



Modern Methods of Construction Program

Integration Partner Framework Contract

The Crown in right of the State of New South Wales, acting through the
Department of Education
Principal

APP Corporation Pty Ltd
Integration Partner

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Modern Methods of Construction Program - Framework Contract

Date

Parties

The Crown in right of the State of New South Wales, acting through the Department of Education of Level 8, 259 George Street, Sydney, NSW, 2000 (**Principal**)

APP Corporation Pty Ltd ACN 003 764 770 of Level 14, 10 Spring Street, Sydney, NSW, 2000 (**Integration Partner**)

Recitals

- A. The Principal is committed to delivering the very best school infrastructure to:
- (a) meet the needs of a growing population; and
 - (b) support modern, flexible teaching and learning.
- B. The Principal wishes to engage the Integration Partner to work together with the Principal as a collaborative and trusted partner to develop the modern methods of construction (**MMC**) ecosystem and to progress Kit of Parts (**KoP**) design for manufacture and assembly to deliver the required school buildings across NSW as part of the MMC Kit of Parts program (**Program**).
- C. The objectives for the Integration Partner's Activities (**Objectives**) are:
- (a) encouraging the use of state-sourced materials and local labour to build a new MMC market that grows the NSW manufacturing capacity and upskills the supply chain. This includes training and development in both manufacturing and assembly;
 - (b) reduced cost across the Program;
 - (c) reduced time on site during construction of school facilities;
 - (d) reduced carbon emissions and reduced material and water waste;
 - (e) improved mental health, site safety and productivity through the creation of jobs that are carried out in safe environments;
 - (f) increased building efficiency through large teaching spaces with less circulation, more outdoor space and the creation of a biophilic environment;
 - (g) improved quality control & safety standards and creation of an industry shift in construction methods;
 - (h) improved design of schools to reflect modern pedagogy and provide equality in the level of education across the state and creation of greater building efficiencies leading to more usable and flexible space; and
 - (i) creation of continued learning and development of processes for the MMC KoP system leveraging new and innovative technologies.
- D. In Phases 1 and 2, the Principal:

- (a) requires the Integration Partner to perform the activities in respect of the Program required by the Contract, as generally set out in the Integrator Scope Matrix which includes acting as an agent of the Principal to deliver the Projects and independently carrying out other services; and
 - (b) may, by issuing a Works Order to the Integration Partner, request the Integration Partner to manage and drive delivery of a Project or multiple Projects within the Program as agent of the Principal.
- E. In Phase 3, the Principal may elect to enter into a Strategic Partnership with the Integration Partner to provide services to the Principal in respect of the Program and also to jointly pursue commercial opportunities as a result of the Learnings from the Program.
- F. Having regard to the Objectives, the Integration Partner has represented to the Principal that it has the necessary skill, experience, available resources and professional competence to carry out the Integration Partner's Activities.
- G. In reliance upon the representations, warranties and promises made by the Integration Partner in the Contract, the Principal engages the Integration Partner to carry out and complete the Integration Partner's Activities and the Integration Partner has agreed to do so on the terms and conditions of the Contract.

The parties agree

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

Operative provisions

1. Definitions and interpretation

1.1 Definitions

In the Contract:

Ad Hoc Resource Fees has the meaning given in Schedule 2.

Alternative JLT Member means, in respect of a JLT Member, a person appointed in accordance with clause 2.3(d) to act as the alternative of that JLT Member.

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

Assembler means a contractor engaged by the Integration Partner (as agent for the Principal) pursuant to an Assembly Contract.

Assembly Contract means a contract between the Integration Partner (as agent for the Principal) and an Assembler for the installation or erection of a part of the Works (including the assembly of the KoP on a Site).

Auditor means an independent auditor or the Principal's internal auditor appointed for the purposes of clause 10.2.

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

Award Date means the date on which the Contract has been signed by the last party to sign.

Best Industry Practice means the care, skill, diligence, prudence and foresight reasonably expected of a highly competent, qualified, skilled and experienced professional working in an organisation providing similar services to an organisation like the Integration Partner, seeking to comply with its contractual and legal obligations and having regard to the requirements of the Program, any Project and any other circumstances affecting the carrying out of the Integration Partner's Activities.

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

Change of Control means:

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

other than as a result of:

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

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

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

Code of Conduct means the Principal's Code of Conduct which is available, as at the Award Date, <https://education.nsw.gov.au/content/dam/main-education/policy-library/associated-documents/pd-2004-0020-01.pdf> or upon request from the Principal's Representative, as updated from time to time.

Computer Programs has the meaning given in the definition of **Source Code** under clause 1.1.



■ [REDACTED]

■ [REDACTED]

■ [REDACTED]

Construction On-Cost Margin has the meaning given in Schedule 2.

Contract means the contractual relationship between the parties constituted by:

- (a) these General Conditions of Contract;
- (b) the Key Details; and
- (c) the schedules to the Contract and exhibits to the Contract.

Contract Price means the amount specified in the Key Details as adjusted under the Contract.

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

Core Team means the core team described in section 1.2 of Schedule 2.

Corporations Act means the Corporations Act 2001 (Cth).

Cost Band has the meaning given in Schedule 2.

Cyber Insurance means a policy of cyber risk insurance covering:

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

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

Defect means an element of the Works which does not conform with the requirements of the Contract or a Project Contract.

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

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

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

Early Warning Notice has the meaning given in clause 11.5(a).

Environmental Law means any Law relating to planning or environmental protection, including all:

- (a) environmental or planning conditions or the requirements of any Approval;
- (b) Laws applicable to the actual or potential effect on the environment of the activities relating to a Project, including in, at or on a Site;
- (c) Laws applicable to the disposal of materials or the discharge of chemicals, gases, liquids or other substances or materials into the environment, or the presence of such chemicals, gases, liquids or other substances or materials in, at or on the Site (including Hazardous Materials); and
- (d) Laws applicable to the emanation of noise, including at or from a Site.

Environmental Requirements include:

- (a) the Principal's environmental requirements or plans for any Project, the Works, the Integration Partner's Activities or a Site (as applicable);
- (b) the requirements of Environmental Law; and
- (c) the requirements or other provisions relating to planning or environmental protection issued by or under any Authorities, Approvals, notices or management plans for any Project, the Works, the Integration Partner's Activities or any Site (as applicable).

Funding Requirements means any State or Commonwealth funding requirements, conditions, or arrangements as notified by the Principal to the Integration Partner from time to time.



GIPA Act has the meaning given in clause 9.11(c)(i).

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

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

Harmful Code means any computer virus, malware or other code that is harmful, malicious, disabling or which is designed to enable, any alteration, denial of service, Security Incident or unauthorised access to, or disclosure or destruction or corruption of data.

Hazardous Materials means any hazardous materials, including any form of organic or chemical matter whether solid, liquid, gas, odour, heat, sand vibration, radiation, or substance which makes or has the capacity to make the environment:

- (a) unsafe or unfit for habitation or occupation by persons or animals;

- (b) degraded in its capacity to support plant life;
- (c) contaminated; or
- (d) otherwise environmentally degraded.

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

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

Integration Partner Cost Plan means the Management Plan of that name.

Integration Partner Fee has the meaning given in Schedule 2.

Integration Partner Supplied Items has the meaning given to that term in clause 9.13(a).

Integration Partner Trust has the meaning given in clause 28.23.

Integration Partner's Activities means all things or tasks which the Integration Partner is, or may be, required to do to comply with its Contract obligations including those allocated to the Integration Partner in the Integrator Scope Matrix and including Variations, work directed to be performed pursuant to a Works Order and rectification work.

Integration Partner's Representative means the person so named in the Key Details or any other person from time to time appointed as the Integration Partner's Representative in accordance with clause 4.5.

Integrator Co means the entity (if any) established as part of the Strategic Partnership as described in Schedule 14.

Integrator Scope Matrix means the document in Exhibit 1.

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

JLT means the Joint Leadership Team.

JLT Chairperson means the chairperson of the JLT as referred to in clause 2.4(a) and as otherwise appointed by the Principal from time to time.

JLT Member means, in respect of a party, a person appointed by that party as a member of the JLT, as replaced from time to time in accordance with clause 2.3. Where the context permits, references to JLT Member include an Alternative JLT Member of that JLT Member.

Joint Leadership Team means the Joint Leadership Team described in clause 2.2.

Key Details means the particulars that appear in Schedule 1.

Kit of Parts means a catalogue of individual standardised building components, objects or items that, when combined, form sub-assemblies or modules, which are then assembled to create a whole structure.

KoP means Kit of Parts.

KPI means a key performance indicator used to measure performance and delivery of individual KRAs, as agreed under clause 27.1, set out in a Works Order or otherwise agreed by the parties in writing from time to time.

KRA means a key result areas used to measure performance against the Objectives, as agreed under clause 27.1 or otherwise agreed by the parties in writing from time to time.

Law means:

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

Learnings has the meaning given in clause 11.17(a).

Legal Opinion means a legal opinion, as applicable under clause 28.24:

- (a) from lawyers to the:
 - (i) Integration Partner, authorised to practise in the place of incorporation of the Integration Partner, stating that the Contract is binding and enforceable against the Integration Partner; or
 - (ii) Parent Company Guarantor, authorised to practise in the place of incorporation of the Parent Company Guarantor, stating that the parent company guarantee required by clause 5.1 is binding and enforceable against the Parent Company Guarantor;
- (b) which states that it may be relied upon by the Principal; and
- (c) in a form reasonably satisfactory to the Principal.

Management Plan means any plan of the kind referred to in clause 8.4 as that plan may be updated, amended and further developed under clause 8.4.

MMC means modern methods of construction.

Milestone Date has the meaning given in clause 16.1.

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

Nominated Integration Partner Personnel means the persons named in Schedule 4 and any other person that the Principal consents to in writing.

Nominated Principal Personnel means the persons nominated by the Principal in accordance with clause 4.7.

Notice of Dispute has the meaning given in clause 21.1.

Objectives has the meaning given in paragraph C of the Recitals.

Other Contractor means any supplier, contractor, consultant, artist, tradesperson or other person engaged to do work in connection with the Program or a Project, including each Principal Contractor, other than the Integration Partner, its Subcontractors and the Project Contractors.



Parent Company Guarantor means each entity so named in the Key Details.

Personnel means:

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

Phase 1 means the “Solution Development” phase of the Integration Partner’s Activities.

Phase 2 means the “Program Implementation (Business as Usual)” phase of the Integration Partner’s Activities.

Phase 3 means the “Strategic Partnership” phase (if applicable).

PID Act means the Public Interest Disclosures Act 2022.

Policies and Procedures means:

- (a) the most recent versions of the policies and procedures available at <https://education.nsw.gov.au/policy-library/policy-library-a---z;>
- (b) each of the following NSW Government policies:
 - (i) Aboriginal Procurement Policy (January 2021);
 - (ii) Small and Medium Enterprises and Regional Procurement Policy (July 2021);
 - (iii) Small Business Shorter Payment Terms Policy (July 2021);
 - (iv) Supplier Code of Conduct (February 2020);
 - (v) the NSW Government Cyber Security Policy (February 2019); and
 - (vi) the NSW Government Resource Efficiency Policy (February 2019); and
- (c) and any other policies or procedures of the Principal notified to the Integration Partner from time to time (including in relation to working in the Principal's premises, or on any Site), each as updated from time to time.

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

Pre-existing IPR in respect of a party means:

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

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

Principal Contractor means a contractor engaged by the Principal in respect of a Project to be responsible for matters such as site establishment, site servicing and utility work, external site works and sub-structure work, including laying foundations for the Kit of Parts assembly.

Principal’s Material means all documents and materials provided to the Integration Partner by the Principal from time to time, including any documents (stored by any means).

Principal’s Representative means the person so nominated in the Key Details or any other person nominated by the Principal from time to time under clause 4.2 to replace that person.

Privacy Laws has the meaning given in clause 23.1.

Procurement Management Plan means the Management Plan of that name.

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

Professional Services Agreement means a contract between the Integration Partner (as agent for the Principal) and a contractor for the performance of professional services in relation to a Project or the Works.

Professional Services Providers means a contractor engaged by the Integration Partner (as agent for the Principal) pursuant to a Professional Services Agreement.

Program has the meaning given in Recital B.

Program Documents includes:

- (a) the Deliverables;
- (b) Principal's Material;
- (c) Approvals;
- (d) without limiting paragraphs (a) to (c), any other material (including any Source Code):
 - (i) produced; or
 - (ii) provided, or required to be provided, to the Principal or the Principal's Representative,

under, for the purposes of or in connection with the Contract, the Program, the Works, a Project or the Integration Partner's Activities by, for or on behalf of the Integration Partner including all documents, papers, books of account, labour time sheets, invoices (whether for services, materials, plant hire or otherwise), financial accounts, reports, databases or other information stored in any electronically-retrievable medium, technical information, plans, designs, drawings (including as-built drawings), specifications, charts, calculations, tables, schedules, correspondence (including correspondence by third parties to the Integration Partner), internal memoranda, minutes of meetings, diary notes, audio material, visual material, audio-visual material, working papers, draft documents and any other material of a similar nature to those materials relating to or arising out of or in connection with the Contract, the Works, a Project, the Program or the Integration Partner's Activities; and

- (e) without limiting paragraphs (a) to (d), all material at any time derived from, or based on, the material described in paragraphs (a) to (d).

Prohibited Person means:

- (a) any person:
 - (i) who has made an admission to the Independent Commission Against Corruption that it has engaged in; or
 - (ii) in respect of whom the Independent Commission Against Corruption has made a finding that it has engaged in,

corrupt conduct as defined in the *Independent Commission Against Corruption Act 1988* (NSW); or

- (b) any person employing an employee in respect of whom paragraph (a)(i) or (a)(ii) apply.

Project means each project in the Program that the Principal requests the Integration Partner to carry out the Integration Partner's Activities in respect of, by issuing a Works Order in accordance with the process in clause 14.

Project Contractors means, collectively, the Assemblers, the Supply Contractors and the Professional Services Providers (and each of them is a **Project Contractor**) but does not include an Other Contractor or any Subcontractor.

Project Contracts means, collectively, the Assembly Contracts, the Supply Contracts and the Professional Services Agreements (and each of them is a **Project Contract**) but does not include any contract pursuant to which the Principal engages an Other Contractor or any contract pursuant to which the Integration Partner engages a Subcontractor.

Public & Product Liability Insurance means a policy of public and product liability insurance:

- (a) covering the respective rights and interests and liabilities to third parties of the Principal, the Integration Partner, the Principal's Representatives and all Subcontractors from time to time;
- (b) covering the parties' respective liability to each other; and
- (c) which complies with the requirements set out in clause 7.2(c),

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

Recipient has the meaning given in clause 18.11(b).

Representatives means the Integration Partner's Representative and the Principal's Representative.

Savings Reduction Commitment has the meaning given in clause 27.1(e)(i).

Schedule of Rates means Schedule 3 as adjusted in accordance with clause 18.12.

Security Incident has the meaning given to this term in clause 23.1.

Site means any site on which any Works are to be conducted.

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

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

Source Code means, in respect of any software, firmware, computer code or configuration files (**Computer Programs**), the human readable code of such Computer Programs, and includes associated software including scripts and applets (collectively comprised in a complete copy of all of the foregoing in executable code) and all compilers, tools, language, documentation necessary to operate, maintain and modify the executable code copy of that

Computer Program including all technical documentation and specifications in respect of that Computer Program, including any other information necessary for a reasonably skilled computer programmer to understand the program logic of the software, firmware, computer code or configuration files and to perform any of those acts in relation to it.

Strategic Partnership means a joint venture established between the Principal and the Integration Partner as described in clause 3.5 and Schedule 14.

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

Supplier has the meaning given in clause 18.11(b).

Supply Contract means a contract between the Integration Partner (as agent for the Principal) and a Supply Contractor for any of the following:

- (a) the supply or design and supply of a part of the Works or any plant, equipment, material or other items for incorporation into the Works or for use in connection with the construction, assembly, testing or commissioning of the Works (including any components of the Kit of Parts);
- (b) the hire of any plant, equipment or other items in connection with the construction, assembly, testing or commissioning of the Works;
- (c) the provision of transportation services in connection with the Works or a Project; and
- (d) the provision of any other services (other than professional services and any services forming part of the Integration Partner's Services) in connection with the construction, assembly, testing or commissioning of the Works.

Supply Contractor means a contractor or supplier engaged by the Integration Partner (as agent for the Principal) pursuant to a Supply Contract.

Term means the period described as such in the Key Details.

Third Party Material has the meaning given to that term in clause 9.5.

Third Party Software means any Software (including firmware and middleware) which is provided or used by, for or on behalf of the Integration Partner in connection with the Contract (or is otherwise required by the Principal in connection with the receipt of the Deliverables) in which the Intellectual Property Rights are owned by a third party, and which is developed independently of the Contract, [REDACTED].

Variation means any change to the Integration Partner's Activities, including any addition, increase, decrease, omission, deletion or removal to or from the Integration Partner's Activities (including the addition, increase, decrease, omission, deletion or removal of or other change to the Integration Partner's Activities to be carried out pursuant to any Works Order).

Wage Price Index means the Wage Price Index with Series ID A2638819F published by the Australian Bureau of Statistics and if there is any suspension or discontinuance in the publication of the Wage Price Index with Series ID A2638819F, then until publication of the Wage Price Index with Series ID A2638819F is resumed, the Wage Price Index shall mean the index that measures changes in the price of labour services resulting from market pressures and which is the closest equivalent to the Wage Price Index with Series ID A2638819F (as determined by the Principal's Representative acting reasonably).

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

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

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

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

Works means the physical works to be handed over to the Principal in connection with a Project (not including the works to be delivered by the Principal Contractor for the Project).

Works Order has the meaning given in clause 14.2(a)(i).

Works Order Proposal has the meaning given in clause 14.1.

1.2 Interpretation

In the Contract:

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

and unless the context indicates a contrary intention:

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

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

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

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

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

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

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

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

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

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

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

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

- (n) any reference to the Integration Partner's Activities, Deliverables or any other document or thing being fit for their intended purpose (or any similar reference) will be read as referring to the purpose having regard to the Objectives and any purpose contemplated in or reasonably ascertainable from:
 - (i) the Contract; and
 - (ii) to the extent relevant for determining the purpose in connection with a Variation, any document provided by the Principal to the Integration Partner specifically in connection with the Variation;
- (o) to the extent that:
 - (i) any amounts are payable to the Integration Partner under the Contract by reference to hourly or daily rates; and
 - (ii) the Integration Partner's Personnel is engaged in the relevant Integration Partner's Activities for an increment of time less than a full hour or day (or for one or more full hours or days plus an increment of time less than a full hour or day) (as applicable),

the Integration Partner will be entitled to payment in respect of such time on a pro rata basis; and
- (p) a reference to any Authority, institute, association or body is:
 - (i) if that Authority, institute, association or body is reconstituted, renamed or replaced or if the powers or functions of that Authority, institute, association or body are transferred to another organisation, deemed to refer to the reconstituted, renamed or replaced organisation or the organisation to which the powers or functions are transferred, as the case may be; and
 - (ii) if that Authority, institute, association or body ceases to exist, deemed to refer to the organisation which serves substantially the same purposes or object as that Authority, institute, association or body.

2. Objectives, governance and collaboration

2.1 Objectives of Contract model

- (a) The parties acknowledge and agree that the key purpose of the Contract is to achieve the Objectives and the Integration Partner commits to meeting those Objectives.
- (b) In order to meet the Objectives, the Integration Partner must:
 - (i) implement innovation in the Integration Partner's Activities to achieve value for money in the Program outcomes;
 - (ii) comply with all of its performance obligations and reporting requirements under the Contract; and
 - (iii) make the best use of all resources available to it for performing the Integration Partner's Activities.

2.2 JLT functions

The Joint Leadership Team (**JLT**) has been established to provide strategic guidance and leadership to the parties. The functions of the JLT are described generally in Schedule 11 however the parties will jointly agree the terms of reference of the JLT during Phase 1 having regard to Schedule 11.

2.3 JLT Members

- (a) At the Award Date, each party must appoint two persons to be a member of the JLT at any one time. The JLT Members appointed by each party at the Award Date are set out in the Key Details.
- (b) The Principal may in its sole discretion and at any time during the Term, change the structure of the JLT including by increasing or decreasing the number of persons required to be appointed as a member of the JLT by each party.
- (c) A party may only appoint persons as JLT Members who are in a position to be able to fully participate as a member of the JLT.
- (d) Each party may, with the consent of the other members of the JLT (which must not be unreasonably withheld or delayed), appoint one or more Alternative JLT Members to act in place of its JLT Members during absences caused by normal planned leave, illness, injury, emergencies or anything beyond the reasonable control of each JLT Member.
- (e) A party may only appoint persons as Alternative JLT Members who fulfil the requirements set out in clause 2.3(c).
- (f) Each party may replace its JLT Members or Alternative JLT Members with the consent of the other members of the JLT (which will not be unreasonably withheld).
- (g) Neither the Principal's Representative nor the Integration Partner's Representative may act as a JLT Member or Alternative JLT Member.

2.4 JLT Chairperson

- (a) On the Award Date, the JLT Chairperson is the JLT Member identified in the Key Details as the JLT Chairperson.
- (b) The JLT Chairperson will convene and chair the meetings of the JLT.

2.5 Meetings of the JLT

- (a) The JLT must:
 - (i) hold a meeting as soon as practicable after the Award Date;
 - (ii) hold meetings monthly or otherwise when considered necessary by the Principal; and
 - (iii) not hold a meeting unless at least one JLT Member appointed by each party is present at that meeting.
- (b) The parties acknowledge and agree that the Principal will:
 - (i) determine the procedures and rules applicable to meetings of the JLT; and
 - (ii) provide any procedures and rules to the Integration Partner.

- (c) The parties acknowledge and agree that the JLT is advisory only.

3. Parties' obligations and Term

3.1 Integration Partner's obligations

The Integration Partner must:

- (a) immediately commence the performance of the Integration Partner's Activities;
- (b) perform the Integration Partner's Activities during the Term including:
 - (i) performing those activities set out in the Integrator Scope Matrix as the Integration Partner's responsibility; and
 - (ii) working closely with, and providing support to, the Principal in respect of the Principal performing those activities set out in the Integrator Scope Matrix as the Principal's responsibility;
- (c) ensure that the Integration Partner's Activities comply with the requirements of the Contract and are fit for their intended purposes; and
- (d) work closely with the Principal on a best for Program basis to support the delivery of the Program (including to support the development of the supply chain for the Program).

3.2 Principal's obligations

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

- (a) allow the Integration Partner to perform the Integration Partner's Activities;
- (b) perform those activities set out in the Integrator Scope Matrix as the Principal's responsibility; and
- (c) work closely with the Integration Partner in respect of the Integration Partner carrying out the Integration Partner's Activities as set out in the Integrator Scope Matrix; and
- (d) pay the Contract Price.

3.3 No commitment as to exclusivity or volume

- (a) The Integration Partner acknowledges and agrees that by executing the Contract:
 - (i) no representation has been made by the Principal or the Principal's Representative as to the number, volume or value of Integration Partner's Activities, Works Orders or Projects that the Principal may direct or require the Integration Partner to perform or manage under the Contract or otherwise;
 - (ii) the Principal is not restricted in any way from carrying out, or engaging any person to carry out, any works or other activities:
 - A. of any type, including work, services or other activities similar to the work, services or other activities which may be required of the Integration Partner; or

- B. at any location where, or in respect of any Project that, the Integration Partner may be required to perform works, services or other activities; and
- (iii) the Principal may seek proposals from other persons in relation to any work, services or other activities in respect of any or all of the Projects, any other projects being considered or carried out by the Principal or in any way in connection with the Program.
- (b) The Principal makes no representation as to which, if any, projects may be undertaken by the Principal in connection with the Program.

3.4 Term

The Principal may (in its absolute discretion):

- (a) any time prior to the expiry date of the initial Term, elect to extend the Term by any period of up to 4 years; and
- (b) any time prior to the expiry of the Term if extended under clause 3.4(a), elect to extend the Term by any further period of up to 3 years,

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

3.5 Phases and Strategic Partnership

- (a) The Parties acknowledge and agree that:
 - (i) the Integration Partner's Activities will be carried out in multiple phases being:
 - A. Phase 1 for a period of up to 6 months from the Award Date; and
 - B. Phase 2 from the end of Phase 1 until the end of the Term;
 - (ii) the Principal may, in its absolute discretion, extend or shorten either or both of Phase 1 or Phase 2; and
 - (iii) the Principal may, in its absolute discretion, elect to enter into a Strategic Partnership with the Integration Partner or an entity or entities established by the Integration Partner on the basis described in Schedule 14.
- (b) Entry into the Strategic Partnership will be subject to receipt of all relevant approvals by the parties.
- (c) If the Strategic Partnership is established:
 - (i) the Term will end on a date agreed by the Parties;
 - (ii) a new separate "Framework Contract" will be entered into between the Principal and Integrator Co pursuant to which:
 - A. the Principal will engage Integrator Co to be responsible for the manufacture, logistics and assembly (and all other relevant services) of the KoP for projects in the Program under a GC21 (or similar) contract (rather than engaging Project Contractors as agent of the Principal); and

- B. Integrator Co will provide support to the Principal in managing the Program.
- (d) As an alternative to clause 3.5(c)(ii)A, the Principal may require Integrator Co to contract directly with Principal Contractors as a nominated subcontractor to be responsible for the manufacture, logistics and assembly of the KoP for projects in the Program.
- (e) In addition to providing the services to the Principal described in clause 3.5(c)(ii), Integrator Co may pursue other commercial opportunities for customers other than the Principal, utilising the Intellectual Property Rights and Learnings developed from the Program.

4. Personnel

4.1 Principal's Representative

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

4.2 Replacement of Principal's Representative

- (a) The parties acknowledge and agree that the Principal may at any time replace the Principal's Representative, in which event the Principal will appoint another person as the Principal's Representative and notify the Integration Partner of that appointment.
- (b) Any substitute Principal's Representative appointed under this clause 4.2 will be bound by anything done by the former Principal's Representative to the same extent as the former Principal's Representative would have been bound.

4.3 Principal's Representative's representative

- (a) The Principal's Representative may:
 - (i) by written notice to the Integration Partner appoint persons to exercise any of the Principal's Representative's functions under the Contract;
 - (ii) not appoint more than one person to exercise a specific function under the Contract; and
 - (iii) revoke any appointment under paragraph (i) by notice in writing to the Integration Partner.
- (b) All references in the Contract to the Principal's Representative include a reference to a representative appointed under this clause 4.3.

4.4 Integration Partner's Representative

- (a) A Direction is deemed to be given to the Integration Partner if it is given to the Integration Partner's Representative.

- (b) Matters within the knowledge of the Integration Partner's Representative are deemed to be within the knowledge of the Integration Partner.
- (c) If the Principal's Representative makes a reasonable objection to the appointment of a representative by the Integration Partner, the Integration Partner must terminate the appointment and appoint another representative, subject again to the reasonable objection of the Principal's Representative.

4.5 Nominated Integration Partner Personnel

The Integration Partner must:

- (a) employ:
 - (i) the Nominated Integration Partner Personnel, including the Integration Partner's Representative, in the positions specified in Schedule 4; and
 - (ii) each person who replaces any Nominated Integration Partner Personnel, including the Integration Partner's Representative, in the position approved in writing by the Principal's Representative under paragraphs (b) or (c);
- (b) subject to paragraph (c), not replace the Nominated Integration Partner Personnel without the Principal's Representative's prior written approval; and
- (c) if any of the Nominated Integration Partner Personnel die, become seriously ill, resign or are removed under clause 4.6 from the employment of the Integration Partner, replace them with persons approved in writing by the Principal's Representative of at least equivalent experience, ability and expertise, unless otherwise directed in writing by the Principal's Representative.

For the purposes of paragraph (b) above, without limiting clause 28.14, the Principal's Representative may take into account whether or not the proposed replacement person is of at least equivalent experience, ability and expertise.

4.6 Removal of persons

- (a) The parties acknowledge and agree that the Principal's Representative may by notice in writing instruct the Integration Partner to remove any person from the Integration Partner's Activities who in the reasonable opinion of the Principal's Representative:
 - (i) is guilty of misconduct, is incompetent or negligent, is not suitably qualified or who may bring the Principal into disrepute; or
 - (ii) should be removed for any other reason not specified in paragraph (i) above.
- (b) The Integration Partner must ensure that such person is not again employed in the Integration Partner's Activities.

4.7 Nominated Principal Personnel

- (a) The Principal may, at any time, nominate persons to:
 - (i) engage in activities in respect of the Program; or
 - (ii) otherwise work with the Integration Partner in respect of the Program.

- (b) The Principal may, by issuing a written notice to the Integration Partner, remove any individual Nominated Principal Personnel from the Program at any time, at its absolute discretion.

4.8 Former public sector employees

- (a) The Integration Partner acknowledges that pursuant to the *Government Sector Employment Act 2013 (NSW)*:
 - (i) the Principal is unable to accept services provided by a former government sector agency employee within the period covered by their severance or redundancy payment, without that public sector employee first repaying the relevant proportion of their severance pay; and
 - (ii) the Principal is unable to accept services provided by a former public service senior executive whose employment was terminated and who received compensation, within the period specified under their former contract, without that former public service senior executive first repaying the relevant proportion of their compensation (and "employment" in this context includes engagement as a consultant, contractor, or through a labour hire arrangement or a company or partnership that provides the services of the former executive to the former employer).
- (b) The Integration Partner warrants to the Principal that it will not allocate responsibility for performing any part of the Integration Partner's Activities to either a:
 - (i) former government sector agency employee within the period covered by their severance or redundancy payment, without that public sector employee first repaying the relevant proportion of their severance pay; or
 - (ii) former public service senior executive whose employment was terminated and who received compensation, within the period specified under their former contract, without that former public service senior executive first repaying the relevant proportion of their compensation.

4.9 Background checks

- (a) The Integration Partner must undertake all necessary background checks of its Personnel involved in the provision of the Integration Partner's Activities to ensure that they are fit and proper to do so, including any background checks reasonably required by the Principal during the Term.
- (b) Where the outcome of a background check reveals that any of the Integration Partner's Personnel are not fit and proper to be involved in connection with the Integration Partner's Activities, the Integration Partner must not use those Personnel and must promptly arrange for their replacement.
- (c) The Integration Partner acknowledges and agrees that:
 - (i) all background checks will be undertaken at the Integration Partner's sole cost, unless otherwise agreed by the Principal's Representative in writing; and
 - (ii) the Integration Partner is solely responsible for obtaining all necessary consents in accordance with the Privacy Laws, to the conduct of any background checks and the provision of the results of the background checks to the Principal and its Personnel where requested.

4.10 Engagement of Personnel

- (a) The parties acknowledge and agree that:
 - (i) in the provision of the Integration Partner's Activities, all the Integration Partner's Personnel are engaged by the Integration Partner and there is no direct contractual relationship between any of the Integration Partner's Personnel and the Principal; and
 - (ii) all contractual and statutory entitlements of the Integration Partner's Personnel including those under any industrial Laws will remain the sole liability of the Integration Partner and not the Principal.
- (b) The Integration Partner warrants that it has in place, will maintain and will comply with industrial arrangements with each of the Integration Partner's Personnel (whether individually or collectively) that are compliant with industrial Laws and will provide satisfactory evidence of those industrial arrangements to the Principal upon request.

5. Security

5.1 Parent Company Guarantee

- (a) Subject to clause 5.1(b), the Integration Partner must on the Award Date give the Principal a guarantee duly executed by the Parent Company Guarantor in favour of the Principal in the form of Schedule 10.
- (b) If the Integration Partner comprises more than one person, each person comprising the Integration Partner must on the Award Date give the Principal a separate guarantee duly executed by its Parent Company Guarantor in favour of the Principal in the form of Schedule 10.

5.2 PPSA

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

6. Conflict of Interest

- (a) The Integration Partner warrants that at the Award Date, no conflict of interest exists or is likely to arise in the performance of the Integration Partner's Activities in respect of the Integration Partner or any of its Personnel, except as has been

disclosed in writing by the Integration Partner to the Principal prior to the execution of the Contract.

- (b) The Integration Partner agrees that, without limiting clause 11.3, it will not act for any third party where so acting may give rise to a conflict of interest.
- (c) The Integration Partner must:
 - (i) use its best endeavours to ensure no conflicts of interest arise;
 - (ii) must notify the Principal, in writing, immediately upon becoming aware of the existence, or possibility, of a conflict of interest; and
 - (iii) must take all steps to avoid or minimise any conflicts of interest.
- (d) On receipt of a notice under clause 6(c), the Principal may:
 - (i) approve the Integration Partner continuing to perform the Integration Partner's Activities, which approval may be subject to conditions specified by the Principal (including requirements relating to separation arrangements) to ensure appropriate management of the conflict; or
 - (ii) where in the Principal's view the conflict of interest cannot be appropriately managed, notify the Integration Partner that the conflict of interest constitutes a substantial breach of the Contract under clause 19.2(e) and exercise its rights under clause 19.2.

7. Risks and insurance

7.1 Integration Partner's indemnity

The Integration Partner must indemnify the Principal from and against:

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

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

7.2 Integration Partner insurance obligations

The Integration Partner must:

- (a) from the Award Date, effect or have in place the following insurance:
 - (i) Professional Indemnity Insurance;
 - (ii) Workers' Compensation Insurance;
 - (iii) Public & Product Liability Insurance; and
 - (iv) Cyber Insurance,

for the amounts referred to in the Key Details;

- (b) ensure that each of its Subcontractors has Workers Compensation Insurance as required by law covering the Subcontractor's workers;
- (c) ensure that the Public & Product Liability Insurance complies with the requirements set out in the Key Details;
- (d) ensure that the Professional Indemnity Insurance does not exclude cover for liability assumed contractually under the Contract;
- (e) provide the Principal's Representative with copies of certificates of currency for the insurances referred to in paragraph (a) as required by the Principal's Representative from time to time; and
- (f) upon request by the Principal's Representative, promptly provide access to the Principal's Representative (or its nominee) to review a physical copy of the Public & Product Liability Insurance effected in accordance with the Contract at the Integration Partner's broker's office under the broker's supervision and on the condition that no copies of the policy are taken .

7.3 Period of insurance

The insurance which the Integration Partner is required to have in place under clause 7.2 must be maintained:

- (a) in the case of Public & Product Liability Insurance, Workers Compensation Insurance and Cyber Insurance, until completion of the Integration Partner's Activities; and
- (b) in the case of Professional Indemnity Insurance, until the expiry of 7 years following completion of the Integration Partner's Activities.

7.4 Insurers

Unless otherwise approved in writing by the Principal, the insurance that the Integration Partner is required to have in place under clause 7.2 must be maintained with insurers that:

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

7.5 Insurance obligations

The Integration Partner must ensure that it:

- (a) does not do anything that prejudices any insurance;
- (b) if necessary, rectifies anything that might prejudice any insurance;
- (c) reinstates an insurance policy if it lapses;
- (d) does not cancel, vary or allow an insurance policy to lapse without the prior written consent of the Principal's Representative;
- (e) immediately notifies the Principal's Representative of any event which may result in an insurance policy lapsing or being cancelled; and

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

7.6 Failure to insure

If the Integration Partner fails to:

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

as required by clause 7.2, 7.3 and 7.4, the Principal may, without prejudice to any other rights it may have, effect the insurance and the cost will be a debt due from the Integration Partner to the Principal.

7.7 Notice of potential claim

The Integration Partner must:

- (a) as soon as possible inform the Principal in writing of any occurrence that may give rise to a claim under an insurance policy required by the Contract, if that claim would:
 - (i) have a material impact on insurance proceeds available under that policy; or
 - (ii) affect the Integration Partner's ability to comply with its obligations under the Contract, including this clause 7;
- (b) keep the Principal informed of subsequent developments concerning the claim; and
- (c) ensure that its Subcontractors similarly inform the Integration Partner and the Principal in respect of occurrences which may give rise to a claim against or by them.

The Integration Partner is not required to comply with clauses 7.7(b) and 7.7(c) in respect of any insurance policy effected under clause 7.2(a)(i).

7.8 Multiple insureds

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

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

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

7.9 Liabilities unaffected

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

8. Deliverables and Software

8.1 Non-reliance

The Integration Partner:

- (a) warrants that it did not, and will not, in any way rely upon:
 - (i) any information, data, representation, statement or Principal's Material made by or provided to the Integration Partner by the Principal, the Principal's Representative or anyone else on behalf of the Principal; or
 - (ii) the accuracy or adequacy of any such information, data, representation, statement or Principal's Material,for the purposes of entering into, and performing the Integration Partner's Activities under, the Contract;
- (b) warrants that it enters into the Contract based on its own investigations, interpretations, deductions, information and determinations; and
- (c) acknowledges that it is aware that the Principal has entered into the Contract relying upon the warranties in clauses 8.1(a) and 8.1(b).

8.2 Principal's Material and ownership of Principal's Material

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

8.3 Review of Principal's Material and Ambiguities

- (a) The Integration Partner must review the Principal's Material for Discrepancies and promptly notify the Principal's Representative if it discovers any such Discrepancy.
- (b) The following order of precedence will apply to any Discrepancy in the documents which make up the Contract, with those higher in the list prevailing over those lower in the list to the extent of that Discrepancy:

- (i) the General Conditions of Contract (including the schedules to the Contract);
 - (ii) any exhibits to the General Conditions of Contract other than the Integrator Scope Matrix; and
 - (iii) the Integrator Scope Matrix.
- (c) If either party discovers any Discrepancy in the documents which make up the Contract or between the Contract and any documents provided to the Integration Partner by or on behalf of the Principal which the Integration Partner is required by the Contract to use in performing the Integration Partner's Activities:
- (i) the party must promptly give notice to the other; and
 - (ii) the Principal must procure the Principal's Representative to instruct the Integration Partner as to the course it must adopt within 5 Business Days of the notice under subparagraph (c)(i), and the Integration Partner must comply with any such instructions.

8.4 Management Plans

- (a) The Integration Partner must prepare the Management Plans as required by the Principal's Representative from time to time including any such plans identified in the Key Details.
- (b) Each Management Plan must be prepared and further developed in accordance with this clause 8.4.
- (c) Each Management Plan must be submitted to the Principal's Representative within the time period, and containing the contents, specified in Schedule 12, for the submission and then updated as required.
- (d) The parties acknowledge and agree that the Principal's Representative may:
 - (i) review any Management Plan submitted under this clause 8.4; and
 - (ii) if he or she considers, acting reasonably, that the Management Plan submitted does not comply with the Contract, notify the Integration Partner of that giving reasons as to why the Management Plan submitted does not comply with the Contract.
- (e) If the Integration Partner receives a notice under clause 8.4(d)(ii), the Integration Partner must promptly submit an amended Management Plan to the Principal's Representative.
- (f) In respect of any Management Plan submitted by the Integration Partner, including whether or not the Principal's Representative reviews it for errors, omissions or compliance with the Contract and whether or not the Principal's Representative comments on it or engages in any act or omission in respect of it:
 - (i) the Principal and the Principal's Representative owes no duty to the Integration Partner; and
 - (ii) the Integration Partner's liabilities or responsibilities and the Principal's rights under the Contract or otherwise will not be changed from what they otherwise would be.
- (g) The Integration Partner acknowledges and agrees that:

- (i) an intended purpose of each Management Plan is for the Integration Partner to provide a detailed description of how the Integration Partner intends to carry out the Integration Partner's Activities in accordance with the requirements of the Contract with respect to the subject matter of each Management Plan; and
- (ii) it must undertake ongoing development, amendment and updating of the Management Plans throughout the duration of the Integration Partner's Activities to take into account:
 - A. Variations;
 - B. any change in Law;
 - C. any Project the subject of a Works Order;
 - D. the commencement of new phases or stages of design and construction of each Project;
 - E. any other events or circumstances which may have any effect on the manner in which the Integration Partner carries out the Integration Partner's Activities; and
 - F. any breach or potential breach of the warranty in clause 8.4(h),

and promptly submit each further Management Plan to the Principal's Representative as it is further developed, amended or updated.

- (h) The Integration Partner warrants that each Management Plan will be fit for its intended purpose.
- (i) If the Principal's Representative believes, acting reasonably, that any Management Plan does not comply with the Contract, the parties acknowledge and agree that he or she may by written notice direct the Integration Partner to further develop, update or amend the Management Plan specifying the reasons and the time within which a compliant Management Plan must be re-submitted. The Integration Partner must comply with that direction and submit a compliant Management Plan to the Principal's Representative within the time specified.
- (j) The Integration Partner must comply with each Management Plan, but compliance will not in any way lessen or affect its liabilities or responsibilities or the Principal's rights whether under the Contract or otherwise according to Law.

8.5 Preparation of Deliverables

- (a) The Integration Partner must prepare the Deliverables:
 - (i) in accordance with the Contract;
 - (ii) so that they are fit for their intended purpose;
 - (iii) so that they are free from any Discrepancies;
 - (iv) to a standard consistent with Best Industry Practice; and
 - (v) so that to the extent that they address like or interrelated subject matter, the Deliverables are coordinated and consistent.

- (b) If at any time either party or an Other Contractor identifies any Discrepancy in the Deliverables, the Integration Partner must at its cost revise or amend the Deliverables to remedy or resolve the Discrepancy.

8.6 Principal's Representative may review Deliverables

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

8.7 No obligation to review

- (a) The parties acknowledge and agree that the Principal's Representative does not assume or owe any duty of care to the Integration Partner to review, or in reviewing, the Deliverables submitted by the Integration Partner for Discrepancies or compliance with the Contract.
- (b) No review or approval of, comments upon, rejection of, or failure to review or comment upon or reject, any Deliverables prepared by the Integration Partner or any other Direction by the Principal's Representative about the Deliverables will:
 - (i) relieve the Integration Partner from, or alter or affect, the Integration Partner's liabilities or responsibilities whether under the Contract or otherwise according to Law; or
 - (ii) prejudice the Principal's rights against the Integration Partner whether under the Contract or otherwise according to Law.

8.8 Maintain integrity and functionality of Principal's software and systems

In carrying out the Integration Partner's Activities, the Integration Partner must (and must ensure that its Personnel):

- (a) maintain the integrity and functionality of the Principal's software and systems; and
- (b) not (whether by act or omission) adversely affect or alter the operation, functionality or technical environment of the Principal's systems, interfaces or software without the Principal's prior written consent.

8.9 Requirements for Software

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

- (a) are free of any Harmful Code, including any viruses or disabling code that may cause an unauthorised change, undesired effect, Security Incident or damage to the Software, the Deliverables, Integration Partner's Activities, Principal's Materials or the information technology systems of the Principal or those of any other entity with which the Principal's information technology systems may interoperate or interact;
- (b) meet all applicable functional performance requirements for those components and comply with any specifications or documentation related to the Software;

- (c) are supplied in the form required by the Principal, together with all relevant tools and documentation necessary to enable the Principal to use, modify, test, operate, maintain, enhance, identify faults in and adapt that Software; and
- (d) are supported and maintained, and regularly updated and upgraded, as required to maintain their full functionality and the full functionality of any equipment, systems, infrastructure, hardware or other like items, and of any other Deliverables, Integration Partner's Activities, on or with which those components are supplied, for the life of the Software,

and the Integration Partner must provide training and knowledge transfer services in relation to the support, maintenance, updating and upgrading of the Software.

8.10 Changes and Updates to Software and systems

The Integration Partner must:

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

9. Intellectual property and confidentiality

9.1 IP warranties and representations

The Integration Partner warrants and represents that:

- (a) it has all the necessary Intellectual Property Rights to carry out the Integration Partner's Activities;
- (b) it owns, or is duly licensed by the owner to use and sub-licence all Integration Partner Pre-existing IPR;

- (c) where it deposits any escrow materials pursuant to clause 9.7, it has the right and is duly authorised to make that deposit and to allow the Principal to access and use the source code material in accordance with the terms of the escrow deed;
- (d) in carrying out the Integration Partner's Activities, the Integration Partner will not infringe the Intellectual Property Rights or Moral Rights of any person; and
- (e) the Principal's (or any of the Principal's sub-licensees') use or receipt of any Deliverables will not infringe the Intellectual Property Rights of the Integration Partner or any third party.

9.2 Ownership

- (a) The Integration Partner agrees that, immediately upon the creation of any Deliverables, the Principal owns the Deliverables, excluding the Integration Partner's Pre-existing IPR and Intellectual Property Rights in [REDACTED].
- (b) The Integration Partner assigns to the Principal all existing and future interest, title and rights (including Intellectual Property Rights) subsisting in and to any Deliverables (including any Deliverables that have been jointly created, developed or brought into existence by the Principal and the Integration Partner), excluding the Integration Partner's Pre-existing IPR and the Intellectual Property Rights in [REDACTED].
- (c) Where the Deliverables comprise any Software, in addition to owning the Intellectual Property Rights in that Software (excluding the Integration Partner's Pre-existing IPR and the Intellectual Property Rights in [REDACTED]), the Principal will own, and the Integration Partner assigns to the Principal all Intellectual Property Rights in:
 - (i) all modifications, developments, derivative works, updates or upgrades to that Software; and
 - (ii) any configuration files which are based on or which arise in connection with the Principal's internal or other design work, definitions or requirements,excluding the Integration Partner's Pre-existing IPR and the Intellectual Property Rights in [REDACTED].
- (d) The Integration Partner must promptly do all things reasonably required, including executing any documents, to further effect the assignment of the Intellectual Property Rights in the Deliverables (including as a present assignment of future copyright) from the Integration Partner to the Principal in accordance with this clause 9.2.
- (e) The Integration Partner must procure that its Personnel ensure that the ownership of the Intellectual Property Rights in the Deliverables which would, but for the application of this clause 9.2, vest in such Personnel, vest in or are transferred or assigned immediately to the Principal on and from the date of creation.
- (f) For Deliverables owned by the Principal pursuant to this clause 9.2, the Principal grants to the Integration Partner a limited, revocable, non-exclusive, royalty-free licence to use those Deliverables during the Term solely to the extent necessary for the Integration Partner to perform the Integration Partner's Activities in accordance with the Contract.

9.3 Pre-existing IPR

- (a) Each party will retain their Pre-existing IPR and nothing in the Contract assigns or transfers the Pre-existing IPR of one party to another. Neither party may assert or bring any claim for ownership of any or all of the other party's Pre-existing IPR.
- (b) The Integration Partner grants to the Principal and its Personnel a non-exclusive, irrevocable, perpetual, worldwide, transferable (including sub-licensable), royalty-free licence to use, reproduce, make adaptations of, modify or incorporate into other works and materials (and sub-licence any other third party to do so) all Intellectual Property Rights comprised in or subsisting in the Integration Partner's Pre-existing IPR to do any one or more of the following:
 - (i) allow the Principal the full benefit and enjoyment of the Deliverables, the Works and Integration Partner's Activities;
 - (ii) perform the Principal's obligations and exercise its rights under the Contract;
 - (iii) to commercialise the Deliverables, the Learnings or any outputs from the Integration Partner's Activities or the Program (with or without the Integration Partner); and
 - (iv) carry out the Principal's functions, requirements or activities or those of the Crown in right of the State of NSW, including:
 - A. for any purpose in any way in connection with a Project, the Program, the Objectives or any other project that may be delivered for, or on behalf of, the Principal;
 - B. to procure, undertake or perform any works, activities, goods or services in connection with any development, procurement, upgrade, refurbishment, operation, maintenance or monitoring of any work, plant, equipment, infrastructure or systems;
 - C. to perform activities similar to the Integration Partner's Activities itself or have them performed by the Principal's Personnel or any third party (including any Other Contractor); and
 - D. to take over, operate and maintain any Integration Partner Supplied Items.
- (c) The Principal grants to the Integration Partner a limited, revocable, non-exclusive, royalty-free licence to use the Principal's Pre-existing IPR during the Term solely for the purpose of carrying out the Integration Partner's Activities in accordance with the Contract.
- (d) Where the Integration Partner's Pre-existing IPR includes any Software [REDACTED] the rights described in clause 9.3(b) also include, in addition to the rights described in that clause, the rights to (and to sub-licence any third party to) use the Intellectual Property Rights subsisting in that Software to:
 - (i) maintain, support, enhance and adapt that Software for all purposes associated with the use and enjoyment of the Deliverables and Integration Partner's Activities; and
 - (ii) access and modify the Software (including, where accessed under the escrow deed contemplated in clause 9.7, the Source Code of that Software), including for the purposes of any subsequent use or support

Party Materials without the express written authorisation of the Principal's Representative.

9.6 Third Party Software

- (a) The Integration Partner must not, and must procure that each Subcontractor must not, embed or otherwise use in connection with the Integration Partner's Activities or any of the Deliverables any Third Party Software without obtaining the Principal's prior written consent, which may be given or withheld in the Principal's sole discretion and subject to such conditions that the Principal reasonably determines.
- (b) In determining whether to provide consent in accordance with clause 9.6(a), the Principal may require the Integration Partner to:
 - (i) provide further information regarding the Third Party Software, including its proposed use;
 - (ii) confirm whether the Third Party Software is generally commercially available for licence;
 - (iii) confirm whether the Third Party Software vendor would be amenable to assigning to the Principal all Intellectual Property Rights that subsist in the Third Party Software prior to the use of such Third Party Software in connection with the Contract;
 - (iv) confirm that the use of such Third Party Software in connection with the Contract will not constrain the Principal's use of the Deliverables or any Deliverables, whether during the Term or after the expiry or termination of the Contract;
 - (v) obtain from the relevant Third Party Software vendor and provide to the Principal, a copy of the licence terms which would apply to the use of such Third Party Software;
 - (vi) confirm whether it is commercially feasible for the Third Party Software vendor to enter into a direct licence with the Principal in respect of such Third Party Software; or
 - (vii) provide any other information that the Principal may reasonably require.
- (c) Without in any way limiting the conditions that may be imposed by the Principal in accordance with clause 9.6(a), the Integration Partner acknowledges and agrees that such conditions may include any one or more of the following:
 - (i) that the use of any such Third Party Software in connection with the Contract is only permitted on and from when all Intellectual Property Rights that subsist in the Third Party Software are assigned to the Principal;
 - (ii) that the Principal must approve any licence terms, including those entered into between the Integration Partner and the Third Party Software vendor, that apply to the use of the Third Party Software in connection with the Contract; or
 - (iii) that on expiry or termination of the Contract, the Integration Partner must procure, and provide all reasonable support to the Principal in relation to, a direct licence between the Third Party Software vendor and the

Principal in respect of the Third Party Software on no less favourable terms than those entered into between the Integration Partner and the Third Party Software vendor.

- (d) The Integration Partner acknowledges and agrees that the use of Third Party Software does not in any way diminish the Integration Partner's obligations under the Contract. To the extent that the Integration Partner has the benefit of a warranty, indemnity or other term or condition under its agreement with a Third Party Software vendor and without limiting any other term of the Contract, the Integration Partner will 'pass-through' to the Principal the benefits of such warranties, indemnities and other terms and conditions under such agreements to the extent it is able to enforce such warranties, indemnities and other terms and conditions (and, if requested by the Principal, the Integration Partner will take all steps necessary to enforce such warranties, indemnities, terms and conditions for the benefit of the Principal).

9.7 Source Code

- (a) Where so specified in the Key Details, within 5 Business Days of the Award Date or otherwise at any later date notified to the Integration Partner by the Principal from time to time, the Integration Partner must enter into an escrow deed with the Principal and an escrow agent:
 - (i) on terms reasonably satisfactory to the Principal (and terms generally consistent with the form of escrow deed set out in Schedule 6); and
 - (ii) in respect of, and under which the Integration Partner places into escrow, any and all Source Code relating to any Software,and the Principal will bear all fees and charges payable to the escrow agent under any such escrow deed.
- (b) To the extent that any Source Code relating to any Software is owned by a third party, the Integration Partner must, if requested by the Principal, promptly procure that such third party enters into an escrow deed on terms generally consistent with the form of the escrow deed set out in Schedule 6. However, the parties acknowledge and agree that the failure of any third party to enter into any such escrow deed will not affect or limit any of the Principal's rights under the Contract.

9.8 Commercialisation

- (a) It is agreed between the parties that the Principal retains the exclusive right to commercialise any Intellectual Property Rights, Learnings or know-how developed from the Program, unless (in its sole discretion) it elects to do so in conjunction with the Integration Partner through a Strategic Partnership in Phase 3.
- (b) Notwithstanding anything to the contrary in the Contract, the Integration Partner will only be permitted to pursue any commercial opportunities (including work for other customers) using any Learnings or know-how developed from or in relation to, the Contract or the Program with the Principal's consent, which may be subject to conditions including that the Principal be involved in the commercial opportunity.
- (c) Without limiting any other clause in the Contract, the Integration Partner agrees that the Principal and its Personnel may use and share any Learnings or any Integration Partner or Integration Partner Personnel know-how developed from, or in relation to, the Program for any purpose, including any purpose in connection with any commercial opportunities

9.9 Moral Rights

Before providing any Deliverables to the Principal or using any materials in connection with the Contract, the Integration Partner must, at its own expense, obtain or procure all necessary consents or waivers from any person who has Moral Rights in the Deliverables and materials to ensure that the Principal may fully exercise its Intellectual Property Rights under the Contract, including the use, modification or adaption of Deliverables and materials or any other dealing which might otherwise constitute an infringement of an author's Moral Rights.

9.10 Indemnity and infringement

The Integration Partner must indemnify the Principal against any claims against, or costs, losses or damages suffered or incurred by, the Principal, arising out of, or in any way in connection with, any actual or alleged infringement of any Intellectual Property Rights or Moral Rights in or associated with the Integration Partner's Activities, the Deliverables or any breach by the Integration Partner of its warranties and obligations under clauses 9.1 - 9.9.

9.11 Confidentiality and disclosure

- (a) Subject to clause 9.11(b), the Integration Partner must:
- (i) keep confidential the Contract and any information relating to, or discussions concerning, the Contract, the Program, each Project and the Works;
 - (ii) not use the information referred to in clause 9.11(a)(i) except as necessary for the performance of its obligations under the Contract; and
 - (iii) ensure that each of its Personnel complies with the terms of clauses 9.11(a)(i) and 9.11(a)(ii).
- (b) The Integration Partner is not obliged to keep confidential any information:
- (i) which is in the public domain through no default of the Integration Partner ; or
 - (ii) the disclosure of which is:
 - A. required by Law;
 - B. consented to in writing by the Principal; or
 - C. given to a court in the course of proceedings to which the Integration Partner is a party.
- (c) The Integration Partner acknowledges that the Principal may disclose the Contract (and information concerning the terms of the Contract) under or in accordance with any one or more of the following:
- (i) the Government Information (Public Access) Act 2009 (NSW) (**GIPA Act**); and
 - (ii) to satisfy the disclosure requirements of the New South Wales Auditor General or to satisfy the requirements of Parliamentary accountability,

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

9.12 Media

The Integration Partner must not:

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

9.13 Integration Partner Supplied Items

- (a) The Integration Partner must provide all facilities, items, equipment, systems, Software and other resources that are necessary for the Integration Partner to carry out the Integration Partner's Activities and to meet the Integration Partner's obligations under the Contract (**Integration Partner Supplied Items**).
- (b) Before any Integration Partner Supplied Items integrate or interface with any of the Principal's software or systems, the Integration Partner must provide the Principal with an opportunity to test and verify the standard and quality of any Integration Partner Supplied Items.
- (c) By providing any Integration Partner Supplied Items that will integrate or interface with the Principal's software or systems, the Integration Partner warrants and represents that the Integration Partner Supplied Items have been checked by the Integration Partner and contain no Harmful Code.

10. Records and Audit

10.1 Records open for inspection and audit

- (a) The Integration Partner must carry out the Integration Partner's Activities on an "open book basis", including that the Integration Partner must:
 - (i) develop, secure and maintain all necessary records and other documentation:
 - A. relating to the Contract and the Integration Partner's Activities; and
 - B. that are reasonably necessary in the provision of the Integration Partner's Activities including:
 - 1) Program Documents;
 - 2) supporting reports and evidence required by the Principal to verify the carrying out and completion of the Integration Partner's Activities as well as the hours spent in providing the relevant Integration Partner's Activities;
 - 3) all accounts and records relating to the Integration Partner's Activities including all supporting materials used to generate and substantiate

invoices submitted in respect of the Integration Partner's Activities; and

- 4) the records required to be maintained by the State Records Act 1998 (NSW), as if the Integration Partner was bound by that Act, and any other Law;
- (ii) ensure that all records and documents comply with, where applicable, good accounting practices, standards and procedures;
 - (iii) provide unfettered access for the Principal or its representatives to inspect all records and documentation referred to in clause 10.1(a)(i) at any time on reasonable notice to ensure compliance with the Integration Partner's obligations under the Contract;
 - (iv) ensure that all material relating to the Integration Partner's Activities, each project or the Works, the quality system and records required to be kept by the Contract and the records and documentation referred to in clause 10.1(a)(i) are available to the Principal (or persons nominated by the Principal) at all times for examination, analysis, audit, inspection, transcription and copying;
 - (v) upon request, promptly provide the Principal's Representative with access to, or a copy of (including by electronic means) any of the records and documentation referred to in clause 10.1(a)(i);
 - (vi) if the Contract is terminated, give the Principal all records and documentation referred to in clause 10.1(a)(i) that are necessary for the orderly continuance of the Integration Partner's Activities, each project or the Works by the Principal or another party or parties; and
 - (vii) for a period of seven years from the end of the Term, not destroy or discard records and other documents referred to in clause 10.1(a)(i) except with the Principal's Representative's prior written consent.
- (b) The requirements of 10.1(a) do not apply to records or documentation that may be the subject of legal professional privilege or are confidential lawyer / client communications.

10.2 Auditing records

- (a) The Integration Partner acknowledges and agrees that the Principal's Representative (or any other person nominated by the Principal's Representative) may on one Business Days' notice at any time carry out an audit of and copy the Integration Partner's documents, accounts and other records to the extent reasonably necessary to verify:
- (i) the Integration Partner's performance of the Integration Partner's Activities; and
 - (ii) that any amounts claimed by the Integration Partner have been properly calculated,
- except to the extent that the documents, accounts or records:
- (iii) are subject to legal professional privilege; or
 - (iv) must not be disclosed in accordance with any Law.
- (b) The Integration Partner must:

- (i) make available for inspection for an audit all such records and other material referred to in clause 10.1(a)(i) as the Auditor may reasonably require, regardless of where they are located or the manner in which they are stored, and the parties acknowledge and agree that the Auditor will be entitled to take copies of all such records and other material as may reasonably be required for the purposes of the audit;
 - (ii) provide all appropriate resources and all reasonable assistance required by the Auditor and fully co-operate in good faith;
 - (iii) if required by the Principal, participate in any meeting in connection with any audit; and
 - (iv) provide reasonable access to any premises where the Integration Partner's Activities are being undertaken to enable the Auditor to carry out such audit.
- (c) Each party will bear its own costs in respect of an audit carried out under this clause 10.2. The Principal will bear the Auditor's costs except if the audit reveals a material non-compliance with the Contract in which case the Integration Partner must pay the Auditor's costs.
- (d) If the audit reveals any non-compliance with the Contract then the Integration Partner must remedy that non-compliance within such time as the Principal reasonably requires and must advise the Principal in writing what steps the Integration Partner has taken to ensure that the identified non-compliance will not re-occur.

10.3 Evidence of financial standing or financial arrangements

- (a) The Integration Partner warrants to the Principal that the Integration Partner will at all times have sufficient financial capacity to meet all of its obligations under the Contract.
- (b) Without limiting clauses 10.1 and 10.2, the Integration Partner must, as and when requested by the Principal's Representative from time to time promptly, and in any event within the period stated in the Principal's Representative's request, provide the Principal's Representative with a copy of such evidence reasonably required by the Principal's Representative which demonstrates the Integration Partner's financial capacity to meet all of its obligations under the Contract.
- (c) The Integration Partner must promptly notify the Principal of:
- (i) any material change to any information provided by the Integration Partner under paragraph (b); and
 - (ii) any material change in the Integration Partner's financial standing which may affect, or is likely to affect, the Integration Partner's financial capacity to meet all of its obligations under the Contract.
- (d) The Integration Partner must assist and fully co-operate with the requirements or requests of the Principal, the Principal's Representative or their nominees in relation to any review of:
- (i) any information provided by the Integration Partner under this clause 10.3; or
 - (ii) the Integration Partner's financial capacity to meet its obligations under the Contract.

10.4 Integration Partner Audits

Notwithstanding any other obligation under clause 10, the Integration Partner agrees that:

- (a) during the Term, it will provide to the Principal as soon as reasonably practicable after becoming available:
 - (i) its bi-annual financial statements which include cash flow details; and
 - (ii) an annual audit statement from an independent appointed auditor.

11. General Integration Partner obligations

11.1 Fundamental obligations

- (a) The Integration Partner acknowledges that the Principal has entered into the Contract relying on the professional skill, care, diligence and expertise of the Integration Partner in the performance of the Integration Partner's Activities.
- (b) The Integration Partner:
 - (i) must exercise the standard of skill, care, diligence and expertise in the performance of the Integration Partner's Activities that would be expected of a professional provider of services similar to the Integration Partner's Activities;
 - (ii) warrants that each of its Subcontractors will exercise the standard of skill, care, diligence and expertise in the performance of the part of the Integration Partner's Activities being performed by the Subcontractors that would be expected of a professional provider of services similar to each part of the Integration Partner's Activities;
 - (iii) must:
 - A. ensure that the Deliverables comply with all of the requirements of the Contract; and
 - B. ensure that the Integration Partner's Activities and the Deliverables will be fit for their intended purpose;
 - (iv) must perform the Integration Partner's Activities in a timely and efficient manner that is safe to both people and the environment;
 - (v) must ensure that the Integration Partner's Activities are provided economically and in accordance with any budgetary requirements of the Principal notified to the Integration Partner; and
 - (vi) must exercise the utmost good faith in the best interests of the Principal and keep the Principal fully and regularly informed about all matters affecting or relating to the performance of the Integration Partner's Activities, the Program or the Projects or otherwise.
- (c) The Integration Partner must:
 - (i) promptly perform the Integration Partner's Activities and use its best endeavours to ensure that the Integration Partner's Activities and the Works proceed at a rate of progress such that each Project is completed by the committed dates for each Project, as specified in the relevant Works Order(s) (including any Milestone Dates); and

- (ii) ensure that all work and methods of working under the Project Contracts are performed in accordance with the requirements of the applicable Project Contract.

11.2 No authority to commit the Principal

- (a) Other than as expressly authorised in writing by the Principal, the Integration Partner:
 - (i) has no authority to, and must not:
 - A. enter into any contracts, commitments or other legal documents or arrangements in the name of, or on behalf of, the Principal; or
 - B. take any act or step to bind or commit the Principal in any manner, whether as a disclosed agent of the Principal or otherwise; and
 - (ii) must act within the limits of authority set out in Schedule 5.
- (b) Without limiting clause 28.20, the Integration Partner is an independent contractor and is not, and must not purport to be, a partner or joint venturer of the Principal.

11.3 Restriction on self-performance

Unless prior written approval is provided by the Principal's Representative to the Integration Partner (which approval may be given or withheld by the Principal's Representative in its sole discretion), neither the Integration Partner, its Personnel nor any related body corporate (as defined in section 50 of the Corporations Act, but also including any body corporate that is related to the Integration Partner by virtue of the Integration Partner's shareholding or other direct or indirect economic or commercial interest in that body corporate) of:

- (a) the Integration Partner;
 - (b) any entity that forms a part of the Integration Partner; or
 - (c) any Subcontractor,
- may:
- (d) perform any function specified in Schedule 13 in respect of a Project or the Program;
 - (e) have any direct or indirect involvement in a Project, a Project Contract or the Program other than for the Principal; or
 - (f) provide services to or advise any other person in relation to a Project, a Project Contract or the Program.

Any approval to self-perform may be given subject to any conditions the Principal sees fit, including the entering into of contracts between the Principal and the Integration Partner for the performance of the relevant work.

11.4 Integration Partner to inform itself

The Integration Partner must:

- (a) inform itself of the Principal's requirements for the Integration Partner's Activities and for this purpose review the Principal's Material; and

- (b) consult with the Principal throughout the carrying out of the Integration Partner's Activities.

11.5 Give notice of matters impacting on Integration Partner's Activities

- (a) If the Integration Partner becomes aware of any event or matter that:
 - (i) is likely to change or that has changed the scope, timing, cost, quality or reputation of the performance of the Integration Partner's Activities, a Project or the Program;
 - (ii) affects or may affect an Objective, a KRA or KPI or the Integration Partner's ability to perform the Integration Partner's Activities by the Milestone Dates or the Principal's ability to achieve the Objectives; or
 - (iii) involves any error, omission or defect in any continuing or completed aspects of the Works or the Integration Partner's Activities,

the Integration Partner must promptly give written notice of that matter to the Principal's Representative (**Early Warning Notice**) containing, as far as practicable in the circumstances:

 - (iv) particulars of the change, effect, error, omission or defect;
 - (v) its impact or likely impact, including on the expected costs to the Principal of a Project or the Program; and
 - (vi) in the case of the Integration Partner, its recommendation as to how to minimise the impact or likely impact of the matter upon the scope, quality, timing, cost and reputation of the Integration Partner's Activities, the Project or the Program.
- (b) Upon receipt of each Early Warning Notice, the parties must procure their respective Representatives to attend a meeting to discuss the matters the subject of the Early Warning Notice.
- (c) At the meeting, the parties must procure their respective Representatives to use best endeavours to:
 - (i) make and consider proposals for how the effect and impact of the risk can be avoided or reduced;
 - (ii) seek solutions that will eliminate or reduce any negative effect or impact of the risk on those who will be affected; and
 - (iii) seek to agree upon the actions that will be taken and who, in accordance with the Contract, will take them.

11.6 Co-ordination with Other Contractors

- (a) The Integration Partner must:
 - (i) fully co-operate with each Other Contractor;
 - (ii) carefully co-ordinate and integrate the performance of the Integration Partner's Activities with Other Contractors' services, works or activities;
 - (iii) perform the Integration Partner's Activities so as to avoid interfering with, disrupting or delaying the Other Contractors' services, works or activities;

- (iv) provide to each of the Principal and the Other Contractors whatever advice, support and co-operation is necessary to facilitate the timely completion of Other Contractors' services, works or activities; and
 - (v) comply with all Directions of the Principal's Representative regarding Other Contractors and their work.
- (b) The Integration Partner acknowledges that:
- (i) it is not entitled to make any Claim as a consequence of:
 - A. delays or disruption caused by Other Contractors; or
 - B. any Direction given by the Principal's Representative pursuant to clause 11.6(a)(v);
 - (ii) any delay or disruption caused by Other Contractors will not affect or limit the Integration Partner's obligations or liabilities under the Contract;
 - (iii) any action of the Integration Partner in respect of a Direction given by the Principal's Representative in respect of the matters specified in this clause 11.6 does not lessen or otherwise affect the Integration Partner's other obligations under the Contract; and
 - (iv) neither the Principal nor the Principal's Representative assumes any responsibility or duty of care to the Integration Partner in respect of its actions in respect of its actions under clause 11.6(a)(v).

11.7 Premises

- (a) The Integration Partner must at all reasonable times:
- (i) give to the Principal, or to any other third person authorised in writing by the Principal or the Principal's Representative, access to premises where the Integration Partner's Activities or part of the Integration Partner's Activities are being performed;
 - (ii) permit those persons referred to in paragraph (i) to inspect the performance of the Integration Partner's Activities and the preparation of any Deliverables; and
 - (iii) provide the Principal, the Principal's Representative and their employees and agents with every reasonable facility necessary for the superintendence, examination and testing of the Integration Partner's Activities.
- (b) The Integration Partner must, if directed by the Principal, co-locate the performance of the Integration Partner's Activities with the Principal at the premises specified by the Principal.

11.8 Environment

- (a) The Integration Partner must comply with, and ensure that all persons engaged in the performance of the Integration Partner's Activities or in the execution of the Works (including Subcontractors) comply with all Environmental Requirements.
- (b) The Integration Partner:

- (i) must ensure that in carrying out the Integration Partner's Activities it does not pollute, contaminate or otherwise damage the environment; and
 - (ii) is responsible for and must at its own cost make good any pollution, contamination or damage to the environment caused by the performance of the Integration Partner's Activities, whether or not the Integration Partner has complied with the requirements of the Contract for the protection of the environment.
- (c) The Integration Partner must notify the Principal's Representative in writing immediately upon the occurrence of any environmental incident (whether caused by the Integration Partner, its Personnel, a Project Contractor, an Other Contractor or third party). The notice must include:
- (i) details of the environmental incident (including details of any harm or potential harm to human health or the environment) and its cause;
 - (ii) details of all remedial or corrective actions taken, or proposed to be taken, to rectify or avoid any harm to human health or the environment as a result of the incident and to prevent a re-occurrence of such an incident; and
 - (iii) details of any notification from or to, or correspondence with, any Authority in relation to the incident.

11.9 Subcontracting

The Integration Partner:

- (a) must not subcontract any Integration Partner's Activities without the prior written approval of the Principal's Representative, other than to the Subcontractors, and the part of the Integration Partner's Activities, specified in the Key Details;
- (b) must not subcontract any Integration Partner's Activities to a Prohibited Person;
- (c) will be fully responsible for the performance of the Integration Partner's Activities despite subcontracting the performance of any part of the Integration Partner's Activities;
- (d) will be vicariously liable to the Principal for all acts, omissions and defaults of its Subcontractors (and those of the employees and agents of its Subcontractors) relating to, or in any way connected with the performance of the Integration Partner's Activities; and
- (e) must ensure that each subcontract contains provisions which bind the Subcontractors to participate in any novation required by the Principal under clause 19.5(c)(i).

11.10 Compliance with Law

The Integration Partner must in carrying out the Integration Partner's Activities:

- (a) comply with all applicable Law;
- (b) comply with any applicable Funding Requirements;
- (c) obtain all Approvals required for the performance of the Integration Partner's Activities and comply with, carry out and fulfil the conditions and requirements of such Approvals;

- (d) as soon as practicable (and not later than 5 Business Days after receipt of the relevant documents), provide copies of all documents (including the Approvals and other notices) to the Principal's Representative that any Authority issues to the Integration Partner in relation to the performance of the Integration Partner's Activities;
- (e) prepare and give the Principal's Representative any documents that an Authority requires in order for the Principal to obtain the Approvals it requires to use the Works; and
- (f) procure that the Integration Partner's Representative prepare and give the Principal's Representative, on each anniversary of the Award Date, certification that the Integration Partner has complied with and satisfied the requirements set out in each of clauses 11.10(a) to 11.10(e) (or otherwise specify any non-compliances with these clauses).

11.11 Marketing or promotion of the Program

The Integration Partner must co-operate with the Principal in connection with the Principal's use of the Integration Partner's name in any marketing or promotion associated with the Program or any Project to the extent the Principal may reasonably require.

11.12 Work health and safety

- (a) Without limiting the Integration Partner's obligations under any other provision of the Contract, the Integration Partner must comply, and must ensure that its Subcontractors and any other person engaged by the Integration Partner for the purposes of the Contract comply, with the WHS Legislation including:
 - (i) any obligation under the WHS Legislation to consult, cooperate and coordinate activities with all other persons who have a work health and safety duty in relation to the same matter;
 - (ii) insofar as the Integration Partner, in carrying out the Integration Partner's Activities, is a person conducting a business or undertaking that designs plant, substances or structures to whom section 22 of the Work Health and Safety Act 2011 (NSW) applies, the obligations under that section and any other provision of the WHS Legislation imposing obligations upon designers;
 - (iii) if requested by the Principal's Representative or required by WHS Legislation, demonstrate compliance with the WHS Legislation, including providing evidence of any Approvals, prescribed qualifications or experience, or any other information relevant to work health and safety matters; and
 - (i) consulting with the Principal for the purposes of the consultation requirements contained in regulation 294 of the Work Health and Safety Regulation 2017 (NSW).
- (b) In performing its obligations under the Contract the Integration Partner must:
 - (i) exercise a duty of utmost good faith to the Principal in carrying out the Integration Partner's Activities to enable the Principal to discharge the Principal's duties under the WHS Legislation; and
 - (ii) ensure that in performing the Integration Partner's Activities, it does not do anything or fail to do anything that would cause the Principal to be in breach of the WHS Legislation.

- (c) When used in this clause 11.12, the term 'design' has any meaning assigned to that term under the WHS Legislation.

11.13 Policies and Procedures

- (a) The Integration Partner must ensure that the Integration Partner and its Personnel are aware of, and comply with:
 - (i) the Code of Conduct; and
 - (ii) the Policies and Procedures.
- (b) For the purposes of clause 11.13(a), any reference to, or requirement applying to, the Principal's employees in the Policies and Procedures is to be read as a reference to the Integration Partner's Personnel.
- (c) In respect of the Aboriginal Procurement Policy (January 2021) (**APP**), the Integration Partner:
 - (i) must comply with the Aboriginal Participation Plan (as defined in the APP) submitted as part of its tender for the Integration Partner's Activities;
 - (ii) must report quarterly against compliance with the Aboriginal Participation Plan;
 - (iii) acknowledges that the Contract value for the purposes of calculating the Aboriginal participation requirements is as set out in the Key Details;
 - (iv) acknowledges and agrees that Training Services NSW has established the Aboriginal participation fund to receive payments when the Integration Partner does not meet contracted Aboriginal participation requirements; and
 - (v) acknowledges and agrees that where the Integration Partner does not meet its Aboriginal participation requirements under the Contract, the Principal may, in accordance with the APP, withhold payments due to the Integration Partner pursuant to the Contract and direct the funds to an account held by Training Services NSW.

11.14 Principal's operations

The Integration Partner must:

- (a) ensure that:
 - (i) the performance of the Integration Partner's Activities; and
 - (ii) any other acts or omissions of the Integration Partner or its Personnel,do not adversely affect or otherwise interfere with the Principal's operations or its ability to achieve the Objectives;
- (b) should the Integration Partner become aware of such effect or interference, promptly notify the Principal of any such adverse effect or interference; and
- (c) consult and co-operate with the Principal's Representative and the Principal and attend meetings as required by the Principal's Representative in relation to the interface between the Principal's operations and the performance of the Integration Partner's Activities.

11.15 Basis of Contract Price

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

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

11.16 Access

- (a) Subject to paragraph 11.16(b), the Integration Partner must comply with all Directions, procedures and policies of the Principal or otherwise as notified by the Principal's Representative relating to work health, safety security and the environment when accessing any site or any premises owned or occupied by the Principal or its Personnel.
- (b) If a Principal Contractor has been appointed as "principal contractor" in respect of a Site for the purposes of the WHS Legislation, the Integration Partner must comply with the Directions of such Principal Contractor with respect to work, health and safety, when accessing the Site.

11.17 Shared learnings

- (a) The Integration Partner agrees to share with the Principal any learnings it acquires in connection with the provision of the Integration Partner's Activities, that could improve the Program or the systems and operations of the Principal (**Learnings**).
- (b) The Integration Partner must report its Learnings to the Principal's Representative on a quarterly basis and within 10 Business Days following the expiry or termination of the Contract in a format reasonably requested by the Principal's Representative.
- (c) If requested by the Principal, throughout the Term, the Integration Partner and Integration Partner Personnel must participate in any forums or meetings with the Principal and its Personnel to discuss and understand the Learnings.

11.18 Indemnity

- (a) The Integration Partner must indemnify the Principal against any claims against, or costs, losses or damages suffered or incurred by, the Principal, arising out of, or in any way in connection with, any breach of the Contract, fraud or wilful default of the Integration Partner in the performance of the Integration Partner's Activities.
- (b) The Integration Partner's liability to indemnify the Principal under paragraph (a) will be reduced proportionally to the extent that any act or omission of the Principal or the Principal's Representative caused or contributed to the claim, cost, loss or damage.

11.19 Resourcing Schedule

- (a) The Integration Partner must, during the Term, prepare a proposed resourcing schedule in respect of the Integration Partner's Activities (**Resourcing Schedule**).
- (b) The Integration Partner must:
 - (i) prepare the Resourcing Schedule so that it shows:

- A. the Integration Partner's Personnel and resources proposed to be used by the Integration Partner in providing the Integration Partner's Activities for the next 3 months;
- B. separately the proposed Personnel:
 - 1) to be comprised in the Core Team (which is paid for as part of the Integration Partner Fee);
 - 2) in addition to the Core Team, that the Integration Partner proposes be paid for through the Ad Hoc Resource Fees (and its proposal for what the relevant resource levels and Ad Hoc Resource Fees would be); and
 - 3) to be engaged in respect of a Works Order, which will be paid for by way of the Construction On-Cost Margin; and
- (ii) where there is a proposed change in the Resourcing Schedule, provide the Principal's Representative with an updated Resourcing Schedule at least on a monthly basis and provide an updated Resourcing Schedules every quarter thereafter during the Term.
- (c) The Integration Partner must not implement any changes to the Resourcing Schedule without the Principal's Representative's prior written approval.
- (d) The Principal's Representative may from time to time require changes to the Resourcing Schedule, including the provision of additional Personnel or removal of Personnel from the Integration Partner's Activities, and the Integration Partner must update the Resourcing Schedule accordingly.
- (e) The Integration Partner must:
 - (i) comply with the Resourcing Schedule as approved by the Principal's Representative in writing from time to time; and
 - (ii) use best endeavours to make available skilled, experienced and diligent Personnel, as required by the Principal's Representative to provide the Integration Partner's Activities, including those Personnel named in Schedule 15.
- (f) The Integration Partner will not be entitled to any Claim for the provision of any additional Personnel or resources described in the Resourcing Schedule other than in accordance with Schedule 2.

12. Quality

12.1 Quality assurance

The Integration Partner:

- (a) must implement a quality assurance system representing Best Industry Practice;
- (b) must allow the Principal's Representative access to the quality assurance system of the Integration Partner and its Subcontractors so as to enable monitoring and quality auditing; and
- (c) will not be relieved from compliance with any of its Contract obligations or from any of its liabilities whether under the Contract or otherwise by Law as a result of:

- (i) the implementation of, and compliance with, the quality assurance requirements of the Contract;
- (ii) any Direction by the Principal's Representative concerning the Integration Partner's quality assurance system or its compliance or non-compliance with that system;
- (iii) any audit or other monitoring by the Principal's Representative, or anyone else acting on behalf of the Principal of the Integration Partner's compliance with the quality assurance system; or
- (iv) any failure by the Principal's Representative, or anyone else acting on behalf of the Principal, to detect any Integration Partner's Activities which are not in accordance with the requirements of the Contract including where any such failure arises from any negligence on the part of the Principal's Representative or other person.

12.2 Non-complying Deliverables or Integration Partner's Activities

If the Principal's Representative discovers or reasonably forms the view that any Deliverables have not been prepared, or any Integration Partner's Activities have not been performed, in accordance with the Contract, the Principal's Representative may give the Integration Partner a Direction specifying the non-complying Deliverables or Integration Partner's Activities and doing one or more of the following:

- (a) requiring the Integration Partner to:
 - (i) amend the Deliverables or re-perform the non-complying Integration Partner's Activities within a specified time period; and
 - (ii) take all such steps as are reasonably necessary to:
 - A. mitigate the effect on the Principal of the failure to prepare the Deliverables or perform the Integration Partner's Activities in accordance with the Contract; and
 - B. put the Principal (as closely as possible) in the position in which it would have been if the Integration Partner had prepared the Deliverables or performed the Integration Partner's Activities in accordance with the Contract; and
- (b) advising the Integration Partner that the Principal will accept the non-complying Deliverables or Integration Partner's Activities despite the non-compliance, in which event the Principal will be entitled to recover from the Integration Partner any reasonable additional costs which will be incurred by the Principal as a result of the non-compliance.

12.3 Re-performance of the non-complying Integration Partner's Activities

- (a) If a Direction is given under clause 12.2(a), the Integration Partner must, at its cost, amend the Deliverables or re-perform the non-complying Integration Partner's Activities:
 - (i) within the time specified in the Principal's Representative's instruction; and
 - (ii) so as to minimise the delay and disruption to the performance of the Integration Partner's Activities and the Works.
- (b) The Integration Partner acknowledges and agrees that:

- (i) should the Integration Partner fail to amend the Deliverables or re-perform the non-complying Integration Partner's Activities within the time specified in the Principal's Representative's instruction or so as to minimise the delay and disruption to the performance of the Integration Partner's Activities and the Works, then the Principal may elect to "step-in" and temporarily assume total or partial management of the whole or any part of the Works or the Integration Partner's Activities; and
- (ii) the Integration Partner must pay to the Principal any costs incurred by the Principal as a result of the "step-in" under sub-clause (i) and such amounts will be debt due and payable by the Integration Partner to the Principal.

13. General obligations of the Principal

13.1 Provide information

The Principal has made, or will make, available to the Integration Partner all information, documents, particulars and Principal's Materials relating to the Principal's requirements for the Program and each Project, which the Principal considers relevant to the Integration Partner's performance of the Integration Partner's Activities.

13.2 Provide additional information

If:

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

then:

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

13.3 Make decisions

If:

- (a) the Integration Partner requests the Principal to consider the selection of alternative courses of action; and
- (b) all information required to enable a decision to be made is provided by the Integration Partner or is otherwise available,

the Principal must give a decision on the required course of action to the Integration Partner within a reasonable time period and so as not to delay or disrupt the performance of the Integration Partner's Activities.

14. Works Orders

14.1 Works Order Proposal

- (a) The parties acknowledge and agree that the Principal's Representative may, at any time, issue a document titled "Works Order Proposal" (**Works Order Proposal**) to the Integration Partner which will set out details of a proposed Works Order which the Principal is considering, which may include:
 - (i) details of the Project to which the Works Order relates;
 - (ii) the scope of the Integration Partner's Activities under the proposed Works Order;
 - (iii) the proposed timing of, and any proposed Milestone Dates for, the Integration Partner's Activities under the proposed Works Order;
 - (iv) any proposed KPIs or KRAs for the Works Order; and
 - (v) any other matters that the Principal considers are relevant to the preparation of the proposed Works Order.
- (b) Within 10 Business Days of the receipt of a "Works Order Proposal", the Integration Partner must provide the Principal's Representative with a written notice in which the Integration Partner sets out:
 - (i) the Integration Partner's estimated Construction On-Cost Margin and its estimation of the applicable Cost Band in respect of the Works Order;
 - (ii) the Integration Partner's proposed methodology and resources for performing the Integration Partner's Activities the subject of the proposed Works Order; and
 - (iii) the effect (if any) which the proposed Works Order will have on the Management Plans.
- (c) The Integration Partner must prepare any notice under paragraph 14.1(b):
 - (i) in a transparent, open book manner, working collaboratively with the Principal, including in relation to pricing and resources; and
 - (ii) in a manner that maximises value for money to the Principal in the performance of the Integration Partner's Activities.
- (d) The Integration Partner must provide any information or documents reasonably requested by the Principal's Representative in relation to the notice under paragraph 14.1(b) or the proposed Works Order.

14.2 Works Order

- (a) The parties acknowledge and agree that the Principal's Representative may:
 - (i) issue a written document to the Integration Partner titled "Works Order" in which the Principal's Representative will state:
 - A. the Integration Partner's Activities that must be performed under the Works Order (including any Milestone Dates);
 - B. any Funding Requirements that apply to that Works Order;

- C. any KRAs or KPIs applying to the Works Order and how the Integration Partner's remuneration will be adjusted in relation to them;
 - D. the expected Cost Band applicable to the relevant Project; and
 - E. any other adjustments required to give effect to the Works Order, including any adjustment required to the Management Plans (including the Integration Partner Cost Plan);
- (ii) reject the Integration Partner's notice; or
 - (iii) request the Integration Partner to submit an amended notice under clause 14.
- (b) If the Principal's Representative issues a Works Order under clause 14.2(a)(i), the Integration Partner must:
 - (i) countersign and return the Works Order within 5 Business Days of its issue; and
 - (ii) perform the Integration Partner's Activities as described in the Works Order.
 - (c) The Integration Partner must not proceed with the Integration Partner's Activities the subject of a proposed Works Order unless and until the Principal's Representative has issued the Integration Partner with a Works Order in respect of such Integration Partner's Activities under clause 14.2(a)(i).
 - (d) No Works Order will invalidate the Contract irrespective of the nature, extent or value of the services the subject of the Works Order.
 - (e) If the Principal's Representative requests an amended notice under clause 14.2(a)(iii), the Integration Partner must prepare a further notice, in which case clause 14.2(a) of this clause will reapply.
 - (f) The Integration Partner must negotiate with the Principal's Representative in good faith to agree any changes requested by the Principal's Representative to the proposed Works Order.
 - (g) Nothing in this clause 14 limits any rights of the Principal or obligations of the Integration Partner under clause 17.

15. Procurement, completion and commissioning

15.1 Procurement of Project Contracts

- (a) The Integration Partner must provide all services to procure the engagement of all Project Contractors in accordance with the Procurement Management Plan or as otherwise required by the Principal.
- (b) The Integration Partner must, in procuring the engagement of all Project Contractors:
 - (i) ensure the competitiveness of all tenders on terms which maximise value for money for the Principal;
 - (ii) conduct procurement processes in accordance with the highest standards of probity, fairness and equal opportunity; and

- (iii) conduct procurements as directed by the Principal, including in accordance with the Principal's NSW Government construction accreditation requirements and the NSW Government Procurement Policy Framework and, where required, using the Principal's tender documentation templates.
- (c) The Integration Partner must not commence any procurement activities in respect of Project Contractors until a Procurement Management Plan has been approved by the Principal's Representative.
- (d) Neither the Integration Partner nor any related entity of the Integration Partner is entitled to tender for any of the Project Contracts, or perform any work under the Project Contracts for the Project Contractors, unless the Integration Partner has obtained the prior written approval of the Principal.
- (e) The Integration Partner must:
 - (i) subject to clause 15.1(e)(iii) and in accordance with Schedule 5, enter into each Project Contract as agent of the Principal;
 - (ii) not enter into any Project Contract with a Prohibited Person or invite a Prohibited Person to participate in a procurement process for a Project Contract; and
 - (iii) not enter into any Project Contract without the prior written approval of the Principal.
- (f) The Integration Partner must ensure that all Project Contracts contain provisions that:
 - (i) bind the Project Contractors to sign any documentation required to novate the Project Contract to the Principal, Integrator Co or another nominee of the Principal; and
 - (ii) to the extent that the Project Contractor will be performing work on the Site, require the Project Contractor to provide a deed poll in favour of the Principal Contractor pursuant to which the Project Contractor agrees to comply with the Principal Contractor's work, health and safety requirements on the Site.

15.2 Co-ordination, supervision and contract administration of the Project Contracts

The Integration Partner must (and, where relevant, subject to and in accordance with Schedule 5):

- (a) provide all superintendence, co-ordination, design management and construction management of the Project Contracts and use its best endeavours to ensure that each Project Contractor:
 - (i) achieves delivery, acceptance or completion (as applicable) by the applicable dates therefor under those contracts; and
 - (ii) completes its activities within its planned total outturn cost (as stated in the Integration Partner Cost Plan);
- (b) subject to the conditions and limitations set out in Schedule 5, provide contract administration of the Project Contracts and perform the functions of the Principal's representative under the Project Contracts (including administering all progress claims, variations, extensions of time and all other claims and matters which the

terms of the Project Contracts require the “Principal's Representative” or “Superintendent”, as named in those contracts, to do);

- (c) monitor the performance of the Project Contractors under the Project Contracts to ensure all faults, omissions or other Defects are rectified prior to delivery, acceptance or practical completion or during the defect liability periods (as the case may be) under the applicable Project Contracts;
- (d) provide advice and all assistance to the Principal in negotiating and resolving any issues or disputes which may arise under the Project Contracts; and
- (e) not do or fail to do anything it is obliged to do which would cause the Principal to be in breach of any Project Contract.

15.3 Interface with Principal Contractor

The parties acknowledge and agree that:

- (a) the Principal will engage a Principal Contractor in respect of each Project;
- (b) the Principal Contractor will be engaged as “principal contractor” (as defined in the WHS Legislation) and the Integration Partner must comply with the requirements of the relevant Principal Contractor in respect of work, health and safety when accessing a Site; and
- (c) the Integration Partner will be responsible for managing the interface between the Principal Contractor and each Project Contractor, including in respect of the program and design of each Project.

15.4 Integration Partner's cost planning obligations

The Integration Partner must:

- (a) prepare and regularly review the Integration Partner Cost Plan;
- (b) inform the Principal's Representative if it becomes aware of any likely or actual cost overruns or cost underruns for the Project Contracts;
- (c) identify and advise the Principal's Representative of any potential cost savings in any of the Project Contracts.

15.5 Commissioning and handover obligations

- (a) The Integration Partner must:
 - (i) within the time required by the Principal's Representative, prepare draft commissioning and handover guidelines for each Project and a draft handover and transition plan and submit the guidelines and the plan for approval to the Principal's Representative;
 - (ii) make such amendments required by the Principal's Representative to the draft commissioning and handover guidelines and draft handover and transition plan and resubmit the guidelines and plan for approval, within the time required by the Principal's Representative; and
 - (iii) without limiting its obligations under the Contract, comply with the approved commissioning and handover guidelines and approved handover and transition plan.

- (b) The Integration Partner must ensure that all relevant Deliverables comply with the commissioning and handover guidelines and handover and transition plan prepared by the Integration Partner and approved by the Principal's Representative.
- (c) The Integration Partner must:
 - (i) in consultation with the Principal's Representative, provide the Principal with such personnel, resources and other specific assistance as may be required by the Principal's Representative to facilitate the timely, efficient and comprehensive commissioning of the Works and the smooth handover of the Works to the Principal; and
 - (ii) as and when reasonably required by the Principal's Representative, meet with the Principal's Representative and Other Contractors nominated by the Principal's Representative with a view to ensuring that the Principal and the nominated Other Contractors have sufficient information to enable the nominated Other Contractors to:
 - A. operate the Works;
 - B. maintain the Works; and
 - C. perform such other activities as may be required by the Principal in respect of the Works.

15.6 Roles reserved to the Principal

The Integration Partner acknowledges and agrees that it must not, and must procure that its Personnel do not, carry out any of the roles listed below in relation to the Program or any Works Order without the prior written approval of the Principal's Representative:

- (a) approve or authorise an account for payment on behalf of the Principal;
- (b) issue a letter of intent or letter of acceptance for any Project Contract;
- (c) execute a Project Contract;
- (d) settle any claim;
- (e) issue media releases, seek publicity or undertake any other external communications;
- (f) appoint or replace a provider of legal services in relation to the Program, or any Project in the Program;
- (g) appoint and replace the representative of the Principal under a Project Contract;
- (h) consent to any assignment, novation or change of control by a Project Contractor;
- (i) vary any obligation of the Project Contractor under a Project Contract;
- (j) waive or compromise any right of the Principal under a Project Contract (including any entitlement to liquidated damages, set-off or security);
- (k) instruct a Project Contractor to suspend work, other than in circumstances relating to a safety or environmental breach, or potential breach, that presents imminent harm; or
- (l) any other roles identified by the Principal from time to time.

15.7 Changes to the Works

The Principal's Representative may, at any time, direct a change to the scope of the Works by issuing a written notice to the Integration Partner, including:

- (a) increasing or decreasing the quantities of the Works (or any part of them);
- (b) omitting any part of the Works;
- (c) changing the character, quality or performance requirements of the Works; or
- (d) changing the dimensions of the Works or any part of them,

and the Integration Partner must implement such change in scope under each relevant Project Contract.

16. Time

16.1 Progress

The Integration Partner must:

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

16.2 Suspension

- (a) The parties acknowledge and agree that the Principal's Representative may instruct the Integration Partner to suspend and, after a suspension has been instructed, to re-commence, the carrying out of all or a part of the Integration Partner's Activities.
- (b) If a suspension under this clause 16.2 arises as a result of:
 - (i) the Integration Partner's failure to carry out its obligations in accordance with the Contract, the Integration Partner will not be entitled to make any Claim against the Principal arising out of, or in any way in connection with, the suspension; or
 - (ii) a cause other than the Integration Partner's failure to carry out its obligations in accordance with the Contract:
 - A. an instruction to suspend under this clause 16.2 will entitle the Integration Partner to be paid by the Principal the reasonable extra costs (not including any profit, loss of profit or offsite overheads) necessarily incurred by the Integration Partner as a result of the suspension as determined by the Principal's Representative;
 - B. the Integration Partner must take all steps possible to mitigate the extra costs incurred by it as a result of the suspension; and
 - C. the Integration Partner will not be entitled to make any Claim against the Principal arising out of, or in any way in

connection with, the suspension other than under this paragraph (ii).

17. Variation

17.1 Variation price request

- (a) The parties acknowledge and agree that the Principal's Representative may, at any time, issue a document titled "Variation Price Request" to the Integration Partner which will set out details of a proposed Variation which the Principal is considering.
- (b) Within 10 Business Days of the receipt of a "Variation Price Request", the Integration Partner must provide the Principal's Representative with a written notice in which the Integration Partner sets out:
 - (i) where the Variation involves additional Integration Partner's Activities, the estimated amount which will be payable to the Integration Partner for the additional Integration Partner's Activities required to be performed by the Integration Partner in order to carry out the proposed Variation;
 - (i) the adjustment to the Resource Plan and the Contract Price (if any) as a result of the Variation; and
 - (ii) the effect (if any) which the proposed Variation will have on the applicable Milestone Dates.

17.2 Variation order

- (a) Whether or not the Principal's Representative has issued a "Variation Price Request" under clause 17.1, the parties acknowledge and agree that the Principal's Representative may at any time instruct the Integration Partner to carry out a Variation by issuing a written document to the Integration Partner titled "Variation Order" in which the Principal's Representative will state one of the following:
 - (i) the proposed adjustment to the Resource Plan and the Contract Price (if any) as set out in the Integration Partner's notice under clause 17.1 (if any) is agreed and the Resource Plan and the Contract Price will be adjusted accordingly; or
 - (ii) any adjustment to the Resource Plan and the Contract Price will be determined under clauses 17.3(b) or 17.3(c).
- (b) No Variation will invalidate the Contract irrespective of the nature, extent or value of the services the subject of the Variation.

17.3 Adjustment for Variation

Subject to clause 22.1, the Contract Price will be adjusted for all Variations which have been the subject of a Direction by the Principal's Representative by:

- (a) where clause 17.2(a)(i) applies, the agreed amount;
- (b) where clause 17.2(a)(i) does not apply, an amount determined by the Principal's Representative using any rates or prices which appear in the Schedule of Rates, as adjusted in accordance with the Contract, to the extent the Principal's Representative determines they are applicable to, or it is reasonable to use them for valuing the Variation; and

- (c) to the extent paragraphs (a) and (b) do not apply, an amount determined by the Principal's Representative acting reasonably.

17.4 Rates and prices

Where the hourly rates or other rates or prices which appear in the Schedule of Rates, as adjusted in accordance with the Contract, are used under clause 17.3(b), the rates and prices will be deemed to cover:

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

17.5 Omissions and deletions

- (a) If a Variation the subject of a Direction by the Principal's Representative omits or deletes any part of the Integration Partner's Activities (including the work under any Works Order) or if the Principal omits or deletes any part of the Works under clause 15.7(b), the Principal may thereafter either perform this work itself or employ or engage Other Contractors to perform the omitted or deleted work.
- (b) No Variation will invalidate, or amount to a repudiation of, the Contract.

17.6 Variations requested by Integration Partner

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

- (a) a description of the requested Variation, including any proposed adjustment to the Resource Plan and the Contract Price (if any);
- (b) the additional or reduced costs or time involved in the Variation and any proposal for sharing any savings in costs with the Principal including the amount; and
- (c) any benefits which will flow to the Principal from the Variation.

17.7 Principal's Representative's determination

- (a) After a request is made by the Integration Partner in accordance with clause 17.6, the Principal's Representative will, in its absolute discretion, give a written notice to the Integration Partner:
 - (i) rejecting the request; or
 - (ii) approving the request either conditionally or unconditionally.
- (b) The Principal's Representative will not be obliged to exercise its discretion for the benefit of the Integration Partner.

17.8 Variation approved by Principal's Representative

If the Principal's Representative issues a written notice under clause 17.7 approving the Integration Partner's request under clause 17.6:

- (a) unless otherwise agreed, the Integration Partner will not be entitled to make a Claim against the Principal arising out of, or in any way in connection with, the Variation;

- (b) if the Integration Partner's request offered to share savings in cost with the Principal, the Contract Price will be reduced by the amount offered by the Integration Partner in its request; and
- (c) the Integration Partner will be responsible for all parts of the Integration Partner's Activities which are in any way affected by the Variation.

18. Payment

18.1 Payment obligation

Subject to clause 18.7 and to any other right to set-off which the Principal may have, the Principal must pay the Integration Partner:

- (a) the Contract Price in relation to Integration Partner's Activities performed;
- (b) the expenses and disbursements described and incurred under Schedule 2;
- (c) [REDACTED] and
- (d) any other amounts which are payable by the Principal to the Integration Partner under the Contract.

18.2 Payment claims

- (a) The Integration Partner must give the Principal's Representative claims for payment on account of the Contract Price and any other amounts payable by the Principal to the Integration Partner under the Contract:
 - (i) subject to clause 18.4, on the 25th day of each month after the Award Date or where that day is not a Business Day, the next Business Day; and
 - (ii) in such form which the Principal's Representative reasonably requires.
- (b) The Integration Partner agrees with the Principal that a payment claim submitted to the Principal's Representative under this clause 18.2 is received by the Principal's Representative as agent for the Principal.

18.3 Payment statements

- (a) The Principal must procure the Principal's Representative to within 10 Business Days of receiving a payment claim under clause 18.2 give the Integration Partner, on behalf of the Principal, a payment statement which states:
 - (i) the value of the Integration Partner's Activities completed in accordance with the Contract;
 - (ii) the amount already paid to the Integration Partner;
 - (iii) the amount the Principal is entitled to retain, deduct, withhold or set-off under the Contract (including any Painshaire Amount (if any));
 - (iv) the amount (if any) which the Principal's Representative believes to be then payable by the Principal to the Integration Partner on account of the Contract Price and otherwise under the Contract and which the Principal proposes to pay to the Integration Partner; and

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

18.4 Conditions precedent to payment

The Integration Partner is not entitled to give the Principal a payment claim under clause 18.2, and the Principal is not obliged to make any payment under clause 18.5, unless the Integration Partner has provided the Principal's Representative with:

- (a) any parent company guarantee as required under clause 5.1;
- (b) evidence of any insurance taken out by the Integration Partner which is required under clause 7.2;
- (c) a duly executed escrow deed as required under clause 9.6 (if applicable);
- (d) documents showing compliance by the Integration Partner with clause 18.10;
- (e) a declaration in the form of Schedule 7, together with any supporting evidence which may be reasonably required by the Principal's Representative, duly signed by the Integration Partner or, where the Integration Partner is a corporation, by a representative of the Integration Partner who is in a position to know the facts declared; and
- (f) copies of all relevant certificates of currency in respect of Workers Compensation Insurance which the Integration Partner has in place in connection with the Integration Partner's Activities.

18.5 Payment of amount set out in payment statement

- (a) Subject to clause 18.7, the Principal must pay the Integration Partner the amount set out as payable in the payment statement within 15 Business Days of receipt by the Principal's Representative of the payment claim under clause 18.2.
- (b) If a payment statement issued under clause 18.3 shows an amount owing by the Integration Partner to the Principal, the Integration Partner must pay the Principal

that amount within 5 Business Days of receipt by the Integration Partner of the payment statement.

18.6 Payment on account

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

18.7 Right of set off

- (a) The Principal may deduct from any moneys otherwise due to the Integration Partner:
 - (i) any debt or other moneys due from the Integration Partner to the Principal (including any due debt from the Integration Partner to the Principal pursuant to section 26C of the SOP Act);
 - (ii) any amount that is less than or equal to the amount claimed to be owed under a payment withholding request served on the Principal pursuant to Division 2A of the SOP Act; or
 - (iii) any bona fide Claim to money which the Principal may have against the Integration Partner whether for damages or otherwise,

whether under or in connection with the Contract or otherwise relating to the Integration Partner's Activities.
- (b) The rights given to the Principal under this clause 18.7 are in addition to and do not limit or affect any other rights of the Principal under the Contract or at Law and nothing in the clause affects the right of the Principal to recover from the Integration Partner the whole of the debt or Claim in question or any balance that remains owing.
- (c) Failure by the Principal to deduct from an amount otherwise due to the Integration Partner any amount which the Principal is entitled to deduct under this clause 18.7, will not prejudice the Principal's right to subsequently exercise its right of deduction under this clause.
- (d) Clause 18.7 will survive any termination of the Contract.

18.8 Interest

The Principal will pay simple interest at the 90 day bank bill rate on any amount which has been set out as payable by the Principal's Representative in a payment statement under clause 18.3, but which is not paid by the Principal within the time required by the Contract. This will be the Integration Partner's sole entitlement to interest including damages for loss of use of, or the cost of borrowing money.

18.9 SOP Act

- (a) This clause applies if the SOP Act applies to the Contract.

- (b) For the purposes of section 17(3) of the SOP Act, the Integration Partner irrevocably chooses the Resolution Institute as the "authorised nominating authority" (as that term is defined in the SOP Act) for any adjudication application it may make under the SOP Act in respect of the subject matter of the Contract.
- (c) When an adjudication occurs under the SOP Act, and the Principal has paid an adjudicated amount to the Integration Partner:
 - (i) the amount will be taken into account by the Principal's Representative in issuing a payment statement under clause 18.3; and
 - (ii) if it is subsequently determined pursuant to the Contract that the Integration Partner was not entitled under the Contract to payment of some or all of the adjudicated amount that was paid by the Principal ("**overpayment**"), the overpayment will be a debt due and payable by the Integration Partner to the Principal which the Integration Partner must pay to the Principal upon demand and in respect of which the Integration Partner is not entitled to claim or exercise any set-off, counterclaim, deduction or similar right of defence.
- (d) Without limiting clause 18.7, the Principal may withhold any amount that is less than or equal to the amount claimed to be owed under a payment withholding request served on the Principal pursuant to Division 2A of the SOP Act.
- (e) If the Principal withholds from money otherwise due to the Integration Partner any amount that is less than or equal to the amount claimed to be owed under a payment withholding request served on the Principal pursuant to Division 2A of the SOP Act, then:
 - (i) the Principal may lead and rely upon Division 2A of the SOP Act as a defence to any Claim for the money by the Integration Partner from the Principal; and
 - (ii) the period during which the Principal retains money due to the Integration Partner pursuant to an obligation under Division 2A of the SOP Act will not be taken into account for the purpose of determining:
 - A. any period for which money owed by the Principal to the Integration Partner has been unpaid; and
 - B. the date by which payment of money owed by the Principal to the Integration Partner must be made.
- (f) The Integration Partner agrees not to commence proceedings to recover any amount withheld by the Principal pursuant to a payment withholding request served on the Principal in accordance with Division 2A of the SOP Act.
- (g) Any amount paid by the Principal pursuant to section 26C of the SOP Act will be a debt due from the Integration Partner to the Principal.
- (h) If the Principal withholds money pursuant to a payment withholding request served on the Principal pursuant to Division 2A of the SOP Act and the Integration Partner:
 - (i) pays the amount claimed to be due under the adjudication application to which the payment withholding claim relates; or
 - (ii) becomes aware that the adjudication application to which the payment withholding claim relates has been withdrawn,

then the Integration Partner must so notify the Principal within 5 days of the occurrence of the event in sub-paragraph (i) or (ii) above (as applicable) by providing to the Principal a statement in writing in the form of a statutory declaration together with such other evidence as the Principal may require evidencing that the amount has been paid or the adjudication application has been withdrawn (as the case may be).

18.10 Subcontractor's statement

- (a) Where the Integration Partner engages any Subcontractor in accordance with the Contract the Integration Partner must:
 - (i) submit a signed subcontractor's statement, in the form set out in Schedule 8, together with any payment claims submitted under clause 18.2; and
 - (ii) ensure that any such subcontractor's statement is not dated before the date of the relevant payment claim.
- (b) The Integration Partner acknowledges that pursuant to the Workers Compensation Act 1987 (NSW), the Payroll Tax Act 2007 (NSW) and the Industrial Relations Act 1996 (NSW):
 - (i) the subcontractor's statement is required to be provided to the Principal; and
 - (ii) the Principal may withhold any payment due to the Integration Partner under the Contract until the Integration Partner gives a subcontractor's statement in the form of Schedule 8. Any penalty for late payment under the Contract does not apply to any payment withheld under this clause 18.10(b)(ii).

18.11 GST

- (a) The parties acknowledge that unless otherwise expressly stated all amounts of monetary consideration in the Contract are exclusive of GST.
- (b) If GST is or becomes payable in connection with a supply made by a party (**Supplier**) under the Contract, the party providing consideration for the supply (**Recipient**) must (in addition to the consideration to be provided for that supply under the other provisions of the Contract) pay an additional amount to the Supplier equal to the GST payable by the Supplier in relation to the supply.
- (c) Any amount payable under clause 18.11(b) must be paid to the Supplier at the same time as the first part of the consideration for the supply is to be paid to the Supplier under the other provisions of the Contract.
- (d) If any party is required under the Contract to reimburse or pay to the other party an amount (other than any payment on account of the Contract Price) calculated by reference to a cost, expense, or an amount paid or incurred by that party, the amount of the reimbursement or payment will be reduced by the amount of any input tax credits to which that party is entitled in respect of any acquisition relating to that cost, expense or other amount.
- (e) Notwithstanding 19.13(c), no additional amount will be payable by the Recipient to the Supplier on account of GST unless and until the Supplier issues a tax invoice for the taxable supply to which the additional amount relates.
- (f) If the GST payable in relation to a supply made by the Supplier under the Contract varies from the additional amount paid by the other party under this clause 18.11 in

respect of that supply, then the Supplier will provide a corresponding refund or credit to or will be entitled to receive the amount of that variation from the other party (as appropriate).

- (g) In this clause 18.11:
- (i) terms defined in GST Legislation have the meaning given to them in GST Legislation, unless the context suggests otherwise;
 - (ii) GST includes amounts defined as "GST" under the GST Legislation and "GST equivalents" payments under the Intergovernmental Agreement Implementation (GST) Act 2000 (NSW) (or similar payments under corresponding legislation of any other State or Territory); and
 - (iii) any part or progressive or periodic component of a supply that is treated as a separate supply for GST purposes (including attributing GST to tax periods) will be treated as a separate supply.
 - (iv) a reference to the GST payable or input tax awaits claimable by a party in clauses or reference to an entity acting through that party and, where relevant, the representative member or any GST group to which that party (or entity) may belong.

18.12 Rate review

- (a) The rates and prices in the Schedule of Rates will be reviewed:
- (i) on the second anniversary of the Award Date; and
 - (ii) thereafter, annually on each anniversary of the date referred to in clause 18.12(a)(i),
- (each a **Review Date**).
- (b) Each review under clause 18.12(a) will be undertaken as follows:
- (i) within 60 Business Days prior to the relevant Review Date, the Integration Partner must give the Principal's Representative a proposal attaching:
 - A. its proposed new rates and prices to replace the then rates and prices in the Schedule of Rates; and
 - B. a detailed explanation on an open book basis of how those proposed rates and prices maximise achievement of the Objectives;
 - (ii) after receiving the Integration Partner's proposal, the parties acknowledge and agree that the Principal's Representative may by notice to the Integration Partner:
 - A. accept the proposal; or
 - B. notify the Integration Partner that it wishes to negotiate the proposal;
 - (iii) the new rates and prices to replace the then rates and prices in the Schedule of Rates will be:
 - A. as accepted by the Principal under clause 18.12(b)(ii)A; or

B. as agreed by the parties under clause 18.12(b)(ii)B; and

(iv) to the extent that any individual rate or price to replace the then corresponding rate or price in the Schedule of Rates has not been:

A. accepted by the Principal's Representative under clause 18.12(b)(ii)A; or

B. agreed by the parties under clause 18.12(b)(ii)B,

by the date that is 40 Business Days before the anniversary of the relevant Review Date (**Disputed Rate**), that Disputed Rate will be determined by the Principal, acting reasonably.

(c) Notwithstanding any other provision in this clause 18.12, the parties acknowledge and agree that the annual percentage change to any rate or price must not exceed the annual percentage change set out in the Wage Price Index for the previous year.

19. Termination

19.1 Preservation of rights

Subject to clause 19.6, nothing in this clause 19 or that a party does or fails to do pursuant to this clause 19 will prejudice the right of that party to exercise any right or remedy (including recovering damages) which it may have where the other party breaches (including repudiates) the Contract.

19.2 Integration Partner default

The Principal may give a written notice under clause 19.3 to the Integration Partner, if the Integration Partner:

- (a) does not commence the Integration Partner's Activities in accordance with the requirements of the Contract;
- (b) suspends the Integration Partner's Activities in breach of clause 16.2 or otherwise does not proceed with the Integration Partner's Activities in accordance with clause 16.1;
- (c) fails to comply with its obligations under clause 4.5, unless that failure has occurred because the relevant person was identified in a notice issued by the Principal's Representative to the Integration Partner under clause 4.6;
- (d) fails to provide a parent company guarantee as required by clause 5.1;
- (e) in the opinion of the Principal has a conflict of interest in performing the Integration Partner's Activities;
- (f) fails to effect, have in place or otherwise maintain or provide evidence of, insurance as required by clause 7;
- (g) fails to exercise the standard of skill, care and diligence required by the Contract;
- (h) does not comply with any Direction of the Principal's Representative made in accordance with the Contract (including any direction given under clause 12.2(a));
- (i) abandons the Integration Partner's Activities or otherwise plainly demonstrates the intention not to continue performance of its obligations under the Contract;

- (j) is in breach of any applicable Law;
- (k) fails to comply with a performance action plan required by the Principal under clause 27 of the Contract;
- (l) fails to comply with clause 10.1; or
- (m) is otherwise in breach of the Contract.

19.3 Contents of notice of default

A notice under clause 19.3 must state:

- (a) that it is a notice under clause 19.3;
- (b) the breach relied upon; and
- (c) that the Principal requires the Integration Partner to remedy the breach within 15 Business Days of receiving the notice.

19.4 Termination for insolvency, change of control or breach

If:

- (a) an Insolvency Event occurs to the Integration Partner, or where the Integration Partner comprises 2 or more persons, to any one of those persons;
- (b) the Integration Partner is in breach of clause 28.13(b); or
- (c) the Integration Partner does not remedy a breach of the Contract the subject of a notice under clause 19.3 within 15 Business Days of receiving the notice under clause 19.3,

then the Principal may by written notice to the Integration Partner terminate the Contract.

19.5 Principal's entitlements after termination

Subject to clause 19.1, if:

- (a) the Principal terminates the Contract under clause 19.4; or
- (b) the Integration Partner repudiates the Contract and the Principal otherwise terminates the Contract,

then:

- (c) the Principal will:
 - (i) be entitled to require the Integration Partner to novate to the Principal or the Principal's nominee, any or all subcontracts between the Integration Partner and its Subcontractors as required by the Principal;
 - (ii) without limiting the Principal's right to do so at any time, be entitled to notify one or more Project Contractors that the Integration Partner is no longer appointed as agent of the Principal and that, the Principal or its nominee will administer the relevant Project Contract;
 - (iii) not be obliged to make any further payments to the Integration Partner, including any money the subject of a payment claim under clause 18.2 or a payment statement under clause 18.3; and

- (iv) be entitled to recover from the Integration Partner any costs, losses or damages incurred or suffered by it as a result of, or arising out of, or in any way in connection with, such termination or repudiation; and
- (d) the Integration Partner must immediately hand over to the Principal all copies of the Program Documents (whether complete or not).

19.6 Integration Partner's entitlements after termination

- (a) If the Principal repudiates the Contract and the Integration Partner otherwise terminates the Contract, the Integration Partner will:
 - (i) be entitled to claim damages; and
 - (ii) not be entitled to a quantum meruit.
- (b) This clause 19.6 will survive any termination of the Contract.

19.7 Termination for convenience

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

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

19.8 Costs

If the Principal terminates the Contract under clause 19.7, the Integration Partner:

- (a) will be entitled to payment of the following amounts as determined by the Principal's Representative:
 - (i) for the Integration Partner's Activities carried out prior to the date of termination, the amount which would have been payable if the Contract had not been terminated and the Integration Partner submitted a payment claim for the Contract value of the Integration Partner's Activities carried out prior to the date of termination; and
 - (ii) the reasonable direct costs incurred by the Integration Partner (excluding profit but including an amount for overheads) as a direct result of the termination,

but in no case will the total amount payable to the Integration Partner under the Contract (including under this clause 19.8) be more than the Contract Price; and
- (b) must:
 - (i) take all steps possible to mitigate the costs referred to in clause 19.8(a); and
 - (ii) immediately hand over to the Principal all copies of the Project Documents (whether complete or not),

and the Principal will be entitled to take the steps described in clause 19.5(c)(ii).

The amount to which the Integration Partner is entitled under this clause 19.8 will be a limitation upon the Principal's liability to the Integration Partner arising out of, or in any way in connection with, the termination of the Contract and the Integration Partner may not make any Claim against the Principal arising out of, or in any way in connection with, the termination of the Contract, other than for the amount payable under this clause 19.8.

This clause 19.8 will survive the termination of the Contract by the Principal under clause 19.7.

20. Transition out

20.1 Right to appoint successor

The Integration Partner acknowledges that the Principal may, on or before the expiry or termination of the Term, invite any person (including the Integration Partner) to perform all or any part of Integration Partner's Activities for the period commencing after expiry or termination of the Term.

20.2 Assistance in securing continuity

- (a) Without limiting any other provisions of the Contract, the Integration Partner must, to the extent permitted by Law, provide the Principal with reasonable access to its premises, Personnel and the information, books and records kept by or on behalf of the Integration Partner in connection with the Integration Partner's Activities, for the purpose of the Principal or its nominee:
 - (i) taking over the performance of all or part of the Integration Partner's Activities at the end of the Term; or
 - (ii) preparing reports and documents in connection with any invitation to a person for the performance of all or part of the Integration Partner's Activities.
- (b) The Integration Partner must provide all reasonable assistance to the Principal in the preparation for, and the conduct of, a fair and competitive expression of interest or tendering process (if applicable).
- (c) The Integration Partner must do everything, both before and after the expiry or termination of the Term, as the Principal may reasonably require to assist and advise the Principal or its nominee in the performance of the Integration Partner's Activities, including:
 - (i) the provision of information and records related to the performance of the Integration Partner's Activities;
 - (ii) to the extent required by the Principal, the novation of any contracts or licences relating to the provision of the Integration Partner's Activities to the Principal or its nominee at no additional charge to the Principal, unless otherwise agreed in writing by the Principal;
 - (iii) to the extent required by the Principal, procuring licences for any Software used in the Integration Partner's Activities on commercially reasonable terms;
 - (iv) making any Personnel available for discussions with the Principal or its nominee as may be reasonably required to ensure the orderly transition and continuity of provision of the Integration Partner's Activities; and
 - (v) the provision of training sessions to any person nominated by the Principal in relation to the performance of the Integration Partner's Activities.

20.3 Continuity of the Integration Partner's Activities

The Integration Partner must manage, perform and maintain the Integration Partner's Activities in a way that the Principal or its nominee is able at any time to immediately take over the performance of the Integration Partner's Activities without interruption.

20.4 Non frustration of transfer

The Integration Partner must not do anything that directly or indirectly avoids or materially prejudices or frustrates the transfer of the performance of the Integration Partner's Activities at termination or expiry of the Term to the Principal or its nominee.

21. Disputes

21.1 Notice of Dispute

- (a) If a dispute or difference arises between the Integration Partner and the Principal or between the Integration Partner and the Principal's Representative in respect of any fact, matter or thing arising out of, or in any way in connection with, the Integration Partner's Activities, the Program, the Works or the Contract, or either party's conduct before the Contract, the dispute or difference must be determined in accordance with the procedure in this clause 21.
- (b) Where such a dispute or difference arises, either party may give a notice in writing (**Notice of Dispute**) to the Principal's Representative and the other party specifying:
 - (i) the dispute or difference;
 - (ii) particulars of the party's reasons for being dissatisfied; and
 - (iii) the position which the party believes is correct.

21.2 Negotiation

The Principal's Representative and the Integration Partner's Representative (or their nominees) must, within 10 Business Days of a Notice of Dispute being given under clause 21.1, meet and discuss the dispute or difference.

21.3 Executive negotiation

Whether or not discussions have taken place under clause 21.2, if the dispute or difference is not resolved within 20 Business Days after a Notice of Dispute is given under clause 21.1, it must be referred to senior executives of each party (as nominated by each party) who must:

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

21.4 Expert determination

Whether or not discussions have taken place under clause 21.3, if the senior executives of each party have not resolved, or agreed upon a procedure to resolve the dispute or difference within 25 Business Days after a Notice of Dispute is given under clause 21.1, either party may submit the dispute or difference to an expert determination.

21.5 The expert

The expert determination under clause 21.4 is to be conducted by an independent industry expert appointed by the Chair for the time being of the Resolution Institute (unless the parties agree otherwise).

21.6 Not arbitration

An expert determination conducted under this clause 21 is not an arbitration and the expert is not an arbitrator. The expert may reach a decision from his or her own knowledge and expertise.

21.7 Procedure for determination

The expert will:

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

21.8 Disclosure of interest

The expert must:

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

21.9 Costs

Each party will:

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

21.10 Conclusion of expert determination

Unless otherwise agreed between the parties, the expert must notify the parties of his or her decision upon an expert determination conducted under this clause 21 within 20 Business Days from the acceptance by the expert of his or her appointment.

21.11 Agreement with 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 9 or such other terms as the parties and the expert may agree.

21.12 Determination of expert

The determination of the expert:

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

21.13 Survive termination

This clause 21 will survive any termination of the Contract.

21.14 Continuation of Integration Partner's Activities

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

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

22. Notices

22.1 Notice of Variation

If the Integration Partner considers that a Direction by the Principal's Representative, which is not expressed to be a "Variation Order" under clause 17.2 or a Works Order, constitutes or involves a Variation, the Integration Partner must, if it wishes to make a Claim against the Principal arising out of, or in any way in connection with, the Direction:

- (a) within 5 Business Days of receiving the Direction and before commencing work on the subject matter of the Direction, give notice to the Principal's Representative that it considers the Direction constitutes or involves a Variation;
- (b) within 15 Business Days of giving the notice under paragraph (a), submit a written claim to the Principal's Representative which includes the details required by clause 22.3(b); and
- (c) continue to carry out the Integration Partner's Activities in accordance with the Contract and all Directions of the Principal's Representative, including any Direction in respect of which notice has been given under this clause 22.1.

22.2 Notice of other Claims

Except for Claims for:

- (a) a Variation instructed in a "Variation Order" under clause 17.2 or to which clause 22.1 applies; or
- (b) payment under clause 18.2 of the original Contract Price specified in the Key Details,

the Integration Partner must give the Principal's Representative the notices required by clause 22.3 if it wishes to make a Claim against the Principal in respect of any Direction by the Principal's Representative or any other fact, matter or thing (including a breach of the Contract by the Principal) under, arising out of, or in any way in connection with, the Contract or the Integration Partner's Activities, the Integration Partner's Activities, including anything in respect of which:

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

22.3 Prescribed notices

The notices referred to in clause 22.2 are:

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

22.4 Continuing events

If the Direction or fact, matter or thing upon which the Claim under clause 22.1(b) or clause 22.2 is based or the consequences of the Direction or fact, matter or thing are continuing, the Integration Partner must continue to give the information required by clause 22.3(b) every 20 Business Days after the written claim under clause 22.1(b) or 22.3(b) (as the case may be)

was submitted or given to the Principal's Representative, until after the Direction or fact, matter or thing upon which the Claim is based has, or the consequences thereof have, ceased.

22.5 Other provisions unaffected

Nothing in clauses 22.1, 22.2, 22.3 or 22.4 will limit the operation or effect of any other provision of the Contract which requires the Integration Partner to give notice to the Principal's Representative in order to preserve an entitlement to make a Claim against the Principal.

23. Privacy and the protection of Principal Data

23.1 Definitions

In this clause 23:

- (a) **Data Protection Plan** means the plan prepared by the Integration Partner and approved by the Principal in accordance with clause 23.7;
- (b) **Information Security Requirements** means the following principles, policies, codes, standards, Laws and directions relating to the storage, management, control and handling of information that is security classified and/or subject to a sensitive information label or other protective marking (such as dissemination limiting markers) or a restriction on use:
 - (i) the most recent version of:
 - A. the NSW Government Information Classification and Labelling Handling Guidelines to the extent applicable;
 - B. the NSW Government Digital Information Security Policy;
 - C. the Australian Government Information Security Manual; and
 - D. the "Australian Government Information Security Management Guidelines", including:
 - 1) Australian Government Security Classification System; and
 - 2) Protectively Marking and Handling Sensitive and Security Classified Information and Material;
 - (ii) Premiers Memorandum M2006-08, Maintaining Confidentiality of Cabinet Documents and Other Cabinet Conventions;
 - (iii) legislation, including the State Records Act 1998 (NSW) and the Privacy Law; and
 - (iv) any other principles, policies, codes, standards, Laws and directions that are notified to the Integration Partner by the Principal from time to time, with respect to the same subject matter as the foregoing,
as replaced, amended or updated from time to time;
- (c) **Personal Information** means information or an opinion (including information or an opinion forming part of a database and whether or not recorded in a material form) about an individual whose identify is apparent or can reasonably be ascertained from the information or opinion;

- (d) **Principal Data** means all data and information relating to the Principal or its systems, operations, facilities, clients, customers, Personnel, assets, programs, Projects and the Program (including Personal Information) in whatever form that information may exist, and whether entered into, stored in, generated by or processed through software or equipment, or produced as part of the performance of the Integration Partner's Activities;
- (e) **Privacy Laws** means the Privacy and Personal Information Protection Act 1998 (NSW), the Health Records and Information Privacy Act 2022 (NSW), the Privacy Act 1988 (Cth), any applicable principles, codes of conduct or directions issued under those Acts and all other applicable Laws relating to privacy or personal information; and
- (f) **Security Incident** means any one or more of the following:
 - (i) any incident, event or issue that causes or has the intent or potential to cause a privacy or security breach or any loss of, unauthorised access to, or use, modification, disclosure or other misuse of, Principal Data, Personal Information or the Principal's confidential information; or
 - (ii) any actual or suspected 'eligible data breach' as defined under the Privacy Laws or other notifiable privacy breach under the Privacy Laws.

23.2 General

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

- (a) not do any act or engage in any practice that would breach the Privacy Laws, or which if done or engaged in by the Principal, would be a breach of the Privacy Laws;
- (b) not access, use or disclose any Personal Information other than for the sole purpose of carrying out its obligations under the Contract, except with the prior written approval of the Principal;
- (c) ensure that Personal Information is protected against loss and unauthorised access, use, modification or disclosure and other misuse;
- (d) immediately notify the Principal upon becoming aware of any Security Incident or actual or suspected breach of an obligation under this clause 23 and the Integration Partner must expeditiously:
 - (i) provide the Principal with details relating to the Security Incident or breach, including the date of the breach, a description of the breach, the type of breach and how it occurred, as well as all other details that the Principal may require to discharge its obligations under the Privacy Laws;
 - (ii) cooperate with the Principal to assess and investigate the Security Incident and breach (including to assist the Principal to determine whether an eligible data breach as defined under the Privacy Laws has occurred);
 - (iii) comply with the Privacy Laws and the Principal's reasonable directions with respect to addressing and resolving such Security Incidents and breaches; and

- (iv) mitigate any potential harm done by such Security Incidents and breaches; and
- (e) comply with such other privacy obligations or policies as the Principal reasonably notifies the Integration Partner of in writing from time to time.

23.3 No restrictions on privacy obligations

Nothing in the Contract (including this clause) is intended to limit any obligations that the Integration Partner has at Law, including with respect to privacy and the protection of Personal Information.

23.4 Principal Data and security

- (a) The Integration Partner acknowledges and agrees that:
 - (i) as part of carrying out the Integration Partner's Activities it may be provided with, or obtain access to Principal Data; and
 - (ii) Software, systems and other Integration Partner Supplied Items that it provides as part of carrying out the Integration Partner's Activities may collect, process, generate or hold Principal Data.
- (b) The Integration Partner agrees that it does not obtain any right, title or interest with respect to any Principal Data, other than a right to use Principal Data for the sole purpose of carrying out the Integration Partner's obligations under the Contract.
- (c) The Integration Partner must not (and must ensure that its Personnel do not):
 - (i) use any Principal Data other than for the purpose of carrying out its obligations under the Contract;
 - (ii) attempt to sell, assign, encumber or commercially exploit any Principal Data; or
 - (iii) transfer or disclose any Principal Data outside NSW, Australia without obtaining the Principal's prior written consent, which may be given or withheld in the Principal's sole discretion and subject to such conditions that the Principal reasonably determines.
- (d) The Integration Partner must:
 - (i) maintain the integrity of all Principal Data held within its systems;
 - (ii) regularly and securely back-up Principal Data held or hosted by it on at least a daily basis or at such other intervals as reasonably requested by the Principal in writing;
 - (iii) regularly test all back-ups referred to in paragraph (ii) to ensure that the Principal Data can be correctly and completely restored;
 - (iv) securely store all back-ups of Principal Data until the Principal's Representative directs the Integration Partner to return or delete Principal Data pursuant to clause 23.5;
 - (v) do all things that a reasonable and prudent entity would do to safeguard and protect Principal Data in the Integration Partner's or its Personnel's possession or control and to prevent a Security Incident; and

- (vi) comply with all Information Security Requirements and any other security policies, requirements and standards with respect to the Integration Partner's Activities, Principal Data and confidential information as specified in the Contract or as may be reasonably notified by the Principal to the Integration Partner from time to time.
- (e) The Integration Partner must ensure that its Personnel are made aware of, and comply with, the obligations under clause 23.

23.5 Return of, and access to, Principal Data

- (a) Within 5 Business Days following the expiry or termination of the Contract, the Integration Partner must liaise and cooperate with the Principal with respect to the secure migration or return to the Principal (or its authorised nominee) of all Principal Data in the Integration Partner's or its Personnel's possession or control (including, for clarity, any Principal Data held or stored within any Software or associated systems). The Principal Data will be securely migrated or returned to the Principal in the timeframe, manner and in the format specified in the Transition Out Plan or (where applicable) in the alternative timeframe, manner and format specified by the Principal. Without limiting the foregoing, Principal Data must be migrated and returned in a manner which preserves the integrity and relationships of the data sets and which can be used by the Principal or its authorised nominee.
- (b) The Integration Partner and its Personnel must not delete any Principal Data without the express authorisation of the Principal's Representative. If the Principal's Representative instructs the Integration Partner to delete any Principal Data, such data must be securely deleted in accordance with the Principal's Information Security Requirements and the reasonable instructions of the Principal's Representative.
- (c) Where Principal Data is in the Integration Partner's possession or control or is held or stored within any Software or associated systems provided by the Integration Partner pursuant to the Contract ([REDACTED]), the Integration Partner must enable the Principal or its authorised nominee to, at any time, with notice to the Integration Partner, access, use, interact with and/or extract and retrieve such data.

23.6 Harmful Code and preventing Security Incidents

- (a) The Integration Partner must take all necessary steps to detect and prevent potential Security Incidents, including preventing Harmful Code from being introduced by the Integration Partner into (or sent from) any Integration Partner Supplied Items or other Software or services into the Principal's systems and Information and communications technology environment.
- (b) The Integration Partner must:
 - (i) regularly and pro-actively monitor for Harmful Code and other Security Incidents;
 - (ii) complete annual penetration testing of Integration Partner Supplied Items and other Software and systems used to carry out the Integration Partner's Activities; and
 - (iii) use appropriate and up-to-date virus detection software for preventing and detecting any Harmful Code and other potential Security Incidents.
- (c) Without limiting the Integration Partner's obligations in relation to Security Incidents under clause 23.2(d), if the Integration Partner becomes aware of any Harmful Code, the Contactor must immediately notify the Principal and must take all

necessary remedial action to promptly respond to and mitigate any impact of the Harmful Code, including eliminating any Harmful Code.

23.7 Data Protection Plan

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

23.8 Evidence of compliance

- (a) On each anniversary of the Award Date or at such other times as reasonably required by the Principal, the Integration Partner must submit to the Principal's Representative a written statement (in a form approved by the Principal's Representative in writing) that the Integration Partner has complied with:
 - (i) all of its privacy, security and confidentiality obligations under the Contract; and
 - (ii) any Data Protection Plan prepared in accordance with clause 23.7, **(Compliance Statement)**.
- (b) Without limiting clause 23.8(a), at the reasonable request of the Principal, the Integration Partner must, within the timeframe stated in the Principal's request, provide the Principal with evidence that demonstrates to the satisfaction of the Principal that the Integration Partner and its Subcontractors have:
 - (i) complied with the privacy, security and confidentiality obligations under the Contract and any Data Protection Plan; and
 - (ii) all necessary procedures, processes and systems (including training) in place to comply with such obligations.

23.9 Acknowledgement

The parties acknowledge and agree that to the extent of any inconsistency between the privacy and security requirements under the Contract or in the Information Security Requirements, the higher or more onerous obligation will apply.

23.10 Indemnity and infringement

The Integration Partner must indemnify the Principal against any claims against, or costs, losses or damages suffered or incurred by, the Principal, arising out of, or in any way in connection with, any actual or alleged infringement of any Privacy Laws arising out of or in connection with the Integration Partner's Activities or any breach by the Integration Partner of clause 23.

24. Modern slavery

(a) In this clause 24:

- (i) **Modern Slavery** has the meaning given to it in the Modern Slavery Act 2018 (Cth) and the Modern Slavery Act 2018 (NSW) and includes any form of slavery, servitude, debt bondage, deceptive recruitment practices, or forced labour to exploit children or other persons;
- (ii) **Modern Slavery Laws** means the Modern Slavery Act 2018 (Cth), the Modern Slavery Act 2018 (NSW) and any other applicable legislation addressing similar subject matter;
- (iii) **Modern Slavery Offence** has the same meaning as in the *Modern Slavery Act 2018* (NSW); and
- (iv) **Modern Slavery Statement** means a modern slavery statement as required or volunteered under the *Modern Slavery Act 2018* (Cth).

The Integration Partner warrants that as at the Award Date, neither the Integration Partner, any entity that it owns or controls or, to the best of its knowledge, any subcontractor of the Integration Partner, has been convicted of a Modern Slavery Offence.

(b) The Integration Partner must:

- (i) subject to any restrictions under any applicable laws by which it is bound provide to the Principal, within 30 days of a request by the Principal, any Information and other assistance, as reasonably requested by the Principal, to enable the Principal to meet its obligations under the *Modern Slavery Act 2018* (NSW) and associated regulatory requirements (for example, annual reporting requirements and NSW Procurement Board directions), including cooperating in any Modern Slavery audit undertaken by the Principal (including by a third party on behalf of the Principal) or the NSW Audit Office, providing reasonable access to the Principal's/Audit Office's auditors to interview the Integration Partner's Personnel and, so far as these matters are known to the Integration Partner, disclosing the source, place and country of origin of goods and services being supplied;
- (ii) within 7 days of providing a Modern Slavery Statement to the Commonwealth, provide a copy of that Modern Slavery Statement to the Principal;
- (iii) notify the Principal in writing as soon as it becomes aware of either or both of the following:

- A. a material change to any of the information it has provided to the Principal in relation to Modern Slavery; and
 - B. any actual or suspected occurrence of Modern Slavery in its operations or supply chains (or those of any entity that it owns or controls).
- (iv) Prior to the end of the Term, submit a report or statement that either:
- A. confirms, to the best of its knowledge, that Modern Slavery has not occurred in its operations and supply chains during the Term; or
 - B. details the steps it undertook to respond to an actual or suspected occurrence of Modern Slavery in its operations or supply chains during the Term.
- (c) The Integration Partner must, during the term of the Contract and for a period of 7 years thereafter:
- (i) maintain; and
 - (ii) upon the Principal's reasonable request, give the Principal access to, and copies of,
- a complete set of records in the possession or control of the Integration Partner to trace, so far as practicable, the supply chain of all goods and services provided under the Contract and to enable the Principal to assess the Integration Partner's compliance with this clause 24.

25. Public Interest Disclosures

- (a) This clause 25 only applies if the Integration Partner is providing services on behalf of the Principal.
- (b) In this clause 25, words and expressions which are not defined in the Contract, but which have a defined meaning in the PID Act, have the same meaning as in the PID Act.
- (c) The Integration Partner must ensure that all individuals involved in providing services under the Contract are made aware of the following:
 - (i) that those individuals are public officials for the purposes of the PID Act;
 - (ii) how to make a voluntary public interest disclosure;
 - (iii) the Principal's public interest disclosure policy which is available at <https://education.nsw.gov.au/policy-library/policies/pd-2002-0019>; and
 - (iv) the fact that a person who is dissatisfied with the way in which a voluntary public interest disclosure has been dealt with may be entitled to take further action under the PID Act or another Law.
- (d) The Integration Partner must notify the Principal as soon as practicable in writing of a voluntary public interest disclosure of which the Integration Partner becomes aware where either:
 - (i) the disclosure relates to the Principal; or

- (ii) the maker of the disclosure is known to be a public official associated with the Principal.
- (e) The Integration Partner must notify the Principal as soon as practicable in writing of any serious wrongdoing committed, or alleged to be committed, by an individual providing services under the Contract.
- (f) The Integration Partner must use its best endeavours to assist in an investigation of serious wrongdoing if requested to do so by a person dealing with a voluntary public disclosure on behalf of the Principal or any other agency (as defined in the PID Act).
- (g) The Integration Partner acknowledges and agrees that:
 - (i) the Principal has an obligation to take corrective action under s. 66 of the PID Act; and
 - (ii) notwithstanding any other provision of the Contract, the Principal may immediately terminate the Contract under clause 19.2 upon written notice to the Integration Partner, without any requirement to pay compensation (other than payment for work performed under the Contract and unpaid at the date of termination) if a finding of serious wrongdoing or other misconduct is made involving the Integration Partner or an individual providing services under the Contract.
- (h) Subject to clause 11.9, if the Integration Partner subcontracts the Contract in whole or in part, the Integration Partner must ensure that the subcontract contains terms binding the person or body engaged under the subcontract that are equivalent to the terms binding the Integration Partner in this clause 25.

26. Limitation of liability

- [Redacted]
- [Redacted]
- [Redacted]
- [Redacted]
- [Redacted]
- [Redacted]
- [Redacted]
- [Redacted]
- [Redacted]
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- [REDACTED]
- [REDACTED]
- [REDACTED]
- [REDACTED]
- [REDACTED]
- [REDACTED]
- [REDACTED]

27. Performance

27.1 Purpose of the KRAs and KPIs

- (a) The parties must use reasonable endeavours to agree:
 - (i) KRAs;
 - (ii) KPIs; and
 - (iii) [REDACTED] relating to the KRAs and KPIs (as applicable),

within 3 months of the Award Date.
- (b)
- (c) The Principal will assess the Integration Partner's performance against the KRAs and KPIs on a monthly basis.
- (d) The Integration Partner acknowledges and agrees that:

- (i) it will use all reasonable endeavours to achieve a [REDACTED] cost saving for the Program compared to traditional construction costs (**Savings Reduction Commitment**); and
- (ii) within 3 months of the Award Date, it will use all reasonable endeavours to agree with the Principal a plan for achieving the Savings Reduction Commitment.

27.2 Recording performance against KRAs and KPIs

The Integration Partner:

- (a) must keep, and make available to the Principal within 3 Business Days of a request from the Principal, sufficient records of its performance as against the KRAs and KPIs to enable the Principal's Representative to evaluate the performance of the Integration Partner under the Contract against the KRAs and KPIs, [REDACTED]
[REDACTED] and [REDACTED]
- (b) acknowledges and agrees that the records required to be kept under clause 27.2(a) will not limit the Principal's Representative's evaluation of the performance of the Integration Partner under the Contract and the Principal's Representative may consider all such other matters as it considers (in its absolute discretion) to be relevant to the evaluation of the performance of the Integration Partner under the Contract.

27.3 Rights and obligations not affected

The parties acknowledge and agree that the parties' rights and obligations, whether under the Contract or otherwise at law or in equity, in relation to the Integration Partner's Activities, the Works or the Contract, will not be affected or limited by the provisions of this clause 27, anything done or omitted to be done under or purported to be done under this clause, the KRAs, the KPIs or the Integration Partner's performance as against the KRAs and the KPIs.

27.4 KPIs

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

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

27.5 Performance review

- (a) If requested by the Principal, the Integration Partner must participate in six monthly performance reviews conducted by the Principal, during which the Principal and the Integration Partner will meet to discuss the Integration Partner's performance of any or all of the Integration Partner's Activities undertaken during that six month period, including the Integration Partner's satisfaction of the KPIs in respect of each of those Integration Partner's Activities (if applicable), and the Principal will provide the Integration Partner with feedback in relation to its performance (**Performance Review**).
- (b) As part of each Performance Review, the Integration Partner may be required by the Principal to:
 - (i) complete reviews provided by the Principal as part of the review process and any questionnaires;
 - (ii) discuss with the Principal:
 - A. any reports produced by the Principal as part of each Performance Review;
 - B. the Integration Partner's strengths and weaknesses based on the Integration Partner's performance in undertaking the Integration Partner's Activities;
 - C. the Principal's assessment of the Integration Partner's satisfaction of the KPIs (if applicable) in relation to the Integration Partner's Activities; and
 - D. any other matters; and
 - (iii) perform such other tasks as the Principal reasonably requires in connection with the Principal's review of the Integration Partner's performance in undertaking any Integration Partner's Activities.

28. Miscellaneous

28.1 Address for service

- (a) All communications (including notices, consents, approvals, requests and demands) under or in connection with the Contract:
 - (i) must be in writing;

- (ii) must be signed by the party making the communication or (on its behalf) by any director, secretary, attorney or authorised agent of, that party;
- (iii) subject to clause 28.1(b) must be delivered or posted by prepaid express post to the address or sent by email to the email address, of the Principal's Representative or the Integration Partner's Representative (as applicable) set out in the Contract or such other address or email address as may be notified in writing by a party to the other party; and
- (iv) are taken to be received by the addressee:
 - A. (in the case of prepaid express post sent to an address in the same country) on the second Business Day after the date of posting;
 - B. (in the case of prepaid express post sent to an address in another country) on the fourth Business Day after the date of posting;
 - C. (in the case of delivery by hand) on delivery at the address of the addressee as provided in clause 28.1(a)(iii); and
 - D. (in the case of email), at the local time (in the place of receipt of that email) that would be determined if section 13A of the Electronic Transactions Act 2000 (NSW) were to apply in respect of the email,

provided that if the communication would be taken to be received on a day which is not a Business Day or after 5.00pm on a Business Day, it is taken to be received at 9.00am on the next Business Day.

- (b) A communication sent by email is not a valid communication under the Contract for the purpose of a:
 - (i) claim for payment (including any communication in respect of the SOP Act); or
 - (ii) notice issued under clauses 19, 21 or 22,

unless the communication is signed by a person duly authorised by the sender and attached to the email in pdf format.
- (c) The Integration Partner must ensure that any documents it provides, including by electronic means, are in the file structure and format for such documents as may be specified by the Principal from time to time. As at the Award Date, the Principal requires such documents which are submitted by email to be submitted as an attachment to an email, where the attachment is in .pdf, or where appropriate Excel, Primavera (.xer or .xml) or Microsoft Project (.mpp) format.
- (d) The Principal will not be liable to the Integration Partner or to any other person for any loss or damage suffered in relation to any document transmitted electronically, including any loss or damage related to or arising out of:
 - (i) the transmission of any Harmful Code (such as viruses) to the Integration Partner by electronic mail (including any document attached to electronic mail); or
 - (ii) any failure by the Principal to notify the Integration Partner that the Principal may have received any Harmful Code (such as viruses) from

the Integration Partner in any electronic mail (including in any document attached to electronic mail).

28.2 No bias against drafting party

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

28.3 Provisions limiting or excluding liability

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

28.4 Discretion

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

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

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

28.5 Authorities

- (a) The Contract will not in any way unlawfully restrict or otherwise unlawfully affect the unfettered discretion of the Principal to exercise its functions and powers pursuant to any legislation.
- (b) Without limiting clause 28.5(a), anything the Principal does, or fails to do or purports to do, pursuant to its respective functions and powers under any legislation will be deemed not to be an act or omission by the Principal under the Contract.
- (c) The Integration Partner:
 - (i) waives any Claims that it may have against the Principal as a result of the exercise by the Principal of its respective functions and powers under any legislation; and
 - (ii) acknowledges and agrees that:
 - A. there are many Authorities with jurisdiction over aspects of the Integration Partner's Activities, and other matters affecting and affected by the Integration Partner's Activities;
 - B. such Authorities may from time to time exercise their statutory functions and powers in such a way as to disrupt, interfere with or otherwise affect the Integration Partner's Activities (including, the exercise by persons (including individuals) acting on behalf of such Authorities of powers and functions

including as necessary for such Authorities to comply with their statutory functions and powers); and

- C. it bears the full risk of all occurrences of the kind referred to in clause 28.5(c)(ii)B and will not be entitled to make, and the Principal will not be liable upon, any Claim arising out of or in any way in connection with such occurrences.

28.6 Governing Law

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

28.7 Jurisdiction

Each party irrevocably:

- (a) submits to the non-exclusive jurisdiction of the courts of the State of New South Wales, and the courts competent to determine appeals from those courts, with respect to any proceedings which may be brought at any time relating to the Contract; and
- (b) waives any objection it may now or in the future have to the venue of any proceedings, and any Claim it may now or in the future have that any proceedings have been brought in an inconvenient forum, if that venue falls within clause 28.7(a).

28.8 Electronic signature

Each party warrants that immediately prior to entering into the Contract, it has unconditionally consented to:

- (a) the requirement for a signature under any law being met; and
- (b) any other party to the Contract executing it,

by any method of electronic signature that other party uses (at that other party's discretion), including signing on an electronic device or by digital signature.

28.9 Counterparts

- (a) The Contract may be executed in any number of counterparts and by the parties on separate counterparts and may be executed electronically or in handwriting (including, a print-out of the electronic form). Each counterpart constitutes an original of the Contract whether kept in electronic or paper form, and all together constitute one agreement. Without limiting the foregoing, if the signatures on behalf of one party are on more than one copy of the Contract, this shall be taken to be the same as, and have the same effect as, if the signatures on the counterparts were on a single copy of the Contract.
- (b) A party who has executed a counterpart of the Contract may exchange that counterpart with another party by emailing the counterpart executed by it to that other party and, upon request by that other party, will thereafter promptly deliver by hand or post to that party the executed counterpart so exchanged by email, but delay or failure by that party to so deliver a counterpart of the Contract executed by it will not affect the validity of the Contract.

28.10 Entire agreement

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

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

28.11 Amendments

The Contract may only be amended by a document signed by or on behalf of both the Principal and the Integration Partner.

28.12 Waiver

- (a) Failure to exercise or enforce, or a delay in exercising or enforcing, or the partial exercise or enforcement of, a right, power or remedy provided by Law or under the Contract by a party does not preclude, or operate as a waiver of, the exercise or enforcement, or further exercise or enforcement, of that or any other right, power or remedy provided by Law or under the Contract.
- (b) A waiver or consent given by a party under the Contract is only effective and binding on that party if it is given or confirmed in writing by that party.
- (c) No waiver of a breach of a term of the Contract operates as a waiver of any other breach of that term or of a breach of any other term of the Contract.

28.13 Assignment and Change of Control

- (a) The Principal may at any time, and without having to obtain the Integration Partner's approval, assign any right or interest of the Principal under the Contract or create or allow to exist, a security interest over or in respect of the Contract or any right or interest of the Principal under the Contract.
- (b) The Integration Partner must not assign, novate, permit or suffer a Change of Control of the Integration Partner or otherwise transfer any of its rights or obligations under the Contract without the prior written consent of the Principal.
- (c) The Integration Partner must notify the Principal in writing as soon as reasonably practicable where the following occur in relation to the Integration Partner:
 - (i) a restructure of the Integration Partner or any "Related Entity" (as defined in the Corporations Act) of the Integration Partner that does not change the "Ultimate Holding Company" (as defined in the Corporations Act) of the Integration Partner; or
 - (ii) a transfer or issue of any securities listed on any recognised stock or securities exchange.

28.14 Consents

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

28.15 Expense

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

28.16 Severance

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

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

28.17 Indemnities

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

28.18 English language

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

28.19 Taxes

- (a) Without limiting clause 11.10, the Integration Partner must pay all taxes which may be payable in respect of the Integration Partner's Activities, including any customs duty and primage applicable to imported plant, equipment and materials required for the Integration Partner's Activities.
- (b) If the Principal is required in its opinion to withhold any amount in respect of tax from a payment to be made to the Integration Partner under the Contract, it is entitled to do so and such withholding and payment to the relevant taxing authority will be a good discharge of its obligation to pay the relevant amount to the Integration Partner.
- (c) If the Principal pays an amount to the Integration Partner without withholding an amount in respect of tax, the Integration Partner must indemnify the Principal for any loss suffered by the Principal as a result of the Principal failing to withhold the amount in respect of tax.

28.20 No partnership, joint venture or other fiduciary relationship

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

28.21 Proportionate liability

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

28.22 Prior work

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

28.23 If the Integration Partner is a trustee

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

- (a) the Integration Partner is the only trustee of the Integration Partner Trust;
- (b) the Integration Partner has unqualified power under the constitution of the Integration Partner Trust to perform its obligations under the Contract;
- (c) no action is currently taking place or pending to remove the Integration Partner as trustee of the Integration Partner Trust or to appoint additional trustees of the Integration Partner Trust;
- (d) the Integration Partner has entered into the Contract in its capacity as trustee of the Integration Partner Trust and for the benefit of the beneficiaries of the Integration Partner Trust;

- (e) the Integration Partner has the right to be fully indemnified out of the assets of the Integration Partner Trust in respect of the obligations incurred by it in relation to the Contract;
- (f) there is no subsisting breach of the constitution of the Integration Partner Trust; and
- (g) the Integration Partner Trust has not been terminated and there is no action pending to terminate the Integration Partner Trust.

28.24 Legal Opinion

If:

- (a) the Integration Partner is incorporated outside Australia the Integration Partner must, on the Award Date, provide a Legal Opinion supporting, and in respect of, the execution of the Contract; and
- (b) the Parent Company Guarantor is incorporated outside Australia the Integration Partner must, on the Award Date, provide a Legal Opinion supporting, and in respect of, the execution of the parent company guarantee required by clause 5.1.

28.25 Survive termination

Clauses 1 (Definitions and interpretation), 5, 8, 9 and the licences granted to the Principal under them, 11.18, 18.7, 19, 20, 21, 22, 23, 25, 28 and any other clauses which are expressed to survive termination will survive recession, termination or expiration of the Contract.

29. NSW Industrial Relations Guidelines

29.1 NSW Industrial Relations Guidelines: Building and Construction Procurement

In addition to terms defined in the Contract, terms used in this clause 29 have the same meaning as is attributed to them in the NSW Industrial Relations Guidelines. The NSW Industrial Relations Guidelines are available at <https://www.industrialrelations.nsw.gov.au/assets/Uploads/files/New-South-Wales-Industrial-Relations-Guidelines-Building-and-Construction-Procurement.pdf>.

29.2 Primary Obligation

- (a) The Integration Partner must at all times comply with, and meet any obligations imposed by, the NSW Industrial Relations Guidelines.
- (b) The Integration Partner must notify the Construction Compliance Unit (**CCU**) and the Principal of any possible non-compliance with the NSW Industrial Relations Guidelines and of remedial action taken, within 24 hours of becoming aware of the possible non-compliance.
- (c) Where the Integration Partner engages a Subcontractor, the Integration Partner must ensure that the contract with the Subcontractor imposes on the Subcontractor equivalent obligations to those in this clause 29, including that the Subcontractor must at all times comply with, and meet any obligations imposed by, the NSW Industrial Relations Guidelines.
- (d) The Integration Partner must not appoint or engage another party in relation to the Integration Partner's Activities where that appointment or engagement would breach a sanction imposed on the other party in relation to the NSW Industrial Relations Guidelines.

29.3 Access and information

(a) The Integration Partner must maintain adequate records of compliance with the NSW Industrial Relations Guidelines by it, its Subcontractors and related entities.

(b) The Integration Partner must allow, and take reasonable steps to facilitate, authorised personnel (including personnel of the CCU) to:

- (i) enter and have access to sites and premises controlled by the Integration Partner;
- (ii) inspect any work, material, machinery, appliance, article or facility;
- (iii) access information and documents;
- (iv) inspect and copy any record relevant to the Integration Partner's Activities;
- (v) have access to personnel; and
- (vi) interview any person,

as is necessary for the authorised personnel to monitor and investigate compliance with the NSW Industrial Relations Guidelines by the Integration Partner, its Subcontractors and related entities.

(c) The Integration Partner, and its related entities, must agree to, and comply with, any request from authorised personnel (including personnel of the CCU) for the production of specified documents by a certain date, whether in person, by post or electronic means.

29.4 Sanctions

(a) The Integration Partner warrants that at the time of entering into the Contract, neither it, nor any of its related entities, are subject to a sanction in connection with the NSW Industrial Relations Guidelines that would have precluded it from responding to a procurement process for work to which the NSW Industrial Relations Guidelines apply.

(b) If the Integration Partner does not comply with, or fails to meet any obligation imposed by, the NSW Industrial Relations Guidelines, a sanction may be imposed against it in connection with the NSW Industrial Relations Guidelines.

(c) Where a sanction is imposed:

- (i) it is without prejudice to any rights that would otherwise accrue to the parties; and
- (ii) the State of NSW (through its agencies, Ministers and the CCU) is entitled to:
 - A. record and disclose details of non-compliance with the NSW Industrial Relations Guidelines and the sanction; and
 - B. take them into account in the evaluation of future procurement processes and responses that may be submitted by the Integration Partner, or its related entities, in respect of work to which the NSW Industrial Relations Guidelines apply.

29.5 Compliance

- (a) The Integration Partner bears the cost of ensuring its compliance with the NSW Industrial Relations Guidelines, including in respect of any positive steps it is obliged to take to meet its obligations under the NSW Industrial Relations Guidelines. The Integration Partner is not entitled to make, and the Principal and the State of NSW will not be liable upon, any Claim against the Principal or the State of NSW arising out of or in any way in connection with the Integration Partner's compliance with the NSW Industrial Relations Guidelines.
- (b) Compliance with the NSW Industrial Relations Guidelines does not relieve the Integration Partner from:
 - (i) responsibility to perform its obligations under the Contract or any supply contract or maintenance contract; or
 - (ii) any other legal liability, whether or not arising from its compliance with the NSW Industrial Relations Guidelines.

Schedule 1 - Key Details

Clause 1 - Definitions and interpretation		
1.	Contract Price: (Clause 1.1)	Calculated in accordance with Schedule 2.
2.	Integration Partner's Representative: (Clause 1.1)	[REDACTED]
3.	Parent Company Guarantor (Clause 1.1)	Apex BidCo Pty Limited ACN 647 948 605
4.	Principal's Representative: (Clause 1.1)	Name: Adam Taylor - Director Modern Methods of Construction Address: Level 8, 259 George Street Sydney NSW 2000 Email: Adam.taylor93@det.nsw.edu.au
5.	Term: (Clause 1.1)	3 years from the Award Date as extended under clause 3.4, unless the Contract is terminated earlier.
Clause 2 - Objectives, governance and collaboration		
6.	JLT Members (Clauses 2.3(b) and 2.4(b))	Principal: <ul style="list-style-type: none"> Adam Taylor - Director Modern Methods of Construction; and Paul Towers - Group Director of Operations. Integration Partner: <ul style="list-style-type: none"> [REDACTED] - Executive Manager; and [REDACTED] - Chief Executive, Major Projects. Chairperson: <ul style="list-style-type: none"> [REDACTED] - Strategic Advisor.
Clause 7 - Risks and insurance		
7.	Insurance policies required to be effected by the Integration Partner: (Clause 7.2)	<p>Public & Product Liability Insurance Amount of cover is \$20 million in respect of any one occurrence, and in the aggregate in respect of product liability.</p> <p>Workers Compensation Insurance Amount of cover: As required by Law</p> <p>Professional Indemnity Insurance Amount of cover is \$5 million per claim and in the aggregate for all claims in any 12 month period..</p> <p>Cyber Insurance Amount of cover is \$5 million per claim and in the annual aggregate.</p>

8.	Additional requirements for Public Liability Insurance and Product Liability Insurance (Clause 7.2(c))	Public & Product Liability Insurance must include the Principal as an additional insured in respect of liability to third parties due to the act or omission of the Integration Partner in the provision of any of the Integration Partner's Activities under the Contract.		
Clause 8 - Deliverables and Software				
9.	Management Plans (clause 8.4)	Delivery Plans for each Phase, Health & Safety Improvement Plan, Sustainability Plan, Supply Chain Development Plan, Procurement Management Plan, Integration Partner Cost Plan, Integrated Solution Plan and any other Plans required by the Principal from time to time.		
Clause 9 - Intellectual property and confidentiality				
10.	Escrow deed required (Clause 9.6)	Yes		
Clause 11 - General Integration Partner obligations				
11.	Pre-Approved Subcontractors: (Clause 11.9(a))	Subcontractor		Part of the Integration Partner's Activities
		Lipman Pty. Ltd	KoP, Design Systems and Advancement Commercial Innovation and Ecosystem Development Assembly and Integration Design and Implementation	
		Cast Consult Limited	Strategic Advisory	
		Woods Bagot Pty. Ltd	KoP, Design Systems and Advancement	
		WSP Australia Pty Ltd	KoP, Design Systems and Advancement	
		MBM Pty Ltd	Cost Advisory and Commercial Opportunity Mapping	
		Richard Crookes Constructions Pty. Ltd	Assembly and Integration Design and Implementation	
		Roberts Co Australia Pty Ltd	Assembly and Integration Design and Implementation	

		Ark PL Pty Ltd	Integration Software & Services
12.	Contract Value for the purposes of calculating the Aboriginal participation requirements: (Clause 11.13(c))	\$39 million	
Clause 16 – Time			
13.	Milestone Date of whole or parts of the Integration Partner's Activities: (Clause 16.1)	Agree KPIs and KRAs within 3 months of the Award Date.	
Clause 25 – Limitation of liability			
14.	Limitation of liability: (Clause 26(a)(ii))	[REDACTED]	
Clause 27 – Performance			
15.	Frequency of KPI reporting and times at which Principal and Integration Partner to meet: (Clause 27.4)	The Integration Partner must provide a KPI Performance Report at the end of each month and the Principal and the Integration Partner will meet every 3 months, unless otherwise agreed in writing by the Principal.	

Schedule 2 - Payment Schedule

1.1 Contract Price

[REDACTED]

■ [REDACTED]

■ [REDACTED]

■ [REDACTED]

1.2

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

■ [REDACTED]

■ [REDACTED]

■ [REDACTED]

■ [REDACTED]

■ [REDACTED]

■ [REDACTED]

■ [REDACTED]

■ [REDACTED]

- [REDACTED]
 - [REDACTED]
 - [REDACTED]
- [REDACTED]
- [REDACTED]
- [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

1.3

- [REDACTED]
- [REDACTED]

[Redacted]

[Redacted]

- [Redacted]

- [Redacted]

[Redacted]

- [Redacted]

- [Redacted]

[Redacted]

1.4

[Redacted]

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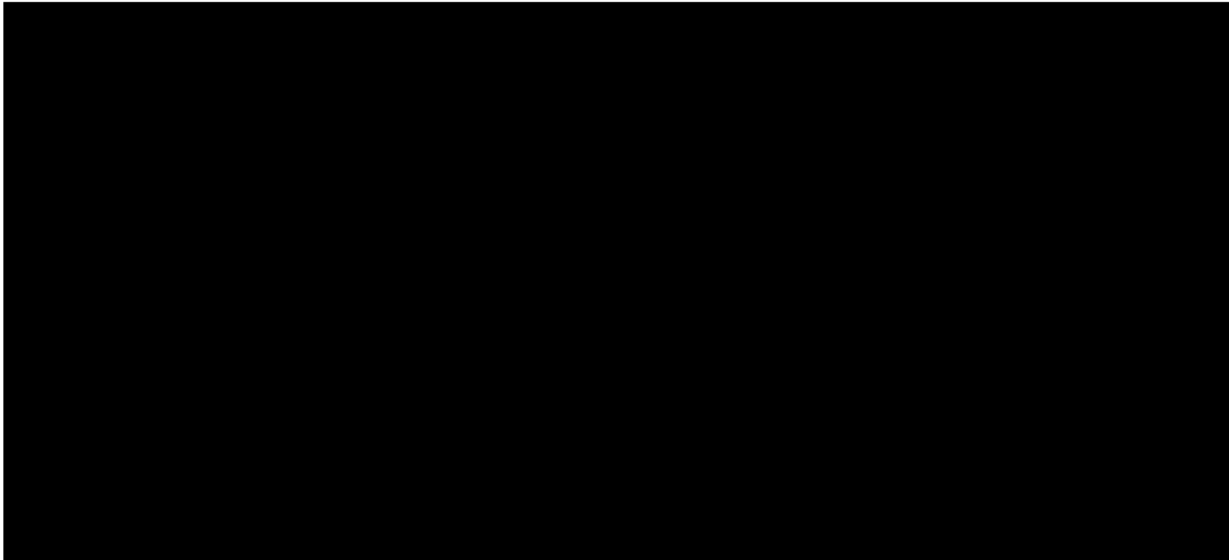
- [Redacted]

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Schedule 3 - Schedule of Rates



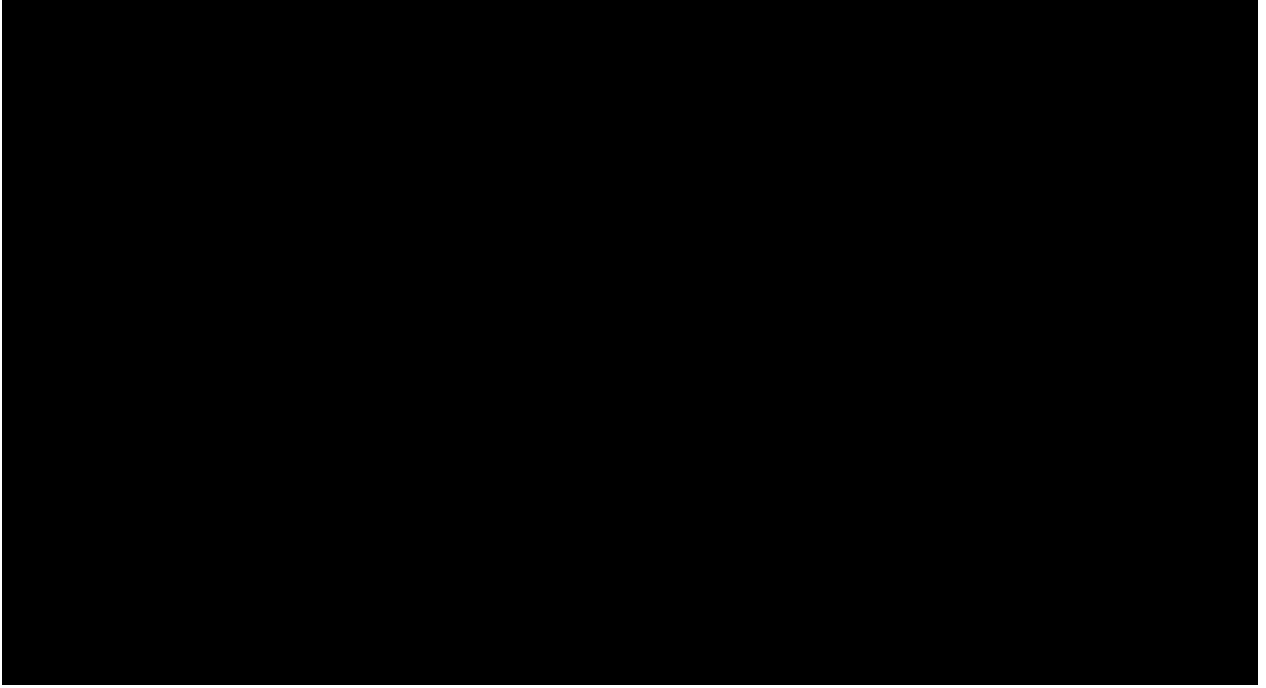
The table below provides a description of each resource type to assist in determining the applicable rate to any Personnel.

Resource Type Descriptions			
Resource Level	Resource Type	Description	Minimum years of relevant experience
Level 1	Partner	Senior Management member and highly experienced practitioner with a broad range of experience within the industry. Provides strategic advice and manages overall commercial strategy. Manages senior client relationships at a strategic level.	15 plus
Level 2	Director	Management member and experienced practitioner within the industry. Provides strategic and technical advice and leads technical teams. Key in sales activity and client relationship management. Alternately: SME / Domain expert with deep technical skills but limited leadership responsibility	15 plus
Level 3	Senior Manager	Senior employee with significant specialist expertise and team leadership capabilities. Practice lead with project management, consulting and facilitation skills and high quality written comms skills including proposals, reports, contractual letters and project plans.	10 plus
Level 4	Manager	Junior management level, specialist technical and subject matter expertise; leads more complex engagements and manages assignment schedules and resource allocation. Ability to lead at client meetings and choose an appropriate solution in responding to a client's needs. Authors proposals and pitches.	8 plus
Level 5	Senior Consultant	Field team leadership role, moderate level of technical and subject matter expertise. Further competencies include critical thinking and comms skills and ability to lead simple engagements	4 - 8
Level 6	Consultant	Higher level technical skills, broader experience base, business process & industry knowledge. Requires limited supervision and may lead analyst/ graduate.	2 - 4
Level 7	Analyst	Performs data gathering and analysis with technical skills. Low level of industry knowledge. Works under supervision by more senior team members.	0 - 2

The Integration Partner's indicative mapping of resource type descriptions across its own organisation and those of its Subcontractors is set out in Schedule 16 to assist in determining the relevant rate payable to particular individuals.

Schedule 4 - Nominated Integration Partner Personnel

(Clause 4.5)



Schedule 5 - Limits of Authority

(Clause 15.2)

The Integration Partner is authorised to represent the Principal for the purposes of providing the Integration Partner's Activities, but subject at all times to the Contract (including this Schedule) and the limitations of the *Government Sector Finance Act 2018* (NSW) and the *Government Sector Audit Act 1983* (NSW).

The Integration Partner acknowledges and agrees that the Integration Partner and its Personnel are each not a "government officer" as defined under the *Government Sector Finance Act 2018* (NSW).

The Integration Partner must, and must procure its Personnel to:

- (a) not act, make any representation (whether express or implied), or hold themselves out as a "government officer" as defined under the *Government Sector Finance Act 2018* (NSW); and
- (b) otherwise do anything or fail to do anything that would cause the Principal to be in breach of the *Government Sector Finance Act 2018* (NSW).

1.1 Overriding principles

- (a) Without limiting any provision of the Contract, the Integration Partner must procure that the Integration Partner's Personnel comply with the following overriding principles when providing the Integration Partner's Activities as an agent or representative of the Principal:
 - (i) the Integration Partner's Personnel act as an agent and not as a delegate of the Principal;
 - (ii) the Integration Partner's Personnel must act within the limits of authority set out in this Schedule (including clause 1.2 below);
 - (iii) the Integration Partner's Personnel can only exercise their authority for the purpose of carrying out the Integration Partner's Activities, and not for any other purpose;
 - (iv) the Integration Partner's Personnel must exercise their authority responsibly, lawfully, honestly and ethically to the standards required by the Contract and in the best interests of the Principal;
 - (v) the Integration Partner's Personnel must not exercise an authority in circumstances where there is an actual or potential conflict of interest between their own interests (or those of family members or other affiliates) and their duties to the Principal; and
 - (vi) the Integration Partner's Personnel must comply with all of the following when carrying out functions on behalf of the Principal:
 - A. relevant Laws and standards;
 - B. relevant policies, including the Code of Conduct and the Policies and Procedures;
 - C. the applicable terms of the Contract; and
 - D. the terms of any relevant Project Contract.

- (b) Regardless of the scope of any authority, the Integration Partner must procure that the Integration Partner's Personnel work collaboratively, consult with senior and specialist colleagues, and ensure that their managers are kept informed of all decisions and activities that may be significant or have material consequences.
- (c) The Integration Partner indemnifies and keeps indemnified the Principal against all losses, liabilities, damages, claims, costs and demands of any nature against the Principal arising out of or in connection with:
 - (i) any negligence of the Integration Partner or the Integration Partner's Personnel in complying with the overriding principles set out in clause 1.1(a) above; or
 - (ii) any breach or default (including any fraud or wilful act or omission) of the Integration Partner or the Integration Partner's Personnel in complying with the overriding principles set out in clause 1.1(a) above.
- (d) Paragraph (c) will survive any termination of the Contract.

1.2 Limits of authority

This clause sets out the limits that apply to the Integration Partner's scope of authority (and the scope of authority of any of the Integration Partner's Personnel appointed as an agent or representative of the Principal). These limits are in addition to any other requirements of the Contract.

Due to the provisions of the *Government Sector Finance Act 2018* (NSW) and the *Government Sector Audit Act 1983* (NSW), the Integration Partner's authority is limited.

For the Integration Partner's Activities, the Principal's Representative will issue a specific delegation to the Integration Partner. The Principal may amend (including to add or remove authority from the Integration Partner) or withdraw the delegation from the Integration Partner at any time and for any reason (in the Principal's absolute discretion).

Schedule 6 - Escrow Deed

(Clause 9.6)

Between [Name] of [Address] (ABN [*]) (**Escrow Holder**).

and [Name] of [Address] (ABN [*]) (**Integration Partner**); and

and **The Crown in right of the State of New South Wales, acting through the Department of Education** (ABN 40 300 173 822), of Level 8, 259 George Street Sydney NSW 2000 (**Principal**).

Background

- A. The Integration Partner has agreed to deposit with the Escrow Holder a copy of the Source Code Material and to allow the Principal to access and use the Source Code Material under certain circumstances.
- B. The Escrow Holder agrees to deal with the Source Code Material on the terms and conditions of this deed.

1. Interpretation

1.1 Definitions

Unless otherwise specified, words and phrases used in this deed have the same meaning as that which is given to them under the Contract. In this deed:

Annual Fee means the annual fees set out in section 1 of the Information Schedule.

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

Contract means the Contract entitled [Insert] between the Principal and [Insert], dated [insert].

CPI means the Consumer Price Index (all groups – weighted average of eight capital cities) published by the Australian Bureau of Statistics.

Escrow Deposit Specification Form means the form set out in Schedule 2.

Establishment Fee means the establishment fee set out in section 1 of the Information Schedule.

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

Information Schedule means Schedule 1 to this deed.

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

- (a) the party informs the other party in writing, or its creditors generally, that the party is insolvent or is unable to proceed with the Contract for financial reasons;
- (b) a trustee, receiver, receiver and manager, interim receiver, controller, administrator, custodian, sequestrator, provisional liquidator, liquidator or any foreign law equivalent or other person with similar power is appointed to the party;
- (c) the party:

- (i) becomes bankrupt or insolvent within the meaning of section 95A of the Corporations Act 2001 (Cth) or under any bankruptcy, insolvency or analogous Law;
 - (ii) would be presumed by a court to be insolvent under section 459C(2) of the Corporations Act 2001 (Cth);
 - (iii) fails to comply with a statutory demand (within the meaning of section 459F(1) of the Corporations Act 2001 (Cth)) and fails to remedy that failure within 7 days after being required in writing to do so by the party issuing the statutory demand;
 - (iv) makes any assignment in bankruptcy or makes any other assignment for the benefit of creditors;
 - (v) seeks relief from its obligations to creditors under any bankruptcy, insolvency or analogous Law;
 - (vi) commences any proceeding, files a petition or proposal to take advantage of any act of bankruptcy or insolvency;
 - (vii) resolves to, consents to or acquiesces in the appointment of a trustee, receiver, receiver and manager, interim receiver, controller, administrator, custodian, sequestrator, provisional liquidator, liquidator or other person with similar power of itself or of all or a portion of its assets; or
 - (viii) files a petition or otherwise commences any proceeding seeking to enter into any compromise, reorganisation, arrangement, composition or readjustment under any applicable bankruptcy, insolvency or analogous Law affecting creditors' rights or consents to, or acquiesces in, the filing of such a petition, or commencement of such proceedings; or
- (d) any act is done or event occurs which, under applicable Law, has a similar effect to anything mentioned in paragraphs (b) or (c).

Software Application means the software application(s) specified in section 2 of the Escrow Deposit Specification Form.

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

Source Code Material means all Source Code for the then currently implemented version of the Software Application, reasonably detailed associated developer commentary regarding that Source Code and all other software, information, documentation and other material described in section 2 of the Information Schedule.

Tax Invoice has the same meaning as in the GST Legislation.

Taxable Supply has the same meaning as in the GST Legislation.

Update means any material update, new release, modification or new version of the computer programs or computer interfaces provided by the Integration Partner.

1.2 References to certain general terms

In the deed:

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

and unless the context indicates a contrary intention:

- (b) an obligation or liability assumed by, or a right conferred on, 2 or more persons binds or benefits them jointly and severally;
- (c) "person" includes an individual, the estate of an individual, a corporation, an Authority, an association or a joint venture (whether incorporated or unincorporated), a partnership and a trust;
- (d) a reference to a party includes a party's executors, administrators, successors and permitted assigns, including persons taking by way of novation and, in the case of a trustee, includes a substituted or additional trustee;
- (e) a reference to a document (including the deed) is to that document as varied, novated, ratified or replaced from time to time;
- (f) a reference to a statute includes its delegated legislation and a reference to a statute or delegated legislation or a provision of either includes consolidations, amendments, re-enactments and replacements;
- (g) a word importing the singular includes the plural (and vice versa), and a word indicating a gender includes every other gender;
- (h) a reference to a party, clause, schedule, exhibit, attachment or annexure is a reference to a party, clause schedule, exhibit, attachment or annexure to or of the deed, and a reference to the deed includes all schedules, exhibits, attachments and annexures to it;
- (i) if the time for giving any notice, issuing any certificate, making any payment or doing any other act required or permitted by the deed, falls on a day which is not a Business Day, then the time for giving the notice, issuing the certificate, making the payment or doing the other act will be taken to be on the next Business Day;
- (j) if a word or phrase is given a defined meaning, any other part of speech or grammatical form of that word or phrase has a corresponding meaning;
- (k) "includes" in any form is not a word of limitation;
- (l) a reference to "\$" or "dollar" is to Australian currency;
- (m) a reference to any Authority, institute, association or body is:
 - (i) if that Authority, institute, association or body is reconstituted, renamed or replaced or if the powers or functions of that Authority, institute, association or body are transferred to another organisation, deemed to refer to the reconstituted, renamed or replaced organisation or the organisation to which the powers or functions are transferred, as the case may be; and
 - (ii) if that Authority, institute, association or body ceases to exist, deemed to refer to the organisation which serves substantially the same purposes or object as that Authority, institute, association or body.

2. Integration Partner's deposit obligations

2.1 Integration Partner to make deposits

The Integration Partner must deposit the then currently implemented version of the Source Code Material, accompanied by a completed Escrow Deposit Specification Form, with the Escrow Holder:

- (a) within 14 days of the date of this deed or as otherwise required by the Principal; and
- (b) within 14 days after any update or material change is made to the implemented version of any Source Code then held by the Escrow Holder.

2.2 Principal may test deposits

The Principal may, after providing the Integration Partner with at least seven days' notice, conduct tests on the Source Code Material to determine whether the Integration Partner has met its obligations under clause 2.1.

2.3 Escrow Holder to provide access

The Escrow Holder will provide the Principal with access to the Source Code Material to enable testing under clause 2.2 to be carried out and will, in the presence and with the oversight of the Integration Partner, allow the Principal to:

- (a) remove the Source Code Material from the custody of the Escrow Holder;
- (b) install, download or copy the Source Code Material onto such computer system or hardware as the Principal may reasonably specify; and
- (c) analyse and conduct reasonable tests in relation to the Source Code Material as provided for under clause 2.2.

Following the testing, the Principal will (in the presence of and with the oversight of the Integration Partner) ensure that all copies of the Source Code Material are deleted from the computer system or hardware referred to in clause 2.3(b), and the material referred to in clause 2.3(a) is promptly returned to the Escrow Holder.

2.4 Support to provide assistance with testing

The Integration Partner must, at the Principal's request and at no charge, give the Principal all reasonable assistance to enable the Principal to carry out the tests referred to in clause 2.2.

2.5 Failure to deposit correct version in escrow

If testing by the Principal reveals that the Source Code Material does not contain the correct version of the computer programs or computer interfaces, the Integration Partner must, at no charge, deliver a copy of the correct version of the Source Code Material to the Escrow Holder within 2 Business Days of the completion of testing.

3. Escrow Holder's obligations

3.1 Obligations

The Escrow Holder must:

- (a) accept each deposit of the Source Code Material and, subject to the terms and conditions of this deed, hold it on behalf of the Integration Partner and the Principal;

- (b) take all reasonably necessary steps to ensure the preservation, care, safe custody and security of the Source Code Material whilst it is in the possession, custody or control of the Escrow Holder;
- (c) only use, access, copy and release the Source Code Material to the extent necessary to enable the Escrow Holder to comply with its obligations under this deed;
- (d) establish and maintain a register of deposits of the Source Code Material (Register) showing deposit and release dates and to whom each deposit was released;
- (e) allow the Integration Partner or the Principal to examine the Register at any time during regular business hours; and
- (f) provide the Integration Partner or the Principal with a copy of the Register within seven days of receiving a request to do so.

3.2 Limit on obligations

The Escrow Holder has no obligation to and is not responsible for:

- (a) verifying the nature, completeness or accuracy of Source Code Material; or
- (b) any transaction between the parties, other than the performance of the Escrow Holder's obligations under this deed.

4. Confidentiality

The Escrow Holder must not disclose to any person:

- (a) any part of the Source Code Material;
- (b) any information about the Source Code Material; or
- (c) any information about this deed,

other than as permitted by this deed or as required by Law.

5. Release to the Principal

5.1 Principal may request release

If one of the following circumstances occurs:

- (a) an Insolvency Event occurs to the Integration Partner;
- (b) the Integration Partner ceases to carry on business;
- (c) the Integration Partner has ceased for any reason to maintain or support a Software Application;
- (d) the Integration Partner breaches the terms of this deed;
- (e) the Contract is terminated for the Integration Partner's breach; or
- (f) the Integration Partner assigns copyright in a Software Application to a third party,

then the Principal may notify the Escrow Holder and the Integration Partner of this event and request that the Escrow Holder release the Source Code Material to the Principal (**Principal Notice**).

5.2 Integration Partner may dispute release

If the Integration Partner disputes the Principal Notice, then it may notify the Escrow Holder and the Principal that it objects to release of the Source Code Material on the basis that the event relied on by the Principal does not exist and the Integration Partner has provided substantial evidence to support its objection (**Integration Partner Objection**).

5.3 Release of Source Code Material to the Principal

Unless otherwise ordered by a court, the Escrow Holder must release the Source Code Material to the Principal:

- (a) if no Integration Partner Objection is received, within 2 Business Days after the Escrow Holder receives a Principal Notice; or
- (b) if an Integration Partner Objection is received, within 7 days after the Integration Partner Objection is received.

5.4 Grant of licence

If the Source Code Material is released to the Principal under this clause 5, then the Integration Partner grants the Principal an irrevocable, perpetual, royalty-free, worldwide, non-exclusive licence in relation to that Source Code Material to use it for all purposes in connection with the Integration Partner's Activities and the purposes described in clause 6.9 of the Contract.

6. Release to Integration Partner

6.1 Release of Source Code Material to Integration Partner

If the Principal has given the Escrow Holder written notice of its consent to the release of the Source Code Material to the Integration Partner, then the Integration Partner may request that the Escrow Holder release the Source Code Material to the Integration Partner, and the Escrow Holder must immediately release the Source Code Material to the Integration Partner.

6.2 No other release to Integration Partner is permitted

Other than as provided for in clause 6.1 and clause 7, the Escrow Holder must not release any Source Code Material to the Integration Partner.

7. Release by agreement or by court order

7.1 Release by agreement

Within five days after receipt of a joint notice from the Integration Partner and the Principal requesting release of the Source Code Material, the Escrow Holder must release the Source Code Material in accordance with that notice.

7.2 Release by court order

Each party acknowledges that the Escrow Holder must release the Source Code Material in accordance with any court order requiring the Escrow Holder to do so.

7.3 Notice to the Principal

The Escrow Holder must immediately notify the Principal if it receives a court order (or any document that refers to a court order being sought) in relation to the Source Code Material.

8. Fees and charges

8.1 Payment of fees

The Principal must pay the Establishment Fee and Annual Fee to the Escrow Holder within 30 days of the Principal's receipt of the invoices referred to in clause 8.3.

8.2 Annual Fee subject to change

The Escrow Holder may increase the Annual Fee for any year by giving 30 days' notice to the Principal. An increase must not exceed the increase in the CPI for the previous year.

8.3 Invoices

The Escrow Holder may issue invoices as follows:

- (a) for the Establishment Fee, on or after the date of this deed, to the Principal;
- (b) for the Annual Fee, on or after each anniversary of the date of this deed, to the Principal; and
- (c) for reasonable delivery costs incurred by the Escrow Holder in releasing the Source Code Material, to the party that requested the release.

All invoices issued by the Escrow Holder must state the basis on which fees are charged and, in respect of amounts invoiced pursuant to sub-clause (c) above, must attach evidence justifying the amounts claimed.

8.4 GST inclusive prices

Unless otherwise stated, the fees include GST.

9. GST

9.1 GST gross up

Subject to clauses 9.2, 9.3 and 9.4, if GST is imposed on any Taxable Supply made by a party under this deed (**Supplying Party**), then the party receiving the Taxable Supply (**Receiving Party**) must pay, in addition to any consideration payable or to be provided under this deed for the supply, an additional amount calculated by multiplying the prevailing GST rate by the consideration for the relevant Taxable Supply payable, or to be provided, by the Receiving Party under any other clause in this deed.

9.2 Tax invoice

Payment for Taxable Supplies is conditional upon the issue of a Tax Invoice. Each Tax Invoice must provide full details of the Taxable Supply, the subject of the Tax Invoice, including any details the payer of the fee may specifically require and such other details required to ensure that it is a Tax Invoice.

9.3 Adjustment

If the amount of GST recovered by the Supplying Party from the Receiving Party differs from the amount of GST payable at Law by the Supplying Party (or an entity grouped with the Supplying Party for GST purposes) in respect of the supply, the amount payable by the Receiving Party to the Supplying Party will be adjusted accordingly.

9.4 Reimbursements

Where one party (**Payer**) is liable to reimburse another party (**Payee**) for any expenditure incurred by the Payer (**Expenditure**), the amount reimbursed by the Payer shall be the GST exclusive Expenditure plus any GST payable to the Payee by the Payer pursuant to clause 9.1.

10. Ownership and risk

10.1 Acknowledgements

Each party acknowledges that:

- (a) nothing in this deed assigns any Intellectual Property Rights in the Source Code Material;
- (b) title in the physical media on which the Source Code Material is stored passes from the Integration Partner to the Principal on release of the Source Code Material to the Principal under clause 5 or clause 7; and
- (c) risk of loss of, or damage to, the Source Code Material and associated media remains with the Integration Partner.

10.2 Loss or damage to Source Code Material

Without limiting any rights or remedies that any of the parties may have, if any of the Source Code Material or associated media is lost, damaged or destroyed while in the Escrow Holder's control:

- (a) the Escrow Holder must promptly notify each other party; and
- (b) the Integration Partner must provide the Escrow Holder with replacement Source Code Material within 2 Business Days or receiving such notice from the Escrow Holder.

10.3 Warranty

The Integration Partner warrants and represents that it has the necessary authority to comply with its obligations under this deed (including the right to grant the licence in clause 5.4).

10.4 Act or omission of Escrow Holder

Notwithstanding any other provision of this deed, if any of the Source Code Material or associated media is lost, damaged or destroyed while in the Escrow Holder's control, and that loss, damage or destruction is caused by:

- (a) the Escrow Holder's breach of this deed; or
- (b) the negligent, wilful or unlawful act or omission of the Escrow Holder,

then the Escrow Holder must, at its own expense, reimburse the Integration Partner for the reasonable cost of replacing the relevant part or parts of the Source Code Material.

11. Termination

11.1 Upon insolvency

This deed terminates immediately if an Insolvency Event occurs to the Escrow Holder.

11.2 Upon release of Source Code Material

This deed terminates immediately if the Source Code Material is released to the Principal or the Integration Partner under this deed, except such termination will not affect those parts of this deed referenced in clause 14.14.

11.3 Upon provision of notice

This deed may be terminated by:

- (a) the Escrow Holder giving 90 days written notice to the Integration Partner and the Principal, subject to a pro-rata refund by the Escrow Holder to the Principal of any advance payment of the Annual Fee; or
- (b) the Principal giving 90 days written notice to the Integration Partner and the Escrow Holder.

11.4 By the Principal or the Integration Partner

Either the Integration Partner or the Principal may, by giving notice to the Escrow Holder (with a copy to the Principal or the Integration Partner, as applicable), terminate this deed with immediate effect if:

- (a) the Escrow Holder commits a material breach of this deed; and
- (b) the breach is not remedied within 14 days of the Escrow Holder receiving a notice detailing the breach and requiring that it be rectified.

11.5 Consequences of an Escrow Holder termination event

Within 14 days after the termination of this deed under clause 11, 11.3 or 11.4, the Integration Partner must, at the direction of the Principal (and the Principal must, if the Integration Partner so requests), enter into another agreement between the Integration Partner, the Principal and a new escrow service provider in a form substantially similar to this deed.

11.6 Return of Source Code Material on termination

- (a) If this deed terminates for any reason other than under clause 11.2 and 11.3(b), then, unless a new escrow deed is entered into within 14 days in accordance with clause 11.5, the Escrow Holder must, within a further 20 days, deliver the Source Code Material to the Principal.
- (b) If this deed terminates under clause 11.3(b), then the Escrow Holder must within 7 days deliver the Source Code Material to the Integration Partner.

12. Notices

- (a) Any notices contemplated by this deed must be in writing and delivered to the relevant address as set out below (or to any new address that a party notifies to the others):
 - (i) to the Principal: Level 8, 259 George Street, Sydney, NSW, 2000

- (ii) to the Escrow Holder: [to be completed]
 - (iii) to the Integration Partner: [to be completed]
- (b) A notice sent by post will be taken to have been received at the time when, in due course of the post, it would have been delivered at the address to which it is sent.

13. No assignment

The Integration Partner and the Escrow Holder must not assign or otherwise deal with all or any of its rights or obligations under this deed without the written consent of the other parties.

14. General

14.1 Discretion in exercising rights

A party may exercise a right or remedy or give or refuse its consent in any way it considers appropriate (including by imposing conditions), unless this deed expressly states otherwise.

14.2 Partial exercise of rights

If a party does not exercise a right or remedy at a given time, the party may still exercise it later.

14.3 Approvals and consents

By giving its approval or consent a party does not make or give any warranty or representation as to any circumstance relating to the subject matter of the consent or approval.

14.4 Remedies cumulative

The rights and remedies provided in this deed are in addition to other rights and remedies given by Law independently of this deed.

14.5 Operation of Law

Rights given to the parties under this deed and the parties' liabilities under it are not affected by anything which might otherwise affect them by Law.

14.6 Indemnities

Each indemnity in this deed is a continuing obligation, separate and independent from the other obligations of the parties, and survives termination, completion or expiration of this deed.

Nothing in this clause 14.6 prevents any other provision of this deed, as a matter of interpretation also surviving the termination of this deed.

It is not necessary for a party to incur expense or make any payment before enforcing a right of indemnity conferred by this deed.

14.7 No partnership, joint venture or other fiduciary relationship

Nothing in this deed will be construed or interpreted as constituting the relationship between the Principal, the Integration Partner and the Escrow Holder as that of partners, joint venturers or any other fiduciary relationship.

14.8 Entire agreement

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

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

14.9 Joint and several liability

- (a) The obligations of the Escrow Holder, if more than one person, under this deed, are joint and several. Each person constituting the Escrow Holder acknowledges and agrees that it will be causally responsible for the acts and omissions (including breaches of this deed) of the other as if those acts or omissions were its own and the Principal may proceed against any or all of them.
- (b) The obligations of the Integration Partner, if more than one person, under this deed, are joint and several. Each person constituting the Integration Partner acknowledges and agrees that it will be causally responsible for the acts and omissions (including breaches of this deed) of the other as if those acts or omissions were its own and the Principal may proceed against any or all of them.

14.10 Severance

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

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

14.11 Provisions limiting or excluding liability

Any provision of this deed which seeks to limit or exclude a liability of the Principal, the Integration Partner or the Escrow Holder is to be construed as doing so only to the extent permitted by Law.

14.12 Variations

This deed may only be varied by a document signed by or on behalf of the Principal, the Integration Partner and the Escrow Holder.

14.13 Waiver

- (a) Failure to exercise or enforce or a delay in exercising or enforcing or the partial exercise or enforcement of any right, power or remedy provided by Law or under this deed by the Principal will not in any way preclude, or operate as a waiver of, any exercise or enforcement, or further exercise or enforcement of that or any other right, power or remedy provided by Law or under this deed.
- (b) Any waiver or consent given by the Principal under this deed will only be effective and binding on the Principal if it is given or confirmed in writing by the Principal.
- (c) No waiver by the Principal of:

- (i) a breach of any term of this deed; or
- (ii) any other failure by the Escrow Holder to comply with a requirement of this deed,

will operate as a waiver of another breach of that term or failure to comply with that requirement or of a breach of any other term of this deed or failure to comply with any other requirement of this deed.

14.14 Survival

Clauses 3.1(e) and 3.1(f), 4, 5.4, 8.4, 9, 10.3, 11.5, 11.6, 14, 14.15 and 1 survive the termination (for any reason) of this deed.

14.15 Governing Law and jurisdiction

- (a) This deed shall be governed by and construed in accordance with the Laws of the State of New South Wales.
- (b) Each party hereby submits to the non-exclusive jurisdiction of the courts of New South Wales and any courts that may hear appeals from any of those courts, for any proceedings in connection with this deed, and waives any right it might have to claim that those courts are an inconvenient forum.

Schedule 1 to Escrow Deed - Information Schedule

1. Fees and charges

Establishment Fee: (first year) \$[] plus GST

Annual Fee: (first year and subsequent years) (subject to increases under clause 8.2 (Annual Fee subject to change)) \$[] plus GST

2. Source code material

(a) The Source Code which incorporates computer programs or computer interfaces;

(b) all documentation relating to the material referred to in (a) which a reasonably qualified programmer would require for understanding, maintaining, modifying such material; and

(c) media on which that Source Code is stored or deposited:

[insert description of media, e.g. DVD ROM]

Schedule 2 to Escrow Deed - Escrow Deposit Specification Form

1. Depositor information

Company Name:

Technical Contact:

Email:

Telephone:

2. Software Application information

Product Names(s)/Version(a)

Modules:

Product Names(s)/Version(a)

Modules:

Product Names(s)/Version(a)

Modules:

3. Media information

Medium	Quantity	Label
_____	_____	_____
_____	_____	_____
_____	_____	_____
_____	_____	_____

4. Escrow deposit details

4.1 Compilation

(a) What hardware is required to compile the Software Application?

(b) What operating system and version is used in the compilation process?

(c) What operating system and version is used in the compilation process?

(d) What development environment (compilers/linkers/other tools) is necessary to compile the Software Application?

(e) List all third party libraries/components that are required to compile the software (brand name, version & Integration Partner) and indicate which (if any) are not included in the deposit?

(f) List all non third party libraries/components that are required to compile the software.

(g) Detail the steps to follow to compile the source code and produce a version of the Software Application that runs.

(h) List all of the files that are created by the compilation process and are needed to successfully run the Software Application.

4.2 Running the application

(a) What hardware is required to successfully run the Software Application (if identical to item 3.4.1.1 please leave blank)?

(b) What software (in addition to the operating system) is required to successfully run the Software Application?

4.3 Documentation

(a) Please provide an overview of the technical documentation.

(b) Please provide an overview of the user documentation.

(c) Please include a short description on the layout of the deposit.

(d) Please include a full directory listing of the contents of the deposit media.

4.4 General information

(a) What are the main functions performed by the Software Application?

(b) List the additional material (reports, databases, etc.) included with the deposit.

(c) Is a copy of the development environment (compilers & third party software) included with the deposit?

(d) Does your company use a formal coding convention (please provide a brief description of the convention used).

5. Remarks

6. Signature

Date: _____

Signature: _____

Name (please print): _____
For and on behalf of the Integration Partner

The Integration Partner warrants that the details set out above are correct and complete.

Executed and delivered as a Deed in Sydney

Signed for and on behalf of The Crown in right of the State of New South Wales, acting through the Department of Education (ABN 40 300 173 822):

Signature of Authorised Delegate

Signature of Witness

Print Name
(block letters)

Print Name
(block letters)

Position held

Position held

Executed as a deed in accordance with section 127 of the *Corporations Act 2001* by [*** Limited**]:

Director Signature

Director/Secretary Signature

Print Name

Print Name

Executed as a deed in accordance with section 127 of the *Corporations Act 2001* by [*** Limited**]:

Director Signature

Director/Secretary Signature

Print Name

Print Name

Schedule 7 - Form of Declaration

(Clause 18.4(e))

Declaration							
<p>I,</p> <p>of</p> <p>do solemnly and sincerely declare that:</p> <p>1. I am the representative of:</p> <p>..... ("the Integration Partner")</p> <p>in the Office Bearer capacity of:</p> <p>.....</p> <p>2. The Integration Partner has a contract with the [.....]:</p> <p>..... ("the Contract")</p> <p>3. I personally know the facts which I have set out in this declaration.</p> <p>4. All employees who have at any time been engaged by the Integration Partner for work done under the Contract:</p> <p>a) have been paid all remuneration and benefits to the date of this declaration payable to them by the Integration Partner in respect of their employment on work under the Contract, and</p> <p>b) have otherwise had accrued to their account all benefits to which they are entitled from the Integration Partner as at the date of this declaration in respect of their employment on work under the Contract pursuant to any award, enterprise agreement, act or regulation,</p> <p>with the exception of the employees and respective amounts unpaid or not accrued for each employee listed below:</p> <table style="width: 100%; border-collapse: collapse;"> <thead> <tr> <th style="text-align: left; width: 60%;">Employee:</th> <th style="text-align: left;">Amount unpaid or not accrued:</th> </tr> </thead> <tbody> <tr> <td>.....</td> <td>.....</td> </tr> <tr> <td>.....</td> <td>.....</td> </tr> </tbody> </table> <p>5. Attached to and forming part of this declaration, as Annexure A, is a supporting statement for the purposes of section 13(7) of the Building and Construction Industry Security of Payment Act 1999 (NSW).</p> <p>Where the Integration Partner holds any retention money from a Subcontractor, the Integration Partner has complied with all requirements under the Building and Construction Industry Security of Payment Amendment (Retention Money Trust Account) Regulation 2015 (NSW), with the exception of the items listed below:</p> <p>.....</p> <p>.....</p>	Employee:	Amount unpaid or not accrued:	
Employee:	Amount unpaid or not accrued:						
.....						
.....						

<p>6. In all cases where a subcontractor or supplier to the Integration Partner has provided services and/or materials in respect of the Contract and has submitted a claim to the Integration Partner for these services or materials which as at the date of this statutory declaration would have been due and payable but which the Integration Partner disputes, the reasons for such dispute have been notified in writing to the subcontractor or supplier by the Integration Partner prior to the date of this statutory declaration. Where such dispute relates to part only of the subcontractor or supplier's claim, that part of the claim not in dispute has been paid by the Integration Partner to the subcontractor or supplier as at the date of this statutory declaration except for the amounts listed in 5 above.</p>																	
<p>7. The provisions of the Contract relating to the payment of employees, subcontractors and suppliers of the Integration Partner have been complied with by the Integration Partner.</p> <p>8. The Integration Partner has been informed by each subcontractor to the Integration Partner (except for subcontracts not exceeding \$25,000 at their commencement) by statutory declaration in equivalent terms to this declaration (made no earlier than the date 14 days before the date of this declaration):</p> <p>(a) that their subcontracts with their subcontractors and suppliers comply with the requirements of the Contract relating to payment of employees and subcontractors, and</p> <p>(b) that all their employees and subcontractors, as at the date of the making of such a declaration:</p> <p>i) have been paid all remuneration and benefits due and payable to them by; or</p> <p>ii) had accrued to their account all benefits to which they are entitled from;</p> <p>the subcontractor of the Integration Partner or from any other subcontractor (except for subcontracts not exceeding \$25,000 at their commencement) in respect of any work under the Contract, and</p> <p>(c) of details of any amounts due and payable or benefits due to be received or accrued described in 8(b) above which have not been paid, received or accrued,</p> <p>except for the following subcontractors to the Integration Partner who have failed to provide such a declaration:</p> <table border="0"> <tr> <td style="width: 50%;">Subcontractor:</td> <td style="width: 50%;">Due amount unpaid:</td> </tr> <tr> <td>.....</td> <td>.....</td> </tr> <tr> <td>.....</td> <td>.....</td> </tr> <tr> <td>.....</td> <td>.....</td> </tr> </table> <p>9. Where a subcontractor to the Integration Partner has provided a declaration as in 8 above, and it includes unpaid amounts or benefits either not received or not accrued, details of the subcontractor, details of the affected employees, suppliers and subcontractors of the subcontractor, and the respective amounts or benefits either unpaid or not accrued are as follows:</p> <table border="0"> <tr> <td style="width: 50%;">Employee, subcontractor or supplier:</td> <td style="width: 50%;">Amount unpaid or not accrued:</td> </tr> <tr> <td>.....</td> <td>.....</td> </tr> <tr> <td>.....</td> <td>.....</td> </tr> <tr> <td>.....</td> <td>.....</td> </tr> </table> <p>10. In relation to the declaration provided by each subcontractor to the Integration Partner, I am not aware of anything to the contrary of what is contained therein, and on the basis of the contents of those statutory declarations, I believe that information to be true.</p> <p>11. I personally know the truth of the matters which are contained in this declaration.</p> <p>12. I am not aware of anything which would contradict the statements made in the statutory declarations or written statements provided to the Integration Partner by its subcontractors, as referred to in this declaration.</p>	Subcontractor:	Due amount unpaid:	Employee, subcontractor or supplier:	Amount unpaid or not accrued:	<p>insert names and addresses of the Integration Partner's subcontractors who have not submitted a declaration, and unpaid amounts due or otherwise due to each of them by the Integration Partner in respect of this claim</p> <p>insert names of the subcontractors, the name and addresses of the unpaid employees, subcontractors and suppliers and amounts listed as unpaid or not accrued to them.</p>
Subcontractor:	Due amount unpaid:																
.....																
.....																
.....																
Employee, subcontractor or supplier:	Amount unpaid or not accrued:																
.....																
.....																
.....																

<p><i>I, [full name], being the Integration Partner, a director of the Integration Partner or a person authorised by the Integration Partner on whose behalf this declaration is made, hereby declare that I am in a position to know the truth of the matters that are contained in this declaration.</i></p>	
<p><i>Signature:</i></p>	<p><i>Date:</i></p>
<p><i>Full name:</i></p>	<p><i>Position/Title:</i></p>

Annexure A

Supporting statement by head contractor regarding payment to subcontractors

This statement must accompany any payment claim served on a principal to a construction contract by a head contractor.

For the purposes of this statement, the terms “principal”, “head contractor”, “subcontractor”, and “construction contract” have the meanings given in section 4 of the *Building and Construction Industry Security of Payment Act 1999*.

Head contractor: *[business name of head contractor]*

ABN: [ABN]

* 1. has entered into a contract with: *[business name of subcontractor]*

ABN: [ABN]

Contract number/identifier: *[contract number/identifier]*

OR

* 2. has entered into a contract with the subcontractors listed in the attachment to this statement.

* *[Delete whichever of the above does not apply]*

This statement applies for work between *[start date]* and *[end date]* inclusive (the construction work concerned), subject of the payment claim dated *[date]*.

I, *[full name]*, being the head contractor, a director of the head contractor or a person authorised by the head contractor on whose behalf this declaration is made, hereby declare that I am in a position to know the truth of the matters that are contained in this supporting statement and declare that, to the best of my knowledge and belief, all amounts due and payable to subcontractors have been paid (not including any amount identified in the attachment as an amount in dispute).

Signature:

Date:

Full name:

Position/Title:

Penalties

The Building and Construction Security of Payment Act 1999 provides that:

- Section 13(7) A head contractor must not serve a payment claim on the principal unless the claim is accompanied by a supporting statement that indicates that it relates to that payment claim.
- Maximum penalty: 1,000 penalty units in the case of a corporation or 200 penalty units in the case of an individual.

And:

- Section 13(8) A head contractor must not serve a payment claim on the principal accompanied by a supporting statement knowing that the statement is false or misleading in a material particular in the particular circumstances.
- Maximum penalty: 1,000 penalty units in the case of a corporation or 200 penalty units or 3 months imprisonment (or both) in the case of an individual.

Attachment

Schedule of subcontractors paid all amounts due and payable				
Subcontractor	ABN	Contract number/identifier	Date of works (period)	Date of payment claim (head contractor claim)

Schedule of subcontractors for which an amount is in dispute and has not been paid				
Subcontractor	ABN	Contract number/identifier	Date of works (period)	Date of payment claim (head contractor claim)

Schedule of subcontractors for which an amount is in dispute and has not been paid				
Subcontractor	ABN	Contract number/ identifier	Date of works (period)	Date of payment claim (head contractor claim)

Schedule 8 - Subcontractor's Statement

(Clause 18.10)

SUBCONTRACTOR'S STATEMENT

REGARDING WORKERS COMPENSATION, PAYROLL TAX AND

REMUNERATION (Note 1 - see back of form)

For the purposes of this Statement a "subcontractor" is a person (or other legal entity) that has entered into a contract with a "principal contractor" to carry out work.

This Statement must be signed by a "subcontractor" (or by a person who is authorised, or held out as being authorised, to sign the statement by the subcontractor) referred to in any of s175B *Workers Compensation Act 1987* (NSW), Schedule 2 Part 5 *Payroll Tax Act 2007* (NSW), and s127 *Industrial Relations Act 1996* (NSW) where the "subcontractor" has employed or engaged workers or subcontractors during the period of the contract to which the form applies under the relevant Act(s). The signed Statement is to be submitted to the relevant principal contractor.

SUBCONTRACTOR'S STATEMENT (Refer to the back of this form for Notes, period of Statement retention, and Offences under various Acts.

Subcontractor: ABN:

(Business name)

of

(Address of Subcontractor)

has entered into a contract with ABN:.....

(Business name of principal contractor)

(Note 2)

Contract number/identifier

.....

(Note 3)

This Statement applies for work between:/...../..... and/...../..... inclusive,

(Note 4)

subject of the payment claim dated:/...../.....

(Note 5)

I, a Director or a person authorised by the Subcontractor on whose behalf this declaration is made, hereby declare that I am in a position to know the truth of the matters which are contained in this Subcontractor's Statement and declare the following to the best of my knowledge and belief:

- (a) The abovementioned Subcontractor has either employed or engaged workers or subcontractors during the above period of this contract. Tick [] if true and comply with (b) to (g) below, as applicable. If it is not the case that workers or subcontractors are involved or you are an exempt employer for workers compensation purposes tick [] and only complete (f) and (g) below. You must tick one box.

(Note 6)

- (b) All workers compensation insurance premiums payable by the Subcontractor in respect of the work done under the contract have been paid. The Certificate of Currency for that insurance is attached and is dated/...../.....
(Note 7)
- (c) All remuneration payable to relevant employees for work under the contract for the above period has been paid.
(Note 8)
- (d) Where the Subcontractor is required to be registered as an employer under the *Payroll Tax Act 2007* (NSW), the Subcontractor has paid all payroll tax due in respect of employees who performed work under the contract, as required at the date of this Subcontractor's Statement.
(Note 9)
- (e) Where the Subcontractor is also a principal contractor in connection with the work, the Subcontractor has in its capacity of principal contractor been given a written Subcontractor's Statement by its subcontractor(s) in connection with that work for the period stated above.
(Note 10)
- (f) Signature Full name.....
- (g) Position/Title Date/...../.....

NOTE: Where required above, this Statement must be accompanied by the relevant Certificate of Currency to comply with section 175B of the *Workers Compensation Act 1987* (NSW).

Notes

1. This form is prepared for the purpose of section 175B of the Workers Compensation Act 1987 (NSW), Schedule 2 Part 5 Payroll Tax Act 2007 (NSW) and section 127 of the Industrial Relations Act 1996 (NSW). If this form is completed in accordance with these provisions, a principal contractor is relieved of liability for workers compensation premiums, payroll tax and remuneration payable by the subcontractor.

A principal contractor can be generally defined to include any person who has entered into a contract for the carrying out of work by another person (or other legal entity called the **subcontractor**) and where employees of the subcontractor are engaged in carrying out the work which is in connection with the principal contractor's business.

2. For the purpose of this Subcontractor's Statement, a principal contractor is a person (or other legal entity), who has entered into a contract with another person (or other legal entity) referred to as the subcontractor, and employees / workers of that subcontractor will perform the work under contract. The work must be connected to the business undertaking of the principal contractor.
3. Provide the unique contract number, title, or other information that identifies the contract.
4. In order to meet the requirements of section 127 of the Industrial Relations Act 1996 (NSW), a statement in relation to remuneration must state the period to which the statement relates. For sequential Statements ensure that the dates provide continuous coverage.

Section 127(6) of the Industrial Relations Act 1996 (NSW) defines remuneration 'as remuneration or other amounts payable to relevant employees by legislation, or under an industrial instrument, in connection with work done by the employees.'

Section 127(11) of the Industrial Relations Act 1996 (NSW) states '*to avoid doubt, this section extends to a principal contractor who is the owner or occupier of a building for the carrying out of work in connection with the building so long as the building is owned or occupied by the principal contractor in connection with a business undertaking of the principal contractor.*'

5. Provide the date of the most recent payment claim.
6. For Workers Compensation purposes an exempt employer is an employer who pays less than \$7500 annually, who does not employ an apprentice or trainee and is not a member of a group.
7. In completing the Subcontractor's Statement, a subcontractor declares that workers compensation insurance premiums payable up to and including the date(s) on the Statement have been paid, and all premiums owing during the term of the contract will be paid.
8. In completing the Subcontractor's Statement, a subcontractor declares that all remuneration payable to relevant employees for work under the contract has been paid.
9. In completing the Subcontractor's Statement, a subcontractor declares that all payroll tax payable relating to the work undertaken has been paid.
10. It is important to note that a business could be both a subcontractor and a principal contractor, if a business 'in turn' engages subcontractors to carry out the work. If your business engages a subcontractor you are to also obtain Subcontractor's Statements from your subcontractors.

Statement Retention

The principal contractor receiving a Subcontractor's Statement must keep a copy of the Statement for the periods stated in the respective legislation. This is currently up to seven years.

Offences in respect of a false Statement

In terms of s127(8) of the *Industrial Relations Act 1996*, a person who gives the principal contractor a written statement knowing it to be false is guilty of an offence if:

- (a) the person is the subcontractor;
- (b) the person is authorised by the subcontractor to give the statement on behalf of the subcontractor; or
- (c) the person holds out or represents that the person is authorised by the subcontractor to give the statement on behalf of the subcontractor.

In terms of s175B of the *Workers Compensation Act* and clause 18 of Schedule 2 of the *Payroll Tax Act 2007* a person who gives the principal contractor a written statement knowing it to be false is guilty of an offence.

Further Information

For more information, visit the WorkCover website www.workcover.nsw.gov.au, Office of State Revenue website www.osr.nsw.gov.au, or Office of Industrial Relations, Department of Commerce website www.commerce.nsw.gov.au. Copies of the *Workers Compensation Act 1987*, the *Payroll Tax Act 2007* and the *Industrial Relations Act 1996* can be found at www.legislation.nsw.gov.au.

Schedule 9 - Terms of Expert Appointment

(Clause 21.11)

THIS AGREEMENT is made on the date the last party to execute this agreement executes this agreement

BETWEEN [insert name, company number and address] (“Principal”)

AND [insert name, company number and address] (“Integration Partner”)

AND [insert name and address] (“Expert”)

Background

- A. The Principal and the Integration Partner (together the **Parties** and each a **Party**) are parties to a contract (the **Contract**) for the provision of certain goods, services or works for the [] in [].
- B. By written notice dated [to be inserted], the [insert Principal or Integration Partner as applicable] has required that the matter described in Schedule 1, being a matter that the Contract requires or permits to be referred to an Expert for determination, be determined by an Expert appointed under clause 21 of the Contract (the **Matter**).
- C. Pursuant to clause 21 of the Contract, the Expert has been appointed to determine the Matter in accordance with the process set out in this Agreement.

Operative part

1. Appointment of Expert

- (a) The Parties appoint the Expert to determine the Matter in the manner and within the times set out in this Agreement and the Expert accepts the appointment on the basis set out in this Agreement.
- (b) The Parties agree that:
- (i) the Expert will act as an expert and not as an arbitrator;
 - (ii) neither the determination of the Matter, nor the process required by this Agreement is an arbitration and any conference conducted during the determination is not a hearing conducted under any legislation or rules relating to any form of arbitration;
 - (iii) the rules of evidence do not apply to the determination;
 - (iv) the Expert must conduct the determination of the Matter in accordance with the Rules for Expert Determination Process set out in Schedule 2;
 - (v) in making the determination, the Expert may determine that a Party pay the other Party's costs of the expert determination.
- (c) If, at any time during the determination, the Expert becomes aware of circumstances that might reasonably be considered to adversely affect the Expert's capacity to act independently or impartially, the Expert must inform the Parties immediately and, unless the Parties agree otherwise, terminate this Agreement.

2. Confidentiality

All proceedings and submissions relating to the determination (including the fact that any step in the determination is occurring), and all documents prepared for the purposes of the determination (including the Expert's determination), must be kept confidential between the Parties and the Expert. No such proceedings, submissions or documents, nor any other information relating to or arising out of the determination, may be divulged to any other person, except with the prior written consent of both Parties or as may be required by law or to the extent necessary to give effect to or enforce the Expert's determination.

3. Costs and fees

- (a) As between the Parties and the Expert, the Parties are jointly and severally liable for the payment of the Expert's fees and disbursements, calculated in accordance with the Schedule of Fees and Disbursements set out in Schedule 3. The Parties agree to comply with any direction from the Expert as to the provision of security deposits in respect of his or her fees and disbursements.
- (b) Subject to any direction as to costs given by the Expert in the Expert's determination, the Parties agree as between themselves that:
 - (i) they will each pay one half of the Expert's fees and disbursements, calculated in accordance with the Schedule of Fees and Disbursements set out in Schedule 3; and
 - (ii) they will each bear their own costs of and incidental to the preparation of this Agreement and their participation in the determination.

4. Exclusion of liability and indemnity

Except in the case of fraud, the Expert will not be liable to either Party for any act or omission by the Expert in the performance or purported performance of this Agreement. The Parties jointly and severally indemnify the Expert against all claims arising out of or in any way referable to any act or omission by the Expert (except fraud) in the performance or purported performance by the Expert of the terms of this Agreement.

5. Co-operation of the Parties

Each Party agrees to take part in the determination in good faith and to comply with the reasonable requests and directions of the Expert in relation to the conduct of the determination.

6. Governing law

This Agreement is governed by and is to be construed in accordance with the laws in force in the place stated in Schedule 1.

7. Jurisdiction

- (a) The Parties and the Expert irrevocably submit to the non-exclusive jurisdiction of the courts of the in the place stated in Schedule 1.
- (b) The Parties and the Expert irrevocably waive any objection they may now or in the future have to the venue of any proceedings, and any claim they may now or in the future have that any proceeding has been brought in an inconvenient forum, where that venue falls within clause 7(a).

Schedule 1

1. **The Matter**

[to be inserted when it comes time for Expert determination]

2. **Governing law - the place**

NSW

3. **Jurisdiction - the place**

NSW

4. **Place for conferences with Expert (clause 3.1 of Schedule 2)**

Sydney, Australia

Schedule 2

Rules for Expert Determination Process

1. Commencement

Except as provided in clause 4.3 of these Rules, the Expert determination process begins when the Expert accepts an appointment to determine the Matter in accordance with these Rules and the Code of Conduct appended to these Rules.

2. Written submissions

- 2.1 No later than 7 days after the date this process begins, Party A (i.e. the Party who gave notice under clause 21.1 of the Contract) must, in addition to any particulars provided by Party A under clause 21.1 of the Contract, give the other Party and the Expert a written statement of the Matter referred for Expert determination, any agreed statement of facts and a written submission on the Matter in support of Party A's contentions.
- 2.2 Within 7 days after the statement in clause 2.1 is served, the other Party must give Party A and the Expert a written response to Party A's submissions.
- 2.3 If the Expert considers it appropriate, Party A may reply in writing to the other Party's response in clause 2.2 within the time allowed by the Expert.
- 2.4 If the Expert decides further information or documentation is required for the determination of the Matter, the Expert may direct one or more Parties to provide such further submissions, information or documents as the Expert may require.

3. Conference

- 3.1 The Expert may, if he or she thinks appropriate, call a conference of the Parties. Unless the Parties agree otherwise, the conference will be held in the place nominated in Schedule 1.
- 3.2 At least 14 days before the conference, the Expert must inform the Parties of the date, venue and agenda for the conference.
- 3.3 The Parties must appear at the conference and may make submissions on the subject matter of the conference. If a Party fails to appear at a conference of which that Party had been notified under clause 3.2, the Expert and the other Party may nevertheless proceed with the conference and the absence of that Party will not terminate or discontinue the Expert determination process.
- 3.4 The Parties:
 - (a) may be accompanied at a conference by legal or other advisers; and
 - (b) will be bound by any procedural directions as may be given by the Expert in relation to the conference both before and during the course of the conference.
- 3.5 The conference must be held in private.
- 3.6 If required by any Party, transcripts of the conference proceedings must be taken and made available to the Expert and the Parties.

4. General

- 4.1 In making a determination or calling or holding a conference, the Expert must proceed in accordance with the Contract.

- 4.2 All proceedings and submissions relating to the Expert determination process must be kept confidential except:
- (a) with the prior consent of the Parties;
 - (b) as may be required by law; or
 - (c) as may be required in order to enforce the determination of the Expert.

4.3 The Expert must:

- (a) inform the Parties of:
 - (i) any relationship or interest with the Parties or their respective officers, employees, contractors, consultants or agents;
 - (ii) any interest the Expert has in the matters in dispute; and
 - (iii) any circumstance which might reasonably be considered to adversely affect the Expert's capacity to act independently or impartially,immediately upon becoming aware of any such circumstances; and
- (b) upon making any disclosure under this clause 4.3, unless and until the Parties agree otherwise or it is otherwise determined under clause 21 of the Contract, terminate the proceedings.

5. **The determination**

5.1 As soon as possible after receipt of the submissions or after any conference and, in any event not later than 20 Business Days after the Expert's acceptance of appointment, the Expert must:

- (a) determine the Matter between the Parties; and
- (b) notify the Parties of that determination.

5.2 The determination of the Expert must meet the requirements of the Contract.

5.3 To the extent permitted by law, the Expert's determination will be final and binding on the Parties unless a party gives a notice of appeal to the other party in accordance with clause 21.12(b) of the Contract.

6. **Costs**

Security for costs must be deposited by both Parties at the commencement of the Expert determination process in accordance with any direction of the Expert.

7. **Modification**

These rules may be modified only by agreement of the Parties and, if the Expert has been appointed, the Expert.

Appendix 1 to Rules for Expert Determination Process

Code of Conduct for an Expert

1. The function of the Expert is to make a determination of the Matter in accordance with the Contract and the Expert Determination Agreement, including the Rules and this Code of Conduct.
2. The Expert must receive the written submissions and responses of the Parties in accordance with the procedures specified in the Rules and may require further information or documentation from the Parties which is reasonably necessary to determine the Matter.
3. The Expert must decide whether a conference is necessary to receive further information. The Expert must inform the Parties of the subject matter of any conference and may hear representations only on those matters during any such conference.
4. The Expert must disclose to both Parties all information and documents received.
5. If a Party fails to make a written submission, the Expert may continue with the process.
6. Subject to clause 3.3 of the Rules in relation to conferences, meetings and discussions with the Expert must only take place in the presence of both Parties.

Schedule 3 - The Expert's Fees and Disbursements

[to be inserted when it comes time for expert determination]

Schedule 10 - Parent Company Guarantee

(Clause 5.1)

Deed of Guarantee and Indemnity made on the date on which the last party to execute this deed has executed this deed

The Crown in right of the State of New South Wales, acting through the Department of Education (ABN 40 300 173 822), of Level 8, 259 George Street, Sydney, NSW, 2000 (**Principal**)

[] ABN [] of [] (**Guarantor**)

Background

- A. The Principal has agreed to enter into the Contract with the Integration Partner on the condition that the Guarantor provide this Guarantee.
- B. The Guarantor has agreed on the following terms and conditions to guarantee to the Principal all of the Obligations and to indemnify the Principal against any loss arising from any failure by the Integration Partner to perform the Obligations.
- C. The Guarantor considers that by providing this guarantee there will be a commercial benefit flowing to it.

This Deed provides

1. Definitions

1.1 Definitions and Interpretation

In this Deed:

Contract means the Contract (Contract Number: []) dated on or about the date of this Deed between the Principal and the Integration Partner.

Integration Partner means [] ABN [].

Event of Default means any event which constitutes a breach of, or is duly and properly declared to be an event of default (howsoever described) by, the Contract.

Guaranteed Money means all money the payment or repayment of which from time to time forms part of the Obligations.

IpsO Facto Event means the Integration Partner is the subject of:

- (a) an announcement, application, compromise, arrangement, managing controller, or administration as described in section 415D(1), 434J(1) or 451E(1) of the Corporations Act 2001 (Cth); or
- (b) any process which under any law may give rise to a stay on, or prevention of, the exercise of contractual rights.

Insolvency Provision means any law relating to insolvency, sequestration, liquidation or bankruptcy (including any law relating to the avoidance of conveyances in fraud of creditors or

of preferences, and any law under which a liquidator or trustee in bankruptcy may set aside or avoid transactions), and any provision of any agreement, arrangement or scheme, formal or informal, relating to the administration of any of the assets of any person.

Legal Opinion means a legal opinion:

- (a) from lawyers to the Guarantor, authorised to practice in the place of incorporation of that Guarantor, stating that this deed is binding and enforceable against that Guarantor;
- (b) which states that it may be relied upon by the Principal; and
- (c) in a form reasonably satisfactory to the Principal.

Obligations means all the liabilities and obligations of the Integration Partner to the Principal under or arising out of or in any way in connection with the Contract or the work to be carried out or performed by the Integration Partner under the Contract, and includes any liabilities or obligations which:

- (a) are liquidated or unliquidated;
- (b) are present;
- (c) are in existence before or come into existence on or after the date of this Deed;
- (d) relate to the payment of money or the performance or omission of any act;
- (e) sound in damages only; or
- (f) accrue as a result of any Event of Default,

and irrespective of:

- (g) whether the Integration Partner is liable or obligated solely, or jointly, or jointly and severally with another person;
- (h) the circumstances in which the Principal comes to be owed each liability or obligation and in which each liability or obligation comes to be secured by this Deed, including any assignment of any liability or obligation or of this Deed; or
- (i) the capacity in which the Integration Partner and the Principal comes to owe or be owed such liability or obligation,

and **Obligation** means any liability or obligation forming part of the Obligations.

Power means any right, power, authority, discretion, remedy or privilege conferred on the Principal by the Contract, by statute, by law or by equity.

Security means a mortgage, charge, pledge, lien, hypothecation, guarantee (including this Deed), indemnity, letter of credit, letter of comfort, performance bond, contractual right of set-off or combination or other assurance against loss which secures the Guaranteed Money or the performance of any other Obligation, and whether existing at the date of this Deed or at any time in the future.

Specified Rate means the rate which is 2% above the rate expressed as a percentage per annum:

- (a) which is the average of the bid rates shown at or about 10.15 am on reference rate page "BBSY" on the Reuters Monitor System on the day the relevant amount was due and payable for bank accepted bills having a tenor of 30 days; or

- (b) if for any reason the rate referred to in paragraph (a) is no longer available or if there is no rate displayed for that period at that time, then the average of the buying rates quoted by 3 banks selected by the Principal at or about 10.15 am on the relevant date referred to in paragraph (a) for bills accepted by such banks having a tenor of 30 days.

1.2 Defined terms

Terms used in this Deed which are not otherwise defined will have the meaning given to them in the Contract.

1.3 Interpretation

In this Deed unless the context otherwise requires:

- (a) references to a person include an individual, a body politic, the estate of an individual, a firm, a corporation, an authority, an association or joint venture (whether incorporated or unincorporated), or a partnership;
- (b) the words "including", "includes" and "include" will be read as if followed by the words "without limitation";
- (c) a reference to any party to this Deed includes that party's executors, administrators, successors, and permitted substitutes and assigns, including any person taking part by way of novation;
- (d) a reference to any Authority, institute, association or body is:
 - (i) if that Authority, institute, association or body is reconstituted, renamed or replaced or if the powers or functions of that Authority, institute, association or body are transferred to another organisation, deemed to refer to the reconstituted, renamed or replaced organisation or the organisation to which the powers or functions are transferred, as the case may be; and
 - (ii) if that Authority, institute, association or body ceases to exist, deemed to refer to the organisation which serves substantially the same purposes or objects as that Authority, institute, association or body;
- (e) a reference to this Deed or to any other deed, agreement, document or instrument is deemed to include a reference to this Deed or such other deed, agreement, document or instrument as amended, novated, supplemented, varied or replaced from time to time;
- (f) a reference to any legislation or to any section or provision of it includes:
 - (i) any statutory modification or re-enactment of, or any statutory provision substituted for, that legislation, section or provision; and
 - (ii) ordinances, by-laws, regulations of and other statutory instruments issued under that legislation, section or provision;
- (g) words in the singular include the plural (and vice versa) and words denoting any gender include all genders;
- (h) headings are for convenience only and do not affect the interpretation of this Deed;
- (i) a reference to:

- (i) a party or clause is a reference to a party or clause of or to this Deed; and
- (ii) a paragraph or a sub-paragraph is a reference to a paragraph or sub-paragraph in the clause in which the reference appears;
- (j) where any word or phrase is given a defined meaning, any other part of speech or other grammatical form of that word or phrase has a corresponding meaning;
- (k) for all purposes (other than where designated as a Business Day), "day" means calendar day;
- (l) a reference to "\$" is to Australian currency;
- (m) no rule of construction applies to the disadvantage of a party on the basis that the party put forward or drafted this Deed or any part; and
- (n) any reference to "information" will be read as including information, representations, statements, data, samples, calculations, assumptions, deductions, determinations, drawings, design, specifications, models, plans and other documents in all forms including the electronic form in which it was generated.

1.4 Limitation

- (a) Notwithstanding any other clause in this Deed but subject to paragraphs (b) and (c) below:
 - (i) the aggregate liability of the Guarantor under this Deed will not exceed the aggregate liability of the Integration Partner under the Contract;
 - (ii) the liability of the Guarantor under this Deed in connection with a breach of the Contract by the Integration Partner shall not be greater than the liability of the Integration Partner under the Contract in respect of the breach;
 - (iii) nothing in this Deed is intended to render the Integration Partner and the Guarantor liable for the same loss twice for the one breach of the Contract by the Integration Partner;
 - (iv) the Guarantor is entitled to rely on all defences, limitations and exclusions (including set off and counterclaim) available to the Integration Partner under the Contract;
 - (v) where the Guarantor is performing any Obligation, the Guarantor will not be required to perform any such Obligation in a manner any different than that required by the Contract; and
 - (vi) payment by one of the Integration Partner or the Guarantor to or in favour of the Principal shall be deemed to be good discharge against the Principal in respect of that payment.
- (b) The limitation of liability under this clause 1.4 does not apply to liability to pay any interest in accordance with clause 7.3 of this Deed or otherwise.
- (c) Nothing in this clause shall limit the Guarantor's liability for Obligations which arise from or would have arisen from any voided, voidable, unenforceable or irrecoverable Obligations referred to in clause 3(b) of this Deed (if those Obligations had not been voided, avoided, unenforceable or irrecoverable), subject to such liability not exceeding the liability that the Integration Partner would have had if the Obligations had not been voided, voidable, unenforceable or irrecoverable.

2. Guarantee

2.1 Guarantee

The Guarantor irrevocably and unconditionally guarantees to the Principal the due and punctual performance by the Integration Partner of all the Obligations.

2.2 Payment by Guarantor

If:

- (a) the Integration Partner does not pay the Guaranteed Money when due [REDACTED], the Guarantor must on demand pay to the Principal the Guaranteed Money which is then due and unpaid or which later becomes due, owing or payable; or
- (b) an Ipso Facto Event has occurred, the Guarantor will immediately on demand satisfy or pay all Obligations as if it was the principal obligor.

2.3 Perform Obligations

If the Integration Partner defaults in the performance or observance of any of the Obligations, the Guarantor must, in addition to its obligations under clause 2.2 of this Guarantee, on demand from time to time by the Principal, immediately perform any of the Obligations then required to be performed by the Integration Partner in the same manner as the Integration Partner is required to perform the Obligations.

3. Indemnity

As a covenant separate and distinct from that contained in clause 2.1, the Guarantor irrevocably and unconditionally agrees to indemnify the Principal and at all times to keep the Principal indemnified against any loss or damage suffered by the Principal arising out of or in connection with:

- (a) any failure by the Integration Partner to perform the Obligations; or
- (b) any obligation or liability that would otherwise form part of the Obligations being void, voidable or unenforceable against or irrecoverable from the Integration Partner for any reason, and whether or not the Principal knew or ought to have known of that reason (including the insolvency of the Integration Partner).

4. Liability as guarantor and indemnifier

A reference in this Deed to the obligations or liabilities of the Guarantor is a reference to the Guarantor's obligations or liabilities as either guarantor or indemnifier (or both) under this Deed. The use of the expression "Guarantor" in this Deed in relation to a party must not be construed as diminishing that party's obligations as an indemnifier under this Deed.

5. Nature and preservation of liability

5.1 Absolute liability

- (a) The liability of the Guarantor under this Deed is absolute and is not subject to the performance of any condition precedent or subsequent by the Integration Partner or the Guarantor.
- (b) This Deed binds each person who has executed it, notwithstanding that:

- (i) any person, whether named as a party or not, does not execute this Deed;
- (ii) the execution of this Deed by any person is invalid, forged or irregular in any way; or
- (iii) this Deed is or becomes unenforceable, void or voidable against any other person.

5.2 Unconditional liability

The liability of the Guarantor under this Deed will not be affected by any act, omission, matter or thing which, but for this clause 5.2, might operate in law or in equity to release the Guarantor from that liability or to reduce the Guarantor's liability under this Deed, including any of the following:

- (a) the occurrence before, on or at any time after the date of this Deed, of any Insolvency Event in relation to the Integration Partner or the Guarantor;
- (b) the receipt by the Principal of any payment, dividend or distribution under any Insolvency Provision in relation to the Integration Partner or the Guarantor;
- (c) the occurrence of any Event of Default;
- (d) the Contract or any payment or other act, the making or doing of which would otherwise form part of the Obligations being or becoming or being conceded to be frustrated, illegal, invalid, void, voidable, unenforceable or irrecoverable in whole or in part for any reason whether past, present or future;
- (e) the Principal accepting or declining to accept any Security from any person at any time;
- (f) the Principal granting time, waiver or other indulgence or concession to, or making any composition or compromise with, the Integration Partner or the Guarantor;
- (g) the Principal not exercising or delaying (whether deliberately, negligently, unreasonably or otherwise) in the exercise of any remedy or right it has for the enforcement of the Contract or any Obligation;
- (h) any laches, acquiescence or other act, neglect, default, omission or mistake by the Principal;
- (i) the determination, rescission, repudiation or termination, or the acceptance of any of the foregoing, by the Principal or the Integration Partner or the Guarantor of the Contract or any Obligation;
- (j) any variation to the Contract or any Obligation, whether or not that variation is substantial or material, or imposes any additional liability on or disadvantages the Integration Partner or the Guarantor;
- (k) the full, partial or conditional release or discharge by the Principal or by operation of law, of the Integration Partner or the Guarantor from the Contract or any Obligation;
- (l) any change in membership (whether by death or retirement of an existing member, admission of a new member, or otherwise) or in the name of any partnership, firm or association in which the Integration Partner or the Guarantor is a member;
- (m) the transfer, assignment or novation by the Principal or the Integration Partner or the Guarantor of all or any of its rights or obligations under the Contract or under any other Obligation;

- (n) any failure by the Principal to disclose to the Guarantor any material or unusual fact, circumstance, event or thing known to, or which ought to have been known by, the Principal relating to or affecting the Integration Partner or the Guarantor at any time before or during the currency of this Deed, whether prejudicial or not to the rights and liabilities of the Guarantor and whether or not the Principal was under a duty to disclose that fact, circumstance, event or thing to the Guarantor or to the Integration Partner;
- (o) the Principal agreeing with the Integration Partner or the Guarantor not to sue, issue process, sign or execute judgment, commence proceedings for bankruptcy or liquidation, participate in any administration, scheme or deed of arrangement or reconstruction, prove in any bankruptcy or liquidation, or do anything else in respect of the liability of the Integration Partner or the Guarantor; or
- (p) the provisions of section 440J of the Corporations Act 2001 (Cth) operating to prevent or delay:
 - (i) the enforcement of this Deed against any Guarantor; or
 - (ii) any claim for contribution against any Guarantor.

5.3 No merger

- (a) This Deed is in addition to and does not merge with, postpone, lessen or otherwise prejudicially affect the Contract or any other Power of the Principal.
- (b) The Principal will hold any judgment or order obtained by it against any person in respect of the Guaranteed Money or the Obligations collaterally with this Deed, and this Deed will not merge in that judgment or order.

5.4 No obligation to gain consent

No consent is required from any Guarantor nor is it necessary for the Guarantor to or be made aware of any event referred to in clause 5.2, any transaction between the Principal and the Integration Partner, or any particulars concerning any Obligation.

5.5 Appropriation

- (a) The Principal is under no obligation to marshal or appropriate in favour of any Guarantor, or to exercise, apply, transfer or recover in favour of any Guarantor, any Security or any funds or assets that the Principal holds, has a claim on, or has received or is entitled to receive, but may do so in the manner and order as the Principal determines in its absolute discretion.
- (b) The Principal may hold in a suspense account (without liability to pay interest) any money which it receives from the Guarantor, or which it receives on account of the Guarantor's liability under this Deed, and which the Principal may, at its discretion, appropriate in reduction of the Guarantor's liability under this Deed.

5.6 Void or voidable transactions

If:

- (a) the Principal has at any time released or discharged:
 - (i) the Guarantor from its obligations under this Deed; or
 - (ii) any assets of the Guarantor from a Security,

in either case in reliance on a payment, receipt or other transaction to or in favour of the Principal; or

- (b) any payment or other transaction to or in favour of the Principal has the effect of releasing or discharging:
 - (i) the Guarantor from its obligations under this Deed; or
 - (ii) any assets of the Guarantor from a Security;

and:

- (c) that payment, receipt or other transaction is subsequently claimed by any person to be void, voidable or capable of being set aside for any reason, including under an Insolvency Provision or under the general law; and
- (d) that claim is upheld or is conceded or compromised by the Principal,

then:

- (e) the Principal will immediately become entitled against the Guarantor to all rights (including under any Security) as it had immediately before that release or discharge;
- (f) the Guarantor must immediately do all things and execute all documents as the Principal may reasonably require to restore to the Principal all those rights; and
- (g) the Guarantor must indemnify the Principal against costs, losses and expenses suffered or incurred by the Principal in or in connection with any negotiations or proceedings relating to the claim or as a result of the upholding, concession or compromise of the claim.

5.7 No set-off, counterclaim

Subject to clause 1.4(a)(iv), the liability of the Guarantor under this Deed will not be reduced or avoided by any defence, set-off or counterclaim available to the Integration Partner against the Principal.

5.8 Claim on the Guarantor

- (a) Subject to clause 5.8(b), the Principal is not required to make any claim or demand on the Integration Partner, or to enforce the Contract, or any other right, power or remedy against the Integration Partner, before making any demand or claim on the Guarantor.
- (b) The Principal agrees not to make a claim or demand for payment of Guaranteed Money against the Guarantor under this Deed unless:
 - (i) the Principal has made a written claim or demand against the Integration Partner for such Guaranteed Money, a copy of which the Principal gives to the Guarantor at the same time as the Principal makes the claim or demand against the Integration Partner, and such Guaranteed Money remains unpaid, in whole or in part, for 10 Business Days after the claim or demand is made; or
 - (ii) an Insolvency Event has occurred in relation to the Integration Partner or the Guarantor.

5.9 No representation by Principal etc.

The Guarantor acknowledges that it has not entered into this Deed as a result of any representation, promise, statement or inducement to the Guarantor by or on behalf of the Principal, the Integration Partner or any other person.

6. Representations and Warranties

6.1 General representations and warranties

The Guarantor or if there is more than one Guarantor, each Guarantor, represents and warrants to the Principal that:

- (a) this Deed constitutes a valid and legally binding obligation of the Guarantor in accordance with its terms;
- (b) the execution, delivery and performance of this Deed by the Guarantor does not breach any law binding on it, or any document or agreement to which the Guarantor is a party or which is binding on it or any of its assets;
- (c) no litigation, arbitration, mediation, conciliation, criminal or administrative proceedings are current, pending or, to the knowledge of the Guarantor, threatened, which, if adversely determined, may have a material adverse effect on the ability of the Guarantor to perform its obligations under this Deed;
- (d) all information relating to the Guarantor provided to the Principal in connection with this Deed is true in all material respects and is not, by omission or otherwise, misleading in any material respect; and
- (e) the Guarantor has not entered into this Deed as the trustee of any trust.

6.2 Corporate representations and warranties

The Guarantor, or if there is more than one Guarantor, each Guarantor, that is or purports to be a body corporate, further represents and warrants to the Principal that:

- (a) it is duly incorporated and has the corporate power to own its property and to carry on its business as is now being conducted;
- (b) the execution, delivery and performance of this Deed does not breach the constitution of the Guarantor and, if the Guarantor or any of its subsidiaries is listed on the Australian Stock Exchange Limited or on any other stock exchange, those listing requirements or business rules;
- (c) it has the power, and has taken all corporate and other action required, to enter into this Deed and to authorise the execution and delivery of this Deed and the performance of its obligations under this Deed; and
- (d) the Guarantor has filed all corporate notices and effected all registrations with the Australian Securities and Investments Commission and all of those filings and registrations are current, complete and accurate to the extent they are material to the performance of the obligations of the Guarantor under this Deed.

7. Payments

7.1 On demand

All money payable by the Guarantor under this Deed must be paid by the Guarantor on demand by the Principal in immediately available funds to the account and in the manner notified by the Principal to the Guarantor.

7.2 Payment in gross

All money received or recovered by the Principal on account of the Guaranteed Money will be treated as payments in gross without any right on the part of the Guarantor to claim the benefit of any money received or recovered by the Principal or any Security, until the Principal has been paid 100 cents in the dollar in respect of the Guaranteed Money.

7.3 Interest

As a liability separate and distinct from the Guarantor's liability under clauses 2 and 3, the Guarantor must on demand by the Principal pay interest on all amounts due and payable by it and unpaid under or in respect of this Deed. Interest will accrue on those amounts from day to day from the due date up to the date of actual payment, before and (as a separate and independent obligation) after judgment, at the Specified Rate for successive 90 day interest periods commencing on the date of default and, if not paid when due, will itself bear interest in accordance with this clause 7.3, provided that interest will not be payable under this clause to the extent that interest for late payment to the Principal is incorporated into the calculation of the amount payable under the Contract.

7.4 Merger

If the liability of the Guarantor to pay to the Principal any money under this Deed becomes merged in any judgment or order, then, as an independent obligation, the Guarantor will pay interest on the amount of that money at the rate which is the higher of that payable under clause 7.3 and that fixed by or payable under the judgment or order.

7.5 No set-off or deduction

All payments by the Guarantor to the Principal under this Deed must be:

- (a) subject to clause 1.4(a)(iv), free of any set-off or counterclaim; and
- (b) without deduction or withholding for or on account of any present or future taxes, unless the Guarantor is compelled by law to make any deduction or withholding.

If the Guarantor is compelled by law to make any deduction or withholding for or on account of any present or future taxes (not being taxes on the overall net income of the Principal), then the Guarantor must:

- (c) pay to the Principal any additional amounts necessary to enable the Principal to receive (after all deductions and withholdings for those taxes) a net amount equal to the full amount which would otherwise be payable to the Principal if no deduction or withholding was required to be made;
- (d) promptly (and within the time prescribed by law) pay to the relevant taxing authority the amount of those taxes which it is compelled by law to deduct or withhold, and indemnify the Principal for any taxes and interest or penalties to which the Principal may become liable consequent on the failure of the Guarantor to pay those taxes; and

- (e) deliver to the Principal, promptly on request from the Principal, a copy of any receipt issued by the relevant taxing authority on payment of those taxes.

7.6 Currency indemnity

- (a) The Australian Dollar is the currency of payment by the Guarantor under or in connection with this Deed, except that payment by the Guarantor of or in relation to any Obligation which is denominated in a foreign currency must be made in that foreign currency.
- (b) If for any reason any amount payable by the Guarantor under or in connection with this Deed is received by the Principal in a currency (**Payment Currency**) other than the currency (**Agreed Currency**) in which that amount is required to be paid under this Deed (whether as a result of any judgment or order, the liquidation of the Guarantor or otherwise), and the amount obtained (net of charges) by the Principal on its conversion of the amount of the Payment Currency received into the Agreed Currency is less than the amount payable under this Deed in the Agreed Currency, then the Guarantor will, as an independent and additional obligation, indemnify the Principal for that deficiency and for any loss sustained as a result of that deficiency.

8. Expenses and stamp duties

8.1 Expenses

The Guarantor must on demand reimburse the Principal for and keep the Principal indemnified against all expenses, including legal fees, costs and disbursements on a solicitor/own client basis (or on a full indemnity basis, whichever is the higher) assessed without the necessity of taxation, incurred by the Principal in connection with:

- (a) any consent, agreement, approval, waiver, amendment to or discharge of this Deed; and
- (b) any exercise, enforcement or preservation, or attempted exercise, enforcement or preservation, of any rights under this Deed.

8.2 Stamp duties

- (a) The Guarantor must pay all stamp duties, transaction, registration and similar taxes, including fines and penalties, financial institutions duty and debits tax, which may be payable to or required to be paid by any appropriate authority, or determined to be payable in connection with the execution, delivery, performance or enforcement of this Deed or any payment, receipt or other transaction contemplated by this Deed; and
- (b) the Guarantor must indemnify the Principal against any loss or liability incurred or suffered by it as a result of the delay or failure by the Guarantor to pay taxes.

8.3 Goods and Services Tax

If the Principal is or becomes liable to pay any GST (including any penalty) in respect of any supply it makes under, or in connection with, this Deed (GST Liability) then:

- (a) to the extent that an amount is payable by the Guarantor to the Principal under this Deed for that supply - the amount will be increased by the full amount of the GST Liability; and
- (b) otherwise - the Guarantor will indemnify and keep the Principal indemnified for the full amount of the GST Liability.

9. Assignment

The Principal may assign, novate or otherwise transfer all or any part of its rights under this Deed and may disclose to a proposed assignee or transferee any information in the possession of the Principal relating to the Guarantor.

10. Governing law, jurisdiction and arbitration

10.1 Governing law

This Deed, and where applicable the arbitration reference contained in clause 10.3, is governed by and will be construed according to the laws of New South Wales.

10.2 Jurisdiction

- (a) This clause 10.2 only applies where clauses 10.3 to 10.7 do not apply.
- (b) The Guarantor irrevocably submits to the non-exclusive jurisdiction of the courts and appellate courts of New South Wales, and the courts competent to determine appeals from those courts, with respect to any proceedings which may be brought relating in any way to this Deed.
- (c) The Guarantor irrevocably waives any objection it may now or in the future have to the venue of any proceedings, and any claim it may now or in the future have that any proceeding has been brought in an inconvenient forum, where that venue falls within paragraph (b) of this clause.

10.3 Reference to arbitration

- (a) Clauses 10.3 to 10.7 will only apply where the Guarantor is a foreign company (as defined in section 9 of the Corporations Act 2001 (Cth)).
- (b) Any controversy, claim or dispute directly or indirectly based upon, arising out of, relating to or in connection with this Deed (including but not limited to any question relating to the existence, validity or termination of this Deed) shall be referred to and finally resolved by arbitration in accordance with the arbitration rules of the Australian Centre for International Commercial Arbitration (known as the ACICA Arbitration Rules).
- (c) The seat of the arbitration will be Sydney.
- (d) The number of arbitrators will be one.
- (e) The language of the arbitration will be English.

10.4 Powers of the arbitrator

The arbitral tribunal has the power to grant all legal, equitable and statutory remedies, except punitive damages.

10.5 Consolidation

The parties agree that section 24 of the International Arbitration Act 1974 (Cth) will apply in respect of consolidations.

10.6 Joinder

The arbitral tribunal has the power, on the application of any party to the arbitration, to allow a third party who the arbitrator considers has a sufficient interest in the outcome of the arbitration to be joined in the arbitration as a party. Each party to this Deed hereby consents to such joinder. In the event of such joinder of parties in the arbitration, the arbitrator has the power to make a single final award, or separate awards, in respect of all parties so joined in the arbitration.

10.7 Award final and binding

Any award will be final and binding upon the parties.

10.8 Guarantor incorporated outside Australia

If the Guarantor is incorporated outside of Australia, a Legal Opinion must be provided by the Guarantor to the Principal, on the date of execution of this Deed.

11. Miscellaneous

11.1 Notices

(a) Any notices contemplated by this Deed must be in writing and delivered or posted by prepaid express post to the relevant address or sent to the facsimile number as set out below (or to any new address or facsimile number that a party notifies to the others):

(i) to the Principal: []

(ii) to the Guarantor: []

(b) A notice sent by prepaid express post will be taken to have been received by the addressee:

(i) (in the case of prepaid express post sent to an address in the same country) on the second Business Day after the date of posting; and

(ii) (in the case of prepaid express post sent to an address in another country) on the fourth Business Day after the date of posting.

(c) A notice sent by facsimile will be taken to have been received on the next day after the day shown on the transmission record showing the number of the person to whom it is addressed in accordance with paragraph (a), which is a Business Day.

11.2 Continuing obligation

This Deed is a continuing obligation notwithstanding any termination by the Guarantor, settlement of account, intervening payment, express or implied revocation or any other matter or thing, and the Principal will continue to be entitled to the benefit of this Deed as regards the due and punctual performance of all the Obligations until a final discharge has been given to the Guarantor.

11.3 Further assurance

The Guarantor must immediately on the request of the Principal, and at the cost of the Guarantor, do and perform all further acts and things and execute and deliver all further documents as the Principal reasonably requires, or as are required by law, to perfect or to give effect to the rights and powers of the Principal created, or intended to be created, by this Deed.

11.4 Form of demand

A demand on the Guarantor for payment under this Deed may be in the form and contain any information as the Principal determines, provided it includes particulars of the relevant default in the due and punctual performance of the Obligations.

11.5 Entire agreement

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

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

11.6 Joint and several liability

The obligations of the Guarantor, if more than one person, under this Deed, are joint and several. Each person constituting the Guarantor acknowledges and agrees that it will be causally responsible for the acts and omissions (including breaches of this Deed) of the other as if those acts or omissions were its own and the Principal may proceed against any or all of them. This Deed binds each person who signs as a "Guarantor" even if another person who was intended to become a "Guarantor" does not become a "Guarantor" or is not bound by this Deed.

11.7 Severance

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

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

11.8 Remedies cumulative

Each Power is cumulative and in addition to each other Power available to the Principal.

11.9 Waiver

- (a) Failure to exercise or enforce or a delay in exercising or enforcing or the partial exercise or enforcement of any right, power or remedy provided by law or under this Deed by the Principal will not in any way preclude, or operate as a waiver of, any exercise or enforcement, or further exercise or enforcement of that or any other right, power or remedy provided by law or under this Deed.
- (b) Any waiver or consent given by the Principal under this Deed will only be effective and binding on the Principal if it is given or confirmed in writing by the Principal.
- (c) No waiver by the Principal of:
 - (i) a breach of any term of this Deed; or
 - (ii) any other failure by the Guarantor to comply with a requirement of this Deed,

will operate as a waiver of another breach of that term or failure to comply with that requirement or of a breach of any other term of this Deed or failure to comply with any other requirement of this Deed.

11.10 Consents

Any consent of the Principal referred to in, or required under, this Deed may be given or withheld, or may be given subject to any conditions, as the Principal (in its absolute discretion) thinks fit, unless this Deed expressly provides otherwise.

11.11 Vienna Convention

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

11.12 Moratorium legislation

To the fullest extent permitted by law, the provisions of all laws operating directly or indirectly to lessen or affect in favour of the Guarantor any obligation under this Deed, or to delay or otherwise prevent or prejudicially affect the exercise of any Power, are expressly waived.

11.13 Variations

This Deed may only be varied by a document signed by or on behalf of both the Principal and the Guarantor.

11.14 Provisions limiting or excluding liability

Any provision of this Deed which seeks to limit or exclude a liability of the Principal or the Guarantor is to be construed as doing so only to the extent permitted by law.

11.15 Counterparts

- (a) This Deed need not be executed by the Principal.
- (b) If the Guarantor is more than one person, a Guarantor may execute this Deed in one or more separate counterparts, each of which constitutes the deed of that Guarantor.

11.16 Confidentiality

- (a) Subject to paragraph (b), each party must keep the terms of this Deed confidential.
- (b) A party may make any disclosure in relation to this Deed:
 - (i) to a professional adviser, financial adviser, insurer, rating agency, financier or auditor if that person is obliged to keep the information disclosed confidential;
 - (ii) to the extent required to comply with any law, a requirement of a regulatory body (including any relevant stock exchange) or pursuant to administrative request or Parliamentary requirement;
 - (iii) to any of its employees or officers to whom it is necessary to disclose the information;
 - (iv) in connection with any legal or arbitral proceeding under or in relation to this Deed;

- (v) to obtain the consent of a third party to a term of, or to an act under, this Deed;
- (vi) to a "related body corporate", as defined in section 9 of the Corporations Act 2001 (Cth), as long as it advises that related body corporate of the confidential nature of the terms of this Deed;
- (vii) (in the case of the Principal) to a potential assignee provided they agree to keep the terms of this Deed confidential;
- (viii) (in the case of the Principal) to a related agency or to its responsible Minister;
- (ix) with the prior consent of the other party to this Deed; or
- (x) if the information disclosed has come into the public domain through no fault of the party (or its Personnel or related bodies corporate) making the disclosure.

Executed as a deed.

Signed for and on behalf of **The Crown in right of the State of New South Wales, acting through the Department of Education ABN 40 300 173 822** by its authorised delegate in the presence of:

Signature of witness

Full name of witness

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

Signature of director

Full name of director

Date

Signature of authorised delegate

Full name of authorised delegate

Date

Signature of company secretary/director

Full name of company secretary/director

Date

Schedule 11 - Functions of the JLT

(Clause 2.2)

1.1 Functions

The JLT will act as a forum for the following functions:

- (a) continuing to review and refine Program requirements;
- (b) discussing and refining the methodology and procedures developed and utilised as part of the Integration Partner's Activities;
- (c) ensuring the Integration Partner and the Principal work to best ensure the Integration Partner discharges its obligations under the Contract;
- (d) providing strategic guidance and leadership to enhance performance;
- (e) providing direction and governance to the Contract;
- (f) co-ordinating and monitoring the performance of the parties to ensure that the Contract is being complied with and that the Integration Partner's Activities are being carried out in accordance with the Contract;
- (g) ensuring that appropriate controls, delegations, systems and procedures are established and complied with; and
- (h) dealing with any differences or disagreements or misalignments between parties that are raised at joint leadership team meetings.

1.2 Competencies

The JLT Members are expected to have complementary skills and experience that cover the following competencies:

- (a) understanding of and ability to lead outstanding performance;
- (b) relevant experience and technical expertise;
- (c) detailed understanding of the Program;
- (d) understanding of good governance;
- (e) understanding of and experience in managing contracts; and
- (f) understanding and acknowledgment of the confidentiality of information.

1.3 Responsibilities

The responsibilities of the JLT include the following:

- (a) provide strategic guidance and leadership to the parties to enhance delivery and performance;
- (b) support outstanding performance;
- (c) provide direction and governance to the Contract:

- (d) co-ordinate and monitor the performance of the parties to ensure that:
 - (i) the terms and conditions of the Contract are complied with; and
 - (ii) the Integration Partner's Activities are carried out in accordance with the Contract;
- (e) ensure that appropriate controls, delegations, systems and procedures are embodied within the Management Plans and that the requirements of each Management Plan are adhered to; and
- (f) deal with any differences or disagreements, misalignments between parties that are raised at meetings of the JLT.

1.4 Governance

Responsibility for governance includes:

- (a) understanding the Contract;
- (b) holding regular scheduled meetings as required by the Contract; and
- (c) requiring and providing minimum monthly reporting.

Schedule 12 - Requirements for Management Plans

(Clause 8.4)

1.1 Delivery Plans

The plans are to include sections on the following:

- (a) Objectives
- (b) Outcomes / deliverables
- (c) Risk & mitigations
- (d) Performance / success descriptions – ‘what does success look like’?
- (e) Where applicable, application of sustainable practices including:
 - (i) Environmental sustainability
 - (ii) Ethical sourcing of products and services
 - (iii) Commitment to economic sustainability
 - (iv) Social procurement initiatives.

The delivery plans are to be updated regularly, as required by the Principal.

1.2 Integrated Solution Plan

The Integrated Solution Plan is to address:

- (a) the strength and viability of the Integration Partner’s integrated solution, including the extent to which it demonstrates compliance with the Program, and best achieves the Objectives;
- (b) proposed strategies and opportunities for cost savings across the Program, to achieve the objective of a 20% cost reduction compared to traditional builds;
- (c) the Integration Partner’s experience in attaining significant realised direct cost benefits on a similar project by providing an example; and
- (d) details of proposed governance and contract management for the Contract.

The Integrated Solution Plan is to be updated regularly, as required by the Principal.

1.3 Other plans

The following plans are to be prepared and submitted during Phase 1 and must be updated regularly as required by the Principal:

- (a) Health & Safety Improvement Plan;
- (b) Sustainability Plan;
- (c) Supply Chain Development Plan;
- (d) Procurement Management Plan; and

- (e) Integration Partner Cost Plan (which must include, amongst other things, the total outturn cost for each Project including the costs of each Project Contract).

Schedule 13 - Restrictions on self-performance

(Clause 11.3(d))

- [REDACTED]
- [REDACTED]
- [REDACTED]
- [REDACTED]
- [REDACTED]

Schedule 14 - Terms of Strategic Partnership

(Clause 3.5)

Item	Issue	Principle
1.	Parties	<p>[REDACTED]</p> <ul style="list-style-type: none"> ■ [REDACTED] ■ [REDACTED] ■ [REDACTED]
2.	Objectives	<p>[REDACTED]</p> <ul style="list-style-type: none"> ■ [REDACTED] ■ [REDACTED]
3.	Strategic Partnership Establishment	<p>[REDACTED]</p> <ul style="list-style-type: none"> ■ [REDACTED] ■ [REDACTED] ■ [REDACTED] ■ [REDACTED] ■ [REDACTED] ■ [REDACTED] ■ [REDACTED] ■ [REDACTED] ■ [REDACTED] ■ [REDACTED]

Item	Issue	Principle
		[REDACTED]
4.	Due Diligence	[REDACTED]
[REDACTED]		

Item	Issue	Principle
5.		
[Redacted]		
6.	Business Plan and Budget	[Redacted]
7.	Objectives	[Redacted]
8.	Governance	[Redacted]

Item	Issue	Principle
		<p>[REDACTED]</p> <p>[REDACTED]</p> <ul style="list-style-type: none"> [REDACTED] [REDACTED] [REDACTED] [REDACTED] [REDACTED]
9.	[REDACTED]	<p>[REDACTED]</p> <p>[REDACTED]</p> <p>[REDACTED]</p> <p>[REDACTED]</p> <ul style="list-style-type: none"> [REDACTED] [REDACTED] <p>[REDACTED]</p>
10.	Conflict Matters	<p>[REDACTED]</p> <ul style="list-style-type: none"> [REDACTED] [REDACTED]
11.	Quorum	<p>[REDACTED]</p>
12.	Accounts	<p>[REDACTED]</p> <ul style="list-style-type: none"> [REDACTED] [REDACTED]
13.	Information Flows	<ul style="list-style-type: none"> [REDACTED] [REDACTED]

Item	Issue	Principle
		<ul style="list-style-type: none"> █ [REDACTED]
14.	█	<ul style="list-style-type: none"> █ [REDACTED] █ [REDACTED] █ [REDACTED]
15.	Key Personnel	<ul style="list-style-type: none"> █ [REDACTED] █ [REDACTED]
16.	Intellectual property	<ul style="list-style-type: none"> █ [REDACTED] █ [REDACTED]
17.	█	<ul style="list-style-type: none"> █ [REDACTED] █ [REDACTED] █ [REDACTED] █ [REDACTED]
18.	Exclusivity	<ul style="list-style-type: none"> █ [REDACTED]
19.	Defaults	<ul style="list-style-type: none"> █ [REDACTED] █ [REDACTED] █ [REDACTED] █ [REDACTED] █ [REDACTED] █ [REDACTED]
20.	Dispute resolution	<ul style="list-style-type: none"> █ [REDACTED]

Schedule 15 - Integration Partner Personnel

Without limiting clause 4.5, the following Personnel may be used by the Integration Partner in performing the Integration Partner's Activities (subject to approval by the Principal's Representative under clause 11.19 and Schedule 2):

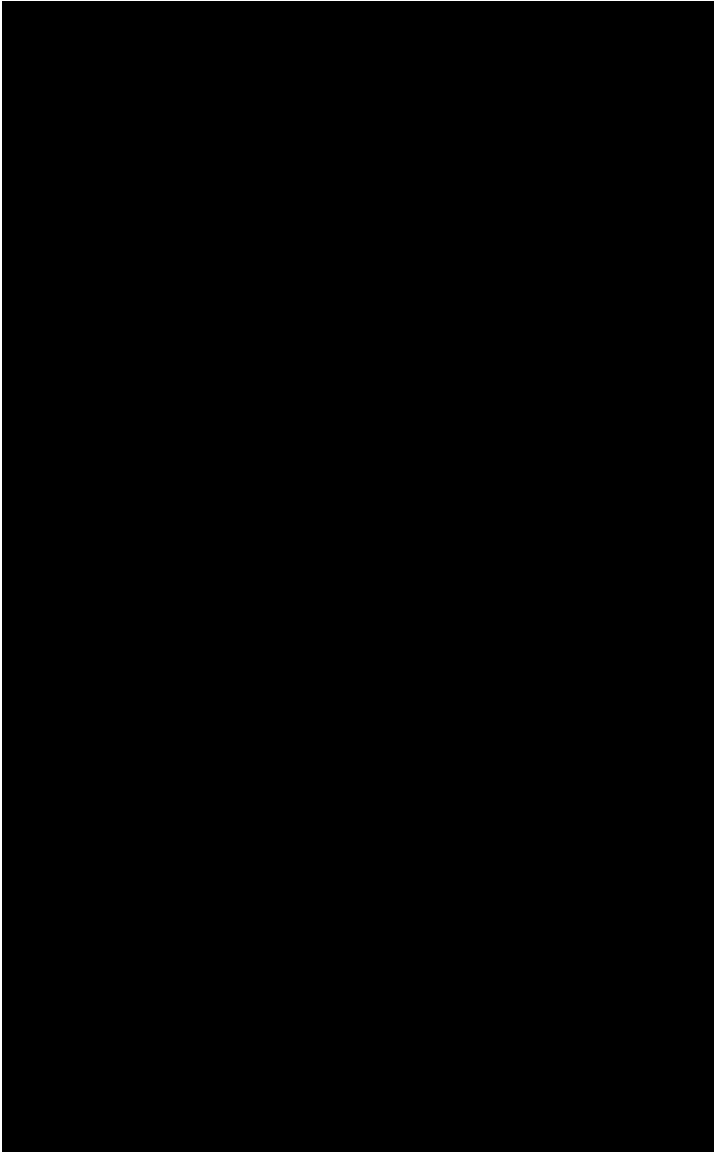


Exhibit 1 – Integrator Scope Matrix

(Clause 1.1)

Executed as a deed.

Signed for and on behalf of The Crown in right of the State of New South Wales, acting through the Department of Education by its authorised signatory in the presence of:

[Redacted]

[Redacted]

Digitally signed
by Paul Hannan
Date: 2023.12.21
09:10:29 +11'00'

Signature of authorised signatory

Bernadette O'Regan

Full name of witness

Full name of authorised signatory

Executed by APP Corporation Pty Ltd ACN 003 764 770 in accordance with section 127 of the Corporations Act 2001 (Cth):

[Redacted]

Signature of director

[Redacted]

Signature of company secretary/director

[Redacted]

Full name of above signatory

[Redacted]

Full name of above signatory

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

Signed for and on behalf of APP Corporation Pty Ltd ACN 003 764 770 by its attorney under a power of attorney dated [insert] registered in [insert] with [insert] in the presence of:

Signature of witness

Signature of attorney who declares that the attorney has not received any notice of the revocation of the power of attorney

Full name of witness

Full name of attorney