

Supply, Installation and Maintenance Agreement

Dated

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

and

Insert ("**Supplier**")

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Details

Parties	Purchaser and Supplier	
Purchaser	Name	Translational Research Institute as trustee for the Translational Research Institute Trust
	ABN	58 155 991 662
	Address	37 Kent Street Woolloongabba QLD 4102 Australia
	Attention	Director – Legal Services
	Email	ogc@tri.edu.au
Supplier	Name	
	ABN	
	Address	
	Attention	
	Email	
Recitals	A	The Purchaser requires the Supplier to provide the Goods, on the terms and conditions set out in this Agreement.
	B	The Supplier has agreed with the Purchaser to supply the Goods, on the terms and conditions set out in this Agreement.
Governing law	Queensland	
Date of Agreement	See Signing page	

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 between the Purchaser and the Supplier for the performance of the Works.

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 11.

Claim means any claim (including any claim for an increase in the Fee, for payment of money or for an extension of time for the performance of the Services), demand, remedy, damage, cost, loss, expense, liability, suit, action, proceeding, verdict, judgement, right of action or debt whether arising at law, in equity, under statute or otherwise.

Code Requirements means the Code Requirements set out in Attachment 7.

Completion means the stage of the Works (excluding any Maintenance Services) when the following has occurred:

- (a) the Goods have been Delivered and Installed in accordance with the Agreement; and
- (b) the Goods have been Accepted; and
- (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;
- (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, 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.

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

Date for Completion means the date specified in Item 5 of Attachment 1 of this Agreement, 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 the Works commence.

Date of Completion means the date certified by the Purchaser in a Certificate of Completion to be the date upon which the Supplier achieved Completion.

Date(s) for Delivery means the date, or if the Goods are being Delivered in stages, the dates, specified in Attachment 3 of this Agreement by which the Goods must be delivered to the Delivery Point, as may be extended in accordance with this Agreement.

Date(s) of Delivery means the date upon which the Supplier achieves Delivery in accordance with this Agreement.

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

Defects Correction Period means, the period of 12 months commencing on the Date of Completion.

Delay Liquidated Damages means the liquidated damages specified in Item 7 of Attachment 1 of this Agreement 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.

Delivery Point means the location or address for Delivery of the Goods specified in Item 6 of Attachment 1 or other location as agreed between the parties in writing.

Delivery Schedule means the schedule for Delivery set out in Attachment 3 of this Agreement.

Deposit means the amount described in Item 2 of Attachment 1, 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 coming into existence after the Date of Agreement.

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 (d),

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.

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.

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 as outlined in Attachment 2.

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 Works 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).

Indemnified Parties means any occupiers, licencees and invitees upon the Site.

Insolvency Event means, in respect of a party, the occurrence of any one or more of the following events or circumstances:

- (a) its winding up, liquidation or provisional liquidation;
- (b) the appointment of an administrator under the Corporations Act;
- (c) the appointment of a Controller (which has the same meaning as given to that term in section 9 of the Corporations Act) or analogous person to it or any of its property;
- (d) being deregistered as a company or other body corporate or otherwise dissolved;
- (e) being unable to pay any of its debts as and when due and payable or being deemed to be insolvent under any Law;
- (f) seeking protection from its creditors under any Law or entering into a compromise, moratorium, assignment, composition or arrangement with, or for the benefit of, any of its members or creditors;
- (g) any director of the party takes steps to develop or take a course of action that is reasonably likely to lead to a better outcome for the party than proceeding to its immediate administration or liquidation, so that section 588GA(1) of the Corporations Act (about a safe harbour for directors taking certain courses of action) applies;
- (h) it otherwise becomes a Chapter 5 body corporate, as defined in the Corporations Act;
- (i) if the party is an individual, they commit an act of bankruptcy within the meaning of section 40 of the *Bankruptcy Act 1966* (Cth) or they are or become bankrupt within the meaning of section 5 of that Act;
- (j) where the party enters into this Agreement as the trustee or a co-trustee of a trust (whether disclosed or not):
 - (i) the beneficiaries of the trust resolve to wind up the trust, the trustee is required to wind up the trust under the terms of the trust or any applicable Law, or the winding up or termination of the trust commences or occurs for any reason;

- (ii) an external administrator is appointed to the trust or the assets of the trust; or
- (iii) for any reason the trustee is not or ceases to be entitled to be indemnified out of, or to have a lien over, the assets of the trust for all of its obligations and liabilities, or that right of indemnity is reduced, restricted, or does not have priority over the rights of the beneficiaries of the trust;
- (k) an analogous event or circumstance to any listed above occurs in any jurisdiction;
- (l) suspending or threatening to suspend payment of its debts as and when they become due;
- (m) ceasing or threatening to cease to carry on business; or
- (n) taking any step or being the subject of any action that is preparatory to, or reasonably likely to result in, any of the above,

unless such event or circumstance occurs as part of a solvent reconstruction, amalgamation, compromise, arrangement, merger or consolidation approved by the other party (which approval is not to be unreasonably withheld or delayed).

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.

Modern Slavery includes modern slavery, human trafficking, forced labour, child labour, bonded labour and similar unethical conduct in operations and supply chains.

Modern Slavery Laws means the *Modern Slavery Act 2018* (Cth) and any other relevant legislation or regulations in Australia or any other jurisdiction that, if

reasonably interpreted, include an objective to address concerns of Modern Slavery.

Modern Slavery Policy means any policy, code of conduct, guidance and procedures of the Purchaser relating to Modern Slavery and worker exploitation (in particular in relation to ensuring transparency in supply chains) as notified to the Supplier from time to time in writing.

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, but does not include the Supplier Background IP.

Purchase Price means the amount payable by the Purchaser to the Supplier as detailed in Item 1 of Attachment 1.

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.

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.

QBCC Act means the *Queensland Building Construction and Commission Act 1991*.

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.

Related Entity has the same meaning as given to that term in the *Code for the Tendering and Performance of Building Work 2016*.

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, 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 Industry Fairness (Security of Payment) Act 2017 (Qld)*.

Site means the site or premises where the Delivery Point is located, as set out in Attachment 6 (Site).

Specification means the specification for the Goods contained in Attachment 2.

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 is developed or acquired by the Supplier independently of this Agreement which is used by the Supplier in the performance of its obligations under this Agreement or otherwise made available to the Purchaser under or in connection with this Agreement, 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 Works, but excludes GST.

Training means the implementation of an instructional program by the Supplier to provide the Purchaser's Personnel with the requisite level of knowledge and skill required to work with the Goods.

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 Specifications.

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, 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.

Works means all of the work which the Supplier is required to carry out in order to ensure the supply, Delivery, Installation, testing and commissioning of the Goods and the performance of the Maintenance Services.

1.2 Interpretation

In the Agreement, unless the context otherwise requires:

- (a) the singular includes the plural and vice versa;
- (b) the clause headings of this Agreement 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 is a reference to an Item in the Attachment or appendix.

2 Prior Works

- (a) Where the Supplier has performed works (whether for the Purchaser, or otherwise) in connection with this Agreement prior to the Date of the Agreement (**Prior Works**), the Supplier acknowledges and agrees that:
 - (i) those Prior Works are deemed to form part of the Works;
 - (ii) the performance of those Prior Works will be deemed to be governed by the terms of the Agreement and the Supplier undertakes to the Purchaser that the Prior Works were carried out in accordance with the requirements of the Agreement (including that they were carried out using the standard of professional care, skill and diligence to be expected of a consultant who regularly provides works of a similar scale, nature and complexity to the Works);
 - (iii) representations and undertakings set out in the Agreement apply to the Prior Works as part of the Works (without prejudice to the generality of such representations and undertakings);
 - (iv) payments made by the Purchaser to the Supplier in connection with the Prior Works are deemed to have been payments on account of the Purchaser Price by the Purchaser under the Agreement; and
 - (v) any contract between the Parties in relation to the Prior Works is deemed to have been terminated upon the Date of the Agreement.

- (b) The Supplier acknowledges and agrees that it will have no Claims against the Purchaser, and hereby releases the Purchaser from all liability, with respect to or in connection with any fact, matter or thing arising out of or in connection with the Prior Works or which occurred prior to the Date of the Agreement.

3 General Obligations

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

4 Documents and order of precedence

4.1 Agreement

- (a) This Agreement comprises and consists of the following:
 - (i) these terms and 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 4.1(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 4.1(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 4.1(b)(iii).

5 Site

- (a) The Supplier must Deliver the Goods to the Delivery Point and perform all other Works 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 Works, 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 Works 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 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 Works;
 - (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 Works;
 - (iv) the supply and conditions affecting the availability and quality of resources and equipment necessary to perform the Works;
 - (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 Works;
 - (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 Works.
- (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 Works 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 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.
- (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 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 and Installation of the Goods and Scheduled Maintenance Services.

- (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 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 Purchaser will carry out such tests of the Goods as are required by this Agreement or as the Purchaser may reasonably require, or the Purchaser may request that the Supplier carry out such tests, at the Purchaser's premises 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.
- (b) The results of the Acceptance Tests will be evaluated and approved by the Purchaser in its absolute discretion.
- (c) 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.
- (d) 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.
- (e) If the Goods being tested fail to pass any Acceptance Test or if any Acceptance Test is stopped before its completion as a result of any act or omission of the Supplier, the Supplier must adjust and modify the Goods as necessary to ensure compliance with the Agreement and, at its own risk, cost and expense, ensure the Acceptance Test is repeated as soon as practicable. 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.
- (f) Unless otherwise provided in the Agreement, the Supplier must provide, calibrate, maintain and be responsible for the accuracy of all test instrumentation and equipment required for the Acceptance Tests.
- (g) The Supplier must bear the cost and expense of all tests (including the Acceptance Tests) and inspections required under the Agreement other than tests and inspections that are expressly stated to be at the Purchaser's cost and expense.

- (h) 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.

9 Risk

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

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.
- (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 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; or
 - (ii) the Supplier has breached any of the terms of this Agreement,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 is not limited or precluded by Acceptance or by payment of any money to the Supplier.

11 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 15 Business Days after receipt of the Supplier's notice under clause 11(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 Works or Goods.
- (c) Subject to and without limiting the Purchaser's rights under the Agreement, if the Purchaser notifies the Supplier that there are omissions or Defects in the Works or Goods, the Supplier must immediately correct the omissions or Defects and the procedures in this clause 11 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.

12 Training

- (a) The Purchaser may require Training in the safe use and operation of the Goods.
- (b) The provision of this Training is covered in the Purchase Price.

13 Maintenance services

- (a) The Supplier must:
 - (i) carry out and perform the Scheduled Maintenance Services in accordance with the Specification in Attachment 1 and the Technical Support Requirements Schedule in Attachment 5;
 - (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); and
 - (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 Works;
 - (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.
- (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 Works 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

- (B) the other obligations of the Supplier under this Agreement;
 - (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 Works, 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) The Supplier obtains no rights, or IP 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 Works.

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 30.2(c)(i).
- (c) The Purchaser will return the Deposit Guarantee to the Supplier upon Acceptance being achieved.

15.2 Performance security

- (a) Within 15 Business Days of the Date of Agreement, the Supplier must provide the Purchaser with an unconditional undertaking in the form set out in Attachment 8 for the amount specified in Item 4 of Attachment 1 ("**Security**").
- (b) The 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 have immediate recourse to the Security where the Purchaser believes (acting reasonably) that:
 - (i) the Supplier has engaged in any negligent act or omission in relation to the Agreement;

- (ii) the Supplier is in breach of any of its obligations under the Agreement;
 - (iii) the Supplier has become indebted to the Purchaser pursuant to the Agreement;
 - (iv) the Purchaser is entitled to have recourse to the Security pursuant to clause 15.1 or 15.3(b);
 - (v) the Purchaser is entitled to terminate the Agreement pursuant to clause 30.2(a); or
 - (vi) an Insolvency Event affecting the Supplier has occurred,
- (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) the 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) Completion;
 - (B) the rectification of all Defects notified to the Supplier during the last Defects Correction Period; or
 - (C) 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 Condition precedent

Notwithstanding anything to the contrary in this Agreement, provision by the Supplier of the Deposit Guarantee (if applicable) and the Security 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, the Purchaser will pay the Supplier:
 - (i) the Purchase Price for Delivery and Installation of the Goods and Scheduled Maintenance Services for the Goods which will be:
 - (A) for Goods for which the Purchaser accepted a fixed sum, the fixed sum specified in Item 1 of Attachment 1; and
 - (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,as adjusted by any additions or deductions made pursuant to this Agreement.
- (b) The Purchase Price and the Unscheduled Maintenance Charges are inclusive of all Taxes but exclusive of GST. 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.
- (c) Except as expressly provided by this Agreement, the Supplier must provide all resources necessary to perform the Works, 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 2 of Attachment 1, the Supplier shall submit a valid Tax Invoice for the Deposit to the Purchaser within 7 days of this Agreement, 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 as set out in Schedule 3, such invoices to be submitted within 7 days of the end of each month for

Goods Delivered and/or Maintenance Services performed 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 and/or Maintenance Services provided in the previous month and showing the total amount payable and the GST payable; and
 - (ii) be accompanied (where necessary or where requested by the Purchaser) by verifying documentation.

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, 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; and
 - (ii) be accompanied (where necessary or where requested by the Purchaser) by verifying documentation.

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 Works to which that invoiced amount relates has not been provided in accordance with this Agreement, or if the Purchaser otherwise disputes the invoiced amount in good faith. The Supplier must promptly provide or complete again any Works (or any part of the Works) not provided in accordance with this Agreement.
- (d) Payment of the invoice or any part thereof, will not be evidence of the value of the Works provided or an admission of liability or evidence that the Goods comply with the Agreement, or that the Works 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 17.4(f) 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, 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.

17.5 Security of payment

- (a) The parties agree that the Purchaser's Representative is authorised to:
 - (i) accept service of payment claims served by the Supplier under the Security of Payment Act;
 - (ii) assess payment claims served by the Supplier under the Security of Payment Act; and
 - (iii) provide 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 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.

17.6 Subcontractors' Charges

- (a) The Supplier must promptly give the Purchaser's Representative a copy of any notice of a charge lodged under Chapter 4 of the Security of Payment Act received by the Supplier.
- (b) If the Purchaser makes a payment as a consequence of a subcontractor lodging a charge under Chapter 4 of the Security of Payment Act, 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 Chapter 4 of the Security of Payment Act.

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.
- (b) The Supplier warrants and represents to the Purchaser that:
- (i) it has the expertise, skill, competence, experience and ability necessary to perform the Works in accordance with this Agreement;
 - (ii) it has all resources and Personnel necessary to perform the Works;
 - (iii) the Works will, as a minimum, be performed in accordance with Good Industry Practices;
 - (iv) it has examined this Agreement and all Purchaser-Supplied Information and that information is suitable, appropriate and adequate for the performance of the Works;
 - (v) it will ensure that its performance of the Works does not adversely affect the Existing Operations or the operation and use of the Site except to the extent authorised by this Agreement, 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 Works and that such Government Approvals, registration or licences will remain current for the duration 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 Works; and
 - (viii) the performance of the Works and the use by the Purchaser of the Goods as contemplated by this Agreement 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);

- (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;
 - (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 Works.
- (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 Works 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 Works 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 Works are 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 Works.
 - (e) If the Supplier breaches this clause 19 the Purchaser may immediately terminate the Agreement under clause 30.2(a)(i) without prejudice to any other rights which the Purchaser may have.

20 Workplace Health & Safety

- (a) This clause 20 applies where the Supplier is required to access the Site for the purpose of performing the Works.
- (b) The Supplier:
 - (i) will be fully responsible for ensuring that the Supplier performs its duties under the Agreement safely; and
 - (ii) will be responsible for compliance with the WH&S Act from the Date of Agreement for the duration 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 20 do not relieve, limit or otherwise affect the Supplier's responsibilities under the WH&S Act, the Agreement;
 - (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 Works:
 - (A) perform the Works 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; and
 - (D) properly supervise its Personnel and ensure that its Personnel complies with the obligations in this clause 20.
- (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 Works is maintained so as to enable the Supplier to meet its obligations under this Agreement; and
 - (iv) program and co-ordinate its performance of the Works 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 Code for the Tendering and Performance of Building Work

The Supplier:

- (a) acknowledges that, depending on the nature and scope of the Goods requested by the Purchaser, the Code Requirements may apply to this Agreement; and
- (b) agrees to comply with the Code 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 or to be Supplied, Installed and Maintained for the benefit of the Purchaser under this 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 clause 22.2(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 clause 22.3(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, 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, 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
 - (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; 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.

23 Suspension

23.1 Right to direct suspension

- (a) The Purchaser may in its absolute discretion suspend the performance of part or all of:
 - (i) the Works; or
 - (ii) the Supplier's obligations under this Agreement,by giving the Supplier written notice.
- (b) The Supplier must not suspend the Works except:
 - (i) as directed by the Purchaser under this clause 23.1; or
 - (ii) in accordance with its statutory rights under the Security of Payment Act or the QBCC Act.
- (c) When the Supplier receives a notice of suspension under this clause 23, the Supplier must immediately suspend its performance of the Works, or performance of the relevant obligations, until such time as the Purchaser directs it by written notice to resume performance of the Works or performance of those obligations. At such time, the Supplier must promptly recommence the Works or the performance of the obligations, in accordance with this Agreement.
- (d) Where the suspension of the Supplier's obligations under clause 23.1(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 properly and reasonably incurred by the Supplier as a direct consequence of the suspension.
- (e) The Supplier must take all steps and actions to minimise the cost to the Supplier and the Purchaser arising from a suspension.

23.2 Suspension under the Security of Payment Act or the QBCC Act

- (a) 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 98 of the Security of Payment Act or section 67O of the QBCC Act.
- (b) If the Purchaser becomes aware that a subcontractor is entitled to suspend work under section 98 of the Security of Payment Act or section 67O of the QBCC 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 Works and the Purchaser may recover any amount paid as a debt due from the Supplier.
- (c) 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 or the QBCC Act.

- (d) If the Supplier intends to exercise its right under the Security of Payment Act or the QBCC Act to suspend the Works, it must give notice to the Purchaser of no less than 2 Business Days prior to the Supplier exercising that right.

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 Works which might reasonably be expected to result in a delay to:
 - (i) Delivery of the Goods;
 - (ii) Completion; or
 - (iii) Scheduled Maintenance Services.
- (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 Works 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) 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 if Delay Liquidated Damages have been specified in Attachment 1.

If the Supplier does not achieve

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

, 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 this Agreement 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.
- (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 by the Supplier, including in relation to:
 - (i) defects liability obligations;
 - (ii) other warranties or guarantees provided elsewhere in this Agreement; or
 - (iii) any liability to pay general law damages.

26 Variations

- (a) The Supplier must not vary the Goods or Works 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 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);
 - (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, 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, 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 5% (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, 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 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 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.
- (j) Where a Variation involves the omission of any part or parts of the Goods or the Works, 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 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 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 Works 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;
 - (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 Works or the Purchaser's use of the Goods as contemplated by this Agreement, infringe the IP Rights of any third party;
 - (ix) any liens or charges (including any charges lodged under the Chapter 4 of the Security of Payment Act) 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 Works under section 98 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 any of the Purchaser's other rights under this Agreement 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 or at Law.
- (g) The rights and obligations under this clause 28 continue after the termination of the Agreement.

29 Dispute Resolution

- (a) Any dispute or difference arising out of or in relation to this Agreement 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, 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 Supplier shall continue to perform the Works.
- (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 registered mail to the other party refer such dispute to litigation.

30 Termination

30.1 Termination for convenience

- (a) The Purchaser may terminate this Agreement in its absolute discretion, at any time by giving the Supplier at least 14 days' notice to that effect.
- (b) The rights given by clause 30.1(a) are in addition to any other rights that may be exercised by the Purchaser under this Agreement or under Law.
- (c) If for any reason, a purported termination by the Purchaser under any clause of this Agreement or at Law is held to be ineffective, the

purported termination is not a breach or repudiation of this Agreement and termination is deemed to have been effected under clause 30.1(a).

- (d) On termination of this Agreement pursuant to clause 30.1(a) 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) The Supplier will not be entitled to compensation for loss of profits and the Principal will not be liable to pay any amounts under this clause 30.1 where it would result in amounts greater than the Purchase Price being paid to the Supplier.

30.2 Termination for breach

- (a) The Purchaser may terminate this Agreement or take all or any part of the Works out of the hands of the Supplier immediately by giving the Supplier notice to that effect, if the Supplier:
 - (i) fails to remedy a breach of any term of this Agreement, 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;
 - (ii) becomes, or threatens to become or is in jeopardy of becoming, the subject of an Insolvency Event;
 - (iii) 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
 - (iv) abandons or refuses to perform the Works.
- (b) If the Purchaser has exercised its right to take all or part of the Works out of the hands of the Supplier under clause 30.2(a) 29.2(a), it may then by written notice:
 - (i) terminate the Agreement; or
 - (ii) take the Works wholly or partially (in respect of some other part) out of the hands of the Supplier).
- (c) On termination of this Agreement pursuant to clause 30.2(a):
 - (i) if the Agreement is terminated prior to Completion, all money which has been paid for the performance of the Works 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.
- (d) Immediately upon receiving or giving notice of termination of this Agreement, the Supplier will:

- (i) cease performance of the Works, 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).
- (e) Any expiration or termination of this Agreement does not affect any rights of the parties which may have accrued before the date of expiration or termination.

31 GST

- (a) Words or expressions used in this clause 31 which are defined in the *A New Tax System (Goods and Services Tax) Act 1999 (Cth)*, have the same meaning in this clause 31.
 - (b) Any consideration to be paid or provided for a supply made under or in connection with the Agreement, unless specifically described in the Agreement as "GST inclusive", does not include an amount on account of GST.
 - (c) If GST is payable on a Taxable Supply made under, by reference to or in connection with this Agreement, the party providing the Consideration for that Taxable Supply must also pay the GST Amount as additional Consideration. This clause 31(c) does not apply to the extent that the Consideration for the Taxable Supply is expressly agreed to be GST inclusive.
 - (d) If a payment to a party under the Contract is a reimbursement or indemnification, calculated by reference to a loss, cost or expense incurred by that party, then the payment will be reduced by the amount of any input tax credit to which that party is entitled for that loss, cost or expense. That party is assumed to be entitled to a full input tax credit unless it proves, before the date on which the payment must be made, that its entitlement is otherwise.
 - (e) Except as required by law, the Recipient need not make a payment for a taxable supply made under or in connection with the Agreement in respect of a taxable supply until the Supplier has given the Recipient a tax invoice for the supply to which the payment relates.
- (a)

32 Notices

- (a) A notice, approval, consent or other communication concerning this Agreement 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; and
 - (iii) 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 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 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 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 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 by the Purchaser; or
 - (ii) declaratory relief or other similar judgment or order as to the obligations of the Purchaser under this Agreement.

33.3 Liability must be limited

The Purchaser is not obliged to do or not do anything in connection with this Agreement (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 the date of signing of this Agreement, 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 (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;

- (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 ; and

- (B) any person who is a worker of the Supplier or any of its subcontractors in connection with this Agreement 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, each policy of insurance required under clause 34(a) is in force for the duration of this Agreement until the expiry of the Defects Correction Period.
- (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 the date of signing of this Agreement 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, 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,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, 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, and must procure that its Personnel 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.
- (v) under section 275(5) of the PPSA.
- (b) 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.
- (c) This clause 36 survives the expiration or termination (for any reason) of this Agreement and is in addition to and not in derogation of obligations under any Law or trade or professional custom or use.
- (d) The Supplier must ensure that its Personnel comply with the terms of this clause 36.
- (e) The Supplier acknowledges and agrees that the Purchaser is required, and is therefore entitled, to disclose any information relating to this Agreement to its shareholders.

36 Personal Property Securities Act 2009

36.1 Further steps

If the Purchaser determines that this Agreement or a transaction in connection with it 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.

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, 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 36 applies despite any other clause in the Agreement.

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:

- (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, and the transactions contemplated under this Agreement;
- (c) the Supplier's obligations under this Agreement are valid and binding and are enforceable against it in accordance with the terms of this Agreement;
- (d) this Agreement 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, the ability of the Supplier to fulfil its commitments under this Agreement 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;
- (i) the Supplier will give all Notices it is required to give under this Agreement 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 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 Works from the Supplier or its Personnel enforceable by, and on terms acceptable to, the Purchaser.

37.3 Counterparts

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

37.4 Amendments

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

37.5 Assignment

No party may assign its right, title and interest under or pursuant to this Agreement without the prior written consent of the other (such consent not to be unreasonably withheld or delayed). This Agreement 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.

37.7 Costs

Each party bears its costs in relation to the preparation and execution of the Agreement.

37.8 Entire Agreement

Subject to clause 18(a):

- (a) Except to the extent otherwise stated in the Agreement, the Agreement constitutes 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 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.

37.11 Waiver

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

38 Compliance with Modern Slavery Laws

38.1 Compliance

- (a) In performing its obligations under this Agreement, the Supplier must (and shall use reasonable endeavours to ensure that its suppliers also):
 - (i) comply with all Modern Slavery Laws from time to time in force; and
 - (ii) comply with all Modern Slavery Policies and have and maintain throughout the term of this Agreement its own policies and procedures to ensure that compliance.
- (b) The Supplier acknowledges and agrees that any Modern Slavery Policy forms part of the Contract and the Supplier must comply with and be bound by the terms of such Modern Slavery Policy.
- (c) The Supplier must notify the Purchaser within 10 Business Days if it ceases to be compliant with any Modern Slavery Policy.
- (d) The Supplier must not engage in any conduct or activity that involves or may give rise to, encourage or permit Modern Slavery including, without limitation, by not sourcing or purchasing any materials, goods or services in relation to this Contract from anyone the Supplier knows or ought to know (having conducted reasonable due diligence) engages in a conduct or activity that involves or may give rise to, encourage or permits Modern Slavery.

38.2 Indemnity

- (a) The Supplier indemnifies the Purchaser against any losses, liabilities, charges, costs or expenses (including, without limitation legal fees and expenses) incurred by the Purchaser as a result of any breach by the Supplier of its obligations under this clause 38.

38.3 Warranties

The Supplier represents and warrants that:

- (a) it does and will conduct its business in a manner that is compliant with the Modern Slavery Laws and consistent with all Modern Slavery Policies;
- (b) all information provided by the Supplier to the Purchaser in relation to Modern Slavery practices and risks in the Supplier's operations and supply chain is true and correct; and
- (c) neither the Supplier nor, to the Supplier's knowledge having made reasonable enquiries, any supplier in the Supplier's supply chain:
 - (i) has been convicted of any offence involving Modern Slavery; or
 - (ii) is or has been the subject of any investigation, inquiry, sanction or enforcement proceedings by any governmental body regarding any offence or alleged offence of or in connection with Modern Slavery practices in its operations.

38.4 Termination

- (a) The Purchaser may terminate the Contract with immediate effect by giving written notice to the Supplier if the Supplier commits any breach of any obligations under this clause 38 which is not remedied within 5 days of receiving written notice from the Purchaser specifying the breach and requiring it to be remedied.

Supply, Installation and Maintenance Agreement

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)

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

.....)
Address

.....)
Signature of Authorised Officer

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

.....)
Position of Authorised Officer

EXECUTED for and on behalf of)
[insert name])
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

Supply, Installation and Maintenance Agreement

Attachment 1 - General Terms

ITEM 1 PURCHASE PRICE (\$AUD)

Purchase Price: [insert]

ITEM 2 DEPOSIT

Deposit Amount: [insert]

ITEM 3 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) Marine (transport) \$500,000]

ITEM 4 SECURITY (clause 15.2)

[insert]

ITEM 5 DATE FOR COMPLETION

[insert]

ITEM 6 DELIVERY POINT

37 Kent St, Woolloongabba, QLD 4102

ITEM 7 DELAY LIQUIDATED DAMAGES

Daily rate of [insert] per day commencing on the 15th day after the end of the Date of Completion.

Supply, Installation and Maintenance Agreement

Attachment 2 - Specification

Schedule of Goods

Specification for Goods

Description of Installation and Maintenance Services

Insert description including service levels and response times

SCHEDULED MAINTENANCE STAGE	GOODS TO BE MAINTAINED	MAINTENANCE LOCATION	TIMEFRAME

Acceptance Testing Requirements

Description of Unscheduled Maintenance Services

Insert description including service levels and response times

Price for Unscheduled Maintenance Services

Unscheduled Maintenance Services beyond the scope of this Agreement are charged at AUD [insert] per hour plus travel, accommodation and parts costs. These are 2021 rates and may be subject to change

Attachment 3 - Project and Payment Schedule

PROJECT STAGE	GOODS	DELIVERY POINT (IF DIFFERENT FOR EACH STAGE)	DATES FOR DELIVERY	PARTY RESPONSIBLE

Amount Payable	Milestone
[e.g. 15%]	Deposit
[e.g. 60%]	Delivery
[e.g. 25%]	Acceptance

Supply, Installation and Maintenance Agreement

Attachment 4 - Installation Schedule

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

Supply, Installation and Maintenance Agreement

Attachment 5 - Technical Support Requirements Schedule

Description of Maintenance Services

Insert description including service levels and response times

SCHEDULED MAINTENANCE STAGE	GOODS TO BE MAINTAINED	MAINTENANCE LOCATION	TIMEFRAME

Description of Unscheduled Maintenance Services

Insert description including service levels and response times

Unscheduled Maintenance Charge:

Unscheduled Maintenance Services beyond the scope of this Agreement are charged at AUD [\$XXXX] per hour plus travel, accommodation and parts costs. These are 2020 rates and may be subject to change.

Supply, Installation and Maintenance Agreement

Attachment 6 - Site

(Clause 1)

Supply, Installation and Maintenance Agreement

Attachment 7 - Code Requirements

(Clause 21)

1. The Supplier must comply with the *Code for the Tendering and Performance of Building Work 2016* (“**Code**”) and Australian Government Model Clauses Type B for the Code for the Tendering and Performance of Building Work, January 2018 (“**Guidelines**”). Copies of the Code and Guidelines are available at www.abcc.gov.au.
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 Works 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 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/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.
7. The Supplier must not appoint a secondary subcontractor or consultant in relation to the Works 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 Works; 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 7 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 7.

Supply, Installation and Maintenance Agreement

Attachment 8 - Security

(Clause 15.2(a))

BY: Insert

("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 Insert

Bank means Insert

Contract means the contract for the supply of Insert between the Supplier and the Purchaser dated Insert

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

Supplier means Insert.

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

[insert execution block for Bank]