



General conditions for the supply of Works

1. Formation and Term of Agreement

- (a) A contract is formed between the parties if the Supplier accepts this Agreement in writing (including by exchange of correspondence), or the Supplier commences performing the Works.
- (b) The term of the Agreement begins at 9:00am NZDT on the Commencement Date and continues until 4:00pm NZDT on the Completion Date, unless extended in accordance with clause 1(b) or terminated earlier in accordance with this Agreement. If no Completion Date is specified, the Agreement will come to an end when all Works have been completed, the Defects Liability Period has ended, and all payments required to be made under the Agreement have been made.
- (c) A party may, by the provision of notice in writing, request the Agreement be extended beyond the Completion Date. The Agreement may only be extended for the period or periods as agreed to by the parties in writing.

2. Provision of Works

- (a) The Supplier must provide the Works to XLam in accordance with this Agreement and any reasonable directions given by XLam from time to time.
- (b) The Supplier must:
 - (i) complete the Works by 4:00pm NZDT on the Date for Practical Completion and any other milestone date(s) for delivery of the Works described in the Specifications;
 - (ii) promptly notify XLam as soon as it becomes aware of any delay or possible delay in the supply of the Works in accordance with the Agreement;
 - (iii) provide fit for purpose Works in a timely and efficient manner using the standard of care, skill, diligence, prudence and foresight that would reasonably be expected from a prudent, expert and experienced provider of Works that are similar to the Works; and
 - (iv) use appropriately skilled and qualified Personnel to provide the Works.

- (c) After performance of the Works or delivery of any deliverable provided as part of the Works, XLam will undertake such reviews as it considers necessary to determine whether the Works or deliverable(s) are fit for purpose and comply with this Agreement. After reviewing the Works or deliverable(s), XLam may notify the Supplier in writing:

- (i) of its acceptance of the Works or deliverable(s) if it is satisfied that the Works or deliverable(s) are fit for purpose and comply with this Agreement; or
- (ii) if the Works or deliverable(s) are not fit for purpose or do not comply with this Agreement, in which case clause 2(d) will apply.

- (d) If XLam notifies the Supplier that the Works or deliverable(s) are not fit for purpose or do not comply with this Agreement, the Supplier must promptly rectify the non-compliance following which XLam will undertake further review of the Works or deliverable(s) under clause 2(c). This process will continue until, at XLam's discretion, XLam:

- (i) waives, in writing, the requirement for the Works or deliverable(s) to comply with this Agreement;
- (ii) is satisfied that the Works or deliverable comply with this Agreement and accepts the Works or deliverable(s) in accordance with clause 2(c)(i);
- (iii) conditionally accepts the Works or deliverable(s), subject to the Supplier agreeing to rectify the non-compliance within a reasonable timeframe and on such terms as XLam specifies; or
- (iv) subject to XLam having provided the Supplier with at least two opportunities to rectify the non-compliance under clause 2(c)(ii), immediately terminate this Agreement by written notice to the Supplier.

If XLam terminates this Agreement under this clause 2(d)(iv), XLam will be entitled to a full refund of all moneys paid to the Supplier in respect of the Works or deliverables which XLam is unable to use following termination.

- (e) As a prerequisite to achieving practical completion, the Supplier shall complete the Works to the satisfaction of XLam and assign to XLam, the benefit of all manufacturers warranties in relation to the Works.
- (f) The Supplier shall use good industry practice to cooperate, and coordinate work with all persons performing work at the Site to avoid disruption or delay to the Works, and work performed by other persons at the Site. The Supplier acknowledges that it shall not be entitled to any variation, extension of time or other claim arising out of, or in connection with any failure

to cooperate, or coordinate in relation to work at the Site.

- (g) The Supplier shall allow access to and through the Site to XLam and any other persons as directed by XLam.

3. Price for the Works

- (a) The Rates and Contract Sum (including any Provisional Sums) payable for the Works are fixed, and inclusive of all taxes (excluding GST), for the duration of the Agreement.
- (b) A Provisional Sum shall not itself be payable by XLam but where pursuant to a direction the work or item to which the Provisional Sum relates is carried out or supplied by the Supplier, the work or item shall be priced by XLam, and the difference shall be added to or deducted from the Contract Sum.
- (c) The Supplier may not charge XLam for any additional fee or charge, or recover any expenses or other costs from XLam.

4. Invoicing and payment

- (a) The Supplier must submit an invoice to XLam at accounts@XLam.co.nz, either:
 - (i) If the Works are completed in under one month, on the Date for Practical Completion, or
 - (ii) Otherwise, the Supplier may submit a claim for payment to XLam on or after the Reference Date each month. Any claims submitted prior to the Reference Date each month will be deemed to have been submitted on the Reference Date for that month.
 - (iii) Within 10 Business Days of receipt of a payment claim, XLam will assess the payment claim and issue a payment schedule identifying the amount to be paid.
 - (iv) If the amount to be paid under the payment schedule is different to the amount claimed by the Supplier, XLam shall set out the reasons for the difference including any reason for withholding payment.
 - (v) For the purpose of this clause 4(a), the Reference Date is the 25th of each month other than December, and in December, the 18th of the month.
- (b) Each invoice submitted by the Supplier must contain all information required in a tax invoice for the purposes of the GST Act, together with such other information as XLam may reasonably require.
- (c) Payment of an invoice is not to be taken as evidence that the Works have been supplied in accordance with the Agreement but must be taken only as payment on account.
- (d) Simple interest, at the rate of 10% per annum, accrues on a daily basis on any Overdue

Amount and is payable by XLam to the Supplier on demand.

5. Failure to perform

- (a) If the Supplier fails to perform any Works or deliver any deliverable(s) in accordance with this Agreement XLam:
 - (i) will not be required to pay for those Works or deliverable(s) until they are provided in accordance with the Agreement; and
 - (ii) may issue a notice to the Supplier requiring the Supplier to remedy any default or re-perform the Works or deliverable(s) within the time specified by XLam (which time must be reasonable having regard to the nature of the relevant Works or deliverable(s)).
- (b) If:
 - (i) the default referred to in clause 5(a) above is incapable of being remedied or re-performed; or
 - (ii) the Supplier fails to remedy the default or re-perform the non-compliant Service(s) or deliverable(s) within the time specified in the notice issued under clause 5(a)(ii),

XLam may either have the Works or deliverable(s) remedied or re-performed by a third party or do so itself. In either case, the Supplier must pay the reasonable costs incurred by XLam in doing so.

- (c) If, during the Defects Liability Period, any of the Works are found to have a Defect, the Supplier shall carry out rectification work and re-test all rectified Works as directed by XLam and at times and in a manner so as not to inconvenience XLam or any other persons performing work at the Site.
- (d) If the Supplier fails to complete the rectification work as directed in 5(c), XLam may have the rectification work carried out by others. The cost incurred for the rectification work will be monies due and payable by the Supplier to XLam.
- (e) Nothing in this clause 5 derogates or otherwise limits any other right or remedy available to XLam at Law.

6. Intellectual Property Rights

- (a) Ownership of any Contract Materials will vest in the Supplier from the time of its creation. The Supplier irrevocably and unconditionally grants to XLam a perpetual, non-exclusive, royalty-free, worldwide and transferable licence (including the right to sub-license) to exercise all Intellectual Property Rights in the Contract Materials to the extent necessary to allow XLam the full use and enjoyment of the Works.
- (b) All Pre-Existing Intellectual Property used by the parties in connection with the provision of the Works or the creation of Contract Materials remains the property of the relevant party or its licensors.

- (c) The Supplier hereby irrevocably and unconditionally grants to XLam a perpetual, non-exclusive, royalty-free, worldwide and transferable licence (including the right to sub-license) to use any of the Supplier's Pre-Existing Intellectual Property incorporated in or otherwise required to use the Contract Materials or the Works. The licence granted to XLam under this clause is limited to use of the relevant Pre-Existing Intellectual Property by XLam for the purposes of XLam and for no other purpose.
- (d) XLam grants the Supplier a non-exclusive, non-transferable, royalty-free licence to use XLam's Pre-Existing Intellectual Property for the sole purpose of performing, and only to the extent required to perform, the Works and comply with its obligations under the Agreement during the Term.
- (e) The Supplier undertakes that the Works may be used in any way by XLam, without identifying any person as the individual responsible for creating any particular material comprised in it, without infringing the Moral Rights of any person.
- (f) The Supplier must, upon request by XLam, do all things necessary (including executing any documents) to give full effect to this clause 6.

7. Data

- (a) Data will remain (and, if necessary, will become) the property of XLam. The Supplier will assign to XLam from the date of creation all Intellectual Property Rights in any Data created by or on behalf of the Supplier.
- (b) The Supplier must only use the Data to the extent necessary to perform its obligations under the Agreement.

8. Liability

- (a) The Supplier indemnifies, and will at all times keep XLam and each of its Personnel indemnified against any Losses due to any:
 - (i) bodily injury, death, illness, disease, disability, shock, fright, defamation of character, mental anguish or mental injury including loss of Works resulting therefrom,
 - (ii) Pollutants escaping, discharging, dispersing, or releasing into or upon any property, land, the atmosphere or any water course or body of water,
 - (iii) physical loss (including loss of possession), destruction or damage to tangible property including the loss of use therefrom, or the loss of use of tangible property that has not been physically lost, destroyed or damaged, but cannot be used,
 - (iv) destruction, distortion, erasure, corruption, alteration or misappropriation of electronic data or software, or inability

or failure to receive, send, access or use electronic data or software,

- (v) fraudulent, dishonest, malicious, reckless or criminal act or omission including but not limited to theft or forgery;
 - (vi) a breach of an obligation of confidence or privacy, whether under this Agreement or otherwise; or
 - (vii) any infringement or alleged infringement of the Intellectual Property Rights, Moral Rights or any other rights, arising out of or in connection with any act or omission of the Supplier or any of its Personnel.
- (b) The Supplier's liability to indemnify XLam under clause 8(a) is reduced to the extent that any wilful, unlawful or negligent act or omission of XLam or its Personnel contributed to the Losses.
 - (c) To the extent that the indemnity in clause 8(a) refers to persons other than XLam, XLam holds this clause on trust for those other persons.
 - (d) The Supplier is responsible for the whole of the Works despite any errors, inconsistencies, or omissions in any XLam supplied information.
 - (e) Prior to 4:00pm NZDT on the Date for Practical Completion:
 - (i) The Supplier is responsible for care of the whole of Works and the deliverables;
 - (ii) The Supplier is liable for loss or damage to the Works and deliverables; and
 - (iii) The Supplier is to carry out rectification work to the Works and deliverables as soon as reasonably practicable after any loss or damage occurs.
 - (f) If described in the Specifications, the Supplier is required to provide Security for performance of the Works in the form of either:
 - (i) Retention of 10% of each progress payment up to 5% of the Contract Sum; or
 - (ii) A bank guarantee in the amount of 2.5% of the Contract Sum to be released in a reasonable time after the Supplier achieves Practical Completion, and
 - (iii) A bank guarantee in the amount of 2.5% of the Contract Sum to be released in a reasonable time after the Completion Date.
 - (g) XLam may have recourse to the Security provided and convert the Security into money to satisfy a debt due and payable to XLam by the Supplier under this Agreement.
 - (h) On achieving Practical Completion, XLam must release part of the Security provided by the Supplier.
 - (i) XLam is to release the remainder of the Security to the Supplier on the Completion Date.

9. Warranties

The Supplier represents and warrants to XLam that:

- (a) **(Capacity)** it has the right to enter into the Agreement and perform the Works;
- (b) **(Purpose)** where XLam has, either expressly or by implication, made known to the Supplier any particular purpose for which the Works are required, including in the Purchase Order or the Schedule of Variables, the Works will be performed in such a way as to achieve that result;
- (c) **(Conflict)** it and its Personnel do not hold any office or possess any property, are not engaged in any business or activity and do not have any obligations whereby duties or interests are or might be created in conflict with or might appear to be created in conflict with its obligations under the Agreement;
- (d) **(IP)** it is entitled to use and deal with any Intellectual Property Rights which may be used by it in connection with the provision of the Works and to grant to XLam the licences contemplated by this Agreement;
- (e) **(Trust)** it has not entered into the Agreement on behalf of a trust; and
- (f) **(No infringement)** the receipt of the Works and the possession or use of any deliverables by XLam will not infringe the Intellectual Property Rights or other rights of any person or any Laws.
- (g) **(Modern Slavery)** it does not engage in any form of 'modern slavery' as that term is defined in the *Modern Slavery Act 2018* (Cth); and on request, will provide XLam with true and correct answers to its annual questionnaire in relation to 'modern slavery'.
- (h) **(Materials)** deliverables including materials used in the Works are new, not used, of high and merchantable quality, and are free from defect, lien, charge, security interest and encumbrance.
- (i) **(Licence)** the Supplier holds and has obtained all relevant licences, permits, and approvals required for and to perform the Works.
- (j) Unless a longer Defects Liability Period has been agreed, the Defects Liability Period for the Works (including replaced or repaired Works) is 12 months starting on the date XLam accepts the Works (or repaired or replaced Works) in writing according to clause 2(d), or if no acceptance has been provided according to clause 2(d) but acceptance is implied, starting on the date of the final invoice payment **(Defects Liability Period)**.
- (k) Prior to the end of the Defects Liability Period, if XLam notifies the Supplier that the Works are not fit for purpose or do not comply with this Agreement, the Supplier must promptly rectify the non-compliance following which XLam will undertake further review of the Works under clause 2(d).

10. Force majeure

- (a) If a party becomes aware of any matter likely to constitute a Force Majeure Event, that party must, as soon as reasonably practicable, give notice of the matter and all relevant particulars to the other party.
- (b) Within 5 Business Days after a Force Majeure Event, the Affected Party must give the other party written notice of:
 - (i) the full particulars of the Force Majeure Event including nature and likely duration;
 - (ii) the relevant obligations of the Affected Party under the Agreement and the nature, extent and likely duration of the effect of the Force Majeure Event on the Affected Party's ability to perform those obligations;
 - (iii) the actions taken or proposed to be taken by the Affected Party to remedy, abate, mitigate or minimise the effects of the Force Majeure Event.
- (c) The Affected Party must:
 - (i) Where the Affected Party is the Supplier, prioritise providing the Works to XLam over providing any goods or Works to the Supplier's other customers;
 - (ii) Use all reasonable diligence and all reasonable means to remedy and minimise the effect of the Force Majeure Event; and
 - (iii) Promptly resume performance of its obligations under this Agreement as soon as reasonably possible and notify the other party when that occurs.
- (d) Provided the Affected Party has complied with its obligations under clauses 10(b), and 10(c), the relevant obligations of the Affected Party will be suspended for the duration the Force Majeure Event prevents the Affected Party from performing its obligations; and
- (e) The Affected Party will have no liability to the other party in respect of the failure to perform such obligations during the suspension period.
- (f) Each party bears its own costs arising out of or in connection with a Force Majeure Event.

11. Termination

- (a) XLam may terminate the Agreement with immediate effect (or with effect from a specified date) by giving notice in writing to the Supplier if the Supplier:
 - (i) fails to provide the Works in accordance with the Agreement;
 - (ii) breaches any provision of the Agreement and, where that breach is capable of remedy, fails to remedy the breach within 10 Business Days after receiving written notice requiring it to do so (or such later date as may be specified in that notice);

- (iii) breaches any provision of the Agreement that is not capable of remedy;
 - (iv) or any of its Personnel involved in the provision of the Works commits fraud, dishonesty or any other serious misconduct;
 - (v) commits any act or does anything that may be prejudicial or otherwise detrimental to the reputation of the XLam; or
 - (vi) suffers from an Insolvency Event.
- (b) XLam may terminate the Agreement without cause on notice to the Supplier.
- (c) If the Agreement is terminated pursuant to clause 11(b), XLam will pay the Supplier:
- (i) for the Works performed in accordance with the Agreement up to the date of the termination; and
 - (ii) the unavoidable and substantiated costs incurred by the Supplier as a direct result of the termination, excluding any loss of profit,
- and XLam has no other liability to the Supplier in relation to that termination.
- (d) When XLam issues a notice under clause 11(b), the Supplier will immediately comply with any directions given in the notice and do all that is possible to mitigate its losses arising from the termination of the Agreement.
- (e) The Supplier may terminate the Agreement by giving at least 20 Business Days written notice to XLam if XLam fails to pay amounts due under this Agreement.
- (f) Termination or expiry of this Agreement will not prejudice any right of action or remedy which may have accrued to either party prior to termination or expiry.
- (g) On termination or expiry the Supplier must immediately, following instructions by XLam, cease using all materials that contain any Data or Confidential Information by either destroying the materials or returning the materials at no additional cost to XLam.

12. Insurance

- (a) The Supplier must obtain and maintain insurance cover during the Term and, if requested by XLam, for a period of up to 7 years after the Works have been completed, sufficient to cover any loss or costs that may be incurred and for which the Supplier may be liable in connection with the Agreement, including professional indemnity of \$5 million (if supplying professional, design or consulting services), public and product liability of \$20 million, and works, transit, materials in storage, and motor vehicle insurances to a value sufficient to cover any loss, damage or costs that may be incurred.
- (b) On request, the Supplier must, within 10 Business Days, provide XLam with evidence of

the currency of any insurance it is required to obtain under this Agreement.

- (c) Where the required insurance is due to expire, on request by XLam, the Supplier must provide evidence of the replacement insurance prior to the expiry of the initial insurance.
- (d) On request, XLam is to be noted as an 'interested person' to whom insurance cover is provided by the Supplier's policy.

13. Confidentiality, privacy and data protection

- (a) The Supplier and its Personnel must keep the Confidential Information confidential and secure and must not disclose or otherwise make available any Confidential Information to any other person.
- (b) The Supplier consents to XLam publishing or otherwise making available information in relation to the Supplier (and the provision of the Works) to comply with Law.
- (c) The Supplier acknowledges that it will be bound by the *Privacy Act 2020* (NZ) with respect to any act done or practice engaged in by the Supplier for the purposes of the Agreement, in the same way and to the same extent as the *Privacy Act 2020* (NZ) would have applied to XLam in respect of that act or practice had it been directly done or engaged in by XLam.
- (d) Neither party will disparage the other party, where disparage means any act or omission, including written or verbal communication, which is intended, or would reasonably be expected, to harm the other party or its reputation or which would reasonably be expected to lead to unwanted, negative, or unfavourable publicity to the other party.

14. Access

When at XLam's Site, the Supplier must, and must ensure that its Personnel:

- (a) protect people and property;
- (b) prevent nuisance;
- (c) act in a safe and lawful manner;
- (d) comply with the safety standards and policies of XLam (as notified to the Supplier); and
- (e) comply with any lawful directions of XLam or its Personnel.

15. Sub-contracting

- (a) The Supplier must not sub-contract to any third person any of its obligations in relation to the Works without the prior written consent of XLam (which may be given conditionally or withheld in its absolute discretion).
- (b) The Supplier will not, as a result of any sub-contracting arrangement, be relieved from the performance of any obligation under the Agreement and will be liable for all acts and

omissions of a sub-contractor as though they were the actions of the Supplier itself.

16. Compliance with Law and Policy

The Supplier must, in performing its obligations in accordance with this Agreement, comply with the Laws relevant to the provision of Works by the Supplier under the Agreement and with the XLam Code of Conduct, the XLam Safety Policy, the XLam Privacy Policy (<https://www.XLam.com.au/privacy-policy>), and all other XLam policies and procedures relevant to the Supplier in connection with delivering the Goods and that are provided to the Supplier.

17. GST

- (a) The terms used in this clause have the same meanings given to them in the GST Act.
- (b) Unless otherwise expressly stated, all prices or other sums payable or consideration to be provided under or in accordance with the Agreement are exclusive of GST.
- (c) If GST is imposed on any supply made under or in accordance with the Agreement, the recipient of the taxable supply must pay to the party making the taxable supply an amount equal to the GST payable on or for the taxable supply. Subject to the recipient first receiving a valid tax invoice, payment of the GST amount will be made at the same time the consideration for the taxable supply is to be paid or provided in accordance with the Agreement.

18. Dispute Resolution

- (a) If any issue, dispute, controversy or claim arises under or in connection with this Agreement (**Dispute**), either party may at any time give written notice to the other containing the material particulars of the dispute (**Dispute Notice**) and must immediately be referred to the nominated representative of each Party who must endeavour in good faith to resolve the Dispute expeditiously.
- (b) If the Dispute is not settled in 15 Business Days or a longer period if both parties agree, it will be referred to mediation (**Mediation**) conducted by the New Zealand Dispute Resolution Centre (**NZDRC**) in accordance with the NZDRC mediation guidelines (**Guidelines**) with each party bearing its own costs.
- (c) If the Dispute is not settled in 30 Business Days after being referred to mediation, either party may terminate the dispute resolution process.
- (d) Until clauses 18(a), 18(b) and 18(c) have been complied with, no Party shall commence any action, bring any proceedings or seek any relief or remedy in a court or by arbitration.
- (e) Notwithstanding clause 18(d), either Party may make an application to the court for any urgent interlocutory or equitable relief
- (f) The parties will continue to perform their respective obligations under this Agreement pending the resolution of a Dispute.

19. General

- (a) The Agreement is governed by and is to be construed in accordance with the Laws. Each party irrevocably and unconditionally submits to the exclusive jurisdiction of the courts of the Jurisdiction and any courts which have jurisdiction to hear appeals from any of those courts and waives any right to object to any proceedings being brought in those courts.
- (b) Time is of the essence in relation to the provision of the Works.
- (c) The Agreement may only be varied or replaced by a written document executed by the parties.
- (d) A waiver of any right, power or remedy under the Agreement must be in writing and signed by the party granting it. The fact that a party fails to do, or delays in doing, something the party is entitled to do under the Agreement does not amount to a waiver.
- (e) Any provision of the Agreement which is invalid or unenforceable is to be read down, if possible, so as to be valid and enforceable, and, if that is not possible, the provision will, to the extent that it is capable, be severed to the extent of the invalidity or unenforceability, without affecting the remaining provisions.
- (f) XLam may at any time, deduct from any amount due or becoming due to the Supplier under the Agreement as follows:
 - (i) all debts and amounts due from the Supplier or its subcontractor,
 - (ii) costs, charges and expenses that XLam may have paid or incurred that for which the Supplier or its subcontractor is liable,
 - (iii) the amount of any payment the Supplier may have failed to make to any of its subcontractors, and
 - (iv) the amount XLam may make under Law that is the responsibility of the Supplier under the Agreement.
- (g) Subject to clause 19(h), a party may not assign any right under the Agreement without the prior written consent of the other party. The Supplier will be responsible for acts and omissions of any assignee.
- (h) XLam may, by notice in writing to the Supplier, assign its rights, transfer its obligations or novate the Agreement to any associated entity as defined in the *Companies Act 1993* (NZ).
- (i) The United Nations Convention on Contracts for the International Sale of Goods does not apply to this Agreement.

20. Anti-money laundering and sanctions

- (a) XLam may delay, impose further conditions on or decline to observe its obligations under any contract or other transaction with the Supplier without incurring any liability if XLam knows or reasonably suspects that the contract or transaction or the application of any money in

connection with the contract or transaction with the Supplier will:

- (i) breach, or cause XLam or its Affiliates to breach, any applicable Law (including any sanctions); or
 - (ii) allow the imposition of any penalty on XLam or its Affiliates under any such Law,
- (a) including where the contract or transaction with the Supplier or the application of any moneys in connection with the contract or transaction involves any entity or activity the subject of any applicable sanctions of any jurisdiction binding on XLam or its Affiliates, or the direct or indirect proceeds of unlawful activity.
- (b) As soon as practicable after XLam becomes aware that it will delay, impose conditions or refuse to observe its obligations under any such contract or transaction referred to in paragraph (a), it will notify the Supplier and consult in good faith but in each case only to the extent XLam determines it is legally permitted to do so. In making that determination, XLam will act reasonably.
- (c) The Supplier must promptly advise XLam if it enters into any such contract or transaction with XLam as agent for another entity and the Supplier must promptly supply, or procure the supply of, such information as may be reasonably requested by XLam from time to time in relation to any principal for which the Supplier may be acting.
- (d) For the purposes of these provisions, Affiliate means, a wholly owned subsidiary or a holding company or any other wholly owned subsidiary of that holding company.
- (e) The Supplier undertake to XLam to exercise its rights and perform its obligations under each contract or transaction with XLam in accordance with all applicable laws or regulations relating to anti-money laundering, counter-terrorism financing and sanctions.
- (f) If at any time XLam's bank or financier requires information not already available to it, to comply with all applicable laws or regulations relating to anti-money laundering, counter-terrorism financing or sanctions and if any such bank or financier requires XLam to provide documentation or other evidence as is reasonably requested by it in relation to the Supplier or the source or proposed application of any moneys in connection with any contract or transaction between XLam and the Supplier, the Supplier must promptly supply or procure the supply of that documentation and other evidence upon request by XLam from time to time

21. Entire Understanding and order for precedence

- (a) This Agreement is comprised of:
- (i) Special Conditions (if any);
 - (ii) these General Conditions;
 - (iii) Specifications (if any);
 - (iv) the Purchase Order (if any); and

(v) Schedule of Variables (if any).

- (b) In the event and to the extent of any inconsistency between the documents listed in clause 20(a), the document listed first will prevail to the extent of the inconsistency. If the inconsistency remains incapable of resolution by reading down, the inconsistent provisions will be severed from the Agreement without otherwise diminishing the enforceability of the remaining provisions of the Agreement.
- (c) This Agreement contains everything the parties have agreed in relation to the Works. No party can rely on an earlier written document or anything said or done by or on behalf of another party before this Agreement was executed.
- (d) For clarity, the parties agree that any Supplier terms and conditions that may be attached to any Supplier credit application, quote, website, or invoice, or any document listed in clause 20(a), do not form part of this Agreement, nor do they supercede this Agreement.

22. Survival

Clauses 3, 4, 6, 7, 8, 9, 11(c), 11(d), 11(f), 11(g), 12(a), 13, 15(b), 18, 19, 20, 21, 22 and 23 of this Agreement survive the termination or expiry of this Agreement or the completion of the provision of Works and may be enforced at any time.

23. Definitions

In this Agreement, unless the context otherwise requires:

Agreement means the agreement for the provision of the Works consisting of the documents listed in clause 20(a).

Business Day means a day which is not a Saturday, Sunday or public holiday at the Delivery Point or 27, 28, 29, 30 or 31 December.

Completion Date means the date the Defects Liability Period ends.

Commencement Date means the date on which the provision of the Works will commence, described as Order Date in the Purchase Order or defined in the Schedule of Variables.

Confidential Information means any technical, scientific, commercial, financial or other information of, about or in any way related to, XLam, including any information designated by XLam as confidential, which is disclosed, made available, communicated or delivered to the Supplier, but excludes information which:

- (a) is in or which subsequently enters the public domain, other than as a result of a breach of an obligation of confidentiality;
- (b) the Supplier can demonstrate was in its possession prior to the date of the Agreement;
- (c) the Supplier can demonstrate was developed by it independently of any disclosures previously made by XLam;
- (d) is lawfully obtained by the Supplier on a non-confidential basis from a person who is not bound by a confidentiality agreement with

XLam or otherwise prohibited from disclosing the information to the Supplier; or

- (e) is required to be disclosed pursuant to Law, court order or other legal process.

Contract Materials means any materials (including any Intellectual Property) which the Supplier creates (whether alone or jointly with any other person) in performing the Works.

Contract Sum mean a fixed fee payable to the Supplier for the provision of the Works, described as 'Total' in the Purchase Order or defined in the Schedule of Variables.

Data means all data, information, text, drawings, statistics, analysis and other materials embodied in any form which is:

- (f) supplied by or on behalf of XLam in connection with this Agreement (**Input Data**); or
- (g) generated, placed, stored, processed, retrieved, printed, accessed or produced utilising the Input Data, the Works or the deliverables.

Date for Practical Completion means the date by which the Works are to be completed by the Supplier, described as 'Deliver On or Before' in the Purchase Order or defined in the Schedule of Variables, but which does not occur until certified by XLam in a certificate of practical completion.

Defect means that the Works:

- a) Do not conform to the Specifications; Have an error, or malfunction;
- b) Are not fit for the purpose made known by XLam or are not of high or merchantable quality;
- c) Do not conform with a sample or test item provided by the Supplier;
- d) or Otherwise do not comply with the requirements of this Agreement.

Defects Liability Period means the period 12 months after the Date for Practical Completion unless a longer period is agreed in writing by the parties.

Force Majeure Event means:

- a) war, invasion, act of foreign enemies, hostilities, war-like operations (whether war be declared or not), or civil war;
- b) mutiny or civil commotion which assumes the proportions of, or amounts to a popular rising, military rising, insurrection, rebellion, revolution, military or usurped power;
- c) confiscation, nationalisation, requisition or destruction of or damage to property by or under the order of any government or public or local authority;
- d) act of terrorism, including any real or threatened force or violence used for the purpose of breaching fear or influencing government, and actions taken in controlling, preventing, suppressing, retaliating or responding to an act of terrorism;
- e) riot, strike, lockout, or labour dispute by labour not employed by the Affected Party or its subcontractors;
- f) any ionising, radiations or contamination by

radioactivity from any nuclear weapon or nuclear waste or from the combustion of nuclear fuel, including nuclear fission or radio-active, toxic, explosive or other hazardous properties of any nuclear installation, reactor, or other nuclear assembly or nuclear component thereof;

- g) use of any chemical, biological, bio-chemical, or electromagnetic weapon;
- h) failure or malfunction or any satellite, any electrical or mechanical failure or interruption, including but not limited to electrical disturbance, spike, brownout, or blackout, or any outage to utilities, telecommunication or other infrastructure;
- i) fraudulent, dishonest, malicious, reckless or criminal act or omission including but not limited to theft or forgery;
- j) hurricane, cyclone, typhoon, windstorm, rainstorm, hailstorm, tornado, earthquake, seaquake, tidal wave, volcanic eruption, subterranean fire, meteor, bushfire, flood, vermin, subsidence or collapse;
- k) destruction, distortion, erasure, corruption, alteration or misappropriation of electronic data or software, or inability or failure to receive, send, access or use electronic data or software; or
- l) any pandemic, epidemic or any other outbreak of disease or any mutation of, or fear or threat (actual or perceived) of, or action taken to control or prevent or suppress any disease.

But only where such event or circumstances:

- a) prevents the Affected Party from performing its obligations under this Agreement;
- b) are beyond the reasonable control of the Affected Party;
- c) are such that, even with the exercise of good industry practice, a competent person in the position of the Affected Party would not be able to prevent or overcome the effect of such events or circumstances on the performance of their obligations under this Agreement; and
- d) are not caused by or contributed to in whole or in part by the Affected Party.

GST Act means the *Goods and Services Tax Act 1985* (NZ).

Insolvency Event means, in relation to the Supplier, any of the following:

- (a) anything that reasonably indicates that there is a significant risk that the Supplier is or will become unable to pay debts as they fall due;
- (b) a step being taken to have a receiver, receiver and manager, liquidator or provisional liquidator appointed to the Supplier or any of its assets; or
- (c) the Supplier ceasing, or indicating that it is about to cease, carrying on business.

Intellectual Property Rights means all intellectual property rights at any time recognised by law, including all present and future copyright, all proprietary rights in relation to inventions (including

patents), registered and unregistered trademarks, trade secrets and know-how, registered designs, circuit layouts, and all other proprietary rights resulting from intellectual activity in the industrial, scientific, literary or artistic fields.

Jurisdiction means New Zealand.

Laws means:

- (a) any statute, regulation or subordinate legislation in force; and
- (b) lawful requirements of any government or government department or other body or a governmental, semi-governmental, judicial, municipal, statutory or public entity or statutory authority, a self-regulatory authority established under statute or a stock exchange (wherever created or located) or a person (whether autonomous or not) who is charged with the administration of a law.

Losses means liabilities, losses, damages, expenses, costs (including all legal and settlement costs determined on a full indemnity basis), fines, penalties, exemplary, aggravated or punitive damages, additional damages resulting from the multiplication of compensatory damages, or liquidated damages.

Moral Rights has the meaning given to that term in the *Copyright Act 1994* (NZ) and includes a right of a similar nature that is conferrable by statute, and that exists or comes into existence anywhere in the world.

Overdue Amount means an amount (or part thereof) that:

- (a) is not, or is no longer, disputed;
- (b) is due and owing under a tax invoice properly rendered by the Supplier in accordance with this Agreement; and
- (c) which has been outstanding for more than 15 Business Days from the date of receipt of the invoice (or the date that the amount ceased to be disputed, as the case may be).

Personnel of a party includes the officers, employees, agents, contractors and sub-contractors of that party.

Pollutant means any solid, liquid, gaseous or thermal irritant or contaminant including but not limited to smoke, vapour, soot, fumes, cinders, dust, odours, noise, acids, alkalis, chemicals or waste. Waste includes materials to be recycled, reconditioned or reclaimed.

Pre-Existing Intellectual Property means all materials owned by or licensed to a party as at the date of the Agreement or developed by or on behalf of a party independently of the Agreement.

Provisional Sum means a sum for Works which may be directed by XLam, as described in the Specifications (if any).

Purchase Order means any form of order or purchase issued by XLam for the provision of the Works.

Rates means the monetary amount (whether charged on an hourly, daily, weekly or other time-related basis) payable to the Supplier for the provision of the Works, as specified as 'Item' or

'Amount' in the Purchase Order or defined in the Schedule of Variables.

Reference Date means the 25th day of each month other than December where the Reference Date means the 18th day of that month.

Schedule of Variables means a document prepared by XLam and provided to the Supplier specifying the meaning of the terms used in this Agreement

Site means the area of the premises for the performance of the Works and storage of deliverables described as the 'Deliver To' address in the Purchase Order or defined in the Schedule of Variables, in the Specifications (if any), or as otherwise directed in writing by XLam.

Supplier means the entity supplying the Works under the Agreement described on the Purchase Order or defined in the Schedule of Variables.

Term means the duration of this Agreement from the Commencement Date to the Completion Date or otherwise as extended in accordance with clause 1(b).

Works means the work to be carried out and completed in accordance with this Agreement, including variations, which are to be handed over to XLam (including, without limitation, design documents, as constructed drawings, keys, and legible English language operating manuals, instructions, passwords, and reference material about or relating to the Works and any other deliverables to be supplied which become the property of XLam, whether or not the deliverables are intended to be affixed to the Site), described on the Purchase Order or defined in the Schedule of Variables and in the Specifications (if any).

XLam means XLam NZ Limited (NZCN 3354730) of 60 Surrey Crescent, Grey Lynn, Auckland 1021 NZ, the entity purchasing the Works under this Agreement.

24. Interpretation

Unless expressed to the contrary, in this Agreement:

- (a) words in the singular include the plural and vice versa;
- (b) if a word or phrase is defined its other grammatical forms have corresponding meanings;
- (c) 'includes' and 'including' are not words of limitation;
- (d) no rule of construction will apply to a clause to the disadvantage of a party merely because that party put forward the clause or would otherwise benefit from it;
- (e) the obligations of the Supplier, if more than one person, under the Agreement are joint and several and each person constituting the Supplier acknowledges and agrees that it will be causally responsible for the acts and omissions, including breaches of the Agreement, of the other as if those acts or omissions were its own;
- (f) the rights of the Supplier, if more than one person, under the Agreement, including the right to payment, jointly benefit each person

constituting the Supplier (and not severally or jointly and severally); and

(g) a reference to:

- (i) a person includes a partnership, joint venture, unincorporated association, corporation and a government or statutory body or authority;
- (ii) a person includes the person's legal personal representatives, successors, assigns and persons substituted by novation;

- (iii) any law, legislation or legislative provision includes any statutory modification, amendment or re-enactment, and any subordinate legislation or regulations issued under that legislation or legislative provision; and
- (iv) a party or parties is a reference to XLam and the Supplier (as the case requires).

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