SUPPLY OF GOODS AND/OR SERVICES CONTRACT

Contract No Insert Number
Insert Project Name

General Conditions

Hunter Water Corporation *ABN 46 228 513 446*
Principal

[Insert name and ABN]
Contractor

Version: 3.0 dated 29 February 2023

AMENDMENTS

[Delete this section before issuing the Contract]

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

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

Version No.	Date	Clause	Description	Approval
1.0	November 2021	All	Prepared by Clayton Utz solicitors with Hunter Water Legal	
2.0	November 2023	1.1, 3, 5.5, 5.6, 6.15, 8, 17, 20, 23 and consequential provisions	Prepared by Clayton Utz solicitors with Hunter Water Legal	
3	February 2024	New Corporate Template	New Corporate Template	

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FORMAL INSTRUMENT OF AGREEMENT

Formal Instrument of Agreement made in Newcastle on the Award Date

Parties

Principal:

Name: Hunter Water Corporation ABN 46 228 513 446

Address: 36 Honeysuckle Drive Newcastle NSW 2300

Contractor:

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

Address: [insert]

Background

A. In accordance with the Hunter Water Act and the operating licence issued to the Principal under the Hunter Water Act, the Principal is required to provide, construct, operate, manage and maintain efficient, co-ordinated and commercially viable system services for:

(a) supplying water;

(b) providing sewage and drainage services; and

(c) disposing of wastewater,

within its area of operations in the Lower Hunter region.

B. The Principal's core objectives and responsibilities are to supply reliable, high quality water and wastewater services to the people of the Lower Hunter region, as well as to provide stormwater services, trade wastewater, recycled water and raw water services (**Objectives**).

C. The Principal intends to procure the delivery of **[insert description of the Project]** (the **Project**).

D. Having regard to the Objectives and the Project, the Contractor has represented to the Principal that it has the necessary skill, experience, available resources and professional competence to carry out the Contractor's Activities.

E. The Contractor has agreed to carry out the Contractor's Activities on the terms and conditions of the Contract.

The parties agree

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

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

Signed as an agreement

Signed for and on behalf of **Hunter Water Corporation ABN 46 228 513 446** by its authorised delegate in the presence of:

Signature of witness

Full name of witness

Signature of authorised delegate

Full name of authorised delegate

Date

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

Signature of director

Full name of director

Date

Signature of company secretary/director

Full name of company secretary/director

Date

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

Executed on behalf of **[Insert name of Contractor] ABN [insert]** by its attorney	)
	)
	)
.....	)
Name of attorney (print)	)
Under power of attorney	)
Registration Number / Book Number (Powers of attorney created in Victoria do not have a number. Insert the date of the power of attorney instead.)	)

.....

in the presence of:

.....	.....
Signature of witness	Signature of attorney By executing this document the attorney states that the attorney has received no notice of revocation of the power of attorney
.....	
Name of witness (print)	.....20..... Date

GENERAL CONDITIONS OF CONTRACT

1. DEFINITIONS AND INTERPRETATION

1.1. Definitions

In the Contract, unless the context indicates otherwise:

Act of Prevention means any one of:

(a) a breach of the Contract by the Principal;

(b) any other act or omission of the Principal, the Principal's Representative or an Other Contractor engaged by the Principal; or

(c) a Variation the subject of a Direction by the Principal's Representative.

Appendix means the Appendix to these General Conditions of Contract.

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

(a) carry out the Contractor's Activities; or

(b) occupy or use the completed Works or a completed Separable Portion.

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

Award Date means:

(a) where a Standing Offer Deed exists, the date on which the Contract came into existence as determined in accordance with the Standing Offer Deed; or

(b) otherwise, the date on which the Formal Instrument of Agreement has been signed by the last party to sign.

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

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

(a) a change in an Approval or a new Approval; or

(b) a change in existing Legislation, or new Legislation, relating to taxes.

Change of Control means, in relation to the Contractor:

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

(b) if a person (acting alone or together with its Associates (as defined in the Corporations Act)) who was in Control of the Contractor on the Award Date stops having Control of the Contractor,

other than as a result of:

(c) a restructure of the Contractor or any Related Entity (as defined in the Corporations Act) of the Contractor that does not change the Ultimate Holding Company (as defined in the Corporations Act) of the Contractor; or

(d) a transfer or issue of any securities listed on any recognised stock or securities exchange.

Claim includes any claim for an increase in the Contract Price or for payment of money (including damages) or for an extension of time to a Date for Practical Completion or LD Milestone Date:

(a) under, arising out of, or in any way in connection with, the Contract, including any Direction of the Principal's Representative;

(b) arising out of, or in any way in connection with, the Contractor's Activities, the Works or either party's conduct before the Contract; or

(c) otherwise at Law or in equity, including by statute, in tort (for negligence or otherwise, including negligent misrepresentation) or for restitution.

Confidential Information means:

(a) information disclosed by or on behalf of the Principal or its Personnel to the Contractor or the Contractor's Personnel (or of which the Contractor or the Contractor's Personnel become aware) arising out of, or in connection with, the Contractor carrying out the Contractor's Activities under the Contract;

(b) information acquired by the Contractor or its Personnel in the course of discussions prior to the Award Date in relation to the Contractor's Activities;

(c) any document or other correspondence provided by the Principal to the Contractor or the Contractor's Personnel, that:

(i) is by its nature confidential; or

(ii) is designated as confidential by the Principal or the Principal's Personnel from time to time; or

(d) any other information which by its nature should reasonably be considered to be the confidential information of the Principal or the Principal's Personnel, or which the Contractor or the Contractor's Personnel knows is confidential,

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

(e) the Contractor can demonstrate to be in the public domain or was known to the Contractor at the time of disclosure other than through a breach of this Contract;

(f) is in the lawful possession of the Contractor without restriction in relation to disclosure before the date of receipt of the information from the Principal or the Principal's Personnel; or

(g) was independently developed by the Contractor or its Personnel.

Confidentiality Undertaking means a deed in the form of Schedule 9 of the Appendix.

Consequential Loss means any:

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

(b) direct or indirect financing costs,

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

Construction Plant Insurance means a policy of insurance insuring construction plant that is material to the Contractor's ability to perform the Contractor's Activities against loss, theft, damage or destruction.

Contract means the contractual relationship between the parties constituted by:

(a) either:

(i) where a Standing Offer Deed exists, the Purchase Order issued by the Principal in accordance with the terms of the Standing Offer Deed; or

(ii) otherwise, the Formal Instrument of Agreement;

(b) these General Conditions of Contract;

(c) the Key Details as amended (if applicable) by a Purchase Order;

(d) the Schedules, Exhibits and Appendix;

(e) the Statement of Work; and

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

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

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

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

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

Corporations Act means the Corporations Act 2001 (Cth).

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

Date for Practical Completion means the date, or period of time, specified in the Key Details, as adjusted under the Contract.

Date of Practical Completion means in respect of the Works or a Separable Portion, the date of Practical Completion set out in a Notice of Practical Completion.

Deed of Final Release means the deed in Schedule 11 of the Appendix.

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

Defect means any aspect of the Contractor's Activities, the Works, or any part thereof, which is not in accordance with the requirements of the Contract.

Defects Liability Period means the period which commences on the Date of Practical Completion of the Works or the last Separable Portion to achieve Practical Completion, and which continues for the period described in the Key Details as extended by clause 9.12.

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

Design Documentation means all design documentation (including drawings, designs, specifications, manuals, patterns, models, samples, calculations and the like) and other information which is necessary for the Contractor to complete any part of the Works.

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

Drug and Alcohol Policy means the policy available, as at the Award Date, at https://www.hunterwater.com.au/documents/assets/src/uploads/documents/Policy-and-standards/Safety-Health-and-Wellbeing/Alcohol-and-Other-Drugs-Standard.pdf, as updated from time to time, or as otherwise notified by the Principal to the Contractor in writing.

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

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

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

Environmental Management Plan has the meaning given to that term in the Environmental Management Guidelines (Construction Procurement) (Edition 4).

Environmental Management System means an independently certified environmental management system that meets the requirements of the Environmental Management Guidelines (Construction Procurement) (Edition 4).

Evaluation Meetings has the meaning given to that term in clause 2.4(a).

Evaluation Trend Scenarios means a document in the form of Part C of Schedule 12 of the Appendix or in any other form prescribed by the Principal.

Final Payment Claim has the meaning given to that term in clause 12.8(a)(iii).

Force Majeure Event means:

(a) riot, war, invasion or act of foreign enemies, acts of terrorism, or hostilities;

(b) ionising radiation or contamination, radio activity from any nuclear fuel or from any nuclear waste from the combustion of nuclear fuel, radioactive, toxic, explosive or other hazardous properties of any explosive assembly or nuclear component;

(c) pressure waves caused by aircraft or other aerial devices travelling at sonic or supersonic speeds;

(d) industrial action in the form of a strike that is not specific to, or caused by, the Contractor; and

(e) earthquakes, flood, fire or other physical natural disaster, but excluding weather conditions, regardless of severity,

but only where:

(f) such events or circumstances:

(i) are beyond the reasonable control of the affected party;

(ii) where the affected party is the Contractor, are such that a competent contractor would not have been able to prevent or overcome the effect of such events or circumstances on the performance of the Contractor's obligations under the Contract if it had exercised the care, skill, diligence, prudence and foresight reasonably or ordinarily expected of a competent, qualified, skilled and experienced contractor providing similar works; and

(iii) are not caused or contributed to in whole or in part by a breach by the affected party of the Contract; and

(g) if the affected party is the Contractor, the Contractor has taken all reasonable steps to mitigate the effects of such events or circumstances on its performance of the Contractor's Activities.

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

General Conditions of Contract means these General Conditions of Contract.

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

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

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

Hunter Water Act means the Hunter Water Act 1991 (NSW).

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

(a) the party informs the other party in writing, or its creditors generally, that the party is insolvent or is unable to proceed with the Contract for financial reasons;

(b) a trustee, receiver, receiver and manager, interim receiver, controller, administrator, custodian, sequestrator, provisional liquidator, liquidator or any foreign law equivalent or other person with similar power is appointed to the party;

(c) the party:

(i) becomes bankrupt or insolvent within the meaning of section 95A of the Corporations Act or under any bankruptcy, insolvency or analogous Law;

(ii) would be presumed by a court to be insolvent under section 459C(2) of the Corporations Act;

(iii) fails to comply with a statutory demand (within the meaning of section 459F(1) of the Corporations Act) and fails to remedy that failure within 7 days after being required in writing to do so by the party issuing the statutory demand;

(iv) makes any assignment in bankruptcy or makes any other assignment for the benefit of creditors;

(v) seeks relief from its obligations to creditors under any bankruptcy, insolvency or analogous Law;

(vi) commences any proceeding, files a petition or proposal to take advantage of any act of bankruptcy or insolvency;

(vii) resolves to, consents to or acquiesces in the appointment of a trustee, receiver, receiver and manager, interim receiver, controller, administrator, custodian, sequestrator, provisional liquidator, liquidator or other person with similar power of itself or of all or a portion of its assets; or

(viii) files a petition or otherwise commences any proceeding seeking to enter into any compromise, reorganisation, arrangement, composition or readjustment under any applicable bankruptcy, insolvency or analogous Law affecting creditors' rights or consents to, or acquiesces in, the filing of such a petition, or commencement of such proceedings; or

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

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

Key Details means the particulars which appear in Schedule 1.

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

(a) in Schedule 8 of the Appendix; and

(b) set out in Schedule 3 (if any).

Latent Conditions means any Site Conditions (excluding weather conditions, or physical conditions which are a consequence of weather conditions, at the Site and its surrounds) which

differ materially from the Site Conditions that should have been reasonably anticipated or foreseen by a prudent, competent and experienced contractor if it had done those things which the Contractor is deemed to have done under clause 7.1.

Law means:

(a) Legislation;

(b) common law and equity;

(c) Approvals; and

(d) any other relevant Authority requirements.

LD Milestone means the milestones set out in Schedule 4.

LD Milestone Date means the date, or period of time, specified in Schedule 4 as adjusted under the Contract.

Legal Opinion means a legal opinion:

(a) from:

(i) lawyers to the Contractor, authorised to practise in the place of incorporation of the Contractor, stating that the Contract is binding and enforceable against the Contractor; or

(ii) lawyers to the Guarantor, authorised to practise in the place of incorporation of the Guarantor, stating that the parent company guarantee is binding and enforceable against the Guarantor,

(as applicable);

(b) which states that it may be relied upon by the Principal; and

(c) in a form reasonably satisfactory to the Principal.

Legislation means any legally binding law, legislation, statute, act, regulation, subordinate legislation, rule, by-law, order, proclamation, decree, ordinance, directive or code which is enacted, issued or promulgated by the Commonwealth or any State or Territory government.

Marine Liability Insurance means a contract of marine insurance:

(a) covering the respective rights and interests and liabilities to third parties of the Principal, the Contractor, the Principal's Representative and all Subcontractors from time to time; and

(b) covering the parties' respective liability to each other,

for loss or damage to property (including the Principal's property) and the death of or injury to any person (other than liability which the Law requires to be covered under a Workers Compensation Insurance policy) arising out of, or in any way in connection with, the use, operation, charter or ownership of any waterborne or marine vessel or craft by the Contractor or its Personnel in connection with the Contractor's Activities.

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

Motor Vehicle Insurance means a policy of insurance covering vehicle third party bodily injury and property damage in respect of all vehicles to be used by the Contractor (whether owned, rented or leased) in connection with the Contractor's Activities.

Notice of Practical Completion means a notice under clause 13.2(a)(ii) by the Principal's Representative stating that Practical Completion of the Works or a Separable Portion has been achieved.

Notice of Dispute has the meaning given in clause 15.1.

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

Option means an option set out in Schedule 5.

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

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

Performance Evaluation Form means the document in the form of Part A of Schedule 12 of the Appendix or in any other form prescribed by the Principal.

Performance Evaluation Record Form means the document in the form of Part B of Schedule 12 of the Appendix or in any other form prescribed by the Principal.

Personal Information means information or an opinion recorded in any form about an individual whose identity is apparent or can reasonably be ascertained from the information or opinion.

Personnel means:

(a) in respect of the Contractor, any directors, officers, employees, consultants, agents and Subcontractors of the Contractor; and

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

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

Plant, Equipment and Work means those things used, or work undertaken, by the Contractor to construct the Works or a Separable Portion but which will not form part of the Works or the Separable Portion.

Policies and Procedures means the following policies and procedures, as updated from time to time:

(a) set out in Schedule 10 of the Appendix;

(b) each of the following NSW Government policies where so stated in the Key Details:

(i) Aboriginal Procurement Policy (January 2021);

(ii) Environmental Management Guidelines (Construction Procurement) (Edition 4);

(iii) Quality Management Guidelines (Construction Procurement) (Edition 4);

(iv) Work Health & Safety management guidelines (for Construction Procurement) (Edition 6);

(v) Skills, training and diversity in construction (PBD 2020-03);

(vi) Small and Medium Enterprises and Regional Procurement Policy (July 2021);

(vii) Small Business Shorter Payment Terms Policy (July 2021); and

(viii) Supplier Code of Conduct (February 2020);

(c) the following policies and procedures:

(i) the Supplier Partnership Principles available as at the Award Date at:

https://www.hunterwater.com.au/documents/assets/src/uploads/documents/Policy-and-standards/Contractor-and-Procurement/Hunter-Water-Supplier-Partnerships-Principles-Low-Res.pdf;

(ii) the Commercial & Procurement Policy available as at the Award Date at:

https://www.hunterwater.com.au/documents/assets/src/uploads/documents/Policy-and-standards/Contractor-and-Procurement/Commercial-and-Procurement-Policy.pdf;

(iii) the Drug and Alcohol Policy;

(iv) the Lifesaver Handbook and Risk Standards available as at the Award Date at:

https://www.hunterwater.com.au/about-us/publications/policies; and

(v) the Supplier User Guide – Work Health and Safety Requirements, available as at the Award Date at:

https://www.hunterwater.com.au/documents/assets/src/uploads/documents/Policy-and-standards/Safety-Health-and-Wellbeing/Guideline-Supplier-User-Guide-WHS-Requirements.pdf;

(d) any policies or procedures notified by the Principal to the Contractor in writing from time to time;

(e) any policies or procedures listed on the Principal's website; and

(f) the policies and procedures set out in the Key Details (if any).

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

Practical Completion means the stage when in respect of the Works or a Separable Portion:

(a) the Works are, or a Separable Portion is, complete except for minor Defects:

(i) which do not prevent the Works or the Separable Portion from being reasonably capable of being used for the intended purpose of the Works or the Separable Portion; and

(ii) which can be corrected without prejudicing the convenient use of the Works or the Separable Portion;

(b) those tests which are required by the Contract to be carried out and passed before the Works or the Separable Portion reach Practical Completion have been carried out and passed;

(c) all documents and other information referred to in the Contract, including all Approvals, which are required for the use, operation and maintenance of the Works or the Separable Portion have been supplied to the Principal's Representative; and

(d) the Contractor has done everything which the Contract requires it to do as a condition precedent to Practical Completion.

Pre-existing IPR in respect of a party means:

(a) any Intellectual Property Rights belonging to that party that are pre-existing as at the Award Date, but does not include any Intellectual Property Rights developed by the Contractor or any of its Personnel for the purposes of, or in anticipation of, carrying out the Contractor's Activities; or

(b) any Intellectual Property Rights that are brought into existence by or on behalf of that party, other than as a result of the performance of that party's obligations under this Contract,

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

Principal Data means all data and information relating to the Principal or its operations, facilities, clients, customers, Personnel, assets and programs (including Personal Information) in whatever form that information may exist, and whether entered into, stored in, generated by or processed through software or equipment, or produced as part of the performance of the Contractor's Activities.

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

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

Privacy Laws means all applicable laws relating to privacy and Personal Information, including the Privacy and Personal Information Protection Act 1998 (NSW), Privacy Act 1988 (Cth) and any applicable principles, codes or directions issued under those Laws.

Product Liability Insurance means a policy of product liability insurance:

(a) covering the respective rights and interests and liabilities to third parties of the Principal, the Contractor, the Principal's Representatives and all Subcontractors from time to time;

(b) covering the parties' respective liability to each other; and

(c) which complies with the requirements set out in clause 5.5(c),

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

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

Project has the meaning given to this term in the section entitled "Background" in the Formal Instrument of Agreement.

Provisional Sum Work means the work or goods so described in the Key Details for which the sum of money referred to in the Key Details is included in the Contract Price.

Public Liability Insurance means a policy of public liability insurance:

(a) covering the respective rights and interests and liabilities to third parties of the Principal, the Contractor, the Principal's Representatives and all Subcontractors from time to time;

(b) covering the parties' respective liability to each other; and

(c) which complies with the requirements set out in clause 5.5(c),

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

Purchase Order means:

(a) where a Standing Offer Deed exists, the 'Purchase Order' issued under the Standing Offer Deed (if any) and includes any annexures, schedules, exhibits and attachments to the Purchase Order; and

(b) otherwise, a purchase order (or any document or documents together referred to by the Principal as the purchase order) issued by the Principal to the Contractor for the purposes of invoicing and payment.

Qualifying Cause means:

(a) an Act of Prevention;

(b) subject to clause 7.3, a Latent Condition;

(c) a Force Majeure Event; or

(d) a Direction to suspend that satisfies clause 10.13(c)(ii).

Quality Management Plan has the meaning given to that term in the Quality Management Guidelines (Construction Procurement) (Edition 4).

Quality Management System means an independently certified quality management system that meets the requirements of the Quality Management Guidelines (Construction Procurement) (Edition 4).

Security Incident means any one or more of the following**:**

(a) any unauthorised (whether under the Contract or otherwise) or unlawful use of, loss of, access to, alteration of, or disclosure of Principal Data, Confidential Information or Personal Information within the Contractor's or its Personnel's possession or control (including any data and information stored on the Contractor's equipment or in the facilities used by the Contractor to carry out the Contractor's Activities, or any unauthorised or unlawful access to such equipment or facilities);

(b) any Eligible Data Breach or other notifiable data breach under the Privacy Laws;

(c) any Virus, denial of service attack or other incident (including any breach of the Contractor's or the Principal's ICT systems) that compromises or adversely impacts the Principal, the Contractor's Activities or the security, availability or integrity of Principal Data, the systems and technologies holding such data or the Principal Environment (or which has the intent to do so);

(d) a Cyber Security Incident as defined under clause 20.2(f);

(e) any security breaches, cyber security incidents or similar events relating to, or affecting, Principal Data, Confidential Information, Personal Information or the Principal Environment which trigger, or are likely to trigger, contractual reporting obligations or legal reporting obligations to an Authority or which would require a response or action under the Contract, at Law or under any of the Policies and Procedures;

(f) where there are reasonable grounds to suspect that any of the breaches or circumstances under paragraphs (a) to (e) have occurred or are likely to have occurred or will occur; or

(g) any alleged occurrence of any of the above events or circumstances.

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

Separable Portion means a separable portion of the Works described in the Key Details.

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

Site Conditions means all above and below ground conditions and characteristics of the Site and its surrounds (including all natural and artificial things, asbestos, contamination, and other environmentally hazardous substances, concrete cracking and spalling, utilities and services on and within the surface and, if the Site includes a building, on and within the building (including those things obscured behind walls, ceilings and beneath the floor)), or on or about the Site including:

(a) the location and adequacy of existing services, including all pipes, valves, ducts, cables, switchboards and other plant and equipment;

(b) the adequacy and position of all load bearing and support structures; and

(c) any existing services, plant, equipment or structures which require temporary or permanent removal or relocation in order to carry out the Contractor's Activities.

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

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

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

program logic of the software, firmware, computer code or configuration files and to perform any of those acts in relation to it.

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

Statement of Work means:

(a) the document in Exhibit A (if any); and

(b) where a Standing Offer Deed exists, any Statement of Work attached to the Purchase Order.

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

Subcontract means a contract between the Contractor and a Subcontractor.

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

Supplier Partnership Principles means the Principal's partnering and business objectives which is available at https://www.hunterwater.com.au/documents/assets/src/uploads/documents/Policy-and-standards/Contractor-and-Procurement/Hunter-Water-Supplier-Partnerships-Principles-Low-Res.pdf or upon request from the Principal's Representative, as updated from time to time.

Tests means:

(a) the tests and procedures specified in the Statement of Work which are to be carried out before Practical Completion;

(b) any other tests required by the Principal's Representative; and

(c) any other tests required to ascertain whether the Works or a specified part thereof meet the requirements of the Contract,

and each of them is a Test.

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

Utility Service means any above or below ground utility, service facility or item of public (State or Federal) or private infrastructure, including pedestrian and vehicular corridors, water, electricity, gas, fuel, telephone, railway, existing drainage, stormwater, sewerage, industrial waste disposal and electronic communications service.

Variation means any change to the Works including any addition, increase, decrease, omission, deletion, demolition or removal to or from the Works.

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

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

(a) the Work Health and Safety Act 2011 (NSW); and

(b) the Work Health and Safety Regulation 2017 (NSW).

WHS Management Plan means the work health and safety plan to be prepared by the Contractor under clause 7.6, which must:

(a) set out in adequate detail the procedures the Contractor will implement to manage the Contractor's Activities from a work health and safety perspective;

(b) describe how the Contractor proposes to ensure the Contractor's Activities are performed consistently with WHS Legislation; and

(c) comply with the specific requirements of Part 6.4 of the Work Health and Safety Regulation 2017 (NSW) in relation to the matters that a WHS management plan must include.

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

Works means the physical works which the Contractor must complete and hand over to the Principal, as more particularly described in the Statement of Work.

Works Insurance means a policy of insurance to:

(a) cover the Principal, the Contractor and all Subcontractors for their respective rights, interests and liabilities; and

(b) insure all the things referred to in clause 15.1 for which the Contractor bears the risk against loss or damage resulting from any insurable event.

1.2. Interpretation

In the Contract:

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

and unless the context indicates a contrary intention:

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

(c) "person" includes an individual, the estate of an individual, a corporation, an Authority, an association or a joint venture (whether incorporated or unincorporated), a partnership and a trust;

(d) a reference to a party includes a party's executors, administrators, successors and permitted assigns, including persons taking by way of novation and, in the case of a trustee, includes a substituted or additional trustee;

(e) a reference to a document (including the Contract) is to that document as varied, novated, ratified or replaced from time to time;

(f) a reference to a statute includes its delegated legislation and a reference to a statute or delegated legislation or a provision of either includes consolidations, amendments, re-enactments and replacements;

(g) a word importing the singular includes the plural (and vice versa), and a word indicating a gender includes every other gender;

(h) a reference to a party, clause, schedule, exhibit, attachment or annexure is a reference to a party, clause schedule, exhibit, attachment or annexure to or of the Contract, and a reference to the Contract includes all schedules, exhibits, attachments and annexures to it;

(i) if the time for giving any notice, issuing any certificate, making any payment or doing any other act required or permitted by the Contract, falls on a day which is not a Business Day, then the time for giving the notice, issuing the certificate, making the payment or doing the other act will be taken to be on the next Business Day;

(j) if a word or phrase is given a defined meaning, any other part of speech or grammatical form of that word or phrase has a corresponding meaning;

(k) "includes" in any form is not a word of limitation;

(l) a reference to "$" or "dollar" is to Australian currency;

(m) the word "Subcontractor" includes suppliers and consultants;

(n) any reference to the Deliverables, Contractor's Activities, Works, Design Documentation or any other document or thing being fit for their intended purpose (or any similar reference) will be read as referring to the purpose having regard to any purpose contemplated in or reasonably ascertainable from:

(i) the Contract and, if applicable, any Standing Offer Deed; and

(ii) to the extent relevant for determining the purpose in connection with a Variation, any document provided by the Principal to the Contractor specifically in connection with the Variation;

(o) to the extent that:

(i) any amounts are payable to the Contractor under the Contract by reference to hourly or daily rates; and

(ii) the Contractor's Personnel is engaged in the relevant Contractor's Activities for an increment of time less than a full hour or day (or for one or more full hours or days plus an increment of time less than a full hour or day) (as applicable),

the Contractor will be entitled to payment in respect of such time on a pro rata basis; and

(p) a reference to any Authority, institute, association or body is:

(i) if that Authority, institute, association or body is reconstituted, renamed or replaced or if the powers or functions of that Authority, institute, association or body are transferred to another organisation, deemed to refer to the reconstituted, renamed or replaced organisation or the organisation to which the powers or functions are transferred, as the case may be; and

(ii) if that Authority, institute, association or body ceases to exist, deemed to refer to the organisation which serves substantially the same purposes or object as that Authority, institute, association or body.

1.3. No bias against drafting party

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

1.4. Provisions limiting or excluding liability

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

1.5. Discretion

(a) Subject to any express provision in the Contract to the contrary:

(i) a provision of the Contract which says that the Principal or the Principal's Representative "may" do or not do something is not to be construed as imposing an obligation on the Principal or the Principal's Representative to do or not do that thing; and

(ii) there will be no procedural or substantive limitation upon the manner in which the Principal or the Principal's Representative may exercise any discretion, power or entitlement conferred by the Contract.

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

1.6. Authorities

(a) The Contract will not in any way unlawfully restrict or otherwise unlawfully affect the unfettered discretion of the Principal to exercise its functions and powers pursuant to any legislation.

(b) Without limiting clause 1.6(a), anything the Principal does, or fails to do or purports to do, pursuant to its respective functions and powers under any legislation, will be deemed not to be an act or omission by the Principal under the Contract.

(c) Without limiting the Contractor's rights under clause 8.4, the Contractor:

(i) waives any Claims that it may have against the Principal as a result of the exercise by the Principal of its respective functions and powers under any legislation; and

(ii) acknowledges and agrees that:

(A) there are many Authorities with jurisdiction over aspects of the Contractor's Activities, and other matters affecting and affected by the Contractor's Activities;

(B) such Authorities may from time to time exercise their statutory functions and powers in such a way as to disrupt, interfere with or otherwise affect the Contractor's Activities (including, the exercise by persons (including individuals) acting on behalf of such Authorities of powers and functions including as necessary for such Authorities to comply with their statutory functions and powers); and

(C) it bears the full risk of all occurrences of the kind referred to in clause 1.6(c)(ii)B and will not be entitled to make, and the Principal will not be liable upon, any Claim arising out of or in any way in connection with such occurrences.

1.7. Separable Portions

(a) In the Contract:

(i) the expressions:

(A) Practical Completion;

(B) Date for Practical Completion;

(C) Date of Practical Completion;

(D) Defect;

(E) Defects Liability Period; and

(F) Notice of Practical Completion,

apply separately to each Separable Portion and references therein to the Works or the Contractor's Activities mean so much of the Works or the Contractor's Activities as are comprised in the relevant Separable Portion; and

(ii) clauses 2, 5.1, 5.3, 9, 10 and 13 apply separately to each Separable Portion and references therein to the Works or the Contractor's Activities mean so much of the Works or the Contractor's Activities as are comprised in the relevant Separable Portion.

(b) Separable Portions may be directed by the Principal's Representative who shall clearly identify for each Separable Portion:

(i) the portion of the Works;

(ii) the Date for Practical Completion; and

(iii) the respective security and liquidated damages (all calculated pro-rata according to the ratio of the Principal's Representative's valuation of the Separable Portion to the Contract Price for the Works).

1.8. Novation

(a) The Principal may at any time, at its sole discretion, novate the Contract to any other person.

(b) If the Principal elects to novate the Contract in accordance with paragraph (a), the Principal will provide the Contractor with a duly completed Deed of Novation and the Contractor must execute the Deed of Novation and return it to the Principal within 5 Business Days of receipt of the relevant Deed of Novation.

(c) If the Contractor fails to properly execute the Deed of Novation within the time period specified in the previous paragraph, then for the purpose of executing the Deed of Novation, the Contractor irrevocably appoints the Principal to be its attorney with full power and authority to complete the particulars and execute, sign, send and deliver in the name of the Contractor the Deed of Novation and all notices, deeds and documents for that purpose.

2. PARTIES' OBLIGATIONS

2.1. Contractor's obligations

The Contractor must:

(a) immediately commence to carry out the Contractor's Activities; and

(b) unless otherwise stated, carry out the Contractor’s Activities at its cost.

2.2. Principal's obligations

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

(a) give the Contractor sufficient access to the Site to allow it to commence work on the Site on the later of:

(i) the date that the Contractor has provided the Principal's Representative with:

(A) any Unconditional Undertaking and parent company guarantee required under clause 4;

(B) any evidence of any insurance taken out by the Contractor which is required under the Contract; and

(C) a duly executed Confidentiality Undertaking as required by clause 6.15(g); or

(ii) the date specified in the Key Details;

(b) subject to other provisions of the Contract affecting access, continue to allow the Contractor sufficient access to the Site to enable it to carry out the Contractor’s Activities; and

(c) pay the Contract Price.

2.3. KPIs

(a) This clause 2.3 does not apply where a Standing Offer Deed exists.

(b) The Contractor in performing the Contractor's Activities must comply with the KPIs as amended in accordance with this Contract.

(c) The Contractor must report to the Principal at the frequency specified in the Key Details in the form of a report (**KPI Performance Report**) in a form satisfactory to the Principal which:

(i) provides an analysis of the performance of the Contractor in meeting the KPIs;

(ii) identifies any non-compliances;

(iii) proposes an action plan to remedy non-compliances and implement continuous improvements; and

(iv) reports on whether the Contractor has implemented any previous action plan and, if not, the extent of non-compliance.

(d) The Contractor acknowledges and agrees that:

(i) the Principal will review each KPI Performance Report to assess the level of compliance by the Contractor with the KPIs;

(ii) it must provide any action plan required by the Principal and must implement and comply with any action plan required by the Principal; and

(iii) the Principal, acting reasonably, may amend the KPIs provided that the Contractor has been consulted by the Principal in respect of the amended KPIs, including being advised of the reasons for the amendment.

(e) The Principal may, during the Evaluation Meetings, review and discuss the Contractor's performance under the KPIs and, if required by the Principal, the parties must review and monitor the Contractor's compliance with any action plan.

2.4. Evaluation Meetings

(a) The parties must meet at the frequency specified in the Key Details to evaluate and monitor the Contractor's performance under the Contract (**Evaluation Meetings**).

(b) The Principal may notify the Contractor that the following forms must be used to assist the evaluation of the Contractor's performance under this Contract:

(i) Performance Evaluation Form;

(ii) Performance Evaluation Record Form; and

(iii) Evaluation Trend Scenarios.

(c) The participants in the Evaluation Meetings must be approved by the Principal. Participants may include Subcontractors and, if the Principal requires, representatives of Authorities, end users and local communities. Participation in meetings does not give the participants any additional rights or responsibilities.

(d) Nothing concerning or in connection with the Evaluation Meetings or the completed evaluation forms changes either party's rights and responsibilities, or can be relied on or used by one party against another in any proceedings.

2.5. Contractor's conduct

(a) The Contractor warrants to the Principal that:

(i) it has not been found by the Independent Commission Against Corruption (**ICAC**) to have engaged in corrupt conduct as defined in the Independent Commission Against Corruption Act 1988 (NSW) (**Corrupt Conduct**);

(ii) it has not been found by a tribunal or a court of competent jurisdiction to have breached any Law relating to bribery, corruption, money laundering, fraud or similar activities (**Applicable Corruption Law**);

(iii) it has read and will comply with the Supplier Partnership Principles; and

(iv) in performing its obligations under this Contract, it will not employ, or continue to employ, any Personnel found by the ICAC to have engaged in Corrupt Conduct, or who have breached the Supplier Partnership Principles, or who have been found by a tribunal or a court of competent jurisdiction to have breached any Applicable Corruption Law.

(b) The Contractor must ensure that:

(i) it does not employ, or continue to employ, any Personnel; and

(ii) no Subcontractor employs, or continues to employ, any person, in relation to the performance of this Contract,

who has been found to have engaged in, or in the case of a company any officer of which has been found to have engaged in, Corrupt Conduct by the ICAC, or who has breached the Supplier Partnership Principles, or who has been found by a tribunal or a court of competent jurisdiction to have breached any Applicable Corruption Law.

(c) The Principal may direct the Contractor to terminate any Subcontract if any officer of the Subcontractor has been found to have engaged in Corrupt Conduct by the ICAC or has been found by a tribunal or a court of competent jurisdiction to have breached any Applicable Corruption Law.

3. PERSONNEL

3.1. Principal's Representative

(a) The Principal's Representative will give Directions and carry out all its other functions under the Contract as the agent of the Principal (and not as an independent certifier, assessor or valuer).

(b) The Contractor must comply with any Direction by the Principal's Representative given or purported to be given under a provision of the Contract.

(c) Except where the Contract otherwise provides, the Principal's Representative may give a Direction orally but will as soon as practicable confirm it in writing.

3.2. Replacement of Principal's Representative

(a) The Principal may at any time replace the Principal's Representative, in which event the Principal will appoint another person as the Principal's Representative and notify the Contractor of that appointment.

(b) Any substitute Principal's Representative appointed under this clause 3.2 will be bound by anything done by the former Principal's Representative to the same extent as the former Principal's Representative would have been bound.

3.3. Principal's Representative's representative

(c) The Principal's Representative may:

(d) by written notice to the Contractor appoint persons to exercise any of the Principal's Representative's functions under the Contract;

(e) not appoint more than one person to exercise a specific function under the Contract; and

(f) revoke any appointment under paragraph (i) by notice in writing to the Contractor.

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

3.4. Contractor's Representative

(a) The Contractor must ensure that the Contractor's Representative is present on the Site at all times reasonably necessary to ensure that the Contractor is complying with its obligations under the Contract.

(b) A Direction is deemed to be given to the Contractor if it is given to the Contractor's Representative.

(c) Matters within the knowledge of the Contractor's Representative are deemed to be within the knowledge of the Contractor.

(d) If the Principal's Representative makes a reasonable objection to the appointment of a representative by the Contractor, the Contractor must terminate the appointment and appoint another representative, subject again to the reasonable objection of the Principal's Representative.

3.5. Key people

The Contractor must:

(a) employ those people specified in the Key Details, including the Contractor's Representative, in the jobs specified in the Key Details;

(b) subject to paragraph (c), not replace the people referred to in paragraph (a) without the Principal's Representative's prior written approval; and

(c) if any of the people referred to in paragraph (a) die, become seriously ill or resign from the employment of the Contractor, replace them with persons approved by the Principal's Representative of at least equivalent experience, ability and expertise.

3.6. General Contractor Personnel requirements

(a) The Contractor must ensure, as an ongoing process, that all Contractor Personnel are competent, suitably qualified and are fit and proper persons to carry out the Contractor's Activities.

(b) Where directed by the Principal, the Contractor must (at its sole cost) promptly arrange for any member of its Personnel who carries out the Contractor's Activities to undergo a criminal record and other background checks as required by the Principal (including an AusCheck). The Contractor must provide the results of those checks to the Principal on request.

(c) Where the results of any background check reveals that any member of the Contractor's Personnel do not meet the requirements of paragraph (a), the Contractor must immediately cease their involvement in connection with the Contract.

(d) The Contractor is solely responsible for obtaining all necessary consents in accordance with the Privacy Laws in connection with the conduct of background checks and the sharing and use of those background checks as contemplated by this clause 3.6.

3.7. Removal of persons

(a) The Principal's Representative may by notice in writing instruct the Contractor to remove any person from the Site or the Contractor's Activities who in the reasonable opinion of the Principal's

Representative is guilty of misconduct, is incompetent or negligent, is not suitably qualified or who, in the opinion of the Principal, may bring the Principal into disrepute.

(b) The Contractor must ensure that any such person is not again employed in the Contractor's Activities.

4. SECURITY

4.1. Form of security

(a) This clause 4.1 applies where so stated in the Key Details.

(b) The Contractor must provide security in the form of 2 Unconditional Undertakings each for the amount specified in the Key Details.

(c) Security must be provided within 10 Business Days of the Award Date.

4.2. Release of security

(a) Subject to its rights to have recourse to the security, the Principal must:

(i) within 10 Business Days of the issue of a Notice of Practical Completion for the Works or for the last Separable Portion to achieve Practical Completion, release such part of the security provided under clause 4.1 then held so that the Principal holds security to the value specified in the Key Details; and

(ii) release the balance of the security then held when all of the following have occurred:

(A) the last Defects Liability Period (including any extensions under clause 9.12) has expired;

(B) the Contractor has provided the Principal with the Final Payment Claim and Deed of Final Release required by clause 12.8; and

(C) the Contractor has complied with all of its obligations under the Contract.

(b) If the Principal terminates the Contract pursuant to clause 14.7 then to the extent that the Principal has not had recourse to it, the Principal must release all security then held by it when the Contractor has complied with its obligations under clause 14.8(a)(ii).

4.3. Replacement security

(a) If the Principal holds security provided under clause 4.1 which contains an expiry date which is earlier than the date upon which the Principal is required to return the security to the Contractor the Contractor must, on or before the date which is 20 Business Days prior to the expiry date for that security, provide the Principal with replacement security in the form of an Unconditional Undertaking in exchange for the security which is being replaced.

(b) If paragraph (a) applies in respect of any security and the Principal has not received from the Contractor replacement security in the form of an Unconditional Undertaking at least 20 Business Days prior to the expiry date for that undertaking then, irrespective of anything contained in, and without limiting the Principal's rights under, the Contract or the security, the Principal may make a demand under the security for the entire amount payable under that security and thereafter retain the proceeds.

(c) Subject to the Principal's rights under the Contract to use these proceeds, the proceeds from any demand made by the Principal pursuant to paragraph (b) will be paid to the Contractor at the same time as the Principal would have been required to return the security from which the proceeds were obtained.

4.4. Additional security

(a) If the Principal directs a Variation under clause 11.2 which increases the Contract Price, the Principal may direct the Contractor to provide additional security so as to ensure that the amount of the security then held by it equals the total value of security required under clause 4.1(b).

(b) The Contractor must provide additional security in the form of an Unconditional Undertaking within 10 Business Days of a Direction under clause 4.4(a).

4.5. Interest

The Principal:

(a) is not obliged to pay the Contractor interest on any Unconditional Undertaking provided under clause 4.1, 4.3 or 4.4 including the proceeds of any bank guarantee if it is converted into cash; and

(b) does not hold the proceeds or money referred to in paragraph (a) on trust for the Contractor.

4.6. Parent company guarantee

(a) Subject to paragraph (b), if the Contractor is required by the Key Details to provide a parent company guarantee the Contractor must, on the Award Date, provide the Principal's Representative with a parent company guarantee:

(i) in the form set out in Schedule 2 of the Appendix with all particulars completed; and

(ii) duly executed by the person named in the Key Details (**Guarantor**).

(b) The Contractor is not required to provide a parent company guarantee under paragraph (a) if it has provided a parent company guarantee under the Standing Offer Deed (if any).

4.7. PPSA

(a) In this clause 4.7:

(i) the following terms have the meaning given to them in the PPSA: Contract Document, Financing Change Statement, Financing Statement, Security Agreement, Security Interest and Verification Statement; and

(ii) PPS Register means the Personal Property Securities Register established under section 147 of the PPSA.

(b) The Contractor acknowledges and agrees that:

(i) the Contract may constitute a Security Agreement; and

(ii) the Contract may create a Security Interest in favour of the Principal with the Contractor as grantor including in relation to:

(A) any and all goods, materials, components and other things (whether fixed of unfixed) intended for use in the Works which are located on Site or off Site;

(B) all construction plant, temporary works and other things on Site or off Site as are used by the Contractor and or any Subcontractors;

(C) the benefit of any Subcontracts or other contract which the Principal requires to be novated to the Principal or the Principal's nominee; and

(D) all data used in, or prepared for, the Works,

(Collateral).

(c) The Contractor consents to the Principal registering the Principal's Security Interest over the Collateral on the PPS Register and must ensure that each Subcontractor consents to the Principal registering the Principal's Security Interest in the Collateral against them, where applicable.

(d) The Contractor undertakes to promptly sign any further documents and provide any further information (such information to be complete, accurate and up-to date in all respects) which the Principal may reasonably require to:

(i) register a Financing Statement or Financing Change Statement on the PPS Register in relation to a Security Interest over the Collateral;

(ii) register any other document on the PPA Register which is necessary to perfect the Principal's Security Interest over the Collateral; or

(iii) correct a defect in any Contract Document.

(e) The Principal and the Contractor agree that:

(i) to the extent permitted by Law, the following provisions of the PPSA do not apply to this Contract: section 95; section 121(4); section 125; section 129; section 130; section 132(3)(d); section 132(4); section 135; section 142; and section 143;

(ii) unless otherwise agreed to by the Principal, the Contractor waives its right to receive a Verification Statement in accordance with section 157 of the PPSA; and

(iii) neither the Principal nor the Contractor will disclose information of the kind mentioned in section 274(1) of the PPSA and the Contractor will not authorise, and will ensure that no party authorises, the disclosure of such information, except where required by section 275(7) of the PPSA.

(f) To the extent the PPSA applies to any goods, materials or other items supplied by the Contractor to the Principal, the Contractor warrants that:

(i) the supply of goods, materials or other items to the Principal does not breach any security agreement the Contractor has with a third party; and

(ii) the supply of goods, materials or other items to the Principal is within the ordinary course of the Contractor's business.

(g) The Contractor indemnifies the Principal against any Claims against, or costs, losses or damages suffered or incurred by the Principal directly or indirectly in connection with any infringement of, or Claim in regard to, any third party security agreement or security interest under the PPSA arising as a result of:

(i) the Contractor carrying out the Contractor's Activities; or

(ii) goods, materials or other items supplied to Principal by the Contractor infringing that third party's rights under the PPSA.

5. RISKS AND INSURANCE

5.1. Risk of Works

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

(a) any loss of or damage to:

(i) the Works or a Separable Portion;

(ii) Plant, Equipment and Work; and

(iii) unfixed goods and materials (whether on or off Site), including anything provided by the Principal to the Contractor or brought onto Site by a Subcontractor, used or to be used in carrying out the Contractor's Activities,

until:

(iv) in the case of loss or damage to the Works or a Separable Portion, a Notice of Practical Completion issues for the Works or the Separable Portion; and

(v) otherwise, a Notice of Practical Completion issues for the Works or the last Separable Portion to reach Practical Completion; and

(b) after the issue of a Notice of Practical Completion for the Works or a Separable Portion, any loss of or damage to the Works or the Separable Portion arising from any act or omission of the Contractor during the Defects Liability Period or from an event which occurred prior to the issue of the Notice of Practical Completion for the Works or the Separable Portion.

5.2. Contractor's indemnity

The Contractor will indemnify the Principal against:

(a) any loss of or damage to property of the Principal (other than property referred to in clause 5.1(a)); and

(b) any liability to or Claims by any person against the Principal in respect of loss of or damage to property or injury to or death of persons,

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

5.3. Reinstatement

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

5.4. Insurance by Principal

The Principal must, from the Award Date, effect the insurance (if any) specified in the Key Details. The insurance is subject to the exclusions, conditions and excesses noted in the policies and the Contractor:

(a) must satisfy itself of the nature and extent of the Principal's insurance;

(b) acknowledges that the insurances effected by the Principal do not cover every risk to which the Contractor might be exposed and are subject to deductibles and limits, and the Contractor may at its cost, take out insurance to:

(i) insure any risks not insured by the Principal's insurance; or

(ii) cover any such exclusions, conditions or excesses in that insurance,

which the Contractor wants to insure against or cover;

(c) must, where it:

(i) bears the risk of the relevant loss or damage under clause 5.1; or

(ii) is required to indemnify the Principal under clause 5.2,

pay on demand by the Principal any excesses that the Principal bears under the Principal's insurance for claims by the Principal related to the relevant loss, damage or liability contemplated under clause 5.1 or clause 5.2;

(d) will be responsible for paying or bearing all excesses in relation to any insured matters for which the Contractor has a claim under the insurances effected by the Principal in accordance with the policy terms; and

(e) may effect its own insurance to cover the amount of any excess.

5.5. Contractor insurance obligations

The Contractor must:

(a) from the Award Date effect and have in place the following insurance with insurers and on terms satisfactory to the Principal's Representative:

(i) Works Insurance;

(ii) Public Liability Insurance;

(iii) Product Liability Insurance;

(iv) Workers Compensation Insurance;

(v) Construction Plant Insurance;

(vi) Motor Vehicle Insurance;

(vii) if the Contractor's Activities involve the use, operation, charter or ownership of any waterborne or marine vessel or craft, Marine Liability Insurance; and

(viii) if the Contractor's Activities involve design services or any other professional services, Professional Indemnity Insurance,

for at least the amounts referred to and with the maximum deductibles specified in the Key Details;

(b) in relation to the Workers Compensation Insurance ensure that each of its Subcontractors has similar insurance to the Workers Compensation Insurance covering the Subcontractor's employees;

(c) ensure that the Public Liability Insurance and the Product Liability Insurance comply with the requirements set out in the Key Details;

(d) ensure that the insurance policies obtained in accordance with this clause 5.5 do not contain an exclusion for dam works or wet works;

(e) provide the Principal's Representative with copies of certificates of currency for the insurances referred to in paragraphs (a) and (b), as required by the Principal's Representative from time to time; and

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

5.6. Period of insurance

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

(a) in the case of Works Insurance, until the Contractor ceases to bear the risk of loss of or damage to anything under clause 5.1;

(b) in the case of Public Liability Insurance and Workers Compensation Insurance, until the later of:

(i) the end of the last Defects Liability Period; and

(ii) the date upon which all Defects have been rectified in accordance with the Contract;

(c) in the case of Construction Plant Insurance, at all times that the relevant items of construction plant are being used or are allocated for use, in connection with the Contractor's Activities or the Works;

(d) in the case of Motor Vehicle Insurance, at all times that the vehicles are to be used by the Contractor in connection with the Contractor's Activities or are on the Site;

(e) in the case of Product Liability Insurance and Professional Indemnity Insurance, until the expiry of 6 years following the end of the Defects Liability Period; and

(f) in the case of Marine Liability Insurance, at all times that the waterborne vessel or craft is to be used, operated or owned by the Contractor in connection with the Contractor's Activities.

5.7. Insurers

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

(a) are authorised under the Insurance Act 1973 (Cth) to carry on an insurance business in Australia and are supervised by the Australian Prudential Regulation Authority; and

(b) have a credit rating of not less than A from Standard & Poor's, A2 from Moody's Investor Services or A- from A.M. Best Company.

5.8. Insurance obligations

The Contractor must ensure that it:

(a) does not do anything which prejudices any insurance;

(b) if necessary, rectifies anything which might prejudice any insurance;

(c) reinstates an insurance policy if it lapses;

(d) does not cancel, vary or allow an insurance policy to lapse without the prior written consent of the Principal's Representative;

(e) immediately notifies the Principal's Representative of any event which may result in an insurance policy lapsing or being cancelled; and

(f) gives full, true and particular information to the insurer of all matters and things the non-disclosure of which might in any way prejudice or affect any such policy or the payment of all or any benefits under the insurance.

5.9. Failure to insure

If the Contractor fails to:

(a) provide copies of any insurance policy together with evidence satisfactory to the Principal's Representative that the policy is current; or

(b) effect insurance which is with insurers and on terms satisfactory to the Principal's Representative,

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

5.10. Notice of potential claim

The Contractor must:

(a) as soon as possible inform the Principal in writing of any occurrence that may give rise to a claim under an insurance policy required by the Contract, if that claim would:

(i) have a material impact on insurance proceeds available under that policy; or

(ii) affect the Contractor's ability to comply with its obligations under the Contract, including this clause 5;

(b) keep the Principal informed of subsequent developments concerning the claim; and

(c) ensure that its Subcontractors similarly inform the Contractor and the Principal in respect of occurrences which may give rise to a claim by them.

5.11. Cross liability

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

(a) insofar as the policy may cover more than one insured, all insuring agreements and endorsements (with the exception of limits of liability) will operate in the same manner as if there were a separate policy of insurance covering each insured;

(b) the insurer waives all rights, remedies or relief to which it might become entitled by subrogation against any of the parties covered as an insured and that failure by any insured to observe and fulfil the terms of the policy will not prejudice the insurance in regard to any other insured;

(c) any non-disclosure by one insured does not prejudice the right of any other insured to claim on the policy; and

(d) a notice to the insurer by one insured will be deemed to be notice by all insured parties.

5.12. Liabilities unaffected

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

6. DESIGN AND DOCUMENTATION

6.1. Principal's documents

The Principal must provide to the Contractor 1 copy of the documents specified in the Key Details, in electronic format.

6.2. Contractor's design

(a) Clauses 6.2 - 6.5 apply if any design work is required as part of the Contractor's Activities.

(b) The Contractor must:

(i) design the parts of the Works which the Contract requires it to design and for this purpose prepare all relevant Design Documentation; and

(ii) prepare all Design Documentation required for the performance of the Contractor's Activities.

(c) The Contractor must submit the Design Documentation it prepares to the Principal's Representative in accordance with the program approved by the Principal's Representative under clause 10.2.

6.3. Principal's Representative may review Design Documentation

(a) To the extent specified in the Contract, the Contractor must review the Design Documentation in consultation with persons nominated by the Principal, and develop the Design Documentation allowing for any matters identified in the review.

(b) The Principal will have 10 Business Days to review and provide comment to the Contractor on the Design Documentation.

(c) The Contractor will have 5 Business Days to resolve any matters identified in the Principal's review under paragraph (b).

(d) If the Principal rejects the Design Documentation because it does not meet the requirements of the Contract, the Contractor must revise and resubmit the Design Documentation accordingly and paragraphs (b) and (c) will reapply.

(e) The Contractor must submit Design Documentation to the Principal and complete the design review periods described in paragraphs (b) and (c) before the Contractor may use the Design Documentation for procurement, manufacture, fabrication or construction.

(f) Design Documentation must be submitted progressively with sufficient detail to demonstrate what is proposed.

(g) If the Contractor proposes to change any component of the Principal's design of the Works (if any), the Contractor must submit the proposed change to the Principal at least 15 Business Days before the Contractor proposes to use those changed documents.

(h) The Principal need not respond to the Contractor about the Design Documentation.

(i) If the Principal objects to the Design Documentation, the Contractor must take the objections into account and discuss them with the Principal. The Contractor must correct any fault, error or omission in the Design Documentation.

6.4. No obligation to review

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

(b) No review or approval of, comments upon, rejection of, or failure to review or comment upon or reject, any Design Documentation prepared by the Contractor or any other Direction by the Principal's Representative about the Design Documentation will:

(i) relieve the Contractor from, or alter or affect, the Contractor's liabilities or responsibilities whether under the Contract or otherwise according to Law; or

(ii) prejudice the Principal's rights against the Contractor whether under the Contract or otherwise according to Law.

6.5. Copies of Design Documentation

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

6.6. Fitness for purpose

The Contractor warrants that:

(a) any Design Documentation it prepares will be fit for its intended purpose;

(b) upon Practical Completion the Works or each Separable Portion will, to the extent they are designed by or on behalf of the Contractor, be fit for their intended purpose; and

(c) documents provided by the Principal under clause 6.1 are accurate and suitable for their purposes under the Contract unless within 10 Business Days of receipt the Contractor gives written notice to the Principal's Representative of any deficiencies in such documents.

6.7. IP warranties and representations

The Contractor warrants and represents that:

(a) it owns, or is licensed by the owner to use and sub-licence, all Pre-existing IPR;

(b) in carrying out the Contractor's Activities, the Contractor will not infringe the Intellectual Property Rights or Moral Rights of any person; and

(c) the Principal's (or any of the Principal's sub-licensees') use or receipt of any Deliverables or Works for any purpose will not infringe the Intellectual Property Rights of the Contractor or any third party.

6.8. Ownership

(a) The Contractor agrees that, immediately upon the creation of any Deliverables, the Principal owns the Deliverables.

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

(c) Where the Deliverables comprise any Software, in addition to owning the Intellectual Property Rights in that Software, the Principal will own, and the Contractor assigns to the Principal all Intellectual Property Rights in:

(i) all modifications, developments, derivative works, updates or upgrades to that Software; and

(ii) any configuration files which are based on or which arise in connection with the Principal's internal or other design work, definitions or requirements.

(d) The Contractor must promptly do all things reasonably required, including executing any documents, to further effect the assignment of the Intellectual Property Rights in the Deliverables (including as a present assignment of future copyright) from the Contractor to the Principal in this clause 6.8.

(e) The Contractor must:

(i) have appropriate provisions in place with its Personnel; and

(ii) incorporate appropriate provisions in its Subcontracts,

such that the ownership of the Intellectual Property Rights in the Deliverables which would, but for the application of this clause 6.8, vest in such Personnel, vest in or are transferred or assigned immediately to the Principal on and from the date of creation.

(f) The Principal grants to the Contractor a limited, revocable, non-exclusive, royalty-free licence to use the Deliverables until the end of the Defects Liability Period solely to the extent necessary for the Contractor to perform the Contractor's Activities in accordance with the Contract.

6.9. Pre-existing IPR

(a) Each party will retain its Pre-existing IPR and nothing in this Contract assigns or transfers the Pre-existing IPR of one party to another. Neither party may assert or bring any claim for ownership of any or all of the other party's Pre-existing IPR.

(b) The Contractor grants to the Principal a non-exclusive, irrevocable, perpetual, transferable, royalty-free licence to use, reproduce, make adaptations of, modify or incorporate into other work (and sub-licence any other third party to do so) all existing and future Intellectual Property Rights comprised in or subsisting in the Contractor's Pre-existing IPR to:

(i) allow the Principal the full benefit and enjoyment of the Works, the Deliverables and Contractor's Activities;

(ii) use the Contractor's Pre-existing IPR:

(A) to procure, undertake or perform any works, activities, goods or services in connection with any upgrade or further upgrade or refurbishment of the Works, or any plant, equipment, infrastructure or systems owned, operated or maintained by the Principal;

(B) to install, operate, maintain and monitor the Works or any plant, equipment, infrastructure or systems owned, operated or maintained by the Principal;

(C) to integrate the Works with any other plant, equipment, infrastructure or systems owned, operated or maintained by the Principal; or

(D) for any other purpose associated or in any way in connection with the Objectives; and

(iii) disclose the Contractor's Pre-existing IPR on a confidential basis to third parties for the purposes of a tender process for any procurement in connection with the matters set out in clause 6.9(b)(ii).

(c) The Principal grants to the Contractor a non-exclusive licence to use the Principal's Pre-existing IPR until the end of the Defects Liability Period solely for the purpose of carrying out the Contractor's Activities in accordance with the Contract.

(d) Where the Contractor's Pre-existing IPR includes any Software, the rights described in clause 6.9(b) also include, in addition to the rights described in that clause, the rights to (and to sub-licence any third party to) use the Intellectual Property Rights subsisting in that Software to:

(i) maintain, support, enhance and adapt that Software (other than where the Intellectual Property Rights in such Software are owned by the Principal, including as a Deliverable or where any modifications, developments, derivative works, updates or upgrades to the Software are owned by the Principal pursuant to clause 6.8) for all purposes associated with the use and enjoyment of the Works, the Deliverables and the Contractor's Activities; and

(ii) access and modify the Software (including, where accessed under the escrow deed contemplated in clause 6.11, the Source Code of that Software), including for the purposes of any subsequent use or support of, repairs to, maintenance or servicing of, or additions, alterations or further developments to, the Works, the Deliverables and the Contractor's Activities.

6.10. Indemnity and infringement

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

6.11. Source Code

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

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

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

6.12. Moral Rights

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

6.13. Contractor to notify errors

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

6.14. Resolution of ambiguities

(a) The following order of precedence will apply to any ambiguity, discrepancy or inconsistency in the documents which make up the Contract, with those higher in the list having precedence over those lower in the list:

(i)

(A) where a Standing Offer Deed exists, the Purchase Order; or

(B) otherwise, the Formal Instrument of Agreement;

(ii) the General Conditions of Contract (including the Schedules and Appendix);

(iii) any Exhibits to the General Conditions of Contract other than the Statement of Work; and

(iv) the Statement of Work.

(b) If either party discovers any ambiguity, discrepancy or inconsistency in the documents which make up the Contract or between the Contract and any documents provided to the Contractor by or on behalf of the Principal which the Contractor is required by the Contract to use for design or construction purposes:

(i) the party must promptly give notice to the other; and

(ii) the Principal's Representative must instruct the Contractor as to the course it must adopt within 5 Business Days of the notice under paragraph (b)(i), and the Contractor must comply with any such instructions.

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

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

6.15. Confidentiality

(a) The Contractor must:

(i) keep the Confidential Information confidential, safe, secure and protected against unauthorised use and access and, subject to paragraph (b), not disclose the Confidential Information to any person;

(ii) not use or permit the use of the Confidential Information for any purpose other than for the sole purpose of carrying out the Contractor's Activities; and

(iii) ensure that Confidential Information is not copied or reproduced without the Principal's express written consent.

(b) The Contractor may disclose Confidential Information:

(i) with the prior written consent of the Principal;

(ii) to the Contractor's Personnel, but only to the extent that each person has a "need to know" the Confidential Information for the purposes of carrying out the Contractor's Activities; and

(iii) to the extent required by Law.

(c) If the Contractor is required by Law to disclose any Confidential Information, the Contractor must before doing so immediately notify the Principal and comply with any reasonable directions given by, or requirements of, the Principal.

(d) Subject to paragraph (e), on the termination, completion or expiry of the Contract or if requested by the Principal, the Contractor must cease access to and use of Confidential Information and:

(i) promptly and securely return to the Principal all documents and other physical records of Confidential Information in its or its Personnel's possession, custody or control;

(ii) securely delete the Confidential Information from any computer system or other device operated or controlled by, or which may be accessed by, the Contractor or the Contractor's Personnel;

(iii) where applicable, comply with the Principal's Policies and Procedures in respect of the destruction or return of any Confidential Information; and

(iv) comply with any reasonable directions issued by the Principal in respect of the Confidential Information.

(e) If the Contractor is required by Law to retain any Confidential Information, and provided the Contractor has not breached any of its obligations under this clause 6.15 and the Confidentiality Undertaking, the Contractor may retain one copy of part or all of the Confidential Information, to the extent that the Contractor is obliged to retain a copy of part of or all of the Confidential Information by Law. Any Confidential Information retained pursuant to any such obligation at Law shall continue to be subject to the obligations of this clause 6.15 and the Confidentiality Undertaking.

(f) The Principal may, at any time prior to the end of the Defects Liability Period, direct the Contractor to deliver to the Principal a duly executed Confidentiality Undertaking.

(g) If the Principal issues a direction under paragraph (f) then the Contractor must, within 5 Business Days of the direction, deliver to the Principal a duly executed Confidentiality Undertaking. The execution of the Confidentiality Undertaking will not limit the Contractor’s obligations under this clause 6.15.

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

6.16. GIPA Act

(a) Without limiting clause 22.17, the Contractor acknowledges that the Principal may disclose the Contract (and information concerning the terms of the Contract) under or in accordance with any one or more of the following:

(i) the Government Information (Public Access) Act 2009 (NSW) (**GIPA Act**); and

(ii) to satisfy the disclosure requirements of the New South Wales Auditor General or to satisfy the requirements of Parliamentary accountability,

and the Contractor must provide to the Principal any other information which the Principal reasonably requires to comply with its obligations under this paragraph (a).

(b) If the Principal is required to include a copy of the Contract in the government contracts register pursuant to the GIPA Act:

(i) the Principal will not disclose Schedule 2 (except for the Contract Price) but may disclose the remainder of the Contract;

(ii) if the Contractor considers that the Principal should not disclose any other provisions of the Contract on the basis that their disclosure would fall within section 32(1) of the GIPA Act, the Contractor must within 10 Business Days of the Award Date give the Principal written notice of:

(A) any provisions of the Contract it believes should not be disclosed for the reasons set out in section 32(1) of the GIPA Act; and

(B) details of:

1. the reasons why the provisions should not been disclosed;
2. whether the provisions can be disclosed at a later date and, if so, when it is likely that they can be disclosed; and
3. a general description of the types of provisions that the Contractor proposes should not be disclosed; and

(iii) in complying with its disclosure obligations under the GIPA Act, the Principal will consider, but will not be bound by, any proposal made by the Contractor under paragraph (b)(ii).

6.17. Media

The Contractor must:

(a) not disclose any information concerning the Contract for distribution through any communications media without the Principal's prior written approval. The Contractor must refer to the Principal any enquiries from any media concerning the Contract;

(b) not advertise or publish that it is contracted by the Principal for the performance of the Contractor's Activities, or use any symbols, logo or representation identifiable with the Principal, without the consent of the Principal, which consent may be withheld, granted or granted on any conditions as the Principal determines in its absolute discretion; and

(c) ensure that all Subcontractors:

(i) comply with this clause 6.17; and

(ii) obtain the prior written consent of the Principal (through the Contractor) before doing anything which, if undertaken by the Contractor, would require the Principal's written consent. The Contractor acknowledges that the Principal may refuse in its absolute discretion to give its consent.

6.18. Contractor to retain records

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

(a) all Contractor's Activities performed under the Contract; and

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

6.19. Auditing and probity

The Contractor acknowledges and agrees that:

(a) the Principal's Representative (or any other person nominated by the Principal's Representative) may carry out regular audits on the Contractor's compliance with its obligations under the Contract; and

(b) the Contractor must provide reasonable access to any premises where the Contractor's Activities are being undertaken (including any premises provided by the Principal or otherwise used by the Contractor in connection with the Contractor's Activities or where documentation in respect of the Contractor's Activities is kept) to enable the Principal or its nominees to carry out any such audit and must co-operate with and provide all assistance requested by the Principal or its nominees when carrying out any such audit, including providing access to all relevant facilities, documentation, records and Personnel (including those of Subcontractors).

6.20. Evidence of financial standing or financial arrangements

(a) Any obligations under this clause 6.20 to provide information in relation to the Guarantor only apply if the Contractor is required to provide a parent company guarantee under clause 4.6.

(b) The Contractor warrants to the Principal that the Contractor will at all times have sufficient financial capacity to meet all of its obligations under the Contract.

(c) Without limiting clause 6.19, the Contractor must, as and when requested by the Principal's Representative from time to time, promptly, and in any event within the period stated in the Principal's Representative's request, provide the Principal's Representative with a copy of such evidence reasonably required by the Principal's Representative which demonstrates:

(i) the Contractor's financial capacity to meet all of its obligations under the Contract; and

(ii) the Guarantor's financial capacity to perform its obligations under the parent company guarantee.

(d) The Contractor must promptly notify the Principal of:

(i) any material change to any information provided by the Contractor under paragraph (c); and

(ii) any material change in the Contractor's or the Guarantor's financial standing which may affect, or is likely to affect, their financial capacity to meet all of their obligations under the Contract or the parent company guarantee (as applicable).

(e) The Contractor must assist and fully co-operate with, and procure that the Guarantor assists and fully co-operates with the requirements or requests of the Principal, the Principal's Representative or their nominees in relation to any review of:

(i) any information provided by the Contractor or the Guarantor under this clause 6.20; or

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

6.21. Survive termination

Clauses 6.7 to 6.12, and 6.15 to 6.19, and the licences granted to the Principal under them, will survive any termination of the Contract.

7. SITE AND INFORMATION

7.1. Contractor to inform itself

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

(a) assessing the risks which it is assuming under the Contract; and

(b) ensuring that the Contract Price contains allowances to protect it against any of these risks eventuating,

(i) including:

(c) visiting and inspecting the Site and its surroundings; and

(d) making its own assessment of the risks associated with conditions at the Site and its surroundings,

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

7.2. Site information

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

7.3. Site access

(a) The Principal:

(i) is not obliged to:

(A) provide the Contractor with sole access to the Site; or

(B) carry out any work or provide any facilities to the Contractor (other than as stated in the Contract) which may be necessary to enable the Contractor to obtain adequate access to carry out the Contractor's Activities; and

(ii) may engage Other Contractors to work upon or in the vicinity of the Site at the same time as the Contractor.

(b) To the extent that the Contractor requires access to any part of the Site or any other land (**Relevant Land**) for the purpose of performing the Contractor's Activities and the Principal does not own the Relevant Land or otherwise have rights to access it for the purpose of the Contractor's Activities other than pursuant to section 20 of the Hunter Water Act:

(i) the Contractor must obtain the prior written consent of the Principal prior to accessing any part of the Site or any other land under this clause 7.4(b);

(ii) if the Principal provides consent under clause 7.4(b)(i), the Principal appoints the Contractor as an authorised person for the purposes of accessing the Relevant Land under section 21(2) of the Hunter Water Act; and

(iii) the Contractor must comply with the requirements of the Hunter Water Act when accessing the Relevant Land.

7.4. Contractor's obligation to provide access

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

(a) minimise disruption or inconvenience to:

(i) the Principal, occupiers, tenants and potential tenants of the Site in their occupation or use of, or attendance upon, any part of the Site; and

(ii) others having a right of access to the Site;

(b) at all reasonable times give the Principal's Representative, the Principal and any person authorised by either the Principal's Representative or the Principal access to the Works, the Site or any areas off-Site where Contractor's Activities are being carried out; and

(c) provide the Principal, the Principal's Representative and any person authorised by the Principal or the Principal's Representative with every reasonable facility necessary for the supervision, examination and testing of the Contractor's Activities.

7.5. Work health and safety

(a) In this clause 7.6, the terms "construction work", "principal contractor" and "workplace" have the same meanings assigned to those terms under the WHS Legislation.

(b) The Principal engages the person identified in the Key Details as the principal contractor in respect of any construction work forming part of the Contractor's Activities.

(c) Where the Principal engages the Contractor as the principal contractor:

(i) the Principal authorises the Contractor to have management and control of each workplace at which construction work is to be carried out and to discharge the duties of a principal contractor, under the WHS Legislation;

(ii) the Contractor accepts the engagement as principal contractor and agrees to discharge the duties imposed on a principal contractor by the WHS Legislation; and

(iii) the Contractor's engagement and authorisation as principal contractor will continue:

(A) until the Date of Practical Completion of the Works (or the Date of Practical Completion of each Separable Portion, as applicable); and

(B) while ever any rectification work that is "construction work" is carried out during the Defects Liability Period,

unless sooner revoked by the Principal terminating the Contract pursuant to any provision of the Contract or according to Law.

(d) Where the Contractor is not engaged as the principal contractor, the Contractor must comply with the reasonable directions of the principal contractor in relation to any construction work forming part of the Contractor's Activities.

(e) As a condition precedent to the Principal's obligation under the Contract to provide the Contractor with access to, or possession of the Site, the Contractor must prepare and submit a WHS Management Plan to the Principal's Representative for approval (such approval not to be unreasonably withheld).

(f) No comment upon nor any review, acceptance or approval of the WHS Management Plan by the Principal's Representative will affect any warranty or guarantee given by the Contractor or relieve the Contractor of any of its liabilities or obligations under the Contract.

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

(i) comply, and must ensure that its Subcontractors and any other person engaged by the Contractor for the purposes of the Contract comply, with the WHS Legislation (including any obligation under the WHS Legislation to consult, cooperate and coordinate activities with all other persons who have a work health and safety duty in relation to the same matter);

(ii) if requested by the Principal's Representative or required by WHS Legislation, demonstrate compliance with the WHS Legislation, including providing evidence of any Approvals, prescribed qualifications or experience, or any other information relevant to work health and safety matters;

(iii) notify the Principal's Representative immediately (and in any event within 12 hours of such matter arising) of all work health, safety and rehabilitation matters arising out of, or in any way in connection with, the Contractor's Activities;

(iv) insofar as the Contractor, in carrying out the Contractor's Activities is under any duty imposed by the WHS Legislation, do everything necessary to comply with any such duty; and

(v) ensure that it does not do anything or fail to do anything that would cause the Principal to be in breach of the WHS Legislation.

(h) To the extent not prohibited by Law, the Contractor indemnifies the Principal against any Claims against, or loss suffered or incurred by, the Principal arising out of or in connection with the failure of the Contractor to discharge the duties imposed on a principal contractor under the WHS Legislation (if the Contractor has been engaged as principal contractor) or otherwise comply with this clause 7.6.

7.6. Dams Safety Legislation

The Contractor must:

(a) comply with the requirements of regulation 23(1) of the Dams Safety Regulation 2019 (NSW) (if applicable); and

(b) in performing its obligations under the Contract:

(i) exercise a duty of utmost good faith to the Principal in carrying out the Contractor's Activities to enable the Principal to discharge the Principal's duties under the Dams Safety Legislation; and

(ii) ensure that in performing the Contractor's Activities, it does not do anything or fail to do anything that would cause the Principal to be in breach of the Dams Safety Legislation.

7.7. Non-reliance

The Contractor:

(a) warrants that it did not in any way rely upon:

(i) any information, data, representation, statement or document made by or provided to the Contractor by the Principal, the Principal's Representative or anyone else on behalf of the Principal; or

(ii) the accuracy, adequacy, suitability or completeness of any such information, data, representation, statement or document,

for the purposes of entering into the Contract, except to the extent that any such information, data, representation, statement or document forms part of the Contract;

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

(c) acknowledges that it is aware that the Principal has entered into the Contract relying upon the warranties in paragraphs (a) and (b).

8. CONSTRUCTION

8.1. Description of Works

Subject to clause 6.14, the Contractor must construct the Works in accordance with:

(a) the Statement of Work;

(b) any Design Documentation prepared by the Contractor in accordance with the requirements of the Contract, and which the Contractor is entitled to use for construction purposes under clause 6.3;

(c) any Direction of the Principal's Representative given or purported to be given under a provision of the Contract, including any Variation directed by the Principal's Representative by a document titled "Variation Order"; and

(d) the other requirements of the Contract (including any performance guarantees or other performance levels or performance requirements stated in the Contract).

8.2. All work included

(a) The Contractor warrants that it has, and it will be deemed to have, allowed for the provision of all Plant, Equipment and Work, materials and other work necessary for the Contractor's Activities, whether or not expressly mentioned in the Statement of Work or any Design Documentation.

(b) Any such Plant, Equipment and Work, materials and other work:

(i) must be undertaken and provided by the Contractor; and

(ii) forms part of the Contractor’s Activities and will not entitle the Contractor to make a Claim except as otherwise provided for in the Contract.

8.3. Compliance with Law

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

(a) comply with all applicable Law;

(b) without limiting paragraph (a), comply with the Principal's environment protection licence granted under the Protection of the Environment Operations Act 1997 (NSW);

(c) obtain all Approvals except for those specified in the Key Details which were either obtained prior to the Award Date or will be obtained after the Award Date by the Principal;

(d) comply with, carry out and fulfil the conditions and requirements of all Approvals (whether obtained by the Contractor or specified in the Key Details) including those conditions and requirements which the Principal is required under the terms of the Approvals specified in the Key Details to comply with, carry out and fulfil; and

(e) prepare and give the Principal's Representative any documents that an Authority requires in order for the Principal to obtain the Approvals it requires to use the Works.

8.4. Change in Law

(a) If there is a Change in Law after the Award Date and:

(i) the Change in Law could not reasonably have been anticipated at the Award Date; and

(ii) compliance with the Change in Law by the Contractor:

(A) has a direct adverse effect on the Contractor in performing the Contractor's Activities; and

(B) directly results in an increase in the Contractor's costs of performing the Contractor's Activities,

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

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

8.5. Subcontracting

(a) The Contractor:

(i) must not subcontract the whole of the Contractor's Activities;

(ii) must not subcontract any Contractor's Activities of the value or type described in the Key Details without the prior written approval of the Principal's Representative, other than to the Subcontractors specified in the Key Details;

(iii) will be fully responsible for the Contractor's Activities despite subcontracting the carrying out of any part of the Contractor's Activities; and

(iv) will be vicariously liable to the Principal for all acts, omissions and defaults of its Subcontractors (and those of the employees and agents of its Subcontractors) relating to, or in any way connected with, the Contractor's Activities.

(b) The Contractor must include in every Subcontract:

(i) details of the Contractor's obligations in connection with the Contract which are to be carried out by the Subcontractor;

(ii) obligations requiring the relevant Subcontractor to be bound by all obligations relating to work, health and safety imposed upon the Contractor under the Contract (including those under clause 7.6);

(iii) provisions that are equivalent to those in clauses 6.7 to 6.12, 6.15 to 6.17, 8.10, 17 and 21 and clauses 3, 4, 5 and 6 of Schedule 10 of the Appendix;

(iv) provisions requiring the Subcontractor to consent to a novation of the Subcontract to the Principal or its nominee, if required by the Principal in circumstances where the Principal terminates the Contract under clause 14.4;

(v) a right to terminate the Subcontract if the Contract is terminated for any reason; and

(vi) a right of termination of the Subcontract for convenience.

8.6. Subcontractor warranties

(a) The Contractor must, as a condition precedent to Practical Completion of the Works or any Separable Portion, procure and provide the Principal with those warranties described in the Key Details from the relevant Subcontractor undertaking or supplying the work or item the subject of the warranty.

(b) These warranties:

(i) must be in the terms prescribed in Schedule 4 of the Appendix; and

(ii) will not derogate from any rights which the Principal may have against the Contractor in respect of the subject matter of these warranties.

8.7. Cleaning up

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

(a) keep the Site and the Works clean and tidy and free of refuse; and

(b) as a condition precedent to Practical Completion of the Works or a Separable Portion, remove all rubbish, materials and Plant, Equipment and Work from the part of the Site relevant to the Works or the Separable Portion.

8.8. Compliance with Environmental Law

(a) Without limiting the generality of any other provision of the Contract, the Contractor must in relation to the performance of the Contractor's Activities:

(i) comply with all environmental obligations imposed on the Contractor under the Contract and under any applicable Environmental Law;

(ii) supervise and monitor the performance of all environmental obligations imposed on the Contractor under the Contract and under any applicable Environmental Law;

(iii) report to the Principal on all matters relating to the performance or non-performance (as the case may be) of the Contractor's environmental obligations under the Contract upon request by the Principal;

(iv) if specified in the Key Details, submit to the Principal an Environmental Management Plan at least 10 Business Days before commencing any work on Site; and

(v) if specified in the Key Details, implement a certified Environmental Management System.

(b) The Contractor will be liable for and indemnifies the Principal against all Claims against, or any loss suffered or incurred by, the Principal arising out of or in connection with any breach by the Contractor of this clause 8.8 or any Environmental Law.

(c) If the Contractor fails to comply with any of its environmental obligations under the Contract, the Principal may take whatever action is necessary to remedy such failure and if it does so any loss suffered or incurred by the Principal in taking such action will be a debt due by the Contractor to the Principal.

(d) The Contractor must immediately notify the Principal's Representative in writing of any:

(i) breach or potential breach of an Environmental Law or any other Approval relating to the Environment; and

(ii) any notices received by the Contractor, or proceedings commenced under any Environmental Law, in respect of a breach or potential breach of an Environmental Law or any other Approval relating to the Environment,

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

8.9. Principal may act

(a) Without limiting clause 15A, the Principal may, either itself or by a third party, carry out an obligation under the Contract which the Contractor was obliged to carry out but which it failed to carry out within the time required in accordance with the Contract.

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

8.10. Policies and Procedures

(a) At all times when performing the Contractor's Activities the Contractor must comply with the Policies and Procedures.

(b) The Contractor must:

(i) complete any site induction required by the Principal (and use any induction tool specified by the Principal in doing so);

(ii) promptly notify the Principal of any:

(A) accident, injury, property or environmental damage resulting from or in connection with the Contractor's performance of the Contractor's Activities; or

(B) an occurrence that might have led to an injury or illness, danger to someone's health or damage to property or the environment,

and:

(C) within 5 Business Days of any such incident or potential incident, provide a written report to the Principal giving complete details of the incident, including the root cause of the incident;

(D) provide any additional information reasonably requested by the Principal in relation to the incident; and

(E) take any further actions taken by the Contractor to prevent a recurrence of the incident;

(iii) comply with all occupational, health and safety and security requirements applicable to the Site;

(iv) comply with any directions by the Principal in relation to health and safety or the security of any premises or facility of the Principal;

(v) revise and update its own hazard identification and risk assessment each time the Contractor commences or re-commences a task or activity on the Principal's premises or using the Principal's facilities;

(vi) determine the appropriate actions which must be taken to eliminate or satisfactorily control any risks identified by the Contractor under or in connection with this Contract;

(vii) prepare safe work method statement(s) as required by the WHS Legislation which include the specific requirements of the Contract; and

(viii) undertake its own hazard identification and risk assessment prior to the commencement of the Contractor's Activities and include in its own hazard identification and risk assessment any relevant risks and hazards identified in any health and safety related information prepared or published by SafeWork NSW, including any information at https://www.safework.nsw.gov.au/.

(c) In complying with the Drug and Alcohol Policy, the Contractor:

(i) acknowledges that the Drug and Alcohol Policy enables the Principal to conduct random and other testing of individuals on the Principal's sites, including any of the Contractor's Personnel; and

(ii) consents to the testing of any Personnel whilst they are on a Principal site, in accordance with the Drug and Alcohol Policy.

(d) If the Key Details state that the Contractor must comply with the Aboriginal Procurement Policy (January 2021) (**APP**), the Contractor:

(i) must comply with the Aboriginal Participation Plan (as defined in the APP) submitted as part of its tender for the Contractor's Activities;

(ii) must report quarterly against compliance with the Aboriginal Participation Plan;

(iii) acknowledges that the Contract value for the purposes of calculating the Aboriginal participation requirements is as set out in the Key Details;

(iv) acknowledges and agrees that Training Services NSW has established the Aboriginal participation fund to receive payments when the Contractor does not meet contracted Aboriginal participation requirements; and

(v) acknowledges and agrees that where the Contractor does not meet its Aboriginal participation requirements under this Contract, the Principal may, in accordance with the APP, withhold payments due to the Contractor pursuant to this Contract and direct the funds to an account held by Training Services NSW.

8.11. Co-operation with Other Contractors

The Contractor must:

(a) permit Other Contractors to carry out their work;

(b) fully co-operate with Other Contractors;

(c) carefully co-ordinate and interface the Contractor's Activities with the work carried out or to be carried out by Other Contractors in a manner that:

(i) is seamless;

(ii) integrates, where applicable, with the services, works, activities and deliverables that the Contractor and any Other Contractors will provide; and

(iii) minimises the need for the Principal to be involved in resolving problems or managing the tasks that the Contractor and Other Contractor perform; and

(d) carry out the Contractor's Activities so as to avoid interfering with, disrupting or delaying the work of Other Contractors.

8.12. Principal's operations

The Contractor must:

(a) ensure that:

(i) the performance of the Contractor's Activities; and

(ii) any other acts or omissions of the Contractor or its Personnel,

do not adversely affect or otherwise interfere with:

(iii) the Principal's operations and the Principal Environment; or

(iv) the activities of business or persons occupying land on, adjacent to or in the vicinity of the Site;

(b) arrange work to minimise nuisance to occupants and users of the Site, to ensure their safety and comfort;

(c) should the Contractor become aware of such effect or interference, promptly notify the Principal of any such adverse effect or interference; and

(d) consult and co-operate with the Principal's Representative and the Principal and attend meetings as required by the Principal's Representative in relation to the interface between the Principal's operations and the performance of the Contractor's Activities.

8.13. Basis of Contract Price

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

(a) is firm and inclusive of all taxes (other than GST), duties (including customs duty) and governmental charges imposed or levied in Australia or overseas; and

(b) includes the cost of any packaging, marking, handling, freight and delivery, insurance and any other applicable costs and charges, and costs of compliance with all other statutory, award or other legal or contractual requirements.

8.14. Requirements for Software

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

(i) are free of any Viruses, disabling code or other code that may cause an unauthorised change, undesired effect, security breach, Security Incident or damage to the Software, the Works, Deliverables, Contractor's Activities, Principal Environment or the information technology systems of the Principal or those of any other Authority with which the Principal's information technology systems may interoperate or interact;

(ii) meet all applicable requirements (including functional performance requirements) for the Software and comply with any specifications or documentation related to the Software and as specified in the Statement of Work or any Design Documentation;

(iii) are supplied together with all relevant tools and documentation necessary to enable the Principal to use, modify, test, operate, maintain, enhance, identify faults in and adapt that Software; and

(iv) are supported and maintained, and regularly updated and upgraded, as required to maintain their full functionality and the full functionality of any equipment, systems, infrastructure, hardware or other like items, and of any other Works, Deliverables or Contractor's Activities, on or with which those components are supplied, for the life of the Software,

and, at the Principal's request, provide training and knowledge transfer services in relation to the support, maintenance, updating and upgrading of the Software, at the applicable rates or prices for such services as specified in the Payment Schedule or, if none stated, at reasonable rates and prices.

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

8.15. Changes and Updates to Software

The Contractor must:

(a) prior to implementing any change, update or upgrade to any Software that forms part of any Works, Deliverables or other Contractor's Activities, advise the Principal of the nature of the proposed change, update or upgrade and its functional objectives, consult with the Principal regarding any projected impact (including on any systems or other technology or software assets of the Principal), assist the Principal in assessing implementation impacts and obtain the Principal's prior approval to the change, update or upgrade before proceeding with its implementation;

(b) where the Principal has given its approval to a change, update or upgrade to any Software that forms part of any Works, Deliverables or other Contractor's Activities, only implement that change, update or upgrade in consultation with the Principal, in compliance with the Principal's directions and subject to prior testing and advance notice where and as stipulated by the Principal; and

(c) promptly notify the Principal of any changes or updates proposed to be made to any Software which may:

(i) alter their identification, performance, characteristics, form, fit, function or processes required for their correct or intended usage of the Software (or any of the Works, Deliverables and other Contractor's Activities more generally); or

(ii) otherwise require notification to any regulator, authority or third party which provides an Approval in connection with that Software (or any of the Works, Deliverables and other Contractor's Activities more generally).

8.16. Continuous Improvement

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

8.17. Attend meetings and reporting

The Contractor must:

(a) consult with the Principal and attend such meetings and briefings at the times set out in the Statement of Work, and at such other times as advised by the Principal; and

(b) provide a progress report to the Principal at the times and containing, as a minimum, those matters specified in the Statement of Work, and such other matters as the Principal requests from time to time.

9. QUALITY AND DEFECTS

9.1. Construction

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

(a) use workmanship:

(i) of the standard prescribed in the Contract, and to the extent it is not so prescribed, of a standard consistent with the best industry standards for work of a nature similar to the Works; and

(ii) which is fit for its purpose;

(b) use materials:

(i) which are new and comply with the requirements of the Contract, and to the extent not fully described in the Contract, which are consistent with the best industry standards for work of a nature similar to the Works; and

(ii) of merchantable quality, which are fit for their purpose and consistent with the nature and character of the Works;

(c) use care, skill, judgment and diligence to the standard prescribed in the Contract, and to the extent it is not so prescribed, of a standard consistent with the best industry standards for work of a nature similar to the Contractor's Activities;

(d) carry out the Contractor's Activities in a manner that is safe to both people and the environment, in accordance with Law and best industry standards for work of a nature similar to the Contractor's Activities;

(e) minimise any disruption, interference or inconvenience to the Principal or its Personnel, including the Principal's operations, or any Other Contractors;

(f) ensure that the Contractor's Personnel engaged in carrying out the Contractor's Activities are suitably qualified and competent;

(g) have regard to the Objectives; and

(h) comply with the requirements of the Contract.

9.2. Quality assurance

The Contractor:

(a) must implement a quality assurance system representing best industry standards;

(b) must, if specified in the Key Details, implement a certified Quality Management System;

(c) must, if specified in the Key Details, submit a Quality Management Plan to the Principal before commencing any Contractor's Activities under the Contract;

(d) must allow the Principal's Representative access to the quality system of the Contractor and its Subcontractors so as to enable monitoring and quality auditing; and

(e) will not be relieved from compliance with any of its Contract obligations or from any of its liabilities whether under the Contract or otherwise by Law as a result of:

(i) the implementation of, and compliance with, the quality assurance requirements of the Contract or any Quality Management System or Quality Management Plan;

(ii) any Direction by the Principal's Representative concerning the Contractor's quality assurance system or its compliance or non-compliance with that system;

(iii) any audit or other monitoring by the Principal's Representative, or anyone else acting on behalf of the Principal, of the Contractor’s compliance with the quality assurance system; or

(iv) any failure by the Principal's Representative, or anyone else acting on behalf of the Principal, to detect any Defect including where any such failure arises from any negligence on the part of the Principal's Representative or other person.

9.3. Right to inspect

(a) The Principal's Representative may at any time inspect the Contractor's Activities.

(b) The Contractor acknowledges that:

(i) the Principal's Representative owes no duty to the Contractor to:

(A) inspect the Contractor's Activities; or

(B) review construction for errors, omissions or compliance with the requirements of the Contract if it does so inspect; and

(ii) no inspection of the Contractor's Activities or review of construction by the Principal's Representative will in any way lessen or otherwise affect:

(A) the Contractor's obligations whether under the Contract or otherwise by Law; or

(B) the Principal’s rights against the Contractor whether under the Contract or otherwise by Law.

9.4. Testing

(a) The Contractor must carry out all Tests required by the Contract.

(b) All Tests are to be carried out in accordance with any procedure:

(i) set out in the Contract which may apply to the Tests; or

(ii) if no procedure exists, as reasonably directed by the Principal's Representative.

9.5. Test not passed

(a) If the Works fail any Test, the Contractor must:

(i) promptly remedy the cause of the failure;

(ii) give the Principal's Representative notice of the cause and the remedial action taken; and

(iii) reschedule, re-perform and report on results of the Test until the Test is passed.

(b) Neither the carrying out of a Test nor the issue of a Test report or certificate will release the Contractor from any of its responsibilities, obligations or liabilities under the Contract (including the repair or replacement or both of any part of the Works damaged during the course of any Test).

9.6. Further Tests and opening up

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

(a) to repeat any Test already carried out (whether or not the Test was previously passed);

(b) to carry out a Test not otherwise required by the Contract; or

(c) to open up or uncover any part of the Works for inspection or testing,

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

9.7. Costs of testing

(a) If:

(i) the Principal's Representative directs the Contractor to carry out a Test (including a retest) or to open up or uncover any part of the Works for inspection or testing, and that Test or that opening up or uncovering:

(A) is not otherwise required by the Contract; or

(B) does not relate to a Defect in respect of which the Principal's Representative gave an instruction under clause 9.8; and

(ii) the results of the Test or the opening up or uncovering show the work is in accordance with the Contract,

the reasonable additional costs necessarily incurred by the Contractor in complying with the Direction, as determined by the Principal's Representative, will be added to the Contract Price.

(b) If:

(i) the Principal's Representative directs the Contractor to carry out a Test (including a retest) or to open up or uncover any part of the Works for inspection or testing and that Test or that opening up or uncovering relates to or uncovers a Defect; or

(ii) the Principal carries out any testing itself or has others carry out such testing in connection with a Defect,

the Principal's costs arising out of or in connection with such testing will be a debt due and payable by the Contractor to the Principal.

9.8. Defects

(a) Subject to paragraph (b), the Contractor must correct all Defects.

(b) If, prior to the expiry of the Defects Liability Period for the Works or a Separable Portion, the Principal's Representative discovers or believes there is a Defect, the Principal's Representative may give the Contractor an instruction specifying the Defect and doing one or more of the following:

(i) requiring the Contractor to correct the Defect, or any part of it, and specifying the time within which this must occur; or

(ii) advising the Contractor that the Principal will accept the work, or any part of it, despite the Defect.

9.9. Correction of Defect

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

(a) within the time specified in the Principal's Representative's instruction; and

(b) if after Practical Completion, at times and in a manner which cause as little inconvenience to the occupants or users of the Works, the Separable Portion or the Site as is reasonably possible.

9.10. Claim for correction of Defect

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

(a) the Contractor will only be entitled to make a Claim for correcting a Defect (or the relevant part of it) if the Defect (or the relevant part of it) is something for which the Contractor is not responsible; and

(b) where the Contractor is so entitled to make a Claim, the work involved in the correction of the Defect (or the relevant part of it) will be treated as if it were a Variation the subject of a Direction by the Principal's Representative and clause 11.3 applied.

9.11. Acceptance of work

If:

(a) an instruction is given under clause 9.8(b)(ii); and

(b) the Contractor is responsible for the Defect (or the relevant part of it),

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

9.12. Extension of Defects Liability Period

If:

(a) the Principal's Representative gives the Contractor an instruction under clause 9.8(b)(i) during the Defects Liability Period; and

(b) the Contractor is responsible for the Defect (or the relevant part of it),

(c) the Defects Liability Period will be extended for the work required by the instruction for a period of 12 months, commencing upon completion of the correction of the Defect (or the relevant part of it).

9.13. Legal rights not affected

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

(a) the rights conferred upon the Principal or Principal's Representative by this clause 9 or any other provision of the Contract;

(b) the failure by the Principal or the Principal's Representative to exercise any such rights; or

(c) any instruction of the Principal's Representative under clause 9.8.

10. TIME

10.1. Progress and time for Practical Completion

The Contractor must:

(a) regularly and diligently progress the Contractor's Activities with due expedition and without delay;

(b) achieve Practical Completion of the Works or each Separable Portion by the Date for Practical Completion;

(c) complete each LD Milestone by the relevant LD Milestone Date;

(d) whenever requested by the Principal's Representative, demonstrate that it is progressing the Contractor's Activities so as to complete the Works and each LD Milestone by the relevant Date for Practical Completion or LD Milestone Date (as applicable); and

(e) if the Contractor does not demonstrate to the Principal that it is progressing the Contractor's Activities in accordance with paragraph (d), the Principal may instruct the Contractor to take all reasonable steps to progress the Contractor's Activities in accordance with paragraph (d) at its own cost. An instruction under this clause is not a notice under clause 10.14.

10.2. Programming

(a) The Contractor must:

(i) within 10 Business Days of the Award Date, submit to the Principal's Representative a program of the Contractor's Activities which must contain the details required by the Contract or which the Principal's Representative otherwise reasonably directs;

(ii) submit to the Principal's Representative for its approval an updated program:

(A) with each payment claim under clause 12.2;

(B) whenever there is a significant change in scheduling of the Contractor's Activities;

(C) within 5 Business Days of receiving an instruction from the Principal's Representative to do so; and

(D) with any Claim for an extension of time under clause 10.5.

(b) The program (and each updated version of the program) must:

(i) show the progress of the Contractor's Activities against each Date for Practical Completion and each LD Milestone Date;

(ii) show, and be consistent with, all constraints on access, performance and coordination;

(iii) show the start and finish date or, in the case of future activities, the intended start and finish dates, of all design and construction activities and other significant events;

(iv) show:

(A) the logical relationship between activities and events and the sequence of activities that constitute the critical path or paths;

(B) time leads and lags; and

(C) resource and other constraints;

(v) show the dates on which the Contractor will:

(A) require information, documents, instructions or materials from the Principal; and

(B) provide information or documents to the Principal,

provided that the dates are consistent with dates that could have been reasonably anticipated by the Principal at the Award Date;

(vi) show:

(A) changes to the program and to any scheduling of the Contractor's Activities;

(B) delays which may have occurred, including any for which the Contractor is granted an extension of time to a Date for Practical Completion or LD Milestone Date under clause 10.8; and

(C) extensions of time to a Date for Practical Completion or LD Milestone Date granted by the Principal's Representative under clause 10.11;

(vii) be accurate, comprehensive and complete;

(viii) comply with any other specific requirements of the Contract, including any specified format or software; and

(ix) comply with any reasonable requirements of the Principal.

(c) The Principal's Representative is not obliged to respond to the submission of a program under this clause 10.2, but if the Principal's Representative advises the Contractor that a program submitted does not comply with the requirements of the Contract, or otherwise instructs the Contractor, the Contractor must revise the program so that it complies with the requirements of the Contract and the instructions of the Principal, and must submit the revised program to the Principal within 5 Business Days after receiving the Principal's advice or instructions.

10.3. Contractor not relieved

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

(a) relieve the Contractor from or alter its liabilities or obligations under the Contract, especially (without limitation) the obligation to achieve Practical Completion of the Works or each Separable Portion by the Date for Practical Completion or to complete a LD Milestone by the LD Milestone Date;

(b) evidence or constitute the granting of an extension of time to any Date for Practical Completion or LD Milestone Date or an instruction by the Principal's Representative to accelerate, disrupt, prolong or vary any, or all, of the Contractor's Activities; or

(c) affect the time for the carrying out of the Principal's or Principal's Representative's Contract obligations.

10.4. Acceleration chosen by Contractor

If the Contractor chooses to accelerate progress, without a direction from the Principal to do so under clause 10.14:

(a) neither the Principal nor the Principal's Representative will be obliged to take any action to assist or enable the Contractor to achieve Practical Completion of the Works or each Separable Portion by the relevant Date for Practical Completion or to achieve a LD Milestone by the relevant LD Milestone Date;

(b) the time for the carrying out of the Principal's or the Principal's Representative's obligations will not be affected; and

(c) any such acceleration will be undertaken at the Contractor's sole cost.

10.5. Delays entitling Claim

(a) If the Key Details specify that this paragraph (a) applies, if the Contractor is or will be delayed in achieving:

(i) Practical Completion of the Works or a Separable Portion; or

(ii) completion of a LD Milestone,

by a Qualifying Cause in a manner which will prevent it from achieving Practical Completion of the Works or the Separable Portion by the Date for Practical Completion or achieving the LD Milestone by the LD Milestone Date (as applicable) unless that date is extended, the Contractor may claim an extension of time.

(b) If the Key Details specify that this paragraph (b) applies, if the Contractor is or will be delayed in achieving:

(i) Practical Completion of the Works or a Separable Portion; or

(ii) completion of a LD Milestone,

by a Qualifying Cause, the Contractor may claim an extension of time.

10.6. Extension of time Claim

To claim an extension of time under clause 10.5 the Contractor must:

(a) within 10 Business Days of the commencement of the occurrence causing the delay submit a written claim to the Principal's Representative for an extension to the relevant Date for Practical Completion or LD Milestone Date which:

(i) gives detailed particulars of the delay and the occurrence causing the delay; and

(ii) states the number of days extension of time claimed together with the basis of calculating that period, including evidence that the Contractor has been or will be delayed in achieving Practical Completion or completion of the LD Milestone in the manner set out in clause 10.7(b) and 10.7(c); and

(b) if the effects of the delay continue beyond the period of 10 Business Days after the commencement of the occurrence causing the delay and the Contractor wishes to claim an extension of time in respect of the further delay, submit a further written claim for an extension to the Principal's Representative:

(i) every 10 Business Days after the first written claim until 5 Business Days after the end of the effects of the delay; and

(ii) containing the information required by paragraph (a).

10.7. Conditions precedent to extension

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

(a) the Contractor must give the written claims required by clause 10.6 as required by that clause;

(b) the cause of the delay was beyond the reasonable control of the Contractor;

(c) the Contractor must have actually been delayed in achieving:

(i) if clause 10.5(a) applies:

(A) Practical Completion of the Works or a Separable Portion; or

(B) a LD Milestone,

by a Qualifying Cause in a manner which will prevent it from achieving Practical Completion of the Works or the Separable Portion by the relevant Date for Practical Completion or completing the LD Milestone by the relevant LD Milestone Date (as applicable), unless that date is extended; or

(ii) if clause 10.5(b) applies:

(A) Practical Completion of the Works or a Separable Portion; or

(B) a LD Milestone,

by a Qualifying Cause; and

(d) the Contractor submitted an updated program in accordance with clause 10.2(a)(ii)D.

10.8. Extension of time

Subject to clauses 10.9 and 10.10, if the conditions precedent in clause 10.7 have been satisfied, the Date for Practical Completion or LD Milestone Date (as applicable) will be extended by a reasonable period determined by the Principal's Representative and notified to the Principal and the Contractor within 15 Business Days of the Contractor's written claim under clause 10.6(a), but where further Claims are submitted under clause 10.6(b), then within 15 Business Days of the last of those Claims.

10.9. Reduction in extension of time

The Principal's Representative will reduce any extension of time it would otherwise have notified to the Principal and the Contractor under clause 10.8 to the extent that the Contractor:

(a) contributed to the delay; or

(b) failed to take all steps necessary both to preclude the cause of the delay and to avoid or minimise the consequences of the delay.

10.10. Concurrent Delays

Where more than one event causes concurrent delays and the cause of at least one of those events, but not all of them, is not a Qualifying Cause, then to the extent that the delays are concurrent, the Contractor is not entitled to an extension of time with respect to the relevant Date for Practical Completion or LD Milestone Date.

10.11. Unilateral extensions

(a) Whether or not the Contractor has made, or is entitled to make, a Claim for an extension of time under this clause 10, the Principal's Representative may, in its absolute discretion at any time and from time to time by written notice to the Contractor, unilaterally extend the Date for Practical Completion or LD Milestone Date.

(b) The power to extend any Date for Practical Completion or LD Milestone Date under this clause 10.11:

(i) may only be exercised by the Principal's Representative and the Principal's Representative is not required to exercise its discretion under this clause 10.11 for the benefit of the Contractor; and

(ii) is not a Direction which can be the subject of a dispute pursuant to clause 15 or in any other way opened up or reviewed by any other person (including any expert, arbitrator or court).

10.12. Delay costs

(a) The Contractor will not be entitled to make any Claim against the Principal for delay or disruption costs arising out of or in any way in connection with delay or disruption in the execution or completion of the Contractor's Activities, however that delay or disruption may have been caused, other than under this clause 10.12.

(b) Subject to clause 10.12(e), where an extension of time has been granted under clause 10.8 for delay caused by a breach of Contract by the Principal, the Principal will pay the Contractor such reasonable extra costs (if any) as are necessarily incurred by the Contractor as a result of that delay as determined by the Principal's Representative. The Contractor must take reasonable steps to mitigate the extra costs incurred by it as a result of the delay.

(c) The extra costs payable to the Contractor under this clause 10.12 will not include any profit, loss of profit or offsite overheads.

(d) Any delay or disruption costs payable under this clause will be a limitation upon the Principal's liability to the Contractor in respect of any Claim by the Contractor for any loss suffered or incurred by the Contractor arising out of or in any way in connection with any delay and disruption which the Contractor suffers or encounters in carrying out the Contractor's Activities as a result of a breach of Contract by the Principal.

(e) The Principal's liability to the Contractor under this clause 10.12 is limited to:

(i) the amount per day; and

(ii) the total aggregate amount,

stated in the Key Details.

10.13. Suspension

(a) The Principal's Representative may direct the Contractor to suspend and, after a suspension has been instructed, to re commence, the carrying out of all or a part of the Contractor's Activities.

(b) Any suspension under paragraph (a) will be effective on and from the date specified in the Principal's Representative's direction.

(c) If a suspension under this clause 10.13 arises as a result of:

(i) the Contractor's failure to carry out its obligations in accordance with the Contract, the Contractor will not be entitled to make any Claim against the Principal arising out of, or in any way in connection with, the suspension; or

(ii) a cause other than the Contractor's failure to carry out its obligations in accordance with the Contract:

(A) an instruction to suspend under this clause 10.13 will entitle the Contractor to be paid by the Principal the reasonable extra costs (not including any profit, loss of profit or offsite overheads) necessarily incurred by the Contractor as a result of the suspension as determined by the Principal's Representative;

(B) the Contractor must take all steps possible to mitigate the extra costs incurred by it as a result of the suspension; and

(C) the Contractor will not be entitled to make any Claim against the Principal arising out of, or in any way in connection with, the suspension other than under this paragraph (ii).

10.14. Instruction to accelerate

(a) Subject to paragraph (e), the Principal may give the Contractor a written notice:

(i) stating that it is a notice under this clause 10.14; and

(ii) instructing the Contractor to accelerate progress of the Contractor's Activities, including to overcome or minimise the extent and effects of any delay.

(b) The Contractor must comply with any notice under paragraph (a) unless, before taking any steps to accelerate, it demonstrates to the satisfaction of the Principal that the acceleration instructed cannot reasonably be achieved.

(c) If requested in writing by the Principal, the Contractor must, within the time specified in the request, advise the Principal of:

(i) its price (excluding all costs of delay or disruption) for a proposed acceleration; and

(ii) the effect of a proposed acceleration on any other matter specified by the Principal.

(d) If the Contractor achieves the acceleration instructed, taking into account any relevant extension of time that has been given, the Contract Price will be adjusted in accordance with clause 11.3 for any unavoidable costs incurred by the Contractor additional to what it would have incurred if the Principal had not given the instruction to accelerate.

(e) Subject to clause 10.15, the Contractor will not be entitled to make any Claim against the Principal, arising out of, or in any way in connection with, the cause of delay and the instruction to accelerate other than for the amount which is payable by the Principal under this clause 10.14.

10.15. Principal's rights to liquidated damages not affected

The Principal's rights to liquidated damages under clause 13.5 for a failure by the Contractor to achieve Practical Completion of the Works or a Separable Portion by any relevant Date for Practical Completion or for a failure by the Contractor to complete a LD Milestone by the relevant LD Milestone Date (as applicable) are not affected by the Principal's Representative giving the Contractor an instruction to accelerate under clause 10.14.

11. VARIATIONS

11.1. Variation price request

(a) At any time prior to the Date of Practical Completion of the Works or a Separable Portion, the Principal's Representative may issue a document titled "Variation Price Request" to the Contractor which will set out details of a proposed Variation which the Principal is considering.

(b) Within 10 Business Days of the receipt of a "Variation Price Request", the Contractor must provide the Principal's Representative with a written notice in which the Contractor sets out:

(i) the adjustment (if any) to the Contract Price to carry out the proposed Variation; and

(ii) the effect (if any) which the proposed Variation will have on the then approved program, including each Date for Practical Completion and each LD Milestone Date.

11.2. Variation order

(a) Whether or not the Principal's Representative has issued a "Variation Price Request" under clause 11.1, the Principal's Representative may at any time prior to the Date of Practical Completion of the Works or the Separable Portion (but without limiting clauses 5.3 or 9.6), instruct the Contractor to carry out a Variation by issuing a written document to the Contractor titled "Variation Order" in which the Principal's Representative will state one of the following:

(i) the proposed adjustment to the Contract Price as set out in the Contractor's notice under clause 11.1 (if any) is agreed and the Contract Price will be adjusted accordingly; or

(ii) any adjustment to the Contract Price will be determined under clauses 11.3(b) or 11.3(c) (as applicable).

(b) No Variation will invalidate the Contract irrespective of the nature, extent or value of the works the subject of the Variation.

11.3. Adjustment for Variation

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

(a) where clause 11.2(a)(i) applies, the agreed amount;

(b) where clause 11.2(a)(i) does not apply, an amount determined by the Principal's Representative using any rates or prices which appear in the Payment Schedule to the extent the Principal's Representative determines they are applicable to, or it is reasonable to use them for valuing the Variation; or

(c) to the extent paragraphs (a) and (b) do not apply, a reasonable amount determined by the Principal's Representative, to which will be added:

(i) the following percentage or percentages of the amount determined:

(A) where the adjustment to the Contract Price is to be an increase, those percentages specified in the Key Details for non-time related overheads and profit; or

(B) where the adjustment to the Contract Price is to be a decrease, the percentage specified in the Key Details for overheads and profit; and

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

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

11.4. Omissions and deletions

(a) If a Variation the subject of a Direction by the Principal's Representative omits or deletes any part of the Works or a Separable Portion, the Principal may thereafter either perform this work itself or employ or engage Other Contractors to perform the omitted or deleted work.

(b) No Variation will invalidate, or amount to a repudiation of, this Contract.

11.5. Variations requested by Contractor

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

(a) a description of the Variation;

(b) the additional or reduced costs or time involved in the Variation and any proposal for sharing any savings in costs with the Principal including the amount; and

(c) any benefits which will flow to the Principal from the Variation.

11.6. Principal's Representative's determination

(a) After a request is made by the Contractor in accordance with clause 11.5, the Principal's Representative will, in its absolute discretion, give a written notice to the Contractor:

(i) rejecting the request; or

(ii) approving the request either conditionally or unconditionally.

(b) The Principal's Representative will not be obliged to exercise its discretion for the benefit of the Contractor.

11.7. Variation approved by Principal's Representative

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

(a) unless otherwise agreed, the Contractor will not be entitled to make a Claim against the Principal arising out of, or in any way in connection with, the Variation;

(b) if the Contractor's request offered to share savings in cost with the Principal, the Contract Price will be reduced by the amount offered by the Contractor in its request; and

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

11.8. Options

(a) The Principal's Representative may, by written notice given to the Contractor at any time within the period stated in Schedule 5, exercise any Option.

(b) Upon the issue of a notice by the Principal's Representative under paragraph (a), the Principal and the Contractor must perform their obligations under this Contract on the basis that:

(i) the Contractor's Activities described in the Option must be carried out or deleted (as applicable); and

(ii) the Contract Price will be adjusted in accordance with and to the extent set out in Schedule 5 for the relevant Option.

(c) The:

(i) Principal is not under any obligation to exercise; and

(ii) Contractor is not entitled to make, nor will the Principal be liable upon, any Claim in respect of the Principal not exercising,

any Option.

(d) Where:

(i) the Principal does not exercise its discretion to exercise an Option; or

(ii) an Option involves the deletion or omission of work,

the Principal may, either by itself or by third parties, undertake the work contemplated by the relevant Option.

(e) The exercise of an Option by the Principal's Representative under this clause 11.8 will not:

(i) relieve the Contractor from its liabilities or obligations (including those arising out of any warranties given under this Contract);

(ii) limit or otherwise affect the Principal's rights against the Contractor or the Contractor's rights against the Principal (including those arising out of any warranties given under this Contract); or

(iii) entitle the Contractor to an extension of time to a Date for Practical Completion or LD Milestone Date,

whether under this Contract or otherwise according to any Law.

12. PAYMENT

12.1. Payment obligation

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

(a) the Contract Price; and

(b) any other amounts which are payable by the Principal to the Contractor under the Contract.

12.2. Payment claims

(a) The Contractor must give the Principal's Representative claims for payment on account of the Contract Price and any other amounts payable by the Principal to the Contractor under the Contract:

(i) subject to clause 12.4:

(A) on the 25th day of each month after the Award Date or where that day is not a Business Day, the next Business Day; and

(B) at the time required by clause 12.8;

(ii) in such form which the Principal's Representative reasonably requires; and

(iii) which are based on the Payment Schedule to the extent such prices are relevant.

(b) The Contractor cannot include in any payment claim under this clause 12.2 a Claim that is barred by clause 18.5.

(c) The Contractor agrees with the Principal that a payment claim submitted to the Principal's Representative under this clause 12.2 is received by the Principal's Representative as agent for the Principal.

12.3. Payment schedules

(a) The Principal's Representative must:

(i) within 10 Business Days of receiving:

(A) a payment claim under clause 12.2; or

(B) a Final Payment Claim and a Deed of Final Release under clause 12.8 (if not received together, whichever is the later); or

(ii) if the Contractor has not submitted a Final Payment Claim under clause 12.8 within 15 weeks after the Date of Practical Completion and the Contractor has submitted a Deed of Final Release under clause 12.8 (if not concurrent, whichever is the later),

give the Contractor, on behalf of the Principal, a payment schedule which states:

(iii) the value of the work completed in accordance with the Contract;

(iv) the amount already paid to the Contractor;

(v) the amount the Principal is entitled to retain, deduct, withhold or set-off under the Contract;

(vi) the amount (if any) which the Principal's Representative believes to be then payable by the Principal to the Contractor on account of the Contract Price and otherwise under the Contract and which the Principal proposes to pay to the Contractor; and

(vii) if the amount in paragraph (vi) is less than the amount claimed in the payment claim:

(A) the reason why the amount in paragraph (vi) is less than the amount claimed in the payment claim; and

(B) if the reason for the difference is that the Principal has retained, deducted, withheld or set-off payment for any reason, the reason for the retention, deduction, withholding or setting-off payment.

(b) The issue of a payment schedule by the Principal's Representative does not constitute approval of any work nor will it be taken as an admission or evidence that the part of the Works covered by the payment schedule has been satisfactorily carried out in accordance with the Contract.

(c) Failure by the Principal's Representative to set out in a payment schedule an amount which the Principal is entitled to retain, deduct, withhold or set-off from the amount which would otherwise be payable to the Contractor by the Principal will not prejudice the Principal's right to subsequently exercise its right to retain, deduct, withhold or set-off any amount under the Contract.

(d) Unless the Principal has notified the Contractor under clause 12.12(g) that it will issue a recipient created tax invoice (**RCTI**) for a taxable supply made by the Contractor to the Principal, the Contractor must, within 2 Business Days after receipt of the payment schedule issued by the Principal's Representative, provide to the Principal a valid tax invoice that complies with the GST Legislation in respect of that taxable supply for the amount set out as payable in the payment schedule. If clause 12.12(g) applies, the Principal will provide the RCTI for the amount set out as payable in the payment schedule together with the payment schedule.

(e) The issue of a payment schedule in respect of the Final Payment Claim is conclusive evidence that all necessary adjustments to the Contract Price have been made and all entitlements of the Contractor have been met, except for those required by:

(i) arithmetical error; or

(ii) resolution of:

(A) any Claim made in accordance with clause 12.8(a)(iii);

(B) any dispute or difference properly notified under clause 15 prior to the Final Payment Claim; or

(C) any issue arising out of the payment schedule in respect of the Final Payment Claim, but only if it is notified to the Principal within 20 Business Days after the date of that payment schedule.

(f) The Contractor's liability under the Contract or otherwise is not affected by the issue of a payment schedule in respect of a Final Payment Claim.

12.4. Conditions precedent to payment

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

(a) any Unconditional Undertakings and parent company guarantee required under clause 4, or under the Standing Offer Deed (if any);

(b) evidence of any insurance taken out by the Contractor which is required under clause 5.5;

(c) a duly executed escrow deed as required under clause 6.11;

(d) a duly executed Confidentiality Undertaking as required by clause 6.15(f);

(e) an updated program under clause 10.2(a)(ii)A; and

(f) a supporting statement and subcontractor's statement in the form set out in Schedule 5 of the Appendix, duly signed by the Contractor on the date of the payment claim.

12.5. Payment

(a) Subject to clauses 12.4 and 12.9, the Principal must pay the Contractor the amount set out as payable in the payment schedule:

(i) if the SOP Act applies to the Contract, within 15 Business Days of receipt by the Principal's Representative of the payment claim under clause 12.2 or 12.8; or

(ii) if the SOP Act does not apply to the Contract, within 30 days of the last to occur of:

(A) issue by the Principal's Representative of the payment schedule under clause 12.3; and

(B) receipt by the Principal's Representative of the documents referred to in clause 12.4.

(b) If a payment schedule issued under clause 12.3 shows an amount owing by the Contractor to the Principal, the Contractor must pay the Principal that amount within 5 Business Days of receipt by the Contractor of the payment schedule.

12.6. Payment on account

(a) Any payment schedule or payment of moneys is not:

(i) evidence of the value of work or that work has been satisfactorily carried out in accordance with the Contract;

(ii) an admission of liability; or

(iii) approval by the Principal or the Principal's Representative of the Contractor's performance or compliance with the Contract.

(b) Payment is only to be taken as payment on account.

12.7. Unfixed goods and materials

(a) Unfixed goods and materials will not be included in the value of work in a payment schedule under clause 12.3 unless:

(i) they are goods and material:

(A) specified in the Key Details for which payment can be claimed; or

(B) otherwise agreed by the Principal's Representative in writing;

(ii) the Contractor gives the Principal's Representative with its payment claim under clause 12.2:

(A) an Unconditional Undertaking equal to the payment claimed for the unfixed goods and materials; and

(B) such evidence as may be required by the Principal's Representative that title to the unfixed goods and materials will vest in the Principal upon payment;

(iii) the unfixed goods and materials are clearly marked as the property of the Principal and are on the Site or available for immediate delivery to the Site; and

(iv) the unfixed goods and materials are properly stored in a place approved by the Principal's Representative.

(b) Upon payment of a payment schedule which includes unfixed goods and materials, title in the unfixed goods and materials will vest in the Principal.

(c) If the Contractor has given the Principal additional security for payment for unfixed goods and materials, the Principal must release it to the Contractor once those goods and materials are incorporated into the Works.

(d) Any payment to be made to the Contractor by the Principal for undelivered goods and materials (or part thereof), whether pursuant to this clause 12.7 or otherwise, is an advance payment for the purposes of section 415D(9), 434J(8) or 451E(8) of the Corporations Act (as applicable), until the goods and materials (or part thereof) in question have been incorporated into the Works in accordance with the Contract.

12.8. Final Payment Claim

(a) Within 13 weeks after the Date of Practical Completion in respect of:

(i) the Works; or

(ii) the last Separable Portion to achieve Practical Completion,

(as applicable), the Contractor must submit to the Principal's Representative:

(iii) a final payment claim (**Final Payment Claim**), which must include:

(A) all amounts which the Contractor claims from the Principal on account of the Contract Price or otherwise under the Contract; and

(B) notice of any other amounts which the Contractor claims from the Principal,

in respect of any fact, matter or thing arising out of, or in any way in connection with, the Contractor's Activities or the Contract which occurred prior to the date of the Final Payment Claim; and

(iv) a duly executed Deed of Final Release.

(b) The payment claim and notice required under this clause 12.8 are in addition to the other notices which the Contractor must give to the Principal's Representative under the Contract in order to preserve its entitlements to make any such Claims.

(c) Any Claim not submitted before or with the Final Payment Claim is barred.

(d) The Contractor cannot include in the Final Payment Claim any Claims that are barred by clause 18.5.

12.9. Right of set off

(a) The Principal may deduct from any moneys otherwise due to the Contractor and from any security held by the Principal:

(i) any debt or other moneys due from the Contractor to the Principal (including any due debt from the Contractor to the Principal pursuant to section 26C of the SOP Act);

(ii) any amount that is less than or equal to the amount claimed to be owed under a payment withholding request served on the Principal pursuant to Division 2A of the SOP Act; or

(iii) any Claim to money which the Principal may have against the Contractor whether for damages (including liquidated damages) or otherwise,

whether under or in connection with the Contract, any other contract formed under the Standing Offer Deed (if applicable) or relating to the Contractor's Activities.

(b) The rights given to the Principal under this clause 12.9 are in addition to and do not limit or affect any other rights of the Principal under the Contract or at Law and nothing in the clause affects the right of the Principal to recover from the Contractor the whole of the debt or Claim in question or any balance that remains owing.

(c) Failure by the Principal to deduct from an amount otherwise due to the Contractor any amount which the Principal is entitled to deduct under this clause 12.9, will not prejudice the Principal's right to subsequently exercise its right of deduction under this clause.

(d) Clause 12.9 will survive any termination of the Contract.

12.10. Interest

(a) The Principal will pay simple interest at the 90 day bank bill rate on any amount which has been set out as payable by the Principal's Representative in a payment schedule under clause 12.3, but which is not paid by the Principal within the time required by the Contract.

(b) This will be the Contractor's sole entitlement to interest including damages for loss of use of, or the cost of borrowing money.

12.11. SOP Act

(a) This clause applies if the SOP Act applies to the Contract.

(b) For the purposes of section 17(3) of the SOP Act, the Contractor irrevocably chooses the Resolution Institute as the "authorised nominating authority" (as that term is defined in the SOP Act) for any adjudication application it may make under the SOP Act in respect of the subject matter of the Contract.

(c) When an adjudication occurs under the SOP Act, and the Principal has paid an adjudicated amount to the Contractor:

(i) the amount will be taken into account by the Principal's Representative in issuing a payment schedule under clause 12.3; and

(ii) if it is subsequently determined pursuant to the Contract that the Contractor was not entitled under the Contract to payment of some or all of the adjudicated amount that was paid by the Principal ("**overpayment**"), the overpayment will be a debt due and payable by the Contractor to the Principal which the Contractor must pay to the Principal upon demand and in respect of which the Contractor is not entitled to claim or exercise any set-off, counterclaim, deduction or similar right of defence.

(d) Without limiting clause 12.9, the Principal may withhold any amount that is less than or equal to the amount claimed to be owed under a payment withholding request served on the Principal pursuant to Division 2A of the SOP Act.

(e) If the Principal withholds from money otherwise due to the Contractor any amount that is less than or equal to the amount claimed to be owed under a payment withholding request served on the Principal pursuant to Division 2A of the SOP Act, then:

(i) the Principal may lead and rely upon Division 2A of the SOP Act as a defence to any Claim for the money by the Contractor from the Principal; and

(ii) the period during which the Principal retains money due to the Contractor pursuant to an obligation under Division 2A of the SOP Act will not be taken into account for the purpose of determining:

(A) any period for which money owed by the Principal to the Contractor has been unpaid; and

(B) the date by which payment of money owed by the Principal to the Contractor must be made.

(f) The Contractor agrees not to commence proceedings to recover any amount withheld by the Principal pursuant to a payment withholding request served on the Principal in accordance with Division 2A of the SOP Act.

(g) Any amount paid by the Principal pursuant to section 26C of the SOP Act will be a debt due from the Contractor to the Principal.

(h) If the Principal withholds money pursuant to a payment withholding request served on the Principal pursuant to Division 2A of the SOP Act and the Contractor:

(i) pays the amount claimed to be due under the adjudication application to which the payment withholding claim relates; or

(ii) becomes aware that the adjudication application to which the payment withholding claim relates has been withdrawn,

then the Contractor must so notify the Principal within 5 days of the occurrence of the event in paragraph (i) or (ii) above (as applicable) by providing to the Principal a statement in writing in the form of a statutory declaration together with such other evidence as the Principal may require evidencing that the amount has been paid or the adjudication application has been withdrawn (as the case may be).

12.12. GST

(a) The parties acknowledge that unless otherwise expressly stated all amounts of monetary consideration in the Contract are exclusive of GST.

(b) If GST is or becomes payable on a supply made by a party (**Supplier**) under or in connection with the Contract or the Contractor's Activities, the party providing consideration for the supply (**Recipient**) must pay an additional amount to the Supplier equal to the GST payable by the Supplier (or representative member of a GST group of which the Supplier is a member) in relation to the supply.

(c) Any amount payable under clause 12.12(b) will be paid to the Supplier at the same time as the other consideration for the supply is paid to the Supplier.

(d) If any party is required under the Contract to reimburse or pay to the other party an amount (other than any payment on account of the Contract Price) calculated by reference to a cost, expense, or an amount paid or incurred by that party, the amount of the reimbursement or payment will be reduced by the amount of any input tax credits to which that party (or representative member of a GST group of which that party is a member) is entitled in respect of any acquisition relating to that cost, expense or other amount.

(e) Notwithstanding any other provision of the Contract, where the Recipient is the Contractor, it will not be obliged to pay any amount on account of GST to the Principal (whether under this clause 12.12 or otherwise) in respect of a taxable supply made by the Principal unless and until the Principal issues to the Contractor, a valid tax invoice that complies with the GST Legislation in respect of that taxable supply.

(f) Where the Supplier is the Contractor, the Contractor must issue a valid tax invoice to the Principal in respect of any taxable supply made by the Contractor to the Principal (including under clause 12.3) as a condition precedent to the Principal being obliged to pay any amount on account of GST to the Contractor in respect of such taxable supply.

(g) The parties agree that, if notified in writing by the Principal, the following will apply to taxable supplies made by the Contractor to the Principal under or in connection with the Contract:

(i) where the GST Legislation permits, the Principal will issue to the Contractor an RCTI for each taxable supply (other than an Excluded Supply as defined in this clause) made by the Contractor to the Principal under the Contract and each such RCTI will be deemed to be a valid tax invoice issued by the Contractor to the Principal for the purpose of clause 12.12(f). The parties may agree in writing from time to time that the Principal will not issue an RCTI in respect of a taxable supply made by the Contractor to the Principal under the Contract (**Excluded Supply**);

(ii) the Principal will issue to the Contractor a recipient created adjustment note for any adjustment event relating to a supply in respect of which it issues an RCTI; and

(iii) the Contractor will not issue a tax invoice in respect of any taxable supply it makes to the Principal (other than in respect of a taxable supply that is an Excluded Supply).

(h) Unless clause 12.12(i) applies, each party acknowledges and warrants that at the time of entering into the Contract it is registered for GST (and any entity making supplies or acquisitions under this Contract is also registered for GST) and will notify the other party if it or any relevant entity ceases to be registered for GST or ceases to comply with any of the requirements of the Goods and Services Tax: Recipient Created Tax Invoice Determination 2017 for Agricultural Products, Government Related Entities and Large Business Entities (RCTI 2017/6) or other determination or ruling issued by a taxation authority relating to the issuance of RCTIs (**RCTI Requirement**). The Principal will not issue a document that would otherwise be an RCTI after the Principal or the Contractor cease to be registered for GST, or after the Principal or the Contractor cease to comply with any RCTI Requirement.

(i) If the Contractor does not, at the time of entering into this Contract have a valid registration for GST purposes or an Australian Business Number (**ABN**):

(i) the Contractor must complete a "Statement by Supplier" or similar document in a form acceptable to the Australian Taxation Office clarifying the basis on which the Contractor is not required to be registered for GST purposes; and

(ii) the Contractor must inform the Principal if the Contractor is or becomes required to be registered for GST purposes and must notify the Principal of the date from which registration will be effective.

(j) If the Contractor does not provide its ABN in this Contract, the Contractor must complete a “Statement by Supplier” in a form acceptable to the Australian Taxation Office declaring the basis on which the Contractor is not required to have an ABN.

(k) The Contractor indemnifies the Principal for any loss suffered by the Principal because of any breach of any warranty given in clauses 12.12(h) to 12.12(j)or because of the inaccuracy of any information provided in accordance with clauses 12.12(h) to 12.12(j) or because of any failure by the Contractor to provide accurate information to the Principal in a timely fashion in accordance with clauses 12.12(h) to 12.12(j).

(l) Where the Principal issues RCTIs to the Contractor in accordance with clause 12.12(g), the Contractor will indemnify or reimburse the Principal on demand for any loss, cost, expense, penalty, fine, interest, fee or other amount incurred in relation to the Principal issuing RCTIs while:

(i) the Contractor is not registered for GST and/or otherwise fails to satisfy, or comply with, any RCTI Requirement and the Principal has not been notified by the Contractor as such; or

(ii) the details contained in any RCTI or recipient created adjustment note issued by the Principal are incorrect, inaccurate or misleading as a result of information provided by the Contractor to the Principal.

(m) If the GST payable in relation to a supply made by the Supplier under the Contract varies from the additional amount paid by the other party under this clause 12.12 in respect of that supply,

then the Supplier will provide a corresponding refund or credit to or will be entitled to receive the amount of that variation from the other party (as appropriate).

(n) In this clause 12.12:

(i) terms defined in GST Legislation have the meaning given to them in GST Legislation, unless the context suggests otherwise;

(ii) GST includes amounts defined as "GST" under the GST Legislation and "GST equivalents" payments under the Intergovernmental Agreement Implementation (GST) Act 2000 (NSW) (or similar payments under corresponding legislation of any other State or Territory); and

(iii) any part or progressive or periodic component of a supply that is treated as a separate supply for GST purposes (including attributing GST to tax periods) will be treated as a separate supply.

12.13. Payment of Subcontractors

The Contractor acknowledges and agrees that:

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

(b) the Contractor must pay all Subcontractors promptly in accordance with the relevant subcontracts.

13. DELIVERY AND ACCEPTANCE

13.1. Prerequisites to delivery

Prior to delivery of the Goods, the Contractor must ensure that:

(c) the Goods:

(i) have been manufactured and produced in accordance with the Contract;

(ii) have been packed and marked in strict compliance with the requirements of the Statement of Work (including in relation to any specified size, weight or handling limitations); and

(iii) are free from Defects, except for minor Defects:

(A) which do not prevent the Goods from being reasonably capable of being used for their intended purpose; and

(B) which can be corrected without prejudicing the convenient use of the Goods;

(iv) if not satisfied that Practical Completion has been achieved, issue a notice so advising the Contractor.

(d) the Tests before delivery and any other Tests which are required by the Contract to carried out and passed before delivery of the Goods, have been carried out and passed;

(e) all documents and other information which are required for the delivery and installation of the Goods have been supplied to the Principal's Representative; and

(f) any other conditions precedent to delivery of the Goods stated in the Contract have been satisfied.

13.2. Contractor to notify and deliver

(a) The Contractor must:

(i) not deliver the Goods to the Delivery Point before the date or time specified in the Key Details;

(ii) give the Principal's Representative written notice 10 Business Days prior to the date it will deliver the Goods to the Delivery Point;

(iii) package the Goods to ensure reasonable protection against theft or damage during transit, delivery and whilst loading and unloading;

(iv) ensure that all protective coatings are safe and will not in any way affect the condition of the Goods;

(v) clearly label the Goods with the relevant Purchase Order number and Delivery Point;

(vi) ensure that the Goods are packaged and secured during transportation in a safe and secure manner, in compliance with Law or as otherwise directed by the Principal, including the requirements set out in the Key Details;

(vii) deliver the Goods to the Principal's Representative at the Delivery Point by the Date for Delivery using the mode of delivery described in the Key Details; and

(viii) unload or load the Goods at the Delivery Point (unless the Key Details states that this is not required).

(ix) if not satisfied that Practical Completion has been achieved, issue a notice so advising the Contractor.

(b) The Principal may direct the Contractor to change the Delivery Point or the mode of delivery. The Contractor must comply with any such Direction. If compliance with any such Direction causes the Contractor to incur more or less cost than otherwise would have been incurred had the Contractor not been given the Direction, the difference in cost, as determined by the Principal's Representative, will be added to or deducted from the Contract Price (as applicable).

(c) Subject to clause 12.5(c), unless transferred at any earlier time, ownership of the Goods supplied by the Contractor under the Contract will transfer to the Principal, free of any security interest, on delivery to the Delivery Point.

13.3. Information accompanying delivery

The Contractor must provide with each consignment of Goods:

(a) a delivery note (**Delivery Note**) containing the following information:

(i) the Contractor’s name and address;

(ii) description and quantity of Goods supplied;

(iii) the reference numbers of the Contract and the Purchase Order;

(iv) the name and contact details of the person who issued the Purchase Order; and

(v) details of the Delivery Point and Date for Delivery;

(b) the results of the Tests required to be carried out by the Contractor before delivery or Acceptance; and

(c) all information necessary for the proper and safe handling, transportation, storage, use, operation, maintenance, repair and disposal of the Goods.

13.4. Principal's Representative to inspect

(a) The Principals' Representative may:

(i) as soon as practicable after the delivery of the Goods to the Delivery Point under clause 13.2, inspect the Goods;

(ii) if satisfied that Acceptance has been achieved, issue a notice to the Contractor stating the date upon which the Principal's Representative determines Acceptance was achieved; and

(iii) if not satisfied that Acceptance has been achieved, issue a notice to the Contractor under clause 13.5.

(b) if the Principal's Representative does not give a notice under either clause 13.4(a)(ii) or 13.4(a)(iii) within 10 Business Days of delivery of the Goods to the Delivery Point, Acceptance will be deemed to have been achieved.

13.5. Notice where failure to achieve Acceptance

A notice under this clause 13.5 will:

(c) state the reasons why the Principal's Representative is not satisfied Acceptance of the Goods has been achieved; and

(d) do one of the following:

(i) require the Contractor to continue with the Contractor's Activities so as to achieve Acceptance of the Goods, in which event clause 13.6 will apply; and

(ii) accept the Goods although the Principal's Representative is not satisfied Acceptance has been achieved, in which event clause 13.7 will apply; or

(iii) reject all or part of the Goods, in which event clause 13.8 will apply.

13.6. Contractor to continue with Contractor's Activities

(e) If Contractor is required by a notice under clause 13.5 to continue with the Contractor's Activities so as to achieve Acceptance of the Goods, the Contractor must::

(i) promptly remove the Goods, if necessary;

(ii) diligently continue with the Contractor's Activities so as to achieve Acceptance as promptly as possible, including, if necessary, replacing the Goods;

(iii) given the Principal's Representative written notice 10 Business Days prior to the date it will deliver the Goods or replacement Goods to the Delivery Point, or if already at the Delivery Point and not removed, submit the Goods for testing, in which case clause 13.4 will apply again; and;

(iv) deliver the Goods or replacement Goods to the Principal's Representative at the Delivery Point on that date.

(f) If ownership of the Goods or any part thereof has passed to the Principal under the Contract and the Goods or part thereof are replaced under this clause 13.6, ownership of the Goods or relevant part thereof will pass back to the Contractor when ownership of the replacement Goods or part passes to the Principal under the Contract.

13.7. Acceptance of Goods

(a) If the Goods are accepted in a notice under clause 13.5(b)(ii):

(i) Acceptance will be deemed to have been achieved;

(ii) the Date of Acceptance will be deemed to be the date the notice under clause 13.5 is given;

(iii) the notice under clause 13.5 will be deemed to be the Notice of Acceptance for the Goods;

(iv) the Contractor must correct all Defects in accordance with clauses 9.8 and 9.9 other than any Defects which the Principal's Representative notifies the Contractor in writing that it need not correct; and

(v) in the case of any Defects for which the Contractor is responsible and for which the Principal's Representative gives a notice under paragraph (iv), the Contract Price will be reduced by an amount determined by the Principal's Representative as representing whichever is the greater of the cost to the Principal of correcting those Defects and the reduction in the value of the Goods to the Principal as a result of those Defects.

(b) If the amount of amount of any reduction to the Contract Price required by paragraph (a)(v) is greater than the unpaid balance of the Contract Price, the difference will be a debt due from the Contractor to the Principal.

13.8. Rejection of Goods

(c) If any Goods are rejected in a notice under clause 13.5::

(i) the Contractor must:

(A) repay any amounts previously paid to it by the Principal in relation to the rejected Goods; and

(B) upon repayment promptly remove the rejected Goods from the Delivery Point or the Principal's possession as the case may be;

(ii) in the case of rejection of all of the Goods, unless the Principal notifies the Contractor otherwise, the Contract will be terminated from the date the notice under clause 13.5 is given; and

(iii) ownership of the rejected Goods will, to the extent it has passed to the Principal under the Contract, pass back to the Contractor upon the Contractor's compliance with paragraph (i)

(d) The Contractor’s obligations under paragraph (a)(i) will survive any termination of the Contract under paragraph (a)(ii).

13.9. Ownership of Goods

To the extent that ownership of the Goods has not already passed to the Principal under the Contract, it will pass to the Principal upon the issue of a Notice of Acceptance for the Goods (or upon a deemed Acceptance under clause 13.4(b), as applicable), free of any security interest.

13.10. Effect to Notice of Acceptance

A Notice of Acceptance and a deemed Acceptance under clause 13.4(b) will not:

(a) constitute approval by the Principal of the Contractor’s performance of its Contract obligations;

(b) be taken as an admission or evidence that the Goods complies with the Contractor; or

(c) prejudice any rights or powers of the Principal or Principal’s Representative.

13.11. Liquidated damages

(a) If Date of Acceptance of the Goods or a Separable Portion has not occurred by the Date for Delivery of the Goods or the Separable Portion, the Contractor must pay liquidated damages at the rate specified in the Key Details for every day after the Date for Delivery until the Date of Acceptance, or until the Contract is terminated, whichever occurs first.

(b) If the Principal's Representative determines (acting reasonably) that the Services (or part of the Services) or a Separable Portion has not been completed by the relevant Date for Completion, the Contractor must pay liquidated damages at the rate specified in the Key Details for every day after the Date for Completion until the:

(i) date on which completion is achieved (as determined by the Principal's Representative acting reasonably); or

(ii) Contract is terminated;

whichever occurs first.

(c) Without limiting the Principal's rights under the Contract or at Law, the amount payable under this clause 13.11:

(i) is an agreed genuine pre-estimate of the Principal's damages if the Date of Acceptance or date of completion of the relevant Services does not occur by the relevant Date for Delivery or Date for Completion (as applicable);

(ii) will be the Principal's sole remedy for damages arising from the Contractor's delay in achieving:

(A) Acceptance by the relevant Date for Delivery; or

(B) completion of the relevant Services by the relevant Date for Completion; and

(iii) will be debt due and payable from the Contractor to the Principal.

13.12. General damages if liquidated damages unenforceable

If the liquidated damages under clause 13.11 are found to be a penalty, or if clause 13.11 is found to be void or unenforceable for any reason (whether in whole or in part), then the Contractor will be liable to pay unliquidated damages at Law for the breach for which the liquidated damages under clause 13.11 would have been payable had the relevant liquidated damages or clause not been a penalty or not been void or unenforceable.

13.13. Cap on liquidated damages

The Contractor's total aggregate liability to the Principal under clauses 13.11 and 13.12 is limited to the amount stated in the Key Details.

13.14. No liquidated damages

If the rate provided in the Key Details in relation to clause 13.11 is specified as "nil", "N/A", "not applicable", "$0" or words to similar effect:

(d) clauses 13.11, 13.12 and 13.13 will not apply; and

(e) the Contractor will be liable to pay unliquidated damages at law for the breach for which liquidated damages under clause 13.11 would have been payable if a rate for liquidated damages had been specified.

14. TERMINATION

14.1. Preservation of rights

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

14.2. Contractor default

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

(a) does not commence the Contractor's Activities in accordance with the requirements of the Contract;

(b) suspends the Contractor's Activities in breach of clause 10.13 or otherwise does not regularly and diligently progress the Contractor's Activities with due expedition and without delay;

(c) fails to provide security as required by clauses 4.1, 4.3 or 4.4 or a parent company guarantee as required by clause 4.6;

(d) fails to execute a Deed of Novation as required by clause 1.8;

(e) fails to effect, have in place or otherwise maintain or provide evidence of, insurance as required by clause 5.5;

(f) fails to use the materials or standards of workmanship required by the Contract;

(g) does not comply with any Direction of the Principal's Representative made in accordance with the Contract;

(h) abandons the Contractor's Activities or otherwise plainly demonstrates the intention not to continue performance of its obligations under the Contract;

(i) is in breach of any applicable Law;

(j) fails to comply with a KPI action plan required by the Principal under this Contract or under the Standing Offer Deed (if any);

(k) would become liable to the Principal for liquidated damages or unliquidated damages under clauses 13.11 or 13.12 for an amount exceeding the amount referred to in clause 13.13, but for the cap on liability under clause 13.13;

(l) fails to comply with clauses 2.6, 6.20, 12.13(b) or 21.8(b); or

(m) is otherwise in breach of the Contract.

14.3. Contents of notice of default

A notice under this clause 14.3 must state:

(a) that it is a notice under clause 14.3;

(b) the breach relied upon; and

(c) that the Principal requires the Contractor to remedy the breach within 5 Business Days of receiving the notice.

14.4. Termination for insolvency or breach

If:

(a) an Insolvency Event occurs to the Contractor, or where the Contractor comprises 2 or more persons, to any one of those persons; or

(b) the Contractor does not, within 5 Business Days of receiving a notice under clause 14.3:

(i) remedy; or

(ii) propose steps reasonably acceptable to the Principal to remedy,

the breach of Contract the subject of a notice under clause 14.3, then the Principal may by written notice to the Contractor:

(iii) terminate the Contract; or

(iv) exercise a Step-In Right.

14.5. Principal's entitlements after termination

Subject to clause 14.1, if:

(a) the Principal terminates the Contract under clause 14.4;

(b) the Contract is terminated under clause 13.8(a)(ii); or

(c) the Contractor repudiates the Contract and the Principal otherwise terminates the Contract,

then, subject to clause 13.8:

(d) the Principal will:

(i) not be obliged to make any further payments to the Contractor, including any money the subject of a payment claim under clause 12.2 or 12.8 or a payment schedule under clause 12.3; and

(ii) not be obliged to make any further payments to the Contractor, including any money the subject of a payment claim under clause 12.2 or 12.8 or a payment schedule under clause 12.3; and

(iii) be entitled to recover from the Contractor any costs, losses or damages incurred or suffered by it as a result of, or arising out of, or in any way in connection with, such termination or repudiation; and

(e) the Contractor must:

(i) immediately:

(A) Except where clause 14.5(b) applies, deliver to the Delivery Point all items in which ownership has passed to the Principal under the Contract; and

(B) hand over to the Principal all copies of:

1. documents provided by the Principal under clause 6.1; and

2. any Deliverables prepared by the Contractor to the date of termination (whether complete or not);

(ii) at the Principal's request, assign to the Principal all the Contractor's rights and benefits under each Subcontract, warranty and security (including undertaking or insurance bond) held by the Contractor in connection with the Contractor's Activities and the Contract, with such assignment to be effective on and from the date of termination of the Contract;

(iii) at the Principal's request, consent to the novation of any Subcontract or other contract between the Contractor and another party in connection with the Contractor's Activities, the Goods; the Services or the Contract, to the Principal or the Principal's nominee; and

(iv) do everything and sign all documents required by the Principal's Representative to give effect to paragraphs (ii) and (iii).

14.6. Contractor's entitlements after termination

(a) If the Principal repudiates the Contract and the Contractor otherwise terminates the Contract, the Contractor will:

(i) be entitled to claim damages; and

(ii) not be entitled to a quantum meruit.

(b) This clause 14.6 will survive any termination of the Contract.

14.7. Termination for convenience

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

(a) at any time for its sole convenience, and for any reason, by written notice to the Contractor terminate the Contract effective from the time stated in the Principal's notice or if no such time is stated, at the time the notice is given to the Contractor; and

(b) thereafter, at its absolute discretion, complete the uncompleted part of the Contractor's Activities either itself or by engaging Other Contractors.

14.8. Costs

(a) If the Principal terminates the Contract under clause 14.7, the Contractor:

(i) will be entitled to payment of the following amounts as determined by the Principal's Representative:

(A) for work carried out prior to the date of termination the amount which would have been payable if the Contract had not been terminated and the Contractor submitted a payment claim for the Contract value of work carried out prior to the date of termination, provided that ownership of all goods and materials included in the value of work will vest in the Principal, free of any security interest, upon payment;

(B) the cost of goods or materials reasonably ordered by the Contractor for the Goods and Services for which the Contractor is legally bound to pay provided that:

1. the value of the goods or materials is not included in any previous payment by the Principal or the amount payable under paragraph A; and

2. ownership in the goods and materials will vest in the Principal, free of any security interest, upon payment; and

(C) the reasonable direct costs incurred by the Contractor (excluding profit but including an amount for overheads) as a direct result of the termination,

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

(ii) must:

(A) take all steps possible to mitigate the costs referred to in clause 14.8(a)(i) and

(B) immediately:

1. deliver to the Delivery Point all items in which ownership has passed to the Principal under the Contract; and

2. hand over to the Principal all copies of:

i. documents provided by the Principal under clause 6.1; and

ii. any Deliverables (including any services and test documentation) prepared by the Contractor to the date of termination (whether complete or not).

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

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

15. DISPUTES

15.1. Notice of Dispute

(a) If a dispute or difference arises between the Contractor and the Principal or between the Contractor and the Principal's Representative in respect of any fact, matter or thing arising out of, or in any way in connection with, the Contractor's Activities, the Works or the Contract, or either party's conduct before the Contract, the dispute or difference must be determined in accordance with the procedure in this clause 15.

(b) Where such a dispute or difference arises, either party may give a notice in writing (**Notice of Dispute**) to the Principal's Representative and the other party specifying:

(i) the dispute or difference;

(ii) particulars of the party's reasons for being dissatisfied; and

(iii) the position which the party believes is correct.

15.2. Negotiation

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

15.3. Executive negotiation

Whether or not discussions have taken place in accordance with clause 15.2, if the dispute or difference is not resolved within 20 Business Days after:

(a) the date the notice is given under clause 15.1; or

(b) where the parties agreed an alternative time for meeting to discuss the dispute or difference in accordance with clause 15.2, the date that was agreed,

the dispute or difference must be referred to senior executives of each party (as nominated by each party) who must:

(c) meet and discuss the dispute or difference; and

(d) if they cannot resolve the dispute or difference, endeavour to agree upon a procedure to resolve the dispute or difference.

15.4. Expert determination

Whether or not discussions have taken place in accordance with clause 15.3, if the senior executives of each party have not resolved, or agreed upon a procedure to resolve the dispute or difference within 25 Business Days after:

(a) a notice is given under clause 15.1; or

(b) where the parties agreed an alternative timeframe for meeting to discuss the dispute or difference in accordance with clause 15.2, the date that was agreed,

either party may submit the dispute or difference to an expert determination.

15.5. The expert

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

15.6. Not arbitration

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

15.7. Procedure for determination

The expert will:

(a) act as an expert and not as an arbitrator;

(b) proceed in any manner he or she thinks fit;

(c) conduct any investigation which he or she considers necessary to resolve the dispute or difference;

(d) examine such documents, and interview such persons, as he or she may require; and

(e) make such directions for the conduct of the determination as he or she considers necessary.

15.8. Disclosure of interest

The expert must:

(a) disclose to the parties any interest he or she has in the outcome of the determination; and

(b) not communicate with one party to the determination without the knowledge of the other.

15.9. Costs

Each party will:

(a) bear its own costs in respect of any expert determination; and

(b) pay one-half of the expert's costs.

15.10. Conclusion of expert determination

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

15.11. Agreement with expert

(a) The expert will not be liable to the parties arising out of, or in any way in connection with, the expert determination process, except in the case of fraud.

(b) The parties must enter into an agreement with the appointed expert on the terms set out in Schedule 6 of the Appendix or such other terms as the parties and the expert may agree.

15.12. Determination of expert

The determination of the expert:

(a) must be in writing;

(b) will be:

(i) substituted for the relevant Direction of the Principal's Representative (if applicable); and

(ii) final and binding,

unless a party gives notice of appeal to the other party within 15 Business Days of the determination; and

(c) is to be given effect to by the parties unless and until it is reversed, overturned or otherwise changed under the procedure in the following clauses.

15.13. Litigation

If:

(a) the expert fails to notify the parties of his or her decision within the time required by clause 15.10; or

(b) a notice of appeal is given under clause 15.12,

then either party may issue a notice to the other party stating that the dispute or difference is to be determined by litigation pursuant to court proceedings.

15.14. Survive termination

This clause 15 will survive any termination of the Contract.

15.15. Continuation of Contractor's Activities

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

(a) continue to carry out the Contractor's Activities; and

(b) otherwise comply with its obligations under the Contract.

15A STEP-IN

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

If:

(a) the expert fails to notify the parties of his or her decision within the time required by clause 15.10; or

(b) a notice of appeal is given under clause 15.12,

(i) safety of people, property, the environment or the operations of the Principal; or

(ii) activities of business or persons occupying land on, adjacent to or in the vicinity of the Site,

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

15A.2 Actions following Step-In

(a) For the purposes of exercising the Step-In Rights the Principal:

(i) is not obliged to make any further payments to the Contractor for the Contractor's Activities in respect of which the Principal has exercised the Step-In Rights;

(ii) may use third parties to carry out and complete the whole or any part of the Contractor's Activities the subject of the Step-In Rights;

(iii) will be entitled to act as the Contractor's agent under all contracts entered into by the Contractor that are necessary for the Principal to exercise the Step-In Rights; and

(iv) may:

(A) give reasonable instructions to any employee of the Contractor (and the Contractor must ensure that such requests are complied with);

(B) contract with such of the Subcontractors engaged by the Contractor; and

(C) take possession of, and use, such of the Design Documentation,

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

(b) The Contractor must take all actions the Principal considers necessary to ensure that the Principal is able to exercise the Step-In Rights effectively and expeditiously including:

(i) providing the Principal with:

(A) any assistance and access to its materials, equipment and inventory; and

(B) the non-exclusive use of all rights and information available to the Contractor,

reasonably required to enable the Principal or its nominees to exercise the Step-In Rights;

(ii) giving the Principal or its nominees access to the Site and any of the land upon which the Contractor's Activities are being performed;

(iii) providing sufficient resources, including Personnel to assist the Principal in exercising the Step-In Rights; and

(iv) not doing anything to hinder, disrupt or prevent the Principal exercising the Step-In Rights.

(c) The Principal may:

(i) itself exercise the Step-In Rights; or

(ii) nominate a third party to exercise the Step-In Rights.

(d) If a third party is nominated to exercise the Step-In Rights in accordance with paragraph (c)(ii), the third party will be taken to be exercising the Step-In Rights itself for and on behalf of the Principal and the provisions of this clause 15A will apply as if references to the Principal were references to that third party.

(e) Upon the Principal exercising a Step-In Right the Contractor's rights and obligations under the Contract are suspended to the extent necessary to permit the Principal to exercise that Step-In Right.

15A.3 Conclusion of Step-In

(a) Upon giving the Contractor at least 5 Business Days prior written notice, the Principal may cease to exercise its Step-In Rights at any time.

(b) Upon the Principal ceasing to exercise a Step-In Right the Contractor must recommence performance of the obligations under the Contract that were suspended.

(c) Except where the Principal exercises a Step-In Right under clause 15A.1(b), the Principal may set-off the costs reasonably incurred and losses reasonably suffered by the Principal in and for the purposes of exercising the Step-In Rights against any amount due by the Principal to the Contractor under this Contract (or which may in the future be due under this Contract).

15A.4 Other rights

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

16. LIMITATION OF LIABILITY

(a) Subject to clause 16(b), but notwithstanding any other provision of the Contract:

(i) neither party will be liable to the other for any Consequential Loss howsoever arising; and

(ii) the Contractor's aggregate liability to the Principal in contract, tort (including negligence) or otherwise under the Contract is limited to the amount stated in the Key Details.

(b) Clause 16(a) does not limit the Contractor's liability in respect of:

(i) liability which cannot be limited at Law;

(ii) liability under clauses 5.2, 6.10, 13.11, 13.12 or 17;

(iii) fraud, wilful misconduct or criminal conduct by the Contractor or any of its Personnel;

(iv) liability to the extent to which the Contractor is (or will be) entitled to be paid or indemnified pursuant to an insurance policy required under the Contract in respect of that liability;

(v) liability for which, but for a failure by the Contractor to comply with its obligations under the Contract or under an insurance policy required under the Contract, the Contractor would have received payment or been indemnified under an insurance policy effected in accordance with the Contract; or

(vi) the Contractor's abandonment of its obligations under the Contract.

(c) In clause 16(b)(iv), the reference to a liability for which the Contractor “is (or will be) entitled to be paid or indemnified pursuant to an insurance policy” means a liability for which the Contractor is or would be entitled to be paid or indemnified under the relevant insurance policy if:

(i) clause 16(a) had not existed;

(ii) the Contractor had complied with the terms of the policy;

(iii) the Contractor had submitted a claim where there was a legitimate entitlement to claim under the policy;

(iv) the Contractor had taken reasonable steps to pursue such a claim once it had been submitted; and

(v) the insurer had remained solvent.

(d) In clause 16(b)(v), the reference to a liability for which the Contractor "would have received payment or been indemnified under an insurance policy" means a liability for which the Contractor would have been entitled to be paid or indemnified under the relevant insurance policy if:

(i) the Contractor had effected and maintained the insurance policy as required by this Contract; and

(ii) the circumstances contemplated by clauses 16(c)(i) to 16(c)(v) had applied with respect to that policy.

(e) Subject to clause 16(f), the Principal's aggregate liability to the Contractor in contract, tort (including negligence) or otherwise under the Contract is limited to the amount stated in the Key Details.

(f) Clause 16(e) does not limit the Principal's liability in respect of:

(i) liability which cannot be limited at Law; or

(ii) fraud, wilful misconduct or criminal conduct by the Principal or any of its Personnel.

(g) This clause 16 will survive any termination of the Contract.

17. PRIVACY AND THE PROTECTION OF PRINCIPAL DATA

17.1. Privacy

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

(a) comply with all relevant Privacy Laws;

(b) not do any act or engage in any practice that would breach the Privacy Laws, or which if done or engaged in by the Principal, would be a breach of the Privacy Laws;

(c) not access, use or disclose any Personal Information other than for the sole purpose of carrying out its obligations under this Contract, except with the prior written approval of the Principal;

(d) unless otherwise agreed by the Principal in writing, cease all access to and use of Personal Information (and securely return the Personal Information to the Principal) on the termination, completion or expiry of the Contract or at such other time as requested by the Principal;

(e) ensure that Personal Information is protected against loss and unauthorised access, use, modification or disclosure and other misuse;

(f) immediately notify the Principal upon becoming aware of any Security Incident involving Personal Information or any actual or suspected breach of an obligation under this clause 17 and, where the Security Incident is an Eligible Data Breach or involves Personal Information:

(i) comply with clause 20.3; and

(ii) unless otherwise directed by the Principal, comply with the Principal's published data breach policy and any other data breach procedures and documentation notified to the Contractor by the Principal's Representative in writing;

(g) comply with the Principal's reasonable directions with respect to safeguarding Personal Information and addressing and resolving privacy breaches (which may include, for example, activities to support the Principal's compliance with the NSW mandatory notification of data breach scheme);

(h) comply with any Authority's directions and requirements with respect to the investigation of, or inquiry into, any privacy related matter provided that such directions and requirements are within the statutory power of the relevant Authority; and

(i) comply with such other privacy obligations or policies as the Principal reasonably notifies the Contractor of in writing from time to time.

17.2. Acknowledgement

The Contractor acknowledges that, to assist the Principal's compliance with its obligations under the Privacy Laws, the obligations under the Contract in relation to the notification and response to

Eligible Data Breaches and other privacy-related matters apply to the Contractor, notwithstanding that the Contractor is not ordinarily subject to the Privacy Laws.

17.3. No restrictions on privacy obligations

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

17.4. Principal Data

(a) The Contractor does not obtain any right, title or interest with respect to any Principal Data, other than a right to use Principal Data for the sole purpose of carrying out the Contractor's obligations under this Contract.

(b) The Contractor must not (and must ensure that its Personnel do not):

(i) use any Principal Data other than for the purpose of carrying out its obligations under this Contract;

(ii) attempt to sell, assign or commercially exploit any Principal Data; or

(iii) transfer or disclose any Personal Information or Principal Data outside NSW, Australia without obtaining the Principal's prior written consent, which may be given or withheld in the Principal's sole discretion and subject to the Contractor and its Personnel:

(A) safeguarding the Personal Information and Principal Data in accordance with the Contract; and

(B) complying with such conditions that the Principal reasonably determines.

(c) Without limiting clause 20, the Contractor must:

(i) do all things that a reasonable and prudent entity would do to safeguard and protect Principal Data in the Contractor's or its Personnel's possession or control and to prevent a Security Incident; and

(ii) comply with all policies, requirements and standards with respect to the Contractor's Activities, Principal Data and Confidential Information as specified in this Contract or as may be reasonably notified by the Principal to the Contractor from time to time.

(d) The Contractor must ensure that its Personnel are made aware of, and comply with, the obligations under clauses 17 and 20.

17.5. Evidence of compliance

(a) At any time reasonably required by the Principal, the Contractor must submit to the Principal's Representative a written statement (in a form approved by the Principal's Representative in writing) that the Contractor has complied with all of its privacy, security and confidentiality obligations under this Contract (**Compliance Statement**).

(b) The Compliance Statement must be signed and certified as true by the Contractor's duly authorised representative.

17.6. Indemnity and infringement

The Contractor must indemnify the Principal against any Claims against, or costs, losses or damages suffered or incurred by, the Principal, arising out of, or in any way in connection with, any actual or alleged infringement of any Privacy Laws arising out of or in connection with the Contractor's Activities or any breach by the Contractor of its privacy and security obligations under this Contract, including clauses 17 and 20.

18. NOTICES

18.1. Notice of Variation

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

(a) within 5 Business Days of receiving the Direction and before commencing work on the subject matter of the Direction, give notice to the Principal's Representative that it considers the Direction constitutes or involves a Variation;

(b) within 15 Business Days of giving the notice under clause 18.1(a), submit a written claim to the Principal's Representative which includes the details required by clause 18.3(b); and

(c) continue to carry out the Contractor's Activities in accordance with the Contract and all Directions of the Principal's Representative, including any Direction in respect of which notice has been given under this clause 18.1.

18.2. Notice of other Claims

Except for Claims for:

(a) an extension of time under clause 10.6;

(b) a Variation instructed in a "Variation Order" under clause 11.2 or to which clause 18.1 applies; or

(c) payment under clause 12.2 or 12.8 of the original Contract Price specified in the Key Details,

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

(d) it is otherwise given an express entitlement under the Contract; or

(e) the Contract expressly provides that:

(i) specified costs are to be added to the Contract Price; or

(ii) the Contract Price will be otherwise increased or adjusted,

as determined by the Principal's Representative.

18.3. Prescribed notices

The notices referred to in clause 18.2 are:

(a) a written notice within 5 Business Days of the first occurrence of the Direction or other fact, matter or thing upon which the Claim is based, expressly specifying:

(i) that the Contractor proposes to make a Claim; and

(ii) the Direction or other fact, matter or thing upon which the Claim will be based; and

(b) a written claim within 15 Business Days of giving the written notice under paragraph (a), which must include:

(i) detailed particulars concerning the Direction or other fact, matter or thing upon which the Claim is based;

(ii) the legal basis for the Claim, whether based on a term of the Contract or otherwise, and if based on a term of the Contract, clearly identifying the specific term;

(iii) the facts relied upon in support of the Claim in sufficient detail to permit verification; and

(iv) details of the amount claimed and how it has been calculated.

18.4. Continuing events

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

18.5. Time bar

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

(a) the Principal will not be liable (insofar as it is possible to exclude such liability) upon any Claim by the Contractor; and

(b) the Contractor will be absolutely barred from making any Claim against the Principal,

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

18.6. Other provisions unaffected

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

19. MODERN SLAVERY

(a) In this clause 19:

(i) "Modern Slavery" has the meaning given to it in the Modern Slavery Act 2018 (Cth) and includes any form of slavery, servitude, debt bondage, deceptive recruitment practices, or forced labour to exploit children or other persons; and

(ii) "Modern Slavery Laws" means the Modern Slavery Act 2018 (Cth) and any other applicable legislation addressing similar subject matter.

(b) The Contractor warrants that:

(i) it complies with and will continue to comply with all applicable Modern Slavery Laws;

(ii) it has thoroughly investigated its labour practices, and those of its Subcontractors in respect of any Modern Slavery used anywhere in its operations or supply chain or in the operations or supply chain of any of its Subcontractors (to the extent reasonably possible);

(iii) it has put in place all necessary processes, procedures, investigations and compliance systems to ensure that it can provide the warranties under this clause at all relevant times; and

(iv) it has taken, and will take in the future, all necessary actions and investigations to validate the warranties provided under this clause.

(c) Should the Contractor become aware of any:

(i) Modern Slavery risks in its supply chain or operations, it must notify the Principal of those risks and advise the Principal of the steps it is taking to eliminate or minimise those risks; or

(ii) Modern Slavery practices being carried out within its operations or supply chain, it must:

(A) in writing, immediately notify the Principal of those practices and of the remediation action it proposes to take; and

(B) at its cost, take any such additional remediation action required by the Principal (acting reasonably and after due consultation with the Contractor).

(d) If the Contractor is a 'reporting entity' for the purposes of any state or federal Modern Slavery Laws, including the Modern Slavery Act 2018 (Cth), it must provide the Principal with a copy of any report it is required to prepare under that legislation at the Principal's request.

20. Security

20.1. Contractor's security obligations

(a) Without limiting any other obligations under the Contract, the Contractor's security obligations under this clause 20.1 apply to:

(i) the Contractor's Activities; and

(ii) Principal Data, Confidential Information and Personal Information, where and to the extent that the Contractor or its Personnel is in the possession of, or controls, such data and information.

(b) For the purposes of this clause 20.1, "**control**" includes controlling, managing, processing, generating, capturing, collecting, transferring, transmitting, deleting and destroying.

(c) The Contractor must (at its sole cost) comply with all security obligations under this clause 20, as well as any additional security standards and requirements specified in the Key Details or a Purchase Order.

(d) The Contractor must have and maintain security measures and a formal security program relating to ICT security and cyber security that is in accordance with:

(i) all applicable Laws and best industry practice;

(ii) this clause 20; and

(iii) any additional standards or requirements specified in the Key Details,

(Security Program).

(e) The Security Program must be designed to:

(i) monitor, audit, detect, identify, report and protect against Security Incidents, Viruses, and any other threats or hazards to the security or integrity of the Principal's operations or the Contractor's Activities and Deliverables;

(ii) ensure the security (including the confidentiality, availability and integrity) of the Contractor's Activities and Deliverables in accordance with the requirements of the Contract;

(iii) ensure the continuity of the Principal's access to, and use of, the Contractor's Activities and Deliverables;

(iv) manage any potential security risks in the Contractor's supply chains that bear upon the Contractor's Activities;

(v) monitor, detect, identify and protect against fraud and corruption by the Contractor's organisation and the Contractor's Personnel; and

(vi) safeguard all Principal Data and the Principal's Confidential Information in accordance with the Contract.

(f) The Contractor must regularly review and continuously improve the Security Program to ensure it remains current and up-to-date and continues to satisfy the requirements of this clause 20.1.

(g) Without limiting paragraphs (d) and (e), where the Contractor exchanges any correspondence, documentation or data with the Principal electronically or through an ICT system, the Contractor must only use secure systems and links.

(h) Subject to any prohibition at Law, at the Principal's request, the Contractor must promptly provide, or make available to the Principal, information about the Contractor's Security Program and security systems.

(i) If specified in the Key Details, the Contractor must have, obtain and maintain from the Award Date and for the duration of the Contractor's Activities the security certifications specified or referenced in the Key Details from an accredited, independent, third party register or accredited, independent third party certification body. Unless otherwise agreed by the Principal's Representative in writing, the certifications must be updated at least annually and must comply with any specific certification requirements set out in the Key Details.

(j) The Contractor and its Personnel must not access or attempt to access the Principal's ICT systems and the Principal Environment without the Principal's prior authorisation and only to the extent necessary to perform the Contractor Activities.

(k) The Principal may, at any time, with notice to the Contractor immediately suspend or revoke the Contractor's and its Personnel's access to any of the Principal's ICT systems and the Principal Environment:

(i) in response to any Security Incident;

(ii) where the Contractor or its Personnel breaches this clause 20 or any relevant Policies and Procedures;

(iii) where the Principal has reasonable concerns that the Contractor's or its Personnel's access to those ICT systems and the Principal Environment will lead to a potential Security Incident;

(iv) where the Principal has reasonable concerns that the Contractor or their Personnel will not be able to comply with their obligations under this clause 20; or

(v) where access by the Contractor and its Personnel is no longer required to perform the Contractor's Activities.

(l) Where the Principal suspends or revokes the Contractor's or its Personnel's access to any ICT systems or the Principal Environment pursuant to paragraph (k) or where this Contract expires or is terminated, the Contractor must (and must ensure its Personnel) immediately cease use of such ICT systems and the Principal Environment.

(m) Notwithstanding clause 6.14, where there is any conflict or inconsistency between the security requirements under the documents comprising the Contract documents, the higher or more onerous requirement will apply to the extent of the inconsistency or conflict.

20.2. Security of Critical Infrastructure Assets

(a) This clause 20.2 applies to the extent that the Contractor's Activities relate to or affect a Critical Infrastructure Asset (or where the Principal notifies the Contractor in writing that this clause applies).

(b) The Contractor must, and must ensure that its Personnel:

(i) comply with:

(A) the Principal's critical infrastructure risk management program and incident response plan created for compliance with the Security of Critical Infrastructure Legislation (if any);

(B) the Principal's security and risk management procedures and reporting requirements relevant to the Critical Infrastructure Asset as notified to the Contractor by the Principal from time to time; and

(C) any direction given to the Contractor by the Principal in any way relating to the security of the Critical Infrastructure Asset, including any direction:

1. to prepare or contribute to a risk management program;
2. in relation to the security of the Critical Infrastructure Asset; or
3. arising under Part 3 or Part 3A of the SOCI Act; and

(ii) in undertaking the Contractor's Activities, take all action reasonably necessary to ensure the security of the Critical Infrastructure Asset and not do, or omit to do, any act or thing that would be prejudicial to the security of the Critical Infrastructure Asset.

(c) The Contractor must:

(i) without limiting its obligations under clause 20.3, notify the Principal in writing immediately (and in any event within sufficient time to allow the Principal to meet its notification obligations under the SOCI Act) if it becomes aware or has reasonable grounds to suspect that there has been any Cyber Security Incident in relation to the Critical Infrastructure Asset which has had, is having or is likely to have an impact (whether direct or indirect) on the availability, reliability, confidentiality or integrity of the Critical Infrastructure Asset, including providing details to the Principal of the Cyber Security Incident and its impact (or potential impact) on the Critical Infrastructure Asset;

(ii) within 2 Business Days (or such other period as reasonably notified by the Principal in its request) of receipt of a request by the Principal:

(A) provide the Principal with evidence of its compliance with this clause 20.2 and any other information, records and reports that the Principal may require to discharge its obligations under the Security of Critical Infrastructure Legislation, including information requested by the Principal in relation to a Cyber Security Incident; and

(B) cooperate with, and provide all necessary assistance to, the Principal to:

1. investigate any actual or suspected Cyber Security Incident; and
2. otherwise enable the Principal to discharge its obligations under the Security of Critical Infrastructure Legislation.

(d) The Contractor must comply with any lawful notice, direction or request made by the Minister, the Secretary (or designated officer) or any other Authority exercising their powers under the Security of Critical Infrastructure Legislation or any other relevant Law.

(e) Subject to the Contractor's obligations at Law, the Contractor must not disclose, notify or report any Cyber Security Incident referred to in clause 20.2(c)(i) to any third party without obtaining the prior written consent of the Principal.

(f) In this clause 20.2:

(i) **Critical Infrastructure Asset** has the meaning given to that term in the SOCI Act;

(ii) **Cyber Security Incident** means:

(A) a cyber security incident as defined in the SOCI Act;

(B) where there are reasonable grounds to suspect that there has been a cyber security incident as defined in the SOCI Act; or

(C) any alleged occurrence of any of the above;

(iii) **Minister** means the minister referred to in the SOCI Act;

(iv) **Secretary** has the meaning given to that term in the SOCI Act;

(v) **Security of Critical Infrastructure Legislation** means the SOCI Act and any rules or regulations enacted in connection with the SOCI Act; and

(vi) **SOCI Act** means the Security of Critical Infrastructure Act 2018 (Cth).

20.3. Notification and response to Security Incidents

(a) Without limiting clause 20.2(c), if the Contractor becomes aware, or has reasonable grounds to suspect, that there has been an Eligible Data Breach or other Security Incident arising out of, or in connection with, the Contractor's Activities or the Contract, the Contractor must:

(i) immediately notify the Principal;

(ii) at the same time as providing notice pursuant to clause 20.3(a)(i), provide to the Principal, to the extent known at the time, the following information:

(A) date of the Security Incident;

(B) a description of the Security Incident (including whether the Security Incident involved any Personal Information);

(C) how the Security Incident occurred;

(D) where the Security Incident is an Eligible Data Breach or other privacy breach, the following:

1. the type of breach that occurred;
2. the amount of time the Personal Information was disclosed for;
3. whether any harm to individuals may occur or has occurred as a result of the breach; and
4. the total (or estimated total) number of individuals affected or likely to be affected by the breach;

(E) whether the Security Incident is a cyber incident and, if so, details of the cyber incident; and

(F) such other information relating to the Security Incident that the Principal or its Personnel requires to comply with the Privacy Laws (and as notified to the Contractor);

(iii) immediately manage and make all reasonable efforts to contain the Security Incident and mitigate the impact and any harm done by the Security Incident (working on a 24 x 7 basis if required);

(iv) cooperate with the Principal (or any assessor appointed by the Principal) in connection with the assessment, diagnosis, response and resolution of the Security Incident (including to ensure notification and reporting in accordance with the timeframes and requirements under all relevant Laws, including the Privacy Laws); and

(v) comply with any additional plans, actions and requirements relating to the Security Incident as required by the Law or any Authority provided that any such requirements are within the statutory power of the relevant Authority.

(b) Where the information set out under clause 20.3(a)(ii) is not known by the Contractor at the time of providing notice pursuant to 20.3(a)(i), the Contractor must expeditiously take steps to investigate and help to identify the information and promptly provide the relevant information to the Principal's Representative once known.

(c) In carrying out an assessment and investigation of a Security Incident, the Contractor must (to the extent applicable) comply with all applicable Laws, including the Privacy Laws.

(d) If requested by the Principal, the Contractor must:

(i) prepare a draft remediation plan for the Principal's approval in respect of its response to, and remediation of, Security Incidents within 3 Business days following the Principal's request or as otherwise required by the Principal to respond to the Security Incident; and

(ii) promptly update the remediation plan and resubmit the remediation plan to the Principal to address any concerns raised by the Principal.

(e) The Contractor must comply with the latest version of the remediation plan which has been approved by the Principal in accordance with clause 20.3(d).

20.4. Audits and compliance

(a) The Contractor must audit its compliance with its Security Program and security obligations under the Contract on an annual basis and at such other times as reasonably required by the Principal (including as a result of a Security Incident). The Contractor must provide a copy of the audit report to the Principal's Representative promptly on request.

(b) To the extent consistent with its obligations under the Contract and at Law, the Contractor must implement any audit findings or recommendations arising from an audit conducted under clause 20.4(a) and, at the Principal's request, reasonably demonstrate to the Principal the implementation of such findings and recommendations.

(c) The Contractor must run initial and annual mandatory security awareness training for all of the Contractor's Personnel involved in carrying out the Contractor's Activities and ensure that those Personnel have completed the initial training prior to carrying out any aspect of the Contractor's Activities. Without limiting this obligation, the Contractor must participate in any additional security training (including the Principal's training courses) as specified in the Statement of Work or as reasonably notified by the Principal to the Contractor.

20.5. No limitation

Nothing in clause 20:

(a) requires the Contractor to provide the Principal with specific details that relate to the Contractor's other customers or would breach any applicable Laws; and

(b) limits the Contractor's obligations at Law with respect to matters relating to security, including the notification and resolution of Security Incidents.

21. MISCELLANEOUS

21.1. Address for service

(a) All communications (including notices, consents, approvals, requests and demands) under or in connection with the Contract:

(i) must be in writing;

(ii) must be:

(A) subject to clause 21.1(a)(ii)B, sent by email to the email address, of the Principal's Representative or the Contractor's Representative (as applicable) set out in the Key Details or such other address or email address as may be notified in writing by a party to the other party; or

(B) if specified in the Key Details or as otherwise directed by the Principal's Representative from time to time, sent electronically by the means of the electronic portal specified in the Key Details or otherwise advised by the Principal's Representative; and

(iii) are taken to be received by the addressee:

(A) (in the case of email), at the local time (in the place of receipt of that email) that would be determined if section 13A of the Electronic Transactions Act 2000 (NSW) were to apply in respect of the electronic communication; and

(B) (in the case of an electronic portal), when the sender receives the sent confirmation report generated by the electronic portal,

provided that if the communication would be taken to be received on a day which is not a Business Day or after 5.00pm on a Business Day, it is taken to be received at 9.00am on the next Business Day.

(b) The Contractor must ensure that any documents it provides, including by electronic means, are in the file structure and format for such documents as may be specified by the Principal from time to time. As at the Award Date, the Principal requires such documents which are submitted by email to be submitted as an attachment to an email, where the attachment is in .pdf, or where appropriate Excel, Primavera (.xer or .xml) or Microsoft Project (.mpp) format.

(c) The Principal will not be liable to the Contractor or to any other person for any loss or damage suffered in relation to any document transmitted electronically, including any loss or damage related to or arising out of:

(i) the transmission of any harmful code (such as viruses) to the Contractor by electronic mail (including any document attached to electronic mail); or

(ii) any failure by the Principal to notify the Contractor that the Principal may have received any harmful code (such as viruses) from the Contractor in any electronic mail (including in any document attached to electronic mail).

21.2. Governing Law

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

21.3. Jurisdiction

Each party irrevocably:

(a) submits to the non-exclusive jurisdiction of the courts of the State of New South Wales, and the courts competent to determine appeals from those courts, with respect to any proceedings which may be brought at any time relating to the Contract; and

(b) waives any objection it may now or in the future have to the venue of any proceedings, and any Claim it may now or in the future have that any proceedings have been brought in an inconvenient forum, if that venue falls within clause 21.3(a).

21.4. Counterparts

(a) This Contract may be executed in any number of counterparts and by the parties on separate counterparts. Each counterpart constitutes an original of this Contract, and all together constitute one agreement.

(b) A party who has executed a counterpart of this Contract may exchange that counterpart with another party by emailing the counterpart executed by it to that other party and, upon request by that other party, will thereafter promptly deliver by hand or post to that party the executed

counterpart so exchanged by email, but delay or failure by that party to so deliver a counterpart of this Contract executed by it will not affect the validity of this Contract.

21.5. Entire agreement

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

(a) any prior agreement (whether in writing or not), negotiations and discussions between the parties in relation to the subject matter of this Contract; or

(b) any correspondence or other documents relating to the subject matter of this Contract that may have passed between the parties prior to the Award Date and that are not expressly included in this Contract.

21.6. Amendments

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

21.7. Waiver

(c) Failure to exercise or enforce, or a delay in exercising or enforcing, or the partial exercise or enforcement of, a right, power or remedy provided by Law or under the Contract by a party does not preclude, or operate as a waiver of, the exercise or enforcement, or further exercise or enforcement, of that or any other right, power or remedy provided by Law or under the Contract.

(d) A waiver or consent given by a party under the Contract is only effective and binding on that party if it is given or confirmed in writing by that party.

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

21.8. Assignment and Change of Control

(a) The Principal may at any time, and without having to obtain the Contractor's approval, assign any right or interest of the Principal under the Contract or create or allow to exist, a security interest over or in respect of the Contract or any right or interest of the Principal under the Contract.

(b) The Contractor must not assign, novate, permit or suffer a Change of Control or otherwise transfer any of its rights or obligations under the Contract without the prior written consent of the Principal.

(c) If the Principal, in its absolute discretion, approves a novation of this Contract, the Contractor must provide the Principal with a duly completed and executed Deed of Novation in relation to this Contract, and the Principal's costs and expenses in connection with negotiating, preparing and executing any Deed of Novation will be a debt due and payable from the Contractor to the Principal.

(d) The Contractor must notify the Principal in writing as soon as reasonably practicable if the following occur in relation to the Contractor:

(i) a restructure of the Contractor or any Related Entity (as defined in the Corporations Act) of the Contractor that does not change the Ultimate Holding Company (as defined in the Corporations Act) of the Contractor; or

(ii) a transfer or issue of any securities listed on any recognised stock or securities exchange.

21.9. Consents

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

21.10. Expense

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

21.11. Severance

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

(a) the legality, validity or enforceability in that jurisdiction of any other provision of the Contract; or

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

21.12. Indemnities

(a) Each indemnity in the Contract is a continuing obligation, separate and independent from the other obligations of the parties, and survives termination, completion or expiry of the Contract.

(b) It is not necessary for a party to incur expense or to make any payment before enforcing a right of indemnity conferred by the Contract.

(c) A party must pay on demand any amount it must pay under an indemnity in the Contract.

21.13. United Nations Convention not applicable

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

21.14. English language

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

21.15. Taxes

(a) Without limiting clause 8.3, the Contractor must pay all taxes which may be payable in respect of the Contractor's Activities, including any customs duty and primage applicable to imported plant, equipment and materials required for the Contractor's Activities.

(b) If the Principal is required in its opinion to withhold any amount in respect of tax from a payment to be made to the Contractor under the Contract, it is entitled to do so and such withholding and payment to the relevant taxing authority will be a good discharge of its obligation to pay the relevant amount to the Contractor.

(c) If the Principal pays an amount to the Contractor without withholding an amount in respect of tax, the Contractor must indemnify the Principal for any loss suffered by the Principal as a result of the Principal failing to withhold the amount in respect of tax.

21.16. No partnership, joint venture or other fiduciary relationship

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

21.17. Exchange of information between government agencies

(a) The Contractor authorises the Principal and its Personnel to make information concerning the Contractor and the Contract available to any Authority, including:

(i) any information provided by the Contractor to the Principal;

(ii) any information relating to the Contractor's performance under the Contract; and

(iii) the terms of the Contract.

(b) The Contractor acknowledges and agrees that:

(i) any information about the Contractor from any source, including but not limited to substantiated reports of unsatisfactory performance, may be taken into account by the Principal and any Authority in considering whether to offer the Contractor future opportunities for NSW government work;

(ii) the communication of such information to any Authority is a communication falling within section 30 of the Defamation Act 2005 (NSW); and

(iii) the Principal has in place processes for assessing the performance of its suppliers, that these processes will apply to the Contractor's performance under the Contract and that it will participate in the Principal's "Contractor Performance Reporting" process.

21.18. Purchase Order where no Standing Offer Deed

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

21.19. Proportionate liability

(a) To the extent permitted by Law, Part 4 of the Civil Liability Act 2002 (NSW) (and any equivalent statutory provision in any other state or territory) is excluded in relation to all and any rights, obligations or liabilities of either party under or in any way in connection with the Contract whether such rights, obligations or liabilities are sought to be enforced in contract, tort or otherwise.

(b) Without limiting paragraph (a), the rights, obligations and liabilities of the Principal and the Contractor under the Contract with respect to proportionate liability are as specified in the Contract and not otherwise, whether such rights, obligations or liabilities are sought to be enforced by a Claim in contract, in tort or otherwise.

(c) To the extent permitted by Law:

(i) the Contractor must not seek to apply the provisions of Part 4 of the Civil Liability Act 2002 (NSW) in relation to any Claim by the Principal against the Contractor (whether in contract, tort or otherwise); and

(ii) if any of the provisions of Part 4 of the Civil Liability Act 2002 (NSW) are applied to any Claim by the Principal against the Contractor (whether in contract, tort or otherwise), the Contractor will indemnify the Principal against any loss, damage, cost or expense that forms part of a Claim by the Principal against the Contractor which the Principal is not able to recover from the Contractor because of the operation of Part 4 of the Civil Liability Act 2002 (NSW).

21.20. Prior work

(a) The terms of the Contract apply to all of the work performed by the Contractor in connection with the Contractor's Activities even if it was performed prior to the Award Date.

(b) Any payment made to the Contractor by the Principal in connection with the Contract or the Contractor's Activities prior to the Award Date will be treated as a payment under the Contract and will be in part discharge of the Principal's obligation to pay the Contract Price.

21.21. If the Contractor is a trustee

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

(a) the Contractor is the only trustee of the Contractor Trust;

(b) the Contractor has unqualified power under the constitution of the Contractor Trust to perform its obligations under this Contract;

(c) no action is currently taking place or pending to remove the Contractor as trustee of the Contractor Trust or to appoint additional trustees of the Contractor Trust;

(d) the Contractor has entered into this Contract in its capacity as trustee of the Contractor Trust and for the benefit of the beneficiaries of the Contractor Trust;

(e) the Contractor has the right to be fully indemnified out of the assets of the Contractor Trust in respect of the obligations incurred by it in relation to this Contract;

(f) there is no subsisting breach of the constitution of the Contractor Trust; and

(g) the Contractor Trust has not been terminated and there is no action pending to terminate the Contractor Trust.

21.22. Legal Opinion

If:

(a) the Contractor is incorporated outside of Australia the Contractor must, on the Award Date, provide a Legal Opinion supporting, and in respect of, the execution of this Contract; and

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

22. Public Interest Disclosures

(a) This clause 22 only applies if the Contractor is providing services on behalf of the Principal.

(b) In this clause 22:

(i) "Agency" has the meaning given in section 16(1) of the PID Act;

(ii) "Corrective Action" has the meaning given in section 66(4) of the PID Act;

(iii) "Public Official" has the meaning given in section 14(1) of the PID Act;

(iv) "Serious Wrongdoing" has the meaning given in section 13 of the PID Act; and

(v) "Voluntary Public Interest Disclosure" has the meaning given in section 24(1) of the PID Act.

(c) The Contractor must ensure that all individuals involved in providing services under this Contract are made aware of the following:

(i) that those individuals are Public Officials for the purposes of the PID Act;

(ii) how to make a Voluntary Public Interest Disclosure;

(iii) the Principal's public interest disclosure policy; and

(iv) the fact that a person who is dissatisfied with the way in which a Voluntary Public Interest Disclosure has been dealt with may be entitled to take further action under the PID Act or another Law.

(d) The Contractor must notify the Principal as soon as practicable in writing of a Voluntary Public Interest Disclosure of which the Contractor becomes aware where either:

(i) the disclosure relates to the Principal; or

(ii) the maker of the disclosure is known to be a Public Official associated with the Principal.

(e) The Contractor must notify the Principal as soon as practicable in writing of any Serious Wrongdoing committed, or alleged to be committed, by an individual providing services under this Contract.

(f) The Contractor must use its best endeavours to assist in an investigation of Serious Wrongdoing if requested to do so by a person dealing with a Voluntary Public Interest Disclosure on behalf of the Principal or any other Agency.

(g) The Contractor acknowledges and agrees that:

(i) the Principal has an obligation to take Corrective Action under section 66 of the PID Act; and

(ii) notwithstanding any other provision of this Contract, the Principal may immediately terminate the Contract upon written notice to the Contractor, without any requirement to pay compensation (other than payment for work performed under the Contract and unpaid at the date of termination) if a finding of Serious Wrongdoing or other misconduct is made involving the Contractor or an individual providing services under this Contract.

(h) If the Contractor subcontracts the Contract in whole or in part, the Contractor must ensure that the Subcontract contains terms binding the person or body engaged under the Subcontract that are equivalent to the terms binding the Contractor in this clause 22.

Schedule 1 - Key Details

	Clause 1 - Definitions and interpretation	
1.	**Contract - Other documents forming part of the Contract** (Clause 1.1)	*[List any other Contract documents]* (If nothing is specified, nil.) (Where a Standing Offer Deed exists, as per the Purchase Order. If nothing is stated in the Purchase Order, nil.)
2.	**Contract Price:** (Clause 1.1)	*[If the Contract Price is a lump sum, specify lump sum];* *[If the Contract Price is not a lump sum, insert 'Calculated in accordance with Schedule 2']; or* *[Where the Contract Price is partly a lump sum, insert: 'The Contract Price is the sum of (1) [insert portion of the Contract Price that is a lump sum], and (2) the amount calculated in accordance with Schedule 2.]* (Where a Standing Offer Deed exists, as per the Purchase Order).
3.	**Contractor's Representative:** (Clause 1.1)	Name: *[insert]* Address: *[insert]* Email: *[insert]* (Where a Standing Offer Deed exists, as per the Purchase Order. If nothing stated in the Purchase Order, as per the Key Details of the Standing Offer Deed.)
4.	**Date for Delivery of Goods:** (Clause 1.1)	Where there are no Separable Portions, the Date for Delivery of the Goods is: *[insert]* Where there are Separable Portions, for each Separable Portion the Date for Delivery is: **Separable Portion** — **Date for Delivery** *[insert]* — *[insert]* *[insert]* — *[insert]* ..... (Where a Standing Offer Deed exists, as per the Purchase Order.)
5.	**Defects Liability Period:** (Clause 1.1)	*[insert]* (12 months unless otherwise stated) (Where a Standing Offer Deed exists, any other longer period stated in the Purchase Order).

6.	**Delivery Point:** (Clause 1.1)	Where there are no Separable Portions, the Delivery Point for the Goods is: Where there are Separable Portions, the Delivery Point for each Separable Portion is: Separable Portion Delivery Point *[insert]* *[insert]* *[insert]* *[insert]* ..... (Where a Standing Offer Deed exists, as per the Purchase Order.)
7.	**Option Period 1:** (Clause 1.1)	*[if applicable, insert option period, e.g "2 years". If there is to be no Option Period 1, insert "N/A".]* (Where a Standing Offer Deed exists, as per the Purchase Order.)
8.	**Option Period 2:** (Clause 1.1)	*[if applicable, insert option period, e.g "2 years". If there is to be no Option Period 2, insert "N/A".]* (Where a Standing Offer Deed exists, as per the Purchase Order.)
9.	**Option Period 3:** (Clause 1.1)	*[if applicable, insert option period, e.g "2 years". If there is to be no Option Period 3, insert "N/A".]* (Where a Standing Offer Deed exists, as per the Purchase Order.)
10.	**Policies and procedures applicable under the Contract:** (Clause 1.1)	Aboriginal Procurement Policy (January 2021) applicable: [*yes/no*]. If nothing is stated 'no'. Environmental Management Guidelines (Construction Procurement) (Edition 4) applicable: [*yes/no*]. If nothing is stated 'no'. *[Note to user: Only applicable to construction procurement]* Quality Management Guidelines (Construction Procurement) (Edition 4) applicable: [*yes/no*]. If nothing is stated 'no'. *[Note to user: Only applicable to construction procurement]* Work Health & Safety management guidelines (Construction Procurement) (Edition 6) applicable: [*yes/no*]. If nothing is stated 'no'. *[Note to user: Only applicable to construction procurement]* Skills, training and diversity in construction (PBD 2020-03) applicable: [*yes/no*]. If nothing is stated 'no'. *[Note to user: Only applicable to construction procurement]* Small and Medium Enterprises and Regional Procurement Policy (July 2021) applicable: yes. *[Note to user: Applicable to procurement that is not construction]* Small Business Shorter Payment Terms Policy (July 2021) applicable: yes. *[Note to user: Applicable to procurement that is not construction]* Supplier Code of Conduct (February 2020) applicable: yes.

		Do any other policies and procedures apply, in addition to those listed in clause 1.1 under the definition of 'Policies and Procedures': *[yes/no*]. If 'yes' the following other policies and procedures apply: [*insert*]. If nothing is stated, 'no'. [***CU Note: We recommend that Hunter Water add to this Item any relevant security policies, for example, in relation to cyber security that it requires the Contractor to comply with.***]
11.	**Principal's Representative:** (Clause 1.1)	Name: *[insert]* Address: *[insert]* Email: *[insert]* (Where a Standing Offer Deed exists, as per the Purchase Order. If nothing stated in the Purchase Order, as per the Key Details of the Standing Offer Deed.)
12.	**Separable Portions:** (Clause 1.1)	*[Describe each Separable Portion of the Goods and/or the Services]* (Where a Standing Offer Deed exists, as per the Purchase Order)
13.	**Term of Services** (Clause 1.1)	*[Insert term of Contract in relation to Services - for how long or until when the Services must be carried out. eg. 12 months from Date of Acceptance. Specify when the Term of Services starts and ends.]* (Only applicable if Services are being provided for a set period.) (Where a Standing Offer Deed exists, as per the Purchase Order.)
	Clause 2 - Parties' obligations	
14.	**Escalation of rates for extension:** (Clause 2.3(b))	*[insert]*% (If nothing is specified, 0%) (Where a Standing Offer Deed exists, any lower percentage stated in the Purchase Order)
15.	**Frequency of KPI reporting:** (Clause 2.4)	*[Insert how frequently in months/days the Contractor must produce a KPI Performance Report]* (If nothing is specified, the Contractor must provide a KPI Performance Report at the end of each month, unless otherwise agreed in writing by the Principal.)
16.	**Frequency of Evaluation Meetings** (Clause 2.5)	*[Insert how frequently in months/days the Principal and the Contractor must meet to review the Contractor's performance]* (If nothing is specified, the Principal and the Contractor must meet monthly, unless otherwise agreed in writing by the Principal).

	Clause 3 - Personnel	
17.	**Key people:** (Clause 3.5(a))	Person Position .... (Where a Standing Offer Deed exists, as per the Purchase Order)
	Clause 4 - Security	
18.	**Security to be provided by the Contractor:** (Clause 4.1)	Clause 4.1 applies: *[yes / no]* *[Select yes if the Contractor is required to provide security]* If 'yes', each Unconditional Undertaking must be for an amount representing: *[insert]*% of the Contract Price. If nothing is stated, 5% of the Contract Price.
19.	**Amount of security to be held following release of security under clause 4.2(a)(i)** (Clause 4.2(a)(i))	Insert amount of security to be held: [*insert*]%. (If nothing is stated, 5% of the Contract Price.)
20.	**Is a parent company guarantee required?:** (Clause 4.6)	*[Yes/No]* If required, it must be provided by: *[Insert name of Guarantor].* *[Note to user: If a parent company guarantee has been provided by the Contractor under a Standing Offer Deed, no parent company guarantee is required under this Contract]*
	Clause 5 - Risks and insurance	
21.	**Date for transfer of risk:** (Clause 5.1)	[*Date of Acceptance / Upon delivery of the Goods or Separable Portion to the Delivery Point.*] [*Select "Upon delivery of the Goods or Separable Portion to the Delivery Point" if the Principal will accept care, custody and control of the Goods on delivery.]* [*Select "Date of Acceptance" if the Contractor will continue to have care, custody and control of the Goods between delivery and Acceptance (e.g. if it is installing the Goods).*] (If nothing is specified, Date of Acceptance.)
22.	**Insurance policies required to be effected by the Principal:** (Clause 5.4)	*[insert]* (None, unless otherwise stated) (Where a Standing Offer Deed exists, as per the Purchase Order. If nothing stated in the Purchase Order, none.)

23.	**Cyber Insurance required:** (Clause 5.5(a)(v))	Yes / No. (If nothing is stated, yes.) [***Drafting Note: Cyber Insurance should be a requirement where the Contractor is performing Services. The requirement for Cyber Insurance should be assessed on a case-by-case basis when the Contractor is supplying Goods.***]
24.	**Insurance policies required to be effected by the Contractor:** (Clause 5.5(a))	**Public Liability Insurance** Amount of cover is $50 million in respect of any one occurrence. Maximum deductible: $*[insert]* (If nothing is stated, the maximum deductible is $0.) **Product Liability Insurance** Amount of cover: [$20 million] in respect of any one occurrence and in the aggregate for all occurrences in any 12 month period. Maximum deductible: $[*insert*] (If nothing is stated, the maximum deductible is $0.) **Workers Compensation Insurance** Amount of cover: The maximum amount required by Law. Maximum deductible: Not applicable. **Motor Vehicle Insurance** Amount of cover: Combined limit of not less than $20 million in respect of property damage and third party bodily injury (other than as provided for by any compulsory statutory insurance scheme or accident compensation scheme). **Cyber Insurance** Amount of cover is $[insert] per claim and in the annual aggregate. (If no amount is specified, $5 million.) **Professional Indemnity Insurance** Amount of cover including provision for at least one automatic reinstatement of the limit of indemnity: $*[insert]* (If no amount is specified, $10 million) Maximum deductible: $*[insert]* (If nothing is stated, the maximum deductible is $0.) (Where a Standing Offer Deed exists, as per the Purchase Order. If nothing stated in the Purchase Order, as above.)
25.	**Additional requirements for Product Liability Insurance and Public Liability Insurance** (Clause 5.5(c))	*[The Product Liability Insurance and Public Liability Insurance must extend the benefit of cover to the Principal for its liability for the acts or omissions of the Contractor and its Subcontractors.]* *OR*

		[The Product Liability Insurance and Public Liability Insurance must be in the joint names of the Contractor and the Principal.] (If nothing stated, the Product Liability Insurance and Public Liability Insurance must extend the benefit of cover to the Principal for its liability for the acts or omissions of the Contractor and its Subcontractors) (Where a Standing Offer Deed exists, as per the Purchase Order. If nothing stated in the Purchase Order, as above.)
	Clause 6 - Design and Documentation	
26.	**Documents to be provided by the Principal to the Contractor:** (Clause 6.1)	Document .... (Where a Standing Offer Deed exists, as per the Purchase Order.)
27.	**Number of copies of Design Documentation to be submitted or resubmitted by the Contractor to the Principal:** (Clause 6.5)	One electronic copy.
28.	**Escrow deed required** (Clause 6.11)	*[Hunter Water's default position is "no". Only select "yes" where there is software or IT being procured and if unsure, select "Required on request"]* Yes - required within 5 Business Days of Award Date /Not required /Required on request (If nothing is stated, not required)
	Clause 7 - Site and information	
29.	**Work health and safety - principal contractor** (Clause 7.5(b))	The principal contractor for the purposes of the WHS Legislation is: …… (If nothing is stated, the principal contractor is the Contractor) (Where a Standing Offer Deed exists, as per the Purchase Order. If nothing is stated in the Purchase Order, the principal contractor is the Contractor.)
	Clause 8 - Manufacture and production	
30.	**Existing Approvals and other Approvals which the Principal is to obtain:** (Clause 8.3)	*[Insert any Approvals that will be obtained by the Principal e.g. a planning Approval]* (Where a Standing Offer Deed exists, as per the Purchase Order.)
31.	**Contractor's Activities that cannot be subcontracted without approval:** (Clause 8.5(a)(ii))	*[insert subcontract value over which Principal must approve Subcontracts and/or any disciplines that must be approved by Principal]*

		(If nothing stated, any Subcontracts with a value over $100,000.) (Where a Standing Offer Deed exists, as per the Purchase Order. If nothing is stated in the Purchase Order, any Subcontracts with a value over $100,000.)
32.	**Pre-approved Subcontractors** (Clause 8.5(a)(ii))	**Subcontractor** | **Part of the Contractor's Activities** *[insert]* | *[insert]* *[insert]* | *[insert]* *[insert]* | *[insert]* (Where a Standing Offer Deed exists, as per the Purchase Order.)
33.	**Warranties required to be procured by the Contractor from Subcontractors and provided to the Principal:** (Clause 8.6)	Warranty required from .... *[Insert description of types of equipment or trades from whom subcontractor warranties are required]* (Where a Standing Offer Deed exists, as per the Purchase Order.)
34.	**Environmental Management Plan** (Clause 8.8(a)(iv))	Is an Environmental Management Plan required: [*yes/no*]. (If nothing is stated 'no'.) *[Note to user: Only relevant if Environmental Management Guidelines applies in Item 10.]*
35.	**Environmental Management System** (Clause 8.8(a)(v))	Is an Environmental Management System required: [*yes/no*]. (If nothing is stated 'no'.) *[Note to user: Only relevant if Environmental Management Guidelines applies in Item 10.]*
36.	**Aboriginal participation Contract value** (Clause 8.10(d)(iii))	The Contract value for the purposes of calculating the Aboriginal participation requirements is [$insert]. *[Note to user: Only applies if the Aboriginal Procurement Policy applies in Item 10 and if the contract value exceeds $7.5m]* (Where a Standing Offer Deed exists, as per the Purchase Order.)
	Clause 9 - Quality and Defects	

37.	**Quality Management System** (Clause 9.2(b))	Is a Quality Management System required under the Contract: [*yes/no*]. (If nothing is stated, 'no'.) *[Note to user: Only relevant if Quality Management Guidelines applies in Item 10.]*
38.	**Quality Management Plan** (Clause 9.2(c))	Is a Quality Management Plan required under the Contract: [*yes/no*]. (If nothing is stated, 'no'.) *[Note to user: Only relevant if Quality Management Guidelines applies in Item 10.]*
	Clause 10 - Time	
39.	**Date for completion of whole or parts of the Services:** (Clause 10.1)	*[Insert any required date (or dates) for completion of any part (i.e. milestone), or the whole of the Services, or insert 'Not applicable'.]* (Where a Standing Offer Deed exists, as per the Purchase Order)
40.	**Cap on delay costs** (Clause 10.12(e))	$*[insert]* per day (If nothing is stated, 0.5% of the Contract Price per day) *[insert]* % of the Contract Price in the aggregate (If no amount is specified, 10% of the Contract Price in the aggregate) (Where a Standing Offer Deed exists, as per the Purchase Order. If nothing is stated in the Purchase Order, $0)
	Clause 11 - Variations	
41.	**Percentage adjustments for valuing a Variation:** (Clause 11.3(c)(i))	(a) For non-time related overheads and profit where the adjustment is to be an increase: *[insert]*% of the amount determined. (b) For overheads and profit where the adjustment is to be a decrease: *[insert]*% of the amount determined. (If nothing stated in (a) or (b) above, 10%.) (Where a Standing Offer Deed exists: (a) **where the adjustment is to be an increase, any lower percentages stated in the Purchase Order;** **where the adjustment is to be a decrease, any higher percentages stated in the Purchaser Order)**
	Clause 12 - Payment	

42.	**Goods (or part thereof) for which payment can be claimed** (Clause 12.7)	The Contractor may claim payment for the following Goods (or part thereof) before Delivery: ....
	Clause 13 - Delivery and Acceptance	
43.	**Earliest date and/or time when Goods may be delivered to the Delivery Point:** (Clause 13.2(a)(i))	*[insert]* (Where a Standing Offer Deed exists, as per the Purchase Order)
44.	**Packaging requirements for transportation of the Goods** (Clause 13.2(a)(vi))	*[insert]* (Where a Standing Offer Deed exists, as per the Purchase Order)
45.	**Mode of delivery:** (Clause 13.2(a)(vii))	*[insert]* (Where a Standing Offer Deed exists, as per the Purchase Order)
46.	**Unload or load the Goods at Delivery Point** (Clause 13.2(a)(viii))	Yes/No (Where a Standing Offer Deed exists, as per the Purchase Order.)
47.	**Liquidated damages payable by Contractor in accordance with clause 13.11:** (Clause 13.11)	Where there are no Separable Portions: a) for the Goods is: $*[insert]* per day b) for the Services is: $*[insert]* per day Where there are Separable Portions, for each Separable Portion is: **Separable Portion** **Liquidated damages** *[insert]* $*[insert]* per day *[insert]* $*[insert]* per day …….. (If nothing is stated, 0.5% of the Contract Price per day) (Where a Standing Offer Deed exists, as per the Purchase Order. If nothing is stated in the Purchase Order, 0.5% of the Contract Price per day.)
48.	**Cap on liquidated damages:** (Clause 13.13)	*[insert]*% of the Contract Price. (If no amount is specified, 10% of the Contract Price) (Where a Standing Offer Deed exists, any higher amount specified in the Purchase Order)

	Clause 16 - Limitation of liability	
49.	**Limitation of liability (Contractor):** (Clause 16(a)(ii))	An amount equal to: a) the Contract Price as adjusted from time to time, including on account of any Variations but without reducing the Contract Price for any amounts deducted under clause 9.11; plus b) any other amounts paid or payable by the Principal to the Contractor under or in connection with the Contract, including any delay costs under clause 10.12 and any suspension costs under clause 10.13.
50.	**Limitation of liability (Principal):** (Clause 16(f))	An amount equal to: a) the Contract Price as adjusted from time to time, including on account of any Variations but without reducing the Contract Price for any amounts deducted under clause 9.11; plus b) any other amounts paid or payable by the Principal to the Contractor under or in connection with the Contract, including any delay costs under clause 10.12 and any suspension costs under clause 10.13.
	Clause 20 - Security	
51.	**Security obligations and standards** (Clause 20.1(c) and clause 20.1(d))	[List any additional ICT security and cyber security standards and requirements that the Contractor's Security Program must comply with or any alternative standards. Any alternative standards must be consistent with the obligations under the Contract with respect to privacy, Principal Data and security.]
52.	**Security certifications** (Clause 20.1(i))	[List any security certifications that the Contractor must have and maintain and any other specific requirements relating to those security certifications.]
	Clause 21 - Miscellaneous	
53.	**Address for service: Email** (Clause 21.1(a)(ii)A)	Email address for notices: Principal's Representative: *[insert]* Contractor's Representative: *[insert]* (Where a Standing Offer Deed exists, as per the Purchase Order.)
54.	**Address for service: Notices sent by electronic portal** (Clause 21.1(a)(ii)B)	Are all notices to be issued by electronic portal instead of by email: *[Yes/No]* If yes, all notices are to be issued by means of *[Aconex]*. (If nothing is stated, no) (Where a Standing Offer Deed exists, as per the Purchase Order. If nothing stated in the Purchase Order, no.)

Schedule 2 - Payment Schedule

(Clause 1.1)

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

[Note to user: where there is no Standing Offer Deed, insert Contract Price or mechanism for calculating Contract Price, including any foreign currency components.

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

Schedule 3 - KPIs

(Clause 1.1)

[Note to user: Insert any KPIs in addition to those in the Appendix]

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

Schedule 5 - Options

(Clause 11.8)

Where a Standing Offer Deed exists, as per the Purchase Order.

OPTION 1	
Description:	
Adjustment to Contract Price:	
Last date or end of period for exercising the Option:	
Amendments to Statement of Work:	
Other Contract amendments:	

OPTION 2	
Description:	
Adjustment to Contract Price:	
Last date or end of period for exercising the Option:	
Amendments to Statement of Work:	
Other Contract amendments:	

APPENDIX A:

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

Exhibit A - Statement of Work

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

1.1 any Goods or Services to be provided;

1.2 whether the Contractor must design the Goods or if any design work is required as part of the Services;

1.3 the Site that will be provided by the Principal (if any);

1.4 any Tests that must be carried out by the Contractor;

1.5 if Software is being provided, the requirements for that Software (including any functional performance requirements) (alternatively, if applicable, this could be set out in the Design Documentation);

1.6 any additional training that the Contractor is required to participate in (including any security training); and

1.7 any requirements for the packing and marking of Goods for delivery.