

Maintenance Services Contract

Contract No [Insert]

[Insert Project Name]

General Conditions

Water NSW ABN 21 147 934 787
Principal

[Insert name and ABN]
Contractor

Version: 1.0
Date: September 2020

AMENDMENTS

[Delete this section before issuing the Contract]

Maintenance of this template contract is the responsibility of the General Counsel, Legal Services.

This template will be updated as necessary and amendments will be effected by replacement of the appropriate sections. Details of amendments will be recorded in the following table.

Version No.	Date	Clause	Description	Approval
1.0	September 2020	All	Prepared by Clayton Utz solicitors with Water NSW Legal Services (Commercial and Contracts)	

website version only - not for use

Contents

1.	Definitions and interpretation	4
1.1	Definitions	4
1.2	Interpretation	13
1.3	No bias against drafting party	15
1.4	Provisions limiting or excluding liability	15
1.5	Discretion	15
1.6	Authorities	16
1.7	Separable Portions	16
1.8	Novation	16
1.9	Indexation and review of rates	17
2.	Parties' obligations	17
2.1	Contractor's obligations	17
2.2	Principal's obligations	17
2.3	Extension of Term	17
3.	Personnel	18
3.1	Principal's Representative	18
3.2	Replacement of Principal's Representative	18
3.3	Principal's Representative's representative	18
3.4	Contractor's Representative	19
3.5	Key people	19
3.6	Removal of persons	19
4.	Security	19
4.1	Form of security	19
4.2	Release of security	20
4.3	Replacement security	20
4.4	Additional security	20
4.5	Interest	21
4.6	Parent company guarantee	21
4.7	PPSA	21
5.	Risks and Insurance	22
5.1	Risk of goods and materials	22
5.2	Contractor's indemnity	22
5.3	Reinstatement	22
5.4	Insurance by Principal	22
5.5	Contractor insurance obligations	23
5.6	Period of insurance	24
5.7	Insurers	24
5.8	Insurance obligations	24
5.9	Failure to insure	25
5.10	Notice of potential claim	25
5.11	Cross liability	25
5.12	Liabilities unaffected	26
6.	Design and documentation	26
6.1	Principal's documents	26
6.2	Contractor's design	26
6.3	Principal's Representative may review Design Documentation	26
6.4	No obligation to review	26

6.5	Copies of Design Documentation	27
6.6	Fitness for purpose	27
6.7	IP warranties and representations	27
6.8	Ownership	27
6.9	Pre-existing IPR	28
6.10	Indemnity and infringement	29
6.11	Source Code	29
6.12	Moral Rights	30
6.13	Contractor to notify errors	30
6.14	Resolution of ambiguities	30
6.15	Confidentiality	31
6.16	Media	32
6.17	Contractor to retain records	32
6.18	Auditing and probity	33
6.19	Evidence of financial standing or financial arrangements	33
6.20	Survive termination	34
7.	Site and information	34
7.1	Contractor to inform itself	34
7.2	Site information	34
7.3	Site access	34
7.4	Contractor's obligation to provide access	35
7.5	Work health and safety	35
7.6	Dams Safety Legislation	37
7.7	Non-reliance	37
8.	Provision of Contractor's Activities	37
8.1	Description of Contractor's Activities	37
8.2	All work included	38
8.3	Compliance with Law	38
8.4	Change in Law	38
8.5	Subcontracting	39
8.6	Subcontractor warranties	39
8.7	Cleaning up	39
8.8	Compliance with Environmental Law	40
8.9	Principal may act	40
8.10	Policies and Procedures	41
8.11	Co-operation with Other Contractors	41
8.12	Principal's operations	41
8.13	Basis of Contract Price	42
8.14	Requirements for Software	42
8.15	Changes and Updates to Software	43
8.16	Continuous Improvement	43
8.17	Attend meetings and reporting	43
8.18	Serviced Equipment List	44
8.19	Work Orders for Corrective Maintenance Services	44
8.20	Parts required for Contractor's Activities	45
8.21	Contractor to cease performance of Contractor's Activities	46
9.	Quality and Defects	46
9.1	Workmanship and materials	46
9.2	Quality assurance	47
9.3	Right to inspect	47
9.4	Testing	48
9.5	Test not passed	48
9.6	Further Tests and opening up	48
9.7	Costs of testing	49

9.8	Defects	49
9.9	Correction of Defect	50
9.10	Claim for correction of Defect	50
9.11	Acceptance of work	50
9.12	Legal rights not affected	50
10.	Time	50
10.1	Progress and time	50
10.2	Programming	51
10.3	Contractor not relieved	51
10.4	Qualifying Causes	52
10.5	Claim for relief	52
10.6	Conditions precedent to relief	52
10.7	Relief from obligations	52
10.8	Reduction in relief	53
10.9	Suspension	53
11.	Variations	53
11.1	Variation price request	53
11.2	Variation order	54
11.3	Adjustment for Variation	54
11.4	Omissions and deletions	55
11.5	Variations requested by Contractor	55
11.6	Principal's Representative's determination	55
11.7	Variation approved by Principal's Representative	55
12.	Payment	56
12.1	Payment obligation	56
12.2	Payment claims	56
12.3	Payment statements	56
12.4	Conditions precedent to payment	57
12.5	Payment	58
12.6	Payment on account	58
12.7	Goods and materials not yet installed	58
12.8	Final payment claim and notice	59
12.9	Right of set off	60
12.10	Evidence of payment of workers and Subcontractors	60
12.11	Interest	61
12.12	SOP Act	61
12.13	GST	62
12.14	Subcontractor's statement	64
12.15	Payment of Subcontractors	65
13.	KPIs and Performance Adjustments	65
13.1	Key Performance Indicators	65
13.2	Performance Adjustments	66
14.	Termination	67
14.1	Preservation of rights	67
14.2	Contractor default	67
14.3	Contents of notice of default	68
14.4	Termination for insolvency or breach	68
14.5	Principal's entitlements after termination	68
14.6	Contractor's entitlements after termination	69
14.7	Termination for convenience	69
14.8	Costs	69
15.	Disputes	71

15.1	Notice of Dispute.....	71
15.2	Negotiation	71
15.3	Executive negotiation.....	71
15.4	Expert determination	71
15.5	The expert.....	71
15.6	Not arbitration.....	72
15.7	Procedure for determination	72
15.8	Disclosure of interest	72
15.9	Costs.....	72
15.10	Conclusion of expert determination	72
15.11	Agreement with expert	72
15.12	Determination of expert	73
15.13	Arbitration.....	73
15.14	Survive termination.....	73
15.15	Continuation of Contractor's Activities.....	74
15A	Step-In	74
15A.1	The Principal's Step-In Rights	74
15A.2	Actions following Step-In	74
15A.3	Conclusion of Step-In.....	75
15A.4	Other rights.....	76
16.	Limitation of liability	76
17.	Privacy and the protection of Principal Data	77
17.1	Definitions	77
17.2	General.....	78
17.3	No restrictions on privacy obligations.....	78
17.4	Principal Data and security.....	78
17.5	Data Protection Plan	79
17.6	Evidence of compliance.....	79
17.7	Indemnity and infringement	80
18.	Notices	80
18.1	Notice of Variation.....	80
18.2	Notice of other Claims.....	80
18.3	Prescribed notices.....	81
18.4	Continuing events	81
18.5	Time bar.....	82
18.6	Other provisions unaffected	82
19.	Modern Slavery	82
20.	Miscellaneous	83
20.1	Address for service	83
20.2	Governing Law	84
20.3	Jurisdiction.....	85
20.4	Counterparts.....	85
20.5	Entire agreement	85
20.6	Amendments	85
20.7	Waiver.....	85
20.8	Assignment and Change of Control.....	86
20.9	Consents.....	86
20.10	Expense	86
20.11	Severance	86
20.12	Indemnities	87
20.13	United Nations Convention not applicable.....	87
20.14	English language	87

20.15	Taxes	87
20.16	No partnership, joint venture or other fiduciary relationship.....	87
20.17	Exchange of information between government agencies.....	87
20.18	Purchase Order where no Standing Offer Deed.....	88
20.19	Proportionate liability	88
20.20	Prior work	89
20.21	If the Contractor is a trustee	89
20.22	Legal Opinion	89
21.	Handover	89
21.1	Consultation and cooperation.....	89
21.2	Development and update of Handover Services Management Plan	90
21.3	Handover Period	90
21.4	Handover	90
21.5	Payment for Handover Services	91
21.6	Handover Services Management Plan	91
Schedule 1 - Key Details		92
Schedule 2 - Payment Schedule and rates review.....		99
Schedule 3 - KPIs.....		103
Appendix		104
Exhibit A - Statement of Work		105

Formal Instrument of Agreement

Formal Instrument of Agreement made at Sydney on the Award Date

Parties

Principal:

Name: **Water NSW** ABN 21 147 934 787

Address: Level 14, 169 Macquarie Street, Parramatta NSW 2150

Contractor:

Name: **[Insert name of Contractor]** ABN **[insert]**

Address: **[insert]**

Background

- A. The Principal is committed to:
- (a) capturing, storing and releasing water in an efficient, effective, safe and financially responsible manner;
 - (b) supplying water in compliance with appropriate standards of quality;
 - (c) ensuring that declared catchment areas and water management works in such areas are managed and protected so as to promote water quality, the protection of public health and public safety and the protection of the Environment;
 - (d) providing for the planning, design, modelling and construction of water storages and other water management works; and
 - (e) maintaining and operating the works of the Principal efficiently and economically and in accordance with sound commercial principles,
- (together, the **Objectives**).
- B. The Principal intends to procure the delivery of [insert description of the Project] (the **Project**).
- C. Having regard to the Objectives and the Project, the Contractor has represented to the Principal that it has the necessary skill, experience, available resources and professional competence to carry out the Contractor's Activities.
- D. The Contractor has agreed to carry out the Contractor's Activities on the terms and conditions of the Contract.

The parties agree

The Principal and the Contractor promise to carry out and complete their respective obligations in accordance with the Contract.

Unless the context indicates otherwise, capitalised terms in this Formal Instrument of Agreement have the meaning given in the attached General Conditions of Contract.

Signed as an agreement

Signed for and on behalf of **Water NSW ABN 21 147 934 787** by its authorised delegate in the presence of:

Signature of witness

Signature of authorised delegate

Full name of witness

Full name of authorised delegate

Date

Date

Executed by **[Insert name of Contractor] ABN [insert]** in accordance with section 127 of the Corporations Act 2001 (Cth):

Signature of director

Signature of company secretary/director

Full name of director

Full name of company secretary/director

Date

Date

OR, where the Contractor is executing under a power of attorney:

Executed on behalf of **[Insert name**)
of Contractor] ABN [insert] by its)
attorney)

.....)

Name of attorney (print))

Under power of attorney)

Registration Number / Book Number

(Powers of attorney created in Victoria do not have a number.
Insert the date of the power of attorney instead.)

.....

in the presence of:

.....
Signature of witness

.....
Name of witness (print)

.....
Signature of attorney

By executing this document the
attorney states that the attorney has
received no notice of revocation of
the power of attorney

.....20.....
Date

General Conditions of Contract

1. Definitions and interpretation

1.1 Definitions

In the Contract, unless the context indicates otherwise:

Act of Prevention means any one of:

- (a) a breach of the Contract by the Principal;
- (b) any other act or omission of the Principal, the Principal's Representative or an Other Contractor engaged by the Principal; or
- (c) a Variation the subject of a Direction by the Principal's Representative.

Appendix means the Appendix to these General Conditions of Contract.

Approval means any licence, permit, registration, consent, approval, determination, certificate, administrative decision, permission or other requirement of any Authority having any jurisdiction in connection with the Contractor's Activities or under any applicable Law, which must be obtained or satisfied to carry out the Contractor's Activities for their intended purpose.

Authority includes any governmental or semi-governmental or local government authority, administrative or judicial body or tribunal, department, commission, public authority, agency, Minister, statutory corporation or instrumentality.

Award Date means:

- (a) where a Standing Offer Deed exists the date on which the Contract came into existence as determined in accordance with the Standing Offer Deed; or
- (b) otherwise, the date on which the Formal Instrument of Agreement has been signed by the last party to sign.

Business Day means a day other than a Saturday, Sunday or public holiday in New South Wales or 27, 28, 29, 30 or 31 December.

Change in Law means a change in an existing Law or a new Law, but does not include:

- (a) a change in an Approval or a new Approval; or
- (b) a change in an existing Law, or a new Law, relating to taxes.

Change of Control means, in relation to the Contractor:

- (a) if the Contractor comes under the Control of a person (acting alone or together with its Associates (as defined in the Corporations Act)) who did not Control the Contractor on the Award Date; or
- (b) if a person (acting alone or together with its Associates (as defined in the Corporations Act)) who was in Control of the Contractor on the Award Date stops having Control of the Contractor,

other than as a result of:

- (c) a restructure of the Contractor or any "Related Entity" (as defined in the Corporations Act) of the Contractor that does not change the "Ultimate Holding Company" (as defined in the Corporations Act) of the Contractor; or
- (d) a transfer or issue of any securities listed on any recognised stock or securities exchange.

Claim includes any claim for an increase in the Contract Price or for payment of money (including damages) or for an extension of time:

- (a) under, arising out of, or in any way in connection with, the Contract, including any Direction of the Principal's Representative;
- (b) arising out of, or in any way in connection with, the Contractor's Activities or either party's conduct before the Contract; or
- (c) otherwise at Law or in equity, including by statute, in tort (for negligence or otherwise, including negligent misrepresentation) or for restitution.

Code of Conduct means the Principal's Code of Conduct which is available at https://www.waternsw.com.au/_data/assets/pdf_file/0007/134674/Code-of-Conduct-WaterNSW.pdf or upon request from the Principal's Representative, as updated from time to time.

Confidentiality Undertaking means a deed in the form of Schedule 10 of the Appendix.

Consequential Loss means any:

- (a) loss of income, loss of revenue, loss of profit, loss of financial opportunity, loss of business or loss of business opportunity, loss of contract, loss of goodwill, loss of use or loss of production (whether the loss is direct or indirect); or
- (b) direct or indirect financing costs,

whether present or future, fixed or unascertained, actual or contingent.

Contract means the contractual relationship between the parties constituted by:

- (a) either:
 - (i) where a Standing Offer Deed exists, the Purchase Order issued by the Principal in accordance with the terms of the Standing Offer Deed; or
 - (ii) otherwise, the Formal Instrument of Agreement;
- (b) these General Conditions of Contract;
- (c) the Key Details, as amended (if applicable) by a Purchase Order;
- (d) the Schedules, Exhibits and Appendix;
- (e) the Statement of Work; and

(f) the other documents (if any) referred to in the Key Details.

Contract Price means the amount specified in the Key Details as adjusted, subject to clause 18.5, under the Contract.

Contractor's Activities means all things or tasks which the Contractor is, or may be, required to do to comply with its Contract obligations and includes the performance of Variations, Tests and rectification work.

Contractor's Representative means the person so named in the Key Details or any other person from time to time appointed as the Contractor's Representative in accordance with clause 3.5.

Control in relation to an entity (as defined in section 9 of the Corporations Act), has the meaning given in section 50AA of the Corporations Act as if section 50AA(4)(b) were replaced with the words "only has that capacity as a result of acting as the bare trustee for another person".

Corporations Act means the Corporations Act 2001 (Cth).

Corrective Maintenance Services means those Contractor's Activities described as 'Corrective Maintenance Services' in the Statement of Work, which are generally corrective, reactive or unplanned in nature.

Corrective Maintenance Fee has the meaning given in Schedule 2.

Dams Safety Legislation means the Dams Safety Act 2015 (NSW) and the Dams Safety Regulation 2019 (NSW).

Deed of Novation means the deed in Schedule 7 of the Appendix.

Defect means any aspect of the Contractor's Activities which is not in accordance with the requirements of the Contract and includes any defect in the Serviced Equipment to the extent caused or contributed to by the Contractor's Activities.

Defects Liability Period means the period described in the Key Details.

Deliverables means all items, materials, documentation (including the Design Documentation and any plans, drawings, manuals and specifications), software and products produced, created or developed for the Principal by or on behalf of the Contractor as part of providing the Contractor's Activities for the purposes of, or in anticipation of, this Contract, irrespective of whether they are produced, created or developed prior to the Award Date.

Design Documentation means all design documentation (including drawings, designs, specifications, manuals, patterns, models, samples, calculations and the like) and other information which is necessary for the Contractor to perform the Contractor's Activities.

Direction means any decision, demand, determination, direction, instruction, notice, order, rejection or requirement.

Environment includes the meaning given to that term at common law and in any legislation in force in New South Wales including any land, water, atmosphere, climate, sound, odour, taste, the biological factor of animals and plants and the social factor of aesthetic.

Environmental Law means any Law regulating or otherwise relating to the Environment including any Law relating to land use, planning, pollution of air, water, soil or groundwater, chemicals, waste, the use of transport, storage and handling of dangerous goods, the health or safety of any person or any other matters relating to, but not limited to, the protection of the Environment, health or property.

Force Majeure Event means:

- (a) riot, war, invasion or act of foreign enemies, acts of terrorism, or hostilities;
- (b) ionising radiation or contamination, radio activity from any nuclear fuel or from any nuclear waste from the combustion of nuclear fuel, radioactive, toxic, explosive or other hazardous properties of any explosive assembly or nuclear component;
- (c) pressure waves caused by aircraft or other aerial devices travelling at sonic or supersonic speeds;
- (d) industrial action in the form of a strike that is not specific to, or caused by, the Contractor; and
- (e) earthquakes, flood, fire or other physical natural disaster, but excluding weather conditions, regardless of severity.

but only where:

- (f) such events or circumstances:
 - (i) are beyond the reasonable control of the affected party;
 - (ii) where the affected party is the Contractor, are such that a competent contractor would not have been able to prevent or overcome the effect of such events or circumstances on the performance of the Contractor's obligations under the Contract if it had exercised the care, skill, diligence, prudence and foresight reasonably or ordinarily expected of a competent, qualified, skilled and experienced contractor providing similar services; and
 - (iii) are not caused or contributed to in whole or in part by a breach by the affected party of the Contract; and
- (g) if the affected party is the Contractor, the Contractor has taken all reasonable steps to mitigate the effects of such events or circumstances on its performance of the Contractor's Activities.

Formal Instrument of Agreement means the formal instrument of agreement to which these General Conditions of Contract are attached.

General Conditions of Contract means these General Conditions of Contract.

GST or Goods and Services Tax means the tax payable on taxable supplies under the GST Legislation.

GST Legislation means the A New Tax System (Goods and Services Tax) Act 1999 (Cth) and any related Act imposing such tax or legislation that is enacted to validate, recapture or recoup such tax.

Guarantor has the meaning given in clause 4.6(a)(ii).

Handover Period means the period referred to in clause 21.3.

Handover Services means the tasks to be performed by the Contractor pursuant to the Handover Services Management Plan.

Handover Services Management Plan means the "Handover Services Management Plan" to be prepared by the Contractor in accordance with clause 21.6.

Incoterms 2020 means the publication called the ICC Incoterms published by the International Chamber of Commerce, 2020 Edition.

Insolvency Event means in relation to a party to the Contract, any of the following:

- (a) the party informs the other party in writing, or its creditors generally, that the party is insolvent or is unable to proceed with the Contract for financial reasons;
- (b) a trustee, receiver, receiver and manager, interim receiver, controller, administrator, custodian, sequestrator, provisional liquidator, liquidator or any foreign law equivalent or other person with similar power is appointed to the party;
- (c) the party:
 - (i) becomes bankrupt or insolvent within the meaning of section 95A of the Corporations Act or under any bankruptcy, insolvency or analogous Law;
 - (ii) would be presumed by a court to be insolvent under section 459C(2) of the Corporations Act;
 - (iii) fails to comply with a statutory demand (within the meaning of section 459F(1) of the Corporations Act) and fails to remedy that failure within 7 days after being required in writing to do so by the party issuing the statutory demand;
 - (iv) makes any assignment in bankruptcy or makes any other assignment for the benefit of creditors;
 - (v) seeks relief from its obligations to creditors under any bankruptcy, insolvency or analogous Law;
 - (vi) commences any proceeding, files a petition or proposal to take advantage of any act of bankruptcy or insolvency;
 - (vii) resolves to, consents to or acquiesces in the appointment of a trustee, receiver, receiver and manager, interim receiver, controller, administrator, custodian, sequestrator, provisional liquidator, liquidator or other person with similar power of itself or of all or a portion of its assets; or
 - (viii) files a petition or otherwise commences any proceeding seeking to enter into any compromise, reorganisation, arrangement, composition or readjustment under any applicable bankruptcy, insolvency or analogous Law affecting creditors' rights or consents

to, or acquiesces in, the filing of such a petition, or commencement of such proceedings; or

- (d) any act is done or event occurs which, under applicable Law, has a similar effect to anything mentioned in paragraphs (b) or (c).

Intellectual Property Rights means all present and future rights in relation to patents, designs, trademarks, copyright or other protected intellectual property rights (or any rights to registration of such rights) whether created before or after the Award Date and whether existing in Australia or otherwise.

Key Details means the particulars which appear in Schedule 1.

Key Performance Indicators or **KPIs** means the key performance indicators:

- (a) in Schedule 8 of the Appendix; and
- (b) if any, set out in Schedule 3.

Law means:

- (a) any legally binding law, legislation, statute, act, regulation, subordinate legislation, rule, by-law, order, proclamation, decree, ordinance, directive or code which is enacted, issued or promulgated by the Commonwealth or any State or Territory government;
- (b) common law and equity;
- (c) Approvals; and
- (d) any other relevant Authority requirements.

Legal Opinion means a legal opinion:

- (a) from:
 - (i) lawyers to the Contractor, authorised to practise in the place of incorporation of the Contractor, stating that this Contract is binding and enforceable against the Contractor; or
 - (ii) lawyers to the Guarantor, authorised to practise in the place of incorporation of the Guarantor, stating that the parent company guarantee is binding and enforceable against the Guarantor,(as applicable);
- (b) which states that it may be relied upon by the Principal; and
- (c) in a form reasonably satisfactory to the Principal.

Moral Rights means any of the moral rights defined in the Copyright Act 1968 (Cth) or other analogous rights arising under any other Law that exists or may come to exist anywhere in the world.

Motor Vehicle Insurance means a policy of insurance covering vehicle third party bodily injury and property damage in respect of all vehicles to be used by the

Contractor (whether owned, rented or leased) in connection with the Contractor's Activities.

Notice of Dispute has the meaning given in clause 15.1.

Objectives means those objectives stated in paragraph A of the Background.

Option Period 1 means the period stated in the Key Details.

Option Period 2 means the period stated in the Key Details.

Option Period 3 means the period stated in the Key Details.

Other Contractor means any supplier, contractor, consultant, artist, tradesperson or other person engaged to do work other than the Contractor or its Subcontractors.

Payment Schedule means the document (if any) in Schedule 2.

Performance Adjustments means the amount(s) by which the Contract Price may be adjusted in accordance with Schedule 2.

Personnel means:

- (a) in respect of the Contractor, any directors, officers, employees, consultants, agents and Subcontractors of the Contractor; and
- (b) in respect of the Principal, any directors, officers, employees, consultants, agents and contractors of the Principal (other than the Contractor).

Policies and Procedures means the most recent versions of the policies and procedures available at <https://www.waternsw.com.au/about/information/policy>, and any other policies or procedures of the Principal notified to the Contractor from time to time, each as updated from time to time.

PPSA means the Personal Property Securities Act 2009 (Cth) and regulations made under that Act.

Pre-existing IPR in respect of a party means:

- (a) any Intellectual Property Rights belonging to that party that are pre-existing as at the Award Date, but does not include any Intellectual Property Rights developed by the Contractor or any of its Personnel for the purposes of, or in anticipation of, carrying out the Contractor's Activities; or
- (b) any Intellectual Property Rights that are brought into existence by or on behalf of that party, other than as a result of the performance of that party's obligations under this Contract,

and used by a party in performing its obligations under this Contract.

Principal's Representative means the person so nominated in the Key Details or any other person nominated by the Principal from time to time under clause 3.2 to replace that person.

Product Liability Insurance means a policy of product liability insurance:

- (a) covering the respective rights and interests and liabilities to third parties of the Principal, the Contractor, the Principal's Representatives and all Subcontractors from time to time;
- (b) covering the parties' respective liability to each other; and
- (c) which complies with the requirements set out in clause 5.5(c),

for loss or damage to property (including the Principal's property) and the death of or injury to any person (other than liability which the Law requires to be covered under a Workers Compensation Insurance policy) arising out of, or in any way in connection with, the Deliverables or any other goods or materials supplied by the Contractor in the course of performing the Contractor's Activities.

Professional Indemnity Insurance means a policy of insurance to cover claims for breach of professional duty (whether owed in contract or otherwise) or any act or omission in rendering of services by the Contractor or its Subcontractors in carrying out the Contractor's Activities.

Project has the meaning given to this term in the Background.

Public Liability Insurance means a policy of public liability insurance:

- (a) covering the respective rights and interests and liabilities to third parties of the Principal, the Contractor, the Principal's Representatives and all Subcontractors from time to time;
- (b) covering the parties' respective liability to each other; and
- (c) which complies with the requirements set out in clause 5.5(c),

for loss or damage to property (including the Principal's property) and the death of or injury to any person (other than liability which the Law requires to be covered under a Workers Compensation Insurance policy) arising out of, or in any way in connection with, the Contractor's Activities.

Purchase Order means:

- (a) where a Standing Offer Deed exists, the 'Purchase Order' issued under the Standing Offer Deed (if any) and includes any annexures, schedules, exhibits and attachments to the Purchase Order; and
- (b) otherwise, a purchase order (or any document or documents together referred to by the Principal as the purchase order) issued by the Principal to the Contractor for the purposes of invoicing and payment.

Qualifying Cause means:

- (a) an Act of Prevention;
- (b) a Force Majeure Event; or
- (c) a Direction to suspend that satisfies clause 10.9(c)(ii).

Routine Maintenance Fee has the meaning given in Schedule 2.

Routine Maintenance Services means those Contractor's Activities described as 'Routine Maintenance Services' in the Statement of Work, which are generally routine, planned, scheduled, preventative or regular in nature.

Separable Portion means a separable portion of the Contractor's Activities required to be carried out at a specified or separate area or location, identified as such in the Key Details.

Serviced Equipment means the assets, equipment or other property to be maintained under this Contract as set out in the Serviced Equipment List.

Serviced Equipment List means the list of Serviced Equipment set out in the Statement of Work (as amended in accordance with clause 8.18).

Site means any land made available by the Principal to the Contractor to carry out the Contractor's Activities, if any, including any such land described in the Statement of Work.

Software means any software, firmware, computer code or configuration files provided, developed or modified or required to be provided, developed or modified, by the Contractor to or for the Principal in connection with the Contractor's Activities or the Deliverables (including any developments, modifications, enhancements, adaptations or derivative works made in respect of those items).

SOP Act means the Building and Construction Industry Security of Payment Act 1999 (NSW).

Source Code means, in respect of any software, firmware, computer code or configuration files (**Computer Programs**), the human readable code of such Computer Programs, and includes associated software including scripts and applets (collectively comprised in a complete copy of all of the foregoing in executable code) and all compilers, tools, language, documentation necessary to operate, maintain and modify the executable code, copy of that Computer Program including all technical documentation and specifications in respect of that Computer Program, including any other information necessary for a reasonably skilled computer programmer to understand the program logic of the software, firmware, computer code or configuration files and to perform any of those acts in relation to it.

Standing Offer Deed means the deed entitled "Standing Offer Deed" between the Contractor and the Principal to which these General Conditions of Contract are annexed (if applicable).

Statement of Work means:

- (a) the document in Exhibit A (if any); and
- (b) where a Standing Offer Deed exists, any Statement of Work attached to the Purchase Order.

Step-In Right has the meaning given in clause 15A.

Subcontractor means any person engaged by the Contractor for the performance of any of the Contractor's Activities.

Term means the period described as such in the Key Details (as extended pursuant to clause 2.3).

Tests means:

- (a) the tests and procedures specified in the Statement of Work;
- (b) any other tests required by the Principal's Representative; and
- (c) any other tests required to ascertain whether the Contractor's Activities or a specified part thereof meet the requirements of the Contract,

and each of them is a Test.

Unconditional Undertaking means an unconditional undertaking (duly stamped) on terms, and given by a financial institution, approved by the Principal (and the terms of the unconditional undertaking set out in Schedule 1 of the Appendix are approved by the Principal).

Variation means, unless otherwise stated in the Contract, any change to the Contractor's Activities including any addition, increase, decrease, omission, deletion or removal to or from the Contractor's Activities.

WHS Legislation means legislation relating to health and safety at work including:

- (a) the Work Health and Safety Act 2011 (NSW); and
- (b) the Work Health and Safety Regulation 2017 (NSW).

WHS Management Plan means the work health and safety plan to be prepared by the Contractor under clause 7.5, which must:

- (a) set out in adequate detail the procedures the Contractor will implement to manage the Contractor's Activities from a work health and safety perspective;
- (b) describe how the Contractor proposes to ensure the Contractor's Activities are performed consistently with WHS Legislation; and
- (c) comply with the specific requirements of Part 6.4 of the Work Health and Safety Regulation 2017 (NSW) in relation to the matters that a WHS management plan must include.

Work Order means a written Direction given by the Principal's Representative in accordance with clause 8.19(c).

Workers Compensation Insurance means a policy of insurance to insure against liability for death of or injury to employees, including liability by statute and at common law.

1.2 Interpretation

In the Contract:

- (a) headings are for convenience only and do not affect interpretation;

and unless the context indicates a contrary intention:

- (b) an obligation or liability assumed by, or a right conferred on, 2 or more persons binds or benefits them jointly and severally;

- (c) "person" includes an individual, the estate of an individual, a corporation, an Authority, an association or a joint venture (whether incorporated or unincorporated), a partnership and a trust;
- (d) a reference to a party includes a party's executors, administrators, successors and permitted assigns, including persons taking by way of novation and, in the case of a trustee, includes a substituted or additional trustee;
- (e) a reference to a document (including the Contract) is to that document as varied, novated, ratified or replaced from time to time;
- (f) a reference to a statute includes its delegated legislation and a reference to a statute or delegated legislation or a provision of either includes consolidations, amendments, re-enactments and replacements;
- (g) a word importing the singular includes the plural (and vice versa), and a word indicating a gender includes every other gender;
- (h) a reference to a party, clause, schedule, exhibit, attachment or annexure is a reference to a party, clause schedule, exhibit, attachment or annexure to or of the Contract, and a reference to the Contract includes all schedules, exhibits, attachments and annexures to it;
- (i) if the time for giving any notice, issuing any certificate, making any payment or doing any other act required or permitted by the Contract, falls on a day which is not a Business Day, then the time for giving the notice, issuing the certificate, making the payment or doing the other act will be taken to be on the next Business Day;
- (j) if a word or phrase is given a defined meaning, any other part of speech or grammatical form of that word or phrase has a corresponding meaning;
- (k) "includes" in any form is not a word of limitation;
- (l) a reference to "\$" or "dollar" is to Australian currency;
- (m) the word "Subcontractor" includes suppliers and consultants;
- (n) if any term in Schedule 2 or the Statement of Work refers to a term included in Incoterms 2020, the rules and definitions governing that term in Incoterms 2020 will apply;
- (o) any reference to the Deliverables, Contractor's Activities, Design Documentation or any other document or thing being fit for their intended purpose (or any similar reference) will be read as referring to the purpose having regard to any purpose contemplated in or reasonably ascertainable from:
 - (i) the Contract and, if applicable, any Standing Offer Deed; and
 - (ii) to the extent relevant for determining the purpose in connection with a Variation, any document provided by the Principal to the Contractor specifically in connection with the Variation;

- (p) to the extent that:
- (i) any amounts are payable to the Contractor under the Contract by reference to hourly or daily rates; and
 - (ii) the Contractor's Personnel is engaged in the relevant Contractor's Activities for an increment of time less than a full hour or day (or for one or more full hours or days plus an increment of time less than a full hour or day) (as applicable),
- the Contractor will be entitled to payment in respect of such time on a pro rata basis; and
- (q) a reference to any Authority, institute, association or body is:
- (i) if that Authority, institute, association or body is reconstituted, renamed or replaced or if the powers or functions of that Authority, institute, association or body are transferred to another organisation, deemed to refer to the reconstituted, renamed or replaced organisation or the organisation to which the powers or functions are transferred, as the case may be; and
 - (ii) if that Authority, institute, association or body ceases to exist, deemed to refer to the organisation which serves substantially the same purposes or object as that Authority, institute, association or body.

1.3 No bias against drafting party

No term or provision of the Contract will be construed against a party on the basis that the Contract or the term in question was put forward or drafted by or on behalf of that party.

1.4 Provisions limiting or excluding liability

Any provision of the Contract which seeks to limit or exclude a liability of a party, is to be construed as doing so only to the extent permitted by applicable Law.

1.5 Discretion

Subject to any express provision in the Contract to the contrary:

- (a) a provision of the Contract which says that the Principal or the Principal's Representative "may" do or not do something is not to be construed as imposing an obligation on the Principal or the Principal's Representative to do or not do that thing; and
- (b) there will be no procedural or substantive limitation upon the manner in which the Principal or the Principal's Representative may exercise any discretion, power or entitlement conferred by the Contract.

Without limiting the previous paragraph, neither the Principal nor the Principal's Representative will be under any obligation to exercise any such discretion, power or entitlement, for the benefit of the Contractor or as required by any other legal doctrine which in any way limits the express words used in the provision of the Contract conferring the discretion, power or entitlement.

1.6 Authorities

- (a) The Contract will not in any way unlawfully restrict or otherwise unlawfully affect the unfettered discretion of the Principal to exercise its functions and powers pursuant to any legislation.
- (b) Without limiting clause 1.6(a), anything the Principal does or fails to do or purports to do, pursuant to its respective functions and powers under any legislation will be deemed not to be an act or omission by the Principal under the Contract.
- (c) Without limiting the Contractor's rights under clause 8.4, the Contractor:
 - (i) waives any Claims that it may have against the Principal as a result of the exercise by the Principal of its respective functions and powers under any legislation; and
 - (ii) acknowledges and agrees that:
 - A. there are many Authorities with jurisdiction over aspects of the Contractor's Activities, and other matters affecting and affected by the Contractor's Activities;
 - B. such Authorities may from time to time exercise their statutory functions and powers in such a way as to disrupt, interfere with or otherwise affect the Contractor's Activities (including, the exercise by persons (including individuals) acting on behalf of such Authorities of powers and functions including as necessary for such Authorities to comply with their statutory functions and powers); and
 - C. it bears the full risk of all occurrences of the kind referred to in clause 1.6(c)(ii)B and will not be entitled to make, and the Principal will not be liable upon, any Claim arising out of or in any way in connection with such occurrences.

1.7 Separable Portions

In the Contract clauses 5.1 and 5.3 and clauses 2, 9 and 10 apply separately to each Separable Portion and references therein to the Contractor's Activities mean so much of the Contractor's Activities as are comprised in the relevant Separable Portion.

1.8 Novation

- (a) The Principal may at any time, at its sole discretion, novate the Contract to any other person.
- (b) If the Principal elects to novate the Contract in accordance with paragraph (a), the Principal will provide the Contractor with a duly completed Deed of Novation and the Contractor must execute the Deed of Novation and return it to the Principal within 5 Business Days of receipt of the relevant Deed of Novation.
- (c) If the Contractor fails to properly execute the Deed of Novation within the time period specified in the previous paragraph, then for the purpose of

executing the Deed of Novation, the Contractor irrevocably appoints the Principal to be its attorney with full power and authority to complete the particulars and execute, sign, send and deliver in the name of the Contractor the Deed of Novation and all notices, deeds and documents for that purpose.

1.9 Indexation and review of rates

If specified in the Key Details, the rates and prices in the Payment Schedule will be adjusted by the method of indexation or adjustment (if any) set out in Schedule 2.

2. Parties' obligations

2.1 Contractor's obligations

- (a) The Contractor must carry out the Contractor's Activities during the Term.
- (b) The Contractor must ensure that the Contractor's Activities will be fit for their intended purposes.

2.2 Principal's obligations

The Principal must, in accordance with the requirements of the Contract:

- (a) allow the Contractor to perform the Contractor's Activities;
- (b) give the Contractor sufficient access to the Site to allow it to carry out the Contractor's Activities on the later of:
 - (i) the date that the Contractor has provided the Principal's Representative with:
 - A. any Unconditional Undertaking and parent company guarantee required under clause 4;
 - B. any evidence of any insurance taken out by the Contractor which is required under the Contract; and
 - C. a duly executed Confidentiality Undertaking as required by clause 6.15(b); or
 - (ii) the date specified in the Statement of Work;
- (c) subject to other provisions of the Contract affecting access, continue to allow the Contractor sufficient access to the Site to enable it to carry out the Contractor's Activities; and
- (d) pay the Contract Price.

2.3 Extension of Term

- (a) The Principal may (in its absolute discretion):
 - (i) extend the Term once by a period up to Option Period 1;

- (ii) if the Principal exercised its right to extend the Term by a period up to Option Period 1 in accordance with clause 2.3(a)(i) extend the Term once by a period up to Option Period 2; and
- (iii) if the Principal exercised its right to extend the Term by a period up to Option Period 2 in accordance with clause 2.3(a)(ii) extend the Term once by a period up to Option Period 3,

by giving written notice at least 30 days before the end of the Term (or such other notice period as the parties may agree).

- (b) Any extension exercised in accordance with paragraph (a) will be on the terms and conditions in effect on, and takes effect from, the end of the then current Term but the Contract Price payable for the further period will be equal to the Contract Price payable for the prior equivalent period of the original Term, escalated by the amount set out in the Key Details.

3. Personnel

3.1 Principal's Representative

- (a) The Principal's Representative will give Directions and carry out all its other functions under the Contract as the agent of the Principal (and not as an independent certifier, assessor or valuer).
- (b) The Contractor must comply with any Direction by the Principal's Representative given or purported to be given under a provision of the Contract.
- (c) Except where the Contract otherwise provides, the Principal's Representative may give a Direction orally but will as soon as practicable confirm it in writing.

3.2 Replacement of Principal's Representative

- (a) The Principal may at any time replace the Principal's Representative, in which event the Principal will appoint another person as the Principal's Representative and notify the Contractor of that appointment.
- (b) Any substitute Principal's Representative appointed under this clause 3.2 will be bound by anything done by the former Principal's Representative to the same extent as the former Principal's Representative would have been bound.

3.3 Principal's Representative's representative

- (a) The Principal's Representative may:
 - (i) by written notice to the Contractor appoint persons to exercise any of the Principal's Representative's functions under the Contract;
 - (ii) not appoint more than one person to exercise a specific function under the Contract; and
 - (iii) revoke any appointment under paragraph (i) by notice in writing to the Contractor.

- (b) All references in the Contract to the Principal's Representative include a reference to a representative appointed under this clause 3.3.

3.4 Contractor's Representative

- (a) The Contractor must ensure that the Contractor's Representative is present at any location where the Contractor's Activities are being carried out at all times reasonably necessary to ensure that the Contractor is complying with its obligations under the Contract.
- (b) A Direction is deemed to be given to the Contractor if it is given to the Contractor's Representative.
- (c) Matters within the knowledge of the Contractor's Representative are deemed to be within the knowledge of the Contractor.
- (d) If the Principal's Representative makes a reasonable objection to the appointment of a representative by the Contractor, the Contractor must terminate the appointment and appoint another representative, subject again to the reasonable objection of the Principal's Representative.

3.5 Key people

The Contractor must:

- (a) employ those people specified in the Key Details, including the Contractor's Representative, in the jobs specified in the Key Details;
- (b) subject to paragraph (c), not replace the people referred to in paragraph (a) without the Principal's Representative's prior written approval; and
- (c) if any of the people referred to in paragraph (a) die, become seriously ill or resign from the employment of the Contractor, replace them with persons approved by the Principal's Representative of at least equivalent experience, ability and expertise.

3.6 Removal of persons

- (a) The Principal's Representative may by notice in writing instruct the Contractor to remove any person from the Site or the Contractor's Activities who in the reasonable opinion of the Principal's Representative is guilty of misconduct, is incompetent or negligent, is not suitably qualified or who in the opinion of the Principal, may bring the Principal into disrepute.
- (b) The Contractor must ensure that any such person is not again employed in the Contractor's Activities.

4. Security

4.1 Form of security

- (a) This clause 4.1 applies where so stated in the Key Details.
- (b) The Contractor must provide security in the form of an Unconditional Undertaking for the amount stated in the Key Details.
- (c) Security must be provided within 10 Business Days of the Award Date.

4.2 Release of security

- (a) Subject to its rights to have recourse to the security, the Principal must release security then held when:
 - (i) the last Defects Liability Period has expired;
 - (ii) the Contractor has provided the Principal with the final payment claim required by clause 12.8; and
 - (iii) the Contractor has complied with all of its obligations under the Contract.
- (b) If the Principal terminates the Contract pursuant to clause 14.7 then to the extent that the Principal has not had recourse to it, the Principal must release all security then held by it when the Contractor has complied with its obligations under clause 14.8(a)(ii).

4.3 Replacement security

- (a) If the Principal holds security provided under clause 4.1 which contains an expiry date which is earlier than the date upon which the Principal is required to return the security to the Contractor, the Contractor must, on or before the date which is 20 Business Days prior to the expiry date for that security, provide the Principal with replacement security in the form of an Unconditional Undertaking in exchange for the security which is being replaced.
- (b) If paragraph (a) applies in respect of any security and the Principal has not received from the Contractor replacement security in the form of an Unconditional Undertaking at least 20 Business Days prior to the expiry date for that undertaking then, irrespective of anything contained in, and without limiting the Principal's rights under, the Contract or the security, the Principal may make a demand under the security for the entire amount payable under that security and thereafter retain the proceeds.
- (c) Subject to the Principal's rights under the Contract to use these proceeds, the proceeds from any demand made by the Principal pursuant to paragraph (b) will be paid to the Contractor at the same time as the Principal would have been required to return the security from which the proceeds were obtained.

4.4 Additional security

- (a) If the Principal directs a Variation under clause 11.2 which increases the Contract Price, the Principal may direct the Contractor to provide additional security so as to ensure that the amount of the security then held by it equals the amount stated in the Key Details.
- (b) The Contractor must provide additional security in the form of an Unconditional Undertaking within 10 Business Days of a Direction under clause 4.4(a).

4.5 Interest

The Principal:

- (a) is not obliged to pay the Contractor interest on any Unconditional Undertaking provided under clause 4.1, 4.3 or 4.4 including the proceeds of any bank guarantee if it is converted into cash; and
- (b) does not hold the proceeds or money referred to in paragraph (a) on trust for the Contractor.

4.6 Parent company guarantee

- (a) Subject to clause 4.6(b), if the Contractor is required by the Key Details to provide a parent company guarantee, the Contractor must, on the Award Date, provide the Principal's Representative with a parent company guarantee:
 - (i) in the form set out in Schedule 2 of the Appendix with all particulars completed; and
 - (ii) duly executed by the person named in the Key Details (**Guarantor**).
- (b) The Contractor is not required to provide a parent company guarantee under clause 4.6(a) if it has provided a parent company guarantee under the Standing Offer Deed (if any).

4.7 PPSA

- (a) To the extent the PPSA applies to any goods, materials or other items supplied by the Contractor to the Principal the Contractor warrants that:
 - (i) the supply of goods, materials or other items to the Principal does not breach any security agreement the Contractor has with a third party; and
 - (ii) the supply of goods, materials or other items to the Principal is within the ordinary course of the Contractor's business.
- (b) The Contractor indemnifies the Principal against any Claims against, or costs, losses or damages suffered or incurred by the Principal directly or indirectly in connection with any infringement of, or Claim in regard to, any third party security agreement or security interest under the PPSA arising as a result of:
 - (i) the Contractor carrying out the Contractor's Activities; or
 - (ii) goods, materials or other items supplied to Principal by the Contractor infringing that third party's rights under the PPSA.

5. Risks and insurance

5.1 Risk of goods and materials

The Contractor will bear the risk of and indemnify the Principal against:

- (a) any loss of or damage to unfixed goods and materials intended for incorporation in the Serviced Equipment but not yet incorporated, until they are installed in the Serviced Equipment, notwithstanding that ownership of all or part of the goods or materials may previously have passed to the Principal under clause 12.5(c); and
- (b) after goods or materials are installed into the Serviced Equipment, any loss of or damage to those goods or materials arising from any act or omission of the Contractor during the performance of Tests or during the Defects Liability Period or from an event which occurred prior to installation.

5.2 Contractor's indemnity

The Contractor will indemnify the Principal against:

- (a) any loss of or damage to property of the Principal (including the Serviced Equipment); and
- (b) any liability to or Claims by any person against the Principal in respect of loss of or damage to property or injury to or death of persons,

caused by, or arising out of, or in any way in connection with, the Contractor's Activities provided that the Contractor's responsibility to indemnify the Principal will be reduced to the extent that an act or omission of the Principal, Principal's Representative or an Other Contractor engaged by the Principal may have contributed to the loss, damage, injury or death.

5.3 Reinstatement

During the period during which the Contractor bears the risk of loss or damage under clause 5.1, the Contractor must, unless otherwise directed by the Principal's Representative, promptly replace or otherwise make good any loss of, or repair the damage to any relevant goods and materials. The Contractor will bear the cost of such replacement, making good or repair.

5.4 Insurance by Principal

- (a) The Principal must, from the Award Date, effect the insurance (if any) specified in the Key Details.
- (b) The insurance is subject to the exclusions, conditions and excesses noted in the policies and the Contractor:
 - (i) must satisfy itself of the nature and extent of the Principal's insurance;

- (ii) acknowledges that the insurances effected by the Principal do not cover every risk to which the Contractor might be exposed and are subject to deductibles and limits, and the Contractor may at its cost, take out insurance to:
 - A. insure any risks not insured by the Principal's insurance; or
 - B. cover any such exclusions, conditions or excesses in that insurance,
 which the Contractor wants to insure against or cover;
- (iii) where it bears the risk of the relevant loss or damage under clause 5.1 or is required to indemnify the Principal under clause 5.2, must bear the cost of any excesses in the Principal's insurance;
- (iv) will be responsible for paying or bearing all excesses in relation to insured matters under the insurances effected by the Principal in accordance with the policy terms; and
- (v) may effect its own insurance to cover the amount of any excess.

5.5 Contractor insurance obligations

The Contractor must:

- (a) from the Award Date effect and have in place the following insurance with insurers and on terms satisfactory to the Principal's Representative:
 - (i) Public Liability Insurance;
 - (ii) Product Liability Insurance;
 - (iii) Workers Compensation Insurance;
 - (iv) Motor Vehicle Insurance; and
 - (v) if the Contractor's Activities involve design services or any other professional services, Professional Indemnity Insurance,
 for at least the amounts referred to and with the maximum deductibles specified in the Key Details;
- (b) in relation to the Workers Compensation Insurance ensure that each of its Subcontractors has similar insurance to the Workers Compensation Insurance covering the Subcontractor's employees;
- (c) ensure that the Public Liability Insurance and the Product Liability Insurance comply with the requirements set out in the Key Details;
- (d) ensure that the insurance policies obtained in accordance with this clause 5.5 do not contain an exclusion for dammed works or wet works;
- (e) provide the Principal's Representative with copies of certificates of currency for the insurances referred to in paragraphs (a) and (b) as required by the Principal's Representative from time to time; and

- (f) upon request by the Principal's Representative, promptly provide the Principal's Representative with a copy of any insurance policy that is either in the joint names of the Contractor and the Principal or extends the benefit of cover to the Principal as an insured in respect of its liability for the acts or omissions of the Contractor and its Subcontractors.

5.6 Period of insurance

The insurance which the parties are required to have in place under this clause 5 must be maintained:

- (a) in the case of Public Liability Insurance, at all times at which the Contractor performs the Contractor's Activities (and at least until the expiry of the Term);
- (b) in the case of Product Liability Insurance and Professional Indemnity Insurance, until the expiry of 6 years following the end of the Defects Liability Period;
- (c) in the case of Workers Compensation Insurance, at all times at which the Contractor performs the Contractor's Activities; and
- (d) in the case of Motor Vehicle Insurance, at all times that the vehicles are to be used by the Contractor in connection with the Contractor's Activities or are on the Site.

5.7 Insurers

Unless otherwise approved in writing by the Principal, the insurance that the Contractor is required to have in place under clause 5.5 must be maintained with insurers that:

- (a) are authorised under the Insurance Act 1973 (Cth) to carry on an insurance business in Australia and are supervised by the Australian Prudential Regulation Authority; and
- (b) have a credit rating of not less than A from Standard & Poor's, A2 from Moody's Investor Services or A- from A.M. Best Company.

5.8 Insurance obligations

The Contractor must ensure that it:

- (a) does not do anything which prejudices any insurance;
- (b) if necessary, rectifies anything which might prejudice any insurance;
- (c) reinstates an insurance policy if it lapses;
- (d) does not cancel, vary or allow an insurance policy to lapse without the prior written consent of the Principal's Representative;
- (e) immediately notifies the Principal's Representative of any event which may result in an insurance policy lapsing or being cancelled; and
- (f) gives full, true and particular information to the insurer of all matters and things the non-disclosure of which might in any way prejudice or affect any such policy or the payment of all or any benefits under the insurance.

5.9 Failure to insure

If the Contractor fails to:

- (a) provide copies of any insurance policy together with evidence satisfactory to the Principal's Representative that the policy is current; or
- (b) effect insurance which is with insurers and on terms satisfactory to the Principal's Representative,

as required by clause 5.5, the Principal may, without prejudice to any other rights it may have, effect the insurance and the cost will be a debt due from the Contractor to the Principal.

5.10 Notice of potential claim

The Contractor must:

- (a) as soon as possible inform the Principal in writing of any occurrence that may give rise to a claim under an insurance policy required by the Contract, if that claim would:
 - (i) have a material impact on insurance proceeds available under that policy; or
 - (ii) affect the Contractor's ability to comply with its obligations under the Contract, including this clause 5;
- (b) keep the Principal informed of subsequent developments concerning the claim; and
- (c) ensure that its Subcontractors similarly inform the Contractor and the Principal in respect of occurrences which may give rise to a claim by them.

5.11 Cross liability

Where the Contract requires insurance to be effected in joint names or extend the benefit of cover to the Principal as an insured in respect of its liability for the acts or omissions of the Contractor and its Subcontractors, the party effecting the insurance must ensure that the insurance policy provides that:

- (a) insofar as the policy may cover more than one insured, all insuring agreements and endorsements (with the exception of limits of liability) will operate in the same manner as if there were a separate policy of insurance covering each named insured;
- (b) the insurer waives all rights, remedies or relief to which it might become entitled by subrogation against any of the parties covered as an insured and that failure by any insured to observe and fulfil the terms of the policy will not prejudice the insurance in regard to any other insured;
- (c) any non-disclosure by one insured does not prejudice the right of any other insured to claim on the policy; and
- (d) a notice to the insurer by one insured will be deemed to be notice by all insured parties.

5.12 Liabilities unaffected

The effecting of insurance by the Contractor or the Principal and the approval of any insurance policy, terms of insurance or insurer by the Principal's Representative does not limit any obligations or liabilities of the Contractor (including the obligation to effect the insurances required by the Contract).

6. Design and documentation

6.1 Principal's documents

The Principal must provide to the Contractor the documents and number of copies of those documents specified in the Key Details.

6.2 Contractor's design

- (a) Clauses 6.2 to 6.5 apply if any design work is required as part of the Contractor's Activities.
- (b) The Contractor must prepare all Design Documentation required for the performance of the Contractor's Activities.
- (c) The Contractor must submit the Design Documentation it prepares to the Principal's Representative in accordance with the program approved by the Principal's Representative under clause 10.2.

6.3 Principal's Representative may review Design Documentation

- (a) The Principal's Representative may:
 - (i) review any Design Documentation, or any resubmitted Design Documentation, prepared and submitted by the Contractor; and
 - (ii) within 15 Business Days of the submission by the Contractor of such Design Documentation or resubmitted Design Documentation, reject the Design Documentation if in its reasonable opinion the Design Documentation does not comply with the requirements of the Contract.
- (b) If any Design Documentation is rejected, the Contractor must submit amended Design Documentation to the Principal's Representative.
- (c) The Contractor must not commence the part of the Contractor's Activities to which any Design Documentation which it has submitted to the Principal's Representative applies, unless the Principal's Representative has had 15 Business Days to review the Design Documentation and has not rejected the Design Documentation.

6.4 No obligation to review

- (a) The Principal's Representative does not assume or owe any duty of care to the Contractor to review, or in reviewing, the Design Documentation submitted by the Contractor for errors, omissions or compliance with the Contract.

- (b) No review or approval of, comments upon, rejection of, or failure to review or comment upon or reject, any Design Documentation prepared by the Contractor or any other Direction by the Principal's Representative about the Design Documentation will:
 - (i) relieve the Contractor from, or alter or affect, the Contractor's liabilities or responsibilities whether under the Contract or otherwise according to Law; or
 - (ii) prejudice the Principal's rights against the Contractor whether under the Contract or otherwise according to Law.

6.5 Copies of Design Documentation

For the purposes of clauses 6.2 and 6.3, the Contractor must submit or resubmit to the Principal's Representative, the number of copies specified in the Key Details of any Design Documentation.

6.6 Fitness for purpose

The Contractor warrants that:

- (a) any Design Documentation it prepares will be fit for its intended purpose;
- (b) documents provided by the Principal under clause 6.1 are accurate and suitable for their purposes under the Contract unless within 10 Business Days of receipt the Contractor gives written notice to the Principal's Representative of any deficiencies in such documents; and
- (c) it will carry out the Contractor's Activities having regard to the Objectives.

6.7 IP warranties and representations

The Contractor warrants and represents that:

- (a) it owns, or is licensed by the owner to use and sub-licence all Pre-existing IPR;
- (b) in carrying out the Contractor's Activities, the Contractor will not infringe the Intellectual Property Rights or Moral Rights of any person; and
- (c) the Principal's (or any of the Principal's sub-licensees') use or receipt of any Deliverables for any purpose will not infringe the Intellectual Property Rights of the Contractor or any third party.

6.8 Ownership

- (a) The Contractor agrees that, immediately upon the creation of any Deliverables, the Principal owns the Deliverables.
- (b) The Contractor assigns to the Principal all existing and future interest, title and rights (including Intellectual Property Rights) subsisting in and to any Deliverables (including any Deliverables that have been jointly created, developed or brought into existence by the Principal and Contractor) excluding all Pre-existing IPR.

- (c) Where the Deliverables comprise any Software, in addition to owning the Intellectual Property Rights in that Software, the Principal will own, and the Contractor assigns to the Principal all Intellectual Property Rights in:
 - (i) all modifications, developments, derivative works, updates or upgrades to that Software; and
 - (ii) any configuration files which are based on or which arise in connection with the Principal's internal or other design work, definitions or requirements.
- (d) The Contractor must promptly do all things reasonably required, including executing any documents, to further effect the assignment of the Intellectual Property Rights in the Deliverables (including as a present assignment of future copyright) from the Contractor to the Principal in this clause 6.8.
- (e) The Contractor must procure that its Personnel ensure that the ownership of the Intellectual Property Rights in the Deliverables which would, but for the application of this clause 6.8, vest in such Personnel, vest in or are transferred or assigned immediately to the Principal on and from the date of creation.
- (f) The Principal grants to the Contractor a limited, revocable, non-exclusive, royalty-free licence to use the Deliverables during the Term solely to the extent necessary for the Contractor to perform the Contractor's Activities in accordance with the Contract.

6.9 Pre-existing IPR

- (a) Each party will retain its Pre-existing IPR and nothing in this Contract assigns or transfers the Pre-existing IPR of one party to another. Neither party may assert or bring any claim for ownership of any or all of the other party's Pre-existing IPR.
- (b) The Contractor grants to the Principal a non-exclusive, irrevocable, perpetual, transferable, royalty-free licence to use, reproduce, make adaptations of, modify or incorporate into other work (and sub-licence any other third party to do so) all existing and future Intellectual Property Rights comprised in or subsisting in the Contractor's Pre-existing IPR to:
 - (i) allow the Principal the full benefit and enjoyment of the Serviced Equipment, the Deliverables and Contractor's Activities;
 - (ii) use the Contractor's Pre-existing IPR:
 - A. to procure, undertake or perform any works, activities, goods or services in connection with any upgrade or further upgrade or refurbishment of the Serviced Equipment, or any plant, equipment, infrastructure or systems owned, operated or maintained by the Principal;
 - B. to install, operate, maintain and monitor the Serviced Equipment or any plant, equipment, infrastructure or systems owned, operated or maintained by the Principal;

- C. to integrate the Serviced Equipment with any other plant, equipment, infrastructure or systems owned, operated or maintained by the Principal; or
 - D. for any other purpose associated or in any way in connection with the Objectives; and
- (iii) disclose the Contractor's Pre-existing IPR on a confidential basis to third parties for the purposes of a tender process for any procurement in connection with the matters set out in clause 6.9(b)(ii).
- (c) The Principal grants to the Contractor a non-exclusive licence to use the Principal's Pre-existing IPR during the Term solely for the purpose of carrying out the Contractor's Activities in accordance with the Contract.
- (d) Where the Contractor's Pre-existing IPR includes any Software, the rights described in clause 6.9(b) also include, in addition to the rights described in that clause, the rights to (and to sub-licence any third party to) use the Intellectual Property Rights subsisting in that Software to:
- (i) maintain, support, enhance and adapt that Software (other than where the Intellectual Property Rights in such Software are owned by the Principal, including as a Deliverable or where any modifications, developments, derivative works, updates or upgrades to the Software are owned by the Principal pursuant to clause 6.8) for all purposes associated with the use and enjoyment of the Serviced Equipment, the Deliverables and the Contractor's Activities; and
 - (ii) access and modify the Software (including, where accessed under the escrow deed contemplated in clause 6.11, the Source Code of that Software), including for the purposes of any subsequent use or support of, repairs to, maintenance or servicing of, or additions, alterations or further developments to, the Serviced Equipment, the Deliverables and the Contractor's Activities.

6.10 Indemnify and infringement

The Contractor must indemnify the Principal against any Claims against, or costs, losses or damages suffered or incurred by, the Principal, arising out of, or in any way in connection with, any actual or alleged infringement of any Intellectual Property Rights or Moral Rights in or associated with the Contractor's Activities, any Deliverables or any breach by the Contractor of clause 6.11 or 6.12.

6.11 Source Code

Where so specified in the Key Details within 5 Business Days of the Award Date or otherwise at any later date notified to the Contractor by the Principal from time to time (if the Key Details state that an escrow deed may be required on request), the Contractor must enter into an escrow deed with the Principal and an escrow agent:

- (a) on terms reasonably satisfactory to the Principal (and terms generally consistent with the form of escrow deed set out in Schedule 3 of the Appendix); and

- (b) in respect of, and under which the Contractor places into escrow, any and all Source Code relating to any Software.

6.12 Moral Rights

The Contractor must, at its own expense, obtain or procure all consents or waivers from any person who has Moral Rights in the Deliverables and the Contractor's Activities to the extent necessary to ensure that the Principal may do or authorise any acts or omissions consistent with the ownership and licences granted by clauses 6.8 and 6.9 without infringing any Moral Rights.

6.13 Contractor to notify errors

The Contractor shall review any documentation which makes up the Contract, and any revisions of and additions to such documentation issued by the Principal's Representative for the purposes of the Contractor's Activities, for any ambiguity, discrepancy, inconsistency, errors, contradictions or omissions and promptly notify the Principal's Representative of any ambiguity, discrepancy, inconsistency, such errors, contradictions or omissions of which the Contractor becomes aware for the attention and action of the Principal's Representative.

6.14 Resolution of ambiguities

- (a) The following order of precedence will apply to any ambiguity, discrepancy or inconsistency in the documents which make up the Contract, with those higher in the list having precedence over those lower in the list:
 - (i) either:
 - A. where a Standing Offer Deed exists, the Purchase Order;
or
 - B. otherwise, the Formal Instrument of Agreement;
 - (ii) the General Conditions of Contract (including the Schedules and Appendix);
 - (iii) any Exhibits to the General Conditions of Contract other than the Statement of Work; and
 - (iv) the Statement of Work.
- (b) If either party discovers any ambiguity, discrepancy or inconsistency in the documents which make up the Contract or between the Contract and any documents provided to the Contractor by or on behalf of the Principal which the Contractor is required by the Contract to use for manufacture and production purposes:
 - (i) the party must promptly give notice to the other; and
 - (ii) the Principal's Representative must instruct the Contractor as to the course it must adopt within 5 Business Days of the notice under paragraph (b)(i), and the Contractor must comply with any such instructions.
- (c) If compliance with the Principal's Representative's instruction under paragraph (b)(ii) causes the Contractor to incur more or less cost than a

competent and experienced contractor (having the experience of a contractor that is an expert in carrying out work of a nature similar to the Contractor's Activities) could reasonably have anticipated if it had carefully examined the Contract documents on or before the Award Date, then the difference in cost, as determined by the Principal's Representative, will be added to or deducted from the Contract Price (as applicable).

- (d) If any ambiguity, discrepancy or inconsistency exists between the Statement of Work and any part of the Design Documentation (which the Contractor is entitled to use for manufacture and production purposes under clause 6.3) then, unless otherwise directed in writing by the Principal's Representative, the Statement of Work will prevail.

6.15 Confidentiality

- (a) The Principal may, at any time during the Term, direct the Contractor to deliver to the Principal a duly executed Confidentiality Undertaking.
- (b) If the Principal issues a direction under paragraph (a), then the Contractor must within 5 Business Days of the direction, deliver to the Principal a duly executed Confidentiality Undertaking. The execution of the Confidentiality Undertaking will not limit the Contractor's obligations under this clause 6.15
- (c) The Contractor must, and must ensure its Personnel, keep confidential and not make, or cause to be made, any public announcement, public comment, press release or other disclosure directly or indirectly in connection with the Contractor's Activities or the Contract to any person other than:
 - (i) as necessary to perform the Contractor's Activities;
 - (ii) with respect to any matter already within the public domain; or
 - (iii) to comply with any applicable Law or any requirement of any regulatory body (including any relevant stock exchange).
- (d) Without limiting clause 20.17, the Contractor acknowledges that the Principal may disclose the Contract (and information concerning the terms of the Contract) under or in accordance with any one or more of the following:
 - (i) the Government Information (Public Access) Act 2009 (NSW) (**GIPA Act**); and
 - (ii) to satisfy the disclosure requirements of the New South Wales Auditor General or to satisfy the requirements of Parliamentary accountability,and the Contractor must provide to the Principal any other information which the Principal reasonably requires to comply with its obligations under this paragraph (d).
- (e) If the Principal is required to include a copy of the Contract in the government contracts register pursuant to the GIPA Act:
 - (i) the Principal will not disclose Schedule 2 (except for the Contract Price) but may disclose the remainder of the Contract;

- (ii) if the Contractor considers that the Principal should not disclose any other provisions of the Contract on the basis that their disclosure would fall within section 32(1) of the GIPA Act, the Contractor must within 10 Business Days of the Award Date give the Principal written notice of:
 - A. any provisions of the Contract it believes should not be disclosed for the reasons set out in section 32(1) of the GIPA Act; and
 - B. details of:
 - 1) the reasons why the provisions should not be disclosed;
 - 2) whether the provisions can be disclosed at a later date and, if so, when it is likely that they can be disclosed; and
 - 3) a general description of the types of provisions that the Contractor proposes should not be disclosed; and
- (iii) in complying with its disclosure obligations under the GIPA Act, the Principal will consider, but will not be bound by, any proposal made by the Contractor under paragraph (e)(ii).

6.16 Media

The Contractor must not:

- (a) disclose any information concerning the Contract for distribution through any communications media without the Principal's prior written approval. The Contractor must refer to the Principal any enquiries from any media concerning the Contract; or
- (b) advertise or publish that it is contracted by the Principal for the performance of the Contractor's Activities, or use any symbols, logo or representation identifiable with the Principal, without the consent of the Principal, which consent may be withheld, granted or granted on any conditions as the Principal determines in its absolute discretion.

6.17 Contractor to retain records

The Contractor must, for a period of seven years after completion of the Contractor's Activities, keep true and accurate accounts and records of:

- (a) all Contractor's Activities performed under the Contract; and
- (b) all associated accounts and records including all supporting materials used to generate and substantiate invoices submitted in respect of the Contractor's Activities.

6.18 Auditing and probity

The Contractor acknowledges and agrees that:

- (a) the Principal's Representative (or any other person nominated by the Principal's Representative) may carry out regular audits on the Contractor's compliance with its obligations under the Contract; and
- (b) the Contractor must provide reasonable access to any premise where the Contractor's Activities are being undertaken (including any premises provided by the Principal or otherwise used by the Contractor in connection with the Contractor's Activities or where documentation in respect of the Contractor's Activities is kept) to enable the Principal or its nominees to carry out any such audit and must co-operate with and provide all assistance requested by the Principal or its nominees when carrying out any such audit, including providing access to all relevant facilities, documentation, records and Personnel (including those of Subcontractors).

6.19 Evidence of financial standing or financial arrangements

- (a) Any obligations under this clause 6.19 to provide information in relation to the Guarantor only apply if the Contractor is required to provide a parent company guarantee under clause 4.6.
- (b) The Contractor warrants to the Principal that the Contractor will at all times have sufficient financial capacity to meet all of its obligations under the Contract.
- (c) Without limiting clause 6.18, the Contractor must, as and when requested by the Principal's Representative from time to time, promptly, and in any event within the period stated in the Principal's Representative's request, provide the Principal's Representative with a copy of such evidence reasonably required by the Principal's Representative which demonstrates:
 - (i) the Contractor's financial capacity to meet all of its obligations under the Contract; and
 - (ii) the Guarantor's financial capacity to perform its obligations under the parent company guarantee.
- (d) The Contractor must promptly notify the Principal of:
 - (i) any material change to any information provided by the Contractor under paragraph (c); and
 - (ii) any material change in the Contractor's or the Guarantor's financial standing which may affect, or is likely to affect, their financial capacity to meet all of their obligations under the Contract or the parent company guarantee (as applicable).
- (e) The Contractor must assist and fully co-operate with, and procure that the Guarantor assists and fully co-operates with the requirements or requests of the Principal, the Principal's Representative or their nominees in relation to any review of:
 - (i) any information provided by the Contractor or the Guarantor under this clause 6.19; or

- (ii) the Contractor's or the Guarantor's financial capacity to meet their obligations under the Contract or the parent company guarantee (as applicable).

6.20 Survive termination

Clauses 6.7 to 6.12, and 6.15 to 6.18, and the licences granted to the Principal under them, will survive any termination of the Contract.

7. Site and information

7.1 Contractor to inform itself

The Contractor warrants that it has, and it will be deemed to have, done everything that would be expected of a prudent, competent and experienced contractor in:

- (a) assessing the risks which it is assuming under the Contract; and
- (b) ensuring that the Contract Price contains allowances to protect it against any of these risks eventuating,

including:

- (c) visiting and inspecting the Site and its surroundings; and
- (d) making its own assessment of the risks associated with conditions at the Site and its surroundings,

and any failure by the Contractor to have done any of those things will not relieve the Contractor of its obligation to carry out and complete the Contractor's Activities in accordance with the Contract.

7.2 Site information

The Principal does not warrant, guarantee or make any representation about the accuracy, adequacy, suitability or completeness of any information or data made available to the Contractor as to the existing conditions at the Site and the Contractor acknowledges that such information or data does not form part of the Contract.

7.3 Site access

- (a) The Principal:
 - (i) is not obliged to:
 - A. provide the Contractor with sole access to the Site; or
 - B. carry out any work or provide any facilities to the Contractor (other than as stated in the Contract) which may be necessary to enable the Contractor to obtain adequate access to carry out the Contractor's Activities; and
 - (ii) may engage Other Contractors to work upon or in the vicinity of the Site at the same time as the Contractor.

- (b) To the extent that the Contractor requires access to any part of the Site or any other land (**Relevant Land**) for the purpose of performing the Contractor's Activities and the Principal does not own the Relevant Land or otherwise have rights to access it for the purpose of the Contractor's Activities other than pursuant to section 32 of the Water NSW Act 2014 (NSW) (**Water NSW Act**):
- (i) the Principal appoints the Contractor as its agent for the purposes of accessing the Relevant Land under s 32 of the Water NSW Act;
 - (ii) the Contractor must comply with the requirements of the Water NSW Act when accessing the Relevant Land;
 - (iii) the Contractor must give a notice under section 32(5)(a) of the Water NSW Act when accessing the Relevant Land; and
 - (iv) the Contractor must not exercise any force when accessing the Relevant Land or enter the Relevant Land under section 32(5)(b) of the Water NSW Act without the Principal's prior written consent.

7.4 Contractor's obligation to provide access

In carrying out the Contractor's Activities, the Contractor must:

- (a) minimise disruption or inconvenience to:
 - (i) the Principal, occupiers, tenants and potential tenants of the Site in their occupation or use of, or attendance upon, any part of the Site; and
 - (ii) others having a right of access to the Site;
- (b) at all reasonable times give the Principal's Representative, the Principal and any person authorised by either the Principal's Representative or the Principal access to the Contractor's Activities, the Serviced Equipment, the Site or any areas off-Site where Contractor's Activities are being carried out; and
- (c) provide the Principal, the Principal's Representative and any person authorised by the Principal or the Principal's Representative with every reasonable facility necessary for the supervision, examination and testing of the Contractor's Activities.

7.5 Work health and safety

- (a) In this clause 7.5, the terms "construction work", "principal contractor" and "workplace" have the same meanings assigned to those terms under the WHS Legislation.
- (b) The Principal engages the person identified in the Key Details as the principal contractor in respect of any construction work forming part of the Contractor's Activities.
- (c) Where the Principal engages the Contractor as the principal contractor:
 - (i) the Principal authorises the Contractor to have management and control of each workplace at which construction work is to be

carried out and to discharge the duties of a principal contractor, under the WHS Legislation;

- (ii) the Contractor accepts the engagement as principal contractor and agrees to discharge the duties imposed on a principal contractor by the WHS Legislation; and
 - (iii) the Contractor's engagement and authorisation as principal contractor will continue while ever any Contractor's Activities that are "construction work" are carried out pursuant to the Contract, unless sooner revoked by the Principal terminating the Contract pursuant to any provision of the Contract or according to Law.
- (d) Where the Contractor is not engaged as the principal contractor, the Contractor must comply with the reasonable directions of the principal contractor in relation to any construction work forming part of the Contractor's Activities.
- (e) As a condition precedent to the Principal's obligation under the Contract to provide the Contractor with access to, or possession of the Site, the Contractor must prepare and submit a WHS Management Plan to the Principal's Representative for approval (such approval not to be unreasonably withheld).
- (f) No comment upon nor any review, acceptance or approval of the WHS Management Plan by the Principal's Representative will affect any warranty or guarantee given by the Contractor or relieve the Contractor of any of its liabilities or obligations under the Contract.
- (g) Without limiting the Contractor's obligations under any other provision of the Contract, the Contractor must:
 - (i) comply, and must ensure that its Subcontractors and any other person engaged by the Contractor for the purposes of the Contract comply, with the WHS Legislation (including any obligation under the WHS Legislation to consult, cooperate and coordinate activities with all other persons who have a work health and safety duty in relation to the same matter);
 - (ii) if requested by the Principal's Representative or required by WHS Legislation, demonstrate compliance with the WHS Legislation, including providing evidence of any Approvals, prescribed qualifications or experience, or any other information relevant to work health and safety matters;
 - (iii) notify the Principal's Representative immediately (and in any event within 12 hours of such matter arising) of all work health, safety and rehabilitation matters arising out of, or in any way in connection with, the Contractor's Activities;
 - (iv) insofar as the Contractor, in carrying out the Contractor's Activities is under any duty imposed by the WHS Legislation, do everything necessary to comply with any such duty; and
 - (v) ensure that it does not do anything or fail to do anything that would cause the Principal to be in breach of the WHS Legislation.

- (h) To the extent not prohibited by Law, the Contractor indemnifies the Principal against any Claims against, or loss suffered or incurred by, the Principal arising out of or in connection with the failure of the Contractor to discharge the duties imposed on a principal contractor under the WHS Legislation (if the Contractor has been engaged as principal contractor) or otherwise comply with this clause 7.5.

7.6 Dams Safety Legislation

The Contractor must in performing its obligations under the Contract:

- (a) exercise a duty of utmost good faith to the Principal in carrying out the Contractor's Activities to enable the Principal to discharge the Principal's duties under the Dams Safety Legislation; and
- (b) ensure that in performing the Contractor's Activities, it does not do anything or fail to do anything that would cause the Principal to be in breach of the Dams Safety Legislation.

7.7 Non-reliance

The Contractor:

- (a) warrants that it did not in any way rely upon:
 - (i) any information, data, representation, statement or document made by or provided to the Contractor by the Principal, the Principal's Representative or anyone else on behalf of the Principal; or
 - (ii) the accuracy, adequacy, suitability or completeness of any such information, data, representation, statement or document,for the purposes of entering into the Contract, except to the extent that any such information, data, representation, statement or document forms part of the Contract;
- (b) warrants that it enters into the Contract based on its own investigations, interpretations, deductions, information and determinations; and
- (c) acknowledges that it is aware that the Principal has entered into the Contract relying upon the warranties in paragraphs (a) and (b).

8. Provision of Contractor's Activities

8.1 Description of Contractor's Activities

Subject to clause 6.14, the Contractor must perform the Contractor's Activities in accordance with:

- (a) the Statement of Work;
- (b) any Design Documentation prepared by the Contractor in accordance with the requirements of the Contract and which the Contractor is entitled to use under clause 6.3;

- (c) any Direction of the Principal's Representative given or purported to be given under a provision of the Contract, including any Variation directed by the Principal's Representative by a document titled "Variation Order"; and
- (d) the other requirements of the Contract (including any performance guarantees or other performance levels or performance requirements stated in the Contract).

8.2 All work included

- (a) The Contractor warrants that it has, and it will be deemed to have, allowed for the provision of all materials and other work necessary for the Contractor's Activities, whether or not expressly mentioned in the Statement of Work or any Design Documentation.
- (b) Any such materials and other work:
 - (i) must be undertaken and provided by the Contractor; and
 - (ii) forms part of the Contractor's Activities and will not entitle the Contractor to make a Claim except as otherwise provided for in the Contract.

8.3 Compliance with Law

The Contractor must in carrying out the Contractor's Activities:

- (a) comply with all applicable Law;
- (b) without limiting paragraph (a), comply with the Principal's environment protection licence granted under the Protection of the Environment Operations Act 1997 (NSW);
- (c) obtain all Approvals except for those specified in the Key Details which were either obtained prior to the Award Date or will be obtained after the Award Date by the Principal;
- (d) comply with, carry out and fulfil the conditions and requirements of all Approvals (whether obtained by the Contractor or specified in the Key Details) including those conditions and requirements which the Principal is required under the terms of the Approvals specified in the Key Details to comply with, carry out and fulfil; and
- (e) prepare and give the Principal's Representative any documents that an Authority requires in order for the Principal to obtain the Approvals it requires in connection with the Contractor's Activities.

8.4 Change in Law

- (a) If there is a Change in Law after the Award Date and:
 - (i) the Change in Law could not reasonably have been anticipated at the Award Date; and
 - (ii) compliance with the Change in Law by the Contractor:

- A. has a direct adverse effect on the Contractor in providing the Contractor's Activities; and
- B. directly results in an increase in the Contractor's costs of providing the Contractor's Activities,

then the additional costs necessarily and reasonably incurred by the Contractor in complying with the Change in Law, as determined by the Principal's Representative, will be added to the Contract Price.

- (b) The Contractor must take all steps possible to mitigate the additional costs necessarily and reasonably incurred referred to in clause 8.4(a).

8.5 Subcontracting

The Contractor:

- (a) must not subcontract the whole of the Contractor's Activities;
- (b) must not subcontract any work without the prior written approval of the Principal's Representative, other than to the Subcontractors specified in the Key Details;
- (c) will be fully responsible for the Contractor's Activities despite subcontracting the carrying out of any part of the Contractor's Activities; and
- (d) will be vicariously liable to the Principal for all acts, omissions and defaults of its Subcontractors (and those of the employees and agents of its Subcontractors) relating to, or in any way connected with, the Contractor's Activities.

8.6 Subcontractor warranties

- (a) The Contractor must procure and provide the Principal with those warranties described in the Key Details from the relevant Subcontractor undertaking or supplying the work or item the subject of the warranty.
- (b) These warranties:
 - (i) must be in the terms prescribed in Schedule 4 of the Appendix; and
 - (ii) will not derogate from any rights which the Principal may have against the Contractor in respect of the subject matter of these warranties.

8.7 Cleaning up

In carrying out the Contractor's Activities, the Contractor must:

- (a) keep the Site clean and tidy and free of refuse; and
- (b) as a condition precedent to completion of the Contractor's Activities, remove all:
 - (i) rubbish;

- (ii) materials; and
- (iii) plant, equipment and work (being things used, or work undertaken, by the Contractor to complete the Contractor's Activities or a Separable Portion but which will not form part of the Contractor's Activities),

from the part of the Site relevant to the Contractor's Activities.

8.8 Compliance with Environmental Law

- (a) Without limiting the generality of any other provision of the Contract, the Contractor must in relation to the performance of the Contractor's Activities:
 - (i) comply with all environmental obligations imposed on the Contractor under the Contract and under any applicable Environmental Law;
 - (ii) supervise and monitor the performance of all environmental obligations imposed on the Contractor under the Contract and under any applicable Environmental Law; and
 - (iii) report to the Principal on all matters relating to the performance or non-performance (as the case may be) of the Contractor's environmental obligations under the Contract upon request by the Principal.
- (b) The Contractor will be liable for and indemnifies the Principal against all Claims against, or any loss suffered or incurred by, the Principal arising out of or in connection with any breach by the Contractor of this clause 8.8 or any Environmental Law.
- (c) If the Contractor fails to comply with any of its environmental obligations under the Contract, the Principal may take whatever action is necessary to remedy such failure and if it does so any loss suffered or incurred by the Principal in taking such action will be a debt due by the Contractor to the Principal.
- (d) The Contractor must immediately notify the Principal's Representative in writing of any:
 - (i) breach or potential breach of an Environmental Law or any other Approval relating to the Environment; and
 - (ii) any notices received by the Contractor, or proceedings commenced under any Environmental Law, in respect of a breach or potential breach of an Environmental Law or any other Approval relating to the Environment,

arising out of or in connection with the Contractor's Activities.

8.9 Principal may act

- (a) Without limiting clause 15A, the Principal may, either itself or by a third party, carry out an obligation under the Contract which the Contractor was

obliged to carry out but which it failed to carry out within the time required in accordance with the Contract.

- (b) The costs, expenses and damages suffered or incurred by the Principal in so carrying out such an obligation will be a debt due from the Contractor to the Principal.

8.10 Policies and Procedures

- (a) The Contractor must ensure that the Contractor and its Personnel are aware of, and comply with:
 - (i) the Code of Conduct; and
 - (ii) the Policies and Procedures; and
 - (iii) Schedule 11 of the Appendix.
- (b) For the purposes of clause 8.10(a), any reference to "Water NSW employees" in the Policies and Procedures is to be read as a reference to the Contractor's employees.

8.11 Co-operation with Other Contractors

The Contractor must:

- (a) permit Other Contractors to carry out their work;
- (b) fully co-operate with Other Contractors;
- (c) carefully co-ordinate and interface the Contractor's Activities with the work carried out or to be carried out by Other Contractors in a manner that:
 - (i) is seamless;
 - (ii) integrates, where applicable, with the services, works, activities and deliverables that the Contractor and any Other Contractors will provide; and
- (d) minimises the need for the Principal to be involved in resolving problems or managing the tasks that the Contractor and Other Contractors perform; and carry out the Contractor's Activities so as to avoid interfering with, disrupting or delaying the work of Other Contractors.

8.12 Principal's operations

The Contractor must:

- (a) ensure that:
 - (i) the performance of the Contractor's Activities; and
 - (ii) any other acts or omissions of the Contractor or its Personnel,do not adversely affect or otherwise interfere with:
 - (iii) the Principal's operations; or

- (iv) the activities of business or persons occupying land on, adjacent to or in the vicinity of the Site;
- (b) arrange work to minimise nuisance to occupants and users of the Site to ensure their safety and comfort;
- (c) should the Contractor become aware of such effect or interference, promptly notify the Principal of any such adverse effect or interference; and
- (d) consult and co-operate with the Principal's Representative and the Principal and attend meetings as required by the Principal's Representative in relation to the interface between the Principal's operations and the performance of the Contractor's Activities.

8.13 Basis of Contract Price

The Contractor acknowledges that unless otherwise expressly stated in the Contract, the Contract Price:

- (a) is firm and inclusive of all taxes (other than GST), duties (including customs duty) and governmental charges imposed or levied in Australia or overseas; and
- (b) includes the cost of any packaging, marking, handling, freight and delivery, insurance and any other applicable costs and charges, and costs of compliance with all other statutory, award or other legal or contractual requirements.

8.14 Requirements for Software

In respect of any components of the Deliverables or other Contractor's Activities that are Software, the Contractor must ensure that those components:

- (a) are free of any viruses, disabling code or other code that may cause an unauthorised change, undesired effect, security breach or damage to the Software, Deliverables, Contractor's Activities or the information technology systems of the Principal or those of any other Authority with which the Principal's information technology systems may interoperate or interact;
- (b) meet all applicable functional performance requirements for those components and comply with any specifications or documentation related to the Software and as specified in the Statement of Work or any Design Documentation;
- (c) are supplied together with all relevant tools and documentation necessary to enable the Principal to use, modify, test, operate, maintain, enhance, identify faults in and adapt that Software; and
- (d) are supported and maintained, and regularly updated and upgraded, as required to maintain their full functionality and the full functionality of any equipment, systems, infrastructure, hardware or other like items, and of any other Deliverables, Contractor's Activities, on or with which those components are supplied, for the life of the Software,

and, at the Principal's request, provide training and knowledge transfer services in relation to the support, maintenance, updating and upgrading of the Software, at the

applicable rates or prices for such services as specified in the Payment Schedule or, if none stated, at reasonable rates and prices.

8.15 Changes and Updates to Software

The Contractor must:

- (a) prior to implementing any change, update or upgrade to any Software that forms part of any Deliverables or other Contractor's Activities, advise the Principal of the nature of the proposed change, update or upgrade and its functional objectives, consult with the Principal regarding any projected impact (including on any systems or other technology or software assets of the Principal), assist the Principal in assessing implementation impacts and obtain the Principal's prior approval to the change, update or upgrade before proceeding with its implementation;
- (b) where the Principal has given its approval to a change, update or upgrade to any Software that forms part of any Deliverables or other Contractor's Activities, only implement that change, update or upgrade in consultation with the Principal, in compliance with the Principal's directions and subject to prior testing and advance notice where and as stipulated by the Principal; and
- (c) promptly notify the Principal of any changes or updates proposed to be made to any Software which may:
 - (i) alter their identification, performance, characteristics, form, fit, function or processes required for their correct or intended usage of the Software (or any of the Deliverables and other Contractor's Activities more generally); or
 - (ii) otherwise require notification to any regulator, authority or third party which provides an Approval in connection with that Software (or any of the Deliverables and other Contractor's Activities more generally).

8.16 Continuous Improvement

The Contractor, in the spirit of continuous improvement, must search for and endeavour to use best industry practice methods on an ongoing basis to ensure that the Contractor's Activities are performed in an efficient, environmentally-conscious, safe and cost-effective manner.

8.17 Attend meetings and reporting

The Contractor must:

- (a) consult with the Principal and attend such meetings and briefings at the times set out in the Statement of Work, and at such other times as advised by the Principal; and
- (b) provide a progress report to the Principal at the times and containing, as a minimum, those matters specified in the Statement of Work, and such other matters as the Principal requests from time to time.

8.18 Serviced Equipment List

- (a) The Contractor must:
 - (i) inspect the Sites to verify the accuracy of the Serviced Equipment List, as required under the Statement of Work or requested by the Principal from time to time;
 - (ii) promptly notify the Principal if it becomes aware of any inaccuracy in the Serviced Equipment List; and
 - (iii) keep a current record of the Serviced Equipment List, as amended in accordance with clause 8.18(b), and provide such lists to the Principal on request.
- (b) The Principal:
 - (i) will, to the extent that the Serviced Equipment List is inaccurate, direct a Variation under clause 11.2; and
 - (ii) may otherwise direct a Variation under clause 11.2 to add to, omit from or change the Serviced Equipment List (including to omit Serviced Equipment for the purposes of allocating Serviced Equipment to an Other Contractor).

8.19 Work Orders for Corrective Maintenance Services

- (a) The Contractor must notify the Principal as soon as reasonably practicable, and, in any event, within 24 hours after it becomes aware that Corrective Maintenance Services are required.
- (b) The Contractor's notice under clause 8.19(a) must set out:
 - (i) the Serviced Equipment which requires the Corrective Maintenance Services (including Site and location on Site);
 - (ii) the issue and probable cause of the issue;
 - (iii) the Corrective Maintenance Services required, including any parts to be replaced; and
 - (iv) if categories of Corrective Maintenance Services are described in the Statement of Work, the category of Corrective Maintenance Services.
- (c) Whether or not the Contractor has provided a notice under clause 8.19(a), the Principal may, at any time before the expiry of the Term, give the Contractor a Work Order for Corrective Maintenance Services.
- (d) Each Work Order must set out:
 - (i) the Corrective Maintenance Services required;
 - (ii) the Corrective Maintenance Fee (as determined under Schedule 2);

- (iii) the time in which the Contractor must carry out the Corrective Maintenance Services; and
 - (iv) the Principal's Work Order number.
- (e) Subject to clause 8.19(f):
 - (i) the Contractor must not carry out any Corrective Maintenance Services; and
 - (ii) the Contractor is not entitled to make, and the Principal will not be liable upon, any Claim for payment in respect of any Corrective Maintenance Services,

unless the Principal has issued a Work Order for the applicable Corrective Maintenance Services under clause 8.19(c).
- (f) The Principal's Representative may give the Contractor an oral Direction to perform urgent Corrective Maintenance Services, but must confirm the oral Direction with a written Work Order within 24 hours after the Direction.

8.20 Parts required for Contractor's Activities

- (a) The Contractor must maintain an inventory of parts and materials to ensure the Contractor is able to comply with this Contract, including performing Corrective Maintenance Services within the times required by clause 10.1(b).
- (b) The Contractor must promptly notify the Principal if any part or materials required to perform the Contractor's Activities are not available to the Contractor.
- (c) The Principal may require the Contractor to use parts and materials made available to the Contractor by the Principal when performing the Contractor's Activities (**Principal Supplied Items**).
- (d) In respect of Principal Supplied Items:
 - (i) the Contractor:
 - A. warrants that it has reviewed the Statement of Work, and made whatever other enquiries and investigations it considers necessary relating to each of the Principal Supplied Items and is satisfied that they satisfy and will allow the Contractor to satisfy the requirements of this Contract;
 - B. will not be entitled to make, and the Principal will not be liable upon, any Claim arising out of or in any way in connection with any Principal Supplied Item; and
 - C. is not relieved from and remains liable for complying with, all of its obligations under this Contract, despite the Principal making available the Principal Supplied Items; and

- (ii) the Principal makes no representation as to the quality, performance, merchantability or fitness of the Principal Supplied Items.

8.21 Contractor to cease performance of Contractor's Activities

The Contractor must, promptly after the expiry of the Term or earlier termination of the Contract:

- (a) cease performing the Contractor's Activities;
- (b) remove any property of the Contractor and its Personnel from each Site; and
- (c) return any property of the Principal (including any original documents, keys to authorised areas, swipe cards and any physical items that contain the Principal's logo) which the Contractor has care of to the Principal.

9. Quality and Defects

9.1 Workmanship and materials

The Contractor must, in carrying out the Contractor's Activities:

- (a) use workmanship:
 - (i) of the standard prescribed in the Contract, and to the extent it is not so prescribed, of a standard consistent with the best industry standards for work of a nature similar to the Contractor's Activities; and
 - (ii) which is fit for its purpose;
- (b) use materials:
 - (i) which are new and comply with the requirements of the Contract, and to the extent not fully described in the Contract, which are consistent with the best industry standards for work of a nature similar to the Contractor's Activities; and
 - (ii) of merchantable quality, which are fit for their purpose and consistent with the nature and character of the Contractor's Activities;
- (c) use care, skill, judgment and diligence to the standard prescribed in the Contract, and to the extent it is not so prescribed, of a standard consistent with the best industry standards for work of a nature similar to the Contractor's Activities;
- (d) carry out the Contractor's Activities in a manner that is safe to both people and the environment, in accordance with Law and best industry standards for work of a nature similar to the Contractor's Activities;
- (e) minimise any disruption, interference or inconvenience to the Principal or its Personnel, including the Principal's operations, or any Other Contractors;

- (f) ensure that the Contractor's Personnel engaged in carrying out the Contractor's Activities are suitably qualified and competent;
- (g) perform the Contractor's Activities in a manner so as to enable the Serviced Equipment:
 - (i) to operate in accordance with the requirements of the Statement of Work; and
 - (ii) to be fit for its intended purpose; and
- (h) comply with the requirements of the Contract.

9.2 Quality assurance

The Contractor:

- (a) must implement a quality assurance system representing best industry standards;
- (b) must allow the Principal's Representative access to the quality system of the Contractor and its Subcontractors so as to enable monitoring and quality auditing; and
- (c) will not be relieved from compliance with any of its Contract obligations or from any of its liabilities whether under the Contract or otherwise by Law as a result of:
 - (i) the implementation of, and compliance with, the quality assurance requirements of the Contract;
 - (ii) any Direction by the Principal's Representative concerning the Contractor's quality assurance system or its compliance or non-compliance with that system;
 - (iii) any audit or other monitoring by the Principal's Representative, or anyone else acting on behalf of the Principal, of the Contractor's compliance with the quality assurance system; or
 - (iv) any failure by the Principal's Representative, or anyone else acting on behalf of the Principal, to detect any Defect including where any such failure arises from any negligence on the part of the Principal's Representative or other person.

9.3 Right to inspect

- (a) The Principal's Representative may at any time inspect the Contractor's Activities.
- (b) The Contractor acknowledges that:
 - (i) the Principal's Representative owes no duty to the Contractor to:
 - A. inspect the Contractor's Activities; or

- B. review manufacture and production for errors, omissions or compliance with the requirements of the Contract if it does so inspect; and
- (ii) no inspection of the Contractor's Activities or review of manufacture and production by the Principal's Representative will in any way lessen or otherwise affect:
 - A. the Contractor's obligations whether under the Contract or otherwise by Law; or
 - B. the Principal's rights against the Contractor whether under the Contract or otherwise by Law.

9.4 Testing

- (a) The Contractor must carry out all Tests required by the Contract.
- (b) All Tests are to be carried out in accordance with any procedure:
 - (i) set out in the Contract which may apply to the Tests; or
 - (ii) if no procedure exists, as reasonably directed by the Principal's Representative.

9.5 Test not passed

- (a) If the Contractor's Activities or Serviced Equipment fail any Test, the Contractor must:
 - (i) promptly remedy the cause of the failure;
 - (ii) give the Principal's Representative notice of the cause and the remedial action taken; and
 - (iii) reschedule, re-perform and report on results of the Test until the Test is passed.
- (b) Neither the carrying out of a Test nor the issue of a Test report or certificate will release the Contractor from any of its responsibilities, obligations or liabilities under the Contract (including the repair or replacement or both of any part of the Serviced Equipment damaged during the course of any Test).

9.6 Further Tests and opening up

At any time before the expiry of the Defects Liability Period, the Principal's Representative may direct the Contractor:

- (a) to repeat any Test already carried out (whether or not the Test was previously passed);
- (b) to carry out a Test not otherwise required by the Contract; or
- (c) to open up or uncover any part of the Serviced Equipment for inspection or testing,

and the Contractor must comply with any such Direction as soon as practicable and must reinstate and make good any part of the Contractor's Activities or Serviced Equipment so tested, inspected, opened up or uncovered.

9.7 Costs of testing

- (a) If:
- (i) the Principal's Representative directs the Contractor to carry out a Test (including a retest) or to open up or uncover any part of the Serviced Equipment for inspection or testing, and that Test or that opening up or uncovering:
 - A. is not otherwise required by the Contract; or
 - B. does not relate to a Defect in respect of which the Principal's Representative gave an instruction under clause 9.8; and
 - (ii) the results of the Test or the opening up or uncovering show the work is in accordance with the Contract,
- the reasonable additional costs necessarily incurred by the Contractor in complying with the Direction, as determined by the Principal's Representative, will be added to the Contract Price.
- (b) If:
- (i) the Principal's Representative directs the Contractor to carry out a Test and that Test or that opening up or uncovering relates to a Defect; or
 - (ii) the Principal carries out any testing itself or has others carry out such testing in connection with a Defect,
- the Principal's costs arising out of or in connection with such testing will be a debt due and payable by the Contractor to the Principal.

9.8 Defects

- (a) Subject to paragraph (b), the Contractor must correct all Defects.
- (b) If, prior to the expiry of the Defects Liability Period, the Principal's Representative discovers or believes there is a Defect, the Principal's Representative may give the Contractor an instruction specifying the Defect and doing one or more of the following:
- (i) requiring the Contractor to correct the Defect, or any part of it, and specifying the time within which this must occur; or
 - (ii) advising the Contractor that the Principal will accept the Contractor's Activities, or any part thereof, despite the Defect.

9.9 Correction of Defect

If an instruction is given under clause 9.8(b)(i), the Contractor must correct the Defect:

- (a) within the time specified in the Principal's Representative's instruction; and
- (b) at times and in a manner which cause as little inconvenience to the users of the Serviced Equipment or the Site as is reasonably possible.

9.10 Claim for correction of Defect

Where an instruction is given under clause 9.8(b)(i):

- (a) the Contractor will only be entitled to make a Claim for correcting a Defect (or the relevant part of it) if the Defect (or the relevant part of it) is something for which the Contractor is not responsible; and
- (b) where the Contractor is so entitled to make a Claim, the work involved in the correction of the Defect (or the relevant part of it) will be treated as if it were a Variation the subject of a Direction by the Principal's Representative and clause 11.3 applied.

9.11 Acceptance of work

If:

- (a) an instruction is given under clause 9.8(b)(ii); and
- (b) the Contractor is responsible for the Defect (or the relevant part of it),

the Contract Price will be reduced by the amount determined by the Principal's Representative which represents the cost of correcting the Defect (or the relevant part of it).

9.12 Legal rights not affected

Neither the Principal's rights, nor the Contractor's liability, whether under the Contract or otherwise according to Law in respect of Defects, whether before or after the expiry of the Defects Liability Period, will be affected or limited by:

- (a) the rights conferred upon the Principal or Principal's Representative by this clause 9 or any other provision of the Contract;
- (b) the failure by the Principal or the Principal's Representative to exercise any such rights; or
- (c) any instruction of the Principal's Representative under clause 9.8.

10. Time

10.1 Progress and time

- (a) The Contractor must regularly and diligently progress the Contractor's Activities with due expedition and without delay and in accordance with any timing requirements set out in the Statement of Work.

- (b) Without limiting clause 10.1(a), the Contractor must perform Corrective Maintenance Services directed in a Work Order under clause 8.19(c), or directed orally in accordance with clause 8.19(f), within:
 - (i) the time directed by the Principal's Representative (which must not be less than any applicable time required by the Statement of Work); or
 - (ii) if no time is directed by the Principal's Representative, the time required by the Statement of Work; or
 - (iii) if clauses 10.1(b)(i) or 10.1(b)(ii) do not apply, as soon as reasonably practicable.
- (c) To the extent possible, the Contractor must perform Corrective Maintenance Services while attending the relevant Site to perform Routine Maintenance Services.

10.2 Programming

The Contractor must:

- (a) within 10 Business Days of the Award Date, submit to the Principal's Representative, a program of the Contractor's Activities which must contain the details required by the Contract or which the Principal's Representative otherwise reasonably directs;
- (b) update the program periodically at least at intervals of no less than once per month (unless otherwise required by the Principal's Representative) to take account of:
 - (i) changes to the program;
 - (ii) delays which may have occurred, including any for which the Contractor is granted relief under clause 10.5; and
 - (iii) relief from obligations granted by the Principal's Representative under clause 10.5; and
- (c) give the Principal's Representative copies of all programs for its approval.

10.3 Contractor not relieved

Any review of, comments upon or approval of, or any failure to review or comment upon, a program by the Principal's Representative will not:

- (a) relieve the Contractor from or alter its liabilities or obligations under the Contract;
- (b) evidence or constitute the granting of an extension of time or an instruction by the Principal's Representative to accelerate, disrupt, prolong or vary any, or all, of the Contractor's Activities; or
- (c) affect the time for the carrying out of the Principal's or Principal's Representative's Contract obligations.

10.4 Qualifying Causes

If a Qualifying Cause prevents, or is likely to prevent, the Contractor from performing its obligations under this Contract within the time required by the Contract, the Contractor may make a Claim under clause 10.5.

10.5 Claim for relief

To claim relief from its obligations the Contractor must:

- (a) within 10 Business Days of the commencement of the Qualifying Cause submit a written claim to the Principal's Representative which includes reasonable details of the following:
 - (i) the event;
 - (ii) the obligations that the Contractor is or will be unable to perform (including evidence showing how the Contractor has been or will be prevented from performing its obligations);
 - (iii) any adverse impacts that the event is having or likely to have on the Serviced Equipment; and
 - (iv) the steps which the Contractor is taking or will take to avoid or mitigate the adverse effects that event has on its obligations.
- (b) if the effects of the event continue beyond the period of 10 Business Days after the commencement of the event and the Contractor wishes to claim relief in respect of the further effects, submit a further written claim for relief to the Principal's Representative:
 - (i) every 10 Business Days after the first written claim until 5 Business Days after the end of the effects of the event; and
 - (ii) containing the information required by paragraph (a).

10.6 Conditions precedent to relief

It is a condition precedent to the Contractor's entitlement to relief that:

- (a) the Contractor must give the written claims required by clause 10.5 as required by that clause; and
- (b) the cause of the event was beyond the reasonable control of the Contractor.

10.7 Relief from obligations

Subject to clause 10.8, if the conditions precedent in clause 10.6 have been satisfied, the Contractor will be relieved of its obligations under this Contract to the extent that a Qualifying Cause prevents their performance, as determined by the Principal (acting reasonably).

10.8 Reduction in relief

The Principal's Representative will reduce any entitlement to relief it would otherwise have notified to the Principal and the Contractor under clause 10.7 to the extent that the Contractor:

- (a) contributed to the Qualifying Cause; or
- (b) failed to take all steps necessary both to preclude the Qualifying Cause and to avoid or minimise the consequences of the Qualifying Cause.

10.9 Suspension

- (a) The Principal's Representative may direct the Contractor to suspend and, after a suspension has been instructed, to re-commence, the carrying out of all or a part of the Contractor's Activities.
- (b) Any suspension under clause 10.9(a) will be effective on and from the date specified in the Principal Representative's direction.
- (c) If a suspension under this clause 10.9 arises as a result of:
 - (i) the Contractor's failure to carry out its obligations in accordance with the Contract, the Contractor will not be entitled to make any Claim against the Principal arising out of, or in any way in connection with, the suspension; or
 - (ii) a cause other than the Contractor's failure to carry out its obligations in accordance with the Contract:
 - A. an instruction to suspend under this clause 10.9 will entitle the Contractor to be paid by the Principal the reasonable extra costs (not including any profit, loss of profit or offsite overheads) necessarily incurred by the Contractor as a result of the suspension as determined by the Principal's Representative;
 - B. the Contractor must take all steps possible to mitigate the extra costs incurred by it as a result of the suspension; and
 - C. the Contractor will not be entitled to make any Claim against the Principal arising out of, or in any way in connection with, the suspension other than under this paragraph (ii).

11. Variations

11.1 Variation price request

- (a) At any time prior to the expiry of the Term, the Principal's Representative may issue a document titled "Variation Price Request" to the Contractor which will set out details of a proposed Variation which the Principal is considering.

- (b) Within 10 Business Days of the receipt of a "Variation Price Request", the Contractor must provide the Principal's Representative with a written notice in which the Contractor sets out:
 - (i) the adjustment (if any) to the Contract Price to carry out the proposed Variation; and
 - (ii) the effect (if any) which the proposed Variation will have on the then approved program.

11.2 Variation order

- (a) Whether or not the Principal's Representative has issued a "Variation Price Request" under clause 11.1, the Principal's Representative may at any time prior to the expiry of the Term (but without limiting clause 5.3), instruct the Contractor to carry out a Variation by issuing a written document to the Contractor titled "Variation Order" in which the Principal's Representative will state one of the following:
 - (i) the proposed adjustment to the Contract Price as set out in the Contractor's notice under clause 11.1 (if any) is agreed and the Contract Price will be adjusted accordingly; or
 - (ii) any adjustment to the Contract Price will be determined under clauses 11.3(b) or 11.3(c) (as applicable).
- (b) No Variation will invalidate the Contract irrespective of the nature, extent or value of the services the subject of the Variation.

11.3 Adjustment for Variation

Subject to clause 18.1, the Contract Price will be adjusted for all Variations which have been the subject of a Direction by the Principal's Representative by:

- (a) where clause 11.2(a)(i) applies, the agreed amount;
- (b) where clause 11.2(a)(i) does not apply, an amount determined by the Principal's Representative using any rates or prices which appear in the Payment Schedule to the extent the Principal's Representative determines they are applicable to, or it is reasonable to use them for valuing the Variation;
- (c) to the extent paragraphs (a) and (b) do not apply, a reasonable amount determined by the Principal's Representative, to which will be added:
 - (i) the following percentage or percentages of the amount determined:
 - A. where the adjustment to the Contract Price is to be an increase, those percentages specified in the Key Details for non-time related overheads and profit; or
 - B. where the adjustment to the Contract Price is to be a decrease, the percentage specified in the Key Details for overheads and profit; and

- (ii) any reasonable costs and expenses incurred by the Contractor arising from the Variation delaying the Contractor.

For the avoidance of doubt, where the adjustment to the Contract Price is to be a decrease, the percentage specified in the Key Details will be applied to the amount determined to further decrease the Contract Price on account of overheads and profit.

11.4 Omissions and deletions

- (a) If a Variation the subject of a Direction by the Principal's Representative omits or deletes any part of the Contractor's Activities, the Principal may thereafter either perform this work itself or employ or engage Other Contractors to perform the omitted or deleted work.
- (b) No Variation will invalidate, or amount to a repudiation of, this Contract.

11.5 Variations requested by Contractor

The Contractor may, for its convenience, request the Principal's Representative to direct a Variation. Any such request must be in writing and must contain the following details:

- (a) a description of the Variation;
- (b) the additional or reduced costs or time involved in the Variation and any proposal for sharing any savings in costs with the Principal including the amount; and
- (c) any benefits which will flow to the Principal from the Variation.

11.6 Principal's Representative's determination

- (a) After a request is made by the Contractor in accordance with clause 11.5, the Principal's Representative will, in its absolute discretion, give a written notice to the Contractor:
 - (i) rejecting the request; or
 - (ii) approving the request either conditionally or unconditionally.
- (b) The Principal's Representative will not be obliged to exercise its discretion for the benefit of the Contractor.

11.7 Variation approved by Principal's Representative

If the Principal's Representative issues a written notice under clause 11.6 approving the Contractor's request under clause 11.5:

- (a) unless otherwise agreed, the Contractor will not be entitled to make a Claim against the Principal arising out of, or in any way in connection with, the Variation;
- (b) if the Contractor's request offered to share savings in cost with the Principal, the Contract Price will be reduced by the amount offered by the Contractor in its request; and

- (c) the Contractor will be responsible for all parts of the Contractor's Activities which are in any way affected by the Variation.

12. Payment

12.1 Payment obligation

Subject to clause 12.9 and to any other right to set-off which the Principal may have, the Principal must pay the Contractor:

- (a) the Contract Price; and
- (b) any other amounts which are payable by the Principal to the Contractor under the Contract.

12.2 Payment claims

- (a) The Contractor must give the Principal's Representative claims for payment on account of the Contract Price and any other amounts payable by the Principal to the Contractor under the Contract:
 - (i) subject to clause 12.4:
 - A. on the 25th day of each month after the Award Date or where that day is not a Business Day, the next Business Day; and
 - B. at the time required by clause 12.8;
 - (ii) in such form which the Principal's Representative reasonably requires; and
 - (iii) which are based on the Payment Schedule to the extent such prices are relevant.
- (b) The Contractor cannot include in any payment claim under this clause 12.2, a Claim which is barred by clause 18.5.
- (c) The Contractor agrees with the Principal that a payment claim submitted to the Principal's Representative under this clause 12.2 is received by the Principal's Representative as agent for the Principal.

12.3 Payment statements

- (a) The Principal's Representative must within 10 Business Days of receiving a payment claim under clauses 12.2 or 12.8 give the Contractor, on behalf of the Principal, a payment statement which states:
 - (i) the value of the work completed in accordance with the Contract;
 - (ii) the amount already paid to the Contractor;
 - (iii) the amount the Principal is entitled to retain, deduct, withhold or set-off under the Contract;

- (iv) the amount (if any) which the Principal's Representative believes to be then payable by the Principal to the Contractor on account of the Contract Price and otherwise under the Contract and which the Principal proposes to pay to the Contractor; and
- (v) if the amount in paragraph (iv) is less than the amount claimed in the payment claim:
 - A. the reason why the amount in paragraph (iv) is less than the amount claimed in the payment claim; and
 - B. if the reason for the difference is that the Principal has retained, deducted, withheld or set off payment for any reason, the reason for the retention, deduction, withholding or setting off payment.
- (b) The issue of a payment statement by the Principal's Representative does not constitute approval of any work nor will it be taken as an admission or evidence that the part of the Contractor's Activities covered by the payment statement has been satisfactorily carried out in accordance with the Contract.
- (c) Failure by the Principal's Representative to set out in a payment statement an amount which the Principal is entitled to retain, deduct, withhold or set off from the amount which would otherwise be payable to the Contractor by the Principal will not prejudice the Principal's right to subsequently exercise its right to retain, deduct, withhold or set off any amount under the Contract.
- (d) Unless the Principal has notified the Contractor under clause 12.13(g) that it will issue a recipient created tax invoice (RCTI) for a taxable supply made by the Contractor to the Principal, the Contractor must, within 2 Business Days after receipt of the payment statement issued by the Principal's Representative, provide to the Principal a valid tax invoice that complies with the GST Legislation in respect of that taxable supply for the amount set out as payable in the payment statement. If clause 12.13(g) applies, the Principal will provide the RCTI for the amount set out as payable in the payment statement together with the payment statement.

12.4 Conditions precedent to payment

The Contractor is not entitled to give the Principal a payment claim under clause 12.2 or 12.8, and the Principal is not obliged to make any payment under clause 12.5, unless the Contractor has provided the Principal's Representative with:

- (a) any Unconditional Undertakings and parent company guarantee required under clause 4, or under the Standing Offer Deed (if any);
- (b) evidence of any insurance taken out by the Contractor which is required under clause 5.5;
- (c) a duly executed escrow deed as required under clause 6.11;
- (d) a duly executed Confidentiality Undertaking as required by clause 6.15(a)(b); and
- (e) documents showing compliance by the Contractor with clause 12.10.

12.5 Payment

- (a) Subject to clause 12.9, the Principal must pay the Contractor the amount set out as payable in the payment statement:
 - (i) if the SOP Act applies to the Contract, within 15 Business Days of receipt by the Principal's Representative of the payment claim under clause 12.2; or
 - (ii) if the SOP Act does not apply to the Contract, within 30 days of the last to occur of:
 - A. issue by the Principal's Representative of the payment statement under clause 12.3; and
 - B. receipt by the Principal's Representative of the documents referred to in clause 12.4.
- (b) If a payment statement issued under clause 12.3 shows an amount owing by the Contractor to the Principal, the Contractor must pay the Principal that amount within 5 Business Days of receipt by the Contractor of the payment statement.
- (c) Upon the Principal paying to the Contractor the amount payable pursuant to a payment statement, all plant, equipment, materials or other goods for which an amount is included in the payment statement will become the property of the Principal free of any security interest regardless of whether or not the plant, equipment, materials or other goods have been incorporated into the Serviced Equipment or delivered to the Principal.

12.6 Payment on account

- (a) Any payment statement or payment of moneys is not:
 - (i) evidence of the value of work or that work has been satisfactorily carried out in accordance with the Contract;
 - (ii) an admission of liability; or
 - (iii) approval by the Principal or the Principal's Representative of the Contractor's performance or compliance with the Contract.
- (b) Payment is only to be taken as payment on account.

12.7 Goods and materials not yet installed

- (a) The Contractor is not entitled to claim payment for, and the Principal's Representative is not to include in any payment statement any amount for, any goods and materials (or part thereof) that have not been installed in the relevant Serviced Equipment unless:
 - (i) the Contractor has established to the satisfaction of the Principal's Representative that it has paid for the goods and materials (or part thereof) in question and that the goods and materials (or part thereof):

- A. are properly stored, set aside and labelled the property of the Principal and adequately protected and insured; and
 - B. will, upon payment to the Contractor of the amount payable pursuant to a payment statement which includes an amount for goods and materials (or part thereof) in question, become the property of the Principal free of any security interest; and
- (ii) the Contractor has given the Principal additional security in the form of an Unconditional Undertaking equivalent to the amount claimed in relation to the goods and materials (or part thereof) in question.
- (b) If the Contractor has given the Principal additional security under the previous paragraph, the Principal must release it to the Contractor once the goods and materials in question have been installed in the relevant Serviced Equipment in accordance with the Contract.
- (c) Any payment to be made to the Contractor by the Principal for goods and materials (or part thereof) that have not yet been installed in the relevant Serviced Equipment, whether pursuant to this clause 12.7 or otherwise, is an advance payment for the purposes of section 415D(9), 434J(8) or 451E(8) of the Corporations Act (as applicable), until such time until the goods and materials (or part thereof) have been installed in the relevant Serviced Equipment.

12.8 Final payment claim and notice

- (a) Within 20 Business Days after the expiry of the last Defects Liability Period the Contractor must give the Principal's Representative:
- (i) a payment claim which must include all amounts which the Contractor claims from the Principal on account of the Contract Price or otherwise under the Contract; and
 - (ii) notice of any other amounts which the Contractor claims from the Principal,
- in respect of any fact, matter or thing arising out of, or in any way in connection with, the Contractor's Activities or the Contract which occurred prior to the expiry of the last Defects Liability Period.
- (b) The payment claim and notice required under this clause 12.8 are in addition to the other notices which the Contractor must give to the Principal's Representative under the Contract in order to preserve its entitlements to make any such Claims.
- (c) Without limiting the previous paragraph, the Contractor cannot include in this payment claim or notice any Claims which are barred by clause 18.5.
- (d) After the date for submitting the payment claim and notice under this clause 12.8 has passed, the Contractor releases the Principal from any Claim in respect of any fact, matter or thing arising out of, or in any way in connection with, the Contractor's Activities or the Contract which occurred prior to the expiry of the last Defects Liability Period except for any Claim

included in a payment claim or notice under this clause 12.8 which is given to the Principal's Representative within the time required by, and in accordance with the terms of, clause 12.8.

12.9 Right of set off

- (a) The Principal may deduct from any moneys otherwise due to the Contractor and from any security held by the Principal:
- (i) any debt or other moneys due from the Contractor to the Principal (including any due debt from the Contractor to the Principal pursuant to section 26C of the SOP Act);
 - (ii) any amount that is less than or equal to the amount claimed to be owed under a payment withholding request served on the Principal pursuant to Division 2A of the SOP Act; or
 - (iii) any Claim to money which the Principal may have against the Contractor whether for damages (including liquidated damages) or otherwise,
- whether under or in connection with the Contract, any other contract formed under the Standing Offer Deed (if applicable), or relating to the Contractor's Activities.
- (b) The rights given to the Principal under this clause 12.9 are in addition to and do not limit or affect any other rights of the Principal under the Contract or at Law and nothing in the clause affects the right of the Principal to recover from the Contractor the whole of the debt or Claim in question or any balance that remains owing.
- (c) Failure by the Principal to deduct from an amount otherwise due to the Contractor any amount which the Principal is entitled to deduct under this clause 12.9, will not prejudice the Principal's right to subsequently exercise its right of deduction under this clause.
- (d) Clause 12.9 will survive any termination of the Contract.

12.10 Evidence of payment of workers and Subcontractors

The Contractor is not entitled to give the Principal a payment claim under clause 12.2 or 12.8, and the Principal is not obliged to make any payment under clause 12.5, unless the Contractor has provided the Principal's Representative with:

- (a) a declaration in the form of Schedule 5 of the Appendix, together with any supporting evidence which may be reasonably required by the Principal's Representative, duly signed by the Contractor or, where the Contractor is a corporation, by a representative of the Contractor who is in a position to know the facts declared; and
- (b) copies of all relevant certificates of currency in respect of Workers Compensation Insurance which the Contractor has in place in connection with the Contractor's Activities.

12.11 Interest

- (a) The Principal will pay simple interest at the 90 day bank bill rate on any amount which has been set out as payable by the Principal's Representative in a payment statement under clause 12.3, but which is not paid by the Principal within the time required by the Contract.
- (b) This will be the Contractor's sole entitlement to interest including damages for loss of use of, or the cost of borrowing money.

12.12 SOP Act

- (a) This clause applies if the SOP Act applies to the Contract.
- (b) For the purposes of section 17(3) of the SOP Act, the Contractor irrevocably chooses the Resolution Institute as the "authorised nominating authority" (as that term is defined in the SOP Act) for any adjudication application it may make under the SOP Act in respect of the subject matter of the Contract.
- (c) When an adjudication occurs under the SOP Act, and the Principal has paid an adjudicated amount to the Contractor:
 - (i) the amount will be taken into account by the Principal's Representative in issuing a payment statement under clause 12.3; and
 - (ii) if it is subsequently determined pursuant to the Contract that the Contractor was not entitled under the Contract to payment of some or all of the adjudicated amount that was paid by the Principal ("**overpayment**"), the overpayment will be a debt due and payable by the Contractor to the Principal which the Contractor must pay to the Principal upon demand and in respect of which the Contractor is not entitled to claim or exercise any set-off, counterclaim, deduction or similar right of defence.
- (d) Without limiting clause 12.9, the Principal may withhold any amount that is less than or equal to the amount claimed to be owed under a payment withholding request served on the Principal pursuant to Division 2A of the SOP Act.
- (e) If the Principal withholds from money otherwise due to the Contractor any amount that is less than or equal to the amount claimed to be owed under a payment withholding request served on the Principal pursuant to Division 2A of the SOP Act, then:
 - (i) the Principal may lead and rely upon Division 2A of the SOP Act as a defence to any Claim for the money by the Contractor from the Principal; and
 - (ii) the period during which the Principal retains money due to the Contractor pursuant to an obligation under Division 2A of the SOP Act will not be taken into account for the purpose of determining:
 - A. any period for which money owed by the Principal to the Contractor has been unpaid; and
 - B. the date by which payment of money owed by the Principal to the Contractor must be made.

- (f) The Contractor agrees not to commence proceedings to recover any amount withheld by the Principal pursuant to a payment withholding request served on the Principal in accordance with Division 2A of the SOP Act.
- (g) Any amount paid by the Principal pursuant to section 26C of the SOP Act will be a debt due from the Contractor to the Principal.
- (h) If the Principal withholds money pursuant to a payment withholding request served on the Principal pursuant to Division 2A of the SOP Act and the Contractor:
 - (i) pays the amount claimed to be due under the adjudication application to which the payment withholding claim relates; or
 - (ii) becomes aware that the adjudication application to which the payment withholding claim relates has been withdrawn,
 then the Contractor must so notify the Principal within 5 days of the occurrence of the event in paragraph (i) or (ii) above (as applicable) by providing to the Principal a statement in writing in the form of a statutory declaration together with such other evidence as the Principal may require evidencing that the amount has been paid or the adjudication application has been withdrawn (as the case may be).

12.13 GST

- (a) The parties acknowledge that unless otherwise expressly stated all amounts of monetary consideration in the Contract are exclusive of GST.
- (b) If GST is or becomes payable on a supply made by a party (**Supplier**) under or in connection with the Contract or the Contractor's Activities, the party providing consideration for the supply (**Recipient**) must pay an additional amount to the Supplier equal to the GST payable by the Supplier (or representative member of a GST group of which the Supplier is a member) in relation to the supply.
- (c) Any amount payable under clause 12.13(b) will be paid to the Supplier at the same time as the other consideration for the supply is paid to the Supplier.
- (d) If any party is required under the Contract to reimburse or pay to the other party an amount (other than any payment on account of the Contract Price) calculated by reference to a cost, expense, or an amount paid or incurred by that party, the amount of the reimbursement or payment will be reduced by the amount of any input tax credits to which that party (or representative member of a GST group of which that party is a member) is entitled in respect of any acquisition relating to that cost, expense or other amount.
- (e) Notwithstanding any other provision of the Contract, where the Recipient is the Contractor, it will not be obliged to pay any amount on account of GST to the Principal (whether under this clause 12.13 or otherwise) in respect of a taxable supply made by the Principal unless and until the Principal issues to the Contractor, a valid tax invoice that complies with the GST Legislation in respect of that taxable supply.

- (f) Where the Supplier is the Contractor, the Contractor must issue a valid tax invoice to the Principal in respect of any taxable supply made by the Contractor to the Principal (including under clause 12.3) as a condition precedent to the Principal being obliged to pay any amount on account of GST to the Contractor in respect of such taxable supply.
- (g) The parties agree that, if notified in writing by the Principal, the following will apply to taxable supplies made by the Contractor to the Principal under or in connection with the Contract:
- (i) where the GST Legislation permits, the Principal will issue to the Contractor an RCTI for each taxable supply (other than an Excluded Supply as defined in this clause) made by the Contractor to the Principal under the Contract and each such RCTI will be deemed to be a valid tax invoice issued by the Contractor to the Principal for the purpose of clause 12.13(f). The parties may agree in writing from time to time that the Principal will not issue an RCTI in respect of a taxable supply made by the Contractor to the Principal under the Contract (**Excluded Supply**);
 - (ii) the Principal will issue to the Contractor a recipient created adjustment note for any adjustment event relating to a supply in respect of which it issues an RCTI; and
 - (iii) the Contractor will not issue a tax invoice in respect of any taxable supply it makes to the Principal (other than in respect of a taxable supply that is an Excluded Supply).
- (h) Unless clause 12.13(i) applies, each party acknowledges and warrants that at the time of entering into the Contract it is registered for GST (and any entity making supplies or acquisitions under this Contract is also registered for GST) and will notify the other party if it or any relevant entity ceases to be registered for GST or ceases to comply with any of the requirements of the Goods and Services Tax: Recipient Created Tax Invoice Determination 2017 for Agricultural Products, Government Related Entities and Large Business Entities (RCTI 2017/6) or other determination or ruling issued by a taxation authority relating to the issuance of RCTIs (**RCTI Requirement**). The Principal will not issue a document that would otherwise be an RCTI after the Principal or the Contractor cease to be registered for GST, or after the Principal or the Contractor cease to comply with any RCTI Requirement.
- (i) If the Contractor does not, at the time of entering into this Contract have a valid registration for GST purposes or an Australian Business Number (**ABN**):
- (i) the Contractor must complete a "Statement by Supplier" or similar document in a form acceptable to the Australian Taxation Office clarifying the basis on which the Contractor is not required to be registered for GST purposes; and
 - (ii) the Contractor must inform the Principal if the Contractor is or becomes required to be registered for GST purposes and must notify the Principal of the date from which registration will be effective.
- (j) If the Contractor does not provide its ABN in this Contract, the Contractor must complete a "Statement by Supplier" in a form acceptable to the

Australian Taxation Office declaring the basis on which the Contractor is not required to have an ABN.

- (k) The Contractor indemnifies the Principal for any loss suffered by the Principal because of any breach of any warranty given in clauses 12.13(h) to 12.13(j) or because of the inaccuracy of any information provided in accordance with clauses 12.13(h) to 12.13(j) or because of any failure by the Contractor to provide accurate information to the Principal in a timely fashion in accordance with clauses 12.13(h) to 12.13(j).
- (l) Where the Principal issues RCTIs to the Contractor in accordance with clause 12.13(g), the Contractor will indemnify or reimburse the Principal on demand for any loss, cost, expense, penalty, fine, interest, fee or other amount incurred in relation to the Principal issuing RCTIs while:
 - (i) the Contractor is not registered for GST and/or otherwise fails to satisfy, or comply with, any RCTI Requirement and the Principal has not been notified by the Contractor as such; or
 - (ii) the details contained in any RCTI or recipient created adjustment note issued by the Principal are incorrect, inaccurate or misleading as a result of information provided by the Contractor to the Principal.
- (m) If the GST payable in relation to a supply made by the Supplier under the Contract varies from the additional amount paid by the other party under this clause 12.13 in respect of that supply, then the Supplier will provide a corresponding refund or credit to or will be entitled to receive the amount of that variation from the other party (as appropriate).
- (n) In this clause 12.13:
 - (i) terms defined in GST Legislation have the meaning given to them in GST Legislation, unless the context suggests otherwise;
 - (ii) GST includes amounts defined as "GST" under the GST Legislation and "GST equivalents" payments under the Intergovernmental Agreement Implementation (GST) Act 2000 (NSW) (or similar payments under corresponding legislation of any other State or Territory); and
 - (iii) any part or progressive or periodic component of a supply that is treated as a separate supply for GST purposes (including attributing GST to tax periods) will be treated as a separate supply.

12.14 Subcontractor's statement

- (a) The Contractor must:
 - (i) submit a signed subcontractor's statement, in the form set out in Schedule 9 of the Appendix, together with any payment claims submitted under clause 12.2 or 12.8; and
 - (ii) ensure that any such subcontractor's statement is not dated before the date of the relevant payment claim.

- (b) The Contractor acknowledges that pursuant to the Workers Compensation Act 1987 (NSW), the Payroll Tax Act 2007 (NSW) and the Industrial Relations Act 1996 (NSW):
 - (i) the subcontractor's statement is required to be provided to the Principal; and
 - (ii) the Principal may withhold any payment due to the Contractor under this Contract until the Contractor gives a subcontractor's statement in the form of Schedule 9 of the Appendix. Any penalty for late payment under the Contract does not apply to any payment withheld under this clause 12.14(b)(ii).

12.15 Payment of Subcontractors

The Contractor acknowledges and agrees that, without limiting clause 12.10:

- (a) the portion of each payment made by the Principal to the Contractor on account of the Contract Price which is payable by the Contractor to Subcontractors in accordance with their relevant subcontracts is held by the Contractor on trust for those Subcontractors; and
- (b) the Contractor must pay all Subcontractors promptly in accordance with the relevant subcontracts.

13. KPIs and Performance Adjustments

13.1 Key Performance Indicators

- (a) The Contractor must comply with the KPIs as amended in accordance with the Contract.
- (b) The Contractor must report to the Principal at the frequency specified in the Key Details, in the form of a KPI Performance Report in a form satisfactory to the Principal which:
 - (i) provides an analysis of the performance of the Contractor in meeting the KPIs;
 - (ii) identifies any non-compliances;
 - (iii) proposes an action plan to remedy non-compliances and implement continuous improvements; and
 - (iv) reports on whether the Contractor has implemented any previous action plan and, if not, the extent of non-compliance.
- (c) The Contractor acknowledges and agrees that:
 - (i) the Principal will review each KPI Performance Report to assess the level of compliance by the Contractor with the KPIs;
 - (ii) it must provide any action plan required by the Principal and must implement and comply with any action plan required by the Principal; and

- (iii) the Principal, acting reasonably may amend the KPIs provided that the Contractor has been consulted by the Principal in respect of the amended KPIs, including being advised of the reasons for the amendment.
- (d) The Principal and the Contractor must meet at the times specified in the Key Details, to monitor and review the Contractor's performance under the Contract and the KPIs and, if required by the Principal, the Contractor's compliance with any action plan.

13.2 Performance Adjustments

This clause 13.2 is only applicable if specified in the Key Details.

- (a) The parties acknowledge and agree that:
 - (i) failure to achieve KPIs may lead to a Performance Adjustment in accordance with Schedule 2;
 - (ii) the Performance Adjustments which may be made by the Principal in accordance with Schedule 2 are intended to reflect the anticipated diminution in the value of the Contractor's Activities in the event that the KPIs are not achieved;
 - (iii) the Performance Adjustments:
 - A. do not reflect any potential cost, expense, loss, damages, liability or Claim (other than anticipated diminution in value of the Contractor's Activities) which may arise from or in connection with any failure to achieve the KPIs; and
 - B. are not intended to apply as liquidated damages.
 - (iv) each of the parties require a formula for calculation of that diminished value that is able to be readily applied without unnecessary administrative costs, delay or difficulty; and
 - (v) there are many and varied matters which form part of the diminished value which the Principal may suffer, many of which are difficult or impossible to calculate with precision.
- (b) To the extent permissible, the Contractor excludes and expressly waives any right of the benefit of the application of any legal rule or norm, including under statute, equity and common law, relating to the characterisation of the Performance Adjustments as penalties, or the enforceability or recoverability of the Performance Adjustments.
- (c) If the Performance Adjustment regime set out in Schedule 2 is found for any reason to be void, invalid or otherwise unenforceable, so as to disentitle the Principal from making a Performance Adjustment, the Principal will be entitled to recover from the Contractor, and the Contractor must pay on a full indemnity basis general Law damages arising out of or in connection with any loss suffered the Principal as a result of an event, action or omission which would have entitled the Principal to make any of the Performance Adjustments, up to the full amount of the applicable adjustment, if the

relevant provision of this Contract had not been found void, invalid or otherwise unenforceable.

- (d) The liability of the Contractor in respect of any cost, expense, loss, damages, liability or Claim which may arise out of or in connection with any failure to achieve the KPIs is not affected, reduced or otherwise limited to or by the Performance Adjustments.

14. Termination

14.1 Preservation of rights

Subject to clause 14.6, nothing in this clause 14 or that a party does or fails to do pursuant to this clause 14 will prejudice the right of that party to exercise any right or remedy (including recovering damages) which it may have where the other party breaches (including repudiates) the Contract.

14.2 Contractor default

The Principal may give a written notice under clause 14.3 to the Contractor, if the Contractor:

- (a) does not commence the Contractor's Activities in accordance with the requirements of the Contract;
- (b) suspends the Contractor's Activities in breach of clause 10.9 or otherwise does not regularly and diligently progress the Contractor's Activities with due expedition and without delay;
- (c) fails to provide security as required by clauses 4.1, 4.3 or 4.4 or a parent company guarantee as required by clause 4.6;
- (d) fails to execute a Deed of Novation as required by clause 1.8;
- (e) fails to effect, have in place or otherwise maintain or provide evidence of, insurance as required by clause 5.5;
- (f) fails to use the materials or standards of workmanship required by the Contract;
- (g) does not comply with any Direction of the Principal's Representative made in accordance with the Contract;
- (h) abandons the Contractor's Activities or otherwise plainly demonstrates the intention not to continue performance of its obligations under the Contract;
- (i) is in breach of any applicable Law;
- (j) fails to comply with a KPI action plan required by the Principal under clause 13.1, or under the Standing Offer Deed (if any);
- (k) fails to comply with a KPI requirement set out in the Key Details (if any);
- (l) fails to comply with clauses 6.19, 12.15(b) or 20.8(b); or
- (m) is otherwise in breach of the Contract.

14.3 Contents of notice of default

A notice under this clause 14.3 must state:

- (a) that it is a notice under clause 14.3;
- (b) the breach relied upon; and
- (c) that the Principal requires the Contractor to remedy the breach within 15 Business Days of receiving the notice.

14.4 Termination for insolvency or breach

If:

- (a) an Insolvency Event occurs to the Contractor, or where the Contractor comprises 2 or more persons, to any one of those persons; or
- (b) the Contractor does not remedy a breach of Contract the subject of a notice under clause 14.3 within 15 Business Days of receiving the notice under clause 14.3,

then the Principal may by written notice to the Contractor:

- (c) terminate the Contract;
- (d) exercise a Step-In Right; or
- (e) without in any way limiting the Principal's right under clause 11.4, direct a Variation omitting or deleting any part of the Contractor's Activities in accordance with clause 11.4 (including in respect of any one or more Separable Portions).

14.5 Principal's entitlements after termination

Subject to clause 14.1, if:

- (a) the Principal terminates the Contract under clause 14.4; or
- (b) the Contractor repudiates the Contract and the Principal otherwise terminates the Contract,

then:

- (c) the Principal will:
 - (i) not be obliged to make any further payments to the Contractor, including any money the subject of a payment claim under clause 12.2 or 12.8 or a payment statement under clause 12.3; and
 - (ii) be entitled to recover from the Contractor any costs, losses or damages incurred or suffered by it as a result of, or arising out of, or in any way in connection with, such termination or repudiation; and

- (d) the Contractor must immediately:
 - (i) deliver to the Principal all items in which ownership has passed to the Principal under the Contract; and
 - (ii) hand over to the Principal all copies of:
 - A. documents provided by the Principal under clause 6.1; and
 - B. any Deliverables prepared by the Contractor to the date of termination (whether complete or not).

14.6 Contractor's entitlements after termination

- (a) If the Principal repudiates the Contract and the Contractor otherwise terminates the Contract, the Contractor will:
 - (i) be entitled to claim damages; and
 - (ii) not be entitled to a quantum meruit.
- (b) This clause 14.6 will survive any termination of the Contract.

14.7 Termination for convenience

Without prejudice to any of the Principal's other rights, the Principal may:

- (a) at any time for its sole convenience, and for any reason, by written notice to the Contractor terminate the Contract effective from the time stated in the Principal's notice or if no such time is stated, at the time the notice is given to the Contractor; and
- (b) thereafter, at its absolute discretion, complete the uncompleted part of the Contractor's Activities either itself or by engaging Other Contractors.

14.8 Costs

- (a) If the Principal terminates the Contract under clause 14.7, the Contractor:
 - (i) will be entitled to payment of the following amounts as determined by the Principal's Representative:
 - A. for work carried out prior to the date of termination the amount which would have been payable if the Contract had not been terminated and the Contractor submitted a payment claim for the Contract value of work carried out prior to the date of termination, provided that ownership of all goods and materials included in the value of work will vest in the Principal, free of any security interest, upon payment;

- B. the cost of goods or materials reasonably ordered by the Contractor for the Contractor's Activities for which the Contractor is legally bound to pay provided that:
- 1) the value of the goods or materials is not included in any previous payment by the Principal or the amount payable under paragraph A; and
 - 2) ownership in the goods and materials will vest in the Principal, free of any security interest, upon payment; and
- C. the reasonable direct costs incurred by the Contractor (excluding profit but including an amount for overheads) as a direct result of the termination,

but in no case will the total amount payable to the Contractor under the Contract (including under this clause 14.8) be more than the Contract Price; and

(ii) must:

- A. take all steps possible to mitigate the costs referred to in clause 14.8(a)(i); and
- B. immediately:
- 1) deliver to the Principal all items in which ownership has passed to the Principal under the Contract; and
 - 2) hand over to the Principal all copies of:
 - a) documents provided by the Principal under clause 6.1; and
 - b) any Deliverables (including any services and test documentation) prepared by the Contractor to the date of termination (whether complete or not).

(b) The amount to which the Contractor is entitled under this clause 14.8 will be a limitation upon the Principal's liability to the Contractor arising out of, or in any way in connection with, the termination of the Contract and the Contractor may not make any Claim against the Principal arising out of, or in any way in connection with, the termination of the Contract other than for the amount payable under this clause 14.8.

(c) This clause 14.8 will survive the termination of the Contract by the Principal under clause 14.7.

15. Disputes

15.1 Notice of Dispute

- (a) If a dispute or difference arises between the Contractor and the Principal or between the Contractor and the Principal's Representative in respect of any fact, matter or thing arising out of, or in any way in connection with, the Contractor's Activities or the Contract, or either party's conduct before the Contract, the dispute or difference must be determined in accordance with the procedure in this clause 15.
- (b) Where such a dispute or difference arises, either party may give a notice in writing (**Notice of Dispute**) to the Principal's Representative and the other party specifying:
 - (i) the dispute or difference;
 - (ii) particulars of the party's reasons for being dissatisfied; and
 - (iii) the position which the party believes is correct.

15.2 Negotiation

The Principal's Representative and the Contractor's Representative (or their nominees) must, within 10 Business Days of a notice being given under clause 15.1, meet and discuss the dispute or difference.

15.3 Executive negotiation

Whether or not discussions have taken place under clause 15.2, if dispute or difference is not resolved within 20 Business Days after a notice is given under clause 15.1, it must be referred to senior executives of each party (as nominated by each party) who must:

- (a) meet and discuss the dispute or difference; and
- (b) if they cannot resolve the dispute or difference, endeavour to agree upon a procedure to resolve the dispute or difference.

15.4 Expert determination

Whether or not discussions have taken place under clause 15.3, if the senior executives of each party have not resolved, or agreed upon a procedure to resolve the dispute or difference within 25 Business Days after a notice is given under clause 15.1, either party may submit the dispute or difference to an expert determination.

15.5 The expert

The expert determination under clause 15.4 is to be conducted by an independent industry expert appointed by the Chair for the time being of the Resolution Institute (unless the parties agree otherwise).

15.6 Not arbitration

An expert determination conducted under this clause 15 is not an arbitration and the expert is not an arbitrator. The expert may reach a decision from his or her own knowledge and expertise.

15.7 Procedure for determination

The expert will:

- (a) act as an expert and not as an arbitrator;
- (b) proceed in any manner he or she thinks fit;
- (c) conduct any investigation which he or she considers necessary to resolve the dispute or difference;
- (d) examine such documents, and interview such persons, as he or she may require; and
- (e) make such directions for the conduct of the determination as he or she considers necessary.

15.8 Disclosure of interest

The expert must:

- (a) disclose to the parties any interest he or she has in the outcome of the determination; and
- (b) not communicate with one party to the determination without the knowledge of the other.

15.9 Costs

Each party will:

- (a) bear its own costs in respect of any expert determination; and
- (b) pay one-half of the expert's costs.

15.10 Conclusion of expert determination

Unless otherwise agreed between the parties, the expert must notify the parties of his or her decision upon an expert determination conducted under this clause 15 within 20 Business Days from the acceptance by the expert of his or her appointment.

15.11 Agreement with expert

- (a) The expert will not be liable to the parties arising out of, or in any way in connection with, the expert determination process, except in the case of fraud.
- (b) The parties must enter into an agreement with the appointed expert on the terms set out in Schedule 6 of the Appendix or such other terms as the parties and the expert may agree.

15.12 Determination of expert

The determination of the expert:

- (a) must be in writing;
- (b) will be:
 - (i) substituted for the relevant Direction of the Principal's Representative (if applicable); and
 - (ii) final and binding,unless a party gives notice of appeal to the other party within 15 Business Days of the determination; and
- (c) is to be given effect to by the parties unless and until it is reversed, overturned or otherwise changed under the procedure in the following clauses.

15.13 Arbitration

- (a) If:
 - (i) the expert fails to notify the parties of his or her decision within the time required by clause 15.10; or
 - (ii) a notice of appeal is given under clause 15.12,the dispute or difference will be referred to arbitration.
- (b) The arbitration will be conducted before a person to be:
 - (i) agreed between the parties; or
 - (ii) failing agreement within 20 Business Days of the referral to arbitration, appointed by the Chair for the time being of the Resolution Institute (unless the parties agree otherwise).
- (c) To the extent that they are not inconsistent with the Contract, the Resolution Institute Arbitration Rules will apply to the arbitration.
- (d) The seat of the arbitration will be Sydney, Australia.
- (e) The arbitrator will have power to grant all legal, equitable and statutory remedies and to open up, review and substitute any determination of an expert under clause 15.12.
- (f) Notwithstanding anything else, to the extent permissible by Law, the arbitrator will have no power to apply or to have regard to the provisions of Part 4 of the Civil Liability Act 2002 (NSW).

15.14 Survive termination

This clause 15 will survive any termination of the Contract.

15.15 Continuation of Contractor's Activities

Despite the existence of a dispute or difference between the parties, the Contractor must:

- (a) continue to carry out the Contractor's Activities; and
- (b) otherwise comply with its obligations under the Contract.

15A Step-In

15A.1 The Principal's Step-In Rights

If:

- (a) the Principal exercises a Step-In Right under clause 14.4(d); or
- (b) an incident or emergency occurs, which in the Principal's reasonable opinion the Contractor is unable to prevent or overcome and which will or does materially affect the:
 - (i) safety of people, property, the environment or the Principal's operations; or
 - (ii) activities of business or persons occupying land on, adjacent to or in the vicinity of the Site,

(**Step-In Event**), then the Principal may, by written notice to the Contractor itself, or have its nominees, undertake any or all of the Contractor's Activities and otherwise exercise any of the Contractor's rights or obligations under this Contract and take such actions as are necessary to address the event giving rise to the step-in (**Step-In Rights**).

15A.2 Actions following Step-In

- (a) For the purposes of exercising the Step-In Rights the Principal:
 - (i) is not obliged to make any further payments to the Contractor for the Contractor's Activities in respect of which the Principal has exercised the Step-In Rights;
 - (ii) may use third parties to carry out and complete the whole or any part of the Contractor's Activities the subject of the Step-In Rights;
 - (iii) will be entitled to act as the Contractor's agent under all contracts entered into by the Contractor that are necessary for the Principal to exercise the Step-In Rights; and
 - (iv) may:
 - A. give reasonable instructions to any employee of the Contractor (and the Contractor must ensure that such requests are complied with);
 - B. contract with such of the Subcontractors engaged by the Contractor; and

- C. take possession of, and use, such of the Design Documentation,

as is reasonably required by the Principal to exercise the Step-In Rights.

- (b) The Contractor must take all actions the Principal considers necessary to ensure that the Principal is able to exercise the Step-In Rights effectively and expeditiously including:
- (i) providing the Principal with any assistance and access to its materials, equipment and inventory and the non-exclusive use of all rights and information available to the Contractor reasonably required to enable the Principal or its nominees to exercise the Step-In Rights;
 - (ii) giving the Principal or its nominees access to the Site and any of the land upon which the Contractor's Activities are being performed;
 - (iii) providing sufficient resources, including Personnel to assist the Principal in exercising the Step-In Rights; and
 - (iv) not doing anything to hinder, disrupt or prevent the Principal exercising the Step-In Rights.
- (c) The Principal may:
- (i) itself exercise the Step-In Rights; or
 - (ii) nominate a third party to exercise the Step-In Rights.
- (d) If a third party is nominated to exercise the Step-In Rights in accordance with paragraph (c)(ii), the third party will be taken to be exercising the Step-In Rights itself for and on behalf of the Principal and the provisions of this clause 15A will apply as if references to the Principal were references to that third party.
- (e) Upon the Principal exercising a Step-In Right the Contractor's rights and obligations under the Contract are suspended to the extent necessary to permit the Principal to exercise that Step-In Right.

15A.3 Conclusion of Step-In

- (a) Upon giving the Contractor at least 5 Business Days prior written notice, the Principal may cease to exercise its Step-In Rights at any time.
- (b) Upon the Principal ceasing to exercise a Step-In Right the Contractor must recommence performance of the obligations under the Contract that were suspended.
- (c) Except where the Principal exercises a Step-In Right under clause 15A.1(b), the Principal may set-off the costs reasonably incurred and losses reasonably suffered by the Principal in and for the purposes of exercising the Step-In Rights against any amount due by the Principal to the Contractor under this Contract (or which may in the future be due under this Contract).

15A.4 Other rights

Nothing in this clause 15A will prejudice the rights to recover damages or exercise any other rights or remedy (including the right to terminate) or relieve the Contractor of its liabilities or responsibilities whether under the Contract or otherwise according to Law.

16. Limitation of liability

- (a) Subject to clause 16(b) but notwithstanding any other provision of the Contract:
- (i) neither party will be liable to the other for any Consequential Loss howsoever arising; and
 - (ii) the Contractor's aggregate liability to the Principal in contract, tort (including negligence) or otherwise under the Contract is limited to the amount stated in the Key Details.
- (b) Clause 16(a) does not limit the Contractor's liability in respect of:
- (i) liability which cannot be limited at Law;
 - (ii) liability under clauses 5.2, 6.10 or 17;
 - (iii) Performance Adjustments;
 - (iv) fraud, wilful misconduct or criminal conduct by the Contractor or any of its Personnel;
 - (v) liability to the extent to which the Contractor is (or will be) entitled to be paid or indemnified pursuant to an insurance policy required under the Contract in respect of that liability;
 - (vi) liability for which, but for a failure by the Contractor to comply with its obligations under the Contract or under an insurance policy required under the Contract, the Contractor would have received payment or been indemnified under an insurance policy effected in accordance with the Contract; or
 - (vii) the Contractor's abandonment of its obligations under the Contract.
- (c) In clause 16(b)(v) , the reference to a liability for which the Contractor "is (or will be) entitled to be paid or indemnified pursuant to an insurance policy" means a liability for which the Contractor is or would be entitled to be paid or indemnified under the relevant insurance policy if:
- (i) clause 16(a) had not existed;
 - (ii) the Contractor had complied with the terms of the policy;
 - (iii) the Contractor had submitted a claim where there was a legitimate entitlement to claim under the policy;
 - (iv) the Contractor had taken reasonable steps to pursue such a claim once it had been submitted; and

- (v) the insurer had remained solvent.
- (d) In clause 16(b)(vi), the reference to a liability for which the Contractor "would have received payment or been indemnified under an insurance policy" means a liability for which the Contractor would have been entitled to be paid or indemnified under the relevant insurance policy if:
 - (i) the Contractor had effected and maintained the insurance policy as required by this Contract; and
 - (ii) the circumstances contemplated by clauses 16(c)(i) to 16(c)(v) had applied with respect to that policy.
- (e) Subject to clause 16(f), the Principal's aggregate liability to the Contractor in contract, tort (including negligence) or otherwise under the Contract is limited to the amount stated in the Key Details.
- (f) Clause 16(e) does not limit the Principal's liability in respect of:
 - (i) liability which cannot be limited at Law; or
 - (ii) fraud, wilful misconduct or criminal conduct by the Principal or any of its Personnel.
- (g) This clause 16 will survive any termination of the Contract.

17. Privacy and the protection of Principal Data

17.1 Definitions

In this clause 17:

- (a) **Data Protection Plan** means the plan prepared by the Contractor and approved by the Principal in accordance with clause 17.5;
- (b) **Personal Information** means information or an opinion recorded in any form about an individual whose identity is apparent or can reasonably be ascertained from the information or opinion;
- (c) **Principal Data** means all data and information relating to the Principal or its operations, facilities, clients, customers, Personnel, assets and programs (including Personal Information) in whatever form that information may exist, and whether entered into, stored in, generated by or processed through software or equipment, or produced as part of the performance of the Contractor's Activities;
- (d) **Privacy Laws** means all applicable laws relating to privacy and Personal Information, including the Privacy and Personal Information Protection Act 1998 (NSW), Privacy Act 1988 (Cth) and any applicable principles, codes or directions issued under those Acts; and
- (e) **Security Incident** means any incident, event or issue that causes or has the intent or potential to cause a privacy or security breach or any loss of, unauthorised access to, or use, modification, disclosure or other misuse of, Principal Data, Personal Information or the Principal's confidential information.

17.2 General

Where the Contractor or its Personnel is provided with, or has access to, any Personal Information in connection with the Contractor's Activities or this Contract, the Contractor must:

- (a) not do any act or engage in any practice that would breach the Privacy Laws, or which if done or engaged in by the Principal, would be a breach of the Privacy Laws;
- (b) not access, use or disclose any Personal Information other than for the sole purpose of carrying out its obligations under this Contract, except with the prior written approval of the Principal;
- (c) ensure that Personal Information is protected against loss and unauthorised access, use, modification or disclosure and other misuse;
- (d) immediately notify the Principal upon becoming aware of any Security Incident or actual or suspected breach of an obligation under this clause 17 and comply with the Principal's reasonable directions with respect to addressing and resolving such Security Incidents and breaches;
- (e) comply with any Authority's directions and requirements with respect to the investigation of, or inquiry into, any Security Incident or privacy related matter provided that such directions and requirements are within the statutory power of the or relevant authority; and
- (f) comply with such other privacy obligations or policies as the Principal reasonably notifies the Contractor of in writing from time to time.

17.3 No restrictions on privacy obligations

Nothing in this clause is intended to limit any obligations that the Contractor has at Law with respect to privacy and the protection of Personal Information.

17.4 Principal Data and security

- (a) The Contractor does not obtain any right, title or interest with respect to any Principal Data, other than a right to use Principal Data for the sole purpose of carrying out the Contractor's obligations under this Contract.
- (b) The Contractor must not (and must ensure that its Personnel do not):
 - (i) use any Principal Data other than for the purpose of carrying out its obligations under this Contract;
 - (ii) attempt to sell, assign or commercially exploit any Principal Data; or
 - (iii) transfer or disclose any Principal Data outside NSW, Australia without obtaining the Principal's prior written consent, which may be given or withheld in the Principal's sole discretion and subject to such conditions that the Principal reasonably determines.

- (c) The Contractor must:
 - (i) do all things that a reasonable and prudent entity would do to safeguard and protect Principal Data in the Contractor's or its Personnel's possession or control and to prevent a Security Incident; and
 - (ii) comply with all security policies, requirements and standards with respect to the Contractor's Activities, Principal Data and confidential information as specified in this Contract or as may be reasonably notified by the Principal to the Contractor from time to time.
- (d) The Contractor must ensure that its Personnel are made aware of, and comply with, the obligations under clause 17.

17.5 Data Protection Plan

- (a) The Contractor must prepare a Data Protection Plan which must:
 - (i) set out measures for how the Contractor will:
 - A. comply with the Privacy Laws and the Contractor's obligations of privacy, security and confidentiality under this Contract;
 - B. protect Principal Data, Personal Information and the Principal's confidential information; and
 - C. prevent, respond to and mitigate against, any Security Incidents;
 - (ii) be consistent with the Privacy Laws and the privacy and security requirements, standards and policies required by this Contract; and
 - (iii) cover such other matters as reasonably required by the Principal.
- (b) The Contractor must review and update the Data Protection Plan annually or at such other times as reasonably required by the Principal.
- (c) The Contractor must:
 - (i) comply with its latest Data Protection Plan; and
 - (ii) provide its latest Data Protection Plan to the Principal on request.

17.6 Evidence of compliance

- (a) On each anniversary of the Award Date or at such other times as reasonably required by the Principal, the Contractor must submit to the Principal's Representative a written statement (in a form approved by the Principal's Representative in writing) that the Contractor has complied with:
 - (i) all of its privacy, security and confidentiality obligations under this Contract; and

- (ii) any Data Protection Plan prepared in accordance with clause 17.5,

(Compliance Statement).

- (b) The Compliance Statement must be signed and certified as true by the Contractor's duly authorised representative.
- (c) Without limiting clauses 17.6(a) and 17.6(b), at the reasonable request of the Principal, the Contractor must, within the timeframe stated in the Principal's request, provide the Principal with evidence that demonstrates to the satisfaction of the Principal that the Contractor and its Subcontractors have:
 - (i) complied with the privacy, security and confidentiality obligations under this Contract and any Data Protection Plan; and
 - (ii) all necessary procedures, processes and systems (including training) in place to comply with such obligations.

17.7 Indemnity and infringement

The Contractor must indemnify the Principal against any Claims against, or costs, losses or damages suffered or incurred by, the Principal, arising out of, or in any way in connection with, any actual or alleged infringement of any Privacy Laws arising out of or in connection with the Contractor's Activities or any breach by the Contractor of clause 17.

18. Notices

18.1 Notice of Variation

If the Contractor considers that a Direction by the Principal's Representative, which is not expressed to be a "Variation Order" under clause 11.2, constitutes or involves a Variation, the Contractor must, if it wishes to make a Claim against the Principal arising out of, or in any way in connection with, the Direction:

- (a) within 5 Business Days of receiving the Direction and before commencing work on the subject matter of the Direction, give notice to the Principal's Representative that it considers the Direction constitutes or involves a Variation;
- (b) within 15 Business Days of giving the notice under paragraph (a), submit a written claim to the Principal's Representative which includes the details required by clause 18.3(b); and
- (c) continue to carry out the Contractor's Activities in accordance with the Contract and all Directions of the Principal's Representative, including any Direction in respect of which notice has been given under this clause 18.1.

18.2 Notice of other Claims

Except for Claims for:

- (a) relief from the Contractor's obligation under clause 10.5;
- (b) a Variation instructed in a "Variation Order" under clause 11.2 or to which clause 18.1 applies; or

- (c) payment under clause 12.2 or 12.8 of the Contract Price,

the Contractor must give the Principal's Representative the notices required by clause 18.3 if it wishes to make a Claim against the Principal in respect of any Direction by the Principal's Representative or any other fact, matter or thing (including a breach of the Contract by the Principal) under, arising out of, or in any way in connection with, the Contract or the Contractor's Activities, including anything in respect of which:

- (d) it is otherwise given an express entitlement under the Contract; or
- (e) the Contract expressly provides that:
 - (i) specified costs are to be added to the Contract Price; or
 - (ii) the Contract Price will be otherwise increased or adjusted,as determined by the Principal's Representative.

18.3 Prescribed notices

The notices referred to in clause 18.2 are:

- (a) a written notice within 5 Business Days of the first occurrence of the Direction or other fact, matter or thing upon which the Claim is based, expressly specifying:
 - (i) that the Contractor proposes to make a Claim; and
 - (ii) the Direction or other fact, matter or thing upon which the Claim will be based; and
- (b) a written claim within 15 Business Days of giving the written notice under paragraph (a), which must include:
 - (i) detailed particulars concerning the Direction or other fact, matter or thing upon which the Claim is based;
 - (ii) the legal basis for the Claim, whether based on a term of the Contract or otherwise, and if based on a term of the Contract, clearly identifying the specific term;
 - (iii) the facts relied upon in support of the Claim in sufficient detail to permit verification; and
 - (iv) details of the amount claimed and how it has been calculated.

18.4 Continuing events

If the Direction or fact, matter or thing upon which the Claim under clause 18.1(b) or clause 18.2 is based or the consequences of the Direction or fact, matter or thing are continuing, the Contractor must continue to give the information required by clause 18.3(b) every 20 Business Days after the written claim under clause 18.1(b) or 18.3(b) (as the case may be) was submitted or given to the Principal's Representative, until after the Direction or fact, matter or thing upon which the Claim is based has, or the consequences thereof have, ceased.

18.5 Time bar

If the Contractor fails to comply with clauses 18.1, 18.2, 18.3 or 18.4:

- (a) the Principal will not be liable (insofar as it is possible to exclude such liability) upon any Claim by the Contractor; and
- (b) the Contractor will be absolutely barred from making any Claim against the Principal,

arising out of, or in any way in connection with, the relevant Direction or fact, matter or thing (as the case may be) to which clause 18.1 or 18.2 applies.

18.6 Other provisions unaffected

Nothing in clauses 18.1, 18.2, 18.3, 18.4 or 18.5 will limit the operation or effect of any other provision of the Contract which requires the Contractor to give notice to the Principal's Representative in order to preserve an entitlement to make a Claim against the Principal.

19. Modern Slavery

- (a) In this clause 19:
 - (i) "Modern Slavery" has the meaning given to it in the Modern Slavery Act 2018 (Cth) and includes any form of slavery, servitude, debt bondage, deceptive recruitment practices, or forced labour to exploit children or other persons; and
 - (ii) "Modern Slavery Laws" means the Modern Slavery Act 2018 (Cth) and any other applicable legislation addressing similar subject matter.
- (b) The Contractor warrants that:
 - (i) it complies with and will continue to comply with all applicable Modern Slavery Laws;
 - (ii) it has thoroughly investigated its labour practices, and those of its Subcontractors in respect of any Modern Slavery used anywhere in its operations or supply chain or in the operations or supply chain of any of its Subcontractors (to the extent reasonably possible);
 - (iii) it has put in place all necessary processes, procedures, investigations and compliance systems to ensure that it can provide the warranties under this clause at all relevant times; and
 - (iv) it has taken, and will take in the future, all necessary actions and investigations to validate the warranties provided under this clause.
- (c) Should the Contractor become aware of any:
 - (i) Modern Slavery risks in its supply chain or operations, it must notify the Principal of those risks and advise the Principal of the steps it is taking to eliminate or minimise those risks; or

- (ii) Modern Slavery practices being carried out within its operations or supply chain, it must:
 - A. in writing, immediately notify the Principal of those practices and of the remediation action it proposes to take; and
 - B. at its cost, take any such additional remediation action required by the Principal (acting reasonably and after due consultation with the Contractor).
- (d) If the Contractor is a 'reporting entity' for the purposes of any state or federal Modern Slavery Laws, including the Modern Slavery Act 2018 (Cth), it must provide the Principal with a copy of any report it is required to prepare under that legislation at the Principal's request.

20. Miscellaneous

20.1 Address for service

- (a) All communications (including notices, consents, approvals, requests and demands) under or in connection with the Contract:
 - (i) must be in writing;
 - (ii) must be signed by the party making the communication or (on its behalf) by any director, secretary, attorney or authorised agent of, that party;
 - (iii) subject to clause 20.1 (b), must be delivered or posted by prepaid express post to the address, or sent by email to the email address, of the Principal's Representative or the Contractor's Representative (as applicable) set out in this Contract or such other address or email address as may be notified in writing by a party to the other party; and
 - (iv) are taken to be received by the addressee:
 - A. (in the case of prepaid express post) sent to an address in the same country) on the second Business Day after the date of posting;
 - B. (in the case of prepaid express post sent to an address in another country) on the fourth Business Day after the date of posting;
 - C. (in the case of delivery by hand) on delivery at the address of the addressee as provided in clause 20.1 (a) (iii); and
 - D. (in the case of email), at the local time (in the place of receipt of that email) that would be determined if section 13A of the Electronic Transactions Act 2000 (NSW) were to apply in respect of the email,

provided that if the communication would be taken to be received on a day which is not a Business Day or after 5.00pm on

a Business Day, it is taken to be received at 9.00am on the next Business Day.

- (b) If:
- (i) the Contractor sends a notice under clause 10, 11, 12, 14, 15 or 15A or concerning a claim for payment (including any communication in respect of the SOP Act); or
 - (ii) the Principal sends a notice under clause 11.2, 14.2, 14.3, 14.4, 14.7 or 15.1,
- by email, the Contractor or the Principal (as applicable) must also deliver or post such notice to the relevant address provided in clause 20.1 (a) (iii).
- (c) For the avoidance of doubt:
- (i) no notice referred to in clause 20.1 (b) will be effective until it has been delivered or posted in accordance with clause 20.1 (b); and
 - (ii) if a notice referred to in clause 20.1 (b) is issued by both email and is also either delivered by hand or posted, both notices must be identical, and in the event that they are not identical, neither notice will constitute a valid notice.
- (d) Where clause 20.1 (b) applies, the relevant notice will be taken to have been received on the date determined in accordance with clause 20.1 (a) (iv) A, 20.1 (a) (iv) B or 20.1 (a) (iv) C (as the case may be).
- (e) The Contractor must ensure that any documents it provides, including by electronic means, are in the file structure and format for such documents as may be specified by the Principal from time to time. As at the Award Date, the Principal requires such documents which are submitted by email to be submitted as an attachment to an email, where the attachment is in .pdf, or where appropriate Excel, Primavera (.xer or .xml) or Microsoft Project (.mpp) format.
- (f) The Principal will not be liable to the Contractor or to any other person for any loss or damage suffered in relation to any document transmitted electronically, including any loss or damage related to or arising out of:
- (i) the transmission of any harmful code (such as viruses) to the Contractor by electronic mail (including any document attached to electronic mail); or
 - (ii) any failure by the Principal to notify the Contractor that the Principal may have received any harmful code (such as viruses) from the Contractor in any electronic mail (including in any document attached to electronic mail).

20.2 Governing Law

The Contract is governed by and must be construed according to the Laws of the State of New South Wales.

20.3 Jurisdiction

Subject to clause 15.13, each party irrevocably:

- (a) submits to the non-exclusive jurisdiction of the courts of the State of New South Wales, and the courts competent to determine appeals from those courts, with respect to any proceedings which may be brought at any time relating to the Contract; and
- (b) waives any objection it may now or in the future have to the venue of any proceedings, and any Claim it may now or in the future have that any proceedings have been brought in an inconvenient forum, if that venue falls within clause 20.3(a).

20.4 Counterparts

- (a) This Contract may be executed in any number of counterparts and by the parties on separate counterparts. Each counterpart constitutes an original of this Contract, and all together constitute one agreement.
- (b) A party who has executed a counterpart of this Contract may exchange that counterpart with another party by emailing the counterpart executed by it to that other party and, upon request by that other party, will thereafter promptly deliver by hand or post to that party the executed counterpart so exchanged by email, but delay or failure by that party to so deliver a counterpart of this Contract executed by it will not affect the validity of this Contract.

20.5 Entire agreement

This Contract constitutes the entire agreement and understanding between the parties and will take effect according to its tenor despite, and supersedes:

- (a) any prior agreement (whether in writing or not), negotiations and discussions between the parties in relation to the subject matter of this Contract; or
- (b) any correspondence or other documents relating to the subject matter of this Contract that may have passed between the parties prior to the Award Date and that are not expressly included in this Contract.

20.6 Amendments

This Contract may only be amended by a document signed by or on behalf of both the Principal and the Contractor.

20.7 Waiver

- (a) Failure to exercise or enforce, or a delay in exercising or enforcing, or the partial exercise or enforcement of, a right, power or remedy provided by Law or under the Contract by a party does not preclude, or operate as a waiver of, the exercise or enforcement, or further exercise or enforcement, of that or any other right, power or remedy provided by Law or under the Contract.
- (b) A waiver or consent given by a party under the Contract is only effective and binding on that party if it is given or confirmed in writing by that party.

- (c) No waiver of a breach of a term of the Contract operates as a waiver of any other breach of that term or of a breach of any other term of the Contract.

20.8 Assignment and Change of Control

- (a) The Principal may at any time, and without having to obtain the Contractor's approval, assign any right or interest of the Principal under the Contract or create or allow to exist, a security interest over or in respect of the Contract or any right or interest of the Principal under the Contract.
- (b) The Contractor cannot assign, novate, permit or suffer a Change of Control or otherwise transfer any of its rights or obligations under the Contract without the prior written consent of the Principal.
- (c) If the Principal, in its absolute discretion, approves a novation of this Contract, the Contractor must provide the Principal with a duly completed and executed Deed of Novation in relation to this Contract, and the Principal's costs and expenses in connection with negotiating, preparing and executing any Deed of Novation will be a debt due and payable from the Contractor to the Principal.
- (d) The Contractor must notify the Principal in writing as soon as reasonably practicable if the following occur in relation to the Contractor:
 - (i) a restructure of the Contractor or any Related Entity (as defined in the Corporations Act) of the Contractor that does not change the Ultimate Holding Company (as defined in the Corporations Act) of the Contractor; or
 - (ii) a transfer or issue of any securities listed on any recognised stock or securities exchange.

20.9 Consents

A consent required under the Contract from a party may be given or withheld, or may be given subject to any conditions, as that party (in its absolute discretion) thinks fit, unless the Contract expressly provides otherwise.

20.10 Expense

Except as otherwise provided in the Contract, each party must pay its own costs and expenses in connection with negotiating, preparing, executing and performing the Contract.

20.11 Severance

If at any time a provision of the Contract is or becomes illegal, invalid or unenforceable in any respect under the Law of any jurisdiction that will not affect or impair:

- (a) the legality, validity or enforceability in that jurisdiction of any other provision of the Contract; or
- (b) the legality, validity or enforceability under the Law of any other jurisdiction of that or any other provision of the Contract.

20.12 Indemnities

- (a) Each indemnity in the Contract is a continuing obligation, separate and independent from the other obligations of the parties, and survives termination, completion or expiry of the Contract.
- (b) It is not necessary for a party to incur expense or to make any payment before enforcing a right of indemnity conferred by the Contract.
- (c) A party must pay on demand any amount it must pay under an indemnity in the Contract.

20.13 United Nations Convention not applicable

The United Nations Convention on Contracts for the International Sale of Goods does not apply to the Contract.

20.14 English language

All communications between the parties and all documentation provided in connection with the Contractor's Activities (including the Deliverables) must be in the English language.

20.15 Taxes

- (a) Without limiting clause 8.3, the Contractor must pay all taxes which may be payable in respect of the Contractor's Activities, including any customs duty and primage applicable to imported plant, equipment and materials required for the Contractor's Activities.
- (b) If the Principal is required in its opinion to withhold any amount in respect of tax from a payment to be made to the Contractor under the Contract, it is entitled to do so and such withholding and payment to the relevant taxing authority will be a good discharge of its obligation to pay the relevant amount to the Contractor.
- (c) If the Principal pays an amount to the Contractor without withholding an amount in respect of tax, the Contractor must indemnify the Principal for any loss suffered by the Principal as a result of the Principal failing to withhold the amount in respect of tax.

20.16 No partnership, joint venture or other fiduciary relationship

Nothing in the Contract will be construed or interpreted as constituting the relationship between the Principal on one hand and the Contractor on the other hand as that of partners, joint venturers or any other fiduciary relationship.

20.17 Exchange of information between government agencies

- (a) The Contractor authorises the Principal and its Personnel to make information concerning the Contractor and the Contract available to any Authority, including:
 - (i) any information provided by the Contractor to the Principal;
 - (ii) any information relating to the Contractor's performance under the Contract; and

- (iii) the terms of the Contract.
- (b) The Contractor acknowledges and agrees that:
 - (i) any information about the Contractor from any source, including but not limited to substantiated reports of unsatisfactory performance, may be taken into account by the Principal and any Authority in considering whether to offer the Contractor future opportunities for NSW government work;
 - (ii) the communication of such information to any Authority is a communication falling within section 30 of the Defamation Act 2005 (NSW); and
 - (iii) the Principal has in place processes for assessing the performance of its suppliers, that these processes will apply to the Contractor's performance under the Contract and that it will participate in the Principal's "Contractor Performance Reporting" process.

20.18 Purchase Order where no Standing Offer Deed

Where no Standing Offer Deed exists, any terms and conditions in any Purchase Order or Work Order do not apply and will not bind the parties.

20.19 Proportionate liability

- (a) To the extent permitted by Law, Part 4 of the Civil Liability Act 2002 (NSW) (and any equivalent statutory provision in any other state or territory) is excluded in relation to all and any rights, obligations or liabilities of either party under or in any way in connection with the Contract whether such rights, obligations or liabilities are sought to be enforced in contract, tort or otherwise.
- (b) Without limiting paragraph (a), the rights, obligations and liabilities of the Principal and the Contractor under the Contract with respect to proportionate liability are as specified in the Contract and not otherwise, whether such rights, obligations or liabilities are sought to be enforced by a Claim in contract, in tort or otherwise.
- (c) To the extent permitted by Law:
 - (i) the Contractor must not seek to apply the provisions of Part 4 of the Civil Liability Act 2002 (NSW) in relation to any Claim by the Principal against the Contractor (whether in contract, tort or otherwise); and
 - (ii) if any of the provisions of Part 4 of the Civil Liability Act 2002 (NSW) are applied to any Claim by the Principal against the Contractor (whether in contract, tort or otherwise), the Contractor will indemnify the Principal against any loss, damage, cost or expense that forms part of a Claim by the Principal against the Contractor which the Principal is not able to recover from the Contractor because of the operation of Part 4 of the Civil Liability Act 2002 (NSW).

20.20 Prior work

- (a) The terms of the Contract apply to all of the work performed by the Contractor in connection with the Contractor's Activities even if it was performed prior to the Award Date.
- (b) Any payment made to the Contractor by the Principal in connection with the Contract or the Contractor's Activities prior to the Award Date will be treated as a payment under the Contract and will be in part discharge of the Principal's obligation to pay the Contract Price.

20.21 If the Contractor is a trustee

If the Contractor enters into the Contract as trustee for a trust (**Contractor Trust**), without limiting any other provision of the Contract, the Contractor represents and warrants that:

- (a) the Contractor is the only trustee of the Contractor Trust;
- (b) the Contractor has unqualified power under the constitution of the Contractor Trust to perform its obligations under this Contract;
- (c) no action is currently taking place or pending to remove the Contractor as trustee of the Contractor Trust or to appoint additional trustees of the Contractor Trust;
- (d) the Contractor has entered into this Contract in its capacity as trustee of the Contractor Trust and for the benefit of the beneficiaries of the Contractor Trust;
- (e) the Contractor has the right to be fully indemnified out of the assets of the Contractor Trust in respect of the obligations incurred by it in relation to this Contract;
- (f) there is no subsisting breach of the constitution of the Contractor Trust; and
- (g) the Contractor Trust has not been terminated and there is no action pending to terminate the Contractor Trust.

20.22 Legal Opinion

If:

- (a) the Contractor is incorporated outside of Australia the Contractor must, on the Award Date, provide a Legal Opinion supporting, and in respect of, the execution of this Contract; and
- (b) the Guarantor is incorporated outside of Australia the Contractor must, on the Award Date, provide a Legal Opinion supporting, and in respect of, the execution of the parent company guarantee required by clause 4.6(a).

21. Handover

21.1 Consultation and cooperation

- (a) The Contractor must, both before and after the expiry of the Term:

- (i) fully cooperate with the Principal and any prospective Successor Contractor or Successor Contractor; and
 - (ii) do all such things as may be necessary to ensure the smooth transition of the provision of the Contractor's Activities to the Principal or a Successor Contractor.
- (b) In this clause 21.1, **Successor Contractor** means the entity that will perform all or any part of the Contractor's Activities after the expiry of the Term or termination of the Contract and includes the entity's proposed subcontractors.

21.2 Development and update of Handover Services Management Plan

- (a) In consultation with the Principal, within 20 Business Days of the Award Date, the Contractor must develop and deliver to the Principal in accordance with this clause 21, a plan (the **Handover Services Management Plan**) that sets out:
 - (i) the respective tasks to be accomplished by each party in connection with the orderly transition and migration of the Contractor's Activities from the Contractor to the Principal or its nominee at the conclusion of the Term or on termination of this Contract; and
 - (ii) a timetable pursuant to which these tasks are to be completed.
- (b) The Contractor must, during the Term, review and update the Handover Services Management Plan with the Principal within 30 days prior to the end of each year of the Term.

21.3 Handover Period

A handover period will commence on the earlier of the date on which:

- (a) notice of termination of this Contract is given by the Principal; and
- (b) the Term expires,

and will continue for 3 months after the date on which the Handover Period commenced unless the Principal notifies the Contractor that it no longer requires the Handover Services (**Handover Period**).

21.4 Handover

- (a) The Contractor must comply with the Handover Services Management Plan and perform the Handover Services:
 - (i) during the Handover Period; and
 - (ii) to ensure that there is an effective transition which allows the Principal to achieve the Objectives.
- (b) If the Principal appoints a third party to take over the provisions of the Contractor's Activities or any part of the Contractor's Activities, the Contractor must act in accordance with the Handover Services

Management Plan with respect to those Contractor's Activities in relation to that third party.

21.5 Payment for Handover Services

- (a) The Principal will pay the Contractor for Handover Services in accordance with Schedule 2.
- (b) If this Contract is terminated by the Principal under clause 14.4, then the Contractor must provide the Handover Services to the Principal at no charge to the Principal.

21.6 Handover Services Management Plan

The Handover Services Management Plan must:

- (a) address, at a high level, the activities to be undertaken by the Contractor during the Handover Period;
- (b) detail the processes by which safety will be maintained at existing levels for all aspects of the Contractor's Activities; and
- (c) address, as a minimum, the following:
 - (i) disengagement process and management;
 - (ii) ensuring all documents, processes and inventory stock required to manage the handover process are available at any point in time to ensure a smooth transition in a timely manner;
 - (iii) ensuring the process is updated frequently in order to meet all operational readiness requirements;
 - (iv) an organisation chart is maintained during the process;
 - (v) handover management;
 - (vi) handover package and operational readiness;
 - (vii) stakeholders engagement, documentation, training, information and asset transfer processes; and
 - (viii) key people and succession planning,

be further developed and updated if required, and at any time at the request of the Principal.

Schedule 1 - Key Details

Clause 1 - Definitions and interpretation

1.	Contract - Other documents forming part of the Contract: (Clause 1.1)	<i>[List any other Contract documents]</i> (If nothing is specified, nil) (Where a Standing Offer Deed exists, as per the Purchase Order. If nothing is stated in the Purchase Order, nil.)
2.	Contract Price: (Clause 1.1)	Calculated in accordance with Schedule 2. (Where a Standing Offer Deed exists, as per the Purchase Order.)
3.	Contractor's Representative: (Clause 1.1)	Name: <i>[insert]</i> Address: <i>[insert]</i> Email: <i>[insert]</i> (Where a Standing Offer Deed exists, as per the Purchase Order. If nothing stated in the Purchase Order, as per the Key Details of the Standing Offer Deed.)
4.	Defects Liability Period: (Clause 1.1)	For Defects in goods and materials: <i>[insert]</i> from the date on which the relevant goods and materials are installed in the Serviced Equipment (12 months unless otherwise stated). For all other Defects: <i>[insert]</i> from the date on which the relevant Contractor's Activities are completed (6 months unless otherwise stated). (Where a Standing Offer Deed exists, any other longer period stated in the Purchase Order).
5.	Option Period 1: (Clause 1.1)	<i>[if applicable, insert option period, e.g "2 years". If there is to be no Option Period 1, insert "N/A".]</i> (Where a Standing Offer Deed exists, as per the Purchase Order.)
6.	Option Period 2: (Clause 1.1)	<i>[if applicable, insert option period, e.g "2 years". If there is to be no Option Period 2, insert "N/A".]</i> (Where a Standing Offer Deed exists, as per the Purchase Order.)
7.	Option Period 3: (Clause 1.1)	<i>[if applicable, insert option period, e.g "2 years". If there is to be no Option Period 3, insert "N/A".]</i> (Where a Standing Offer Deed exists, as per the Purchase Order.)
8.	Principal's Representative: (Clause 1.1)	Name: <i>[insert]</i> Address: <i>[insert]</i> Email: <i>[insert]</i> (Where a Standing Offer Deed exists, as per the Purchase

		Order. If nothing stated in the Purchase Order, as per the Key Details of the Standing Offer Deed.)										
9.	Separable Portions: (Clause 1.1)	<i>[Describe each Separable Portion of the Contractor's Activities]</i> (Where a Standing Offer Deed exists, as per the Purchase Order.)										
10.	Term: (Clause 1.1)	<i>[Insert Term of Contract - for how long or until when the Contractor's Activities must be carried out. Specify when the Term starts and ends.]</i> (Where a Standing Offer Deed exists, as per the Purchase Order.)										
11.	Indexation and review of rates: (Clause 1.9)	<i>[Applicable / Not applicable]</i> If applicable: <ul style="list-style-type: none"> CPI indexation in accordance with clause 1 of Part 2 of Schedule 2 [does / does not] apply [select that this applies if the Contractor's prices will be CPI indexed annually AND the General Review of Rates in clause 2 of Part 2 of Schedule 2 will not apply]; <i>[OR]</i> <ul style="list-style-type: none"> the General Review of Rates in clause 2 of Part 2 of Schedule 2 [does / does not] apply; and [select that this applies if Water NSW agrees to an annual increase in the Contractor's rates. If the option above is selected so that CPI indexation applies, the General Review of Rates should not apply to avoid double indexation.] the foreign currency adjustment in Part 2 of Schedule 2 [does / does not] apply; [select that this applies if Water NSW agrees to take foreign currency risk] (If nothing is specified, not applicable.)										
Clause 2 - Parties' obligations												
12.	Escalation of rates for extension: (Clause 2.3(b))	<i>[insert]%</i> (If nothing is specified, 0%) (Where a Standing Offer Deed exists any lower percentage stated in the Purchase Order)										
Clause 3 - Personnel												
13.	Key people: (Clause 3.5(a))	<table border="1"> <thead> <tr> <th>Person</th><th>Position</th></tr> </thead> <tbody> <tr><td>.....</td><td>.....</td></tr> <tr><td>.....</td><td>.....</td></tr> <tr><td>.....</td><td>.....</td></tr> <tr><td>.....</td><td>.....</td></tr> </tbody> </table> (Where a Standing Offer Deed exists, as per the Purchase Order.)	Person	Position
Person	Position											
.....											
.....											
.....											
.....											

Clause 4 - Security

14.	Security to be provided by the Contractor: (Clause 4.1)	<p>Clause 4.1 applies: [yes / no] [Select yes if the Contractor is required to provide security]</p> <p>Amount</p> <p>Security is required for [insert amount].</p> <p>(If nothing is stated, 5% of the Contract Price, except where a Standing Offer Deed exists, the amount of security shall be as per the Purchase Order. If nothing is stated in the Purchase Order, 5% of the Contract Price)</p> <p>[Note to user: If the Contract Price is not a lump sum, then the amount of security must be specified]</p>
15.	Additional security (Clause 4.4)	<p>Amount of additional security to be held: \$[insert] (If nothing is stated, 10% of the Contract Price)</p> <p>(Where a Standing Offer Deed exists, as per the Purchase Order. If nothing is specified in the Purchaser Order, 10% of the Contract Price)</p> <p>[Note to user: If the Contract Price is not a lump sum, then the amount of additional security must be specified]</p>
16.	Is a parent company guarantee required?: (Clause 4.6)	<p>[Yes/No]</p> <p>If required, it must be provided by: [Insert name of Guarantor].</p> <p>[Note to user: If a parent company guarantee has been provided by the Contractor under a Standing Offer Deed, no parent company guarantee is required under this Contract]</p>

Clause 5 - Risks and insurance

17.	Insurance policies required to be effected by the Principal: (Clause 5.4)	<p>[insert] (None, unless otherwise stated)</p>
18.	Insurance policies required to be effected by the Contractor: (Clause 5.5(a))	<p>Public Liability Insurance</p> <p>Amount of cover is \$20 million in respect of any one occurrence.</p> <p>Maximum deductible: \$[insert] (If nothing is stated, the maximum deductible is \$0.)</p> <p>Product Liability Insurance</p> <p>Amount of cover: \$20 million in respect of any one occurrence and in the aggregate for all occurrences in any 12 month period.</p> <p>Maximum deductible: \$[insert] (If nothing is stated, the maximum deductible is \$0)</p>

		<p>Workers Compensation Insurance</p> <p>Amount of cover: The maximum amount required by Law.</p> <p>Maximum deductible: Not applicable</p> <p>Motor Vehicle Insurance</p> <p>Amount of cover: Combined limit of not less than \$20 million in respect of property damage and third party bodily injury (other than as provided for by any compulsory statutory insurance scheme or accident compensation scheme).</p> <p>Professional Indemnity Insurance</p> <p>Amount of cover including provision for at least one automatic reinstatement of the limit of indemnity: \$[insert]</p> <p>(If no amount is specified, \$10 million.)</p> <p>Maximum deductible: \$[insert]</p> <p>(If nothing is stated, the maximum deductible is \$0.)</p>										
19.	<p>Additional requirements for Product Liability Insurance and Public Liability Insurance (Clause 5.5(c))</p>	<p>[The Product Liability Insurance and Public Liability Insurance must extend the benefit of cover to the Principal as an insured in respect of its liability for the acts or omissions of the Contractor and its Subcontractors.]</p> <p>OR</p> <p>[The Product Liability Insurance and Public Liability Insurance must be in the joint names of the Contractor and the Principal.]</p> <p>(If nothing stated, the Product Liability Insurance and Public Liability Insurance must extend the benefit of cover to the Principal as an insured in respect of its liability for the acts or omissions of the Contractor and its Subcontractors.)</p>										
<p>Clause 6 - Design and Documentation</p>												
20.	<p>Documents and number of copies to be provided by the Principal to the Contractor: (Clause 6.1)</p>	<table><tr><td>Document</td><td>No of copies</td></tr><tr><td>.....</td><td>.....</td></tr><tr><td>.....</td><td>.....</td></tr><tr><td>.....</td><td>.....</td></tr><tr><td>.....</td><td>.....</td></tr></table> <p>(Where a Standing Offer Deed exists, as per the Purchase Order.)</p>	Document	No of copies
Document	No of copies											
.....											
.....											
.....											
.....											
21.	<p>Number of copies of Design Documentation to be submitted or resubmitted by the Contractor to the Principal: (Clause 6.5)</p>	<p>[insert]</p> <p>.....</p> <p>(2 copies if not otherwise stated).</p>										
22.	<p>Escrow deed required (Clause 6.11)</p>	<p>[Water NSW's default position is "no". Only select "yes" where there is software or IT being procured and if unsure,</p>										

		select "On Request"] Yes - required within 5 Business Days of Award Date /Not required /Required on request (If nothing is stated, no)								
Clause 7 - Site and information										
23.	Work health and safety - principal contractor (Clause 7.5(b))	The principal contractor for the purposes of the WHS Legislation is: (If nothing is stated, the principal contractor is the Contractor.)								
Clause 8 - Provision of Contractor's Activities										
24.	Existing Approvals and other Approvals which the Principal is to obtain: (Clause 8.3(c))	<i>[Insert any other Approvals that will be obtained by the Principal e.g. a planning Approval.]</i> (Where a Standing Offer Deed exists, as per the Purchase Order.)								
25.	Pre-Approved Subcontractors: (Clause 8.5(b))	<table border="1"> <thead> <tr> <th>Subcontractor</th><th>Part of the Contractor's Activities</th></tr> </thead> <tbody> <tr> <td>[insert]</td><td>[insert]</td></tr> <tr> <td>[insert]</td><td>[insert]</td></tr> <tr> <td>[insert]</td><td>[insert]</td></tr> </tbody> </table> (Where a Standing Offer Deed exists, as per the Purchase Order.)	Subcontractor	Part of the Contractor's Activities	[insert]	[insert]	[insert]	[insert]	[insert]	[insert]
Subcontractor	Part of the Contractor's Activities									
[insert]	[insert]									
[insert]	[insert]									
[insert]	[insert]									
26.	Warranties required to be procured by the Contractor from Subcontractors and provided to the Principal: (Clause 8.6)	Warranty required from <i>[Insert description of types of equipment or trades from whom subcontractor warranties are required]</i> (Where a Standing Offer Deed exists, as per the Purchase Order.)								
Clause 11 - Variations										
27.	Percentage adjustments for valuing a Variation: (Clause 11.3(c))	(a) For non-time related overheads and profit where the adjustment is to be an increase: [insert]% of the amount determined. (b) For overheads and profit where the adjustment is to be a decrease: [insert]% of the amount determined.								

		<p>(If nothing stated in (a) or (b) above, 5%.)</p> <p>(Where a Standing Offer Deed exists:</p> <ul style="list-style-type: none"> ▪ where the adjustment is to be an increase, any lower percentages stated in the Purchase Order; ▪ where the adjustment is to be a decrease, any higher amount stated in the Purchaser Order)
Clause 13- KPIs and Performance Adjustments		
28.	Frequency of KPI reporting and times at which Principal and Contractor to meet: (Clause 13.1)	<p><i>[Insert how frequently in months/days the Contractor must produce a KPI Performance Report.]</i></p> <p><i>[Insert how frequently in months/days the Principal and the Contractor must meet to review the Contractor's performance.]</i></p> <p>(If nothing is specified, the Contractor must provide a KPI Performance Report at the end of each month and the Principal and the Contractor will meet every 3 months, unless otherwise agreed in writing by the Principal.)</p> <p>Click or tap here to enter text.</p>
29.	Performance Adjustments: (Clause 13.2)	Performance Adjustments [are / are not] applicable.
Clause 14 - Termination		
30.	Default events in relation to KPIs (Clause 14.2)	<p><i>[Note to User: specify any additional default events in relation to KPIs that Water NSW would like to include. Delete if not required]</i></p> <p>A breach of the any of the following KPIs will give rise to the Principal's rights under clause 14.2:</p> <p><i>[insert]</i></p> <p>If nothing stated, not applicable.</p> <p>(The default events specified above will apply in addition to the default events specified in the Purchase Order).)</p>
Clause 16- Limitation of liability		
31.	Limitation of liability (Contractor): (Clause 16(a)(ii))	<p><i>[Note: this limitation of liability is calculated based on the payment schedule template provided in Schedule 2. If the payment structure in schedule 2 is not appropriate, please seek legal advice regarding an appropriate limitation of liability]</i></p> <p>An amount equal to the aggregate of:</p> <p>a) the Routine Maintenance Fee already paid to the Contractor, together with the estimated Routine Maintenance Fee payable for the remainder of the</p>

		<p>Term; plus</p> <p>b) any:</p> <ul style="list-style-type: none"> (i) Corrective Maintenance Fee already paid to the Contractor, together with the estimated Corrective Maintenance Fee payable for the remainder of the Term; (ii) amounts payable on account of Variations but without reducing the Contract Price for any amounts deducted under clause 9.11; and (iii) other amounts paid or payable by the Principal to the Contractor under or in connection with the Contract, including any suspension costs under clause 10.9.
32.	Limitation of liability (Principal): (Clause 16(e))	<p><i>[Note: this limitation of liability is calculated based on the payment schedule template provided in Schedule 2. If the payment structure in Schedule 2 is not appropriate, please seek legal advice regarding an appropriate limitation of liability]</i></p> <p>An amount equal to the aggregate of:</p> <ul style="list-style-type: none"> a) the Routine Maintenance Fee already paid to the Contractor, together with the estimated Routine Maintenance Fee payable for the remainder of the Term; plus b) any: <ul style="list-style-type: none"> (i) Corrective Maintenance Fee already paid to the Contractor, together with the estimated Corrective Maintenance Fee payable for the remainder of the Term; (ii) amounts payable on account of Variations but without reducing the Contract Price for any amounts deducted under clause 9.11; and (iii) other amounts paid or payable by the Principal to the Contractor under or in connection with the Contract, including any suspension costs under clause 10.9.

Schedule 2 - Payment Schedule and rates review

Part 1 - Payment Schedule

[Note: The payment schedule set out below is a **basic template only**. It assumes that the Contractor will be paid:

- the Routine Maintenance Fee for the Routine Maintenance Services in the form of a yearly lump sum, payable in 12 equal instalments; and
- the Corrective Maintenance Fee for the Corrective Maintenance Services, which will be calculated in accordance with the Payment Schedule.

If this payment structure is not appropriate, please seek legal advice.

This schedule does not set out mechanisms for dealing with any foreign currency components of the Contract Price. If this is required please seek legal advice.]

1. Contract Price

1.1 Contract Price

The Contract Price is the sum of:

- (a) the Routine Maintenance Fee; and
- (b) the Corrective Maintenance Fee.

1.2 Routine Maintenance Fee

The Routine Maintenance Fee is an amount for Routine Maintenance Services for each item of Serviced Equipment on the Serviced Equipment List, being the yearly fixed lump sum for that Serviced Equipment specified in the Payment Schedule, payable in equal monthly instalments.

1.3 Corrective Maintenance Fee

The Corrective Maintenance Fee is the amount calculated by applying the Payment Schedule to the actual quantities of the relevant Corrective Maintenance Services which comply with, and have been performed in accordance with, this Contract.

2. Performance Adjustment

[The following is an **example only** of a Performance Adjustment Regime which may be used with this Maintenance Contract Template. It is based on Service Points being allocated to Nominated KPIs, as set out in Schedule 3. **This regime will not be appropriate in every case. Please seek legal advice if you are not sure.**]

The Contract Price for a month will be subject to Performance Adjustment as follows:

Adjusted Contract Price = A x B

where:

A is the original Contract Price applicable to the relevant month calculated in accordance with section 1 of this Schedule 2; and

B is the applicable percentage Performance Adjustment as set out in the following table:

Total Service Points for the relevant month (calculated in accordance with Schedule 3)	Performance Adjustment %
0 - 4.99	100
5 - 5.99	99
6 - 6.99	98.6
7 - 7.99	98.2
8 - 8.99	97.8
9 - 9.99	97.4
10 - 10.99	97.0
11 - 11.99	96.6
12 - 12.99	96.2
13 - 13.99	95.8
14 - 14.99	95.4
15 - 15.99	95.0
16 - 16.99	94.6
17 - 17.99	94.2
18 - 18.99	93.8
19 - 19.99	93.4
20 or More	93.0

3. Payment Schedule

[insert]

[Note to user: any schedule of prices containing a daily rate must specify how many hours are assumed in a day for that rate]

Part 2 - Indexation

1. CPI Indexation

- (a) Any prices in the Payment Schedule will be indexed for movements in the CPI on and from the date following the yearly anniversary of the Award Date (**CPI Adjustment Date**) in accordance with the following formula:

$$A \text{ (CPI Indexed)} = A \times \frac{CPI_{q-2}}{CPI_{Base}}$$

Where:

A is the monetary amount originally specified in this Contract;

CPI means the "Weighted Average of Eight Capital Cities: All Groups Consumer Price Index" as maintained and published quarterly by the Australia Bureau of Statistics (ABS), or as otherwise determined in accordance with paragraph (b);

CPI_{q-2} is the last CPI published prior to the CPI Adjustment Date; and

CPI_{Base} is the last CPI published prior to the Award Date.

- (b) If the CPI ceases to be published or its method of calculation substantially alters, then it is to be replaced by the nearest equivalent index as selected in good faith by the Principal's Representative and any necessary consequential amendments are to be made.

2. General Review of Rates

- (a) This clause applies where specified in the Key Details.
- (b) Once each year during the Term, either party may provide a notice to the other requesting that the Payment Schedule be reviewed in accordance with this clause.
- (c) If either party provides a notice under paragraph (b), the parties must meet within 20 Business Days to hold good faith discussions to attempt to agree a revised Payment Schedule which reflects the Contractor's actual, direct, proven and reasonable increases or decreases in costs.
- (d) If the parties agree to a revised Payment Schedule, the Payment Schedule will be deemed to be replaced with the revised Payment Schedule on and from the date following the yearly anniversary of the Award Date (**Rates Adjustment Date**).
- (e) If the parties cannot agree to a revised Payment Schedule within 35 Business Days of the notice under paragraph (b), the prices in the Payment Schedule will be adjusted on and from the Rates Adjustment Date by the amount given by the following formula:

$$A \text{ (WPI Indexed)} = A \times \frac{[WPI]_{q-1}}{[WPI]_{Base}}$$

Where:

A is the monetary amount originally specified in the Payment Schedule;

WPI means the "Wage Price Index: Total Hourly Rates of Pay Excluding Bonuses" as maintained and published quarterly by the Australian Bureau of Statistics, or as otherwise determined in accordance with paragraph (g);

WPI_{q-1} is the last WPI published prior to the Rates Adjustment Date; and

WPI_{Base} is the last WPI published prior to the Award Date.

- (f) If paragraph (e) applies the Principal's Representative will calculate the adjusted prices and provide written notice of the adjusted prices to the Contractor.
- (g) If the WPI ceases to be published or its method of calculation substantially alters, then it is to be replaced by the nearest equivalent index as selected in good faith by the Principal's Representative and any necessary consequential amendments are to be made.

3. Foreign Exchange Adjustments

- (a) This clause applies where specified in the Key Details.
- (b) Where this clause applies the relevant Australian dollar amount of any rate or price which is stated to be subject to a foreign currency adjustment (**Foreign Currency Amount**) will be adjusted in accordance with this clause on each date on which the Payment Schedule provides that a foreign currency adjustment is to occur (**FX Review Date**).
- (c) The Foreign Currency Amount will be adjusted based on movements in the relevant exchange rate in accordance with the following formula:

$$\text{FCA (Adjusted)} = \text{FCA} \times [\text{XR(current)}/\text{XR(base)}]$$

Where:

FCA (Adjusted) is the relevant Foreign Currency Amount as adjusted;

FCA is the relevant Foreign Currency Amount specified in the Payment Schedule which is to be subject to a foreign currency adjustment;

XR (current) is the relevant exchange rate published by the Reserve Bank of Australia as at the relevant FX Review Date; and

XR(base) is the relevant exchange rate specified in the Payment Schedule as at the Award Date.

Schedule 3 - KPIs

Key Performance Indicators

[Water NSW to insert any KPIs in addition to those in the Appendix]

(If nothing is attached, the only KPIs are those specified in Schedule 8 of the Appendix)

Nominated KPI Service Point calculation for Performance Adjustments

[The following is an example only of how to set up a Service Point calculation method which goes with the example Performance Adjustment regime in Schedule 2. This regime will not be appropriate in every case. Please seek legal advice if you are not sure.]

1. Nominated KPIs

- (a) The following KPIs will be used to calculate the total Service Points each month:
 - (i) **[insert relevant KPIs]**
 (each a **Nominated KPI**).
- (b) the Principal's Representative will calculate Service Points for each of the Nominated KPIs in accordance with section 2 of this Schedule 3. The total Service Points for a month is the sum of the Service Points for each Nominated KPI.
- (c) The maximum Service Points for each of the Nominated KPI is **[20]** Service Points per month.
- (d) If the Contractor accrues **[20]** or more total Service Points for 3 months in any rolling 6 month period, it will be deemed to be in substantial breach of this Contract.

2. Calculation of Service Points

2.1 **[Insert Nominated KPI]**

[Insert method of calculation of Service Points for Nominated KPI. The calculation method must be clear and objective. For an example, please speak to the Legal Services Division]

[Complete as required]

Appendix

See attached (if nothing is attached, a copy is available on request from the Principal's Representative).

website version only - not for use

Exhibit A - Statement of Work

The Statement of Work should contain, as a minimum, a detailed description of:

1. the Contractor's Activities to be provided which must clearly specify:
 - (a) *those services that are Routine Maintenance Services; and*
 - (b) *those services that are Corrective Maintenance Services.*
2. the Serviced Equipment List;
3. any requirements as to the timing of Routine Maintenance Services and Corrective Maintenance Services (eg breakdown response times);
4. whether any design work is required as part of the Contractor's Activities;
5. the Site(s) that will be provided by the Principal (if any);
6. any Tests that must be carried out by the Contractor; and
7. reporting requirements.

website version only - not for use