



Professional Services Contract

Contract No [Insert]

[Insert Project Name]

General Conditions

Water NSW ABN 21 147 934 787
Principal

[Insert name and ABN]
Contractor

Version: 2.0
Version Date: May 2024

Contents

1	Definitions and interpretation	1
1.1	Definitions	1
1.2	Interpretation	5
1.3	No bias against drafting party	5
1.4	Provisions limiting or excluding liability.....	5
1.5	Discretion	5
1.6	Authorities	5
1.7	Novation	6
2	Parties' obligations	6
2.1	Contractor's obligations	6
2.2	Principal's obligations.....	6
2.3	Extension of Term	6
2.4	KPIs	6
2.5	Parent company guarantee.....	6
3	Personnel	7
3.1	Principal's Representative	7
3.2	Replacement of Principal's Representative	7
3.3	Principal's Representative's representative	7
3.4	Contractor's Representative	7
3.5	Key people	7
3.6	Removal of persons	7
4	Conflict of Interest	7
5	Risks and insurance	7
5.1	Contractor's indemnity	7
5.2	Contractor insurance obligations.....	8
5.3	Period of insurance	8
5.4	Insurers	8
5.5	Insurance obligations	8
5.6	Failure to insure.....	8
5.7	Notice of potential claim	8
5.8	Cross liability	8
5.9	Liabilities unaffected.....	8
6	Principal's Material and documentation	9
6.1	Principal's Material and ownership of Principal's Material	9
6.2	Review of Principal's Material and Ambiguities	9
6.3	Preparation of Deliverables.....	9
6.4	Principal's Representative may review Deliverables	9
6.5	No obligation to review.....	9
6.6	Copies of Deliverables.....	9
6.7	IP warranties and representations	9
6.8	Ownership.....	10
6.9	Pre-existing IPR.....	10
6.10	Indemnity and infringement	10
6.11	Source Code	10
6.12	Moral Rights	10
6.13	Confidentiality	11
6.14	GIPA Act	11
6.15	Media.....	11
6.16	Contractor to retain records.....	12
6.17	Auditing and probity.....	12
6.18	Evidence of financial standing or financial arrangements	12
6.19	Survive termination	12
7	General Contractor obligations	12
7.1	Contractor's Acknowledgement	12
7.2	Standard of care	12
7.3	No authority to act	12
7.4	Contractor to inform itself.....	12
7.5	Give notice of matters impacting on Contractor's Activities	13
7.6	Co-ordination with Other Contractors	13
7.7	Give access to premises.....	13

7.8	Subcontracting	13
7.9	Compliance with Law	13
7.10	Change in Law.....	13
7.11	Maintain records	13
7.12	Work health and safety	14
7.13	Policies and Procedures	14
7.14	Principal's Operations.....	14
7.15	Basis of Contract Price.....	14
7.16	Requirements for Software.....	14
7.17	Changes and Updates to Software	14
7.18	Continuous Improvement	15
7.19	Attend meetings and reporting.....	15
7.20	Dams Safety Legislation.....	15
7.21	Compliance with Environmental Law	15
8	General obligations of the Principal	15
8.1	Provide other information.....	15
8.2	Provide additional information	15
8.3	Provide access.....	15
8.4	Make decisions	16
9	Quality.....	16
9.1	Quality assurance	16
9.2	Non-complying Deliverables or Contractor's Activities.....	16
9.3	Re-performance of the non-complying Contractor's Activities	16
10	Time	16
10.1	Progress.....	16
10.2	Programming.....	16
10.3	Contractor not relieved.....	16
10.4	Delays entitling Claim	17
10.5	Extension of time Claim	17
10.6	Conditions precedent to extension.....	17
10.7	Extension of time	17
10.8	Reduction in extension of time	17
10.9	Concurrent Delays.....	17
10.10	Unilateral extensions	17
10.11	Delay costs	17
10.12	Suspension.....	17
11	Variation	18
11.1	Variation price request	18
11.2	Variation order	18
11.3	Adjustment for Variation.....	18
11.4	Rates and prices	18
11.5	Omissions and deletions	18
11.6	Variations requested by Contractor.....	18
11.7	Principal's Representative's determination	18
11.8	Variation approved by Principal's Representative.....	18
12	Payment.....	18
12.1	Payment obligation	18
12.2	Payment claims.....	19
12.3	Payment statements.....	19
12.4	Conditions precedent to payment	19
12.5	Payment	19
12.6	Payment on account	19
12.7	Right of set off	19
12.8	Evidence of payment of workers and Subcontractors	20
12.9	Interest	20
12.10	SOP Act.....	20
12.11	Subcontractor's statement.....	20
12.12	Payment of Subcontractors	21
12.13	GST	21
13	Liquidated Damages	22
13.1	Liquidated damages.....	22
13.2	General damages if liquidated damages unenforceable	22
13.3	Cap on liquidated damages.....	22
13.4	No liquidated damages.....	22

14	Termination	22
14.1	Preservation of rights.....	22
14.2	Contractor default.....	22
14.3	Principal default.....	22
14.4	Contents of notice of default.....	22
14.5	Termination for insolvency or breach.....	23
14.6	Principal's entitlements after termination.....	23
14.7	Contractor's entitlements after termination.....	23
14.8	Termination for convenience.....	23
14.9	Costs.....	23
15	Disputes	23
15.1	Notice of Dispute.....	23
15.2	Negotiation.....	24
15.3	Executive negotiation.....	24
15.4	Expert determination.....	24
15.5	The expert.....	24
15.6	Not arbitration.....	24
15.7	Procedure for determination.....	24
15.8	Disclosure of interest.....	24
15.9	Costs.....	24
15.10	Conclusion of expert determination.....	24
15.11	Agreement with expert.....	24
15.12	Determination of expert.....	24
15.13	Arbitration.....	24
15.14	Survive termination.....	24
15.15	Urgent relief.....	24
15.16	Continuation of Contract.....	24
16	Limitation of liability	24
17	Privacy and the protection of Principal Data	25
17.1	Privacy.....	25
17.2	Acknowledgement.....	25
17.3	No restrictions on privacy obligations.....	25
17.4	Principal Data.....	25
17.5	Evidence of compliance.....	26
17.6	Indemnity and infringement.....	26
18	Notices	26
18.1	Notice of Variation.....	26
18.2	Notice of other Claims.....	26
18.3	Prescribed notices.....	26
18.4	Continuing events.....	26
18.5	Time bar.....	26
18.6	Other provisions unaffected.....	26
19	Modern Slavery	26
20	Security	27
20.1	Contractor's security obligations.....	27
20.2	Security of Critical Infrastructure Assets.....	27
20.3	Notification and response to Security Incidents.....	28
20.4	Audits and compliance.....	28
20.5	No limitation.....	29
21	Public Interest Disclosures	29
22	Miscellaneous	29
22.1	Address for service.....	29
22.2	Governing Law.....	29
22.3	Jurisdiction.....	29
22.4	Counterparts.....	30
22.5	Entire agreement.....	30
22.6	Amendments.....	30
22.7	Waiver.....	30
22.8	Assignment and Change of Control.....	30
22.9	Consents.....	30
22.10	Expense.....	30
22.11	Severance.....	30
22.12	Indemnities.....	30
22.13	English language.....	30

22.14	Taxes	30
22.15	No partnership, joint venture or other fiduciary relationship	31
22.16	Purchase Order where no Standing Offer Agreement	31
22.17	Exchange of information between government agencies.....	31
22.18	Proportionate liability	31
22.19	Prior work	31
22.20	If the Contractor is a trustee.....	31
22.21	Legal Opinion.....	31
22.22	Non-reliance.....	31
Schedule 1 - Key Details.....		33
Schedule 2 - Payment Schedule.....		37
Schedule 3 - KPIs.....		38
Schedule 4 - Statement of Interests and Associations		39
Schedule 5 - Design Provisions.....		40
Attachment 1 Appendix.....		41
Exhibit A - Statement of Work.....		42

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

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

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

.....
Signature of attorney

.....
Name of witness (print)

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

.....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.

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 Agreement exists, the date on which the Contract came into existence as determined in accordance with the Standing Offer Agreement; 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/0004/134725/Code-of-Conduct.pdf or upon request from the Principal's Representative, as updated from time to time.

Confidential Information means:

- (a) information disclosed by or on behalf of the Principal or its Personnel to the Contractor or the Contractor's Personnel (or of which the Contractor or the Contractor's Personnel become aware) arising out of, or in connection with, the Contractor carrying out the Contractor's Activities under the Contract;
- (b) information acquired by the Contractor or its Personnel in the course of discussions prior to the Award Date in relation to the Contractor's Activities;
- (c) any document or other correspondence provided by the Principal to the Contractor or the Contractor's Personnel, that:
 - (i) is by its nature confidential; or
 - (ii) is designated as confidential by the Principal or the Principal's Personnel from time to time; or
- (d) any other information which by its nature should reasonably be considered to be the confidential information of the Principal or the Principal's Personnel, or which the Contractor or the Contractor's Personnel knows is confidential,

whether or not marked as "Commercial in Confidence", "Proprietary" or "Confidential", and which may be provided in writing, electronically, verbally or otherwise, but does not include any information which:

- (e) the Contractor can demonstrate to be in the public domain or was known to the Contractor at the time of disclosure other than through a breach of this Contract;
- (f) is in the lawful possession of the Contractor without restriction in relation to disclosure before the date of receipt of the information from the Principal or the Principal's Personnel; or
- (g) was independently developed by the Contractor or its Personnel.

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 Agreement exists, the Purchase Order issued by the Principal in accordance with the terms of the Standing Offer Agreement; 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 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).

Cyber Insurance means a policy of cyber risk insurance covering:

- (a) the Contractor, its Subcontractors and the Principal for their:
 - (i) repair, replacement, recreation or restoration costs for systems or data;
 - (ii) investigation, public relations, business interruption and legal costs; and
 - (iii) loss of money or property paid in connection with an extortion demand; and
- (b) liability of the Contractor and any of its Subcontractors (including liability to the Principal) for third party claims, fines, penalties and other costs,

arising from a loss of or failure to secure data (including through the theft of or unauthorised access to data by employees and third parties), disclosure of data (whether negligent or inadvertent), breach of duty in connection with the storage or use or handling of data, cyber extortion or the receipt or transmission of Viruses.

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

Date for Completion has the meaning given in clause 10.1.

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

Deliverables means all items, materials, documentation (including, where Schedule 5 applies, 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 has the meaning given in Schedule 5.

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

Discrepancy means an inconsistency, discrepancy, ambiguity, inadequacy, deficiency, error or omission.

Eligible Data Breach has the meaning given to that term under the Privacy Laws and includes an "eligible data breach" as defined under the Privacy and Personal Information Protection Act 1998 (NSW).

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 2.5(a)(ii).

ICT means information and communication technologies.

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 the Contract is binding and enforceable against the Contractor; and

- (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.

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 and its Subcontractors.

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

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.

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).

PID Act means the Public Interest Disclosures Act 2022 (NSW).

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.

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 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.

Principal Environment means the combination of hardware, software, systems (including ICT systems), infrastructure and services used by the Principal from time to time.

Principal's Material means all documents and materials provided to the Contractor by the Principal from time to time, including documents provided in accordance with clause 6.1

and any other documents, equipment, machinery and data (stored by any means).

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.

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 Laws.

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 5.2(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 Agreement exists, the 'Purchase Order' issued under the Standing Offer Agreement (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 10.12(c)(ii).

Security Incident means any one or more of the following:

- (a) any unauthorised (whether under the Contract or otherwise) or unlawful use of, loss of, access to, alteration of, or disclosure of Principal Data, Confidential Information or Personal Information within the Contractor's or its Personnel's possession or control (including any data and information stored on the Contractor's equipment or in the facilities used by the Contractor to carry out the Contractor's Activities, or any unauthorised or unlawful access to such equipment or facilities);
- (b) any Eligible Data Breach or other notifiable data breach under the Privacy Laws;
- (c) any Virus, denial of service attack or other incident (including any breach of the Contractor's or the Principal's ICT systems) that compromises or adversely impacts the Principal, the Contractor's Activities or the security, availability or integrity of Principal Data, the systems and technologies holding such data or the Principal Environment (or which has the intent to do so);
- (d) a Cyber Security Incident as defined in clause 20.2(a);

- (e) any security breaches, cyber security incidents or similar events relating to, or affecting, Principal Data, Confidential Information, Personal Information or the Principal Environment which trigger, or are likely to trigger, contractual reporting obligations or legal reporting obligations to an Authority or which would require a response or action under the Contract, at Law or under any of the Policies and Procedures;
- (f) where there are reasonable grounds to suspect that any of the breaches or circumstances under paragraphs (a) to (e) have occurred or are likely to have occurred or will occur; or
- (g) any alleged occurrence of any of the above events or circumstances.

Security Program has the meaning given to that term in clause 20.1(a).

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 Agreement means the agreement entitled "Standing Offer Agreement", 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 Agreement exists, any Statement of Work attached to the Purchase Order.

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).

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.

Virus means a computer program, code, device, product or component that is designed to threaten the security or integrity of, or prevent, inhibit or impair the performance of, the Principal's operations, the Deliverables or the Contractor's Activities, or pose a threat or hazard to the security or integrity of the Principal's operations.

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).

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.

Works means, where Schedule 5 applies, the physical works to be constructed based on the Design Documentation.

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) any reference to the Contractor's Activities, Deliverables 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 Agreement; 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;
- (o) 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

- (p) 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

- (a) Subject to any express provision in the Contract to the contrary:
 - (i) 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
 - (ii) 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.
 - (b) 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 Novation

- (a) The Principal may at any time, at its sole discretion, novate the Contract to:
 - (i) either of the following without the consent of the Contractor:
 - A. the State of New South Wales or any Authority; or
 - B. a contractor engaged by the Principal to construct the Works; or
 - (ii) an entity not referred to in clause 1.7(a)(i) with the prior consent of the Contractor (which shall not be unreasonably withheld or delayed by the Contractor).
- (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.

2 Parties' obligations

2.1 Contractor's obligations

The Contractor must:

- (a) immediately commence the performance of the Contractor's Activities;
- (b) where a Term is specified in the Key Details perform the Contractor's Activities during the Term; and
- (c) ensure that the Contractor's Activities are 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; and
- (b) 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.

2.4 KPIs

- (a) This clause 2.4 does not apply where a Standing Offer Agreement exists.
- (b) The Contractor in performing the Contractor's Activities must comply with the KPIs as amended in accordance with this Contract.
- (c) The Contractor must report to the Principal at the frequency specified in the Key Details in the form of a report (**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.
- (d) 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.
- (e) The Principal and the Contractor must meet at the times specified in the Key Details, to monitor and review the Contractor's performance under this Contract and the KPIs and, if required by the Principal, the Contractor's compliance with any action plan.

2.5 Parent company guarantee

- (a) Subject to clause 2.5(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 2.5(a) if it has provided a parent company guarantee under the Standing Offer Agreement (if any).

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.
- (d) If the Contractor disagrees with any determination made by the Principal's Representative in respect of a valuation of any extension of time or entitlement to costs, it may issue a Notice of Dispute for determination under clause 15.

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) A Direction is deemed to be given to the Contractor if it is given to the Contractor's Representative.
- (b) Matters within the knowledge of the Contractor's Representative are deemed to be within the knowledge of the Contractor.
- (c) 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, with such approval not to be unreasonably withheld where the proposed replacement personnel are of at least equivalent experience, ability and expertise as those referred to in paragraph (a); 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 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 Conflict of Interest

- (a) The Contractor warrants that at the date of this Contract, no conflict of interest exists or is likely to arise in the performance of the Contractor's Activities in respect of the Contractor or any of its Personnel, except as has been disclosed in writing by the Contractor to the Principal prior to the execution of this Contract.
- (b) The Contractor agrees that it will not act for any third party where so acting may give rise to a conflict of interest.
- (c) The Contractor must use its best endeavours to ensure no conflicts of interest arise and must notify the Principal, in writing, immediately upon becoming aware of the existence, or possibility, of a conflict of interest.
- (d) On receipt of a notice under clause 4(c), the Principal may:
 - (i) approve the Contractor continuing to perform the Contractor's Activities, which approval may be subject to conditions specified by the Principal (including requirements relating to separation arrangements) to ensure appropriate management of the conflict; or
 - (ii) where in the Principal's view the conflict of interest cannot be appropriately managed, notify the Contractor that the conflict of interest constitutes a substantial breach of the Contract under clause 14.2(c) and exercise its rights under clause 14.2.
- (e) The Principal may, at its sole discretion and at any time, require the Contractor to sign and procure that each of its officers, employees, subcontractors or agents involved in the performance of the Contractor's Activities signs and delivers, to the Principal a Statement of Interests and Associations in the form attached in Schedule 4 or such other form as reasonably required by the Principal.

5 Risks and insurance

5.1 Contractor's indemnity

The Contractor must indemnify the Principal from and against:

- (a) any loss of or damage to property of the Principal, including the Principal's Material; and
- (b) any liability to or Claims by any person against the Principal in respect of loss of or damage to any 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.

5.2 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 acting reasonably:
 - (i) Professional Indemnity Insurance and Workers' Compensation Insurance; and
 - (ii) if an amount is included in the Key Details for such insurances, Public Liability Insurance and Cyber 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 complies with the requirements set out in the Key Details;
- (d) ensure that the insurance policies obtained in accordance with this clause 5.2 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.

5.3 Period of insurance

The insurance which the Contractor is required to have in place under clause 5 must be maintained:

- (a) in the case of Public Liability Insurance, Workers Compensation Insurance and Cyber Insurance, until completion of the Contractor's Activities; and
- (b) in the case of Professional Indemnity Insurance, until the expiry of 6 years following completion of the Contractor's Activities.

5.4 Insurers

Unless otherwise approved in writing by the Principal, the insurance that the Contractor is required to have in place under clause 5.2 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.

5.5 Insurance obligations

The Contractor must (in relation to the insurance required under clause 5.2) 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.

5.6 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 5.2, the Principal may, if the Contractor has not resolved its failure under paragraph (a) or (b) within 5 Business Days of being notified by the Principal's Representative of the failure, 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.

5.7 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.

5.8 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.

5.9 Liabilities unaffected

The effecting of insurance 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 Principal's Material and documentation

6.1 Principal's Material and ownership of Principal's Material

- (a) The Principal must provide to the Contractor the Principal's Material, and number of copies of that Principal's Material, specified in the Key Details.
- (b) The Principal's Material will remain the property of the Principal.
- (c) If the Principal informs the Contractor of any Principal's Material in which third parties have any Intellectual Property Rights and of any conditions attaching to the use of that material, the Contractor must use that material only in accordance with those conditions.
- (d) The Contractor must protect and keep safe and secure all Principal's Material provided to it by the Principal, and may only use, copy or reproduce such Principal's Material for the purpose of performing the Contractor's Activities and performing the Contractor's other obligations under the Contract.
- (e) Upon the completion of the Contractor's Activities or termination of the Contract, the Contractor must promptly return all Principal's Material to the Principal.

6.2 Review of Principal's Material and Ambiguities

- (a) The Contractor must review the Principal's Material for Discrepancies and promptly notify the Principal's Representative if it discovers any such Discrepancy.
- (b) The following order of precedence will apply to any Discrepancy 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 Agreement 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.
- (c) If either party discovers any Discrepancy 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 in performing the Contractor's Activities:
 - (i) the party must promptly give notice to the other; and
 - (ii) the Principal's Representative must (acting reasonably) instruct the Contractor as to the course it must adopt within 5 Business Days of the notice under paragraph (c)(i), and the Contractor must comply with any such instructions.
- (d) If compliance with the Principal's Representative's instruction under paragraph (c)(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 reasonably determined by the Principal's Representative, will be added to or deducted from the Contract Price (as applicable).

6.3 Preparation of Deliverables

- (a) The Contractor must prepare the Deliverables:
 - (i) in accordance with the Contract;
 - (ii) if applicable, having regard to any existing structures and relevant site conditions and constraints;
 - (iii) so that they are fit for their intended purpose;
 - (iv) so that they are free from any Discrepancies; and
 - (v) so that to the extent that they address like or interrelated subject matter, the Deliverables are coordinated and consistent.
- (b) If at any time (including during the construction of the Works) either party or an Other Contractor identifies any Discrepancy in the Deliverables, the Contractor must at its cost revise or amend the Deliverables to remedy or resolve the Discrepancy.
- (c) If the Contractor's Activities involve the design of any physical works, or structures, Schedule 5 applies.

6.4 Principal's Representative may review Deliverables

- (a) The Principal's Representative may:
 - (i) review any Deliverables, or any resubmitted Deliverables, prepared and submitted by the Contractor; and
 - (ii) reject the Deliverables if in its reasonable opinion the Deliverables do not comply with the requirements of the Contract.
- (b) If any Deliverables are rejected, the Contractor must submit amended Deliverables to the Principal's Representative.

6.5 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 Deliverables submitted by the Contractor for Discrepancies or compliance with the Contract.
- (b) Subject to clause 18.1, no review or approval of, comments upon, rejection of, or failure to review or comment upon or reject, any Deliverables prepared by the Contractor or any other Direction by the Principal's Representative about the Deliverables 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.

6.6 Copies of Deliverables

For the purposes of clauses 6.3 and 6.4, the Contractor must submit or resubmit to the Principal's Representative, the number of copies specified in the Key Details of any Deliverables.

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 Deliverables, the Works 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 design, construction, upgrade or further upgrade or refurbishment of the Works or any plant, equipment, infrastructure or systems owned, operated or maintained by the Principal;
 - B. to install, operate, maintain and monitor the Works or any plant, equipment, infrastructure or systems

owned, operated or maintained by the Principal;

- C. to integrate the Works 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 Deliverables and 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 Deliverables and Contractor's Activities.

6.10 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 Intellectual Property Rights or Moral Rights in or associated with the Contractor's Activities and 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 Confidentiality

- (a) The Contractor must:
- (i) keep the Confidential Information confidential, safe, secure and protected against unauthorised use and access and, subject to paragraph (b), not disclose the Confidential Information to any person;
 - (ii) not use or permit the use of the Confidential Information for any purpose other than for the sole purpose of carrying out the Contractor's Activities; and
 - (iii) ensure that Confidential Information is not copied or reproduced without the Principal's express written consent.
- (b) The Contractor may disclose Confidential Information:
- (i) with the prior written consent of the Principal;
 - (ii) to the Contractor's Personnel, but only to the extent that each person has a "need to know" the Confidential Information for the purposes of carrying out the Contractor's Activities; and
 - (iii) to the extent required by Law.
- (c) If the Contractor is required by Law to disclose any Confidential Information, the Contractor must before doing so immediately notify the Principal and comply with any reasonable directions given by, or requirements of, the Principal.
- (d) Subject to paragraph (e), on the termination, completion or expiry of the Contract or if requested by the Principal, the Contractor must cease access to and use of Confidential Information and:
- (i) promptly and securely return to the Principal all documents and other physical records of Confidential Information in its or its Personnel's possession, custody or control;
 - (ii) securely delete the Confidential Information from any computer system or other device operated or controlled by, or which may be accessed by, the Contractor or the Contractor's Personnel;
 - (iii) where applicable, comply with the Principal's Policies and Procedures in respect of the destruction or return of any Confidential Information; and
 - (iv) comply with any reasonable directions issued by the Principal in respect of the Confidential Information.
- (e) If the Contractor is required by Law to retain any Confidential Information, and provided the Contractor has not breached any of its obligations under this clause 6.13 and the Confidentiality Undertaking, the Contractor may retain one copy of part or all of the Confidential Information, to the extent that the Contractor is obliged to retain a copy of part of or all of the Confidential Information by Law. Any Confidential Information retained pursuant to any such obligation at Law shall continue to be subject to the obligations of this clause 6.13 and the Confidentiality Undertaking.
- (f) The Principal may, at any time during the Term (or if no Term applies, prior to the Contractor completing the Contractor's Activities), direct the Contractor to deliver to the Principal a duly executed Confidentiality Undertaking.
- (g) If the Principal issues a direction under paragraph (f), 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 6.13.

- (h) For clarity, the obligations and restrictions on the disclosure of Confidential Information extend to any public announcement, public comment, press release or other disclosure of Confidential Information, directly or indirectly to any person.

6.14 GIPA Act

- (a) Without limiting clause 22.17, 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 (a).
- (b) 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 (b)(ii).

6.15 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.

6.16 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.

6.17 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).

6.18 Evidence of financial standing or financial arrangements

- (a) Any obligations under this clause 6.18 to provide information in relation to the Guarantor only apply if the Contractor is required to provide a parent company guarantee under clause 2.5.
- (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 6.17, 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 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 6.18; 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).

6.19 Survive termination

Clauses 6.7 to 6.17, and the licences granted to the Principal under them, will survive any termination of the Contract.

7 General Contractor obligations

7.1 Contractor's Acknowledgement

The Contractor acknowledges that the Principal has entered into the Contract relying on the professional skill, care, diligence and expertise of the Contractor in the performance of the Contractor's Activities.

7.2 Standard of care

The Contractor:

- (a) must exercise the standard of skill, care, diligence and expertise in the performance of the Contractor's Activities that would be expected of a professional provider of services equivalent to the Contractor's Activities;
- (b) warrants that each of its Subcontractors will exercise the standard of skill, care, diligence and expertise in the performance of the part of the Contractor's Activities being performed by each of the Subcontractors that would be expected of a professional provider of services equivalent to each part of the Contractor's Activities;
- (c) must:
 - (i) ensure that the Deliverables comply with all of the requirements of the Contract; and
 - (ii) ensure that the Contractor's Activities and the Deliverables will be fit for their intended purpose;
- (d) must perform the Contractor's Activities in a timely and efficient manner;
- (e) must perform the Contractor's Activities having regard to the Objectives;
- (f) must ensure that the Contractor's Activities are provided economically and in accordance with any budgetary requirements of the Principal notified to the Contractor; and
- (g) must keep the Principal fully and regularly informed about all matters affecting or relating to the performance of the Contractor's Activities or the Works or otherwise.

7.3 No authority to act

- (a) Other than as expressly authorised, the Contractor has no authority to, and must not:
 - (i) enter into any contracts, commitments or other legal documents or arrangements in the name of, or on behalf of, the Principal; or
 - (ii) take any act or step to bind or commit the Principal in any manner, whether as a disclosed agent of the Principal or otherwise.
- (b) Without limiting clause 22.15, the Contractor is an independent contractor and is not, and must not purport to be, a partner or joint venturer of the Principal.

7.4 Contractor to inform itself

The Contractor must:

- (a) inform itself of the Principal's requirements for the Contractor's Activities and for this purpose review the Principal's Material; and
- (b) consult the Principal throughout the carrying out of the Contractor's Activities.

7.5 Give notice of matters impacting on Contractor's Activities

- (a) If the Contractor becomes aware of any event or matter which:
- (i) is likely to change or which has changed the scope, timing, cost or quality of the performance of the Contractor's Activities;
 - (ii) affects or may affect the Contractor's ability to perform the Contractor's Activities in accordance with the approved Contractor's program; or
 - (iii) involves any error, omission or defect in any continuing or completed aspects of the Works or the Contractor's Activities,

the Contractor must as soon as practicable (and not later than 5 Business Days after becoming aware of the event or matter), give written notice of that matter to the Principal's Representative.

- (b) A written notice issued under this clause 7.5 must contain:
- (i) particulars of the event, matter, change, error, omission or defect;
 - (ii) its likely impact; and
 - (iii) the Contractor's recommendation as to how to minimise its impact upon the scope, timing and cost of the performance of the Contractor's Activities.

7.6 Co-ordination with Other Contractors

The Contractor must:

- (a) fully co-operate with each Other Contractor;
- (b) carefully co-ordinate and integrate the performance of the Contractor's Activities with Other Contractors' services, works or activities 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
 - (iii) minimises the need for the Principal to be involved in resolving problems or managing the tasks that the Contractor and Other Contractor perform;
- (c) perform the Contractor's Activities so as to avoid interfering with, disrupting or delaying, Other Contractors' services, works or activities; and
- (d) provide to each of the Principal and the Other Contractors whatever advice, support and co-operation is reasonably necessary to facilitate the timely completion of Other Contractors' services, works or activities.

7.7 Give access to premises

The Contractor must at all reasonable times:

- (a) give to the Principal's Representative or to any other third person authorised in writing by the Principal's Representative, access to premises where the Contractor's Activities or part of the Contractor's Activities are being performed; and
- (b) permit those persons referred to in paragraph (a) to inspect the performance of the Contractor's Activities and the preparation of any Deliverables.

7.8 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 performance of the Contractor's Activities despite subcontracting the performance of any part of the Contractor's Activities;
- (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 performance of the Contractor's Activities; and
- (e) must ensure that each subcontract contains provisions which bind the Subcontractors to participate in any novation required by the Principal under clause 14.6(c).

7.9 Compliance with Law

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

- (a) comply with all applicable Law;
- (b) 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;
- (c) 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;
- (d) as soon as practicable (and not later than 5 Business Days after receipt of the relevant documents), provide copies of all documents (including the Approvals and other notices) to the Principal's Representative that any Authority issues to the Contractor in relation to the performance of the Contractor's Activities; 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 to use the Works.

7.10 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 performing the Contractor's Activities; and
 - B. directly results in an increase in the Contractor's costs of performing 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 (acting reasonably), 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 7.10(a).

7.11 Maintain records

- (a) The Contractor must keep proper accounts, records (including information stored by computer and other devices) and time sheets in accordance with accounting principles generally applied in commercial practice in respect of its time charge billing, its reimbursable expenditure and fees and reimbursements payable to others properly engaged pursuant to the Contract.

- (b) The Contractor must, within a reasonable time of any request, give the Principal's Representative access to, or verified copies of, any information which may be reasonably required by the Principal to substantiate a Claim by the Contractor.

7.12 Work health and safety

- (a) Without limiting the Contractor's obligations under any other provision of the Contract, the Contractor must 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:

- (i) 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; and
- (ii) if requested by the Principal's Representative (acting reasonably) 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.

- (b) In performing its obligations under the Contract the Contractor must:

- (i) 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 WHS Legislation; and
- (ii) 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 WHS Legislation.

7.13 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;
- (ii) the Policies and Procedures; and
- (iii) Schedule 11 of the Appendix.

- (b) For the purposes of clause 7.13(a), any reference to "Water NSW employees" in the Policies and Procedures is to be read as a reference to the Contractor's employees.

7.14 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 the Principal's operations and the Principal Environment;
- (b) should the Contractor become aware of such effect or interference, promptly notify the Principal of any such adverse effect or interference; and
- (c) 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.

7.15 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.

7.16 Requirements for Software

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

- (i) are free of any Viruses, disabling code or other code that may cause an unauthorised change, undesired effect, security breach, Security Incident or damage to the Software, the Deliverables, Contractor's Activities, Principal Environment 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;
- (ii) meet all applicable requirements (including functional performance requirements) for the Software and comply with any specifications or documentation related to the Software and as specified in the Statement of Work or, where Schedule 5 applies, any Design Documentation;
- (iii) 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
- (iv) 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 Contractor's Activities as specified in the Payment Schedule or, if none stated, at reasonable rates and prices.

- (b) Where requested by the Principal, the Contractor must provide sufficient information to the Principal about any Software that the Contractor provides as part of the Deliverables or the Contractor's Activities, including information about the Contractor's Software quality assurance, vulnerability assessments and patches, as well as such other information as required by the Principal to undertake a security assessment and clearance of the Software. The provision of this information to the Principal does not limit the Contractor's responsibilities under the Contract.

7.17 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).

7.18 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.

7.19 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.

7.20 Dams Safety Legislation

The Contractor must:

- (a) comply with the requirements of regulation 23(1) of the Dams Safety Regulation 2019 (NSW) (if applicable); and
- (b) in performing its obligations under the Contract:
 - (i) 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
 - (ii) 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.

7.21 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 (acting reasonably).

- (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 0 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 reasonably 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 General obligations of the Principal

8.1 Provide other information

Without limiting the obligation to provide the Principal's Material the Principal must as soon as practicable, make available to the Contractor all other relevant information, documents and particulars relating to the Works and to the Principal's requirements for the Works.

8.2 Provide additional information

If:

- (a) the Contractor, in its reasonable opinion, considers that any additional information, documents or particulars are needed to enable it to perform the Contractor's Activities; and
- (b) the additional information, documents or particulars are not provided by the Principal under the Contract or by an Other Contractor,

then:

- (c) the Contractor must give notice in writing to the Principal's Representative of the details of that additional information, documents or particulars and the reasons why they are required; and
- (d) the Principal must, if the Principal's Representative reasonably believes that the additional information, documents or particulars are needed by the Contractor, use its best endeavours to arrange the provision of the additional information, documents or particulars.

8.3 Provide access

- (a) Subject to any other agreement or arrangement with any party other than the Contractor, the Principal must:
 - (i) as soon as practicable, provide the Contractor with access to the land upon which the Works are to be constructed; and
 - (ii) arrange access to any other property or relevant aspects of the Principal Environment to the extent necessary for the Contractor to perform the Contractor's Activities,

and subject to the Contractor's compliance with the Contract.

- (b) The Contractor must comply with all directions, procedures and policies relating to work health, safety and security pertaining to the land referred to in paragraph (a)(i) and the other property referred to in paragraph (a)(ii) when accessing and using the same.

8.4 Make decisions

If:

- (a) the Contractor requests the Principal to consider the selection of alternative courses of action; and
- (b) all information required to enable a decision to be made is provided by the Contractor or is otherwise available,
the Principal must (acting reasonably) give a decision on the required course of action to the Contractor within a reasonable time period and so as not to delay or disrupt the performance of the Contractor's Activities.

9 Quality

9.1 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 Contractor's Activities which are not in accordance with the requirements of the Contract including where any such failure arises from any negligence on the part of the Principal's Representative or other person.

9.2 Non-complying Deliverables or Contractor's Activities

- (a) If the Principal's Representative discovers or reasonably believes that any Deliverables have not been prepared, or any Contractor's Activities have not been performed, in accordance with the Contract, the Principal's Representative may (acting reasonably) give the Contractor a Direction specifying the non-complying Deliverables or Contractor's Activities and requiring the Contractor to:
 - (i) amend the Deliverables or re-perform the non-complying Contractor's Activities within a specified time period; and
 - (ii) take all such steps as are reasonably necessary to:
 - A. mitigate the effect on the Principal of the failure to prepare the Deliverables or perform the Contractor's Activities in accordance with the Contract; and

- B. put the Principal (as closely as possible) in the position in which it would have been if the Contractor had prepared the Deliverables or performed the Contractor's Activities in accordance with the Contract.

- (b) If the Contractor has not complied with clauses 9.2(a)(i) and 9.2(a)(ii) within the specified time period, the Principal's Representative may (acting reasonably) give the Contractor a Direction advising the Contractor that the Principal will accept the non-complying Deliverables or Contractor's Activities despite the non-compliance, in which event the Principal will be entitled to recover from the Contractor any additional costs which will be incurred by the Principal as a result of the non-compliance.

9.3 Re-performance of the non-complying Contractor's Activities

If a Direction is given under clause 9.2(a), the Contractor must, at its cost, amend the Deliverables or re-perform the non-complying Contractor's Activities:

- (a) within the time specified in the Principal's Representative's instruction; and
- (b) so as to minimise the delay and disruption to the performance of the Contractor's Activities and the Works.

10 Time

10.1 Progress

The Contractor must:

- (a) immediately commence performance of the Contractor's Activities; and
- (b) regularly and diligently progress the Contractor's Activities with due expedition and without delay and, if a date for completion is included in the Key Details for completion of the whole or different parts of the Contractor's Activities, complete the applicable Contractor's Activities by the relevant date included in the Key Details (**Date for Completion**).

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; and
 - (ii) delays which may have occurred; 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, especially (without limitation) the obligation (if any) to complete the whole, or different parts, of the Contractor's Activities, by the relevant Date for Completion;
- (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 Delays entitling Claim

If the Contractor is or will be delayed by a Qualifying Cause in a manner which will prevent it from performing the Contractor's Activities by the relevant Date for Completion unless that date is extended, the Contractor may claim an extension of time.

10.5 Extension of time Claim

To claim an extension of time under clause 10.4 the Contractor must:

- (a) within 10 Business Days of the commencement of the occurrence causing the delay submit a written claim to the Principal's Representative for an extension to the relevant Date for Completion which:
 - (i) gives detailed particulars of the delay and the occurrence causing the delay; and
 - (ii) states the number of days extension of time claimed together with the basis of calculating that period, including evidence that the Contractor has been or will be delayed in achieving the Date for Completion in the manner set out in clause 10.6(b) and 10.6(c); and
- (b) if the effects of the delay continue beyond the period of 10 Business Days after the commencement of the occurrence causing the delay and the Contractor wishes to claim an extension of time in respect of the further delay, submit a further written claim for an extension 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 delay; and
 - (ii) containing the information required by paragraph 10.5(a).

10.6 Conditions precedent to extension

It is a condition precedent to the Contractor's entitlement to an extension of time that:

- (a) the Contractor must give the written claims required by clause 10.5 as required by that clause;
- (b) the cause of the delay was beyond the reasonable control of the Contractor; and
- (c) the Contractor must have actually been delayed in achieving performance by the relevant Date for Completion by a Qualifying Cause in a manner which will prevent it from achieving performance by the relevant Date for Completion unless that date is extended.

10.7 Extension of time

Subject to clause 10.8, if the conditions precedent in clause 10.6 have been satisfied, the relevant Date for Completion will be extended by a reasonable period determined by the Principal's Representative and notified to the Principal and the Contractor within 15 Business Days of the Contractor's written claim under clause 10.5(a), but where further Claims are submitted under clause 10.5(b), then within 15 Business Days of the last of those Claims.

10.8 Reduction in extension of time

The Principal's Representative will reduce any extension of time 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 delay; or
- (b) failed to take all steps necessary both to preclude the cause of the delay and to avoid or minimise the consequences of the delay.

10.9 Concurrent Delays

Where more than one event causes concurrent delays and the cause of at least one of those events, but not all of them, is not a Qualifying Cause, then to the extent that the delays

are concurrent, the Contractor is not entitled to an extension of time with respect to the relevant Date for Completion.

10.10 Unilateral extensions

- (a) Whether or not the Contractor has made, or is entitled to make, a Claim for an extension of time under this clause 10, the Principal's Representative may, in its absolute discretion at any time and from time to time by written notice to the Contractor and the Principal, unilaterally extend a Date for Completion.
- (b) The power to extend any Date for Completion under this clause 10.10:
 - (i) may only be exercised by the Principal's Representative and the Principal's Representative is not required to exercise its discretion under this clause 10.10 for the benefit of the Contractor; and
 - (ii) is not a Direction which can be the subject of a dispute pursuant to clause 15 or in any other way opened up or reviewed by any other person (including any expert, arbitrator or court).

10.11 Delay costs

- (a) The Contractor will not be entitled to make any Claim against the Principal for delay or disruption costs arising out of or in any way in connection with delay or disruption in the execution or completion of the Contractor's Activities, however that delay or disruption may have been caused, other than under this clause 10.11.
- (b) Subject to clause 10.11(e), where an extension of time has been granted under clause 10.7 for delay caused by a breach of Contract by the Principal, the Principal will pay the Contractor such reasonable extra costs (if any) as are necessarily incurred by the Contractor as a result of that delay as reasonably determined by the Principal's Representative. The Contractor must take reasonable steps to mitigate the extra costs incurred by it as a result of the delay.
- (c) The extra costs payable to the Contractor under this clause 10.11 will not include any profit, loss of profit or offsite overheads.
- (d) Any delay or disruption costs payable under this clause will be a limitation upon the Principal's liability to the Contractor in respect of any Claim by the Contractor for any loss suffered or incurred by the Contractor arising out of or in any way in connection with any delay and disruption which the Contractor suffers or encounters in carrying out the Contractor's Activities as a result of a breach of Contract by the Principal.
- (e) The Principal's liability to the Contractor under this clause 10.11 is limited to:
 - (i) the amount per day; and
 - (ii) the total aggregate amount, stated in the Key Details.

10.12 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 10.12(a), will be effective on and from the date specified in the Principal Representative's direction.
- (c) If a suspension under this clause 10.12 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 10.12 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 reasonably 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 Variation

11.1 Variation price request

- (a) The Principal's Representative may, at any time, 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, including the Date for Completion.

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 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 (acting reasonably) using any rates or prices which appear in the Payment Schedule to the extent the Principal's Representative determines (acting reasonably) they are applicable to, or it is reasonable to use them for valuing the Variation; or
- (c) to the extent paragraph (b) does not apply, a reasonable amount:

- (i) to be agreed between the parties; or
- (ii) failing agreement, a reasonable amount determined by the Principal's Representative (acting reasonably).

11.4 Rates and prices

Where the hourly rates or other rates or prices which appear in the Key Details are used under clause 11.3, the rates and prices will be deemed to cover:

- (a) all labour, materials, overheads and profit related to the work the subject of the Variation and compliance with the Contractor's obligations under the Contract; and
- (b) all costs and expenses which will be incurred by the Contractor arising out of or in any way in connection with the Variation.

11.5 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.

11.6 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.

11.7 Principal's Representative's determination

- (a) After a request is made by the Contractor in accordance with clause 11.6, 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.

11.8 Variation approved by Principal's Representative

If the Principal's Representative issues a written notice under clause 11.7 approving the Contractor's request under clause 11.6:

- (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 12.7 and to any other right to set-off which the Principal may have, the Principal must pay the Contractor:

- (a) the Contract Price;
- (b) the expenses and disbursements described in Schedule 2 (if any); and

- (c) 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, on the 25th day of each month after the Award Date or where that day is not a Business Day, the next Business Day;
 - (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 clause 12.2 give the Contractor, on behalf of the Principal, a payment statement which states:
- (i) the value of the Contractor's Activities 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, 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 parent company guarantee required under clause 2.5, or under the Standing Offer Agreement (if any);
- (b) evidence of any insurance taken out by the Contractor which is required under clause 5.2;
- (c) a duly executed escrow deed as required under clause 6.11;
- (d) a duly executed Confidentiality Undertaking as required by clause 6.13(g); and
- (e) documents showing compliance by the Contractor with clause 12.8.

12.5 Payment

- (a) Subject to clause 12.7, 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.

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 Right of set off

- (a) The Principal may deduct from any moneys otherwise due to the Contractor:
- (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 Agreement (if applicable), or relating to the Contractor's Activities.

- (b) The rights given to the Principal under this clause 12.7 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 12.7, will not prejudice the Principal's right to subsequently exercise its right of deduction under this clause.
- (d) Clause 12.7 will survive any termination of the Contract.

12.8 Evidence of payment of workers and Subcontractors

The Contractor is not entitled to give the Principal a payment claim under clause 12.2 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.

12.9 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.

12.10 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 12.7, 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).

12.11 Subcontractor's statement

- (a) The Contractor must:
 - (i) submit a signed subcontractor's statement, substantially in the form set out in Schedule 9 of the Appendix, together with any payment claims submitted under clause 12.2; 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 12.11(b)(ii).

12.12 Payment of Subcontractors

The Contractor acknowledges and agrees that, without limiting clause 12.8:

- (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.

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(l) 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 A New Tax System (Goods and Services Tax): Recipient Created Tax Invoice Determination (RCTID 2023) 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(i) or because of the inaccuracy of any information provided in accordance with clauses 12.13(h) to 12.13(i) 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(i).
 - (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.

13 Liquidated Damages

13.1 Liquidated damages

- (a) If the Principal's Representative determines (acting reasonably) that the whole or a relevant part of the Contractor's Activities has not been completed by the relevant Date for Completion, the Contractor must pay liquidated damages at the rate specified in the Key Details for every day after the Date for Completion until the date on which completion is achieved (as determined by the Principal's Representative acting reasonably), or until the Contract is terminated, whichever occurs first.
- (b) Without limiting the Principal's rights under the Contract or at Law, the amount payable under this clause 13.1:
- (i) is an agreed genuine pre-estimate of the Principal's damages if completion of the relevant Contractor's Activities does not occur by the relevant Date for Completion;
 - (ii) will be the Principal's sole remedy for damages arising from the Contractor's delay in completing the relevant Contractor's Activities by the relevant Date for Completion; and
 - (iii) will be a debt due and payable from the Contractor to the Principal.

13.2 General damages if liquidated damages unenforceable

If the liquidated damages under clause 13.1 are found to be a penalty, or if clause 13.1 is found to be void or unenforceable for any reason (whether in whole or in part), then the Contractor will be liable to pay unliquidated damages at Law for the breach for which the liquidated damages under clause 13.1 would have been payable had the relevant liquidated damages or clause not been a penalty or not been void or unenforceable.

13.3 Cap on liquidated damages

The Contractor's total aggregate liability to the Principal under clauses 13.1 and 13.2 is limited to the amount stated in the Key Details.

13.4 No liquidated damages

If the rate provided in the Key Details in relation to clause 13.1 is specified as "nil", "N/A", "not applicable", "\$0" or words to similar effect:

- (a) clauses 13.1, 13.2 and 13.3 will not apply; and
- (b) the Contractor will be liable to pay unliquidated damages at law for the breach for which liquidated damages under clause 13.1 would have been payable if a rate for liquidated damages had been specified.

14 Termination

14.1 Preservation of rights

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 10.12 or otherwise does not proceed with the Contractor's Activities in accordance with clause 10.1;
- (c) in the opinion of the Principal, has a conflict of interest in performing the Contractor's Activities;
- (d) fails to execute the Deed of Novation as required by clause 1.7;
- (e) fails to provide a parent company guarantee as required by clause 2.5;
- (f) fails to effect, have in place or otherwise maintain or provide evidence of, insurance as required by clause 5;
- (g) fails to exercise the standard of skill, care and diligence required by the Contract;
- (h) does not comply with any Direction of the Principal's Representative made in accordance with the Contract;
- (i) abandons the Contractor's Activities or otherwise plainly demonstrates the intention not to continue performance of its obligations under the Contract;
- (j) is in breach of any applicable Law;
- (k) fails to comply with a KPI action plan required by the Principal under this Contract or under the Standing Offer Agreement (if any);
- (l) would become liable to the Principal for liquidated damages or unliquidated damages under clause 13.1 or 13.2 for an amount exceeding the amount referred to in clause 13.3, but for the cap on liability under clause 13.3;
- (m) fails to comply with clauses 6.18, 12.12(b) or 22.8(b); or
- (n) is otherwise in substantial breach of the Contract.

14.3 Principal default

The Contractor may give a written notice under clause 14.4 to the Principal, if the Principal:

- (a) fails to pay the Contractor an undisputed amount due and payable under the Contract; or
- (b) an Insolvency Event occurs to the Principal.

14.4 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 party giving the notice requires the other party to remedy the breach within 15 Business Days of receiving the notice.

14.5 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) a party 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:
- (c) where that party is the Contractor, the Principal may by written notice to the Contractor terminate the Contract; or
- (d) where that party is the Principal, the Contractor may by written notice to the Principal:
 - (i) suspend the whole or any part of the Contractor's Activities; and
 - (ii) if within 15 Business Days of the date of this suspension the Principal fails:
 - A. to remedy the breach; or
 - B. if the breach is not capable of remedy or in the case of an Insolvency Event, to make arrangements reasonably satisfactory to the Contractor, terminate the Contract.

14.6 Principal's entitlements after termination

Subject to clause 14.1, if:

- (a) the Principal terminates the Contract under clause 14.5; or
- (b) the Contractor repudiates the Contract and the Principal otherwise terminates the Contract, then:
- (c) the Principal will:
 - (i) be entitled to require the Contractor to novate to the Principal or the Principal's nominee, any or all subcontracts between the Contractor and its Subcontractors as required by the Principal; 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 hand over to the Principal all copies of:
 - (i) the Principal's Material; and
 - (ii) any Deliverables prepared by the Contractor to the date of termination (whether complete or not).

14.7 Contractor's entitlements after termination

- (a) Subject to clause 14.1, if:
 - (i) the Contractor terminates the Contract under clause 14.5; or
 - (ii) the Principal repudiates the Contract and the Contractor otherwise terminates the Contract,
 the Contractor will be entitled to recover from the Principal 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.
- (b) This clause 14.7 will survive any termination of the Contract.

14.8 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.

14.9 Costs

- (a) If the Principal terminates the Contract under clause 14.8, the Contractor:
 - (i) will be entitled to payment of the following amounts as reasonably 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; and
 - B. 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 14.9) be more than the Contract Price; and
 - (ii) must:
 - A. take all steps possible to mitigate the costs referred to in clause 14.9(a)(i); and
 - B. immediately hand over to the Principal all copies of:
 - 1) the Principal's Material; and
 - 2) any Deliverables 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 14.9 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 14.9.
- (c) This clause 14.9 will survive the termination of the Contract by the Principal under clause 14.8.

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, the Works 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 the 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 Urgent relief

Nothing in this clause 15 will prejudice the right of a party to seek urgent injunctive or declaratory relief from a court.

15.16 Continuation of Contract

Despite the existence of a dispute or difference between the parties, the parties must continue to comply with their obligations under the Contract.

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) Except to the extent that the Contractor's liability is limited by a scheme approved under the Professional Standards Act 1994 (NSW), 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 5.1, 6.10, 13.1, 13.2 or 17;
 - (iii) fraud, wilful misconduct or criminal conduct by the Contractor or any of its Personnel;
 - (iv) 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;
 - (v) 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
 - (vi) the Contractor's abandonment of its obligations under the Contract.
- (c) In clause 16(b)(iv), 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)(v), 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.
- (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) unless otherwise agreed by the Principal in writing, cease all access to and use of Personal Information (and securely return the Personal Information to the Principal) on the termination, completion or expiry of the Contract or at such other time as requested by the Principal;
- (d) ensure that Personal Information is protected against loss and unauthorised access, use, modification or disclosure and other misuse;
- (e) immediately notify the Principal upon becoming aware of any Security Incident involving Personal Information or any actual or suspected breach of an obligation under this clause 17 and, where the Security Incident is an Eligible Data Breach or involves Personal Information:
- (i) comply with clause 20.3; and
 - (ii) unless otherwise directed by the Principal, comply with the Principal's published data breach procedures and documentation notified to the Contractor by the Principal's Representative in writing;
- (f) comply with the Principal's reasonable directions with respect to safeguarding Personal Information and addressing and resolving privacy breaches;
- (g) comply with any Authority's directions and requirements with respect to the investigation of, or inquiry into, any privacy related matter; and
- (h) comply with such other privacy obligations or policies as the Principal reasonably notifies the Contractor of in writing from time to time.

17.2 Acknowledgement

The Contractor acknowledges that, to assist the Principal's compliance with its obligations under the Privacy Laws, the obligations under the Contract in relation to the notification and response to Eligible Data Breaches and other privacy-related matters apply to the Contractor, notwithstanding that the Contractor is not ordinarily subject to the Privacy Laws.

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

- (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 Personal Information or Principal Data outside NSW, Australia without obtaining the Principal's prior written consent (acting reasonably).
- (c) Without limiting clause 20, 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 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 clauses 17 and 20.

17.5 Evidence of compliance

- (a) At any time 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 all of its privacy, security and confidentiality obligations under this Contract (**Compliance Statement**).
- (b) The Compliance Statement must be signed and certified as true by the Contractor's duly authorised representative.

17.6 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 its privacy and security obligations under this Contract, including clauses 17 and 20.

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) an extension of time 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 of the original Contract Price specified in the Key Details,

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 when the Contractor became aware or reasonably ought to have become aware of the 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, the Principal's Representative may notify the Contractor (acting reasonably) that the Principal will not be liable (insofar as it is possible to exclude such liability) upon any Claim by the Contractor 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.
- (iii) manage any potential security risks in the Contractor's supply chains that bear upon the Contractor's Activities; and
- (iv) safeguard all Principal Data and Confidential Information.
- (c) The Contractor must regularly review and improve the Security Program to ensure it continues to satisfy this clause 20.1.
- (d) Without limiting paragraphs (a) and (b), where the Contractor exchanges any correspondence, documentation or data with the Principal electronically or through an ICT system, the Contractor must only use secure systems and links.
- (e) Subject to any prohibition at Law, at the Principal's request, the Contractor must promptly provide, or make available to the Principal, information about the Contractor's Security Program and security systems.
- (f) If specified in the Key Details, the Contractor must have, obtain and maintain from the Award Date and for the duration of the Contractor's Activities, updated annually, the security certifications specified in the Key Details from an accredited, independent, third party register or certification body.
- (g) The Contractor and its Personnel must not access or attempt to access the Principal's ICT systems and the Principal Environment without the Principal's prior authorisation and only to the extent necessary to perform the Contractor Activities.
- (h) The Principal may, at any time, with notice to the Contractor immediately suspend or revoke the Contractor's and its Personnel's access to any of the Principal's ICT systems and the Principal Environment:
- (i) in response to any Security Incident;
- (ii) where the Contractor or its Personnel breaches this clause 20 or any relevant Policies and Procedures;
- (iii) where the Principal has reasonable concerns that the Contractor's or its Personnel's access will lead to a potential Security Incident;
- (iv) where the Principal has reasonable concerns that the Contractor or its Personnel will not be able to comply with this clause 20; or
- (v) where access by the Contractor and its Personnel is no longer required to perform the Contractor's Activities.
- (i) Where the Principal suspends or revokes the Contractor's or its Personnel's access to any ICT systems or the Principal Environment pursuant to paragraph (h) or where this Contract expires or is terminated, the Contractor must (and must ensure its Personnel) immediately cease use of such ICT systems and the Principal Environment.

20 Security

20.1 Contractor's security obligations

- (a) The Contractor must have and maintain security measures and a formal security program relating to ICT security and cyber security that is in accordance with:
- (i) all applicable Laws and best industry practice;
- (ii) this clause 20; and
- (iii) any additional standards or requirements specified in the Key Details,

(Security Program).

- (b) The Security Program must be designed to:
- (i) monitor, audit, detect, identify, report and protect against Security Incidents, Viruses, fraud and corruption and any other threats or hazards to the security or integrity of the Principal's operations or the Contractor's Activities and Deliverables;
- (ii) ensure the continuity of the Principal's access to, and use of, the Contractor's Activities and Deliverables;

20.2 Security of Critical Infrastructure Assets

- (a) In this clause 20.2:
- (i) **Critical Infrastructure Asset** has the meaning given to that term in the SOCI Act;
- (ii) **Cyber Security Incident** means:
- A. a cyber security incident as defined in the SOCI Act;
- B. where there are reasonable grounds to suspect that there has been a cyber security incident as defined in the SOCI Act; or
- C. any alleged occurrence of any of the above;
- (iii) **Security of Critical Infrastructure Legislation** means the SOCI Act and any rules or

- regulations enacted in connection with the SOCI Act; and
- (iv) **SOCI Act** means the Security of Critical Infrastructure Act 2018 (Cth).
- (b) This clause 20.2 applies to the extent that the Contractor's Activities relate to or affect a Critical Infrastructure Asset (or where the Principal notifies the Contractor in writing that this clause applies).
- (c) Where this clause 20.2 applies, the Contractor must do all things necessary to assist or enable the Principal to comply with the requirements of the Security of Critical Infrastructure Legislation (including providing all information requested by the Principal).
- (d) The Contractor must, and must ensure its Personnel:
- (i) comply with the Principal's plans, procedures and reporting requirements relevant to the Critical Infrastructure Asset as notified to the Contractor by the Principal from time to time;
 - (ii) comply with any reasonable direction of the Principal relating to, or necessary for, the Principal's compliance with, or obligations under, the Security of Critical Infrastructure Legislation; and
 - (iii) take all action reasonably necessary to ensure the security of the Critical Infrastructure Asset and not do, or omit to do, any act or thing that would be prejudicial to the security of the Critical Infrastructure Asset or put the Principal in breach of the Security of Critical Infrastructure Legislation.
- (e) The Contractor must:
- (i) without limiting its obligations under clause 20.3, notify the Principal in writing immediately (and in any event within sufficient time to allow the Principal to meet its notification obligations under the SOCI Act) if it becomes aware or has reasonable grounds to suspect that there has been any Cyber Security Incident in relation to the Critical Infrastructure Asset which has had, is having or is likely to have an impact (whether direct or indirect) on the availability, reliability, confidentiality or integrity of the Critical Infrastructure Asset; and
 - (ii) cooperate with, and provide all necessary assistance and information, records and reports to, the Principal to:
 - A. investigate any actual or suspected Cyber Security Incident; and
 - B. otherwise enable the Principal to discharge its obligations under the Security of Critical Infrastructure Legislation.
- (f) Subject to the Contractor's obligations at Law, the Contractor must not disclose, notify or report any Cyber Security Incident referred to in clause 20.2(e)(i) to any third party without obtaining the prior written consent of the Principal.
- 20.3 Notification and response to Security Incidents**
- (a) Without limiting clause 20.2(e), if the Contractor becomes aware, or has reasonable grounds to suspect, that there has been an Eligible Data Breach or other Security Incident arising out of, or in connection with, the Contractor's Activities or the Contract, the Contractor must:
- (i) immediately notify the Principal;
 - (ii) at the same time as providing notice pursuant to clause 20.3(a)(i), provide to the Principal, to the extent known at the time:
 - A. the date of the Security Incident;
 - B. a description of the Security Incident (including whether the Security Incident involved any Personal Information);
 - C. how the Security Incident occurred;
 - D. where the Security Incident is an Eligible Data Breach or other privacy breach, the following:
 - 1) the type of breach that occurred;
 - 2) the amount of time the Personal Information was disclosed for;
 - 3) whether any harm to individuals may occur or has occurred as a result of the breach; and
 - 4) the total (or estimated total) number of individuals affected or likely to be affected by the breach;
 - E. whether the Security Incident is a cyber incident and, if so, details of the cyber incident; and
 - F. such other information relating to the Security Incident that the Principal or its Personnel requires to comply with the Privacy Laws (and as notified to the Contractor);
- (iii) immediately manage and make all reasonable efforts to contain the Security Incident and mitigate the impact and any harm done by the Security Incident;
- (iv) cooperate with the Principal and its Personnel in connection with the assessment, diagnosis, response and resolution of the Security Incident; and
- (v) comply with any additional plans, actions and requirements relating to the Security Incident as required by the Law or any Authority.
- (b) Where the information set out under clause 20.3(a)(ii) is not known by the Contractor at the time of providing notice pursuant to 20.3(a)(i), the Contractor must expeditiously take steps to investigate and help to identify the information and promptly provide the relevant information to the Principal's Representative once known.
- (c) If requested by the Principal, the Contractor must:
- (i) prepare a draft remediation plan for the Principal's approval in respect of its response to, and remediation of, Security Incidents within 3 Business Days following the Principal's request or as otherwise required by the Principal to respond to the Security Incident; and
 - (ii) promptly update and resubmit the remediation plan to the Principal to address any concerns raised by the Principal.
- (d) The Contractor must comply with the latest version of the remediation plan which has been approved by the Principal in accordance with clause 20.3(c).
- 20.4 Audits and compliance**
- (a) The Contractor must audit its compliance with its Security Program and security obligations under the Contract on an annual basis and at such other times as reasonably required by the Principal. The Contractor must provide a copy of the audit report to the Principal's Representative promptly on request.
- (b) To the extent consistent with its obligations under the Contract and at Law, the Contractor must implement any audit findings or recommendations arising from an audit conducted under clause 20.4(a) and, at the Principal's request, reasonably demonstrate to the

Principal the implementation of such findings and recommendations.

- (c) The Contractor must run initial and annual mandatory security awareness training for all of the Contractor's Personnel involved in carrying out the Contractor's Activities and ensure that those Personnel have completed the initial training prior to carrying out the Contractor's Activities.

20.5 No limitation

Nothing in this clause 20 limits the Contractor's obligations at Law with respect to matters relating to security, including the notification and resolution of Security Incidents.

21 Public Interest Disclosures

- (a) This clause 21 only applies if the Contractor is providing services on behalf of the Principal.
- (b) In this clause 21:
- (i) **Agency** has the meaning given in section 16(1) of the PID Act;
 - (ii) **Corrective Action** has the meaning given in section 66(4) of the PID Act;
 - (iii) **Public Official** has the meaning given in section 14(1) of the PID Act;
 - (iv) **Serious Wrongdoing** has the meaning given in section 13 of the PID Act; and
 - (v) **Voluntary Public Interest Disclosure** has the meaning given in section 24(1) of the PID Act.
- (c) The Contractor must ensure that all individuals involved in providing services under this Contract are made aware of the following:
- (i) that those individuals are Public Officials for the purposes of the PID Act;
 - (ii) how to make a Voluntary Public Interest Disclosure;
 - (iii) the Principal's public interest disclosure policy; and
 - (iv) the fact that a person who is dissatisfied with the way in which a Voluntary Public Interest Disclosure has been dealt with may be entitled to take further action under the PID Act or another Law.
- (d) The Contractor must notify the Principal as soon as practicable in writing of a Voluntary Public Interest Disclosure of which the Contractor becomes aware where either:
- (i) the disclosure relates to the Principal; or
 - (ii) the maker of the disclosure is known to be a Public Official associated with the Principal.
- (e) The Contractor must notify the Principal as soon as practicable in writing of any Serious Wrongdoing committed, or alleged to be committed, by an individual providing services under this Contract.
- (f) The Contractor must use its best endeavours to assist in an investigation of Serious Wrongdoing if requested to do so by a person dealing with a Voluntary Public Interest Disclosure on behalf of the Principal or any other Agency.
- (g) The Contractor acknowledges and agrees that:
- (i) the Principal has an obligation to take Corrective Action under section 66 of the PID Act; and
 - (ii) notwithstanding any other provision of this Contract, the Principal may immediately terminate the Contract upon written notice to the Contractor, without any requirement to pay compensation (other than payment for work performed under the Contract and unpaid at the date of termination) if a finding

of Serious Wrongdoing or other misconduct is made involving the Contractor or an individual providing services under this Contract.

- (h) If the Contractor subcontracts the Contract in whole or in part, the Contractor must ensure that the Subcontract contains terms binding the person or body engaged under the Subcontract that are equivalent to the terms binding the Contractor in this clause 21.

22 Miscellaneous

22.1 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) 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 22.1(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) 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.

22.2 Governing Law

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

22.3 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 22.3(a).

22.4 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.

22.5 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) 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.

22.6 Amendments

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

22.7 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.

22.8 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:
- (i) assign, novate or otherwise transfer any of its rights or obligations under the Contract without the prior written consent of the Principal; or
 - (ii) permit or suffer a Change of Control under the Contract without the prior written consent of the Principal (which must not be unreasonably withheld).
- (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.

22.9 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.

22.10 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.

22.11 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.

22.12 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.

22.13 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.

22.14 Taxes

- (a) Without limiting clause 7.9, 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.

22.15 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.

22.16 Purchase Order where no Standing Offer Agreement

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

22.17 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.

22.18 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).

22.19 Prior work

- (a) This clause 22.19 applies if so stated in the Key Details.
- (b) 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.
- (c) 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.

22.20 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.

22.21 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 2.5(a).

22.22 Non-reliance

The Contractor:

- (a) warrants that it enters into the Contract based on its own investigations, interpretations, deductions, information and determinations;
- (b) 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;

- (c) acknowledges that:
 - (i) it is aware that the Principal has entered into the Contract relying upon the warranties in paragraphs (a) and (b); and
 - (ii) it has allowed in the Contract Price for the warranties and acknowledgements provided in this clause 22.22.

Schedule 1 - Key Details

Clause 1 - Definitions and interpretation		
1.	Contract - Other documents forming part of the Contract: (Clause 1.1)	[[List any other Contract documents] (If nothing is specified, nil.)]
2.	Contract Price: (Clause 1.1)	[[Insert lump sum if applicable, or insert 'Calculated in accordance with Schedule 2'.] (Where the Contract Price is not a lump sum, the Contract Price is calculated in accordance with Schedule 2.)]
3.	Contractor's Representative: (Clause 1.1)	Name: [insert] Address: [insert] Email: [insert] (Where a Standing Offer Agreement exists, as per the Purchase Order. If nothing stated in the Purchase Order, as per the Key Details of the Standing Offer Agreement.)
4.	Option Period 1: (Clause 1.1)	[[if applicable, insert option period, e.g "2 years". If there is to be no Option Period 1, insert "N/A".] (Where a Standing Offer Agreement exists, as per the Purchase Order.)
5.	Option Period 2: (Clause 1.1)	[[if applicable, insert option period, e.g "2 years". If there is to be no Option Period 2, insert "N/A".] (Where a Standing Offer Agreement exists, as per the Purchase Order.)
6.	Option Period 3: (Clause 1.1)	[[if applicable, insert option period, e.g "2 years". If there is to be no Option Period 3, insert "N/A".] (Where a Standing Offer Agreement exists, as per the Purchase Order.)
7.	Principal's Representative: (Clause 1.1)	Name: [insert] Address: [insert] Email: [insert] (Where a Standing Offer Agreement exists, as per the Purchase Order. If nothing stated in the Purchase Order, as per the Key Details of the Standing Offer Agreement.)
8.	Term: (Clause 1.1)	[[Insert Term of Contract in relation to Contractor's Activities - for how long or until when the Contractor's Activities must be carried out. Specify when the Term starts and ends.] (Only applicable if Contractor's Activities are being provided for a set period.) (Where a Standing Offer Agreement exists, as per the Purchase Order.)
Clause 2 - Parties' obligations		
9.	Escalation of rates for extension: (Clause 2.3(b))	[[insert]% (If nothing is specified, 0%) (Where a Standing Offer Agreement exists, any lower percentage stated in the Purchase Order)]
10.	Frequency of KPI reporting and times at which Principal and Contractor to meet: (Clause 2.4)	[[Insert how frequently in months/days the Contractor must produce a KPI Performance Report.] [Insert how frequently in months/days the Principal and the Contractor must meet to review the Contractor's performance.]

		(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.)										
11.	Is a parent company guarantee required?: (Clause 2.5)	[[Yes/No] If required, it must be provided by: [Insert name of Guarantor]. [Note to user: If a parent company guarantee has been provided by the Contractor under a Standing Offer Agreement, no parent company guarantee is required under this Contract]										
Clause 3- Personnel												
12.	Key people: (Clause 3.5(a))	<table border="0"> <thead> <tr> <th style="text-align: left;">Person</th> <th style="text-align: left;">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> <p>(Where a Standing Offer Agreement exists, as per the Purchase Order.)</p>	Person	Position
Person	Position											
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.....											
Clause 5 - Risks and insurance												
13.	Insurance policies required to be effected by the Contractor: (Clause 5.2)	<p>Public Liability Insurance Amount of cover is \$20 million in respect of any one occurrence. Maximum deductible: \$[insert] (If nothing is stated, the maximum deductible is \$0.)</p> <p>Workers Compensation Insurance Amount of cover: The maximum amount required by Law Maximum deductible: Not applicable</p> <p>Cyber Insurance Amount of cover is \$[insert] per claim and in the annual aggregate. (If no amount is specified, \$5 million.)</p> <p>Professional Indemnity Insurance Amount of cover including provision for at least one automatic reinstatement of the limit of indemnity: \$[insert] (If no amount is specified, \$10 million.) Maximum deductible: \$[insert] (If nothing is stated, the maximum deductible is \$0.)</p>										
14.	Additional requirements for Public Liability Insurance (Clause 5.2(c))	<p>[[The 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>[Public Liability Insurance must be in the joint names of the Contractor and the Principal.]</p> <p>(If nothing stated, the 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>										
Clause 6 - Principal's Material and Documentation												

15.	Number of copies of Principal's Material to be provided by the Principal to the Contractor: (Clause 6.1)	<table border="1"> <thead> <tr> <th data-bbox="611 170 906 215">Document</th> <th data-bbox="906 170 1481 215">No of copies</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> <p>(Where a Standing Offer Agreement exists, as per the Purchase Order.)</p>	Document	No of copies		
Document	No of copies													
.....													
.....													
.....													
.....													
16.	Number of copies of Deliverables to be submitted or resubmitted by the Contractor to the Principal: (Clause 6.6)	<p>[[insert]</p> <p>.....</p> <p>(1 electronic copy if not otherwise stated).]</p>												
17.	Escrow deed required (Clause 6.11)	<p>[[Water NSW's default position is "no".</p> <p>Yes - required within 5 Business Days of Award Date /Not required /Required on request</p> <p>(If nothing is stated, no)</p>												
Clause 7 - General Contractor obligations														
18.	Pre-Approved Subcontractors: (Clause 7.8(b))	<table border="1"> <thead> <tr> <th data-bbox="611 853 919 913">Subcontractor</th> <th data-bbox="919 853 1481 913">Part of the Contractor's Activities</th> </tr> </thead> <tbody> <tr> <td data-bbox="611 913 919 974">[insert]</td> <td data-bbox="919 913 1481 974">[insert]</td> </tr> <tr> <td data-bbox="611 974 919 1034">[insert]</td> <td data-bbox="919 974 1481 1034">[insert]</td> </tr> <tr> <td data-bbox="611 1034 919 1095">[insert]</td> <td data-bbox="919 1034 1481 1095">[insert]</td> </tr> <tr> <td data-bbox="611 1095 919 1155"> </td> <td data-bbox="919 1095 1481 1155"> </td> </tr> <tr> <td colspan="2" data-bbox="611 1155 1481 1216">(Where a Standing Offer Agreement exists, as per the Purchase Order)</td> </tr> </tbody> </table>	Subcontractor	Part of the Contractor's Activities	[insert]	[insert]	[insert]	[insert]	[insert]	[insert]			(Where a Standing Offer Agreement exists, as per the Purchase Order)	
Subcontractor	Part of the Contractor's Activities													
[insert]	[insert]													
[insert]	[insert]													
[insert]	[insert]													
(Where a Standing Offer Agreement exists, as per the Purchase Order)														
19.	Existing Approvals and other Approvals which the Principal is to obtain: (Clause 7.9(b))	<p>[[Insert any Approvals that will be obtained by the Principal e.g. a planning Approval.]</p> <p>(Where a Standing Offer Agreement exists, as per the Purchase Order)]</p>												
Clause 10 - Time														
20.	Date for completion of whole or parts of the Contractor's Activities: (Clause 10.1)	<p>[[Insert any required date (or dates) for completion of any part (i.e. milestone), or the whole of the Contractor's Activities, or insert 'Not applicable'.]</p> <p>(Where a Standing Offer Agreement exists, as per the Purchase Order)]</p>												
21.	Cap on delay costs (Clause 10.11)	<p>[\$[insert] per day</p> <p>(If nothing is stated, 0.5% of the Contract Price per day)</p> <p>[insert] % of the Contract Price in the aggregate</p> <p>(If no amount is specified, 10% of the Contract Price in the aggregate)</p> <p>(Where a Standing Offer Agreement exists, as per the Purchase Order. If nothing is stated in the Purchase Order, \$0.)</p>												
Clause 13 - Liquidated Damages														
22.	Liquidated damages payable by Contractor for delay in performing the Contractor's Activities by the Date for	<p>[\$[insert] per day [and if multiple Dates for Completion insert relevant amount for each Date for Completion]</p> <p>.....</p> <p>(If nothing is stated, 0.5% of the Contract Price per day)</p>												

	Completion: (Clause 13.1)	(Where a Standing Offer Agreement exists, as per the Purchase Order. If nothing is stated in the Purchase Order, 0.5% of the Contract Price per day.)
23.	Cap on liquidated damages: (Clause 13.3)	[[insert]% of the Contract Price (if no amount is specified, 10% of the Contract Price) Where a Standing Offer Agreement exists, any higher amount specified in the Purchase Order)]
Clause 16 - Limitation of liability		
24.	Limitation of liability (Contractor): (Clause 16(a)(ii))	[To the extent that the Contractor's liability is limited by a scheme approved under the Professional Standards Act 1994 (NSW), an amount equal to the maximum limitation amount or maximum monetary ceiling (as applicable) contemplated by and permitted under that scheme in respect of the relevant liability. In any other circumstances, an amount equal to: a) the Contract Price as adjusted from time to time, including on account of any Variations; plus b) any other amounts paid or payable by the Principal to the Contractor under or in connection with the Contract.]
25.	Limitation of liability (Principal): (Clause 16(e))	[An amount equal to: a) the Contract Price as adjusted from time to time, including on account of any Variations; plus b) any other amounts paid or payable by the Principal to the Contractor under or in connection with the Contract.]
Clause 20 - Security		
26.	Security obligations and standards (Clause 20.1(a))	[List any additional ICT security and cyber security standards and requirements that the Contractor's Security Program must comply with or any alternative standards. Any alternative standards must be consistent with the obligations under the Contract with respect to privacy, Principal Data and security.]
27.	Security certifications (Clause 20.1(f))	[List any security certifications that the Contractor must have and maintain and any other specific requirements relating to those security certifications.]
Clause 22 - Miscellaneous		
28.	Prior Work (Clause 22.19)	Clause 22.19 applies: [yes/no]
Schedule 5 - Principal's Budget		
29.	Principal's Budget: (Clause 1.3 of Schedule 5)	[[Insert the value of the Principal's Budget if the Contractor's Activities include design of Works.] \$ [insert] for the Works [[OR] \$ [insert] for that part of the Works to which the Contractor's Activities relate (If nothing is specified, not applicable.) (Where a Standing Offer Agreement exists, as per the Purchase Order.)]

Schedule 2 - Payment Schedule

(Where a Standing Offer Agreement exists, the Schedule of Prices in Annexure B of the Standing Offer Agreement applies.)

[Note: where there is no Standing Offer Agreement, insert Contract Price or mechanism for calculating Contract Price.

Also insert Payment Schedule if available, for the calculation of Variations and progress claims.]

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

Schedule 3 – KPIs

[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.)]

Schedule 4 - Statement of Interests and Associations

Statement of Associations and Interests

To: Water NSW ("the Principal")

I,(insert name), acknowledge and agree that:

1. I declare below any associations and / or interests.
2. I am not aware of any existing or potential conflicts of interest between my personal interests and the impartial performance of my duties as a permanent or temporary employee, consultant, advisor, agent or contractor of the Principal, other than those declared below.
3. If I become aware of any actual or potential conflict of interest, I will disclose it to the Principal's Chief Executive and / or the Probity Advisor at the first reasonable opportunity.

List any associations and / or interests below:

[

]

[.....

Signed

.....

Name and Organisation

Date: [

Schedule 5 - Design Provisions

1.1 Definitions

In this Schedule 5:

- (a) **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 prepare (if any) to perform the Contractor's Activities.
- (b) **Principal's Budget** means the amount specified in the Key Details, being the Principal's budget for the Works or that part of the Works to which the Contractor's Activities relate (as applicable).
- (c) **Risk Register** means a register to be prepared and updated from time to time by the Contractor of all hazards and risks in the design prepared by the Contractor that have either been notified to the Contractor by the Principal or the Principal's Representative or which have been identified by the Contractor, and which sets out in respect of each hazard and risk details of:
 - (i) the nature of the hazard or risk;
 - (ii) whether the hazard or risk has been considered in the preparation of the design and, if so, the steps that have been taken in preparing the design to either eliminate or mitigate the hazard or risk; and
 - (iii) if a hazard or risk has not been considered in the preparation of the design the reasons why, and when the Contractor proposes to consider the steps that can be taken to either eliminate or mitigate the hazard or risk in the design which it is preparing.
- (d) **Safety Report** means the report required to be prepared by a designer of a structure by regulation 295 of the Work Health and Safety Regulation 2017 (NSW), which without limiting the requirements of regulation 295 must include the Risk Register current at the time.

1.2 Preparation of Design Documentation

- (a) If the Contractor's Activities include the design of Works, the Contractor must design the parts of the Works which the Contract requires it to design in accordance with the Statement of Work and the other requirements of the Contract and for this purpose (but without limitation) prepare all relevant Design Documentation.
- (b) Without limiting clause 6.3(a) of the Contract, the Contractor must prepare the Deliverables having regard to any existing buildings and relevant site conditions and constraints.
- (c) If remedying a Discrepancy in the Deliverables involves effecting a material change or making a determination in relation to the design intent of any Works, the Contractor must consult the Principal before effecting such a remedy or resolution.

1.3 Design within the Principal's Budget

- (a) If the Contractor's Activities include the design of Works, the Contractor must prepare Design Documentation so that the Works may be constructed within the Principal's Budget.
- (b) If at any time during the performance of the Contractor's Activities (whether upon receipt of tenders for the Works or otherwise), the Contractor believes that the cost of the construction of the Works in accordance with the Design Documentation will exceed the Principal's Budget, the Contractor must give a written notice to the Principal which states the

amount by which the Contractor believes the cost of the construction of the Works in accordance with the Design Documentation is likely to exceed the Principal's Budget (**Budget Excess**) and propose recommendations to avoid or minimise the Budget Excess.

- (c) Following receipt of a notice under paragraph (b), the Principal may (acting reasonably):
 - (i) notify the Contractor in writing that the Design Documentation must be changed or revised so that the cost of the construction of the Works is brought within the Principal's Budget;
 - (ii) approve the Budget Excess;
 - (iii) notify the Contractor in writing of a change to the Principal's Budget;
 - (iv) notify the Contractor in writing that it accepts the Contractor's recommendations to avoid or minimise the Budget Excess with or without changes to those recommendations; or
 - (v) otherwise provide the Contractor with written Directions in relation to the Principal's Budget and the Budget Excess.
- (d) The Contractor will not be entitled to any costs, losses, expenses or damages in addition to the Contract Price for complying with its obligations under this clause 1.3 of Schedule 5, including revising the Design Documentation, unless otherwise approved in writing by the Principal.

1.4 Work health and safety

- (a) Without limiting the Contractor's obligations under any other provision of the Contract, the Contractor must 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 by:
 - (iii) insofar as the Contractor, in carrying out the Contractor's Activities, is a person conducting a business or undertaking that designs plant, substances or structures to whom section 22 of the WHS Act applies, the obligations under that section and any other provision of the WHS Legislation imposing obligations upon designers;
 - (iv) consulting with the Principal for the purposes of the consultation requirements contained in regulation 294 of the Work Health and Safety Regulation 2017 (NSW);
 - (v) preparing the Safety Report in accordance with the requirements of, and otherwise discharging its obligation under, the provisions of the WHS Legislation;
 - (vi) providing the Safety Report to the Principal; and
 - (vii) for this purpose, preparing and maintaining the Risk Register, ensuring the Risk Register is updated, as necessary, to reflect the design development process and providing the updated Risk Register to the Principal at regular intervals.
- (b) The Contractor acknowledges and agrees that the Principal may provide a copy of the Safety Report to any person who has been provided with the design for the purposes of giving effect to it.
- (c) When used in this clause 1.4 of Schedule 5, the term 'design' has any meaning assigned to that term under the WHS Legislation.

Attachment 1 Appendix

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

Exhibit A - Statement of Work

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

- 1.1 *of the services to be provided;*
- 1.2 *any Deliverables to be prepared; and*
- 1.3 *if applicable, the Works that are to be designed including details of the site upon which they are to be constructed.]*