

The parties agree that, by reference to this document, the terms contained herein including the terms contained in the PRA, govern the purchase and supply of Services to **noumi** (collectively, the “**Agreement**”).

**The parties agree** in consideration of the mutual promises contained in the Agreement:

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## **1 Definitions and interpretation**

### 1.1 In the Agreement:

**Adjustment Note** includes any document or record treated by the Commissioner of Taxation as an adjustment note or as enabling the claiming of an input tax credit for which an entitlement otherwise arises.

**Confidential Information** means, in relation to a party:

- (a) the existence and terms of the Agreement;
- (b) all its business, commercial, financial, operational, manufacturing, technical, scientific, and research and development information or processes, including (without limitation):
  - (i) business, marketing and product development plans and strategies;
  - (ii) business and financial reports, records and data;
  - (iii) customer lists;
  - (iv) pricing information;
  - (v) specifications; and
  - (vi) product information;
- (c) all its IPR, know-how, trade secrets, ideas and concepts; and
- (d) other information that, by its nature or by the circumstances of its disclosure, is or could reasonably be expected to be regarded as confidential to that party or to any third party with whose consent or approval that party uses such information,

excluding information that is in the public domain, other than due to a breach of any obligation of confidence owed to the party.

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

**Force Majeure** means any event or circumstance which is beyond the reasonable control of either party and which results in, or causes the failure of, that party to perform any of its obligations under this agreement, including but not limited to:

- (a) acts of God, strike, lock-out or other industrial disturbance, pandemic, epidemic, act of a public enemy, declared or undeclared war, threat of war, terrorist act, blockade, revolution, riot, insurrection, civil commotion, public demonstration, sabotage, act of vandalism, lightning, fire, storm, earthquake, explosion; and
- (b) governmental restraint or other intervention or request, Act of parliament, other legislation or by-law;

for the avoidance of doubt, lack of funds will be deemed not to be a matter beyond the reasonable control of the party concerned;

**Consideration** means the Consideration in respect of the Services set out in in the PRA.

**GST** means goods and services tax or similar value added tax levied or imposed in Australia under the GST Law or otherwise on a supply and includes any replacement or subsequent similar tax.

**GST Act** means A New Tax System (Goods and Services Tax) Act 1999 (Cth).

**GST Law** has the meaning in the GST Act.

**Insolvency Event** means, in respect of a party:

- (a) taking any step or action in connection with the party entering into any composition, arrangement or compromise with its creditors or any class of them;
- (b) failing to pay its debts when they are due or unable to pay its debts within the meaning of the Corporations Act;
- (c) being deemed under the Corporations Act to be insolvent;
- (d) entering liquidation or provisional liquidation;
- (e) having a receiver and manager, administrator, trustee or similar official appointed to any of its assets or undertakings;
- (f) ceasing or threatening to cease carrying on business; or
- (g) having an application or order made or resolution passed for its winding up or dissolution, or in connection with any analogous or substantially similar procedure.

**IPR** means all industrial and intellectual property rights of any kind (whether registered or unregistered) including, without limitation, copyright, trademarks, design, moral rights and other proprietary rights.

**Law** means laws, statutes, regulations, codes and all requirements of government agencies.

**Location** means the location specified in the PRA.

**Loss** means any damage, loss, liability, claim, action, cost, charge, expense (including reasonable legal Considerations), outgoing or payment (whether direct or indirect, consequential or incidental).

**noumi's policies** means the relevant policies [as at the date of entering into this Agreement OR as updated from time to time, with the changes to these policies being notified to the Supplier 30 days prior to the changes coming into effect.]

**Products** means **noumi's** products specified in the PRA.

**PRA** means the product ranging agreement signed between the Supplier and **noumi** to which these terms are incorporated into.

**Related Bodies Corporate** has the meaning given in section 50 the Corporations Act.

**Scope** means the scope of the Services as set out in the PRA.

**Services** means the services set out in the PRA.

**Supplier's Personnel** means any of the Supplier's officers, employees, agents, representatives, subcontractors, and any of the officers, employees, agents and representatives of any subcontractors, involved directly or indirectly in the supply of the Services.

1.2 **Tax Invoice** includes any document or record treated by the Commissioner of Taxation as a tax invoice or as enabling the claiming of an input tax credit for which an entitlement otherwise arises.

- (a) words in the singular include the plural and vice versa; In the Agreement, headings are only for convenience and do not affect interpretation and, unless the context requires otherwise;
- (b) words or expressions are to be construed in the masculine or feminine as appropriate; and
- (c) all references to dollars are to the legal currency of Australia;
- (d) no provision of the Agreement will be construed adversely to a party because that party was responsible for the preparation of the Agreement or that provision; and
- (e) a reference to a clause, party or schedule is a reference to a clause of, and a party and schedule to, the Agreement and a reference to the Agreement includes any schedules.

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## 2 Supply

### 2.1 Standards

- (a) In performing its obligations under the Agreement, the Supplier must, and must procure that the Supplier's Personnel:

- (i) supply the Services in accordance with the Scope at the Location;
  - (ii) supply the Services at the time or times specified by **noumi** reasonably in advance of the supply of Services or, if no time is specified by **noumi**, in a reasonably timely manner;
  - (iii) comply with all applicable Laws and **noumi**'s policies, procedures and reasonable directions relating to the supply of the Services, or the Agreement;
  - (iv) exhibit the level of care, skill, competence, diligence and judgement that may be expected of a professional organisation experienced in supplying services of the type and complexity of the Services; and
  - (v) supply the Services in a highly professional, safe and ethical manner.
- (b) Time is of the essence in the supply of the Services by the Supplier under the Agreement.

## 2.2 Non-conforming Services

- (a) Without limiting this clause 2.2 or any other remedy that **noumi** may have, if the Services performed are not within the Scope or do not otherwise comply with the terms of the Agreement (**Non-conforming Services**), **noumi** will not be required to pay any Consideration for those Non-conforming Services.
- (b) **noumi** will notify the Supplier of any Non-conforming Services as soon as practicable after **noumi** becomes aware of the Non-conforming Services.
- (c) The Supplier must promptly:
  - (i) remedy, at no cost to **noumi**, the Non-conforming Services to **noumi**'s reasonable satisfaction; or
  - (ii) where the Non-conforming Services are not fully remedied within 10 days, refund to **noumi** all amounts paid by **noumi** in respect of the Non-conforming Services.

## 3 Consideration and payment

### 3.1 Consideration

Subject to clause 4, the Consideration is inclusive of insurance costs, charges, government taxes, duties, levies or other imposts payable by Law, in respect of the Services, unless agreed otherwise in writing by **noumi**.

### 3.2 Payment

- (a) If no payment terms are specified in the PRA, the amount specified in a Tax Invoice is payable within 30 days of the end of the month in which a Tax Invoice is received by **noumi**.
- (b) If **noumi** disputes the amount payable or any other matter set out in any Tax Invoice, clause 3.2(a) does not apply and the dispute must be resolved in accordance with clause 9.
- (c) **noumi** must pay any disputed amount in relation to a Tax Invoice within 15 Business Days of that dispute being finally agreed or determined in accordance with clause 9.

## 4 GST

- (a) Terms defined in the GST Act have the same meaning in this clause 4, unless provided otherwise.
- (b) If GST is or will be imposed on a supply made under or in connection with the Agreement, the Supplier may, to the extent that the consideration otherwise provided for that supply under the Agreement is not stated to already include

an amount in respect of GST on the supply:

- (i) increase the consideration otherwise provided for that supply under the Agreement by the amount of that GST; or
  - (ii) otherwise recover from **noumi** the amount of that GST.
- (c) The recovery of any amount in respect of GST by the Supplier under the Agreement on a supply is subject to the issuing of the relevant Tax Invoice or Adjustment Note to **noumi**.
- (d) If there is an adjustment event in relation to a supply which results in the amount of GST on a supply being different from the amount in respect of GST recovered by the Supplier, as appropriate, the Supplier:
- (i) may recover from **noumi** the amount by which the amount of GST on the supply exceeds the amount recovered; and
  - (ii) must refund to **noumi** the amount by which the amount recovered exceeds the amount of GST on the supply.

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## 5 Warranties and Indemnity

### 5.1 Supplier's Representations and Warranties

The Supplier represents and warrants to **noumi** that:

- (a) the Services are and will always be provided in accordance with the Scope;
- (b) the Supplier and the Supplier's Personnel have all licences, permits (including work rights) and other regulatory consents required or necessary to enter into and perform the Agreement;
- (c) the Supplier and the Supplier's Personnel comply with all applicable Laws in connection with the Agreement;
- (d) all representations made by the Supplier or the Supplier's Personnel to **noumi** (including any information or correspondence in relation to the Services) are complete and accurate, not misleading or deceptive and may be relied on by **noumi** in entering into and performing the Agreement; and
- (e) the supply of the Services will not infringe any right of any third party (including, without limitation, any industrial or intellectual property rights), or any applicable Laws.

### 5.2 Indemnity

Each party (indemnifying party) indemnifies the other party (indemnified party) against direct losses and costs which the indemnified party suffers, incurs or is liable for in connection with a breach of this Agreement by the indemnifying party, except to the extent the loss is caused by the indemnified party.

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## 6 Confidential Information and IP

### 6.1 Confidential Information

- (a) Each party must procure that its Personnel, do not use the Confidential Information of the other party for any purpose other than as necessary to exercise its rights and performing its obligations under the Agreement.
- (b) Each party must procure that its Personnel, do not disclose any Confidential Information of the other party other than:
  - (i) to its employees, officers, representatives, advisers and sub-contractors who need to know such Confidential Information for the purposes of exercising the party's rights or performing its obligations under the Agreement and who are under confidentiality obligations comparable to this clause 6; or
  - (ii) as required by Law, the rules of a recognised stock exchange, a court of competent jurisdiction, or any governmental or regulatory authority.

- (a) Each party must procure that its Personnel, store all Confidential Information in a way that minimises the risk of unauthorised access.
- (b) At a party's request, the other party must promptly return or destroy (and certify the destruction of) any of the first party's Confidential Information.

## 6.2 Intellectual Property

- (a) Each party will retain its pre-existing IPR and nothing in the Agreement assigns or transfers the pre-existing IPR of one party to the other. Neither party may assert or bring any claim for ownership of any or all of the other party's pre-existing IPR.
- (b) All IPR relating to or created during the supply of the Services to **noumi**, excluding pre-existing IPR (**New IPR**), is owned by **noumi** and the Supplier assigns all rights, title and interest in all New IPR (whenever created) to **noumi**.

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## 7 Audit

- (a) **noumi** may conduct an audit of the Supplier on 10 days' notice for the purpose of ensuring the Supplier is complying with the terms of the Agreement and/or applicable Laws, and/or for any other reasonable and legitimate purpose that **noumi** requires.
- (b) The Supplier must do all things reasonably necessary to enable **noumi** to undertake an audit, including by:
  - (i) providing reasonable assistance to conduct the audit expeditiously and to review, verify and sample the records; and
  - (ii) providing adequate working space and reasonable access to the Supplier's facilities.

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## 8 Termination and Liability

### 8.1 Termination

- (a) Either party may terminate the Agreement at any time without cause or penalty by providing the other party with 30 days written notice.
- (b) Where Supplier receives such notice, it must stop providing the Services specified in the notice and take all steps to mitigate any loss suffered or costs incurred as a result of the Agreement being terminated by **noumi**. **noumi** will only be liable for any reasonable costs (excluding, without limitation, loss of prospective income or profits) unavoidably incurred by the Supplier which are a direct result of the termination of this Agreement by **noumi** in accordance with this clause 8.1(a).
- (c) Without limiting **noumi**'s rights at Law or any other termination right under the Agreement, **noumi** may immediately terminate the Agreement by giving the Supplier written notice, if:
  - (i) the Supplier or the Supplier's Personnel breach a term of the Agreement that is not capable of remedy including, without limitation, clauses 5, 6, 9, 11, 12 and 13;
  - (ii) the Supplier or the Supplier's Personnel breach a term of the Agreement that is capable of remedy and fail to remedy the breach within 10 Business Days after receipt of a written breach notice; or
  - (iii) the Supplier does anything that materially damages or is likely to materially damage the business or reputation of **noumi**;
- (d) Without limiting Supplier's rights at Law, Supplier may immediately terminate the Agreement by giving **noumi** written notice if:
  - (i) **noumi** breaches a term of the Agreement that is not capable of remedy;
  - (ii) **noumi** breaches a term of the Agreement that is capable of remedy and **noumi** fails to remedy the breach within 30 days of receipt of a written breach notice issued by the Supplier; or
  - (iii) **noumi** does anything that materially damages or is likely to materially damage the business or reputation of the Supplier.
- (e) Without limiting a party's rights at Law or any other termination right under the

Agreement, either party may immediately terminate the Agreement by giving the other party written notice, if an Insolvency Event occurs in respect of the other party.

## 8.2 Effect of Termination

On expiry or termination of the Agreement:

- (a) the parties agree that within 14 days from the date of expiry or termination:
  - (i) the Supplier must refund all money paid by **noumi** for Services yet to be supplied and for all Non-conforming Services supplied;
  - (ii) each party will return (or at the other party's option, destroy and certify the destruction of) any of the other party's property (whether tangible or intangible including, without limitation, any Confidential Information) in its possession or control;
  - (iii) on written request, each party will supply the other with written certification of its compliance with this clause; and
  - (iv) the Supplier must take all steps to mitigate any loss suffered or costs incurred by the Supplier as a result of the Agreement being terminated by **noumi**; and
- (b) subject to **noumi**'s other rights under the Agreement (including its right to withhold or set-off payment and recover damages), **noumi**'s liability for termination of the Agreement is limited to the payment of a fair and reasonable price for all agreed work in progress at the time of termination and subsequently received by **noumi**, and for any reasonable costs unavoidably incurred by the Supplier, which are directly attributable to the termination of this Agreement by **noumi** (such price to be determined solely by **noumi** acting reasonably and in consultation with the Supplier).

## 8.3 Liability

- (a) The termination or expiry of the Agreement will not prejudice or affect any pre-existing liability or any accrued rights of any party.
- (b) Other than as set out in clause 8.2(b), **noumi** is not liable for any Loss suffered by the Supplier or the Supplier's Personnel as a consequence of or in connection with the Agreement, the termination of the Agreement and/or the provision of the Services.

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## 9 Dispute Resolution

- (a) If a dispute arises under the Agreement that is not settled promptly in the ordinary course of business, a party may deliver written notice to the other party of the matters in dispute, including that party's position and the relevant facts and circumstances (**Dispute Notice**).
- (b) Promptly after the Dispute Notice, the parties must meet for the purpose of resolving the dispute via good faith discussions and negotiations.
- (c) If the dispute is not resolved within 15 Business Days after the meeting pursuant to clause 9(b), then either party may call a meeting between a member of each of their senior management, who must promptly meet for the purpose of resolving the dispute via good faith discussions and negotiations, and/or to mutually agree on an alternative dispute resolution process to be undertaken by the parties in relation to the dispute.
- (d) If the dispute is not resolved within 15 Business Days after the meeting pursuant to clause 9(c), then either party may submit the dispute to independent arbitration in accordance with, and subject to, the then current Resolution Institute Arbitration Rules. Unless the parties agree upon an arbitrator, either party may request a nomination from the Chair of the Resolution Institute.
- (e) Neither party may commence litigation, other than urgent interlocutory relief, until the procedures in clauses 9(a) to 9(d) have been complied with.

- (f) Except where clearly prevented by the area in dispute, the Supplier must continue to perform its obligations under the Agreement notwithstanding the existence of any dispute.

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## 10 Relationship of Parties

Nothing in the Agreement:

- (a) constitutes a partnership or a joint venture between the Supplier and **noumi**;
- (b) authorises a party to:
  - (i) act or hold itself out as an agent or representative of the other party; or
  - (ii) assume or create any obligations on behalf of the other party.

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## 11 Anti-Bribery

- (a) The Supplier must comply with all applicable Laws and **noumi** policies relating to anti-bribery and anti-corruption.
- (b) The Supplier must promptly report to **noumi** any request or demand made by any person for any benefit, whether an undue financial advantage or other advantage of any kind, received by the Supplier in connection with the Agreement or the Services.

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## 12 Modern Slavery

- (a) The Supplier must, and must procure that each of its sub-suppliers (if any):
  - (i) comply with all applicable Laws and **noumi** policies relating to modern slavery or human trafficking, including but not limited to the Modern Slavery Act 2018 (Cth); and
  - (ii) take reasonable steps to ensure that there is no modern slavery or human trafficking in any part of their business or supply chains.
- (b) The Supplier represents and warrants that the Supplier has not, nor has the Supplier's Personnel or others associated with it, been convicted or investigated for modern slavery or human trafficking offences.
- (c) The Supplier must promptly report to **noumi** any actual or suspected slavery or human trafficking in a supply chain in connection with the Agreement or the Services.
- (d) The Supplier must maintain complete records evidencing its compliance with this clause 12.

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## 13 Privacy

Each party must:

- (a) comply with all Laws and **noumi** policies relating to privacy or personal information including but not limited to the *Privacy Act 1988* (Cth);
- (b) only collect or use personal information for the purpose of fulfilling its obligations under the Agreement;
- (c) ensure that personal information held by it is protected against misuse, interference, loss, unauthorised access, modification or disclosure; and
- (d) promptly report to, and cooperate with each other regarding any actual or suspected breach of this clause 13.

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## 14 General

### 14.1 Further assurances

Supplier and **noumi** agree at all times to do all such things and execute all such documents as may be reasonably required in order to give effect to the provisions of the Agreement.

### 14.2 Force Majeure

- (a) If either party is unable to carry out any of its obligations under the Agreement because of Force Majeure, the Agreement will remain in effect but except as otherwise provided, both parties' obligations (other than an obligation as to payment of Product accrued up to the date of the Force Majeure) will be suspended without liability for a period equal to the period of the Force Majeure, and:
  - (i) the non-performing party will give the other party prompt notice describing the event or circumstance claimed to be Force Majeure, including the nature of the occurrence and its expected duration and, where reasonably practicable, continue to furnish regular reports with respect thereto during the period of Force Majeure;
  - (ii) the suspension of obligations will be of no greater scope and of no longer duration than is required by the Force Majeure;
  - (iii) no obligations of either party which accrued before the notice referred to in clause 1.1(a)(i) is given will be suspended as a result of the Force Majeure; and
  - (iv) the non-performing party will use all reasonable efforts to remedy as quickly as possible its inability to perform its obligations.
- (b) In the event that the Force Majeure affects the supply of Products to Customer for a period in excess of 30 consecutive days, either party may terminate the Agreement forthwith by notice in writing to the other.
- (c) Neither party will be liable to the other for any breach of the Agreement, which is directly or indirectly caused by Force Majeure.

#### **14.3 Waiver**

- (a) None of the provisions of the Agreement will be considered to be waived by either party except when such waiver is given in writing.
- (b) No delay or omission of either party in exercising any right, power, privilege or remedy under the Agreement will operate to impair such right, power, privilege or remedy or be construed as a waiver thereof. Any single or partial exercise of any such right, power, privilege or remedy will not preclude any other future exercise thereof or the exercise of any other right, power, privilege or remedy.
- (c) No waiver by a party of any breach will be deemed a waiver of any continuing or re-occurring breach unless it is expressly agreed to be so in writing by the parties.



#### **14.4 Subcontracting and assignment**

- (a) The parties agree that **noumi** has selected the Supplier due to, in part, the Supplier's capability to perform the Services and its fit as a **noumi** partner. The Supplier must not subcontract any part or all of its obligations, or assign part or all of the Agreement, without **noumi**'s prior written consent, which is not to be unreasonably withheld.
- (b) Any subcontractor of the Supplier will be considered the agent and representative of the Supplier and no subcontracting or assignment will relieve the Supplier of its obligations under the Agreement.
- (c) **noumi** may assign or novate the Agreement or any right, benefit or interest under the Agreement to its Related Bodies Corporate and, upon **noumi**'s request, the Supplier must promptly execute all documents required to give effect to any such assignment or novation.

#### **14.5 Set off or withholding**

**noumi** may set off, deduct or withhold from moneys due to the Supplier any money due or claimed to be due from the Supplier to **noumi** whether under the Agreement or otherwise.

#### **14.6 Illegality**

If any provision of the Agreement is or becomes or is declared invalid, unenforceable or illegal by the courts of the jurisdiction to which it is subject such invalidity, unenforceability or illegality will not prejudice or affect the remaining provisions of the Agreement which will continue in full force and effect notwithstanding such invalidity, unenforceability or illegality.

#### **14.7 Waiver**

- (a) No waiver is effective unless it is in writing and signed by the party granting it.
- (b) No failure or delay in exercising a right or remedy under the Agreement will operate as a waiver, or prevent the further exercise of that or any other right or remedy.
- (c) No single or partial exercise of a right or remedy under the Agreement prevents a further exercise of that **or of any other right or remedy**.

#### **14.8 Entire agreement**

- (a) The Agreement constitutes the entire agreement between the parties with respect to its subject matter and supersedes all previous agreements, communications and understandings, whether oral or written, between the parties.
- (b) In the event of any inconsistency, the Agreement must be interpreted in accordance with the following order of precedence:
  - (i) the terms and conditions set out in this document;
  - (ii) the terms and conditions set out in the PRA; then
  - (iii) any other documents related to the supply of Services.

#### **14.9 Governing Law**

The Agreement will be governed by and construed in all respects in accordance with the laws of New South Wales, Australia and each of the parties submit to the exclusive jurisdiction of the courts of New South Wales, Australia.

#### **14.10 Notices**

- (a) Any notice, demand, consent, agreement, certificate or other communication required or permitted to be given or sent under the Agreement will, unless expressly provided otherwise, be in writing and will be delivered personally or by pre-paid post, by courier delivery or by facsimile.
- (b) The required address and email for a party for the purposes of this clause 14.10 is set out on the Invoice or Purchaser Order, provided that either party may alter its address and/or email address for the purposes of this clause 14.10 by notice in writing to the other party.

- (c) Subject to clause (d) below, a notice or other form of communication will be deemed to have been served as follows:
  - (i) if given or delivered personally or by courier delivery, at the time when given or delivered;
  - (ii) if sent by pre-paid post, at the expiration of seven days after the document was delivered into the custody of the postal authorities; and
  - (iii) if sent by email, the earlier of either the sender receiving a confirmation of receipt (whether from the recipient or from the email system generating a read-receipt confirmation) or by 5.00 p.m. on the day that the email is sent.
- (d) A notice or other form of communication which, but for the provisions of this clause 15.101.1(c), would be deemed to be received after 5.00 p.m. on a Business Day or on a day which is not a Business Day, will be deemed to be received at 8.30 a.m. on the following Business Day.

#### **14.11 Acceptance**

The continuation of supply of Services to **noumi** will be construed as Supplier's acceptance of these terms.

#### **14.12 Updates**

**noumi** may propose updates to these terms from time to time by providing Supplier with 30 days' notice. The parties agree that such notice may be provided in several ways including without limitation by email, or incorporating a weblink to the updated terms on a Tax Invoice or other documents issued by Supplier. The Supplier may accept the updated terms by continuing to supply the Services to **noumi**. If the Supplier is not willing to agree to the updated terms, the Supplier may terminate the Agreement without penalty by giving notice to **noumi** prior to the expiry of the 30 day notice period, with such termination to take effect 30 days after the date on which the Supplier gives notice of its intention to terminate the Agreement and the then current terms to continue to apply without amendment for the duration of that 30 day period.

#### **14.13 Costs**

- (a) The parties will bear their own costs and expenses incurred in connection with the preparation, negotiation and execution of the Agreement.
- (b) Any action to be taken by the Supplier in performing its obligations under the Agreement must be taken at its own cost and expense, unless otherwise provided in the Agreement.

#### **14.14 Survival**

The provisions of the Agreement that by their nature or otherwise reasonably should survive termination or expiry of the Agreement, including without limitation clauses 5.2, 6, 8.2, 8.3, 9, 13, 15.5, 15.6 and 15.9 shall remain in full force and effect after expiration or termination.