

## Terms of Trade

### 1. Definitions and interpretation

#### 1.1 Definitions

In this Agreement, unless the context otherwise indicates:

**“ACL”** means the Australian Consumer Law under the *Competition and Consumer Act 2010* (Cth) (as amended and updated from time to time).

**“Agreement”** means the agreement between the Client and Parkway, for Parkway’s supply of Goods (including Leased Equipment) and/or performance of Services according to these Terms of Trade, which agreement is formed upon the Client’s acceptance of Parkway’s offer to supply relevant Goods (including Leased Equipment) and/or perform relevant Services.

**“aMES® Technology”** means Parkway’s activated mineral extraction system.

**“Background Intellectual Property Rights”** means the Intellectual Property Rights of a party that such party either:

- (a) owned, controlled or had rights with respect to prior to the date of this Agreement; or
- (b) develops, or acquires ownership, control or rights with respect to, during the term of this Agreement, but which is not made or acquired pursuant to this Agreement, including any improvements to such Intellectual Property Rights.

**“Break Fee”** means the reasonable costs incurred by Parkway in collecting the Leased Equipment from the Premises on termination of this Agreement, including (amongst other costs and charges) a reasonable account closing fee.

**“Business Day”** means a day that is not a Saturday, a Sunday or a public holiday or bank holiday in Victoria, Australia.

**“Client”** means the person to whom Parkway will supply the Goods (including Leased Equipment) and/or for whom Parkway will perform the Services.

**“Confidential Information”** means all information which, by its nature or by the circumstances of its disclosure, is or could reasonably be expected to be regarded as confidential to a party including (amongst other things):

- (a) concepts, technical, commercial and operational information owned or used by a party; and
- (b) details of any clients, customers or suppliers of a party.

For the avoidance of any doubt, Confidential Information does not include information which:

- (c) a party independently creates (whether alone or jointly with another person), without any reference to the other party’s Confidential Information;

- (d) is publicly available at the date of this Agreement (otherwise than as a result of a breach of a party's confidentiality obligations under this Agreement);
- (e) is obtained without restriction as to further disclosure from a source other than the party which owns the relevant Confidential Information; or
- (f) was already in the recipient party's possession (as evidenced by written records) when provided to such recipient party by or on behalf of the other party.

**"Consequential Loss"** means:

- (a) loss of revenue, loss of profits, loss of anticipated savings or business, pure economic loss, loss of data, loss of value of equipment (other than the cost of repair), loss of opportunity or expectation loss and any other form of consequential, special, indirect, punitive or exemplary loss or damages; and
- (b) any loss arising out of any claim by a third party, whether arising in contract, in tort (including negligence), under any law, as a consequence of fraud or otherwise and whether present or future, fixed or unascertained, actual or contingent.

**"Default Rate"** means 1.25% per month.

**"Force Majeure Event"** means any circumstance not within the reasonable control of the party affected by it which results in the party not being able to perform one (1) or more of its obligations pursuant to this Agreement, including (amongst other things) an act of God, an industrial dispute, war (whether declared or undeclared), civil disturbance, act or omission of a government or other competent authority, epidemic or pandemic, fire, lightning, explosion or flood.

**"Fees"** means the fees payable by the Client to Parkway, in exchange for the Goods (including Leased Equipment) and/or Services provided to the Client by Parkway, details of which fees are outlined in one (1) or more invoices issued by Parkway to the Client.

**"Goods"** means any components, equipment and other materials which Parkway has agreed to supply to the Client.

**"GST"** means the goods and services tax as imposed by the GST Act.

**"GST Act"** means the *A New Tax System (Goods and Services Tax) Act 1999* (Cth) and includes all regulations and associated legislation and delegated legislation.

**"iBC® Technology"** means Parkway's innovative process technology, which removes common impurities from waste brine streams through a causticisation process, enabling further processing and treatment of such waste streams, resulting in the production of various salt products and/or industrial-grade caustic product(s).

**"Intellectual Property Rights"** means all statutory or other proprietary rights (including moral rights) in respect of copyright, trade marks, designs, patents, circuit layout rights, trade or business or company names, domain names, and any rights to registration of such rights, whether created before or after the commencement of this Agreement.

**"Leased Equipment"** means the Goods which Parkway has agreed to lease to the Client according to the terms of this Agreement.

**"Loss"** means any loss, cost, liability or damage, including reasonable legal costs on a solicitor/client basis and any Consequential Losses, unless otherwise stated in this Agreement.

**"Parkway"** means Parkway Process Solutions Pty Ltd (ACN 163 469 761) and each of its related bodies corporate (as that term is defined in Section 50 of the *Corporations Act 2001* (Cth)).

**“Perfected”** has the meaning which is given to that term in the PPSA.

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

**“Register”** has the meaning which is given to that term in the PPSA.

**“Security Interest”** has the meaning which is given to that term in the PPSA.

**“Services”** means all labour services and/or engineering advisory services which Parkway has agreed to perform for the Client.

**“Standard Rates”** means the document of that title which is maintained (and updated from time to time) by Parkway, a copy of which may be requested from Parkway by the Client, outlining the standard rates at which Parkway will perform various categories of services.

**“Technical Information”** means all engineering, scientific and technical information and/or materials relating to technologies in Parkway’s Technology Portfolio, including (but not limited to) calculations, software simulation models, engineering and fabrication drawings, models, methodologies, techniques and processes.

**“Technology Portfolio”** means the portfolio of technologies developed, owned and/or licensed by Parkway, including (but not limited to):

- (a) the aMES® Technology;
- (b) the iBC® Technology;
- (c) all Technical Information, related inventions (whether patentable or not), software, copyrightable materials, patent rights and applications for patents, relating to Parkway’s patented technologies (including, amongst others, the aMES® Technology and iBC® Technology); and/or
- (d) any improvements or other developments to Parkway’s patented technologies (including, amongst others, the aMES® Technology and iBC® Technology) that are made during or in connection with this Agreement.

**“Term”** means the term of this Agreement, over which time Parkway will supply the Goods (including Leased Equipment) to the Client and/or perform the Services for the Client.

**“Written Down Value”** means the value of the Leased Equipment after accounting for depreciation or amortisation (as determined by Parkway acting reasonably) as at the date of Parkway’s termination of this Agreement.

## 1.2 Interpretation

A reference to:

- (a) this Agreement or another document includes any variation or replacement of it notwithstanding any change in the identity of the parties;
- (b) any statute, ordinance, code or other law includes regulations and other statutory instruments under any of them and consolidations, amendments, re-enactments or replacement of any of them;
- (c) a person includes the person’s successors, executors, administrators, substitutes (including a person who becomes a party by novation) and assigns;

- (d) the singular includes the plural and vice versa;
- (e) if the day on which any act under this Agreement is required to be taken is not a Business Day, that act shall be required to be taken on the next Business Day; and
- (f) where two (2) or more persons are defined as a party to this Agreement, the term “party” refers to those persons both jointly and severally.

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## 2. Application of Agreement

- (a) Unless otherwise agreed in writing by the parties, this Agreement applies to Parkway’s supply of all relevant Goods (including Leased Equipment) and/or performance of all relevant Services during the Term.
- (b) The Client acknowledges and agrees that:
  - (i) Parkway may, from time to time, amend these Terms of Trade; and
  - (ii) at all times during the Term of this Agreement, the current Terms of Trade may be accessed on [Parkway’s website \(www.pwnps.com\)](http://www.pwnps.com).

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## 3. Fees

- (a) Subject to clauses 3(b) and 3(c) below, Parkway’s Fees for its supply of Goods (including Leased Equipment) and/or performance of Services will be outlined in one (1) or more quotes issued by Parkway to the Client (“**Fee Quote**”).
- (b) In circumstances where the Client wishes for Parkway to:
  - (i) supply additional Goods (whether on an outright purchase or rental basis), which are listed on [Parkway’s website \(www.pwnps.com\)](http://www.pwnps.com) but which are not referred to in a Fee Quote, Parkway agrees to supply those additional Goods to the Client according to the terms of this Agreement:
    - A. **(for purchases)** at the list prices for those relevant Goods which are published on [Parkway’s website \(www.pwnps.com\)](http://www.pwnps.com); or
    - B. **(for rental)** in exchange for additional rental fees, as negotiated and agreed between the parties;
  - (ii) perform additional Services which are not referred to in a Fee Quote, Parkway agrees to supply those additional Services to the Client according to the terms of this Agreement, at the hourly rates for those additional Services which are outlined in Parkway’s Standard Rates.
- (c) In circumstances where, during the Term of this Agreement, Parkway (acting reasonably) determines that a Fee Quote does not comprehensively and accurately reflect:
  - (i) all of the Goods (including Leased Equipment) and/or Services which the Client requires; and/or
  - (ii) commercially reasonable Fees, having regard to the Goods (including Leased Equipment) and/or Services which the Client requires,

Parkway may (acting reasonably) notify the Client in writing and request that the parties negotiate and agree commercially reasonable amendments to this Agreement (including, amongst other things, to the Fees payable by the Client in exchange for

Parkway's supply of the Goods (including Leased Equipment) and/or Services).

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## 4. Invoices and Payments

- (a) Subject to clause 5 below and unless otherwise agreed (including, for the avoidance of any doubt, as outlined in any Fee Quote(s)), Parkway may submit invoices to the Client for payment of its Fees:
  - (i) at monthly intervals during the Term of this Agreement; and
  - (ii) at the end of the Term, for the balance of all Fees which are owing to Parkway.
- (b) Subject to clause 5 below and unless otherwise agreed (including, for the avoidance of any doubt, as outlined in any Fee Quote(s)), the Client shall pay an amount invoiced by Parkway in full within 30 days of the end of the month in which the invoice is issued to the Client by Parkway. If the Client disputes an invoice amount, the Client shall notify Parkway of the dispute (stating reasons) and pay any amount not disputed by the due date for payment.
- (c) Time for payment is of the essence and a material condition of this Agreement. If the Client fails to pay when due an amount not in dispute and such failure continues for five (5) days after Parkway gives notice of non-payment to the Client, Parkway may immediately terminate this Agreement by giving a further written notice to the Client.
- (d) Parkway may charge interest on amounts overdue from the due date until paid, at the Default Rate.
- (e) The parties acknowledge and agree that, to the extent of any inconsistency between the terms and conditions in any Fee Quote(s) and those outlined in this clause 4 (Invoices & Payments), the terms and conditions in the relevant Fee Quote(s) will prevail.

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## 5. Orders through Parkway's website

Unless otherwise agreed (including where you have a registered trading account with Parkway), in circumstances where you have purchased Goods through [Parkway's website \(www.pwnps.com\)](http://www.pwnps.com):

- (a) you must pay for the Goods in full, at the time of placing your order, by credit card or any other payment method which is listed on [Parkway's website \(www.pwnps.com\)](http://www.pwnps.com);
- (b) until such time as you have paid for the Goods in full, such Goods will remain available for sale to other customers, which may impact the availability of such Goods; and
- (c) you acknowledge and agree that Parkway will not process your order and/or coordinate delivery of the relevant Goods to your nominated address, until such time as you have paid for the Goods in full.

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## 6. GST

- (a) Unless otherwise expressly stated, all Fees, prices or other sums payable or consideration to be provided under or in accordance with this Agreement are exclusive of GST.
- (b) If GST is imposed on any supply made under or in accordance with this 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 this Agreement.

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## 7. Site Access, Safety and Security

- (a) The Client will be responsible for providing Parkway with suitable and timely access to the Client's site for the supply and installation of Leased Equipment, delivery of Goods and/or performance of Services.
- (b) The Client shall provide Parkway's personnel with:
  - (i) an appropriate site-specific health and safety orientation, prior to Parkway's supply and installation of Leased Equipment, delivery of Goods and/or performance of Services on the Client's site; and
  - (ii) a safe working environment.
- (c) Parkway shall use its best endeavours to ensure that its personnel, whilst located on the Client's site, comply with all reasonable safety and security directions given by the Client.

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## 8. Engineering Reports

- (a) The parties acknowledge and agree that Parkway's Services under this Agreement may include the preparation and delivery of engineering advisory reports to the Client, incorporating (amongst other things):
  - (i) the results of testing and/or analysis conducted by Parkway at the Client's request, including (amongst other things) investigating the potential application of Parkway's Technology Portfolio to one or more water treatment challenges faced by the Client ("**Test Results**"); and/or
  - (ii) Goods and/or Services which Parkway recommends that the Client purchases (or, in the case of Leased Equipment, leases) from Parkway, in response to the Test Results referred to in clause 8(a)(i) above,
 (together referred to as "**Engineering Reports**").
- (b) Subject to clause 8(c) below, Parkway must prepare all Engineering Reports:
  - (i) utilising reasonable care and skill, applying methods of analysis consistent with normal industry practice; and
  - (ii) on the basis of the parties' agreed scope(s) of services in relation to the relevant Engineering Report(s).
- (c) Parkway notes the following limitations in connection with its preparation and delivery of all Engineering Reports pursuant to this Agreement:
  - (i) unless otherwise agreed in writing by Parkway, any Engineering Report:
    - A. will be prepared by Parkway for the exclusive usage of the Client. The Client must not disclose any of the information contained in the Engineering Report to any unauthorised third-party recipient(s). Parkway shall have no liability if any of the information contained in the Engineering Report is used and/or relied upon by any unauthorised third-party recipient(s) for any purpose(s); and

- B. cannot be relied upon by the Client for any specific purpose(s). Parkway does not warrant:
  - 1) the accuracy of any Test Results outlined in any Engineering Report; and/or
  - 2) the appropriateness of any Goods (including Leased Equipment), Services and/or the potential application of Parkway's Technology Portfolio to satisfy any specific purpose(s);
- (ii) an Engineering Report will be current as at the date referred to on that Engineering Report and may not reflect any event(s) or circumstance(s) which occur(s) after such date; and
- (iii) to the extent that an Engineering Report is prepared on the basis of information provided to Parkway by (or on behalf of) the Client ("**Client Information**"), Parkway relies on the completeness and accuracy of that Client Information and makes no warranties (whether express or implied) in relation to the completeness and/or accuracy of:
  - A. the Client Information; and/or
  - B. the Engineering Report, to the extent that any errors in or omissions from the Client Information result in associated errors in or omissions from the Engineering Report;
- (iv) if considered necessary and appropriate to do so, Parkway may prepare and deliver an Engineering Report to the Client, with Parkway's advice and/or findings caveated by specified assumptions, the accuracy of which assumptions may:
  - A. as a relevant project is further progressed, be revealed as incorrect; and/or
  - B. need to be validated in one (1) or more further studies in relation to a relevant project;
- (v) any forward-looking estimates and/or forecasts referred to in an Engineering Report might be impacted by the occurrence of one (1) or more circumstances which cannot be reasonably foreseen as at the date of the relevant Engineering Report,  
 (together the "**Report Limitations**");
- (d) Parkway waives responsibility for any losses and/or damages of whatever kind (and sustained by whomever) connected with (whether directly or indirectly) the above Report Limitations.

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## 9. Warranties

- (a) (**Services**) Parkway warrants to the Client that the Services will be performed in accordance with good industry practice. The warranty period for Parkway's Services is 12 months from the date of Parkway's performance of those Services. During the warranty period, upon written request and corroboration, Parkway will promptly re-perform Services that breach this warranty.
- (b) (**Goods manufactured by Parkway**) For Goods (including Leased Equipment) manufactured by Parkway, Parkway warrants to the Client that the Goods will be free



from defects in workmanship or materials. The warranty period is 12 months from the date of Parkway's delivery of those relevant Goods. During the warranty period, Parkway will promptly repair or replace Goods that breach this warranty. The warranty will become null and void if the Client's use of any Goods is not in accordance with Parkway's specifications.

- (c) **(Goods not manufactured by Parkway)** For Goods (including Leased Equipment) not manufactured by Parkway, Parkway shall use its reasonable endeavours to:
  - (i) assign to the Client the benefit of all assignable warranties given by manufacturers and suppliers of Goods that are supplied by Parkway; and
  - (ii) assist the Client in making any claims in accordance with such warranties.
- (d) The warranties given in clauses 8(b), 9(a) and 9(b) and the commitment to assign warranties made in clause 9(c) are given and made in place of all warranties and conditions allowed by law, trade custom, course of dealing or otherwise, including warranties or conditions as to merchantable quality and/or fitness for purposes, all of which are expressly excluded to the fullest extent allowed by law (including, amongst others, under the ACL).
- (e) Parkway's liability to the Client for any Losses which arise under this Agreement shall not in any event exceed:
  - (i) **(for Services)** the cost to Parkway of re-performing the Services;
  - (ii) **(for Goods (including Leased Equipment) manufactured by Parkway)** the cost to Parkway of replacing the Goods;
  - (iii) **(for Goods (including Leased Equipment) not manufactured by Parkway)** the actual amount received by Parkway from manufacturers or suppliers of such Goods, under warranties given by them (if applicable); and
  - (iv) **(for all other Losses)** 50% of the aggregate value of all Fees.

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## 10. Leased Equipment

### 10.1 Delivery and installation

Parkway will deliver and install the Leased Equipment at the Client's site, in exchange for the parties' agreed Fees (as outlined in one or more Fee Quotes).

### 10.2 Title and risk

- (a) Title in the Leased Equipment will, at all times during the Term of this Agreement and following the expiry or termination of this Agreement, remain with Parkway.
- (b) Risk in the Leased Equipment will:
  - (i) pass to the Client upon delivery of the Leased Equipment to the Client's site; and
  - (ii) remain with the Client until Parkway has collected the Leased Equipment from the Client's site, following the expiry or termination of this Agreement.

### 10.3 Maintenance and usage of the Leased Equipment

- (a) At all times during the Term of this Agreement, the Client must use its best endeavours to ensure that:



- (i) the Leased Equipment is:
  - A. used correctly, in accordance with all relevant specifications, and not for any purpose(s) other than its intended purpose(s);
  - B. not altered or amended, without Parkway's prior written consent;
  - C. maintained in a clean and sanitary condition, in compliance with all relevant laws;
  - D. not removed from the Client's site without Parkway's prior written consent;
  - E. not damaged in any way; and
  - F. not sold, transferred or encumbered in any way without Parkway's prior written consent;
- (ii) Parkway is immediately notified of any material damage to (or malfunction of) the Leased Equipment.
- (b) If, as a result of an act or omission by or on behalf of the Client, the Leased Equipment is damaged, lost, destroyed or sustains any faults or defects, Parkway may:
  - (i) repair or replace any damaged, lost or destroyed Leased Equipment; and/or
  - (ii) remedy any faults or defects in the Leased Equipment,

provided that the Client indemnifies Parkway in respect of all costs associated with such repair, replacement and/or remediation of the Leased Equipment.
- (c) If the Client breaches any of its obligations under this clause 10.3 and fails to remedy those breaches within five (5) Business Days of being requested to do so in writing by Parkway, Parkway may immediately terminate this Agreement by giving a further written notice to the Client.

#### **10.4 Termination**

- (a) If, during the Term:
  - (i) Parkway terminates this Agreement in accordance with any of clauses 4(c), 10.3(c) or 19; or
  - (ii) the Client wrongfully terminates or repudiates this Agreement and Parkway accepts such repudiation and elects to terminate this Agreement,

the Client acknowledges and agrees that Parkway will be entitled to receive from the Client:

  - (iii) a Break Fee; and
  - (iv) the Written Down Value of the Leased Equipment.
- (b) If, during the Term, the Client terminates this Agreement in accordance with clause 19, the Client will not be charged a Break Fee or the Written Down Value of the Leased Equipment.
- (c) In circumstances where clause 10.4(a) applies, Parkway's final invoice to the Client will incorporate relevant amounts for both the Break Fee and Written Down Value of the Leased Equipment.
- (d) Nothing in this clause prevents Parkway from claiming further damages at law from the Client, including for (amongst other things):

- (i) loss of, damage to and/or destruction of the Leased Equipment; and
- (ii) the Client's breach or repudiation of this Agreement.

## 10.5 Collection of Leased Equipment following expiry or termination

Immediately following expiry (or, where applicable, termination) of this Agreement, the Client must provide Parkway with complete and uninterrupted access to the Client's site, to facilitate Parkway's collection of the Leased Equipment.

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## 11. Goods

- (a) **(Goods other than Leased Equipment)** The parties acknowledge and agree that this clause 11 (Goods):
  - (i) does not apply to any Leased Equipment which is supplied by Parkway to the Client during the Term of this Agreement; and
  - (ii) applies solely to Goods which the Client purchases from Parkway, during the Term of this Agreement ("**Purchased Goods**").
- (b) **(Acceptance)** If Purchased Goods which are delivered by Parkway conform with this Agreement, the Client will promptly issue written notification to Parkway of acceptance of those Purchased Goods. If the Client does not give written notification to Parkway of acceptance or rejection of Purchased Goods within five (5) Business Days of those Purchased Goods' delivery, acceptance of those Purchased Goods will be deemed to have occurred on the date of the Purchased Goods' delivery.
- (c) **(Defective Purchased Goods)** The Client may reject any Purchased Goods which breach this Agreement (including any of the warranties referred to in clauses 9(b) and 9(c) of this Agreement) ("**Defective Purchased Goods**") by giving written notice (including reasons for rejection) to Parkway within five (5) Business Days of the delivery of those Defective Purchased Goods. If Parkway (acting reasonably) agrees with the Client's assessment that the relevant Purchased Goods are Defective Purchased Goods, Parkway will:
  - (i) at its cost and as soon as reasonably practicable, collect and remove the Defective Purchased Goods from the Client's site; and
  - (ii) at Parkway's absolute discretion, either:
    - A. repair or replace the Defective Purchased Goods; or
    - B. give the Client a credit or refund for any amount(s) paid by the Client for such Defective Purchased Goods.
- (d) **(Return of Purchased Goods)** If, for any reason, the Client wishes to return any Purchased Goods which do not constitute Defective Purchased Goods, the Client may send a written notice to Parkway, requesting Parkway's consent to the Client's return of such Purchased Goods ("**Return Request**"). Parkway may, in its absolute discretion, either accept or reject a Return Request. In circumstances where Parkway accepts a Return Request:
  - (i) the Client will bear financial responsibility for:
    - A. any transportation costs incurred in returning the relevant Purchased Goods to Parkway (unless the Client has a statutory or other legal right that permits otherwise);
    - B. any damage which occurs to the relevant Purchased Goods, during return of such Purchased Goods to Parkway; and

- C. any re-stocking fees incurred by Parkway in relation to the relevant Purchased Goods;
- (ii) Parkway will give the Client a credit or refund for the amount(s) paid by the Client for the relevant Purchased Goods (less any costs or losses deducted by Parkway pursuant to clause 10(d)(i) of this Agreement above).

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## 12. Indemnity

Each party (the “**Indemnifying Party**”) indemnifies and agrees to keep indemnified the other party against any claim resulting from injury or death of any persons, its employees, agents or contractors, caused by any negligent act or omission or wilful misconduct of the Indemnifying Party.

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## 13. Consequential Losses

For the avoidance of any doubt and despite any clause to the contrary in this Agreement, neither party will be liable to the other party for any Consequential Loss arising out of or in connection with Parkway’s supply of any Goods (including Leased Equipment) and/or Services under this Agreement.

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## 14. Subcontracting, Novation and Assignment

- (a) Subject to clause 14(b) below, neither party may novate, assign or otherwise transfer any of their respective rights and/or obligations under this Agreement without first obtaining the prior written consent of the other party.
- (b) Parkway may subcontract performance of some or all of its rights and/or obligations under this Agreement without first obtaining the Client’s prior written consent, provided that Parkway:
  - (i) appoints a subcontractor who Parkway reasonably considers is capable of performing Parkway’s subcontracted obligations; and
  - (ii) remains responsible to the Client for the acts and/or omissions of Parkway’s appointed subcontractor.

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## 15. Force Majeure

Parkway will not be liable for any delay in performing any of its obligations under this Agreement if such delay is caused by a Force Majeure Event beyond its reasonable control and will be entitled to a reasonable extension of time for the performance of such obligations in such event.

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## 16. Dispute Resolution

- (a) Until the relevant provisions of this clause 16 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, except that nothing in this clause 16 prevents either party from seeking interlocutory or equitable relief from a court.
- (b) Any dispute, controversy or claim (a “**Dispute**”) arising out of or in relation to this Agreement must be the subject of a notice from either party to the other party setting out the material particulars of the Dispute (“**Notice**”) and must immediately be referred to nominated representatives of each party who must endeavour in good faith to resolve the Dispute expeditiously.
- (c) If the Dispute has not been resolved within seven (7) days of reference to the parties’

nominated representatives pursuant to clause 16(b) of this Agreement, the Dispute must be referred to the Managing Director (or equivalent) of each party, who must endeavour in good faith to resolve the Dispute expeditiously.

- (d) If a Dispute is not resolved within 14 days after the date on which the Notice under clause 16(b) is given, either party who has complied with this clause 16 may terminate the dispute resolution process undertaken and commence court proceedings in relation to the Dispute.

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## **17. Independent Contractor**

Parkway is an independent contractor. Nothing in this Agreement constitutes a relationship of employer and employee, principal and agent, partnership or joint venture as between Parkway and the Client.

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## **18. Confidentiality and intellectual property**

### **18.1 Confidential Information**

- (a) Subject to clause 18.1(b) below, each party must (including using reasonable endeavours to ensure that its sub-contractors and its personnel also must) keep secret and confidential and not (unless compelled by law) disclose to any third party any Confidential Information supplied to it by the other party. Each party must take or cause to be taken such reasonable precautions as may be necessary to maintain the secrecy and confidentiality of all such Confidential Information.
- (b) The Client acknowledges and agrees that:
  - (i) Parkway Process Solutions Pty Ltd (ACN 163 469 761) is a wholly owned subsidiary of Parkway Corporate Limited (ACN 147 346 334) ("**PCL**");
  - (ii) in its capacity as a public company which is listed on the Australian Securities Exchange ("**ASX**"), PCL is legally required to comply with (amongst other laws) the Listing Rules published by the ASX (as amended and updated from time to time) ("**ASX Listing Rules**"); and
  - (iii) in circumstances where Parkway's entrance into this Agreement is required to be announced to the ASX, in accordance with Chapter 3 of the ASX Listing Rules, Parkway will be permitted to make a relevant announcement to the ASX, provided that in doing so, Parkway must (to the maximum extent legally permissible) ensure that the Client's Confidential Information is not disclosed without the Client's prior written consent.

### **18.2 Intellectual Property Rights**

- (a) All Background Intellectual Property Rights are (and shall remain) the exclusive property of the party owning such Background Intellectual Property Rights, in accordance with the definition of Background Intellectual Property Rights (or, where applicable, the third party from whom such Background Intellectual Property Rights are procured).
- (b) Notwithstanding any provision of this Agreement to the contrary, all current and future Intellectual Property Rights in relation to the Technology Portfolio shall be vested in (and owned exclusively by) Parkway, and the Client shall have no right, title or interest in any Intellectual Property Rights in relation to the Technology Portfolio.
- (c) The Client acknowledges and agrees that:

- (i) any Intellectual Property Rights which Parkway develops during its supply of Goods (including Leased Equipment) and/or Services under this Agreement will vest in Parkway;
  - (ii) the Client shall not use any of Parkway's Intellectual Property Rights without Parkway's prior written consent, except to the extent necessary to use the Goods (including Leased Equipment) and/or Services in the manner contemplated in this Agreement; and
  - (iii) the Client shall not represent that it has any ownership interest in Parkway's Intellectual Property Rights, nor contest nor impair Parkway's right, title or interest in Parkway's Intellectual Property Rights (whether during the term of this Agreement or at any time afterwards).
- (d) Each party shall immediately give written notice to the other party of any actual, threatened or suspected infringement of any party's Intellectual Property Rights used in connection with this Agreement, of which it becomes aware.

## 19. Default and termination

- (a) If a party (the "**Defaulting Party**") has breached a material term of this Agreement then the other party (the "**Non-Defaulting Party**") may give a written notice to the Defaulting Party describing the breach. If the breach is not remedied by the Defaulting Party within 14 days after the notice was given, then the Non-Defaulting Party may terminate this Agreement with immediate effect by a further written notice to the Defaulting Party.
- (b) A party may terminate this Agreement immediately if the other party dies, becomes insolvent or bankrupt, or any court action is threatened or commenced (or resolution proposed or passed) to place that party under any form of bankruptcy, insolvency, administration, receivership or liquidation.

## 20. PPSA

If Parkway determines that this Agreement (or any transaction in connection with it) contains a Security Interest for the purposes of the PPSA, the Client acknowledges that Parkway will be entitled to Perfect such Security Interest by registration on the Register. The Client waives any entitlements under the PPSA regarding notices. The Client agrees, at Parkway's request, to do all acts, matters and things necessary to ensure Parkway holds a valid and Perfected Security Interest. Non-compliance by the Client with this clause will constitute a breach of this Agreement. Any cost associated with Parkway's enforcement of its rights under the PPSA will be payable by the Client.

## 21. General

### 21.1 Service Chemicals

In circumstances where Parkway's Services under this Agreement involve (amongst other things) the usage and/or provision of chemicals, which chemicals are not purchased by the Client on an outright basis as Goods ("**Service Chemicals**"):

- (a) those Service Chemicals will, at all times during the Term of this Agreement and following the expiry or termination of this Agreement, remain the property of Parkway, including in circumstances where unused Service Chemicals are located on the Client's site; and
- (b) following expiry or termination of this Agreement, the Client will grant Parkway access

to its site, for the purpose of Parkway collecting any unused Service Chemicals which are located on the Client's site; and

- (c) risk in Service Chemicals will:
  - (i) pass to the Client upon delivery of the Service Chemicals to the Client's site; and
  - (ii) remain with the Client until Parkway has collected the Service Chemicals from the Client's site, following the expiry or termination of this Agreement.

## **21.2 Title and risk in Purchased Goods**

- (a) Title in Purchased Goods will pass to the Client upon acceptance of (and full payment for) the Purchased Goods.
- (b) Risk in the Purchased Goods will pass to the Client upon delivery of the Purchased Goods to the Client's site.

## **21.3 Waivers**

A right in favour of a party under this Agreement, subject to any express provision of this Agreement to the contrary, may only be waived (whether prospectively or retrospectively) in writing signed by that relevant party. No other act, omission or delay will constitute a waiver of a right by the relevant party.

## **21.4 Authority**

The Client warrants that the person entering into this Agreement on its behalf is authorised to enter into this Agreement and bind the Client to the terms of this Agreement. The Client indemnifies Parkway from and in respect of all losses, damages, liabilities or claims arising from a breach of this warranty.

## **21.5 Costs**

Each party shall be responsible for its own costs incurred in the negotiation of, and the performance of its obligations pursuant to, this Agreement (including, without limitation, legal costs).

## **21.6 Whole agreement**

- (a) This Agreement supersedes all prior representations, arrangements, understandings and agreements between the parties and represents the entire complete and exclusive understanding and agreement between the parties relating to the subject matter of this Agreement.
- (b) The parties acknowledge and agree that they have not relied on any written or oral representation, arrangement, understanding or agreement not expressly set out or referred to in this Agreement.

## **21.7 Severance**

If any part of this Agreement is deemed to be illegal, invalid, void or voidable, the legality or validity of the remainder of this Agreement will not be affected and will continue in full force and effect.

## **21.8 Governing Law**

- (c) This Agreement shall be governed by and construed in accordance with the laws of the State of Victoria, Australia.

- (d) The parties irrevocably and unconditionally submit to the non-exclusive jurisdiction of the courts of the State of Victoria, Australia, to resolve any dispute which may arise between the parties in relation to this Agreement.