



**SUPPLY OF GOODS AND SERVICES AGREEMENT**

**RELATING TO CABLE REPAIR, LIFE EXTENSION and CABLE COATING**

**REFERENCE SCHEDULE**

<b>CRA</b>	<b>CABLE RESTORATION AUSTRALIA PTY LTD (ACN 146 135 202)</b>	
	<b>Address:</b>	16 Da Vinci Way, Forrestdale WA 6112
	<b>Telephone:</b>	+61 (8) 9497 3500
	<b>Email:</b>	

<b>CRA's Representative</b>	<b>Name:</b>	
	<b>Telephone:</b>	
	<b>Email:</b>	

<b>Contracted Party</b>	<b>Name:</b>	
	<b>Address:</b>	
	<b>Telephone:</b>	
	<b>Email:</b>	

<b>Contracted Party's Representative</b>	<b>Name:</b>	
	<b>Telephone:</b>	
	<b>Email:</b>	

<b>Term</b>	<b>Commencement Date:</b>	
	<b>Term:</b>	

<b>Start Date</b> (clause 1.1)	
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Goods and Services (clause 1.1)	Description	Method of calculation (eg, daily rate, hourly rate x no. of hours)	Fees (\$)
	<b>Services</b>		
			\$
			\$
			\$
	<b>Goods</b>		
			\$
			\$
			\$

<b>Fees</b> (clause 1.1)	<b>Total price (excluding GST)</b>	\$.....
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<b>Payment of invoices</b> (clause 6)	Address for invoices:
	Time or frequency for payment of invoices: 30 days
	Payment milestones:
	Invoices to be paid by:

<b>Fee Payment Period</b> (clause 6.3)	
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<b>Key Personnel</b> (clauses 1.1 )	
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<b>Location of Works</b> (clause 1.1)	<input type="checkbox"/> Contracted Party's Site:
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<b>Contracted Party's Project Officer</b> (clauses 1.1 & 5.6(b))	
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<b>Contracted Party's Product and Equipment</b> (clauses 1.1 and 5.7(a))	
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<b>Assistance</b> (clauses 1.1 and 5.8)	
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<b>Required insurances</b> (clause 20)	<b>Public and product liability:</b>	
	<b>Motor Vehicle Third Party Property Damage:</b>	
	<b>Workers' compensation:</b>	

<b>Special Conditions</b> (clauses 1.1 & 31.7)	
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## Terms and Conditions for the Supply of Goods and Services

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## Terms and Conditions for the Supply of Goods and Services

### 1. DEFINITIONS AND INTERPRETATION

#### 1.1 Definitions

In this Agreement unless the context otherwise requires:

**ADC** means the Australian Disputes Centre (ABN 87 003 042 840) or any successor dispute resolution organisation having similar objects that succeeds it.

**ADI** means an authorised deposit-taking institution, having the meaning given in the *Banking Act 1959* (Cth).

**Agreement** means the Reference Schedule (including the Special Conditions), these Terms and Conditions and any annexures or attachments.

**Business Day** means a day which is not a Saturday, Sunday or public holiday in Western Australia.

**Change in Control** means a change in more than 50% of the shareholding or underlying control or the composition of the board of directors of a person.

**Contracted Party** means the entity identified as the Contracted Party in the Reference Schedule.

**Contracted Party's Equipment** means the equipment and facilities provided by the Contracted Party as specified in the Reference Schedule.

**Contracted Party's Project Officer** means the Contracted Party's project officer specified in the Reference Schedule.

**Commencement Date** means:

- (a) the date specified in the Reference Schedule as being the date from which this Agreement takes effect; or
- (b) if no such date is specified, the date on which this Agreement is executed by both parties.

**Confidential Information** in relation to a party means information of a confidential nature including but not limited to information about its business, operations, strategy, administration, technology, affairs, Contracted Parties, customers, employees, contractors or suppliers, but does not include any information which is in the public domain other than through a breach of confidence.

**Consequential Loss** means any loss of profits, loss of revenue, loss of any contract value, loss of anticipated profit or damages for lost opportunity.

**CRA** means Cable Restoration Australia Pty Ltd (ACN 146 135 202), the entity identified as CRA in the Reference Schedule.

**Credit Facility** means the credit facility CRA may offer to the Contracted Party via CRA's Credit Facility Application Form.

**Encumbrance** means security interests, mortgages, pledges, charges, bills of sale, liens, assignments, preferential rights or trust arrangements whether over real or personal property or both, and any other arrangement given or created in each case by way of security.

**Fee Payment Period** means the payment period specified in the Reference Schedule.

**Fees** mean the total price of the various amounts payable by the Contracted Party under this Agreement for the

Goods and/or Services, calculated in accordance with the Reference Schedule.

**Force Majeure Event** means an event which is beyond the reasonable control of a party and includes but is not limited to the following types of events:

- (a) an act of God;
- (b) war or other state of armed hostilities, insurrection, riot, civil commotion, act of public enemies, acts of terrorism, national emergency (whether in fact or in Law) or martial law;
- (c) weather sufficiently inclement to prevent a party from performing an obligation under this Agreement;
- (d) natural catastrophes, fire, earthquake, lightning or explosions;
- (e) pandemic, epidemic or quarantine (including any government-mandated 'lockdown' or imposition of stay-at-home orders; or restrictions on travel, social interaction or access to public spaces);
- (f) strikes, lock outs, slowdowns, stoppages and restraints of labour;
- (g) lawful restraints;
- (h) prolonged energy shortages, prolonged embargoes, or prolonged lack of availability of raw materials;
- (i) changes in Laws; and
- (j) action or inaction by, or orders, judgments, rulings, decisions or enforcement actions of, any government, governmental authority or court of competent jurisdiction whether local, State or Federal (including denial, refusal or failure to grant any permit, authorisation, licence, approval or acknowledgment despite timely endeavours to obtain same),

but does not include:

- (k) financial distress nor the inability of either party to make a profit or avoid a financial loss;
- (l) changes in market prices or conditions; or
- (m) a party's financial inability to perform its obligations under this Agreement.

**Goods** mean goods or products supplied by CRA to the Contracted Party (and where the context so permits shall include any supply of Services) as described in the Reference Schedule

**GST** means a goods and services tax, or a similar value added tax, levied or imposed under the GST Law.

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

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

- (a) a winding up, dissolution, liquidation, provisional liquidation, administration or bankruptcy;
- (b) having a Controller or analogous person appointed to it or any of its property;

- (c) being unable to pay any of its debts as and when due and payable or being deemed to be insolvent under any provision of the Corporations Act or any other Law;
- (d) seeking protection from its creditors under any Law, entering into a compromise, moratorium, assignment, composition or arrangement with, or for the benefit of, any of its members or creditors; or
- (e) any analogous event or circumstance to those described in preceding sub-clauses (a) to (d) of this definition.

**Intellectual Property** includes all trademarks, patents, copyright, designs, marks, processes, know-how, methodology, concepts, models, specifications, statements, formulae, trade secrets, manner of new manufacture, drawings, artwork and data or other like property or rights owned or held by CRA. These rights include but are not limited to:

- (a) marks, logos, images, service marks, trade names, business names, internet domain names, slogans, symbols, brand names, copyright or other trade indicia; and
- (b) all rights in information, know-how, processes, procedures, compositions, devices, methods, formulae, protocols, techniques, software, designs, drawings, programs, source code, dynamic link libraries, graphical user interfaces, trade secrets or data whether or not protectable by patent application design registration, copyright, circuit layouts or otherwise, whether unregistered, registered or registrable.

**Intellectual Property Rights** means all present and future rights in relation to copyright, trademarks, designs, patents, semiconductor and circuit layout rights, trade, business, company and domain names, confidential and other proprietary rights, and any other rights to registration of such rights whether created before or after the date of this Agreement, and whether in Australia or otherwise.

**Key Personnel** means those CRA's Personnel specified in the Reference Schedule.

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

**Loss or Claim** means, in relation to any person, a claim, action, proceeding, judgment, damage (including but not limited to any damages or compensation and any damage to reputation), loss, cost (including legal costs on a full indemnity basis), expense or liability incurred by or to or made or recovered by or against the person, however arising and whether present, unascertained, immediate, future or contingent.

**Personal Information** means information or an opinion (including information or an opinion forming part of a

database) whether true or not, and whether recorded in material form or not, about an individual whose identity is apparent, or can be reasonably ascertained, from the information or opinion.

**Personnel** means a party's principals, officers, employees, secondees, agents, consultants, contractors and subcontractors, and, in the case of CRA, includes Key Personnel.

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

**Pre-Existing Materials** means all things, goods, materials, documents, information and items developed by or on behalf of CRA or the Contracted Party independently of this Agreement.

**Premises** means CRA's business premises or other premises where CRA carries out Services.

**Privacy Act** means the *Privacy Act 1988* (Cth).

**Reference Schedule** means the schedule containing the contract particulars at the front of this Agreement.

**Security Agreement, Commingled Goods, Financing Statement, Financing Change Statement, Personal Property, All Present and After Acquired Property, Purchase Money Security Interest, Registration and Security Interest** have the meanings given to them in the PPSA.

**Services** means the provision of CRA's:

- (a) services (including, if specified, the Key Personnel) to undertake the contracted activities and works; and
- (b) any related Goods (and where the context so permits shall include any supply of Goods) supplied by CRA,

as all described in the Reference Schedule, and including any variations authorised under this Agreement.

**Site** means the Contracted Party's site for the supply of Goods and/or Services as specified in the Reference Schedule.

**Special Conditions** mean the special conditions under clause 30 and as specified in the Reference Schedule.

**Start Date** means the date CRA will commence supplying the Goods and/or Services as specified in the Reference Schedule

**Taxes** means all taxes, levies, rates, charges, imposts of any kind whatsoever, including withholding tax.

**Tax Invoice** has the meaning given in the GST Law.

**Taxable Supply** has the meaning given in the GST Law.

**Term** means the period commencing on the Commencement Date and ending on:

- (a) the expiry of the term specified in the Reference Schedule; or
- (b) if no term or expiry date is specified in the Reference Schedule, the date on which both parties complete all of the obligations under this Agreement,

as may be extended pursuant to clause 5.5.

**Terms and Conditions** means these terms and conditions for the Supply of Goods and Services.

## 1.2 Interpretation

In this Agreement the following rules of interpretation apply unless the context otherwise requires,:

- (a) headings are for convenience only and do not affect the interpretation of this Agreement;
- (b) the singular includes the plural and vice versa;
- (c) words that are gender neutral or gender specific include each gender;
- (d) where a word or phrase is given a particular meaning, other parts of speech and grammatical forms of that word or phrase have corresponding meanings;
- (e) "includes" means without limitation;
- (f) a reference to:
  - (i) a person includes a natural person, partnership, joint venture, government agency, association, corporation or other body corporate;
  - (ii) a party includes its successors and permitted assigns;
  - (iii) a document includes all amendments or supplements to that document;
  - (iv) a clause, term, party, schedule or attachment is a reference to a clause or term of, or party, schedule or attachment to, this Agreement;
  - (v) this Agreement includes all schedules and attachments to it;
  - (vi) an agreement other than this Agreement includes an undertaking, or legally enforceable arrangement or understanding, whether or not in writing; and
  - (vii) a monetary amount is in Australian dollars;
- (g) an agreement on the part of two or more persons binds them jointly and severally;
- (h) when the day on which something must be done is not a Business Day, that thing must be done on the following Business Day; and
- (i) no rule of construction applies to the disadvantage of a party because that party was responsible for the preparation of this Agreement or any part of it.

## 2. APPLICATION AND ACCEPTANCE OF THESE TERMS AND CONDITIONS

2.1 The Contracted Party agrees to purchase the Goods and/or Services from CRA Supplier on these Terms and Conditions.

2.2 Any instructions received by CRA from the Contracted Party in relation to the following:

- (a) acceptance of the Fees;
- (b) supply of Goods and/or Services; or

(c) the Contracted Party's acceptance of Goods and/or Services supplied by CRA, which includes acceptance via any electronic or online portal, will constitute acceptance of these Terms and Conditions.

2.3 Where more than one Contracted Party has entered into this Agreement, each Contracted Party shall be jointly and severally liable for all payments of the Fees.

2.4 The Contracted Party shall give CRA not less than fourteen (14) days prior written notice of any proposed change of ownership of the Contracted Party or any change in the Contracted Party's name and/or any other change in the Contracted Party's details (including but not limited to, changes in the Contracted Party's address, email address, or business practice). The Contracted Party shall be liable for any Loss or Claim incurred by CRA as a result of the Contracted Party's failure to comply with this clause 2.

## 3. TERM

This Agreement commences on the Commencement Date and continues for the Term unless terminated earlier in accordance with this Agreement.

## 4. CREDIT FACILITY

4.1 The Contracted Party may make an application for a Credit Facility from CRA by completing CRA's Credit Application Form.

4.2 The Contracted Party is not entitled to any credit facilities from CRA until it receives a written notice from CRA that the credit facilities have been granted.

Until the Contracted Party receives a notice that a Credit Facility has been granted, all Goods and/or Services supplied by CRA to the Contracted Party must be paid in accordance with clause 6.3(b), or as otherwise agreed between the parties.

4.3 Any credit provided to the Contracted Party is provided solely for the purpose of allowing the Contracted Party to purchase Goods and/or Services from CRA under this Agreement.

4.4 CRA may from time to time place a limit on the amount of credit available to the Contracted Party and may also amend that limit from time to time.

4.5 If the Contracted Party orders Goods and/or Services which would result in the Contracted Party exceeding its credit limit or if the Contracted Party has already exceeded its credit limit, CRA, in its absolute discretion may do one or more of the following:

- (a) refuse to supply further Goods and/or Services to the Contracted Party ;
- (b) require the Contracted Party to pay for all Goods and/or Services on a "cash on delivery" basis; or
- (c) require the Contracted Party to reduce the amount owed to CRA on credit by a specified amount.

## 5. SUPPLY OF GOODS AND SERVICES

### 5.1 Commencement and Performance of the Services

(a) CRA must commence work under this Agreement at the Site or its Premises (as the case may be) on or before the Start Date.

- (b) CRA must diligently carry out the work under this Agreement and must not, except as permitted by this Agreement, delay, suspend, or fail to maintain reasonable progress in the performance of that work.
- (c) If the Services are to be performed at the Site, the Contracted Party warrants that it has full authority to permit the Services to be carried out at the Site and authorises CRA and its Personnel full and unrestricted access during reasonable hours to carry out the Services and for Site inspections, documentation, delivery and service connections and agrees to assist CRA in carrying out these tasks.

### 5.2 Key Personnel and Place of Work

- (a) CRA may provide the Services using the Key Personnel.
- (b) If CRA is providing Key Personnel under this Agreement to carry out work at the Site, and unless otherwise agreed by the parties, CRA:
  - (i) must provide the Key Personnel to carry out all work related to the supply of Services; and
  - (ii) will ensure all its Key Personnel comply with any security, occupational health and safety and other policies and procedures specified by the Contracted Party from time to time.
- (c) CRA must ensure that Key Personnel:
  - (i) are competent and have all necessary and appropriate skills, training, background and valid qualifications to carry out the duties and responsibilities of their positions and the tasks allocated to them;
  - (ii) behave in a professional and responsible manner at all times and perform the Services with due care and skill and in accordance with best industry practice; and
  - (iii) understand and agree to the requirements of this Agreement which are relevant to them.
- (d) The Key Personnel are employees or contractors of CRA and are not employees or contractors of the Contracted Party.
- (e) CRA is solely responsible for all of its Personnel (including Key Personnel) and must comply with any Laws relating to the employment of its Personnel, including superannuation requirements, payment of tax instalment deductions and all Taxes including fringe benefits and payroll tax registration requirements, conditions on payment of wages, requirements to maintain records and payment of all remuneration (including salaries, wages, leave entitlements, superannuation and all other benefits).
- (f) CRA remains liable to the Contracted Party for all acts and omissions of CRA's Personnel as if they were the acts and omissions of CRA.

### 5.3 Delivery of Goods

Clause 5.3 applies if the Goods and/or Services under this Agreement requires CRA to arrange for delivery of Goods to the Contracted Party.

- (a) Unless otherwise agreed between the parties, CRA will deliver the Goods to the Contracted Party.
- (b) CRA will notify the Contracted Party as soon as possible if CRA becomes aware of any delay in the delivery of Goods.
- (c) If CRA delivers the Goods to the Contracted Party's nominated delivery address, the Contracted Party must make all arrangements necessary to take delivery of the Goods whenever they are tendered for delivery and in the event that the Contracted Party is unable to take delivery of the Goods as arranged then CRA will be entitled to charge a reasonable fee for re-delivery.
- (d) If applicable, CRA may deliver the Goods by separate instalments and each separate instalment will incur delivery costs and must be invoiced and paid in accordance with the provisions in these Terms and Conditions.
- (e) CRA's failure to deliver up the Goods will not entitle either party to treat the Agreement as repudiated.
- (f) CRA will not be liable to the Contracted Party for any Loss or Claim resulting from late delivery of the Goods for any reason (including but not limited to changes to the Contracted Party's requirements or variations to the Agreement).

### 5.4 Times for Performance

- (a) CRA will provide the Contracted Party with the Services during the Term at such times as may be reasonably required by the Contracted Party.
- (b) Unless otherwise agreed by the parties, CRA will provide the Services to the Contracted Party during normal business hours on each Business Day during the Term.

### 5.5 Extension of Time

- (a) CRA may request an extension to the Term to the extent contemplated by and subject to the provisions of the remaining provisions of this clause 5.5 if CRA is or will be delayed in achieving delivery of the Goods and/or Services by any of the following causes:
  - (i) a Force Majeure Event occurring on or before the expiry of the Term;
  - (ii) delays occasioned by the Contracted Party or the Contracted Party's Personnel (whether occurring before or after the expiry of the Term); or
  - (iii) a variation which is the subject of clause 21 of this Agreement so long as:
    - (A) the variation was one requested by the Contracted Party; or
    - (B) for a variation not requested by the Contracted Party, then only if the variation was required due to

circumstances which CRA could not reasonably have foreseen when the Agreement was made; or

- (b) CRA must take all reasonable steps to lessen the effect and duration of any delay.
- (c) If CRA wishes to claim an extension of the Term other than under clause 5.5(a), CRA must give to the Contracted Party a written request with the particulars completed or other written notice which must:
  - (i) be given within two (2) Business Days of the occurrence of the relevant cause of delay;
  - (ii) identify the cause of the delay; and
  - (iii) state the period of time that CRA wishes to claim an extension of the Date for Practical Completion;
 (collectively the “**Extension of Time Claim**”).
- (d) The Contracted Party must then, within five (5) Business Days of receiving the Extension of Time Claim, response in writing to CRA stating that:
  - (i) the Contracted Party agrees to the claimed extension; or
  - (ii) the Contracted Party wholly or partially rejects the claimed extension and giving CRA reasons for that rejection.
- (e) If the Contracted Party does not respond to CRA’s claim, the extension of time claimed by CRA will be deemed to be accepted by the Contracted Party.
- (f) CRA shall be entitled to loss, cost or expense actually incurred by CRA by reason of the wrongful rejection by the Contracted Party of a claim for an extension of the expiry of the Term.

**5.6 Manner of Performance**

CRA will ensure that its Key Personnel:

- (a) supply the Services in a careful, diligent, proper and efficient manner in accordance with the highest professional standards applying to the Services;
- (b) will work under the Contracted Party’s supervision and as directed by the Contracted Party’s Project Officer or its nominee, at the Site or the Premises (as the case may be) or other location agreed by the parties;
- (c) will act with the utmost good faith in all dealings with the Contracted Party; and
- (d) in providing the Services, cause as little disruption as possible to the business activities of the Contracted Party and its customers.

**5.7 Equipment and Materials**

- (a) CRA, except as agreed in writing between the Contracted Party and CRA, shall supply at its cost and expense all materials (if any) necessary for the completion of the supply of Goods and/or Services.
- (b) CRA and the Contracted Party’s Project Officer shall agree as to the extent which CRA shall supply its own materials, if at all, and any materials supplied

by CRA shall comply with the provisions and specifications provided this Agreement.

- (c) The equipment and materials and the uses to which they are put by CRA shall comply with all relevant Laws and all applicable Australian or International Standards.
- (d) All materials supplied by CRA shall, unless otherwise specified, be new and unused, of current manufacture and of the highest grade, free from all imperfections affecting performance and suitable for its purposes.
- (e) Risk in and to equipment and materials supplied by CRA at the Site or the Premises, and elsewhere, remains vested in CRA and CRA is liable to take all precautions to protect equipment and materials supplied by CRA against loss, theft, damage or destruction.
- (f) CRA confirms that any measuring equipment provided and/or used as part of the Services is fit for the purpose intended, as well as calibrated and maintained in accordance with the manufacturer’s recommendations and any relevant statutory standards or requirement.
- (g) The Contracted Party may provide the Contracted Party’s Equipment for use by the Key Personnel, provided that CRA ensures that each Key Personnel:
  - (i) uses the Contracted Party’s Equipment only for the purposes of providing the Services;
  - (ii) does not remove the Contracted Party’s Equipment from the Site;
  - (iii) uses the Contracted Party’s Equipment according to any manufacturer’s instructions and any instructions provided by the Contracted Party from time to time; and
  - (iv) notifies the Contracted Party immediately if the Key Personnel becomes aware that the Contracted Party’s Equipment is not working properly or is, or becomes, damaged, lost or stolen.

**5.8 Assistance**

The Contracted Party will make available to CRA the assistance, if any, specified in the Reference Schedule.

**6. FEES**

**6.1 Fees**

Subject to any changes as a result of clause 6.4, the Fees:

- (a) payable by the Contracted Party to CRA under this Agreement are specified in the Reference Schedule; and
- (b) are inclusive of all costs and expenses incurred by CRA and no further amounts are payable by the Contracted Party unless otherwise agreed in writing by the Contracted Party.

**6.2 Invoicing**

- (a) Subject to any changes as a result of clause 6.4, CRA shall invoice the Contracted Party for the Fees:
- (i) to the address for invoices specified in the "Payment of invoices" part of the Reference Schedule, or if no address for invoices is specified, to the Contracted Party's address specified in the "Contracted Party" part of the Reference Schedule; and
  - (ii) at the times or frequency and/or upon achievement of the milestones (if applicable) specified in the Reference Schedule, or if no times or frequency or relevant payment milestones are set out in the Reference Schedule, on completion of the supply of Goods and/or Services (as the case may be).
- (b) An invoice is correctly rendered if:
- (i) the amount claimed in the invoice is due for payment in accordance with the Reference Schedule;
  - (ii) CRA has complied with its obligations under this Agreement as at the date of the invoice; and
  - (iii) the invoice is a Tax Invoice in the proper form for the purposes of GST.
- (c) If any part of any invoice is found to have been rendered incorrectly after payment has been made by the Contracted Party, then to the extent that it has been incorrectly rendered, any underpayment or overpayment will be recoverable by or from CRA, as the case may be.

### 6.3 Payment

Subject to clauses 6.2(b) and 7, the Contracted Party must pay any correctly rendered undisputed invoice:

- (a) if a Credit Facility is in place, pursuant to the Credit Facility and these Terms and Conditions; or
- (b) otherwise, within the Fee Payment Period shown in the Reference Schedule, or if no payment due date is shown, then the Contracted Party agrees to pay Fees in full within thirty (30) days of the invoice date.

### 6.4 Price Fluctuations

- (a) Notwithstanding any other provision of this Agreement, CRA shall be entitled to claim an increase to the Fees ("**Fee Adjustment**") if CRA can demonstrate to the Contracted Party by written evidence (as described in clause 6.4(b)(i)) that it has necessarily and unavoidably suffered increased costs, including:
- (i) of materials; and/or
  - (ii) of labour; and/or
  - (iii) as a result of industrial agreements or site allowances; and/or
  - (iv) as a result of fluctuations in currency exchange rates,

greater than that which it allowed for in the Reference Schedule or Variation Quotation (as the case may be) as a direct consequence of changes in economic or market conditions outside the control of CRA having regard to the steps a competent supplier in the position of CRA would take in respect to mitigating additional costs.

- (b) To claim the Fee Adjustment (which can be claimed at any time during the Term), CRA shall give the Contracted Party written notice of such Fee Adjustment ("**Fee Adjustment Notice**"), stating:
- (i) reasons for CRA's entitlement to the Fee Adjustment together with evidence to demonstrate the increase between the Fees shown in the Reference Schedule and the Fee Adjustment (such evidence which may include copies of any invoice, receipt or other order document that shows such increased costs to CRA); and
  - (ii) the steps taken by CRA to mitigate the amount of additional work and additional cost including alternative quotations and other supporting documentation to demonstrate that the increased costs are competitive and unavoidable.
- (c) The Contracted Party may terminate this Agreement without penalty by written notice to CRA if the increase between the Fees and the Fee Adjustment under this clause is greater than [ ]%.
- (d) Subject to this clause, the Fee Adjustment applies from the date of the Fee Adjustment Notice .

## 7. DISPUTED INVOICES

- 7.1 If the Contracted Party disputes the amount of any invoice, the Contracted Party may, on written notice to CRA, withhold or suspend payment of any disputed part of the invoice until the dispute is resolved.
- 7.2 CRA must continue to perform its obligations under this Agreement in the event of a dispute about an invoice, while that dispute is resolved.
- 7.3 The Contracted Party must:
- (a) pay any non-disputed amounts in accordance with clause 6; and
  - (b) promptly pay any disputed amounts that are subsequently found to be correctly payable.

## 8. GST

- 8.1 The Fees are exclusive of GST.
- 8.2 If any supply under this Agreement is a Taxable Supply, then the party making the supply may, at the same time that an invoice is rendered for the agreed consideration for the Taxable Supply, recover the amount of GST payable on that Taxable Supply, subject to the issue of a valid Tax Invoice.

## 9. CRA'S WARRANTIES

### 9.1 Warranties

CRA warrants, and it is a condition of this Agreement, that:

- (a) it will supply, and will ensure that the Key Personnel supply, the Services in a good, proper and workmanlike manner and to the best practice and standard of care, skill, judgment and diligence expected of a contractor experienced in supplying the same or similar services;
- (b) it will comply, and will ensure that the Key Personnel comply, with all Laws relating to the supply of the Services, and obtain all necessary consents and approvals to supply the Services;
- (c) all Services will be performed by suitably qualified and experienced Personnel;
- (d) the supply of Goods and their use will not:
  - (i) contravene any Laws; or
  - (ii) infringe the rights of a third party (including any Intellectual Property Rights); and
- (e) it will ensure that the Contracted Party will obtain the benefit of all warranties given by all manufacturers, subcontractors, contractors and other relevant third parties in relation to the Goods.

## 9.2 Exclusions

Notwithstanding the provisions of clause 9.1, CRA has no obligation under the warranties it gives in these Terms and Conditions for defects or non-conformance to the extent that the defect or non-conformance is caused by or occurs because of:

- (a) misuse of, an accident to, improper storage of, or negligent or wrongful use of, the Goods, or the Contracted Party's property or assets which are the subject of the supply of Services ("**Applicable Assets**");
- (b) inadequate or insufficient maintenance of the Applicable Assets;
- (c) failure by the Contracted Party to conduct normal maintenance on the Applicable Assets, including regular inspections;
- (d) incorrect handling of material as applied to the Applicable Assets;
- (e) prior repairs or maintenance to the Applicable Assets where those repairs or maintenance were performed by a person other than CRA;
- (f) modifications, alterations or welded additions to the Applicable Assets;
- (g) the base metal properties or other materials used in the manufacture of the Applicable Assets; or
- (h) damage or corrosion to the Applicable Assets resulting from a deficiency in design, use, materials or workmanship, normal wear and tear, or repairs or maintenance by third parties.

## 10. CONTRACTED PARTY'S WARRANTIES

10.1 The Contracted Party warrants that it will comply with all applicable Laws in storing, operating or using the Goods, including without limitation any relevant equipment operating codes, work, health and safety Laws, or software licence requirements, and that it will comply with all

applicable equipment operating standards, good equipment operating practice and the manufacturer's manual.

- 10.2 The Contracted Party declares and warrants that the information contained in the Application for Credit is true, complete and correct.
- 10.3 The Contracted Party will indemnify CRA and hold it harmless in respect of any Loss or Claim which CRA may incur or suffer arising out of any failure or default in respect of the Contracted Party's obligations under this clause 10 including without limitation any remedial or rectification action in respect of improper or unlawful storage, operation, or installation of the Goods.
- 10.4 Where the Contracted Party is a trustee, the Contracted Party:
  - (a) warrants that it has full power and authority for the benefit purposes and objects of the trust to enter the Agreement on behalf of the trust and that it shall be bound by these Terms and Conditions both personally and as trustee; and
  - (b) confirms that the trustee shall be liable for the account and that in addition the assets of the trust shall be available to meet payment of the Fees.
- 10.5 The Contracted Party warrants that it has full authority to permit delivery to, storage, installation and operation of the Goods and the performance by CRA of the Services at the Site and authorises CRA or its Personnel full and unrestricted access to the Site during reasonable hours to deliver, store, install, operate and otherwise deal with the Goods, to perform the Services, and for Site inspections, documentation, delivery and service connections and agrees to assist CRA in carrying out these tasks.

## 11. PARTIES' OBLIGATIONS

### 11.1 CRA's Obligations

CRA will, subject to clause 11.4 below:

- (a) deliver the Goods Services to a high standard of quality, having regard to Laws and prevailing standards, and in a competent and professional manner;
- (b) ensure that all CRA Personnel who are involved in delivering the Services are competent and capable of performing their respective tasks;
- (c) take reasonable care to properly supervise or direct the CRA Personnel who are involved in delivering the Goods and/or Services, in the manner required or permitted by Law in respect of each such person;
- (d) supply Goods, that are, to CRA reasonable knowledge, of correct specifications and quality for the relevant purpose as determined by CRA in its absolute discretion; and
- (e) where it participates in the design or manufacture of any Good, exercise due care and apply appropriate skill when doing so.

### 11.2 Contracted Party's Obligations

The Contracted Party will:

- (a) ensure that the Site is in a safe condition at all times when the Goods and/or Services are being supplied, and when the CRA Personnel are present at the Site;
- (b) not deliberately, negligently or recklessly expose any CRA Personnel to any hazards or unreasonable dangers; or harass or be discourteous to any of those persons;
- (c) not interfere with the delivery of the Goods and/or Services in any manner, nor allow anyone else to do so;
- (d) provide all relevant and necessary information required by CRA to successfully supply the Goods and/or Services, and ensure that such information is complete, correct and not misleading in any respect;
- (e) provide access to the Site at all times necessary for the successful delivery of the Goods and/or Services, and facilitate the introduction and use of any Contracted Party's Equipment for that purpose;
- (f) ensure that the Site is clean and suitable for the delivery of Goods and/or performance of Services at all relevant times;
- (g) take reasonable steps to prevent loss or theft of the Goods and CRA's equipment while present at the Site;
- (h) while any CRA Personnel are present on the Site, maintain the Site as a safe working environment, in accordance with all applicable work, health and safety Laws;
- (i) where the services of third-party contractors or suppliers are required before CRA can supply the Goods and/or Services, procure those third parties' services, at the Contracted Party's own cost;
- (j) if the Contracted Party alleges that any improper damage has been sustained at the Site as a result of the acts or omissions of CRA's Personnel, report that loss or damage to CRA as soon as reasonably possible after the event, and provide all reasonable assistance that may be necessary for CRA to make an insurance claim in relation to that loss or damage;
- (k) ensure that the Site is adequately secured during any period when Goods or CRA's equipment is left unattended at the Site, including that the relevant part of the Site must be capable of being locked properly;
- (l) ensure that its Personnel understand, and comply with, all warning labels, plates or signs attached to any Goods or CRA equipment by its Personnel during the performance of the supply of Good and Services;
- (m) ensure that no person, in particular any of its Personnel, interferes with or removes any warning labels, tags, or other notifications from any Goods or CRA; and

11.3 CRA will not be responsible for:

- (a) cleaning the Site; or
- (b) managing access to or use of the Site by other persons.

11.4 The parties agree that:

- (a) CRA may suspend the whole or part of the supply of the Goods and/or Services because:
  - (i) of a personal accident, serious illness or death of any CRA Personnel or Contracted Party Personnel associated with the supply of Goods and/or Services;
  - (ii) there is, in CRA's sole opinion, circumstances which present actual or potential risk of life or serious injury at the Site;
  - (iii) in CRA's sole opinion, the condition of the Site is not adequate for the supply of Goods and/or Services;
  - (iv) of the acts or omissions of any third party that materially affect the supply of Goods and/or Services;
  - (v) a breach has occurred which requires notification under the *Work Health and Safety Act 2020* (WA); or
  - (vi) of any dispute between the parties regarding Intellectual Property, Confidential Information or the supply of Goods and/or Services; and
- (b) in such circumstances, except where the suspension is attributable to CRA's gross negligence, CRA will not be liable to pay the Contracted Party any compensation, besides refunding any relevant part of the Fees in the sole discretion of CRA, and the Contracted Party hereby releases CRA from liability for any Loss or Claim that the Contracted Party may experience as a result of such suspension.

## 12. NON-SOLICITATION AND NON-COMPETE

12.1 In consideration of this Agreement, the Contracted Party expressly agrees and undertakes to CRA that, for any breach of the non-solicitation and non-compete provisions in this clause 12, damages alone may not be an adequate remedy. Therefore, the Contracted Party, in addition to any claims for Loss or damages on a full indemnity basis for any breach of this clause 12, consents to and indemnifies CRA in obtaining any injunctions, specific performance and any other remedies available at Law and in equity.

12.2 During the Term and after this Agreement ceases for any reason, the Contracted Party agrees that:

- (a) within the areas of:
  - (i) Australia, but if a Court deems that unenforceable then;
  - (ii) Western Australia, but if a Court deems that unenforceable then;
  - (iii) 500 km radius from the Contracted Party's business premises (and any other then-

- premises of the Contracted Party), but if a Court deems that unenforceable then;
- (iv) 100 km radius from the parties' business premises (and any other then-premises of the parties), but if a Court deems that unenforceable then;
  - (v) the Perth metropolitan area,
- (b) for the periods from the Commencement Date of this Agreement until:
- (i) 2 years after the expiry of the Term, but if a Court deems that unenforceable then;
  - (ii) 12 months after the expiry of the Term, but if a Court deems that unenforceable then;
  - (iii) 6 months after the expiry of the Term,
- (c) the Contracted Party will not:
- (i) solicit, canvass, induce or encourage any Personnel of CRA to leave the employment of CRA;
  - (ii) solicit, canvass, approach any person or entity who is/was a Contracted Party, customer or patron of CRA, with a view to establishing a relationship with or obtaining the custom of that person or entity in a business which carries on a business similar to CRA's business; or
  - (iii) interfere or seek to interfere, directly or indirectly, with the relationship between CRA's business and its Personnel or Contracted Parties in the conduct of its business,
- without CRA's prior written consent (which may be held in its absolute discretion).

12.3 Clause 12.2 is construed and has effect as if it were a number of separate sub-clauses which results from combining each such sub-clause with each other sub-clause and each combination being severable from the others. If any such separate sub-clause is invalid or unenforceable for any reason, such invalidity or unenforceability does not in any way affect the validity or enforceability of other such related sub-clauses.

**13. TITLE TO GOODS AND THE PPSA**

- 13.1 Title to and ownership of Goods remains with CRA until all the amounts owing by the Contracted Party to CRA (including without limitation the Fees and other debts owing to CRA) have been paid in full.
- 13.2 If payment of Fees is not received as and when due, CRA reserves the right to enter the place where the Goods are stored without further notice and remove and repossess the Goods (even if they have been installed). CRA is entitled to recover, in addition to any other damages, the costs of so doing from the Contracted Party.
- 13.3 Until all the amounts owing by the Contracted Party have been paid in full, the Contracted Party may sell the Goods in the ordinary course of its business but only as trustee and agent of CRA. The Contracted Party must store the Goods in such a manner that they are readily distinguishable from

other goods held by the Contracted Party so they clearly show that they are the property of CRA. The Contracted Party must not represent to any third party that it is acting for CRA, and CRA will not be bound by any contracts with third parties to which the Contracted Party is a party.

- 13.4 The Contracted Party must hold the sale proceeds it receives from any sale of the Goods as trustee and agent for CRA. All such sale proceeds must be placed in an ADI account separate from its own monies and the Contracted Party must not allow any person to have control of, or grant a Security Interest over, the proceeds or the accounts in which they are held. The Contracted Party must make immediate payment to CRA from the accounts in which the sale proceeds are held of all amounts which may be owing by the Contracted Party to CRA.
- 13.5 The Contracted Party acknowledges that the Agreement and these Terms and Conditions constitute a Security Agreement, and the Contracted Party grants a Security Interest in favour of CRA in all the Goods supplied by CRA to the Contracted Party from time to time. The Contracted Party grants to CRA a Purchase Money Security Interest. Further, the Contracted Party grants to CRA a Security Interest in the Contracted Party's All Present and After Acquired Property to secure the as security for the Goods and performance of its obligations under this Agreement.
- 13.6 The Contracted Party accepts, acknowledges and agrees that:
- (a) CRA can, without notice to the Contracted Party, affect and maintain a Registration (in any manner that CRA considers appropriate) of its Security Interest on the PPSR in relation to any Security Interest contemplated or constituted by the Agreement including but not limited to CRA's Goods, Services, contract rights or Intellectual Property; and
  - (b) Pursuant to section 275(6) of the PPSA, the Contracted Party agrees CRA is not required to disclose to an interested person information pertaining to CRA's Security Interest unless required to do so pursuant to the PPSA or at Law generally.
- 13.7 The Contracted Party will:
- (a) sign any documents and/or provide any further information (which information the Contracted Party warrants to be complete, accurate and up-to-date in all respects) and/or assistance which CRA may reasonably require to enable perfection of its Security Interest or Registration of a Financing Statement or Financing Change Statement on the PPSR;
  - (b) not register a Financing Change Statement or make a demand to alter the Financing Statement pursuant to section 178 of the PPSA in respect of the Goods, including any Services, without the prior written consent of CRA;
  - (c) give CRA not less than fourteen (14) days' written notice of any proposed change in their name and/or any other changes in their details (including but not

- limited to, changes in their address, facsimile number, email address, trading name or business activities);
- (d) indemnify CRA against any costs CRA incurs in perfecting and maintaining its perfected Security Interest in the Goods or such other Personal Property under the PPSA and any costs CRA may incur in the course of enforcing any of its rights under this Agreement, the PPSA or at Law generally; and
- (e) procure from any persons considered by CRA to be relevant to its security position, such agreement and waivers as CRA may at any time reasonably require.
- 13.8 The Contracted Party undertakes not to register, or permit to be registered, a Financing Statement or a Financing Change Statement in respect of a Security Interest contemplated or constituted by this Agreement in favour of a third party without CRA's prior written consent.
- 13.9 If Chapter 4 of the PPSA would otherwise apply to the enforcement of a Security Interest arising in connection with this Agreement to which these Terms and Conditions apply, the Contracted Party agrees that the following provisions of the PPSA will not apply to the enforcement of the Agreement:
- (a) Section 95 (notice of removal of accession), to the extent that it requires CRA to give a notice to the Contracted Party;
- (b) Section 96 (when a person with an interest in the whole may retain an accession);
- (c) Subsection 121(4) (enforcement of liquid assets – notice to grantor);
- (d) Section 125 (obligation to dispose of or retain collateral);
- (e) Section 129 (disposal by purchase);
- (f) Section 130 (notice of disposal of collateral), to the extent that it requires CRA to give a notice to the Contracted Party;
- (g) Section 132(3)(d) (contents of statement of account after disposal);
- (h) Section 132(4) (statement of account if no disposal);
- (i) Section 135 (notice of retention of collateral);
- (j) Section 142 (redemption of collateral); and
- (k) Section 143 (reinstatement of security agreement).
- 13.10 Notices or documents required or permitted to be given to CRA for the purposes of the PPSA must be given in accordance with the PPSA.
- 14. INTELLECTUAL PROPERTY**
- 14.1 The Contracted Party expressly agrees and acknowledges that:
- (a) any Intellectual Property in CRA's Goods and/or Services (whether unregistered, registered or registrable) is CRA's property and not the Contracted Party's property; and
- (b) nothing in the Agreement is intended to provide the Contracted Party with any interest in the Intellectual Property in CRA's Goods and/or Services.
- 14.2 The Contracted Party agrees that it must not copy, alter, modify or in any other way interfere with (including but not limited to reverse engineering) the Goods, the Services, or the Intellectual Property in the Goods or Services. The Contracted Party must not do anything that may infringe on the CRA's Intellectual Property Rights.
- 15. CONFIDENTIALITY**
- 15.1 Each party ("**Recipient**") must keep confidential, and not disclose, any Confidential Information of the other party ("**Discloser**") except:
- (a) as permitted under this Agreement;
- (b) with the prior written consent of the Discloser;
- (c) to the Recipient's officers, agents, professional advisers, auditors, employees, contractors, sub-contractors and insurers; or
- (d) where the Recipient is compelled to do so by Law, provided that it gives the other party written notice prior to disclosure.
- 15.2 The Recipient must only use the Confidential Information of the Discloser for the purpose for which it was disclosed in connection with this Agreement.
- 15.3 The Recipient must:
- (a) maintain effective security measures to protect all Confidential Information in the possession or control of the Recipient from unauthorised access, use, copying or disclosure;
- (b) notify the Discloser immediately in writing if the Recipient becomes aware of any anticipated, suspected or actual breach of this Agreement by the Recipient and take all reasonable steps required to prevent or stop that breach, at the Recipient's expense; and
- (c) reasonably assist the Discloser in connection with any action or investigation by the Discloser regarding any anticipated, suspected or actual unauthorised disclosure or misuse of the Confidential Information by the Recipient.
- 15.4 The following are exceptions to clauses 15.1 and 15.2:
- (a) that at the time of disclosure, the information is in the public domain;
- (b) information that is required by Law to be communicated to a person who is authorised by law to receive it;
- (c) disclosure to a court, arbitrator, expert, board of enquiry or administrative tribunal in the course of proceedings or determinations by before him or it;
- (d) disclosure to any person who is required or authorised by this Agreement to perform any function under this Agreement;
- (e) information that is necessary to be disclosed to any bank or other financial institution in connection

- with the organisation of that party's financial affairs;
- (f) information that is necessary to be disclosed to any legal counsel, accountant or other professional adviser in connection with the party's affairs provided that the disclosee is bound by an obligation of confidentiality in regard to the information disclosed; or
- (g) information that is necessary to be disclosed to the party's officers, employees, agents, contractors, consultants, auditors and other persons for the purpose of all or any of the matters pertaining to this Agreement.
- 15.5 All records, documents (electronic or otherwise) and other papers (and any copies or extracts and including, but not limited to Confidential Information) made or acquired by the Contracted Party in relation to CRA is and remains the sole property of CRA. These items must be delivered-up to CRA when the Agreement is terminated.
- 16. SECURITY FOR PAYMENT**
- As security for the Contracted Party's obligations and liabilities under this Agreement:
- (a) the Contracted Party charges for the due and punctual payment and performance of those obligations and liabilities, all of its legal and equitable interest (both present and future) of whatsoever nature held in any and all real and personal property;
- (b) without limiting the generality of the charge in this clause, the Contracted Party agrees, on CRA's request, to execute any documents and do all things necessary required by CRA to register a mortgage, absolute caveat, Security Interest or other instrument of charge over any real property or personal property, or both, and against the event the Contracted Party fails to do so within a reasonable time of being so requested, the Contracted Party irrevocably and by way of security, appoints any credit manager or solicitor engaged by CRA to be the Contracted Party's true and lawful attorney to execute and register such instruments; and
- (c) the Contracted Party will indemnify CRA on a full indemnity basis against all costs and expenses incurred by CRA in connection with the preparation and registration of any such security interest, charge, caveat or mortgage document.
- 17. PRIVACY AND PERSONAL INFORMATION**
- 17.1 The Contracted Party must:
- (a) in relation to the discharge of its obligations under this Agreement, comply with the relevant provisions of the Privacy Act;
- (b) ensure that Personal Information is protected against loss and against unauthorised access, use, modification, disclosure or other misuse;
- (c) not use Personal Information other than for the purpose of performing its obligations under this Agreement, unless required or authorised by Law;
- (d) not disclose Personal Information without the prior written consent of CRA, unless required or authorised by Law;
- (e) not transfer any Personal Information outside of Australia without the prior written consent of CRA;
- (f) ensure that access to Personal Information is restricted to those of its Personnel who require access in order to perform their duties under this Agreement;
- (g) ensure that its Personnel are aware of the Contracted Party's obligations under this clause 16 and comply with the same obligations imposed on the Contracted Party under this clause;
- (h) fully cooperate with CRA to enable CRA to respond to applications for access to, or amendment of, a document containing a person's Personal Information and to privacy complaints;
- (i) immediately notify CRA if the Contracted Party becomes aware that a disclosure of Personal Information is or may be required or authorised by Law; and
- (j) comply with such other privacy and security measures as CRA reasonably advises the Contracted Party in writing from time to time.
- 17.2 The Contracted Party agrees for CRA to obtain from a credit reporting agency a credit report containing credit information and Personal Information about the Contracted Party in relation to the Credit Facility.
- 17.3 The Contracted Party agrees that CRA may exchange information about the Contracted Party with those credit providers either named as trade referees by the Contracted Party or named in a consumer credit report issued by a credit reporting agency for the following purposes:
- (a) to assess any application for a Credit Facility by the Contracted Party; and/or
- (b) to notify other credit providers of a default by the Contracted Party; and/or
- (c) to exchange information with other credit providers as to the status of the Credit Facility, where the Contracted Party is in default with other credit providers; and/or
- (d) to assess the credit worthiness of the Contracted Party.
- 17.4 The Contracted Party consents to CRA being given a consumer credit report to collect overdue payment on commercial credit (Section 18K(1)(h) of the Privacy Act).
- 17.5 The Contracted Party agrees that credit information and Personal Information provided may be used and retained by CRA for the following purposes and for other purposes as shall be agreed between the Contracted Party and CRA or required by law from time to time:
- (a) provision of Goods and/or Services; and/or

- (b) marketing of Goods and/or Services by CRA, its agents or distributors in relation to the Goods and/or Services; and/or
  - (c) analysing, verifying and/or checking the Contracted Party's credit, payment and/or status in relation to provision of Goods and/or Services; and/or
  - (d) processing of any payment instructions, direct debit facilities and/or credit facilities requested by Contracted Party; and/or
  - (e) enabling the daily operation of Contracted Party's account and/or the collection of amounts outstanding in the Contracted Party's account in relation to the Goods and/or Services.
- 17.6 CRA may give information about the Contracted Party to a credit reporting agency for the following purposes:
- (a) to obtain a consumer credit report about the Contracted Party; and/or
  - (b) allow the credit reporting agency to create or maintain a credit information file containing information about the Contracted Party.
- 17.7 The Contracted Party must immediately notify CRA upon becoming aware of a breach of this clause 17.
- 17.8 Nothing in this clause 17 is intended to limit any obligation of the Contracted Party under the Privacy Act, that the Contracted Party may have as an organisation with respect to Personal Information.

**18. INDEMNITY**

The Contracted Party continually indemnifies CRA and its Personnel from and against any Claim or proceeding that is made, threatened or commenced, and against any Loss or Claim, liability, expense or damage ((including commissions payable to commercial agents, mercantile agents or debt collectors to pursue or recover outstanding monies pursuant to this Agreement and the liability to pay this commission arises at the time the recovery is placed in the hands of such agents or debt collectors; and legal costs on a full indemnity basis including legal proceedings for enforcement) any of CRA or its Personnel incurs or suffers, as a direct or indirect result of any of the following:

- (a) any breach of this Agreement by the Contracted Party;
- (b) the death or personal injury of any person to the extent caused or contributed to by any act or omission of the Contracted Party or its Personnel;
- (c) loss of, or damage to, any property to the extent caused or contributed to by any act or omission of the Contracted Party or its Personnel;
- (d) any breach of Law by the Contracted Party or its Personnel;
- (e) any infringement, or alleged infringement, of a third party's rights (including Intellectual Property Rights); and
- (f) any act or omission of fraud, dishonesty, reckless or wilful misconduct or misrepresentation by the Contracted Party or its Personnel.

**19. LIABILITY**

- 19.1 To the maximum extent permitted by Law and save for the limitation in clause 19.2, CRA maximum aggregate liability to the Contracted Party (whether under contract, tort, statute or in equity) arising out of or in connection with this Agreement is limited to the total amount of the Fees paid under this Agreement.
- 19.2 Notwithstanding clause 19.1, to the maximum extent permitted by Law, CRA maximum aggregate liability to the Contracted Party (whether under contract, tort, statute or in equity) for any loss, theft, damage or destruction to the Contracted Party's property that is stored or held at CRA's Premises is limited to One hundred Thousand Dollars (\$100,000).
- 19.3 This clause 19 will apply regardless of the form of Loss or Claim whether in contract, statute or tort (including without limitation to negligence) or otherwise.
- 19.4 Neither party will be liable to the other party for any Consequential Loss suffered or incurred by the other party arising out of or in connection with this Agreement, whether arising under contract, in tort (including negligence) or otherwise.
- 19.5 The Contracted Party acknowledges that the collection, storage and provision of data on local and remote servers presents inherent security risks and risk of loss. It agrees that it will not hold CRA liable for any loss, theft or corruption of any data collected, stored or provided by CRA or any damage that the Goods and/or Services may cause to any of the Contracted Party's existing infrastructure that does not directly result from CRA's gross negligence.

**20. INSURANCE**

- 20.1 Each party must effect and maintain the insurances specified in the Reference Schedule in the form or forms appropriate to the other party's activities and with insurers approved by the Australian Prudential Regulation Authority.
- 20.2 Each party must provide, on the party's request, certificates of currency and such other evidence satisfactory to the other party of insurance coverage specified in this clause 20.
- 20.3 Each party must, if so required:
- (a) effect the workers' compensation and public liability insurance before the Start Date and maintain them until this Agreement is terminated or expired; and
  - (b) effect the professional indemnity insurance before the Start Date and maintain it for not less than 3 years after this Agreement is terminated or expired

**21. VARIATIONS**

- 21.1 The Contracted Party may by written notice to CRA request CRA to vary the scope of the Services to be supplied under this Agreement ("**Variation Notice**").
- 21.2 Without limiting the generality of clause 21.1, the Contracted Party may vary the Services, to:
- (a) omit any part of the Services;

- (b) increase or decrease the frequency and/or duration of performance of all or any part of the Services; or
- (c) perform additional work.
- 21.3 Within five (5) Business Days of receiving a Variation Notice, CRA will provide to the Contracted Party a written quotation ("**Variation Quotation**") which details:
- (a) the variation requested by the Variation Notice;
- (b) the variation (if any) to the Fees; and
- (c) all relevant specifications, time frames and operational requirements relating to the varied Services additional to but not inconsistent with those in the Variation Notice.
- 21.4 The Contracted Party may by written notice to CRA:
- (a) accept the Variation Quotation within five (5) Business Days of receiving it; or
- (b) reject the Variation Quotation within five (5) Business Days of receiving it if that Variation Quotation has not already been accepted.
- 21.5 If the Contracted Party does not reject the Variation Quotation within five (5) Business Days of receiving it pursuant to clause 21.4(b), the Contracted Party will be deemed to have accepted the Variation Quotation.
- 21.6 The Contracted Party is not required to pay any additional fees unless and until:
- (a) the Contracted Party accepts the Variation Quotation under clause 21.4(a);
- (b) the Contracted Party is deemed to have accepted the Variation Quotation under clause 21.5; or
- (c) the parties otherwise agree in writing to the varied terms and fees.
- 22. DISPUTE RESOLUTION**
- 22.1 If any dispute arises out of or in connection with this Agreement or the interpretation of its terms (a "**Dispute**"), a party may not commence any court proceedings relating to the Dispute unless this clause 22 has first been complied with, except where that party seeks urgent interlocutory relief.
- 22.2 The parties must attempt to resolve any Dispute as follows:
- (a) Either party may notify the other party in writing of the occurrence of a Dispute and the parties must meet within seven (7) days or such other time as agreed to discuss and attempt to resolve the Dispute.
- (b) On receipt of the notice specified in clause 22.2(a), the parties must use their reasonable efforts to expeditiously resolve the Dispute.
- (c) If the parties cannot resolve the Dispute within fourteen (14) days after the first meeting between the parties specified in clause 22.2(a), or any further period as the parties may agree to in writing, the Dispute must (at the instigation of any party) go to mediation.
- (d) The mediation is to be conducted in accordance with the ADC's Mediation Guidelines with a mediator as agreed by the parties or, failing agreement, as appointed by the ADC or its nominee.
- (e) The mediation will be confidential, and the parties must equally bear the mediator's costs to the Dispute, and each party must also bear their own legal costs.
- (f) If the Dispute is not resolved at mediation within fourteen (14) days of the first mediation meeting then any party is at liberty to claim their costs against the other parties, including the costs referred to in clause 22.2(e), and either party may commence legal proceedings.
- 22.3 The parties must continue to perform their obligations under this Agreement, including the payment of any Fees, while any Dispute is being resolved in accordance with this clause 22.
- 23. DEFAULT AND CONSEQUENCES**
- 23.1 Neither party shall take any action (including legal action) against the other party for a default of the Agreement without first giving the defaulting party written notice specifying the default and providing the defaulting party with seven (7) days to rectify such.
- 23.2 If the Contracted Party defaults in payment (including by way of dishonoured cheque) of any invoice when due, the Contracted Party will indemnify CRA from and against all costs and disbursements incurred by CRA in pursuing the debt including legal costs (on a solicitor and own Contracted Party basis) and CRA's debt recovery costs.
- 23.3 Without prejudice to any other remedies CRA may have, if at any time the Contracted Party is in breach of any obligation (including those relating to payment), CRA may suspend or terminate the supply of Goods and/or Services to the Contracted Party and any of its other obligations under these Terms and Conditions. CRA will not be liable to the Contracted Party for any Loss or Claim the Contracted Party suffers because CRA has exercised its rights under this clause.
- 23.4 Without prejudice to CRA's other remedies at Law, CRA is entitled to cancel all or any part of any order of the Contracted Party which remains unfulfilled and all amounts owing to CRA shall, whether or not due for payment, become immediately payable in the event that:
- (a) any money payable to CRA becomes overdue, or in CRA's opinion the Contracted Party will be unable to meet its payments as they fall due; or
- (b) the Contracted Party is the subject of an Insolvency Event.
- 24. TERMINATION**
- 24.1 Either party may terminate this Agreement by giving the other party not less than three (3) months' written notice.
- 24.2 **Default by the Contracted Party**
- CRA may terminate this Agreement immediately by written notice to the Contracted Party if the Contracted Party:
- (a) does anything that materially damages or is likely to materially damage CRA's brand or reputation;

- (b) breaches this Agreement and does not remedy the breach within fourteen (14) days of receipt of written notice from CRA specifying the breach and requiring it to be remedied;
- (c) commits a breach of this Agreement which is incapable of remedy;
- (d) or its Personnel commit any act of fraud or dishonesty in relation to this Agreement; or
- (e) is the subject of an Insolvency Event.

**24.3 Default by CRA**

The Contracted Party may terminate this Agreement immediately by written notice to CRA if CRA:

- (a) ceases to hold any applicable licence relating to the class of Goods and Services it provides to the Contracted Party, or has conditions or restrictions imposed on such licence or licences which are unacceptable to the Contracted Party, acting reasonably;
- (b) does anything that materially damages or is likely to materially damage the Contracted Party's brand or reputation;
- (c) breaches this Agreement and does not remedy the breach within fourteen (14) days of receipt of written notice from the Contracted Party specifying the breach and requiring it to be remedied;
- (d) commits a breach of this Agreement which is incapable of remedy;
- (e) or its Personnel commit any act of fraud or dishonesty in relation to this Agreement; or
- (f) is the subject of an Insolvency Event.

**24.4 Credit Facility**

- (a) CRA may terminate the Credit Facility at its discretion for any reason upon twenty-four (24) hours' notice.
- (b) Upon the Credit Facility terminating:
  - (i) all amounts owing under the Credit Facility now or in the future become immediately due and payable and recoverable as a debt payable by the Contracted Party to CRA; and
  - (ii) CRA may retake possession of all Goods that have been delivered which are in the Contracted Party's possession.

24.5 This clause 23 does not limit CRA's rights to receive its Fee for all Goods and Services provided by CRA to the Contracted Party up to the date of termination for any reason.

**25. CONSEQUENCES OF TERMINATION**

- 25.1 As soon as practicable after expiry or termination of this Agreement, each party (the "First Party") must:
- (a) return to the other party all the other party's equipment, records, documents and materials provided by the First Party for the purposes of this Agreement, including any security passes and keys; and

- (b) return to the other party all copies of all Confidential Information and Personal Information of the other party in its possession or control.

25.2 Clauses 12, 13, 14.1, 18, 18, 20.3(b), 22, 25 and 28 continue after termination or expiry of this Agreement.

**26. REPORTING AND CONTRACT MANAGEMENT**

26.1 Each party appoints the contract representative specified in the Reference Schedule to manage the relationship between the parties under this Agreement.

26.2 The parties will ensure that the contract representatives meet at the times and places as required by mutual agreement between the parties to discuss performance of, and any issues arising under, this Agreement.

**27. SUBCONTRACTING**

27.1 CRA may subcontract any of its rights or obligations under this Agreement providing such subcontractor has the requisite skills, knowledge, Personnel, authorisations and licences to supply the Goods and/or Services.

27.2 CRA must ensure that its subcontractors comply with all Laws and all standards, and have all requisite skills, knowledge, Personnel, authorisations and licences applicable to the performance of CRA's obligations under this Agreement.

27.3 To the extent that CRA subcontracts any of its obligations under this Agreement to a third party, CRA will remain liable to the Contracted Party for each act and omission of that third party (including its Personnel) in connection with the performance of such obligations as if it were an act or omission of CRA.

**28. NOTICES**

28.1 Notices under this Agreement may be delivered by hand, by mail or by email to the parties' addresses specified in the Reference Schedule.

28.2 Notices will be deemed to be served:

- (a) upon delivery – if delivered by hand;
- (b) on the fourth (4th) Business Day after the date on which it was posted – if sent by ordinary pre-paid or registered post addressed to a party;
- (c) on the day it was sent – if sent by email transmission before or during normal business hours on a Business Day; or
- (d) on the next Business Day following the day on which it was sent – if it is sent by email transmission after 4.00 pm on a Business Day or on a day other than a Business Day.

28.3 Each party must promptly notify the other party of any change to their addresses (including email addresses) or any other such information supplied by them.

**29. FORCE MAJEURE**

If CRA is delayed, hindered, or otherwise prevented from complying with its obligations under this Agreement by reason of events or circumstances beyond the reasonable control of CRA including by reason of a Force Majeure Event, or any other circumstances affecting the supply of Goods and/or Services, CRA is not liable to the Contracted

Party for any loss or damage which is or may be suffered by the Contracted Party whether as a direct or indirect result of any such events or circumstances

**30. SPECIAL CONDITIONS**

30.1 The parties agree that they will be bound by any Special Conditions set out in the Reference Schedule.

30.2 In the event of any conflict in the interpretation of the Special Conditions and any part of this Agreement, the order of precedence in clause 31.7 applies.

**31. GENERAL**

**31.1 Governing Law**

This Agreement is governed by the laws of Western Australia and each party submits to the exclusive jurisdiction of the courts of Western Australia.

**31.2 Assignment**

Neither party may assign any of its rights or obligations under this Agreement without the other party's prior written consent.

**31.3 Relationship**

Nothing in this Agreement gives rise to any relationship of agency, partnership, employment or otherwise between the parties.

**31.4 Set Off**

- (a) The Contracted Party shall not be entitled to set off against or deduct from the Fees any sums owed or claimed to be owed to the Contracted Party by CRA.
- (b) CRA may by notice in writing set off against or deduct from any amounts owing to the Contracted Party under this Agreement by any fee, credit, rebate or other amount which is payable to CRA under or in connection with this Agreement.

**31.5 Entire Agreement**

This Agreement constitutes the entire agreement between the parties in connection with their respective subject matter and supersedes all previous agreements or understandings between the parties in connection with the relevant subject matter.

**31.6 Further Assurance**

Each party must promptly do whatever any other party reasonably requires of it to give effect to this Agreement and to perform its obligations under this Agreement.

**31.7 Inconsistency**

In the event of any inconsistency between:

- (a) the Special Conditions specified in the Reference Schedule (if any);
- (b) the Reference Schedule;
- (c) these Terms and Conditions; and

- (d) any schedules, annexures or other attachments to this Agreement (if any),

the document listed first in this clause 31.7 will prevail to the extent of the inconsistency.

**31.8 Severability**

If any provision of this Agreement at any time is or becomes void or voidable or unenforceable, the remaining provisions, if any, will continue in full force and effect and any void, voidable or unenforceable provision will be replaced by a lawful and enforceable provision which, so far as possible achieves the same economic and other benefits for the Contracted Party and CRA, as the void, unlawful or unenforceable provision, was intended to achieve.

**31.9 Conflict**

Where any conflict occurs between the provisions contained in these Terms and Conditions, such provisions will be read down to resolve such conflict. If the conflict remains incapable of resolution by reading down, the conflicting provisions will be severed from these Terms and Conditions without otherwise diminishing the enforceability of the remaining provisions of these Terms and Conditions.

**31.10 Limitation and Breach**

In the event of any breach of the Agreement or any of these Terms and Conditions by CRA the remedies of the Contracted Party shall be limited to damages which under no circumstances shall exceed the Fees.

**31.11 Waiver**

No waiver of a right or remedy under this Agreement is effective unless it is in writing and signed by the party granting it.

**31.12 Variation**

No variation of this Agreement is effective unless made in writing and signed by each party.

**31.13 No Representations or Warranties**

The Contracted Party acknowledges CRA does not make under this Agreement, or these Terms and Conditions, or outside of them, any representations or warranties regarding goods and services or any matter (including but not limited to descriptions, illustrations and performance contained in any CRA's catalogues, price lists or any other advertising or marketing materials) which is or might be relevant to the Contracted Party buying or selling goods and services other than the representations or warranties expressed here.

**31.14 Counterparts**

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



**EXECUTION PAGE**

**FIRE SECURITY**

**Signed for and on behalf of the Contracted Party by its duly Authorised Representative:**

.....

Authorised Representative

.....

Name of Authorised Representative (PLEASE PRINT)

11/05/2023

.....

Date

**CABLE RESTORATION AUSTRALIA PTY LTD**

**Signed for and on behalf of Cable Restoration Australia Pty Ltd by its duly Authorised Representative:**

.....

Authorised Representative

Patrick Hanna

.....

Name of Authorised Representative (PLEASE PRINT)

11/05/2023

.....

Date