Purchaser's purpose and will be of such a nature and quality that may reasonably be expected to achieve the results that the Purchaser desires the Goods to achieve;
 - (iv) are free from all defects or imperfections in materials and workmanship;
 - (v) be of the current manufacture and in accordance with Good Industry Practice;
 - (vi) be provided in a timely and professional manner in and in any case be Delivered in the time required under this Agreement and the relevant Purchase Order Contract;
 - (vii) meet all relevant Australian standards (or, where applicable, appropriate international standards) and comply with all Laws;
 - (viii) when used properly, are safe and without risk to health;
 - (ix) are new and unused unless otherwise agreed with the Purchaser; and
 - (x) are free of any mortgage, lien, encumbrance or any other third party interest.
- (d) On or before Delivery, the Supplier must assign to the Purchaser any warranties which the Supplier has received from the suppliers or manufacturers of the Goods (or components of the Goods) or have otherwise been received by the Supplier in relation to, and in the course of performing, the Work under the Agreement.
- (e) The Purchaser will have the benefit of any implied warranties from the provisions of the *Competition and Consumer Act 2010* (Cth) including the *Australian Consumer Law* (as it is described in that Act), *Fair Trading Act 1989* (Qld), the *Sale of Goods Act 1896* (Qld) and the *Property Agents and Motor Dealers Act 2000* (Qld) and any other relevant legislation.

- (f) The application of the United Nations Convention on Contracts for the International Sale of Goods (known as the *Vienna Sales Convention 1980*) is excluded.

19 Environment

- (a) When performing any Work under the Agreement that requires the Supplier to access the Site, the Supplier shall:
 - (i) comply with and ensure its Personnel comply with:
 - (A) all Environmental Laws;
 - (B) all Government Approvals (including development approvals);
 - (C) the Purchaser's requirements for environmental management system documentation (and the Supplier acknowledges that those requirements are available from the Purchaser on request);
 - (D) Site specific environmental requirements; and
 - (E) any relevant Australian or international standards or codes regarding environmental management;
 - (ii) ensure that all machinery, tools, plant and equipment used by the Supplier or its Personnel are maintained so as to enable it to comply with its obligations under this clause 19; and
 - (iii) undertake regular inspections of the Work under the Agreement and provide to the Purchaser a checklist detailing compliance with clauses 19(a)(i) and 19(a)(ii) within 10 days after each inspection.

(b) The Purchaser may conduct or engage a suitably qualified independent expert to carry out random audits to ensure that the Work under the Agreement is being carried out by the Supplier in accordance with clause 19(a). The Supplier agrees to cooperate fully with any such audit.

- (c) The Supplier must notify the Purchaser as soon as possible but no later than 12 hours after it becomes aware of the occurrence on Site of an Environmental Incident caused by the Supplier or the Supplier's Personnel.
- (d) The Supplier must comply with any notice, order or direction issued to the Supplier or Purchaser under an Environmental Law in connection with the Work under the Agreement.
- (e) If the Supplier breaches this clause 19 the Purchaser may immediately terminate the Agreement and/or any Purchase Order Contract under clause 30(a)(ii)(A) without prejudice to any other rights which the Purchaser may have.

20 Workplace Health & Safety

- (a) This clause applies where the Supplier is required to access the Site for the purpose of performing the Work under the Agreement.

- (b) The Supplier:
 - (i) will be fully responsible for ensuring that the Supplier performs its duties under the Agreement and any Purchase Order Contract safely; and
 - (ii) accepts responsibility for compliance with the WH&S Act from the Date of Agreement for the Term of the Agreement; and
 - (iii) unless otherwise advised by the Purchaser, will comply with its duties as a Person with Management or Control of the Workplace at the Site.
- (c) The Supplier acknowledges and agrees that:
 - (i) the Purchaser is not obliged to check or monitor the Supplier's compliance with the requirements of the WH&S Act;
 - (ii) the random audits referred to in this clause do not relieve, limit or otherwise affect the Supplier's responsibilities under the WH&S Act, the Agreement and any Purchase Order Contract;
 - (iii) the Purchaser has certain duties under the WH&S Act;
 - (iv) the Supplier must (at its own cost and expense and without any entitlement to any Claim of any kind whatsoever) immediately comply with:
 - (A) the reasonable directions given by the Purchaser so as to enable the Purchaser to comply with its duties under the WH&S Act;
 - (B) all directions given by the Purchaser to stop work due to safety related issues; and
 - (C) directions on safety issued by any Authority;
 - (v) the Supplier must in performing the Work under the Agreement:
 - (A) perform the Work under the Agreement in such manner as to not place the Purchaser in breach of its duties under the WH&S Act;
 - (B) comply in all relevant respects with the WH&S Act, including, where relevant, the "designer's" duties and functions under the WH&S Act;
 - (C) establish and implement a process that provides for the Purchaser or any other persons affected by the work undertaken by the Supplier to be informed about and consulted in relation to the hazards and controls identified in the work method statements or changes made thereafter;
 - (D) properly supervise its Personnel;
 - (E) provide a representative if requested by the Purchaser to attend and take part in any workplace health and safety committee; and

- (F) facilitate a formal design risk assessment workshop led by a suitably qualified facilitator to consult with the Purchaser and discuss safety.
- (d) The Supplier must (and must ensure that its Personnel):
 - (i) comply with any specific safety requirements for the Site, work method statements, the Purchaser's own safety system including the Purchaser's safety plan, and the reasonable safety directions given by the Purchaser;
 - (ii) attend a health and safety induction conducted by the Purchaser prior to starting work on the Site;
 - (iii) ensure that all machinery, tools, plant and equipment used for the performance of the Work under the Agreement is maintained so as to enable the Supplier to meet its obligations under this Agreement and any Purchase Order Contract; and
 - (iv) program and co-ordinate its performance of the Work under the Agreement so as to minimise the effect on any existing operations at the Site.
- (e) The Supplier must verbally notify the Purchaser immediately after the occurrence on the Site or the Site of any incident or injury involving or caused by the Supplier or the Supplier's Personnel, including any work related illness, work injury, dangerous event, or serious bodily injury.
- (f) The Supplier must provide the Purchaser with copies of all statutory notices and correspondence of whatsoever nature concerning the WH&S Act within 1 hour of the dispatch and/or receipt by the Supplier. Outside the Purchaser's normal work hours, the Supplier must verbally notify the Purchaser of such events and provide copies to the Purchaser on request or on the following normal work day, whichever is the earlier.
- (g) The Purchaser may carry out random audits and inspections to ensure that all work being carried out is being done so in accordance with any Site-specific safety requirements, the Purchaser's safety system and the WH&S Act. The Supplier agrees to cooperate fully with any such audit.
- (h) If the Supplier witnesses or becomes aware of any actual or potential risk relating to the workplace or work activities being undertaken, the Supplier must immediately notify the Purchaser of such situation and provide the Purchaser with all details the Purchaser reasonably requires.

21 National Code of Practice for the Construction Industry

The Supplier:

- (a) acknowledges that, depending on the nature and scope of the Goods requested by the Purchaser in any of its Purchase Orders, the National Code of Practice Requirements may apply to this Agreement and the relevant Purchase Order Contract; and
- (b) agrees to comply with the National Code of Practice Requirements, if they apply.

22 Intellectual Property rights

22.1 Supplier to obtain all necessary rights

The Supplier must ensure that it has all necessary rights and licences to any IP Rights subsisting in any matter, thing or process used or to be used by or on behalf of the Supplier in performing its obligations under this Agreement and any Purchase Order Contract or to be Supplied (and if necessary, Installed and/or Maintained) for the benefit of the Purchaser under this Agreement and any Purchase Order Agreement.

22.2 Licence of Project IP to Purchaser

- (a) The Supplier grants to the Purchaser a perpetual, non-exclusive, royalty-free, non-transferable licence to use, reproduce, modify and adapt the Project IP.
- (b) The licence described in paragraph (a) above, shall be capable of sub-licence to any operator, licensee, contractor, subcontractor or consultant engaged by the Purchaser.

22.3 Licence of Background IP

- (a) The Supplier grants to the Purchaser a perpetual, irrevocable, non-exclusive, royalty-free, licence to use, reproduce, modify and adapt the Supplier Background IP to the extent necessary to:
 - (i) exercise the Purchaser's rights in connection with the Goods; or
 - (ii) use, maintain, alter, repair, upgrade or operate the Goods.
- (b) The licence described in paragraph (a) above, shall be capable of sub-licence to any operator, licensee, contractor, subcontractor or consultant engaged by the Purchaser.

22.4 Intellectual Property warranty

The Supplier warrants and represents that:

- (a) it has all rights and licences necessary to grant to the Purchaser the licences granted in clauses 22.2 and 22.3; and
- (b) the Project IP, the Supplier Background IP and any use of either of them by or on behalf of the Purchaser, will not infringe the IP Rights of any third party.

22.5 Intellectual Property indemnity

The Supplier indemnifies the Purchaser from and against all Claims, liability, loss, damages, costs and expenses (including legal cost) arising out of or in connection with any Claim by a third party that the Project IP, the Supplier Background IP and any use of either of them by or on behalf of the Purchaser infringes the IP Rights of a third party.

22.6 No third party payments

The Supplier represents and warrants that except for amounts included in the Purchase Price, no royalties or other payments are due or payable by the Purchaser to the Supplier or any other person in respect of the Project IP or the Supplier Background IP.

22.7 Return of material forms of Project IP

Within 45 days after the earlier of the termination of this Agreement or the expiry of the last Defects Correction Period under the last Purchase Order Contract, the Supplier must deliver to the Purchaser all material forms of the Project IP in the possession, power or control of the Supplier or any of its suppliers, contractors or subcontractors.

22.8 Moral Rights

To the extent that any person has any moral rights in the Goods or any product delivered to the Purchaser under this Agreement or a Purchase Order Contract, the Supplier must use reasonable endeavours to obtain all consents and waivers from the individual creator necessary to ensure the Purchaser may do any acts or omissions consistent with the licence granted under clause 22.3 without infringing any moral rights.

22.9 Intellectual Property protection

- (a) The Supplier agrees to notify the Purchaser as soon as the Supplier becomes aware of any suspected, threatened or actual infringement of:
 - (i) any IP Rights subsisting in the Goods or any matter, thing or process used or to be used by or on behalf of the Supplier in performing its obligations under this Agreement or any Purchase Order Contract; or
 - (ii) the Project IP.
- (b) The Supplier agrees to provide all reasonable assistance the Purchaser may request to protect:
 - (i) the IP Rights subsisting in the Goods or any matter, thing or process used or to be used by or on behalf of the Supplier in performing its obligations under this Agreement or any Purchase Order Contract; and
 - (ii) the Project IP.

22.10 Survival obligations

Subject to clause 22.2, the obligations of this clause 22 will not cease on the completion, expiry or termination of this Agreement or any Purchase Order Contract.

23 Suspension

- (a) The Purchaser may in its absolute discretion suspend the performance of part or all of:
 - (i) the Work under the Agreement; or
 - (ii) the Supplier's obligations under this Agreement or a Purchase Order Contract,

by giving the Supplier written notice.

- (b) When the Supplier receives a notice of suspension under this clause 23, the Supplier must immediately suspend its performance of the Work under the Agreement, or performance of the relevant obligations, until such time as the Purchaser directs it by written notice to resume performance of the Work under the Agreement or performance of those

obligations. At such time, the Supplier must promptly recommence the Work under the Agreement or the performance of the obligations, in accordance with this Agreement or a Purchase Order Contract as applicable.

- (c) Where the suspension of the Supplier's obligations under clause 23(a) is caused by or necessary because of the acts or omissions of the Purchaser or its Personnel, then the Purchaser will reimburse the Supplier within a reasonable time of receipt of a detailed breakdown of the Supplier's claim for the extra costs necessarily and reasonably incurred by the Supplier as a direct consequence of the suspension.
- (d) The Supplier must take all steps and actions to minimise the cost to the Supplier and the Purchaser arising from a suspension.

24 Extension Of Time

- (a) The Supplier must immediately give the Purchaser notice of all incidents, circumstances or events ("**Events**") of any nature affecting or likely to affect the progress of the Work under the Agreement which might reasonably be expected to result in a delay to:
 - (i) Delivery of the Goods;
 - (ii) Completion; or
 - (iii) Scheduled Maintenance.
- (b) If the Supplier wishes to claim an extension of time, within 7 days after an Event has first occurred, the Supplier must give a written claim to the Purchaser expressed as an "Extension of Time Claim" setting out:
 - (i) full details of the cause of the Event with supporting documents; and
 - (ii) stating a reasonable period by which the Supplier believes the Date(s) for Delivery or Date for Completion should be extended as a result of the delay caused by the Event.
- (c) Subject to the other provisions of this clause 24, the Supplier is only entitled to an extension of time to the Date(s) for Delivery or Date for Completion where a delay to the Date(s) for Delivery or Date for Completion is caused by any of the following events, whether occurring before, on or after the Date(s) for Delivery or Date for Completion:
 - (i) any act, omission, default or breach by the Purchaser or its Personnel;
 - (ii) the execution of a Variation under clause 26, except where that Variation is caused by or required due to an act, omission, breach or default by the Supplier or its Personnel;
 - (iii) an order to suspend the performance of the Work under the Agreement under clause 23, except where the suspension is caused by or required due to an act, omission, breach or default by the Supplier or its Personnel; or
 - (iv) an Event of Force Majeure.

- (d) As soon as practicable after receipt of the notice in clause 24(b), the Purchaser will notify the Supplier as to the period, if any, by which the Date(s) for Delivery or Date for Completion will be extended.
- (e) Despite any other provisions of this clause 24, the Purchaser may, in its absolute discretion and at any time, make an extension to the Date(s) for Delivery or Date for Completion.
- (f) Where more than one event causes concurrent delays and the cause of at least one of those events, but not all of them, is not an event which entitles the Supplier to an extension of time, then to the extent that the delays are concurrent, the Supplier is not entitled to an extension of time to the Date(s) for Delivery or the Date for Completion.
- (g) It is a condition precedent to the Supplier's entitlement to an extension of time under clause 24(c) that the Supplier submits the notice required by clause 24(a) and the claim required by clause 24(b) strictly within the time and as required under those clauses.
- (h) Any principles of Law (including "the prevention principle" and those which might otherwise entitle the Supplier to relief) which might otherwise cause the Date(s) for Delivery or Date for Completion to be set at large and render liquidated damages unenforceable will not apply.
- (i) A delay by the Purchaser or the failure by the Purchaser to grant a reasonable extension of time or to grant an extension of time will not cause the Date(s) for Delivery or Date for Completion to be set at large.

25 Delay Liquidated Damages

- (a) The provisions of this clause 25 apply to this Agreement and to a Purchase Order Contract if Delay Liquidated Damages have been specified in Item 12 of the relevant Purchase Order.

If the Supplier does not achieve

- (i) Delivery by the Date(s) for Delivery; or
- (ii) Completion by the Date for Completion

under a Purchase Order Contract, the Supplier will pay or allow to the Purchaser the Delay Liquidated Damages for each day or part thereof after the Date(s) for Delivery or Date for Completion (as the case may be) up to and including the Date(s) of Delivery or the Date of Completion or the date the relevant Purchase Order Contract is terminated, whichever occurs first.

- (b) The parties acknowledge and agree that the Delay Liquidated Damages are a genuine pre-estimate of the loss likely to be suffered by the Purchaser in the event that Delivery is not achieved by the Date(s) for Delivery or Completion is not achieved by the Date for Completion in accordance with a Purchase Order Contract.
- (c) The Purchaser may set off Delay Liquidated Damages when calculating any payment due or to become due to the Supplier.
- (d) Nothing in this clause 25 is to be taken to limit any other obligations or liabilities of the Supplier or other rights of the Purchaser arising from breach of this Agreement or Purchase Order Contract by the Supplier, including in relation to:

- (i) defects liability obligations;
- (ii) other warranties or guarantees provided elsewhere in this Agreement or Purchase Order Contract; or
- (iii) any liability to pay general law damages.

26 Variations

- (a) The Supplier must not vary the Goods or Work under the Agreement except as directed by the Purchaser.
- (b) The Purchaser may direct a Variation by issuing the Supplier with a "Variation Notice" specifying the details of the Variation. The Supplier must carry out the Variation. The Agreement and Purchase Order Contract will be deemed to be varied by and in accordance with the Variation Notice and clause 26(e).
- (c) Before issuing a Variation Notice, the Purchaser may request that the Supplier provide a Variation Proposal under clause 26(c) for the proposed Variation.
- (d) Within 7 days of receipt of a Variation Notice under clause 26(b), or a request for a Variation Proposal under clause 26(c), and before the Supplier carries out the Variation, the Supplier must provide the Purchaser with a proposal setting out for that Variation:
 - (i) a detailed breakdown of its assessment of the increase or decrease in the Purchase Price or the Unscheduled Maintenance Charges (or notice that there will be no impact on the Purchase Price or the Unscheduled Maintenance Charges) based on the rates and prices set out or referred to in the Specification (including any Schedule of Rates) or the relevant Purchase Order Contract;
 - (ii) any impact on the Date for Delivery and the Date for Completion; and
 - (iii) if the Supplier considers that a Variation will, if carried out by the Supplier, prevent the Supplier from being able to comply with any of the warranties given by the Supplier or any of the Supplier's obligations under the Agreement or Purchase Order Contract, details of the warranties and obligations which it considers will be affected and the respects in which they will be so affected

("Variation Proposal").

- (e) The Purchaser may notify the Supplier that:
 - (i) it accepts the Variation Proposal, in which case the Purchase Price and Date for Delivery and Date for Completion will be varied in accordance with the Variation Proposal; or
 - (ii) it rejects the Variation Proposal or wishes to discuss the Variation Proposal in which case the Purchase Price, Unscheduled Maintenance Charges, Date for Delivery, Date for Completion and impact of the Variation will be varied as agreed by the parties or determined in accordance with clause 26(f) and documented by the Purchaser in the Variation Notice (where a

notice has not yet been issued), or the Purchaser will issue a revised Variation Notice.

- (f) In the absence of agreement between the parties in respect of:
 - (i) the Purchase Price or the Unscheduled Maintenance Charges, a valuation will be made by the Purchaser on the basis of the rates and prices set out in the Specification or in Appendix 5 to the Purchase Order, if any, to the extent that they are applicable. If, or to the extent that, those rates and prices are not applicable, then the Purchaser will determine a fair and reasonable adjustment to the Purchase Price or the Unscheduled Maintenance Charges as a result of the Variation (such valuation will include an amount comprising profit and overheads (including project and head office) of 10% (in total)). If the variation to the Purchase Price or the Unscheduled Maintenance Charges has not been agreed within 14 days of the date of the Variation Notice, the Supplier may notify the Purchaser and require a determination from the Purchaser within 7 days;
 - (ii) the Date for Delivery, Date for Completion or some other aspect of the Agreement or Purchase Order Contract, the Purchaser will determine a reasonable variation (or will reasonably determine that no variation is required) taking into account the nature and impact of the Variation and the Supplier's Variation Proposal.
- (g) The Supplier is not entitled to any payment (pursuant to the Agreement or Purchase Order Contract, or otherwise at Law) in relation to any Variation unless:
 - (i) the Supplier has been directed to carry out the Variation pursuant to clause 26(b); and
 - (ii) the Supplier has given notice of the detailed breakdown of the increase or decrease in the Purchase Price or the Unscheduled Maintenance Charges in accordance with clause 26(d); and
 - (iii) the adjustment to the Purchase Price or the Unscheduled Maintenance Charges has been agreed or determined in accordance with clause 26(e).
- (h) If the Purchaser accepts a Variation Proposal containing a notice under clause 26(d)(iii), the Supplier will not be in breach of the Agreement or Purchase Order Contract to the extent that it fails to comply with the warranties or obligations referred to in the Variation Proposal solely as a result of carrying out the Variation.
- (i) No Variation issued in accordance with the Agreement will vitiate or invalidate the Agreement or Purchase Order Contract.
- (j) Where a Variation involves the omission of any part or parts of the Goods or the Work under the Agreement, the Purchaser may perform itself, or engage others, to perform the omitted part or parts. The Supplier acknowledges that one or more Variations will not constitute a basis to allege that the Purchaser has repudiated the Agreement or Purchase Order Contract notwithstanding the extent or timing of the Variations.

27 Indemnity and Liability

- (a) The Supplier indemnifies the Indemnified Parties and the Purchaser and its Personnel against any liability, loss, damage or expense (including legal expenses on a full indemnity basis) arising directly or indirectly from or in connection with:
- (i) any breach of warranty by the Supplier;
 - (ii) any breach of this Agreement or a Purchase Order Contract by the Supplier;
 - (iii) any wilful, unlawful or negligent act or omission by the Supplier or its Personnel;
 - (iv) any injury, illness or death of any person caused or contributed to by the Supplier or its Personnel;
 - (v) any property loss or damage caused or contributed to by the Supplier or its Personnel;
 - (vi) any penalty imposed for breach of Law in connection with the performance of the Work under the Agreement by the Supplier or its Personnel;
 - (vii) loss or damage to any plant, equipment, tools, appliances or other property owned, rented or hired by the Supplier or its Personnel and used in relation to this Agreement or a Purchase Order Contract;
 - (viii) any infringement of IP Rights by the Supplier or its Personnel or any Claim that the Goods or any part or whole of the Work under the Agreement or the Purchaser's use of the Goods as contemplated by this Agreement or a Purchase Order Contract, infringe the IP Rights of any third party;
 - (ix) any liens or charges (including any charges lodged under the *Subcontractors' Charges Act 1974* (Qld)) which are exercised or lodged as a consequence of the Supplier's failure to pay, or delay in making payments to, any of its Personnel;
 - (x) any suspension of a subcontractor of Work under the Agreement under section 33 of the Security of Payment Act;
 - (xi) any breach by the Supplier of clause 19, including any fines or penalties imposed by an Authority;
 - (xii) any breach by the Supplier of clause 20 or the WH&S Act; and
 - (xiii) any Claim, action, demand or proceeding by a third party against the Purchaser caused or contributed to by the Supplier or its Personnel.
- (b) The Supplier's liability under the indemnity in clause 27(a) to a party referred to in that clause will be reduced proportionally to the extent only that a negligent act or omission of that party has contributed to the liability, loss, damage or expense.

28 Defects

- (a) If, during the Defects Correction Period, the Purchaser finds any Defect in the Goods (other than a Defect caused by the negligence of the Purchaser), then the Purchaser or the Purchaser's representative may give the Supplier notice in writing of the Defect and require the Supplier to make good the Defect within a reasonable period stated in the notice.
- (b) If the Supplier does not make good the Defect within the period stated in the notice given pursuant to clause 28(a), the Purchaser may:
 - (i) reject the Goods with the Defect and return them to the Supplier, in which case the Supplier must replace the Goods free of charge and reimburse the Purchaser for any expenses incurred; or
 - (ii) make good or engage another supplier to make good the Defect, in which case the Supplier must reimburse the Purchaser for any cost and expenses incurred.
- (c) If the Supplier does not replace the Goods pursuant to clause 28(b)(i) and:
 - (i) the Purchaser has already paid the Supplier for the Goods with the Defect, the Supplier must repay the Purchaser the Purchase Price for those Goods; or
 - (ii) the Purchaser has not already paid the Supplier for the Goods with the Defect, the Purchaser is not liable to pay the Supplier for those Goods.
- (d) Where the Supplier has made good any Defect under this clause 28, those Goods will be subject to a new Defects Correction Period, from the date the Supplier made good the Defect.
- (e) The Purchaser's rights under this clause 28 do not in any way affect the Supplier's obligations under this Agreement or a Purchase Order Contract or any of the Purchaser's other rights under this Agreement, a Purchase Order Contract or at Law.
- (f) The Acceptance of any Goods with a Defect by the Purchaser or the Purchaser's Representative will not bind the Purchaser to accept any other Goods with a Defect and does not affect any of the Purchaser's other rights under this Agreement, a Purchase Order Contract or at Law.
- (g) The rights and obligations under this clause 28 continue after the Termination Date.

29 Dispute Resolution

- (a) Any dispute or difference arising out of or in relation to this Agreement or a Purchase Order Contract between the Supplier and the Purchaser shall be resolved in accordance with this clause 29.
- (b) If a dispute between the Supplier and the Purchaser arises out of or in connection with this Agreement or a Purchase Order Contract, then either party shall deliver by hand or send by certified mail to the other party a notice of dispute in writing adequately identifying and providing details of the dispute.

- (c) Notwithstanding the existence of a dispute, the Supplier and the Purchaser shall continue to perform this Agreement and any Purchase Order Contract, and Supplier shall continue to perform the Work under the Agreement.
- (d) Within 14 days after service of a notice of dispute, the parties shall confer at least once to attempt to resolve the dispute and failing resolution of the dispute to explore and if possible agree on methods of resolving the dispute by other means. At any such conference each party shall be represented by a person having authority to agree to a resolution of the dispute.
- (e) In the event that the dispute cannot be so resolved or if at any time either party considers that the other party is not making reasonable efforts to resolve the dispute, either party may by notice in writing delivered by hand or sent by certified mail to the other party refer such dispute to litigation.

30 Termination

- (a) The Purchaser may terminate this Agreement and any or all Purchase Order Contracts:
 - (i) in its absolute discretion, at any time by giving the Supplier at least 14 days' notice to that effect;
 - (ii) immediately by giving the Supplier notice to that effect, if the Supplier:
 - (A) fails to remedy a breach of any term of this Agreement or a Purchase Order Contract, or where the breach is incapable of remedy, fails to pay reasonable compensation to the Purchaser, within 7 days of being requested to do so by the Purchaser;
 - (B) becomes, or threatens to become or is in jeopardy of becoming, the subject of an Insolvency Event;
 - (C) ceases to carry on business or disposes of any part of its business or there is a change in the control of the Supplier; or
 - (D) abandons or refuses to perform the Work under the Agreement.
- (b) The rights given by clause 30(a) are in addition to any other rights that may be exercised by the Purchaser under this Agreement, a Purchase Order Contract or under Law.
- (c) If for any reason, a purported termination by the Purchaser under any clause of this Agreement, a Purchase Order Contract or at Law is held to be ineffective, the purported termination is not a breach or repudiation of this Agreement or Purchase Order Contract and termination is deemed to have been effected under clause 30(a)(i).
- (d) On termination of this Agreement or a Purchase Order Contract pursuant to clause 30(a)(i) the Purchaser will only be liable for payment for the Goods supplied to the date of termination and for extra costs necessarily and reasonably incurred by the Supplier as a direct consequence of termination, subject to the Purchaser's rights of set-off.

- (e) On termination of this Agreement or a Purchase Order Contract pursuant to clause 30(a)(ii):
 - (i) if the Agreement or Purchase Order Contract is terminated prior to Completion, all money which has been paid for the performance of the Work under the Agreement prior to the date of termination will be repaid by the Supplier to the Purchaser;
 - (ii) the Purchaser will be under no obligation to make any further payments to the Supplier;
 - (iii) the Purchaser may, without further notice to the Supplier, pursue any other remedy under Law; and
 - (iv) any rights of the Purchaser arising from prior breaches by the Supplier will not be affected.
- (f) Immediately upon receiving or giving notice of termination of this Agreement or a Purchase Order Contract, the Supplier will:
 - (i) cease performance of the Work under the Agreement, including the procurement, manufacture or fabrication of the Goods;
 - (ii) take all available steps to minimise any loss which the Supplier or the Purchaser may suffer as a consequence of that termination; and
 - (iii) take such action as is necessary or as the Purchaser directs for the transfer, protection and preservation of its property (including the Confidential Information).
- (g) Any expiration or termination of this Agreement or a Purchase Order Contract does not affect any rights of the parties which may have accrued before the date of expiration or termination.
- (h) Subject to this clause 30:
 - (i) each Purchase Order Contract entered into prior to the expiry of the Term continues until terminated in accordance with its terms, notwithstanding the expiry of the Term;
 - (ii) the termination of this Agreement does not by itself operate to terminate a Purchase Order Contract; and
 - (iii) the termination of a Purchase Order Contract does not by itself operate to terminate this Agreement.

31 GST

- (a) In this clause, words and expressions that are not defined in this Agreement but have a defined meaning in GST Law have the same meaning as in the GST Law. GST Law has the meaning given to that expression in the *A New Tax System (Goods and Services Tax) Act 1999* (Cth).
- (b) Unless otherwise expressly stated, all prices or other sums payable or consideration to be provided under this Agreement and any Purchase Order Contract are exclusive of GST.

- (c) If GST is payable by a supplier on any supply made under this Agreement and any Purchase Order Contract, the recipient will pay to the supplier an amount equal to the GST payable on the supply.
- (d) If this Agreement or a Purchase Order Contract requires a party to reimburse or indemnify the other party for any expense, loss or outgoings ("**reimbursable expense**"), the amount required to be paid by the first party will be the sum of:
 - (i) the amount of the reimbursable expense less any input tax credits to which the other party is entitled in respect of the reimbursable expense ("**net amount**"); and
 - (ii) if the payment or reimbursement is subject to GST, an amount equal to that GST.
- (e) The recipient will pay the amount of GST referred to in clause 31(c) in addition to and at the same time that the consideration for the supply is to be provided under this Agreement or a Purchase Order Contract, provided the supplier delivers to the recipient a valid tax invoice or adjustment note at or before the time payment is required. The recipient may withhold payment of the GST until the supplier provides a valid tax invoice or adjustment note as appropriate.
- (f) If an adjustment event arises in respect of a taxable supply made by a supplier under this Agreement or a Purchase Order Contract, the amount payable by the recipient under clause 31(c) will be recalculated to reflect the adjustment event and a payment will be made by the recipient to the supplier or by the supplier to the recipient as the case requires.
- (g) "Pay As You Go" withholding amounts will be deducted from payments to be made to the Supplier, if at the time payment is required, the Supplier has not provided a valid Australian Business Number to the Purchaser.

32 Notices

- (a) A notice, approval, consent or other communication concerning this Agreement or any Purchase Order Contract may be sent, delivered or transmitted to the person and at the address specified in the Details or to such other address or person as either party may notify in written or electronic form.
- (b) All such notices or communications shall be deemed to have been duly given or made:
 - (i) 7 days after postage;
 - (ii) when delivered by hand;
 - (iii) if sent by facsimile, the sender's fax machine noting an apparently successful transmission; and
 - (iv) if sent by electronic transmission, the earlier of when the sender receives an automated message confirming delivery, or four hours after the time sent (as recorded on the device from which the sender sent the email) unless the sender receives an automated message that the email has not been delivered.
- (c) Any written communication by a party's solicitors to the other party or their solicitors shall be deemed to be with the authority of that party.

33 Purchaser as trustee

33.1 Purchaser as trustee

- (a) The Purchaser enters into the Agreement and each Purchase Order Contract in its capacity as trustee of the Translational Research Institute Trust (the “**Trust**”) and is only liable in its capacity as trustee.
- (b) The Purchaser's liability to any person (including the Supplier) in connection with the Agreement, any Purchase Order Contract or any transaction in connection with them, is limited to the extent to which the liability can be satisfied out of the Trust property by the Purchaser exercising its right of indemnity out of the Trust property.
- (c) Payment by the Purchaser of an amount equal to the amount (if any) it receives under its right of indemnity in respect of any such liability constitutes a complete discharge by the Purchaser of that liability.

This applies despite anything else in this Agreement or any Purchase Order Contract but remains subject to clause 33.2.

33.2 No proceedings

The Supplier may not seek to recover any amounts owing to it under this Agreement or any Purchase Order Contract by applying to have the Purchaser wound up. However, the Supplier may:

- (a) do anything necessary to enforce its rights in connection with the Trust property; and
- (b) take proceedings to obtain:
 - (i) an injunction or other order to restrain any breach of this Agreement or any Purchase Order Contract by the Purchaser; or
 - (ii) declaratory relief or other similar judgment or order as to the obligations of the Purchaser under this Agreement or any Purchase Order Contract.

33.3 Liability must be limited

The Purchaser is not obliged to do or not do anything in connection with this Agreement or any Purchase Order Contract (including enter into any transaction or incur any liability) unless the Purchaser's liability is limited in a manner which is consistent with this clause 33.

34 Insurance

- (a) From commencement of each Purchase Order Contract, the Supplier must procure and maintain the following minimum insurances, unless stated otherwise in Attachment 1 (General Terms):
 - (i) public and product liability insurance written on an occurrence basis with a limit of indemnity of not less than the greater of the amount set out in Attachment 1 (General Terms) or the minimum amount prescribed by Law for each and every occurrence and, in the case of product liability, no less than the amount set out in Attachment 1 (General Terms) in the aggregate during any one 12 month period of insurance which covers the liability of the Supplier and any of the Supplier's Personnel (including to the Purchaser) in respect of:

- (A) loss of, damage to, or loss of use of, any real or personal property; and
- (B) the bodily injury of, disease or illness (including mental illness) to, or death of, any person,

arising out of the performance of or in connection with this Agreement and the Purchase Order Contract (including the provision of the Goods) by the Supplier. This insurance must also extend to cover liability for:

- (C) the use of unregistered motor vehicles or unregistered mobile plant and equipment used in connection with this Agreement and the Purchase Order Contract;
- (D) registered vehicles used to Deliver the Goods; and
- (E) any plant and equipment of the Purchaser in the care, custody or control of the Supplier, except to the extent such plant and equipment is otherwise required to be insured under this Agreement,

and must be endorsed to add the Purchaser as a Purchaser and contain a waiver of subrogation from the insurer in favour of the Purchaser as Purchaser;

- (ii) workers' compensation insurance (where required by Law, including occupational disease if required by Law) which complies with the relevant Laws, for the death of or injury to:
 - (A) any person employed by the Supplier in connection with this Agreement or a Purchase Order Contract; and
 - (B) any person who is a worker of the Supplier or any of its subcontractors in connection with this Agreement and a Purchase Order Contract and who may be deemed under any Law to be a worker of the Purchaser;

and

- (iii) such other insurances as are stated in Attachment 1 (General Terms).

(b) The Supplier must ensure that the insurances required under clause 34(a)(i) provide that failure by an insured to observe and fulfil the terms of the policy or to comply with any duty of disclosure does not prejudice the insurance of any other insured and the insurer waives all rights, remedies or relief to which it might become entitled against named insureds.

- (c) The Supplier must ensure that any subcontractors are insured as required by this clause 34, as appropriate, as if they were the Supplier.
- (d) The Supplier must ensure that, unless otherwise stated in this Agreement or a Purchase Order Contract, each policy of insurance required under clause 34(a) is in force for the duration of each Purchase Order Contract until the expiry of the Defects Correction Period under each Purchase Order Contract.
- (e) The Supplier must ensure (and, where relevant, procure that its subcontractors ensure) that any insurance required to be taken out

under this clause 34 (other than statutory insurance) is effected with reputable insurers which at all times hold at least the Required Credit Rating and have their principal place of business in Australia.

- (f) The Supplier must, within 15 Business Days of Contract Formation of a Purchase Order Contract and otherwise when requested by the Purchaser, provide to the Purchaser certificates of currency and renewal certificates or other evidence of compliance with this clause 34 reasonably required by the Purchaser. Despite anything to the contrary in this Agreement or a Purchase Order Contract, the Purchaser:
 - (i) has the right to refuse the Supplier (and any of the Supplier's Personnel) entry to the Site; and
 - (ii) is not obliged to pay, and may withhold payment of any amount owed by it to the Supplier without any interest accruing under this Agreement or Purchase Order Contract,

unless and until the Purchaser has been so satisfied. Nothing in this clause 34(f) will fix the Purchaser with notice of the contents of any policy and will not be raised as a defence to any Claim by the Purchaser against the Supplier.

- (g) If the Supplier fails to procure and maintain insurance policies in accordance with this Agreement or Purchase Order Contract, the Purchaser may, but is not obliged to procure and maintain any such insurance and the cost and expense of doing so will be a debt due and immediately payable from the Supplier to the Purchaser.
- (h) Whenever a Claim is made under any of the policies of insurance referred to in this clause 34, the Supplier is liable for any excess or deductible payable as a consequence.
- (i) The Supplier must inform the Purchaser in writing immediately if it becomes aware of any actual, threatened or likely Claims (other than Claims by the Purchaser) under any of the insurances referred to in this clause 34 and where relevant, provide all such assistance to the Purchaser as may be required for the preparation and negotiation of insurance claims.
- (j) The insurance policies under this Agreement are primary, and not secondary to the indemnities referred to in this Agreement.

35 Confidentiality

- (a) The Supplier must not:
 - (i) disclose to any person; or
 - (ii) use for any purpose other than supplying the Goods, any Confidential Information unless, and only to the extent:
 - (iii) the Purchaser has given its prior written consent; or
 - (iv) required by Law or a stock exchange.
- (b) The Supplier must immediately notify the Purchaser if the Supplier becomes aware of any unauthorised access to, or use or disclosure of, any of the Confidential Information.

- (c) Despite:
 - (i) clause 35(a), Confidential Information may be disclosed to the Supplier's Personnel who have a need to know it (and only to the extent that each needs to know) in order for the Supplier to perform the Work under the Agreement; and
 - (ii) clause 35(a)(iv), the Supplier must not disclose or authorise the disclosure of any information of the kind described in section 275(1) if the PPSA unless such disclosure is required under section 275(5) of the PPSA.
- (d) The Supplier, at the reasonable written request of the Purchaser, is required to immediately deliver to the Purchaser all Records and documents, including all copies, containing, recording or referring to Confidential Information which are in its possession, power or control, or (at the Purchaser's request) have such material deleted from its information systems and confirm such deletion promptly in writing.
- (e) This clause 35 survives the expiration or termination (for any reason) of this Agreement and any Purchase Order Contract and is in addition to and not in derogation of obligations under any Law or trade or professional custom or use.
- (f) The Supplier must ensure that its Personnel comply with the terms of this clause 35.
- (g) The Supplier acknowledges and agrees that the Purchaser is required, and is therefore entitled, to disclose any information relating to this Agreement or any Purchase Order Contract to its shareholders.

36 Personal Property Securities Act 2009

36.1 Further steps

If the Purchaser determines that this Agreement, a Purchase Order Contract or a transaction in connection with either of them is or contains a security interest for the purposes of the PPSA, the Supplier agrees to do anything (such as obtaining consents, signing and producing documents, getting documents completed and signed and supplying information) which the Purchaser asks and considers necessary for the purposes of:

- (a) ensuring that the security interest is enforceable, perfected (including, where possible, by control in addition to registration) and otherwise effective; or
- (b) enabling the Purchaser to apply for any registration, or give any notification, in connection with the security interest so that the security interest has the priority required by the Purchaser; or
- (c) enabling the Purchaser; to exercise rights in connection with the security interest.

36.2 Cost of further steps and undertaking

Everything the Supplier is required to do under this clause 36 is at the Supplier's cost and expense. The Supplier agrees to pay or reimburse the costs of the Purchaser in connection with anything the Supplier is required to do under this clause.

36.3 Negative pledge for the purposes of the PPSA

For the purposes of this sub-clause 36.3, “**the Purchaser’s Personal Property**” means all personal property of the Purchaser the subject of a security interest granted in favour of the Purchaser under this Agreement or any Purchase Order Contract.

The Supplier agrees:

- (a) not to create any security interest or lien over any of the Purchaser’s Personal Property;
- (b) not to sell, lease or dispose of its interest in the Purchaser’s Personal Property;
- (c) not to give possession of the Purchaser’s Personal Property to another person except where the Purchaser expressly authorises it to do so;
- (d) to notify the Purchaser at least 14 days before:
 - (i) the Supplier changes its name, place of business or place of registration or incorporation;
 - (ii) any ABN, ARBN or ARSN allocated to the Supplier changes, is cancelled or otherwise ceases to apply to it (or if it does not have an ABN, ARBN or one is allocated, or otherwise starts to apply, to it); and
 - (iii) the Supplier becomes trustee of a trust, or a partner in a partnership.

36.4 Exclusion of PPSA provisions

If the Agreement, a Purchase Order Contract or a transaction in connection with either of them is or contains a security interest for the purposes of the PPSA, each party agrees that to the extent the law permits them to be excluded:

- (a) sections 142 and 143 of the PPSA are excluded and the relevant secured party need not comply with the following provisions of the PPSA: sections 95, 118, 121(4), 125, 130, 132(3)(d), 132(4) and any other provision of the PPSA notified to the grantor by the relevant secured party after the Date of Agreement; and
- (b) the Purchaser need give any notice required under any provision of the PPSA (except section 135).

This clause applies despite any other clause in the Agreement or any Purchase Order Contract.

37 General

37.1 General Representations and Warranties

The Supplier makes the following representations and warranties to the Purchaser, each of which is true and correct on the date of signing this Agreement and on the date of signing each Purchase Order Contract:

- (a) the Supplier is a company duly organised, existing and in good standing under the laws of Queensland and it is licensed to do business in Queensland;

- (b) the Supplier possesses all requisite power and authority to enter into and perform this Agreement, each Purchase Order Contract and the transactions contemplated under this Agreement;
- (c) the Supplier's obligations under this Agreement and each Purchase Order Contract are valid and binding and are enforceable against it in accordance with the terms of this Agreement and each Purchase Order Contract;
- (d) this Agreement, each Purchase Order Contract and the transactions under them do not contravene the Supplier's constituent documents or any Law or obligation by which it is bound or to which any of its assets are subject or cause a limitation of powers or the powers of its directors to be exceeded;
- (e) to the best of the Supplier's knowledge, no suit, claim, action, arbitration, or legal, administrative or other proceeding is pending or threatened against the Supplier that would affect the validity or enforceability of this Agreement or any Purchase Order Contract, the ability of the Supplier to fulfil its commitments under this Agreement and any Purchase Order Contract in any material respect, or that could result in any material adverse change in the business or financial condition of the Supplier;
- (f) the Supplier is not in breach of any Law or obligation affecting it or its assets in a way which may result in a material adverse effect on the business or financial condition of the Supplier;
- (g) there are no reasonable grounds to suspect that it is unable to pay the Supplier's debts as and when they become due and payable;
- (h) the Supplier owns or has the right to use all IP Rights necessary to perform its obligations under this Agreement and each Purchase Order Contract;
- (i) the Supplier will give all notices it is required to give under this Agreement and each Purchase Order Contract as and when it is required to do so.

37.2 Further steps

The Supplier must do, sign and execute (and cause to be done, signed and executed) all acts, deeds, documents and things as may reasonably be required by the Purchaser so as to carry out and give effect to the Agreement or Purchase Order Contract, as the case may be, or to perfect or protect the rights of the Purchaser including the giving or obtaining upon request by the Purchaser of confidentiality undertakings in relation to Records and the subject matter of the Work under the Agreement from the Supplier or its Personnel enforceable by, and on terms acceptable to, the Purchaser.

37.3 Counterparts

This Agreement and each Purchase Order Contract may consist of a number of copies each signed by one or more parties to the Agreement or Purchase Order Contract. If so, the signed copies are treated as making up the one document.

37.4 Amendments

No alteration of this Agreement or a Purchase Order Contract shall be binding upon any party unless made in writing and executed by the parties to this Agreement or the Purchase Order Contract.

37.5 Assignment

No party may assign its right, title and interest under or pursuant to this Agreement or a Purchase Order Contract without the prior written consent of the other. This Agreement and each Purchase Order Contract shall be for the benefit of and be binding upon the parties and their respective successors, legal representatives and permitted assigns.

37.6 Construction

The Attachments form part of this Agreement. A reference to conditions contained in this Agreement includes the conditions contained in the Attachments.

The Appendices to the Purchase Order form part of the Purchase Order Contract. A reference to conditions contained in the Purchase Order Contract includes conditions contained in the Appendices to the Purchase Order.

37.7 Costs

Each party bears its costs in relation to the preparation and execution of the Agreement and each Purchase Order Contract.

37.8 Entire Agreement

Subject to clause 18(a):

- (a) Except to the extent otherwise stated in the Agreement or a Purchase Order Contract, the Agreement and each Purchase Order Contract constitute the full and complete understanding between the parties with respect to the subject matter.
- (b) The parties agree that any pre-contractual representations and warranties, whether made orally or in writing, are of no effect, with the result that neither party is entitled to found any claim to damages in reliance upon any pre-contractual representations and warranties.

37.9 Governing Law

This Agreement and each Purchase Order Contract shall be governed by and construed in accordance with the law of Queensland and each of the parties hereby submits to the non-exclusive jurisdiction of the Queensland Courts.

37.10 Time of the Essence

Time shall in all respects be of the essence of this Agreement and each Purchase Order Contract.

37.11 Waiver

A provision or a right created under this Agreement and any Purchase Order Contract may not be waived or varied except in writing by the party or parties to be bound.

Standing Offer for Supply, Installation and Maintenance of Goods

(c) Signing page

DATED:_____

EXECUTED for and on behalf of)
TRANSLATIONAL RESEARCH)
INSTITUTE PTY LTD as trustee for) the Translational
Research Institute) Trust ABN 58 155 991 662 in)
accordance with its Constitution by its)
authorised officer)

in the presence of:)

Signature of Witness)

Signature of Authorised Officer

Name of Witness (block letters)

Name of Authorised Officer (block letters)

Address

Position of Authorised Officer

EXECUTED [•])
)
)
in accordance with its Constitution by)
its authorised officer)

in the presence of:)

Signature of Witness)

) Signature of Authorised Officer

Name of Witness (block letters)

Name of Authorised Officer (block letters)

Address

Position of Authorised Officer

Standing Offer for Supply, Installation and Maintenance of Goods

(d) Attachment 1 – General Terms

ITEM 1 TERM

Expiry Date: [insert]

ITEM 2 INSURANCE (clause 34)

(a) Public and Product Liability insurance: \$20,000,000

(b) Other required insurances:

(i) Insurance to cover the Goods up to the point of Delivery
Sum Insured: Full value of Goods

(ii) [insert Details]

ITEM 3 SECURITY (clause 15.2)

\$(insert)

Standing Offer for Supply, Installation and Maintenance of Goods

(e) Attachment 2 - Goods

[#INSERT SCHEDULE OF GOODS, SPECIFICATION FOR GOODS, DESCRIPTION OF INSTALLATION AND MAINTENANCE SERVICES, TESTING REQUIREMENTS AND PLANS FOR PERFORMANCE OF THE INSTALLATION WORKS AND PRICE FOR UNSCHEDULED MAINTENANCE SERVICES.]






Standing Offer for Supply, Installation and Maintenance of Goods









(f) Attachment 3 - Purchase Order

This Purchase Order is issued in accordance with clause 4(b) of the Standing Offer for Supply, Installation and Maintenance of Goods between Translational Research Institute Pty Ltd as trustee for the Translational Research Institute Trust (Purchaser) and **[insert]** (Supplier) dated **[insert]** (Agreement).

Goods ordered under this Purchase Order will be supplied by the Supplier in accordance with the terms of the Agreement and as specified in this Purchase Order.

Defined terms used in this Purchase Order have the meaning given in the Agreement.

ITEM	ISSUE	DETAIL
1.	Goods (clauses 1 and 3)	 INSERT AN ACCURATE DESCRIPTION OF THE GOODS WHICH THE SUPPLIER MUST BE ABLE TO PROVIDE DURING THE TERM OF THE AGREEMENT. YOU MUST ENSURE THAT THE DESCRIPTION ADDRESSES ALL ASPECTS OF THE GOODS THE PURCHASER REQUIRES. REFER TO THE SPECIFICATION ANNEXED TO THE AGREEMENT IF RELEVANT OR IF NOT ANNEXED OR NOT APPLICABLE, ATTACH AN AGREED SPECIFICATION IN APPENDIX 1 TO THIS FORM IF APPROPRIATE.
2.	Delivery Point (clauses 1 and 7)	 INSERT THE RELEVANT SITE DETAILS. THE AGREEMENT HAS BEEN PREPARED FOR GOODS IN QUEENSLAND. IF THE GOODS ARE OUTSIDE OF QUEENSLAND, REFER TO LEGAL. WHERE THE GOODS ARE TO BE DELIVERED AT DIFFERENT PLACES FOR DELIVERY, SPECIFY THESE IN APPENDIX 2 TO THIS FORM AND INSERT "REFER TO APPENDIX 2".
3.	Installation (clauses 1 and 11)	 INSERT "INSTALLATION REQUIRED – REFER TO APPENDIX 3" IF ANY OF THE GOODS REQUIRE INSTALLATION AND INSERT THE RELEVANT DETAILS OF INSTALLATION WHICH THE SUPPLIER IS ABLE TO UNDERTAKE DURING THE TERM OF THE AGREEMENT, IN THE INSTALLATION SCHEDULE IN APPENDIX 3 OF THIS FORM. OR WRITE "N/A" IF INSTALLATION OF THE GOODS IS NOT REQUIRED.
4.	Maintenance (clauses 1 and 13)	 INSERT "MAINTENANCE REQUIRED" – REFER TO APPENDIX 4" IF ANY OF THE GOODS REQUIRE MAINTENANCE, OR WRITE "N/A" IF MAINTENANCE OF THE GOODS IS NOT REQUIRED.
5.	Purchase Price (clauses 1 and 15)	 INSERT PRICE OR REFER TO SCHEDULE OF RATES AND PRICES ATTACHED AS ATTACHMENT 6 TO THIS PURCHASE ORDER OR IF NOT ATTACHED AND A SCHEDULE OF RATES AND PRICES HAS BEEN AGREED, ATTACH THIS SCHEDULE TO THE PURCHASE ORDER IN APPENDIX 5.

ITEM	ISSUE	DETAIL
6.	Date(s) for Delivery (clauses 1 and 7)	 <p>INSERT THE DATE FOR DELIVERY OR</p> <p>IF THE GOODS ARE BEING DELIVERED IN STAGES, AND INSERT "REFER TO APPENDIX 2" AND COMPLETE THE DELIVERY SCHEDULE IN APPENDIX 2 TO THIS FORM.</p>
7.	Date(s) for Completion (clauses 1 and 12)	 <p>INSERT THE DATE FOR COMPLETION OR</p> <p>IF THE GOODS ARE BEING DELIVERED AND INSTALLED IN STAGES, INSERT "REFER TO APPENDIX 3" AND COMPLETE THE INSTALLATION SCHEDULE IN APPENDIX 3 TO THIS FORM.</p>
8.	Purchaser-Supplied Information (clause 14)	 <p>UNDER CLAUSE 14, THE SUPPLIER IS ENTITLED TO RELY ON PURCHASER-SUPPLIED INFORMATION FORMING PART OF THE CONTRACT DOCUMENTS. IF OTHER INFORMATION IS TO BE COVERED, INSERT THE DETAILS HERE.</p>
9.	Defects Correction Period (clause 1)	 <p>INSERT IF MORE OR LESS THAN 12 MONTHS. IF LEFT BLANK, THE DEFECTS LIABILITY PERIOD WILL BE 12 MONTHS.</p>
10.	Acceptance Tests (clause 1 and 8)	 <p>SPECIFY ANY APPLICABLE TESTS WHICH THE GOODS ARE REQUIRED TO PASS (AND THE TIMEFRAME(S) FOR CARRYING OUT THE TESTS) AND ANY VERIFYING DOCUMENTS TO BE PROVIDED TO THE PURCHASER.</p>
11.	Special Conditions	 <p>INSERT ANY SPECIAL CONDITIONS. FOR EXAMPLE: WHERE THE GOODS WILL BE USED FOR A PURPOSE OTHER THAN THAT FOR WHICH THEY ARE COMMONLY USED, IDENTIFY THE PURPOSE AND SPECIFY THAT THE GOODS ARE REQUIRED TO BE FIT FOR THAT PURPOSE;</p> <p>WHERE GOODS ARE REQUIRED TO BE SOURCED FROM A PARTICULAR LOCATION OR TO BE OF A PARTICULAR BRAND, SPECIFY THE RELEVANT REQUIREMENT.</p>
12.	Delay Liquidated Damages (clause 25)	 <p>SPECIFY ANY DELAY LIQUIDATED DAMAGES. SPECIFY THE AMOUNT OF LIQUIDATED DAMAGES PAYABLE FOR FAILURE TO ACHIEVE THE COMPLETE BY THE DATE FOR COMPLETION.</p> <p>SPECIFY THE MAXIMUM AMOUNT PAYABLE IN RESPECT OF DELAY LIQUIDATED DAMAGES (IF AGREED).</p>
13.	Deposit (clause 17.1)	 <p>INSERT IF APPLICABLE, OTHERWISE LEAVE BLANK..</p>
14.	Additional Documents (clause 3.1(a)(iii))	

PURCHASER

SIGNED by

.....
Name of Authorised Officer for the Purchaser
(clearly printed block letters)

.....
Position of Authorised Officer for the Purchaser
(clearly printed block letters)

as Authorised Officer for Translational Research
Institute Pty Ltd as trustee for the Translational
Research Institute Trust ABN 58 155 991 662:

.....
Signature of Authorised Officer for the Purchaser

SUPPLIER

SIGNED by

.....
Name of Authorised Officer for the Supplier
(clearly printed block letters)

.....
Position of Authorised Officer for the Supplier
(clearly printed block letters)

as Authorised Officer for
[insert Supplier name and ABN]:

.....
Signature of Authorised Officer for the Supplier

Standing Offer for Supply, Installation and Maintenance of Goods

(g) Appendix 1 to Purchase Order Specification

Standing Offer for Supply, Installation and Maintenance of Goods

(h) Appendix 2 to Purchase Order Delivery Schedule

DELIVERY STAGE

	GOODS TO BE DELIVERED	DELIVERY POINT (IF DIFFERENT FOR EACH STAGE)	DATES FOR DELIVERY
(i)	<i>[insert]</i>	<i>[insert]</i>	<i>[insert]</i> <i>[insert]</i>

Standing Offer for Supply, Installation and Maintenance of Goods

(j) Appendix 3 to Purchase Order
Installation Schedule

INSTALLATION STAGE [IF SAMES AS DELIVERY STAGE, INSERT "SAME AS DELIVERY STAGE"]	GOODS TO BE INSTALLED	INSTALLATION POINT (IF DIFFERENT FOR EACH STAGE)	DATES FOR COMPLETION [IF SAMES AS DATES FOR DELIVERY, INSERT "SAME AS DATES FOR DELIVERY"]
(k)	[insert]	[insert]	[insert] [insert]

Standing Offer for Supply, Installation and Maintenance of Goods

- (l) Appendix 4 to Purchase Order Maintenance Schedule
- (m) [complete where Goods require Scheduled Maintenance]

SCHEDULED MAINTENANCE STAGE	GOODS TO BE MAINTAINED	MAINTENANCE LOCATION	TIMEFRAME
(n)	[insert]	[insert]	[insert] [insert]

Unscheduled Maintenance Charge:

- (o) [Supplier to insert applicable rates for Unscheduled Maintenance Services]

Standing Offer for Supply, Installation and Maintenance of Goods

(p) Appendix 5 to Purchase Order
Rates and prices

Standing Offer for Supply, Installation and Maintenance of Goods

(q) Attachment 4 - Site

(Clause 1)

(r) ***[insert description / map / layout of Site]***

Standing Offer for Supply, Installation and Maintenance of Goods

(s) Attachment 5 – National Code of Practice Requirements

(Clause 21)

1. The Supplier must comply with the National Code of Practice for the Construction Industry ("**Code**") and the Australian Government Implementation Guidelines for the National Code of Practice for the Construction Industry, May 2012 ("**Guidelines**"). Copies of the Code and Guidelines are available at **deewr.gov.au/building**.
2. Compliance with the Code and Guidelines shall not relieve the Supplier from responsibility to perform the Agreement, or from liability for any defect in the Work under the Agreement arising from compliance with the Code and Guidelines.
3. Where a change in the Agreement is proposed and that change would affect compliance with the Code and Guidelines, the Supplier must submit a report to the Commonwealth specifying the extent to which the Supplier's compliance with the Code and Guidelines will be affected.
4. The Supplier must maintain adequate records of the compliance with the Code and Guidelines by:
 - (a) the Supplier;
 - (b) its secondary subcontractors;
 - (c) its consultants; and
 - (d) its Related Entities.
5. If the Supplier does not comply with the requirements of the Code or the Guidelines in the performance of this Agreement such that a sanction is applied by the Minister for Employment and Workplace Relations, the Code Monitoring Group or the Commonwealth, without prejudice to any rights that would otherwise accrue, those parties shall be entitled to record that non-compliance and take it, or require it to be taken, into account in the evaluation of any future tenders that may be lodged by the Supplier or a Related Entity in respect of work funded by the Commonwealth or its agencies.
6. While acknowledging that value for money is the core principal underpinning decisions on Government procurement, when assessing tenders, the Supplier may give preference to secondary subcontractors and consultants that have a demonstrated commitment to:
 - (a) adding and/o retaining trainees and apprentices;
 - (b) increasing the participation of women in all aspects of the industry; or
 - (c) promoting employment and training opportunities for Indigenous Australians in regions where significant indigenous populations exist.
7. The Supplier must not appoint a secondary subcontractor or consultant in relation to the Work under the Agreement where:
 - (a) the appointment would breach a sanction imposed by the Minister for Employment and Workplace Relations; or

- (b) the secondary subcontractor or consultant has had a judicial decision against them relating to employee entitlements, not including decisions under appeal, and has not paid the claim.
- 8. The Supplier agrees to require that it and its secondary subcontractors or consultants and its related entities provide the Commonwealth or any person authorised by the Commonwealth, including a person occupying a position in the Office of the Australian Building and Construction Commissioner (or any successor body), with access to:
 - (a) inspect any work, material, machinery, appliance, article or facility;
 - (b) inspect and copy any record relevant to the Work under the Agreement; and
 - (c) interview any person,

as is necessary to demonstrate its compliance with the Code and Guidelines.

- 9. Additionally, the Supplier agrees that the Supplier and its related entities will agree to a request from the Commonwealth or any person authorised by the Commonwealth, including a person occupying a position in the Office of the Australian Building and Construction Commissioner (or any successor body), to produce a specified document within a specified period, in person, by fax or by post.
- 10. For the avoidance of doubt, paragraph 8 of this Attachment 5 applies in relation to the Supplier's new privately funded construction work.
- 11. The Supplier must ensure that all subcontracts impose obligations on secondary subcontractors equivalent to the obligations under this Attachment 5.

Standing Offer for Supply, Installation and Maintenance of Goods

(t) Attachment 6 – Guarantee

(Clause 15.2(a))

BY: [TBA]

(“Bank”)

IN FAVOUR OF: TRANSLATIONAL RESEARCH INSTITUTE PTY LTD AS
TRUSTEE FOR THE TRANSLATIONAL RESEARCH INSTITUTE TRUST ABN 58 155 991 662

(“Purchaser”)

OPERATIVE PROVISIONS

The terms defined in the section above and in the Deed apply when used in this undertaking.

1 In this Undertaking, except to the extent the context otherwise requires:

Amount means [TBA].

Bank means [TBA].

Contract means the contract for the supply of [insert] between the Supplier and the Purchaser dated [insert].

Supplier means [TBA].

Purchaser means Translational Research Institute Pty Ltd as trustee for the Translational Research Institute Trust ABN 58 155 991 662.

- 2 At the request of the Supplier and in consideration of the Purchaser accepting this Undertaking by way of security to the Purchaser for the performance by the Supplier of its obligations under the Contract, the Bank undertakes unconditionally and irrevocably to pay the Purchaser on demand any sum or sums which may from time to time be demanded by the Purchaser to a maximum aggregate of the Amount.
- 3 This Undertaking is to continue until the first to occur of the following:
- (a) a written notification has been received from the Purchaser that such sum is no longer required by the Purchaser;
 - (b) this Undertaking is returned to the Bank; or
 - (c) payment to the Purchaser by the Bank of the whole of the Amount.
- 4 The Bank must make payment of the Amount or any part or parts of the Amount to the Purchaser:
- (d) immediately upon the Bank receiving at any place where the Bank carries on business a written demand from the Purchaser;
 - (e) so that it is immediately available and freely transferable in Australian dollars clear of and without any deductions;

- (f) without reference by the Bank to the Supplier;
 - (g) despite any notice given to the Bank by the Supplier not to pay the Purchaser any part of the Amount; and
 - (h) irrespective of the performance or non-performance by the Supplier or the Purchaser of the Contract in any respect.
- 5 The Bank acknowledges its obligations under this Undertaking constitute direct primary, irrevocable and unconditional obligations. The Bank further acknowledges its obligations under this Undertaking will not be abated, suspended, abrogated, varied, discharged or otherwise prejudiced or affected by any matter or thing which, in the absence of this provision, would or might have that effect, except for a discharge or amendment expressly made or agreed to in writing by the Purchaser.
- 6 The Bank may at any time, without being required to do so, pay to the Purchaser the Amount less any amount or amounts it has previously paid under this Undertaking and when it has done so the liability of the Bank under this Undertaking will immediately cease and determine.
- 7 The Purchaser may assign this Undertaking to any person and upon receipt of notification to the Bank in writing, the Bank undertakes to make any payment claimed under this Undertaking to the person specified in the notice which will constitute a full and valid discharge to the Bank in relation to the payment.
- 8 If two or more persons are named as the Purchaser, this Undertaking takes effect for the benefit of them jointly and a demand under this unconditional Undertaking by any one or more of them is deemed to be a demand by both or all of them jointly. The Bank is entitled to rely upon and act in accordance with any notice which purports to be given by the Purchaser and, on receipt of notification of assignment, any person to whom this Undertaking has been assigned.
- 9 This unconditional undertaking is governed by and is to be construed in accordance with the laws of Queensland.

EXECUTED as a deed poll in Queensland

- (u) **[insert execution block for Bank]**

Standing Offer for Supply, Installation and Maintenance of Goods

(v) Attachment 7 – Parent Company Guarantee

(Clause 15.4)

DATE PARTIES

Translational Research Institute Pty Ltd as trustee for the Translational Research Institute Trust ABN 58 155 991 662 ("Secured Party")

[Name of guarantor] [ABN/ACN] of [Address] ("Guarantor")

BACKGROUND

The Guarantor has, at the request of the Supplier, agreed to enter into this document.

The Guarantor is satisfied that it will obtain a commercial benefit in return for entering into this document.

AGREED TERMS

1 Interpretation

1.1 Definitions

In this document:

Applicable Interest Rate means, on any date:

- (a) the sum of 2% per annum and the Commonwealth Bank of Australia's Corporate Overdraft Reference Rate (quarterly charging cycle) on that date; or
- (b) if such rate ceases to exist or be published, the rate which the Secured Party reasonably determines.

Contract means the contract for the supply of [insert] between the Supplier and the Secured Party dated [insert].

Supplier means [insert].

Guaranteed Obligations means:

- (a) the obligations and liabilities of the Supplier to pay all money and damages under or in connection with the Contract:
 - (i) which now or in the future are owing (actually or contingently) by the Supplier to the Secured Party;
 - (ii) which having now or in the future become owing (actually or contingently) by the Supplier to the Secured Party, cease to be owing under any law relating to Bankruptcy and remain unpaid by the Supplier and unreleased by the Secured Party; and

- (iii) which now or in the future there is a prospect may become owing (actually or contingently) by the Supplier to the Secured Party; and
- (b) all other obligations and liabilities (whether contingent, prospective or actual) of the Supplier to the Secured Party under or in connection with the Contract.

Relevant Jurisdiction means the State of Queensland.

Tax means a tax (including any tax in the nature of a goods and services tax), rate, levy, impost or duty (other than a tax on the net overall income of the Secured Party) and any interest, penalty, fine or expense relating to any of them.

Except as otherwise provided in this document any term defined in the Contract which is used in this document shall have the same meaning as in the Contract.

1.2 Construction

Unless expressed to the contrary, in this document:

- (a) words in the singular include the plural and vice versa;
- (b) any gender includes the other genders;
- (c) if a word or phrase is defined its other grammatical forms have corresponding meanings;
- (d) “includes” means includes without limitation;
- (e) no rule of construction will apply to a clause to the disadvantage of a party merely because that party put forward the clause or would otherwise benefit from it;
- (f) a reference to:
 - (i) a person includes a partnership, joint venture, unincorporated association, corporation and a government or statutory body or authority;
 - (ii) a person includes the person’s legal personal representatives, successors, assigns and substitutes, including persons substituted by novation;
 - (iii) any legislation includes subordinate legislation under it and includes that legislation and subordinate legislation as modified or replaced;
 - (iv) an obligation includes a warranty or representation and a reference to a failure to comply with an obligation includes a breach of warranty or representation;
 - (v) a right includes a benefit, remedy, discretion or power;
 - (vi) time is to local time in Brisbane, Queensland;
 - (vii) “\$” or “dollars” is a reference to Australian currency;
 - (viii) this or any other document includes the document as novated, varied or replaced and despite any change in the identity of the parties;

- (ix) writing includes any mode of representing or reproducing words in tangible and permanently visible form, and includes fax transmissions;
- (x) any thing (including any amount) is a reference to the whole or any part of it and a reference to a group of things or persons is a reference to any one or more of them; and
- (xi) this document includes all schedules and annexures to it;
- (g) if the date on or by which any act must be done under this document is not a Business Day, the act must be done on or by the next Business Day; and
- (h) where time is to be calculated by reference to a day or event, that day or the day of that event is excluded.

1.3 Headings

Headings do not affect the interpretation of this document.

2 Consideration

The Guarantor enters into this document in consideration for the payment of \$1 from the Secured Party receipt of which the Guarantor hereby acknowledges.

3 Guarantee

3.1 Guarantee

The Guarantor unconditionally and irrevocably guarantees to the Secured Party the punctual observance and performance by the Supplier of the Guaranteed Obligations.

3.2 Payment on demand under guarantee

- (a) If the Supplier defaults in the punctual payment of any of its obligations and liabilities referred to in paragraph (a) of the definition of Guaranteed Obligations, the Guarantor must pay the whole amount of those Guaranteed Obligations to the Secured Party immediately on demand.
- (b) The Secured Party may make such a demand on the Guarantor from time to time, whether or not demand has been made by the Secured Party on the Supplier.

3.3 Non-performance of Guaranteed Obligations

- (a) If the Supplier defaults in the punctual performance of any of its obligations and liabilities referred to in paragraph (b) of the definition of Guaranteed Obligations, the Guarantor must indemnify the Secured Party against any and all demands, claims, suits, actions, damages, liabilities, losses, costs and expenses which may be made or brought against or suffered or incurred by the Secured Party by reason of the default or failure on the part of the Supplier and must pay to the Secured Party immediately upon demand any amounts due to the Secured Party under this clause 3.
- (b) The Secured Party may make such a demand on the Guarantor from time to time, whether or not demand has been made by the Secured Party on the Supplier.

3.4 Payment on demand under indemnity

The Guarantor must pay to the Secured Party immediately on demand any amounts due to the Secured Party under clause 3.2. The Secured Party may make such a demand on the Guarantor from time to time, whether or not demand has been made by the Secured Party on the Supplier.

4 Preservation of Secured Party's rights

4.1 Continuing and primary obligations

This document is a continuing guarantee and indemnity for the whole of the Guaranteed Obligations and is not limited to any transaction or other thing. The Guarantor's obligations under this document are primary obligations and the Secured Party is not obliged to proceed against or enforce any right against any other person or demand payment from any other person before making a demand for payment on the Guarantor with respect to the Guaranteed Obligations.

4.2 Preservation of Guarantor's obligations

The Guarantor's obligations (as guarantor, indemnifier or otherwise) and the Secured Party's rights will not be affected by anything which might abrogate, prejudice or limit them or the effectiveness of this document, including any of the following:

- (a) any variation, termination or replacement of any liability, obligation, agreement or document between the Supplier and the Secured Party (whether material or not);
- (b) the granting of any forbearance, time or other indulgence to the Supplier; or
- (c) any delay, laches, acquiescence, mistake or negligence or other act or omission of the Secured Party.

4.3 No Merger

The Guarantor's obligations under this document shall not merge in any deed, judgment, order or other thing obtained by the Secured Party against the Supplier. The Guarantor shall remain liable to the Secured Party under this document notwithstanding that the Secured Party may obtain judgement against the Supplier at any time.

5 Payments

The Guarantor must make payments to the Secured Party under this document:

- (a) on demand and at a place and in a manner reasonably required by the Secured Party;
- (b) by 11.00 am local time in the place where payment is to be made; and
- (c) in immediately available funds and without set-off, counter claim, condition or, unless required by law, deduction or withholding.

6 Set-off and counterclaim

The Guarantor shall be entitled to raise as a defence to any claim under this document all defences of set-off and/or counterclaim that would have been available to the Supplier had the claim by the Secured Party been brought against the Supplier under the Contract

7 Interest

7.1 Interest

The Guarantor must pay interest on any amount owing under this document at the Applicable Interest Rate.

7.2 Calculation of interest

Interest will accrue from day to day, be computed from and including the day when the money upon which interest is payable becomes owing to the Secured Party by the Guarantor until but excluding the day of payment of that money, be calculated on the actual number of days elapsed on the basis of a 365 day year and be paid by the Guarantor upon demand.

7.3 Capitalisation

The Secured Party may capitalise, upon a monthly or such other periodical basis as the Secured Party may determine, any part of any interest which becomes due and owing or due on demand, and interest is payable in accordance with this document upon capitalised interest.

8 Costs and expenses

The Guarantor must pay and if paid by the Secured Party reimburse to the Secured Party:

- (w) the Secured Party's costs and expenses (including legal costs and expenses on a full indemnity basis) in relation to the exercise or attempted exercise or the preservation of any rights of the Secured Party under this document; and
- (x) any Tax, stamp duty or other impost and registration or other fees (including fines and penalties) which are payable in relation to this document, or any related document or any transaction contemplated by them.

9 Goods and services tax

- (a) The parties agree that unless otherwise expressly stated, all sums payable under this document are exclusive of GST.
- (b) If GST is payable in respect of a taxable supply, the party paying the amount must also pay any GST in respect of the taxable supply to which it relates at the same time that the payment under this document is made.
- (c) The party receiving the payment must deliver a tax invoice.
- (d) The payment of any amount under this agreement which is a reimbursement or indemnification of a cost, expense, loss, or liability will exclude any part of the amount for which the other party can claim an input tax credit.

10 General

10.1 Amendment

This document may only be varied or replaced by a document executed by the parties.

10.2 Waiver and exercise of rights

- (a) A right in favour of the Secured Party under this document or a breach of an obligation of the Guarantor under this document can only be waived by an instrument properly executed by the Secured Party. No other act, omission or delay of the Secured Party will constitute a waiver binding, or estoppel against, the Secured Party.
- (b) A single or partial exercise or waiver by a party of a right relating to this document does not prevent any other exercise of that right or the exercise of any other right.
- (c) A party is not liable for any loss, cost or expense of any other party caused or contributed to by the waiver, exercise, attempted exercise, failure to exercise or delay in the exercise of a right.

10.3 Counterparts

This document may consist of a number of counterparts and, if so, the counterparts taken together constitute one document.

10.4 Governing law and jurisdiction

- (a) This document is governed by and is to be construed in accordance with the laws applicable in the Relevant Jurisdiction.
- (b) Each party irrevocably and unconditionally submits to the non-exclusive jurisdiction of the courts of the Relevant Jurisdiction and any courts which have jurisdiction to hear appeals from any of those courts and waives any right to object to any proceedings being brought in those courts.

10.5 Joint and several liability

An obligation of two or more persons binds them jointly and severally.

10.6 Assignment

The Secured Party shall be entitled to assign the benefit of this document to any party to whom the Secured Party assigns the benefit of the Contract. Such assignment shall be effective from the date upon which the Secured Party gives notice to the Guarantor of the assignment.

Standing Offer for Supply, Installation and Maintenance of Goods

(y) Signing page

(z) DATED:____

(aa) **[insert execution block for Guarantor]**

Invitation to Tender

TRI-0012

Framework Agreement for Supply of **Goods**

EXECUTED for and on behalf of)
TRANSLATIONAL RESEARCH)
INSTITUTE PTY LTD as trustee for) the Translational Research Institute) Trust
ABN 58 155 991 662 in)
accordance with its Constitution by its) authorised officer
)

in the presence of:)
)
)

.....)
Signature of Witness

.....
Name of Witness (block letters)

.....
Address

.....
Signature of Authorised Officer

.....
Name of Authorised Officer (block letters)

.....
Position of Authorised Officer

