

Supply Agreement for Provision of Insurance Services T18/006

Georges River Council
ABN 57 789 014 855

Jardine Lloyd Thompson Pty Ltd (JLT)
ABN 69 009 098 864

Table of Contents

Table of Contents	2
Background	1
General Conditions	1
1 Term and the Agreement	1
2 Performance of this Agreement	1
3 Site	5
4 Services	6
5 Goods	10
6 Variations	13
7 Time for Completion, Delivery and Extensions of Time	14
8 Fees, invoices and payment	16
9 Intellectual Property Rights	18
10 Insurance	19
11 Indemnity	19
12 Limitation of Liability	20
13 Notices	21
14 Liquidated Damages	21
15 Relationship of Parties	22
16 Confidential Information and Privacy	23
17 Force Majeure	23
18 Termination by the Principal	24
19 Dispute Resolution	25
20 General	27
21 Interpretation	29
22 Definitions	30
Contract Information	33
Contract Details	33
Schedule 1 - Fees	38
Schedule 2 - Statutory Declaration	39
Schedule 3 - Expert determination agreement	41
Schedule 4 – Performance Management System	46

Background

- A The Contractor and the Principal have agreed that the Contractor will supply the Goods and perform the Services in accordance with the terms of this Agreement.
- B The Principal agrees to pay the Contractor the Fees in payment for the Goods supplied and Services performed.

General Conditions

1 Term and the Agreement

.1 Term

This Agreement commences on the Commencement Date.

.2 Formation of Agreements

.1 This Agreement consists of the following documents:

- .1 the General Conditions;
- .2 the Contract Details;
- .3 the Schedules; and
- .4 any documents specified in the Contract Details and attached to this Agreement.

.2 In the case of a discrepancy, inconsistency or ambiguity in or between any of the documents forming part of this Agreement, the highest or most stringent standard shall prevail unless the Principal directs otherwise.

.3 The Contractor shall not have any Claim as a result of any such ambiguity, inconsistency or conflict.

.3 Exclusion of additional Terms

No pre-printed terms on any confirmation, shipment or delivery docket, invoice or other document issued by or on behalf of the Contractor will vary or form part of this Agreement.

2 Performance of this Agreement

.1 Obligation to Supply Goods and Services

.1 From the Commencement Date, the Contractor must:

- .1 supply the Goods; and
- .2 perform the Services,
in accordance with this Agreement.

.2 If the Services have been performed or the Goods have been delivered before the date of this Agreement, the provisions of this Agreement apply to those Goods or Services.

.3 The Contractor must perform all work that is not specifically mentioned in this Agreement but can be reasonably inferred as being required for the proper Delivery of the Goods or Completion of the Services (as applicable) as if that work was expressly stipulated in this Agreement.

.4 If the Goods are to be delivered, or the Services are to be performed, in stages then the Contractor must obtain the Principal's written approval prior to commencing any stage (other than the first stage) and the Principal is not

obliged to pay the Contractor for any Services performed or Goods delivered prior to that approval.

- .5 The Contractor must take all steps necessary to clarify and confirm the Principal's requirements for the Goods and Services and must examine all relevant information and documents relating to the Goods or Services and, subject to this clause 2.1.5, will be taken to have satisfied itself of their sufficiency. If the Contractor is not satisfied, it must immediately advise the Principal in writing requesting further information, documents or amendments it requires.
- .6 If required by the Principal, the Contractor must liaise, consult and co-operate with other contractors engaged by the Principal and must integrate the Goods and Services with the services of the other consultants and contractors engaged by the Principal.
- .7 Unless this Agreement provides differently, the Contractor must supply at its own expense all labour, plant, equipment, tools, appliances or other property and items necessary to fulfil its obligations under this Agreement.

.2 Performance Reviews

The Contractor must, at the Principal's request, meet periodically with the Principal to review the performance of the Contractor under this Agreement. Those meetings will be at no additional cost to the Principal.

.3 KPIs

- .1 The Contractor must, in addition to its other obligations, meet or exceed the KPIs (if any).
- .2 The Contract Details set out the additional consequences (if any) to the parties of the failure to achieve, achievement of, or over-achievement of KPIs.

.4 Authorised Representatives

- .1 Each party's Authorised Representative is authorised to give instructions and make binding commitments on behalf of that party.
- .2 Each party may from time to time by notice to the other party nominate any other person to be its Authorised Representative in place of the person named in the Contract Details. If at any time a party does not have an Authorised Representative, then all that party's Authorised Representative's rights and powers under this Agreement may be exercised by that party.
- .3 The Contractor must comply with any written direction of the Principal's Authorised Representative in relation to the supply of the Goods or the performance of the Services or this Agreement. Any approval, direction, consent or comment given by the Principal's Authorised Representative does not in any way limit, reduce or waive the obligations or liabilities of the Contractor under the Agreement.
- .4 The Principal's Authorised Representative acts as agent for the Principal and not as an independent assessor of certifier.

.5 Time for performance

Unless expressly stated to the contrary in this Agreement, the Contractor agrees to comply with all obligations regarding the time in which the Services must be performed, or the Goods delivered, under this Agreement.

.6 WHS and the environment

- .1 In delivering the Goods to, or performing the Services on, any Site, the Contractor must (and must ensure that its Personnel):
 - .1 comply with all applicable Laws and all lawful directions by the Principal relating to WHS and the environment;

- .2 comply with all the Principal's policies, protocols and rules relating to WHS and ensure that its own WHS policies and procedures meet or exceed the standard of the Principal's WHS policies and procedures;
 - .3 comply with all the Principal's policies, protocols and rules relating to the environment and ensure that its environment policies and procedures meet or exceed the standard of the Principal's environment policies and procedures;
 - .4 ensure that it, and any subcontractor it engages, will consult, cooperate and co-ordinate with the Principal, and with each other, in relation to WHS matters (including, without limitation, complying with any applicable WHS Laws), so far as reasonably practicable;
 - .5 notify the Principal of every injury or work related illness which occurs at a Site as soon as possible but not later than 24 hours after the occurrence; and
 - .6 if the Principal appoints the Contractor as the Principal Contractor for the Site, indemnify the Principal against all claims of any description made by any third party, whether at general law or under any statutory power or authority to recover money including costs, losses, damages, fines and expenses (including legal costs and disbursements) arising in relation to or in connection with a breach by the Contractor of its obligations under Laws relating to WHS and, if relevant, as the Principal Contractor for the Site.
- .2 In relation to the Goods (including, without limitation, the design of the Goods) and the Services, the Contractor must provide the Principal at any time and at its own cost, upon request, any information relating to any Goods or Services, or any design provided by the Contractor to the Principal, which the Principal reasonably requires to comply with WHS Laws, including but not limited to:
- .1 the results of any calculations, analysis, testing or examination in relation to the design;
 - .2 any conditions necessary to ensure that the design can be manufactured, assembled, constructed, dismantled or disposed of without risks to health and safety;
 - .3 written reports that specify the hazards relating to the design (including any variation of the design) that, so far as the Contractor is reasonably aware:
 - .1 create a risk to the health or safety of persons who are to carry out any construction work in relation to the design; and
 - .2 are associated only with the particular design and not with other designs of the same type.
- .7 **Compliance with Laws**
- In performing its obligations under this Agreement, the Contractor must (and must ensure that its Personnel) comply with all applicable Laws, Government Approvals and all applicable codes of practice and standards (including those relating to tax instalment deductions, PAYG, fringe benefits tax, superannuation, payroll tax, sick leave, annual leave, long service leave, and any other taxes, levies or obligations imposed on an employer or its Personnel under the Agreement).
- .8 **Contractor's Personnel and Key Personnel**
- .1 The Contractor must provide suitably qualified and experienced Personnel of the Contractor to supply the Goods or perform the Services. If Key Personnel are identified in the Contract Details, the Contractor must provide those Key Personnel, to supply the relevant Goods or perform the relevant Services.

- .2 The Contractor must ensure that the Key Personnel supply the Goods or perform the Services throughout the Term and that the Key Personnel and other Personnel allocate as much of their time as necessary to properly supply the Goods or perform the Services.
 - .3 The Contractor may not, without the Principal's prior written consent, remove or substitute any of the Key Personnel.
 - .4 The Principal's consent under clause 2.8.3 is not required if the relevant person becomes seriously ill, dies, retires, resigns or is dismissed by the Contractor (except where that person accepts employment with a Related Company of the Contractor). In that case, the Contractor must promptly provide a replacement acceptable to the Principal.
 - .5 If the Principal acting reasonably gives the Contractor a Notice requiring any one or more of the Key Personnel to cease to supply the Goods or perform the Services, the Contractor must immediately comply with the Notice and provide a replacement acceptable to the Principal.
 - .6 If, in the Principal's reasonable opinion, any of the Contractor's Personnel are inadequate to perform any of the Contractor's obligations under this Agreement, the Principal may by Notice direct the Contractor to rectify that inadequacy within a reasonable period as stipulated by the Principal.
 - .7 The Contractor must meet any increased costs or expenditure it incurs as a consequence of complying with the Principal's directions under this clause 2.8 and is not entitled to claim or recover any additional costs or expenditure from the Principal.
 - .8 The Contractor's compliance with this clause 2.8 does not relieve the Contractor of its obligations and liabilities under this Agreement.
- .9 **Record keeping**
- The Contractor must keep all records required by this Agreement, and provide all records to the Principal within the times required by this Agreement, and whenever requested by the Principal. Such records must be kept until the date that is seven years after the later of the final Date of Delivery or completion of the relevant Services.
- .10 **Principal Provided Items**
- .1 The Principal will supply the Principal Provided Items to the Contractor.
 - .2 Principal Provided Items at all times remain the Principal's property and must only be used for the purposes of fulfilling the Contractor's obligations under this Agreement.
 - .3 The Contractor must keep all Principal Provided Items in good order and condition.
 - .4 The Contractor must use all reasonable endeavours to prevent loss of or damage to the Principal Provided Items.
 - .5 Upon delivery of the Principal Provided Items to the Site, the Contractor must carry out a visual inspection of the Principal Provided Items. If the Contractor identifies a defect in the Principal Provided Items, the Contractor must, within 1 Business Day of delivery of the Principal Provided Items to the Site, notify the Principal in writing of the defect.
 - .6 The Contractor accepts all risk and liability of the Principal Provided Items upon delivery to the Site or the nominated delivery location except for those defects in the Principal Provided Items that existed at the time of delivery and were identified to the Principal by the Contractor in writing within 1 Business Day after delivery.

- .7 The Contractor is responsible for and indemnifies the Principal against any loss or waste of, or damage to, Principal Provided Items, normal wear and tear excepted.
- .8 The Contractor must report to the Principal any loss and damage to the Principal Provided Items within 24 hours of the Contractor becoming aware of the loss or damage having occurred. The Principal may elect to replace or repair those lost or damaged Principal Provided Items, at the Contractor's cost.
- .11 **Performance management**
 - .1 The Principal will monitor the Consultant's performance of its obligations under this Contract as provided for in Schedule .
- .12

3 Site

- .1 **Access to Site**
 - .1 Unless otherwise agreed with the Principal, the Contractor must give the Principal at least 10 Business Days' Notice of its intention to access a Site.
 - .2 If the Contractor gives the written Notice required under clause 3.1.1, the Principal must provide the Contractor with access to the areas of the Site reasonably required for the delivery of the Goods or the proper performance of the Services. Access may be given progressively. The Contractor will not be given exclusive possession of, or access to, the Site. The Principal and other people may access and work on the Site at any time, and the Contractor must work co-operatively with the Principal and third parties while on the Site.
 - .3 The Contractor must (and must ensure that its Personnel):
 - .1 undertake any inductions required to have access to a Site;
 - .2 carry out its obligations under this Agreement so as not to place the Principal in breach of any Laws or obligations in relation to a Site; and
 - .3 ensure that the Goods and Services, when complete, will comply with the health and safety requirements of any Site.
- .2 **Supply at a Site**
 - .1 The Contractor represents and warrants to the Principal that the Contractor has, or will ensure that it has, inspected, made appropriate enquiries and thoroughly familiarised itself with each Site and all conditions and has examined all information and other matters which are relevant to the risks, contingencies and circumstances which affect or could affect its performance.
 - .2 The Contractor must deliver the Goods to the Delivery Location and perform the Services at the Site (or Sites) set out in the Contract Details or any other locations agreed to by the parties from time to time.
 - .3 The Contractor must ensure that it and its Personnel carry out and complete any site inductions required to carry out the Services or supply the Goods at a Site.
- .3 **Behaviour on Site**
 - .1 In delivering the Goods to, or performing the Services on, any Site the Contractor must (and must ensure that its Personnel):
 - .1 comply with all Laws and Government Approvals;
 - .2 comply with the Principal's policies and procedures including in respect of:

- .1 security;
 - .2 health, safety and the environment; and
 - .3 consumption of alcohol and other drugs;
- .3 use its best endeavours not to interfere with or disrupt the usual business operations of any occupant of a Site, except to the extent agreed in advance with the Principal as reasonably necessary to perform the relevant obligations;
- .4 ensure that all Sites are left secure, clean, orderly and fit for immediate use;
- .5 conform to reasonable standards of behaviour, conduct and hygiene; and
- .6 act strictly in accordance with the provisions of this Agreement.
- .2 The Contractor is responsible for and indemnifies the Principal against:
 - .1 any loss or damage to a Site; and
 - .2 any loss or damage to, or waste of, Principal Provided Items,to the extent caused by the Contractor's Personnel that is not, in the Principal's reasonable opinion, due to normal wear and tear.
- .3 The Principal may by written notice require the Contractor to remove or replace any of the Contractor's Personnel at a Site who are, for any reason, unacceptable to the Principal.

4 Services

.1 Completion

The Contractor must achieve Completion of the Services by the relevant Date for Completion of Services.

.2 Quality of Services

The Contractor acknowledges that the Principal has entered into this Agreement in reliance on the Contractor's representation that it has the necessary skill, experience and ability to provide the Services. The Contractor must:

- .1 perform the Services with the degree of professional skill, care and diligence expected of a competent professional contractor experienced in carrying out the same or similar services;
- .2 ensure the Services, and all Deliverables, conform to the requirements of this Agreement, are in accordance with the Principal's reasonable directions given from time to time, and are fit for any purpose specified by the Principal in the Contract Details and otherwise the purpose for which the Deliverables are ordinarily used;
- .3 ensure that the Services:
 - .1 are strictly in accordance with the terms of this Agreement;
 - .2 comply with all Laws and Government Approvals; and
 - .3 do not infringe any Intellectual Property Rights; and
- .4 if circumstances reasonably require it, put forward alternative proposals, methods and designs to the Principal for its consideration (which the Principal may reject in its sole and absolute discretion).

.3 Provision and Inspection of Services

- .1 The Contractor must keep:

- .1 itself fully and properly informed of all matters that may directly or indirectly affect the Services; and
- .2 the Principal's Authorised Representative fully informed about all aspects of the Services.
- .2 Without limiting clause 4.3.1, the Contractor must provide to the Principal's Authorised Representative upon request:
 - .1 timesheets for the Contractor's Personnel who have performed the Services which record all of the work that those Personnel have performed;
 - .2 full records of the Services carried out;
 - .3 copies of all correspondence, technical materials, reports and other documents within the Contractor's power, possession or control concerning the Services;
 - .4 progress reports on the Services to allow the Principal's Authorised Representative to ascertain whether the Services comply with the terms of this Agreement, including setting out:
 - .1 any quality issues associated with the Services;
 - .2 any significant events which have occurred in the previous period;
 - .3 any significant events which the Contractor expects to occur in the coming period; and
 - .4 a detailed program for the projected supply of the Services.
- .3 At all reasonable times, the Principal's Authorised Representative and/or anyone appointed by the Principal under this Agreement to conduct an audit may inspect, examine, review and witness tests on the Services or their results at:
 - .1 a Site;
 - .2 the Principal's premises;
 - .3 the Contractor's premises; and
 - .4 at the premises of any of the Contractor's subcontractors.
- .4 The Contractor must ensure that the Principal's Authorised Representative and/or anyone appointed by the Principal under this Agreement to conduct an audit are provided with access to the premises specified in clause 4.3.3 and that all facilities reasonably required for the Principal's Authorised Representative to review, inspect, examine and witness the testing of the Services and their results are made available to the Principal's Authorised Representative.
- .4 **Completed Services**
 - .1 If the Contractor believes that any part of the Services has reached Completion the Contractor will notify Principal in writing.
 - .2 Following notification of completion under clause 4.4.1, the Principal will carry out a review, inspection or examination of the relevant Services. If the Principal:
 - .1 is satisfied that the Services have reached Completion, the Principal will issue a certificate of completion to the Contractor;
 - .2 is not satisfied that the Services have reached Completion:
 - .1 the Principal will inform the Contractor in writing; and

- .2 the Contractor must take such steps as are necessary to ensure full compliance with this Agreement including where necessary promptly re-performing, re-providing or remedying (as applicable) the deficient Services at the Contractor's cost.
 - .3 If, following a notice from the Principal pursuant to clause 4.4.2.2.1, the Contractor fails to promptly re-perform or remedy a deficient Service to the Principal's satisfaction then the Principal, acting reasonably and in good faith, may:
 - .1 itself or by a third party rectify the deficiency without notice to the Contractor; and
 - .2 recover from the Contractor, as a debt due, any direct costs incurred by the Principal in doing so or set off those costs against any money owing by the Principal to the Contractor.
 - .4 If the Principal issues a notice pursuant to clause 4.4.2.2.1, the Principal may withhold any money due to the Contractor under this Agreement until all of the Services comply with this Agreement.
 - .5 Any review, inspection, examination or witnessing of testing of the Services or their results by the Principal's Authorised Representative does not relieve the Contractor of its responsibilities under this Agreement.
 - .6 The Contractor must make the rights contained in this clause 4.4 a condition of any subcontract that the Contractor enters into.
 - .7 The Principal may instruct the Contractor either to undertake additional tests or inspections or to permit additional tests or inspections to be performed by or on behalf of the Principal and the Principal shall provide all necessary assistance and co-operation. Such additional tests and inspections may be carried out on any part of the Services, and shall not relieve, diminish or in any other way affect the Contractor's obligations and liabilities under the Agreement. Such additional tests or inspections shall be at the Principal's cost and expense unless the results of such tests or inspections show that the Contractor has not complied with the Agreement in which case they shall be at the Contractor's cost and expense.
- .5 **Warranty Period (Services only)**
- .1 The Contractor must, at its own cost (including all incidental costs such as removal and replacement), repair, replace or otherwise make good any defects in the Services arising before or during the Warranty Period, including any defect notified to the Contractor by the Principal.
 - .2 The obligation to repair, replace or otherwise make good defects in clause 4.5.1 above includes an obligation to repair, replace or otherwise make good any damage caused by the defect in the Services.
 - .3 If, during the Warranty Period, any defect is identified:
 - .1 the Contractor must provide a written proposal to the Principal's Authorised Representative within 5 Business Days of being notified of the defect by the Principal. The written proposal must set out the actions that the Contractor proposes to take to repair, replace or otherwise make good the defect;
 - .2 before commencing the repair, replacement or making good, the timing of the repair, replacement or making good must be agreed with the Principal, or failing agreement, must be reasonably specified by the Principal; and
 - .3 the repair, replacement or making good to be carried out by the Contractor under clause 4.5.1 must be agreed with the Principal, or failing agreement must be specified by the Principal acting reasonably.

- .4 If the Contractor fails to repair, replace or make good the defect within the time agreed or specified by the Principal under clause 4.5.3, the Principal may repair, replace or make good the defect or engage another party to do so at the Contractor's risk and expense and the Principal's costs of doing so will be a debt due from the Contractor to the Principal.
- .5 A new Warranty Period of the same duration as the original Warranty Period set out in the Contract Details commences from the date the repair, replacement or making good is completed, but only in respect of that part of the Services repaired, replaced or made good.
- .6 **Design Obligations**
 - .1 This clause 4.6 only applies to the extent that the Contractor has a Design Obligation specified in the Contract Details.
 - .2 The Contractor must carry out and complete the design of the Services referred to in the Agreement. The Contractor represents and warrants, in addition to any other representation or warranty given or obligations assumed, that the design will:
 - .1 be fully and professionally completed without error, omission or defect;
 - .2 be fit for any purpose made known to the Contractor as at the date of this Agreement;
 - .3 be fit for all purposes for which such design work might reasonably be used;
 - .4 comply in all respects with all relevant Laws and Government Approvals; and
 - .5 be carried out by appropriately qualified and skilled personnel who hold relevant accreditations to carry out the Design Obligations, and
 - .3 The Contractor acknowledges that the Principal has entered into this Agreement in reliance on the representations and warranties given in this clause.
 - .4 The Contractor will submit each design document set out in the relevant Agreement to the Principal for review ("**Design Document**").
 - .5 If, in the Principal's opinion, any Design Document:
 - .1 does not comply with the Agreement; or
 - .2 will not enable the Contractor to comply with the Agreement,the Principal must, within twenty (20) Business Days after receipt of such Design Document, give the Contractor a notice setting out those non-compliances and requiring the Contractor to rectify them.
 - .6 If the Principal gives a Notice of non-compliance under clause 4.6.5, the Contractor must, promptly after receipt of the Notice of non-compliance:
 - .1 amend the Design Document to rectify the non-compliance; and
 - .2 promptly resubmit the amended Design Document to the Principal for its review, in which case clauses 4.6.5 and 4.6.6 will apply to the amended Design Document.
 - .7 Any review or comment (if any) does not make the Principal responsible for any aspect of the Design Obligation and the Contractor remains fully responsible for all of the Design Obligation.
 - .8 The Contractor must supply to the Principal all originals and at least 3 copies of all Design Documents in an electronic format acceptable to the Principal in addition to hard copies.

.7 Title in Deliverables

- .1 The Principal acquires title to the Deliverables or any part thereof when the Principal pays the Contractor for the Deliverables.
- .2 The Contractor warrants that when title in the Deliverables passes to the Principal, the Deliverables will be free of any registered or unregistered security interest, charge, lien, mortgage, encumbrance or other adverse interest.
- .3 The Contractor agrees that, in the event of non-payment for any Services by the Principal, the Contractor's only remedy is an action to recover the Fees for those Services.

5 Goods

.1 Delivery

The Contractor must deliver the Goods to the Delivery Location by the Date for Delivery.

.2 Quality of Goods

The Contractor must ensure all Goods are suitably packed to avoid damage in transit or in storage and only deliver Goods that:

- .1 conform to the description of the Goods in the Contract Details and any applicable Specification;
- .2 are new and fit for the purpose for which Goods of the same kind are commonly supplied or bought and for any other purpose that the Principal has specified to the Contractor in writing;
- .3 are of merchantable quality, free from defects;
- .4 comply with all standards specified by the Principal;
- .5 are free from any encumbrances or defects in title;
- .6 comply with all laws applicable to their design and manufacture; and
- .7 in the case of Goods comprising potentially dangerous or hazardous materials, are accompanied by information and material as specified by the Principal to comply with the Principal's health, safety and environmental policies and requirements, and manufacturers' material safety data sheets.

.3 Testing

- .1 Before delivering any Goods, the Contractor shall, at its own cost, conduct tests to ensure that the Goods comply with the requirements of this Agreement and supply to the Principal certificates of the results of such testing.
- .2 Where the Goods fail to satisfy any tests referred to in clause 5.3.1, the Principal shall be entitled to reject the Goods and they shall be deemed not to have been Delivered in accordance with the provisions of clause 5.4.
- .3 Any review, inspection, examination or witnessing of testing of the Goods or their results by the Principal's Authorised Representative does not relieve the Contractor of its responsibilities under this Agreement.

.4 Packaging and Delivery

- .1 The Goods shall be packed and transported in such a manner as to reach the Delivery Location undamaged and in good condition. Unless otherwise stated, all packaging, carriage and services necessary to achieve Delivery shall be included in the Fees. The Contractor shall send with each consignment of Goods such documentation as required by the Principal.

- .2 The Contractor must, at its cost and risk, undertake all activities necessary to Deliver the Goods to the Delivery Location including unloading the Goods at the Delivery Location in accordance with all Laws and the requirements of this Agreement.

.5 Audit

- .1 The Contractor must, at its cost:
 - .1 have a quality system that is approved by the Principal, and that is audited by an accredited third party and which must be kept up to date; and
 - .2 permit the Principal or its representatives access to the Contractor's premises or the Site on 1 Business Days' notice to inspect the Site, the Goods, the Services, conduct quality tests and audit the Contractor's compliance with clause 5.5.1.1,and the Contractor must provide all reasonable assistance that may be required in relation to this clause.
- .2 Without limiting the Principal's rights under this Agreement, if requested by the Principal, the Contractor must use its best endeavours to implement any reasonable improvements or modifications to the Site, the Goods, the Services or any of its procurement, manufacturing, packaging or supply systems arising out of the testing, auditing or inspection under clause 5.5.1 within a timeframe required by the Principal, acting reasonably.

.6 Rejection of non-conforming Goods

The Principal may reject any Goods that are supplied in a damaged condition, are defective or that do not meet the requirements of this Agreement. If the Principal does so, the Contractor must promptly:

- .1 without further cost to the Principal replace the rejected Goods with Goods conforming to this Agreement;
- .2 refund or credit to the Principal all money paid or payable by the Principal to the Contractor in relation to the rejected Goods; or
- .3 at the Contractor's expense repair the Goods on site or otherwise to the satisfaction of the Principal,

as the Principal directs and, in the case of clauses 5.6.1 or 5.6.2, remove the rejected Goods at the Contractor's expense.

.7 Return of Goods

The Principal may at any time return any unused Goods to the Contractor. If the Principal does so:

- .1 the Principal must pay all costs of re-packaging and returning those Goods; and
- .2 on receipt of those Goods, the Contractor must refund or credit to the Principal all money paid or payable by the Principal to the Contractor for those Goods.

.8 Warranty Period (Goods only)

- .1 The Contractor must, at its own cost (including all incidental costs such as removal and replacement), repair, replace or otherwise make good any defects in the Goods arising before or during the Warranty Period, including any defect notified to the Contractor by the Principal.
- .2 The obligation to repair, replace or otherwise make good defects in clause 5.8.1 above includes an obligation to repair, replace or otherwise make good any damage caused by the defect in the Goods.
- .3 If, during the Warranty Period, any defect is identified:

- .1 the Contractor must provide a written proposal to the Principal's Authorised Representative within 5 Business Days of being notified of the defect by the Principal. The written proposal must set out the actions that the Contractor proposes to take to repair, replace or otherwise make good the defect;
- .2 before commencing the repair, replacement or making good work, the timing of the repair, replacement or making good work must be agreed with the Principal, or failing agreement, must be reasonably specified by the Principal; and
- .3 the repair, replacement or making good to be carried out by the Contractor under clause 5.8.1 must be agreed with the Principal, or failing agreement must be specified by the Principal acting reasonably.
- .4 If the Contractor fails to repair, replace or make good the defect within the time agreed or specified by the Principal under clause 5.8.3, the Principal may repair, replace or make good the defect or engage another party to do so at the Contractor's risk and expense and the Principal's costs of doing so will be a debt due from the Contractor to the Principal.
- .5 A new Warranty Period of the same duration as the original Warranty Period set out in the Contract Details commences from the date the repair, replacement or making good is completed, but only in respect of that part of the Goods repaired, replaced or made good.

.9 Latent Defects

- .1 The Principal may reject the Goods for any non-conformity with this Agreement if that non-conformity could not have been discovered by reasonable inspection prior to the expiry of the Warranty Period.
- .2 The Contractor must, at its own cost (including all incidental costs such as removal and replacement), repair, replace or otherwise make good any defects in the Goods rejected under clause 5.9.1. The Principal may specify the time by which such repair, replacement or making good is to be complete.
- .3 If the Contractor fails to repair, replace or make good the defect within the time specified by the Principal under clause 5.9.2, the Principal may repair, replace or make good the defect or engage another party to do so at the Contractor's risk and expense and the Principal's costs of doing so will be a debt due from the Contractor to the Principal.

.10 Substitution of Goods

- .1 The Goods:
 - .1 must not be substituted for other goods, whether similar or not; and
 - .2 must not be subject to a change in manufacturing method from that used at the Commencement Date.
- .2 If, after a period of 6 months from the Commencement Date, the Contractor requires a change in its manufacturing method to produce the Goods, or can no longer provide the Goods in accordance with the Specification or any other requirement of this Agreement, but can provide similar goods, the Contractor must give notice to the Principal requesting the Principal's consent to change its manufacturing method or type of goods provided.
- .3 If the Contractor gives notice to the Principal pursuant to clause 5.10.2, the Contractor must request a change form from the Principal and return it completed to the Principal's Authorised Representative along with the following documentation
 - .1 five (5) samples of each of the goods it wishes to substitute the Goods with full details as to why the request is being made;

- .2 full details, specifications and supporting documentation of the proposed manufacture method and substitute goods and place of manufacture; and
 - .3 a declaration that the proposed substitute goods are of the same quality and fit for the purpose for which Goods of the same kind are commonly supplied or bought and for any other purpose that the Principal has specified to the Contractor.
 - .4 If the Principal receives a request in accordance with clause 5.10.3, it will test and review the proposed substitute goods, and will give notice to the Contractor within 30 days after receiving the Contractor's request, whether it approves or rejects the Contractor's request. For the avoidance of doubt, the Principal's decision is final and the Principal may make this decision in its absolute discretion. The Contractor must pay all costs incurred by the Principal in reviewing the Contractor's proposal contemplated in this clause 5.9.
 - .5 This clause 5.9 does not operate as a waiver of the Contractor's obligation to comply with the remaining provisions of this Agreement.
- .11 **Title and Risk in Goods**
- .1 The Principal acquires title to the Goods or any part thereof when the Principal pays the Contractor for the Goods.
 - .2 Notwithstanding the passing of title to the Principal in accordance with 5.11.1, the Contractor is responsible for, and bears the risk of, loss of or damage to the Goods until the Date of Delivery.
 - .3 If loss or damage occurs to all or any part of the Goods while they are the Contractor's responsibility, then the Contractor must promptly rectify that loss or damage at its own cost.
 - .4 The Principal is not taken to have accepted Goods as complying with the terms of this Agreement merely as a result of their having been Delivered to or received by the Principal.
 - .5 If Goods are delivered to the Principal but the Principal later rejects them, or returns the Goods under warranty:
 - .1 risk passes back to the Contractor when the Principal delivers the Goods to the Contractor, or the Contractor collects the Goods from the Principal; and
 - .2 title in those Goods passes back to the Contractor when the Contractor reimburses the Principal for those Goods or title in replacement Goods passes to the Principal.
 - .6 The Contractor warrants that when risk or title in Goods passes to the Principal, the Goods will be free of any registered or unregistered security interest, charge, lien, mortgage, encumbrance or other adverse interest.
 - .7 The Contractor agrees that, in the event of non-payment for any Goods by the Principal, the Contractor's only remedy is an action to recover the Fees for those Goods.

6 Variations

- .1 The Contractor may by written Notice to the Principal request a variation to the Services. If the Principal in its absolute discretion agrees with the Contractor's proposal, the Principal will issue a variation Notice to the Contractor in accordance with clause 6.2 and the remaining provisions of this clause will apply. The Contractor must not vary the Goods other than as directed in a Notice to Proceed.

- .2 The Principal's Authorised Representative may issue to the Contractor a written Notice (**Variation Notice**) to alter, amend, omit, add to or otherwise vary the Goods or the Services but only in relation to goods, services or maintenance that are the same as or similar to the Goods or Services.
- .3 Within 7 days of receipt of a Variation Notice by the Contractor's Authorised Representative, and before the Contractor carries out the variation, the Contractor must give the Principal a detailed breakdown of:
 - .1 the work required or no longer required;
 - .2 any adjustment to the relevant Date for Delivery or Date for Completion (as applicable); and
 - .3 any proposed increase or decrease in the Fees as a result of the variation,and the Principal will determine the extent of the variation, including any change to the Fees and the relevant Date for Delivery or the Date for Completion (as applicable), within a reasonable time after receiving the Contractor's breakdown of the variation.
- .4 In determining any change to the Fees, the Principal will:
 - .1 agree the change with the Contractor; or
 - .2 determine the change in accordance with any applicable rate or price set out in the Agreement; or
 - .3 in the absence of agreement or any applicable rate, determine the change acting reasonably on the basis of any applicable rates and prices set out in the Agreement or, if that is not practicable, on such other fair and reasonable valuation as the Principal may determine.
- .5 If the Principal requires the Contractor to carry out a proposed variation, it will issue a notice to proceed (**Notice to Proceed**) within 7 days of receipt of the Contractor's Notice given under clause 6.3. The Principal's Notice to Proceed will contain details of the work to be carried out, the change to the Fees (if any) and the change to any Date for Delivery or Date for Completion (as applicable). A Notice to Proceed may be issued by the Principal whether or not the Principal has issued a Variation Notice in respect of that variation.
- .6 Any variation made necessary due to any act, omission or default of the Contractor in the performance of its obligations under this Agreement will not entitle the Contractor to any payment or to an increase in the Fees.
- .7 A variation may involve the omission of any part or parts of the Services or Goods, and the Contractor agrees that any one or more omission will not constitute a basis to allege that the Principal has repudiated this Agreement notwithstanding the extent or timing of the omission.
- .8 The Principal may engage others to perform any part of the Services or provide any part of the Goods under a Notice to Proceed that the Contractor does not perform.

7 Time for Completion, Delivery and Extensions of Time

- .1 **Completion**
 - .1 The Contractor must:
 - .1 deliver the Goods by the Date for Delivery; or
 - .2 achieve Completion of the Services by the Date for Completion of Services.

.2 Delays

- .1 The Contractor must use all reasonable endeavours to avoid delays to the delivery of the Goods and completion of the Services.
- .2 The Contractor must promptly inform the Principal of any anticipated or actual delays to the delivery of the Goods or the completion of the Services and must:
 - .1 use reasonable endeavours to minimise those delays; and
 - .2 keep the Principal informed of any delay.

.3 Extensions of Time

The Contractor is entitled to an extension of time if, and only if:

- .1 within 7 days of the occurrence of the event that may cause:
 - .1 Delivery of the Goods to be delayed beyond the Date for Delivery; or
 - .2 Completion of the Services to be delayed beyond the Date for Completion of Services,(as applicable),

the Contractor gives the Principal a notice setting out full details of the cause of the delay, together with supporting documents, and stating a reasonable period by which the Contractor believes the Date for Delivery or the Date for Completion of Services (as applicable) will be delayed;
- .2 within 10 Business Days after the cessation of the relevant cause of delay, the Contractor give to the Principal's Authorised Representative a written extension of time claim (including details of the matters referred to in clause 7.3.4) stating a reasonable period by which the Contractor believes the Date for Delivery or the Date for Completion of Services (as applicable) should be extended;
- .3 the delay is caused by:
 - .1 an act, omission or breach by the Principal or the Principal's Personnel (other than an act or omission permitted by this Agreement);
 - .2 a Variation, except to the extent that the variation is caused directly or indirectly by an act or omission of the Contractor; or
 - .3 a Force Majeure Event;
- .4 the Principal's Authorised Representative, acting reasonably, is satisfied of the following:
 - .1 the event will delay:
 - .1 Delivery of the Goods by the Date for Delivery; or
 - .2 Completion of the Services by the Date for Completion of Services,(as applicable),
 - .2 the delay is not caused by the Contractor's failure to fulfil its obligations under the Agreement; and
 - .3 the Contractor has taken all reasonable steps to minimise and overcome the delay.

.4 Determination

- .1 As soon as practicable after receipt of the Notice in clause 7.2.2, the Principal will notify the Contractor as to the reasonable period, if any, by which the Date for Delivery or Date for Completion of Services (as applicable) will be extended.

- .2 It is a condition precedent to the Contractor's entitlement to an extension of time under clause 7.3 that the Contractor submitted the Notices strictly within the times and as required under clause 7.3.1 and 7.3.2.
 - .3 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 an event which entitles the Contractor to an extension of time, then to the extent that the delays are concurrent, the Contractor is not entitled to an extension of time.
 - .4 No principle of Law which might otherwise cause the Date for Delivery or the Date for Completion of the Services to be set at large and render liquidated damages unenforceable (including those which might otherwise entitle the Contractor to relief such as the 'prevention principle'), applies in connection with this Agreement. No delay by the Principal in granting an extension of time, or failure by the Principal to grant a reasonable extension of time, will cause the Date for Delivery or the Date for Completion of Services (as applicable) to be set at large.
 - .5 Despite any other provisions of this clause 7, the Principal may, in its absolute discretion and at any time extend a Date for Delivery or Date for Completion of Services (as applicable). The Principal is not required to exercise this discretion for the Contractor's benefit.
- .5 **Delay Costs**
- .1 The Contractor bears risk of additional costs arising as a result of delays, including those delays which entitle it to an extension of time, and shall have no claim against the Principal for delay costs, prolongation costs or any like claim whatsoever.
- .6 **Suspension**
- .1 The Principal may suspend performance of the Contractor's obligations by Notice to the Contractor.
 - .2 When the Contractor receives a Notice requiring suspension in accordance with clause 7.6.1, the Contractor must suspend performance of the relevant obligations until the Principal directs the Contractor to resume performance of those obligations by Notice.
 - .3 The Contractor must recommence performance of the suspended obligations on receipt of a Notice by the Principal requesting the Contractor to do so.
 - .4 The Contractor must take all reasonable steps to mitigate the costs of any suspension to the Principal.

8 Fees, invoices and payment

- .1 **Fees**
- .1 In consideration for the Contractor supplying the Goods and performing the Services under this Agreement, the Principal will pay to the Contractor the Fees.
 - .2 Payments made by the Principal are on account only and are not:
 - .1 evidence of the value of work or that the work has been satisfactorily carried out in accordance with this Agreement;
 - .2 an admission of liability on the part of the Principal; and
 - .3 approval by the Principal of the Contractor's performance or compliance with this Agreement.
- .2 **Invoices**
- .1 The Principal is not obliged to pay any invoice that does not comply with the requirements in this clause 8.2.

- .2 Unless otherwise specified in the Contract Details, the Fees payable for the Goods and Services will be calculated in accordance with Schedule 1.
 - .3 On the dates set out in the Contract Details, the Contractor must issue an invoice to the Principal in accordance with the requirements of this clause 8.2. Each invoice must be a Tax Invoice.
 - .4 The Contractor must ensure that each Tax Invoice and all correspondence pertaining to the Goods and Services clearly sets out:
 - .1 the Principal's full legal name and ABN;
 - .2 a description of the Goods supplied or Services performed (as applicable), the Fees and any Reimbursable Expenses (if applicable);
 - .3 any KPI Performance Payment payable to the Contractor or to the Principal; and
 - .4 documentary evidence to the Principal's reasonable satisfaction either:
 - .1 demonstrating that all money owed to the Contractor's Personnel in respect of the Goods and Services has been paid; or
 - .2 setting out the amount still payable to the Personnel; and
 - .3 any other information that the Principal reasonably requires from time to time to identify the Goods and Services that are being claimed for.
 - .5 The Contractor must ensure that all Reimbursable Expenses are submitted with supporting documents and are invoiced as a direct pass-through without any added margin, mark-up overhead or administrative charge.
 - .6 Each Tax Invoice must be accompanied by a duly executed statutory declaration in the form of Schedule 2.
 - .7 The Principal must pay the amount on the Tax Invoice, to the extent that the amount claimed is payable to the Contractor, at the time stated in the Contract Details.
 - .8 The Principal may at any time up to 12 months after it pays an invoice conduct an audit of the basis of the invoice using the Contractor's records. The Contractor must make available to the Principal all relevant access, records and documentation to facilitate this audit.
 - .9 In submitting a Tax Invoice to the Principal, the Contractor represents and warrants to the Principal that the Contractor has paid all amounts then due and payable to its Personnel who have been engaged in connection with the relevant Goods and Services.
 - .10 The Contractor must provide the Principal with Notice of any claim by a subcontractor under legislation regarding the security of payments in the building and construction industry and must indemnify the Principal for any losses incurred by the Principal as a result of such claims or suspension by a subcontractor under the Act.
- .3 **Disputed Invoices**
- .1 If the Principal disputes all or any part of a Tax Invoice:
 - .1 the Principal may withhold payment of the disputed amount and must notify the Contractor of the disputed amount;
 - .2 the Principal and the Contractor must negotiate to settle the dispute promptly;
 - .3 the Principal must pay to the Contractor the undisputed amount of a Tax Invoice issued in accordance with this Agreement; and

- .4 the Contractor must not suspend its performance of any of its obligations under this Agreement as a result of the dispute.
- .2 If the Principal is required by any Law to issue a notice of withholding within a particular timeframe, the Principal shall issue such notice within the time required by that Law.
- .3 The Principal may withhold, retain or set off from any payment due to the Contractor under this Agreement amounts that the Principal, acting reasonably and in good faith, considers necessary to protect the Principal against any costs, charges, expenses and Damages for which the Contractor may be liable to the Principal under or in connection with this Agreement. This right to withhold, retain or set off does not limit the Principal's right to recover those amounts in any other way.

9 Intellectual Property Rights

- .1 The Principal owns all Intellectual Property Rights in any output produced or developed by the Contractor in the performance of the Services or the supply of the Goods (but not including the design of the Goods), either alone or in conjunction with the Principal or any third party.
- .2 The Contractor must:
 - .1 disclose to the Principal all Intellectual Property Rights arising out of or in connection with the performance of the Services or the supply of the Goods;
 - .2 obtain all Intellectual Property Rights including copyright, patents, registered designs, trademarks, moral rights and other protected rights necessary to perform the Services and supply the Goods;
 - .3 assign all Intellectual Property Rights referred to in clause 9.2.1 to the Principal from the date of their creation and do anything necessary to ensure those Intellectual Property Rights vest in the Principal, including by assigning the rights to modify, amend or replace any Document to ensure that it does not infringe the Intellectual Property Rights claimed by any other person; and
 - .4 if this Agreement is terminated before completion of the Services or the delivery of the Goods, grant an irrevocable, non-exclusive, royalty free, perpetual licence to the Principal to use, reproduce and copy any prior existing work referred to in clauses 9.2.2 and 9.2.3 for any purpose related to the Principal's business.
- .3 The Principal does not own:
 - .1 Intellectual Property Rights in the Contractor's methodologies, the Goods or other proprietary information in existence at or before the date of this Agreement; or
 - .2 copyright in existing publications or other work produced by or on behalf of the Contractor before or otherwise than in the course of providing the Services or supplying the Goods.
- .4 To the extent that the Principal needs to use any of the Intellectual Property Rights referred to in clause 9.3.1 or 9.3.2, then the Contractor must grant an irrevocable, non-exclusive, royalty-free, perpetual licence to the Principal to use, reproduce and copy the prior existing work referred to in clauses 9.3.1 and 9.3.2 and for any purpose related to the Principal's business.
- .5 The Contractor must ensure that, in performing the Services or supplying the Goods, it does not infringe the Intellectual Property Rights of any person.
- .6 The Contractor acknowledges that:

- .1 the Principal and any of the Principal's licensees, successors in title and persons authorised by the Principal may use, adapt, change, relocate, demolish or destroy the whole or any part of any output referred to in clause 9 in any way (including any way which could otherwise be a breach of the moral rights of the creators of that output); and
- .2 the Principal and the Principal's licensees, successors in title and authorised persons do not have to include any attribution of the Contractor or the individual creator of any output referred to in clause 9.
- .7 The Contractor warrants that it has obtained the necessary consents including, but not limited to, consents from its employees and any subcontractors, to give effect to the acknowledgement in clause 9.5 and otherwise under this Agreement.

10 Insurance

- .1 The Contractor must obtain and maintain the insurance policies in the amount(s) specified in the Contract Details and all other insurances required by law.
- .2 The Contractor must ensure that any subcontractor engaged by the Contractor effects and maintains insurance policies on terms similar to those applicable to the Contractor's policy under this Agreement, or that the Contractor's insurance policy is endorsed to include the subcontractor, and in either case on terms satisfactory to the Principal.
- .3 The Contractor's insurance policies held for the purposes of this Agreement must be with a reputable insurer.
- .4 Upon the Principal's request, the Contractor must promptly provide the Principal with certificates of currency for the Contractor's insurance policies required under this Agreement including details of the scope of coverage and any exclusions to the Contractor's insurance policies.
- .5 The Contractor must maintain the professional indemnity insurance policy referred to in the Contract Details for at least 6 years after the later of the completion of the last work under this Agreement and the termination of this Agreement.
- .6 The Contractor must promptly give Notice to the Principal if the Contractor receives, or it becomes aware that a subcontractor has received, a notice of cancellation or any other notice in relation to a policy of insurance it is required to hold under this Agreement.
- .7 The Contractor must, as soon as practicable, give Notice to the Principal of the occurrence of any event in connection with the Goods or Services that may give rise to a claim under any policy of insurance it or its subcontractors are required to hold under this Agreement. The Contractor must keep the Principal informed of all subsequent actions and developments concerning the claim.
- .8 The Principal may take out and maintain any policy of insurance required by this clause 10 if the Contractor fails to do so.
- .9 The Contractor agrees to reimburse the Principal for any expenses the Principal incurs in taking out and maintaining any policy of insurance taken out by the Principal under clause 10.8.

11 Indemnity

- .1 The Contractor indemnifies the Principal against any and all Damages suffered or incurred by the Principal or any of their Personnel arising from or in any way related to:

- .1 a breach of this Agreement by the Contractor;
- .2 a negligent act or omission or wilful misconduct of the Contractor, any of its Related Companies or any of their respective Personnel in connection with this Agreement;
- .3 a claim, demand, suit, action or proceeding by a third party arising from an act or omission of the Contractor, any of its Related Companies or any of their respective Personnel in connection with this Agreement, whether negligent or not;
- .4 any claim made against the Principal by any of the Contractor's or any of its Related Companies' Personnel under any Law concerning income tax, workers compensation, annual leave, long service leave, superannuation or any applicable award, determination or agreement of a competent industrial tribunal;
- .5 any penalty imposed for breach of an applicable Law in connection with the performance of the Services or the supply of the Goods;
- .6 any liens or charges registered which are registered or notified as a consequence of the Contractor's failure to pay, or delay in making payments to, any of the Contractor's Personnel;
- .7 a claim, demand, suit, action or proceeding by a third party alleging that any aspect of the Goods or the Services, or their use adaptation, change, relocation, demolition, destruction or non-attribution by or for the Principal, infringes the Intellectual Property Rights of any person; or
- .8 any act or omission of the Contractor, any of its Related Companies or any of their respective Personnel in connection with this Agreement resulting in or contributing to:
 - .1 claims by any third party against the Principal in respect of personal injury or death; or
 - .2 loss of or damage to physical property.
- .2 The Contractor's liability under this clause will be reduced to the extent the Damages were caused by the Principal's or the Principal's Personnel's negligence, breach of contract or wilful misconduct.
- .3 Each indemnity in this Agreement is a continuing obligation separate and independent from the Contractor's other obligations, and each indemnity survives termination of this Agreement.
- .4 It is not necessary for the Principal or their respective Personnel to incur expense or make payment before enforcing a right of indemnity conferred by this Agreement.

12 Limitation of Liability

.1 Limited Liability of the Principal

Subject to clause 12.4, the Principal's liability to the Contractor for any act, matter or thing done, omitted or purported to be done in connection with this Agreement or its termination is limited to payment of amounts due and owing from time to time by the Principal to the Contractor under the Agreement.

.2 Exclusion of Consequential Loss

Subject to clause 12.4, neither party will be liable to the other party for any Consequential Loss.

.3 Liability Cap

Subject to clause 12.4, the Contractor limits its liability for Damages under this Agreement to the amount stated in the Contract Details.

.4 Exceptions

- .1 The exclusions and limitations of liability in clauses 12.1, 12.2 and 12.3 do not apply to:
 - .1 the Contractor's liability for fraud, wilful misconduct, breach of confidence, infringement of Intellectual Property Rights, loss of or damage to physical property, personal injury or death;
 - .2 the Contractor's liability for Liquidated Damages pursuant to clause 14 of this Agreement;
 - .3 any event or liability which is covered by an insurance policy required under this Agreement; or
 - .4 any event or liability which would have been covered by an insurance policy required under this Agreement but for:
 - .1 the Contractor failing to take out and maintain the insurances required by clause 10;
 - .2 the Contractor vitiating or prejudicing any insurance policy;
 - .3 the Contractor failing to make a claim under an insurance policy; or
 - .4 the exclusion of liability for Consequential Loss in clause 12.2.

13 Notices

Any Notice:

- .1 must be in writing and signed by the sender or a person properly authorised by the sender and in the case of notices sent by email, the notice must be in PDF format and sent as an attachment;
- .2 must be addressed and delivered to the intended recipient at the address in the Contract Details or the address last notified by the intended recipient to the sender after the date of this Agreement; and
- .3 is taken to be received:
 - .1 in the case of hand delivery, upon delivery;
 - .2 in the case of a posted letter, on the fifth day after posting; and
 - .3 in the case of an email, on production of a 'sent' item (or similar) which indicates that the email was sent in its entirety to the email address of the recipient.

14 Liquidated Damages

- .1 If the Contractor fails to:
 - .1 Deliver the Goods on or before the Date for Delivery; or
 - .2 achieve Completion of the Services by the Date for Completion of Services,the Contractor must pay to the Principal liquidated damages at the Liquidated Damages Rate for each day after the Date for Delivery or the Date for Completion of Services (as applicable) until the earlier of:
 - .3 the Date of Delivery or the Date of Completion of Services; or
 - .4 the date that this Agreement or the applicable Purchase Order is terminated, as the case may be.
- .2 The liquidated damages payable by the Contractor to the Principal pursuant to clause 14.1 are a debt due and payable immediately by the Contractor.

- .3 The parties agree that the liquidated damages at the rate stated in the Contract Details constitute a fair and reasonable pre-estimate of the loss that will be suffered by the Principal if the Contractor fails to:
 - .1 Deliver the Goods on or before the Date for Delivery; or
 - .2 achieve Completion of the Services by the Date for Completion of Services,(as applicable) and that the Contractor will not raise, by way of defence or claim in relation to the Principal's right to deduct liquidated damages, any argument that the amount of liquidated damages is a penalty or otherwise unenforceable.
- .4 If the Principal's entitlement to, and the Contractor's liability for, liquidated damages under clause 14.1 is or becomes void, voidable or unenforceable for any reason or there is no amount specified in the Contract Details, the Principal will be entitled to recover from the Contractor the costs, losses, damages and liabilities incurred or suffered by the Principal arising out of or in connection with the Contractor's failure to:
 - .1 Deliver the Goods on or before the Date for Delivery; or
 - .2 achieve Completion of the Services by the Date for Completion of Services.

15 Relationship of Parties

- .1 **Principal and Contractor**
 - .1 No party is authorised to bind or to make representations on behalf of the other party, or to pledge its credit.
 - .2 Nothing in this Agreement is to be interpreted as creating an employment, agency, partnership or joint venture relationship between any parties.
 - .3 If the Contractor enters into this Agreement as trustee of any trust then the Contractor does so both in its own right and as trustee of the relevant trust and represents and warrants to the Principal that it has the power under the trust's constituent documents to enter into this Agreement and that entering into this Agreement is for the benefit of all the beneficiaries of the trust.
- .2 **Subcontracting by Contractor**
 - .1 The Contractor must not without the Principal's prior written consent (which will not be unreasonably withheld or delayed), subcontract to a third party any of its obligations under this Agreement.
 - .2 The Contractor:
 - .1 must ensure that any subcontractor is bound by obligations set out in this Agreement that relate to:
 - .1 security, health, safety and the environment;
 - .2 payment of money owed; and
 - .3 confidentiality;
 - .2 is not, as a result of any subcontracting arrangement, relieved from the performance of any obligation under this Agreement;
 - .3 is liable for all acts and omissions of a Contractor's subcontractor as though they were the actions of the Contractor itself; and
 - .4 must ensure that its subcontractors effect insurances that are appropriate having regard to the nature of, and risks inherent in, the Goods and Services being subcontracted.

16 Confidential Information and Privacy

.1 Confidential Information

Each party (a **Recipient**):

- .1 may use Confidential Information of the other party solely for the purposes of this Agreement;
- .2 except as permitted under clause 16.1.3, must keep confidential all Confidential Information of the other party; and
- .3 may disclose Confidential Information of the other party only:
 - .1 to persons who have a need to know (including the party's Related Companies), provided that those persons are subject to a legally binding obligation to keep confidential the Confidential Information and only to the extent that each has a need to know; or
 - .2 as required by Law or stock exchange regulation.

.2 Privacy

Each party must comply with the:

- .1 reasonable directions of the other party in relation to the handling of any personal information; and
- .2 Privacy Act 1988 (Cth).

.3 Survival

This clause 16 survives the termination or expiration of this Agreement.

17 Force Majeure

.1 Force Majeure Event

If a party (**Affected Party**) is prevented, in whole or in part, from carrying out its obligations under this Agreement other than an obligation to pay money ("**Affected Obligations**") as a result of a Force Majeure Event:

- .1 the Affected Party must as soon as reasonably practicable give a Notice to the other party advising them of that fact and providing details of the nature of the event and its anticipated duration;
- .2 the Affected Party must take all reasonable steps to mitigate the impact of the Force Majeure Event on the Affected Obligations. This clause 17.1.2 does not require a party to settle an industrial dispute on terms not acceptable to it; and
- .3 unless this Agreement is terminated, the Affected Party must resume performance of the Affected Obligations as soon as possible after the Force Majeure Event abates sufficiently to permit a resumption of performance.

.2 Termination in a Force Majeure Event

If a Force Majeure Event that prevents in whole or in part the performance of a party's obligations under this Agreement continues for a period of 60 days, either party may by notice to the other party terminate this Agreement without liability for breach of contract but without prejudice to any rights accrued at the date of termination.

.3 Affected Obligations Suspended

The obligations of the Affected Party are suspended, to the extent that they are affected by the Force Majeure Event, from the date the affected party gives the written notice under clause 17.1.1 until cessation of the Force Majeure Event.

18 Termination by the Principal

.1 Immediate Termination

- .1 The Principal may immediately terminate all or any part of this Agreement by giving notice to the Contractor:
 - .1 if the Contractor becomes insolvent (or any like event);
 - .2 if the Contractor breaches any of its material obligations under this Agreement;
 - .3 if the Contractor or any of its Personnel engage in conduct which constitutes serious misconduct, wilful neglect or incompetence, which includes, without limitation, breach of any Laws or obligations in relation to WHS;
 - .4 abandons or refuses to proceed with the supply of the Goods or the performance of the Services;
 - .5 if the Contractor's liability reaches the Liquidated Damages liability cap provided for under clause 14; or
 - .6 if the Contractor's liability reaches the amount of the total aggregate liability cap provided for under clause 12.3.
- .2 If the Principal terminates this Agreement under this clause 18.1 or clause 18.2, then the Principal may withhold, retain or set off any amounts that it reasonably considers it will incur to complete the supply of the Goods or the performance of the Services.

.2 Contractor Event of Default

- .1 Without prejudice to the Principal's rights under clause 18.1, if the Contractor commits a breach of this Agreement, the Principal may give the Contractor a Notice (**Contractor Default Notice**) which:
 - .1 states that it is a Contractor Default Notice;
 - .2 details the alleged breach; and
 - .3 requires the Contractor to remedy the breach.
- .2 On giving a Contractor Default Notice to the Contractor under clause 18.2.1, the Principal may suspend payments to the Contractor until the date on which the Contractor remedies the breach to the Principal's reasonable satisfaction.
- .3 If within thirty (30) days after the Contractor has received a Contractor Default Notice from the Principal under clause 18.2.1, the Contractor fails to remedy the breach or, where the breach is not capable of remedy, overcome its effects, the Principal may, by Notice to the Contractor:
 - .1 suspend the whole or any part of the supply of the Goods or the performance of the Services;
 - .2 remove the whole or any part of the supply of the Goods or the performance of the Services from the Contractor and have it performed by a third party; or
 - .3 immediately terminate the Agreement.

.3 Termination for Convenience

- .1 The Principal may terminate this Agreement for convenience by giving 20 days' Notice to the Contractor.
- .2 If for any reason a purported termination or action by the Principal under clause 18.1 is ineffective:
 - .1 the purported termination is not a breach or repudiation of the Agreement; and

.2 the Agreement is deemed to have been terminated under clause 18.3.

.4 Termination by Contractor

The Contractor may terminate this Agreement by giving written Notice to the Principal:

- .1 with immediate effect if the Principal breaches any of its material obligations under this Agreement or becomes insolvent; or
- .2 as otherwise specified in this Agreement.

.5 Accrued Rights and Obligations

- .1 Termination under this clause 18 does not affect the rights or obligations of the parties under this Agreement accrued prior to the date of termination.
- .2 If this Agreement is terminated pursuant to clause 18.1 or clause 18.2, the rights of the Principal will be the same as they would have been at law had the Contractor repudiated this Agreement and the Principal had elected to treat this Agreement as at an end and recover damages.

.6 Contractor's Obligations on Termination

When the Contractor receives a Notice of termination from the Principal, the Contractor must:

- .1 stop work to the extent required by the Notice;
- .2 provide all work in progress to the Principal;
- .3 return, at the Principal's request, Principal Provided Items as well as any data, records or other documents provided by the Principal to the Contractor, or that the Contractor has kept in connection with performance of the Goods or Services;
- .4 take such action as necessary or as the Principal directs, for the transfer, protection and preservation of the Principal Provided Items and all of the Principal's other property; and
- .5 do its best to minimise the cost of termination to the Principal.

19 Dispute Resolution

.1 Notice of dispute

- .1 If a dispute between the parties arises out of, or in any way in connection with, the subject matter of this Contract, then either party may, by hand or by registered post, give the other and the Principal's Representative a written notice of dispute adequately identifying and providing details of the dispute.
- .2 Notwithstanding the existence of a dispute, the parties must, subject to clause 18 and clause 19.13, continue to perform the Contract.

.2 Negotiation

Within 10 Business Days after receiving a notice of dispute, representatives from the senior management of the parties set out in Item 27 of Schedule 1 must undertake genuine negotiations with a view to resolving the dispute.

.3 Expert determination

If the dispute has not been resolved, within 20 Business Days of service of the notice of dispute, either party may refer the dispute to expert determination in accordance with clauses 19.4 to 19.11.

.4 The expert

The expert determination is to be conducted by an independent industry expert:

- .1 agreed by the parties; or
- .2 failing agreement within 10 Business Days of the referral, as nominated by the Principal (acting reasonably, which expert must be suitably qualified and experienced in light of the nature of the dispute in question).

.5 Not arbitration

An expert determination conducted under this clause 19 is not arbitration and the expert is not an arbitrator. The expert may reach a decision from his or her own knowledge and expertise.

.6 Procedure for determination

The expert will:

- .1 act as an expert and not as an arbitrator;
- .2 proceed in any manner he or she thinks fit but must observe the rules of natural justice;
- .3 conduct any investigation which he or she considers necessary to resolve the dispute;
- .4 examine such documents, and interview such persons, as he or she may require; and
- .5 make such directions for the conduct of the expert determination as he or she considers necessary.

.7 Disclosure of interest

The expert must:

- .1 disclose to the parties any interest he or she has in the outcome of the expert determination; and
- .2 not communicate with one party to the expert determination without the knowledge of the other.

.8 Costs

Each party will:

- .1 bear its own costs in respect of any expert determination; and
- .2 unless determined otherwise by the expert, pay one-half of the expert's costs.

.9 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 19 within 20 Business Days from the acceptance by the expert of his or her appointment.

.10 Liability of expert

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. The parties must enter into an agreement with the appointed expert on the terms set out in Schedule 3 or such other terms as the parties and the expert may agree.

.11 Determination of expert

The determination of the expert:

- .1 must be in writing;
- .2 will be:

- .1 substituted for the relevant direction of the Principal's Representative (where applicable); and
- .2 final and binding,

unless:

- .3 the amount determined by the expert exceeds the amount in Item 28 of Contract Details; and
 - .4 a party gives notice of appeal to the other party within 15 Business Days of the determination; and
- .3 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 subclauses.

.12 Litigation

If a notice of appeal is given under clause 19.11.2.4 then either party may commence proceedings in relation to the dispute.

.13 Summary relief

Nothing herein will prejudice the right of a party to institute proceedings to seek injunctive or urgent declaratory relief.

20 General

.1 Costs

Each party must bear its own costs arising out of the negotiation, preparation and execution of this Agreement.

.2 GST

- .1 A reference in this clause to a term defined or used in A New Tax System (Goods and Services Tax) Act 1999 is, unless the context indicates otherwise, a reference to that term as defined or used in the GST Act.
- .2 Any amount referred to in this Agreement which is relevant in determining a payment to be made by one of the parties to the other is exclusive of any GST unless indicated otherwise.
- .3 If GST is imposed on a supply made under or in connection with this Agreement, the consideration provided for that supply is increased by the rate at which that GST is imposed. The additional consideration is payable at the same time as the consideration to which it relates.
- .4 Invoices issued by the Contractor to the Principal under this Agreement must be Tax Invoices compliant with the GST Act.
- .5 If one of the parties is entitled to be reimbursed for an expense or outgoing incurred in connection with this Agreement, the amount of the reimbursement will be net of any input tax credit which may be claimed by the party being reimbursed in relation to that expense or outgoing.
- .6 Both parties represent and warrant to each other that they are registered for GST when they entered into this Agreement and that they will notify the other party immediately if they cease to be registered for GST or cease to satisfy the requirements of GSTR 2000/10 or as otherwise determined by the Commissioner of Taxation from time to time.

.3 Withholding Taxes

- .1 The Principal may withhold from a payment to be made to the Contractor under this Agreement any amount which, in its opinion, the Principal is required to withhold in respect of the Contractor's potential taxation liabilities or as required by Law. The withholding and payment to the

relevant lawful authority discharges the Principal's obligation to pay the withheld amount to the Contractor.

- .2 If the Principal pays an amount to the Contractor without withholding an amount, or a sufficient amount, in respect of the Contractor's potential taxation liabilities which the law requires the Principal to withhold, then (except in the case of the Principal's wilful default) the Contractor indemnifies the Principal against any loss, damage, claim, action or expense (including legal expense) which the Principal suffers as a result.

.4 Entire Agreement & Priority

- .1 This Agreement:

- .1 contains the entire agreement between the parties with respect to its subject matter as at the date of this Agreement;
- .2 sets out the only conduct relied on by the parties; and
- .3 supersedes all earlier conduct and prior agreements and understandings between the parties in connection with its subject matter.

- .2 No pre-printed terms on any confirmation, shipment or delivery docket, invoice or other document issued by or on behalf of the Contractor will vary or form part of this Agreement.

.5 Amendment

This Agreement may be amended only by an agreement in writing executed by both parties.

.6 Assignment

- .1 The rights and obligations of the Contractor under this Agreement are personal and must not be assigned, transferred, encumbered or otherwise dealt with, without the prior written consent of the Principal which will not be unreasonably withheld or delayed.
- .2 The Principal may assign or novate any or all of its rights and obligations under this Agreement without obtaining the Contractor's prior written consent, and the Contractor must promptly execute any documents reasonably required by the Principal to give effect to that assignment or novation.

.7 Severability

Any provision of this Agreement that is prohibited or unenforceable in any jurisdiction is ineffective in, and will be severed from this Agreement in relation to, that jurisdiction to the extent of the prohibition or unenforceability. That will not invalidate the remaining provisions of this Agreement nor affect the validity or enforceability of that provision in any other jurisdiction.

.8 Waiver

The failure, delay, relaxation or indulgence on the part of any party in exercising any power or right given to that party does not operate as a waiver of that power or right, nor does any single exercise of the power or right preclude any other exercise of it or the exercise of any other power or right of that party. A power or right may only be waived in writing, signed by the party to be bound by the waiver.

.9 Continuing Performance

- .1 The obligations contained in this Agreement continue until satisfied in full and do not merge with any action performed or document executed by any party for the purposes of performance of this Agreement.

- .2 Any representation in this Agreement survives the execution of any document for the purposes of, and continues after, performance of this Agreement.
- .3 Any indemnity given by any party under this Agreement:
 - .1 constitutes a liability of that party separate and independent from any other liability of that party under this Agreement or any other agreement; and
 - .2 survives and continues after performance of this Agreement.
- .10 **Further Action**

Each party must do everything (including executing agreements and documents) necessary or reasonably required by any other party to give full effect to this Agreement and the transactions contemplated by it.
- .11 **Other Rights Preserved**

Except as otherwise expressly provided in this Agreement, the rights, powers and remedies under this Agreement are in addition to, and do not exclude or limit, any right, power or remedy provided elsewhere in this Agreement or by law or equity.
- .12 **Governing Law and Jurisdiction**
 - .1 This Agreement is governed by the Laws of the Jurisdiction.
 - .2 The parties submit to the non-exclusive jurisdiction of the courts of Jurisdiction and courts of appeal from them for determining any dispute concerning this Agreement.
 - .3 Without preventing any other mode of service, any document in an action (including any writ of summons or other originating process or any third or other party notice) may be served on a party by being delivered to that party in accordance with clause 13.
- .13 **Counterparts**

This Agreement may be executed in any number of counterparts. All counterparts will be taken to constitute one instrument.
- .14 **Public Statements**
 - .1 The Contractor must not make any public statement about this Agreement unless it has first obtained written consent from the Principal which the Principal may give or withhold in its absolute discretion.
 - .2 For the avoidance of doubt, the Contractor must not issue any information, publication, document or article for publication concerning this Agreement or the supply of Goods or performance of the Services in any media without obtaining the prior written consent of the Principal. The Contractor must refer to the Principal any enquiries from the media concerning this Agreement or any of the Goods or the Services.

21 Interpretation

These rules of interpretation apply unless the context requires otherwise:

- .1 the singular includes the plural, and the converse also applies;
- .2 if a word or phrase is defined, its other grammatical forms have a corresponding meaning;
- .3 a reference to a clause, schedule or annexure is a reference to a clause of or a schedule or annexure to this Agreement;
- .4 a reference to a party to this Agreement includes the party's successors, permitted substitutes and permitted assigns;

- .5 a reference to dollars or currency is to Australian currency unless otherwise indicated;
- .6 the mention of anything after “includes”, “including”, “for example” or similar expressions does not limit what else might be included;
- .7 a reference to time is to the time in the capital city of the Jurisdiction;
- .8 headings are for convenience of reference only and do not affect interpretation; and
- .9 if the day on which any act, matter or thing is to be done under or pursuant to this Agreement is not a Business Day, that act, matter or thing must be done on or by the next Business Day.

22 Definitions

In this Agreement, unless the context requires otherwise, capitalised terms have the meanings set out in the Contract Details or below.

Agreement means the contract formed in the manner, and consisting of the elements, set out in clause 1.2.

Authorised Representative means the person specified in the Contract Details or such other person as the relevant party appoints from time to time.

Business Day means a day that is not a Saturday, Sunday or public holiday in the capital city of the Jurisdiction.

Commencement Date means the date specified in the Contract Details or, if no date is specified, the date on which the Contractor starts to supply Services under this Agreement.

Completion means the stage where the relevant Service is complete, is free from defects and complies with all requirements of this Agreement and **Complete** has a like meaning.

Confidential Information means all information disclosed by a party to the other party which by its nature is confidential or which the recipient ought reasonably be aware is the confidential information of the disclosing party excluding information that is, or during this Agreement becomes, publicly available.

Consequential Loss means loss of use, production, revenue, profit, income, bargain, opportunity or anticipated savings.

Contract Details means the section of this Agreement headed "Contract Details".

Contract Price means the total of all amounts paid or payable by the Principal to the Contractor under this Agreement.

Damages means all liabilities, losses, damages, costs and expenses (including legal costs, on a full indemnity basis), whether arising in contract, tort (including negligence) or otherwise.

Date for Completion of Services has the meaning given in the Contract Details.

Date for Delivery has the meaning given in the Contract Details.

Date of Completion of Services means the date on which the Services achieve Completion as certified by the Principal in accordance with clause 4.4.2.1.

Date of Delivery is the date that the Goods are Delivered in accordance with clause 5.4.

Deliverables means the Deliverables set out in the Contract Details which are required to be provided by the Contractor as part of the Services.

Delivery means that stage in the supply of the Goods when:

- .1 the Contractor has delivered the Goods complying in all respects with the requirements of the Agreement to the Delivery Location; and
- .2 the Goods are free from all defects.

and **Deliver**, **Delivering** and **Delivered** have a corresponding meaning.

Delivery Location has the meaning given in the Contract Details.

Design Obligations means the design obligations (if applicable) set out in the Contract Details.

Documents means documentation of any nature that the Contractor is required to provide to the Principal.

Force Majeure Event means:

- .1 fire, flood, earthquake or act of God;
- .2 riot, civil disorder, rebellion, terrorism or revolution; or
- .3 other similar cause beyond the reasonable control of the non-performing party,
but in each case only if and to the extent that the non-performing party and its Related Companies are without fault in causing the event, and the event, or its effect, could not have been prevented by reasonable precautions.

General Conditions means these terms and conditions.

Goods means the goods set out in the Contract Details or otherwise supplied in connection with the performance of the Services.

Government Approval means any authorisation, consent, approval, licence, ruling, condition, permit, determination, certificate, exemption, filing, order, judgement or publication of any Government Authority.

Government Authority means any governmental, semi-governmental, administrative, fiscal, judicial or quasi-judicial body, government or regulatory department, commission, body, instrumentality, minister, tribunal or court, agency or other authority.

GST means the goods and services tax imposed or to be imposed by the *New Tax System (Goods and Services Tax) Act 1999* (Cth) and the related imposition Acts of the Commonwealth.

Intellectual Property Rights means all intellectual property rights at any time recognised by law, including the following rights:

- .1 patents, copyright, rights in circuit layouts, registered or unregistered designs, trademarks, business names and any right to have confidential information kept confidential;
- .2 any inventions, discoveries, processes, methods, trade secrets, know-how, computer software, Confidential Information and scientific, technical and product information;
- .3 any application or right to apply for registration of any of the rights referred to in paragraphs .1 and .2 above; and
- .4 any other similar or analogous rights and any intellectual or industrial rights, including moral rights, whether now existing or which come into existence in the future.

Jurisdiction means the jurisdiction specified in the Contract Details.

KPI Performance Payment has the meaning given in the Contract Details.

Law means from time to time any statute, regulation, code, standards, award or other subordinate legislation or legislative instrument of the State or the Commonwealth, any rule of common law or equity, and any legally binding or enforceable requirement of a Government Authority.

Notice means any notice, demand, consent or other communication given or made under this Agreement.

Personnel means:

- .1 the officers, employees, contractors and agents of the relevant person; and

.2 the officers, employees, contractors and agents of the contractors and Related Companies of the relevant person,

but in the case of the Principal, excludes the Contractor and each of its Personnel.

Principal Contractor has the meaning in the relevant WHS Regulations (defined in Schedule 1).

Principal Provided Items means the items and equipment specified in the Contract Details together with any other plant, equipment, tools, appliances or other property and items that the Principal provides to the Contractor to enable the Contractor to perform its obligations under this Agreement.

Related Company means a related body corporate (as defined in section 50 of the Corporations Act 2001 (Cth)).

Services means the Services (as applicable) and defined in the Contract Details.

Site means the work location or locations, as the context requires, specified in the Contract Details or any other places reasonably requested by the Principal.

Tax Invoice has the meaning given in the A New Tax System (Goods and Services Tax) Act 1999 (Cth).

Term means the period from the Commencement Date to the date the Agreement terminates.

Warranty Period means the period set out in the Contract Details.

WHS means work health and safety.

WHS Act means the Work Health and Safety Act 2011 (NSW).

WHS Regulations means the Work Health and Safety Regulations 2012 (NSW).

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5. Services

Refer to Scope of Services.

6. Goods

Refer to Scope of Services

7. Key Performance Indicators (KPIs)

As mutually agreed with the Principal after the Date of Contract.

8. Principal Provided Items

The Principal Provided Items are as follows: Refer to Section 04: Scope of Services

9. Site (for Services)

The Site (for Services) is: Georges River Council
Civic Centre
MacMahon Street
Hurstville NSW 2220

10. Term and the Agreement

The relevant Date for Commencement is: Date of Contract
The Term of Agreement is: 4 years from Date of Contract
Extension Options (if any): 2 years (1 +1 years) subject to review and satisfactory contract performance.

11. Completion of Services

The relevant Date for Completion of Services is:

Milestone	Description	Date for Completion
Milestone 1	Transition Period	4 Weeks from Date of Contract
Milestone 2	Provision of Insurance Services	208 Weeks form Date of Contract
Milestone 3	Extension Option 1 - Provision of Insurance Services subject to review and satisfactory contract performance	52 Weeks from completion of Milestone 2
Milestone 4	Extension Option 2 - Provision of Insurance Services subject to review and satisfactory contract performance	52 Weeks from Completion of Milestone 3

12. Delivery Location (for Goods)

The Delivery Location for the Goods is: Georges River Council
Civic Centre
MacMahon Street, Hurstville NSW 2220

13. Liquidated Damages

1 Rate

The Liquidated Damages Rate is: NIL per Day.

2 Delay Rate

The Delay Rate is: Refer to clause 7.5.1.

14. Warranty Period

1 Services

The Warranty Period commences on Completion of the Services and, subject to clause 4.5.5, expires on the date that is annual renewal date of licencing agreement after.

2 Goods

The Warranty Period for Goods commences on the Date of Delivery and, subject to clause 5.8.5, expires on the date that is annual renewal date of licencing agreement after.

15. Contractor's Key Personnel

The Contractors Key Personnel are: As per Tender Schedule 5

16. Fees (inclusive of GST)

The Fees are set out in Schedule 1.

17. Reimbursable Expenses (inclusive of GST)

The Principal agrees to pay certain Reimbursable Expenses as set out in Schedule 1.

18. Dates for submission of Tax Invoices

The Contractor may submit a Tax Invoice last business day of the month.

19. Time for payment

30 calendar days after receipt of a valid Tax Invoice.

20. Design Obligations

Not Applicable

21. Jurisdiction

New South Wales.

22. Public liability insurance:

\$20 million any one occurrence and in the annual aggregate

23. Product liability insurance:

NOT USED.

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Schedule 1 - Fees

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- (c) take into consideration all documents, information and other written and oral material that the Principal and Consultant place before the Expert including documents, information and material relating to the facts the subject of the Dispute and to arguments and submissions upon the matters the subject of the Dispute;
- (d) not be expected or required to obtain or refer to any other documents, information or material but may do so if he or she so desires;
- (e) giving reasons, make a decision in writing stating the determination of the Dispute; and
- (f) act with expedition with a view to making a decision within two weeks of the date of this agreement.

5. **MEET WITH PARTIES**

If as part of the procedures under clause 3, the Expert meets with the Principal and Consultant, the Principal and Consultant agree to be bound by such procedural directions as may be given by the Expert both in preparation for, and during the course of, the meeting.

The parties agree that any such meeting or meetings are not in any way to be regarded as a formal hearing.

6. **REMUNERATION**

In consideration of the Expert performing his obligations under this agreement the parties must pay to the Expert the amount of set out in Item 4 of Annexure 1 or such other amount as is agreed between the Principal, Consultant and Expert.

7. **CONFIDENTIALITY**

The Expert must not at any time, without the consent of both the Principal and Consultant, disclose or suffer or permit his or her employees, consultants or agents to disclose to any person:

- (a) any details concerning the subject matter of the Dispute;
- (b) any of the contents of the Contract, this agreement or any other collateral or supplemental agreements or any of the commercial bases or any information relating to the negotiations concerning the same; or
- (c) any other information which may have come to the Expert's knowledge in the course of this agreement including information concerning the operations, dealings, transactions, contracts, commercial or financial arrangements or affairs of the Principal or Consultant.

8. **NATURE OF EXPERT'S ROLE**

The Expert:

- (a) is to be independent from the Principal and Consultant; and

- (b) without limitation, warrants that he or she has no conflict of interest in acting under this agreement.

9. **TERMINATION**

This agreement may be terminated by either the Principal or the Consultant in any of the following events:

- (a) the Expert being declared of unsound mind or mentally ill;
- (b) the Expert being declared bankrupt;
- (c) the Expert committing any proven act of dishonesty or, by wilful act or omission or by gross neglect, behaving in a fashion clearly prejudicial to the interests of the Principal or the Consultant;
- (d) the Expert failing to observe and fulfil any of the substantive terms of this agreement; or
- (e) the Expert being prevented by illness or incapacity from performing his or her obligations under this agreement.

10. **NOTICES**

All notices to be given to the Expert under this agreement will be deemed to be properly given if:

- (a) hand delivered to the Expert;
- (b) sent by certified or registered mail to the Expert's address set out in Item 5 of Annexure 1 or to such other address as the Expert may from time to time advise by notice in writing; or
- (c) forwarded by facsimile transmission to the Expert's facsimile number as set out in Item 6 of Annexure 1 or to such other facsimile number as the Expert may from time to time advise by notice in writing.

11. **GOVERNING LAW**

Unless specified otherwise in Item 7 of Annexure 1, this agreement is to be construed for all purposes in accordance with the laws applying to the Contract.

12. **INCONSISTENCY BETWEEN AGREEMENT AND CONTRACT**

If there is any inconsistency between the terms of this agreement and the Contract, then unless otherwise specified in Item 8 of Annexure 1 the terms of the Contract will prevail.

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ANNEXURE 1

Item 1: (Contract):

Item 2: (Dispute):

Item 3: (Procedures):

Item 4: (Expert's Hourly Remuneration):

Item 5: (Expert's Address):

Item 6: (Expert's Facsimile):

Item 7: (Governing law):

Item 8: (Inconsistency):

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Performance Evaluation Report
 To be issued at completion of assignment/project

<i>Contract Name:</i>	[#insert#]	Rating system
<i>Contract number:</i>	[#insert#]	1 Good
<i>Period:</i>	2 Fair
<i>Date:</i>	3 Poor
		4 Unacceptable

Topic	Grading (this period)	Comments
Time Management	<input type="checkbox"/>	
Standard of Work (defects)	<input type="checkbox"/>	
Quality of Workmanship	<input type="checkbox"/>	
Work Health & Safety	<input type="checkbox"/>	
Environmental Management	<input type="checkbox"/>	
Contract Administration	<input type="checkbox"/>	
Public Complaints	<input type="checkbox"/>	

Note: The parties should decide on actions after discussing project and contract objectives, comments, observations and suggestions for improvement.