

Explanatory table

This table provides an explanation of the information Hunter Water has determined should not be disclosed in connection with this contract.

Contract Clause (and general description)	Reason under Government Information (Public Access) Act 2009	Explanation of the reasons under the Government Information (Public Access Act) 2009
Schedule 4 – Key Performance Indicators	<ol style="list-style-type: none"> 1. Commercial-in-confidence provisions 2. Information that is of such a nature that its inclusion in a record would result in there being an overriding public interest against disclosure of the record. 	<p>Hunter Water weighed the competing public interest considerations and determined there was an overriding public interest against disclosure of this information because:</p> <ol style="list-style-type: none"> (a) disclosure of the figures would provide visibility of the Contractor's financial information and liability, project risks and cost structure; (b) disclosure would provide visibility on the amount and apportionment of risk and consequences assumed by the Contractor and Hunter Water; (c) disclosing this information would place Hunter Water and the Contractor at a disadvantage in negotiations with other contractors or potential contractors and will prejudice the business, commercial and financial interests of the Contractor; (d) disclosing the information would place the Contractor at a disadvantage in operating its business in the future and the value of the redacted information would be diminished if the information was available to the Contractor's competitors; (e) disclosure may reveal insight into the Contractor's financial arrangements; and (f) although there is a public interest in revealing the commercial arrangements between the parties, this interest is outweighed by the potential detriment described above.
Schedule 6 – Works Schedule	<ol style="list-style-type: none"> 1. Commercial-in-confidence provisions 2. Could reasonably be expected to affect public safety or security 3. Information that is of such a nature that its inclusion in a record would result in there being an overriding public interest against disclosure of the record. 	<p>Hunter Water weighed the competing public interest considerations and determined there was an overriding public interest against disclosure of this information because:</p> <ol style="list-style-type: none"> (a) disclosure would provide visibility on the amount and apportionment of risk and consequences assumed by the Contractor and Hunter Water;

		<ul style="list-style-type: none"> (b) disclosing this information would place Hunter Water and the Contractor at a disadvantage in negotiations with other contractors or potential contractors and will prejudice the business, commercial and financial interests of the Contractor; (c) disclosure of the material contained would provide visibility of the sampling locations and monitoring requirements, which would affect safety of the contractor's sampling officers, and the security of the assets and services provided by Hunter Water; (d) disclosing the information would place the Contractor at a disadvantage in operating its business in the future and the value of the redacted information would be diminished if the information was available to the Contractor's competitors; and (e) although there is a public interest in revealing the commercial arrangements between the parties, this interest is outweighed by the potential detriment described above.
<p>Schedule 7 – Schedule of Rates</p>	<ul style="list-style-type: none"> 1. Commercial-in-confidence provisions 2. Information that is of such a nature that its inclusion in a record would result in there being an overriding public interest against disclosure of the record. 	<p>Hunter Water weighed the competing public interest considerations and determined there was an overriding public interest against disclosure of this information because:</p> <ul style="list-style-type: none"> (f) disclosure of the figures would provide visibility of the Contractor's financial information and liability, project risks and cost structure; (g) disclosing this information would place Hunter Water and the Contractor at a disadvantage in negotiations with other contractors or potential contractors and will prejudice the business, commercial and financial interests of the Contractor; (h) disclosure of the material contained would provide visibility of the fees payable by Hunter Water, the Contractor's cost structure and profit margins; (i) disclosing the information would place the Contractor at a disadvantage in operating its business in the future and the value of the redacted information would be diminished if

		<p>the information was available to the Contractor's competitors;</p> <ul style="list-style-type: none"> (j) disclosure may reveal insight into the Contractor's financial arrangements; and (k) although there is a public interest in revealing the commercial arrangements between the parties, this interest is outweighed by the potential detriment described above.
Schedule 8 – Testing Methods and Requirements	<ol style="list-style-type: none"> 1. Commercial-in-confidence provisions 2. Information that is of such a nature that its inclusion in a record would result in there being an overriding public interest against disclosure of the record. 	<p>Hunter Water weighed the competing public interest considerations and determined there was an overriding public interest against disclosure of this information because:</p> <ul style="list-style-type: none"> (a) disclosure of the figures would provide visibility of the Contractor's project risks; (b) disclosing this information would place Hunter Water and the Contractor at a disadvantage in negotiations with other contractors or potential contractors and will prejudice the business, commercial and financial interests of the Contractor; (c) disclosing the information would place the Contractor at a disadvantage in operating its business in the future and the value of the redacted information would be diminished if the information was available to the Contractor's competitors; and (d) although there is a public interest in revealing the commercial arrangements between the parties, this interest is outweighed by the potential detriment described above.
Clause 5.5(a) – Operative Part	<ol style="list-style-type: none"> 1. Commercial-in-confidence provisions 2. Information that is of such a nature that its inclusion in a record would result in there being an overriding public interest against disclosure of the record. 	<p>Hunter Water weighed the competing public interest considerations and determined there was an overriding public interest against disclosure of this information because:</p> <ul style="list-style-type: none"> (a) disclosure would provide visibility on the amount and apportionment of risk and consequences assumed by the Contractor and Hunter Water; and (b) although there is a public interest in revealing the commercial arrangements between the parties, this interest is outweighed by the potential detriment described above.

Contract for Laboratory Services

Hunter Water Corporation

ABN 46 228 513 446

Australian Laboratory Services Pty Ltd

ABN 84 009 936 029

Newcastle

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Part A Trade Waste Rates

Part B Wastewater Treatment Rates

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Part D Planning and Operations Rates

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1.1 Scheduled Pricebook Rates

1.2 Unscheduled Pricebook Rates

1.3 Outsourced / Subcontracted Pricebook Rates

Schedule 8 Testing Methods and Requirements

Date/...../.....

Parties

Name Hunter Water Corporation (**Hunter Water**)

ABN 46 228 513 446

Address 36 Honeysuckle Drive, Newcastle NSW 2300

Name Australian Laboratory Services Pty Ltd (**Service Provider**)

ABN 84 009 936 029

Address Level 2, 299 Coronation Drive, Milton QLD 4064

Background

- A. Hunter Water is responsible for supplying drinking water and treating wastewater in the Hunter region of NSW.
- B. The Service Provider is a laboratory with the skills and experience to take samples from water bodies, water treatment plants, wastewater treatment plants, points within the distribution network and as required by Hunter Water within the Hunter region and conduct testing upon those samples and report results.
- C. Hunter Water wishes to engage the Service Provider to carry out that sampling and testing on behalf of Hunter Water.
- D. The parties have entered into this Contract in order to facilitate this arrangement.

Contract Documents

The Contract consists of the following documents:

- Schedule 1 General Conditions of Contract;
- Schedule 2 Availability;
- Schedule 3 Technical Requirements;
- Schedule 4 Key Performance Indicators;
- Schedule 5 Monthly Report Form;
- Schedule 6 Work Schedules;
- Schedule 7 Schedule of Rates; and

Schedule 8 Testing Methods and Requirements.

Operative part**1 Definitions****1.1 General Conditions**

Terms used in the Contract which are defined in Schedule 1 “General Conditions”, shall have the meaning given to them in Schedule 1 “General Conditions”.

1.2 Terms used in the Contract

In this Contract, the following expressions shall have the following meanings:

“**Adjustment Rate**” means the percentage rate published in the Australian Bureau of Statistics’ publication 6401.0 (Consumer Price Index, Australia) Table 1, series A2325807L (Percentage Change from Corresponding Quarter of Previous Year; All groups CPI; Sydney) for the quarter immediately preceding the Review Date, minus 0.2%.

“**Adjustment Ratio**” is the Adjustment Rate (expressed as a decimal), plus 1.00.

“**Authority**” means any government department, local government council, government or statutory authority or other body or instrumentality which has a right to impose a requirement or whose approval is required with respect to or in connection with the Services.

“**Commencement Date**” means the date of this Contract.

“**Fee**” means the fee or fees payable by Hunter Water to the Service Provider for the proper performance of the Services, as calculated in accordance with clause 4 and the Schedule of Rates and any other applicable provision of the Contract.

“**Force Majeure Event**” means any event, condition or circumstance or combination of events, conditions or circumstances that wholly or partly prevent or delay the Service Provider from performing its obligations under this Contract, but only if and to the extent that such events, conditions or circumstances:

- (a) actually prevent or delay the Service Provider from performing its obligations under this Contract;
- (b) are not within the reasonable control of the Service Provider;
- (c) are without the fault or negligence of the Service Provider; and
- (d) could not have been avoided by the Service Provider using reasonable care,

and includes, without limitation, any of the following events:

- (e) fire, lightning strike, explosion, flood, earthquake, landslide or other natural disaster;

- (f) ionising radiation or contamination by radioactivity from any nuclear fuel or from any nuclear waste from the combustion of nuclear fuel;
- (g) riot, civil commotion, malicious damage, sabotage, war (whether declared or not), act of terrorism or revolution; and
- (h) strikes at a national level or industrial disputes by labour not employed by the Service Provider and which affect an essential portion of the Services.

“General Conditions” means the General Conditions in Schedule 1 to this Contract.

“Hunter Water Representative” means Glen Robinson whose details are:

- (a) Phone: (02) 4979 9489;
- (b) Mobile: 0437 490 017; and
- (c) E-mail: glen.robinson@hunterwater.com.au,

and includes:

- (d) such other person as Hunter Water may, in writing, substitute for that representative; or
- (e) any person authorised by that representative to perform any of that representative’s powers, duties, discretions or authorities.

“Hunter Water Requirements” means anything advised by Hunter Water from time-to-time, acting reasonably, as being a requirement for the proper and timely carrying out of the Services by the Service Provider.

“Initial Term” means the period of five (5) years from the Commencement Date.

“Intellectual Property Rights” means the existing and future copyright, design rights, intellectual property rights and rights of a similar nature in and to the Documentation.

“Key Performance Indicator” or “KPI” means a key performance indicator set out in Schedule 4.

“Level of Reporting” or “LOR” means the smallest measured concentration of a substance that can be reliably measured by using a given analytical method for each of the technical requirements.

“Licence Requirements” means any requirement attaching to a licence held by Hunter Water which relates to the Services, including the licence issued by the Environmental Protection Authority covering Wastewater Treatment Works and Hunter Water Corporation’s Operating Licence.

“Loss” means all losses, damages, expenses, liabilities, claims, costs or proceedings, and including all legal costs on an indemnity basis.

“Miscellaneous Services” means any services that Hunter Water requests the Service Provider to provide from time-to-time which are in addition to the Scheduled Services or Unscheduled Services and are required by Hunter

Water for the carrying on of its operations, and includes response to Operational Incidents, trade waste inspections, maintenance for the Boag's Hill nutrient analyser, materials testing, or consultation, or Technical Support or advice, and Urgent Services where Hunter Water has requested that those Miscellaneous Services be carried out such that they commence within one hour of a direction to do so and are to be completed within 24 hours (unless directed otherwise).

"Miscellaneous Services Notice" means a notice given by Hunter Water (at its sole discretion) to the Service Provider to carry out Miscellaneous Services, which is to include notice of:

- (a) the Services to be carried out;
- (b) the Site(s) relating to those Services;
- (c) the time for commencement and completion of the Miscellaneous Services; and
- (d) the Rates at which the Service Provider is to be paid to carry out the Miscellaneous Services (by reference to the Miscellaneous Services Rates).

"Miscellaneous Services Rates" means the Rates described as "Normal Time", expressed hourly, identified in the following sections of the Schedule of Rates:

- (a) Part A – item ER1.5;
- (b) Part B – item WR1.8;
- (c) Part C – item HR1.3; and
- (d) Part D – item PR1.6.

"Out-of-Hours" means any time for which the Service Provider is properly providing Services under this Contract:

- (a) for any Business Day, on a day between Monday and Friday (inclusive) outside the hours of 7:00am and 3:00pm for sample collection and 8.30am and 5.00pm for testing; and
- (b) for any day that is not a Business Day, all day.

"Overtime Rates" means, for the proper carrying out of any Services in accordance with clause 4.6, the rate of:

- (a) "Time and a Half" (as used in Schedule 7):
 - (i) For the first two hours during which those Services are carried out during Out-of-Hours on any day that falls between Monday and Friday (inclusive); and
 - (ii) for the first two hours during which those Services are carried out on any Saturday,

that is not a gazetted public holiday in NSW.

- (b) “Double Time” (as used in Schedule 7):
- (i) for any hours in excess of two hours during Out-of-Hours on any day that falls between Monday and Friday (inclusive);
 - (ii) for any hours in excess of two hours during which those Services are carried out on any Saturday; and
 - (iii) for any hours during which those Services are carried out on any Sunday,
- that is not a gazetted public holiday in NSW.
- (c) “Double Time and a Half” (as used in Schedule 7) for any hours during which those Services are carried out on any gazetted public holiday in NSW.

“**Operational Incident**” means any incident which may present risks to the environment, public health or Hunter Water assets.

“**Performance Management Framework**” means the system of KPIs in Schedule 4 by which some aspects of the Service Provider’s performance of this Contract’s requirements will be measured and Service Standard Adjustments may be determined.

“**Rate**” means the rate(s) payable to the Service Provider in consideration for the proper performance of the Services (or the proper discharge of its obligations) under this Contract, as set out in the Schedule of Rates.

“**Reporting Requirements**” means any requirement of the Service Provider to meet with, provide a report to, or otherwise advise or inform Hunter Water in any way relating to the carrying out of the Services under this Contract, and includes the meetings, reports and information required to be provided by the Service Provider under clauses 5 and 6 and in Schedule 3.

“**Reporting Rate**” means the rate, expressed annually, set out at item PR1.1 of Part D in Schedule 7.

“**Samples**” means the samples that the Service Provider is to take under this Contract, at the Sites and frequencies described in Schedule 6 (or as otherwise directed by Hunter Water or its agents from time-to-time), and includes the collection of samples of ground water, drinking water, wastewater, bio-solids, sludge, soil, and trade waste.

“**Sample Information**” means, for each of the Samples taken by the Service Provider the:

- (a) Site name and code;
- (b) date, time, and Site-specific observations made;
- (c) GPS coordinates of the location of sampling; and
- (d) the Chain of Custody.

“**Schedule of Rates**” means the rates for the Services set out in Schedule 7, which rates are broken down as follows:

- (a) Trade Waste Rates, being those Rates for the Services identified in Part A of Schedule 6;
- (b) Wastewater Treatment Facility Rates, being those Rates for the Services identified in Part B of Schedule 6;
- (c) Water Treatment Facility Rates, being those Rates for the Services identified in Part C of Schedule 6;
- (d) Planning and Operations Rates, being those Rates for the Services identified in Part D of Schedule 6; and
- (e) Pricebook of Analysis Rates, being those Rates for the Services identified in Part E of Schedule 6.

“Scheduled Rates (Collection)” means the Rates, expressed annually, set out in the following sections of the Schedule of Rates:

- (a) Part A – items ER2.1 Major Inspections ,ER2.2 (Major samples); ER2.3 (Major Inspect & Sampling Machine); ER2.4 (Moderate Inspections); ER2.5 (Moderate Sample); and ER2.6 (Moderate Inspect & Sampling Machine);
- (b) Part B – item WR2.1 and WR3.1;
- (c) Part C – item HR2.1; and
- (d) Part D – item PR2.1 and PR2.3 (and, in the case of the Rate set out for collection of bore samples at items PR2.3, is the Rate for the collection of samples from the bores listed in the Parts B, C and D of Schedule 6).

“Scheduled Rates (Testing and Reporting)” means the Rates set out in the following sections of the Schedule of Rates:

- (a) Part A – items ES1 to ES8 (inclusive);
- (b) Part B – items WS1 to WS18 and WS20 to WS22 (inclusive);
- (c) Part C – items:
 - (i) HS1 to HS13 (inclusive); and
 - (ii) HA1; and
- (d) Part D – items:
 - (i) PS1 to PS11 (inclusive); and
 - (ii) PS13 to PS14 (inclusive).

“Scheduled Rates (Other)” means the Rates, expressed annually, set out in the following sections of the Schedule of Rates:

- (e) Part B of Schedule 7 – item WR2.2 (Sampling Machine Hire Charges for Burwood Beach, Tanilba Bay, Cessnock);
- (f) Part B of Schedule 7 – WS19 Overflow Monitoring (which Rate is payable for testing and reporting work to be carried out when directed

by Hunter Water following an overflow event. Payment for collection of the samples is to be at the Unscheduled Rates Collection);

- (g) Part D of Schedule 7 – items:
 - (i) PS12 (Campvale Auto sampler Check);
 - (ii) PR2.2 (Sampling Machine hire for Raw Monitoring); and
 - (iii) PR2.4 (Sampling Machine Maintenance).

“Scheduled Services” means, the Scheduled Services (Collection, Testing and Reporting), and Scheduled Services (Other), taken together or as the context requires.

“Scheduled Services (Collection, Testing and Reporting)” means the services listed in the following parts of Schedule 6:

- (a) Part A – items:
 - (i) ES1 to ES8 (inclusive); and
 - (ii) ER2.1 (Major Inspections), ER2.2 (Major samples); ER2.3 (Major Inspect & Sampling Machine); ER2.4 (Moderate Inspections); ER2.5 (Moderate Sample); and ER2.6 (Moderate Inspect & Sampling Machine);
- (b) Part B – items WS1 to WS18 and WS20 to WS22 (inclusive);
- (c) Part C – items:
 - (i) HS1 to HS13 (inclusive); and
 - (ii) HA1; and
- (d) Part D – items:
 - (i) PS1 to PS11 (inclusive); and
 - (ii) PS13 to PS14 (inclusive).

“Scheduled Services (Other)” means the Services listed in the following parts of Schedule 6:

- (a) for the collection of Samples from Burwood Beach, Tanilba Bay and Cessnock WWTW using an automatic sampling machine (which includes the set up and removal of the machines, as required);
- (b) Part D – items:
 - (i) PS12 (Campvale Autosampler Check);
 - (ii) PR2.2 (Sampling Machine hire for Raw Monitoring); and
 - (iii) PR2.4 (Sampling Machine Maintenance).

“Services” means any services arising out of or as a consequence of the collection and Testing of Samples carried out by the Service Provider under this Contract, including Scheduled Services, Unscheduled Services, Miscellaneous Services, Urgent Services, and the Reporting Requirements.

“Service Provider Personnel” are any and all employees of the Service Provider that are employed by the Service Provider in relation to the carrying out the Services under this Contract, or perform work on the Service Provider’s behalf touching upon those Services.

“Service Standard Adjustment” or **“SSA”** means an adjustment of the Fees payable under this Contract where such adjustment is calculated in accordance with the Performance Management Framework set out in Schedule 4.

“Site” means any location from which Samples are to be collected by the Service Provider in the carrying out of the Services under this Contract, including those locations identified in Schedule 6 and any other location nominated by Hunter Water from time to time (including for the carrying out of Unscheduled Services or Miscellaneous Services).

“Technical Support” or **“Technical Advice”** means all consultation and technical advice provided by the Service Provider to Hunter Water in association with the carrying out of the Services, including in relation to trade waste, environmental incident response, water quality issues, research and any matter related to the Hunter Water Requirements.

“Term” means the whole term of this Contract, including:

- (a) the Initial Term; and
- (b) if this Contract is extended pursuant to clause 7, any Extended Term or Second Extended Term (as the case may be).

“Testing” or **“Tests”** means the tests carried out by the Service Provider under this Contract in relation to Scheduled Services, Unscheduled Services and Miscellaneous Services.

“Test Results” means the results of any Testing carried out by the Service Provider on the Samples, and includes the results of any tests carried out prior to the Commencement Date.

“Third Party Testing” means tests (in whatsoever form Hunter Water may direct) carried out by an independent third party laboratory on any of the Samples.

“Treatment Operations Contractor” means any contractor engaged by Hunter Water for the operation and maintenance of Hunter Water’s water treatment facilities and wastewater treatment facilities.

“Turnaround Time” or **“TAT”** means:

- (a) for Scheduled Services, the time (to be expressed days) in accordance with Schedule 6 from the receipt of the Sample in the laboratory until the time that Hunter Water receives the Test Results; and
- (b) for Unscheduled Services or Miscellaneous Services, as agreed or directed upon the issue of an Unscheduled Services Notice or Miscellaneous Services Notice (which may require non-business day

sampling/analysis/reporting with appropriate non-business day rates)
(as applies).

“Unscheduled Services” means any Services that Hunter Water requests the Service Provider to carry out pursuant to an Unscheduled Services Notice, for:

- (a) the collection of any Samples;
- (b) the carrying out of any Testing; and/or
- (c) the provision of Test Results,

which are requested by Hunter Water from time-to-time in response to an issue which is unplanned and cannot be scheduled in advance.

“Unscheduled Rates (Collection)” means the Rates described as “Normal Time”, expressed hourly, set out in the following sections within the Schedule of Rates:

- (a) Part A – item ER2.7;
- (b) Part B – WR2.3;
- (c) Part C – HR2.2; and
- (d) Part D – PR2.6.

“Unscheduled Rates (Testing and Reporting)” means:

- (a) subject to paragraph (b) immediately below, the Pricebook of Analysis Rates, on a per item basis, for the Unscheduled Services set out in paragraph 1.2 of Part E in Schedule 7; and/or
- (b) if Hunter Water directs any Testing to be undertaken during a period that is Out-of-Hours, then:
 - (i) the Pricebook of Analysis Rates, on a per item basis, for Unscheduled Services in paragraph 1.2 of Part E in Schedule 7; plus
 - (ii) any applicable rates set out in the following items (having regard to the Services undertaken and the Overtime Rates that apply for any given period during Out-of-Hours):
 - (A) Part A – item ER1.6;
 - (B) Part B – item WR1.9;
 - (C) Part C – item HR1.4; and
 - (D) Part D – item PR1.7.

“Unscheduled Services (Collection)” means the collection of samples for Unscheduled Services that the Service Provider is to carry out described as such in an Unscheduled Services Notice.

“Unscheduled Services (Testing and Reporting)” means the testing and reporting for the Unscheduled Services that the Service Provider is to carry out described as such in an Unscheduled Services Notice.

“Unscheduled Services Notice” means a notice given by Hunter Water (at its sole discretion) to the Service Provider to carry out Unscheduled Services, which may, depending on the scope of the Unscheduled Services required, include notice of:

- (a) the Samples to be taken (including the number and frequency);
- (b) the Tests to be carried out on those Samples;
- (c) the Sites from which the Samples are to be taken;
- (d) the time and date for commencement of, and the Turnaround Time for, and the completion of the carrying out of those Unscheduled Services;
- (e) any additional requirements that Hunter Water considers appropriate for the proper carrying out of those Unscheduled Services; and/or
- (f) the Rates at which the Service Provider is to be paid to carry out the Unscheduled Services or whether they are, pursuant to clause 4.3, to be paid at the Rates applicable to any Scheduled Services (in either case, by reference to the Schedule of Rates).

“Urgent Services” means any Unscheduled Services or Miscellaneous Services which Hunter Water from time-time-time directs the Service Provider to carry out with a priority over other works (including Services) and which the Service Provider must:

- (a) commence travelling to the Site within 1 hour of a direction to proceed;
- (b) complete within 24 hours from notice, unless directed otherwise; and
- (c) carry out during a period which is Out-of-Hours if so directed.

“Urgent Services Rates” means the Rates set out in this Contract for the Unscheduled Services or the Miscellaneous Services (as the case may be for each) and, where applicable, the Rates for Out-of-Hours Services.

“Wastewater Treatment Works” means a facility owned, used or operated by Hunter Water (or its agents or nominees) which is used to treat wastewater and other waste products.

2 Interpretation

In this Contract, unless the context indicates a contrary intention:

- (a) **(documents)** a reference to this Contract or another document includes any document which varies, supplements, replaces, assigns or novates this or that other document;
- (b) **(references)** a reference to a party, clause, paragraph, schedule or annexure is a reference to a party, clause, paragraph, schedule or annexure to or of this Contract;

- (c) (**headings**) clause headings and the table of contents are inserted for convenience only and do not affect interpretation of this Contract;
- (d) (**person**) a reference to a person includes a natural person, corporation, statutory corporation, partnership, the Crown and any other organisation or legal entity and their personal representatives, successors, substitutes (including persons taking by novation) and permitted assigns;
- (e) (**party**) a reference to a party to a document includes that party's personal representatives, executors, administrators, successors, substitutes (including persons taking by novation) and permitted assigns;
- (f) (**including**) including and includes are not words of limitation, and a list of examples is not limited to those items or to items of a similar kind;
- (g) (**corresponding meanings**) a word that is derived from a defined word has a corresponding meaning;
- (h) (**singular**) the singular includes the plural and vice-versa;
- (i) (**gender**) words importing one gender include all other genders;
- (j) (**rules of construction**) neither this Contract nor any part of it is to be construed against a party on the basis that the party or its lawyers were responsible for its drafting;
- (k) (**legislation**) a reference to any legislation or provision of legislation includes all amendments, consolidations or replacements and all regulations or instruments issued under it;
- (l) (**time and date**) a reference to a time or date in connection with the performance of an obligation by a party is a reference to the time and date in NSW, Australia, even if the obligation is to be performed elsewhere;
- (m) (**weekends and public holidays**) the time for giving any notice or providing any document or report to another party under this Contract shall, if it ends on a Saturday, Sunday or Statutory or Public Holiday, be deemed to end on the day next following which is not a Saturday, Sunday or Statutory or Public Holiday;
- (n) (**Australian currency**) a reference to dollars or \$ is to Australian currency;
- (o) (**month**) a reference to a month is a reference to a calendar month;
- (p) (**year**) a reference to a year is a reference to twelve consecutive calendar months;
- (q) (**GST**) words defined in the *A New Tax System (Goods and Services Tax) Act 1999* (Cth) have the same meaning in clauses about GST, and references to GST extend to any notional liability of any person for GST and to any amount which is treated as GST under the *A New Tax*

System (Goods and Services Tax) Act 1999 (Cth), and references to an input tax credit extend to any notional input tax credit to which any person is entitled;

- (r) (**GST group**) if a person is a member of a GST group, references to GST for which the person is liable and to input tax credits to which the person is entitled include GST for which the representative member of the GST group is liable and input tax credits to which the representative member is entitled; and
- (s) (**codes and standards**) any reference to specific standards, regulations, codes of practice, third party agreements or other documents or instruments shall be construed as including all amendments, supplements, re-drafts and substitutes thereto.

3 Services

3.1 Service Provider's Obligations

- (a) The Service Provider must carry out:
 - (i) the Scheduled Services (Collection), Scheduled Services (Testing and Reporting) and Scheduled Services (Other) in accordance with Schedule 6;
 - (ii) the Unscheduled Services in accordance with the terms of the Unscheduled Services Notice to which they relate;
 - (iii) the Miscellaneous Services in accordance with the terms of the Miscellaneous Services Notice to which they relate; and
 - (iv) any Testing under this Contract in accordance with the requirements of Schedule 8 (Testing Methods and Requirements), as is applicable to the Services carried out by the Service Provider.
- (b) Upon the completion of any Testing of Samples to be carried out under this Contract, the Service Provider will compile and submit to Hunter Water, at the times specified by Hunter Water, the Test Results.
- (c) Where any Unscheduled Services or Miscellaneous Services are Urgent Services:
 - (i) Hunter Water may instruct the commencement of those Urgent Services by whatever means it considers necessary in the circumstances (including by telephone);
 - (ii) the Service Provider will:
 - (A) commence the carrying out of those Unscheduled Services or Miscellaneous Services (as the case may be) within one hour of receiving the instruction under clause 3.1(c)(i); and
 - (B) complete the services within 24 hours, if so directed; and

- (iii) if the instruction under clause 3.1(c)(i) is not in writing, Hunter Water must confirm the details of that instruction, in writing, within 1 Business Day.

3.2 **Description of the Services**

Without limiting clause 3.1, the Service Provider acknowledges and agrees that, in carrying out the Services, it will be required to:

- (a) collect, transport, and Test the Samples;
- (b) maintain a database of Test Results;
- (c) submit the Test Results to Hunter Water;
- (d) collect other samples incidental to the carrying out of the Services as and when directed by Hunter Water (such as in relation to complaints by customers);
- (e) record and classify all dangerous goods, such as those related to environmental incidents and emergencies;
- (f) supply, maintain and operate auto-sampling machines and other equipment required for the taking of the Samples, carrying out the Testing, or as required to fulfil its obligations under this Contract;
- (g) to maintain and operate the nutrient analyser located at Boags Hill inlet for Balickera Canal on Williams River at Seaham as required by Hunter Water;
- (h) provide Technical Support to Hunter Water;
- (i) inspect existing trade waste facilities, tankers and deemed trade waste customers to assess compliance with Hunter Water Requirements.
- (j) liaise with the Treatment Operations Contractor to co-ordinate collection of samples and other relevant activities.
- (k) supply and distribute bottles for the taking of Samples; and
- (l) comply with all of the Reporting Requirements.

3.3 **General**

- (a) The Service Provider must immediately notify Hunter Water if it does not have adequate resources to provide the Services in accordance with the Contract.
- (b) The Service Provider must keep accurate records of, and make available to Hunter Water immediately upon request, the Sample Information.
- (c) Prior to leaving the Site after carrying out any **Unscheduled Services** or **Miscellaneous Services**, the Service Provider must contact Hunter Water's Representative to check whether the Services required by an **Unscheduled Services Notice** or a **Miscellaneous Services Notice** (as the case may be) have been properly carried out. However the Service Provider:

- (i) warrants that it does not rely upon; and
 - (ii) agrees that Hunter Water is not responsible for, any response by Hunter Water as to the proper or complete carrying out of those Services arising out of this clause 3.3(c).
- (d) Hunter Water is not responsible for maintaining any infrastructure at the Sites for the benefit of the Service Provider, including in relation to access to those Sites. Sites should be accessible via four wheel drive vehicle using best efforts. The Service Provider acknowledges that the Sites will be made available on an 'as is, where is' basis and it shall take due care to gain safe access to any Site for the carrying out of the Services. The Service Provider will notify Hunter Water if it becomes aware of, or identifies any potential safety hazards or issues whilst on Site that may impact the ability of the Service Provider to safely provide the Services. On receipt of that notice, Hunter Water will use its best endeavours to remedy any potential safety hazards or issues identified by the Service Provider, or suspend the Services pursuant to clause 8.1(a)(i).

4 Payment

4.1 Scheduled Services

In consideration for the proper performance of the Scheduled Services by the Service Provider, Hunter Water will pay the Service Provider the Fee, which is to be calculated in accordance with the:

- (a) Scheduled Rates (Collection) and the Scheduled Rates (Testing and Reporting), and the quantity of the Services completed, in the case of the Service Provider carrying out the Scheduled Services (Collection, Testing and Reporting), as is applicable to the relevant Services carried out; and
- (b) Scheduled Rates (Other) and the quantity of the Services completed in the case of the Service Provider carrying out the Scheduled Services (Other).

4.2 Unscheduled Services

In consideration for the proper performance of the Unscheduled Services by the Service Provider, Hunter Water will pay the Service Provider the Fee, which is to be calculated in accordance with the:

- (a) Unscheduled Rates (Collection) and the quantity of the services completed as directed in the case of the Service Provider carrying out the Unscheduled Services (Collection); and
- (b) Unscheduled Rates (Testing and Reporting) and the quantity of the services completed as directed in the case of the Service Provider carrying out the Unscheduled Services (Testing and Reporting).

4.3 Unscheduled Services at Scheduled Rates

If any **Unscheduled Services** can, in the opinion of Hunter Water (acting reasonably), be carried out by the Service Provider in conjunction with the **Scheduled Services** such that:

- (a) the Samples can be collected as part of a collection run for **Scheduled Services** without the need to travel more than an additional 5km; and
- (b) the Tests on any Samples relating to those **Unscheduled Services** can be carried out by the Service Provider during normal working hours (that is, not **Out-of-Hours**) in conjunction with the Testing of Samples for any other **Scheduled Services**,

then Hunter Water will:

- (c) notify the Service Provider of that opinion at the time of issuing the **Unscheduled Services Notice** to which those **Services** relate; and
- (d) upon completion of the proper carrying out of those **Unscheduled Services**, only be obliged to make payment to the Service Provider of a Fee calculated in accordance with the relevant Rate applicable for **Scheduled Services** (as if those **Unscheduled Services** were **Scheduled Services**).

4.4 **Miscellaneous Services**

Hunter Water will pay the **Miscellaneous Services Rates** to the Service Provider in consideration for the proper performance of the **Miscellaneous Services** by the Service Provider.

4.5 **Urgent Services**

Where the Service Provider is requested, whether by an **Unscheduled Services Notice** or a **Miscellaneous Services Notice**, to carry out **Urgent Services**, the Service Provider will be entitled to be paid a Fee (which shall replace and not be in addition to any other Fee payable for those **Services**), in consideration for the Service Provider properly carrying out those **Services**, calculated in accordance with the **Urgent Services Rates**.

4.6 **Out-of-hours Services**

- (a) Subject to clause 4.6(b), the Service Provider will be entitled to be paid the **Overtime Rates** for the proper performance of any **Unscheduled Services** or **Miscellaneous Services** that the Service Provider is directed to carry out during any period that is **Out-of-Hours**.
- (b) This clause 4.6 applies only where:
 - (i) an **Unscheduled Services Notices**;
 - (ii) a **Miscellaneous Services Notice**; or
 - (iii) a direction to carry out **Services** which are **Urgent Services**, expressly requests that the Service Provider carry out the **Services** to which the relevant notice relates as **Out-of-Hours** (or states that any part of those **Services** is to be carried out as **Out-of-Hours**).

4.7 Reporting Requirements

The Service Provider will be entitled to be paid a Fee for the proper carrying out of its Reporting Requirements, which is to be calculated pursuant to the Reporting Rate. The payment of such Fee shall be the whole of the amount due and payable by Hunter Water in consideration for the Service Provider carrying out the Reporting Requirements.

4.8 Inclusions

Any payment to be made by Hunter Water in consideration for the Service Provider carrying out their obligations under this Contract includes payment for anything required to be done by the Service Provider that is incidental to, is a consequence of, or is otherwise necessary for the carrying out of those obligations.

4.9 Monthly, per test, and per hour Rates

Where a Rate in the Schedule of Rates is:

- (a) expressed as an hourly rate, the Fee payable by Hunter Water under this Contract for the carrying out of the Services relating to that Rate is to be calculated by reference to the hours reasonably and properly spent by the Service Provider carrying out those Services at that hourly rate;
- (b) expressed on a "per test" basis, the only Fee payable by Hunter Water under this Contract for the carrying out of the Services relating to that rate is to be calculated by reference to the quantity of tests provided by the Service Provider at the rates described for each test; and
- (c) in all other cases, the Rate is deemed to be an annual amount for which the Service Provider will be entitled to issue a Tax Invoice monthly for one twelfth of that annual amount.

4.10 Annual Rates Adjustment

- (a) The Rates contained in the Schedule of Rates are fixed for a period of 12 months from the Commencement Date (**Fixed Rate Period**).
- (b) After the Fixed Rate Period, the Schedule of Rates will be adjusted in accordance with clauses 4.10(c)-4.10(g) on each 12 month anniversary of the Commencement Date (**Review Date**) while this Contract remains in effect.
- (c) On each Review Date, the Service Provider must advise Hunter Water of the Adjustment Rate and provide Hunter Water with records of all calculations used to reach the Adjustment Rate.
- (d) Within 2 Business Days after the Service Provider's compliance with clause 4.10(c), Hunter Water will give notice to the Service Provider that it either rejects (on the basis of arithmetic error) or approves the calculation of the Adjustment Rate.

- (e) If Hunter Water rejects the Adjustment Rate for arithmetic error under clause 4.10(d), the Service Provider must, before the next Business Day, re-calculate the Adjustment Rate under clause 4.10(c) and re-submit to Hunter Water for approval.
- (f) If Hunter Water approves the Adjustment Rate under clause 4.10(d), each of the Rates contained in the Schedule of Rates will be multiplied by the Adjustment Ratio (**Adjusted Schedule of Rates**).
- (g) The Adjusted Schedule of Rates will be effective from the Review Date and any Fee payable with respect to any Rates will be thereafter calculated in accordance with the Adjusted Schedule of Rates, but shall in no other way affect the rights or obligations of either party under this Contract.
- (h) Notwithstanding this clause, the Rates will not decrease below the original fixed rate amount in the first Fixed Rate Period having regard to indexation.

5 Performance Management

5.1 Acknowledgement

- (a) Hunter Water and the Service Provider acknowledge that the value to Hunter Water from performance of the Services varies depending upon how well the Services are performed.
- (b) To maximise the value to Hunter Water from performance of the Services, Hunter Water has developed the Performance Management Framework and a system of Service Standard Adjustments that may, in accordance with this Contract, become payable by the Service Provider to Hunter Water.
- (c) The Service Provider acknowledges that it has taken the Performance Management Framework and the system of Service Standard Adjustments into account in the Fees and the Rates which the Service Provider has agreed to for the Services which it must carry out under this Contract.

5.2 Meetings and Reporting

- (a) The Service Provider Representative and the Hunter Water Representative must:
 - (i) meet monthly to discuss and review the Service Provider's performance and process improvement; and
 - (ii) meet at least once a year to discuss and review Contract performance.
- (b) Hunter Water will, at its sole discretion, set meeting dates and issue a meeting agenda for any meetings held in accordance with this clause 5.

- (c) The Service Provider Representative must attend meetings relevant to the Services as requested by Hunter Water's Representative.
- (d) No later than:
 - (i) 5 Business Days prior to the meeting to be held under 5.2(a)(i), the Service Provider must provide to Hunter Water its monthly report under clause 5.3(b); and
 - (ii) 1 Business Day prior to the meeting to be held under 5.2(a)(i), Hunter Water must provide to the Service Provider its report under clause 5.3(c).
- (e) The Service Provider must comply with the Level of Reporting requirements set out in Schedule 8.

5.3 Performance Review and Reporting

- (a) Hunter Water will monitor performance of the Service Provider and the Service Provider Personnel in accordance with the Key Performance Indicators (**KPIs**) set out in Schedule 4.
- (b) The Service Provider must provide a monthly report addressing the matters listed in Schedule 5, and including a table in the form of schedule 4 which sets out the Service Provider's performance against the KPIs.
- (c) On receipt of the report required under clause 5.3(b), Hunter Water will on a basis and within a timeframe as required by Hunter Water, monitor and assess the Service Provider's performance of the Services against the KPIs detailed in Schedule 4, and issue to the Service Provider a statement for the relevant month detailing the outcomes of Hunter Water's monitoring and assessment of the Service Provider's performance of the Services against the KPIs in Schedule 4 and whether any Service Standard Adjustments are to be paid by the Service Provider. The monitoring and assessment may include Hunter Water assessing information held by Hunter Water or third parties which Hunter Water deems is relevant to monitor and assess the Service Provider's performance of the Services against the KPIs detailed in Schedule 4.

5.4 Service Standard Adjustments

- (a) The Service Provider's entitlement to the payment of the Fees each month (at the Rates under Schedule 7 or otherwise in accordance with this Contract) is subject to the Service Provider being obliged to pay to Hunter Water a monthly Service Standard Adjustment if the Service Provider does not meet the Target for a KPI in accordance with Schedule 4 and the report issued by Hunter Water under clause 5.3(c) requires the Service Provider to pay a Service Standard Adjustment.
- (b) Payment of any Service Standard Adjustment by the Service Provider to Hunter Water shall occur as a set-off from the next or subsequent monthly payments of the Fees due from Hunter Water to the Service

Provider, but if no further payment is to be made by Hunter Water to the Service Provider under this Contract, the Service Provider must, within 20 Business Days of the report issued by Hunter Water under clause 5.3(c), pay the amount of the Service Standard Adjustment as a debt due to Hunter Water.

- (c) If the statement issued by Hunter Water under clause 5.3(c) assesses that the Service Provider is to pay a Service Standard Adjustment then such report must specify in reasonable detail the cause and calculation of the Service Standard Adjustment having regard to the criteria referred to in Schedule 4.
- (d) On or before 30 January 2015, the Service Provider must:
 - (i) review and audit the Plant and Equipment to determine whether or not the Plant and Equipment listed in Schedule 3 of the Business Sale Agreement is fit for the purpose of performing the requirements of this Contract; and
 - (ii) give the Hunter Water written notice confirming whether or not the Plant and Equipment is fit for the purpose of performing the requirements of this Contract, including detailed reasons for the Service Provider's conclusions (the **P&E Notice**).
- (e) If the Service Provider issues a P&E Notice, then Hunter Water and the Service Provider must meet within 15 Business Days of Hunter Water's receipt of the P&E Notice to discuss in good faith the impact of the P&E Notice on performance of the Contract.
- (f) If the Service Provider does not meet a Target for a KPI in accordance with Schedule 4 in the period up to two (2) months after the Commencement Date and the Service Provider demonstrates to the satisfaction of Hunter Water, acting reasonably, that the failure to meet that Target for a KPI is directly due to issues raised in the P&E Notice then Clauses 5.4(a) to 5.4(c) will not apply to this failure.
- (g) For the avoidance of doubt the relief described in Clause 5.4(e) is the only relief available to the Service Provider in respect of a P&E Notice.

5.5 **Effect of Service Standard Adjustment**

- (a)
- (b) The payment by the Service Provider of a monthly Service Standard Adjustment to Hunter Water and the monthly cap detailed in clause 5.5(a) do not in any way limit Hunter Water's right to recover general damages at law for any Claim, expense, loss, damage, cost, charge or

other liability suffered or incurred by Hunter Water in connection with, arising out of or as a consequence of any breach of this Contract or any negligent act or negligent omission of the Service Provider.

- (c) If Hunter Water recovers from the Service Provider general damages at law for any Claim, expense, loss, damage, cost, charge or other liability suffered or incurred by Hunter Water in connection with, arising out of or as a consequence of any breach of this Contract or any negligent act or negligent omission of the Service Provider (**General Damages**) then the Service Provider will be relieved from paying to Hunter Water an amount of the General Damages equivalent to the amount of the Service Standard Adjustment that is directly related to the breach of this Contract or negligent act or negligent omission of the Service Provider for which the General Damages recoverable by Hunter Water relate.
- (d) The Service Provider acknowledges and agrees that any Service Standard Adjustment paid by the Service Provider to Hunter Water:
 - (i) will be triggered by, and relates to, the number of times that the relevant KPI is not complied with;
 - (ii) does not relate in any way to the outcome or consequences of the Service Provider's non-compliance with the underlying requirements of this Contract; and
 - (iii) does not preclude Hunter Water from Claiming for any breach of the quality of the Services provided by the Service Provider.
- (e) If:
 - (i) Hunter Water's right to apply a Service Standard Adjustment is held to be unenforceable for any reason; or
 - (ii) the monthly cap detailed in clause 5.5(a) does in any way limit Hunter Water's right to recover general damages at law for any Claim, expense, loss, damage, cost, charge or other liability suffered or incurred by Hunter Water in connection with, arising out of or as a consequence of any breach of this Contract or any negligent act or negligent omission of the Service Provider,

then the Service Provider indemnifies Hunter Water for any Claim, expense, loss, damage, cost, charge or other liability suffered or incurred by Hunter Water in connection with, arising out of or as a consequence of any breach of this Contract or any negligent act or negligent omission of the Service Provider.

5.6 Special circumstances

- (a) If the Service Provider considers that there exist special circumstances (including the occurrence of a Force Majeure Event) which should be taken into account in the assessment of any Service Standard Adjustment, it may give notice to Hunter Water of those special circumstances in any monthly report provided by it under clause 5.3(c)

and set out what, if any, effect those special circumstances had on their ability to meet the KPI's or their obligations under this clause 5.

- (b) Hunter Water may, in its sole and absolute discretion and without any obligation to do so:
 - (i) take into account any special circumstances notified under clause 5.6(a) and adjust the Service Standard Adjustment that would have otherwise been applicable during that reporting period; or
 - (ii) waive, whether in response to special circumstances notified under clause 5.6(a) or of its own volition:
 - (A) the Service Standard Adjustment (or any part thereof) which would have otherwise been payable by the Service Provider; or
 - (B) the requirement that the Service Provider meet all or some of the KPI's set out in Schedule 4,
- during any given month (and shall not act as an ongoing waiver) by giving notice, in writing, to the Service Provider to that effect.

provided that, where and to the extent that a Force Majeure Event prevents or limits the ability of the Service Provider to meet its KPI's and/or the Service Provider's other obligations under this clause 5, then Hunter Water shall be obliged to adjust and/or waive the Service Standard Adjustments and waive compliance with the KPI's set out in Schedule 4 (as applicable) in order to reflect the impact of the Force Majeure Event on the Service Provider's ability to deliver the relevant Services.

6 Quality Assurance

6.1 General

- (a) Within 20 Business Days following the date of this Contract, the Service Provider must submit to Hunter Water:
 - (i) an audit schedule for Service Provider internal audits to ensure compliance with the Service Provider's certification; and
 - (ii) an Environmental Management Plan, WHS Management Plan, and Quality Management Plan in accordance with clauses 23 and 24 (as applies) of the General Conditions.
- (b) The Service Provider must provide to Hunter Water periodically (but no less than 4 times per calendar year) audited evidence which demonstrates that its quality system and the quality management plan are fully documented and substantially implemented.
- (c) Audits shall be carried out by a third party accreditation body registered with the Joint Accreditation System of Australia and New Zealand. The Service Provider must also allow for audits conducted by Hunter Water

in regard to sampling, analysis methods, safety, quality assurance and quality control processes.

- (d) The Service Provider must carry out repeat works where results are inconsistent with historical or normal limits and/or when otherwise requested by the Hunter Water's Representative, and must deliver the results of those tests or works as may be specified by Hunter Water. Payment or non-payment for any repeat analysis will be determined by Hunter Water's Representative acting reasonably and in accordance with industry standards and (where applicable) made in accordance with the Schedule of Rates.

6.2 Third Party Testing

- (a) Hunter Water may for audit and compliance reasons only, at any time and in its sole discretion, direct that the Service Provider to take additional samples to facilitate Third Party Testing.
- (b) Hunter Water will reimburse the Service Provider for the actual cost to take additional samples as detailed in a separate Tax Invoice (as defined in the General Conditions) covering the actual cost of additional sampling

7 Extension of Term

- (a) Hunter Water may, at its sole discretion but not less than 30 days prior to the expiry of the Initial Term, give a notice to the Service Provider stating that the Contract is to be extended by a further period of 12 months from the date that the Initial Term would have otherwise expired (**Extended Term**).
- (b) If the Contract is extended under clause 7(a), Hunter Water may, at its sole discretion but not less than 90 days prior to the expiry of the Extended Term, give a notice to the Service Provider stating that the Contract is to be extended by a further period of 12 months from the date that the Extended Term would have otherwise expired (**Second Extended Term**).
- (c) For clarity, if Hunter Water elects:
 - (i) not to exercise its rights under this clause 7, the Term of this Contract will be five years;
 - (ii) to exercise its rights under clause 7(a), but not under 7(b), the Term of this Contract will be six years; and
 - (iii) to exercise its rights under both clauses 7(a) and 7(b), the Term of this Contract will be seven years.

8 Suspension and Adjustment of Scope

8.1 Suspension of Services

- (a) Hunter Water may, acting reasonably, give notice to the Service Provider that any part of the Scheduled or non-scheduled Services are

to be suspended (**Suspension**) with immediate effect and for any duration (**Suspension Notice**) if the following circumstances:

- (i) for the protection or safety of any person or property;
 - (ii) where the Service Provider is in breach of this Contract or has committed a negligent or wilful act or omission in the performance of the Services; and
 - (iii) where Hunter Water no longer requires test results due to the permanent or temporary closure of all or part of a Site or a change in Licence Requirements.
- (b) The Suspension Notice must set out the start date and the end date (which may be indefinite) between which dates the Suspension of the Services (or any service comprising the Services) is to remain in effect (**Suspension Period**).
- (c) Upon receiving the Suspension Notice, the Service Provider will immediately suspend the carrying out of any Services identified in the Suspension Notice and will continue to suspend the carrying out of any Services for the duration of the Suspension Period.
- (d) Hunter Water will not be liable to make payment to the Service Provider for any Services carried out by the Service Provider the subject of a Suspension Notice during a Suspension Period.
- (e) No later than 5 Business Days prior to the end of the Suspension Period or the Extended Suspension Period (as the case may be), or at any time if the Suspension is indefinite, Hunter Water may give notice to the Service Provider either:
- (i) extending the Suspension Period for any amount of time (**Extended Suspension Period**); or
 - (ii) confirming that the Suspension is to cease on the end date of the Suspension Period (or, if the Suspension is indefinite, on any date not less than 5 Business Days after giving the notice); and
 - (iii) if notice is given under clause 8.1(e)(i), then clause 8.1(d) will continue to apply throughout the Extended Suspension Period.

8.2 Adjustment to scope of Scheduled Services

- (a) Hunter Water may, at any time and in its sole discretion, give notice to the Service Provider that:
- (i) Services which are not Scheduled Services are to be deemed Scheduled Services; or
 - (ii) Services which are Scheduled Services are no longer be defined as Scheduled Services,
- (the **Scope Change Notice**, in each case).

- (b) On and from the date of the Scope Change Notice:
 - (i) Schedule 6 and the Schedule of Rates will be deemed to have been amended in accordance with the Scope Change Notice; and
 - (ii) the Rates payable by Hunter Water for Service Provider carrying out any such Services described in the Scope Change Notice will vary accordingly.
- (c) The Scope Change Notice will include the following information, where relevant (having regard to the Services set out in the Scope Change Notice):
 - (i) the Site from which collection of Samples is to be carried out;
 - (ii) whether the Samples are to be collected by the Service Provider or the Treatment Operations Contractor;
 - (iii) the Tests to be carried out by the Service Provider on those Samples; and/or
 - (iv) the Turnaround Time for the relevant Services.

8.3 Valuation of change in scope

The valuation of any change to the scope of the Scheduled Services under clause 8.2, shall, unless otherwise agreed by Hunter Water and the Service Provider, be determined as follows:

- (a) the valuation shall be determined in accordance with the Rates specified the Schedule of Rates where and to the extent that such Rates are directly applicable to the specific Scheduled Services in question;
- (b) where and to the extent that the Rates specified in the Schedule of Rates are relevant, but not directly applicable, to the specific Scheduled Services in question, appropriate fair and reasonable Rates shall (after due consultation with the Service Provider) be established by Hunter Water having regard to the Rates set out in the Schedule of Rates; and
- (c) where neither clause 8.1(a) nor clause 8.1(b) above applies, the amount of the adjustment to the Rate at which the change to the scope of those Scheduled Services is to be calculated shall be the actual cost reasonably and properly incurred by the Service Provider in relation to the specific Scheduled Services in question.

9 Subcontracting

9.1 General

- (a) The Service Provider is responsible for ensuring the suitability of all subcontractors (if consented to under clause 41 of the General Conditions) in the provision of the Services, and for ensuring that any work undertaken by any subcontractor meets the requirements of this Contract.

- (b) The Service Provider may develop methods internally and insource any subcontracted analytical services listed in this Agreement, with the timely approval of Hunter Water in writing, with such approval not being unreasonably withheld, upon achieving equivalent LORs, NATA accreditation and service levels.

9.2 Request by the Service Provider to subcontract

- (a) Without limiting clause 9.1 or clause 41 of the General Conditions, if the Service Provider considers that it may need to subcontract part of the Services (for example, due to workload or resourcing constraints), then it may request that Hunter Water approve the subcontracting of those Services to a suitably qualified subcontractor and Hunter Water may, in its sole discretion, approve such a request, and direct that the Service Provider subcontract the Services identified therein to that subcontractor.
- (b) If, pursuant to clause 9.2(a), the Service Provider subcontracts any part of its obligations under this Contract, it:
 - (i) is liable to Hunter Water for the acts and omissions of its subcontractors as if they were the acts and omissions of the Service Provider;
 - (ii) must ensure that acts and omissions of its subcontractors are covered by the insurances which the Service Provider is required to obtain and maintain under this Contract; and
 - (iii) must be entitled to immediately terminate the engagement of its subcontractors if this Contract is terminated.
- (c) Any request by the Service Provider under clause 9.2(a) must also include details of:
 - (i) the Services proposed to be subcontracted; and
 - (ii) details of the subcontractor to which they propose to subcontract those Services.
- (d) Any approval given by Hunter Water to the Service Provider in relation to subcontracting does not discharge or release the Service Provider from any liability for the performance of its obligations under this Contract.

9.3 Payment for Subcontracted Services

- (a) For those Services properly carried out by a subcontractor engaged under this clause 9, the Service Provider will be entitled to be paid as follows. If paragraph 1.3 of Part E in Schedule 7:
 - (i) provides a Rate for the Services carried out by that subcontractor, then the Fee will be calculated on the basis of that Rate; or

- (ii) does not provide a Rate for the Services carried out by that subcontractor, then the Fee will be calculated as if those Services had been carried out by the Service Provider under this Contract; or
- (iii) provides a Rate for some but not all of the Services carried out by that subcontractor, then:
 - (A) the Fee for the Services carried out by the subcontractor for which a Rate is provided will be calculated on the basis of that Rate; and
 - (B) the Fee for the remainder of the Services carried out will be calculated as if those Services had been carried out by the Service Provider under this Contract.
- (b) The rates detailed in the Pricebook at paragraph 1.3 of Part E in Schedule 7 have been prepared based on quoted prices from third party laboratories capable of carrying out tests which the Service Provider cannot carry out. The Service Provider is to ensure that these rates quoted in the Pricebook remain in keeping with market rates. When directed by Hunter Water to seek quotes from third party laboratories for the Pricebook, the Service Provider must engage subcontract laboratories at market prices and update the Pricebook accordingly.

9.4 Indemnity

The Service Provider agrees to indemnify Hunter Water from any and all claims (including Claims) made against Hunter Water by any subcontractor arising out of or as a consequence of the engagement by the Service Provider of any subcontractor to provide any Services (or part of any Services) under this clause 9.

10 Employment and Personnel

10.1 Service Provider Personnel

- (a) Service Provider Personnel are employees of the Service Provider and are subject to the overall control and direction of the Service Provider. Where Service Provider Personnel have been directed by the Service Provider to attend the Site, the Service Provider Personnel may be subject to the day-to-day guidance and instruction of Hunter Water. This does not remove the right of the Service Provider to exercise overall direction and control in relation to the Service Provider Personnel.
- (b) The Service Provider has no authority to make any offer, whether to Service Provider Personnel or any other person, of employment with Hunter Water.
- (c) In the event of any industrial dispute involving the Service Provider, Service Provider Personnel or other contractors and sub-contractors of the Service Provider at the Site, the Service Provider must continue to provide the Services.

- (d) The Service Provider undertakes that, during the Term, except with the prior written consent of Hunter Water, it will not directly or indirectly approach, solicit, canvass, induce or encourage:
 - (i) any employee of Hunter Water; or
 - (ii) any other contractor engaged by Hunter Water,to leave the employment of Hunter Water or the third party contractor (whichever is relevant).
- (e) Clause 10.1(d) does not prevent the Service Provider from hiring any person:
 - (i) who responds in good faith to any general solicitation, employee search or advertisement; or
 - (ii) who contacts the Service Provider on their own initiative without any direct or indirect solicitation or encouragement from the Service Provider, other than any general solicitation or advertisement.
- (f) Any Service Provider employee, contractor, agent or any person engaged by the Service Provider in contravention of clause 9.1(d) of this will not be permitted access to the Site for a period of not less than three (3) months from the date of Site suspension of that person.

10.2 Induction

Any member of the Service Provider's staff who wishes to carry out the Services (or otherwise where required by law), must be inducted into the Sites at which they are to carry out those works.

10.3 Industrial relations expenses

Hunter Water will not be liable for any costs incurred by the Service Provider in relation to employment or industrial relations expenses, including:

- (a) costs in relation to Service Provider Personnel employment awards, or Australian workplace agreements or interim transitional employment agreements, or Service Provider Personnel wages, allowances and statutory levies;
- (b) leave loadings, crib time, lunch time breaks, smoko breaks;
- (c) long service leave entitlements, industrial relations;
- (d) worker's compensation insurance premiums, superannuation and payroll tax;
- (e) Service Provider Personnel training, whether onsite or offsite; and
- (f) the Service Provider Personnel occupational work wear and safety equipment.

11 Changes to Sites

11.1 Closure of a Site

Where there is a permanent or temporary closure of a Site, Hunter Water will provide the Service Provider with 30 days written notification of the closure or, where Hunter Water does not have knowledge of the permanent or temporary closure 30 days before the closure, as soon as practicable upon becoming aware of the closure.

11.2 Changes to Sites and Licence Requirements

- (a) Hunter Water must notify the Service Provider:
 - (i) immediately if it sells, leases, sub-leases, or otherwise transfers control of a Site.
 - (ii) within a reasonable time if it becomes aware of any change to the Licence Requirements.

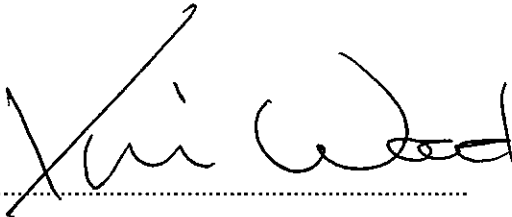
Executed as an agreement

Executed by **Kimley John Wood** as)
authorised representative for **Hunter**)
Water Corporation ABN 46 228 513 446)
who warrants that they are duly authorised)
to execute this agreement on behalf of)
Hunter Water Corporation in the)
presence of:)



.....

Signature of Witness



.....

Signature of Authorised Representative

PETER KEMBREY

.....

Print name of Witness

Executed by Australian Laboratory)
Services Pty Ltd ACN 009 936 029 in)
accordance with section 127 of the)
Corporations Act 2001 (Cth) by:)

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Signature of Director

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Signature of Director/Secretary

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Print name of Director

.....

Print name of Director/Secretary

Schedule 1 General Conditions

1 Definitions and interpretation

1.1 Definitions

In these General Conditions and the Contract the following terms have the meanings set out below:

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

Claim means any claim, notice, demand, debt, account, lien, liability, action, proceedings or suit under, arising out of, or in any way in connection with:

- (a) this Contract;
- (b) the Services;
- (c) either party's conduct under this Contract before this Contract came into force,

whether at law (including for breach of contract) or in equity (including for restitution), under statute, or in tort (including by or against any or all of Hunter Water or its Personnel by Personnel of the Service Provider or any third party).

Hunter Water IP means the Intellectual Property Rights of Hunter Water which:

- (a) are in existence at the date of the Contract; or
- (b) come into existence after the date of the Contract otherwise that in connection with the Contract.

Confidential Information means the Contract, and any information (in whatever form) or Documentation of a confidential nature (or which the Service Provider or its Personnel ought reasonably to know to be confidential) which relates to the business, affairs or activities of Hunter Water (including in relation to the Services) and which:

- (a) is disclosed to the Service Provider or its Personnel by or on behalf of Hunter Water;
- (b) is generated by the Service Provider or its Personnel in performing the Services; or
- (c) otherwise comes to the knowledge of the Service Provider or its Personnel.

Contract IP means all Intellectual Property Rights (present or future) created, discovered or coming into existence as a result of, for the purpose of, or in connection with the provision of the Services or the Contract (including all Intellectual Property Rights in anything developed by the Service Provider in providing the Services and any Intellectual Property Rights in the Documentation provided by Hunter Water to the Service Provider).

Corporations Act means the *Corporations Act 2001* (Cth).

Deducted Amount is defined in Clause 15.2(a).

Dispute is defined in Clause 32.1

Dispute Notice is defined in Clause 32.1

Dispute Representative is defined in Clause 32.2(a)

Documentation includes plans, designs, drawings, calculations, engineering information, data, specifications,

sketches, notes, samples, reports, maps, accounts, operating manuals, training materials and any other material specified in the Contract (and whether embodied in tangible or electronic form).

Facilities means any accommodation, place of work and, transportation, including the treatment facilities and laboratory.

Government Agency means any government or governmental, semi-governmental, administrative, municipal, fiscal or judicial body, department, commission, authority, tribunal, agency or entity.

Intellectual Property Rights means all industrial and intellectual property rights whether protectable by statute, at common law or in equity, including all copyright and similar rights which may subsist or may hereafter subsist in works or any subject matter, rights in relation to inventions (including all patents and patent applications), trade secrets and know-how, rights in relation to designs (whether or not registrable), rights in relation to registered or unregistered trademarks, circuit layout designs and rights in relation to circuit layouts, but excludes non-assignable moral rights and similar non-assignable personal rights of authors and producers.

Liabilities means damages, Claims, losses, liabilities, costs and expenses of any kind.

Materials is defined in Clause 36.5(a)(i).

Notice is defined in Clause 37.1.

Party means a party to the Contract.

Personal Data means information relating to identifiable individuals and includes (but is not limited to) all information relating to individuals that is protected by privacy laws or data protection laws in the country where:

- (a) the individuals are located; or
- (b) the data relating to those individuals is processed.

Personnel means:

- (a) in relation to the Service Provider, any of its employees, Sub-contractors (including Sub-contractors' Personnel), agents and representatives involved either directly or indirectly in the performance of the Services;
- (b) in relation to Hunter Water, any of its past or present officers, employees, agents or representatives; and
- (c) in relation to a Sub-contractor, any of its employees, agents or representatives involved either directly or indirectly in the performance of the Services.

Quality Management Plan means the plan submitted in accordance within clause 24.

Related Body Corporate has the meaning given in the Corporations Act.

Service Provider IP means the Service Provider's Intellectual Property Rights which:

- (a) are in existence at the date of the Contract; or

- (b) come into existence after the date of the Contract otherwise than in connection with the Contract.

Services Timetable means any period within which the Service Provider is to provide Services under this Contract or for the progress of the Services.

Specifications means the specifications for the Services and any modification of those specifications as directed by Hunter Water Representative in accordance with the Contract.

Statutory Requirement means:

- (a) Acts, ordinances, regulations, by-laws, orders, awards and proclamations of the jurisdiction where the Services or any particular part thereof are being carried out;
- (b) certificates, licences, consents, permits, approvals and requirements of organisations having jurisdiction in connection with the carrying out of a Services; and
- (c) fees and charges payable in connection with the foregoing.

Subcontractor means any person engaged by the Service Provider to perform all or any part of the Services on behalf of the Service Provider.

Tax or Taxes means, unless the contrary intention is expressed, any and all taxes, including, without limitation excise, stamp, documentary, customs, import/export, payroll, personal, property, real property, interest equalisation, business, occupation, turnover, income, corporation, capital, profits, gains, gross receipts, or other taxes, fees, withholdings, imposts, levies, duties or other charges of any nature whatsoever or whensoever, together with any penalties, fines or interest thereon or similar additions thereto, imposed, levied or assessed by any Government Agency or otherwise payable.

Tax Invoice means an invoice or other document, including without limit a credit note or debit note, in a form that is valid under the applicable law of the jurisdiction in which a liability to pay indirect transaction Taxes is imposed, claimed, levied or assessed, which must be held by a person for that person to be able to claim Input Tax Credits.

1.2 Interpretation

Headings are for convenience only and do not affect interpretation. The following rules apply unless the context requires otherwise.

- (a) The singular includes the plural and conversely.
- (b) A gender includes all genders.
- (c) If a word or phrase is defined, its other grammatical forms have a corresponding meaning.
- (d) The meaning of general words is not limited by specific examples introduced by including or for example.
- (e) A reference to a person, corporation, trust, partnership, unincorporated body or other entity includes any of them.
- (f) A reference to a person or a Party includes a reference to that person's or Party's executors, administrators, successors, substitutes (including persons taking by way of novation), assigns (in the case of a person) and permitted assigns (in the case of a Party).

- (g) A reference to a Clause or Annexure is a reference to a clause of, or annexure to, these General Conditions.
- (h) A reference to a Schedule is a reference to a schedule to the Contract.
- (i) A reference to an Act or legislation, or to a provision of an Act or legislation, includes a modification or re-enactment of it, a legislative provision substituted for it and a regulation or statutory instrument issued under it.
- (j) A reference to use in the context of dealing with Intellectual Property Rights includes using, exploiting, copying, adapting, creating derivative works, developing, modifying, disclosing and communicating.
- (k) A reference to conduct includes, without limitation, an omission, statement or undertaking, whether or not in writing.
- (l) Where it is provided that the Service Provider will perform any act or provide anything at its cost, this means the Service Provider will not be entitled to any additional compensation for such act or thing and the cost will be deemed to be included in the Fee (or the Rates used to calculate that Fee).

2 Evidence of Contract and precedence of documents

2.1 Not used.

2.2 Entire agreement

- (a) The Contract contains the entire agreement between Hunter Water and the Service Provider with respect to its subject matter and supersedes all prior communications and negotiations between Hunter Water and the Service Provider in this regard, unless those communications expressly form part of the Contract.
- (a) If at any time in relation to the Services, the Service Provider provides, refers to, submits or otherwise uses terms and conditions other than those included in the Contract (including as part of the submission of an Invoice) such terms and conditions will not form part of, or be incorporated into, the Contract. Where items supplied under the Contract are accompanied by the Service Provider's documentation, acceptance of the item/s or documentation by Hunter Water is limited to an acknowledgement of receipt or delivery of the item/s so supplied and not of the Service Provider's documentation.
- (b) If during the Term Hunter Water issues any other document (including to a Tax Invoice or other item required to be provided under this Contract), which attaches a separate set of terms and conditions other than those incorporated in the Contract, those terms and conditions will not form part of, or be incorporated into, the Contract.

2.3 Amendment to be in writing

No amendment or variation of the Contract is valid or binding on a Party unless made in writing and signed by the Service Provider and Hunter Water.

3 Service Provider's representations

The Service Provider represents to Hunter Water that, as at the date of the Contract:

- (a) it has the corporate power to enter into, and to perform all of its obligations under, the Contract;
- (a) it is qualified and has the necessary experience, skill and resources to perform the Services;
- (b) it is properly licensed, equipped, organised and financed to perform all its obligations under the Contract and that there are no contracts in existence that would affect the Service Provider's ability to perform its obligations under the Contract in a timely and satisfactory manner;
- (c) the Contract has been validly executed by the Service Provider and constitutes valid and binding obligations of the Service Provider enforceable according to its terms; and
- (d) the execution of the Contract and the performance of the Services do not and will not result in the breach of:
 - (i) the terms of, or constitute a default under, any agreement or undertaking (whether verbal or written) or any instrument to which the Service Provider may be affected or bound; or
 - (ii) any order, writ, rule, regulation, injunction or decree of any court or Government Agency or any legislation applicable to the Service Provider by which the Service Provider may be bound.

4 Service Provider's investigations

4.1 Investigations regarding Contract

Hunter Water will provide the Service Provider prior to the provision of the Services with every opportunity for inspecting and testing the Site or Sites and every assistance in relation to the investigation of all local and other conditions affecting the performance of the Contract, and the provision of the Services, including in relation to meteorological, geological, labour, accommodation, fuel, power, water, telecommunications and transport conditions.

4.2 No representation by Hunter Water

Hunter Water has endeavoured and will continue to endeavour (without being obliged to do so) to ensure the accuracy of any information provided to, or obtained by, the Service Provider or its Personnel from Hunter Water. However, Hunter Water does not warrant or guarantee the accuracy, sufficiency or otherwise of such information and disclaims all responsibility for it. The Parties acknowledge that any information so provided is for the convenience of the Service Provider only and does not form part of the Contract unless otherwise expressly agreed by the Parties in writing.

4.3 Service Provider satisfied with accuracy

The Service Provider agrees that it has satisfied itself as to the accuracy of any information given to it at any time prior to the execution of the Contract and accepts full responsibility for any use by it of such information including, without limitation, responsibility for any conclusions drawn by it from such information.

4.4 No relief

Failure by the Service Provider to do all or any of the things it is deemed to have done under this Clause 4 will not relieve the Service Provider from any of its obligations under the Contract.

4.5 Hunter Water not liable

Hunter Water is not liable for any Liabilities incurred or suffered by the Service Provider as a result of its reliance in any way upon any information given to it by Hunter Water.

5 Performance by Service Provider

5.1 Performance of Services

The Service Provider must perform the Services in accordance with the terms of the Contract and in consideration of the payment of the Fee by Hunter Water.

6 Variations

The Hunter Water Representative may vary the Services as set out in clause 8 of the Contract. No variation will vitiate the Contract.

7 Service Provider's warranties

7.1 Service Provider's warranties

In addition to the warranties contained in Clauses 35.4, and 36.1, the Service Provider warrants that:

- (a) it will provide the Services with due diligence and competence;
- (b) all of the Services will be provided in an efficient manner in accordance with all applicable legislation and laws or regulations;
- (c) anything done by it under this Contract (including carrying out the Services and conducting Testing) will be done in a manner that is fit for purpose;
- (d) all of the Services will be of the highest standard and in accordance with this Contract as set out in Schedule 3- Technical Requirements;
- (e) in relation to the performance of the Services:
 - (i) the Service Provider and its Personnel will exercise the standards of diligence, skill and care normally exercised by a similarly qualified and competent person in the performance of comparable work; and
 - (ii) any equipment used on-Site by the Service Provider will be in safe working condition, will comply with all legislation which is applicable to such equipment and will be operated by suitably qualified and competent Personnel, to the satisfaction of Hunter Water; and
- (f) all information and materials provided to Hunter Water by the Service Provider are true and correct in every respect and are not misleading or deceptive and the Service Provider has not withheld from Hunter Water any information concerning the Service Provider, its experience or expertise which might reasonably be supposed to be material to Hunter Water in determining whether or not to engage the Service Provider to provide the Services or the price at which or the terms on which Hunter Water would be prepared to engage the Service Provider to provide the Services.

8 Correction of deficient Services

8.1 Correction of deficient Services

Without prejudice to Hunter Water's right to make an SSA under clause 5 of the Contract, upon receipt of a Notice from

Hunter Water Representative during the Term of any deficiency in the Services, the Service Provider must correct such deficiency (including by way of providing such additional services necessary to correct such deficiency) at no cost to Hunter Water prior to the time specified in the Notice.

8.2 Service Provider failure to rectify

If the Service Provider fails to correct any deficiency in the Services identified by Hunter Water pursuant to Clause 8.1, Hunter Water may correct any deficient Services at the Service Provider's risk and cost and any costs and expenses incurred by Hunter Water will be recoverable from the Service Provider as a debt due and payable.

9 Services Timetable

9.1 Adherence to Services Timetable

- (a) Time is of the essence in the performance of the Service Provider's obligations under the Contract.
- (b) The Service Provider must perform the Services in accordance with the Services Timetable. The Service Provider acknowledges that Hunter Water Representative will rely upon the Services Timetable in co-ordinating other work at the Site and elsewhere.
- (c) If Hunter Water Representative is of the opinion that the Service Provider will not be able to complete the Services or any part of the Services in accordance with the Services Timetable, then Hunter Water Representative (without prejudice to Hunter Water's other rights under the Contract) may instruct the Service Provider to work overtime (including night shifts, Saturdays, Sundays and public holidays) and to provide all necessary additional labour, supervision and plant to achieve and maintain adherence to the Services Timetable at no additional cost to Hunter Water, until such time as the performance of the Services is in accordance with the Services Timetable. The Service Provider must comply with any instruction from Hunter Water Representative given in accordance with this Clause 9.1(c).

9.2 Amendments to Services Timetable

- (a) If the Service Provider at any time is of the opinion that despite all reasonable steps having been taken, it will not be able to adhere to all or any part of the Services Timetable due to:
 - (i) an event of Force Majeure;
 - (ii) a breach of any provision of the Contract by Hunter Water;
 - (iii) a delay or suspension in access to the Site as outlined in Clause 25.3; or
 - (iv) a delay caused by another on-Site supplier or its personnel as outlined in Clause 28.3;

Hunter Water must, if it considers an application made by the Service Provider in accordance with Clause 9.2(a) to be reasonable, by Notice amend the Services Timetable in such manner as it considers appropriate and such amendment will be the Service Provider's sole remedy for any delay and the Service Provider will not be entitled to any increase in the Fee or any damages, costs or expenses in connection with such extension provided that Hunter Water may (in its

discretion) reimburse the Service Provider for additional costs if it considers that such reimbursement would be fair and equitable in the circumstances.

- (b) Unless the Service Provider has applied for an amendment to the Services Timetable in accordance with this Clause 9.2 and unless and until Hunter Water has granted an amendment, the Service Provider will not by reason of any delay arising from any cause be relieved in any way or to any extent from its obligations to proceed with and complete the Services in accordance with the Services Timetable. In the event of an amendment to the Services Timetable, the Service Provider will only be so relieved to the extent that it will have until the expiry of the relevant dates (as amended), in which to perform and complete the Services.

10 Term

The Contract will commence on the Commencement Date and will remain in force, unless terminated earlier in accordance with the Contract, for the Term.

11 Representatives

11.1 Performance

The Services must be performed by the Service Provider in accordance with the Contract and in accordance with any directions of Hunter Water Representative pursuant to the provisions of the Contract.

11.2 Hunter Water Representative

- (a) Hunter Water Representative is responsible for giving directions for and on behalf of Hunter Water as provided in the Contract.
- (b) Directions given to the Service Provider by any person other than Hunter Water Representative will not bind Hunter Water unless ratified by Hunter Water Representative.

11.3 Service Provider Representative

- (a) The Service Provider Representative is responsible for liaising with Hunter Water Representative in relation to any of the matters referred to in Clause 11.2 and the Service Provider Representative will have full power to legally bind the Service Provider in respect of all matters arising out of the Contract.
- (b) Any direction which Hunter Water Representative gives to a Service Provider Representative is deemed to have been given to the Service Provider for and on behalf of Hunter Water and the Service Provider must comply with that direction accordingly. Any communication given, or document signed, by a Service Provider Representative is deemed to have been given or signed by the Service Provider and will bind the Service Provider. Matters within the knowledge of a Service Provider Representative are deemed to be within the knowledge of the Service Provider.
- (c) Either Party may from time to time revoke the appointment of its representative and appoint another person as its representative and that Party must give Notice of such revocation and appointment to the other Party.

12 Fee

12.1 Fee

The Fee is defined in clause 1.2 of the Contract.

12.2 Fee to be inclusive

All expenses incurred by the Service Provider in relation to the provision of the Services, including, without limitation, travel expenses and subsistence expenses, will be deemed to be included in the Fee.

13 Taxes

The Fee includes all taxes which may arise in connection with the performance of the Services, with the exception of GST (unless the Rate at which the Fee is to be calculated is expressed as being GST inclusive).

14 Payments to Service Provider

14.1 Method of payment

Unless otherwise provided in the Contract, all payments required to be made to the Service Provider by Hunter Water pursuant to the Contract in relation to the performance of the Services must be made in the Australian dollars by electronic funds transfer into the Service Provider's nominated bank account.

14.2 Tax Invoices

- (a) The Service Provider must, unless otherwise agreed with Hunter Water, render a Tax Invoice to Hunter Water in relation to the provision of the Services (or, where a Fee is payable in relation to the carrying out of any other obligation under this Contract, that obligation) at the end of each month during the period in which the Services are (or other obligation is) provided.
- (a) Tax Invoices must be in a form acceptable to Hunter Water and must contain the following information:
 - (i) a description of the Services provided in the period covered by the Tax Invoice; and
 - (ii) any further verification or documentation in relation to the Tax Invoice as is reasonably required by Hunter Water.

14.3 Payment of Tax Invoices

Subject to Clauses 14.4, 15, 29 and 31.6, Hunter Water must pay to the Service Provider the amount shown on the Tax Invoice within 30 days after the Tax Invoice is received by Hunter Water.

14.4 Disputed Tax Invoices

If Hunter Water disputes any amount shown on a Tax Invoice, it must notify the Service Provider within 10 days of receipt of the Tax Invoice and must pay any amounts not in dispute in accordance with Clause 14.3 provided that:

- (a) the payment by Hunter Water of any amount the subject of a disputed Tax Invoice is not to be considered as an acceptance of the amount in dispute or of Hunter Water's liability to make that payment; and
- (b) the Service Provider submits a further Tax Invoice for the amount not in dispute.

14.5 Errors or exceptions in invoicing

Without limiting Clause 14.4, if the Service Provider discovers or is advised of any errors or exceptions relating to its invoicing for the Services, the Service Provider and Hunter Water will jointly review the nature of the errors or exceptions, and the Service Provider must, if appropriate, take prompt corrective action and adjust the relevant invoice or refund overpayments.

15 Deduction from payments

15.1 Deductions

Hunter Water may:

- (a) deduct from any moneys due or becoming due to the Service Provider, the following amounts:
 - (i) all debts and moneys due from the Service Provider or its Personnel to Hunter Water;
 - (ii) all Liabilities which Hunter Water may have paid, suffered or incurred and which or for which the Service Provider or its Personnel is or are liable to bear, pay or reimburse to Hunter Water (including pursuant to any indemnity contained in the Contract); and
 - (iii) the cost of remedying any performance of the Services, below a standard acceptable to Hunter Water; or
- (b) without prejudice to Hunter Water's rights pursuant to any other provision of the Contract, if the Service Provider fails to perform any of its obligations under the Contract, without notice withhold payment of all or part of any amount payable to the Service Provider under the Contract, until the matter has been remedied.

15.2 Deductions and withholdings required by law

- (a) If Hunter Water is required by law to withhold or deduct any amount (**Deducted Amount**) from an amount payable under the Contract, the Deducted Amount will be treated as having been paid to the Service Provider when it is withheld or deducted and Hunter Water will not be liable to pay any amount on account of the Deducted Amount to the Service Provider.
- (b) If Hunter Water fails to withhold or deduct a Deducted Amount, Hunter Water may:
 - (i) give Notice to the Service Provider demanding payment of an amount equal to the Deducted Amount and the Service Provider will pay that amount to Hunter Water within 30 days of receiving the Notice;
 - (ii) deduct an amount equal to the Deducted Amount from any amounts payable by Hunter Water to the Service Provider and the amount so deducted will be treated as having been paid to the Service Provider when it is deducted and Hunter Water will not be liable to pay any amount on account of the Deducted Amount to the Service Provider; or
 - (iii) recover an amount equal to the Deducted Amount by a combination of a demand under Clause 15.2(b)(i) and deducting an amount under Clause 15.2(b)(ii),

and in each case where the failure to withhold or deduct the Deducted Amount arises as a result of any act, omission or oversight of the Service Provider, the Deducted Amount will include any fines, penalties or interest payable by Hunter Water in respect of the Deducted Amount.

15.3 Notification of withholding or deductions

Hunter Water must notify the Service Provider of the details of any amounts withheld or deducted pursuant to Clauses 15.1 or 15.2.

15.4 Clause to survive termination

This Clause 15 will survive the termination or expiry of the Contract.

16 Not used

17 Service Provider's information, accounts and records

17.1 Provision of information

The Service Provider must provide Hunter Water with any information requested by Hunter Water in relation to the provision of the Services.

17.2 Service Provider to maintain accounts and records

The Service Provider must:

- (a) maintain a complete set of accounts and records in accordance with prudent and accepted accounting principles; and
- (b) retain, and ensure that all of its Personnel retain, any of the items referred to in Clause 17.2(a) for a minimum period of 2 years after the expiry of the Term or earlier termination of the Contract.

17.3 Service Provider to provide access

- (a) In addition to the rights set out in 17.1, the Service Provider and its Personnel must permit Hunter Water to have access to any of their accounts, books, records, correspondence, receipts, vouchers and other relevant documents (including documents stored in electronic form) for the purposes of substantiating:
 - (i) the Fee, including any amendment to the Fee;
 - (ii) the Rates; or
 - (iii) any other amount payable to, or claimed by, the Service Provider pursuant to the Contract.
- (b) Hunter Water may make and retain copies of any of the items referred to in Clause 17.3(a).

18 Right to audit by Hunter Water

18.1 Right of audit of Service Provider performance

In addition to the rights set out in Clause 17, the Service Provider and its Personnel must permit Hunter Water to have access to the Service Provider's premises, any of their Documentation and data (including Documents stored in electronic form) and to interview the Service Provider's Personnel in connection with the Services, as necessary for Hunter Water Personnel to verify, monitor and audit the Service Provider's compliance with:

- (a) the health, safety, environmental and quality conditions set out in Clauses 22 to 24; and
- (b) Hunter Water policies identified in Clause 26.

18.2 Action by Service Provider

Without limiting any other rights or remedies available to Hunter Water as a result of the Service Provider's non-compliance with any of the conditions, policies and standards referred to in Clause 18.1 if deficiencies are identified by an audit undertaken under Clause 18.1, the Service Provider must take prompt corrective action and notify Hunter Water of such action.

19 Preservation of existing third party supply arrangements

The Service Provider acknowledges that:

- (a) supply arrangements exist between Hunter Water and third party suppliers as at the Commencement Date; and
- (b) subject to clause 20, Hunter Water has no obligation to the Service Provider to seek to alter, modify or terminate any of the supply arrangements referred to in Clause 19(a) provided the supply arrangements do not relate to the supply of the Services.

20 Nature of engagement

- (a) The parties acknowledge and agree that:
 - (i) the Service Provider would like to provide additional types of services to Hunter Water; and
 - (ii) Hunter Water is not engaging the Service Provider on an exclusive basis for any additional types of services, however, Hunter Water will provide the Service Provider with the opportunity to increase the scope for the performance of the Services in accordance with the remainder of this clause 20.
- (b) Scheduled Services: Hunter Water confirms that it will exclusively engage the Service Provider to carry out the Scheduled Services subject to, and in accordance with, the terms of this Contract for the duration of the Term.
- (c) Unscheduled Services: Where and to the extent that Hunter Water requires the performance of Unscheduled Services, that are not Urgent Services, and which comprise Testing of the same type as is contained in the Scheduled Services, then Hunter Water agrees to exclusively engage the Service Provider to carry out those Unscheduled Services for the duration of the Term, subject to and in accordance with the terms of this Contract.
- (d) Miscellaneous and Urgent Services: Where and to the extent that Hunter Water requires the performance of Miscellaneous Services and/or Urgent Services that comprise Testing of the same type as is contained in the Scheduled Services then provided that, to Hunter Water's satisfaction acting reasonably, the Service Provider:
 - (i) has the capacity to carry out the Testing within the Turnaround Time specified by Hunter Water (including capacity with respect to laboratory and technical resources and the availability of Service Provider Personnel);
 - (ii) has qualifications which enable it to carry out that Testing to a high industry standard; and

- (iii) provides a Fee to Hunter Water in advance which is reasonable having regard to the Fee for other similar Testing under this Contract (and if no similar Fee, a fee that is reasonable for the type of services being provided having regard to the current market for those services),

then Hunter Water will engage the Service Provider to undertake those Miscellaneous Services and/or Urgent Services (as the case may be).

- (e) Notwithstanding clauses 20(c) and 20(d), the Service Provider acknowledges and agrees that:
 - (i) there may be occasions where the particular circumstances surrounding the conduct of Testing and the performance of services mean that Hunter Water requires the relevant Testing and/or services to be performed by another service provider; and
 - (ii) where such circumstances arise, Hunter Water may, acting reasonably and in good faith, engage another service provider to undertake the relevant Testing and/or to perform those services.
- (f) Notwithstanding clauses 20(c) and 20(d), the Service Provider acknowledges and agrees that Hunter Water may engage a third party to provide the relevant Testing and/or services if required by law, for legal disputes, or to satisfy certain technical requirements.
- (g) For clarity, clauses 20(c) and 20(d) only apply in relation to Testing, and do not apply other aspects of the Services including collection and sampling. The parties acknowledge and agree that this Contract does not: (i) create an exclusive relationship between the parties; or (ii) require Hunter Water to engage the Service Provider for any particular Services, except to the extent expressly stated in clauses 20(b) to 20(d).
- (h) For the avoidance of doubt, clauses 20(b) to 20(d) apply to Hunter Water's testing obligations under the Licence Requirements as amended from time to time.

21 Service Provider Personnel, Facilities and equipment

21.1 Service Provider Personnel

The Service Provider is required to supply all Personnel necessary for the proper performance of the Services. Such Personnel must be appropriately qualified, competent and skilled to perform the relevant part of the Services in respect of which they are engaged.

21.2 Engagement of Personnel

The Service Provider must ensure that all Personnel of the Service Provider engaged to provide any part of the Services comply with Clauses 33, 34, 35 and 36 with respect to Intellectual Property Rights, Documentation, Confidential Information and business standards.

21.3 Service Provider Personnel information

- (a) Promptly following the date of the Contract, the Service Provider must provide Hunter Water Representative with a detailed organisational chart containing details of the positions and reporting relationships within the Service Provider's organisation in relation to

supervisory Personnel associated with the provision of the Services.

- (b) During the Term, the Service Provider must promptly notify Hunter Water Representative of any changes to the positions and reporting relationships outlined in the organisational chart provided in accordance with Clause 21.3(a).
- (c) The Service Provider must at all times keep an updated list of its Personnel undertaking work on the Site.

21.4 Hunter Water may object to Personnel

Hunter Water Representative may object to any of the Service Provider's Personnel who, in the opinion of Hunter Water Representative, is lacking in appropriate skills or qualifications, engages in misconduct or is incompetent or negligent. The Service Provider must remove such Personnel upon receipt from Hunter Water Representative of Notice requiring it to do so and must not re-employ that person in connection with the Services without the prior written consent of Hunter Water Representative. In addition, the Service Provider must at its cost replace such removed Personnel with suitably qualified, competent, skilled and approved Personnel.

21.5 Service Provider responsibilities

The Service Provider is responsible for:

- (a) the transportation of its Personnel to and from the Site and will provide for the movement of its Personnel on the Site at all times and all vehicles and drivers used for this purpose must be properly licensed and all vehicles must comply with the requirements of any applicable road safety and traffic laws, legislation and regulations;
- (b) the supply of all labour, supervision, tools, equipment, materials, power, water, safety equipment and other requirements necessary for the Service Provider to provide the Services in accordance with the Contract; and
- (c) the health and safety of its Personnel.

21.6 Hunter Water Facilities

- (a) To the extent that Hunter Water has relevant Facilities in place which are available, those Facilities will be available for use by the Service Provider or any of its Personnel in relation to the provision of the Services. The Service Provider is responsible for the provision of any Facilities which are required for the provision of the Services to the extent that they are not already in existence and available. (as determined by Hunter Water)
- (b) The Service Provider is required to inform Hunter Water Representative at least 7 days in advance of its requirements in relation to the use of Hunter Water's Facilities. The terms of use of any of Hunter Water's Facilities will be at Hunter Water's discretion.
- (c) The Service Provider must ensure that at all times the Site and any Facilities used are left in a clean, orderly and safe condition and fit for immediate use.

21.7 Improper or defective items

- (a) Hunter Water Representative may object to and have removed from the Site any improper or defective materials, plant, machinery or implements and may also

request the addition of such items as in the opinion of Hunter Water Representative are necessary for the due completion and fulfilment of the Contract.

- (b) If the Service Provider fails to comply with any such objection or request made by Hunter Water Representative within 7 days of receiving Notice of that objection or request, then Hunter Water may add to or remove such materials, plant, machinery or implements as it sees fit at the cost of the Service Provider.

22 Safety

22.1 General Safety Responsibility

- (a) The Service Provider is responsible for safety in performing the Services.
- (b) The Service Provider is responsible for safety at all the Facilities from the Commencement Date until the expiry of the Term.

22.2 Risk Management

The Service Provider is to manage all risks to health and safety of any person arising as a consequence of the Services by:

- (a) identifying all reasonably foreseeable hazards that could give rise to a risk;
- (b) eliminating the risk so far as is reasonably practicable;
- (c) if it is not reasonably practicable to eliminate the risk, minimize the risk so far as is reasonably practicable by implementing control measures;
- (d) maintain the control measures so they remain effective; and
- (e) review, and if necessary revise, control measures so as to maintain, so far as is reasonably practicable, a work environment that is without risks to health and safety.

22.3 Hunter Water Site Safety Rules

- (a) In addition to any site safety rules adopted by the Service Provider, all persons (including the Service Provider) at workplaces on Hunter Water property must, as a minimum, comply with the site safety rules presented in clause 49.
- (b) The requirements in clause 49 are not exhaustive and the Service Provider should implement all necessary site safety rules and procedures following its own risk assessment of the Facilities and the Services.

22.4 Site Attendance Register

- (a) The Service Provider must maintain a register at each of its Facilities of all persons attending the Facilities including employees, subcontractors and visitors. The Service Provider must ensure that all persons attending the Facility sign in upon arrival and sign out when leaving. The Service Provider must check the register at the end of each day to ensure that all persons have left the Facility and are accounted for.
- (b) The Service Provider must sign in with any register required of it by the Treatment Operations Contractor when in attendance at any of the Facilities operated by the Treatment Operations Contractor.

22.5 Information, Training, Instruction and Supervision

- (a) The Service Provider must provide relevant information, training, instruction and supervision to protect, as far as is reasonably practicable, all workers and other persons from risks to their health and safety arising from the Services. The information, training and instruction must be readily understandable by the person to whom it is provided and be suitable and adequate having regard to:
 - (i) the nature of work carried out by the person;
 - (ii) the nature of risks associated with the work at the time of the information, training and instruction; and
 - (iii) the control measures implemented.
- (b) The Service Provider's supervisors must be aware of and provide the level of supervision necessary to ensure, as far as is reasonably practicable, the health and safety of workers, including assessing worker's competency to undertake the work.
- (b) The Service Provider must ensure that all workers and visitors to the workplace must be given suitable induction training prior to entering the workplace.

22.6 Hunter Water Inductions and Training

- (c) Prior to performance of any of the Services at any Facility operated by the Treatment Operations Contractor, the Service Provider's staff must be inducted to the sites by the Treatment Operations contractor before accessing the sites to collect samples or carry out any other work.
- (d) Prior to performance of any of the Services at any site other than a Facility operated by the Treatment Operations Contractor, the Service Provider must nominate key personnel who hold management and safety responsibilities to attend induction(s) provided by Hunter Water. The Service Provider must incorporate relevant information from the induction into training to be provided to all workers.

22.7 Review by Hunter Water

Any review or inspection by Hunter Water of any information relating to work health and safety provided by the Service Provider under this Contract shall not constitute the verification or acceptance by Hunter Water of the adequacy of the information, which remains the sole responsibility of the Service Provider.

22.8 Removal from Site

Notwithstanding any other term of the Contract, in the event of any breach of this Clause 22 Hunter Water may:

- (a) require the Service Provider, Service Provider's Personnel and/or any other person to leave the Site immediately; and
- (b) require the Service Provider and/or any of its Personnel to remove any material or substance from the Site at the Service Provider's cost,

and the Service Provider must, at its own cost, ensure such request is immediately complied with and take all possible action to ensure the protection and safety of all works, personnel and the environment.

23 Environmental and WHS Systems

23.1 Environment Management System

- (c) The Service Provider must establish and implement an Environmental Management System certified to AS/NZS ISO 14001 Environmental Management Systems, within 5 Business Days of the Commencement Date and must maintain certification of the system until the end of the Term of this Contract.
- (d) The Environmental Management System shall include sufficient measures to ensure protection of the environment including at least:
 - (i) identification of all environmental hazards on each Facility and the controls to be put in place to eliminate or manage risks;
 - (ii) Standard Operating Procedures for all environmentally hazardous activities;
 - (iii) emergency procedures;
 - (iv) names, positions and environmental responsibilities of all persons at the workplace having such responsibilities;
 - (v) how environmental incidents will be managed, investigated and reported; and
 - (vi) arrangements for ensuring workers have the necessary training to protect the environment.
- (e) The Service Provider must provide evidence of continuous improvement of all management systems including copies of all audit reports.

23.2 WHS Management System/Plan

The Service Provider must:

- (a) develop and implement a WHS Management Plan that complies with the *NSW Government Work Health and Safety Management Systems and Auditing Guidelines 5th Edition (WHSMS Guidelines)*;
- (b) submit the WHS Management Plan no later than 5 days after the Commencement Date;
- (c) ensure that, so far as applicable to the Services, all relevant risks are included in the WHS Management Plan;
- (d) undertake its own detailed analysis of all work health and safety risks under the Contract;
- (e) include a program indicating the timetable and resources allocated for Inspection, testing and servicing and Internal review (WHSMS Guidelines, elements 7 and 11); and
- (f) nominate the resources allocated for Incident management and corrective action (WHSMS Guidelines, element 8).

23.3 WHS Management Monthly Report

The Service Provider must:

- (a) submit, no later than the seventh (7th) day of each month (or otherwise as agreed between the parties), a report detailing Inspection, testing and servicing activities, Internal reviews and Incident management and corrective action, and including the information

listed below, as evidence of the implementation of the WHS Management Plan during the previous month.

- (b) as a minimum, the monthly report required under this clause 23.3 must include the information required by Schedule 5, and may be included in the report to be prepared under that Schedule 5.

24 Quality Management System

- (a) The Service Provider must establish and implement a Quality Management System certified to AS/NZS ISO 9001 Quality Management Systems, by the Commencement Date. Maintain certification of the system until the expiry of the Term.
- (b) The Quality Management System shall comprise the development and implementation of a Quality Management Plan to sampling, collection and testing in accordance with the Contract including:
 - (i) Standard Operating Procedures including emergency procedures and procedures for the ordering and verification of chemicals;
 - (ii) data and record keeping procedures and systems; and
 - (iii) arrangements for ensuring workers have the necessary qualifications and training to perform their duties.
- (c) The Service Provider must provide evidence of continuous improvement of all management systems including copies of all audit reports.

25 Access to Site

25.1 Access

Without limiting this Clause 25, Hunter Water will grant to the Service Provider access to the Site on and from the date of the Contract and the Service Provider must give Hunter Water Representative at least 7 days' Notice before commencing the Services on the Site.

25.2 Service Provider obligations

- (a) Prior to commencement of the Services on the Site, the Service Provider must notify Hunter Water Representative of its normal times and periods of work and must give Hunter Water Representative at least 24 hours' Notice of any alteration in its working hours or periods of work.
- (b) The Service Provider must at all times consult with Hunter Water Representative and obtain 14 days' prior written approval for any action likely to interfere with Hunter Water's operations. Hunter Water Representative must reply to any such request within 7 days of receipt of such request.
- (c) The Service Provider must not access any Site outside of normal working hours unless Hunter Water has provided its consent (which may be given by requesting those services be carried out outside of those hours).

25.3 Delayed or suspended access

If there is any delay in giving the Service Provider access to the Site, or if access is suspended or inadequate, the Service Provider may apply for an amendment to the Services Timetable in accordance with Clause 9.2.

25.4 Right to deny access

If the Service Provider or its Personnel fail to comply with any of the requirements of Clause 24 or this Clause 25, then Hunter Water Representative may in its discretion deny that person or those persons access to the Site or permit such access subject to terms and conditions Hunter Water Representative thinks appropriate.

25.5 No exclusive possession

The Service Provider acknowledges that nothing in the Contract confers on it exclusive possession of any Site and that it will only be granted access to Site(s) to the extent deemed necessary by Hunter Water Representative for the performance of the Services.

26 Compliance with Hunter Water policies

During the Term, the Service Provider must, and must ensure that its Personnel, comply with each of the rules and policies of Hunter Water, as notified by Hunter Water to the Service Provider from time to time in writing.

27 Laws

27.1 Compliance with laws

During the Term, the Service Provider must:

- (a) comply with all applicable Statutory Requirements, legislation, laws and Government Agency requirements relating to its obligations under the Contract and ensure that each of its Personnel does the same; and
- (b) in relation to the provision of the Services, at its cost:
 - (i) obtain all necessary notices;
 - (ii) give all necessary notices;
 - (iii) pay all necessary fees, deposits and Taxes,

and, if requested by Hunter Water, must provide evidence of the matters referred to in this Clause 27.1(b)

27.2 Consequences of breach

Notwithstanding any other Clause of these General Conditions or term of the Contract, in the event of any breach of Clause 26 or this Clause 27 Hunter Water may:

- (a) require the Service Provider, the Service Provider's Personnel, and/or any other person to leave the Site immediately; and
- (b) require the Service Provider and/or any of its Personnel to remove any material or substance from the Site at the Service Provider's cost,

and the Service Provider must, at its cost, ensure such request is immediately complied with and take all possible action to ensure the safety of all Personnel.

28 Co-operation with third parties

28.1 No interference

The Service Provider must not impede or interfere with the work of any other suppliers, contractors, consultants or their personnel (whether employed or engaged by Hunter Water or not) on-Site during the Term.

28.2 No compensation

The Service Provider is not entitled to any increase in the Fee (or Rates used to calculate any Fee), damages, costs or any other financial or other compensation as a result of any interference on-Site from other suppliers, contractors, consultants or personnel.

28.3 Amendment to Services Timetable

If, through no fault of its own, the Service Provider suffers delay through interference by other suppliers, contractors, consultants or their personnel on the Site, the Service Provider may apply for an amendment to the Services Timetable in accordance with Clause 9.2.

29 Insurances

29.1 Professional Indemnity Insurance

- (a) The Service Provider must have insurance covering liability for errors in provision of the Services. The insurance must be with a reputable insurer and provide coverage for an amount not less than \$5,000,000 per claim and in the aggregate. The Service Provider must provide evidence of coverage on request.
- (b) The professional indemnity insurance required by Clause 30.1(a), shall be maintained from the date of this Contract until the expiry of 7 years from the Expiry Date.

29.2 Workers' Compensation

The Service Provider must ensure that an insurance policy is effected prior to commencing performance of the Services and remains current for the duration of this Contract, covering liability for death of or injury to persons employed by the Service Provider and related liability as required or under the Workers' Compensation Act 1987 (NSW). The Service Provider must provide evidence of coverage on request.

29.3 Public Liability

- (a) The Service Provider must obtain and maintain a public liability policy of insurance to cover loss or damage to property or injury or death to persons arising out of or in connection with carrying out the Services.
- (b) The policy must be:
 - (i) with a reputable insurer;
 - (ii) obtained prior to commencing the carrying out of the Services;
 - (iii) maintained for the duration of the Contract; and
 - (iv) for an amount not less than \$20,000,000 in respect of any single occurrence.
- (c) The policy must cover the Service Provider, Hunter Water, Hunter Water's Representative and all sub-contractors engaged from time to time for or in relation to the Contract and the Services for their respective rights and interests and cover their liabilities to third parties. The Service Provider must provide evidence of coverage on request.
- (d) The policy must also provide that:
 - (i) in so far as the policy covers more than one insured party, 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 party;

- (ii) failure by any insured party to observe and fulfil the terms of the policy will not prejudice the insurance in regard to any other insured parties;
- (iii) any non-disclosure by one insured party does not prejudice the right of any other insured party to claim on the policy; and
- (iv) a notice to the insurer by one insured party will be deemed to be notice by all insured parties.

30 Indemnities

30.1 Acknowledgement

The Service Provider acknowledges that if it enters on to the Site, it does so at the Service Provider's own risk. The Service Provider must ensure that its Personnel are also aware that they enter onto the Site at their own risk.

30.2 Indemnity

- (a) Subject to Clause 30.3, the Service Provider will indemnify (and will keep indemnified) Hunter Water and its Personnel from and against all Liabilities that any Indemnified Party suffers, sustains or incurs, arising from any one or more of the following:
 - (i) the breach by the Service Provider or its Personnel of any of the Service Provider's obligations (including any warranty) under the Contract;
 - (ii) any negligent act or omission or wilful misconduct by the Service Provider or its Personnel arising out of the performance of the Contract; or
 - (iii) any Claim made against Hunter Water by any of the Service Provider's Personnel in respect of relevant legislation concerning income tax, workers' compensation, annual leave, long service leave, superannuation or any applicable award, determination or agreement of a competent industrial tribunal.
- (b) Hunter Water is entitled to recover from the Service Provider an amount due to its Personnel under the indemnity in Clause 30.2(a) on behalf of its Personnel and will hold any amount recovered, and the benefit of the indemnity in Clause 30.2(a) to which its Personnel is entitled, as trustee for and on behalf of its Personnel.

30.3 Exclusions

The Service Provider will not be liable under Clause 30.2 to the extent that the Liability was caused, or contributed to, by Hunter Water's or its subcontractors' negligent acts or omissions or wilful misconduct.

30.4 Indemnity held for benefit of Hunter Water Personnel

Every exemption, limitation, defence, immunity, indemnity or other benefit contained in the Contract or otherwise to which Hunter Water, is entitled will also be held by Hunter Water as trustee for the benefit of, and will extend to protect, each of Hunter Water's Personnel.

30.5 Indemnity continuing

Each indemnity in the Contract is a continuing obligation separate and independent from the Service Provider's other obligations and survives termination or expiry of the Contract.

30.6 No requirement for expense before enforcing indemnity

It is not necessary for Hunter Water or its Personnel to incur expense or make payment before enforcing a right of indemnity conferred by the Contract.

30.7 Limitation of liability

Subject to clause 5 (Performance Management) and to clause 30.8 below, but notwithstanding any other provision in this Contract, and except to the extent liability cannot be limited or excluded by law:

- (a) the Service Provider will not be liable to Hunter Water for any indirect loss whatsoever, including consequential loss, loss of profits or revenue, economic loss, foregone business opportunities, business interruption or any losses not reasonably foreseeable by either party at the time of entering into this Contract; and
- (b) the Service Provider's cumulative liability to Hunter Water for any loss or damage whatsoever which arises under or in connection with this Contract or the provision of the Services, and whether by way of an indemnity or statute, in tort (for negligence or otherwise), or on any other basis in law or equity, is limited to the value of the Services provided; and
- (c) the Service Provider's cumulative liability to Hunter Water for any loss or damage to real or personal property whatsoever which arises under or in connection with this Contract or the provision of the Services, and whether by way of an indemnity or statute, in tort (for negligence or otherwise), or on any other basis in law or equity, is limited to an amount recovered under the Service Provider's policies of insurance (such policies to have coverage of not less than \$100 million per occurrence).

30.8 Exceptions to limitation of liability

The Service Provider's liability will not be limited under clauses 30.7 in connection with any liability arising out of personal injury, illness, disease or death of any person, loss of, breach of any Intellectual Property Rights, breach of confidentiality or privacy obligations, fraud, dishonesty, wilful default or gross negligence by the Service Provider, or any amount which is recoverable under any policy of insurance, or that would have been recoverable under such a policy of insurance but for an act or omission of the Service Provider.

31 Termination

31.1 Termination by Hunter Water for Default by the Service Provider

If the Service Provider:

- (a) becomes bankrupt, or insolvent, or enters into a scheme or arrangement with its creditors;
- (b) without reasonable cause suspends the carrying out of the Services; or
- (c) commits a substantial breach of this Contract,

Hunter Water may:

- (d) in the case of the default specified in Clause 31.2(a), forthwith terminate this Contract by written notice addressed to the Service Provider; and
- (e) in the case of any other specified default, terminate this Contract by written notice addressed to the Service Provider if the Service Provider fails to remedy the default within 10 days from the date of service of a notice by Hunter Water on the Service Provider specifying the relevant default.

31.2 Termination by the Service Provider

- (a) If Hunter Water fails to pay the Service Provider any amount in accordance with this Contract which is not in dispute, or commits a fundamental breach of the Contract, the Service Provider may give notice requiring Hunter Water to remedy the default within 15 Business Days after receiving the notice.
- (b) If Hunter Water fails to remedy the default, or fails to propose steps reasonably acceptable to the Service Provider to do so, the Service Provider may issue a notice terminating the Contract.
- (c) Hunter Water must pay the amounts prescribed in Clause 31.5.

31.3 Service Provider's Continuing Liability

Termination by Hunter Water or Service Provider or completion of the Services will not release the Service Provider from liability in respect of any breach, or non-performance, of any obligation pursuant to this Contract.

31.4 Effect of Termination

- (a) Termination of this Contract by either party is without prejudice to any accrued rights or remedies of each party.
- (b) If the Service Provider's appointment is terminated for any reason, the Service Provider shall take such steps as may be necessary to ensure a safe conclusion of activities and deliver to Hunter Water all the Contract Material (whether in the course of preparation or completed).
- (c) Upon any termination of the Service Provider's appointment or upon any suspension of the performance by the Service Provider of all or any of the Services, however arising, Hunter Water shall not be liable to the Service Provider for any loss of profit, loss of business, loss of contract or any other loss or expense arising out of or in connection with such termination or suspension.
- (d) If the Contract is terminated whether under this Clause or otherwise, Hunter Water will be entitled to recover from the Service Provider any costs, losses or damages incurred or suffered by it as a result of, arising out of, or in any way in connection with, such termination.

31.5 Adjustment of the Fee on Termination

- (a) If this Contract is terminated pursuant to Clause 31.1, Hunter Water will pay the Service Provider for the Services performed by the Service Provider to the date of termination, together with any adjustments and deductions for loss or damage suffered by Hunter Water as a consequence of breach by the Service

Provider. Hunter Water may recover any short-fall from the Service Provider as a debt due and payable.

- (b) If this Contract is terminated pursuant to Clause 31.2, Hunter Water will pay the Service Provider for the Services performed by the Service Provider to the date of termination in full and final satisfaction of any claim the Service Provider has or may have.

32 Dispute Resolution

- (a) If a dispute or difference arises between Hunter Water and the Service Provider out of or in connection with this Contract, then either party may give the other a written notice specifying the dispute or difference. The notice must specify in reasonable detail the nature of the dispute or difference and, if the party serving the notice makes any claim, the notice must specify in reasonable detail the legal basis of the claim.
- (b) Neither party will commence court proceedings (other than for injunctive or other urgent relief) in respect of any such dispute or difference before a notice under clause 32(a) has been served and the procedure in clauses 32(c) to clause 32(f) has been complied with.
- (c) If a dispute or difference notified under clause 32(a) has not been settled within 7 days of the date of the notice, either party may require by further notice in writing to the other, that a person holding a position of senior management of each of Hunter Water and the Service Provider meet and undertake negotiations in good faith and on a without prejudice basis with a view to resolving the dispute or difference.
- (d) If a meeting is required by either party under clause 32(c) then, within 7 days of the receipt of the further notice, each party must ensure attendance on its behalf by a person holding a position of senior management.
- (e) If the dispute or difference is not resolved within 21 days of the giving of notice under clause 32(a), the dispute or difference is referred to mediation. If the parties cannot promptly agree on a mediator then a mediator will be selected by the President of the Institute of Arbitrators and Mediators Australia (or his delegated or nominated representative).
- (f) The parties must pay the mediator's remuneration in equal shares. Each party must pay its own costs of the mediation. The then current rules of the Institute of Arbitrators and Mediators Australia rules will apply to the mediation.
- (g) Notwithstanding the existence of a dispute or difference, the Parties must continue to perform their respective obligations under this Contract.

33 Confidentiality

33.1 Obligation of confidentiality

The Service Provider undertakes and agrees:

- (a) to hold in strict confidence all Confidential Information and not to disclose or permit or cause the Confidential Information to be disclosed to any person other than any of its Personnel who require the Confidential Information for the purposes of providing the Services; and

- (b) not to make use of the Confidential Information (including duplicating, reproducing, distributing, disseminating or directly or indirectly deriving information from the Confidential Information), except and solely to the extent necessary for the performance of the Services, unless the Service Provider has obtained the prior written consent of Hunter Water to do so (which consent may be withheld by Hunter Water in its discretion or given on such terms as it sees fit).

33.2 Exceptions

Clause 33.1 does not apply to:

- (a) information after it becomes generally available to the public other than as a result of the breach of this Clause 33 or any other obligations of confidence imposed on the Service Provider; or
- (b) the disclosure of information in order to comply with any applicable law or legally binding order of any court, Government Agency or recognised stock exchange, provided that prior to such disclosure the Service Provider gives Notice to Hunter Water with full particulars of the proposed disclosure.

33.3 Breach of consent

The breach of any of the conditions contained in a consent granted pursuant to Clause 33.1 will be deemed to be a breach of the Contract.

33.4 Service Provider acknowledgment

The Service Provider acknowledges that this Clause 33 is for the benefit of not only Hunter Water but also its Personnel and any person that has any interest in any Confidential Information.

33.5 Indemnity

Without limiting Clause 29, the Service Provider indemnifies and must keep indemnified Hunter Water in respect of any Liabilities incurred or sustained by them resulting from a breach of this Clause 33 by the Service Provider or its Personnel.

33.6 Additional obligations

The obligations in this Clause 33 are in addition to and do not diminish the obligations of the Service Provider in respect of secret and confidential information at common law or under any statute or trade or professional custom or use.

33.7 Return of Confidential Information

If requested by Hunter Water, whether prior to or after the expiry or earlier termination of the Contract, the Service Provider must promptly deliver to Hunter Water all Confidential Information in the custody, possession or control of the Service Provider or any of its Personnel.

33.8 Survival of Clause

This Clause 33 will survive the termination or expiry of the Contract.

34 Public announcements

Except as required by any applicable law or regulatory requirement or as otherwise permitted by the Contract, the Service Provider may not make any public announcements or disclosures as to the Contract, or otherwise in relation to the subject matter of the Contract, without the prior written

consent of Hunter Water. In this regard, no media release or public announcement will be made in relation to the existence of the Contract without Hunter Water's written approval and should such approval be given, then the wording of such release and the manner of publication must first be approved in writing by Hunter Water.

35 Intellectual Property Rights in Services

35.1 Service Provider IP

- (a) Hunter Water acknowledges that the Service Provider remains the owner of all Service Provider IP and that nothing in the Contract prevents, limits or restricts the Service Provider's subsequent use or exploitation of Service Provider IP.
- (b) The Service Provider grants to Hunter Water a non-exclusive, transferable, royalty free, irrevocable and perpetual licence to use all Service Provider IP for the purposes of or in connection with the business of the Hunter Water to the extent such use is necessary to enjoy the benefit of the Services.

35.2 Contract IP

- (a) The Service Provider agrees that all Contract IP will be vested in Hunter Water and will be Hunter Water's property as and when created and the Service Provider assigns and must ensure that all of its Personnel assign all of their respective right, title and interest in and to the Contract IP (whether created before, on or after the Commencement Date) to Hunter Water.
- (b) Hunter Water's request, the Service Provider must execute any formal assignment or other document required to give effect to this Clause 35.2

35.3 Sub-licence of Service Provider IP

Hunter Water may sub-licence Hunter Water's rights to use the Service Provider IP under Clause 35.1(b) to any person provided such use is in connection with the business of the Hunter Water.

35.4 Service Provider warranty

The Service Provider warrants that:

- (a) the Service Provider has the right to grant to Hunter Water the licence under Clause 35.1(b); and
- (b) the Service Provider has the right to assign all Contract IP to Hunter Water in accordance with Clause 35.2.

35.5 General Service Provider obligations

The Service Provider agrees to:

- (a) disclose to Hunter Water all Contract IP as and when it is created;
- (b) ensure that any sub-contract the Service Provider enters into in relation to the Contract contains an assignment by the Sub-contractor to Hunter Water of all Intellectual Property Rights in any Contract IP created by the Sub-contractor for the purposes of the Contract;
- (c) notify Hunter Water as soon as the Service Provider becomes aware of any suspected, threatened or actual infringement or unauthorised use of any Intellectual Property Rights in the Contract IP and to provide all reasonable assistance in relation to that infringement; and

- (d) provide all reasonable assistance Hunter Water may request to protect, perfect, enforce, defend or assert its interests in and right to use and exploit the Contract IP (including assisting Hunter Water to take action against persons infringing the Contract IP). The Service Provider must also ensure that its Personnel provide all reasonable assistance to Hunter Water as set out in Clause 35.2

35.6 Survival of Clause

This Clause 35 will survive the termination or expiry of the Contract.

36 Third party Intellectual Property Rights

36.1 Third party Intellectual Property Rights

The Service Provider warrants that to the extent that it uses or proposes to use the Intellectual Property Rights of any third party in the provision of the Services, or to the extent Hunter Water will use or might propose to use the Intellectual Property Rights of any third party in the use and enjoyment of the Services:

- (a) it has obtained, or will obtain at no further cost to Hunter Water, from the relevant third party all necessary licences and consents to use, or assignments of, such Intellectual Property Rights; and
- (b) that it will not breach any of the licences or assignments referred to in Clause 36.1(a).

36.2 Indemnity

- (a) Without limiting Clause 30, the Service Provider indemnifies Hunter Water and must keep Hunter Water indemnified in respect of any Liabilities incurred or sustained by Hunter Water resulting from any actual or alleged infringement of any Intellectual Property Rights of any third party arising out of or caused by:
 - (i) the performance of the Services by the Service Provider;
 - (ii) the performance or operations of any other plant, machinery, tools, equipment, process, work, material, matter, thing or method used or supplied by the Service Provider; or
 - (iii) the receipt of the Services by Hunter Water.
- (b) The Service Provider must notify Hunter Water immediately the Service Provider becomes aware of a Claim being threatened or made against Hunter Water in relation to any of the matters covered by the indemnity in Clause 36.3(a).
- (c) Hunter Water may require the Service Provider to conduct any litigation that may arise from a Claim referred to in Clause 36.2(b) and all negotiations for settlement of that Claim. However, the Service Provider must not make any settlement or consent to any judgment, order or verdict against Hunter Water without Hunter Water's prior written consent.

36.3 Procurement of Intellectual Property Rights

If Hunter Water is prevented from (as the case requires) utilising all or any part of the Services as a result of any Claim in relation to an infringement of Intellectual Property Rights, the Service Provider must (at its cost) take all reasonable steps to procure for Hunter Water the right to utilise the

Services or the relevant part of the Services for the purpose for which it was intended.

36.4 Procedure where Intellectual Property Rights cannot be procured

If the Service Provider cannot procure the rights referred to in Clause 36.3 within a reasonable time (but not exceeding 60 days unless Hunter Water Representative otherwise agrees), it must notify Hunter Water Representative accordingly and Hunter Water Representative may direct the Service Provider to immediately (at the Service Provider's cost):

- (a) alter the Services or the relevant part of the Services to avoid infringement or violation of the Intellectual Property Rights or any of them;
- (b) (as applicable) re-perform or replace the Services affected or the relevant part of the Services with work which does not infringe or violate the Intellectual Property Rights; or
- (c) discontinue provision of the Services and reimburse Hunter Water any compensation and other moneys already paid to the Service Provider and pay to Hunter Water any costs or other expenses that may have been paid or incurred by Hunter Water in connection with the discontinued Services.

36.5 Moral rights

- (a) The Service Provider must (at its cost) procure from each of the Personnel of the Service Provider's Personnel and any third parties engaged in the provision of the Services an irrevocable and unconditional consent, in favour of the Service Provider (for the benefit of the Service Provider and its customers, including Hunter Water), which is legally enforceable by Hunter Water, for Hunter Water to:
 - (i) reproduce, transmit, communicate, adapt or publish any materials in relation to the Services to Hunter Water (together the Materials) or any adaptation of them (or any part of the Materials or any such adaptation) anywhere in the world, in whatever form Hunter Water thinks fit (including the making of any distortions, additions or alterations to the Materials or any adaptation thereof or any part of the Materials or any such adaptation) as so reproduced, transmitted, communicated, adapted or published;
 - (ii) reproduce, transmit, communicate, adapt or publish the Materials or any adaptation of them (or any part of the Materials or any such adaptation) anywhere in the world without making any identification of the employee/contractor/third party in relation to such reproduction, transmission, communication, adaptation or publication; and
 - (iii) do anything in relation to the Materials that (but for these consents) would otherwise infringe any moral rights or similar rights of the employee/contractor/third party anywhere in the world.
- (b) Where Hunter Water reasonably believes that the Service Provider has not complied with its obligations set out in this Clause 36.5 the Service Provider must procure that each of the Personnel of the Service

Provider or any third parties engaged in the provision of the Services do all such other things and execute all such documents as reasonably requested by Hunter Water in order to confirm or give effect to any of the matters stated in this Clause 36.5.

37 Notices

37.1 Form of Notices

Unless otherwise specified in the Contract, any notice, demand, consent or other communication (**Notice**) given or made pursuant to the Contract must:

- (a) be in writing;
- (b) be marked to the attention of "Hunter Water Secretary" for the Party to whom the Notice is addressed;
- (c) where given by Hunter Water, be signed or authorised by either Hunter Water Representative, a director or company secretary of Hunter Water, or a duly authorised representative of Hunter Water;
- (d) where given by the Service Provider, be signed or authorised by either the Service Provider Representative, a director or company secretary of the Service Provider, or a duly authorised representative of the Service Provider; and
- (e) be delivered by prepaid post, by hand or by facsimile to the Party to whom the Notice is addressed at its address shown in the Contract or such other address as that Party may have notified to the other Party.

37.2 Notices deemed given

A Notice will be taken to be duly given:

- (a) in the case of delivery by hand, when delivered;
- (b) in the case of delivery by post, 2 Business Days after the date of posting (if posted to an address in the same country) or 7 Business Days after the date of posting (if posted to an address in another country); or
- (c) in the case of facsimile, on receipt by the sender of a transmission control report from the despatching machine showing the relevant number of pages and the correct destination fax machine number or name of the recipient and indicating that the transmission has been made without error, but if the result is that a Notice would be taken to be given or made on a day that is not a Business Day or the Notice is sent or is later than 4.00pm (local time) it will be taken to have been duly given or made at the commencement of business on the next Business Day.

38 Conflict of interest

38.1 Warranty

The Service Provider warrants that as at the date of the Contract it has not carried on business, entered into any financial arrangements or undertaken any obligation which would in any way interfere or conflict with the performance of the Services by the Service Provider and its Personnel under the Contract.

38.2 Conflicts of interest

The Service Provider must ensure that neither it nor any of its Personnel carry on business, enter into any financial arrangements or undertake any obligation which would in any

way interfere or conflict with the performance of the Services by the Service Provider and its Personnel under the Contract, without the prior written consent of Hunter Water.

38.3 Indemnity

Without limiting Clause 30, the Service Provider indemnifies Hunter Water and must keep Hunter Water indemnified in respect of any Liabilities incurred or sustained by Hunter Water as a result of any breach by the Service Provider of the warranties contained in Clause 38.1 or the undertakings contained in Clause 38.2.

39 Costs

39.1 Each Party to bear its own costs

Each Party must bear its own costs arising out of:

- (a) the negotiation, preparation and execution of the Contract; and
- (b) except as expressly provided otherwise in the Contract, any transaction contemplated by the Contract.

40 Status of Service Provider

40.1 Independent contractor

At all times during the Term, and in the provision of the Services, the Service Provider is an independent contractor and will not act as, or be regarded as, an agent or employee of Hunter Water, and the Service Provider and its Personnel will not be entitled to any benefits which would ordinarily accrue to any employee of Hunter Water by virtue of their status as an employee.

40.2 Partnership and joint venture suppliers

Where the Service Provider comprises more than one person they will be bound jointly and severally and by executing the Contract accept joint and several liability for any loss or damage that may be suffered or occasioned and any sum that may be or may become payable to Hunter Water under the Contract.

41 Assignment and sub-contracting

41.1 Consent required

The Service Provider is not permitted to assign or sub-contract all or any part of the Contract without the prior written consent of Hunter Water, such permission being at Hunter Water's discretion and on whatever terms and conditions Hunter Water may think appropriate, including requiring the proposed assignee or Sub-contractor to be bound by any or all of the provisions of the Contract.

41.2 Obligations survive assignment or sub-contract

The Service Provider acknowledges that no permitted assignment or sub-contract in any way relieves the Service Provider from the performance of any of its obligations under the Contract.

41.3 Status of Sub-contractor

As between the Service Provider and Hunter Water, the Sub-contractor will be considered the agent and employee of the Service Provider. For the purposes of the Contract, the acts and omissions of each Sub-contractor and its Personnel will be deemed to be the acts and omissions of the Service Provider.

42 Personal Data Protection

42.1 Personal Data

Each Party agrees to comply with its obligations under all applicable laws relating to privacy and protection of Personal Data in respect of Personal Data obtained by or disclosed to them pursuant to this Contract.

42.2 Warranty

Each Party warrants to the other Party that it has complied with, and will continue to comply with, all applicable laws in its processing of Personal Data (including its collection, use, disclosure, storage and handling) pursuant to this Contract.

42.3 Survival of Clause

- (a) The Service Provider must, on termination of this Contract, return, destroy, store or dispose of Personal Data as directed by Hunter Water.
- (b) This Clause will survive the termination or expiry of this Contract.

43 Waiver

A failure to exercise, or any delay in exercising any right, power or remedy by a Party does not operate as a waiver. A single or partial exercise of any right, power or remedy does not preclude any other or further exercise of that or any other right, power or remedy. A waiver is not valid or binding on the Party granting that waiver unless made in writing.

44 Further assurances

Each Party agrees to do all things and execute all deeds, instruments, transfers or other documents as may be necessary or desirable to give full effect to the provisions of the Contract and the transactions contemplated by it.

45 Severability

45.1 Severability

Any provision of the Contract which is prohibited or unenforceable in any jurisdiction is ineffective as to that jurisdiction to the extent of the prohibition or unenforceability. This does not invalidate the remaining provisions of the Contract nor does it affect the validity or enforceability of that provision in any other jurisdiction.

45.2 Negotiation in good faith

Where a provision is prohibited or unenforceable, the Parties must negotiate in good faith to replace the invalid provision by a provision which is in accordance with the applicable law and which must be as close as possible to the Parties' original intent and appropriate consequential amendments (if any) will be made to the Contract.

46 Governing law

The Contract is governed by the laws of New South Wales. Each Party submits to the non-exclusive jurisdiction of the Courts exercising jurisdiction in New South Wales in connection with matters concerning the Contract.

47 Counterparts

This Contract may consist of a number of copies, each signed by one or more of the Parties. If so, the signed copies are to be treated as making up the one document, and the date on which the last counterpart is executed will be the date of this Contract.

48 Information Technology

The Service Provider is to provide the following additional technological services in the carrying out of the Services:

- (a) data backup processes and storage;
- (b) hardware security;
- (c) hardware and software support;
- (d) virus protection;
- (e) system processes;
- (f) risk management recovery strategies; and
- (g) comply with the Privacy and Personal Information Protection Act 1998 for all information provided to and from Hunter Water IT systems.

49 Hunter Water Site Safety Rules

In addition to any site safety rules adopted by the Service Provider, all persons (including the Service Provider) at workplaces on Hunter Water property must, as a minimum, comply with the site safety rules below. These requirements are not exhaustive and the Service Provider should implement any necessary additional site safety rules following its own risk assessment of the Facilities and the Services.

- (a) Workplace Specific Training.

Persons are only allowed to enter the workplace if they have been suitably informed, trained and instructed in the nature of any risks associated with their work or presence at the workplace and the controls measures to be adopted.
- (b) Procedures, Signs and Instructions.

All persons must comply with safety procedures, posted signs and any instructions given by those persons having control of the workplace.
- (c) Personal Protective Equipment.

All persons must wear footwear which provides protection to the entire foot. Thongs, sandals, high-heel or open-toe shoes are not permitted. All persons working in the open must wear long sleeve shirts and trousers. Persons working on or near roads and other trafficable areas including all treatment plants must wear high-visibility clothing. Persons using chemicals must wear the personal protective equipment as specified in the relevant material safety data sheet.

All persons in any part of the workplace designated as a construction site must wear safety helmets and safety footwear at all times. Safety helmets must comply with AS 1801 Occupational protective helmets and safety footwear must comply with AS 2210 Occupational protective footwear
- (d) Tags/Lock-out.

Equipment fitted with a Danger tag, an Out of Service tag or a lock-out device must not be operated. The only person permitted to remove a Danger tag is the person named on the tag. Out of Service tags may only be removed by the person who fitted the tag, their supervisor or the maintenance worker who repaired the equipment.
- (e) Alcohol and Drugs.

No person is allowed to use or be in possession of any alcohol or illicit drugs while at a workplace on Hunter Water property. No person under the influence of any intoxicating substance is allowed at a workplace on Hunter Water property.

- (f) Smoking.
Smoking is not allowed on Hunter Water property.
- (g) Firearms, Weapons and Explosives.
Firearms, weapons and explosives are not permitted on Hunter Water property without explicit permission from Hunter Water.
- (h) Bullying, Harassment and Discrimination.
All forms of bullying, harassment and discrimination are not permitted at a workplace on Hunter Water property.
- (i) Emergencies.
All persons must be aware of, and comply with, their employer's emergency procedures.
- (j) Incident notification.
Workplace incidents, near misses and previously unidentified hazards must be reported immediately to supervisors.
- (k) Confined spaces.
No person is permitted to enter a confined space, including all sewerage structures and water reservoirs, unless they hold evidence of appropriate training.
- (l) Working at heights.
Fall prevention equipment must be adopted when working at heights of two metres or greater if appropriate fencing, handrails or barriers are not already provided.
- (m) Asbestos.
No person is allowed to bring asbestos in any form onto Hunter Water property.
- (n) Fire Prevention.

Provide suitable extinguishing equipment if work includes the use of flame or spark generating equipment. Avoid driving or parking motor vehicles on long dry grass as heat generated by the exhaust system can start a fire.

- (o) Housekeeping.
Keep work areas in a clean and orderly state and walkways free from obstructions. Store any materials, plant and equipment so that it doesn't present a hazard.
- (p) Electrical safety.
Worker's electrical appliances must be inspected and tagged prior to being used at a workplace on Hunter Water property. Electrical work may only be performed by a qualified electrician.
- (q) Site Security.
Any unauthorized access must be reported immediately to supervisors.
- (r) Pets/animals.
Dogs, cats and other domestic animals are not permitted at workplaces on Hunter Water property.

50 Hunter Water Directive

If the Service Provider, its employees or subcontractors forms the view that any act or direction of Hunter Water, its representatives or agents (the **Directive**) may be illegal, or likely to cause harm to the Service Provider's equipment or personnel, the Service Provider shall immediately notify Hunter Water in writing of the relevant Direction and in what respects it is illegal or likely to cause harm to the Service Provider's equipment or personnel. Provided that the Service Provider has given the notice required by this clause 50, then the Service Provider shall not be obliged to comply with or follow the Directive to the extent reasonably necessary to comply with law and/or to avoid harm to its equipment and personnel, but the Service Provider shall in any event comply with any alternative Directives as Hunter Water may issue in relation to the performance of the relevant Services.

Schedule 2 Availability

1 Availability and Local Presence

- 1.1 The Service Provider warrants that it has, and will have at all times during the Term, the resources and ability to respond to calls from Hunter Water twenty-four (24) hours per day, seven (7) days per week.
- 1.2 The Service Provider must keep the Hunter Water Representative up to date with all contact details of the relevant Service Provider Personnel available to take out of hours requests.
- 1.3 The Services may require planned or emergency Service Provider Personnel availability. Service Provider Personnel availability must be confirmed by the Service Provider within two hours of the written request by Hunter Water (which may be done by telephone).
- 1.4 The Service Provider warrants that it has and will have at all times during the Term, a local presence in the region to be serviced that can provide:
 - (a) local sampling officer capability to collect non-scheduled samples at any time of the day or night and be able to reach all parts of Newcastle, Lake Macquarie, Port Stephens, and Maitland shires within 2 hours of a formal request;
 - (b) local laboratory technician capability to perform analysis on microbiological water quality including (but not limited to) E. coli for drinking water and environmental incident non-scheduled samples at any time and be able to commence testing as soon as the sample is delivered to the laboratory. For samples that are collected and delivered by Hunter Water for testing, the Service Provider must be able to commence testing within 2 hours of being notified by Hunter Water that the samples will be delivered to the laboratory; and
 - (c) testing facilities located centrally in the regions such that samples are able to be delivered from all parts of Newcastle, Lake Macquarie, Port Stephens and Maitland shires within 1 hour.
- 1.5 The Service Provider will maintain expertise in all aspects of laboratory analyses and make that expertise available to Hunter Water as requested.
- 1.6 The Service Provider employees who will liaise with Hunter Water must be familiar with the relevant requirements set out in the current version of NHMRC Australian Drinking Water Guidelines and other relevant guidelines related to water and wastewater quality.

Schedule 3 Technical Requirements

The Service Provider shall, in the performance of the Services, comply with the technical requirements set out in this Schedule 3.

1 Sampling and Testing Methods

- 1.1 The Service Provider will make available to Hunter Water upon request all sampling and laboratory testing procedures used in the performance of the Services.
- 1.2 The Service Provider must supply, operate and maintain automatic sampling machines for sample collection purposes as required by the Work Schedules. The automatic samplers are to be refrigerated.
- 1.3 The Service Provider must comply with requests to change procedures, lab schedules, reporting mechanisms and any other aspect of the Services in line with Hunter Water's requirements as and when required by Hunter Water.
- 1.4 The Service Provider will prepare a Standard Operating Procedure (**SOP**) for sampling and make that available to Hunter Water. The SOP's are to include (but are not limited to) site specific safe work method statements for the collection of samples, access details for specific sites and specific details of the sampling locations.
- 1.5 At all times during the performance of the Services the Service Provider must comply with the Standard Operating Procedures and the site specific safe work method statements prepared in accordance with clause 1.4 of this Schedule 3 and all relevant Australian Standards.
- 1.6 The Service Provider may suggest alternative testing throughout the Term however no alternations to the Services will be made without the prior written approval of Hunter Water.
- 1.7 The Service Provider must in the performance of the Services utilise National Association of Testing Authorities, Australia (**NATA**) accredited sampling techniques and ensure that the Service Provider's laboratory/laboratories are NATA accredited to carry out the required tests with test accreditation equivalent or superior to the NATA accreditation of Hunter Water laboratories at point of transaction.
- 1.8 The Service Provider must undertake all Scheduled and Unscheduled microbiological tests (excluding cryptosporidium and giardia) listed in paragraphs 1.1 and 1.2 of the Pricebook in Schedule 7, and NATA accredited holding time critical tests at the testing facilities described at clause 1.4 of Schedule 2. All other tests may be performed at any of the Service Provider's facilities.
- 1.9 Testing methods utilised by the Service Provider in the performance of the Services must be as per the testing requirements and Level of Reporting (LOR) set out in Schedule 8.
- 1.10 For tests for which there is not a NATA approved method the Service Provider must notify Hunter Water of the proposed testing method and must comply with industry best practice.
- 1.11 Services pertaining to health and environment are to meet NSW Health and NSW Environment Protection Authority (EPA) requirements.
- 1.12 An internal standard, such as "ColorSeedTM", must be used with each sample processed for protozoa analysis. Where protozoa (e.g. cryptosporidium) is detected in Samples at selected sites, speciation of protozoa present may be required
- 1.13 The Service Provider will instigate and use proper sampling, preservation and handling techniques consistent with the requirements of the EPA Publication 441 "A guide to the

Sampling and Analysis of Water and Wastewater” and EPA Publication “A guide to the Sampling and Analysis of Polluted Soils” where appropriate. Approved Methods for the Sampling and Analysis of Water Pollutants in New South Wales (2004) is available at:

<http://www.epa.nsw.gov.au/resources/legislation/approvedmethods-water.pdf>

- 1.14 If the analysis techniques are not fully covered in these publications then the techniques will be in accordance with APHA/AWWA “Standard Methods for the Examination of Water & Wastewater” current edition.
- 1.15 The Service Provider shall record water quality parameters including free chlorine on site for all sampling sites. Upon notification from Hunter Water, the Service Provider, in addition, must record (as a minimum) pH, turbidity, conductivity, temperature, dissolved oxygen (% saturation and mg/L) and redox potential on site using an in-situ probe at the locations identified by Hunter Water for Scheduled, Unscheduled and Miscellaneous sampling and analysis.
- 1.16 The Service Provider shall undertake filtration of water samples at sampling sites for analysis of dissolved metals.
- 1.17 In the performance of the Services the Service Provider must, at least, comply with the existing Level of Reporting (**LOR**) for analytes, methods used for analysis and standard Turnaround Time (TAT) for Scheduled Services as set out in Schedule 8.
- 1.18 The Service Provider shall put forward proposals to improve the existing practice in line with best industry practices and Hunter Water requirements.
- 1.19 The Service Provider will retain water samples after reporting of test results unless specifically required by clause 6.1(d) for the following periods:
 - for seven (7) calendar days for microbiological samples;
 - 14 days for organic samples; and
 - 4 weeks for all other samples,

2 Sample Collection from Water Treatment Works (WTW) and Wastewater Treatment Works (WWTW)

- 2.1 Some of the samples as nominated in the Schedule 6 will be collected by the Treatment Operations Contractor, who will store the samples at the plants.
- 2.2 The Service Provider must pick up these samples from WTWs and WWTWs within the required timeframes as set by NATA accreditation, any relevant guidelines and Hunter Water requirements.
- 2.3 The Service Provider must arrange delivery of suitable sample bottles to all treatment works to facilitate timely sample collection as required by Hunter Water and training requirements for Treatment Works Contractor regarding correct sampling procedures.
- 2.4 The Service Provider is to coordinate sampling times with the Treatment Operations contractor so that all samples are collected and arrive at the laboratory at the required times.

3 Collection and Transport Requirements

- 3.1 The Service Provider is to provide all suitable sampling containers in accordance with the NATA accreditation requirements and in compliance with the NHMRC Australian Drinking Water Guidelines (ADWG), Environment Protection Agency (EPA), Australian Standards, and any other relevant guidelines and collect samples from designated points and at designated times, as set out in this Contract, as amended from time to time by Hunter Water.

- 3.2 The Treatment Operations Contractor is required to undertake some sampling. The Service Provider must collect these samples to be tested from the agreed locations.
- 3.3 The Service Provider personnel collecting samples from the Facilities operated by the Treatment Operations Contractor will need to comply with any site specific induction procedures and the Treatment Operations Contractor's site requirements when on these sites.
- 3.4 Samples will also need to be collected from random sites associated with the water and wastewater network and remote sites associated with the catchments, as directed by Hunter Water.
- 3.5 When requested by Hunter Water, the Service Provider will store specific Samples for a reasonable period until it is established that those Samples are not required for re-analysis, audit purpose, or for any other reason

Vehicles

- 3.6 Sampling of some locations require suitable four wheel drive vehicles to be used by the Service Provider and it is the responsibility of the Service Provider to provide these vehicles.
- 3.7 Vehicles are required to be dedicated for Hunter Water sampling and are to be fitted with refrigeration units to store all samples at 4°C during transit unless there is specific requirement not to refrigerate samples for certain parameters.
- 3.8 Sampling from some locations require use of a boat which will be provided by Hunter Water. The Service Provider personnel must acquire all appropriate licences and complete training and competency standards to ensure safe operation of Hunter Water boats and collection of samples from these locations.

4 Sampling and Analysis for Licence Sampling Points

- 4.1 There may be a requirement for repeat samples as a result of reported exceptions to the initial sample tests. There may be little advance notice available to Hunter Water and therefore due to the need to expedite the notification of the Service Provider conducting water sampling, the initial notification may be by way of a telephone call by Hunter Water.
- 4.2 The sites selected for the purpose of drinking water sampling have taps located on the property (**Sample Site**). Any request made by a property resident to relocate a Sample Site off their property is to be referred to Hunter Water for direction as to which neighbouring properties would be the best replacement Sample Site/s.
- 4.3 For the collection of a drinking water sample for microbiological analysis, sampling tap will need to be sterilised by applying a flame to the external threads and the inside of a sampling tap for 5-10 seconds using an LPG torch.
- 4.4 The Service Provide must use a Bayonet fitting to collect the Samples from the sample point taps where necessary to avoid contamination of the Samples.

5 Response Times

Scheduled Services

- 5.1 Scheduled samples are to be collected, transported and tested in accordance with the frequencies and response times set out in the Contract.
- 5.2 If Hunter Water directs the Service Provider to perform additional Scheduled Services, the parties may agree a timetable for collection, transportation and testing. If agreement is not reached, clause 5.1 of this Schedule 3 applies.

Unscheduled Services

- 5.3 Unscheduled samples are to be collected, transported and tested in accordance with the response time advised at the time the work is directed. This work can generally be expected to be urgent and the response time will often require a sample to be collected, transported to the laboratory and tested out of normal working hours.
- 5.4 The Service Provider is to immediately notify the Hunter Water Representative at the time of sample receipt or at the time of a request being made, if in fact the advised response time for results cannot be met. Hunter Water at this time may direct that this work be sent to a Third Party Laboratory pursuant to clause 6.2 of the Contract.

6 Submission of Results / Information

- 6.1 The Service Provider must send results of BeachWatch monitoring in the format as requested by Hunter Water to the EPA BeachWatch Coordinator and Hunter Water.
- 6.2 The Service Provider shall send Hunter Water notification of exceptions in relation to relevant guideline values for microbiological data (>501 enterococci/100 mL) within 2 hours of data being available and confirmed. Hunter Water may amend guideline value from time to time.
- 6.3 The Service Provider must provide a schedule of routine sampling runs to be undertaken by sampling officers to Hunter Water including names of sampling officers, lists of Samples to be collected and dates of the sampling. The schedule is to be submitted in advance of the sampling runs and is to be updated monthly or as often as is necessary for it to be kept current.
- 6.4 The Service Provider must keep a register to record details of any changes as they are made to the Scheduled Services schedule under the Contract (Work Schedules) and make it available to Hunter Water when requested.
- 6.5 The Service Provider must notify the Hunter Water Representatives by phone and email within 2 hours of the scheduled time for collection of the sample if any of the Scheduled Samples to be collected as part of regulatory requirement (**Missing Samples**) such as Environmental Protection Licence and Operating Licence, are not collected. If any missing samples were to have been collected by the Treatment Operations Contractor the Service Provider must also notify the Treatment Operations Contractor representative by phone and email to arrange for missing samples to be collected. Immediately collect all other missing samples.
- 6.6 The Service Provider must also send a report on a weekly basis, or as otherwise agreed, listing any of the Scheduled Samples which were not collected during each week explaining the reason for not collecting those Samples and must investigate and report to Hunter Water why this occurred and how this could be avoided in future in consultation with Hunter Water.
- 6.7 The Service Provider must notify Hunter Water of any problems which may affect the accuracy of reporting or results within 2 hours of the issue coming to the attention of the Service Provider.
- 6.8 The testing results are to be submitted to Hunter water electronically via SFTP on a daily basis to a schedule to be advised. The Hunter Water IT group will define the detailed format of the data to be submitted. It is to be in a format that can be read by Hunter Water's current "Labdata" program and the proposed upgraded version. It will also be in a format that will allow the results to be made available to the Treatment Operations Contractor.
- 6.9 The Service Provider must include the results of testing undertaken for the Treatment Operations Contractor with the data to be transferred to Hunter Water each day provided that the Treatment Operations Contractor provides written consent.
- 6.10 When directed by Hunter Water, the Service Provider will submit specific test results directly to nominated officers or agents by email, as well as via the standard digital method as required by clause 6.8.

- 6.11 The Service Provider will store all data collected during the Term and make it available to Hunter Water at any time on request.
- 6.12 The Service Provider will notify Hunter Water by telephone and email when total Geosmin and/or MIB > 10 ng/L in Grahamstown Raw or Dungog Filtered water samples or if MIB > 5 ng/L in Grahamstown Raw water samples.
- 6.13 The Service Provider must notify the Hunter Water Representative of the following results by telephone and email within 2 hours of results being available and confirmed. The Service Provider must follow Hunter Water exception reporting procedures.
- (a) any results of E. coli > 0 MPN/100 mL in any treated drinking water samples, i.e. treated water at water treatment plants, at routine drinking water quality sample points (representative of water supplied to customers), or from any other site from within the distribution system, i.e. reservoirs, high level tanks or watermains;
 - (b) any positive result of Cryptosporidium or Giardia in raw and treated waters; and
 - (c) any results that exceed the health-related guideline value for drinking water under the current version of NHMRC Australian Drinking Water Guidelines (for all treated drinking water samples, i.e. treated water at water treatment plants, at routine drinking water quality sample points, or from any other site from within the distribution system, i.e. reservoirs, high level tanks or watermains).
- 6.14 To comply with the telephone notification requirements of clauses 4.1, 6.5, 6.11 or 6.12 of this Schedule 3 direct contact must be made, any other telephone contact will be insufficient notice. If the telephone is not answered, another contact on the list must be telephoned. The Service Provider must continue to attempt to notify the Hunter Water Representative until direct contact is made.

Quality Assurance/Quality Control (QA/QC)

- 6.15 The Service Provider will provide QA/QC reports/data with the results of sample analysis carried out for Unscheduled work. For Scheduled work, the Service Provider must keep record of all QA/QC report/data and make them available upon request from Hunter Water.
- 6.16 The Service Provider must participate in the Proficiency Testing Analysis (**PTA**) for laboratory analysis for different matrix, including for protozoa (cryptosporidium and giardia) in the Samples. The results of the PTA participation are to be made available to Hunter Water as they become available.

7 Reporting

- 7.1 The following results must be emailed to the designated list of Hunter Water representatives and agents within 2 hours of data being available and confirmed:
- (a) cryptosporidium and giardia for all water samples;
 - (b) blue-green algae data for all water samples;
 - (c) BeachWatch results;
 - (d) phosphorus data for Williams River at Boags Hill to Manager Water Network Operations;
 - (e) groundwater data (E. coli, chloride, fluoride, ammonia, nitrate, nitrite, total oxidised nitrogen and water level) for four piezometers (P1-P4) and four bores (B4-B7) at Tomago Pump Station 4.

- 7.2 The Service Provider must email Treatment Operations Contractor and Hunter Water representatives notification of exceedance in relation to EPL concentration requirements within 2 hours of data being available and confirmed (Hunter Water to provide EPL concentration values for each WWTW).
- 7.3 For Unscheduled work, results of all analytes are to be presented in MS Excel Spreadsheet and PDF formats. The Service Provider will be required to provide preliminary results (interim reports) as they become available and provide confirmed results at a later stage as they become available. The results may be required to be tabulated and graphed over time, and compared to the relevant guidelines.
- 7.4 Test methods used for Unscheduled work are to be included in all test reports and are to include (but not limited to):
- (a) Laboratory reference number;
 - (b) Name of Hunter Water representative who requested the works;
 - (c) Date and time of sample collected at the site and received at the lab;
 - (d) Date of test;
 - (e) Point at which sample was taken;
 - (f) Name of person who collected sample; and
 - (g) QA/QC report.
- 7.5 In addition to any reporting requirements set out in this Schedule 3, or in clause 5 or clause 6 of the Contract, the Service Provider must:
- (a) compile monthly environment protection license pollution monitoring data, to comply with any licensing requirements or Statutory Requirements placed on Hunter Water as a result of carrying out the Services; and
 - (b) provide a monthly Water Quality Report including Zone Means and Region Means files for monthly Water Quality Committee meetings,
- and provide copies of such reports immediately upon request by Hunter Water.

8 General

- 8.1 The Service Provider's employees are required to undertake Hunter Water's Compliance Training as is necessary, including but not limited to Drinking Water Quality Awareness training.
- 8.2 All data and SOPs generated in performing the works under the Contract shall be property of Hunter Water.
- 8.3 The Service Provider must not publish, report or present data in any way or form without written prior approval from Hunter Water.
- 8.4 The Service Provider shall make information on all sampling and analysis methods available to assist Hunter Water in preparing presentations and reports as required.
- 8.5 The Service Provider must at all times when in control or at a Site, keep the Site, environment, people, and property safe and must report any 'break and enter' that comes to their attention (whether witnessed directly or where obvious after attending any Site).

9 Trade Waste Inspector Requirements

- 9.1 The Service Provider is required to provide inspection of the existing trade waste facilities, tankers and deemed trade waste customers to assess compliance with Hunter Water requirements.

- 9.2 Following are the minimum requirements for a Trade Waste inspector:
- (a) Current vehicle licence;
 - (b) NSW WorkCover Work Health & Safety General Induction Card (White Card);
 - (c) Qualifications in plumbing or similar knowledge;
 - (d) Understanding of how trade waste facilities operate;
 - (e) Understanding of plumbing system operations and theory and their applications;
 - (f) Ability to read plans/diagrams in order to locate sewer systems, trade waste facilities etc;
 - (g) Communication skills to request and provide information and understand non-trade descriptions;
 - (h) Ability to recognise and investigate breaches;
 - (i) Ability to report on findings (using a Hunter Water supplied report); and
 - (j) Physical fitness to be able to lift heavy manhole and gattic lids.

10 Analysis to be Carried out Following Customer Complaints

Drinking Water Quality Complaints

- 10.1 In response to customer complaints or other incidents, Hunter Water may direct the Service Provider to collect and analyse drinking water samples as an Unscheduled Service. The samples are to be analysed for the following default analytes unless Hunter directs other tests to be carried out:
- (a) pH;
 - (b) Conductivity;
 - (c) Turbidity;
 - (d) Fluoride;
 - (e) Manganese Total;
 - (f) Iron Total;
 - (g) Copper Total;
 - (h) Zinc Total;
 - (i) Total Chlorine; and
 - (j) Free Chlorine.

- 10.2 A report of analysis will need to be faxed or emailed to Hunter Water's Customer Services and Manager Water Network Operations and as directed by Hunter Water.

Suspected Seepage / Water Leak

- 10.3 In response to a suspected seepage or water leak from Hunter Water assets or other incidents Hunter Water may direct the Service Provider to collect and analyse samples as an Unscheduled Service. The samples are to be analysed for the following default analytes unless Hunter directs other tests to be carried out.
- (a) Chloride;
 - (b) Fluoride;
 - (c) pH;

- (d) Conductivity;
- (e) Chloride;
- (f) Fluoride;
- (g) Ammonia; and
- (h) Nitrites.

10.4 A report of analysis will need to be faxed or emailed to Hunter Water's Customer Services and Manager Water Network Operations and as directed by Hunter Water.

11 Sample Drop off Services to be Provided During Out-of-Hours

- 11.1 The Service Provider must provide access to a suitable storage facility including a refrigerator that meets sample storage requirements as outlined in Schedule 3 Technical Requirements to receive samples dropped off by Hunter Water staff and agents during Out-of-Hours at the laboratory.
- 11.2 The Service Provider must provide access to a suitable facility at the laboratory to receive sample information and analysis requirements at the time of sample drop off during Out-of-Hours by Hunter Water staff and agents.
- 11.3 The Service Provider must provide access to Hunter Water staff and agents to pick up empty sample bottles from the laboratory during Out-of-Hours for sample collection.
- 11.4 The Service Provider must also provide contact details of laboratory staff for Hunter Water staff and agents to notify about sample drop off sample during Out-of-Hours.

Schedule 5 Monthly report form

Part A Issues to be covered in Montly Report

- Safety incidents including the attached WHS report on this contract
- Environmental incidents on this contract
- Non compliances with licence requirements
- Reports not collected or sampled
- Report on performance against each of the KPI's and SSA.
- Statistics for the month including number of samples collected and number of tests completed
- Update of the schedule for prescheduled sampling if current version is not up to date
- Update of any changed SOP's
- Update the register of agreed changes to the Work Schedules if current version is not up to date
- Identify any potential variations that may arise.



CONTRACTOR WHS PERFORMANCE REPORT

This form is to be completed by the Contractor at the end of each month during the Contract and at Practical Completion

Contract Name:	Report for the Month of..
Contract Number:	Prepared By:
Contractor:	Date:

PERFORMANCE INDICATORS

<u>Indicator</u>	No. of Occurrences (including subcontractors and employees)		
	Current Month	Total to Date on Contract	Reported to HWC during month? Y/N
Lost Time Injuries <i>An incident that resulted in time lost of one day/shift or more</i>			
Total Days lost to above LTI's			
Medical Treatment Injuries <i>Treatment Administered by a doctor or Hospital</i>			
First Aid Injuries <i>An Injury that requires first aid treatment in the workplace</i>			
Near Misses <i>Incident with no injury sustained but potential for injury</i>			
Notifiable Occurrences reported to WorkCover			
Property Damage			
OHS Inductions (first day on site)			
OHS Inductions (later than first day on site)			
Workplace Inspections Carried Out			
Total Hours Worked by Contractor			
Total Hours Worked by sub-contractors			
Meetings including WHS			

Contractor comments on OHS Performance: _____

Name of Contractor's Representative: _____
Signature / Date: _____

Comments by Hunter Water Project Manager: _____

Name of Hunter Water Project Manager _____
Signature / Date _____