

## **47.SPECIAL CONDITION – COVID-19**

### **47.1 Covid – 19 Events**

- (a) A party will not be liable for any failure or delay in the performance or discharge of its obligations under this Agreement to the extent that such failure or delay is caused, directly or indirectly, by a Covid-19 Event, provided such failure or delay:
  - (i) could not have been prevented by reasonable precautions; or
  - (ii) could not have reasonably been circumvented by the non-performing party by means of alternate sources, workarounds or by using its best endeavours.

This clause does not apply if any Covid-19 Event is caused or contributed to by a breach of this Agreement by the party claiming the Covid-19 Event.

### **47.2 Notification**

A party whose performance or discharge of its obligations referred to in clause 47.1 is affected by a Covid-19 Event must immediately :

- (a) Notify the other party; and
- (b) describe in a reasonable level of detail the nature of the Covid-19 Event and its likely effect on that non-performing party's performance or discharge of its obligations under this Agreement.

### **47.3 Response to a Covid-19 Event**

- (a) On the occurrence of a Covid-19 Event, the non-performing party must use best endeavours to continue or resume performance or observance whenever and to whatever extent possible without delay, including by means of alternate sources, workarounds or other means.
- (b) The non-performing party agrees that the other party may terminate this Agreement in whole or in part by notice to the non-performing party if any Covid-19 Event has the result that the non-performing party fails to complete the contract within ninety (90) days from the date hereof.
- (c) If a party terminates this Agreement pursuant to this Clause then the provisions of Clause 19 shall apply.

### **47.4 Covid-19 Events means any of the following Events:**

#### **i. Covid-19 Events**

- (1) any government requisition, control, intervention, requirement or interference arising from the current Covid-19 health emergency;
- (2) epidemics including the Covid-19 health emergency;
- (3) party being required to self-isolate because of the Covid-19 health emergency;
- (4) a party being diagnosed with Covid-19;
- (5) any other causes of a similar nature to the above beyond the control of the parties:

#### **ii. Provided that in respect of (i) above:**

- (1) such events were not caused by the error, neglect, act or omission of the non-performing party: and
- (2) were not, or could not reasonably have been, foreseen by the non-performing party at the date of the Contract; and
- (3) the non-performing party shall have made all reasonable efforts to avoid and minimise the effects such events have on Completion of the Contract: and
- (4) the event has directly prevented the non-performing party from completing the Contract.

- 47.5** To the extent that this clause is inconsistent with any other provision in the Contract providing for any liability of a non-performing party in the event of any failure or delay in the performance or discharge of its obligations under this Agreement then the provisions of this clause shall prevail.