BLVC PTY LTD TERMS AND CONDITIONS OF TRADE

1 Interpretation

1.1 Definitions

In this Agreement, unless the subject or context otherwise requires:

(a) **Agreement** means these terms and conditions, the Proposal and any schedules or annexures, as amended by the parties;

(b) **Approvals** means the licence, permit, registration, consent, approval, determination, certificate, administrative decision, permission or other requirement of any third party or Government Authority;

(c) **Australian Consumer Law** or **ACL** means the Australian Consumer Law set out in Schedule 2 of the Competition and Consumer Act 2010 (Cth);

(d) **Business Day** means a day other than a Saturday or a Sunday (or a public holiday) on which major trading banks are open in the state of New South Wales;

(e) **Business Hour** means the period commencing 9am and ending 5pm on a Business Day;

(f) **Client** means the person or entity specified in the Proposal;

(g) **Client Representative** means the person for the time being holding or occupying the position as notified by the Client from time to time;

(h) **CFI** means information furnished by the Client or a third party which is used by the Supplier in connection with the Supplier's Activities;

(i) **CFE** means equipment furnished by the Client and used by the Supplier in connection with the Supplier's Activities;

(j) **Completion** means the stage when the Design Documentation has been completed in accordance with the Agreement;

(k) **Confidential Information** means in relation to a Party all Intellectual Property Rights, trade secrets, ideas, concepts, know how, knowledge and any other information, whether in writing or otherwise, relating to any of that Party's products, services, systems, affairs, businesses, strategies, Clients or employees, whether owned by, licensed to, or otherwise in possession or control of that Party, which are disclosed to the other Party by that Party or otherwise obtained by the other Party, its employees, agents, or contractors under, in contemplation of or in connection with this Agreement, but excluding any information which is generally and readily available in the public domain other than by a breach of this Agreement or any other agreement;

(l) **Contract Price** means the sum of all Fees specified in the Proposal, as adjusted in accordance with this Agreement;

(m) **Date for Completion** means the estimated date for completion of the Design and any other activities or things specified in the Proposal or the Program, as extended in accordance with the terms of this Agreement;

(n) **Default Interest Rate** means 12 per cent per annum;

(o) **Defect** means any defect, omission or deficiency in the final Design Documentation to comply with the Requirements in a material respect except for defects:

(i) which do not prevent the documents from being reasonably capable of being used for the intended purpose of the activities; and

(ii) which can be corrected without prejudicing the convenient use of the documents;

(iii) caused by unauthorised modifications or alterations to the documents; and

(iv) caused by CFI or CFE,

(p) **Defects Liability Period** means the period commencing on completion of final Design Documentation and continuing for the period of 45 days;

(q) **Delay Notice** means a notice containing the details specified at clause 15.3(b);

(r) **Deliverable** the services and work product specified in the Proposal to be delivered by the Supplier to Client, in the form and media specified in the Proposal;

(s) **Design** means the design to be developed by the Supplier pursuant to this Agreement in respect of the Site;

(t) **Design Documentation** means all design documentation (including drawings, specifications, models, samples and calculations) in computer readable and written forms necessary for the Supplier to complete any part of the Supplier's Activities;

(u) **Electronic Laws** means all legislation that applies in the State regulating electronic transactions and includes any regulations made under or in connection with that Act or legislation from time to time;

(v) **Extension of Time** means an extension to the Date For Completion in accordance with the terms of this Agreement,

(w) **Fees** means the fees and charges payable by the Client pursuant to this Agreement and set out Payment Schedule;

(x) **Force Majeure** means acts of God including but without limitation to lightning, earthquakes and storms; and in addition strikes, lockouts or other industrial disturbances, acts of enemies of any country in the Territory, sabotage, wars, terrorism, pandemics, blockades, insurrections, riots, landslides, floods, fires, washouts, arrests and restraints, civil disturbances, explosions, breakages of or accidents to machinery or delivery facilities, the orders of any court or governmental authority or any other cause whether of the kind herein enumerated or otherwise not within the control of the person claiming force majeure and which by the exercise of due diligence the person claiming force majeure is unable to overcome;

(y) **Good Industry Practice** means practices consistent with recognised standards, methods, and laws, as would be used by skilled and experienced contractors for works or services similar to the Supplier's Activities;

(z) **Government Authority** means any government or governmental, administrative, monetary, fiscal or judicial body, department, commission, authority, tribunal, agency or entity;

(aa) **Indirect Loss** means any kind of:

(i) indirect or consequential loss;

(ii) loss of profits;

(iii) loss of sales or business;

(iv) loss of production;

(v) loss of agreements or contracts;

(vi) loss of business opportunity;

(vii) loss of anticipated savings;

(viii) loss of, or damage to, goodwill;

(ix) loss of reputation; or

(x) loss of use or corruption of software, data or information;

(bb) **Intellectual Property Rights** or **IPR** means all intellectual property rights of any kind, in any jurisdiction, subsisting now or in the future (including, without limitation, business, company or trade names, domain names, patents, inventions, copyright, design rights, know-how, trade marks, the right to sue for passing off and rights to use, and protect the confidentiality of, confidential information), whether registered or unregistered, and including the rights to apply for or renew the registration of any such rights and any rights the subject of any lapsed application or registration;

(cc) **Latent Condition** means any Site Conditions which would not be able to be ascertained by a visual inspection of the Site;

(dd) **Milestone** means an event or thing described in the Payment Schedule given rise to a Progress Payment;

(ee) **Party** means the Supplier and/or the Client as the context dictates;

(ff) **Payment Schedule** means the fees and charges specified in the Proposal;

(gg) **Pre-existing IPR** of any party means any Intellectual Property Rights belonging to the party which are:

(i) pre-existing as at the date of this Agreement, but does not include any Intellectual Property Rights developed by the Supplier or any of its officers, employees, agents or subcontractors for the purposes of, or in anticipation of, carrying out the Supplier's Activities; or

(ii) brought into existence other than as a result of the performance of its obligations under this Agreement; and

(iii) used by a party in performing its obligations under this Agreement.

(hh) **Progress Payment** means each instalment of the Fee payable on satisfaction of an associated Milestone;

(ii) **Program** means the programme for the Supplier's Activities to be developed in accordance with the terms of this Agreement including the Design and the various stages for the development of the Design to final completion;

(jj) **Proposal** means the document issued by the Supplier to the Customer for the provision of goods and/ or services to be provided by the Supplier and which expressly reference these terms and conditions;

(kk) **Qualifying Cause** means:

(i) delays caused by a Government Authority in processing relevant approvals or consents provided that such delays have not been caused by the Supplier;

(ii) delays caused by the Client including its agents, consultants and contractors (other than the Supplier) providing relevant information requested by the Supplier or new information or approving relevant documentation;

(iii) a breach of this Agreement by the Client;

(iv) a variation to the Supplier's Activities or Scope of Work;

(v) delays or an act or omission caused by the landlord of the Site;

(vi) delays in providing access to the Site to the Supplier provided such delay is not caused by the Supplier;

(vii) Site conditions which differ materially from the conditions that should have been reasonably anticipated or foreseen by a prudent, competent and experienced contractor;

(viii) a Latent Condition;

(ix) a Force Majeure Event; and

(x) where the Supplier suspends work in accordance with the terms of this Agreement;

(ll) **Requirements** means the requirements for the Design to be developed in accordance with the terms of this Agreement;

(mm) **Schedule** means a schedule to this Agreement;

(nn) **Scope of Work** means the scope of work or activities to be undertaken by the Supplier, as specified in the Proposal;

(oo) **Site** means the location or locations subject of the Design, as specified the Proposal;

(pp) **Site Conditions** means all conditions and characteristics of the Site and its surrounds (including below ground conditions, all natural and artificial things, asbestos, contamination, and other environmentally hazardous substances, concrete cracking and spalling, facilities, utilities and services on and within the surface and, if the Site includes a building, on and within the building

(including those things obscured behind walls, ceilings and beneath the floor)), or on or about the Site including:

(i) the location and adequacy of existing services, including all pipes, valves, ducts, cables, switchboards and other plant and equipment; and

(ii) the adequacy and position of all load bearing and support structures; and

(iii) any existing services, plant, equipment or structures which require temporary or permanent removal or relocation in order to carry out the Supplier's Activities;

(qq) **Supplier** means BLVC Pty Ltd ACN 669 773 844 or such other party specified as such in the Proposal.

(rr) **Supplier's Activities** means the development of the Design, the Deliverables and any other goods or services to be provided by the Supplier in accordance with this Agreement;

(ss) **Supplier Representative** means the person for the time being holding or occupying the position and as notified by the Supplier from time to time;

(tt) **Suspension Fee** means the fee payable to the Supplier for delays caused by the Client in accordance with clause 16.4;

(uu) **Third Party Consultants** means any person engaged to provide the professional services such as a certifier, architect or engineer including the persons specified in the Proposal; and

(vv) **Works** means the physical works to be undertaken at the Site by a third party based on the final Design Documentation.

1.2 Construction

In this Agreement, unless the subject or context otherwise requires:

(a) words importing the singular include the plural and vice versa;

(b) words importing one gender include the other gender;

(c) a reference to any party or other person includes that person's successors and permitted assigns;

(d) a reference to a statute, ordinance or other legislation includes any amendment, replacement or re-enactment for the time being in force and includes all regulations, by-laws and statutory instruments made thereunder;

(e) a reference to this or any other document includes a reference to that document as amended, supplemented, novated or replaced from time to time;

(f) a reference to a recital, clause or schedule is a reference to a recital, clause or schedule of this Agreement;

(g) a reference to writing includes all means of reproducing words in a tangible and permanently visible form;

(h) a reference to time is a reference to time New South Wales;

(i) a reference to a person includes a natural person, corporation, partnership, trust, estate, joint venture, sole partnership, government or governmental subdivision or agency, association, co-operative and any other legal or commercial entity or undertaking;

(j) where a party comprises two or more persons any agreement or obligation to be performed or observed by that party binds those persons jointly and each of them severally, and a reference to that party is deemed to include a reference to any one or more of those persons;

(k) the headings in this Agreement do not affect its interpretation; and

(l) the recitals and the schedules form part of this Agreement.

2 Acceptance

The Client shall be deemed to have accepted the Proposal and these terms and conditions by signing a copy of the Proposal within the Proposal validity period (if any) and returning it to the Supplier or otherwise directing the Supplier to proceed with the Supplier's Activities.

3 Contract representatives

3.1 The Client shall appoint the Client's Representative to manage the Agreement and carry out all its functions under the Agreement on behalf of the Client.

3.2 The Supplier shall appoint the Supplier's Representative to manage the Agreement and carry out all its functions under the Agreement on behalf of the Supplier.

4 Parties' Obligations

4.1 Supplier's Obligations

(a) The Supplier shall, subject to clause 4.4, carry out the Supplier's Activities with due care and skill and in accordance with Program and if there is no Program within a reasonable time.

(b) To the extent the Supplier's Activities include the provision of services, the Supplier must provide the services to the Client:

(i) using appropriately qualified, skilled and experienced personnel;

(ii) to a standard of quality not less than Good Industry Practice for services of the same type as those Services, in a timely manner:

(iii) to the reasonable satisfaction of the Client; and

(iv) in accordance with any other requirements specified in this Agreement.

4.2 Client's Obligations

The Client shall:

(a) use its best endeavours to give the Supplier access to the Site to enable the Supplier to comply with its obligations under this Agreement;

(b) do anything else specified in this Agreement or reasonably requested by the Supplier;

(c) provide of all information, data, designs, graphic and related materials to be incorporated into the Design;

(d) review, reject or accept any Deliverable within the timeframes specified in this Agreement and if no timeframes are stipulated, within a reasonable time requested by the Supplier;

(e) provide of any other information, ideas or suggestions which are to be expressly considered by the Supplier in developing the Design; and

(f) pay the Contract Price.

5 Development of Client Requirements

5.1 The parties will consult with each other in order to provide sufficient information for the Supplier to develop the Requirements. The Client will provide such information and assistance as the Supplier reasonably requires to enable it to translate the Client's requirements for the Design into the Requirements. In order to develop the Requirements some or all of the following may need to be undertaken:

(a) Existing conditions survey and documentation;

(b) Photographs;

(c) Measurements;

(d) Compile existing drawings if any;

(e) Prepare high-level base drawings;

(f) Statement of probable build/construction cost;

(g) Programming space and use;

(h) Code review.

5.2 If the Client accepts the Requirements, the Supplier will provide the Supplier's Activities in accordance with the Requirements and the Program and otherwise in accordance with the terms and conditions of this Agreement.

5.3 If the Client rejects the Requirements, it must notify the Supplier of its rejection and request the Supplier to amend the Requirements, as follows:

(a) the Client will submit to the Supplier a copy of the proposed amendment to the Requirements;

(b) subject to the Supplier agreeing to the amendment, the Supplier will submit an amended Requirements ("the Amended Requirements");

(c) subject to the Client agreeing to the Amended Requirements, the Supplier will develop the Design in accordance with the Amended Requirements, the Program and otherwise in accordance with the terms and conditions of this Agreement (and the expression "Requirements" will thereafter mean the Amended Requirements); and

(d) if the Parties are unable to agree on the Amended Requirements, the Supplier will not develop the Design and this Agreement will be terminated without any Fees payable by the Client for work not yet fulfilled or performed.

6 Development and acceptance of Program

6.1 The Client will provide such reasonable information and assistance as the Supplier reasonably requires to enable it to translate the Client's requirements for the Design into the Program.

6.2 Subject to acceptance of the Requirements pursuant to clause 5, the Supplier will translate the Client's requirements for the Design into the Program.

6.3 Upon acceptance by the Client of the Program, the Supplier will provide the Supplier's Activities in accordance with the Program and the Requirements and otherwise in accordance with the terms and conditions of this Agreement.

6.4 If the Client rejects the draft Program, it must notify the Supplier of its rejection and request the Supplier to amend the Program, as follows:

(a) the Client will submit to the Supplier a copy of the proposed amendment to the Program;

(b) subject to the Supplier agreeing to the amendment, the Supplier will submit an amended Program ("the Amended Program");

(c) subject to the Client agreeing to the Amended Program, the Supplier will develop the Design in accordance with the Amended Program, the Requirements and otherwise in accordance with the terms and conditions of this Agreement (and the expression "Program" will thereafter mean the Amended Program); and

(d) if the Parties are unable to agree on the Amended Program, the Supplier will not develop the Design and this Agreement will be terminated without any Fees payable by the Client for work not yet fulfilled or performed.

7 Development of Design

7.1 Upon approval of the Requirements (in accordance with clause 3) and the Program (in accordance with clause 6), the Supplier will develop the Design in accordance with the Requirements, the Program and the Proposal.

7.2 The Client's Representative shall:

(a) review any Design Documentation, or any resubmitted Design Documentation, prepared and submitted by the Supplier; and

(b) within 5 Business Days of the submission by the Supplier of such Design Documentation or resubmitted Design Documentation, reject the Design Documentation if in its reasonable opinion the Design Documentation does not comply with the requirements of the Agreement.

7.3 If any Design Documentation is rejected, the Supplier must submit amended Design Documentation to the Client's Representative.

7.4 If the Client has not accepted or rejected the Design Documentation within 5 Business Days of receipt, it shall be deemed to have accepted the same.

8 Acceptance of Deliverables

8.1 The Client shall, within 5 Business Days of receipt of each Deliverable, notify the Supplier, in writing, of any failure of such Deliverable to comply with the specifications specified in the Proposal, or of any other objections, corrections, changes or amendments the Client wishes to be made to such Deliverable.

8.2 Any such written notice shall be sufficient to identify with clarity any objection, correction or change or amendment, and the Supplier will undertake to make the same in a timely manner.

8.3 Any and all objections, corrections, changes or amendments shall be subject to the terms and conditions of this Agreement.

8.4 In the absence of such notice from the Client, the Deliverable shall be deemed accepted.

8.5 If the Client has not accepted or rejected the Deliverable within 5 Business Days of receipt, it shall be deemed to have accepted the same.

9 Variations to Scope of Work

9.1 Supplier notified variation

If the Supplier is of the view that any direction or instruction from the Client constitutes a variation to the Scope of Work:

(a) the Supplier shall give written notice to the Client of the facts and circumstances giving rise to the variation to the Scope of Work together with details of additional Fees resulting from the variation;

(b) subject to the Client accepting (in writing) the proposed variations and the additional Fees, the Scope of Work and this Agreement will be deemed to incorporate such variations and the Fees will be deemed to be varied accordingly;

(c) if the Client does not accept the proposed variation and the additional Fees, the Supplier shall be under no obligation to undertake the activities subject of the variation.

9.2 Client Request

Notwithstanding anything in this clause 8, the Client may at any time prior to the acceptance of the Design in accordance with this Agreement, request a variation to the Scope of Work as follows:

(a) the Client will submit to the Supplier a copy of the proposed variations to the Scope of Work;

(b) the Client will be advised of any additional Fees as a result of the proposed variations to the Scope of Work and the Supplier will, upon request by the Client, provide such further information as is reasonably required by the Client to verify the additional Fees so claimed;

(c) subject to the Client accepting (in writing) the proposed variations and the additional Fees, the Scope of Work and this Agreement will be deemed to incorporate such variations and the Fees will be deemed to be varied accordingly;

(d) if the Client does not accept the additional Fees, the Client may withdraw its proposed variation.

9.3 Deemed Variation

The Contract Price shall be increased to account for:

(a) a Qualifying Cause which has caused the Supplier to incur additional costs;

(b) the cost of the Supplier engaging any Third Party Consultants not specifically stated to be included in the Contract Price;

(c) any delay caused to the Supplier's Activities because of a Latent Condition in accordance with clause 13;

(d) any delay or disruption costs in accordance with clause 15.4;

(e) any other events specified in the Proposal.

10 Feasibility budgets and cost estimates

If the Supplier's Activities include the provision of a feasibility budget or cost estimate for the Works, such budgets or costs:

(a) are indicative of the Supplier's opinion of the probable cost to the Client of contracting at arm's length to construct the Works based on the final Design;

(b) unless otherwise express stated, excludes such things including, but not limited to:

(i) the professional fees and disbursements of all experts fees and disbursements;

(ii) authority fees, taxes, levies and other charges payable to authorities;

(iii) finance charges; and

(iv) removal, relocation and holding costs;

(c) unless otherwise express stated, is a figure or range quoted exclusive of GST;

(d) are not guaranteed by Supplier and should be considered indicative only until superseded by firm pricing including actual costs or quotations provided by a contractor who is prepared to undertake the Works.

11 Fees

11.1 Payment claims

The Supplier shall issue payment claims for the provision of the Supplier's Activities at the rate and in the manner specified in the Payment Schedule.

11.2 Out of pocket expenses

In addition to the Fees, the Client shall reimburse the Supplier for any out of pocket expenses or disbursement incurred in connection with this Agreement incurred by Designer with Client's prior approval.

11.3 Due date for Payment

The Client will pay:

(a) each Progress Payment in respect of a Milestone in the manner specified in the Payment Schedule;

(b) other charges and fees in the manner specified in the Fee Schedule to the extent it is relevant; and

(c) any additional charges or fees permitted under this Agreement,

within 14 days of the date of issue of a tax invoice or such other period stated in the Proposal.

11.4 Tax Invoice

Payment of the Fees shall not be due until the Client receives a correctly rendered invoice. An invoice is correctly rendered if:

(a) the specified amount is correctly calculated and due for payment;

(b) the invoice includes verified statements of services performed, the total sum claimed, the method of calculation of that sum and (in relation to the Fees) the stage(s) in the Program to which the sum relates;

(c) the invoice is set out in a manner that enables the Client to ascertain the goods and services to which the invoice relates and the amounts payable in respect of those goods and services; and

(d) the invoice is a "tax invoice" as defined in the *A New Tax System (Goods and Services Tax) Act 1999* (as amended).

11.5 Interest

The Client will pay interest at the Default Interest Rate on any amount which has been set out as payable, but which is not paid by the Client within the time required by the Agreement.

11.6 Indemnity

The Client indemnifies and holds the Supplier harmless against all costs arising from a breach of Agreement by the Client including legal costs on a solicitor/ client basis incurred by the Supplier in connection with the enforcement of the Supplier's rights under this Agreement including costs incurred in connection with recovery (attempted or otherwise) of any unpaid monies.

11.7 SOP Act

This clause applies if the SOP Act applies to this Agreement.

(a) The Supplier agrees with the Client that the date prescribed in clause 10.1 as the date on which the Supplier must make a payment claim is, for the purposes of section 8 of the SOP Act, the "reference date" (as defined in the SOP Act).

(b) For the purposes of section 17(3) of the SOP Act, the Supplier irrevocably chooses the Resolution Institute as the "authorised nominating authority" (as that term is defined in the SOP Act) for any adjudication application it may make under the SOP Act in respect of the subject matter of this Agreement

12 Provision of electronic documentation

If required by the Supplier, all Design Documentation and other documents or information shall be transmitted for review and approval via electronic means. The parties shall ensure that only its authorised personnel have access to the application.

13 Warranties

13.1 General

Each Party warrants that it has the power, the legal capacity and is duly authorised to enter into this Agreement and perform the obligations herein.

13.2 Supplier's warranties as to Design Documentation

In addition to any other warranty expressed in this Agreement, the Supplier warrants that the final to Design Documentation;

(a) will for the Defects Liability Period be free from Defects; and

(b) will not breach any person's Intellectual Property Rights;

13.3 The warranties provided in this Agreement do not apply to:

(a) conditions resulting from improper use of the final to Design Documentation; and

(b) conditions resulting from modifications to the final to Design Documentation other than modifications made or approved by the Supplier.

13.4 Notice of Defects

Notwithstanding acceptance of the final to Design Documentation by the Client in accordance with clause 12, the Client must give written notice to the Supplier of any Defects in the final to Design Documentation before the expiry of the Defects Liability Period together with such additional information reasonably requested by the Supplier to understand the nature of the Defect.

13.5 Rectification of Defects

The Supplier shall by way of replacement or correction remedy at its cost any Defect in the final Design Documentation properly notified by the Client to the Supplier at any time within the Defects Liability Period.

14 Site and information

14.1 Existing Site Conditions and Latent Conditions

The Client and the Supplier acknowledge agree that:

(a) the Supplier shall conduct a reasonable non-invasive visual inspection of the Site in connection with the Supplier's Activities;

(b) the Site may be affected by Latent Conditions for which the Supplier has not allowed in the Contract Price.

The Client releases the Supplier from any claims for loss or damage arising in connection with a Latent Condition.

14.2 Site information

The Client warrants the accuracy, adequacy, suitability and completeness of any information or data made available to the Supplier as to the existing conditions at the Site.

14.3 Site Conditions

If during the performance of the Supplier's Activities the Supplier becomes aware of a Latent Condition, the Supplier must promptly, and where possible before the Site Conditions are disturbed, give written notice to the Client's Representative specifying:

(a) the conditions encountered and in what respects the Supplier considers they constitute a Latent Condition;

(b) the additional work and additional resources which the Supplier estimates to be necessary to deal with the conditions;

(c) the time the Supplier anticipates will be required to deal with the conditions and the expected delay in achieving Completion (if any) as a result of dealing with the conditions;

(d) the Supplier's estimate of the cost of the measures necessary to deal with the conditions; and

(e) other details reasonably required by the Client's Representative.

15 Confidentiality

15.1 The Parties agree not to disclose or cause or permit to be disclosed the Confidential Information of the other Party during the term of this Agreement or thereafter, except as specified in this Agreement.

15.2 Notwithstanding clause 14.1, each Party is entitled to disclose the other Party's Confidential Information as follows:

(a) to its professional advisers, but only to the extent required for the purposes of obtaining necessary professional advice from such advisers in relation to this Agreement and provided that such Confidential Information is disclosed subject to confidentiality;

(b) as required by law;

(c) to any other person with the prior written consent of the other Party, which consent may be withheld at the absolute discretion of the other Party and if granted will be subject to such conditions as required by the other Party.

15.3 Either Party may upon termination of this Agreement by notice in writing to the other Party demand the return of all tangible property comprising the Confidential Information of that Party including all copies and records thereof in the possession of the other Party or any other person authorised to possess the Confidential Information of that Party pursuant to clause 14.2. The other Party must comply with the demand within 14 days of service of the demand.

15.4 Nothing contained in this Agreement excludes the right of either Party at common law or in equity to protect its Confidential Information by application to any court for injunction or otherwise.

16 Programming, Completion and extensions of time

16.1 Programming

The Supplier must:

(a) undertake the Supplier's Activities in accordance with the Program;

(b) update the Program periodically to take account of:

(i) changes to the Program;

(ii) delays which may have occurred, including any for which the Supplier is granted an extension of time.

16.2 Completion

The Supplier shall, in relation to the Supplier's Activities, reach Completion by the Date for Completion.

16.3 Extension of time

(a) If the Supplier is or will be delayed in achieving Completion by a Qualifying Cause in a manner which will prevent it from achieving Completion of the Supplier's Activities by the Date for Completion unless that date is extended, the Supplier shall be entitled to an extension of time.

(b) The Supplier shall give written notice to the Client within 5 Business Days of the start of the delay setting out:

(i) details of the delay;

(ii) its causes; and

(iii) the number of days extension claimed,

and such other relevant information in the form of the Delay Notice.

(c) The Client may also unilaterally extend the Date for Completion in its absolute discretion at any time and from time to time by written notice to the Supplier.

16.4 Client Delay

(a) The Client acknowledges that the Supplier has reserved time exclusively to perform the Supplier's Activities. If the Client causes a delay in the Supplier's Activities ("**Client Delay**"), the Client shall pay to the Supplier, in addition to fees and expenses already incurred through the date of such Client Delay, a Suspension Fee equal to the Supplier's hourly fees for idle time caused by the Client Delay, unless the Supplier is able to secure other work for that time for the same or greater compensation. The Client acknowledges that if the Supplier accepts other work because of a Client Delay, the Supplier shall be entitled to adjust time to complete the Supplier's Activities as necessary to accommodate such other work.

(b) The parties agree that the amount of damages payable under this clause is a genuine pre-estimate of the damage likely to be suffered by the Supplier in the event the Supplier's Activities are delayed or disrupted.

(c) The Client acknowledges and agrees that the Supplier may not be able to complete the Supplier's Activities in accordance with the Program in the event of Client Delay in which case the Supplier shall be entitled to an Extension of Time and/ or amend the Program to give priority to other pre-committed business or projects to which resources have been allocated.

17 Title

Title in the Design Documents (or any part of them) will pass to the Client on the Client paying for the Design Documents (or any part of them).

18 Resolution of ambiguities

(a) The following order of precedence will apply to any ambiguity, discrepancy or inconsistency in the documents which make up the Agreement, with those higher in the list having precedence over those lower in the list:

(i) the terms of this Agreement (other than the Proposal, Schedules);

(ii) the Requirements takes precedence;

(iii) the Proposal;

(iv) the Schedules (other than the Proposal);

(v) any other documents (if any) referred to in the Proposal.

(b) If either party discovers any ambiguity, discrepancy or inconsistency in the documents which make up the Agreement or between the Agreement and any documents provided to the Supplier by or on behalf of the Client which the Supplier is required by the Agreement to use for construction purposes:

(i) the party must promptly give notice to the other; and

(ii) the Client's Representative must instruct the Supplier as to the course it must adopt within 5 Business Days of the notice under paragraph (b)(i).

(c) If compliance with the Client's Representative's instruction under paragraph (b)(ii) causes the Supplier to incur more or less cost than a competent and experienced contractor (having the experience of a contractor that is an expert in carrying out work of a nature similar to the Supplier's Activities) could reasonably have anticipated if it had carefully examined the Agreement documents on or before the date of the Agreement, then the difference in cost, will be added to or deducted from the Contract Price (as applicable).

(d) If any ambiguity, discrepancy or inconsistency exists between the Scope of Work and any part of the Design Documentation (which the Supplier is entitled to use for construction purposes under clause 5) then, unless otherwise directed in writing by the Client's Representative, the Scope of Work will prevail.

19 Intellectual Property Rights

19.1 IP warranties and representations

The Supplier warrants and represents that:

(a) it owns, or is licensed by the owner to use and sub-licence all Supplier Pre-existing IPR;

(b) in carrying out the Supplier's Activities, the Supplier will not infringe the Intellectual Property Rights of any person; and

(c) the Client's use or receipt of any Design Documentation for any purpose will not infringe the Intellectual Property Rights of the Supplier or any third party.

19.2 Ownership and licensing of Developed IP

(a) Subject to any Pre-Existing IPR or Third Party IPR, ownership of all Intellectual Property Rights in the Design Documentation brought into existence as result of the Supplier performing the Supplier Activities shall vest on creation in the Supplier (Developed IP).

(b) The Supplier grants to the Client an irrevocable, perpetual, non-exclusive, royalty-free licence, world-wide licence to use any Developed IP in the Design Documentation in order to construct, use, maintain and repair the Works.

19.3 Pre-existing IPR

(a) Each party retains ownership of its Pre-existing IPR and nothing in this Agreement assigns or transfers the Pre-existing IPR of one party to another.

(b) The Supplier grants to the Client an irrevocable, perpetual, non-exclusive, royalty-free licence, world-wide licence in all existing and future Intellectual Property Rights comprised in or subsisting in the Supplier's Pre-existing IPR to allow the Client to use the Design Documentation.

(c) The Client grants to the Supplier an irrevocable, perpetual, non-exclusive, royalty-free licence, world-wide licence all existing and future Intellectual Property Rights to use the Client's Pre-existing IPR for the purpose and to the extent required to carry out the Supplier's Activities.

(d) For the avoidance of doubt, the licence granted in this clause 18.3 does not entitle the Client to independently commercialise any of the Supplier's Pre-existing IPR.

20 Client Furnished Equipment & Information, Third Party Consultants and Approvals

20.1 Client Furnished Equipment and Information

(a) The Client must provide the CFE and CFI to enable the Supplier to undertake the Supplier Activities.

(b) Any failure to provide the CFE or CFI by the time required in this Agreement or within a reasonable time shall entitle the Supplier to an Extension of Time.

(c) The Client warrants that the CFE is fit for the purpose of this Agreement and that any CFI is complete and accurate.

(d) The Client acknowledges and agrees that the Supplier is entitled to rely on any CFE and CFI in carrying out the Supplier Activities.

20.2 Third Party Consultants

(a) The Supplier will, if part of the Supplier's Activities, identify and manage Third Party Consultants on behalf of the Client.

(b) The Client must:

(i) execute all contracts with Third Party Consultants (**Third Party Consultant Contract**);

(ii) pay of all fees and other monies owed to any Third Party Consultant under a Third Party Consultant Contract.

(c) The Supplier shall be entitled to claim an Extension of Time if the Completion is not reached by the Date for Completion:

(i) due to an act or omission of the Client in connection with a Third Party Consultant; or

(ii) due to the Client failing to pay monies owed to the Third Party Consultant,

unless such delay is caused by an act or omission of the Supplier.

20.3 Approvals

(a) The Supplier will, if part of the Supplier's Activities, apply for and manage the Approvals on behalf of the Client.

(b) The Client, where requested by the Supplier, must sign any document or do anything else reasonably requested by the Supplier in relation to an Approval.

(c) The Supplier shall be entitled to claim an Extension of Time if Completion is not reached by the Date for Completion:

(i) due to an act or omission of the Client in connection with an Approval; or

(ii) due to the Client failing to pay any fees owed in connection with an Approval,

unless such delay is caused by an act or omission of the Supplier.

20.4 Payment of Third party Consultants and Approval fees by Supplier

(a) Notwithstanding the Client is obliged to pay all relevant Third Party Consultant fees or fees in connection with an Approval, the Supplier may, in its absolute discretion, agree to pay such fees on behalf of the Client.

(b) If the Supplier pays any monies owing to a Third Party Consultant or pays any fees in connection with an Approval on behalf of the Client, the Client shall reimburse the Supplier such amount plus an administration charge equal to 10% of the relevant fee.

20.5 Exclusion of liability for errors or omissions in information provided by Third Party Consultants

(a) The Supplier is not liable for any errors or omissions contained in information or documentation provided by Third Party Consultants and relied upon by the Supplier in connection with the Supplier's Activities.

(b) The Client indemnifies and releases the Supplier from all claims, costs, loss or damage arising from errors or omissions contained in information of documentation provided by Third Party Consultants.

21 Limitation of liability

21.1 Subject to the other terms of this clause 21, the Supplier's maximum aggregate liability to the Client, is limited to:

(a) the remedies in 12.2 in respect of any Defect in the Design Documentation notified by the Client pursuant to clause 14.1; and

(b) the Fee paid or payable for any other loss or damage or injury arising out of or in connection with this Agreement, including any breach by the Supplier of this Agreement however arising, under any indemnity, in tort (including negligence), under any statute, custom, law or on any other basis.

21.2 Subject to the other terms of this clause 21, each party excludes any liability to the other, whether in contract, tort (including negligence) or otherwise, for any Indirect Loss.

21.3 Nothing in this Agreement is intended to have the effect of excluding, restricting or modifying the application of all or any of the provisions of Part 5-4 of the ACL, or the exercise of a right conferred by such a provision, or any liability of the Supplier in relation to a failure to comply with a guarantee that applies under Division 1 of Part 3-2 of the ACL to a supply of goods or services.

21.4 Nothing in this Agreement limits or excludes the Supplier's liability:

(a) for death or personal injury caused by its negligence or wilful misconduct or that of its employees, as applicable;

(b) for fraud or fraudulent misrepresentation by it or its employees, as applicable; or

(c) where liability cannot be limited or excluded by applicable law.

21.5 The Supplier's obligations under this Agreement shall be reduced to the extent the Client's acts or omissions have contributed to any losses, including provision of ambiguous, erroneous, defective or incomplete CFI or CFE.

22 GST

22.1 Unless otherwise stated all monetary amounts in this Agreement are exclusive of GST.

22.2 The Client will pay to the Supplier an amount equal to any GST payable on any taxable supply made under or in connection with the Agreement.

22.3 The Supplier warrants that it is registered for GST under the GST Act and will immediately notify the Client if it ceases to be registered or ceases to satisfy any of the requirements of any determination or ruling made by the Australian Taxation Office under the GST Act.

23 Force Majeure

23.1 If either Party is for the time being rendered unable wholly or in part by Force Majeure to carry out its obligations under this Agreement, that Party will give to the other Party prompt written notice of the Force Majeure with reasonably full particulars concerning it whereupon this Agreement will nevertheless continue and remain in full force and effect but the obligations of the Party giving the notice, so far as they are affected by the Force Majeure, will be suspended provided that the Party giving such notice uses all possible diligence to remove the Force Majeure as quickly as possible.

23.2 The requirement that any Force Majeure be removed with all possible diligence does not require the settlement of strikes, lockouts or other labour difficulties by the Party involved on terms contrary to its wishes, and the manner in which all such strikes, lockouts or other labour difficulties are handled is entirely within the bona fide discretion of the Party concerned.

23.3 If a delay or failure by a Party to perform its obligations due to Force Majeure exceeds sixty (60) days, either Party may immediately terminate this Agreement on providing notice in writing to the other Party.

24 Sub-Suppliers, Assignment and Novation

24.1 The Supplier may sub-contract the performance of this Agreement or any part of this Agreement without the prior written consent of the Client.

24.2 The Client must not assign any of its rights under the Agreement without the prior written consent of the Supplier.

25 Termination and Suspension

25.1 Without prejudice to any other rights it may have, a Party may terminate all or any part of this Agreement by giving notice in writing to the other Party (the **Defaulting Party**) if:

(a) the Defaulting Party commits a material breach of this Agreement and the Defaulting Party does not rectify such breach within 7 Business Days of being given notice of the same;

(b) the Defaulting Party is unable to pay its debts as they fall due, makes or commences negotiations with a view to making a general re-scheduling of its indebtedness, a general assignment, scheme of arrangement or composition with its creditors;

(c) the Defaulting Party takes any corporate action, or any steps are taken or legal proceedings are started for:

(i) its winding up, dissolution, liquidation or re-organisation, other than to reconstruct, merge or amalgamate while solvent; or

(ii) the appointment of a controller, receiver, administrator, office manager, trustee or other similar officer, of it or of any of its revenues or assets; or

(d) the Defaulting Party seeks or is granted protection from its creditors, under any applicable legislation.

25.2 The Supplier may suspend the Supplier's Activities in the event the Client fails to pay any valid tax invoice by the due date.

25.3 Clauses 10,16, 17 and 21 of this Agreement will survive the termination or expiration of this Agreement.

26 Set off

If the Client owes any monies to the Supplier in connection with the Agreement, the Supplier may deduct such amount from any monies owed to the Client.

27 Notices

27.1 A notice or other communication required or permitted to be given by one party to another must be in writing and is taken to have been given when (unless otherwise proved):

(a) delivered personally, at the time it is delivered to the party;

(b) sent by pre-paid mail to the address of the addressee:

(i) from Australia to an address within Australia, on the second Business Day after posting;

(ii) from Australia to an address outside Australia or from outside Australia to an address within Australia, on the fifth Business Day (at the address to which it is mailed) after posting;

(c) sent by email to the email address of the addressee or such other email address notified as being the email address to use for the purposes of this clause:

(i) where the email is sent during a Business Hour on a Business Day, upon the return of a receipt which confirms successful transmission of the email to the email address of the recipient or, where no return receipt is produced by the recipient's email system, by the end of the last Business Hour on the day the email was sent; or

(ii) where the email is sent after the end of the last Business Hour on a Business Day or on a non-Business Day, the email will be deemed to be received at the beginning of the first Business Hour on the next Business Day.

27.2 A party may change its address for service by giving notice of that change in writing to the other parties.

28 Marketing

28.1 The Client acknowledges and agrees that the Supplier shall have the right to use the Deliverables, drawings, photographs, videos or other depictions of the interior and/or exterior of the Site or any components or features thereof in any promotional or advertising materials without notice to or consent from the Client being required in any manner whatsoever.

29 Miscellaneous

29.1 Further Acts

Each Party agrees to do all things that may be necessary or desirable to give full effect to every part of this Agreement if asked in writing by another Party to do so.

29.2 Waiver

No waiver by any Party of any default in the strict and literal performance of or compliance with any provision, condition or requirement of this Agreement is to be deemed to be a waiver of strict and literal performance of and compliance with any other provision, condition or requirement in this Agreement, nor

to be a waiver of or in any manner release any Party from strict and literal performance of and compliance with any provision, condition or requirement in the future, nor will any delay or omission of any party to exercise any right in any manner impair the exercise of any such right accruing to such party thereafter.

29.3 Costs

Each Party is responsible for its own costs in relation to the preparation and execution of this Agreement.

29.4 Provisions Severable

If any provision of this Agreement is invalid, illegal or unenforceable in any respect the validity, legality and enforceability of the remaining provision will not be affected and such invalid, illegal or unenforceable provision is to be severed from this Agreement.

29.5 Electronic Signatures

Where effected in accordance with Electronic Laws and any other applicable laws from time to time, each party consents to the use of electronic signatures and accepts that such signatures will have the same effect as a handwritten signature. In such cases the electronic format signature will be valid and binding.

29.6 Governing Law

This agreement is governed by and construed in accordance with the laws of the state of New South Wales and the Parties irrevocably submit to the exclusive jurisdiction of the courts in that State.

29.7 Variation

No part of this Agreement may be amended or modified unless reduced to writing making specific reference to this Agreement and signed by the Parties or their authorised representatives.

29.8 Entire Agreement

This agreement sets out the entire agreement and understanding between the Parties with respect to the subject matter of this Agreement and supersedes all prior agreements, understandings and representations, except for any confidentiality agreements entered into between the Parties.