

LICENCE AND SUBSCRIPTION TERMS AND CONDITIONS

Last modified: 17/03/2021

BEFORE CLICKING THE "I ACCEPT" BUTTON BELOW, YOU SHOULD CAREFULLY READ THE FOLLOWING TERMS AND CONDITIONS. BY CLICKING ON THE "I ACCEPT" BUTTON BELOW YOU CONFIRM THAT YOU UNDERSTAND AND AGREE TO BECOME BOUND BY THE TERMS AND CONDITIONS OF THIS AGREEMENT. IF YOU DO NOT AGREE WITH THESE TERMS AND CONDITIONS, YOU SHOULD NOT CLICK ON THE "I ACCEPT" BUTTON BELOW. IF YOU ARE REPRESENTING AN ENTITY, BY ACCEPTING THIS AGREEMENT, YOU ARE CERTIFYING THAT YOU ARE AUTHORIZED TO LEGALLY BIND SUCH ENTITY TO THIS AGREEMENT AND YOU ARE ACTING ON BEHALF OF SUCH ENTITY AND BINDING SUCH ENTITY TO THIS AGREEMENT. YOU WILL BE REFERRED TO AS CUSTOMER THROUGHOUT THIS AGREEMENT. IF YOU DO NOT HAVE SUCH AUTHORITY, OR IF YOU DO NOT AGREE WITH THESE TERMS AND CONDITIONS, YOU MUST NOT ACCEPT THIS AGREEMENT AND MAY NOT USE THE SOFTWARE AND SERVICES UNDER THIS AGREEMENT.

This Licence and Subscription Agreement (this agreement) is effective as of the date Customer installs the Software after accepting this Agreement and creating an account on the Service (the Effective Date) and is by and between BMP Plus Pty Ltd ACN 643 176 318, of 244 Summerleas Road, Kingston, Tasmania, Australia 7050 (hereinafter referred to as Supplier) and the entity on whose behalf you are acting in entering into this Agreement (hereinafter referred to as Customer) (each a party, and together the parties).

The Parties hereby agree as follows: Agreed terms

1. Interpretation

1.1 The definitions and rules of interpretation in this clause apply in this agreement.

ACL: the Australian Consumer Law in Schedule 2 to the *Competition and Consumer Act 2010* (Cth).

Affiliate: means Related Body Corporate.

Authorised Users: means those employees, agents and independent contractors of the Customer who are authorised by the Customer to use the Software, Services and the Documentation, as further described in Clause 2.2(d).

Business Day: a day other than a Saturday, Sunday or public holiday in Tasmania, Australia when banks in Hobart are open for business.

Compiled Data: has the meaning as provided in clause 16.2.

Corporations Act: the *Corporations Act 2001* (Cth).

Customer Data: means:

- a) the data inputted by the Customer, Authorised Users, or the Supplier on the Customer's behalf using the Software for the purpose of utilising the Services or facilitating the Customer's use of the Services;
 - b) the work product of the Supplier or its Authorised Users resulting from the Software or Services using the data provided under (a) above;
- excluding Compiled Data.

Documentation: the document made available to the Customer by the Supplier online via www.bmpplus.com or such other web address notified by the Supplier to the Customer from time to time which sets out a description of the Services and the user instructions for the Services.

Fee: the fees payable by the Customer to the Supplier for the Software and Services, as published on www.bmpplus.com from time to time or as otherwise agreed in writing between the Parties.

Heightened Cybersecurity Requirements: any laws, regulations, codes, guidance (from regulatory and advisory bodies. Whether mandatory or not), international and national standards, industry schemes and sanctions, which are applicable to either the Customer or an Authorised User relating to security of network and information systems and security breach and incident reporting requirements, all as amended or updated from time to time.

Insolvency Event: the occurrence of any one or more of the following events in relation to a party:

- a) it is insolvent as defined by section 95A of the Corporations Act as disclosed in its accounts or otherwise, states that it is insolvent, is presumed to be insolvent under an applicable law (including under section 459C(2) or section 585 of the Corporations Act) or otherwise is, or states that it is, unable to pay all its debts as and when they become due and payable;
- b) any step is taken to appoint a receiver, a receiver and manager, a liquidator or a provisional liquidator or other like person to it or any of its assets, operations or business;
- c) an administrator is appointed to it under section 436A, section 436B or section 436C of the Corporations Act;
- d) a controller (as defined in section 9 of the Corporations Act) is appointed to it or any of its assets;
- e) an application is made to a court for an order, or an order is made, that it be wound up, declared bankrupt or that a provisional liquidator, receiver or receiver and manager be appointed, and that application is not withdrawn, struck out or dismissed within 15 Business Days of it being made;

- f) any step is taken to enter into an arrangement or composition with one or more of its creditors, or an assignment for the benefit of one or more of its creditors, in each case other than to carry out a reconstruction or amalgamation while solvent]
- g) it proposes a winding-up, dissolution or reorganisation, moratorium, deed of company arrangement or other administration involving one or more of its creditors;
- h) it is taken to have failed to comply with a statutory demand under section 459F(1) of the Corporations Act;
- i) it ceases to carry on business or threatens to do so, other than in accordance with the terms of this agreement; or
- j) anything occurs under the law of any jurisdiction which has a substantially similar effect to any of the events set out in paragraphs (a) to (k) of this definition.

Intellectual Property Rights: patents, utility models, rights to inventions, copyright and related rights, trade marks and service marks, trade names and domain names, rights in get-up, goodwill and the right to sue for passing off or unfair competition, rights in designs, rights in computer programs, database rights, rights to preserve the confidentiality of information (including know-how and trade secrets) and any other intellectual property rights, including all applications for (and rights to apply for and be granted), renewals or extensions of, and rights to claim priority from, such rights and all similar or equivalent rights or forms of protection which subsist or will subsist, now or in the future, in any part of the world.

Maintenance Release: release of the Software that corrects faults, adds functionality or otherwise amends or upgrades the Software, but which does not constitute a New Version.

New Version: any new version of the Software which from time to time is publicly marketed and offered for purchase by the Supplier in the course of its normal business, being a version which contains such significant differences from the previous versions as to be generally accepted in the marketplace as constituting a new product.

Normal Business Hours: 8.00 am to 6.00 pm local AEST/AEDT time, each Business Day.

Order: means the online order form found at the Website or such order communicated by the Customer to the Supplier through email or other written form.

Related Body Corporate: has the meaning given to that term in section 50 of the Corporations Act.

Service: means the BMP+ Platform online software subscription services provided by the Supplier to the Customer under this Agreement via the Website notified to the Customer by the Supplier from time to time.

Software: the BMP+ Platform and any related Maintenance Release.

Subsidiary: a "subsidiary" as defined in section 46 of the Corporations Act.

Term: means the Initial Term together with any subsequent Renewal Period.

Third-Party Additional Terms: the additional terms and conditions set out on the Website relating to Third-Party Software.

Third-Party Software: the third-party software identified on the Website.

Vessel: means the vessel or vessels as identified by their Maritime Mobile Service Identity and/or the IMO Number as specified in the Order.

Virus: any thing or device (including any software, code, file or programme) which may: prevent, impair or otherwise adversely affect the operation of any computer software, hardware or network, any telecommunications service, equipment or network or any other service or device; prevent, impair or otherwise adversely affect access to or the operation of any programme or data, including the reliability of any programme or data (whether by re-arranging, altering or erasing the programme or data in whole or part or otherwise); or adversely affect the user experience, including worms, trojan horses, viruses and other similar things or devices.

Vulnerability: a weakness in the computational logic (for example, code) found in software and hardware components that when exploited, results in a negative impact to the confidentiality, integrity, or availability, and the term **Vulnerabilities** shall be construed accordingly.

Website: means www.bmpplus.com or such other website as specified by the Supplier from time to time.

1.2 Clause, Schedule and paragraph headings will not affect the interpretation of this agreement.

1.3 Unless the context otherwise requires:

- (a) words in the singular will include the plural and in the plural will include the singular;
- (b) a reference to a statute or statutory provision is a reference to it as [amended, extended or re-enacted from time to time];
- (c) any words following the terms **including, include, in particular, for example** or any similar expression will be construed as illustrative and will not limit the

sense of the words, description, definition, phrase or term preceding those terms.

- 1.4 A **person** includes a natural person, corporate or unincorporated body (whether or not having separate legal personality) and that person's personal representatives, successors and permitted assigns.

2. Delivery of Software

- 2.1 The Supplier will make the Software available for download by the Customer at www.bmpplus.com . The Customer is permitted to download the Software onto any number of devices physically located on the Vessel.

3. Licence for Software

- 3.1 In consideration of the Fee paid by the Customer to the Supplier, the Supplier grants to the Customer a non-exclusive licence for the Term to use the Software on the Vessel only.

- 3.2 In relation to scope of use:

- (a) For the purposes of clause 3.1, use of the Software will be restricted to use of the Software in object code form for the purpose of processing the Customer's data for the normal internal business purposes of the Customer (which will not include allowing the use of the Software by, or for the benefit of, any person other than an employee of the Customer).
- (b) For the purposes of clause 3.1, "use of the Software" means loading the Software into temporary memory or permanent storage on the relevant computer or device physically located on the Vessel.
- (c) The Customer may not use the Software other than as specified in clause 3.1 and clause 3.2(a).
- (d) The Third-Party Software will be deemed to be incorporated within the Software for the purposes of this agreement (except where expressly provided to the contrary) and use of the Third-Party Software will be subject to the Third-Party Additional Terms.
- (e) The Customer will indemnify and hold the Supplier harmless against any loss or damage which it may suffer or incur as a result of the Customer's breach of any Third-Party Additional Terms howsoever arising.
- (f) The Supplier may treat the Customer's breach of any Third-Party Additional Terms as a breach of this Agreement.

4. Service

- 4.1 Each Party will provide the other with reasonable cooperation, assistance, information and access as may be necessary to initiate Customer's use of the Service. As part of the implementation process, Customer will identify an administrative user name and password that will be used to set up Customer's account. Customer may use the administrative user name and password to create subaccounts for its Users (each with unique login IDs and passwords). Customer shall be responsible and liable for all uses of the Service and Documentation resulting from access provided by Customer, directly or indirectly, whether such access is permitted or in violation of this agreement. Without limiting the foregoing, Customer shall be responsible for the acts or omissions of any person who accesses the Service using passwords or access procedures provided to or created by Customer. Supplier reserves the right to refuse registration of, or to cancel, login IDs that violate the terms and conditions set forth in this Agreement or that have been inactive for a period of six (6) consecutive months.
- 4.2 Subject to the Customer upon compliance with all terms and conditions of this Agreement, during the Term Supplier grants Customer a revocable, non-exclusive, non-transferable right, without the right to grant sub-licences, to permit Authorised Users to access and use the Services through a web-based interface, and Documentation during the Term solely for Customer's internal business purposes.
- 4.3 Customer's access and use of the Service shall comply with all other conditions set forth as advised by the Supplier from time to time (such as, for example, any requirements regarding data formats, number of permitted users or prohibited uses).

5. Customer Obligations

- 5.1 In relation to the Authorised Users the Customer undertakes to:
- (a) ensure that the number of persons using the Software, Services and Documentation are Authorised Users;
 - (b) it will not allow or suffer any subscription to be used by more than one individual Authorised User unless it has been reassigned in its entirety to another individual Authorised User, in which case the prior Authorised User shall no longer have any right to access or use the Software, Services and/or Documentation;
 - (c) each Authorised User shall keep a secure password for his use of the Services and Documentation and shall keep their password confidential;
 - (d) it shall maintain a written, up to date list of current Authorised Users and provide such list to the Supplier within 5 Business Days of the Supplier's written request at any time or times;

- (e) it shall permit the Supplier or the Supplier's designated auditor to audit the Software and Services in order to establish the name and password of each Authorised User and the Customer's data processing facilities to audit compliance with this agreement. Each such audit may be conducted no more than once per quarter, at the Supplier's expense, and this right shall be exercised with reasonable prior notice, in such a manner as not to substantially interfere with the Customer's normal conduct of business;
- (f) if any of the audits referred to in this clause 5.1(e) reveal that any password has been provided to any individual who is not an Authorised User, then without prejudice to the Supplier's other rights, the Customer shall promptly disable such passwords and the Supplier shall not issue any new passwords to any such individual;

5.2 The Customer shall not access, store, distribute or transmit any Viruses, or any material during the course of its use of the Services that:

- (a) is unlawful, harmful, threatening, defamatory, obscene, infringing, harassing or racially or ethnically offensive;
- (b) facilitates illegal activity;
- (c) depicts sexually explicit images;
- (d) promotes unlawful violence;
- (e) is discriminatory based on race, gender, colour, religious belief, sexual orientation, disability; or
- (f) is otherwise illegal or causes damage or injury to any person or property;

and the Supplier reserves the right, without liability or prejudice to its other rights to the Customer, to disable the Customer's access to any material that breaches the provisions of this clause.

5.3 The Customer shall not:

- (a) except as may be allowed by any applicable law which is incapable of exclusion by agreement between the parties and except to the extent expressly permitted under this Agreement:
 - (i) attempt to copy, modify, duplicate, create derivative works from, frame, mirror, republish, download, display, transmit, or distribute all or any portion of the Software and/or Documentation (as applicable) in any form or media or by any means; or
 - (ii) attempt to de-compile, reverse compile, disassemble, reverse engineer or otherwise reduce to human-perceivable form all or any part of the Software; or

- (b) access all or any part of the Services and Documentation in order to build a product or service which competes with the Services and/or the Documentation; or
- (c) use the Software, Services and/or Documentation to provide services to third parties; or
- (d) license, sell, rent, lease, transfer, assign, distribute, display, disclose, or otherwise commercially exploit, or otherwise make the Software, Services and/or Documentation available to any third party except the Authorised Users, or
- (e) attempt to obtain, or assist third parties in obtaining, access to the Services and/or Documentation, other than as provided under this clause 2; or
- (f) introduce or permit the introduction of any Virus or Vulnerability into the Supplier's network and information systems.

5.4 The Customer shall use all reasonable endeavours to prevent any unauthorised access to, or use of, the Software, Services and/or the Documentation and, in the event of any such unauthorised access or use, promptly notify the Supplier.

5.5 The rights provided under this clause 5 are granted to the Customer only, and shall not be considered granted to any subsidiary or holding company of the Customer.

6. Beta Software – Additional Terms

6.1 If the Software provided to the Customer by the Supplier under this Licence Agreement is a pre-commercial release or beta software (**Beta Software**), then the following additional terms apply.

6.2 The Customer will hold all information concerning the Beta Software and use and evaluation of such and the Beta Software (Collectively, **Beta Software Information**) in confidence. Any use of the Beta Software Information will be in accordance with clause 10. The Customer must not, without the prior written consent of the Supplier, disclose the Beta Software Information to any person or entity for any reason at any time, provided however that the Customer may disclose Beta Software Information to those Authorised Users who actually need such access to the information for the purpose of participating in the proposed evaluation and testing (**Beta Testing**) of the Beta Software, on the condition that prior to disclosure to the employees or representatives they are made aware of the conditions of this Licence Agreement. The Customer must not use Beta Software Information for any reason or purpose other than as necessary for Beta Testing.

- 6.3 The Customer must not make any other use of the Beta Software Information other than specified in this clause 6 or to incorporate any Beta Software Information into any Customer work or product.
- 6.4 The Customer acknowledges and agrees that the Beta Software is a pre-release, beta version, does not represent final product from the Supplier and may contain bugs, errors and other problems that could cause system or other failures and data loss.
- 6.5 The Beta Software is provided to you 'as-is' and to the extent permitted by law the Supplier shall not be liable for any damages of any kind arising from installation or use of the Beta Software, whether resulting from a tort (including negligence), breach of contract, warranty or other form of action, and including but not limited to direct, indirect, special, incidental and consequential damages or any kind arising in any way, even if advised of the possibility of such damage.
- 6.6 The Customer may only use the Beta Software for the purposes of evaluation and testing only and not for production use.
- 6.7 The Customer acknowledges that the Supplier has no obligation to release a commercial version of the whole or any part of the Beta Software. Accordingly, any research or development by the Customer on the Beta Software is entirely at the Customers risk.
- 6.8 Within thirty (30) days of completing the beta testing, the Customer must return or destroy all unreleased versions of the Beta Software.
- 6.9 To the extent that any provision of this clause is in conflict with any other terms and conditions of this agreement, this section shall supersede such other terms and conditions with respect to the Beta Software, but only to the extent necessary to resolve the conflict.

7. Evaluation Software – Additional terms

- 7.1 If the Software and related Services provided by the Supplier to the Customer is specifically for evaluation purposes (**Evaluation Software**), then the following terms apply until such time as a licence of the full retail version of the Software is purchased.
- 7.2 The Customer may only use the Evaluation Software for the purposes of evaluation and testing only and not for production use.
- 7.3 The Customer acknowledges and agrees that the Evaluation Software may contain limited functionality and/or may only function for a limited time.

- 7.4 The Supplier is only licensing the Evaluation Software to you on an 'as-is' basis solely for the purposes of enabling the Customer to evaluate the Software to make a purchasing decision.
- 7.5 If the Evaluation Software is a time out version, then the Evaluation Software will cease operating after a certain period of time (**Time Out Date**). Upon such Time Out Date the Evaluation Software licence will cease and you will not be able to use the Software or Services, until you purchase a licence for a full retail version of the Software.
- 7.6 The Customer acknowledges and agrees that the Evaluation Software shall cease operation on the Time Out Date accordingly, access to any files or output created with such Evaluation Software is entirely at the Customers risk.
- 7.7 To the extent that any provision of this clause is in conflict with any other terms and conditions of this Agreement, this section shall supersede such other terms and conditions with respect to the Evaluation Software, but only to the extent necessary to resolve the conflict.

8. Maintenance releases

The Supplier will provide the Customer with all Maintenance Releases generally made available to its customers. The Supplier warrants that no Maintenance Release will adversely affect the then existing facilities or functions of the Software. The Customer will install all Maintenance Releases as soon as reasonably practicable after receipt if for whatever reason the Software is not updated automatically. Maintenance Releases will be pushed to the Software when synced with the Service.

9. Fees

- 9.1 The Customer will pay to the Supplier the Fees at the frequency as set out on the Website or as otherwise agreed between the Parties in writing.
- 9.2 All sums payable under this Agreement are exclusive of goods and services tax or any relevant local sales taxes, for which the Customer will be responsible.
- 9.3 If the Customer fails to make any payment due to the Supplier under this agreement by the due date for payment, then, without limiting the Supplier's remedies under clause 9, the Customer will pay interest on the overdue amount at the daily 11.00 am cash rate quoted on Reserve Bank of Australia cash rate plus 5%. Such interest will accrue on a daily basis from the due date up to and including the date of actual payment, whether before or after judgment. The Customer will pay the interest together with the overdue amount.

9.4 Supplier is entitled to increase the Fees payable at the start of each Renewal Period upon 90 days prior written notice to the Customer.

10. Confidentiality and publicity

10.1 Each party will, during the term of this agreement and thereafter, keep confidential all, and will not use for its own purposes nor without the prior written consent of the other disclose to any third party (except its professional advisors or as may be required by any law or any legal or regulatory authority) any, information of a confidential nature (including trade secrets and information of commercial value) which may become known to such party from the other party and which relates to the other party or any of its Affiliates, unless that information is public knowledge or already known to such party at the time of disclosure, or subsequently becomes public knowledge other than by breach of this agreement, or subsequently comes lawfully into the possession of such party from a third party. Each party will use its reasonable endeavours to prevent the unauthorised disclosure of any such information.

10.2 No party will make, or permit any person to make, any public announcement concerning this agreement without the prior written consent of the other parties (such consent not to be unreasonably withheld or delayed), except as required by law, any governmental or regulatory authority (including, without limitation, any relevant securities exchange), any court or other authority of competent jurisdiction.

11. Export and compliance with policies

11.1 Neither party will export, directly or indirectly, any technical data acquired from the other party under this agreement (or any products, including software, incorporating any such data) in breach of any applicable laws or regulations (**Export Control Laws**), including United States export laws and regulations, to any country for which the government or any agency thereof at the time of export requires an export licence or other governmental approval without first obtaining such licence or approval.

11.2 Each party undertakes:

- (a) contractually to oblige any third party to whom it discloses or transfers any such data or products to make an undertaking to it in similar terms to the one set out in clause 11.1; and
- (b) if requested, to provide the other party with any reasonable assistance, at the reasonable cost of the other party, to enable it to perform any activity required by any competent government or agency in any relevant jurisdiction for the purpose of compliance with any Export Control Laws.

12. Supplier's obligations

- 12.1 The Supplier shall, during the Term, provide the Services and make available the Documentation to the Customer on and subject to the terms of this agreement.
- 12.2 The Supplier shall use commercially reasonable endeavours to make the Services available 24 hours a day, seven days a week, except for:
- (a) planned maintenance carried out during the maintenance window of 10.00 pm to 2.00 am AEST/AEDT time; and
 - (b) unscheduled maintenance performed outside Normal Business Hours, provided that the Supplier has used reasonable endeavours to give the Customer at least 6 Normal Business Hours' notice in advance.
- 12.3 The Supplier will, as part of the Services and at no additional cost to the Customer, provide the Customer with the Supplier's then standard customer support services during Normal Business Hours. The Customer may purchase enhanced support services separately at the Supplier's then current rates.
- 12.4 The Supplier excludes all rights, representations, guarantees, conditions, warranties, guarantees, undertakings, remedies or other terms in relation to the Software and Services to the maximum extent permitted by law.
- 12.5 The Supplier is not liable in any way for any failure of the Software or Services in any of the following events:
- (a) the defect arises because the Customer failed to follow the Supplier's oral or written instructions for the installation or use of the Software, Services or best industry practice;
 - (b) the Customer or someone acting with authority of the Customer alters or amends the Software without the written consent of the Supplier;
 - (c) the Customer used the Software, Services or Documentation outside the terms of this agreement or for a purpose or in a context other than the purpose or context for which it was designed or in combination with any other software not provided by the Supplier;
 - (d) the Customer has loaded the Software on equipment other than Supplier-specified or suitably configured equipment; or
 - (e) the defect arises as a result of the Customer's wilful damage, negligence or abnormal working condition.

12.6 The Supplier:

- (a) does not warrant that:
 - (i) the use of the Software or Services will be uninterrupted or error-free;
 - (ii) that the Services, Documentation and/or the information obtained by the Customer through the Services will meet the Customer's requirements or that it will enable the Customer to comply with its obligations including, but not limited to those relating to biofouling management or port state biosecurity requirements;
 - (iii) the use of the Software or Services will result in local authorities or regulators permitting the Vessel to access any intended port or destination; or
 - (iv) the Software or the Services will be free from Vulnerabilities or Viruses; or
 - (v) the Software, Documentation or Services will comply with any Heightened Cybersecurity Requirements.
- (b) is not responsible or liable for for any delays, delivery failures, or any other loss or damage resulting from
 - (i) the transfer of data over communications networks and facilities, including the internet,
 - (ii) the Customer being denied or delayed in gaining access to any port for any reason;and the Customer hereby acknowledges and agrees that the Software, Services and Documentation may be subject to limitations, delays and other problems inherent in the use of such communications facilities;

13. Customer Data

13.1 Customer hereby grants Supplier a nonexclusive, royalty-free, worldwide right and license to access, copy, distribute, display, process and use all Customer Data, for the purpose of providing the Service and as otherwise permitted by this agreement. Customer acknowledges and agrees that:

- (a) the Service depends on the availability of the Customer Data; and
- (b) the Supplier will not assume any responsibility for, or undertake to verify, the accuracy or completeness of any Customer Data. Supplier will maintain appropriate reasonable administrative, physical, and technical safeguards for the protection of the security, confidentiality and integrity of the Customer Data.

- (c) the Customer Data may be transmitted and/or processed outside of the Software or Service.

13.2 Customer further acknowledges and agrees that Supplier shall have the right to:

- (a) modify the Customer Data as needed to provide the Services or for any other purpose,
- (b) disclose the Customer Data as permitted by clause 10 of this agreement; and
- (c) access and/or use the Customer Data to provide the Service, prevent or address service or technical problems with the Service, and/or at Customer's request in connection with customer support matters. Customer shall ensure that Customer Data and any User's use of Customer Data will not violate any policy or terms referenced in or incorporated into this agreement or any applicable law and that it has obtained informed consent from data subjects to the extent required by any applicable data protection or privacy law or regulation.

13.3 Customer may store Customer Data through the Service up to the amount set forth on the Order, if any. If the amount of storage used exceeds this limit, Customer will be charged, on a monthly basis, the excess storage fees pursuant to the Order. Supplier will use commercially reasonable efforts to notify Customer when it has used approximately eighty percent (80%) of its included storage space; and Customer shall not be liable for any excess storage fees incurred prior to being notified that it has exceeded the amount of included storage space set forth above. Supplier reserves the right to establish or modify its general practices and limits relating to storage of Customer Data, provided that the minimum amount of storage included without additional charge and any security or privacy measures relating to Customer Data may not be modified without Customer's prior written consent.

14. Indemnity

14.1 The Customer shall defend, indemnify and hold harmless the Supplier against claims, actions, proceedings, losses, damages, expenses and costs (including without limitation court costs and reasonable legal fees) arising out of or in connection with the Customer's use of the Software, Services and/or Documentation, provided that:

- (a) the Customer is given prompt notice of any such claim;
- (b) the Supplier provides reasonable co-operation to the Customer in the defence and settlement of such claim, at the Customer's expense; and
- (c) the Customer is given sole authority to defend or settle the claim.

15. Limitation of liability

15.1 Except as expressly and specifically provided in this agreement:

- (a) the Customer assumes sole responsibility for results obtained from the use of the Software, Services and the Documentation by the Customer, and for conclusions drawn from such use. The Supplier shall have no liability for any damage, loss or delays caused by errors or omissions in any information, instructions or scripts provided to the Supplier by the Customer in connection with the Services, or any actions taken by the Supplier at the Customer's direction;
- (b) all warranties, representations, conditions, guarantees, undertakings, remedies and all other terms of any kind whatsoever implied by statute or common law are, to the fullest extent permitted by applicable law, excluded from this agreement; and
- (c) the Services and the Documentation are provided to the Customer on an "as is" basis.

15.2 Subject to the other terms of this clause 15, the Supplier's maximum aggregate liability to the Customer in any 12-month period for any loss or damage or injury arising out of or in connection with the performance or non-performance of or the supply of Software or Services under this agreement, including any breach by the Supplier of this agreement however arising, under any indemnity, in tort (including negligence), under any statute, custom, law or on any other basis, is limited to the actual charges paid by the Customer under this agreement in the 12-month period preceding the matter or event giving rise to the claim.

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

15.4 If the Supplier is liable to the Customer in relation to a failure to comply with a guarantee that applies under Division 1 of Part 3-2 of the ACL that cannot be excluded, the Supplier's total liability to the Customer for that failure is limited to, at the option of the Supplier:

- (a) in the case of services, the resupply of the services or the payment of the cost of resupply; and
- (b) in the case of goods, the replacement of the goods or the supply of equivalent goods, or the repair of the goods, or the payment of the cost of replacing the

goods or of acquiring equivalent goods, or the payment of the cost of having the goods repaired.

- 15.5 The Supplier excludes any liability to the Customer, whether in contract, tort (including negligence) or otherwise, for any special, indirect or consequential loss arising under or in connection with this agreement, including any:
- (a) loss of profits;
 - (b) loss of sales or business;
 - (c) loss of production;
 - (d) loss of agreements or contracts;
 - (e) loss of business opportunity;
 - (f) loss of anticipated savings;
 - (g) loss of or damage to goodwill;
 - (h) loss of reputation; or
 - (i) loss of use or corruption of software, data or information.
- 15.6 Nothing in this agreement limits or excludes the Supplier's liability:
- (a) for death or personal injury caused by its negligence or wilful misconduct or that of its employees;
 - (b) for fraud or fraudulent misrepresentation by it or its employees, as applicable; or
 - (c) where liability cannot be limited or excluded by applicable law.
- 15.7 All dates supplied by the Supplier for the delivery of the Software or the provision of Services will be treated as approximate only. The Supplier will not in any circumstances be liable for any loss or damage arising from any delay in delivery beyond such approximate dates.
- 15.8 All references to "the Supplier" in this clause 15 will, for the purposes of this clause, be treated as including all employees, subcontractors and suppliers of the Supplier and its Affiliates, all of whom will have the benefit of the exclusions and limitations of liability set out in this clause.

16. Intellectual property and data rights

- 16.1 Unless otherwise agreed by the parties and subject to Supplier's rights to Compiled Data and Reports set forth below, Customer shall own all right, title and interest (including all applicable intellectual property and other proprietary rights) in and to the Customer Data.

- 16.2 Customer agrees that Supplier is free to monitor and disclose aggregate measures of Service usage and performance, and to reuse all general knowledge, experience, know-how, works and technologies (including ideas, concepts, processes and techniques) related to the Customer Data or acquired during provision of the Service (including without limitation, that which it could have acquired performing the same or similar services for another customer). Customer further agrees that (a) Supplier shall have the right to monitor, compile and analyse, on an aggregated and de-identified basis, Customer Data and data derived or collected from Customer's and its Authorised User's use of the Software and Service including, without limitation, operational and usage information, data and other content collected (collectively, **Compiled Data**) and to prepare reports, studies, analyses and other work product resulting from such Compiled Data on an anonymous basis (**Reports**) and (b) Provider shall have exclusive ownership rights to, and the exclusive right to use and disclose such Compiled Data and Reports for any purpose, including, but not limited to (i) advertising, marketing, and promotion of networking opportunities to other customers and prospective customers of the Software, Services and Supplier's other products and services, (ii) operating, managing, maintaining and improving the Software, Service, Documentation and/or Provider's other products and services, and (iii) developing and distributing benchmarks and similar reports and databases. All Compiled Data and Reports shall be in aggregated format only, with any data elements that can be used to identify Customer or a specific individual or Authorised User removed. Supplier shall not distribute any Compiled Data or Reports which includes any Customer Data which can identify the Customer or Authorised User without first obtaining the prior written consent of Customer.
- 16.3 The Customer acknowledges that all Intellectual Property Rights in the Software, Services, Documentation and any Maintenance Releases belong and will belong to the Supplier or the relevant third-party owners (as the case may be), and the Customer will have no rights in or to the Services, Software or Documentation other than the right to use it in accordance with the terms of this agreement.
- 16.4 Notwithstanding any other clause in this agreement, the Customer acknowledges and agrees that the Supplier may be required to make the Customer Data and Personal Information available to any government body responsible for the management of vessels biofouling and/or marine biosecurity upon receipt of a written request from such organisation. Customer consents to such disclosure of Customer Data and Personal Information in these circumstances.
- 16.5 The Supplier undertakes at its own expense to defend the Customer or, at its option, settle any claim or action brought against the Customer alleging that the possession or use of the Software (or any part thereof), Services and/or Documentation in accordance with the terms of this agreement infringes the Australian Intellectual Property Rights of a third party (**Claim**) and will be responsible for any reasonable losses, damages, costs (including legal fees) and expenses incurred by or awarded against the Customer as a

result of or in connection with any such Claim. For the avoidance of doubt, this clause 16.5 will not apply where the Claim in question is attributable to possession or use of the Software, Services or Documentation (or any part thereof) by the Customer other than in accordance with the terms of this agreement, use of the Software in combination with any hardware or software not specified by the Supplier if the infringement would have been avoided by the use of the Software not so combined, or use of a non-current release of the Software.

16.6 If any third party makes a Claim, or notifies an intention to make a Claim against the Customer, the Supplier's obligations under clause 16.5 are conditional on the Customer:

- (a) as soon as reasonably practicable, giving written notice of the Claim to the Supplier, specifying the nature of the Claim in reasonable detail;
- (b) not making any admission of liability, agreement or compromise in relation to the Claim without the prior written consent of the Supplier (such consent not to be unreasonably conditioned, withheld or delayed);
- (c) giving the Supplier and its professional advisers access at reasonable times (on reasonable prior notice) to its premises and its officers, directors, employees, agents, representatives or advisers, and to any relevant assets, accounts, documents and records within the power or control of the Customer, so as to enable the Supplier and its professional advisers to examine them and to take copies (at the Supplier's expense) for the purpose of assessing the Claim; and
- (d) subject to the Supplier providing security to the Customer to the Customer's reasonable satisfaction against any claim, liability, costs, expenses, damages or losses which may be incurred, taking such action as the Supplier may reasonably request to avoid, dispute, compromise or defend the Claim.

16.7 If any Claim is made, or in the Supplier's reasonable opinion is likely to be made, against the Customer, the Supplier may at its sole option and expense:

- (a) procure for the Customer the right to continue to use the Software, Services and Documentation (or any part thereof) in accordance with the terms of this agreement;
- (b) modify the Software so that it ceases to be infringing;
- (c) replace the Software with non-infringing software; or
- (d) terminate this agreement immediately by notice in writing to the Customer and refund any of the Fee paid by the Customer as at the date of termination (less a reasonable sum in respect of the Customer's use of the Software to the date of termination) on return of the Software and all copies thereof,

provided that if the Supplier modifies or replaces the Software, the modified or replacement

- 16.8 Notwithstanding any other provision in this agreement, clause 16.5 will not apply to the extent that any claim or action referred to in that clause arises directly or indirectly through the possession or use of any Third-Party Software or through the breach of any Third-Party Additional Terms by the Customer.
- 16.9 This clause 16 constitutes the Customer's exclusive remedy and the Supplier's only liability in respect of Claims and, for the avoidance of doubt, is subject to clause 15.1.

17. Termination

- 17.1 This agreement shall, unless otherwise terminated as provided in this clause 17 commence on the Effective Date and shall continue for the Initial Term and, thereafter, this agreement shall be automatically renewed for successive periods of 12 months (each a **Renewal Period**), unless:
- (a) either party notifies the other party of termination, in writing, at least 60 days before the end of the Initial Term or any Renewal Period, in which case this agreement shall terminate upon the expiry of the applicable Initial Subscription Term or Renewal Period; or
 - (b) otherwise terminated in accordance with the provisions of this agreement;
- 17.2 Without affecting any other right or remedy available to it, either party may terminate this agreement with immediate effect by giving written notice to the other party if:
- (a) the other party fails to pay any undisputed amount due under this agreement on the due date for payment and remains in default not less than 14 days after being notified in writing to make such payment;
 - (b) the other party commits a material breach of any other term of this agreement and that breach is irremediable or (if that breach is remediable) fails to remedy that breach within a period of 30 days after being notified in writing to do so;
 - (c) the other party repeatedly breaches any of the terms of this agreement in such a manner to reasonably justify the opinion that its conduct is inconsistent with it having the intention or ability to give effect to the terms of this agreement;
 - (d) an Insolvency Event occurs in relation to the other party; or
 - (e) there is a Change of Control of the other party without the consent of the non-defaulting party, such consent not to be unreasonably withheld or delayed.
- 17.3 Without limiting its other rights or remedies, the Supplier may suspend supply of the Software or access to the Services and Documentation under this agreement if:
- (a) the Customer becomes subject to an Insolvency Event;
 - (b) the Supplier reasonably believes that the Customer is about to become subject to an Insolvency Event; or

- (c) the Customer fails to pay any amount due under this agreement on the due date for payment.

17.4 On termination for any reason:

- (a) all rights granted to the Customer under this agreement will cease;
- (b) the Customer will cease all activities authorised by this agreement;
- (c) the Customer will immediately pay to the Supplier any sums due to the Supplier under this agreement; and
- (d) the Customer will immediately destroy or return to the Supplier (at the Supplier's option) all copies of the Software then in its possession, custody or control and, in the case of destruction, certify to the Supplier that it has done so.

17.5 The following clauses survive termination or expiry of this agreement together with any other term which by its nature is intended to do so:

- (a) clause 13 (Limitation of liability);
- (b) clause 10 (Confidentiality);
- (c) clause 14 (Indemnity);
- (d) clause 17 (Termination);
- (e) clause 18 (Dispute resolution); and
- (f) clause 35 (Governing law and jurisdiction).

18. Dispute resolution

18.1 If a dispute arises out of or in connection with this agreement, or the performance, validity or enforceability of it (**Dispute**) then except as expressly provided for in this agreement, the parties must comply with the procedure set out in this clause 18.

18.2 Either party may give to the other written notice of the Dispute, setting out its nature and full particulars (**Dispute Notice**), together with relevant supporting documents.

18.3 On receipt of a Dispute Notice:

- (a) the CEO or other nominated representative of the Supplier and CEO or other nominated representative of the Customer must attempt in good faith to resolve the Dispute;
- (b) if the CEO or other nominated representative of the Supplier and CEO or other nominated representative of the Customer are for any reason unable to resolve the Dispute, the parties agree to endeavour in good faith to settle the Dispute by mediation administered by the Australian Commercial Disputes Centre. To

initiate the mediation, a party must serve notice in writing (**Mediation Notice**) to the other party to the Dispute, requesting a mediation. The mediation will start not later than 14 days after the date of the Mediation Notice.

- 18.4 Subject to clause 18.5, no party may commence any court proceedings in relation to the whole or part of the Dispute until 14 days after service of the Mediation Notice, provided that the right to issue proceedings is not prejudiced by a delay.
- 18.5 This clause 18 is not intended to prevent any party from:
- (a) seeking urgent injunctive or similar relief; or
 - (b) exercising any rights under clause 29.

19. Privacy

- 19.1 In this clause 19, the following definitions apply:
- (a) **Privacy Act:** the *Privacy Act 1988* (Cth) as amended from time to time.
 - (b) **APP:** an Australian Privacy Principle as defined in the Privacy Act.
 - (c) **APP Entity:** an APP Entity as that term is defined in the Privacy Act.
 - (d) **Eligible Data Breach:** has the meaning given to that term in the *Privacy Amendment (Notifiable Data Breaches) Act 2016* (Cth), occurring on or after 22 February 2018.
 - (e) **Data Incident:** an Eligible Data Breach that has, or is reasonably suspected to have, occurred in respect of any Personal Information the Supplier has collected, held, used or disclosed in the course of or relating to this agreement.
 - (f) **Investigation:** the investigation at clause 19.7(c).
 - (g) **Personal Information:** has the meaning given to that term in the Privacy Act.
 - (h) **Sensitive Information:** has the meaning given to that term in the Privacy Act.
- 19.2 The Supplier warrants that it complies with and will continue to comply with the Privacy Act and all other applicable privacy laws.
- 19.3 The Customer warrants that it complies with and will continue to comply with the Privacy Act and all other applicable privacy laws.
- 19.4 If the Supplier collects, holds, uses or discloses Personal Information in the course of or relating to this agreement, the Supplier must:
- (a) handle all Personal Information in accordance with the Supplier's privacy policy to the extent that policy is not inconsistent with the requirements of this clause 19 or this agreement;

- (b) only use Personal Information for the purpose of performing its obligations under this agreement;
- (c) comply with any directions given by the Customer relating to:
 - (i) Personal Information to the extent that they are not inconsistent with the requirements of this clause 19;
 - (ii) the handling and response to any of the events in clause 19.4(m)(i) and clause 19.4(m)(ii);
 - (iii) a Data Incident, Investigation or Eligible Data Breach; and
 - (iv) a notification required under clause 19.4(m)(iii), and in which case the Supplier agrees to assist the Customer to prevent, resist or limit any such disclosure.
- (d) not disclose Personal Information to any third party (including any subcontractor) without the Customer's prior written consent or as required under clause 19.4(m)(iii);
- (e) ensure that any personnel of the Supplier (including for the purposes of this clause 19.4(f) employees, contractors, subcontractors and advisors) who are required to access or handle Personal Information are made aware of the obligations set out in this clause 19.4, and if requested by the Customer, sign written undertakings to comply with this clause 19.4 in a form of the Customer's election;
- (f) protect Personal Information from:
 - (i) misuse, interference and loss; and
 - (ii) unauthorised access, modification or disclosure.
- (g) ensure that Personal Information is only made available to Supplier's personnel on a need-to-know basis as necessary for the Supplier's performance of its obligations under the agreement;
- (h) ensure that any subcontract entered into for the purpose of fulfilling the Supplier's obligations under the agreement contains the same or equivalent terms as the Supplier has under this clause 19.4;
- (i) not do anything which impairs the accuracy, currency or completeness of the Personal Information;
- (j) ensure that Personal Information is accurate, up-to-date, complete and relevant;
- (k) immediately notify the Customer in writing if it becomes aware of the Supplier's or any third party's any actual or possible:
 - (i) breach of any of the obligations in this clause 19; or
 - (ii) misuse or loss of Personal Information,

whether by the Supplier or any third party.

- (l) anonymise, return or destroy Personal Information (except as required by law) at any time as directed in writing by the Customer, and otherwise on the termination or expiry of this agreement;
- (m) notify the Customer immediately in writing if the Supplier becomes aware of any:
 - (i) request regarding access to, or correction of, any Personal Information;
 - (ii) any complaint about the handling of Personal Information;
 - (iii) disclosure of Personal Information required by law; and
- (n) not disclose Personal Information to a person (including a Related Body Corporate or subcontractor) who is not in Australia without the express written consent of the Customer.

19.5 If it is necessary for the performance of this agreement, the Supplier may disclose Personal Information to a person (including a Related Body Corporate or subcontractor) who is not in Australia provided that person provides a written statement in a form satisfactory to the Supplier, before any such disclosure, which states that the person:

- (a) agrees to comply with the APPs in relation to the collection, use, disclosure, storage and destruction or de-identification of Personal Information disclosed to it in the course of this agreement;
- (b) has an established complaint handling process for privacy complaints and provides a copy of that process.

19.6 The Customer warrants that it:

- (a) will not provide any Sensitive Information to the Supplier;
- (b) has:
 - (i) made all necessary notifications required by APP 5, on behalf of itself and the Supplier to; and
 - (ii) obtained all necessary consents required by APP 6 from, and
 - (iii) obtained consent as required by APP 8.2(b), on behalf of itself and the Supplier from,

the individuals whose Personal Information it is disclosing to the Supplier in the course of this agreement to enable to the Supplier to lawfully use the Personal Information and perform its obligations in accordance with this agreement.

19.7 In addition to the Supplier's obligations in this clause 19, the Supplier also commits to take each of the following actions if it becomes aware, or there are reasonable grounds to suspect, that a Data Incident has occurred:

- (a) immediately take any steps, and bear any costs, of containing and resolving the Data Incident and preventing any further serious harm to affected individuals (for the avoidance of doubt, this obligation is ongoing);
- (b) immediately notify the Customer in writing stating:
 - (i) the nature and details of the Data Incident;
 - (ii) the specific Personal Information affected;
 - (iii) the actions taken by the Supplier including those required at clause 19.7(a); and
 - (iv) the recommended next steps for each of the parties and the affected individuals;
- (c) identify whether the Data Incident is an Eligible Data Breach by conducting a thorough investigation of the Data Incident within 30 days of becoming aware of the Data Incident;
- (d) provide a full, unedited and unredacted copy of the report of the investigation in clause 19.7(c) to the Customer on completion;
- (e) engage in regular open and good faith discussions with the Customer regarding:
 - (i) the conduct and outcomes of the Investigation;
 - (ii) its ongoing actions to contain and resolve the Data Incident and prevent any further serious harm to affected individuals at clause 19.7(a); and
 - (iii) in the case of an Eligible Data Breach whether the Customer or the Supplier will make the relevant notifications under the Privacy Act; and whether and to what extent any public or media statements will be made (in each case, the Customer's decision to be final); and
- (f) where the Supplier is making the relevant notifications at clause 19.7(e)(iii), the Supplier must submit the notifications to the Customer for approval before they are made (such approval to be given promptly and not to be unreasonably withheld).

19.8 Each party will ensure that its employees, contractors or advisors who are required to handle Personal Information in the course of this agreement are made aware of the obligations of that party in this clause 19.

19.9 Each party is responsible for the acts and omissions of its respective personnel (including subcontractors and advisors), and a breach by any such personnel is a breach by that party.

19.10 The Customer:

- (a) acknowledges that the Supplier is reliant on the Customer for direction as to the extent to which the Supplier is entitled to use Personal Information disclosed to it in the course of and for the purpose of this agreement; and
- (b) indemnifies the Supplier for any claim brought by any third party in connection with any act or omission by the Supplier in relation to a third party's Personal Information to the extent that such act or omission resulted directly from the Customer's instructions or a breach by the Customer of their obligations in this clause 19.

20. Third party providers

The Customer acknowledges that the Services may enable or assist it to access the website content of, correspond with, and purchase products and services from, third parties via third-party websites and that it does so solely at its own risk. The Supplier makes no representation, warranty or commitment and shall have no liability or obligation whatsoever in relation to the content or use of, or correspondence with, any such third-party website, or any transactions completed, and any contract entered into by the Customer, with any such third party. Any contract entered into and any transaction completed via any third-party website is between the Customer and the relevant third party, and not the Supplier. The Supplier recommends that the Customer refers to the third party's website terms and conditions and privacy policy prior to using the relevant third-party website. The Supplier does not endorse or approve any third-party website nor the content of any of the third-party website made available via the Services.

21. Costs

Except as expressly provided in this agreement, each party must pay its own costs incurred in connection with the negotiation, preparation, and execution of this agreements, and any documents referred to in it.

22. Notices

22.1 Any notice required to be given under this agreement shall be in writing and shall be delivered by hand or sent by registered post or recorded delivery post to the other party at its address set out in this agreement, or such other address as may have been notified by that party for such purposes, or sent by fax to the other party's fax number as set out in this agreement.

22.2 A notice delivered by hand shall be deemed to have been received when delivered (or if delivery is not in business hours, at 9 am on the first business day following delivery). A correctly addressed notice sent by registered post or recorded delivery post shall be

deemed to have been received at the time at which it would have been delivered in the normal course of post. A notice sent by fax shall be deemed to have been received at the time of transmission (as shown by the timed printout obtained by the sender).

23. Variation

An amendment or variation of any term of this agreement must be in writing and signed by each party.

24. No waiver

24.1 No party may rely on the words or conduct of any other party as being a waiver of any right, power or remedy arising under or in connection with this agreement unless the other party or parties expressly grant a waiver of the right, power or remedy. Any waiver must be in writing, signed by the party granting the waiver and is only effective to the extent set out in that waiver.

24.2 Words or conduct referred to in clause 24.1 include any delay in exercising a right, any election between rights and remedies and any conduct that might otherwise give rise to an estoppel.

25. Assignment and other dealings

25.1 The Supplier may at any time assign, mortgage, charge, subcontract, delegate, declare a trust over or deal in any other manner with any or all of its rights and obligations under this agreement.

25.2 The Customer shall not assign, transfer, mortgage, charge, subcontract, delegate, declare a trust over or deal in any other manner with any of its rights and obligations under this agreement. A breach of clause 25.1 by a the Customer entitles the Supplier to terminate this agreement.

25.3 Clause 25.2 does not affect the construction of any other part of this agreement.

26. Counterparts

26.1 This agreement may be executed in any number of counterparts. All counterparts taken together constitute one instrument. A party may execute this agreement by signing any counterpart. The date on which the last counterpart is executed is the date of this agreement.

27. Severability

- 27.1 If the whole or any part of a provision of this agreement is or becomes invalid or unenforceable under the law of any jurisdiction, it is severed in that jurisdiction to the extent that it is invalid or unenforceable and whether it is in severable terms or not.
- 27.2 Clause 27.1 does not apply if the severance of a provision of this agreement in accordance with that clause would materially affect or alter the nature or effect of the parties' obligations under this agreement.

28. No merger

- 28.1 On completion or termination of this agreement, the rights and obligations of the parties set out in this agreement will not merge and any provision that has not been fulfilled remains in force.

29. Further action

- 29.1 Each party must at its own expense do all things (including completing and signing all documents) reasonably requested by the other party that are necessary to:
- (a) bind the party and any other person intended to be bound by this agreement;
 - (b) show that it is complying with this agreement; and
 - (c) give full effect to this agreement and the transactions contemplated by this agreement,
 - (d) and use reasonable endeavours to procure that any third parties do the same.

30. Relationship of the parties

- 30.1 Nothing in this agreement gives a party authority to bind any other party in any way.
- 30.2 Nothing in this agreement imposes any fiduciary duties on a party in relation to any other party.
- 30.3 This agreement does not create a relationship of employment, agency or partnership between the parties or their respective personnel.
- 30.4 Neither party grants the other the right to use its trade marks, trade names, or other designations in any promotion or publication without prior written consent.

31. Exercise of rights

- 31.1 No party is required to act reasonably in exercising any right, power, authority, discretion or remedy under or in connection with this agreement, including the granting or

withholding of any approval or consent, unless expressly required to do so by the terms of this agreement.

- 31.2 Any party may (without being required to act reasonably) make any consent or approval required to be given by it under or in connection with this agreement, or a waiver of any of its rights, powers, authority, discretion or remedies arising under or in connection with this agreement, subject to conditions that must be complied with by the party seeking to rely on the consent, approval or waiver.

32. Remedies cumulative

Except as provided in this agreement and permitted by law, the rights, powers and remedies provided in this agreement are cumulative with and not exclusive to the rights, powers or remedies provided by law independently of this agreement.

33. Entire agreement

- 33.1 This Agreement (together with the End User Licence Agreement, Order and Privacy Policy and any terms which may otherwise be agreed to in a writing signed by both Parties on or after the Effective Date) constitutes the entire agreement, and supersedes all prior negotiations, understandings or agreements (oral or written), between the Parties about the subject matter of this agreement.

34. No reliance

- 34.1 No party has relied on any statement, representation, assurance or warranty made or given by any other party, except as expressly set out in this agreement.

35. Governing law and jurisdiction

- 35.1 This agreement is governed by the law in force in Tasmania, Australia.
- 35.2 Each party irrevocably submits to the exclusive jurisdiction of courts exercising jurisdiction in Tasmania, Australia and courts of appeal from them in respect of any proceedings arising out of or in connection with this agreement.
- 35.3 Each party irrevocably waives any right it has to object to the venue of any legal process in the courts described in clause 35.2 on the basis that:
- (a) any proceeding arising out of or in connection with this agreement has been brought in an inconvenient forum; or
 - (b) the courts described in clause 35.2 do not have jurisdiction.