



Infrastructure Advisory Services Contract – Long Form

Contract No. INSW_2400079

Architectural Services

Penrith Stadium Redevelopment

between

Infrastructure NSW
ABN 85 031 302 516
(Principal)

and

Populous Design Pty Ltd
ABN/ACN 55 072 891 993
(Service Provider)

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Table of contents

Key Contract terms	5
1. SERVICES AND OTHER OBLIGATIONS	9
1.1 General obligations of the Service Provider.....	9
1.2 General obligations of the Principal.....	9
1.3 Standard of Services.....	9
1.4 Standard of Deliverables.....	10
1.5 Legal Compliance.....	10
1.6 Approvals and licensing.....	10
1.7 Confidential Information.....	11
1.8 Confidentiality Deed Poll.....	12
1.9 Privacy.....	12
1.10 Separable Portions.....	12
1.11 [Public interest disclosures].....	12
2. PERSONNEL, SUBCONTRACTING AND PREMISES	13
2.1 Service Provider's Representatives.....	13
2.2 Key People.....	13
2.3 Removal of Personnel.....	14
2.4 Principal's Representative.....	14
2.5 Co-operation with Other Contractors.....	14
2.6 Subcontracting.....	14
2.7 Access to Principal's Premises.....	15
2.8 Principal Contractor.....	15
2.9 Training of Service Provider's Personnel.....	15
3. INTELLECTUAL PROPERTY RIGHTS AND DATA SECURITY	16
3.1 Warranty.....	16
3.2 Ownership of new Intellectual Property Rights.....	16
3.3 Ownership of existing Intellectual Property Rights.....	16
3.4 Licence to the Principal.....	16
3.5 Moral rights.....	17
3.6 Principal Data and security.....	17
3.7 Media and Publications.....	18
4. DELIVERABLES	18
4.1 Preparation of Deliverables.....	18
4.2 Review by the Principal.....	19
4.3 No obligation to review.....	19
4.4 Responsibility preserved.....	19
4.5 Use of Deliverables.....	19
5. PRINCIPAL'S MATERIAL	20
5.1 Provision of the Principal's Material.....	20
5.2 Review of the Principal's Material.....	21
5.3 No claim.....	21
6. TIME	21
6.1 Time for provision of Services.....	21
6.2 Additional resources.....	22
6.3 Completion.....	22
6.4 Extension of time for Completion.....	23
6.5 Claim for extension of time.....	23
6.6 Conditions precedent to extension of time.....	24
6.7 Suspension.....	24
6.7A General damages.....	25
7. PAYMENT AND GST	25
7.1 Payment obligation.....	25
7.1A Payment claims and payment.....	25
7.2 Set off.....	25
7.3 Service Provider acknowledgements.....	25
7.4 Taxes.....	26

8.	VARIATION	28
8.1	Variation Proposal Request	28
8.2	Variation Order.....	28
8.3	Valuation of Variations	28
8.4	Notification of changes in scope	29
8.5	Entitlement to payment	29
8.6	Omissions	29
8.7	Non-compliances	29
8.8	Re-performance of Non-compliances	30
8.9	Annual Amendments to Variation Rates	30
9.	INDEMNITIES AND LIABILITY.....	30
9.1	Indemnities by the Service Provider	30
9.2	Intellectual Property Rights Indemnity	31
9.3	Indemnities generally	31
9.3A	Proportionate liability.....	31
9.4	Limitation of liability.....	32
10.	INSURANCE	32
10.1	Professional indemnity insurance	32
10.2	Public liability insurance.....	32
10.3	Insurance of Employees	33
10.4	Service Provider's Insurance Obligations	33
11.	FORCE MAJEURE	34
12.	TERMINATION	34
12.1	Termination for convenience.....	34
12.2	Termination for breach by Service Provider or Insolvency Event	34
12.3	Termination for breach by the Principal	35
12.4	Rights of the Principal	35
12.5	Rights exhaustive.....	36
12.6	Adjustment of Fee on termination	36
12.7	Obligations on termination	36
12.8	Survival	37
13.	DISPUTE RESOLUTION.....	37
13.1	Dispute Notice.....	37
13.2	Negotiation.....	37
13.3	Alternate dispute resolution	37
13.4	Mediation	37
13.5	Expert Determination	37
13.6	Litigation.....	38
13.7	Continuation.....	38
13.8	Survival	38
14.	MEETINGS, REPORTING AND RECORD KEEPING.....	38
14.1	Meetings	38
14.2	Other consultation and reporting.....	38
14.3	Record keeping.....	39
14.4	Reporting under the Infrastructure Advisory Commercial Framework	39
14.5	Auditing records	40
14.6	Return of Documentation	40
15.	GENERAL.....	40
15.1	Government information disclosure	40
15.2	Other Government bodies	41
15.3	Exchange of information	41
15.4	Defence to defamation.....	41
15.5	Release.....	41
15.6	Notices	41
15.7	Conflict of interest	42
15.8	Assignment and novation.....	43
15.9	Applicable law and Jurisdiction	43
15.10	Authorities	43
15.11	Order of precedence	44

15.12	Clauses survive termination	44
15.13	Independent Service Provider.....	44
15.14	Joint and several liability	44
15.15	If the Service Provider is a Trustee.....	44
15.16	No waiver	45
15.17	Entire agreement	45
15.18	Severability.....	45
15.19	Counterparts	45
15.20	Exclusivity	46
15.21	Electronic execution.....	46
Schedule 1 – Definitions and Interpretation		47
Schedule 2 – Commonwealth, NSW Government and Principal Requirements.....		55
Schedule 3 – Scope of Services.....		62
Schedule 4 – Specifications		69
Schedule 5 – Fee.....		70
Schedule 6 – Indigenous Cultural intellectual property		71
Schedule 7 – Reliance Letter.....		76
Schedule 8 – Security of Payment.....		79
Schedule 9– Supporting Statement and Subcontractor’s Statement.....		81
Schedule 10 – Confidentiality Deed Poll		86
Schedule 11 – Expert Determination Agreement.....		1
Schedule 12 – Deed of Novation		9
Schedule 13 – Special Conditions		18
Schedule 14 – Key personnel.....		19

Infrastructure Advisory Services Contract – Long Form

DEED FORM**DATED 13th day of March 2024**

Parties: Infrastructure NSW ABN 85 031 302 516 (**Principal**) of AON Tower, Level 27, 201 Kent Street, Sydney

Populous Design Pty Ltd (ABN 55 072 891 993) of Level 10, Waterfront Place, 1 Eagle Street, Brisbane QLD 4000 Australia (**Service Provider**)

Deed: The parties agree to enter into and comply with the terms of this Deed.

This Deed comprises the following documents:

Document description	Where found
This Deed Form	This document
Key Contract Terms	Attached to this document
General Conditions	
Schedule 1 – Definitions and Interpretation	
Schedule 2 – Commonwealth and NSW Government Requirements	
Schedule 3 – Scope of Services	
0– Specifications	
0– Fee	
0- Indigenous Cultural Intellectual Property	
0– Reliance Letter	
0– Security of Payment	
0– Form of Supporting Statement and Subcontractor Statement	
0– Confidentiality Deed Poll	
0– Expert Determination Agreement	
0– Deed of Novation	
0– Special Conditions	
Schedule 14– Key Personnel	

KEY CONTRACT TERMS

1	Principal:	Name: Infrastructure NSW ABN: 85 031 302 516 Address: AON Tower, Level 27, 201 Kent Street, Sydney
2	Principal's Representative: (clause 2.4)	Name: Steve Arnold Telephone: [REDACTED] Email: steve.arnold@infrastructure.nsw.gov.au
3	Service Provider:	Name: Populous Design Pty Ltd ABN: 55 072 891 993 Address: Level 10, Waterfront Place, 1 Eagle Street, Brisbane QLD 4000 Australia
4	Service Provider's Representative: (clause 2.1)	Name: [REDACTED] Telephone: [REDACTED] Email: [REDACTED]
5	Project: (Schedule 1 clause 1)	Penrith Stadium Redevelopment https://www.infrastructure.nsw.gov.au/projects-nsw/in-progress/penrith-stadium
6	Services: (Schedule 1 clause 1)	The Services are: <input checked="" type="checkbox"/> Architecture and design advisory Architectural design services for the redevelopment of Penrith Stadium under a design development and construct arrangement. Services to include design development and preparation of a functional brief, tender support, novation to the main works builder, detailed design, construction documentation and support services, commissioning and handover support, as further described in Schedule 3.
7	Commencement Date: (Schedule 1 clause 1)	The Date of Contract
8	Date for Completion: (Schedule 1 clause 1)	
	A (Whole of the Services)	24 July 2026
9	Fee: (0)	Total Upper Limiting Fees \$6,942,665.00 exclusive of GST or \$7,636,931.50 inclusive of GST further described in 0.

10	Payment: (clause 7.1A)	Monthly payments (Security of Payment) The Payment Claim Date is the last Business Day of every month.
11	Security of Payment: (0)	0 (Security of Payment) applies.
12	Liquidated damages: (clause 6.7B)	Not applicable
13	Confidentiality Deed Poll: (clause 1.8)	The Service Provider must enter into a Confidentiality Deed Poll: Yes
14	Key People: (clause 2.2)	Refer to schedule 14 Key Personnel
15	Principal Contractor: (clause 2.8)	The Service Provider will not be the Principal Contractor.
16	Permitted disclosure of Deliverables or Services: (clause 3.7)	Not applicable
17	Deliverables (For Use): (clause 4.5, Schedule 1 clause 1)	Reference Design, preliminary Brief and schedule of accommodation
18	Limit of Service Provider's Liability: (clause 9.4)	[REDACTED]
19	Insurance: (clause 10)	Professional Indemnity Insurance [REDACTED] in any one claim and in the annual aggregate. Public Liability Insurance [REDACTED]
20	Alternate Dispute Resolution: (clause 13.3(a)13.5(e)(iii))	<input checked="" type="checkbox"/> Mediation <input type="checkbox"/> Expert Determination, with a threshold of \$[insert amount] for a final and binding determination (“\$500,000” applies if no amount is stated)
21	Reporting: (clause 14.2(a))	The Service Provider is required to consult with the Principal as follows: Fortnightly coordination meeting along with a monthly report
22	Deed of Novation: (clause 15.8(c))	Clause 15.8 applies.
23	NSW Guidelines: (Schedule 2 clause 1)	Clause 1 of Schedule 2 applies.

24	Aboriginal Procurement Policy: (Schedule 2 clause 2)	Clause 2 of Schedule 2 does not apply.
25	Compliance with policies: (clause 1.5(b))	The Service Provider must comply with the following policies: (a) the New South Wales Government 'Supplier Code of Conduct', February 2020, a copy of which is available at www.buy.nsw.gov.au/policy-library/policies/supplier-code-of-conduct , (b) the New South Wales Government 'Public Interest Disclosure Policy', a copy of which is available at https://www.nsw.gov.au/departments-and-agencies/enterprise-investment-and-trade/policies-plans-and-procedures-of-enterprise-investment-and-trade/public-interest-disclosure-policy ,
26	Special Conditions: (0)	Do Special Conditions apply: <input checked="" type="checkbox"/> No

EXECUTED by the parties as a deed.

SIGNED, SEALED AND DELIVERED for and on behalf of **Infrastructure NSW (ABN 85 031 302 516)** by its authorised signatory in the presence of:

[Redacted Signature]

Signature of witness

Louise Haran

Full name of witness

A/ Project Manager

Office held

13 March 2024

Date

[Redacted Signature]

Signature of authorised person

Tom Gellibrand

Name of authorised person

Chief Executive

Office held

SIGNED, SEALED AND DELIVERED by the **Populous Design Pty Ltd (ABN 55 072 891 993)** in accordance with section 127 of the *Corporations Act 2001* (Cth):

[Redacted Signature]

Secretary (or additional Director)

[Redacted Signature]

Director

[Redacted Name]

Name printed

5/9/2024 | 4:46 PM AEST

Date

[Redacted Name]

Name printed

5/9/2024 | 4:46 PM AEST

GENERAL CONDITIONS

1. SERVICES AND OTHER OBLIGATIONS

1.1 General obligations of the Service Provider

- (a) The Service Provider must:
 - (i) perform the Services in accordance with this Deed, including in accordance with any applicable timing requirements;
 - (ii) use all reasonable efforts to inform itself of the requirements of the Principal and regularly consult with the Principal during the performance of the Services;
 - (iii) liaise, co-operate and confer with others as directed by the Principal; and
 - (iv) act in good faith and in the best interests of the Principal.
- (b) This Deed applies to any Services performed by the Service Provider before, on or after the Date of Contract.

1.2 General obligations of the Principal

The Principal must:

- (a) pay the Service Provider the Fee, subject to and in accordance with this Deed;
- (b) use reasonable endeavours (where reasonably practicable and where such information is readily available to the Principal) to provide information which the Service Provider has reasonably requested to perform the Services, provided that the Service Provider has given written notice to the Principal of the requested information and adequate reasons; and
- (c) provide (where reasonably practicable and subject to any agreement or arrangement between the Principal and any third party) access to any premises owned or occupied by the Principal (including any construction site) for the purposes of carrying out the Services, provided that the Service Provider:
 - (i) reasonably requires that access and has given written notice to the Principal of its request for access; and
 - (ii) complies with the conditions in clause 2.7.

1.3 Standard of Services

- (a) The Service Provider must exercise the standard of skill, diligence, care and expertise in the performance of the Services that would be expected of a professional who regularly acts in the capacity in which the Service Provider is engaged and who possesses the knowledge, skill and experience of a professional services provider qualified to act in that capacity. The Service Provider acknowledges that the Principal is relying on the Service Provider's skill, diligence, care and expertise in the Service Provider's performance of the Services.
- (b) The Service Provider must ensure that the Services are carried out in accordance with the Specifications, all relevant standards (including Australian Standards, where applicable), codes (including the Australian National Construction Code, where applicable), guidelines, requirements of any Authority, lawful directions and the other requirements of this Deed.

- (c) The Service Provider warrants the accuracy of Deliverables that are of a factual nature.
- (d) The Service Provider warrants that any design contained in the Deliverables will be consistent with the Standard of Care.

1.4 Standard of Deliverables

The Service Provider must ensure that the Deliverables:

- (a) are coordinated, and free from Non-complying Services;
- (b) have been prepared in accordance with, and satisfy, the requirements of this Deed;
- (c) comply with all relevant standards (including Australian Standards, where applicable), codes (including the Australian National Construction Code, where applicable) and the other requirements of this Deed; and
- (d) comply with the Principal's reasonable requirements regarding form and format.

1.5 Legal Compliance

- (a) The Service Provider must comply with, and ensure the Services and the Deliverables comply with, all applicable Laws and Approvals.
- (b) The Service Provider must at all times comply with the applicable Commonwealth and NSW Government Requirements and the ethical and other policy requirements of the Principal (including the policies specified in the Key Contract Terms), as may be notified by the Principal from time to time in connection with this Deed and the provision of the Services.

1.6 Approvals and licensing

- (a) The Service Provider must, unless otherwise directed by the Principal's Representative, obtain and maintain all Approvals required for the performance of the Services.
- (b) The Service Provider must be, and must ensure that the Personnel are, registered or licensed to perform the Services in accordance with the requirements of any applicable Law, professional accreditation and Authority. The Service Provider must comply, and must ensure that the Personnel comply, with the conditions of any such registration or licence.
- (c) The Service Provider must, and where applicable, in accordance with WHS Legislation:
 - (i) ensure the Services are performed without risk to the health and safety of any persons;
 - (ii) ensure the safety in and buildability of any design;
 - (iii) notify the Principal, as soon as reasonably practicable, if the Service Provider becomes aware of a WHS incident;
 - (iv) comply with and ensure that each of the Personnel engaged in providing the Services, comply with the WHS Legislation and the Deed, reasonable directions, policies or requirements of the Principal or Principal Contractor in relation to WHS;
 - (v) provide the Principal with all information the Principal requests and consult with the Principal as requested, so that the Principal may comply with its duties under the WHS Legislation;

- (vi) consult, cooperate and coordinate activities with all other persons who have a work health and safety duty in relation to the same matter;
 - (vii) if required as part of the Services, develop a safety management plan that complies with this Deed (“**Safety Management Plan**”) and ensure that the Service Provider and the Personnel comply with the Safety Management Plan;
 - (viii) comply with, and procure that the Personnel comply with, any directions issued by the Principal's Representative in relation to work, health, safety or the environment including where the direction is given because its Personnel are not complying with their obligations under this clause 1.6; and
 - (ix) ensure its subcontracts include provisions equivalent to the obligations of the Service Provider in this clause 1.6 and any other provisions of this Deed concerning work health and safety matters.
- (d) If the Principal's Representative is of the opinion that the Service Provider or any Personnel have not complied, or are not complying with, any health and safety requirements in this Deed or under WHS Legislation, including the requirement to eliminate or minimise risks so far as is reasonably practicable, then the Principal's Representative or their delegate or nominee may:
- (i) direct the Service Provider to immediately comply with the obligation; and
 - (ii) where there is an immediate risk to the health, safety or welfare of any persons as a result of the non-compliance, direct the Service Provider to immediately suspend carrying out all or any part of the Services until such time as the Service Provider is compliant.

1.7 Confidential Information

- (a) Subject to clause 1.7(b), the Service Provider must:
- (i) keep confidential all Confidential Information;
 - (ii) establish and maintain comprehensive security measures to ensure that any Confidential Information in its possession, custody or control is secure at all times; and
 - (iii) ensure that each of the Personnel complies with the terms of this clause 1.7.
- (b) The Service Provider is not obliged to keep confidential any information which is in the public domain through no default of the Service Provider or the Personnel.
- (c) The Service Provider undertakes only to disclose Confidential Information:
- (i) the disclosure of which is necessary to perform the Services; or
 - (ii) the disclosure of which is:
 - A. required by Law; or
 - B. given with the written consent of the Principal.
- (d) In the event of a breach by the Service Provider of the Service Provider's obligations under clause 1.7(a), then in addition to, and without prejudice to, any other remedy that the Principal may have, the Principal will be entitled to seek and obtain injunctive relief in any court of competent jurisdiction.
- (e) This clause 1.7 will survive the termination or expiry of this Deed.

1.8 Confidentiality Deed Poll

If the Key Contract Terms state or the Principal at any time directs, that the Service Provider must enter into a Confidentiality Deed Poll, then no later than the Commencement Date or 5 Business Days after the date of the direction (as applicable), the Service Provider must provide to the Principal a duly and properly executed Confidentiality Deed Poll.

1.9 Privacy

- (a) The Service Provider must comply with all relevant Privacy Laws when providing the Services, including obtaining the consent of each individual where Personal Information of that individual is collected, used or disclosed and only use Personal Information for the purposes of undertaking its obligations under this Deed.
- (b) Where the Service Provider is required to collect Personal Information on behalf of the Principal, the Service Provider must comply with the *Privacy and Personal Information Protection Act 1998* (NSW) as if it were the Principal collecting the Personal Information.

1.10 Separable Portions

- (a) The Principal may direct additional Separable Portions from time to time. The Principal's direction must clearly identify for each Separable Portion:
 - (i) the portion of the Services constituting the Separable Portion; and
 - (ii) the Date for Completion of the Separable Portion.
- (b) If the Deed includes Separable Portions (including where the Principal directs any Separable Portion under clause 1.10(a)), the terms Completion, Notice of Completion, Date of Completion, Date for Completion and Services shall apply separately to each Separable Portion and references to those terms and in clause 6 to the Services shall mean so much of the Services as is comprised in the relevant Separable Portion.

1.11 [Public interest disclosures]

- (a) In this clause **Error! Reference source not found.**, words and expressions:
 - (i) which are not defined in this Deed, but which have a defined meaning in the PID Act, have the same meaning as in the PID Act; and
 - (ii) which are defined in this Deed but, by such a definition, are given a different meaning in other clauses of this Deed to the meaning given in the PID Act, take the same meaning as in the PID Act in this clause.
- (b) The Service Provider must ensure that all individuals involved in providing services under this Deed are made aware of the following:
 - (i) that those individuals are public officials for the purposes of the PID Act;
 - (ii) how to make a voluntary public interest disclosure;
 - (iii) the Principal's public interest disclosure policy; and
 - (iv) the fact that a person who is dissatisfied with the way in which a voluntary public interest disclosure has been dealt with may be entitled to take further action under the PID Act or another Law.
- (c) The Service Provider must notify the Principal of a voluntary public interest disclosure of which the Service Provider 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.
- (d) The Service Provider must notify the Principal of serious wrongdoing committed, or alleged to be committed, by an individual providing services under this Deed.
- (e) The Service Provider 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).
- (f) The Service Provider acknowledges that:
 - (i) the Principal has an obligation to take corrective action under section 66 of the PID Act; and
 - (ii) the Principal has a right to terminate this Deed in response to a finding of serious wrongdoing or other misconduct involving the Service Provider or an individual providing services under this Deed.
- (g) If the Service Provider subcontracts this Deed in whole or in part in accordance with clause 2.6, the Service Provider must ensure that the subcontract contains terms binding the person or body engaged under the subcontract that are equivalent to the terms binding the Service Provider in this clause 1.11.
- (h) The parties acknowledge that the regulations made under the PID Act may make further provision about terms that must, or must not, be included in an agency service contract or a class of agency service contracts.

2. PERSONNEL, SUBCONTRACTING AND PREMISES

2.1 Service Provider's Representatives

- (a) The Service Provider represents that the Service Provider's Representative in respect of this Deed:
 - (i) has the legal power to bind the Service Provider in respect of any matter arising in connection with the Services; and
 - (ii) has the authority to receive directions on behalf of the Service Provider from the Principal and the Principal's Representative.
- (b) The Service Provider must promptly notify the Principal in writing of any proposed substitute representative.

2.2 Key People

The Service Provider must:

- (a) engage the Key People specified in the Key Contract Terms in the performance of the Services and in the positions (if any) specified in the Key Contract Terms;

- (b) subject to clause 2.2(c), not replace the Key People without the Principal's Representative's prior written approval (which approval will not be unreasonably withheld); and
- (c) if any of the Key People:
 - (i) dies;
 - (ii) becomes unable to continue in their positions due to illness; or
 - (iii) resigns from the employment of the Service Provider (other than to accept other employment with the Service Provider or any "related body corporate" of the Service Provider (as that term is defined in section 9 of the *Corporations Act 2001* (Cth)),

promptly notify the Principal's Representative and replace those Key People with personnel of at least equivalent experience, ability, knowledge and skills approved by the Principal's Representative.

2.3 Removal of Personnel

- (a) The Service Provider must immediately take steps to replace any Personnel who are requested by the Principal to be removed from the Services with a replacement of the required skills and experience, and obtain the written approval of the Principal (which approval will not be unreasonably withheld but may be subject to reasonable conditions), to the replacement prior to engaging the replacement.
- (b) The Service Provider is not relieved of responsibility, and remains fully responsible, for the Services notwithstanding the Principal's approval of any replacement Key People.

2.4 Principal's Representative

- (a) The Principal represents that the Principal's Representative in respect of this Deed has the authority to exercise the Principal's powers and discretions under this Deed. Any substitute representative must be notified promptly in writing to the Service Provider.
- (b) The Principal's Representative may by notice in writing to the Service Provider delegate any or all of its functions to another person.

2.5 Co-operation with Other Contractors

The Principal may, for its sole convenience and at its absolute discretion, engage Other Contractors. The Service Provider must:

- (a) fully cooperate with those Other Contractors;
- (b) carefully coordinate and integrate the provision of the Services with the services, works or activities provided by those Other Contractors;
- (c) to the extent the Principal reasonably requires, attend meetings involving those Other Contractors;
- (d) to the extent the Principal reasonably requires, align its Program with the programs of those Other Contractors; and
- (e) ensure that the performance of the Services does not delay, disrupt or interfere with the services, works or activities of the Other Contractors.

2.6 Subcontracting

- (a) The Service Provider must not subcontract any part or whole of the Services without the prior written approval of the Principal.

- (b) An approval given by the Principal under clause 2.6(a) does not relieve the Service Provider from its obligations and liabilities pursuant to this Deed and the Service Provider will be vicariously liable for the acts and omissions of the Personnel.

2.7 Access to Principal's Premises

The Service Provider's access to any premises owned or occupied by the Principal (including any construction site) for the purposes of carrying out the Services is subject to the following conditions:

- (a) the Service Provider must ensure that the Personnel complies with the Principal's access, security and health and safety requirements (including completing any site inductions) when performing the Services;
- (b) the Service Provider (including its Personnel) must not unreasonably obstruct, delay or interfere with the Principal's operations or personnel at the relevant premises or construction site;
- (c) if required by the Principal, the Service Provider must give the Principal accurate information about the identity and job history of the Personnel; and
- (d) the Principal may for its sole convenience and at its absolute discretion deny or restrict access to the premises to any person who the Principal considers does not comply with the Principal's access, security and health and safety requirements.

2.8 Principal Contractor

- (a) Where the Key Contract Terms state that the Service Provider will be the Principal Contractor:
 - (i) the Principal engages the Service Provider as the Principal Contractor for the Construction Work until the Construction Work is complete or the Principal ends the Service Provider's engagement as Principal Contractor by written notice (including so that the Principal can engage another person as Principal Contractor);
 - (ii) the Principal authorises the Service Provider to have management or control of the workplace on which the Construction Work is performed and to discharge the duties of a Principal Contractor under the *Work Health and Safety Regulation 2017* (NSW); and
 - (iii) the Service Provider accepts its engagement as the Principal Contractor and must perform the duties and functions of the Principal Contractor, regardless of whether its engagement is an effective engagement for the purposes of the *Work Health and Safety Regulation 2017* (NSW).
- (b) Where the Key Contract Terms state the Service Provider will not be the Principal Contractor, or the Principal ends the Service Provider's engagement under clause 12, the Service Provider:
 - (i) acknowledges that the Principal Contractor for the Construction Work will be as selected by the Principal; and
 - (ii) must comply with any direction given by the Principal Contractor for the Construction Work in its capacity as the Principal Contractor.

2.9 Training of Service Provider's Personnel

The Principal may request that Personnel participate in reasonably required training programs or courses required by the Principal which are relevant to the performance of the Services. If requested to do so, the Service Provider must ensure its Personnel participate in such training programs or courses conducted by the Principal at the Service Provider's cost.

3. INTELLECTUAL PROPERTY RIGHTS AND DATA SECURITY

3.1 Warranty

The Service Provider warrants that:

- (a) it owns or has the necessary Intellectual Property Rights to be used in the provision of the Services; and
- (b) the Principal will not infringe any Intellectual Property Rights in using the Service Provider's Deliverables.

3.2 Ownership of new Intellectual Property Rights

- (a) Subject to clause 3.2(b) and arrangements regarding ICIP in accordance with Schedule 6 of this Deed, all Intellectual Property Rights which are created or developed by the Service Provider in connection with the provision of the Services (including Deliverables) will vest absolutely in, and are assigned by the Service Provider to, the Principal upon payment of the fees. The Service Provider agrees to do all things necessary to give effect to this clause.
- (b) The Principal grants to the Service Provider and its Personnel who the Principal has consented to in accordance with clause 2.6, a non-exclusive, non-transferrable, royalty free licence to use, reproduce and modify the Principal's IP and Third Party IP only to the extent required to provide the Services or meet the Service Provider's other obligations under this Deed. Except as expressly stated in this Deed, no licence or right to Intellectual Property Rights is transferred to or created for the benefit of the Service Provider or any Personnel.

3.3 Ownership of existing Intellectual Property Rights

All Intellectual Property Rights in those aspects of the Services and the Documents which:

- (a) were created by the Service Provider before the date the Service Provider commences the Services; or
- (b) are developed by the Service Provider independently of this Deed and the Services, remain the property of the Service Provider.

3.4 Licence to the Principal

The Service Provider grants the Principal a perpetual, non-exclusive, transferable, irrevocable, royalty-free licence to:

- (a) use, reproduce, add to, modify and communicate to the public all Intellectual Property Rights retained by the Service Provider under clause 3.3 which are incorporated in or necessary to use or enjoy the benefit of any Deliverable or the Services in any manner;
- (b) permit any person to assist the Principal to do any of the things referred to in clause 3.4(a); and
- (c) sublicense any of the rights described in clause 3.4(a) or clause 3.4(b) to any person, for any purpose.

The Principal may for its sole convenience and at its absolute discretion assign this licence or license these rights to any entity that becomes entitled to any interest in the Services or the Deliverables to which the licence relates.

3.5 Moral rights

- (a) The Service Provider warrants to the Principal that, as at the date of this Deed:
- (i) all individuals who may have moral rights (as that expression is defined in the *Copyright Act 1968* (Cth)) in any Documents or Deliverables provided as part of the Services or any works constructed in accordance with that material have validly provided (or the Service Provider will procure that they validly provide) their written consent (pursuant to section 195AWA of that Act) to the Principal (or any other person); and
 - (ii) the consent referred to in clause 3.5(a)(i) allows the Principal (and others) to deal with that material or those works (including by way of destruction or alteration) and without attribution of authorship in such manner as the Principal may for its sole convenience and at its absolute discretion decide without being held to have infringed any moral right of the individual,
- with the exceptions that:
- (iii) At the request of the Contractor following completion of the Services, the Principal will publicly confirm the Service Provider as the provider of the architectural Services for the Penrith Stadium Redevelopment Project; and
 - (iv) To the extent that the Documents or Deliverables provided as part of the Services contain ICIP, as defined in Schedule 6 of this Deed, moral rights consents and Intellectual Property Rights, licensing and attribution will be dealt with in accordance with Schedule 6 of this Deed.
- (b) Where the Services relate to any demolition or redevelopment of existing improvements or the use of any material in relation to which moral rights may exist, the Service Provider must, in providing the Services, consider the obligations imposed by the *Copyright Act 1968* (Cth) in relation to moral rights and ensure that nothing is done which may place the Principal in breach of those obligations.

3.6 Principal Data and security

- (a) The Service Provider 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 Service Provider's obligations under this Deed.
- (b) The Service Provider must not:
- (i) use any Principal Data other than for the purpose of carrying out its obligations under this Deed;
 - (ii) attempt to sell, assign or commercially exploit any Principal Data; or
 - (iii) transfer, store, access 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.
- (c) The Service Provider must:
- (i) do all things that a reasonable and prudent entity would do to safeguard and protect Principal Data in the Service Provider's or its Personnel's possession or control and to prevent a Security Incident;
 - (ii) comply with all security policies, requirements and standards with respect to the Services, Principal Data and the Principal's information relating to the Project, the Services or this Deed as specified in this Deed or as may be

reasonably notified by the Principal to the Service Provider from time to time;
and

- (iii) notify the Principal if it becomes aware of any grounds to believe or suspect that a Security Incident has occurred or is occurring as soon as practicable upon the Service Provider becoming aware of the Security Incident and the Service Provider must, within a reasonable time, provide:
 - A. any information or assistance requested by the Principal in order to determine the extent of the Security Incident;
 - B. details of steps taken by the Service Provider to mitigate the impact of the Security Incident; and
 - C. details of the Principal Data affected (or suspected to be affected) by the Security Incident.
- (d) The Service Provider must ensure that its Personnel are made aware of, and comply with, the obligations under this clause 3.6.

3.7 Media and Publications

- (a) The Service Provider must not (and must procure that its Personnel do not) disclose details about this Deed or the Services without the Principal's consent, with the exceptions set out in (b) below.
- (b) The Service Provider may be permitted to disclose a factual description of the Services performed (or if appropriate, a copy of their Deliverables), which will not constitute a breach of the confidentiality obligations in clause 1.7 this Deed and any relevant Deed Poll entered by the Service Provider, if:
 - (i) expressly permitted in the Key Contract Terms; or
 - (ii) otherwise as permitted by the Principal in writing,

which may be given by the Principal in its sole discretion and subject to any conditions stipulated by the Principal; or
 - (iii) providing the details in the form of, a statement made by the Principal or as approved by the Principal in accordance with clause 3.5(a)(iii) of this Deed.

4. DELIVERABLES

4.1 Preparation of Deliverables

- (a) The Service Provider must prepare and submit the Deliverables as reasonably directed by the Principal taking into account its requirements for the Project.
- (b) If at any time (including during the design or construction of any works) either party or an Other Contractor identifies any Non-complying Services in the Deliverables or the Services, the Service Provider must (unless it has received a direction from the Principal under clause 8.7(b)) at its cost revise or amend the Deliverables and the Services as required to remedy or resolve the Non-complying Services (including, where applicable, in accordance with any direction given by the Principal under clause 8.7(a)).
- (c) If remedying any Non-complying Services in the Deliverables or the Services (including in accordance with clause 8.8(a)) involves effecting a material change or

making a determination in relation to the design intent of any works, the Service Provider must consult the Principal before effecting such a remedy or resolution.

4.2 Review by the Principal

- (a) The Principal may:
 - (i) review and provide comments on any Deliverable, or resubmitted Deliverable, prepared and submitted by the Service Provider; and
 - (ii) within 15 Business Days of the submission by the Service Provider of such Deliverable or resubmitted Deliverable, reject the Deliverable if in its reasonable opinion the Deliverable does not comply with the requirements of this Deed.
- (b) If any Deliverable is rejected, the Service Provider must:
 - (i) at its own cost, promptly make any changes to the Deliverable required by the Principal to ensure the Deliverable complies with this Deed; and
 - (ii) if required by the Principal, within any reasonable time period specified by the Principal (or where no time period has been specified, a reasonable period of time), resubmit the revised Deliverable to the Principal, in which case this clause 4.2 will reapply.

4.3 No obligation to review

- (a) The Principal does not assume or owe any duty of care to the Service Provider to review, or in reviewing, any Deliverables submitted by the Service Provider for errors, omissions or compliance with this Deed.
- (b) No review of, comments upon, rejection of, or failure to review or comment upon or reject, any Deliverable prepared by the Service Provider or any other direction by the Principal about the Deliverable will:
 - (i) relieve the Service Provider from, or alter or affect, the Service Provider's liabilities; or
 - (ii) prejudice the Principal's rights against the Service Provider,whether under this Deed or otherwise according to Law.

4.4 Responsibility preserved

The Service Provider remains fully responsible for the Services despite the Principal's, the Principal's Representative's, or any of the Other Contractor's comments on, review of, approval of, acceptance of, or certification issued in connection with the Services (or any failure to do so).

4.5 Use of Deliverables

- (a) The Service Provider acknowledges and agrees that the Principal may suffer or incur costs, expenses, loss or liability in the event that the Deliverables are not in accordance with the requirements of this Deed, including as a result of a claim referred to in clause 4.5(b)(i).
- (b) The Service Provider acknowledges and agrees that the Principal may provide Deliverables to third parties including Authorities, Other Contractors and prospective tenderers for works, goods and/or services in relation to the Project (Recipients) and, where it does so, the Principal:
 - (i) may provide the Deliverables (For Use) to Recipients for their use, including as part of a contract for works, goods and/or services in relation to a project, in

which event such Recipients may be entitled to claim against the Principal if the Deliverables are inaccurate, inadequate, unsuitable or incomplete; and

- (ii) may provide Deliverables (For Information) to Recipients for information purposes and without giving any warranty, making any representation about, or providing any entitlement in relation to the accuracy, adequacy, suitability or completeness of the Deliverables (For Information).
- (c) The Service Provider acknowledges that the Principal has entered into this Deed in reliance upon the acknowledgments and agreements in this clause 4.5.

Indemnity

- (d) The Service Provider must indemnify the Principal for any cost or expense suffered or incurred by the Principal as a result of any claim by a Recipient in connection with any aspect of the Deliverables (For Use) that is not in accordance with the requirements of this Deed, but only to the extent that such cost or expense is due to a breach by the Service Provider of its obligations under this Deed.
- (e) Subject to the prior written consent of the Principal as to its form and content, the Service Provider may insert a statement in any Document comprising a Deliverable to the effect that:
 - (i) identifies whether the Deliverable was provided to the Principal as a Deliverable (For Use) or Deliverable (For Information);
 - (ii) the Service Provider makes no direct warranty or representation in favour of a Recipient regarding the accuracy, adequacy, suitability or completeness of the Deliverable; and
 - (iii) the Service Provider disclaims all responsibility and liability to a Recipient in connection with any use of, or reliance on, the Deliverable by the Recipient.

5. PRINCIPAL'S MATERIAL

5.1 Provision of the Principal's Material

- (a) The Principal may provide the Service Provider with the Principal's Material relevant to the provision of the Services.
- (b) The Principal must provide the Service Provider with a copy of the up to date major milestones and other schedule information upon request. This will include sufficient information for the Service Provider to adequately understand the timeframe for the Services to be completed. In the event of a change to the Project program, such as if an extension of time is granted, an updated Project program will be produced and provided to the Service Provider by the Principal.
- (c) The Principal's Material (including any Principal's IP incorporated in that material) will remain the property of the Principal.
- (d) If the Principal informs the Service Provider of any Third Party IP in any Principal's Material and of any conditions attaching to the use of that material, the Service Provider must use that material only in accordance with those conditions.
- (e) The Service Provider 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 Services and performing the Service Provider's other obligations under this Deed.

- (f) The Service Provider must not rely upon or use any part of any Principal's Material for any purpose unless the Principal has confirmed in writing that the Service Provider may rely upon and use the Principal's Material, in which case clause 5.1(g) applies.
- (g) If the Principal informs the Service Provider it may rely upon or use any part of the Principal's Material, the Service Provider must act with reasonable care in relying upon or using the Principal's Material in connection with the provision of the Services.
- (h) The Service Provider may give written notice to the Principal seeking a direction as to whether it is entitled to use any part of any Principal's Material. The Principal must respond to that notice and direct the Service Provider as to whether it may use the relevant Principal's Material or whether that material was provided for information purposes only.

5.2 Review of the Principal's Material

- (a) The Service Provider must review the Principal's Material and must promptly (and as soon as reasonably practicable before using the relevant Principal's Material) notify the Principal if the Service Provider discovers any discrepancy, error, omission, inaccuracy, ambiguity or if the Principal's Material is otherwise insufficient to enable the Service Provider to carry out the Services.
- (b) If the Principal receives a notification in accordance with clause 5.2(a), the Principal must give a direction to the Service Provider to resolve the discrepancy or error.

5.3 No claim

The Principal is not liable for any claim, damage, loss, expense, cost (including legal costs) or liability in respect of any Principal's Material:

- (a) to the extent that clause 5.1(f) applies;
- (b) to the extent that clause 5.1(g) applies and the Service Provider fails to exercise reasonable care in using that Principal's Material;
- (c) in relation to any interpretation of, assumption in relation to, or unreasonable reliance on such Principal's Material; or
- (d) to the extent that the Principal has given any direction under clause 5.1(g), except where that direction gives rise to a Variation and subject to the following:
 - (i) the Service Provider has complied with the requirements of clauses 5.2(a) and 8.4;
 - (ii) the discrepancy, error, omission, inaccuracy, ambiguity could not reasonably be identified prior to the Date of Contract; and
 - (iii) the Service Provider has taken all necessary and reasonable steps to avoid or minimise the impacts on the time to perform the Services and the Fee.

6. TIME

6.1 Time for provision of Services

- (a) The Service Provider must:
 - (i) commence and perform the Services from the Commencement Date, diligently and with due expedition; and

- (ii) provide the Services:
 - A. so as to achieve Completion by the Date for Completion; and
 - B. in accordance with the reasonable requirements notified by the Principal to the Service Provider from time to time.
- (b) Without limiting or otherwise restricting clause 6.1(a), the Service Provider must give the Principal reasonable advance notice of when the Service Provider needs information, materials or instructions from the Principal.
- (c) The Principal is obliged to give any information, materials or instructions within a reasonable period of time according to:
 - (i) The needs and requirements of the Service Provider for provision of the Services as reasonably anticipated at the Commencement Date by the Principal; or
 - (ii) If reasonably requested by the Service Provider to the Principal. .
- (d) The Principal may direct in what order and at what time the Services (or if applicable, any Separable Portions) must be carried out and the Service Provider must comply with any such direction.

6.2 Additional resources

- (a) From time to time the Principal may require the Service Provider to provide a resource schedule or updated resource schedule for the Services.
- (b) If requested by the Principal, the Service Provider must demonstrate that the Service Provider's resources will be adequate to perform the Services in compliance with this Deed.

6.3 Completion

- (a) The Service Provider must promptly notify the Principal of the date on which it considers that Completion was achieved.
- (b) If, after receipt of a notice under clause 6.3(a), the Principal considers:
 - (i) that Completion of the Services has been achieved, the Principal will issue a Notice of Completion to the Service Provider stating the date upon which the Principal determines Completion was achieved; or
 - (ii) Completion has not been achieved, the Principal may issue a notice to the Service Provider advising the Service Provider that the Principal does not agree with the Service Provider's assessment and setting out the Services to be completed before Completion is achieved (after which clause 6.3 will reapply).
- (c) If at any time the Principal is of the opinion that Completion of the Services has been achieved, the Principal may for any reason in its absolute discretion issue a Notice of Completion for the Services.
- (d) The issue by the Principal of a Notice of Completion is not evidence or an admission by the Principal that the Services have been performed satisfactorily or in accordance with this Deed and nor will it prejudice any claim, rights or powers of the Principal.

6.4 Extension of time for Completion

If the Service Provider is or will be delayed in achieving Completion of the Services by the Date for Completion (or if the Date for Completion has passed, delayed in achieving Completion of the Services) by:

- (a) an act or omission of the Principal or Principal's Representative that is not expressly authorised under this Deed;
- (b) a breach of this Deed by the Principal;
- (c) an event of Force Majeure; or
- (d) a Variation directed under clause 8.2 or a suspension directed under clause 6.7(a) where the variation or suspension is not due to an act or omission of the Service Provider (or its Personnel),

the Service Provider may claim an extension of time to the Date for Completion in accordance with clause 6.5.

6.5 Claim for extension of time

- (a) To claim an extension of time, the Service Provider must, within 10 Business Days of the Service Provider becoming aware of the impact of an event or circumstance that may delay the Completion of the Services, submit a written claim to the Principal's Representative which includes:
 - (i) details of the delay and the event or circumstance causing the delay;
 - (ii) details of the delay to the activities that are critical to the maintenance of progress in the execution of the Services;
 - (iii) the number of days extension of time claimed to the Date for Completion together with the basis of calculating that period;
 - (iv) the action which the Service Provider has taken or will take to avoid or mitigate the delay, or the reasons why the Service Provider cannot avoid or mitigate the delay; and
 - (v) any other information reasonably requested by the Principal's Representative.

This information may be included as part of a Variation Proposal in accordance with clause 8.

- (b) If the effects of the delay continue beyond the period of 10 Business Days after the first occurrence of the event or circumstance causing the delay and the Service Provider wishes to claim an extension of time in respect of the further delay, the Service Provider must submit further written claims to the Principal's Representative at intervals not greater than 10 Business Days and containing the information required under clause 6.5(a).
- (c) The Service Provider must take reasonable steps, including managing its resources, to avoid or mitigate any delay to Completion. The Service Provider will not be entitled to an extension of the Date for Completion to the extent:
 - (i) the Service Provider or its Personnel caused or contributed to the delay; or
 - (ii) the delay would have been avoided or mitigated if the Service Provider had taken reasonable steps, including managing its resources, to avoid or mitigate any delay to Completion.
- (d) The Principal's Representative may, within 10 Business Days of receiving the Service Provider's claim or further claim for an extension of time to the relevant Date for

Completion, by written notice to the Service Provider, request additional information in relation to the claim or further claim. The Service Provider must, within 10 Business Days of receiving such request, provide the Principal's Representative with the information requested.

- (e) Notwithstanding that the Service Provider is not entitled to an extension of time or has not made a claim for an extension of time, the Principal's Representative may at any time by notice in writing to the Service Provider extend the time for Completion for any reason.
- (f) The Principal's Representative is not required to exercise its discretion under clause 6.5(e) for the benefit of the Service Provider.

6.6 Conditions precedent to extension of time

- (a) It is a condition precedent to the Service Provider's entitlement to an extension of time to the Date for Completion that:
 - (i) the Service Provider gives the written claim required by clause 6.5;
 - (ii) the Service Provider complies with any request for additional information under clause 6.5 within the time required;
 - (iii) the cause of the delay is beyond the reasonable control of the Service Provider; and
 - (iv) the Service Provider is actually, or will be, delayed in achieving Completion by the Date for Completion of the Services (or if the Date for Completion has passed, delayed in achieving Completion of the Services), by reason of one or more of the causes set out in clause 6.4.
- (b) If the Service Provider complies with the conditions precedent in this clause 6.6, the Service Provider is entitled to an extension of time in accordance with this clause 6.6. The Principal's Representative will notify the Service Provider of any extension of time to which it is entitled.
- (c) If the Service Provider fails to comply with the conditions precedent in this clause 6.6:
 - (i) the Principal will not be liable upon any claim by the Service Provider; and
 - (ii) the Service Provider will be absolutely barred from making any claim against the Principal,

arising out of or in any way in connection with the event giving rise to the delay and the delay involved.

6.7 Suspension

- (a) The Principal may, at any time by prior written notice to the Service Provider, suspend the carrying out of the Services or any part thereof. Subject to clause 6.7(c), the Principal must, unless the suspension arose due to an act or omission of the Service Provider or its Personnel, pay the Service Provider any direct costs and expenses reasonably and necessarily incurred by the Service Provider by reason of the suspension, provided that the Service Provider must minimise and mitigate any such direct costs and expenses and the Service Provider has notified the Principal of the anticipated costs prior to incurring those costs.
- (b) The Principal may, at any time after giving a notice in accordance with clause 6.7(a), give the Service Provider reasonable notice to recommence carrying out those Services suspended.
- (c) Without limiting or otherwise restricting clause 6.7(a), if the suspension under clause 6.7(a) arises as a result of the Service Provider's failure to carry out its obligations in

accordance with this Deed, the Service Provider 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, the suspension.

- (d) If the suspension under clause 6.7(a) continues for a period of 90 consecutive days, the Principal may either:
- (i) where the suspension did not arise as a result of an act or omission of the Service Provider or its Personnel, terminate this Deed by notice in writing to the Service Provider under clause 12.1;
 - (ii) where the suspension arose as a result of an act or omission of the Service Provider or its Personnel, terminate this Deed by notice in writing to the Service Provider under clause 12.2; or
 - (iii) give the Service Provider notice to recommence carrying out those Services suspended.

6.7 A General damages

If:

- (a) no amount of, or rate for, liquidated damages is set out in the Key Contract Terms (or if "nil" or "not applicable" or some other form of words to similar effect is included, or if the liquidated damages in the Key Contract Terms is left blank); or
- (a) the Service Provider's obligation to pay liquidated damages is held to be unenforceable for any reason whatsoever,

then the Service Provider remains liable to the Principal for general damages if Completion does not occur by the Date for Completion.

7. PAYMENT AND GST

7.1 Payment obligation

- (a) Subject to the Service Provider performing the Services in accordance with this Deed, the Principal must pay the Service Provider the Fee and any Expenses for which it is entitled to payment, in accordance with this clause 7 and 0.

7.1 A Payment claims and payment

The parties agree that the provisions of Schedule 8 apply to this Deed.

7.2 Set off

The Principal may, at any time withhold, set-off or deduct from amounts otherwise payable to the Service Provider:

- (a) any debt or other moneys due from the Service Provider to the Principal under this Deed (including any due debt from the Service Provider to the Principal pursuant to section 26C of the SOP Act if applicable);
- (b) 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 Part 3 of the SOP Act, if applicable; or
- (c) any bona fide claims the Principal may have under or in connection with this Deed.

7.3 Service Provider acknowledgements

- (a) The Service Provider acknowledges and agrees that:

- (i) the Fee includes the Service Provider's profits and overheads;
 - (ii) the Fee includes all costs and expenses (other than the Expenses) that the Service Provider may incur in performing its obligations under this Deed;
 - (iii) the Fee and the Upper Limiting Fee will not be subject to any upwards adjustment except as expressly set out in this Deed; and
 - (iv) the Service Provider's sole entitlement to payment in connection with the performance of its obligations under this Deed is as set out in clause 7.17.3(a)(i).
- (b) The Service Provider warrants that it has done everything that would be expected of a skilled, prudent, experienced and professional consultant in assessing the risks which it is assuming under this Deed and ensuring that the Fee and the Upper Limiting Fee contains allowances to protect it against any of these risks eventuating.
- (c) Any quantities in 0 are estimated quantities only. The Principal does not warrant (and the Service Provider agrees that it has not relied upon) the accuracy or completeness of any quantities in 0.
- (d) If the Fee is payable wholly on the basis of a lump sum the Service Provider is not entitled to any adjustment of the Fee for any discrepancy between the actual quantity of an item of work required to perform the Services and the quantity of an item specified in 0 or for any item of work which is not included in 0. Any item of work which is not included in 0 is deemed to be included in the lump sum.
- (e) If the Fee is payable wholly or partially on the basis of the rates in 0, this clause 7.3(e) applies. If the Fee is payable:
- (i) wholly on the basis of the rates in 0 and the rates in 0 omit an item of work which is required to be performed as part of the Services, that item of work is deemed to have been included in the rates applicable for the other items of work required to be performed as part of the Services and no additional amount is payable in respect of the Fee or the Services;
 - (ii) partially on the basis of the rates in 0 and the rates in 0 omit an item of work which is required to be performed as part of the Services, that item of work is deemed to have been included in the lump sum component of the Fee and no additional amount is payable in respect of the Fee or the Services; and
 - (iii) wholly or partially on the basis of any hourly rates in 0:
 - A. a maximum daily amount will apply for each person of 8 hours multiplied by the person's hourly rate stated in 0 for the person performing the Services in a day commencing at midnight and ending 24 hours later; and
 - B. if the Services are required by a person for less than a full day, an hourly rate in 0 shall apply, up to a maximum of 8 hours.

7.4 Taxes

- (a) Unless otherwise stated, all dollar amounts referred to in this Deed are GST exclusive.
- (b) If GST is or becomes payable on a supply made by a party ("Supplier") under or in connection with this Deed, including the Services, the party providing the consideration for the supply ("Recipient Party") must pay an additional amount to the Supplier equal to the GST payable by the Supplier (or representative member of a GST group of which the Supplier is a member) in relation to the supply.

- (c) Any amount payable under clause 7.4(b) will be paid to the Supplier at the same time as the consideration for the supply is paid to the Supplier.
- (d) If any party is required under this Deed to reimburse or pay to the other party an amount (other than any payment on account of the Fee and any Expenses for which it is entitled to payment) calculated by reference to a cost, expense, or an amount paid or incurred by that party, the amount of the reimbursement or payment will be reduced by the amount of any input tax credits to which that party (or representative member of a GST group of which that party is a member) is entitled in respect of any acquisition relating to that cost, expense or other amount.
- (e) Notwithstanding any other provision of this Deed, where the Recipient Party is the Service Provider, it will not be obliged to pay any amount in respect of GST to the Principal (whether under this clause 7.4 or otherwise) in respect of a taxable supply made by the Principal unless the Principal issues to the Service Provider a tax invoice that complies with the GST Law in respect of that taxable supply.
- (f) Unless otherwise agreed in writing, the following will apply to all taxable supplies made by the Service Provider to the Principal under or in connection with this Deed:
 - (i) the Principal will issue to the Service Provider a RCTI for each taxable supply made by the Service Provider to the Principal under this Deed;
 - (ii) the Principal will issue to the Service Provider an adjustment note for any adjustment event;
 - (iii) the Service Provider will not issue a tax invoice in respect of any taxable supply it makes to the Principal; and
 - (iv) the Principal may notify the Service Provider that it will no longer issue a RCTI for each taxable supply made by the Service Provider under this Deed, in which case, from that point in time, the Principal will not be required to issue RCTIs in respect of such supplies and the Service Provider will be required to issue tax invoices to the Principal (including as a condition precedent to payment under clause 7.1A) as a condition precedent to the Principal being obliged to pay any amount in respect of the Services or GST to the Service Provider in respect of any such taxable supply.
- (g) Each party acknowledges and warrants that at the time of entering into this Deed it is registered for GST and will notify the other party if it ceases to be registered for GST or ceases to comply with any of the requirements of any taxation ruling issued by a taxation Authority relating to the creation of RCTIs.
- (h) If the GST payable in relation to a supply made by the Supplier under this Deed varies from the additional amount paid by the other party under this clause 7.4 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).
- (i) The Service Provider must ensure that each insurance policy referred to in clause 10 covers any liability to GST such that the proceeds of any claim under the policy (after payment of GST) are sufficient to fully indemnify the party who suffers the loss that is claimed.
- (j) In clause 7.4:
 - (i) "GST" means the tax payable on taxable supplies under GST Law;
 - (ii) "GST Law" means the *A New Tax System (Goods & Services Tax) Act 1999* (Cth) and any related Act imposing such tax or legislation that is enacted to validate, recapture or recoup such tax; and
 - (iii) terms which are defined in GST Law have the meaning provided by GST Law.

- (k) Subject to clauses 7.4(a) to 7.4(i) (inclusive), the Service Provider must pay all taxes, duties, levies, imposts and charges which may be payable arising out of or in any way in connection with the Services.
- (l) Despite any other provision of this Deed, if the Principal is obliged to make any deduction or withholding on account of any tax, charge, rate, duty or impost however described in connection with this Deed as a result of not being provided with the Service Provider's ABN or for any other reason, the Principal may withhold the relevant amount from the payment due to the Service Provider and promptly pay that amount to the relevant Authority. The Principal has no obligation to pay any additional amount to the Service Provider in connection with any withheld amount.

8. VARIATION

8.1 Variation Proposal Request

- (a) At any time prior to the Completion of the Services, the Principal's Representative may issue a document titled 'Variation Proposal Request' (**Variation Proposal Request**) to the Service Provider which will set out details of the proposed Variation that the Principal is considering.
- (b) Within 10 Business Days of the receipt of a Variation Proposal Request, or at such other time as is approved by the Principal's Representative, the Service Provider must provide the Principal's Representative with a written Variation Proposal.
- (c) A Variation Proposal must comply with the Variation Proposal Request. The Principal is not obliged to accept any Variation Proposal.
- (d) Without limiting or otherwise restricting clause 1.3(c), the Service Provider's obligations under, and the warranties given in this Deed by the Service Provider will remain unaffected notwithstanding any Variation directed by the Principal.

8.2 Variation Order

Whether or not the Principal's Representative has issued a Variation Proposal Request under clause 8.1, at any time prior to the Completion of the Services, the Principal may direct the Service Provider in writing to carry out a Variation by issuing a written document titled "Variation Order", in which the Principal's Representative will state one of the following:

- (a) the proposed adjustment to the Upper Limiting Fee (if applicable) and the Fee as set out in the Variation Proposal (if any) is agreed and the Upper Limiting Fee (if applicable) and the Fee will be adjusted accordingly; or
- (b) any adjustment to the Upper Limiting Fee (if applicable) and the Fee will be determined in accordance with clause 8.3, and

(if applicable) any change to the Date for Completion and requirements for an extension of time in accordance with clause 6.5(a).

8.3 Valuation of Variations

Any Variation will be priced as follows:

- (a) as agreed under clause 8.2(a); or
- (b) if clause 8.3(a) does not apply, in accordance with the Variation Rates; or
- (c) if the Variation Rates are not applicable to the Variation, the Principal will reasonably determine the value of the Variation.

8.4 Notification of changes in scope

- (a) If the Service Provider believes that a direction by the Principal, other than a Variation Order under clause 8.2 constitutes or involves a Variation, then the Service Provider must:
- (i) within 5 Business Days of receiving the direction and before complying with that direction, give written notice to the Principal that it considers the direction constitutes or involves a Variation and provide the following details:
 - A. the adjustment to the Upper Limiting Fee (if applicable) and the Fee (if any) to carry out the services the subject of the direction;
 - B. the particulars of the plant, labour, materials and goods to be used or not used as a part of the services the subject of the direction; and
 - C. the effect (if any) the direction will have on the timing for the provision of the Services, including on the relevant Date for Completion and whether an extension of time is required in accordance with clause 6.5(a); and
 - (ii) subject to clause 8.4(b), not proceed with the services arising out of or in any way in connection with that direction.
- (b) Within 10 Business Days of receiving a notice under clause 8.4(a), the Principal may:
- (i) issue a direction to the Service Provider stating that it does not agree that the direction constitutes or involves a Variation and requiring the Service Provider to proceed with that part of the Services the subject of the direction; or
 - (ii) issue a:
 - A. Variation Order to the Service Provider under clause 8.2; or
 - B. Variation Proposal Request to the Service Provider under clause 8.1.
- (c) In the event the Service Provider receives a direction pursuant to clause 8.4(b)(ii), the Service Provider may, within 20 business days of reception of said direction, dispute the direction and the reasonings supplied by the Principal for the rejection of the notice under clause 8.4(a) under the Dispute Resolution procedure as set out in clause 13. Notwithstanding the existence of a dispute in accordance with this clause the Service Provider will continue with the work, the subject of the disputed direction.

8.5 Entitlement to payment

The Service Provider will have no entitlement to claim, or to be paid for, a Variation unless the Principal directs the Variation in writing.

8.6 Omissions

The Principal may direct a Variation which omits any part of the Services and may thereafter either perform such work itself or engage other service providers to perform the omitted work. The Principal must give the Service Provider no less than 15 Business Days' prior written notice of its intention to omit a substantial portion of the Services.

8.7 Non-compliances

Without in any way limiting the Principal's rights under or in connection with this Deed, if the Principal discovers that the Services, or any part thereof, have not been performed in accordance with this Deed (including any Deliverables not complying with the requirements of this Deed), then the Principal may give the Service Provider a direction specifying the Non-complying Services and do one of the following:

- (a) require the Service Provider to:
 - (i) re-perform the Non-complying Services (including by amending the Deliverable) 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 perform the Services in accordance with this Deed; and
 - B. put the Principal (as closely as possible) in the position in which it would have been if the Service Provider had performed the Services in accordance with this Deed; or
- (b) advise the Service Provider that the Principal will accept the Non-complying Services despite the non-compliance, in which event the Principal will be entitled to:
 - (i) a reduction in the Fee and Upper Limiting Fee (if applicable); and
 - (ii) recover from the Service Provider any reasonable additional costs which will be incurred by the Principal as a result of the non-compliance, including any costs incurred by the Principal in having the Non-complying Services re-performed by an Other Contractor.

8.8 Re-performance of Non-compliances

- (a) If a direction is given under clause 8.7(a), the Service Provider must, at its own cost, re-perform the Non-complying Services:
 - (i) within the time specified in the Principal's instruction; and
 - (ii) so as to minimise the delay and disruption to the performance of the Services and the Project.
- (b) If the Service Provider fails to comply with a direction under clause 8.7(a), then, without in any way limiting or otherwise restricting the Principal's other rights, the Principal may give the Service Provider a direction under clause 8.7(b).

8.9 Annual Amendments to Variation Rates

- (a) The Variation Rates under this Deed, which are used to price Variations under clause 8.38.3(b), shall be adjusted on 1 January each year by multiplying the original Variation Rate by the 'Current Index' and dividing it by the 'Original Index' where the:
 - (i) 'Current Index' is the latest published Quarter Consumer Price Index (All Groups Sydney) number.
 - (ii) 'Original Index' means the Consumer Price Index (All Groups Sydney) number for the quarter ending December 2023, being 136.4.

8.10

9. INDEMNITIES AND LIABILITY

9.1 Indemnities by the Service Provider

- (a) The Service Provider must indemnify the Principal from and against any claim, damage, loss, expense, reasonable cost (including any claim by a third party and any legal costs) or liability suffered or incurred by the Principal arising out of or in connection with any:

- (i) loss of or damage to any real or personal property, including property of the Principal but excluding claims for loss or damage to the property of the Principal arising directly from a breach of a professional duty in performance of the Services;
- (ii) personal injury, disease, illness or death of any person; and
- (iii) breach of a term of, or warranty under, clauses 1.7(a), 1.9 or 2.8 (where the Service Provider has been appointed the Principal Contractor),

arising out of or in connection with any act or omission (including negligence) of the Service Provider or its Personnel in connection with carrying out the Services or any breach by the Service Provider of its obligations under this Deed.

- (b) The Service Provider must indemnify the Principal from and against any claim, damage, loss, expense, cost (including any claim by a third party and any legal costs) or liability suffered or incurred by the Principal arising out of or in connection with any unlawful, wrongful, wilful or negligent act or omission of the Service Provider or its Personnel.
- (c) The Service Provider must indemnify the Principal from and against any expense or cost (including any payment of compensation by the Principal under section 66 of the PID Act) arising from or in connection with any serious wrongdoing or other misconduct to the extent caused by the Service Provider or the Service Provider's Personnel under this Deed.
- (d) The Service Provider's liability under clause 9.1(a), 9.1(b) or (c)9.1(c) will be reduced proportionally to the extent that an act or omission of the Principal or the employees, agents or Other Contractors of the Principal, or a breach of this Deed by the Principal has contributed to the claim, damage, loss, expense or cost.

9.2 Intellectual Property Rights Indemnity

The Service Provider indemnifies the Principal against any claim, damage, expense, cost (including legal cost) or liability suffered or incurred by the Principal or any of its licensees or sub-licensees in respect of the ownership of, or rights to use, Intellectual Property Rights the Service Provider uses, develops or creates in connection with the provision of the Services including the Intellectual Property Rights warranty under clause 3.1, Intellectual Property Rights as referred to in clause 3.2 or licensed to the Principal under clause 3.4 or arising out of the Principal's use of the Deliverables or the Services in accordance with this Deed.

9.3 Indemnities generally

- (a) Each indemnity in this Deed is a continuing obligation, separate and independent from the other obligations of the Service Provider, and survives termination, completion or expiration of this Deed. It is not necessary for the Principal to incur expense or make any payment before enforcing a right of indemnity conferred by this Deed.
- (b) The Principal may demand as a debt due and payable under this Deed any amount in respect of which the Service Provider has indemnified the Principal under this Deed.

9.3 A Proportionate liability

To the extent permitted by Law, Part 4 of the *Civil Liability Act 2002* (NSW) is excluded in relation to all and any rights, obligations or liabilities of either party under this Deed whether such rights, obligations or liabilities are sought to be enforced in contract, tort or otherwise.

9.4 Limitation of liability

- (a) Subject to clause 9.4(b), but notwithstanding any other provision of this Deed:
- (i) the Service Provider's total liability to the Principal arising out of or in any way in connection with the Services (however arising, including in negligence) is limited to the amount set out in the Key Contract Terms; and
 - (ii) neither party will be liable to the other for any Consequential Loss howsoever arising.
- (b) Clause 9.4(a) does not limit the Service Provider's liability:
- (i) in respect of liability which:
 - A. cannot be limited at Law;
 - B. arises under clauses 9.1(a), 9.1(b), 9.2 or as a result of a breach of clauses 3.1, 3.4 or 3.5;
 - C. is due to the Service Provider's or the Personnel's Wilful Misconduct, fraud or criminal conduct; or
 - D. arises in connection with the Service Provider's abandonment of its obligations under this Deed.
 - (ii) to the extent insurance proceeds are recoverable by the Service Provider in respect of that liability under any insurance policy which is required to be effected or maintained by a party, or would have been recoverable if the Service Provider had effected and maintained the insurance policies as required by this Deed, complied with the insurance policies which are required to be effected or maintained by a party and taken all reasonable steps to recover the proceeds of insurance policies which are required to be effected or maintained by a party;
 - (iii) to pay interest; or
 - (iv) for personal injury (including death) or illness to any person in any circumstances,

and those liabilities will not be included in any calculation of the Service Provider's total liability under clause 9.4(a).

10. INSURANCE

10.1 Professional indemnity insurance

- (a) Before the Service Provider commences carrying out the Services, the Service Provider must effect a professional indemnity insurance policy for the Services with a limit of insurance of not less than the sum stated in the Key Contract Terms.
- (b) The policy and such level of cover must be maintained until the later of the date the Service Provider completes carrying out the Services and expiry of this Deed and thereafter for a period of 6 years.

10.2 Public liability insurance

- (a) The Service Provider must maintain a public and products liability policy for an amount in respect of any one claim or series of claims arising from one original cause of not less than the sum stated in the Key Contract Terms. The policy must be maintained

until the later of the date the Service Provider completes carrying out the Services and expiry of this Deed.

- (b) The policy must cover the Service Provider in respect of liability to the Principal and third parties in respect of any claim arising from the acts or omissions of the Service Provider or its Personnel in the course of carrying out the Services and must extend to indemnify the Principal as one of the class of persons constituting the insured, but not in respect of liability to the extent that the liability is due to or results from the negligence of the Principal.

10.3 Insurance of Employees

- (a) Before the Service Provider commences carrying out the Services, the Service Provider must insure against liability for death or injury to persons employed by the Service Provider including liabilities, under Law including relevant workers compensation legislation and at common law. The insurance cover must be maintained annually until the later of the date the Service Provider completes carrying out the Services and expiry of this Deed.
- (b) Where permitted by Law, the insurance cover must be extended to indemnify the Principal for the Principal's statutory liability for persons employed by the Service Provider.
- (c) The Service Provider must ensure that employees of the Service Provider's Subcontractors are similarly insured as the Service Provider's employees are required to be insured under this clause 10.3.

10.4 Service Provider's Insurance Obligations

The Service Provider must:

- (a) prior to the commencement of the Services, provide the Principal's Representative with a copy of, or certificate of currency for, any insurance policies which it is required to effect or maintain by this Deed;
- (b) if at any time requested by the Principal's Representative, provide evidence satisfactory to the Principal's Representative that the policy is current;
- (c) ensure that it:
 - (i) does not do anything which prejudices any insurance which it or the Principal is required to effect or maintain by this Deed;
 - (ii) if necessary, rectifies anything which might prejudice any insurance which it or the Principal is required to effect or maintain by this Deed;
 - (iii) reinstates any insurance policy it is required to maintain by this Deed if it lapses;
 - (iv) Not used;
 - (v) immediately notifies the Principal's Representative of any event which may result in an insurance policy it is required to maintain by this Deed lapsing or being cancelled; and
 - (vi) 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; and

- (d) where this Deed requires the Service Provider to effect insurance in the name of more than one party or to include the Principal as one of the class of persons constituting a "Principal" as defined in the policy, ensure that the insurance policy provides that:
 - (i) insofar as the policy may cover more than one insured or "Principal", all insuring agreements and endorsements (with the exception of limits of liability) will cover each named insured and "Principal" but only in respect of the Services carried out under this Deed by the Service Provider for that "Principal";
 - (ii) failure by one insured or "Principal" to observe and fulfil the terms of the policy will not prejudice the insurance in regard to any other insured or "Principal" who has not committed a vitiating act; and
 - (iii) any non-disclosure by one insured or "Principal" does not prejudice the right of any other insured or "Principal" to claim on the policy.

11. FORCE MAJEURE

- (a) A party is not liable for any failure to observe its obligations under this Deed where that failure is wholly or substantially due to a Force Majeure, provided that the party seeking to rely on the benefit of this clause:
 - (i) as soon as reasonably practicable, notifies the other party of the extent to which it is unable to perform its obligations; and
 - (ii) uses its best endeavours to mitigate the adverse effects of the Force Majeure and perform its obligations under this Deed as quickly as possible.
- (b) Where the Force Majeure prevents a party from performing a material obligation under this Deed for a period in excess of 3 months, then the other party may by notice, terminate this Deed, which will be effective immediately, unless otherwise stated in the notice.
- (c) A Force Majeure will not relieve either party from its obligations to make payments of amounts then due and payable in respect of obligations under this Deed which have been performed prior to the occurrence of the Force Majeure.

12. TERMINATION

12.1 Termination for convenience

The Principal may, for its sole convenience and in its absolute discretion, terminate this Deed at any time by a minimum of 20 Business Days' prior notice to the Service Provider and regardless of whether there has been any default by the Service Provider.

12.2 Termination for breach by Service Provider or Insolvency Event

The Principal may terminate this Deed, or take the whole or any part of the performance of the Services out of the Service Provider's hands, immediately by notice to the Service Provider if:

- (a) the Service Provider substantially breaches this Deed and the Service Provider fails to remedy the breach or overcome its effects on the Principal within 10 Business Days (or such longer time as the Principal states) of receiving a notice from the Principal requiring the breach to be remedied. For the purposes of this clause, substantial breaches include:
 - (i) the Service Provider abandons its obligations under this Deed;

- (ii) the Service Provider fails to proceed with due diligence and without delay;
 - (iii) the Service Provider has not obtained, or provided evidence of, any required Service Provider insurances in accordance with clause 10 or has cancelled, varied or allowed to lapse any required Service Provider insurances in breach of clause 10.4;
 - (iv) the Service Provider has not complied with the confidentiality and privacy requirements under clause 1.7;
 - (v) the Service Provider has not complied with the Intellectual Property Rights requirements under clauses 3.1 - 3.5;
 - (vi) the Service Provider has not complied with the conflict of interest requirements under clause 15.7;
 - (vii) the Service Provider has not complied with the restrictions on assignment, transfer or novation under clause 15.8;
- (b) an Insolvency Event occurs in respect of the Service Provider;
 - (c) a suspension of the Services as a result of an act or omission of the Service Provider or its Personnel continues for a period of 90 consecutive days as referred to in clause 6.7(d)(ii); or
 - (d) there is a finding of serious wrongdoing or other misconduct involving the Service Provider or an individual providing services under this Deed.

12.3 Termination for breach by the Principal

The Service Provider may terminate this Deed by notice to the Principal if:

- (a) the Principal has failed to pay an undisputed amount due to the Service Provider under this Deed;
- (b) the amount referred to in clause 12.3(a) is not the subject of a dispute;
- (c) the Service Provider serves a notice on the Principal:
 - (i) stating that the amount referred to in clause 12.3(a) is overdue;
 - (ii) stating that if the amount referred to in clause 12.3(a) is not paid within 25 Business Days of receipt of the notice, the Service Provider proposes to exercise its rights under this clause 12.3; and
 - (iii) attaching evidence of the amount overdue, and
- (d) the Principal has not made payment of the amount referred to in clause 12.3(a) within 25 Business Days of receipt of the notice referred to in clause 12.3(c).

12.4 Rights of the Principal

- (a) Termination of this Deed will not affect any other right or remedy of the Principal, including the right of the Principal to engage others to carry out or complete the Services.
- (b) Without limiting or otherwise restricting the Principal's other rights, where the Principal takes Services out of the Service Provider's hands under clause 12.2:
 - (i) subject to clause 12.6(b) and to the extent permitted by Law, no further amount is payable by the Principal to the Service Provider for the Services;
 - (ii) the Principal may have those Services performed by itself or others;

- (iii) the Service Provider must pay the Principal the costs and expenses incurred by the Principal in performing or having performed the Services to the extent such costs and expenses exceed the amount which would have been payable to the Service Provider for the Services;
- (iv) the Principal may demand payment of amounts under clause 12.4(b)(iii) progressively as those amounts are incurred; and
- (v) amounts demanded under clause 12.4(b)(iv) will be a debt due and payable from the Service Provider to the Principal 10 Business Days after the Principal gives the demand and provides reasonable evidence of the costs and expenses.

12.5 Rights exhaustive

The rights of termination specified in this clause 12 and clause 15.7(c)(ii) are the only rights of termination available to the parties and any common law rights of termination are excluded.

12.6 Adjustment of Fee on termination

- (a) Where this Deed is terminated under clause 12.1 or clause 15.7(c), the Principal must pay the Service Provider for Services provided up until the date of termination plus the direct costs reasonably and necessarily incurred by the Service Provider as a result of the termination.
- (b) Where this Deed is terminated or the Services are taken out of the hands of the Service Provider under clause 12.2, the Principal must pay the Service Provider for the Services performed by the Service Provider as at the date of termination after first deducting the Principal's reasonable assessment of:
 - (i) amounts which are reasonably likely to be payable by the Service Provider to the Principal under clause 12.4(b); and
 - (ii) any other loss or damage suffered, or reasonably likely to be suffered, by the Principal as a consequence of the termination of this Deed, or breach by the Service Provider.
- (c) Other than as set out in clauses 12.6(a) and 12.6(b), the Service Provider will have no claim against the Principal for any expenses or losses (including Consequential Loss) arising from the termination of this Deed under clause 12.1, 12.2 or clause 15.7(c).

12.7 Obligations on termination

Within 5 Business Days (or such other time as may be specified by the Principal) of the date of termination of this Deed, the Service Provider must:

- (a) deliver to the Principal all documents, books, records, plans, drawings, papers, models and information of any kind relating to the Project which are the property of the Principal;
- (b) provide to the Principal a copy of all Deliverables (whether complete or not) and if required by the Principal, the Service Provider must provide a copy of all documents in electronic form; and
- (c) if requested by the Principal, assign to the Principal all rights and benefits under contracts with third parties which relate to the Services or the Project.

12.8 Survival

Clauses 12.4 to 12.8 inclusive survive the termination of this Deed.

13. DISPUTE RESOLUTION

13.1 Dispute Notice

If a difference or dispute (together called a “**dispute**”) between the parties arises in connection with the subject matter of this Deed, then either party may give the other party written notice of the dispute by hand, prepaid post or email in accordance with clause 15.6(b) which adequately identifies the details of the dispute (“**Dispute Notice**”).

13.2 Negotiation

The Service Provider and the Principal must endeavour to resolve any dispute expeditiously by negotiation within 20 Business Days (or any other time period agreed by the parties in writing) after receipt of the Dispute Notice (“**Negotiation Period**”). At such negotiations, each party must be represented by a person who has the authority to agree to such resolution. All aspects of the negotiation (except the fact that the negotiations took place) will be privileged.

13.3 Alternate dispute resolution

If a dispute between the Service Provider and the Principal is not resolved during the Negotiation Period then, subject to the parties' right to seek injunctive or urgent declaratory relief, and before either party has recourse to any litigation, the parties must attempt to resolve the dispute by either of the methods in clauses 13.4 or 13.5 as specified in the Key Contract Terms.

13.4 Mediation

- (a) This clause 13.4 applies where specified in the Key Contract Terms.
- (b) If a dispute between the Service Provider and the Principal is not resolved during the Negotiation Period then, subject to the parties' right to seek injunctive or urgent declaratory relief, and before either party has recourse to any litigation, the parties must use reasonable endeavours to attempt to resolve the dispute by mediation.
- (c) If the Service Provider and the Principal do not agree upon a mediator within 10 Business Days of the end of the Negotiation Period, then either party may request the Chair of the Resolution Institute to nominate a mediator.
- (d) Where mediation fails to resolve the dispute within 60 Business Days of receipt of the Dispute Notice (or any other time period agreed by the parties in writing), the parties can refer the dispute to litigation under clause 13.6.
- (e) Except where otherwise agreed by the parties, each party must bear its own costs and pay one half of the mediator's fees and expenses.

13.5 Expert Determination

- (a) This clause 13.5 applies where specified in the Key Contract Terms
- (b) If a dispute between the Service Provider and the Principal is not resolved during the Negotiation Period then, subject to the parties' right to seek injunctive or urgent declaratory relief, the parties may (where specified in the Key Contract Terms or otherwise agreed by the parties) submit the dispute to expert determination by an independent expert.
- (c) If the Service Provider and the Principal do not agree upon an independent expert within 10 Business Days of the end of the Negotiation Period, then either party may request the Chair of the Resolution Institute to nominate an expert.

- (d) The parties must enter into an agreement with the agreed or nominated expert on the terms of the agreement in 0 or such other terms as the parties and the expert may agree.
- (e) Except where the parties otherwise agree in writing:
 - (i) each party must (unless otherwise determined by the expert) bear its own costs and pay one half of the expert's fees and expenses;
 - (ii) the expert must not act as an arbitrator;
 - (iii) the determination of the expert will be final and binding on the parties except where:
 - A. the expert's determination relating to a dispute is that one party shall pay to the other an amount, or carry out Services to an amount, greater than the amount stated in the Key Contract Terms; and
 - B. a party gives notice of appeal to the other party within 15 Business Days of the determination being given; and
 - (iv) the determination is to be given effect to by the parties unless and until it is reversed, overturned or otherwise changed under the procedure in clause 13.6 below.

13.6 Litigation

If the determination of the expert is not final and binding on the parties, but without limiting or otherwise restricting clause 13.5(e)(iv), either party may commence litigation in relation to the dispute.

13.7 Continuation

Each party must continue to perform its obligations under this Deed notwithstanding the existence of a dispute.

13.8 Survival

This clause 13 will survive the termination of this Deed.

14. MEETINGS, REPORTING AND RECORD KEEPING

14.1 Meetings

The Service Provider must attend meetings as required by the Principal.

14.2 Other consultation and reporting

The Service Provider must:

- (a) consult with the Principal in the manner and at the times set out in the Key Contract Terms, and at such other times as the Principal reasonably requests, in relation to the provision of the Services. Matters for consultation may include:
 - (i) the Program and progress of the performance of the Services;
 - (ii) the standard of performance of the Services; and
 - (iii) such other matters as the Principal identifies;
- (b) if required by the Principal's Representative, provide the Principal's Representative with periodic program and / or performance reports (in the format and frequency as may be required by the Principal's Representative);
- (c) whenever requested by the Principal's Representative provide the Principal's Representative with a written report containing details on all work health and safety

matters arising out of or in any way in connection with the Services, including in respect of any matters arising out of or in any way in connection with clauses 1.6 to 1.7; and

- (d) keep the Principal fully informed as to any matters affecting the cost, timing or quality of the Services (including as to any matters on which the Principal's Representative may specifically request that the Service Provider report) promptly upon the Service Provider becoming aware of such matters.

14.3 Record keeping

- (a) The Service Provider must:
 - (i) keep, and ensure its Subcontractors keep, proper accounts, accurate records, information, Documents, or materials including books and records and timesheets (or verified copies) relating to the performance of the Services, charges, fees, and reimbursable expenses, in accordance with applicable Laws and standards (including accounting standards) and as would be expected of a professional and experienced service provider providing similar services;
 - (ii) ensure that all persons engaged in the performance of the Services produce and maintain
 - A. where the Fee is time based, a daily timesheet accurately recording the time spent in the performance of the Services;
 - (iii) at the Principal's request, provide, and ensure that its Subcontractors provide, the records referred to in this clause 14.3 for their inspection and copying by the Principal; and
 - (iv) ensure that all records required to be kept by this Deed are current and accurate.
- (b) The records referred to in this clause 14.3 must be retained for seven (7) years after the earlier of:
 - (i) the Completion of the Services;
 - (ii) the expiry of this Deed; or
 - (iii) the termination of this Deed.

14.4 Reporting under the Infrastructure Advisory Commercial Framework

- (a) If required by NSW Procurement or otherwise requested by the Principal, the Service Provider must submit a quarterly report to NSW Procurement containing:
 - (i) details of the Service Provider's Infrastructure Advisory Services contracts which commenced in the previous quarter;
 - (ii) details of the daily resource level pricing in Infrastructure Advisory Services contracts which commenced in the previous quarter; and
 - (iii) such other information as set out in the Supplier Report of Engagements Template available at buy.nsw.gov.au or as reasonably requested by NSW Procurement or the Principal.
- (b) Where one has been requested by NSW Procurement or the Principal, each Supplier Report of Engagements must be submitted to NSW Procurement:
 - (i) in the form of the Supplier Report of Engagements Template;

- (ii) via email to infra-advisory@treasury.nsw.gov.au, or via such other method as notified by NSW Procurement or the Principal to the Service Provider from time to time; and
 - (iii) by no later than the 20th day of the month following the relevant quarter.
- (c) The Service Provider acknowledges and agrees that any information provided in any Supplier Report of Engagements may be shared between NSW Government Entities.

14.5 Auditing records

- (a) The Principal may appoint an Auditor to conduct regular or one-off audits of the Service Provider's performance in providing the Services and complying with its other obligations under this Deed.
- (b) The Service Provider must make available for inspection for an audit all such records as the Auditor may reasonably require that are directly related to this Deed or the Project itself and not subject to existing confidentiality or legal (including privacy law) requirements, regardless of where they are located or the manner in which they are stored. The Auditor will be entitled to take copies of records as may reasonably be required for the purposes of the audit.
- (c) The Service Provider must provide all appropriate resources and all reasonable assistance required by the Auditor and fully co-operate in good faith.
- (d) Each party will bear its own costs in respect of an audit. The Principal will bear the Auditor's costs except if the audit reveals a material non-compliance with this Deed in which case the Service Provider must pay the Auditor's costs.
- (e) If the audit reveals any non-compliance with this Deed then the Service Provider must remedy that non-compliance within such time as the Principal reasonably requires and must advise the Principal in writing what steps the Service Provider has taken to ensure that the identified non-compliance will not re-occur.
- (f) The Principal must ensure the Auditor complies with the Service Provider's reasonable access requirements when performing any audit under this clause 14.5 at the Service Provider's premises.

14.6 Return of Documentation

Upon the earlier of Completion of the Services or termination of this Deed, the Service Provider must promptly deliver to the Principal upon request all Principal's Material and Documents:

- (a) provided by or on behalf of the Principal in connection with the Services; or
- (b) prepared by the Service Provider or others as part of the Documents to be provided to the Principal in connection with, or as part of, the Services,

but the Service Provider may retain one copy of its own working notes created in the course of providing the Services to the extent necessary to comply with any Law or to maintain compliance with any recognised quality assurance system, provided that the Service Provider securely and safely stores such working notes, marks them as confidential and complies with clause 1.7.

15. GENERAL

15.1 Government information disclosure

- (a) The Service Provider acknowledges that the Principal may be required to publish certain information concerning this Deed in accordance with sections 27 – 35 of the

Government Information (Public Access) Act 2009 (NSW). If the Service Provider reasonably believes that any part of this Deed contains information which is commercial in confidence or could reasonably be expected to affect public safety or security, the Service Provider should immediately advise the Principal in writing, identifying the provisions and providing reasons so that the Principal may consider seeking to exempt those provisions from publication.

- (b) The Service Provider acknowledges that the Principal may from time to time be required to disclose certain information in accordance with the requirements of the *Government Information (Public Access) Act 2009* (NSW) and that the Service Provider must indicate what, if any, information it considers is commercially sensitive information for the purposes of that Act.
- (c) The Service Provider acknowledges that notwithstanding any notification from the Service Provider under clause 15.1(a) or (b) of its views as to the commercial in confidence, commercially sensitive nature or impact to public safety or security of the information, that notification may not necessarily exclude that information from being published or disclosed as required in accordance with the *Government Information (Public Access) Act 2009* (NSW).

15.2 Other Government bodies

The Service Provider acknowledges that the Principal may make information concerning the Service Provider (including any information provided by the Service Provider to the Principal and any information relating to the Service Provider's performance under this Deed) available to NSW Government Entities.

15.3 Exchange of information

The Service Provider acknowledges that information about the Service Provider from any source, including substantiated reports of unsatisfactory performance, may be taken into account by the Principal, other agencies or NSW Government Entities in considering whether to offer the Service Provider future opportunities for work.

15.4 Defence to defamation

The Service Provider agrees that the Principal will be entitled to rely on the defence of qualified privilege for the purposes of section 30 of the *Defamation Act 2005* (NSW) in relation to the provision and use of information under clauses 15.2 and 15.3.

15.5 Release

The Service Provider releases the Principal from and against any liability arising out of or in any way in connection with its provision of information under clauses 15.1, 15.2 and 15.3 or the use of such information by NSW Government Entities.

15.6 Notices

- (a) At any time and from time to time the Principal's Representative may notify the Service Provider of an electronic portal or document management system to be used for the purposes of this Deed ("**Electronic Portal**"). The Principal's Representative's notice will set out:
 - (i) the relevant Electronic Portal;
 - (ii) the commencement date for the use of the electronic portal or document management system;
 - (iii) any password, login details or similar information required for the Service Provider to use the Electronic Portal;

- (iv) address details for the Principal, the Principal's Representative and the Service Provider; and
 - (v) any other information reasonably necessary for the use and service of notices via the Electronic Portal.
- (b) Any notices contemplated by this Deed must be in writing and must before the date referred to in clause 15.6(a)(ii), be delivered by hand or prepaid post to the relevant address or sent to the email address shown in Key Contract Terms (or to any new address or email address notified by the intended recipient).
- (c) A notice is taken to be given in the case of:
- (i) delivery by hand, on the day of delivery;
 - (ii) if sent by prepaid post, 2 Business Days after the date of posting (or 7 Business Days after the date of posting if posted to or from a place outside Australia); or
 - (iii) email or via the Electronic Portal, at the local time (in the place of receipt of that email or the notice via the Electronic Portal) that would be determined if section 13A of the *Electronic Transactions Act 2000* (NSW) were to apply.
- (d) On and from the commencement date for use of the Electronic Portal, all notices must be sent through the Electronic Portal in accordance with the requirements set out in clause 15.6(a).
- (e) With respect to notices sent by email or through the Electronic Portal, an attachment to a notice will only form part of a notice if it is attached to the email or uploaded to the Electronic Portal (as applicable) in:
- (i) pdf format;
 - (ii) a format compatible with Microsoft Office; or
 - (iii) such other format as may be agreed between the parties in writing from time to time.

15.7 Conflict of interest

- (a) The Service Provider warrants that no conflict of interest exists in relation to the Services at the Date of Contract.
- (b) The Service Provider must immediately provide the Principal written notice upon becoming aware of the existence, or possibility, of an actual or perceived conflict of interest in the performance of the Services.
- (c) On receipt of a notice under clause 15.7(b), the Principal may:
- (i) approve the Service Provider continuing to perform the Services, which approval may be subject to conditions specified by the Principal (including requirements relating to separation arrangements) to ensure appropriate management of the actual or perceived conflict of interest in the performance of the Services; or
 - (ii) where in the Principal's view the actual or perceived conflict of interest in the performance of the Services cannot be appropriately managed, and without limiting or otherwise restricting clause 12, terminate this Deed by notice in writing to the Service Provider effective from the date specified in the notice.
- (d) If requested by the Principal, the Service Provider must sign a conflict of interest declaration in the form required by the Principal.

- (e) If the Services include the performance of any probity related services, the Service Provider must disclose to the Principal (in writing) any current, recent and new probity services engagements with any Authority.

15.8 Assignment and novation

- (a) The Service Provider must not assign, transfer or novate any of its rights, interests or obligations in this Deed without the prior written consent of the Principal and except on such terms as are determined in writing by the Principal.
- (b) The Principal may, for its sole convenience and at its absolute discretion, assign, novate or otherwise deal with its rights and obligations without the Service Provider's consent to any Authority. The Service Provider must execute any document reasonably required to give effect to the assignment, novation or other dealing.
- (c) Where the Key Contract Terms state that this clause 15.8(c) applies then without limiting or otherwise restricting clause 15.8(b), the Principal may at any time novate this Deed to a Construction Contractor nominated by the Principal. If directed by the Principal, the Service Provider must, without being entitled to compensation, within 5 Business Days of the date of receipt by the Service Provider of the direction, execute and deliver to the Principal a deed of novation in the form which appears in 0 in favour of the Principal and the Construction Contractor nominated by the Principal.

15.9 Applicable law and Jurisdiction

The law of New South Wales applies and 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 this Deed; 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 15.9(a).

15.10 Authorities

- (a) This Deed will not in any way unlawfully restrict or otherwise unlawfully affect the unfettered discretion of the Principal to exercise any of their respective functions and powers pursuant to any Law.
- (b) Without limiting or otherwise restricting clause 15.10(a), anything the Principal does, or fails to do or purports to do, pursuant to their respective functions and powers under any Law or Approval will be deemed not to be an act or omission by the Principal under this Deed.
- (c) The Service Provider:
 - (i) waives any claims that it may have against the Principal as a result of the exercise by the Principal of their respective functions and powers under any Law or Approval; and
 - (ii) acknowledges and agrees that:
 - A. there are many Authorities with jurisdiction over aspects of the Services;
 - 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 Services (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 15.10(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.

15.11 Order of precedence

In the event of any inconsistency, ambiguity or discrepancy between the documents comprising this Deed then:

- (a) the higher, more onerous, or more rigorous, requirement for the Service Provider will apply to the extent of any inconsistency, ambiguity or discrepancy;
- (b) otherwise to the extent of any inconsistency, ambiguity or discrepancy, the order of precedence in this Deed is:
- (i) the Deed Form;
- (ii) the Key Contract Terms;
- (iii) the General Conditions (as amended by any Special Conditions, where applicable); then
- (iv) the Schedules; and
- (c) where the ambiguity, discrepancy or inconsistency cannot be resolved by applying clauses 15.11(a) and 15.11(b), the Principal will direct the Service Provider as to the interpretation to be followed at the Service Provider's own cost.

15.12 Clauses survive termination

- (a) Any provision of this Deed which expressly or by implication from its nature is intended to survive the termination or expiry of this Deed and any rights arising on termination shall survive, including any warranties, licences or indemnities given under this Deed.
- (b) No provision of this Deed which is expressed to survive the termination or expiry of this Deed will prevent any other provision of this Deed, as a matter of interpretation, also surviving the termination or expiry of this Deed.

15.13 Independent Service Provider

- (a) In providing the Services, the Service Provider acts as the Principal's independent contractor and does not have any authority to act as the Principal's agent or on the Principal's behalf, unless the Principal expressly authorises the Service Provider to do so in writing. In particular, the Service Provider has no authority to enter into contracts, make representations or incur liabilities on behalf of the Principal.
- (b) This Deed does not create any relationship of employment, agency, partnership or joint venture between the Principal and the Service Provider.

15.14 Joint and several liability

If the Service Provider comprises more than one person, those persons are jointly and severally liable for the performance and obligations of the Service Provider.

15.15 If the Service Provider is a Trustee

If the Service Provider enters into this Deed as a trustee for a trust (**Service Provider Trust**), without limiting or otherwise restricting any other provision of this Deed, the Service Provider represents and warrants that:

- (a) the Service Provider is the only trustee of the Service Provider Trust;
- (b) the Service Provider has unqualified power under the constitution of the Service Provider Trust to perform its obligations under this Deed;
- (c) no action is currently taking place or pending to remove the Service Provider as trustee of the Service Provider Trust or to appoint additional trustees of the Service Provider Trust;
- (d) the Service Provider has entered into this Deed in its capacity as trustee of the Service Provider Trust and for the benefit of the beneficiaries of the Service Provider Trust;
- (e) the Service Provider has the right to be fully indemnified out of the assets of the Service Provider Trust in respect of the obligations incurred by it in relation to this Deed;
- (f) there is no subsisting breach of the constitution of the Service Provider Trust;
- (g) the Service Provider Trust has not been terminated and there is no action pending to terminate the Service Provider Trust; and
- (h) the Service Provider must seek the consent of the Principal, which will not be unreasonably withheld or delayed, before making any amendment to the Service Provider Trust or the relevant trust deed.

15.16 No waiver

- (a) Failure by the Principal to enforce or compel performance of any term or condition of this Deed does not constitute a waiver of that term or condition and does not impair the right of the Principal to enforce it at a later time or to pursue remedies it may have for any subsequent breach of that term or condition.
- (b) The Service Provider acknowledges that no waiver by the Principal of a breach of any term of this Deed will be a waiver of any other breach of that or any other term.

15.17 Entire agreement

To the extent permitted by Law, in relation to its subject matter, this Deed:

- (a) embodies the entire understanding of the parties, and constitutes the entire terms agreed by the parties; and
- (b) supersedes any prior written or other agreement of the parties.

15.18 Severability

If at any time a 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.

15.19 Counterparts

This Deed may be executed in any number of counterparts and by the parties on separate counterparts. Each counterpart constitutes the deed of each party who has executed and delivered that counterpart.

15.20 Exclusivity

- (a) For the purposes of this clause 15.20, 'Related Body Corporate' has the meaning given to that term in section 9 of the *Corporations Act 2001* (Cth).
- (b) The Service Provider must not, and must procure that:
 - (i) any Related Body Corporate of the Service Provider; and
 - (ii) any employees, agents and Subcontractors who are involved in the provision of the Services,
prior to the earlier of the date that is:
 - (iii) 12 months after the completion of the Services;
 - (iv) 12 months after the Project is suspended; or
 - (v) the date the Project is terminated or completeddo not:
 - (vi) have any direct or indirect involvement in the Project other than for the Principal; or
 - (vii) provide services to or advise any other person in relation to the Project, except with the prior written consent of the Principal which may be withheld or granted in its absolute discretion.
- (c) The Service Provider agrees that:
 - (i) having regard to the Project and the Services, clause 15.20(b) is reasonable in regards to the nature of the involvement restrained and the duration and scope of the restraint and that the restraints are reasonably necessary for the probity of the Project and to ensure the best value for money for the Project; and
 - (ii) damages may not be a sufficient remedy for the breach of clause 15.20(b) and the Principal may be entitled to specific performance or injunctive relief (as appropriate) as a remedy for any breach or threatened breach by the Service Provider, in addition to any other remedies available at Law.

15.21 Electronic execution

A party may execute this Deed (and any variation to this Deed) with a digital signature generated by DocuSign or Adobe Sign, or by any other generally accepted and lawful form of technology as agreed by the parties for execution by digital signatures. A party who receives such a digital signature may assume that such execution was validly and legally performed by the other party.

SCHEDULE 1 – DEFINITIONS AND INTERPRETATION

1 Definitions

In this Deed:

“Approvals” includes approvals, authorities, licences, consents, certificates and permits issued by an Authority or under any Law.

“Auditor” means an independent auditor or the Principal’s internal auditor appointed by the Principal for the purposes of clause 14.5(a).

“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 and any private electricity, telecommunications, gas or other utility company having statutory rights in relation to the Project, the Services or the performance by the Service Provider of its obligations under this Deed.

“Business Day” means any day other than:

- (a) a Saturday, Sunday or public holiday in New South Wales; or
- (b) 27, 28, 29, 30 or 31 December.

“Commencement Date” means the date stated in item 7 of the Key Contract Terms.

“Commonwealth and NSW Government Requirements” means the requirements in Schedule 2.

“Completion” is the stage when the Services are, or a Separable Portion is, complete in accordance with this Deed.

“Confidential Information” is any information (whether in written, oral or electronic form) given to the Service Provider by the Principal or anyone on the Principal’s behalf (whether or not owned by the Principal). It includes:

- (a) this Deed;
- (b) information acquired by the Service Provider in the course of discussions in relation to the Services, this Deed or the Project; and
- (c) any information directly or indirectly derived or produced partly or wholly from the Confidential Information including any notes, calculation, conclusion, summary and computer modelling, or other document produced by the Service Provider.

“Confidentiality Deed Poll” means a confidentiality deed poll in the form set out in 0.

“Consequential Loss” means any:

- (a) loss of income, loss of revenue, loss of profit, loss of anticipated savings, loss of financial opportunity, loss arising from business interruption or loss of business opportunity, loss of contract (other than this Deed), loss of goodwill, loss of use or loss of production (whether the loss is direct or indirect), loss of or corruption of data except any data provided as part of the Deliverables; or
- (b) the cost of capital, or direct or indirect financing costs,

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

“Construction Contractor” means the contractor or contractors that will be engaged by the Principal for the purposes of completing the design and construction of the Project.

“Construction Work” means those Services (if any) which form part of a construction project as defined in the *Work Health and Safety Regulation 2017* (NSW).

“Date for Completion” means the date shown in item 8 of the Key Contract Terms or that date as adjusted in accordance with this Deed.

“Date of Completion” means:

- (a) the date of Completion of the Services, set out in a Notice of Completion; or
- (b) where another date is determined in any determination by an expert or any litigation pursuant to clause 13 as the date upon which Completion was achieved, that date.

“Date of Contract” means the date that this Deed is executed by the last party to do so.

“Deed” means this deed between the Principal and the Service Provider comprising the documents specified in the Deed Form.

“Deed Form” means the document of that name to which these General Conditions and Schedules are attached.

“Deliverable” means any Document or other item provided or required to be provided to the Principal or produced by or on behalf of the Service Provider in connection with the Services or this Deed and includes the Deliverables (For Use) and the Deliverables (For Information).

“Deliverables (For Information)” means those Deliverables which are not Deliverables (For Use).

“Deliverables (For Use)” means those Deliverables identified as Deliverables (For Use) in item 17 of the Key Contract Terms and any other Deliverables that the parties agree in writing will be Deliverables (For Use) for the purposes of this Deed.

“Dispute Notice” has the meaning given to it in clause 13.1.

“Documents” means all documents, reports, plans, drawings, layouts, designs, computer disks, specifications and all other materials in both hard and electronic formats.

“Electronic Portal” means the electronic portal or document management system (if any) referred to in a notice by the Principal’s Representative under clause 15.6(a).

“Expenses” means the expenses (including disbursements) referred to in 0 for which the Service Provider is entitled to payment.

“Fee” means:

- (c) (to the extent that the Fee is a lump sum or lump sums) the lump sum fee or lump sum fees referenced in 0; and
- (d) (to the extent that the Fee is calculated on the basis of rates) the amount calculated in accordance with the method referenced in 0,

as adjusted in accordance with this Deed.

“Fit For Purpose” means fit for the purposes specified in or reasonably ascertainable from:

- (a) this Deed; and
- (b) to the extent relevant for determining the purpose in connection with a Variation, any document provided by the Principal to the Service Provider specifically in connection with the Variation.

“Force Majeure” means:

- (a) earthquake, cyclone, fire, explosion, flood;
- (b) act of a public enemy, terrorism or civil unrest taking place in Australia;
- (c) war, invasion, hostility between nations, civil insurrection, military coup or act of a foreign enemy taking place in Australia;
- (d) ionising radiation or radioactive contamination from nuclear waste or the combustion of nuclear fuel taking place in Australia; or
- (e) confiscation, nationalisation, requisition or property damage under the order of any government taking place in Australia,

which is beyond the reasonable control of the parties and their Related Parties and which is an event which, or an event the effects of which both:

- (f) prevents or delays a party from performing an obligation under this Deed; and
- (g) where that party is the Service Provider, could not have been wholly mitigated, prevented, avoided, remedied or overcome by the Service Provider or its Related Parties taking those steps which a professional who regularly acts in the capacity in which the Service Provider is engaged and who possesses the knowledge, skill and experience of a professional services Service Provider qualified to act in that capacity, would have taken.

“General Conditions” means clauses 1.1 – 15.21 attached to the Deed Form.

“Insolvency Event” means when:

- (a) a party informs the other party in writing or creditors generally that the party is insolvent or is unable to proceed with its obligations under this Deed for financial reasons;
- (b) execution is levied against a party by a creditor, debenture holders or trustees;
- (c) in relation to an individual person or a partnership including an individual person, and if that person (being a party):
 - (i) commits an act of bankruptcy;
 - (ii) has a bankruptcy petition presented against him or her or presents his or her own petition;
 - (iii) is made bankrupt;
 - (iv) makes a proposal for a scheme of arrangement or a composition; or
 - (v) has a deed of assignment or deed of arrangement made, accepts a composition, is required to present a debtor’s petition, or has a sequestration order made, under part X of the *Bankruptcy Act 1966* (Cth); or
- (d) in relation to a party being a corporation:
 - (i) notice is given of a meeting of creditors with a view to the corporation entering a deed of company arrangement or scheme of arrangement (other than a solvent scheme of arrangement);
 - (ii) the party enters a deed of company arrangement or composition with creditors;
 - (iii) an application is made for, a resolution is passed by the directors for the appointment of, or an order is made for, a controller, administrator, receiver,

- receiver and manager, provisional liquidator or liquidator to be appointed to the party;
- (iv) a controller, administrator, receiver, receiver and manager, provisional liquidator or liquidator is appointed to the party;
 - (v) an application is made to a court for the winding-up of the party and not stayed, dismissed or discontinued within 21 days;
 - (vi) a sequestration order or winding-up order is made in respect of the party;
 - (vii) that party resolves by special resolution that the party be wound up voluntarily (other than for a members' voluntary winding-up) or a meeting of creditors of a party under administration or a deed of company arrangement resolves that the party be wound up;
 - (viii) the party enters into any other form of insolvency administration;
 - (ix) a mortgagee of any property of the party takes possession of that property; or
 - (x) the party ceases, suspends or threatens to cease or suspend the conduct of all or a substantial part of its business, or disposes or threatens to dispose of all or a substantial part of its assets.

“Infrastructure Advisory Services” means engineering, technical, design and advisory services provided under a fee for service arrangement in relation to any stage in the infrastructure asset lifecycle, from concept through to commissioning (and where applicable the ongoing operations and maintenance of the asset) of all economic and social infrastructure assets for the NSW Government.

“Intellectual Property Rights” means all present and future rights throughout the world conferred by any Law in or in relation to any patent, design, registered design, trademark, name (including domain names), copyright, circuit layout, software, database, invention, know-how, business process or other protected right, in each case whether registered or unregistered and including all rights in all applications to register, renew or extend these rights.

“Key Contract Terms” means the section titled ‘Key Contract Terms’ attached to the Deed Form.

“Key People” means the person(s) nominated in item 14 of the Key Contract Terms who are engaged by the Service Provider under clause 2.2 and any of their replacements approved by the Principal's Representative under that clause.

“Law” means statutes, regulations, by-laws, ordinances, rules, subordinate legislation, common law and rules of equity.

“Negotiation Period” has the meaning given to it in clause 13.2.

“Non-complying Services” means any:

- (a) defect, deficiency, fault, error or omission in the Services (including any Deliverable); or
- (b) other aspect of the Services (including any Deliverable) that is not in accordance with the requirements of this Deed, including inconsistencies, discrepancies, ambiguities, inaccuracies, non-compliances, non-conformances and non-conformities.

“Notice of Completion” means a notice issued under clause 6.3(c) by the Principal's Representative“

“NSW Government Entity or Entities” means the NSW Government and its departments, agencies, authorities and state-owned corporations.

“Other Contractor” means any consultant, contractor, supplier or other person engaged by the Principal in relation to the Project other than the Service Provider and the Personnel.

“Payment Claim Date” means the last Business Day of each month unless otherwise stated in item 10 of the Key Contract Terms.

“Personal Information” has its meaning in the *Privacy and Personal Information Protection Act 1998* (NSW).

“Personnel” means the Subcontractors and officers, employees and agents of the Service Provider and the Subcontractors (and, if the Service Provider is a partnership, includes partners).

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

“Principal Contractor” means a Principal Contractor as defined in the *Work Health and Safety Regulation 2017* (NSW).

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

“Principal’s IP” means all Intellectual Property Rights subsisting in any Documents (including any Principal’s Material) provided or made available to the Service Provider by or on behalf of the Principal in connection with this Deed which are vested in, or otherwise owned by, the Principal.

“Principal’s Material” means all documents and materials provided to the Service Provider by or on behalf of the Principal from time to time, including documents provided in accordance with clause 5.1 and any other documents, equipment, machinery and data (stored by any means). The Principal’s Material includes the up to date Project programme described in clause 5.1.

“Principal’s Representative” means the person nominated in item 2 of the Key Contract Terms or any other person appointed from time to time by the Principal under clause 2.4.

“Privacy Laws” means the *Privacy and Personal Information Protection Act 1998* (NSW), the *Privacy Act 1988* (Cth), any applicable principles, codes of conduct or directions issued under those Acts and all other applicable Law relating to privacy or personal information.

“Program” means the program for the provision of the Services (and any updates to it) as agreed by the parties, including if applicable, in accordance with clause 6.1A.

“Project” means the project or projects stated in item 5 of the Key Contract Terms in respect of which the Services are provided.

“RCTI” means recipient created tax invoice.

“Recipient” has the meaning given in clause 4.5(b).

“Records” mean the records and other documents contemplated in clause 14.3(a)(i).

“Related Parties” means:

- (a) in respect of the Principal:
 - (i) the Principal's Representative;
 - (ii) any of the employees, agents, service providers or officers of the Principal, the Principal's Representative,

but excludes the Service Provider and employees, agents, consultants, service providers (of any tier) and officers of the Service Provider; and

(b) in respect of the Service Provider:

- (i) the Service Provider's Representative;
- (ii) any of the employees, agents, service providers or offices of the Service Provider, the Service Provider's Representative,

but excludes the Principal and employees, agents, consultants, service providers (of any tier) and officers of the Principal.

“Safety Management Plan” means the Safety Management Plan developed (if required) in accordance with clause 1.6(c), as amended from time to time.

“Security Incident” means 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 information relating to the Project, the Services or this Deed.

“Separable Portion” means a portion of the Services as described in item 8 of the Key Contract Terms or as otherwise directed by the Principal in accordance with clause 1.10(a).

“Service Provider Trust” has the meaning given to it in clause 15.15.

“Service Provider's Representative” means the person nominated in item 4 of the Key Contract Terms as the Service Provider's Representative and any substitute representative notified by the Service Provider under clause 2.

“Services” means the whole of the services to be carried out and completed in accordance with this Deed, including any changes required due to Variations provided for by this Deed, as generally described in item 6 of the Key Contract Terms.

“SOCl Act” means the *Security of Critical Infrastructure Act 2018* (Cth) and any rules or regulations enacted in connection with that Act.

“SOCl Cyber Security Incident” has the same meaning as the meaning given to “cyber security incident” in section 12M of the SOCl Act.

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

“Special Conditions” means any terms or conditions which vary, or are additional to, the General Conditions and are specified in item 26 the Key Contract Terms.

“Specifications” means any specifications attached or referred to in 0.

“Standard of Care” means the standard of skill, diligence, care and expertise in the performance of the Services that would be expected of a professional who regularly acts in the capacity in which the Service Provider is engaged and who possesses the knowledge, skill and experience of a professional services provider qualified to act in that capacity.

“Subcontractor” means a person who supplies work, services, materials, plant, equipment or advice to the Service Provider in connection with the Services (regardless of tier).

“Supplier Report of Engagements” means the report of all Infrastructure Advisory Services related engagements, including daily resource level pricing, which is required from the top 50 Infrastructure Advisory Services Suppliers (by spend) to government on a quarterly basis.

“Supplier Report Template” means the supplier report of engagements template available at buy.nsw.gov.au.

“Third Party IP” means any Intellectual Property Rights subsisting in the Documents provided or made available to the Service Provider by or on behalf of the Principal in connection with this Deed which have been licensed to the Principal and which the Principal has a right to sublicense to the Service Provider to use, reproduce and modify to the extent required for the Services or the Service Provider’s other obligations under this Deed.

“Upper Limiting Fee” means the maximum Fee payable where the Services or part of the Services are payable on a basis of rates, as set out in 0 and as may be adjusted in accordance with this Deed.

“Variation” means any change to the Services, including any addition, increase, decrease, omission, removal to or from the scope of, timing of or requirements for the Services.

“Variation Proposal” means a notice from the Service Provider to the Principal setting out:

- (a) the adjustment (if any) to the Upper Limiting Fee (if applicable) and the Fee to carry out the proposed Variation;
- (b) the particulars of the plant, labour, materials and goods to be used or not used as a result of the proposed Variation; and
- (c) the effect (if any) the proposed Variation will have on the timing for the provision of the Services, including on the Date for Completion.

“Variation Proposal Request” has the meaning in clause 8.1(a).

“Variation Rates” means the rates or other amounts described as the “Variation Rates” in 0.

WHS” means work health and safety.

“WHS Legislation” means the following as it may apply from time to time:

- (a) the *Work Health and Safety Act 2011* (NSW) and the *Work Health and Safety Regulation 2017* (NSW); and
- (b) all other acts, regulations and codes of practice relating to work health and safety which apply in the State in which the Services are being executed.

“Wilful Misconduct” means any conduct, act or omission done or to be done by the Service Provider or any of its Personnel which results from conscious, intentional or reckless disregard of any provision of this Deed or the rights or welfare of those who are or may be affected by that conduct, act or omission; but does not mean errors of judgement, acts, errors or omissions or mistakes made in good faith.

2 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, clause, Schedule or Exhibit is a reference to a party, clause, Schedule or Exhibit 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 otherwise designated as a Business Day), "day" means calendar day and "week" means a period of 7 calendar days;
- (l) where the day on which something is to be done is not a Business Day, that thing must be done on the following Business Day;
- (m) a reference to \$ is to Australian currency;
- (n) 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;
- (o) any reference to "information" will be read as including information, representations, statements, data, samples, calculations, assumptions, deductions, determinations, drawings, design, specifications, models, plans and documents in all forms including any electronic form in which it was generated;
- (p) any reference in this Deed to "the Contract" or "this Contract" will be taken to be a reference to this Deed; and
- (q) unless this Deed expressly states otherwise, each party may give or withhold any consent or approval, or exercise any other right, power, authority, discretion or remedy, under this Deed in its absolute discretion.

SCHEDULE 2 – COMMONWEALTH, NSW GOVERNMENT AND PRINCIPAL REQUIREMENTS

1. NSW Guidelines

This clause 1 only applies if stated in the Key Contract Terms.

1.1 NSW Guidelines

In addition to terms defined in this document, terms used in this clause 1 have the same meaning as is attributed to them in the New South Wales Industrial Relations Guidelines: Building and Construction Procurement (“**NSW Guidelines**”) (September 2017 and updated from time to time). The NSW Guidelines are available at: www.industrialrelations.nsw.gov.au.

1.2 Primary Obligation

- (a) The Service Provider must at all times comply with, and meet any obligations imposed by the NSW Guidelines.
- (b) The Service Provider must notify the CCU and the Principal of any possible non-compliance with the NSW Guidelines and of remedial action taken, within 24 hours of becoming aware of the possible non-compliance.
- (c) Where the Service Provider engages a Subcontractor or consultant, the Service Provider must ensure that the contract imposes on the Subcontractor or consultant equivalent obligations to those in this clause 1 (under the heading NSW Guidelines), including that the Subcontractor or consultant must at all times comply with, and meet any obligations imposed by, the NSW Guidelines.
- (d) The Service Provider must not appoint or engage another party in relation to the Project where that appointment or engagement would breach a sanction imposed on the other party in relation to the NSW Guidelines.

1.3 Access and information

- (a) The Service Provider must maintain adequate records of compliance with the NSW Guidelines by it, its Subcontractors, consultants and related entities.
- (b) The Service Provider must allow, and take reasonable steps to facilitate, NSW Government authorised personnel (including personnel of the CCU) to:
 - (i) enter and have access to sites and premises controlled by the Service Provider, including the project site;
 - (ii) inspect any work, material, machinery, appliance, article or facility;
 - (iii) access information and documents directly related to the Project and not subject to any existing confidentiality or other relevant legal (e.g. privacy law) obligations;
 - (iv) inspect and copy any record relevant to the Project;
 - (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 Guidelines, by the Service Provider, its Subcontractors, consultants and related entities.
- (c) The Service Provider, and its related entities, must agree to, and comply with, a 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.

1.4 Sanctions

- (a) The Service Provider warrants that at the time of entering into this Deed, neither it, nor any of its related entities, are subject to a sanction in connection with the NSW Guidelines that would have precluded it from responding to a procurement process for work to which the NSW Guidelines apply.
- (b) If the Service Provider does not comply with, or fails to meet any obligation imposed by, the NSW Guidelines, a sanction may be imposed against it in connection with the NSW 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 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 Service Provider, or its related entities, in respect of work to which the NSW Guidelines apply.

1.5 Compliance

- (a) The Service Provider bears the cost of ensuring its compliance with the NSW Guidelines, including in respect of any positive steps it is obliged to take to meet its obligations under the NSW Guidelines. The Service Provider is not entitled to make a claim for reimbursement or an extension of time from the Principal or the State of NSW for such costs.
- (b) Compliance with the NSW Guidelines does not relieve the Service Provider from responsibility to perform the Services and any other obligation under this Deed, or from liability for any Non-complying Services in the works or from any other legal liability, whether or not arising from its compliance with the NSW Guidelines.
- (c) Where a change in this Deed or Services is proposed, and that change may, or may be likely to, affect compliance with the NSW Guidelines, the Service Provider must immediately notify the Principal (or nominee) of the change, or likely change and specify:
 - (i) the circumstances of the proposed change;
 - (ii) the extent to which compliance with the NSW Guidelines will be, or is likely to be, affected by the change; and
 - (iii) what steps the Service Provider proposes to take to mitigate any adverse impact of the change (including any amendments it proposes to a Workplace Relations Management Plan or Project Work Health and any applicable Safety Management Plan);

and the Principal will direct the Service Provider as to the course it must adopt within 10 Business Days of receiving notice.

- (d) In this clause 1:

- (i) “**CCU**” means Construction Compliance Unit, the unit established within NSW Industrial Relations to monitor compliance with and receive reports of alleged breaches of the NSW Guidelines.

2. NSW Government Aboriginal Procurement Policy

This clause 2 only applies if stated in the Key Contract Terms.

2.1 Definitions

In this clause 2:

Aboriginal Business means a business that has at least 50 per cent Aboriginal or Torres Strait Islander ownership and that is recognised as such through an appropriate indigenous business verification organisation, including Supply Nation or the NSW Indigenous Chamber of Commerce.

Aboriginal Employees means employees of the Service Provider or its Subcontractor, who are people of Aboriginal or Torres Strait Islander descent as verified by the Service Provider in accordance with guidance provided under the Aboriginal Procurement Policy.

Aboriginal Participation Fund means the “Aboriginal Participation Fund” (or its successors managed by the Department of Education. This fund is designed to target skills and capacity gaps for Aboriginal people and businesses and to build the capacity and capability of Aboriginal businesses in NSW.

Aboriginal Participation Plan means the “Aboriginal Participation Plan” submitted by the Service Provider and approved by the Principal, setting out how the Service Provider will meet the Aboriginal Participation Requirements in respect of the Project and this Deed.

Aboriginal Participation Requirement means the mandatory minimum requirement for Aboriginal participation in the Project as determined by:

- (a) [at least [1.5%] of the APP Contract Value is subcontracted to Aboriginal Businesses; or]
- (b) [at least [1.5%] of the full time equivalent Australian based workforce deployed on the Project are Aboriginal Employees, on average over the term of the Project; or]
- (c) [at least [1.5%] of the APP Contract Value is applied to the cost of education, training or capability building for Aboriginal Employees or Aboriginal Businesses directly contributing to the Project; or]
- (d) [any combination of the following, such that the combined percentages add up to at least [1.5%]:
 - a. a percentage of the APP Contract Value is subcontracted to Aboriginal Businesses;
 - b. a percentage of the full time equivalent Australian based workforce deployed on the Project are Aboriginal Employees, on average over the term of the Project; and
 - c. a percentage of the APP Contract Value is applied to the cost of education, training or capability building for Aboriginal Employees or Aboriginal Businesses directly contributing to the Project.]

Aboriginal Procurement Policy means the NSW government’s “Aboriginal Procurement Policy” and published at <https://buy.nsw.gov.au/policy-library/policies/aboriginal-procurement-policy> (as updated, amended or varied from time to time).

Actual Aboriginal Participation means the percentage of actual Aboriginal participation in the Project, as determined by combining:

- (a) [the percentage of the APP Contract Value that is subcontracted to Aboriginal Businesses;]
- (b) [the percentage of the full time equivalent Australian based workforce deployed on the Project who are Aboriginal Employees, on average over the term of the Project; and]
- (c) [the percentage of the APP Contract Value that is applied to the cost of education, training or capability building for Aboriginal Employees or Aboriginal Businesses directly contributing to the Project.]

APP Contract Value means the total amount payable by the Principal under this Deed.

Unmet Percentage means the difference between the [1.5%] Aboriginal Participation Requirement and the Actual Aboriginal Participation in the Project.

2.2 Aboriginal Participation Requirements

- (a) The Service Provider must at all times, comply with, and perform its obligations under this Deed in compliance with the requirements of the Aboriginal Participation Plan and the Aboriginal Participation Requirements.
- (b) The Service Provider:
 - (i) agrees to:
 - A. provide to the Principal, the Aboriginal Participation Plan on commencement of this Deed;
 - B. report every calendar quarter to the Principal, in the format reasonably requested by the Principal, on the Service Provider's progress towards meeting its commitment on the Aboriginal Participation Requirements in accordance with the Aboriginal Participation Plan; and
 - C. submit a final report on or before expiry or termination of this Deed and in the format reasonably requested by the Principal, confirming its compliance with the Aboriginal Participation Plan and the Aboriginal Participation Requirements. If the Service Provider is unable to confirm compliance with the Aboriginal Participation Plan and the Aboriginal Participation Requirements in the final report, the report must include a statement setting out (in reasonable detail) its computations in determining the Actual Aboriginal Participation and Unmet Percentage.
 - (ii) represents and warrants that any report or information it provides to the Principal in relation to its compliance with the Aboriginal Participation Requirements and the Aboriginal Participation Plan is, to the best of its knowledge, complete and accurate.
- (c) If at the time of termination or expiry of this Deed, the Service Provider does not meet the Aboriginal Participation Requirements, the Service Provider must within 30 days of providing the final report under clause 2.2(b)(i)C pay to the Principal, for the Principal to transfer into the Aboriginal Participation Fund, an amount equal to the Unmet Percentage multiplied by the APP Contract Value. If any amounts are not paid by the Service Provider in accordance with this clause 2.2(c), it will constitute a debt due and owing by the Service Provider to the Principal. The Principal may set off any amounts due and owing by the Service Provider to the Principal under this clause 2.2(c) against any amounts due and owing by the Principal to the Service Provider under this Deed.
- (d) The Infrastructure NSW or other NSW Government Entity or an auditor engaged by the Infrastructure NSW or other NSW Government Entity, may at any time conduct an audit of the Service Provider's compliance with the Aboriginal Participation

Requirements or the Service Provider's processes and reporting standards in relation to reports provided under clause 2.2(b). The Service Provider will, and procures that its Subcontractors will, assist and cooperate with the audit in good faith and provide all the necessary information as requested by the NSW Entity, the Principal or the auditor.

- (e) The Service Provider must provide to the Principal any information or other assistance, as reasonably requested by the Principal, to enable the Principal to meet its obligations under the Aboriginal Procurement Policy.
- (f) The obligations of the Service Provider under this clause 2 survive termination of this Deed.

3. Modern Slavery

3.1 Definitions

In this clause 4:

"Anti-slavery Commissioner" means the Anti-slavery Commissioner appointed under the *Modern Slavery Act 2018* (NSW).

"Information" may include (as applicable) information as to any risks of, actual or suspected occurrences of, and remedial action taken in respect of, Modern Slavery but excludes "personal information" as defined in the *Privacy and Personal Information Protection Act 1998* (NSW) or information which tends to identify individuals.

"Modern Slavery" has the same meaning as in the Modern Slavery Laws and includes slavery, servitude, forced labour, human trafficking, debt bondage, organ trafficking, forced marriage and the exploitation of children.

"Modern Slavery Laws" means, as applicable, the *Modern Slavery Act 2018* (NSW) and the *Modern Slavery Act 2018* (Cth).

"Modern Slavery Offence" has the same meaning as in the *Modern Slavery Act 2018* (NSW).

"Modern Slavery Statement" means a modern slavery statement as required or volunteered under the *Modern Slavery Act 2018* (Cth).

3.2 Compliance

The Service Provider warrants that, as at the date of its execution of this Deed, neither the Service Provider, any entity that it owns or controls or, to the best of its knowledge, any Subcontractor, has been convicted of a Modern Slavery Offence.

3.3 Information

3.3.1 The Service Provider must:

- (a) 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 Laws 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 Service Provider's staff and, so far as these matters are known to the Service Provider, disclosing the source, place and country of origin of goods and services being supplied;

- (b) within 7 days of providing a Modern Slavery Statement to the Commonwealth, provide a copy of that Modern Slavery Statement to the Principal; and
- (c) notify the Principal in writing as soon as it becomes aware of either or both of the following:
 - (i) a material change to any of the Information it has provided to the Principal in relation to Modern Slavery; and
 - (ii) any actual or suspected occurrence of Modern Slavery in its operations or supply chains (or those of any entity that it owns or controls).

3.3.2 The Service Provider may provide any Information or report requested by the Principal in the form of a previously-prepared statement or re-purposed report, for example a statement provided in response to a similar request for information from another Australian public sector agency, or refer the Principal to its publicly available Modern Slavery Statement, provided that such statement or report provides generally the same Information as that sought by the Principal.

3.3.3 The Service Provider must, during the term of this Deed and for a further period of seven (7) years:

- (a) maintain; and
- (b) upon the Principal's reasonable request, give the Principal access to, and/or copies of, a complete set of records in the possession or control of the Service Provider to trace, so far as practicable, the supply chain of all goods and services provided under this Deed and to enable the Principal to assess the Service Provider's compliance with this clause 4.

3.4 Modern Slavery due diligence

The Service Provider must take reasonable steps to ensure that:

- (a) Modern Slavery is not occurring in the operations and supply chains of the Service Provider and any entity that it owns or controls; and
- (b) it does not use, nor procure, any goods, plant, equipment or other materials and work or services that are the product of Modern Slavery.

3.5 Subcontractors

The Service Provider must take reasonable steps to ensure that all subcontracts of the whole or part of this Deed contain Modern Slavery provisions that are reasonably consistent with the provisions in this clause 4, having regard to the nature of the procurement.

3.6 Response to Modern Slavery incident

3.6.1 If the Service Provider becomes aware of any actual or suspected occurrence of Modern Slavery in its operations or supply chains (or in those of any entity that it owns or controls), the Service Provider must take reasonable steps to respond to and address the occurrence in accordance with any internal Modern Slavery strategy and procedures of the Service Provider and any relevant Code of Practice/Conduct or other guidance issued by the Anti-slavery Commissioner or (if the Principal notifies the Service Provider that it requires the Service Provider to comply with the relevant NSW Procurement Board Code/guidance) by the NSW Procurement Board.

3.6.2 Any action taken by the Service Provider under clause 4.6.1 will not affect any rights of the Principal under this Deed, including its rights under clause 3.7.

3.7 Termination on ground of Modern Slavery

In addition to any other right or remedy of the Principal under this Deed or at law, including rights of termination, or rights to damages, the Principal may, in its sole discretion, terminate this Deed, upon written notice, with immediate effect and without any requirement to pay compensation in respect of such termination (other than payment for work performed by the Service Provider under this Deed and unpaid up until the date of termination), on any one or more of the following grounds:

- (a) The Service Provider has failed to disclose to the Principal, prior to execution of this Deed, that the Service Provider, or any entity owned or controlled by the Service Provider, has been convicted of a Modern Slavery Offence;
- (b) The Service Provider, or any entity owned or controlled by the Service Provider, is convicted of a Modern Slavery Offence during the term of this Deed;
- (c) In the Principal's reasonable view, the Service Provider has failed to notify the Principal as soon as it became aware of an actual or suspected occurrence of Modern Slavery in its operations or supply chains (or in those of any entity that it owns or controls);
- (d) In the Principal's reasonable view, the Service Provider has failed to take reasonable steps to respond to and address an actual or suspected occurrence of Modern Slavery in its operations or supply chains (or in those of any entity that it owns or controls); or
- (e) In the Principal's reasonable view, the Service Provider has otherwise committed a substantial breach (including multiple minor (non-trivial) breaches) of clause 4.2 or clause 4.3.

SCHEDULE 3 – SCOPE OF SERVICES

Scope of Services are inclusive of the Services Brief from the RFQ process and Populous response documentation to the RFQ. The assumptions and exclusions set out in the Populous response documentation form part of this Schedule.

Architect Services Brief

Background

Infrastructure NSW (INSW) received a Project Authorisation Order on 28 June 2022 authorising it to carry out the Penrith Football Stadium Refurbishment project. On 12 July 2023, the NSW Government committed to a \$309 million refurbishment of the existing Penrith Stadium. This commitment follows the December 2021 announcement of \$309 million for the onsite redevelopment of Penrith Stadium. This is a gross 'not to exceed' budget amount (total project cost) and since December 2021, inflation and construction escalation costs mean the \$309 million will now only cover a partial refurbishment and not a full redevelopment. The construction cost, project development costs and management costs must fit within this budget.

Elements to be included in the budget include:

Upgrade of the existing stadium, responding to community and stakeholder feedback and achieving wider community benefits.

An 'optimised' scope based on the Preferred Reference Design (refer Appendix A) approved by the Minister's Office in December 2023 (see 'Current Status' below for more details). This design will be subject to design development, detailed design and value management.

Construction costs, margins and adjustments, design and construction contingencies, escalation, delivery costs, operator management costs, planning costs, some fit out and compensation and/or relocation costs payable to affected parties.

Objectives of the proposed refurbishment include:

Improve the spectator experience with new seating and improved sightlines to the field of play

Deliver a multi-use contemporary rectangular venue that meets the needs of patrons, hirers and other users for rugby, football, concerts and other new forms of entertainment

Provide new and refurbished corporate areas, members areas and general admission areas to enhance the patron experience

Promote universal accessibility, safety and security such that the stadium is welcoming, inclusive and safe for all stadium users, including persons requiring universal access

Enhance the spectator experience through improved food and beverage and amenities

Activate a precinct that operates not only on event days, but throughout the week via public access.

Develop a design that maximises the use of the approved budget for this project, but conceptually can be expanded in future years to eventually deliver a fully seated stadium.

Current Status

A scoping study was completed in November 2023 setting out a preferred scheme (the Preferred Reference Design) for the upgrade to Penrith Stadium. This scheme includes:

Demolishing and rebuilding the western grandstand

Substantially demolishing and rebuilding the eastern grandstand

Retaining the northern and southern hills

Repurposing the training oval to the west of the stadium for player warm up, car parking and event day activation and non-event day public recreation.

The Reference Design has been determined to provide the greatest number of additional seats, in locations that provide the best opportunity for spectator viewing and commercial returns (west and east grandstands), across a range of sport and entertainment types.

In addition, the Reference Design maintains the character of the ground by keeping the northern and southern hills and maintains capacity for Panthers members seating in the western grandstand – both strongly advocated for during public consultation.

New toilets, food and beverage facilities, upgraded accessible seating and Disability Discrimination Act facilities, improved changerooms and sport facilities for women are also key features of this scheme.

Venues NSW as the nominated future operator have endorsed the proposed mix of seats and facilities based on the current level of design.

To minimise the impact on the stakeholders and current users of Penrith Stadium, key dates need to coincide with the start and finish of NRL seasons. Specifically, the last NRL match at the stadium for the 2024 season will be approximately mid-September, with construction commencing as soon as possible following the end of the 2024 NRL season.

INSW is on track to secure planning approval and to procure a suitable contractor ready to commence on-site in September 2024. Construction is currently estimated to conclude in mid 2026. However, the target is to complete construction as close as possible to March 2026 for the start of the 2026 NRL season.

INSW will work with the Office of Sport (OoS), Venues NSW (VNSW) and associated stakeholders, including Penrith Panthers and Penrith City Council, to progress the approved redevelopment.

Project Phases

Procurement

INSW will run an independent procurement process for the Architect and Landscape Architect and novate the selected parties to the successful Main Works Contractor.

The Main Works tender process will be in two stages, firstly an EOI, followed by a select tender. There will also be an Early Works package that will be procured independently to the Main Works.

Design Development

Design Development is the first task for the selected Architect and involves a 10-week period of design. This will enable review and refinement of the Reference Design and preparation of appropriate tender documentation, as well as materials to support the preparation of the SSDA. There will be a need for site visits at Penrith stadium and some face to face workshops with INSW, VNSW and stakeholders (the quantum of workshops to be proposed in your methodology).

Presentations to the State Design Review Panel (SDRP) as well as a NSW Treasury Assurance deep dive will occur in this period.

A separate Early Works package defining services diversions and demolition will be required ahead of the tender for the Main Works package.

Main Works Tender

The Main Works Tender is expected to be a select tender of 3, preparing a design development and construct tender submission over approximately 12 weeks. The selected Architect will be required to support the Main Works Tender.

Mobilisation and Early Works

Subject to INSW procurement and the construction methodology and program of the selected contractor, the mobilisation and early works phases will focus on activities that can be undertaken to plan, design, purchase materials and prepare the site ahead of the main works on site.

Construction

The construction phase will be driven as per the Contractor's scope of works, programme and any staging that is agreed.

Commissioning and Handover

Following practical completion there will be a period of handover and commissioning with the operator.

Scope of Services

Introduction - Overview

The service provider is responsible for the provision of architectural design services to support the Penrith Football Stadium Refurbishment Project. An overview of the Scope of Services includes, but is not limited to:

Provide an architectural design solution for the Project which meets the project objectives, client project requirements, sporting code requirements, key stakeholder's requirements and any other requirements as directed by the Project Director.

Provide an architectural design solution for the Project which minimises operational cost for the operator (VNSW).

Ensure the design solution is flexible, future proofed and creates a platform for fan experience appropriate to a 'Tier 3' suburban stadium, similar to or slightly below that achieved at Bankwest Stadium.

Ensure the design solution provides revenue opportunity consistent with the Client's project requirements.

Allowance should be made for client and stakeholder reviews and sign-off at each stage of design.

Plan, design, and document all architectural components throughout the duration of the Project to ensure they are functional, achieve the design intent and meet budget expectations. In order to meet budget expectations, the project will use the concept of 'Core Scope' and 'Optional Scope' to help maximise the use of the project budget.

Complete the architectural design including all interior design fit out and FF&E selection under the direction of the Main Works Contractor.

Complete the Principal's Requirements (Project Brief) in collaboration with INSW and Venues NSW.

This scope is for architectural design. All supporting engineering and other consulting services will be provided by INSW and/or the Main Works tenderers/selected contractor.

The design development and detailed design must be aligned with the Principal's Requirements (Project Brief) and be within the construction budget.

Deliverables for Design Development Phase

Prior to the Main Works tender, the Architect will undertake a 10-week period of design development. This period will enable:

Review and refinement of the Reference Design

Preparation of appropriate Main Works tender documentation

Materials to support the preparation of the SSDA.

Note that the Main Works tender documents will be a design development of the SSDA Environmental Impact Statement (EIS) documents.

Preparation and delivery of a presentation to the State Design Review Panel (SDRP)

Preparation and participation in a NSW Treasury 'Assurance deep dive'

Preparation of documentation for an Early Works tender package of services diversions and demolition.

Deliverables for Main Works Tender Phase

As directed by Projects NSW, the Architect will provide support to the Tenderers (x3) including high level design and documentation for this Phase, technical capability to the Contractor in support of the tender finalisation process, deliverables include, but are not limited to:

Participate in workshops, design interactives (assume weekly coordination meetings, 2 x half day workshops, 3 design interactives x 3 tenderers) and progressive design reviews (allow for 2 reviews per tenderer i.e. 2 x3) with the Tenderers

Assist the Tenderers with interpretation and response to the Project Brief as requested

Coordinate with all design discipline consultants (part of the Tenderer's design teams) to ensure all other design disciplines are coordinated with the architectural design

Participate and assist in value management to enable the Tenderers to finalise tender requirements

Coordinate and incorporate statutory and regulatory requirements within the design to enable the Tenderers to finalise tender requirements

Assist the Tenderers with design verifications and minor design optioneering as required.

Deliverables for Mobilisation and Early Works, Construction and Commissioning and Handover Phases

The Architect will be novated to the Contractor for the Mobilisation and Early Works, Construction, and Commissioning and Handover Phases. Deliverables will include:

Developed design documentation to a 100% complete design to enable the Contractor to finalise Approved for Construction (AFC) and Issued for Construction (IFC) documentation

Participate in progressive design reviews and coordination meetings as required by the Contractor

Assist the Contractor with engagement with required stakeholders and the venue operator

Assist the Contractor with client approval on developed design and documentation

Finalise and coordinate all trade package documentation and specifications, approved for construction

Participate and assist in value management to enable the Contractor to finalise AFC documentation

Liaison with sub-contractors as requested

Assist with relevant design verifications for construction certification and approvals

Respond as required to requests for information

Review all appropriate samples as required

Review shop drawings where appropriate as required

Provide input into progress reports as required

Provide periodic defect list reports as required

Attend site inspections as required

Inspection of the works prior to completion and preparation of final defects list

Assist the Contractor in the preparation of operation and maintenance manuals

Provide final certification and as built drawings

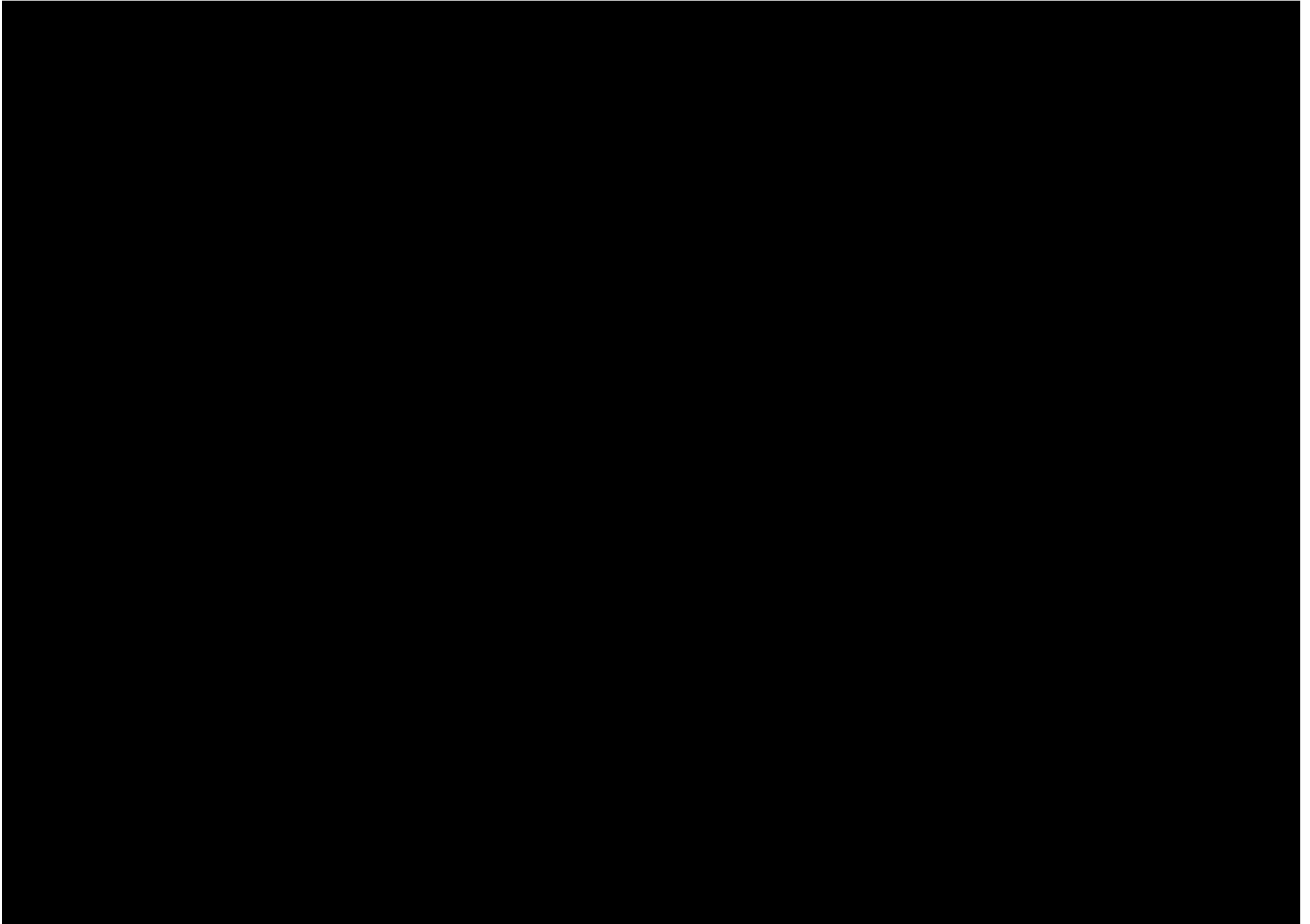
New and refurbish building design base scope work to be provided in BIM format to a minimum of LOD 300 (LOD350-400 is desirable for special fabrication elements), with inputs provided by subcontractors and suppliers as required (further verification of the accuracy of this data input to be provided by others)

Existing building retained areas to be provided in BIM format to a minimum of LOD 300, with inputs provided by existing building survey, subcontractors and suppliers as required (further verification of the accuracy of this data input to be provided by others).

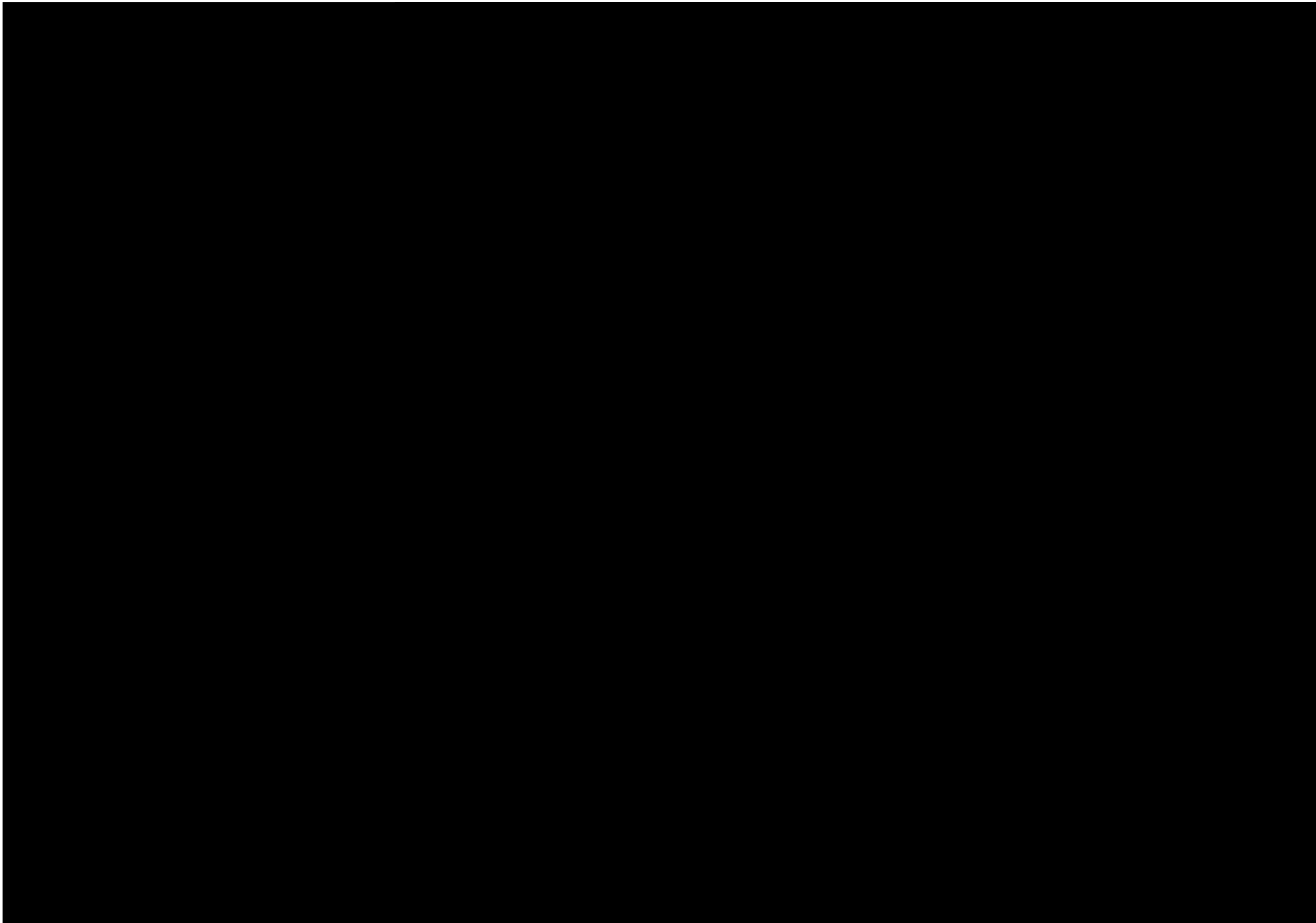
Populous RFQ Response

Noting the Populous response to the RFQ INSW 2400079 dated 27/02/2024 and its contents form part of and supersede this Scope of Services to the extent of any inconsistency, the following are summarised below:

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Appendix 3

Fee Details

Prepared for INSW

February 27, 2024

PLEASE FILL YELLOW HIGHLIGHTED CELLS ONLY

Pricing Schedule for RFT: INSW

[POPULOUS NOTE]
 Please note the pricing schedule is a combination of resource rates, hours plus disbursements allocation per stage. Tasks relating to disbursement cost are shown in red.
 Refer to Inclusions, Options, Assumptions & Exclusions tab for further detail

Key Deliverables		
S.No	Breakdown of Tasks	Price (excl. GST)
1	Stage 1: Design Development, Brief, DA	
1a	Confirmation and documentation of design fundamentals including pitch size, seating bowls, hospitality & premium products, grids and roofs, and sewer relocation	
1b	Resolution of critical design items, including the seating bowl and concourse, facade, roof and supporting superstructure, MEP/ESD requirements, planning and public domain	
1b	Design Strategies and Scope Definition for tender, including interiors, fire, thermal and acoustic, typical wall sections & elevations, and wayfinding and signage concepts	
1b	Preparation of Main Works Tender Documentation	
1c	Preparation of the Project Brief for 50%, 90% & 100% Submission	
1d	Materials to support SSDA preparation	
1e	Preparation and delivery of State Design Review Panel (SDRP) Presentation	
1f	Preparation and participation in NSW Treasury Assurance 'Deep Dive'	
1g	Preparation of documentation for Early Works tender package of services diversions and demolition	
1h	BIM Model 100-200	
1i	Estimate of FCAD & Ngurra Costs	
1j	Estimate of Specification Costs	
1k	Estimate of Travel Costs	
2	Stage 2: Main Works Tender Contractor Interactives	
2a	Participation in Workshops, Design Interactives and Progressive Design Reviews with Tenderers	
2b	Assist the Tenderers with interpretation and response to the Project Brief as requested	
2c	Architectural design coordination with all design discipline consultants	
2d	Participation and assistance in Value Management to finalise tender requirements	
2e	Coordination and incorporation of statutory and regulatory requirements within the design	
2f	Assist the Tenderers with design verifications and minor design optioneering as required	
2g	BIM Model LOD 100-200	
2h	Estimate of FCAD & Ngurra Costs	
2i	Estimate of Travel Costs	
3	Stage 3: Main Works Design, Early Works & Construction Docs	
3a	Developed design documentation to 100% complete design for AFC and IFC documentation	
3b	Participate in progressive design reviews and coordination meetings as required	
3c	Assist contractor with engagement of required stakeholders and the venue operator	
3d	Assist contractor with client approval on developed design and documentation	
3e	Finalise and coordinate all trade package documentation and specifications, approved for construction	
3f	Participate and assist in Value Management to enable contractor to finalise AFC documentation	
3g	Liaison with sub-contractors as requested	
3h	BIM Model LOD 300	
3i	Estimate of Ngurra Costs	
3j	Estimate of Specification Costs	
3k	Estimate of Travel Costs	
4	Stage 4: Construction Site Services	
4a	Assist with design verifications for construction certification and approvals	
4b	Respond to RFIs as required	
4c	Review all appropriate samples as required	
4d	Review shop drawings where appropriate as required	
4e	Provide input into progress reports as required	
4f	Provide periodic defect list reports as required	
4g	Attend site observation walks as required	
4h	Estimate of Specification Costs	
4i	Estimate of Travel Costs	
5	Stage 5: Defects, Commissioning & Operational Readiness	
5a	Inspection of works prior to completion and preparation of final defects list	
5b	Assist contractor in the preparation of operation and maintenance manuals	
5c	Assist the contractor with Final Certification	
5d	Completion of a Record Set of Drawings	
5e	BIM Model LOD 300 (LOD350-400 is desirable for special fabrication elements), with inputs and verifications of accuracy provided by others	
5f	Estimate of Travel Costs	
	Total Upper Limiting Fees (ex GST)	\$ -6,942,665.00

PLEASE FILL YELLOW HIGHLIGHTED CELLS ONLY					
Hourly Rates of Nominated Resources					
Key Deliverables Task/s	*Resource Type	Name of the Nominated Person	Hours Allocated	% of Resource allocation	Hourly Rate (\$), excl. GST
Stage 1: Design Development, Brief, DA	Partner			2.3%	
	Director			16.8%	
	Sr Manager			2.9%	
	Manager			13.7%	
	Sr Consultant			12.2%	
	Consultant			10.9%	
	Analyst			41.1%	
Stage 2: Main Works Tender Contractor Interactives	Partner			4.1%	
	Director			24.3%	
	Sr Manager			0.0%	
	Manager			10.0%	
	Sr Consultant			10.7%	
	Consultant			13.4%	
	Analyst			37.5%	
Stage 3: Main Works Design, Early Works & Construction Docs	Partner			0.5%	
	Director			14.1%	
	Sr Manager			5.6%	
	Manager			8.3%	
	Sr Consultant			14.7%	
	Consultant			6.2%	
	Analyst			50.5%	
Stage 4: Construction Site Services	Partner			0.9%	
	Director			12.3%	
	Sr Manager			9.8%	
	Manager			18.0%	
	Sr Consultant			24.6%	
	Consultant			2.6%	
	Analyst			31.8%	
Stage 5: Defects, Commissioning & Operational Readiness	Partner			1.7%	
	Director			17.3%	
	Sr Manager			13.0%	
	Manager			21.6%	
	Sr Consultant			34.6%	
	Consultant			5.3%	
Analyst			6.6%		
Total Hours					

Please repeat the above for Stage 3, Stage 4, Stage 5 and Stage 6
 Please Don't change the formula in Column H and fill in Details in cells highlighted Yellow
 If you are not using a particular Resource Type for a Stage, please leave that row blank.
 *Resources Types and Definition are provided in the table below for Proponents to refer

Resource Type	Description	Minimum years of relevant experience
Partner	Senior management member	12
Director	Management member with deep expertise	10
Senior Manager	Senior employee with significant specialist expertise and team leadership capabilities	8
Manager	Junior level of entity management, specialist technical and subject matter expertise; manages assignment schedules and resource allocation	6
Senior Consultant	Field leadership role, moderate level of technical and subject matter expertise; provides business system advice and consulting services	4
Consultant	Performs detailed data and systems analysis, identifies risks, gathers additional data, interprets data and provides recommendations for improvement. Higher level technical skills, broader experience base, business process & industry knowledge and requiring less supervision than an analyst	2
Analyst	Performs data gathering and analysis with strong technical skills. Low level of industry knowledge. Supervised by more senior members.	0 - 4

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Proposed Payment Plan

[POPULOUS NOTE]
Please note disbursements are included in payment milestones below.

Milestone (Key deliverable or task completed)	Amount of Payment (ex GST)	Invoicing Month	% of Total Upper Limiting Fees
Stage 1			
			TOTAL

* Proponents to specify which stage or tasks they intend to invoice WCAA for.
e.g If Proponent intends to invoice the whole of Stage 1, then write Stage 1 in cell 5C
or If Proponent intends to invoice few tasks of Stage 1 , you may fill 1a, 1b and 1c
based on the work completed.

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SCHEDULE 4 – SPECIFICATIONS

Not used

SCHEDULE 5 – FEE**Part A - Fee**

The Fee is to be calculated:

As an upper limiting fee

Lump Sum

\$6,942,665.00 (excl. GST)

Part B – Expenses

The Service Provider will only be entitled to reimbursement of the following expenses:

Nil

Part C - Variation Rates

The Variation Rates are as follows:

The Variation Rates are to be in accordance with the Hourly Rates of Nominated Resources set out in the Populous RFP Pricing Schedule (or otherwise by agreement).

The Parties agree that the above Variation Rates shall escalate each year from 4 December 2026 (the estimated completion date), by agreement, with updated rates effective from 4 December 2026.

SCHEDULE 6 – INDIGENOUS CULTURAL INTELLECTUAL PROPERTY

1 Defined Terms

- (a) Any capitalised terms not defined in this Schedule 6 have the same meaning as in Schedule 1 of the Deed.
- (b) For the purposes of this Schedule 6:

Aboriginal Person(s)* means any Aboriginal person(s) who asserts and expresses their ICIP rights and interest.

*[*Note to Principal staff & Service Provider: To honour the principle of self-determination, this definition does not prescribe which terminology is used to describe, define or name the relevant Aboriginal person(s). The Department respects the rights of the Aboriginal person(s) to define themselves and the terminology or naming conventions used in describing themselves. Use of the term 'Aboriginal person(s)' in the context of this document is intended to be inclusive of all definitions, terms and naming conventions provided by the Aboriginal person(s) who are asserting and expressing their ICIP rights and interests. Some examples include, but are not limited to, Aboriginal, Indigenous, Aboriginal & Torres Strait Islander, First Nations, First Peoples, Traditional Owner, Traditional Custodian, Cultural Authority, Knowledge Holder, Elder or any other variation.]*

Background IP means Intellectual Property Rights which remain the property of the Service Provider under clause 3.3 of the General Conditions and for the purposes of this Schedule 6, does not include ICIP.

Best Practice ICIP Guidelines means the Aboriginal Affairs NSW Aboriginal Cultural and Intellectual Property Protocol, as amended from time to time, available at https://www.aboriginalaffairs.nsw.gov.au/media/website_pages/our-agency/staying-accountable/aboriginal-cultural-and-intellectual-property-acip-protocol/AANSW-Aboriginal-Cultural-and-Intellectual-Property-ICIP-Protocol.pdf.

ICIP Protocols means the Principal's ICIP protocols, as notified to the Service Provider.

Indigenous Cultural and Intellectual Property or ICIP means the cultural heritage, traditional knowledge and traditional cultural expressions belonging to Aboriginal peoples as referred to in Article 31 of the United Nations Declaration on the Rights of Indigenous Peoples. Cultural heritage, traditional knowledge and traditional cultural expression comprises all objects, sites and knowledge, the nature or use of which has been transmitted or continues to be transmitted from generation to generation, and which is regarded as pertaining to particular Aboriginal peoples or their territory. ICIP includes:

- (a) cultural knowledge (knowledge of Country and what healthy Country looks like, ecological knowledge, scientific, agricultural, technical knowledge, ritual knowledge);
- (b) traditional cultural expression (traditional land management practices, stories of Country, art, architecture, designs and symbols and literature);
- (c) languages (including oral or written language words);
- (d) performances (ceremonies, dance and song);
- (e) cultural objects (including, but not limited to arts, crafts, ceramics, jewellery, weapons, tools, visual arts, photographs, textiles, contemporary art practices);
- (f) human remains and tissues;
- (g) places, sacred and historically significant sites and burial grounds;
- (h) the secret and sacred material and information (including sacred/historically significant sites and burial grounds); and

- (i) documentation of Aboriginal peoples' heritage in all forms of media such as films, sound recordings, photographs, books, reports, records, digital databases and includes documentation taken by others.

Specified Acts for ICIP means any of the following classes or types of acts or omissions undertaken by or on behalf of the parties:

- (a) using, reproducing or adapting all or any ICIP in the Deliverables; or
- (b) using ICIP in the proposed context of the Deliverables,

but does not include false attribution of ownership or custodianship.

2 ICIP generally

- (a) The parties acknowledge that, as at the Commencement Date:
 - (i) the best practice guidelines for the management of ICIP are set out in the Best Practice ICIP Guidelines; and
 - (ii) the Principal may update the Best Practice ICIP Guidelines from time to time.
- (b) The Principal may by notice in writing to the Service Provider require the Service Provider to comply with all or part of the Best Practice ICIP Guidelines, in addition to any other requirements in this Schedule 6.
- (c) The parties agree that nothing in this Deed affects the ownership of any ICIP collected or obtained in the course of performing the Services.
- (d) Prior to performing any Specified Acts for ICIP with any ICIP collected or obtained in the course of performing the Services, the Service Provider agree that if the Principal:
 - (i) has implemented ICIP Protocols, the Service Provider will adhere to those ICIP Protocols; or
 - (ii) has not implemented ICIP Protocols, the Service Provider will collect or obtain and use the relevant ICIP in accordance with the principles in this Annexure A Part 1.
- (e) Without limitation to clause 2(d), prior to any Specified Acts for ICIP the Principal may request the Service Provider to provide an ICIP plan outlining the process for managing ICIP under this Deed, which must relevantly consider the principles outlined in Annexure A (**ICIP Management Plan**), for the Principal's approval.
- (f) If ICIP Protocols apply, the Service Provider agrees to implement and follow that protocol when performing Specified Acts for ICIP with any ICIP collected or obtained in the course of performing the Services. The Service Provider must:
 - (i) maintain records of implementation of the ICIP protocols, including copies of all consents collected for proposed Specified Acts for ICIP;
 - (ii) upon request, provide the Principal with copies of the consents and other records maintained in accordance with this clause;
 - (iii) if applicable, maintain records of executed uses of the ICIP and how the ICIP was applied in connection with this Deed; and
 - (iv) if applicable, adhere to the ICIP Management Plan.
- (g) To the extent any of ICIP is incorporated into the Deliverables, the Service Provider must:
 - (i) obtain from the relevant Aboriginal Person(s) prior written consent to the Specified Acts for ICIP (whether occurring before or after the consent is given) which extends directly or indirectly to the performance of the Specified Acts for ICIP by the parties;

- (ii) upon request of the Principal, promptly provide a copy of each such consent to the Principal;
 - (iii) ensure that the relevant Aboriginal Person(s) are appropriately attributed for use of their ICIP in accordance with any directions provided by the Aboriginal Person(s);
 - (iv) ensure that the Principal is given prior written notice of any:
 - (A) attribution required by clause 2(g)(iii) by completing the table in clause 2 of Annexure A; or
 - (B) cultural mourning protocol required by completing the table in clause 3 of Annexure A; and
 - (v) not use the ICIP for any other purpose other than as part of performing the Services, or as otherwise contemplated by or in connection with this Deed.
- (h) In addition to the consent obtained under clause 2(g)(i), the Principal may direct the Service Provider, on written notice, to seek consent from the relevant Aboriginal Person(s) for the Commonwealth Government to undertake Specified Acts for ICIP, if the Commonwealth Government have provided funding or otherwise have an interest in the provision of the Services.
- (i) If requested by the Principal, the Service Provider will, at its cost, engage in good faith discussions with the Principal and Aboriginal Person(s) to seek to resolve any dispute regarding use of the ICIP material as contemplated under this Deed. Following such discussions, if directed by the Principal, the Service Provider will make any reasonable adjustments to the Services, at its cost, to resolve the dispute or issue, which may include removal of ICIP material in dispute.
- (j) The parties agree that any secret or sacred information will not be incorporated into the Deliverables or Service Provider's Background IP unless the Service Provider has obtained prior written consent from the relevant Aboriginal Person(s) to the Specified Acts for ICIP on behalf of the Principal. If prior written consent has been obtained by the Service Provider, the Service Provider must notify the Principal in writing of the part of the ICIP that is secret or sacred information, and what restrictions there are on its publication or dissemination.
- (k) Despite any other provisions in this Deed, if the Service Provider has failed to comply with this Schedule 6 then without limitation to any other rights the Principal may have, the Principal may terminate this Deed.

Annexure A

1. ICIP Principles

Principle	Description
<i>Principle 1 – Respect</i>	The rights of Indigenous people and communities to own, protect, maintain, control and benefit from their cultural heritage should be respected.
<i>Principle 2 – Self-determination</i>	Indigenous people have the right to self-determination and to be empowered in decisions that affect their arts and cultural affairs.
<i>Principle 3 – Communication, consultation and consent</i>	Indigenous people have the right to be consulted and give their free prior informed consent for the use of their cultural heritage.
<i>Principle 4 – Interpretation</i>	Indigenous people have the right to be recognised and represented as the primary guardians and interpreters of their cultural heritage.
<i>Principle 5 – Cultural Integrity and authenticity</i>	Maintaining the integrity of cultural heritage is vital to the continued practice of culture.
<i>Principle 6 – Secrecy and confidentiality</i>	Indigenous people have the right to keep secret and sacred their cultural heritage. Confidentiality concerning aspects of Indigenous peoples' personal and cultural affairs should also be respected.
<i>Principle 7 – Attribution</i>	Indigenous people have the right to be respectfully acknowledged and attributed as the traditional owners and custodians of their cultural heritage.
<i>Principle 8 – Benefit Sharing</i>	Indigenous people and communities have the right to benefit from their contribution and for the sharing of their cultural heritage, particularly if commercially applied.
<i>Principle 9 – Continuing Cultures</i>	Indigenous cultures are dynamic and evolving, and the protocols within each group and community will also change. Consultation and free prior informed consent are ongoing processes.
<i>Principle 10 – Recognition and protection</i>	Indigenous people have the right to protection of their cultural heritage and intellectual property rights in that cultural heritage. Laws, policies and contracts should be developed and implemented to respect these rights.

***Credit: True Tracks© Principles, Terri Janke & Company Lawyers and Consultants.**

2. Credit wording / Attribution

The following wording will be used to credit the Aboriginal Person(s) who assert and express their ICIP rights and interests:

Name:	[Insert details]
Description*:	[Insert details]

[*Note to Principal staff & Service Provider: To honour the principle of self-determination, this credit wording and attribution section does not prescribe which terminology is used to describe the relevant Aboriginal person(s). Examples for this section may include: Community Member, Knowledge Holder, Cultural Fire Practitioner. Otherwise, the parties may wish to use "Not applicable".]

3. Cultural Mourning Protocols

The parties respect Aboriginal person(s) and their communities' cultural mourning protocols and agree that in the event of death or incapacitation of the Aboriginal person(s) during the performance of the Services, the Service Provider will discuss with the Principal the ongoing use of the Aboriginal

person(s) name, image, voice, likeness and any biography in connection with this Deed and in consultation with the person nominated in the table below:

Name:	[Insert details]
Relation:	[Insert details]
Address:	[Insert details]
Contact Number:	[Insert details]

SCHEDULE 7 – RELIANCE LETTER**Not used**

Reliance Letter**[Insert date]****To: [enter name of the relevant authority, other contractor or successful tenderer including details of the ACN/ABN and principal place of business]****[INSERT PROJECT NAME] (PROJECT)****RELIANCE LETTER**

- 1 We, [insert name of Service Provider], have been engaged by [insert Principal] (**Principal**) to provide services for the Project (**Services**).
- 2 We have prepared the following reports in accordance with the scope of Services set out in the Infrastructure Advisory Services Contract dated [insert date] (**Deliverables**), a copy of which is attached at Appendix 1:
 - (a) [Deliverables to be inserted].
- 3 As requested by the Principal, you and your related bodies corporate (**You**) may use and rely on the Deliverables as if the Deliverables were expressly addressed to be in favour of You solely for the purpose of [insert a limited and specific purpose for which the relying party can rely upon or use the Deliverables for e.g “assisting You with Your due diligence enquiries of the relevant Project sites”] (**Limited Purpose**).
- 4 We assume no responsibility to You to update the Deliverables in respect of anything that occurs or of which we become aware after the date of issue of the Deliverables. In providing this letter, we are not restating the Deliverables.
- 5 We make no representation about whether the Deliverables are appropriate for the Limited Purpose or the accuracy or completeness of the information used to prepare the Deliverables. It is Your responsibility to ensure the Deliverables are appropriate for the Limited Purpose. We have acted solely in accordance with the instructions of the Principal in preparing the Deliverables and have considered only the interests of the Principal in doing so. The Deliverables may not necessarily address all or any of the specific concerns, purposes, requirements or interests of You or any other third party.
- 6 The Deliverables have been prepared in accordance with the Infrastructure Advisory Services Contract and on the basis of the assumptions and qualifications set out in the Deliverables. The Deliverables are strictly limited to the Infrastructure Advisory Services Contract and do not extend by implication or otherwise to any other matter or interpretation. We disclaim any duty of care to You, other than in relation to the Deliverables prepared in accordance with the Infrastructure Advisory Services Contract. We have not been instructed to advise You or to provide any services to You and we have no fiduciary relationship with You in relation to any matter addressed in the Deliverables or otherwise, other than the express reliance relationship arising under this letter.
- 7 The contents of the Deliverables are limited to the time of drafting [(such time being after the final inspection of the relevant Project sites)] and no earlier than [two calendar months] before the date of the Deliverables. We take no responsibility for any inaccuracies in the Deliverables which have arisen due to changes or works at the Project sites since the Deliverables were drafted [(such time being after the final inspection of the relevant Project sites)] and no earlier than [two calendar months] before the date of the Deliverables.
- 8 The right for You to rely on the Deliverables pursuant to this letter is provided subject to:

- (a) You agreeing that You may only use or rely upon the Deliverables for the Limited Purpose.
- (b) You keeping the Deliverables strictly confidential and not disclosing the Deliverables to any other person or organisation without our prior written consent, except to people or organisations with a specific need to have access to the Deliverables and such disclosure is:
- (i) in the ordinary course of business (including disclosure to auditors and to financial, accounting, technical, environmental, survey and legal advisers) on the basis that any person to whom or organisation to which the Deliverables are disclosed maintains the Deliverables in the strictest confidence and do not disclose the Deliverables to any other person;
 - (ii) required by law, regulation, the rules of any stock exchange, the requirements of a regulatory or self-regulatory body, authority or committee or required in accordance with an official directive or request (whether or not having the force of law) and with which responsible service providers and companies generally comply with in carrying on their business or it is good practice for responsible service providers and companies to comply with; and
 - (iii) in connection with any actual or threatened claim, investigation or litigation or any agreement or debt between You and the Principal or in connection with this letter;
- (c) You agreeing that:
- (i) subject to paragraphs (c)(ii) and (b)(iii) below, our total liability to You arising out of or in connection with the use of or reliance on the Deliverables (however arising, including in negligence) is limited to the amount of [insert amount that either corresponds with or must not be higher than the amount specified in the Key Contract Terms as the Service Provider's limit of liability under clause 9.4].
 - (ii) neither us nor You will be liable to the other for:
 - (i) loss of business opportunity;
 - (ii) loss of goodwill;
 - (iii) loss of contracts;
 - (iv) loss arising from business interruption;
 - (v) loss of or corruption of data except any data provided as part of the Deliverables;
 - (vi) loss of anticipated savings; or
 - (vii) the cost of capital or other financing costs,arising out of or in connection with the use of or reliance on the Deliverables (however arising, including in negligence).
 - (iii) Our liability to You arising out of or in connection with the use of or reliance on the Deliverables (however arising, including in negligence) is unlimited in respect of liability which:
 - A. cannot be limited at law;
 - B. arises out of or in connection with any alleged or actual infringement by us or our subcontractors, officers, employees and agents of the

intellectual property rights of a third party arising in connection with the Deliverables; or

C. is due to the wilful or reckless misconduct, fraud, criminal conduct or negligence of us or our subcontractors, officers, employees and agents.

9 This letter is addressed to You solely for the benefit of You as at the date of this letter. It takes effect immediately on the date the letter is signed by us. You have the benefit of and may enforce this deed poll even though You are not a party to it. This letter and the Deliverables may not be relied on by any other person without our prior consent in writing.

10 If anything in the Deliverables is inconsistent with the terms of this letter, the terms of this letter will prevail.

11 This letter, and our relationship, is governed by and is to be interpreted in accordance with the laws of New South Wales.

EXECUTED AND DELIVERED as a Deed Poll by [insert Service Provider]

Executed as a deed poll in accordance with section 127 of the *Corporations Act 2001*

Director Signature

Director/Secretary Signature

Print Name

Print Name

DATED day of20.....

SCHEDULE 8 – SECURITY OF PAYMENT

1. Payment claim

- (a) Subject to the Service Provider performing the Services, the Principal must pay the Service Provider the Fee and any Expenses for which it is entitled to payment, in accordance with this 0.
- (b) On each Payment Claim Date, the Service Provider may submit to the Principal's Representative a payment claim setting out:
 - (i) details of the Services provided;
 - (ii) the amount claimed in respect of those Services (including by separately identifying an amount claimed in respect of a Variation) calculated in accordance with this Deed; and
 - (iii) any Expenses incurred during the relevant period,in each case as supported by:
 - (iv) a duly completed and signed supporting statement and subcontractor statement in the form contained in 0 (or in any other form requested and/or approved by the Principal's Representative); and
 - (v) such information as the Principal reasonably requires to substantiate the payment claim as notified to the Service Provider prior to the submission of the payment claim.
- (c) Each payment claim must contain the details required by the Principal. All payment claims must be addressed to the Principal and must refer to the Infrastructure Advisory Services Contract No. on the cover page of this Deed.
- (d) Payment claims on a time basis must be for the period up to the Payment Claim Date and accompanied by timesheets and a summary of the Services performed in the time period of the claim.

2. Payment Schedules

- (a) Within 10 Business Days following receipt of a payment claim, the Principal will issue the Service Provider with a payment schedule which identifies the payment claim to which it relates and sets out:
 - (i) the value of the Services completed in accordance with this Deed;
 - (ii) the amount already paid to the Service Provider;
 - (iii) the amount that the Principal is entitled to retain, deduct, withhold or set-off under this Deed;
 - (iv) the amount (if any) which the Principal proposes to pay to the Service Provider;
 - (v) if applicable, the reason why the amount under clause 2(a)(iv) is less than the amount claimed in the payment claim; and
 - (vi) if the reason for the difference is that the Principal is retaining, deducting, withholding or setting-off payment for any reason, the reason for the Principal retaining, deducting, withholding or setting-off payment.

- (b) The failure by the Principal to set out in a payment schedule an amount which it is entitled to retain, deduct, withhold or set off under this Deed will not prejudice its right to subsequently exercise such right.

3. Payments

- (a) The Principal must within 15 Business Days following receipt of a payment claim, pay the amount stated in the payment schedule.
- (b) The making of a payment by the Principal under this clause 3 is not evidence of the value of the Services performed, does not constitute an admission by the Principal that any Services provided by the Service Provider conform with the requirements of this Deed, and is a payment on account only.

SCHEDULE 9– SUPPORTING STATEMENT AND SUBCONTRACTOR’S STATEMENT

Supporting Statement

Construction Contracts

Pursuant to section 13(7) of the *Building and Construction Industry Security of Payment Act 1999 (NSW)* (the **Act**) a supporting statement must accompany any payment claim served on a principal to a construction contract by a head contractor.

This form should be used by a head contractor who has a construction contract that is not an owner-occupier construction contract. If the contract is an owner-occupier construction contract the ‘Supporting Statement – Owner Occupier Construction Contracts’ form should be used instead.

For the purposes of this statement, the terms “principal”, “head contractor”, “subcontractor”, “construction contract” and “owner-occupier construction contract” have the meanings given in section 4 of the Act.

Head contractor (business name of head contractor):	
<input type="checkbox"/> 1. has entered into a contract with: (business name of subcontractor)	
ABN of subcontractor	
Contract number/identifier	
or	
<input type="checkbox"/> 2. has entered into a contract with the subcontractors listed in Schedule 1	
This statement applies to work between (start date)	
or	
This statement applies to work completed in Stage (number) of the construction contract	
Subject of the payment claim dated (date)	

Declaration

I, (full name)

being the head contractor, a director of the head contractor or a person authorised by the head contract or on whose behalf this declaration is made, hereby declare that to the best of my knowledge and belief all subcontractors, if any, have been paid all amounts that have become due and payable in relation to the construction work that is the subject of this payment claim.

These subcontractors and the amounts paid to them are identified in Schedule 1 on page 3.

It is an offence under section 13(7) of the Act for a head contractor to serve a payment claim on the principal, if it is not accompanied by a supporting statement that indicates that it relates to that payment claim. The maximum penalty is \$110,000 for corporations, and \$22,000 for an individual.

It is also an offence under the Act for a head contractor to serve a payment claim accompanied by a supporting statement knowing that the statement is false or misleading in a material particular in the particular circumstances. The maximum penalty is \$110,000 for corporations, and \$22,000 or 3 months imprisonment (or both) for individuals.

Full Name of Individual	
Position/Title	
Signature	
Date	

Schedule 1

List all subcontractors that have been paid all amounts that have become due and payable in relation to the construction work that is the subject of the payment claim which this supporting statement accompanies.

Name of subcontractor	ABN	Contract number/ identifier	Date of works (period or stage)	Date of subcontractor's payment claim

Approved form under *Building and Construction Industry Security of Payment Act 1999* - Section 13(9)

SUBCONTRACTOR'S STATEMENT**REGARDING WORKER'S COMPENSATION, PAYROLL TAX
AND REMUNERATION (NOTE 1)**

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

(Note 4)**(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 the 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*, 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 [in (b)] 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 to the Subcontractor's Statement

These notes have been prepared using the terms in the referenced Acts. Where this Statement is being completed for the purposes of this Deed, (unless the context otherwise requires) 'Subcontractor' means the 'Contractor' and 'Principal Contractor' means the 'Principal'.

1. This form is prepared for the purpose of section 175B of the *Workers Compensation Act 1987* (NSW), Schedule 2 Part 5 of the *Payroll Tax Act 2007* (NSW), 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 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 s127 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 \$7,500 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 Subcontractor to carry out the work. If your business engages a Subcontractor you are to also obtain Subcontractor's Statements from your Subcontractor.

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* (NSW), 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 1987* (NSW) and clause 18 of Schedule 2 of the *Payroll Tax Act 2007* (NSW) 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 SafeWork website <https://www.safework.nsw.gov.au/>, iCare (for Workers Compensation queries) via the iCare web site or NSW Industrial Relations website, <http://www.industrialrelations.nsw.gov.au>
Copies of relevant legislation can be found at www.legislation.nsw.gov.au.

SCHEDULE 10 – CONFIDENTIALITY DEED POLL



Corporate Confidentiality Deed Poll (One way)

Key Details

Corporate Confidentiality Deed Poll made on:	[insert day] day in [insert month] 20_____
By:	Recipient Name: [insert name] (“Recipient”) ABN: [insert ABN] Address: [insert registered address] Attention: [insert name] Email address: [insert email]
In favour of:	[Insert Principal] (ABN [insert ABN]) (“Principal”) Address: [insert address] Attention: [insert name] Email address: [insert email]
Project	[insert Project]
Authorised Purpose: (see clause 2)	[User Instruction: Consider including the highlighted text, or amend as appropriate.] Solely for the purposes of the Recipient performing any services or activities in respect of the Project including: <ol style="list-style-type: none"> Participating in any meetings or briefings that the Principal provides; Receiving and reviewing any Documents provided or made available by or on behalf of the Principal
Continuing obligation (see clause 11)	12 years after the date of this deed poll. [User Instruction: A period of 12 years is the default position. There may be circumstances however where a shorter period is appropriate. If considering a shorter period, please consult further with your Legal team.]

SIGNED, SEALED and DELIVERED as a deed poll by the Recipient in accordance with section 127 of the Corporations Act Signature of Director: _____ Name: _____	Signature of 2 nd Director or Company Secretary: _____ Name: _____
---	--

BACKGROUND

- The Principal intends to provide certain Confidential Information to the Recipient during the course of the Recipient carrying out any services or activities in relation to the Project.
- The parties have agreed that any Confidential Information that is disclosed by the Principal to the Recipient will be disclosed on the terms of this deed poll.

TERMS

3 Dictionary and Interpretation

3.1 Definitions

In this deed poll, except where the context otherwise requires:

Authorised Purpose has the meaning in the Key Details.

Confidential Information is any information (whether in written, oral or electronic form) given to the Recipient or its Representatives by the Principal or anyone on the Principal's behalf, (whether or not owned by the Principal). It includes:

- (a) information acquired by the Recipient or its Representatives in the course of discussions prior to the date of this deed poll in relation to the Project; and
- (b) any information directly or indirectly derived or produced partly or wholly from the Confidential Information including any notes, calculation, conclusion, summary and computer modelling, or other document produced by the Recipient,

whether or not marked as "Commercial in Confidence", "Proprietary" or "Confidential" but does not include Excluded Information.

Excluded Information means any information:

- (c) which the Recipient can prove is in the public domain other than through a breach of this deed poll or an obligation of confidence owed to the Principal;
- (d) which was already lawfully known to the Recipient on a non-confidential basis at the time of disclosure;
- (e) which is provided to the Recipient by another person who is in possession of it lawfully and can lawfully disclose it to the Recipient on a non-confidential basis; or
- (f) independently developed by the Recipient without access to the Confidential Information.

Key Details means the section of this deed poll titled Key Details.

Law means any statute, law, order of a court, tribunal, governmental or regulatory body or the listing rules of ASX Limited.

Personal Information has the same meaning as in the *Privacy and Personal Information Protection Act 1998* (NSW).

Project has the meaning in the Key Details.

Recipient means the party so identified in the Key Details.

Representative includes, in relation to the Recipient, an employee, officer, agent, adviser, director, partner, auditor, contractor or consultant of the Recipient who is authorised to know Confidential Information of the Principal under clause 4.

3.2 Interpretation

The following apply in the interpretation of this deed poll, unless the context requires otherwise.

- (a) A reference to any statute, regulation, rule or similar instrument includes any consolidations, amendments or re-enactments of it, any replacements of it, and any regulation or other statutory instrument issued under it.
- (b) A reference to the singular includes the plural number and vice versa.
- (c) A reference to a party means a person who is named as a party to this deed poll.

- (d) Person includes a firm, corporation, body corporate, unincorporated association and a governmental authority.
- (e) A reference to a party or a person includes that party's or person's executors, legal personal representatives, successors, liquidators, administrators, trustees in bankruptcy and similar officers and, where permitted under this deed poll, their substitutes and assigns.
- (f) An agreement on the part of, or in favour of, two or more persons binds or is for the benefit of them jointly and severally.
- (g) In this deed poll "includes" or "including" is not a word of limitation.
- (h) Where a word or expression has a defined meaning, its other grammatical forms have a corresponding meaning.
- (i) A reference to doing something includes an omission, statement or undertaking (whether or not in writing) and includes executing a document.
- (j) A reference to a clause, schedule or attachment is a reference to a clause of, or a schedule or an attachment to this deed poll.
- (k) A heading is for reference only. It does not affect the meaning or interpretation of this deed.

4 Use of Confidential Information

The Recipient and any Representatives must (in addition to and without limiting the obligations set out in clause 6.1) use the Confidential Information solely for the Authorised Purpose and not for any other purpose, and must not allow any other person to do so without the Principal's written consent.

5 Permitted Disclosure of Confidential Information

5.1 Permitted Disclosure of Confidential Information

The Recipient may disclose Confidential Information:

- (a) to its Representatives, to the extent that each has a need to know the information for the purpose of the Authorised Purpose;
- (b) to the extent required by Law, subject to complying with clause 3.3;
- (c) which is in the public domain other than through a breach of this deed poll or an obligation of confidence owed to the Principal by the Recipient or its Representatives; or
- (d) with the written consent of the Principal.

5.2 Recipient's Representatives

- (a) Prior to the Recipient disclosing Confidential Information to its Representative, the Recipient must ensure that each Representative is fully aware of the confidentiality obligations imposed on the Recipient under this deed poll.
- (b) The Recipient is responsible for its Representatives (whether or not still employed or engaged by the Recipient) and must ensure that its Representatives comply with the obligations under this deed poll as if they were the Recipient. A breach of the provisions of this deed poll caused by an act or omission of a Representative of the Recipient will be deemed to be a breach of this deed poll by the Recipient.

5.3 Disclosure required by Law

If the Recipient is required by Law to disclose any Confidential Information, the Recipient must:

- (a) provide the Principal with sufficient notice to enable it to seek a protective order or other remedy to protect the confidentiality of the Confidential Information; and
- (b) provide all assistance and cooperation which the Principal considers necessary to prevent or minimise the disclosure of the Confidential Information.

6 Protection of Confidential Information

6.1 Recipient to maintain confidence

The Recipient must:

- (a) do everything reasonably necessary to protect and maintain the confidentiality of the Confidential Information;
- (b) establish and maintain comprehensive security measures to ensure that any Confidential Information in its possession, custody or control is secure at all times;
- (c) not do any act or thing (or omit to do any act or thing) involving the use or disclosure of the Confidential Information which may cause loss or damage to the Principal;
- (d) not use or permit the use of the Confidential Information for any purpose other than the Authorised Purpose unless authorised by a separate agreement between the parties and then only to the extent permitted by that agreement;
- (e) not introduce any Confidential Information into any computer system or other device operated, controlled or which may be accessed to any extent by a person other than the Recipient and its Representatives;
- (f) not copy or reproduce the Confidential Information (or any part of it) except to the extent necessary for the Authorised Purpose; and
- (g) notify the Principal promptly if any of its Representatives who have had access to the Confidential Information leave the employment or engagement of the Recipient and ensure such Representatives return all copies of, and no longer have access to, the Confidential Information.

6.2 Inspections

The Recipient consents, and must procure the necessary consents from its Representatives, to such inspections and audits as may be reasonably required by the Principal for the purpose of auditing compliance by the Recipient and its Representatives with the terms of this deed poll.

7 Acknowledgements

7.1 Confidential Information belongs to the Principal

The Recipient acknowledges and agrees that:

- (a) the Confidential Information constitutes valuable and proprietary information of the Principal, or persons acting on its behalf (or other relevant owner of the Confidential Information, if applicable), and that it has no right, title or interest in or to the Confidential Information; and
- (b) this deed poll does not grant to the Recipient any licence or other right in relation to the Confidential Information except as expressly provided in this deed poll.

7.2 Injunctive relief

The Recipient acknowledges that damages are not a sufficient remedy for the Principal for any breach of this deed poll and that in addition to, and without prejudice to, any other remedy that the Principal may have, the Principal is entitled to specific performance or injunctive relief (as appropriate) as a remedy for any breach or threatened breach by the Recipient.

7.3 No obligation to disclose information

Nothing in this deed poll obliges the Principal, or any person acting on its behalf to disclose any particular information to the Recipient or its Representatives. The Principal has an absolute discretion as to which information is disclosed.

8 Return of Confidential Information

8.1 Return of Confidential Information

If requested by the Principal, the Recipient must:

- (a) return to the Principal all copies of Confidential Information (in tangible form) in the possession, custody or control of the Recipient and its Representatives;
- (b) securely and appropriately, destroy and erase all copies of the Confidential Information (whether in tangible or intangible form) from any computer system or other device operated, controlled or which may be accessed by the Recipient and its Representatives; and
- (c) provide a statutory declaration to the Principal that this clause 6.1 has been complied with in all respects.

8.2 No release from obligations

The return, destruction or erasure of the Confidential Information referred to in clauses (a) and (b) does not release the Recipient or its Representatives from their obligations under this deed poll.

9 Breach of confidentiality obligations

9.1 When breach occurs

The Recipient must immediately notify the Principal of, and take all steps necessary to prevent, any actual, threatened or suspected breach of this deed poll by the Recipient or its Representatives and comply with any directions issued by a duly authorised representative of the Principal regarding any unauthorised use or disclosure of the Confidential Information by the Recipient.

9.2 Provide assistance

The Recipient must provide such assistance as may be reasonably requested by the Principal in relation to any claim or proceedings that the Principal may take against any third party for unauthorised use or disclosure of the Confidential Information.

10 Notices

10.1 Notice Requirements

Any notice given in connection with this deed poll must be in writing, marked to the attention of the person identified on the front page of this deed poll and must either be:

- (a) hand delivered or sent by prepaid post to the relevant address set out in the Key Details; or,
- (b) sent by email to the relevant email address set out in the Key Details.

However, if a party is notified of a changed address or email address, then the notice must be sent to that address or email address.

10.2 When given

A notice is taken to have been given:

- (a) in the case of being hand delivered, on the date on which it is delivered;

- (b) in the case of being sent by prepaid post, 2 Business Days after the date of posting (or 7 Business Days after the date of posting if posted to or from a place outside Australia); and
- (c) in the case of delivery by email, at the time sent, unless the sender is notified, by a system or person involved in the delivery of the email, that the email was not successfully sent.

11 Personal Information

The Confidential Information may include Personal Information. In addition to any other obligations the Recipient may have under any Law or under this deed poll, the Recipient agrees to:

- (a) take all necessary measures to ensure that Personal Information in its possession or control in connection with this deed poll is protected against loss and unauthorised access, use, modification and disclosure; and
- (b) comply with the *Privacy and Personal Information Protection Act 1988* (NSW) as though the Recipient were a “public sector agency” as defined in that Act.

12 No representation or warranties given

12.1 No representation or warranties given

The Recipient acknowledges that neither the Principal nor any person acting for or on the Principal's behalf:

- (a) has made nor makes any representation or warranty, express or implied, as to the accuracy, content, legality or completeness of the Confidential Information;
- (b) is under any obligation to notify the Recipient or provide any further information to the Recipient if it becomes aware of any inaccuracy, incompleteness or change in the Confidential Information; or
- (c) has made or makes any representation or warranty, express or implied that the Confidential Information does not infringe the intellectual property rights or any other right of any person.

12.2 Disclaimer by the Principal

To the maximum extent permitted by Law, the Principal and all persons acting on the Principal's behalf disclaim all liability for any loss or damage (whether foreseeable or not) suffered by any person using, disclosing or acting on any Confidential Information disclosed by the Principal or any person acting on the Principal's behalf.

13 Continuing obligation

This deed poll ends after the period stated in the Key Details unless:

- (a) the Principal notifies the Recipient in writing that it ends;
- (b) it is replaced by a later deed poll or agreement which protects the Confidential Information to the same or similar degree; or
- (c) the Confidential Information is no longer confidential (but not through a breach of this deed poll).

14 General

14.1 Further assurance

Each party must do everything necessary, or reasonably required, by another party, to give effect to this deed poll and the transactions contemplated by this deed poll.

14.2 Assignment

Without limiting or otherwise restricting any Law, the Recipient must not assign its rights or obligations under this deed poll without the prior written consent of a duly authorised representative of the Principal.

14.3 Amendments

This deed poll may only be varied by a document signed by or on behalf of each party.

14.4 No waiver

Failure by the Principal to enforce or compel performance of any term or condition of this deed poll does not constitute a waiver of that term or condition and does not impair the right of the Principal to enforce it at a later time or to pursue remedies it may have for any subsequent breach of that term and condition.

14.5 Waiver

A waiver is effective only if in writing and signed by or on behalf of the party to be bound and is effective to the extent that the party giving it expressly states in writing.

14.6 Cost of compliance

Each party is responsible for any cost of complying with its obligations in connection with this deed poll.

14.7 Governing Law and Jurisdiction

This deed poll is governed by the laws in force in New South Wales. Each party submits to the exclusive jurisdiction of the courts of New South Wales.

SCHEDULE 11 – Expert Determination Agreement

(Clause 13.5(c))

Expert Determination Agreement made at [place] **on** [date]

Parties [Insert Principal] (ABN [Insert ABN]), [insert address of the Principal] (**Principal**)
[Insert name, ABN/ACN and address of Service Provider] (**Service Provider**)
[Insert name and address of Expert agreed between the Parties or appointed pursuant to clause [13.5] of the Contract] (**Expert**)

Background

- A. The Principal and the Service Provider (together "**the Parties**" and each "**a Party**") are parties to a contract (**Contract**) for [Insert].
- B. In accordance with clause 13.5 of the Contract, the [Insert the Principal or Service Provider as applicable] has required that the matter described in Appendix 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 [insert] of the Contract ("**Matter**").
- C. Pursuant to clause [insert] 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 Appendix 2; and
 - (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 the determination, or any particular 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 Appendix 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 Appendix 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 State of New South Wales.

7. Jurisdiction

- (a) The Parties and the Expert irrevocably submit to the non-exclusive jurisdiction of the courts of the State of New South Wales and the New South Wales courts to which the appeals from those courts may be made.
- (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).

Appendix 1 - The Matter

[To be inserted]

Appendix 2 - Rules for Expert Determination Process

1. Commencement

- 1.1 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 Within 5 Business Days after the date this process begins, Party A (i.e. the Party who gave notice under clause 13.1 of the Contract) must, in addition to any particulars provided by Party A under clause 13.1 of the Contract, give the other Party and the Expert a written statement of the Matter referred for Expert determination and a written submission on the Matter in support of Party A's contentions.
- 2.2 Within 5 Business 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 Sydney.
- 3.2 At least 10 Business 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 the Expert has 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, 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 50 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:

- (a) be in writing stating the Expert's determination and giving reasons;
- (b) be made on the basis of the submissions (if any) of the parties, the conference (if any) and the Expert's own expertise; and
- (c) be made in accordance with the terms of the Contract.

5.3 Subject to clause 5.4, to the extent permitted by law, the Expert's determination will be final and binding on the Parties unless a notice of appeal is given in accordance with clause [insert] of the Contract.

5.4 If the Expert's determination contains a clerical mistake, an error arising from an accidental slip or omission, a material miscalculation of figures, a mistake in the description of any person, matter or thing, or a defect of form, then the Expert must correct the determination.

6. Costs

6.1 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

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

APPENDIX 2.1 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.

Appendix 3 - The Expert's Fees and Disbursements

[To be inserted]

Signed as an agreement

Signed for and on behalf of the Principal by

[insert name] in the presence of:

[Name of witness]

[Signature]

[Signature of witness]

Signed for and on behalf of the Service Provider in accordance with section 127 of the *Corporations Act 2001* (Cth)::

[Signature of additional Director / Secretary]

[Signature of Director]

[Name of additional Director / Secretary]

[Name of Director]

Signed by the Expert for ***[insert name]*** in the presence of:

[Name of witness]

[Signature]

[Signature of witness]

SCHEDULE 12 – DEED OF NOVATION

Novation Deed

Penrith Stadium Refurbishment Project

Dated

Infrastructure New South Wales ABN 85 031 302 516
 (“**Outgoing Party**”)

[insert]
 (“**Incoming Party**”)

[insert]
 (“**Continuing Party**”)

DEED OF NOVATION**KEY DETAILS**

1	Date	See Execution on page 8
2	Parties	
	Outgoing Party	Infrastructure NSW , being the body corporate established under the <i>Infrastructure NSW Act 2011</i> (NSW) ABN 85 031 302 516
	Name	
	Address	Level 27, 201 Kent Street, SYDNEY NSW 2000
	Email address	##
	Attention of	##
	Incoming Party	##Incoming Party ##ABN/ACN/ARBN ##number
	Name	
	Address	## ##
	Email address	##
	Attention	##
	Continuing Party	
	Name	##Continuing Party ##ABN/ACN/ARBN ##number
	Address	## ##
	Email address	##
	Attention	##
3	Contract	Contract No. INSW2400079 Architectural Services Penrith Stadium Redevelopment between the Outgoing Party and the Continuing Party dated ##date
4	Governing law	
	State/Territory	New South Wales

BACKGROUND

- A The Outgoing Party and the Continuing Party are parties to the Contract.
- B The parties to this deed have agreed to novate the Contract on the terms set out in this deed.

TERMS

1 Definitions and interpretation

1.1 Definitions

The following words have the following meanings in this deed, unless the context requires otherwise.

Business Day means a day (other than a Saturday, Sunday or public holiday) on which banks are open for general banking business in Sydney.

Claim means any claim, demand, legal proceeding or cause of action, including any claim, demand, legal proceeding or cause of action:

- (a) based in contract (including breach of warranty);
- (b) based in tort (including misrepresentation or negligence);
- (c) under common law or in equity; or
- (d) under statute,

whether present, unascertained, immediate, future or contingent.

Continuing Party means the person described as such in item 2 of the Key Details.

Contract means the contract described in item 3 of the Key Details.

Effective Date means [## insert date or description of date].

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

Incoming Party means the person described as such in item 2 of the Key Details.

Key Details means the section of this deed headed Key Details.

Loss means liability, debt, cost, expense, interest, loss or damage.

New Contract means the new contract formed pursuant to clause 2.

Outgoing Party means the person described as such in item 2 of the Key Details.

1.2 Interpretation

The following apply in the interpretation of this deed, unless the context requires otherwise.

- (a) A reference to this deed or any other document is a reference to this deed or that other document as varied, novated or replaced in any way.
- (b) A reference to a law includes any law, principle of equity, statute and official directive of any governmental authority.

- (c) A reference to any statute, regulation, rule or similar instrument includes any consolidations, amendments or re-enactments of it, any replacements of it, and any regulation or other statutory instrument issued under it.
- (d) A reference to the singular includes the plural number and vice versa.
- (e) A reference to a gender includes a reference to each gender.
- (f) A reference to a party means a person who is named as a party to this deed.
- (g) A reference to a person includes a firm, corporation, body corporate, unincorporated association and a governmental authority.
- (h) A reference to a party or a person includes that party's or person's executors, legal personal representatives, successors, liquidators, administrators, trustees in bankruptcy and similar officers and, where permitted under this deed, their substitutes and assigns.
- (i) An agreement on the part of, or in favour of, 2 or more persons binds or is for the benefit of them jointly and severally.
- (j) A reference to includes means includes but without limitation.
- (k) Where a word or expression has a defined meaning, its other grammatical forms have a corresponding meaning.
- (l) A reference to doing something includes an omission, statement or undertaking (whether or not in writing) and executing a document.
- (m) A reference to a clause, schedule or annexure is a reference to a clause of, or a schedule or an annexure to, this deed.
- (n) A reference to time is to the time in the place where a thing is to be done, unless specified otherwise.
- (o) A heading is for reference only. It does not affect the meaning or interpretation of this deed.

2 Novation

On and from the Effective Date, the parties agree that, subject to clause 4, the Contract is extinguished and a new contract is created on the same terms and conditions as the Contract except that:

- (a) the Incoming Party is substituted for the Outgoing Party; and
- (b) each reference to the Outgoing Party must be read as a reference to the Incoming Party.

3 Rights and obligations under the New Contract

On and from the Effective Date, the parties agree that, subject to clause 4:

- (a) the Incoming Party enjoys under the New Contract all the rights and benefits conferred on the Outgoing Party under the Contract;
- (b) the Incoming Party is bound by the New Contract as the Contract relates to the Outgoing Party and assumes under the New Contract all the obligations of the

Outgoing Party under the Contract; and

- (c) the Continuing Party is bound by the New Contract and must perform its obligations under the New Contract in favour of the Incoming Party.

4 Rights and obligations under the Contract

4.1 Release from future performance

The Continuing Party and the Outgoing Party release and discharge each other from all obligations to the other under the Contract which arise or fall due for performance on or after the Effective Date.

4.2 Accrued rights and obligations

- (a) Each of the Continuing Party and the Outgoing Party remain liable for all obligations to the other under the Contract which fell due for performance before the Effective Date and for any obligation which falls due for performance on or after the Effective Date solely because of anything done before the Effective Date as if the Contract had not been novated.
- (b) Nothing in this deed releases or discharges any Claim that the Continuing Party or the Outgoing Party may have against each other in connection with the Contract which accrued before the Effective Date, including any Claim which would have accrued if Loss had been suffered by it before the Effective Date as if the Contract had not been novated.

4.3 Incoming Party has no rights or obligations

The Incoming Party does not acquire any right, or assume any obligation or liability, under or in connection with the Contract which arose or accrued before the Effective Date or which relates to any act or omission before the Effective Date.

5 Indemnities

5.1 Indemnities

- (a) The Incoming Party agrees to indemnify the Outgoing Party against any Loss (including legal fees and expenses on a full indemnity basis) which the Outgoing Party suffers or incurs as a result of any act or omission of the Incoming Party under or in connection with the New Contract which occurs on or after the Effective Date.
- (b) The Outgoing Party agrees to indemnify the Incoming Party against any Loss (including legal fees and expenses on a full indemnity basis) which the Incoming Party suffers or incurs as a result of any act or omission of the Outgoing Party under or in connection with the Contract which occurs before the Effective Date.

5.2 Continuing indemnities

The indemnities in clause 5.1 survive the expiry or termination of this deed.

6 Consent and acknowledgements

6.1 Consent to novation

The Continuing Party consents to the novation of the Contract on the terms and conditions set out in this deed.

6.2 No breach under the Contract

The Continuing Party acknowledges and agrees that nothing in this deed or any of the transactions contemplated by this deed constitutes:

- (a) a breach of any term of the Contract;
- (b) an event of default under the Contract; or
- (c) any other event or circumstance which, with the giving of notice, lapse of time or fulfilment of any condition, would cause the acceleration of any payment to be made under, or the termination or enforcement of, the Contract.

6.3 Notices under the New Contract

The Continuing Party agrees that any notice (and other documents) given to the Incoming Party under or in connection with the New Contract must be left at or sent by post to the address, or sent by email to the email address, of the Incoming Party as specified in each case in item 2 of the Key Details.

7 Representations and warranties

7.1 General representations and warranties

Each party represents and warrants to the other parties [## on the date of this deed and on the Effective Date with reference to the facts and circumstances then existing] that:

- (a) it has power to enter into and to comply with its obligations under this deed and (in the case of the Incoming Party) the New Contract;
- (b) it has taken all necessary corporate action to authorise its entry into and to comply with its obligations under this deed and (in the case of the Incoming Party) the New Contract;
- (c) it has in full force and effect the authorisations necessary to enter into this deed and (in the case of the Incoming Party) the New Contract and to comply with its obligations under it and to allow it to be enforced; and
- (d) its obligations under this deed and (in the case of the Incoming Party) the New Contract constitute its binding obligations and are completely and lawfully enforceable against it in accordance with their terms, subject to laws generally affecting creditors' rights and to principles of equity.

7.2 Representations and warranties by the Continuing Party

The Continuing Party represents and warrants to the Incoming Party that:

- (a) it is not in breach of the Contract; and
- (b) it is not aware of any Claim that the Outgoing Party may have against it in connection with the Contract.

7.3 Reliance on representations and warranties

Each party acknowledges that each other party has executed this deed and agreed to take part in the transactions contemplated by this deed in reliance on the representations and warranties made to it in this clause 7.

8 GST

8.1 Interpretation

Terms used in this clause 8 which are not defined in this deed, but which are defined in the GST Law, have the meanings given to them in the GST Law.

8.2 Payment of GST

Amounts payable, and consideration to be provided, under any other provision of this deed exclude GST unless otherwise stated in this deed. If GST is payable on a supply made under or in connection with this deed (not being a supply the consideration for which is specifically described in this deed as being inclusive of GST), the recipient of the supply (**recipient**) must pay to the party making the supply (**supplier**) an amount equal to the GST payable on that supply at the time the recipient pays or provides any part of the consideration for the supply. The supplier must give a tax invoice to the recipient before the time when the recipient is required to pay or provide any part of the consideration for the supply.

8.3 Adjustment event

If an adjustment event arises in connection with a supply made under or in connection with this deed, the supplier must recalculate the GST payable to reflect the adjustment event and give the recipient an adjustment note as soon as reasonably practicable after the supplier becomes aware of the adjustment event. The adjustment amount must be paid without delay either by the recipient to the supplier or by the supplier to the recipient, as the case requires.

8.4 Reimbursement

Where a party (**payer**) must pay to another party (**payee**) an amount in respect of a cost, charge or expense (**outgoing**) of the payee, the amount payable is the sum of the amount of the outgoing less any input tax credit in respect of it to which the payee, or its GST group representative member, is entitled and, if the amount payable is subject to GST, an amount equal to that GST.

9 General

9.1 Costs and expenses

Subject to clause 9.2, each party must pay its own legal fees and expenses and other costs and expenses in connection with the negotiation, preparation and execution of this deed.

9.2 Stamp duty

All stamp duty (including fines, penalties and interest) payable on or in connection with this deed and any transaction contemplated by this deed must be borne by the Incoming Party. The Incoming Party must indemnify the Outgoing Party and the Continuing Party on demand against any liability for that stamp duty.

9.3 Entire agreement

This deed records the entire agreement between the parties, and supersedes all previous negotiations, understandings, representations and agreements, in relation to the subject matter of this deed.

9.4 Further assurance

Each party must do everything necessary, or reasonably required, by the other party, to give effect to this deed and the transactions contemplated by this deed.

9.5 Severability

If any part of this deed is for any reason unenforceable, that part must be read down to the extent necessary to preserve its operation. If it cannot be read down, it must be severed.

9.6 Counterparts

If this deed is signed in counterparts, then each counterpart is deemed an original and together they constitute one document.

9.7 Governing law and jurisdiction

This deed is governed by the law in force in the state or territory specified in item 4 of the Key Details and the parties submit to the non-exclusive jurisdiction of the courts of that state or territory.

EXECUTION

Executed as a deed on

Signed for and on behalf of **Infrastructure NSW**, being the body corporate established under the *Infrastructure NSW Act 2011* (NSW) by its authorised delegate in the presence of:

_____ Signature	_____ Signature of authorised officer
_____ Name	_____ Name of authorised officer
Date: _____	

Signed by **[insert company name of Incoming Party] [ABN]** in accordance with section 127 of the Corporations Act 2001 (Cth):

_____ Signature of Director	_____ Signature of Company Secretary/Director
_____ Full Name of Director	_____ Full Name of Company Secretary/Director
Dated: _____	

Signed by **[insert company name of Continuing Party] [ABN]** in accordance with section 127 of the Corporations Act 2001 (Cth):

_____ Signature of Director	_____ Signature of Company Secretary/Director
_____ Full Name of Director	_____ Full Name of Company Secretary/Director
Dated: _____	

SCHEDULE 13 – SPECIAL CONDITIONS

SCHEDULE 14 – KEY PERSONNEL

	PERSON	ROLE ON PROJECT
POPULOUS		Principal in Charge
		Design Lead Facades & Roof Planning
		Management Lead
		SSDA Alternate Management Lead
		Technical Lead Brief SSDA Coordination
		Seating Bowl Lead
		Interiors Lead
		Structure & MEP Coordination Lead
		ESD Lead
		Urban Design Lead & Design With Country Coordination
		Brief Support
		Peer Review
		Peer Review
FCAD		Design With Country - Design
NGURRA		Design With Country - Social Impact
		Design With Country - Social Impact
		Design With Country - Social Impact
EARLYMARK		Specification Writing Lead
		Specification Writer
UNSW		Safe Movement Specialist