

This version of the Services Terms and Conditions applies as from, and is incorporated into, all Agreements entered into or renewed on or after 1 August 2025 and replaces all prior versions, until further notice by GroundProbe.

1 DEFINITIONS AND INTERPRETATIONS

1.1 Definitions

Affiliate means, with respect to a party, any other entity controlled by, controlling or under common control with that party, with “control” for such purpose meaning the ownership directly or indirectly of a shareholding, or economic, voting or participation interest of 50% or more.

Additional Period has the meaning provided in the Proposal.

Agreement means the agreement between GroundProbe and Customer regarding the provision of Services which is comprised of:

- (a) the terms relating to the provision of Services in the applicable Proposal;
- (b) these Services Terms and Conditions; and
- (c) any other applicable terms incorporated by reference into the Proposal or the Services Terms and Conditions, and any annexures to them.

Agreement Date means the date on which the Customer has accepted, or is deemed to have accepted, the offer of Services by GroundProbe as set out in the Proposal, which will be the earlier of:

- (a) The date of the signed Proposal;
- (b) the date on which a PO is first generated by the Customer for any Service, whether or not the Proposal is fully signed by the Parties; and
- (c) In the case of Maintenance and Support Services – the date on which any Maintenance and Support Service is first provided to the Customer (which includes the delivery of any associated equipment, Hardware, Software or Rotational Items, components or spare parts, as applicable), whether or not the Proposal is fully signed by the Parties; and
- (d) In the case of any other Service to be provided – the date on which any such Service is first provided to the Customer, whether or not the Proposal is fully signed by the Parties.

AI Tool means a computer program or technology solution that performs tasks, computations, processes or functions on or using data (whether generative, extractive, reactive or otherwise).

Applicable Trade Control Law(s) has the meaning provided in Schedule C to these Services Terms and Conditions.

Commissioning Services means the Services described as such in the Proposal, which may include activities relating to the set up and implementation, and consequential decommissioning, of GroundProbe Products at the Customer Site.

Confidential Information (of a Party) means any information that falls into one or more of the following categories:

- (a) Regarding the business or affairs (including financial position, internal management, policies and strategies) of such Party or its Affiliates;
- (b) Regarding clients, customers, employees, contractors of, or other persons doing business with, such Party or its Affiliates;
- (c) Regarding the content of any communications of such Party carried on or across any network;
- (d) Regarding the terms and conditions of the Agreement, or the financial arrangements between the Parties;
- (e) Which is by its nature confidential, or which is designated as confidential by such Party, or which the other Party knows (or ought reasonably to know) is confidential;

- (f) In the case of GroundProbe, includes GroundProbe Data and any information, manuals, documents, technical or product specifications which relate to GroundProbe Assets; or

- (g) In the case of Customer, includes Customer Data and any information, manuals, documents, technical or product specifications which relate to Customer Assets.

Consequential Loss means any Loss suffered or incurred by a party as a result of a breach of the Agreement by the other party which does not arise naturally (that is, according to the usual course of things), from the breach, and also includes any loss of revenue, loss of profits, increased operating costs, loss of goodwill, loss of business reputation or loss of or corruption of data.

Customer or You means the party to the Agreement that is not GroundProbe.

Customer Assets means Customer Data, Customer Equipment and any Software, system, documents, materials, processes or any item whatsoever anywhere in the world, together with all Intellectual Property Rights in relation to such, which is owned or controlled, or licensed for use by or on behalf of the Customer prior to the Agreement Date or which may be developed thereafter by or on behalf of the Customer, independently of any services provided by GroundProbe whether or not under this Agreement. For avoidance of doubt, “Customer Assets” excludes any equipment, product, software or item which has been sold, leased or licensed by GroundProbe to the Customer under a separate agreement.

Customer Data means all Data uploaded or provided by Customer, or which is generated at the Customer Site, which for avoidance of doubt excludes Usage Data.

Customer Equipment means any equipment, tools and Hardware used at the Customer’s Site which is not provided by GroundProbe under the Agreement. For avoidance of doubt, such equipment includes GroundProbe Products which have been sold or leased to Customer under a separate agreement.

Customer Feedback means suggestions, enhancement requests, recommendations or other feedback provided by or on behalf of the Customer (including feedback provided by the Customer’s employees, contractors and agents) relating to the Services.

Customer Instructions and Information has the meaning provided in clause 5(d).

Customer Site means the location(s), operations, and site(s) owned or controlled by the Customer, as described in the Proposal, at which GroundProbe will provide the Services under the Agreement.

Data means data or information in in any format or medium, including for avoidance of doubt data in digital form.

Fees has the meaning as described in the Proposal and for avoidance of doubt includes any fees or amounts owing in respect of additional attendance at the Customer Site or additional training (as requested by the Customer).

Geotechnical Specialist (GS) Services has the meaning provided in the Proposal.

Governing Law has the meaning provided in clause 29.1.

GroundProbe means the GroundProbe entity listed in the Proposal or if no entity is listed then GroundProbe Pty Ltd (ACN 095 991 549).

GroundProbe Assets means the Service Assets, and any documents, materials, processes or other item whatsoever anywhere in the world, together with all Intellectual Property Rights in relation to such, which is owned or controlled by or licensed for use by or on behalf of GroundProbe and/or any member(s) of the Orica Group prior to the Agreement Date, or which may be developed by or on behalf of GroundProbe and/or any member(s) of the Orica Group or licensed for use by or on behalf of GroundProbe and/or any member(s) of the Orica Group during the Term or thereafter, whether or not developed independently of GroundProbe's obligations under the Agreement, except to the extent otherwise provided in the Proposal. For avoidance of doubt, "GroundProbe Assets" excludes any equipment, product, Software or item licensed by the Customer for use by or on behalf of GroundProbe under the Agreement.

GroundProbe Data means all Data that is not Customer Data and for avoidance of doubt includes Usage Data.

GroundProbe Services Equipment means any equipment, tools, Hardware, Rotational Items or any other items (including any necessary replacement parts or components) provided or used by GroundProbe directly or indirectly in the course of providing the Services under the Agreement.

GroundProbe Products means any item, product or equipment which is leased or sold by GroundProbe to Customer under a separate agreement.

GroundProbe Software means Software owned or licensed for use by GroundProbe whether or not provided for use by GroundProbe under the Agreement, which for avoidance of doubt, excludes any Software licensed by the Customer to GroundProbe for the purpose of receiving the Services.

GroundProbe Systems means Systems owned or controlled by GroundProbe whether or not used in relation to providing the Services.

Force Majeure means an event or cause which is beyond the control of an affected Party, not able to be overcome by the exercise of reasonable care.

Hardware means any and all physical devices, equipment, machinery, components, and related tangible technology, whether standalone or integrated. Hardware includes, but is not limited to, computers, servers, storage devices, networking equipment, telecommunications infrastructure, processors, microchips, circuit boards, peripherals, sensors, power supplies, embedded systems, controllers, and any associated accessories, tools, and support components. Unless expressly excluded, Hardware also encompasses any firmware, embedded Software, configurations, and technical documentation necessary for its operation, maintenance, or integration.

Indemnitees means in relation to a Party, that Party, its Affiliates and the representatives of such Party and its Affiliates (which includes their directors, officers, employees and agents), each of which is an "Indemnitee" and **together** comprises the Indemnitees of that Party.

Initial Exchange Rate has the meaning provided in clause 12(d).

Insolvency Event means any of the following events:

- (a) A Party ceases to, or takes steps to cease to, conduct its business in the normal manner;
- (b) A Party enters into or resolves to enter into any arrangement, composition or compromise with or assignment for the benefit of its creditors or any class of them;
- (c) A Party is unable to pay its debts when they are due, or is deemed to be insolvent under the applicable legislation in the jurisdiction of the Governing Law. For avoidance of doubt, where the Governing Law is the law of an Australian State or Territory, such applicable law would be the Corporations Act 2001 (Cth);

- (d) A liquidator or provisional liquidator is appointed to a Party or a receiver, receiver and manager, official manager, trustee or similar official is appointed over any of the assets or undertakings of that Party; or
- (e) An application or order is made or a resolution is passed for the winding up of a Party, other than in connection with a bona fide solvent internal reorganisation or restructure.

Intellectual Property Rights means all industrial and intellectual property rights throughout the world, including all copyright and analogous rights, all rights in relation to inventions or discoveries (including patent rights), designs, registered and unregistered trade marks (including service marks), trade names, brand names, know-how, technical information, software, circuit layouts and all other rights throughout the world resulting from intellectual activity in the industrial, scientific or artistic fields.

Laws means all statutes, regulations, proclamations, ordinances, by-laws, rules, regulatory principles and requirements, mandatory codes of conduct, writs, orders, injunctions, judgments **and** any awards or other industrial instruments, which are applicable under the Governing Law, in any jurisdiction in which the Services are performed by GroundProbe, or in which the Platform or any Application is accessed by the Customer (where this differs from the Governing Law), or which may otherwise apply to the matters under the Agreement.

Loss means loss (including loss of life and personal injury), damage, liability, charge, expense, outgoing, payment or cost (including all legal and other professional costs on a full indemnity basis) of any nature or kind.

Maintenance and Support Services has the meaning provided in the Proposal.

Onsite Services has the meaning provided in the Proposal.

Orica Group means:

- (a) GroundProbe; and
- (b) Each Affiliate of GroundProbe.

Orica Privacy Notice means the privacy statement of Orica Limited and its controlled entities which can be found at www.orica.com/privacy/privacy.

Party means either GroundProbe or the Customer and "**Parties**" refers to both of them.

Personal Information means any information relating to an individual from which that individual can be identified directly or indirectly.

Personnel in relation to a Party means that Party's officers (including directors), employees, contractors and those of its third-party subcontractors (if any) who are involved in using or receiving the Services on behalf of, or as directed by, the Customer.

PO has the meaning provided in clause 3.3.

Privacy Laws means all applicable privacy laws, including the *General Data Protection Regulation (EU) 2016/679*, the *Australian Privacy Act 1998* and the *Australian Privacy Principles*, or any successors to those laws.

Proposal means the document containing the offer by GroundProbe to provide specified Services to the Customer together with any additional terms which may be applicable.

Reimbursable Expenses includes the cost of items specified as such in the Proposal together with:

- (a) The cost notified by GroundProbe to the Customer for any items for which the Customer is responsible for supplying under the Agreement but which have been provided by GroundProbe; and

- (b) The full cost of mobilization, demobilization, accommodation and site-specific inductions of GroundProbe Personnel,

unless otherwise specified in the Proposal or agreed in writing with the Customer.

Rotational Items means any equipment, product or item which is provided by GroundProbe under Maintenance and Support Services (or otherwise) for use by the Customer when Customer's own equivalents require repair, in accordance with the Agreement, and includes any items which may be specified as such in the Proposal.

Service Assets means GroundProbe Data, GroundProbe Software, GroundProbe Systems, GroundProbe Services Equipment and any other assets owned, licensed for use by or controlled by GroundProbe which are used in or provided to the Customer in the course of providing the Services under the Agreement.

Services means the activities described as such in the Proposal which GroundProbe offers to provide to the Customer in relation to the Customer Site and the Customer Equipment (specified in the Proposal), in accordance with the terms of the Agreement, which may include:

- (a) Geotechnical Specialist Services;
- (b) Maintenance and Support Services;
- (c) Training Services; and/or
- (d) Onsite Services (including Commissioning Services relating to GroundProbe Products at the Customer Site),

and may involve providing access to Service Assets in accordance with the Agreement.

Services Terms and Conditions means the terms in clauses 1 to 29 contained in this document together with its annexures.

Software means any and all computer programs, applications, code, scripts, and related components, whether in source code, object code, or executable form, including proprietary, open-source, and third-party software, as well as any associated libraries, frameworks, modules, middleware, firmware, operating systems, utilities, and databases. "Software" also encompasses any related documentation, specifications, data structures, algorithms, interfaces, application programming interfaces (APIs), encryption methods, security protocols, updates, modifications, enhancements, patches, bug fixes, upgrades, and derivative works. Unless expressly stated otherwise, Software includes all intellectual property rights therein, including copyrights, patents, trade secrets, and any related proprietary rights.

Software Licence has the meaning provided in clause 3.7(a) of these Services Terms and Conditions.

Systems means a combination of interconnected and interdependent hardware, software, networks, and data components that function together to perform specific operations, processes, or services which include, but are not limited to, computing environments, IT infrastructure, cloud-based platforms, cybersecurity frameworks, operational technology, control systems, automated workflows, artificial intelligence models, embedded solutions, and any supporting documentation, configurations, and protocols necessary for integration, maintenance, security, and performance optimization.

Taxes means any sales, use, excise or any other taxes or assessments levied by any federal, state, municipal or other governmental authority in connection with the provision of the Services.

Term has the meaning given in the Proposal unless extended in accordance with clause 2 in which case the extended period will apply.

Training Services has the meaning provided in the Proposal.

Usage Data is defined in clause 8(d).

1.2 Interpretation

In the Agreement:

- (a) Headings and bold type are for convenience only and do not affect the interpretation of the Agreement.
- (b) The singular includes the plural and the plural includes the singular.
- (c) Words of any gender include all genders.
- (d) An expression importing a person includes any company, partnership, joint venture, association, corporation or other body corporate as well as an individual.
- (e) A reference to a clause, Party, schedule, attachment or exhibit is a reference to a clause of, or a Party, schedule, attachment or exhibit to, the Agreement.
- (f) A reference to a document includes all amendments or supplements to, or replacements or novation's of, that document.
- (g) A reference to a party to a document includes that party's successors and permitted assignees.
- (h) A promise on the part of 2 or more persons binds them jointly and severally.
- (i) 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.
- (j) A reference to \$ or dollars is to Australian dollars.
- (k) Specifying anything in the Agreement after the words 'include' or 'for example' or similar expressions does not limit what else is included.
- (l) In the event of any inconsistency in the Agreement between the provisions of:
 - (1) The Proposal;
 - (2) These Services Terms and Conditions; and / or
 - (3) Any other terms incorporated by reference into the Proposal or the Services Terms and Conditions relating to the provision of the Services,

the terms will apply and take precedence in the order listed above.

2 COMMENCEMENT AND TERM OF THE AGREEMENT

The Agreement commences on the Agreement Date and continues for the Term. Not less than sixty (60) days before the end of the Term, the Parties may agree in writing to extend the Term for an Additional Period.

3 SERVICES

3.1 GroundProbe to provide the Services

GroundProbe will provide the Services to the Customer in accordance with the Agreement.

3.2 Basis of engagement

The Customer engages GroundProbe as a non-exclusive independent contractor to provide the Services to the Customer, and GroundProbe accepts such engagement, on the terms of the Agreement.

3.3 Purchase orders

- (a) The Customer may issue a purchase order ("PO") to GroundProbe for the Services under the Agreement.
- (b) Each PO must include a reference to the applicable Proposal (and include the Proposal number if any) and specify the Services, Customer Site and any other relevant details, which must be consistent with the terms contained in the Proposal.
- (c) GroundProbe's acceptance of a PO will be subject to the terms of the Agreement, and no additional or conflicting terms included in a PO will be deemed binding on GroundProbe unless expressly agreed to in writing by both Parties. For avoidance of doubt, acceptance of a PO by GroundProbe is strictly limited to

invoicing and accounting purposes only and shall not be deemed as acceptance of any Customer documentation or terms.

- (d) GroundProbe will be deemed to have accepted a PO when any Services described in the PO are first provided to the Customer.

3.4 Standard of performance

GroundProbe will perform the Services in compliance with applicable Laws and will:

- (a) Ensure the Services are performed:
- (1) By reasonably skilled and experienced individuals; and
 - (2) Using the standard of care, skill and diligence that would reasonably be expected of a provider of services similar to the Services; and
- (b) Use reasonable efforts not to interfere with the Customer's Operations in the provision of the Services.

3.5 No interpretation or advice by GroundProbe

- (a) The Services provided to the Customer are strictly limited to those set out in the Proposal. The Customer acknowledges and agrees that GroundProbe provides no services relating to the interpretation of data and the Customer is solely responsible for any such interpretation and any decisions made based on such interpretation.
- (b) Any GS Services provided to the Customer are strictly limited to supporting the Customer to interpret data obtained from Customer Equipment and optimise the use of Customer Equipment (as described in the Proposal), with the provision of a pit audit or other deliverables as may be outlined in the Proposal.
- (c) Notwithstanding any other provision in the Agreement, the Services shall not constitute advice or recommendation of any kind to the Customer, including with respect to safety or operational matters at the Customer Site.

3.6 Customer policies and procedures

GroundProbe will comply with all Customer environmental, health and safety, and security policies and procedures, notified to GroundProbe.

3.7 Software Licence terms

The following provisions apply where Services to be provided will include access to GroundProbe Software:

- (a) GroundProbe grants the Customer a non-exclusive, non-transferable license to use such GroundProbe Software at the Customer Site, solely for the purpose and duration and on the terms as described in the Proposal ("**Software Licence**"); and
- (b) The additional terms in Annexure A will apply in respect of such Software Licence.

3.8 Maintenance and Support of Software

If Maintenance and Support Services are to be provided, these Services will cover such GroundProbe Software as described in the Proposal. The Parties agree the additional terms in Annexure B will apply in respect of any such Services, and in the event of any inconsistency with the provisions in clauses 1 to 29 of these Services Terms and Conditions, the provisions in Annexure B will take precedence.

4 USE OF SERVICE ASSETS

The Customer must comply, and must ensure that its Personnel comply, with the following provisions in relation to the Service Assets:

- (a) Do not copy, host, reproduce, lease, rent, licence, sell or otherwise make available or transfer all or any part of the Service Assets to any third-party ;
- (b) Do not grant a security interest over all, any or any part of the Service Assets;
- (c) Do not attempt to operate or maintain the Service Assets (or any part of them), except with GroundProbe's written permission.
- (d) Do not attempt to modify, port, adapt, disassemble, decompile or otherwise reverse engineer any of the Service Assets including

source code, data representations or underlying algorithms, processes or methods, except to the extent permitted by non-excludable Laws;

- (e) Obtain the consent of all relevant third-parties (including any regulatory or governmental authorities), as applicable, in relation to Customer's collection, use, transmission, processing and storage of the Customer Data, including any Personal Information and any information in relation to, or owned by, the third-party which the Customer enters onto the Service Assets or otherwise uses in the course of receiving the Services;
- (f) Obtain the consent of all relevant third-parties (including any regulatory or governmental authorities), as applicable, in relation to the transfer to, processing and storage by GroundProbe or any of the Orica Group (or their sub-contractors) of, any Customer Data (including any Personal Information) in accordance with the terms of the Agreement;
- (g) Do not use the Service Assets to access any Data other than the Customer Data and GroundProbe Data associated with the Services and only for the purpose of making use of the Services in accordance with the terms of the Agreement;
- (h) Do not violate or attempt to violate the security of the Service Assets or attempt to disable, impair, damage or destroy the Service Assets or any part thereof;
- (i) Ensure that the Customer Data does not contain any Software viruses, computer worm, computer timebomb, ransomware or other programming routines or codes designed to interrupt, destroy or limit the functionality of any computer software or hardware or telecommunications equipment or destroy, damage, reveal or alter any Data uploaded to or accessed, processed or transmitted through the Service Assets, or which may otherwise compromise the functionality or security of the Service Assets;
- (j) Ensure that any device which the Customer and/or its Personnel uses to receive the Services contains up-to-date firewall infrastructure and virus, security, and intrusion prevention, scanning and detection software;
- (k) Ensure the Service Assets and Services are used in compliance with applicable Laws, including Privacy Laws; and
- (l) Follow all instructions provided by or on behalf of GroundProbe in relation to using the Service Assets and the Services.

5 OTHER CUSTOMER RESPONSIBILITIES

- (a) The Customer will provide GroundProbe with timely, free and safe access to all areas of the Customer Site necessary for the provision of the Services.
- (b) The Customer acknowledges and agrees that the provision of the Services may be delayed, suspended or interrupted if GroundProbe determines at any time that the Customer has not provided the required access in accordance with clause 5(a).
- (c) Where Services are to be provided under the Agreement in relation to Customer Equipment which is not GroundProbe Products, the Customer will obtain all necessary third-party consents to enable GroundProbe to perform the Services in relation to such Customer Equipment, including but not limited to, providing access to such Customer Equipment and using, collecting, storing, processing displaying and transmitting any data obtained from such Customer Equipment, in accordance with the Agreement.
- (d) The Customer will provide GroundProbe with the necessary instructions, information and acknowledgements and permissions to enable GroundProbe to perform the Services (which may include an applicable "*GSS – Remote Monitoring Limitations & Risk*" document), including with respect to any Customer Equipment which is not GroundProbe Product ("**Customer Instructions and Information**").
- (e) The Customer acknowledges and agrees that:
- (1) GroundProbe may rely on the Customer Instructions and Information for the purpose of providing the Services under the Agreement, without the need for independent verification; and

- (2) The performance of the Services under the Agreement may be delayed, suspended or interrupted if GroundProbe determines at any time at its discretion that it has not received the necessary Customer Instructions and Information or that Customer has not otherwise complied with its obligations under clauses 4 (Use of Service Assets) or 5 (Other Customer Responsibilities).
- (f) Other than as set out in the Agreement, the Customer is solely responsible for providing all Hardware, telecommunications equipment, Software (including browsers) and network requirements (including bandwidth) necessary for access to and use of the Service Assets and the Services.

6 SECURITY

- (a) Customer is responsible for ensuring the security of the Customer Equipment.
- (b) GroundProbe is responsible for ensuring the security of the Service Assets, subject always to Customer's obligations under clause 4 (Use of Service Assets).
- (c) GroundProbe will use commercially reasonable data security practices and take all commercially reasonable measures to secure the Customer Data.
- (d) For avoidance of doubt, nothing in this clause 6 mitigates or releases the Customer from any of its obligations set out elsewhere in the Agreement.

7 MODIFICATIONS, CHANGES AND UPDATES

GroundProbe may modify, discontinue, change or update the Service Assets, including from a technical and functional perspective, from time to time, provided only that GroundProbe must provide Customer with reasonable notice of any material modifications, changes or updates which are reasonably likely to affect the Services.

8 INTELLECTUAL PROPERTY RIGHTS

- (a) The Parties agree that:
- (1) GroundProbe owns or has rights to use the GroundProbe Assets at all times;
 - (2) The Customer owns or has rights to use the Customer Assets at all times; and
 - (3) Nothing in the Agreement transfers any title or rights of use in any Customer Assets to GroundProbe nor in any GroundProbe Assets to the Customer.
- (b) Subject always to clause 3.7 (Software Licence Terms), Annexure A (Additional Software Licence Terms) and clause 12 (Fees and Payment), GroundProbe grants the Customer a non-exclusive, non-transferable, and non-sublicensable licence for the Term to use the Service Assets at or in connection with the Customer Site, together with the right to access, copy, transmit and use GroundProbe Data which is provided as part of the Services, solely and only to the extent reasonably necessary for the Customer to receive the benefit of the Services at or in connection with the Customer Site, and only for the purpose of carrying on the Customer's ordinary business (and not for commercialisation) in relation to the Customer Site.
- (c) Customer grants to GroundProbe:
- (1) a non-exclusive, world-wide, sublicensable and royalty-free licence for the Term to use the Customer Assets located at, or which relate to, the Customer Site (including processing, storing and transmitting Customer Data) solely for the purpose of, and to the extent reasonably necessary, to enable GroundProbe to provide the Services to the Customer in accordance with the Agreement;
 - (2) a non-exclusive, perpetual, irrevocable, world-wide, sublicensable and royalty-free licence to process, store, transmit and use the Customer Data in order to maintain and develop the Service Assets and the Services, and for avoidance of doubt such licence will survive the expiration or termination of the Agreement; and
 - (3) a non-exclusive, perpetual, irrevocable, world-wide, sublicensable and royalty-free licence to process, store, transmit and use the Customer Data in order to comply

with GroundProbe's and the Orica Group's requirements under applicable Law together with their listing, regulatory and record keeping requirements, and for avoidance of doubt such licence will survive the expiration or termination of the Agreement.

- (d) Customer acknowledges that in providing the Services, GroundProbe collects data and performs analysis on how the Service Assets are used, including for example, the amount a feature is used, the volume of data a customer generates, or the combination of features a customer uses ("**Usage Data**"). The Usage Data which is anonymised is owned by GroundProbe and does not form part of the Customer Data. Customer assigns on creation all rights which the Customer may have in any Usage Data to GroundProbe.
- (e) Customer warrants to GroundProbe that:
- (1) Customer has the right to provide the licences under clause 8(c); and
 - (2) GroundProbe's use of the Customer Data and Customer Feedback, and GroundProbe's access and connection to the Customer Assets for the purpose of providing the Services (including the transmission, processing and storage of Customer Data by the Service Assets) under the Agreement will not infringe any rights (including any Intellectual Property Rights) of any third-party.
- (f) GroundProbe warrants to Customer that:
- (1) GroundProbe has the right to provide the licence under clause 8(b); and
 - (2) The use of the Service Assets, by or on behalf of the Customer under the Agreement, will not infringe any rights (including any Intellectual Property Rights) of any third-party.

9 SUBCONTRACTING

- (a) Customer acknowledges and agrees that GroundProbe may engage its Affiliates and / or third-party service providers to assist in providing the Services and maintaining the Service Assets. Any such GroundProbe Affiliates and third-party service providers may be located in multiple geographic locations.
- (b) Customer acknowledges and agrees that GroundProbe, its Affiliates or third-party service providers (or any of them), may develop, host, operate and maintain the Service Assets and Services, in whole or in part, and store, access and process Customer Data, in one or more jurisdictions.

10 PRIVACY

- (a) In the course of providing the Services, and in the course of the Customer and its Personnel accessing and using the Service Assets, GroundProbe, the Orica Group and their sub-contractors may collect Personal Information, including from Customer's Personnel.
- (b) All Personal Information collected under clause 10(a) will be collected, held, used and disclosed in accordance with the Orica Group's Privacy Notice and Privacy Laws applicable to the Orica Group.
- (c) Customer must ensure that all of its Personnel have:
- (1) Been informed that GroundProbe, the Orica Group and their sub-contractors may collect their Personal Information through access and use of the Service Assets and Services;
 - (2) Been provided with a copy of Orica's Privacy Notice; and
 - (3) Provided written consent in relation to GroundProbe, the Orica Group and their sub-contractors collecting, holding, using and disclosing their Personal Information in accordance with the Orica Privacy Notice.
- (d) If the Customer or any of its Personnel provides Personal Information to GroundProbe about any third-party, Customer warrants to GroundProbe that the individuals to whom the Personal Information relates have:

- (1) Been informed that GroundProbe, the Orica Group and their sub-contractors may collect their Personal Information;
- (2) Been provided with a copy of Orica's Privacy Notice; and
- (3) Provided written consent in relation to GroundProbe, the Orica Group and their sub-contractors collecting, holding, using and disclosing their Personal Information in accordance with the Orica Privacy Notice.

11 CONFIDENTIAL INFORMATION

11.1 Confidentiality obligation

- (a) Each Party agrees to keep confidential, and not to use or disclose, other than as permitted under the Agreement, any Confidential Information of the other Party during the Term and for a period of 5 years thereafter.
- (b) The obligation of confidence in clause 11.1(a) extends to Confidential Information provided to or obtained by a Party before entering into the Agreement.

11.2 Permitted disclosure

- (a) Each Party may use and disclose Confidential Information of the other only on a 'need to know' and confidential basis, and solely for the exercise of rights, or the performance of obligations under the Agreement, in one or more of the following circumstances:
 - (1) With the prior written consent of the other Party; or
 - (2) To its Personnel and professional advisors including its auditors;
 - (3) To its Affiliates and their Personnel; and
 - (4) In the case of GroundProbe, to its third-party contractors and service providers to the extent reasonably necessary to host, maintain, develop or provide the Services and / or Service Assets.
- (b) A Party which discloses Confidential Information of the other pursuant to clause 11.2(a) must ensure that such information is kept confidential by the recipient pursuant to confidentiality obligations that are substantially similar to, and at least as onerous as, the obligations set out in this clause 11.

11.3 Preventing disclosures

Each Party must take all steps and do all such things as may be reasonably necessary, prudent or desirable in order to safeguard the confidentiality of the Confidential Information of the other Party.

11.4 Exclusions

The obligations of confidence in clauses 11.1 to 11.3 will not apply to Confidential Information that is:

- (a) Required to be disclosed under Law, provided the receiving Party restricts the disclosure to the minimum amount of Confidential Information required to satisfy the Law and, where possible, before disclosing any information, the receiving Party provides a reasonable amount of notice to the disclosing Party and exhausts all reasonable steps (whether required by the disclosing Party or not) to keep such Confidential Information confidential; or
- (b) That is in the public domain otherwise than as a result of a breach of the Agreement or other obligation of confidence; or
- (c) That is already known, or rightfully received, or independently developed, by the receiving Party free of any obligation of confidence.

11.5 Remedies

Each Party acknowledges that:

- (a) The other Party, or its Affiliates, may suffer financial and other loss and damage if any unauthorised act occurs in relation to the other Party's Confidential Information, and that monetary damages would be an insufficient remedy; and
- (b) In addition to any other remedy available at law or in equity, the other Party or its Affiliates are entitled to injunctive relief to

prevent a breach of, and to compel specific performance of, the obligations under this clause 11.

12 FEES AND PAYMENT

- (a) In consideration of GroundProbe providing the Services, the Customer must pay the Fees to GroundProbe in accordance with the Agreement.
- (b) Unless provided for in the Proposal, the Fees are due and payable by the Customer as set out below:
 - (1) Fees for Services will be invoiced quarterly in advance and will be due and payable thirty (30) days from the date of the invoice;
 - (2) Fees for Rotational Items (if any) will be due and payable thirty (30) days after the Rotational Item has been provided or from the date of the invoice generated, whichever is the later;
 - (3) Reimbursable Expenses are due and payable thirty (30) days from the date of the invoice; and
 - (4) Fees for scheduled Customer Site visits as part of Maintenance and Support Services or Onsite Services provided will be due and payable in accordance with the relevant Maintenance and Support Service plan or as set out in the Proposal.
- (c) Subject to currency exchange adjustments in clause 12(d), all prices set out in the Proposal are fixed and are not subject to variation (unless otherwise specified in the Proposal).
- (d) Where applicable, all prices set out in the Proposal are quoted using an initial exchange rate set out in the Proposal ("**Initial Exchange Rate**"). On each calendar quarter anniversary date (31 March, 30 June, 30 September and 31 December), if the currency exchange rate as published in the Wall Street Journal varies by more than +/-5% from the Initial Exchange Rate, then all prices set out in the Proposal will be adjusted by the amount above or below the Initial Exchange Rate and the adjusted pricing will be effective until the next calendar quarter anniversary date.
- (e) All payments required to be made to GroundProbe must be in AUD or USD as specified in the Proposal, and by electronic funds transfer into GroundProbe's nominated bank account.
- (f) An invoice will be correctly rendered if it identifies the Proposal number, or any applicable PO, is accompanied by documentation substantiating the amount claimed if necessary and where applicable is a valid tax invoice.
- (g) In the event of any dispute about an invoice, all monies not in dispute (if any) shall be immediately paid and the particulars of the dispute notified to the other Party. The provisions in clause 26 shall apply in respect of the disputed portion of the invoice.

13 INTEREST & COSTS OF COLLECTION

- (a) Properly rendered invoices must be paid by the due date of the invoice in accordance with clause 12(b).
- (b) Any and all amounts which remain unpaid after the due date will be deemed overdue and, without prejudice to any other right or remedy available to GroundProbe, will be subject to interest at the rate of 1.5 % per month, calculated daily, from the due date until the date that payment is received.
- (c) GroundProbe will also be entitled to recover all out of pocket expenses incurred as a result of the non-payment or late payment of any correctly rendered invoices.

14 RISK, TITLE AND FREIGHT

- (a) All freight to and from the delivery point specified in the Proposal relating to the initial supply of any GroundProbe Services Equipment to be provided as part of the Services will be at the expense of the Customer (including customs duties), unless otherwise stated in the Proposal or agreed in writing.
- (b) All risk and responsibility for loss and damage to the GroundProbe Services Equipment vests in the Customer from the time of departure from GroundProbe's premises (as specified in the Proposal).

- (c) Subject to clause 14(d), all right and title to any GroundProbe Services Equipment (which may be intended to pass to the Customer under the terms of the Proposal) and any accompanying materials and documentation or other deliverables produced pursuant to the Proposal, remains with GroundProbe until full and final payment is received by GroundProbe as cleared funds.
- (d) No title to Rotational Items passes to the Customer, however, on payment of any applicable Rotational Item fee as set out in the Proposal, the Customer will be entitled to use such Rotational Items in the event the Customer-owned equivalents require repair.
- (e) With respect to any GroundProbe Services Equipment, materials and documentation or other deliverables or any portion thereof, the Customer must not: part with possession or control; mix them with Customer goods; encumber or cause an encumbrance to be created (including assignment, mortgage, pledge, sale, charge, lien or licence); or move them from the Customer Site without the prior consent in writing of GroundProbe (which may be given, withheld or made conditional at GroundProbe's absolute discretion).

15 TAXES

- (a) The Parties, their employees and agents will comply in all respects with the taxation laws and requirements of the Governing Law.
- (b) The Fees, any charges or other amounts referred to in the Agreement which are relevant in determining a payment to be made by one of the Parties to the other do not include any amounts for Taxes, unless indicated otherwise.
- (c) If a supply by a Party under the Agreement is subject to Taxes, the recipient of the supply must pay to the supplier an additional amount equal to that Tax. The additional amount is payable at the same time as the payment for the supply is payable or is to be provided.
- (d) The supplying Party must issue a tax invoice to the recipient of the supply at or before the time of payment of the consideration for the supply as increased on account of any Taxes under clause 15(c) or at such other time as the Parties agree.
- (e) Whenever an adjustment event occurs in relation to any taxable supply made under or in connection with the Agreement, the supplying Party must determine the net amount of Taxes in relation to the supply (taking into account any adjustment) and if the net amount of Taxes differs from the amount previously paid under clause 15(c), the amount of the difference must be paid by, refunded to or credited to the recipient, as applicable.
- (f) If a Party is entitled to be reimbursed or indemnified under the Agreement, the amount to be reimbursed or indemnified does not include any amount for Taxes for which the Party is entitled to an input tax credit.

16 CONSUMER RIGHTS

Nothing in the Agreement is intended to exclude, restrict or modify any rights which the Customer may have under any Law (including the Australian Consumer Law where applicable) which may not be excluded, restricted or modified by agreement (**Your Consumer Rights**).

17 WARRANTIES

- (a) Subject always to Your Consumer Rights and clause 17(c) below, and except as may be otherwise specified in the Proposal, GroundProbe makes no express warranty or representation in respect of the Services and all implied warranties, terms or conditions are excluded from the Agreement.
- (b) In particular, the Parties agree and acknowledge that:
 - (1) The Services and Service Assets are provided 'as is' and without any guarantee, warranty or condition, either express or implied, including as to fitness for any particular purpose or merchantability;

- (2) Under a Maintenance and Support Services – "*Standard Plan*", the Services will not cover fair wear and tear or Customer caused loss or damage;
- (3) Under a Maintenance and Support Services – "*Complete Care Plan*", the Services will not cover Customer caused loss or damage; and
- (4) GroundProbe does not guarantee, represent or warrant:
 - (A) That the Services or Service Assets will meet the Customer's requirements;
 - (B) That the provision of the Services will be uninterrupted, timely or secure;
 - (C) That any GroundProbe Software provided is free from errors, omissions, defects, viruses, computer worms, computer timebombs, Trojan horses or other disabling or malicious code; or
 - (D) In relation to the accuracy or reliability of any results which may be obtained from the provision of the Services, or of any information or data contained in, processed by or accessible through the Services.

- (c) GroundProbe warrants that:

- (1) Any Hardware provided as part of Maintenance and Support Services (including Rotational Items, components and spare parts) will be free of defects for a period of ninety (90) days from the date of delivery to the Customer Site; and
- (2) For all other Services, the sole and exclusive remedy for any defect, at GroundProbe's discretion, will be the repeat performance of the Services to which the defect relates during the Term.

18 INDEMNITIES

- (a) Subject to clauses 18(b) to (d), each Party will indemnify and hold the other Party's Indemnitees harmless against all loss, damage, liability or expense arising in respect of any action, claim, or proceeding brought against it, whether it be in relation to property damage, death or personal injury, third-party rights or otherwise, where such loss, cost, expense or liability arose as a direct consequence of any wilful, wrongful, unlawful or grossly negligent act or omission of that Party.
- (b) The Customer indemnifies and holds harmless GroundProbe's Indemnitees against all and any actions, claims, losses, costs, damages, or expenses which may be brought against any of them arising directly or indirectly from:
 - (1) Customer's breach of any of clauses 4 (Use of Service Assets), 5 (Other Customer Responsibilities), 6(a) (Data Security), 8 (Intellectual Property Rights), 10 (Privacy), 11 (Confidentiality), 15 (Taxes), 23 (Use of AI Tools) or 27 (Ethics and Compliance);
 - (2) The Customer's use or interpretation of any data or other information generated in the course of providing the Services, or which may otherwise be provided under the Agreement and, for avoidance of doubt the Customer acknowledges that the Customer is at all times solely responsible for such use or interpretation;
 - (3) The Customer's alarm level settings and thresholds it has applied at the Customer Site;
 - (4) The Customer's operational or site response to an alarm trigger; and
 - (5) Any third-party allegations, claims, actions, disputes, or demands ("**Third-Party Claim**") brought or purported to be brought against any of GroundProbe's Indemnitees arising in connection with the use of Customer Assets (including Customer Data) under the Agreement, including for avoidance of doubt, any claim or purported claim of actual or potential infringement of that third-party's intellectual property rights, provided that:
 - (A) GroundProbe immediately notifies the Customer of the Third-Party Claim as soon as it becomes aware of such claim;

- (B) GroundProbe acknowledges that the Customer has the right solely to control the management, defence and settlement of the Third-Party Claim, at the Customer's cost;
- (C) Subject to clause 18(b)(5)(E), GroundProbe complies with the Customer's reasonable directions in relation to the use of the Customer's IP (including Customer Data), and provides assistance (at the Customer's cost) for the purposes of managing, defending and settling the Third-Party Claim, as reasonably directed by the Customer;
- (D) The Third-Party Claim is not caused or contributed to by the gross negligence or wilful misconduct on the part of GroundProbe (as reasonably determined by the Customer);
- (E) GroundProbe has taken all reasonable steps to cease the act or omission which is the subject of the Third-Party Claim and to mitigate any resulting Loss, including acting in accordance with its obligations under clause 18(b)(5)(C), except that GroundProbe will not be required at any time to take any action that would, or would likely, have a material detrimental effect on the use and operation of the Service Assets generally, or otherwise materially affect its ability to provide Services to its customers, as reasonably determined by GroundProbe; and
- (F) GroundProbe is not in breach of the Agreement and has not acted illegally.
- (c) GroundProbe indemnifies and holds harmless Customer's Indemnitees against all and any actions, claims, losses, costs, damages, or expenses which may be brought against any of them arising directly or indirectly from:
- (1) GroundProbe's breach of any of clauses 6(b)-(d) (Data Security), 8 (Intellectual Property Rights), 10 (Privacy), 11 (Confidentiality), 23 (Use of AI Tools) or 27 (Ethics and Compliance); and
 - (2) Any Third-Party Claim brought or purported to be brought against any of the Customer's Indemnitees arising in connection with the use of GroundProbe Assets (including GroundProbe Data) under the Agreement, including for avoidance of doubt, any claim or purported claim of actual or potential infringement of that third-party's intellectual property rights, provided that:
 - (A) The Customer immediately notifies GroundProbe of the Third-Party Claim as soon as it becomes aware of such claim;
 - (B) Customer acknowledges that GroundProbe has the right solely to control the management, defence and settlement of the Third-Party Claim, at GroundProbe's cost;
 - (C) The Customer complies with GroundProbe's reasonable directions in relation to the use of GroundProbe Assets (including GroundProbe Data), the Services, Service Assets and provides assistance (at GroundProbe's cost) for the purposes of managing, defending and settling the Third-Party Claim, as reasonably directed by GroundProbe;
 - (D) The Third-Party Claim is not caused or contributed to by the gross negligence or wilful misconduct on the part of the Customer or its Personnel (as reasonably determined by GroundProbe);
 - (E) The Customer has taken all reasonable steps to cease the act or omission which is the subject of the Third-Party Claim and to mitigate any resulting Loss, including acting in accordance with its obligations under clause 18(c)(2)(C); and
 - (F) The Customer is not in breach of the Agreement and has not acted illegally.
- (d) The indemnities referred to in these Services Terms and Conditions will survive the expiration or termination of the Agreement.
- ## 19 LIABILITY
- (a) Subject always to Your Consumer Rights and to clause 19(b):
- (1) To the maximum extent permitted by law and notwithstanding anything to the contrary, neither Party will be liable to the other for any Consequential Loss suffered or incurred by the other Party arising out of or in connection with the Agreement;
 - (2) The maximum aggregate liability of each Party for Loss suffered or incurred by the other Party arising out of or in connection with the Agreement (howsoever arising) is an amount limited to the lesser of:
 - (A) the amount of the Loss;
 - (B) the proceeds of any insurances required and received under this Agreement in relation to the Loss; and
 - (C) an amount equal to the total amount of Fees paid and payable under the Agreement; and
 - (3) GroundProbe will not be liable to Customer for any Loss suffered or incurred by Customer arising out of or in connection with any error, interruption or inaccuracy in the the Services or Service Assets.
- (b) The limitations and exclusions in clause 19(a)(2) do not apply in relation to any Loss which is the subject of an indemnity under clause 18 or which arises from the indemnifying Party's improper collection, use, storage, transmission or disclosure of third-party Data.
- (c) Any liability of a Party will be reduced proportionately to the extent the loss or damage was caused or contributed to by the other Party, and each Party will use all reasonable endeavours to mitigate any losses incurred as a result of any damage or loss sustained, except that GroundProbe will not be required at any time to take any action that would, or would likely, have a material detrimental effect on the use and operation of the Service Assets generally, or otherwise materially affect its ability to provide Services to its other customers, as reasonably determined by GroundProbe.
- (d) Each Party will be liable for breach of its obligations under this Agreement, whether such breach arose from the acts or omissions of that Party or its Personnel, and where such breach arises from the acts or omissions of its Personnel, the Party will be liable to the same extent as if the acts or omissions were those of the Party itself.
- (e) GroundProbe will not be in breach of its obligations under the Agreement or otherwise liable to the Customer or a third-party, in respect of any act or omission conducted by or on its behalf, which relates directly or indirectly to any breach by the Customer of its obligations under clauses 4 (Use of Service Assets) or 5 (Other Customer Responsibilities).
- (f) Provided that GroundProbe has exercised its rights under clauses 20 and 21 (respectively) to suspend or terminate the Agreement reasonably and in good faith, it will not be liable to the Customer (whether in negligence or otherwise) for any loss or damage suffered or incurred by the Customer as a result of the suspension or termination.
- ## 20 SUSPENSION
- GroundProbe may suspend performance of all or any part of the Services and GroundProbe's other obligations under the Agreement at any time if it reasonably and in good faith determines that the Customer has not complied with its obligations under clauses 4 (Use of Service Assets) or 5 (Other Customer Responsibilities) of the Agreement.
- ## 21 TERMINATION
- ### 21.1 Termination on notice
- A Party is entitled to terminate the Agreement during the Term without default by giving paid written notice to the other Party in accordance

GROUNDPROBE SERVICES TERMS AND CONDITIONS

with the notice period in the Proposal, or if not specified in the Proposal, then a notice period of ninety (90) days.

21.2 Termination for breach

A Party may, at its sole discretion, terminate the Agreement immediately by notifying the other Party in writing, if one or more of the following events occurs in relation to that other Party:

- (a) Where that other Party commits a breach of the Agreement which is capable of remedy, and fails to remedy that breach within thirty (30) days after the first Party provides a written notice specifying the breach, regardless of whether negotiations have commenced under clause 26;
- (b) Where that other Party commits a breach of the Agreement which is not capable of being remedied (as reasonably determined by the terminating Party);
- (c) If one or more Insolvency Events occurs in relation to the other Party; or
- (d) In the case of GroundProbe, if it has the right to terminate the Agreement under clause 27 and Annexure C.

21.3 Consequences of termination or expiry of the Agreement

On expiry or termination of the Agreement (whether effected under clause 21 or otherwise):

- (a) GroundProbe will immediately cease providing the Services to the Customer and the Customer may not issue any further orders or POs for Services under the Agreement;
- (b) Except where the Agreement is terminated as a result of a breach by GroundProbe (under clause 21.2), GroundProbe will be entitled to immediately recover payment for all Services provided, plus any Reimbursable Expenses incurred, and any interest and costs of collection as applicable. All such amounts will be deemed to be immediate debts due and payable by the Customer as at the date of expiry or termination;
- (c) The Customer must, within fourteen (14) days of the date of expiry or termination of the Agreement:
 - (1) Make payment as required by GroundProbe under clause 21.3(b); and
 - (2) Return to GroundProbe all manuals (relating to the Services or GroundProbe Services Equipment), GroundProbe Software and any other Service Assets which the Customer may have in its possession.
- (d) Except to give effect to clause 21.3(e), the licences granted under clauses 8(b) and 8(c)(1) will automatically and immediately terminate, and the Customer will comply with GroundProbe's reasonable requirements in relation to the termination of the licences;
- (e) The Customer will be afforded an opportunity within thirty (30) days following the date of termination or expiry of the Agreement to download a copy of any Customer Data stored on the GroundProbe Services Equipment (where this is possible);
- (f) Following the end of the period referred to in clause 21.3(e), GroundProbe will where practicable (subject always to GroundProbe's rights under the Agreement and obligations under applicable Laws) delete all Customer Data. GroundProbe will ensure that any Customer Data that is retained and not deleted will be anonymised and if this is not possible, GroundProbe will treat such Customer Data as Confidential Information in accordance with clause 11.

22 GROUNDPROBE RESPONSIBLE FOR SUB-CONTRACTORS

GroundProbe may sub-contract the performance of all or some of its duties, obligations and powers under the Agreement without Customer's prior approval. However, subject to clause 19 above, GroundProbe will remain liable for the acts or omissions of its sub-contractors in the performance of any of its duties, obligations and rights as if they were GroundProbe's acts or omissions.

23 USE OF AI TOOLS**23.1 Restriction on use of AI Tools**

Neither Party may, without the prior written consent of the other Party (which may be withheld by the other Party in its absolute discretion or given subject to conditions determined by that Party in its absolute discretion):

- (a) Use any AI Tool in connection with providing or receiving (as applicable) any Services under the Agreement; or
- (b) Input or upload any Confidential Information of the other Party into any AI Tool which if used, would collect, retain (in any form and for any period), process or manipulate any of the Confidential Information.

23.2 Disclosure of proposed use

If a Party wishes to use any AI Tools, it must disclose the nature and extent of such use to the other Party in advance of, or at the same time as, submitting a request under clause 23.1 for the other Party's consent (which pursuant to clause 23.1, may be withheld by the other Party in its absolute discretion or given subject to conditions determined by that Party in its absolute discretion).

23.3 Compliance with Laws

Subject to obtaining the consent required under clause 23.1, a Party must ensure that its use of any AI Tools complies with all applicable laws, regulations, and industry standards.

23.4 Liability

Notwithstanding any other provision in these Services Terms and Conditions, a Party assumes all liability for any damages or losses suffered by it arising from its use of AI Tools in connection with the Services provided under the Agreement.

23.5 Termination

Either Party reserves the right to terminate the Agreement with immediate effect if the other Party breaches any part of this clause 23.

24 CUSTOMER FEEDBACK

The Customer may (but has no obligation to) provide Customer Feedback to GroundProbe during or after the Term and agrees to assign on behalf of itself and procure the assignment by its employees, contractors and agents of all right, title and interest in any ideas, know-how, concepts, techniques, and any other Intellectual Property Rights contained in the Customer Feedback, such that GroundProbe and the Orica Group may make use of the Customer Feedback without any attribution or compensation to any person. If such rights cannot be assigned, Customer agrees to provide a perpetual, royalty-free, worldwide, transferable, sub-licensable, irrevocable licence (or procure the provision of such a licence) to GroundProbe and the Orica Group to make use of the Customer Feedback or any part of it as GroundProbe deems appropriate. For avoidance of doubt, GroundProbe and the Orica Group have no obligation to make use of such Customer Feedback.

25 INSURANCE

Each Party will effect and maintain the insurance of the types and for the amounts specified below with reputable insurers and, upon request, furnish the other Party with a certificate of insurance evidencing that any such cover is in force:

- (a) Public and product liability insurance having a limit of cover of USD 5,000,000 (or its equivalent if denominated in another currency) for each occurrence;
- (b) Workers compensation insurance (or the equivalent) as may be required by Law; and
- (c) Its own cyber insurance policy which provides indemnity for:
 - (1) direct costs and expenses incurred as a result of a data or security breach; and
 - (2) legal liability to pay damages and expenses arising from a data or security breach.

26 DISPUTES

If a dispute arises between the Parties, they shall engage in good faith negotiations at a senior management level to resolve the matter. If the

dispute is not resolved within thirty (30) days of the commencement of such negotiations, either Party may refer the dispute to a court of competent jurisdiction.

27 ETHICS AND COMPLIANCE

- (a) The Parties agree the rights and obligations in Annexure C apply as if incorporated in full into this clause 27.
- (b) The Customer must not (and must ensure that its sub-contractors do not) act in contravention of the provisions set out in Schedule A to these Services Terms and Conditions.
- (c) If the Customer intends to transfer any items, including software, that require an export licence or other export authorisation under Applicable Trade Control Laws to GroundProbe, it must provide such export requirements for those items in advance of such transfer.
- (d) Nothing under the Agreement requires GroundProbe to provide any item or service:
 - (1) In contravention of an Applicable Trade Control Law; or
 - (2) Otherwise in respect of any country, individual or entity that has been sanctioned pursuant to an Applicable Trade Control Law, unless the necessary authorisation has been obtained from the relevant regulator and Orica has expressly consented to such provision.
- (e) The provisions in this clause 27 (which for avoidance of doubt incorporate the provisions in Annexure C) apply in priority to any other provision in the Agreement.

28 MARKETING

- (a) The Customer agrees that GroundProbe may use the name of the Customer to identify them as a customer of GroundProbe.
- (b) References to the Customer's experience in relation to the Services may only be included in GroundProbe corporate, promotional or marketing literature with the Customer's prior written approval.

29 GENERAL

29.1 Governing law and jurisdiction

The Agreement is governed by the law in force in the state, territory or country (as applicable) in which the contracting GroundProbe entity is incorporated or registered, as the case may be ("**Governing Law**"). Each Party irrevocably submits to the exclusive jurisdiction of courts exercising jurisdiction in such state, territory or country and courts of appeal from them in respect of any proceedings arising out of or in connection with the Agreement. Each Party irrevocably waives any objection to the venue of any legal process in these courts on the basis that the process has been brought in an inconvenient forum.

29.2 Invalidity and enforceability

- (a) If any part of a provision in the Agreement is invalid under the Governing Law, the provision is enforceable in that jurisdiction to the extent that it is not invalid, whether it is in severable terms or not.
- (b) Clause 29.2(a) does not apply where enforcement of the provision in the Agreement would materially affect the nature or effect of the Parties' obligations under the Agreement.

29.3 Survival

The rights, obligations and indemnities in clauses 8(a), 8(c)(2)-(3) and 8(e) (Intellectual Property Rights), 10 (Privacy), 11 (Confidential Information), 13 (Interest and Cost of Collection), 14 (Taxes), 18 (Indemnities), 19 (Liability), 21.3 (Consequences of termination or expiry of the Agreement), 24 (Customer Feedback), clause 26(b) (Insurance) and 29 (General) will survive the termination or expiry of the Agreement together with any other clauses which by their nature are intended to survive.

29.4 Waiver

No Party to the Agreement may rely on the words or conduct of any other Party as a waiver of any right unless the waiver is in writing and signed by the Party granting the waiver.

The meanings of the terms used in this clause 29.4 are set out below

- "**conduct**" includes delay in the exercise of a right;
- "**right**" means any right arising under or in connection with the Agreement and includes the right to rely on this clause; and
- "**waiver**" includes an election between rights and remedies, and conduct which might otherwise give rise to an estoppel.

29.5 Variation

- (a) A variation of any term of the Agreement must be agreed expressly in writing by both Parties.
- (b) Notwithstanding clause 29.5(a), but subject to Customer's rights in clause 29.5(c), the Services Terms and Conditions may be updated from time to time by GroundProbe. GroundProbe will provide Customers with thirty (30) days' notice in writing (which may be via a statement on GroundProbe's website) in respect of an update before the updated version of the Services Terms and Conditions becomes effective. After the expiration of this notice period, the updated Services Terms and Conditions will be deemed to be incorporated into the Agreement.
- (c) The Customer may terminate the Agreement by notifying GroundProbe in writing within ten (10) days from the date GroundProbe first provides written notice under clause 29.5(b), provided the Customer can demonstrate to GroundProbe's reasonable satisfaction that the changes to the Services Terms and Conditions would have a material detrimental effect on the Customer's use of the Services or the Customer's business, in which case such termination will become effective thirty (30) days after the date on which the Customer provided written notification under this sub-clause (c).

29.6 Further action to be taken at each Party's own expense

Each Party must, at its own expense, do all things and execute all documents necessary to give full effect to the Agreement and the transactions contemplated by it.

29.7 Entire agreement

- (a) The Agreement states all the express terms of the agreement between the Parties in respect of its subject matter. It supersedes all prior discussions, negotiations, understandings and agreements in respect of its subject matter.
- (b) The Parties acknowledge and agree that any terms or conditions which may accompany the Customer's PO or which may otherwise be submitted by the Customer, will be expressly excluded from this Agreement and have no effect on the rights and obligations of the Parties. The Agreement will prevail over any conflicting terms which may be submitted by the Customer, and any such terms will not be deemed to modify, amend, or supplement the provisions of the Agreement unless explicitly agreed to in writing by both Parties.

29.8 No reliance

No Party has relied on any statement by the other Party which is not expressly included in the Agreement.

29.9 Relationship of the Parties

- (a) Nothing in the Agreement gives a Party authority to act on behalf of, represent or bind the other Party in any way.
- (b) Nothing in the Agreement imposes a fiduciary duty on a Party in relation to the other Party.

29.10 Exercise of rights

- (a) Unless expressly required by the terms of the Agreement, a Party is not required to act reasonably in giving or withholding any consent or approval or exercising any other right, power, authority, discretion or remedy, under or in connection with the Agreement.
- (b) A Party may (without any requirement to act reasonably) impose conditions on the grant by it of any consent or approval, or any waiver of any right, power, authority, discretion or remedy, under or in connection with the Agreement. Any conditions must be complied with by the Party relying on the consent, approval or waiver.

29.11 Benefit of Agreement

- (a) GroundProbe enters into the Agreement on its own behalf and as agent for and on behalf of its Affiliates and holds the benefit of the Agreement as trustee for them.
- (b) The provisions of the Agreement may be enforced by GroundProbe on its own behalf and on behalf of and for the benefit of its Affiliates or any one of them.

29.12 Force Majeure

- (a) If a Party is prevented in whole or in part from carrying out its obligations under the Agreement as a result of Force Majeure, it must immediately notify the other Party, specifying:
 - (1) The Force Majeure;
 - (2) The obligations it cannot perform as a result; and
 - (3) The estimated duration the Force Majeure will continue.
- (b) Following the notice described in clause 29.12(a), and while the Force Majeure continues, the obligations that cannot be performed due to the Force Majeure (excluding any payment obligations under clause 12) will be suspended. The Party prevented from carrying out its obligations (excluding any payment obligations under clause 12) due to Force Majeure must resume performance of its obligations as soon as reasonably possible, and take all reasonable action to mitigate any Loss suffered by the other Party.
- (c) If the Force Majeure lasts, or is reasonably expected to last, more than thirty (30) days, then the non-declaring party may immediately terminate a PO and / or the Agreement by notice in writing.

ANNEXURE A – ADDITIONAL SOFTWARE LICENCE TERMS

1. Restrictions

The Customer shall not:

- (a) Modify, reverse-engineer, decompile, or disassemble the GroundProbe Software.
- (b) Copy, distribute, sublicense, or transfer the GroundProbe Software to any third party.
- (c) Use the GroundProbe Software for any unauthorized purposes beyond the permitted scope as described in the Proposal.

2. Ownership & Intellectual Property

GroundProbe retains all rights, title, and interest in and to the GroundProbe Software, including all intellectual property rights. The Customer acknowledges that no right, title or interest in the GroundProbe Software is transferred under this Software Licence.

3. Suspension of Licence

- 3.1. GroundProbe may, at its sole discretion, suspend the Customer's access to the Software Licence for any of the following reasons:
 - (a) With immediate effect if GroundProbe reasonably determines the Customer has breached any of the terms in the Agreement; or
 - (b) For the purpose of maintaining or updating the GroundProbe Software as part of providing any Maintenance and Support Services, and GroundProbe will use reasonable endeavours to provide the Customer with advance notice of any such suspension; or
 - (c) If any virus, malware, or other harmful code is detected that may compromise the integrity, security, or functionality of the GroundProbe Software or GroundProbe's assets or systems, and GroundProbe will notify the Customer of any such suspension as soon as reasonably practicable and may reinstate access once the threat has been mitigated to GroundProbe's satisfaction.
- 3.2. Where the Customer's access to the Software Licence is suspended under clause 3.1, the Customer must immediately (or after any applicable notice period) cease using the GroundProbe Software and comply with GroundProbe's reasonable directions.
- 3.3. For avoidance of doubt, the Parties agree that any suspension of the Software Licence under this paragraph 3 will not constitute a breach by GroundProbe of its obligations under the Agreement and GroundProbe will not be liable for any Loss, whether direct, indirect or consequential, which may be suffered by Customer.

4. Termination

- 4.1. GroundProbe may at its sole discretion, terminate the Software Licence with immediate effect:
 - (a) If GroundProbe reasonably determines the Customer has breached any of the terms in the Agreement; or
 - (b) Where the Customer's access to the Software Licence has been suspended under paragraph 3 of this Annexure A, GroundProbe determines the Customer's access to the Software Licence cannot be securely reinstated; or
 - (c) If GroundProbe ceases to hold the rights to use and / or licence the use of the GroundProbe Software to third parties.
- 4.2. Where the Software Licence is terminated pursuant to clause 4.1, the Customer must immediately cease using the GroundProbe Software and comply with GroundProbe's reasonable directions in relation to such termination.

5. Disclaimer

GroundProbe provides the GroundProbe Software "as is," without any warranties, express or implied, including but not limited to fitness for a particular purpose, reliability, or security.

6. Limitation of Liability

In no event will GroundProbe be liable for indirect, incidental, or consequential damages arising from the Customer's use or inability to use the GroundProbe Software.

7. Back Up

The Customer may make one (1) copy only of GroundProbe Software for back- up and disaster recovery purposes only.

8. Application

The terms in this Annexure A will apply in priority to any other provision in the Services Terms and Conditions in the event of a conflict.

ANNEXURE B – MAINTENANCE AND SUPPORT OF SOFTWARE

1. Maintenance Services

GroundProbe will provide maintenance services to the Customer in respect of GroundProbe's Software as described in the Proposal, including updates, patches, and technical support, as outlined below, for the duration specified in the Proposal.

2. Software updates

GroundProbe will provide periodic updates to correct errors, enhance security, and improve performance in the GroundProbe Software.

3. Software Upgrades:

Major software enhancements and new feature releases will be provided subject to additional fees which will be notified by GroundProbe from time to time. For avoidance of doubt, the Customer is not obliged to accept any such Upgrade, however GroundProbe does not provide any warranty or assurance that the GroundProbe Software may continue to be used or will continue to retain the same level of functionality without such Upgrade.

4. Support Services

- 4.1. GroundProbe will offer technical assistance via email and phone during business hours.
- 4.2. The Customer may report defects, and GroundProbe will endeavour to resolve them within a reasonable time frame.

5. Exclusions

Maintenance and Support Services in respect of GroundProbe Software will not include support for any third-party software, unauthorized modifications to GroundProbe's Software, or any issues resulting from the Customer's misuse of GroundProbe's Software, as reasonably determined by GroundProbe.

GROUNDPROBE SERVICES TERMS & CONDITIONS

ANNEXURE C - ETHICS & COMPLIANCE

Incorporations and Definitions

This Annexure forms part of the Services Terms and Conditions and applies as if incorporated in full into clause 27 of the Services Terms and Conditions.

In this Annexure, the following capitalised terms have the following meanings, and if not defined below, capitalised terms in this Annexure bear the same meaning as in the Services Terms and Conditions:

Affiliate means in respect of a legal entity, any legal entity directly or indirectly controlling, controlled by, or under common control with that legal entity, through: (i) ownership of 50% or more of issued equity; or (ii) control over the composition of the board of directors or voting stock, or otherwise, control over the day-to-day operations of the entity.

Applicable Anti-Corruption Law(s) means any international anti-corruption law or conventions applicable to either Party to the Agreement including the US Foreign Corrupt Practices Act, the UK Bribery Act and the Australian Commonwealth Criminal Code Act.

Applicable Trade Controls Law(s) means any sanctions, export control, or import laws, or other regulations, orders, directives, designations, licenses, or decisions relating to the trade of goods, technology, software and services which are imposed, administered or enforced from time to time by Australia, the United States, the United Kingdom, Canada, the EU, EU Member States, Switzerland, the United Nations or United Nations Security Council and also includes U.S. anti-boycott laws and regulations.

Restricted Country or Territory means: Afghanistan, Central African Republic, Democratic Republic of Congo, Eritrea, Iraq, Lebanon, Libya, Myanmar, Russia, Somalia, South Sudan, Sudan, Ukraine, Yemen and/or Zimbabwe.

Restricted Party means any person, entity, governmental body, organization or vessel/aircraft that is designated for export controls or sanctions restrictions under any Applicable Trade Controls Laws, including but not limited to those designated under the U.S. List of Specially Designated Nationals and Blocked Persons, Foreign Sanctions Evaders List, Entity List, Unverified List, Denied Persons List, Debarred List, the Australian Consolidated List, the UK Consolidated List and the EU Consolidated List of Persons, Groups, and Entities Subject to EU Financial Sanctions.

Sanctioned Country or Territory means any country or territory against which comprehensive sanctions are imposed by Australia, the United States, the United Kingdom, Canada, the EU, any EU Member States, Switzerland, the United Nations, or any other country with jurisdiction over the activities undertaken in connection with the Agreement. As at the date of the Agreement, Sanctioned Countries or Territories include Cuba, Iran, North Korea, Syria or the Regions of Crimea, Donetsk, and Luhansk, including any transactions initiated from these jurisdictions.

1. End use restrictions

- 1.1. The Customer agrees that it will comply with Applicable Trade Control Laws in relation to any products, services or other items provided under the Agreement.
- 1.2. The Customer agrees that it will not re-sell, distribute, transmit or transfer any GroundProbe product to any entity other than an Affiliate.
- 1.3. The Customer agrees that it will not export, re-export, transfer, retransfer or transport to or use any GroundProbe product, service or other items provided under the Agreement in a Sanctioned Country or Territory or a Restricted Country or Territory except in full compliance with Applicable Trade Control Laws and without first obtaining the written consent of GroundProbe, which may be withheld at GroundProbe's discretion.
- 1.4. The Customer will at all times ensure that no commodities, software, services or technical data of U.S., Australian, U.K,

Canadian or EU origin or otherwise subject to the export controls laws of these jurisdictions will be sold, exported, re-exported, transmitted, transferred, retransferred or used except in compliance with all applicable government requirements.

- 1.5. The Customer represents and warrants that:
 - (a) It is not organised under the laws of, or located, operating or ordinarily resident in, a Sanctioned Country or Territory;
 - (b) It is not part of nor owned or controlled by the government of a Sanctioned Country or Territory;
 - (c) Neither it, nor any Affiliates, nor any directors, officers or employees of the Customer, is a Restricted Party; and
 - (d) It will not take any actions that cause it to become a Restricted Party or otherwise to become sanctioned, restricted, or designated under Applicable Trade Controls Laws during the term of the Agreement, and it will promptly inform GroundProbe in the event it becomes so sanctioned, restricted, or designated.
- 1.6. The Customer must upon request by GroundProbe provide written certification that it has complied with all Applicable Trade Controls Laws including, where requested, by providing an end-use certificate for any product, service or other item provided by GroundProbe.
- 1.7. Nothing in the Agreement requires any Party to take any action, or refrain from taking any action, where doing so would be prohibited by or subject to penalty under Applicable Trade Controls Laws.

2. Anti – Corruption

Each Party agrees that neither it nor any of its Affiliates will take any action in connection with the Agreement that would violate any Applicable Anti-Corruption Law.

3. Audit

The Customer will, upon request, permit GroundProbe to audit, examine and inspect any books, financial records, property or location under the supervision, direction or control of the Customer (including, but not limited to, the Customer's transactions with third-parties in connection with the Agreement or any products, services or other items provided by GroundProbe) as necessary for the verification of compliance with the Customer's representations, warranties and undertakings under clause 1 and/or 2 of this Annexure, except to the extent prohibited under applicable competition or anti-trust laws.

4. Termination

- 4.1. If the Customer breaches clauses 1 or 2 of this Annexure then, without limiting GroundProbe's rights, GroundProbe may in its discretion, immediately terminate the Agreement by notice in writing to the Customer;
- 4.2. For the avoidance of doubt, if GroundProbe terminates the Agreement under clause 4.1 of this Annexure, GroundProbe will be entitled to immediately cease all deliveries of GroundProbe's products, services or other items and will have no liability to compensate the Customer in any way.