

Standard Terms and Conditions of Supply

1 Definitions and interpretation

1.1 Definitions

In these Terms and Conditions, capitalised terms have the following meanings except where the context otherwise requires.

Accounts Email means:

- (a) for Bengalla Mining Company Pty Ltd or Bengalla Coal Sales Company Pty Ltd, Bengalla.Accounts@newhopegroup.com.au; or
- (b) for any other New Hope Company, accounts@newhopegroup.com.au,

or such other email address as New Hope may from time to time notify the Supplier in writing.

Agreed Pricing means the pricing applicable to the performance of the Supply, whether based on a fixed lump sum, milestones, schedule of rates, cost-reimbursement, or another methodology, as set out or referenced in the Contract.

Approval means any consent, authorisation, registration, qualification, filing, lodgement, notification, agreement, certificate, commission, lease, licence, permit, approval or exemption from, issued or required by an Authority.

Associated Documents means all records and documents which New Hope reasonably expects or requires to be delivered as part of, in connection with, or ancillary or incidental to, the Supply including data, testing results, certifications, material safety data sheets, operator manuals, manufacturer warranties, instructions, reports, plans, drawings and diagrams.

Australian Standards means the standards published under that designation by Standards Australia.

Authority means any federal, state or local government, semi government, quasi government, administrative, fiscal or judicial body, department, commission, authority, tribunal, agency or entity or other body or authority, statutory or otherwise.

Background Intellectual Property means the Intellectual Property Rights in any Material which was developed by the Supplier or any of its Personnel:

- (a) and was existing prior to the Commencement Date and which was not specifically developed for New Hope as part of the Supply; and
- (b) on or after the Commencement Date and which was not specifically developed for New Hope as part of the Supply.

Business Day means a day that is not a Saturday, Sunday or gazetted public holiday in the capital city of the State.

Claim includes any written claim, action, investigation, proceeding, litigation, regulatory prosecution or demand of any kind, whether brought in contract, tort (including in negligence), breach of statutory duty or otherwise.

Commencement Date has the meaning given in clause 2.1(c).

Confidential Information has the meaning given in clause 17.1(a).

Contract means a contract between New Hope and the Supplier in respect of a Supply, formed in accordance with clause 2.1(a) and comprising the documents set out in clause 2.1(b).

Defect means any error, fault, omission, defect, deficiency or discrepancy in the Supply (including in respect of design, materials or workmanship), including any failure to comply with:

- (a) any specifications (including minimum performance requirements) stated in the Contract;
- (b) any standards of supply stated in the Contract, including in clause 5.2 (in respect of Services) and clause 6.2 (in respect of Goods);
- (c) any warranty or guarantee provided by the Supplier or any third party vendor, manufacturer or supplier; and
- (d) any other requirements of the Contract.

Defects Liability Period means:

- (a) in respect of Goods, a period of 12 months from the date on which the Goods are delivered to the Delivery Place and accepted by New Hope; or
- (b) in respect of Services, a period of 12 months from the date on which the performance of the Services is completed by the Supplier.

Delivery Date means, in respect of any Supply, the date by which the Supply must be delivered or completed (as applicable) as stated in the Contract.

Delivery Place means, in respect of the delivery of Goods or Hire Equipment (as applicable):

- (a) the address specified in the Contract as the point of delivery;
- (b) (if no address is specified in the Contract) the Site at which the Goods or Hire Equipment (as applicable) are to be used or consumed; or
- (c) (if New Hope notifies the Supplier that New Hope will arrange a carrier to transport the Goods or Hire Equipment (as applicable)), the address notified by New Hope at which the Goods or Hire Equipment (as applicable) are to be collected by New Hope's carrier for transportation to New Hope.

Dispute Notice has the meaning given in clause 20(a).

Documentation means any data, design, document, record, plan, specification, report, system, program or other material (irrespective of the form in which such information is written, embodied, stored and/or reproduced).

Excluded Loss means any loss of opportunity, loss of revenue, loss of business, loss of profits or anticipated profits, loss of third party contracts, loss of anticipated savings, loss of use or loss of goodwill.

Fair Wear and Tear means the expected deterioration of the Hire Equipment in normal and appropriate operation during its use over the Hire Period.

Force Majeure Event means any circumstance or event outside the reasonable control of a party and:

- (a) which prevents a party from complying with any of its obligations under the Contract;
- (b) which the affected party is not able to prevent, overcome or remedy by the exercise of due diligence, reasonable care and proper precautions; and
- (c) the effects of which the affected party cannot avoid by utilising reasonable alternatives,

but specifically excludes the following:

- (d) breakdown of, loss of or damage to, or unavailability of, any property, plant, machinery or equipment (other than by natural disasters, terrorism, wars or hostilities, fires or explosions);
- (e) change in market conditions or a shortage of materials, consumables, equipment or utilities;
- (f) strikes or industrial disturbances, except where such strike or industrial disturbance is state-wide or nation-wide and not confined to the Supplier's Personnel; or
- (g) a failure by the Supplier to reach agreement with any third party necessary to enable it to perform its obligations under the Contract.

Goods means the goods manufactured or supplied (or, where the context requires, to be manufactured or supplied) to New Hope by the Supplier as specified in the Contract.

GST has the meaning given in the GST Act.

GST Act means A New Tax System (Goods and Services Tax) Act 1999 (Cth) and any other laws and regulations which impose or regulate the operation or administration of GST.

Hire Equipment means, in respect of a Contract, the goods, plant and equipment described in that Contract, and includes any replacement or substitute equipment supplied by the Supplier in accordance with the Contract.

Hire Period means the period commencing on New Hope taking possession of the Hire Equipment under clause 9.2(c) to the date the Supplier commences any works to dismantle or decommission the Hire Equipment for removal, or collects the Hire Equipment from the Delivery Place under clause 9.5(a).

HSE means health, safety and environment.

HSE Laws means all work health and safety Laws and environmental Laws as in force from time to time which are

applicable in any way to the Supply or activities performed by the Supplier or its Personnel in connection with the Contract and:

- (a) in Queensland, HSE Laws include the Work Health and Safety Act 2011 (Qld), Work Health and Safety Regulation 2011 (Qld), Coal Mining Safety and Health Act 1999 (Qld), Coal Mining Safety and Health Regulation 2017 (Qld), Heavy Vehicle National Law Act 2021 (Qld) and relevant regulations, and Environmental Protection Act 1994 (Qld); and
- (b) in New South Wales, HSE Laws include the Work Health and Safety Act 2011 (NSW), Work Health and Safety Regulation 2017 (NSW), Work Health and Safety (Mines and Petroleum Sites) Act 2013 (NSW), Work Health and Safety (Mines and Petroleum Sites) Regulation 2022 (NSW), Heavy Vehicle National Law 2013 (NSW) and relevant regulations, and Protection of the Environment Operations Act 1997 (NSW).

Insolvency Event means, in respect of a party:

- (a) the party being unable to pay its debts as and when they fall due; or
- (b) the party being placed under external administration (including by being placed into voluntary administration, liquidation or receivership).

Intellectual Property Rights means all intellectual property rights (registered and unregistered), whether created before or after the commencement of the Contract, including all copyright, trade or service marks, designs, patents, circuit layouts, indications of source or appellations of origin, trade secrets, know-how, Confidential Information and other proprietary rights, or any rights to registration of such rights existing in Australia and throughout the world.

Joint Venture means an unincorporated joint venture for and on behalf of which New Hope is a party to the Contract as agent.

Joint Venturer means any party while acting in its capacity as a participant or partner with a member of the New Hope Group in the relevant Joint Venture.

Law includes:

- (a) the common law; and
- (b) any statute, regulation, by-law, local law, subordinate legislation, ordinance, instrument, proclamation, order, mandatory code, standard and guideline,

of any applicable jurisdiction in which any act or obligation in connection with the Contract is or is to be carried out.

Loss includes:

- (a) any loss, cost, expense or liability;
- (b) any diminution in value;
- (c) any expense directly incurred in carrying out corrective action (including clean up costs); and
- (d) reasonable legal costs of defending a Claim.

Material includes plant, equipment, hardware, machinery, computer software (including development tools and object libraries), concepts, approaches, tools, methodologies, processes, know-how, data, Documentation and anything else which is in a material, including electronic form.

Moral Rights has the meaning given to that term in the Copyright Act 1968 (Cth).

New Hope means the New Hope Company which issues the Purchase Order in respect of a Contract.

New Hope Company means any of the following companies:

- (a) New Hope Corporation;
- (b) each Related Body Corporate of New Hope Corporation; and
- (c) each entity which is appointed as operator or agent for a Joint Venture and is under the management of a company described in paragraph (a) or (b).

New Hope Contract Representative has the meaning given to it in clause 21.2(a)(i).

New Hope Corporation means New Hope Corporation Limited ABN 38 010 653 844.

New Hope Group means, collectively, all New Hope Companies.

New Hope Representative has the meaning given to it in clause 21.2(a).

party means each party to a Contract, being each of New Hope and the Supplier, and **parties** means both of them.

Payment Schedule has the meaning given in Annexure 1.

Personal Information has the meaning given in the Privacy Act 1988 (Cth) and includes personal information which is collected, used, disclosed, stored or handled by a party in connection with the Supply.

Personnel means:

- (a) in relation to New Hope, its and its Related Bodies Corporates' directors, officers, employees and agents; and
- (b) in relation to the Supplier, its and its Related Bodies Corporates' directors, officers, employees, agents and invitees, and all persons engaged in connection with the performance of the Supply, including contractors and subcontractors at any level.

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

Privacy Law means all Laws, principles, industry codes and policies relating to the collection, use, disclosure, storage or granting of access rights to Personal Information.

Purchase Order means a uniquely numbered purchase order generated by a New Hope Company's enterprise resource planning system for the purpose of ordering the Supply.

Related Body Corporate has the meaning given in the Corporations Act 2001 (Cth).

Relevant Policies and Procedures means:

- (a) any New Hope Group policy specified in the Contract as being a policy that the Supplier must comply with;
- (b) any policies, procedures and site conditions of any Site which the Supplier or its Personnel attend in connection with the Supply; and
- (c) the following policies, available at <https://newhopegroup.com.au/corporate-governance>, to the extent the corresponding 'relevant circumstances' apply in respect of the Supply:

Policy	Relevant circumstances
Anti-Bribery and Corruption Policy	- In respect of the negotiation and entry into the Contract. - Where the Supply involves the representation of New Hope to any Authority or third party.
Code of Conduct	To the extent the Supply involves any of the following: - the Supplier's Personnel working at a Site on an integrated basis with New Hope's Personnel; - the Supplier's Personnel performing duties in a New Hope issued uniform; - the Supplier's Personnel performing duties through New Hope's IT systems and/or through a New Hope issued email address; and/or - the representation of New Hope to any Authority or third party.
Appropriate Workplace Behaviours Policy	To the extent that the Supplier's Personnel carry out work at a Site.
Privacy Policy	Where the Supplier routinely handles or stores Personal Information obtained through the performance of the Supply.
Securities Trading Policy	Where the Supplier or the Supplier's Personnel become aware of "Inside Information" (as defined in the policy) in connection with the Supply.
Safety and Wellbeing Policy	To the extent the Supply involves the performance of work at a Site or the transportation of people or materials to, from or between a Site(s).
Environment Policy	
Modern Slavery Policy	All circumstances.

Policy	Relevant circumstances
Site HSE Requirements	To the extent the Supply involves the performance of work at a Site or the transportation of people or materials to, from or between a Site(s).

Reportable Incident means any event or incident reportable to an Authority under any safety Law or environmental Law.

Representative means the Supplier's Representative and a New Hope Representative.

Security Interest has the meaning given in the PPSA.

Security of Payment Act has the meaning given in Annexure 1.

Services means the services performed (or, where the context requires, to be performed) by the Supplier as specified in the Contract including any installation, commissioning, maintenance or other services performed in connection with the supply of Goods.

Site means any mine, site, facility or office operated by a New Hope Company.

Site HSE Requirements means all rules and requirements that apply to the entry onto and performance of work at a Site, including:

- (a) any safety and health management system applicable at the Site; and
- (b) any other rules, policies, procedures and requirements stipulated by the Site (as communicated to the Supplier and its Personnel).

State means:

- (a) where a Purchase Order is issued by any of Bengalla Mining Company Pty Ltd, Bengalla Coal Sales Company Pty Ltd, Bengalla Agricultural Company Pty Ltd or New Hope West Muswellbrook Pty Ltd, the state of New South Wales; or
- (b) where a Purchase Order is issued by any other New Hope Company, the state of Queensland.

Statement of Work means a mutually agreed document, either executed by the parties or referenced in the Contract, which sets out the Supplier's scope of work obligations relevant to the Supply.

Supplier means the supplier engaged to perform the Supply as specified in the Contract.

Supplier's Representative has the meaning given in clause 21.1(b).

Supply means the supply of any Goods, Services or Hire Equipment by the Supplier to New Hope, and includes:

- (a) the supply of any Associated Documents or materials in connection with the performance of the Supply;
- (b) any variations to the scope of the Supply;
- (c) all rectifications and reinstatements to remedy any Defects; and

- (d) any other matter or thing which the Supplier is obliged to do or causes to be done or the result or effect which the Supplier must achieve, create, develop or cause to be achieved, created or developed as part of or as a result of the performance of the Supply.

Supply Intellectual Property means any Intellectual Property Rights used, created, resulting from or arising in the course of, the development, creation, performance or delivery of any Documentation, product or other deliverable which did not exist prior to the Commencement Date and which is specifically developed for New Hope as part of the Supply (and may include, by way of example only, a design or a consultant's report, or bespoke equipment, machinery or computer software). For the avoidance of doubt, Supply Intellectual Property excludes the Background Intellectual Property.

Term has the meaning given to it in clause 2.1(c).

Terms and Conditions means the terms and conditions set out in this document.

1.2 Interpretation

In the Contract (including these Terms and Conditions):

- (a) headings are for convenience only and do not affect interpretation;

and except where the context otherwise requires:

- (b) the singular includes the plural and vice versa;
- (c) another grammatical form of a defined word or expression has a corresponding meaning;
- (d) the meaning of general words in the Contract is not limited because of the inclusion of specific examples;
- (e) "includes" in any form is not a word of limitation and is to be read as if followed by the words "without limitation";
- (f) a reference to a document or instrument (including any documents that comprise the Contract) includes the document or instrument as amended, novated, altered, supplemented or replaced from time to time;
- (g) a reference to a clause, schedule, appendix, annexure or party is a reference to a clause of, and a schedule, appendix, annexure or party to, the Contract and references to the Contract include any schedules, appendices or annexures;
- (h) a reference to legislation or to a provision of legislation (including subordinate legislation) is to that legislation as amended, re-enacted or replaced, and includes any subordinate legislation issued under it;
- (i) a reference to a party includes the party's executors, administrators, successors and permitted assigns and substitutes, including persons taking by way of novation;
- (j) a reference to a person includes a natural person, the estate of a natural person, a partnership, a body corporate, a trust, an association, a governmental or local authority or an agency or other entity;

- (k) an obligation or a liability assumed by, or a right conferred on, two or more persons binds or benefits them jointly and severally;
- (l) dollars or \$ is a reference to Australian dollars; and
- (m) a reference to monetary amounts, including fees, rates, charges, budgets, costs, expenditure, contract limits, revenue or profits are exclusive of any GST component.

2 Basis of Contract

2.1 Contract for Supply

- (a) A Contract will be deemed to form between New Hope and the Supplier in respect of the Supply upon New Hope issuing a Purchase Order and the earlier of:
 - (i) the Supplier providing confirmation to New Hope that it will perform the Supply;
 - (ii) the Supplier commencing performance of any part of the Supply; and
 - (iii) the Supplier issuing an invoice or requesting payment for any part of the Supply.
- (b) The documents listed below comprise the Contract and in the event of any ambiguity, discrepancy or inconsistency between the documents comprising the Contract or between parts of any document comprising the Contract, then:
 - (i) the document or provision which prescribes or requires the highest quality or standard of performance by the Supplier or the more onerous obligation on the Supplier takes precedence; and
 - (ii) to the extent that clause 2.1(b)(i) does not apply to or does not resolve the ambiguity, discrepancy or inconsistency, then the following order of precedence applies:
 - (A) these Terms and Conditions;
 - (B) the Purchase Order;
 - (C) the Statement of Work (if applicable to the Supply); and
 - (D) any other document incorporated by express reference as forming part of the Contract.
- (c) Unless terminated earlier in accordance with these Terms and Conditions, the term of the Contract will commence on the date the Contract is formed under clause 2.1(a) (**Commencement Date**) and continue until the last day of the applicable Defects Liability Period (**Term**).

2.2 Early Supply

The parties agree that to the extent the Supplier has commenced any of the Supply prior to the Commencement Date, that supply is deemed to form part of the Supply and be

governed by the Contract, and any payments made by New Hope are deemed to have been made under the Contract.

2.3 Conflicting documents and provisions

- (a) The Contract contains the entire agreement between the parties in respect of the Supply and supersedes all prior discussions, representations, agreements, statements, understandings or other dealings, whether oral or in writing, relating to the Supply.
- (b) If the Supplier's terms and conditions are provided by the Supplier (including as printed on consignment notes or other documents, or otherwise included as part of its bid, offer, quote or estimate), those terms and conditions will be of no legal effect and will not constitute part of the Contract.

2.4 Non-exclusive engagement

Nothing in these Terms and Conditions nor in any part of the Contract creates any exclusive supply relationship between the Supplier and any member of the New Hope Group.

2.5 No minimum Supply

Unless expressly stated otherwise in the Contract, New Hope is not obliged to procure any minimum level of Supply from the Supplier and New Hope may, in its absolute discretion, engage any third party to perform any Supply of the same or a similar nature to that contemplated under the Contract.

2.6 Appointment of Supplier as an independent contractor

The Supplier:

- (a) acknowledges and agrees that New Hope is engaging the Supplier to carry out the Supply as an independent contractor;
- (b) must not represent itself as being an employee or agent of New Hope;
- (c) acknowledges that nothing in the Contract constitutes any relationship of employer and employee, principal or agent or partnership between the two parties or between New Hope and any member of the Supplier's Personnel; and
- (d) agrees that it is solely liable for, and must pay, all remuneration, superannuation, Claims and other entitlements payable to the Supplier's Personnel as well as comply with all Laws relevant to it as an employer.

3 Role of New Hope

3.1 Types of capacity

The Supplier acknowledges and agrees that New Hope may, in respect of all or part of the Supply, be contracting with the Supplier:

- (a) as principal (for its own benefit);
- (b) as agent for and on behalf of one or more New Hope Companies; and/or
- (c) as agent for and on behalf of a Joint Venture.

3.2 If on behalf of another New Hope Company

If New Hope is contracting with the Supplier in the capacity described in clause 3.1(b), then New Hope:

- (a) holds the benefit of the Contract (including the right to recover any liability) for itself and on trust for the applicable New Hope Company; and
- (b) is entitled to enforce the Contract (including any indemnity), in any manner including by way of equitable, legal or statutory relief, for itself and on behalf of the applicable New Hope Company.

3.3 If on behalf of Joint Venturers

- (a) If New Hope is contracting with the Supplier in the capacity described in clause 3.1(c) then:
 - (i) New Hope is a party to the Contract as agent severally for each of the Joint Venturers in proportion to their respective participating interests in the Joint Venture;
 - (ii) New Hope holds the benefit of the Contract (including the right to recover any liability) for itself and on trust for the Joint Venturers;
 - (iii) New Hope is entitled to enforce the Contract (including any indemnity), in any manner including by way of equitable, legal or statutory relief, for itself and on behalf of the Joint Venturers; and
 - (iv) the obligations and liabilities of the Joint Venturers to the Supplier are several and not joint, in accordance with each Joint Venturer's respective participating interest in the Joint Venture.
- (b) The Supplier acknowledges and agrees that the participating interest, identity and number of the Joint Venturers may change from time to time without notice to the Supplier.
- (c) New Hope may, at any time, assign its rights and obligations under the Contract to an incoming agent or manager on behalf of the Joint Venturers by notice to the Supplier.
- (d) Notwithstanding clause 3.3(a), the Supplier must deal only with New Hope (and not any Joint Venturer separately) in connection with the Contract.

4 Conduct obligations

4.1 General conduct obligations

In connection with the Supply, the Supplier must, and must ensure that its Personnel:

- (a) comply with all applicable Laws (including applicable HSE Laws);
- (b) not do or permit to be done any act or omission which may place New Hope or New Hope's Personnel in breach of any Law or Approval;
- (c) obtain, hold and comply with all Approvals required in connection with the Supply;

- (d) comply with:

- (i) all Relevant Policies and Procedures; or
- (ii) if New Hope has provided its prior written consent to do so, its own policies (including any HSE standards, management plans and operating procedures) which cover the subject matter of the Relevant Policies and Procedures; and

- (e) provide New Hope with any information reasonably requested by New Hope in connection with the Supply.

4.2 HSE Obligations

In connection with the Supply, the Supplier must, and must ensure that its Personnel:

- (a) proactively pursue the elimination of work-related injuries and occupational illnesses;
- (b) act in a manner that prevents unauthorised harm to the environment, including by:
 - (i) preventing the unintended release of any contaminant into the environment;
 - (ii) preventing any contaminant from emanating from the Supplier's or any of its Personnel's plant and equipment; and
 - (iii) maintaining a clean worksite, and cleaning up the worksite following completion of activities;
- (c) if operating any plant and equipment in connection with the Supply, ensure that the plant and equipment is, at all times:
 - (i) in a safe working condition, free from Defects and in good, safe and serviceable order;
 - (ii) in compliance with, and operated in accordance with, all Laws and Approvals; and
 - (iii) operated by suitably qualified, licensed and competent Personnel; and
- (d) if attending a Site:
 - (i) comply with the Site HSE Requirements;
 - (ii) ensure that its Personnel obtain all inductions and training required by New Hope for the Site;
 - (iii) provide its Personnel with appropriate personal protective equipment;
 - (iv) comply with the directions of any person nominated by New Hope as having authority in connection with health and safety at the Site;
 - (v) consult with New Hope in respect of any matter relevant to health and safety at the Site; and
 - (vi) (if the nature of activities requires) prepare contractor management plans, procedures and safe work method statements in respect of the Supply; and

- (e) if the Supply involves the Supplier bringing any plant and equipment onto a Site and if New Hope requires, arrange for the Supplier's plant and equipment to be inspected by New Hope and take any necessary steps to ensure the Supplier's plant and equipment complies with any applicable Site requirements.

4.3 People-related obligations

- (a) The Supplier must ensure that all Personnel engaged in connection with the Supply:
 - (i) except in respect of Supply carried out outside of Australia, are lawfully permitted to work in Australia and to perform the activities required of their role;
 - (ii) are paid and engaged upon work conditions which accord with the Law and any applicable industrial award or agreement;
 - (iii) do not enter onto any Site while under the influence of any intoxicating substance; and
 - (iv) comply with the Relevant Policies and Procedures applicable to their duties.
- (b) To the extent that a portable long service leave scheme applies in respect of any of the Supplier's Personnel (including under the *Building and Construction Industry (Portable Long Service Leave) Act 1991 (Qld)*, *Coal Mining Industry (Long Service Leave) Administration Act 1992 (Cth)* or *Coal Mining Industry (Long Service Leave) Payroll Levy Collection Act 1992 (Cth)*), the Supplier must provide any required notifications to the relevant Authority and must pay all applicable statutory levies in connection with the Contract and the Supply (regardless of who is liable under the Law to pay those levies) unless otherwise notified by New Hope in writing.

4.4 Business practice warranties

The Supplier represents and warrants that:

- (a) it has not collaborated with, or shared or received any confidential information from, any other participant in the tender process for the Supply; and
- (b) no inducement or improper payment offer or promise has been made to any of New Hope's Personnel or any other person in connection with the Supply.

4.5 Modern slavery

- (a) For the purpose of this clause, "Modern Slavery Laws" means:
 - (i) Division 270 and 271 of the *Criminal Code Act 1995 (Cth)*; and
 - (ii) any other Law which prohibits exploitation of a worker, human trafficking, slavery, slavery-like behaviour, servitude, forced labour, child labour, debt bondage or deceptive recruiting for labour or services (or similar).
- (b) The Supplier represents and warrants that, prior to the Commencement Date:

- (i) there has been no breach of the Modern Slavery Laws by the Supplier; and
- (ii) it is not aware of any breach of Modern Slavery Laws by any subcontractor or supplier that it intends to engage in connection with the Supply.

- (c) The Supplier must (and must ensure that its Personnel) comply with the Modern Slavery Laws for the duration of the Term.

5 Supply of Services

(This clause 5 applies where the Supply involves the provision of Services.)

5.1 Performance of Services

The Supplier must perform the Services in the time, at the location and in the manner required by the Contract (including this clause 5).

5.2 Standard of Services

Without limiting the warranty as to Defects provided under clause 13.1, all Services must be performed:

- (a) by Personnel who are careful, skilled, appropriately qualified, suitably experienced and competent in their role;
- (b) with a level of skill and care normally exercised by a similarly qualified and competent person in the performance of comparable work;
- (c) in accordance with any specifications in the Contract;
- (d) in accordance with any Australian Standards applicable to the Services; and
- (e) in accordance with any applicable Laws and Approvals.

5.3 Conduct of supply

The Supplier must:

- (a) supply all labour tools, plant, equipment and materials necessary to complete the Services;
- (b) complete the Services before the Delivery Date; and
- (c) (if Services are performed at a Site) use its best endeavours not to impede or interfere with other work or operations conducted at the Site.

6 Supply of Goods

(This clause 6 applies where the Supply involves the provision of Goods to New Hope)

6.1 Provision of Goods (including Associated Documents)

The Supplier must:

- (a) manufacture or procure (as applicable) the Goods for the benefit of New Hope;
- (b) deliver the Goods to the Delivery Place on or before the Delivery Date;

- (c) test and commission the Goods to the extent required by the Contract;
- (d) provide New Hope with all Associated Documents; and
- (e) otherwise provide the Goods in the manner required by the Contract (including this clause 6).

6.2 Standard of Goods

Without limiting the warranty as to Defects provided under clause 13.1, Goods supplied to New Hope must:

- (a) be new (unless otherwise stated in the Contract);
- (b) be of merchantable quality;
- (c) be free from damage upon delivery to New Hope;
- (d) conform with any specifications in the Contract;
- (e) conform with any Australian Standards applicable to the Goods;
- (f) conform with any applicable Laws and Approvals; and
- (g) be fit for, and have a life expectancy suitable for, New Hope's intended purpose, provided that the intended purpose is stated in the Contract or is otherwise disclosed or made known to the Supplier.

6.3 Conduct until delivery

Prior to the delivery of the Goods to the Delivery Place, the Supplier must:

- (a) protect the Goods from loss, shrinkage or damage;
- (b) ensure that the Goods are appropriately packed, handled and transported, including in accordance with any requirements notified by New Hope; and
- (c) keep New Hope informed of any delays or material changes in respect of the delivery of the Goods.

6.4 Title and Risk

- (a) All right, title and ownership of a Good passes to New Hope upon full payment of the Agreed Pricing for the Good.
- (b) At the time when title to or ownership of any Goods or materials is passed to New Hope, the Supplier must ensure that title or ownership is passed free of any Security Interest and, if requested by New Hope, the Supplier must provide New Hope with evidence that the Goods or materials are free from all Security Interests.
- (c) Risk in a Good passes to New Hope:
 - (i) (if the Supply involves the installation, commissioning or other Services relating to the Good at a Site) when the Supplier completes all installation, commissioning or other Services relating to the Good and operational responsibility for the Good is handed over to New Hope; or
 - (ii) (otherwise) upon delivery of the Good to the Delivery Place and New Hope accepting the Good.

6.5 Conduct following delivery

- (a) New Hope may inspect or test (or require the Supplier to inspect or test) any Good within a reasonable time following delivery to the Delivery Place.
- (b) If a Defect is identified upon an inspection or test, New Hope may exercise its rights under clause 13.

6.6 Change management

In respect of Goods provided to New Hope on an ongoing or periodic basis, the Supplier must notify New Hope of any manufacturing or supplier changes in the Goods as soon as reasonably practicable and provide a brief explanation of the nature of the change.

7 Acceptance

The Supplier acknowledges and agrees that the delivery, or receipt, of any Supply (including any Hire Equipment) or the giving of any direction by New Hope in respect of any Supply (including in relation to the installation or commissioning of any Hire Equipment) does not:

- (a) lessen the Supplier's liability to New Hope for any failure to comply with the Contract;
- (b) constitute acceptance by New Hope that the Supply meets the requirements of the Contract; or
- (c) constitute either a waiver of the Supplier's obligations under the Contract or certification that the Supplier has properly fulfilled its obligations under the Contract.

8 Personal Property Securities Act

- (a) If either party reasonably determines that the Contract (or any transaction in connection with it) gives rise to a Security Interest, the other party must provide all assistance and co-operation reasonably required to:
 - (i) enable registration of the Security Interest and any required notification under the PPSA; and
 - (ii) ensure that the Security Interest is enforceable, perfected and otherwise effective.
- (b) A party who registers a Security Interest in connection with the Contract must provide the other party with a verification statement in the manner and within the time period required by the PPSA.
- (c) A party must promptly notify the other party if it knows or becomes aware (whether by receipt of a notice under the PPSA or otherwise) that a third party has, or claims, a Security Interest in any Goods or materials supplied, or to be supplied, by the Supplier to New Hope under the Contract.
- (d) Without limiting clause 17, neither party will disclose information of the kind mentioned in section 275(1) of the PPSA except to the extent disclosure is required under section 275(7) of the PPSA.

9 Hire Equipment

(This clause 9 applies where the Supply involves the provision of Hire Equipment.)

9.1 Hire

- (a) The Supplier warrants that it has title in and ownership of the Hire Equipment or it holds all necessary rights and interests in the Hire Equipment to hire the Hire Equipment to New Hope.
- (b) In consideration of New Hope paying the Agreed Pricing, the Supplier agrees to make available for hire, and New Hope has agreed to receive for hire, the Hire Equipment for the Hire Period in accordance with the terms and conditions of the Contract.
- (c) During the Hire Period, New Hope will have exclusive possession and unrestricted use of the Hire Equipment.
- (d) The parties acknowledge and agree that:
 - (i) nothing in this clause 9.1 passes title in the Hire Equipment to New Hope;
 - (ii) New Hope must not do anything or permit anything to be done to adversely affect the Supplier's interest as owner of the Hire Equipment; and
 - (iii) New Hope must not create a Security Interest over the Hire Equipment without the Supplier's prior written consent.

9.2 Pre-hire inspection

- (a) The Supplier must, at its cost and risk:
 - (i) deliver the Hire Equipment to, and collect the Hire Equipment from, the Delivery Place; and
 - (ii) if required by New Hope, perform any installation or commissioning of the Hire Equipment to the satisfaction of New Hope, or supervise New Hope's installation or commissioning of the Hire Equipment.
- (b) Prior to New Hope taking possession of the Hire Equipment, at the request of either party:
 - (i) a New Hope Representative will perform an inspection of the Hire Equipment and complete an inspection report of the Hire Equipment (**Pre-Hire Inspection Report**); and
 - (ii) the Supplier's Representative will review the Pre-Hire Inspection Report and either:
 - (A) confirm agreement with the Pre-Hire Inspection Report by signing it; or
 - (B) set out any aspects of the Pre-Hire Inspection Report with which the Supplier's Representative disagrees (in which case the Representatives will in good faith seek to agree the contents of a revised Pre-Hire Inspection Report).

- (c) New Hope will be deemed to have taken possession of the Hire Equipment:
 - (i) if a Pre-Hire Inspection Report is prepared under clause 9.2(b), upon the Supplier's Representative signing the Pre-Hire Inspection Report; or
 - (ii) otherwise:
 - (A) (if the Supplier is not required to undertake installation or commissioning of the Hire Equipment in accordance with clause 9.2(a)(ii)) the date the Hire Equipment is delivered to the Delivery Place; or
 - (B) (if the Supplier is required to undertake installation or commissioning of the Hire Equipment in accordance with clause 9.2(a)(ii)) the date the Supplier completes installation or commissioning of the Hire Equipment.

9.3 Maintenance and repair of the Hire Equipment

- (a) Unless expressly stated otherwise in the Contract and subject to clause 9.3(d), the Supplier is responsible for the maintenance of the Hire Equipment and any repairs (including, if necessary, in respect of Fair Wear and Tear) required to the Hire Equipment to ensure that the Hire Equipment is in good operating condition at all times during the Hire Period.
- (b) If New Hope identifies that any maintenance or repairs to the Hire Equipment are required, New Hope will promptly notify the Supplier.
- (c) Subject to clause 9.3(d), all costs associated with the maintenance of the Hire Equipment and any repairs to the Hire Equipment (including any transportation of the Hire Equipment required to complete any maintenance or repairs) will be borne by the Supplier and is included in the Agreed Pricing.
- (d) If the Hire Equipment is damaged by New Hope (excluding Fair Wear and Tear) during the Hire Period, New Hope must pay the Supplier for all reasonable and direct costs incurred by the Supplier in repairing the Hire Equipment.

9.4 Operation of the Hire Equipment

- (a) New Hope:
 - (i) is responsible for the care of the Hire Equipment and the risk of any loss or damage to the Hire Equipment during the Hire Period;
 - (ii) must take all reasonable steps to protect the Hire Equipment during the Hire Period from any loss or damage;
 - (iii) must ensure that the Hire Equipment is operated by competent and properly qualified and trained personnel only;
 - (iv) must comply with:

- (A) all applicable Laws while operating the Hire Equipment; and
- (B) all standards, procedures and manuals in relation to the use, operation and storage of the Hire Equipment provided by the Supplier to New Hope from time to time; and
- (v) must not:
 - (A) part with possession of the Hire Equipment except for repair or maintenance in accordance with clause 9.3; or
 - (B) make any modifications of any nature to the Hire Equipment without the Supplier's prior written consent.
- (b) Unless expressly stated otherwise in the Contract, during the Hire Period, New Hope is responsible for, at its cost:
 - (i) providing consumables for the Hire Equipment; and
 - (ii) cleaning the Hire Equipment.

9.5 **Post-hire inspection**

- (a) At the end of the Hire Period and prior to the Supplier commencing any works to dismantle or decommission the Hire Equipment for removal, or the Supplier collecting the Hire Equipment from the Delivery Place, at the request of either party:
 - (i) the Supplier's Representative will perform an inspection of the Hire Equipment and complete a post-hire inspection report of the Hire Equipment specifying any repairs for which the Supplier's Representative believes New Hope is responsible (excluding Fair Wear and Tear) (**Post-Hire Inspection Report**) in the presence of a New Hope Representative; and
 - (ii) a New Hope Representative and the Supplier's Representative will use reasonable endeavours to agree in good faith, and then sign, the Post-Hire Inspection Report.
- (b) The parties acknowledge and agree that:
 - (i) if the Supplier's Representative undertakes an inspection of the Hire Equipment and completes a Post-Hire Inspection Report under clause 9.5(a), the signed Post-Hire Inspection Report will be binding on both parties; and
 - (ii) if the Supplier's Representative decides not to undertake an inspection of the Hire Equipment and a Post-Hire Inspection Report is not completed as contemplated by clause 9.5(a) or a Pre-Hire Inspection Report is not completed as contemplated by clause 9.2(b), New Hope may notify the Supplier's Representative of any repairs for which New Hope believes it is responsible (excluding Fair Wear and Tear) or

- any Hire Equipment which New Hope identifies as 'lost' or 'stolen' (**End of Hire Notice**).
 - (c) New Hope will be responsible for any reasonable and direct costs to:
 - (i) replace any Hire Equipment which:
 - (A) was included in the Pre-Hire Inspection Report and identified as 'lost' or 'stolen' in the Post-Hire Inspection Report; or
 - (B) is identified in the End of Hire Notice as 'lost' or 'stolen'; and
 - (ii) repair any damage to the Hire Equipment that is identified in:
 - (A) the Post-Hire Inspection Report and which was not identified in the Pre-Hire Inspection Report as being present prior to New Hope taking possession of the Hire Equipment, with the exception of Fair Wear and Tear; or
 - (B) the End of Hire Notice,
- except where any damage to the Hire Equipment is irreparable or the cost of replacing the damaged Hire Equipment is less than the cost of repairing the damaged Hire Equipment, New Hope will only be liable to the Supplier for the reasonable and direct costs of replacing the irreparable or damaged Hire Equipment.

10 **Pricing and payments**

10.1 **Application of Agreed Pricing**

- (a) New Hope must pay the Supplier for the proper performance of the Supply in accordance with the Agreed Pricing.
- (b) Subject to clause 10.1(c), the Agreed Pricing is deemed to include all of the Supplier's costs in relation to the Supply, including:
 - (i) employee wages and entitlements for Personnel;
 - (ii) all travel, parking, accommodation, meals and, transportation;
 - (iii) fuel and other consumables;
 - (iv) the costs of manufacture, testing, certification, packaging, handling, storage and transport of any Goods;
 - (v) contractor registration and accreditation on New Hope's worker management and access control platform (currently Damstra);
 - (vi) fees, charges, levies, duties and taxes (except GST) imposed by Authorities in connection with the Supply; and

- (vii) the cost of performing all obligations set out in the Contract, including to correct Defects.
- (c) The Supplier will only be entitled to claim reimbursement for costs it incurs in the performance of the Supply if the Contract specifically provides for cost reimbursable pricing or if New Hope agrees in writing to reimburse the Supplier for the relevant cost prior to the cost being incurred.

10.2 Invoicing and payment

The parties acknowledge and agree that Annexure 1 applies instead of this clause 10.2 to the extent the Supply constitutes “construction work” or “related goods and services” (as those terms are defined in the Security of Payment Act), and unless otherwise stated in the Contract:

- (a) the Supplier must submit invoices to New Hope:
 - (i) if the Agreed Pricing provides for or contemplates progress claims, by the 3rd Business Day of each month for any Supply provided to the last day of the previous calendar month; or
 - (ii) if the Agreed Pricing provides for milestone payments, promptly after the Supplier has achieved an applicable milestone; and
- (b) the invoice must:
 - (i) be in the form of a tax invoice and conform with the requirements of clause 10.4;
 - (ii) quote the Purchase Order number;
 - (iii) include details of, as applicable, payment milestones reached and/or the value of Supply provided;
 - (iv) be accompanied by such certification and documentation as New Hope may reasonably require; and
 - (v) be delivered to the New Hope Contract Representative and an electronic copy of the invoice must also be sent by email to the Accounts Email; and
- (c) subject to New Hope’s rights under clause 10.3 and the invoice complying with requirements in clause 10.2(b), New Hope must pay the amount in the invoice within 30 days unless New Hope has agreed, in its absolute discretion and in writing, to any lesser period for the payment of invoices.

10.3 Disputed invoices

The parties acknowledge and agree that Annexure 1 applies instead of this clause 10.3 to the extent the Supply constitutes “construction work” or “related goods and services” (as those terms are defined in the Security of Payment Act):

- (a) if New Hope wishes to dispute any invoice, in whole or in part, New Hope must notify the Supplier of the dispute as soon as reasonably practicable after receiving the invoice;

- (b) New Hope is not required to pay an invoice while it is in dispute. However, New Hope will pay an undisputed amount in an invoice if the Supplier cancels the original invoice (pending resolution of the dispute) and reissues New Hope with an invoice for the amount of the undisputed portion;
- (c) a notice given under clause 10.3(a) will be deemed to be a ‘Dispute Notice’ for the purposes of clause 20(a) and the provisions of clause 20 will apply until the resolution of the dispute; and
- (d) notwithstanding the process outlined in this clause 10.3, no payment by New Hope will prejudice New Hope’s right to question or dispute an invoice or pursue or recover any claims against the Supplier.

10.4 GST

- (a) Unless the context otherwise requires, terms defined in the GST Act and used in this clause 10.4, will have the meaning given to them in the GST Act (including the terms “Supplier” and “Supply”).
- (b) The consideration for a Supply made under or in connection with the Contract is exclusive of GST unless stated otherwise.
- (c) A Recipient of a Taxable Supply under or in connection with the Contract:
 - (i) must pay to the Supplier, in addition to the consideration, an amount equal to the GST paid or payable by the Supplier; and
 - (ii) must make such payment to the Supplier as and when the consideration or part of it is provided, except that the Recipient need not pay unless the Recipient has received a Tax Invoice (or an Adjustment Note) for that Taxable Supply.
- (d) For clarity, the GST payable under clause 10.4(c) is correspondingly increased or decreased by any subsequent adjustment to the amount of GST for the Supply for which the Supplier is liable, however caused.
- (e) If either party has the right under the Contract to be reimbursed or indemnified by another party for a cost incurred in connection with the Contract, that reimbursement or indemnity excludes any GST component of that cost for which an Input Tax Credit may be claimed by the party being reimbursed or indemnified, or by its representative member, joint venture operator or other similar person entitled to the Input Tax Credit (if any).
- (f) Where a Supply made under or in connection with the Contract is a Progressive or Periodic Supply, clause 10.4(c) applies to each component of the Progressive or Periodic Supply as if it were a separate Supply.

10.5 Set off

- (a) Without limiting any other right of New Hope under the Contract, New Hope may set off against any amount owed by New Hope to the Supplier:

- (i) any sum payable under the Contract by the Supplier to New Hope; or
 - (ii) any costs or expenses incurred by New Hope as a result of or arising from any breach of the Contract by the Supplier or any of its Personnel.
- (b) Any amount under clause 10.5(a) will be a debt due and payable to New Hope and may be recovered in any court of competent jurisdiction (to the extent such amount is not otherwise set off).

11 Intellectual Property

11.1 Supply Intellectual Property

The parties agree that:

- (a) New Hope will own all Supply Intellectual Property and the Supply Intellectual Property is deemed to vest in New Hope immediately upon its creation;
- (b) the Supplier must do everything required to perfect the vesting of all Supply Intellectual Property in New Hope and ensure that New Hope has full legal ownership of all Supply Intellectual Property;
- (c) for the duration of the Term, New Hope grants the Supplier a non-transferable, royalty-free, non-exclusive, worldwide, licence to use, modify and adapt the Supply Intellectual Property for the purpose of performing the Supply (including to perform its obligations under the Contract); and
- (d) the Supplier must notify New Hope in writing as soon as practicable of any Claim threatened or brought against the Supplier or any of its Personnel arising from an infringement or alleged infringement by the Supplier or any of its Personnel of the Intellectual Property Rights or Moral Rights of any person.

11.2 Background Intellectual Property

- (a) The Supplier or its Personnel (as the case may be) will retain ownership of any Background Intellectual Property which is provided to New Hope or utilised by the Supplier or its Personnel in connection with the Supply.
- (b) The Supplier grants (and to the extent it is not the owner, the Supplier must procure that its Personnel and any relevant third party grants) to New Hope Group a transferable (including the right to sublicense), non-exclusive, worldwide, irrevocable, unconditional, royalty-free, perpetual and fully assignable licence to use, modify and adapt the Background Intellectual Property which is provided to New Hope or utilised by the Supplier or its Personnel in connection with the Supply for:
 - (i) the purposes of:
 - (A) carrying out any design, development, construction, installation, commissioning or testing of; or
 - (B) using, operating, duplicating, maintaining, repairing, upgrading,

improving, altering, modifying or otherwise dealing with,

the whole or any part of the Supply; and

- (ii) any of New Hope Group's internal and other business operations associated with the Supply.

11.3 Moral Rights

Without limiting any other provision of the Contract, the Supplier must ensure that the exercise of New Hope's rights under the Contract (including any acts or omissions of New Hope in connection with the use of the Supply) will not infringe the Moral Rights of any person (including that New Hope is not required to attribute authorship of any part of the Supply).

12 Warranties

12.1 Supplier warranties

The Supplier represents and warrants to New Hope that:

- (a) it has the necessary skill, experience and resources to deliver the Supply;
- (b) it validly exists under the law of the place of its incorporation and has the power to enter into the Contract;
- (c) no Insolvency Event has occurred in respect of it, or any of its Related Bodies Corporate, in the past 12 months;
- (d) (unless disclosed to New Hope) it enters into the Contract in its own capacity and not as trustee of any trust;
- (e) it holds all Approvals required to deliver the Supply and to perform its obligations under the Contract;
- (f) it has informed itself of and is compliant with the conduct obligations in clause 4;
- (g) (in respect of any Goods supplied) it has good and marketable title to the Goods and other materials provided as part of the Supply and that, upon full payment of the Agreed Pricing for the Goods, the Goods and other materials will be free from any Security Interests, liens or other encumbrances;
- (h) the Supply and any Associated Documents and other materials provided by the Supplier do not infringe the Intellectual Property Rights or Moral Rights of any person; and
- (i) it is operating its own independent business and provides goods and services of the same or a similar nature to that contemplated under the Contract to persons other than New Hope.

12.2 Breach of warranties

In addition to New Hope's rights at Law (including to claim damages), if the Supplier breaches any of the warranties in this clause then New Hope may exercise its rights of suspension and/or termination in accordance with clause 19.

13 Defects

13.1 Warranty as to Defects

- (a) Subject to clause 13.1(b), the Supplier represents and warrants that the Supply will be free from Defects upon delivery to the Delivery Place and for the duration of the Defects Liability Period.
- (b) The Supplier's warranty under clause 13.1(a) and its obligations to rectify Defects under clause 13.2 do not extend to any Defect which arises due to:
 - (i) improper use of the Supply by New Hope;
 - (ii) normal wear and tear; or
 - (iii) defective materials supplied by New Hope.

13.2 Notification and rectification

- (a) The Supplier must immediately give notice to New Hope of any Defect or potential Defect in the Supply of which it becomes aware.
- (b) If New Hope discovers a Defect in the Supply during the term of the Contract or at any time prior to the expiry of the Defects Liability Period, New Hope may give the Supplier a written notice to rectify the Defect and such notice will provide details of the Defect and a reasonable date on which rectification must commence and be completed by **(Defect Notice)**.
- (c) If New Hope gives the Supplier a Defect Notice, the Supplier must rectify the Defect:
 - (i) as soon as reasonably practicable and within any time period specified in the Defect Notice;
 - (ii) through re-performance, repair or replacement of the Defective Supply, as specified by New Hope in the Defect Notice (acting reasonably);
 - (iii) to the standard required by the Contract;
 - (iv) at the Supplier's own cost and risk (including the cost of attending any Site and the cost of collection, transportation and re-delivery); and
 - (v) without causing damage to any other property or materials and without causing avoidable disruption to New Hope's ongoing operations.
- (d) If the Supplier fails to rectify a Defect in accordance with clause 13.2(c) then New Hope may rectify the Defect itself or cause a third party to rectify the Defect and the costs of doing so will be a debt due and payable from the Supplier to New Hope. New Hope may withhold from any payment otherwise due to the Supplier an amount equivalent to the costs it is entitled to recover under this clause.
- (e) A Defect rectified during the Defects Liability Period will be subject to a further defects liability period of 12 months commencing on the date the relevant Defect is rectified.

13.3 Other rights not prejudiced

- (a) Nothing in this clause 13 is intended or will be construed to prejudice any other rights or remedies that New Hope has or may have in relation to a Defect.
- (b) New Hope expressly reserves the right to:
 - (i) withhold payment to the Supplier for any Defective Supply, until such time as the Defect is rectified; and
 - (ii) exercise any available rights of termination, including in respect of all or part of future Supply.

13.4 Third party warranties

- (a) The Supplier must use all reasonable endeavours to assign to New Hope, or will otherwise enforce for the benefit of New Hope, any warranty or guarantee of any vendor, manufacturer or supplier of any Goods as well as any warranty of subcontractors or consultants. The Supplier must cooperate and assist New Hope in New Hope's enforcement of those warranties or guarantees.
- (b) The delivery of a warranty or guarantee from any third party vendor, manufacturer or supplier will be in addition to the warranties given by the Supplier under the Contract, and will not relieve the Supplier from responsibility to rectify Defects.

14 Liability

14.1 Risk

- (a) Subject to clause 14.1(d), the Supplier performs the Supply and enters and uses the Site at its own risk and, as between the parties, the Supplier bears the obligation to identify any risks in connection with the Supply.
- (b) Subject to clauses 14.1(c) and 14.1(d), the Supplier releases each New Hope Company and their respective directors, officers and employees **(Released Persons)** from any and all liability for:
 - (i) loss of, or damage to, any physical property owned, leased or used by the Supplier or the Supplier's Personnel; or
 - (ii) injury (including psychological injury), illness or death to any of the Supplier's Personnel,occurring in connection with the performance of the Supply, including any occurrence at, on or about the Site.
- (c) The release in clause 14.1(b) does not apply to the extent that the loss, damage, injury, illness or death is caused or contributed to by a negligent, fraudulent or unlawful act or omission of a Released Person or breach of the Agreement by a Released Person.
- (d) Nothing in this clause 14.1 operates to exclude, restrict or modify the application of any law (including any safety Laws and the *Workers' Compensation and*

Rehabilitation Act 2003 (Qld)) where to do so would contravene that law or cause any part of this clause 14.1 to be void.

14.2 Indemnities

The Supplier must indemnify, defend and hold harmless each New Hope Company and their respective directors, officers and employees (**Indemnified Persons**) against any Loss which may be suffered or incurred by an Indemnified Person or Claims which may be brought against an Indemnified Person arising out of or in connection with:

- (a) any breach of any provision of the Contract (including any breach of warranty) by the Supplier or any of its Personnel;
- (b) any breach by the Supplier of its safety obligations under the Contract including any breach, investigation, proceedings or prosecution under or in respect of any safety Laws in connection with the provision of the Supply by the Supplier;
- (c) any infringement (or alleged infringement) of any Intellectual Property Rights or Moral Rights of any person in respect of any Material forming party of the Supply;
- (d) any loss of, or damage to, any physical property, or injury (including psychological injury), illness or death of any person to the extent caused or contributed to by an act or omission of the Supplier or any of its Personnel in connection with the performance of the Contract; or
- (e) any negligent, fraudulent or unlawful act or omission of, or wilful misconduct by, the Supplier or any of its Personnel in connection with the performance of the Contract,

except to the extent that the Loss or Claim was caused or contributed to by a negligent, fraudulent or unlawful act or omission of an Indemnified Person or a breach of the Contract by an Indemnified Person.

14.3 Nature of indemnities

- (a) Each release and indemnity in the Contract is a continuing obligation, separate and independent from the other obligations of the parties, and survives termination, completion or expiration of the Contract.
- (b) It is not necessary for a party to incur expense or to make any payment before enforcing a right of indemnity conferred by the Contract.
- (c) A party must pay on demand any amount it must pay under an indemnity in the Contract.

14.4 Excluded Losses

Subject to clause 14.5 but notwithstanding any other provision of the Contract and to the extent permitted by law, neither party is liable to the other party whether in contract, tort (including in negligence), equity, product liability, under any warranty or indemnity, by operation of statute or otherwise for any Excluded Loss.

14.5 Certain liability not limited or excluded

Nothing in the Contract (including clause 14.4) will exclude or limit any liability of the Supplier which arises out of or in connection with any:

- (a) injury (including psychological injury), illness or death of any person;
- (b) loss of, or damage to, any physical property;
- (c) liability which is covered by a policy of insurance required to be held under the Contract or which would have been covered by a policy of insurance required to be held under the Contract, if the Supplier had complied with the Contract, the terms of the relevant policy of insurance and diligently pursued any claim available under that policy of insurance (provided that the Supplier's liability contemplated under this clause 14.5(c) will not exceed the amount of insurance required to be held under the Contract);
- (d) breach of clause 11 (Intellectual Property) or clause 17 (Information obligations);
- (e) breach of any Laws;
- (f) abandonment of the Contract;
- (g) fixed or agreed amount for loss, damage, reduction, remedy or abatement (including any liquidated damages); or
- (h) fraud, criminal conduct or wilful misconduct.

15 Insurance

15.1 Obligation to effect and maintain insurance

Prior to commencing any Supply, the Supplier must effect and maintain (and, if the Supplier has subcontracted any of the Supply, ensure that its subcontractors effect and maintain) the following insurances:

- (a) comprehensive public and products liability insurance, including coverage for loss or damage to physical property and death or bodily injury to any person, for an amount not less than \$20 million in respect of each claim;
- (b) if the Supply involves the transportation of items (including Goods) for New Hope, insurance covering loss or damage to those items for their full replacement value until risk in the items passes to New Hope;
- (c) if the Supply involves the transportation or handling of hazardous substances, insurance covering liabilities arising from the accidental release of any pollutant for an amount of not less than \$10 million for each and every claim;
- (d) if the Supply involves the Supplier bringing plant and equipment (including Hire Equipment) onto a Site, insurance covering all loss and damage to the plant and equipment (including Hire Equipment), for the replacement value of that plant and equipment;
- (e) if the Supply involves the use of motor vehicles, third party motor vehicle liability insurance covering

liability for death or bodily injury to any person and loss or damage to any property arising from the use of the motor vehicle;

- (f) in respect of all Personnel involved in the Supply:
 - (i) workers compensation insurance as required under an applicable statutory scheme prescribed by Law (including coal mines insurance to the extent required by the laws in force in New South Wales, where the Supplier's Personnel is required to perform the Supply at a Site in New South Wales); or
 - (ii) if the insurance described in clause 15.1(f)(i) cannot be obtained in respect of any Personnel for any reason, substantially equivalent workplace personal injury insurance in respect of those Personnel;
- (g) if the Supply includes professional services (including consultancy, engineering, legal and accounting services), professional indemnity insurance:
 - (i) for an amount prescribed by a statutory professional standards scheme applying to the Supplier; or
 - (ii) otherwise, for an amount of not less than \$5 million in respect of each claim; and
- (h) any other insurance required by Law or specified in the Purchase Order or Statement of Work.

15.2 Requirements for insurances

All insurances described in clause 15.1 must:

- (a) be procured at the Supplier's own expense;
- (b) remain in effect for the period in which the Supply is provided and in addition:
 - (i) the insurance in clauses 15.1(a) and 15.1(f) must remain in effect until the expiry of the Defects Liability Period; and
 - (ii) the insurance in clause 15.1(g) must remain in effect for at least six years after:
 - (A) the expiry of the Defects Liability Period; or
 - (B) where there is no Defects Liability Period, the completion of the Supply; and
- (c) be obtained from independent and reputable insurers.

15.3 Supplier's undertakings

- (a) Upon New Hope's request, the Supplier must provide to New Hope certificates of currency as evidence of the Supplier's and its subcontractors' compliance with this clause 15.
- (b) Neither failure to comply nor full compliance with this clause 15 will limit or relieve the Supplier from its liability under the Contract.

- (c) If the Supplier fails or refuses to comply with the obligations prescribed in this clause 15, New Hope may, without prejudice to any other rights or remedies available to it under the Contract or at Law:
 - (i) treat the Contract as having been repudiated by the Supplier; or
 - (ii) procure the required insurances and the costs of doing so will be a debt due and payable from the Supplier to New Hope.

16 Records, audits, inspections, notifications and investigations

16.1 Record keeping

The Supplier must keep accurate and complete records relating to the Supply (including records of all health and safety matters, environmental matters and records to enable New Hope to determine the Supplier's compliance with the Modern Slavery Laws and the steps taken by the Supplier to ensure that slavery and human trafficking is not taking place in any part of the Supplier's business or supply chain) and retain copies of them for a period of 6 years, or any longer period as required by any applicable Law.

16.2 Audit of records

The Supplier must provide New Hope access to its records and accounts to confirm any of the following:

- (a) any amount payable to the Supplier (or which the Supplier claims it is owed) on a cost-reimbursable basis; and
- (b) where New Hope has reasonable grounds to suspect that the Supplier has not complied with a requirement of the Contract, the Supplier's compliance with the Contract (including the conduct obligations set out in clause 4).

16.3 Inspections and tests

- (a) New Hope may, at any time, conduct an inspection, test or investigation in connection with the Supply (including an inspection of the Supplier's plant and equipment used in connection with the Supply and an inspection of the Goods at the place of manufacture of the Goods).
- (b) An inspection, test or investigation under clause 16.3(a) may be conducted, upon reasonable prior notice, at any location operated by the Supplier or its Personnel.

16.4 Notifications

The Supplier must immediately notify New Hope (such notice may initially be verbal, provided that a written notice is given to New Hope as soon as practicable thereafter):

- (a) of any Reportable Incident involving the Supply or that may affect the performance of the Supply or an obligation under the Contract;
- (b) of any event or incident that occurs on or adjacent to the Site involving the Supplier or any of its Personnel

including any injury, accident or HSE related incident; and

- (c) of any matter or conduct relating to the Supplier or any of its Personnel which does, or may, constitute a breach of any requirement in clause 4.

16.5 Investigations

- (a) The Supplier must investigate, in accordance with good industry practices:
 - (i) any Reportable Incident notified to New Hope; and
 - (ii) the root cause of any Defect in the Supply that occurs more than once or that affects more than one part of the Supply.
- (b) The Supplier must provide New Hope with the results of its investigation under clause 16.5 including any recommendations, lessons learned, or corrective actions taken by the Supplier.

16.6 Supplier's assistance

- (a) Subject to clause 16.6(b), the Supplier must render all assistance with any audit, inspection, testing or investigation carried out under this clause 16 including by providing any information reasonably required by New Hope.
- (b) The Supplier is not required to disclose records to New Hope to the extent that the records are subject to:
 - (i) legal professional privilege; or
 - (ii) an obligation of confidentiality to a third party (provided the Supplier uses reasonable endeavours to obtain the consent of the third party to release the record).
- (c) Any audit, inspection, test or investigation conducted by New Hope will not relieve the Supplier from any responsibility or liability in connection with the performance of its obligations under the Contract.

17 Information obligations

17.1 Confidential information

- (a) Subject to clause 17.1(c), the Supplier agrees to hold in confidence, keep secure and not unnecessarily reproduce:
 - (i) the Contract (including the Agreed Pricing);
 - (ii) any document or material provided by New Hope to the Supplier which is of a confidential nature; and
 - (iii) any information about New Hope or New Hope's operations that is acquired or produced in connection with the Supply,
- (Confidential Information) except to those of its Personnel and professional advisers who have a reasonable need to know the relevant document, material or information and who are bound by obligations of confidentiality to the Supplier.

- (b) Subject to clause 17.1(c), New Hope agrees to hold in confidence, keep secure and not unnecessarily reproduce:

- (i) the Contract (including the Agreed Pricing); and
- (ii) any document or material provided by the Supplier in connection with the Supply which is marked 'confidential' or which the Supplier advises New Hope in writing is confidential in nature, provided that the Supplier will not assert confidentiality over any part of the Supply or any material (including any Associated Documents) which is provided as a deliverable or which otherwise forms part of the Supply,

except to those of its Personnel and professional advisers who have a reasonable need to know the relevant document, material or information and who are bound by obligations of confidentiality to New Hope.

- (c) The obligations in clauses 17.1(a) and 17.1(b) do not apply in respect of any document, material or information that is:
 - (i) already in the public domain;
 - (ii) independently known to the recipient at the time it was acquired or produced;
 - (iii) required to be disclosed by Law (including by orders of any court or other Authority) or a stock exchange listing rule; or
 - (iv) disclosed for the purposes of obtaining legal advice or for the purposes of participating in legal proceedings.
- (d) Each party must promptly advise the other if it becomes aware of any actual or suspected breach of its obligations under this clause 17.1.

17.2 Personal Information

Each party must comply with the Privacy Laws in respect of any Personal Information obtained by or disclosed to it in connection with the Supply.

17.3 Information security

- (a) If the Supply involves the Supplier holding Personal Information on any device or server outside of New Hope's systems, the Supplier must put into place and maintain appropriate technical, physical and organisational measures to protect against processing, access or disclosure to the Personal Information.
- (b) Personal Information must not be exported to any device or server outside of Australia without the prior written consent of New Hope.
- (c) The Supplier must immediately notify New Hope if:
 - (i) there is an accidental loss, destruction of, or unauthorised access to Personal Information relevant to New Hope;

- (ii) there is a cyber security or data security breach in respect of any system used in connection with the Supply which has or may impact Personal Information relevant to New Hope; and
 - (iii) (without limiting the above) the Supplier becomes aware of any 'eligible data breach' as such term is defined in the Privacy Laws in connection with Personal Information relevant to New Hope.
- (d) In respect of any matter described in clause 17.3(c), the Supplier must:
- (i) mitigate, to the extent practicable, any harmful effect;
 - (ii) provide all information requested by New Hope in relation to the matter; and
 - (iii) cooperate with New Hope in any investigation and in notifying individuals or regulators about the incident.

17.4 Public announcements/ media

Unless required by Law or applicable stock exchange listing rules, the Supplier must not make or publish any public announcement or statement about the Contract or the Supply without the prior written consent of New Hope.

18 Force Majeure

- (a) Subject to clause 18(b):
- (i) neither party will be liable for any delay or failure to perform its obligations under the Contract; and
 - (ii) the performance of a party's obligations under the Contract will be suspended,
- if and to the extent that:
- (iii) the affected party is unable to carry out any of its obligations (in whole or in part) under the Contract due to a Force Majeure Event; and
 - (iv) the delay or failure is caused by a Force Majeure Event provided that the affected party is without fault in causing that delay or failure.
- (b) This clause does not apply to an obligation of a party to pay money and for the avoidance of doubt, the Supplier will not be entitled to payment of any part of the Agreed Pricing where the relevant Supply has not been performed by the Supplier.
- (c) The affected party must:
- (i) notify the other party in writing promptly (and no later than 5 Business Days after becoming aware of the Force Majeure Event) if the Force Majeure Events prevents (or is likely to prevent) it from complying with any of its obligations under the Contract and the notice must:

- (A) provide a detailed description of the Force Majeure Event and its effect on the party's obligations;
 - (B) identify the obligations and the extent to which that the party will be unable to perform, or will be delayed in performing, in accordance with the Contract as a result of the Force Majeure Event; and
 - (C) identify the efforts the party has made, or will make, to try to overcome the effect of the Force Majeure Event;
- (ii) use its best endeavours to:
- (A) mitigate any losses or damages;
 - (B) minimise any delay caused by the Force Majeure Event; and
 - (C) if possible, work around or overcome the effect of the Force Majeure Event;
- (iii) keep the other party informed of the continuation and expected duration of the Force Majeure Event and of measures taken to comply with this clause; and
- (iv) recommence performance of its obligations as soon as possible after the Force Majeure Event has ceased to exist.

19 Suspension and Termination

19.1 Suspension for certain matters

- (a) If:
- (i) the Supplier or any of its Personnel breach a conduct obligation in clause 4, including any of the warranties in clause 4.4;
 - (ii) if there is a Reportable Incident involving the Supplier or any of its Personnel in connection with the Supply;
 - (iii) the Supplier or any of its subcontractors breach any of the insurance obligations in clause 15; or
 - (iv) New Hope is directed to suspend operations or the Supply by an Authority,

then without prejudice to its other rights under the Contract or at Law, New Hope may give the Supplier a written notice to suspend the performance of the Supply, and may suspend the Supplier's or any of its Personnel's access to a Site, for such time and under such conditions as New Hope determines, acting reasonably.

- (b) If:
- (i) an act, default or omission of, or the wilful misconduct of, the Supplier or any of its Personnel caused or contributed to the matter giving rise to the suspension; or

- (ii) the suspension is made pursuant to clause 19.1(a)(i) or clause 19.1(a)(iii),

then the Supplier will bear its own costs in connection with a suspension under clause 19.1(a) and the Supplier will not be entitled to make any Claim against New Hope (including any claim for payment of any Agreed Pricing in respect of the period of suspension).

- (c) If none of the circumstances in clause 19.1(b) apply, New Hope's liability to the Supplier in respect of a suspension under clause 19.1(a) will be limited to the payments described in clause 19.2(c) (as would apply for a suspension for convenience) and this will be the Supplier's sole entitlement, and the Supplier will have no other Claim against New Hope, arising out of a suspension under clause 19.1(a).

19.2 Suspension or termination for New Hope's convenience

- (a) New Hope may, in its absolute discretion and at any time, terminate all or any part of the Contract or suspend all or any part of the Supply for its convenience by giving written notice to the Supplier.
- (b) In exercising its rights under clause 19.2(a), New Hope is not required to give the Supplier any reasons.
- (c) Without limiting New Hope's rights under or in connection with the Contract (including the rights to withhold or set-off payment, and recovery of damages), in respect of a termination or suspension made under clause 19.2(a), New Hope must pay to the Supplier:
 - (i) the outstanding and unpaid portion of the Agreed Pricing due to the Supplier for the Supply up to the date of termination or suspension (provided the Supply was performed in accordance with the Contract);
 - (ii) any reasonable costs incurred by the Supplier in removing the Supplier's Personnel and equipment (if any) from the Site;
 - (iii) (in the case of suspension) any standby rates in the Agreed Pricing while the Supplier's Personnel and equipment remain mobilised at the written request of New Hope; and
 - (iv) (in the case of termination) the actual cost of materials reasonably ordered by the Supplier prior to the date of termination which:
 - (A) the Supplier is legally bound to accept (subject to the exercise of any termination rights by the Supplier if New Hope so directs); and
 - (B) the Supplier cannot recover or mitigate by any other means,but only if the materials are delivered to, and become the property of, New Hope upon payment,

provided that:

- (v) to the extent that any part of the Agreed Pricing is specified to be a fixed lump sum, that part of the Agreed Pricing will be reduced on a daily pro rata basis for any period that the Supply has not been performed by the Supplier;
- (vi) New Hope will not be liable to pay any amount, to the extent the Supplier could have, acting reasonably reduced or limited its exposure for that amount (including by not entering into any further subcontracts, not performing any further Supply or otherwise mitigating costs);
- (vii) New Hope's maximum liability arising out of:
 - (A) a termination of the Contract under clause 19.2(a), will not exceed the amount which would have been payable as the Agreed Pricing (and to the extent it otherwise would be so, New Hope's liability to the Supplier is capped at the Agreed Pricing); or
 - (B) a suspension of the Contract under clause 19.2(a), will not exceed the amount which would have been payable as the Agreed Pricing for the period of suspension (and to the extent it otherwise would be so, New Hope's liability to the Supplier is capped at the Agreed Pricing for the period of suspension); and
- (viii) the Supplier will not be entitled to compensation for any Excluded Loss arising out of or in connection with the termination or suspension of the Contract under clause 19.2(a).

- (d) The costs contemplated under clause 19.2(c) will be the Supplier's sole entitlement, and the Supplier will have no other Claim against New Hope, arising out of any termination or suspension of the Contract under clause 19.2(a).

19.3 Termination for default or solvency issues

- (a) Without limiting its other rights under the Contract (including under clauses 19.1 and 19.2) and at Law, New Hope may, at any time, terminate all or any part of the Contract immediately by written notice to the Supplier, if the Supplier:
 - (i) breaches any of its obligations under the Contract and the Supplier does not rectify the breach within the time period stated in a notice from New Hope requesting the breach to be remedied (such time period to be at least 14 days from the date of the notice); or
 - (ii) becomes subject to an Insolvency Event.

- (b) To the maximum extent permitted by Law, New Hope will have no liability to the Supplier in connection with a termination made under this clause 19.3.

19.4 Supplier's right to suspend and terminate

Without limiting its other rights under the Contract and at Law, the Supplier may terminate all or any part of the Contract or suspend all or any part of the Supply immediately by written notice to New Hope, if New Hope:

- (a) (in respect of an invoice which is not subject to a dispute) fails to make payment of the undisputed invoice within 30 days of receipt of a written demand from the Supplier following the invoice becoming overdue; or
- (b) becomes subject to an Insolvency Event.

19.5 Conduct following suspension or termination

- (a) Upon termination or suspension under this clause 19, the Supplier must immediately (unless otherwise directed by New Hope):
- (i) cease the provision of the whole or the relevant part of the Supply (as applicable);
 - (ii) protect property in the possession of the Supplier in which New Hope has or may acquire an interest;
 - (iii) if required by New Hope, transfer to New Hope the Supply or any part of the Supply (including any Associated Documents) existing as at the date of the termination or suspension notice, including any Documentation or information of New Hope provided to the Supplier in connection the Contract or which has become the property of New Hope under or in connection with the Contract;
 - (iv) comply with any directions given by New Hope; and
 - (v) use its best endeavours to mitigate any loss or damage that it may suffer as a result of the termination or suspension.
- (b) Without prejudice to any other rights of New Hope, New Hope may, following termination of a Contract (including under this clause 19), provide the Supply itself or procure a third party to provide the Supply in the place of the Supplier.
- (c) To the extent New Hope purports to terminate the Contract under clause 19.3 or on any other basis, and such termination would, but for this clause, be held to be invalid (including that New Hope would have, but for this clause repudiated the Contract), then the parties agree that instead of such termination being held to be an invalid termination, the Contract is deemed to have been terminated in accordance with clause 19.2 and the rights and obligations of the parties will be determined accordingly.
- (d) The expiry or termination of the Contract does not affect any accrued rights or liabilities of either party or

excuse any party from a breach of the Contract occurring prior to termination or expiry.

20 Dispute resolution

- (a) If a dispute between the parties arises in connection with the Contract, then either party may give the other party a written notice of the dispute in accordance with this clause 20, identifying and providing details of the dispute (including the value of the amount in dispute, if relevant) (**Dispute Notice**).
- (b) Unless the dispute is in relation to the exercise of a right to terminate the Contract, the parties must continue to perform the Contract unless otherwise agreed.
- (c) Within 10 Business Days after service of a Dispute Notice, the parties must confer at least once (in good faith and without prejudice) to resolve the dispute. Each party must be represented by a person having authority to agree to a resolution of the dispute.
- (d) If the dispute has not been resolved within 20 Business Days of service of the Dispute Notice, either party may commence legal proceedings or, if agreed in writing by the parties, commence alternative dispute resolution proceedings.
- (e) Nothing in this clause 20 will prevent a party from commencing court proceedings to obtain any urgent injunctive, declaratory or other interlocutory relief.

21 Representatives

21.1 Supplier's representative

- (a) The Supplier must, at all times during the Term, have an appointed representative with responsibility to act as the point of contact with New Hope in connection with the Contract and the Supply.
- (b) The Supplier's Representative will be the person named in the Contract or such other person as the Supplier may from time to time appoint by written notice to New Hope (**Supplier's Representative**).
- (c) Unless otherwise notified by the Supplier, the Supplier's Representative will have authority in respect to all matters relating to the Contract and the performance of the Supply.

21.2 New Hope representatives

- (a) The following people have authority in respect to all matters relating to the Contract (including to give directions and issue notices on behalf of New Hope) (each a **New Hope Representative**):
- (i) the person appointed as New Hope's nominated contract representative in the Contract or such other person as New Hope may from time to time appoint to administer the Contract on a day-to-day basis (**New Hope Contract Representative**);
 - (ii) any New Hope manager or general manger (as applicable) of the Site where the Supply is to be delivered or performed; and

- (iii) any of the New Hope Corporation executives, being the Chief Executive Officer, the Chief Financial Officer and the Executive General Manager.

- (b) A New Hope Representative may, by written delegation or authorisation, delegate any of its functions or responsibilities, or authorise other persons to carry out any of its functions or responsibilities, under the Contract.

22 Assignment and subcontracting

- (a) The Supplier must not transfer, assign, novate or subcontract the Contract or any of its rights, benefits or obligations under the Contract without the prior written consent of New Hope.
- (b) The Supplier's obligations under the Contract are not lessened or otherwise affected by its entry into any subcontracts.
- (c) Notwithstanding any subcontracts entered into by the Supplier, the Supplier remains liable for all acts and omissions of its Personnel, as if they were acts or omissions of the Supplier.
- (d) The Supplier agrees that New Hope may transfer, assign or novate the Contract or any of its rights, benefits or obligations under the Contract and the Supplier will promptly do all things and execute all further documents required by law or necessary to give full effect to the transfer, assignment or novation.

23 Notices

23.1 Notices generally

Subject to clause 23.2, a notice under the Contract will be deemed to be delivered if the notice is sent:

- (a) by email to the email address of the other party's Representative (unless the sender receives an out of office notification or a notice of delivery failure); or
- (b) by prepaid post or hand delivery to the other party's registered address (as recorded by the Australian Securities and Investment Commission).

23.2 Copy of certain notices to company secretary

In addition to the requirements in clause 23.1, if the Supplier issues any of the following types of notices:

- (a) any Dispute Notice; and
- (b) any notice alleging a contractual breach, any notice purporting or threatening to terminate the Contract, any notice claiming force majeure, or any notice making a monetary claim (other than a payment claim made in the ordinary course in accordance with the Agreed Pricing),

then the Supplier must also send an electronic copy of that notice by email to cossec@newhopegroup.com.au.

24 General

- (a) **(Governing law)** The Contract will be governed by and construed in accordance with the laws of the

State. Each party submits to the non-exclusive jurisdiction of the courts of the State in connection with the Contract.

- (b) **(Amendments)** The Contract may only be amended by a written agreement signed by or on behalf of each party.
- (c) **(Consent)** A party may exercise a right or remedy or give or refuse its consent in any way it considers appropriate (including by imposing conditions) unless the Contract expressly states otherwise. If a party does not exercise a right or remedy fully or at a given time, the party may still exercise it later.
- (d) **(Waiver)** A waiver or consent given by a party under the Contract is only effective and binding on that party if it is given or confirmed in writing by that party. No waiver of a breach of a term of the Contract operates as a waiver of another breach of that term or of a breach of any other term of the Contract.
- (e) **(Severability)** If any provision contained in the Contract is void, illegal or unenforceable, that provision is severable from the Contract and the remainder of the Contract has full force and effect.
- (f) **(Further acts)** Each party must promptly do all further acts and execute and deliver all further documents (in form and content reasonably satisfactory to that party) required by Law or reasonably requested by another party to give effect to the Contract.
- (g) **(No representations)** Each party acknowledges and confirms that it does not enter into the Contract in reliance on any representation or other inducement by or on behalf of any other party, except for representations or inducements expressly set out in the Contract.
- (h) **(No authority)** Unless expressly authorised in writing by a party, neither party:
 - (i) has the right or authority to act on the other party's behalf, bind the other party or speak on the other party's behalf; and
 - (ii) agrees not to represent that it has any authority to expressly or impliedly bind or attempt or purport to bind the other party to any contract or commitment.
- (i) **(Costs)** Except as otherwise provided in the Contract:
 - (i) each party must pay its own costs and expenses in connection with negotiating, preparing, executing and performing the Contract; and
 - (ii) the Supplier will pay any stamp duty payable in connection with the Contract.
- (j) **(Trusts)** If the Supplier enters into the Contract as trustee of a trust, the Supplier represents and warrants in its own right and as trustee of the trust, that as at the Commencement Date and until such time as all of the Supplier's obligations under the Contract are discharged:

- (i) the Supplier is the sole trustee of the trust;
 - (ii) the Supplier has the requisite capacity and authority to enter the Contract on behalf of, and to bind the beneficiaries of, that trust and to perform all obligations under the Contract pursuant to the documents governing that trust; and
 - (iii) the Supplier has the right to be fully indemnified out of the assets of the trust in relation to the Contract and the assets of the trust are sufficient to satisfy all obligations under the Contract.
- (k) **(Survival)** Clauses 2.6(d), 3.2, 3.3, 10.5, 11, 13, 14, 15.2(b)(ii), 15.3(c)(ii), 16.1, 17, 19.2(d), 19.3(b), 19.5 and 20, and this clause 24(k) survive the termination, expiry or completion of the Contract.

Annexure 1 - Security of Payment Act

1 Definitions

In this Annexure 1, capitalised terms have the following meanings except where the context otherwise requires:

Payment Claim means a claim for a progress or milestone payment made by the Supplier in accordance with the Contract and is a 'payment claim' for the purposes of the Security of Payment Act.

Payment Schedule means a payment schedule issued by the New Hope Contract Representative in accordance with the Contract and is a 'payment schedule' for the purposes of, and issued pursuant to, the Security of Payment Act.

Security of Payment Act means:

- (a) if the Contract is for Supply to be performed or delivered in New South Wales, the *Building and Construction Industry Security of Payment Act 1999* (NSW); or
- (b) if the Contract is for Supply to be performed or delivered in Queensland, the *Building Industry Fairness (Security of Payment) Act 2017* (Qld).

2 Applicability of Annexure 1

This Annexure 1 applies to the extent the Supply constitutes "construction work" or "related goods and services" (as those terms are defined in the Security of Payment Act).

3 Payment Claims

- (a) The Supplier must submit Payment Claims to the New Hope Contract Representative:
 - (i) if the Agreed Pricing provides for or contemplates progress claims, by the 3rd Business Day of each month for any Supply provided to the last day of the previous month; or
 - (ii) if the Agreed Pricing provides for milestone payments, promptly after the Supplier has achieved an applicable milestone.
- (b) Each Payment Claim must:
 - (i) be given in writing to the New Hope Contract Representative and an electronic copy of the Payment Claim must also be sent by email to the Accounts Email;
 - (ii) include details of, as applicable, payment milestones reached and/or the value of Supply provided and may include details of other moneys then due to the Supplier pursuant to the Contract; and

- (iii) be accompanied by any material or information the Contract or the Security of Payment Act requires, or the New Hope Contract Representative requests the Supplier to provide in support of its Payment Claim.

- (c) The Supplier will not be entitled to submit Payment Claims more frequently, or at any time earlier, than the time specified in clause 3(a) of this Annexure 1. An early Payment Claim will be deemed to have been made on the date permitted for making that Payment Claim in clause 3(a) of this Annexure 1.
- (d) Within:
 - (i) 28 days after the expiry of the last Defects Liability Period; or
 - (ii) where there is no Defects Liability Period, 28 days after the date on which the Goods are delivered and the date on which the Services have been fully performed by the Supplier,

the Supplier must give the New Hope Contract Representative a written final Payment Claim endorsed 'Final Payment Claim' being a Payment Claim made in accordance with the applicable requirements in clause 3 of this Annexure 1, together with all other Claims whatsoever in connection with the subject matter of the Contract (**Final Payment Claim**). An electronic copy of the Final Payment Claim must also be sent by email to the Accounts Email.

4 Payment Schedules

- (a) The New Hope Contract Representative must, within 10 Business Days after receiving a valid Payment Claim, issue to New Hope and the Supplier a Payment Schedule which identifies the Payment Claim to which it relates, states the amount of payment, if any, due from New Hope to the Supplier pursuant to the Payment Claim and provides reasons for any difference or withholding of payment.
- (b) The New Hope Contract Representative must, within 10 Business Days after receiving the Supplier's valid Final Payment Claim, issue to New Hope and the Supplier a final Payment Schedule evidencing the moneys finally due and payable between New Hope and the Supplier on any account whatsoever in connection with the subject matter of the Contract (**Final Payment Schedule**).
- (c) New Hope is not required to give the Supplier a Payment Schedule (or Final Payment Schedule) if the amount claimed in a valid Payment Claim (or

Final Payment Claim) is paid in full within 15 Business Days following receipt of the valid Payment Claim (or Final Payment Claim) by New Hope.

- (d) If the Supplier does not make a Payment Claim (or Final Payment Claim) in accordance with clause 3(a) or 3(d) of this Annexure 1, or for any other reason and at any other time in the New Hope Contract Representative's absolute discretion (and without being under any obligation to do so), the New Hope Contract Representative may issue a Payment Schedule (or Final Payment Schedule).
- (e) The Supplier must, within 2 Business Days of receipt of a Payment Schedule (or Final Payment Schedule), give New Hope a variation of the original tax invoice for the amount of the Payment Schedule (or Final Payment Schedule) issued by the New Hope Contract Representative pursuant to clause 4 of this Annexure 1. An electronic copy of the variation of the original tax invoice must also be sent by email to the Accounts Email.
- (f) New Hope must, within 15 Business Days following receipt of a valid Payment Claim (or Final Payment Claim), pay to the Supplier the amount stated in the Payment Schedule (or Final Payment Schedule) as due from New Hope to the Supplier. If the Payment Schedule (or Final Payment Schedule) states an amount is payable by the Supplier to New Hope, the Supplier must pay that amount to New Hope within 15 Business Days of receiving the Payment Schedule (or Final Payment Schedule).
- (g) Failure by the New Hope Contract Representative to set out in a Payment Schedule an amount which New Hope is entitled to retain, deduct, withhold or set off from an amount which would otherwise be payable to the Supplier by New Hope will not prejudice New Hope's right to subsequently exercise its right to retain, deduct or set off any amount under the Contract.
- (h) At any time and from time to time, the New Hope Contract Representative may, by a Payment Schedule, correct any error which has been discovered in a previous Payment Schedule.
- (i) Neither a Payment Schedule nor a payment of moneys by New Hope will be evidence that the subject Supply has been carried out satisfactorily. Payment will be payment on account only.

5 Security of Payment Act notifications

If the Security of Payment Act applies:

- (a) the New Hope Contract Representative is authorised to receive Payment Claims, and issue Payment Schedules, and carry out all other functions of New Hope under the Security of Payment Act as the agent of New Hope;
- (b) any notice, document or claim under the Security of Payment Act (including Payment Claims and Payment Schedules), may be served on the relevant party by email to the address specified in the Contract (or any substitute address as notified in writing by that party from time to time);
- (c) any adjudication applications and adjudication responses under the Security of Payment Act must be delivered to the relevant party at the address specified in the Contract (or any substitute address as notified in writing by that party from time to time) and an electronic copy of the application or response must also be sent by email to cosec@newhopegroup.com.au; and
- (d) the Supplier must, promptly and without delay, give the New Hope Contract Representative a copy of any written communication of whatever nature in relation to the Security of Payment Act that the Supplier receives from a subcontractor, including in connection with any potential or actual suspension of goods or services forming part of the Supply.