

Terms of Business
Nuclear Science &
Technology and Landmark
Infrastructure

AG-5083



1. DEFINITIONS AND INTERPRETATION

1.1 Definitions

In this Agreement:

Access means any physical or remote access to any of ANSTO Facilities by the Client under the terms of this Agreement.

Agreement means these Terms of Business, incorporating any Order, quotation, Particulars, specifications or Special Conditions.

ANSTO means the Australian Nuclear Science and Technology Organisation (ABN 47 956 969 590).

ANSTO Facilities means any beamlines, equipment, infrastructure, location, facility or site which is owned or controlled by ANSTO.

Client means the legal person, including an individual, company or other organisation, to whom ANSTO will be providing the Services or the Access, as set out in the Particulars.

Commencement Date means the date that ANSTO accepts the Order under clause 3.1(a) or the date specified in the Particulars.

Confidential Information, of a Discloser, means information (including know how, data, technical, market, product, operational, financial and other industrial or commercial knowledge) of the Discloser in any form or media (whether verbal, tangible or intangible and whether coming into existence before or after the Commencement Date of the Agreement), which is either designated as confidential or is by its nature confidential; and is disclosed to the Recipient by the Discloser, or obtained by the Recipient from the Discloser, for the purpose of this Agreement, other than Excluded Information.

Consumer Law means the *Competition and Consumer Act 2010 (Cth)*.

Deliverables includes any data, test results, training package, goods, report or analysis to be supplied to the Client under the Services and as specified in the Particulars.

Discloser means a Party under the Agreement that has disclosed its Confidential Information to, or had its Confidential Information accessed by, the other Party.

Excluded Information means any information of the Discloser to the extent it, is in the public domain other than as a result of a breach by the Recipient of an obligation of confidence; was rightfully received by the Recipient from a third party without an obligation of confidentiality or duty of confidence being owed (directly or indirectly) by the third party towards the Discloser; or was independently developed by the Recipient without having knowledge of, access to or obligation of confidentiality with respect to, the Confidential Information.

Fees means the fees and charges for the Services as set out in the Particulars, including GST if applicable, but excluding any Reimbursables.

Force Majeure means any event or circumstance or combination of events or circumstances:

- (a) comprising earthquake, act of God, pandemic or infectious disease outbreak, natural disaster, fire, flood, storm and tempest, explosion and lightning, riots, civil commotion, radiological incident, malicious damage, sabotage act of public enemy, war, revolution, radioactive, biological or chemical contamination, currency restrictions, embargo or a failure of a public utility computer or IT disruption due to the effects of a computer virus or other malicious code introduced other than through the acts or omissions of the party seeking relief, lock-out, act of restraint of government,

- or any other any event or circumstance to the extent it is beyond the reasonable control of the Party seeking relief;
- (b) which prevent a Party from performing an obligation under the Agreement.

A Force Majeure may include any event or circumstance occurring at the commencement of the Agreement. A Force Majeure does not include financial difficulty unless it arises directly from a Force Majeure event or circumstance described in paragraph (a).

GST and GST Law have the same meaning as in the *A New Tax System (Goods and Services Tax) Act 1999 (Cth)*.

Invoice means an invoice to be issued by ANSTO for the Services; which will be a Tax Invoice within the meaning of the GST Law if applicable.

Intellectual Property Rights include all copyright (including rights in relation to phonograms and broadcasts), all rights in relation to inventions (including patent rights), plant varieties, registered designs, and circuit layouts, and all other rights resulting from intellectual activity in the industrial, scientific, literary or artistic fields. Intellectual Property Rights excludes any trademarks or services marks.

Loss means any loss, damage, liability, compensation, or expense (including any legal cost and expense), however it arises.

Materials mean any materials which are provided to ANSTO by the Client in connection with the Services.

Order means an order placed by the Client or a proposal issued by ANSTO to the Client which has been accepted by ANSTO under clause 3.1.

Particulars means documentation, specifications, completed forms and correspondence setting out the details pertaining to the Deliverables, and or Services to be provided by ANSTO to the Client and any other matters set out in these Terms to be specified in the "Particulars". The Particulars may include the Order.

Party means ANSTO or the Client and **Parties** means both of them.

Personnel means a Party's officers, employees, agents, subcontractors and consultants.

Product means the tangible product or result (if any) delivered by ANSTO as part of the Services and or the Deliverables, and, unless otherwise agreed between the Parties, includes a product, the Materials, substance, good or item which is the property of the Client and which undergoes a change in its physical or chemical properties or is transformed or otherwise altered in connection with the provision of the Services and/or the Deliverables,

Recipient means a Party under the Agreement obtaining access to or acquiring the other Party's Confidential Information.

Reimbursables means the fees and charges nominated as a reimbursable in the Particulars.

Released Matters means each of the following matters:

- (a) damage to, destruction of, or changes to the characteristics of, the Materials as a result of or in connection with the performance of the Services or any handling or storage of the Materials, unless such damage or destruction results from reckless conduct by ANSTO or its employees;
- (b) whether the provision of the Services or the Deliverables are of commercial value to the Client or suitable for the Client's purposes;

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(c) the use of any Deliverables or Product by a third party.

Relevant Law means a law which applies to the operations of ANSTO or to which ANSTO agrees to comply with in the Particulars or any Special Conditions.

Services means the services to be provided by ANSTO to the Client as described in the Particulars.

Special Conditions means any special conditions of the Agreement specified in the Particulars.

Termination Date means any date specified in the Particulars and if no date is specified in the Particulars, the later of the date on which ANSTO provides the Deliverables or completes the Services or the Client pays the Fees.

1.2 Interpretation

- (a) In interpreting the Agreement headings are for convenience only, and do not affect interpretation. A singular word includes the plural, and vice versa. If a word is defined, another part of speech has a corresponding meaning.
- (b) A reference to legislation (including subordinate legislation) is to that legislation as amended, re-enacted or replaced, and includes any subordinate legislation issued under it. A reference to a document or agreement, or a provision of a document or agreement, is to that document, agreement or provision as amended, supplemented, replaced or novated and a Party to the Agreement includes a permitted substitute or a permitted assign of that Party; and anything (including a right, obligation or concept) includes each part of it.
- (c) If an example is given of anything (including a right, obligation or concept), such as by saying it includes something else, the example does not limit the scope of that thing.

2. AGREEMENT TERM

Subject to clause 12, the Agreement commences on the Commencement Date and terminates on the Termination Date.

3. SERVICES

3.1 Ordering

- (a) An Order placed by the Client under this Agreement is 'accepted' when the Order has been accepted by ANSTO verbally or in writing (but not by any failure to respond) and ANSTO has provided an order reference number for the Order.
- (b) Subject to the express terms of this Agreement, ANSTO has no obligation to supply Services unless and until the Client's Order has been accepted under clause 3.1(a).

3.2 Provision of Services and other Deliverables

- (a) ANSTO will perform the Services in a diligent and professional manner, and with the necessary skill and care required to perform the Services.
- (b) ANSTO will produce the Deliverables in a diligent and professional manner, and with the necessary skill and care required to provide the Deliverables.
- (c) While the delivery of any Materials to ANSTO is primarily the Client's responsibility under clause 3.3, ANSTO will provide necessary assistance to the Client for the delivery of the Materials to ANSTO.
- (d) ANSTO agrees to hold any licences and approvals required by a Relevant Law for the provision of the Services and the Deliverables.
- (e) The Client acknowledge that any Materials may be destroyed, or changed, and may be unable to be further used by the Client following the Services.
- (f) Once the Services are complete, ANSTO will deliver the Deliverables and Product to the Client as specified in the Particulars, and at the Client's expense unless otherwise specified in the Particulars.
- (g) If the Services involve tests or experiments on people, animals, genetically modified organisms, recombinant DNA or hazardous materials, then notwithstanding any other provision of this Agreement, the Services may not

commence until prior approval from the appropriate Ethics and Safety Committee has been obtained.

3.3 Provision of Materials

Where the Services involve the provision or delivery of Materials to ANSTO, the Client agrees to:

- (a) deliver the Materials to ANSTO, including arranging all applicable export and import permits, authorisations, approvals and licences;
- (b) ensure that the delivery of the Materials complies with all applicable laws, including those relating to export control and the transport of the Materials;
- (c) provide all instructions for the handling of the Materials by ANSTO, prior to their shipment or delivery to ANSTO;
- (d) provide all Materials required and ensure such Materials conform to the description or specification of the Materials provided to ANSTO;
- (e) provide all information and assistance reasonably requested by ANSTO in relation to the Services; and
- (f) ensure the Materials are stored, held, maintained and used by the Client (if applicable) in a safe, careful and proper manner that would be expected of someone in the same position, and in accordance with all applicable laws any lawful and reasonable instructions, directions, requirements, policies and procedures of ANSTO.

3.4 Provision of Deliverables to third parties

The Client may provide any Deliverables to third parties subject to compliance with the following:

- (a) any references to ANSTO must not be removed from any report or other document; and
- (b) it must be clear that ANSTO provided the Services and the Deliverables to the Client and has no obligation or liability to the third party.

4. FEES AND CHARGES

4.1 Fees and Charges

- (a) The Client agrees to pay ANSTO the Fees in accordance with this clause 4.1 and in the manner and timing described in the Particulars (or if not so described within 30 days of the date of Invoice).
- (b) If the Fees set out in the Particulars are a proposal, quote or an estimate, the Fees will be determined by applying the formula or methodology for determination of the Fees as set out in the Particulars. In this case, any estimated fees may differ from the actual Fees.
- (c) In addition to the Fees, the Client agrees to pay ANSTO the amount of any Reimbursables incurred by ANSTO plus a margin of 10% on such Reimbursables.

4.2 Invoicing

- (a) ANSTO will issue Invoices to the Client for amounts payable under this Agreement.
- (b) Unless otherwise agreed in writing between the Parties, the Client shall pay the amount specified in the Invoice by direct debit to the account details notified by ANSTO in the Invoice.

4.3 Outstanding payments

Any outstanding Fee or payment under the Agreement will attract interest at an annual rate equal to 2% over Commonwealth Bank of Australia's Corporate Overdraft Reference Rate (applying from time to time) accruing daily, from their due date under the Agreement to their receipt in full by ANSTO, without need for further invoice.

4.4 Taxes

The Client is liable for and agrees to pay all taxes and duties due under or in relation to the Agreement, including any GST, consumption tax, value added tax, stamp duty or customs duty, or similar taxes or duties levied in respect of the Services, the Fees or the Reimbursables but does not include income, company or other like taxes of ANSTO.

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5. EXISTING AGREEMENTS

5.1 Existing Agreement

- (a) Unless otherwise specified in any Special Conditions, or the Particulars, if there is an existing agreement concerning the subject matters of this Agreement or Confidential Information (**Existing Agreement**) between the Parties which relates to the Services or the Deliverables, then that existing agreement will continue to apply and will apply to the extent of any inconsistency with the terms of this Agreement unless otherwise specified in a Special Condition.
- (b) An Existing Agreement between the Parties for the purposes of clause 5.1(a) is an agreement that has been executed by both Parties.
- (c) Under no circumstances will any purchase order of the Client or Standard terms of the Client prevail over this Agreement or an Existing Agreement between the Parties.

5.2 Use and disclosure of Confidential Information

- (a) Each Party will keep confidential all Confidential Information which it obtains from the Discloser, or creates under the Terms of this Agreement and not use it, except for the purposes of this Agreement and not to disclose it except to its Personnel on a need to know basis for the purpose of performing its obligations under this Agreement, or with the Discloser's consent, or to the extent required by law or legal obligation, or to its professional advisors or, in the case of ANSTO, to its Minister, Parliament, its auditors, or regulators in response to a request or legislative order. These obligations continue for a period of 10 years from the termination of this Agreement.
- (b) Where the Recipient discloses Confidential Information to a third party as permitted under this Agreement, the Recipient must inform the third party of the confidential nature of the Confidential Information, and will be responsible for all use and disclosure of the Confidential Information by the Recipient's Personnel and professional advisors.
- (c) The Client must not make any public announcements or advertisement relating to the Agreement, except where ANSTO has approved the announcement or the advertisement in writing.
- (d) ANSTO may publish information about this Agreement where required by Government order, direction or Government Procurement Policy.
- (e) Neither Party will use the other Party's trade-marks, logos or trade names without the prior written approval of the other Party.

6. INTELLECTUAL PROPERTY

6.1 Intellectual property arising from the Services or Deliverables

- (a) Each Party retains all its Intellectual Property Rights which existed at the Commencement Date, or which are developed independently of the Agreement.
- (b) Except as specified in the Particulars or any Special Conditions:
 - (i) ANSTO will own any Intellectual Property Rights in all works, inventions, discoveries, methods or analyses made or employed by ANSTO:
 - (A) in the provision of the Services or the production of the Deliverable or Product;
 - (B) in any improvements to existing Intellectual Property Rights;
 - (C) relating to the methodology, methods, techniques or processes used to analyse or measure materials or relating to the use of ANSTO Facilities; and
 - (ii) the Client will own any Intellectual Property Rights in the Deliverables and any analyses or data made or produced by ANSTO in the provision of the Services (other than as described in clause 6.1(b)(i)(C)), and any improvements to its existing Intellectual Property

Rights, and ANSTO hereby assigns such rights to the Client.

- (c) Subject to the terms of this Agreement, ANSTO grants to the Client a perpetual, royalty free, non-exclusive, worldwide licence in any of its Intellectual Property Rights under clause 6.1(b)(i) which are incorporated into the Deliverables and required by the Client to use or enjoy the Services or the Deliverables .
- (d) ANSTO may use the Intellectual Property Rights described in clause 6.1(b)(ii) for research and teaching purposes subject to clause 5.2.

6.2 Publication

Subject to the provisions of clause 5.2, each Party may publish material relating to the Services and/or the Deliverables provided that:

- (a) all material prepared for publication by a Party is provided to the other Party for approval to publish at least thirty days prior to submission for publication, which approval may not be unreasonably withheld; and
- (b) if the other Party requests that the material not be published in the form submitted, the submitting Party must either:
 - (i) amend the material as requested by the other Party;
 - (ii) delay publication for a period not exceeding sixty days to allow registration or protection of Intellectual Property; or
 - (iii) where the material contains commercial information for which such registration or protection is not possible or appropriate, delay publication for a further period as may be agreed between the parties not exceeding two years.
- (c) ANSTO acknowledges and agrees:
 - (i) to the right of the Client to control the authorship and production of any written or oral material or publication, in relation to the Services and/or the Deliverables agrees to co-operate where reasonable in the production of the same;
 - (ii) not to release or use in any way, for purposes of advertising, promotion, reference or otherwise, any material, either written or oral, including the name of the Client, the terms of this Agreement or any Confidential Information in part or in whole, without the prior express written approval of the Client;
 - (iii) that all data and results arising from the performance of the Service or the Deliverables conducted by ANSTO on behalf of Client in whatever form shall be protected by ANSTO from unauthorised loss, damage, or destruction and in no circumstances will the level of protection of data by ANSTO be less than ANSTO gives to its own comparable data; and
 - (iv) at the Client's cost and expense, if the Client requires experimental data or other property of the Client to be archived by ANSTO, this will be subject to a separate agreement between the Parties.

7. LIABILITY

7.1 Exclusion of conditions and warranties

- (a) Except for the representations and warranties expressly made in the Agreement, all conditions, warranties, undertakings or representations, express or implied, arising by statute (including the Consumer Law), general law or otherwise are expressly excluded to the extent permitted by law.
- (b) The Client acknowledges and agrees that it does not rely on any representation by ANSTO as to the Released Matters.
- (c) Risk for damage to or loss of any Materials or Product, remains at all times with the Client.
- (d) Title in any Product or Deliverables transfers to the Client on the delivery to the Client .

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- (e) To the extent permitted by law, the provisions of the United Nations Convention on contracts for the International Sale of Goods and all associated enacting legislative instruments shall not apply to this Agreement.

7.2 Limitation of liability

- (a) To the extent permitted by law, the liability of ANSTO to the Client under or in connection with the Agreement or the Services, Products or Deliverables, whether in contract, tort (including negligence and breach of statutory duty) is limited to the amount of the sum of Fees paid and payable under the Agreement. This clause 7.2 does not apply to liability under clause 7.3.
- (b) In the case of a breach by ANSTO of any condition or warranty implied by Schedule 2 of the Consumer Law, to the extent permitted by the Consumer Law, ANSTO's liability is limited to a refund of the Fees and Reimbursables paid by the Client under the Agreement or the re-supply of the Services by ANSTO, at ANSTO's election.
- (c) To the extent permitted by law, in no circumstances is ANSTO liable under or in connection with the Agreement or the Services or Deliverables, to compensate the Client for any lost revenue, lost profits or lost business, or any special, indirect or consequential loss or damage of any nature.

7.3 Indemnity and Release

To the extent permitted by Law, the Client must indemnify and keep indemnified ANSTO and its Personnel, agents and representatives (the Indemnified Persons) for any Loss suffered or incurred by ANSTO or an Indemnified Person arising from:

- (a) the Released Matters;
- (b) the Client's wilful, unlawful or negligent act in connection with the Client's possession, storage, handling, use or disposal of any Materials, Product or Deliverables;
- (c) loss, damage or injury to property or person caused or contributed to by conduct of the Client or its employees or officers which is:
 - (i) reckless; or
 - (ii) flagrant or intentional non-compliance to the lawful and reasonable instructions, directions, requirements, policies and procedures of ANSTO required to be adhered to by the Client under this Agreement; and/or
 - (iii) any misuse of ANSTO's Confidential Information by the Client or its Personnel

8. INSURANCE

The Parties will effect and maintain prudent levels of insurance (or the equivalent thereof) in connection with this Agreement, and comply with any requirements in relation to the insurance, as described in the Particulars or any Special Conditions.

9. FACILITY ACCESS

- (a) Subject to the Client complying with its obligations under this Agreement, ANSTO shall use reasonable endeavours to provide any Access to the Client to ANSTO's Facilities as a necessary part of the provision of the Services or the Deliverables under the terms of this Agreement including any access described in the Particulars. Access may be physical or remote.
- (b) Any Access by the Client is subject to compliance with the terms of this Agreement and any legal, safety and/or security requirements or directions specified by ANSTO for entry into, or during use of, its Facilities or other infrastructure under the terms of this Agreement
- (c) The Client agrees and acknowledges that it, or its Personnel, may be directed at any time to leave ANSTO's Facilities, or stop any remote Access, and that ANSTO is not required to provide any reason for the issue of relevant direction, in its absolute discretion.
- (d) Any Access is also subject to the Client providing all relevant information to ANSTO in relation to the Access required and the nature or purpose of any project, research

or experiments to be undertaken utilising ANSTO's Facilities.

- (e) The Client acknowledges and agrees that officers and employees of the Client must, in relation to their conduct at or access to any part of ANSTO:
 - (i) obtain and require any security clearances and access permits required to be held by ANSTO;
 - (ii) comply with any lawful and reasonable instructions, directions, requirements, policies and procedures of ANSTO (including as to experiment authorisation, risk assessment and inductions);
 - (iii) comply with all applicable work, health and safety, and environmental, laws which apply to the Client or to ANSTO;
 - (iv) possess and comply with all approvals, permits, and consents required to receive the Services; and
 - (v) access and use the Australian Synchrotron in a safe, careful and proper manner expected of someone in the same position.

10. SPECIAL CONDITIONS

Any Special Conditions agreed between the Parties in writing or agreed and included in the Particulars, apply to and form part of the Agreement.

11. DISPUTES

- (a) If a dispute arises out of or in relation to the Agreement (including any dispute as to breach or termination of the Agreement or as to any claim in tort, in equity or pursuant to any statute) (a Dispute), a Party may not commence any court or arbitration proceedings relating to the Dispute unless it has:
 - (i) complied with this clause 11; and
 - (ii) the Dispute has not been resolved within 50 days after the receipt of the Dispute Notice under clause 11(b),
 - (iii) except if the Party seeks urgent (or interlocutory) relief by way of injunction or temporary restraining order.
- (b) A Party claiming that a Dispute has arisen in relation to the Agreement shall give written notice to the other Party specifying the nature of the Dispute (Dispute Notice).
- (c) If the Parties have not resolved the Dispute within 30 days after the receipt of a Dispute Notice, ANSTO and the Client shall ensure that their representative with authority to resolve the Dispute shall meet in person, by telephone or videoconference to endeavour to resolve the Dispute expeditiously by negotiation.
- (d) If the Parties have not resolved the Dispute under clause 11(c) within 30 days after the receipt of a Dispute Notice, then the parties shall refer the Dispute to mediation.
- (e) The Parties agree that in relation to any mediation under this clause 11:
 - (i) The President of the Law Society or Client (or equivalent) in New South Wales will appoint the mediator;
 - (ii) The mediation shall be conducted in accordance with the Australian National Mediation Accreditation Practice Standards;
 - (iii) The mediation shall be conducted in Sydney, Australia.
 - (iv) The mediation shall be attended by an executive from each Party with sufficient authority to resolve the Dispute; and
 - (v) The costs of the mediation will be born in equal shares by each Party.

12. TERMINATION

- (a) Either Party (Terminating Party) may terminate the Agreement on 30 days' written notice to the other Party (the "Other Party") if the Other Party has breached the Agreement in a material manner, provided that the

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Terminating Party has given a written notice to Other Party specifying the particulars of the breach and requiring that it be rectified; and the Other Party has failed to rectify or remedy the breach to the Terminating Party's reasonable satisfaction within 30 days of receiving such notice from the Terminating Party under this clause.

- (b) To the extent permitted by law, either Party may terminate the Agreement immediately on written notice to the Other Party if:
 - (i) the Other Party is insolvent, in liquidation, under administration or has had a controller or analogous person appointed to it (or any analogous event);
 - (ii) the Other Party is subject to a change in the entity or entities which control the Party; or
 - (iii) the Terminating Party holds a reasonable belief that the Other Party has engaged in unlawful conduct or wilful misconduct relevant to the Agreement, the Deliverables or the Services or which may impact on the reputation of the Terminating Party.
- (c) ANSTO may terminate for convenience or in its absolute discretion by giving the Client at least 30 days written notice. If ANSTO does so, the Client will pay ANSTO for the work or Services already performed on a pro rata basis and for any Reimbursables already incurred by ANSTO, subject to the Client under no circumstances being liable to ANSTO for a sum in excess of the Fee plus any Reimbursables.
- (d) Clauses 5.2, 6, 7, 11, 12(d) and 13 survive the termination of this Agreement.

13. GENERAL PROVISIONS

- (a) **(Survival)** Clauses necessary to give effect to the Agreement, survive the termination or expiry of the Agreement.
- (b) **(Entire Agreement)** Subject to clause 5.1, this Agreement constitutes the entire agreement of the Parties. A variation of any term of the Agreement must be in writing signed by the parties.
- (c) **(Governing Law)** This Agreement shall be governed by the laws of the State of New South Wales. Each Party irrevocably submits to the jurisdiction of the Courts of New South Wales, and Courts of appeal there from.
- (d) **(Severance)** If any part of the Agreement shall be void, voidable or unenforceable, it is to be severed from this Agreement, without affecting the validity or enforceability of the remainder of it.
- (e) **(Counterparts)** The Agreement, or the applicable Particulars, may be executed in counterparts. An electronic copy of the Agreement or the Particulars, or any counterpart of them or of the execution of them shall be deemed to be as effectual as if the original Agreement or the Particulars, or any counterpart of them, were originally executed. The parties agree that the Agreement, or the applicable Particulars, may be executed electronically.
- (f) **(Assignment)** The Client's rights under this Agreement may not be assigned except with the prior written consent of ANSTO.
- (g) **(Precedence)** Without limiting clause 5.1, if there is any conflict between these terms, the Particulars or any Special Conditions, the following order of precedence shall apply:
 - (i) Any Special Conditions;
 - (ii) The Particulars; and
 - (iii) These terms.
- (h) **(Force Majeure)** The obligations under this Agreement (other than payment or Insurance obligations) of the Party giving the notice are suspended to the extent to which they are affected by the relevant Force Majeure as long as the Force Majeure continues. Without limiting any other rights under the Agreement, if a Force Majeure continues for more than 90 days during the term of the Agreement, including a Force Majeure occurring at the Commencement

Date, ANSTO may terminate this Agreement on 7 days' notice to the Client. If ANSTO terminates the Agreement, ANSTO will refund any excess Fees paid by the Client under the Agreement and return any Materials to the Client, at the Client's expense unless otherwise agreed by ANSTO.

- (i) **(Relationship)** The Parties are independent contractors and nothing in the Agreement shall be construed as establishing an agency, trust, joint venture, partnership or employment relationship between the Parties. Neither Party shall have authority to make any statements, representations, or commitments of any kind or to take any action that will be binding on the other Party unless specifically authorised by the Agreement.
- (j) **(Notices)** Any notice or other formal communication under the Agreement must be in writing and signed by a representative of the sender or a person delegated by them; must be marked to the attention of the recipient's representative and be delivered to the recipient by hand, pre-paid post or email at the address specified in the Particulars. Such notice or communication will be effective once received, and will be deemed to be received, if posted in Australia, on the seventh day or, if emailed, on the day following the time shown on the recipient's computer system as the date of receipt. The Parties agree that notices and communications which do not comply with this clause 13(j) will be of no effect.
- (k) **(Waiver)** A right may only be waived in writing, signed by the Party giving the waiver, and:
 - (i) no other conduct of a Party (including a failure to exercise, or delay in exercising, the right) operates as a waiver of the right or otherwise prevents the exercise of the right; and
 - (ii) a waiver of a right on one or more occasions, or the exercise of a right, does not operate as a waiver of that right or as an estoppel precluding enforcement of that right if it arises again and not prevent any further exercise of that right or of any other right.
- (l) **(Data Breach)** If a Party (**Affected Party**) becomes aware of any actual or suspected:
 - (i) action taken through the use of computer networks that results in an actual or potentially adverse effect on a Party's computer network or related information systems and/or any data or information residing on that system (Data Breach), regardless of whether such a Data Breach would constitute an Eligible Data Breach or not; or
 - (ii) any other unauthorised access or use by a third party or misuse, damage or destruction by any person of the Affected Party's computer network or related information system and/or any data or information residing on that system (Other Incident),
the Affected Party must notify the other Party immediately in accordance with the notice provisions of the Agreement; and subject to law or legal obligation, comply with any directions issued by the other Party in connection with the Data Breach or Other Incident. Terms not otherwise defined in this clause or this Agreement, have any meanings ascribed to them in the Privacy Act 1988 (Clth).
- (m) **(Privacy)** The Parties agree to comply with the Privacy Act 1988 (Clth) in connection with this Agreement.