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Infrastructure NSW

PROFESSIONAL SERVICES CONTRACT

Harbour Park Design Services

Agreement Number INSW 3716

Between
Infrastructure NSW

ABN 85 031 302 516

and

Architectus Australia Pty Ltd

ABN 90 131 245 684

Infrastructure NSW
Level 27, AON Tower
201 Ken Street
SYDNEY NSW 2000

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THIS AGREEMENT is made at Sydney on the Commencement Date

BETWEEN **Infrastructure NSW** ABN 85 031 302 516 of Level 27, 201 Kent Street,
Sydney NSW 2000

(the **Principal**)

AND **Architectus Australia Pty Ltd** ABN 90 131 245 684 of Level 18, 25 Martin
Place, Sydney NSW 2000

(the **Contractor**).

OPERATIVE CLAUSES

1 DEFINITIONS AND INTERPRETATION

1.1 Definitions

In this Agreement, unless the context otherwise requires:

Agreement means this document and includes any annexures to it.

Authority means any federal, state, territorial or local government department, body, instrumentality, state owned corporation, or other organisation having the right to give any consent, certificate, approval, permit or licence in relation to the Services.

Business Day means any day other than:

- (a) a day that is a Saturday, Sunday or public holiday generally in New South Wales; or
- (b) 27, 28, 29, 30 and 31 December of each year.

Claim means any action, suit, claim, demand, cause of action or notice, of any nature whatsoever, at law or in equity, including:

- (a) in contract, whether for breach or for an entitlement under a contract;
- (b) in tort for negligence or otherwise, including without limitation negligent misrepresentation;
- (c) for contribution or indemnity at common law, equity or statute;
- (d) for restitution, unjust enrichment or quantum meruit;
- (e) under or for breach of statute; or
- (f) in any other way,

whether for a Loss or a Remedy.

Commencement Date means the date set out in Item 3 of the Contract Particulars.

Confidential Information means:

- (a) information disclosed by or on behalf of the Principal to the Contractor or its representatives (or of which the Contractor or its representatives become aware) in the course of discussions in relation to the Services;
- (b) information acquired by the Contractor or its representatives in the course of discussions prior to the date of this Agreement in relation to the Services;
- (c) information designated as confidential by the Principal from time to time; and
- (d) any other information which by its nature should reasonably be considered to be the confidential information of the Principal,

whether or not marked as "Commercial in Confidence", "NSW Sensitive: Government", "NSW Sensitive: Cabinet", "Cabinet in Confidence or Confidential", and which may be provided in writing, electronically, verbally or otherwise, but does not include any information which the Contractor can demonstrate to be in the public domain or was known to the Contractor at the time of disclosure other than through a breach of this Agreement.

Consequential Loss or Damage means loss of production, loss of revenue, loss of profit, loss of goodwill, loss of reputation, business interruption of any nature, loss of business or business opportunities, loss of anticipated savings or wasted overheads, loss of use, loss or corruption of data or information or anything beyond the normal measure of damages.

Contract Material means any Material created, written or otherwise brought into existence by or on behalf of the Contractor in the course of performing this Agreement in which subsists newly created Intellectual Property Rights.

Contract Particulars means the document which is annexed as Annexure A to this Agreement.

Contractor's Representative means the person identified in Item 14 of the Contract Particulars.

Deed of Novation means the document substantially in the form set out in Annexure J.

Disbursements means the expenses identified in Item 16 of the Contract Particulars which were properly and necessarily incurred by the Contractor in carrying out the Services.

Dispute and **Dispute Notice** are defined in clause 20.1.

End Date means the date specified in Item 4 of the Contract Particulars.

Event of Insolvency means, in respect of the Contractor, if:

- (a) the Contractor informs the Principal in writing or creditors generally that the Contractor is insolvent or is financially unable to proceed with the Agreement;
- (b) execution is levied against the Contractor by a creditor;
- (c) if the Contractor is an individual person or a partnership including an individual person, that person:

- (i) commits an act or 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;
 - (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
 - (vi) any act is done or event occurs which has an analogous or similar effect to any of the events in paragraphs (a), (b) or (c); or
- (d) if the Contractor is a corporation:
- (i) notice is given of a meeting of creditors with a view to the Contractor entering into a deed of company arrangement;
 - (ii) the Contractor enters into a deed of company arrangement with creditors;
 - (iii) a controller or administrator is appointed to the Contractor;
 - (iv) an application is made to a court for the winding-up of the Contractor and not stayed within 14 days;
 - (v) a winding-up order is made in respect of the Contractor;
 - (vi) the Contractor resolves by special resolution that the Contractor be wound up voluntarily (other than for a members' voluntary winding-up);
 - (vii) a mortgagee of any property of the Contractor takes possession of that property; or
 - (viii) any act is done or event occurs which has an analogous or similar effect to any of the events in paragraphs (a), (b) or (d).

Existing Contract Material means any Material which exists at the date of this Agreement and which is incorporated in the Contract Material.

Fee or Fees means the fee or fees described in Item 2 of the Contract Particulars.

Good Industry Practice means the care, skill, diligence, prudence and foresight reasonably or ordinarily expected of a competent, qualified, skilled and experienced Contractor providing similar services to the Services to an organisation like the Principal, seeking to comply with its contractual and legal obligations and having regard to the requirements of the Principal and any other circumstances affecting the carrying out of the Services.

GST has the meaning given to this term in the GST Law.

GST Law means A New Tax System (Goods and Services Tax) Act 1999 (Cth), related legislation and any delegated legislation made pursuant to such legislation.

ICAC means the Independent Commission Against Corruption established under the Independent Commission Against Corruption Act 1988 (NSW).

Information Document means any information, data, document or material which:

- (a) forms part of the Principal's Material;
- (b) at the time of issue (or being provided or made available) by or on behalf of the Principal to the Contractor is expressly stated to be an "Information Document"; or
- (c) is referred to or incorporated by reference in an Information Document,

irrespective of the form of the information, data, document or material (including electronic and oral forms).

Intellectual Property Rights includes any and all intellectual and industrial property rights throughout the world, whether subsisting now or in the future and includes all copyright and analogous rights, all rights in relation to inventions (including patent rights), registered and unregistered trademarks, designs (whether or not registered or registrable), circuit layouts, trade names, trade secrets, business names, company names or internet domain names.

Key People means the persons specified in Item 9 of the Contract Particulars as replaced from time to time in accordance with clause 2.5.

Law means:

- (a) all Commonwealth, New South Wales or local government legislation including any regulations, ordinances, instruments, codes, requirements, by-laws, orders, proclamations and other subordinate legislation;
- (b) common law; and
- (c) Authority approvals and the lawful requirements of any person acting in the exercise of statutory powers enabling them to give directions affecting the Contractor's obligations under this Agreement.

Loss means any money, cost, expense, damage, interest, penalty, fine, delay, disruption, costs and losses associated with a Remedy or detriment of any kind whatsoever.

Material includes documents, information and data stored by any means.

Moral Rights means the right of integrity of authorship, the right of attribution of authorship and the right not to have authorship falsely attributed, more particularly as conferred by the Copyright Act 1968 (Cth), and rights of a similar nature anywhere in the world whether existing at the Commencement Date or which may come into existence on or after the Commencement Date.

Payment Claim means a payment claim issued by the Contractor under clause 12.2.

Payment Statement means a payment statement issued by the Principal under clause 12.3.

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

Personnel means:

- (a) in respect of the Contractor, any Related Entity of the Contractor and any directors, officers, employees, consultants, agents and contractors of the Contractor; and
- (b) in respect of the Principal, and any officers, employees, consultants, agents and contractors of the Principal (other than the Contractor or any of its Related Entities).

Premises means the property or properties specified in Item 7 of the Contract Particulars.

Principal's Policies, Codes and Standards means the most recent version of the policies, codes and standards set out in Annexure B and as updated from time to time and otherwise made known to the Contractor by the Principal's Representative.

Principal's Material means any Material supplied by the Principal to the Contractor by whatever means in relation to this Agreement.

Principal's Representative means the person identified in Item 15 of the Contract Particulars.

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

Program means the program for the delivery of the Services (if any):

- (a) set out in Annexure I; or
- (b) to be developed in accordance with clause 10.1(a),

as revised from time to time in accordance with clause 10.1(b).

Project means the project described in the Services Brief.

Related Entity in relation to the Contractor, has the meaning given to 'related body corporate' in section 50 of the Corporations Act 2001 (Cth)

Remedy means any entitlement, damages, interest, compensation, contribution, indemnity, injunction, specific performance, extension of time or other legal or equitable or statutory remedy of any kind whatsoever.

Safety Report means the report required to be prepared by a designer of a structure by clause 295 of the Work Health and Safety Regulations 2017(NSW).

Services means the services specified in Item 1 of the Contract Particulars and any incidental or related services requested in writing by the Principal.

Services Brief means the documents which is annexed as Annexure C to this Agreement, as amended from time to time in accordance with clause 11.

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

Statement of Interests and Associations has the meaning given in clause 5 (e) of this Agreement.

Subcontractor means a person engaged by the Contractor in accordance with clause 6 to provide part of the Services and includes a supplier of goods or services or both.

Supply has the meaning given to it in the GST Law.

Term means the period specified in clause 2.2.

Variation has the meaning given in clause 11.1.

WHS Legislation means:

- (a) the Work Health and Safety Act 2011 (NSW) and the Work Health and Safety Regulation 2017 (NSW); and
- (b) all other Laws relating to work health and safety which apply in the jurisdiction in which the Services are being executed.

Worksite means the site(s) (if any) for the provision of the Services set out in Item 8 of the Contract Particulars.

1.2 Interpretation

In this Agreement:

- (a) headings are for convenience only and do not affect interpretation, and the following rules apply in interpreting this Agreement unless the context makes clear that a rule is not intended to apply:
- (b) an obligation or a liability assumed by, or a right conferred on, two or more persons binds or benefits them jointly and severally;
- (c) "**person**" includes an individual, the estate of an individual, a corporation, an Authority, an association or a joint venture (whether incorporated or unincorporated), a partnership and a trust;
- (d) a reference to a party includes that party's executors, administrators, successors and permitted assigns, including persons taking by way of novation;
- (e) a reference to a document (including this Agreement) is to that document as varied, novated, ratified or replaced from time to time;
- (f) a reference to a statute includes its delegated legislation and a reference to a statute or delegated legislation or a provision of either includes consolidations, amendments, re-enactments and replacements;
- (g) a word importing the singular includes the plural (and vice versa), and a word indicating a gender includes every other gender;
- (h) a reference to a party, clause, schedule, exhibit, attachment or annexure is a reference to a party, clause, schedule, exhibit, attachment or annexure to or of this Agreement, and a reference to this Agreement includes all schedules, exhibits, attachments and annexures to it;

- (i) if a word or phrase is given a defined meaning, any other part of speech or grammatical form of that word or phrase has a corresponding meaning;
- (j) "**includes**" in any form is not a word of limitation;
- (k) a reference to "\$" or "dollar" is to Australian currency;
- (l) if the day on or by which anything is to be done under this Agreement is not a Business Day, that thing must be done no later than the next Business Day;
- (m) no provision of this Agreement is to be interpreted to the disadvantage of a party because that party (or its representative) drafted that provision;
- (n) any provision of this Agreement which seeks to limit or exclude a liability of a party is to be construed as doing so only to the extent permitted by Law; and
- (o) where a reference is made to any Authority which ceases to exist (Former Body), that reference will be to that Authority which then serves substantially the same functions as the Former Body (Replacement Body). Any reference to any senior officer of the Former Body will be to the equivalent senior officer of the Replacement Body.

2 THE SERVICES

2.1 Engagement

The Principal engages the Contractor to perform the Services in accordance with this Agreement.

2.2 Term

- (a) This Agreement commences on the Commencement Date and, subject to the provisions of this Agreement, expires on the End Date.
- (b) The Principal may in its absolute discretion extend this Agreement by providing written notice to the Contractor prior to the expiry of the then current Term, to extend the Term of this Agreement.
- (c) The Contractor grants to the Principal an option to extend the Term of the Agreement by the number of additional periods set out in Item 5 of the Contract Particulars.
- (d) The length of each additional Term is the period specified in Item 6 of the Contract Particulars.
- (e) Any such further Term or Terms will be on the same terms and conditions as set out in this Agreement, but excluding the reference to extending the Term in the additional periods for the periods which have expired.
- (f) If the Contractor continues to perform its obligations under the Agreement after the expiry of the Agreement:
 - (i) the terms of the Agreement will continue to apply in respect of those obligations; and

- (ii) the Contractor will be entitled to be paid for performing those obligations in accordance with the terms of the Agreement.

2.3 Procurement of services by other agencies

If within the Term a department or agency of the NSW Government requests the Contractor to provide services to it that are the same or similar to the Services to be provided by the Contractor under this Agreement, the Contractor acknowledges and agrees that it must enter into a separate agreement with the relevant department or agency on terms no less favourable than the terms of this Agreement having regard to any necessary changes required to reflect the particulars of the services that the Contractor will provide to that department or agency.

2.4 Contractor's Obligations

- (a) The Contractor must provide the Services in accordance with this Agreement including the Services Brief.
- (b) Without limiting the generality of clause 2.4(a), the Contractor must:
 - (i) commence and progress the Services expeditiously, without delay and, if a Program is required in Item 11 of the Contract Particulars in accordance with that Program and, if a date for completion is included in Item 10 of the Contract Particulars, complete the applicable Services by that date (or any extension of that date approved in writing by the Principal as part of a program approval under clause 10.1(b) or otherwise);
 - (ii) perform the Services in accordance with any directions of the Principal or the Principal's Representative, such directions which may be given orally unless otherwise stated in this Agreement;
 - (iii) perform the Services in accordance with Good Industry Practice;
 - (iv) comply with all obligations and meet all requirements set out in this Agreement, including the Services Brief;
 - (v) comply with all applicable Law, standards, codes and all applicable requirements of any Authority;
 - (vi) carry out the Services having regard to the need for safety in design and safety in the buildability of the design of the Project as well as the other requirements and circumstances affecting the Project and the carrying out of the Services;
 - (vii) ensure that it and its Personnel are familiar with and comply with the Principal's Policies, Codes and Standards;
 - (viii) 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;
 - (ix) allocate sufficient resources in order to perform the Services in accordance with this Agreement; and
 - (x) coordinate and liaise with every other person performing any other work in connection with the Services to ensure that the Services and the other work are completed in such a way that no additional costs

and no delays are incurred with respect to the Services or any other work.

2.5 Personnel

- (a) The Contractor must:
- (i) ensure that all Personnel utilised by it in connection with the Services are appropriately accredited, qualified, licensed, competent, experienced, reliable and trained in the provision of services of the nature of the Services;
 - (ii) subject to clauses 2.5(a)(iii) and 2.5(a)(iv), employ the person or persons specified in Item 9 of the Contract Particulars as "Key People" in the performance of the Services in the roles specified for them in Item 9 of the Contract Particulars;
 - (iii) ensure that neither it, nor its Personnel at any level engage any person who has been identified by ICAC as having engaged in corrupt conduct;
 - (iv) immediately take steps to replace any Key People who are unable to work or are requested by the Principal, acting reasonably, to be removed from the Services with replacement personnel of equivalent expertise and experience;
 - (v) without limiting clause 2.5(a)(iii), remove any Personnel within the time directed by the Principal if the Principal directs the Contractor to cease using that person in respect of any activity relating to the Services on the basis that the Principal considers that person's performance or conduct to be unsatisfactory; and
 - (vi) obtain the prior written approval of the Principal, which will not be unreasonably withheld, to the replacement of any Key People or the appointment of any new Personnel to perform the Services.
- (b) The Contractor's responsibility for the performance of the Services and for the standard of performance by its Personnel is not altered in any way by anything done in accordance with this clause 2.5.

2.6 Services not provided by the Supplier

Without prejudice to any other right or remedy of the Principal, if the Contractor fails to provide the Services as required, the Principal may:

- (a) direct the Contractor to provide the Services so that they conform to the requirements of this Agreement and any directions given by the Principal's Representative; or
- (b) engage a third party to provide the Services and recover:
 - (i) the actual costs incurred by the Principal to engage a third party to provide the Services; or
 - (ii) if no costs have actually been incurred, the reasonable estimated cost of the Services being performed by a third party,

either by an adjustment in any monies due to the Contractor under clause 12.1 or by determining such amount and that amount being a debt due and payable from the Contractor to the Principal.

2.7 Discrepancies in information

- (a) The documents listed below (in the following order of precedence) together comprise this Agreement:
 - (i) Annexure A (Contract Particulars);
 - (ii) the Operative Clauses 1 to 22 (but excluding all Annexures);
 - (iii) Annexure C (Services Brief, which includes the Stage Two Competition Documents);
 - (iv) Annexure I (Program);
 - (v) Annexure F (Schedule of Rates);
 - (vi) Annexure B (The Principal's Policies, Codes and Standards and related Contractor Obligations);
 - (vii) Annexure D (Confidentiality Deed Poll);
 - (viii) Annexure G (Statutory Declaration and Subcontractor's Statement) and Annexure H (Form of Supporting Statement);
 - (ix) Annexure J (Deed of Novation); and
 - (x) Annexure E (Statement of Associations and Interests).
- (b) The parties agree that to the extent of any inconsistency between any of the documents which make up this Agreement, the terms of the document with a higher precedence above will prevail.
- (c) If the Contractor considers that any documents forming part of this Agreement or other particulars made available to it by any person on behalf of the Principal and which may be relied on by the Contractor are inadequate or contain errors or ambiguities, the Contractor must give written notice to the Principal's Representative detailing the inadequacy, errors or ambiguities as soon as practicable. The Principal's Representative will direct the Contractor as to the interpretation to be followed following receipt of any such notice under this clause 2.7 having regard to the order of precedence set out in clause 2.7(b).

2.8 Reports and deliverables

- (a) The Contractor must provide such reports and deliverables:
 - (i) containing the information;
 - (ii) in the format; and
 - (iii) meeting the requirements and standards,

as may be specified in or required by the Program or the Services Brief or as may otherwise be required by the Principal from time to time.

- (b) Any reports and deliverables required by this Agreement must be provided to the Principal by the date the relevant report or deliverable is required by the Program or the Services Brief.
- (c) If the Contractor submits a document to the Principal's Representative, then except where this Agreement expressly provides otherwise:
 - (i) the Principal's Representative does not assume or owe any duty of care or other responsibility to the Contractor, and shall not be required to check that report or deliverable for errors, omissions, inconsistencies, ambiguities, discrepancies or compliance with this Agreement. The Contractor is not entitled to make any Claim in connection with the Principal's Representative not detecting or notifying the Contractor of any errors, omissions, inconsistencies, ambiguities or discrepancies;
 - (ii) any review of, comments upon, or failure to review or comment upon, any report or deliverable provided by the Contractor or any other direction (including approval) by the Principal's Representative about the report or deliverable shall not:
 - (A) relieve the Contractor from, or alter or affect, the Contractor's liabilities or responsibilities under this Agreement or otherwise at Law; or
 - (B) prejudice the Principal's rights against the Contractor whether under this Agreement or otherwise according to legislative requirements.
- (d) If this Agreement or the Services Brief requires the Contractor to obtain the Principal's Representative's direction about that report or deliverable, the Principal's Representative shall give a direction, including reasons if the report or deliverable does not meet the requirements of this Agreement, including the Services Brief.
- (e) A direction by the Principal's Representative to vary anything in any report or deliverable will be a Variation to the Services only to the extent that the report or deliverable, before such Variation, complied, or would have complied, with the requirements of this Agreement and the Services Brief.
- (f) Without limiting the foregoing, the Contractor must, where reasonably required by the Principal during the Term, provide the Principal with monthly costs and status reports on the Services being provided under this Agreement.

2.9 Contractor's relationship with the Principal

- (a) The Contractor must liaise, cooperate and confer with the Principal's Representative, other persons performing works relating to the Services and any other person nominated by the Principal.
- (b) Nothing in this Agreement will be construed or interpreted as constituting a relationship between the Principal and the Contractor of partners, joint venturers, fiduciaries, employer and employee or principal and agent.

- (c) The Contractor must not act outside the scope of the authority conferred on it by this Agreement and must not purport to bind the Principal in any way or hold itself out as having any authority to do so, except as specifically authorised pursuant to this Agreement or otherwise authorised by the Principal in writing.

2.10 Compliance

- (a) Without limiting or otherwise restricting any other provision of this Agreement, the Contractor must perform the Services and meet the obligations and liabilities arising from or in connection with this Agreement in accordance with the requirements of applicable Laws (including the WHS Legislation and Privacy Laws), Australian standards, codes of practice and requirements of Authorities.
- (b) Without limiting or otherwise restricting clause 2.16, if the Contractor is required to have a licence or other approval from any Authority in order to provide the Services, the Contractor at its cost, will obtain and hold such licence or approval prior to commencement of the Services and will hold such licence or approval until the later of the expiry of the Term or termination of this Agreement and will provide the Principal with a copy of the same on request.

2.11 Principal's Materials

The Contractor must protect and keep safe and secure all of the Principal's Materials provided to the Contractor.

2.12 Warranties and representations

The Contractor warrants and represents to the Principal that:

- (a) it and its Personnel have the resources, knowledge, skill, ability, expertise, competence and qualifications to provide the Services and comply with this Agreement;
- (b) the Services and any deliverables will be fit and safe at all times for the purpose or purposes stated in, or reasonably to be inferred from, this Agreement;
- (c) whilst on the Worksite or the Principal's premises its Personnel will at all times comply with the Principal's Policies, Codes and Standards;
- (d) it has been duly incorporated in accordance with the Laws of the place of its incorporation and that it is validly existing under those Laws;
- (e) it has full authority and power to enter into and perform its obligations under this Agreement and can do so without the consent of any other person;
- (f) it has taken all action which is necessary to authorise the performance of this Agreement in accordance with its terms;
- (g) it is solvent; and
- (h) it has not entered or taken steps to enter and does not propose to enter into any arrangement, compromise or assumption with or assignment for the benefit of its creditors or any class of them.

2.13 Access to Contractor's Premises

The Contractor must:

- (a) at all reasonable times and upon reasonable notice, permit the Principal and its Personnel access to the Contractor's Premises in order for the Principal to inspect, discuss and assess the Contract Material, Existing Contract Material and any other material produced by or on behalf of the Contractor or obtained by the Contractor from any person in connection with the Services;
- (b) within a reasonable time of any request by the Principal, give the Principal access to, or verified copies of, any information, documents or materials (including its books and records) which may be reasonably required to enable any claim by the Contractor for payment to be substantiated and verified by the Principal; and
- (c) do everything reasonably required by the Principal to allow the Principal to conduct an audit of the Contractor's compliance with this Agreement.

2.14 Access

- (a) This clause 2.14 applies if the Supplier is required to attend the Worksite in order to perform the Services and carry out its obligations in accordance with this Agreement.
- (b) The Principal shall give the Contractor sufficient access to the Worksite to enable the Contractor to perform its obligations under this Agreement.
- (c) The Contractor may only access the Worksite, and the areas around the Worksite, as directed by the Principal.
- (d) The Contractor acknowledges and agrees that:
 - (i) it will have non-exclusive possession of the Worksite;
 - (ii) when arriving at the Worksite it must report to the Principal's Representative or any other party nominated by the Principal; and
 - (iii) it must not allow any person not connected with the provision of the Services into, or to remain on, the Worksite without the Principal's Representative's prior written consent.
- (e) When attending any Worksite, the Contractor and its Personnel:
 - (i) must not unreasonably obstruct, delay or interfere with the Principal's operations or Personnel at the Worksite; and
 - (ii) must comply with all reasonable directions from the Principal's Representative regarding their presence and activities at the Worksite.
- (f) The Principal's Representative may direct the Contractor to remove from the Worksite any person engaged in connection with the provision of the Services who, in the opinion of the Principal's Representative exercising absolute discretion, is guilty of misconduct, is incompetent, is negligent, has contravened any safety requirement of the Principal, or has interfered with

the orderly progress of the Services. The Contractor must immediately comply with any such direction received from the Principal.

- (g) The Contractor must provide the Principal, and any other party whose details are notified by the Principal's Representative to the Contractor, with access to:
 - (i) all areas of the Worksite being used by the Contractor in connection with the provision of the Services; and
 - (ii) any other areas where a part of the Services is being carried out.
- (h) The Contractor must keep that part of the Worksite used for the Services clean and tidy and regularly remove rubbish and surplus material.

2.15 **No occupier's liability**

- (a) The Principal and its Personnel will not be responsible for any damage to the Contractor's property or to the property of the Contractor's Personnel or for any personal injury sustained by any of the Contractor's Personnel occurring on the Principal's premises (including the Worksite) as a result of the carrying out of the Services or any act or omission of the Contractor or its Personnel.
- (b) The Contractor unconditionally and irrevocably releases the Principal and its Personnel from all responsibility referred to in clause 2.15(a).

2.16 **Licensing and authorisation**

The Contractor must:

- (a) ensure that if any Laws (including the WHS Legislation) require that:
 - (i) a person:
 - (A) be authorised or licensed (including in accordance with the WHS Legislation) to carry out any part of the Services at that workplace, that person is so authorised or licensed, and complies with any conditions of such authorisation or licence; and/or
 - (B) has prescribed qualifications or experience to carry out any part of the Services or, if not, is to be supervised by a person who has prescribed qualifications or experience (as defined in the WHS Legislation), that person has the required qualifications or experience or is so supervised; or
 - (ii) a workplace, plant or substance (or design), or work (or class of work) be authorised or licensed, that workplace, plant or substance, or work is so authorised or licensed;
- (b) not direct or allow a person to carry out work or use plant or substance at a workplace unless the requirements of clause 2.16(a) are met (including any requirement to be authorised, licensed, qualified or supervised); and
- (c) if requested by the Principal, the Principal's Representative or required by the WHS Legislation, produce evidence of any approvals, certificates, authorisations, licences, prescribed qualifications or experience, or any other

information relevant to work health and safety (as the case may be) to the satisfaction of the Principal before the Contractor commences such work.

2.17 Duties under WHS Legislation

Without limiting the Contractor's obligations under any other clause of this Agreement, the Contractor must:

- (a) comply with the WHS Legislation; and
- (b) discharge its obligations under the provisions of the WHS Legislation, including by preparing a Safety Report if required by Law. If required, the Contractor must give a copy of the Safety Report to the Principal within the time specified in Item 12 of the Contract Particulars.

2.18 Safety and the environment

- (a) The Contractor must:
 - (i) prior to appointing any Subcontractor, assess the work health and safety management capability of such a Subcontractor and institute systems to obtain regular written assurances from all Subcontractors about their ongoing compliance with the WHS Legislation including the due diligence obligation contained in the WHS Legislation;
 - (ii) prior to commencing the Services on the Worksite ensure that all Key People have undertaken any induction required by the Principal;
 - (iii) comply with and procure that any Subcontractor and its employees comply with all the requirements of the WHS Legislation and any other requirements of this Agreement for work, health, safety and rehabilitation management;
 - (iv) comply with, and procure that any Subcontractor complies with, any reasonable directions issued by the Principal's Representative, the Principal or any principal contractor in relation to work, health, safety or the environment including where the direction is given because Key People are not complying with their obligations under this clause 2.18;
 - (v) provide to the Principal written assurances about its ongoing compliance with the WHS Legislation, together with written assurances from its subcontractors obtained pursuant to clause 2.18(a)(i);
 - (vi) comply with its obligation under the WHS Legislation to consult, cooperate and coordinate activities with all other persons who have a work health and safety duty in relation to the same matter including co-operate with the Principal's Representative and any contractor engaged by the Principal with respect to the Project and co-ordinate the Services with the work of the Principal's Representative and any contractor engaged by the Principal with respect to the Project;
 - (vii) exercise a duty of utmost good faith to the Principal in carrying out the Services to enable the Principal to discharge the Principal's duties under the WHS Legislation; and

- (viii) ensure its subcontracts include provisions equivalent to the obligations of the Contractor in this clause 2.18 and any other provisions of the Agreement concerning work health and safety matters.
- (b) When the Contractor enters the premises of the Principal (including the Worksite), the Contractor must, and must ensure that its Personnel:
 - (i) protect people and property;
 - (ii) prevent nuisance and unnecessary noise and disturbance; and
 - (iii) act in a safe and lawful manner and comply with the Principal's Policies, Codes and Standards.

3 INFORMATION DOCUMENTS

- (a) The Contractor acknowledges that the Principal does not warrant, guarantee, assume any duty of care or other responsibility for or make any representation about the accuracy, adequacy, suitability or completeness of the Information Documents.
- (b) The Contractor acknowledges and warrants that:
 - (i) it did not place any reliance upon the completeness, accuracy, adequacy or suitability of any Information Documents;
 - (ii) it entered into this Agreement based on its own investigations, interpretations, deductions, information and determinations; and
 - (iii) it is aware that the Principal entered into this Agreement relying upon the acknowledgements, warranties and deemed matters in this clause 3 and that the Principal would not have entered into this Agreement but for those acknowledgements, warranties and matters.

4 CONFIDENTIALITY AND PRIVACY

4.1 Confidentiality

- (a) Subject to clause 4.1(c), the Contractor must:
 - (i) not disclose any Confidential Information to any person without the prior written consent of the Principal;
 - (ii) take all reasonable steps to ensure that the Confidential Information in its possession or control is kept confidential and protected against unauthorised use and access; and
 - (iii) comply with any security measures required by the Principal in connection with the Confidential Information.
- (b) The Contractor agrees to use the Confidential Information solely for the purposes of the Services and for no other purpose unless otherwise approved in writing by the Principal.

- (c) Subject to clauses 4.1(d) and 4.1(g), the Contractor may disclose Confidential Information:
 - (i) to its Personnel (**permitted recipient**) to the extent only such disclosure is essential to carrying out their duties in accordance with this Agreement; or
 - (ii) if required to be disclosed pursuant to Law, legal process or regulatory authority.
- (d) Before disclosing the Confidential Information to a permitted recipient, the Contractor must ensure that the permitted recipient is aware of the confidentiality requirements of this Agreement and is advised that he, she or it is strictly forbidden from disclosing the Confidential Information or from using the Confidential Information other than as permitted by this Agreement.
- (e) The Principal may, at its sole discretion and at any time, require the Contractor to arrange for a permitted recipient to execute a confidentiality deed poll in the form set out in Annexure D or such other form as is reasonably required by the Principal relating to the non-disclosure and use of Confidential Information and the Contractor must promptly arrange for such deed to be executed and provided to the Principal.
- (f) The Confidential Information must not be copied or reproduced by the Contractor and/or the permitted recipient without the express prior written permission of the Principal, except for such copies as may be reasonably required to accomplish the purpose for which the Confidential Information was provided pursuant to this Agreement.
- (g) If the Contractor receives a subpoena or other demand for information relating to documents provided to it by the Principal, the Contractor must:
 - (i) notify the Principal within 24 hours of receiving the subpoena or other demand for information;
 - (ii) provide the Principal with copies of all documents provided to it by the Principal which the Contractor proposes to produce in response to the subpoena or other demand for information, as soon as possible and before any documents are produced; and
 - (iii) provide all reasonable assistance to the Principal in making any claim or application in relation to the production of the documents.
- (h) Without limiting any rights or remedies of the Principal, the Contractor acknowledges that damages may not be a sufficient remedy for the Principal for any breach of this clause 4.1 and that the Principal may seek injunctive relief for any breach or threatened breach of this clause 4.1.

4.2 **Privacy and disclosure of Personal Information**

- (a) Each party must act, and ensure that its Personnel act, in accordance with the Privacy Laws, in its collection, use or disclosure of any Personal Information provided by the other party.
- (b) If the Contractor is required to collect Personal Information on behalf of the Principal, the Contractor must not put the Principal in breach of the Privacy Laws and the Contractor must comply with the Privacy Laws as if the Contractor was the Principal collecting the Personal Information.

- (c) The Contractor releases and indemnifies the Principal from and against any Claim arising out of the Contractor's breach of this clause 4.2.

5 CONFLICT OF INTEREST

- (a) The Contractor warrants that at the date of this Agreement, no conflict of interest exists or is likely to arise in the performance of the Services in respect of the Contractor or any of its Personnel, except as has been disclosed in writing by the Contractor to the Principal prior to the execution of this Agreement.
- (b) The Contractor agrees that it will not act for any third party where so acting may give rise to a conflict of interest.
- (c) The Contractor must use its best endeavours to ensure no conflicts of interest arise and must notify the Principal, in writing, immediately upon becoming aware of the existence, or possibility, of a conflict of interest.
- (d) On receipt of a notice under clause 5(c), the Principal may:
 - (i) approve the Contractor 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 conflict; or
 - (ii) where in the Principal's view the conflict of interest cannot be appropriately managed, notify the Contractor that the conflict of interest constitutes a breach of the Agreement under clause 18.2(c) and exercise its rights under clause 18.2(g).
- (e) The Principal may, at its sole discretion and at any time, require the Contractor to sign and procure that each of its officers, employees, subcontractors or agents involved in the performance of the Services signs and delivers, to the Principal a Statement of Interests and Associations in the form attached in Annexure E or such other form as reasonably required by the Principal.

6 SUBCONTRACTING

- (a) The Contractor must not engage another person to provide any part of the Services without the prior written approval of the Principal, which may:
 - (i) be given or withheld in the Principal's absolute discretion; and
 - (ii) be given subject to any conditions the Principal sees fit to impose.
- (b) The existence of any contract between the Contractor and a Subcontractor or any approval given by the Principal permitting the Contractor to engage a Subcontractor does not relieve the Contractor from any of its obligations and liabilities pursuant to this Agreement and the Contractor will be vicariously liable for all acts, omissions or defaults of its Subcontractors.
- (c) Prior to any Subcontractor or any employee or agent of the Subcontractor commencing work in respect of the Services, the Contractor must obtain from that person, and provide to the Principal, a written assignment (on terms reasonably satisfactory to the Principal) from the person to the Principal of

the Intellectual Property Rights created as a result of the person performing that work.

- (d) The Principal will have no contractual relationship with and undertakes no obligations to any Subcontractor.
- (e) The Contractor must ensure that the services of all Subcontractors are coordinated to meet the Principal's requirements for the Services and that the Subcontractors comply with all relevant obligations imposed on the Contractor in this Agreement.
- (f) The Contractor must ensure that any Subcontractors engaged by the Contractor perform those services in accordance with Good Industry Practice.

7 INSURANCES

- (a) Subject to clause 7 (h), prior to commencement of the Services, the Contractor must, and must ensure that any Subcontractors have and maintain:
 - (i) a public liability policy of insurance in the amount specified for public liability insurance in Item 13 of the Contract Particulars in respect of each Claim for the duration of the Term and specifying the interested parties to whom the insurance cover provided by the insurance contract extends and which, if the Services are to be provided on or near rail, must not contain any exclusion or limitations in cover in respect of Services supplied near rail;
 - (ii) a products liability policy of insurance in the amount specified for products liability insurance in Item 13 of the Contract Particulars in respect of each Claim and in the annual aggregate for the duration of the Term and specifying the interested parties to whom the insurance cover provided by the insurance contract extends and which, if the Services are to be provided on or near rail, must not contain any exclusion or limitations in cover in respect of Services supplied near rail;
 - (iii) workers' compensation insurance as required by Law;
 - (iv) a professional indemnity policy of insurance in the amount specified for professional indemnity insurance in Item 13 of the Contract Particulars in respect of each Claim for the period commencing on the Commencement Date and ending on the expiry of the period stated in Item 13 of the Contract Particulars, and if no period is stated, for 7 years, following the expiration or earlier termination of this Agreement; and
 - (v) such other insurances as may be required by Law or by the requirements of any professional association of which the Contractor is a member.
- (b) The Service Provider must take out and keep current all of the insurance policies that the Service Provider is required to effect and maintain under this Agreement with an insurer:

- (i) that is authorised under the Insurance Act 1973 (Cth) to carry on an insurance business in Australia;
 - (ii) approved by the Principal; or
 - (iii) which has a security rating of at least A minus from Standard & Poor's, AM Best or an equivalent rating from another internationally recognised rating agency.
- (c) If the Principal at any time requires the Contractor to arrange insurance against a risk not provided for or contemplated under clause 7(a) or increase the extent of an existing insurance in relation to a risk contemplated under clause 7(a), it may notify the Contractor in writing and request that the Contractor give effect to its requirements.
- (d) The Contractor must promptly inform the Principal of the amount of any additional premium payable in giving effect to a notice of the Principal under clause 7(c) before it implements the requirement, and the Principal will advise the Contractor whether it still requires the Contractor to give effect to that requirement.
- (e) If the Principal directs the Contractor to give effect to the requirement in accordance with clause 7(c), the Fee shall be increased by an amount equal to the cost of any additional premiums paid on any additional, increased or varied insurances required by the Principal under clause 7(c).
- (f) The Contractor must, in respect of the insurances required under this Agreement:
- (i) on request from time to time by the Principal, produce to the Principal satisfactory evidence of insurance, including certificates of currency of the policies required under this Agreement within 5 Business Days of being required to do so;
 - (ii) ensure that it:
 - (A) does not do anything which prejudices the insurance;
 - (B) if necessary, rectifies anything which might prejudice the insurance;
 - (C) does not cancel, vary or allow an insurance policy to lapse without providing prior notification to the Principal's Representative. Such notification will not constitute waiver of the Principal's rights under this Agreement;
 - (D) where any of the insurance policies are due to expire during the Term of this Agreement, prior to such expiration, obtains a replacement insurance policy and provide the Principal with evidence of the replacement insurance policy; and
 - (E) 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 such policy or the payment of all or any benefits under the insurance;
 - (iii) within 5 Business Days of the Contractor becoming aware of an actual Claim against any of its insurance policies effected and

maintained pursuant to clause 7(a), howsoever arising, the Contractor must notify the Principal in writing, if the Claim may materially impact on the ability of the Contractor to;

- (A) provide the Services or carry out its obligations under this Agreement; or
 - (B) obtain and / or maintain the insurance in accordance with the requirements of this Agreement.
- (g) If the Contractor fails to effect any insurance that complies with clauses 7(a)(i), 7(a)(ii), 7(a)(iii) and 7(a)(iv) (as the case may be), then the Principal may, without prejudice to other rights the Principal may have or the Contractor's obligations or liability under or in connection with this Agreement, effect the relevant insurance and the cost will be a debt due from the Contractor to the Principal.
- (h) If no amount is stated in any part of Item 13 of the Contract Particulars:
- (i) the amount specified for public liability insurance is \$20 million;
 - (ii) the amount and time for maintaining professional indemnity insurance are \$10 million and 7 years respectively.

8 RECORD KEEPING AND PERFORMANCE REPORTING

8.1 Keeping of records

The Contractor must, during the Term:

- (a) keep proper accounts, records (including information stored by computer and other devices) and timesheets in accordance with accounting principles generally applied in commercial practice in respect of its time charge billing, its reimbursable expenditure and fees and reimbursements payable to others properly engaged pursuant to this Agreement and maintain the same for a period of 7 years;
- (b) 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 the Services, including in respect of any matters concerning or arising out of clauses 2.10 and clauses 2.16 to 2.18.
- (c) manage all records relating to the provision of the Services in accordance with the Services Brief and the reasonable requirements of the Principal.

8.2 Auditing and probity

- (a) The Contractor acknowledges and agrees that the Principal's Representative (or any other person designated by the Principal's Representative) may carry out regular audits, as applicable, on:
 - (i) the Contractor's quality management system;
 - (ii) the Contractor's work health and safety system; and
 - (iii) quality and probity compliance by:

- (A) inspections after the Contractor has provided the Services;
 - (B) random spot inspections;
 - (C) viewing CCTV footage available at the Worksite;
 - (D) inspecting reports prepared by the Contractor in accordance with this Agreement; and
 - (E) utilising the Principal compliance auditors during possessions to check staff competencies, plant certifications and other relevant factors.
- (b) If the Principal's Representative (or any other person designated by the Principal's Representative) requires access to the Contractor's Premises in order to carry out an audit pursuant to clause 8.2(a), the requirements of clause 2.13 will apply.

8.3 Government disclosure

- (a) The Contractor authorises the Principal, its employees and agents to make information concerning the Contractor available to NSW government Authorities. Such information may include any information provided by the Contractor to the Principal and any information relating to the Contractor's performance under this Agreement.
- (b) The Contractor acknowledges that any information about the Contractor from any source, including substantiated reports of unsatisfactory performance, may be taken into account by the Principal and the Authorities in considering whether to offer the Contractor future opportunities for work.
- (c) The Contractor acknowledges that:
 - (i) the Principal may disclose certain information about this Agreement in accordance with the Principal's obligations under the Government Information (Public Access) Act 2009 (**GIPA Act**), including making certain information about this Agreement publicly available in any disclosure log of contracts the Principal is required to maintain; and
 - (ii) if the Contractor reasonably believes that any part of this Agreement contains information which is commercial-in-confidence or could reasonably be expected to affect public safety or security, the Contractor must 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.
- (d) The Contractor 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 of information under clauses 8.3(a), 8.3(b) and 8.3(c).
- (e) The Contractor releases and indemnifies the Principal from and against any claim arising out of its provision of information under this clause 8.3.

8.4 Performance reporting

- (a) The Principal may provide performance reports of the Contractor's performance to the Principal at the intervals set out in the Services Brief (if any) or as otherwise notified by the Principal.
- (b) The Contractor must provide the Principal with any assistance or documentation reasonably required by the Principal for the purposes of the Principal carrying out any performance reporting requirements.

9 AGREEMENT MANAGEMENT

9.1 Contractor's Representative

The Contractor represents and warrants that the Contractor's Representative has full authority to act on behalf of the Contractor and the legal power to bind the Contractor in respect of any matters arising in connection with the Services and this Agreement.

9.2 Provide information

The Principal will, as soon as reasonably practicable following a request from the Contractor, give all necessary instructions and answer any queries made by the Contractor relating to the Principal's requirements in connection with this Agreement.

9.3 Principal's Representative

The Principal's Representative, or any alternate person the Principal nominates in writing, will act as the Principal's Representative and will have authority to act on behalf of the Principal for all purposes in connection with this Agreement.

10 TIME

10.1 Program

- (a) If Item 11 of the Contract Particulars states that:
 - (i) a Program is required; and
 - (ii) the Program is to be developed in accordance with this clause 10.1,the Contractor must, within 5 Business Days of the commencement of the Services, submit for approval by the Principal a program for the performance and completion of the Services that accords with the dates and deliverables specified in the Services Brief;
- (b) As soon as practicable (and in any event within 5 Business Days) after becoming aware of any matter which is likely to change or which has changed the timing of the Services (including any notice, direction or instruction of the Principal), the Contractor must:
 - (i) submit a revised Program for approval by the Principal, or otherwise as soon as practicable after any reasonable request by the Principal to do so;
 - (ii) perform the Services expeditiously and in accordance with the most recent Program approved by the Principal; and

- (iii) report on progress against the Program monthly or at such other interval as requested in writing by the Principal.
- (c) The Contractor will have no claim for any delay or other costs in relation to the approval or non-approval of a revised program submitted in accordance with clause 10.1(b)(i) unless otherwise agreed in writing by the Principal (acting reasonably).

10.2 Suspension

- (a) The Principal may, for its sole convenience and at its absolute discretion, immediately suspend the provision of the Services and payments relating to those suspended Services, regardless of whether there has been any default by the Contractor, at any time by written notice to the Contractor. The Principal may only suspend payment in relation to those Services which are yet to be performed.
- (b) Subject to clause 10.2(c):
 - (i) if the Principal suspends the Services under clause 10.2(a); and
 - (ii) the reason for the suspension has not been caused by, or arisen as a consequence of any default by the Contractor,the Principal will pay the Contractor the reasonable costs incurred by the Contractor (excluding profit) as a direct result of the suspension.
- (c) The Contractor must, as a pre-condition to any entitlement to recover any costs under clause 10.2(b):
 - (i) immediately take all reasonable and practicable measures to mitigate all losses, costs, and expenses, arising from the suspension; and
 - (ii) provide the Principal with supporting documentation, to the reasonable satisfaction of the Principal, to enable the Principal to verify the amount claimed by the Contractor.
- (d) Payment by the Principal of the amount in clause 10.2(b) will be the Contractor's sole and exclusive remedy in respect of the Principal suspending the Services.
- (e) At any time after the Principal has issued a notice under clause 10.2(a), the Principal may issue a notice to the Contractor to recommence performing the Services.
- (f) Within 2 Business Days of receiving a notice from the Principal under clause 10.2(e), the Contractor must recommence performing the Services.

11 VARIATIONS

11.1 Proposal

- (a) Subject to clause 11.1(b), the Principal may direct in writing that the Contractor vary the Services (including omitting or deleting a part of the Services), or the timing, including the time for completion, of the Services or both (**Variation**).

- (b) If the Principal proposes a Variation, the Principal will specify in the direction a reasonable time by which the Contractor must provide a written estimate of the time, cost and programming effects of the proposed Variation. If no time is specified, the Contractor must provide the estimate within 10 Business Days.

11.2 Variation instruction

- (a) Whether or not the Contractor provides a written estimate under clause 11.1(b), the Principal may instruct in writing the Contractor to carry out a Variation and the Contractor must comply with such instruction.
- (b) Subject to clause 11.4, the Principal will not be liable for any work provided or any associated expenditure incurred by the Contractor in relation to any proposed Variation, unless the Principal's Representative has directed the Variation in writing to the Contractor.

11.3 Valuation

- (a) The valuation of a Variation instructed under clause 11.2(a) will be determined by the Principal's Representative as follows:
 - (i) by agreement between the Principal's Representative and the Contractor including, where the Contractor has provided a written estimate pursuant to 11.1(b) which the Principal has accepted, the amount in that written estimate;
 - (ii) by using the hourly rates and other prices set out in Annexure F where included; or
 - (iii) on the basis of reasonable prices and rates determined by the Principal's Representative.
- (b) The Fee will be adjusted by the value of each Variation as determined in accordance with this clause 11.3.

11.4 Variation due to a change in a statutory requirement

If a new Law or a change in a Law after the date of this Agreement:

- (a) necessitates a change to the Services;
- (b) has effect after the date of the Agreement; and
- (c) could not reasonably have been anticipated at that date having regard to Good Industry Practice,

then the extent to which the Services cost more for the Contractor to perform due to the new or changed Law any such additional cost shall be valued pursuant to clause 11.3.

11.5 Omissions

If a Variation the subject of a direction by the Principal's Representative omits or deletes any part of the Services, the Principal may carry out these Services itself or engage another Contractor to do so.

11.6 Directions not formally identified as Variations

- (a) If the Contractor considers that a direction by the Principal's Representative is a direction requiring the Contractor to carry out a Variation, but the Principal's Representative has not expressly identified it in writing as a direction under this clause 11, then within 5 Business Days of the date of the direction, the Contractor shall notify the Principal's Representative in writing that the Contractor considers it to be a direction requiring the Contractor to carry out a Variation.
- (b) The Contractor will not be entitled to make any claim against the Principal arising out of, or in any way in connection with, the direction unless the Contractor gives the notice required by clause 11.6(a) within the time stated in that clause and either:
 - (i) within 15 Business Days of receiving the Contractor's notice, the Principal's Representative either withdraws the direction or confirms in writing that the direction is a proposed Variation, in which case clause 11.3 will apply; or
 - (ii) within 20 Business Days of the Contractor giving its notice, the Contractor gives the Principal's Representative a notice of dispute pursuant to clause 20.1 regarding the direction of the Principal's Representative.

11.7 Variations for the convenience of the Contractor

- (a) If the Contractor requests the Principal's Representative to direct a Variation for the convenience of the Contractor the Principal's Representative may do so. The direction shall be in writing and may be conditional. Unless the direction provides otherwise, the Contractor shall not be entitled to either extra time or extra costs.
- (b) The Principal's Representative is not required to exercise its discretion under clause 11.7(a) for the benefit of the Contractor.

12 PAYMENT

12.1 Payment by the Principal

Subject to clause 12.5 and the performance of the Services by the Contractor in accordance with this Agreement, the Principal will pay the Contractor the Fee and any Disbursements on the basis and at the times or in the circumstances specified in Item 18 of the Contract Particulars and in accordance with this clause 12.

12.2 Payment Claims

- (a) It is a condition precedent to the Contractor's right to submit a Payment Claim under this clause 12.2 and any obligation of the Principal to pay the Contractor any amount under clause 12.4, that the Contractor must provide to the Principal:
 - (i) evidence of the payment of any monies due and payable to any Personnel and / or Subcontractors of the Contractor in respect of the Services the subject of the Payment Claim;

- (ii) a duly completed and signed statutory declaration and subcontractor's statement in the form set out in Annexure G (or in any other form requested or approved by the Principal) from the Contractor;
 - (iii) if the SOP Act applies to this Agreement and it is required in accordance with section 13(7) of the SOP Act, a duly completed and signed supporting statement by the Contractor in the form prescribed by the SOP Act and set out in Annexure H;
 - (iv) if requested by the Principal, proof of insurance in accordance with clause 7; and
 - (v) such further documentation as may reasonably be required by the Principal from time to time.
- (b) The Contractor is entitled to make a Payment Claim on the later to occur of:
- (i) the date that the Contractor satisfies all of the conditions precedent to the Contractor's entitlement to make a Payment Claim set out in clause 12.2(a); and
 - (ii) the period of time, or the dates, set out in Item 17 of the Contract Particulars.
- (c) Unless otherwise specified all Disbursements (if any are specified in Item 16 of the Contract Particulars) will be reimbursed at cost.
- (d) Each Payment Claim must:
- (i) be given in writing;
 - (A) in a form agreed by the parties or, failing agreement, as required by the Principal;
 - (B) addressed to the accounts payable division of the Principal, or as otherwise notified by the Principal to the Contractor from time to time; and
 - (C) send my mail, or email, to the Principal's Representative in accordance with clause 19;
 - (ii) refer to the contract number on the cover page of this Agreement; and
 - (iii) itemise details of the value of the Services performed by:
 - (A) applying the rates set out in the Schedule of Rates which are applicable to the Services completed under the relevant Payment Claim; and
 - (B) itemising any Disbursements (if any) that the Contractor is entitled to claim pursuant to this Agreement;
 - (iv) be accompanied by a valid tax invoice in the amount stated in the Payment Claim;

- (v) itemise any applicable GST;
- (vi) state the total amount payable;
- (vii) state the Contractor's invoice number; and
- (viii) include any other details reasonably required by the Principal.

12.3 Payment Statement

- (a) Within 10 Business Days of receiving a Payment Claim under clause 12.2, the Principal must give the Contractor a Payment Statement which sets out:
 - (i) the value of the Services completed;
 - (ii) the amount already paid to the Contractor in respect of the relevant Services;
 - (iii) the amount that the Principal is entitled to retain, deduct, withhold or set-off under this Agreement;
 - (iv) the amount (if any) which the Principal proposes to pay to the Contractor in respect of the relevant Services;
 - (v) the reason why an amount in clause 12.3(a)(iv) is less than the amount claimed in the relevant Payment Claim (if applicable); 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 of the Principal to set out in a Payment Statement an amount which it is entitled to retain, deduct, withhold or set off under this Agreement will not prejudice its right to subsequently exercise such right.
- (c) If the Contractor disagrees with a Payment Statement of the Principal, the Contractor may issue a Dispute Notice, following which the Dispute will be resolved in accordance with clause 20. Notwithstanding the existence of a Dispute, the Principal will make payment to the Contractor of the amount which the Principal proposes to pay the Contractor under clause 12.3(a)(iv) in accordance with clause 12.4.
- (d) Subject to the Contractor exercising its rights under clause 12.3(c), if the amount which the Principal proposes to pay the Contractor in a Payment Statement is less than the amount claimed in a Payment Claim, the Contractor agrees to withdraw the tax invoice submitted with the Payment Claim and issue a tax invoice in the amount stated in the relevant Payment Statement by not later than 2 Business Days following the date that the Contractor receives the relevant Payment Statement. Any invoice issued pursuant to this clause will not constitute a Payment Claim.

12.4 Payments

- (a) The Principal must pay the Contractor the amount which the Principal proposes to pay the Contractor as stated in the relevant Payment Statement provided under clause 12.3(a) within the period stated in Item 18 of the Contract Particulars.

- (b) The making of a payment by the Principal under this clause 12.4:
 - (i) is not evidence of or an indication of the value of the Services performed;
 - (ii) does not constitute an admission by the Principal that any Services provided by the Contractor conform with the requirements of this Agreement;
 - (iii) is a payment on account only; and
 - (iv) does not amount to a waiver of any right or action that the Principal may have against the Contractor at any time.
- (c) The Contractor agrees that all claims for payment for any Services must be made in accordance with this Agreement. If this Agreement is terminated, the Contractor will not be entitled to any payment other than as calculated in accordance with this Agreement.
- (d) Unless otherwise agreed by the Principal, payment to the Contractor will be made by electronic funds transfer to:
 - (i) where the Principal holds bank account details in respect of the Contractor as at the Commencement Date, that bank account; or
 - (ii) such other bank account as may be notified by the Contractor to the Principal from time to time during the Term.

12.5 Set Off

The Principal may at any time deduct from amounts otherwise payable to the Contractor any debt or amount due from the Contractor to the Principal under or in connection with this Agreement or any claim to money which the Principal reasonably considers it may have against the Contractor whether for damages or otherwise under or in connection with this Agreement.

12.6 Security of Payment Act

- (a) This clause applies if the SOP Act applies to this Agreement.
- (b) A Payment Statement issued by the Principal is a payment schedule under section 14 of the SOP Act.
- (c) For the purposes of section 17(3)(b) of the SOP Act, the Contractor irrevocably chooses the Institute of Arbitrators & Mediators Australia as the authorised nominating authority (as that term is defined in the SOP Act) for any adjudication application it may make under the SOP Act in respect of the subject matter of the Agreement.
- (d) When an adjudication occurs under the SOP Act and the Principal has paid an adjudicated amount to the Contractor:
 - (i) the amount will be taken into account by the Principal's Representative in issuing a Payment Statement; and
 - (ii) if it is subsequently determined pursuant to this Agreement that the Contractor was not entitled under this Agreement to payment of some or all of the adjudicated amount that was paid by the Principal

(Overpayment), the Overpayment will be a debt due and payable by the Contractor to the Principal which the Contractor must pay to the Principal upon demand and in respect of which the Contractor is not entitled to claim or exercise any set-off, counterclaim, deduction or similar right of defence.

- (e) Without limiting clause 12.5, the Principal may withhold any amount that is less than or equal to the amount claimed to be owed under a payment withholding request served on the Principal pursuant to Division 2A of the SOP Act.
- (f) If the Principal withholds from money otherwise due to the Contractor any amount that is less than or equal to the amount claimed to be owed under a payment withholding request served on the Principal pursuant to Division 2A of the SOP Act, then:
 - (i) the Principal may plead and rely upon Division 2A of the SOP Act as a defence to any claim for money by the Contractor from the Principal; and
 - (ii) the period during which the Principal retains money due to the Contractor pursuant to an obligation under Division 2A of the SOP Act will not be taken into account for the purpose of determining:
 - (A) any period for which money owed by the Principal to the Contractor has been unpaid; and
 - (B) the date by which payment of money owed by the Principal to the Contractor must be made.
- (g) The Contractor agrees not to commence proceedings to recover any amount withheld by the Principal pursuant to a payment withholding request served on the Principal in accordance with Division 2A of the SOP Act.
- (h) Any amount paid by the Principal pursuant to section 26C of the SOP Act will be a debt due from the Contractor to the Principal.
- (i) If the Principal withholds money pursuant to a payment withholding request served on the Principal pursuant to Division 2A of the SOP Act and the Contractor:
 - (i) pays the amount claimed to be due under the adjudication application to which the payment withholding request relates; or
 - (ii) becomes aware that the adjudication application to which the payment withholding request relates has been withdrawn,

then the Contractor must so notify the Principal within 5 days of the occurrence of the event in 12.6(i)(i) or 12.6(i)(ii) above (as applicable) by providing to the Principal a statement in writing in the form of a statutory declaration together with such other evidence as the Principal may require evidencing that the amount has been paid or the adjudication application has been withdrawn.

13 TAXES INCLUDING GOODS AND SERVICES TAX

- 13.1 To the extent that a party to this Agreement (**GST Supplier**) is or becomes liable to pay GST in connection with any Supply made under this Agreement and the amount of any such GST is not included in the amount payable under this Agreement:
- (a) the GST Supplier may add to the price of the Supply an amount equal to the GST payable on the Supply (**GST Amount**); and
 - (b) the other party will pay the GST Supplier the price for the Supply in accordance with this Agreement plus the GST Amount.
- 13.2 If, for any reason, the GST Supplier's GST liability in respect of a particular Supply is different from the amount of GST paid by the other party:
- (a) the GST Supplier must immediately repay to the other party the amount of any excess paid by the other party above the GST Supplier's GST liability; or
 - (b) the other party must pay the deficiency in the amount previously paid by that party to the GST Supplier for that Supply.
- 13.3 Each party warrants that at the time that party makes any Supply under this Agreement on which GST is imposed, that party is or will be registered under the GST Law.
- 13.4 Any invoice rendered by a party to this Agreement in connection with a Supply under this Agreement which seeks to recover an amount of GST payable by that party must conform to the requirements for a tax invoice (as that term is defined in the GST Law).
- 13.5 Other than GST, the Contractor must pay all taxes and charges payable in connection with the provision of the Services or this Agreement.
- 13.6 The Contractor acknowledges that, despite any other provision of this Agreement, the Principal will be entitled to withhold any payment otherwise due to the Contractor until it has satisfied any conditions which the Law requires be satisfied prior to the Principal making a payment or to ensure the Principal does not become liable for any taxes or charges for which the Contractor is primarily liable.

14 INTELLECTUAL PROPERTY

14.1 Contract Material

- (a) Copyright (including future copyright) in all Contract Material vests in the Principal or is otherwise assigned by the Contractor to the Principal. Title to, and Intellectual Property Rights in, all Contract Material shall, on being created, written or otherwise brought into existence, vest or otherwise be assigned or transferred to the Principal, without the need for further assurance.
- (b) The Principal grants to the Contractor a non-exclusive licence during the Term to exercise Intellectual Property Rights in the Contract Material solely for the purpose of performing the Contractor's obligations under this Agreement.

14.2 Existing Contract Material

This Agreement does not affect ownership of the Intellectual Property Rights in Existing Contract Material. The Contractor hereby grants, and must ensure that relevant third parties grant, to the Principal, at no additional cost to the Principal, a perpetual, non-exclusive, royalty-free, irrevocable, transferable licence (which includes the right to sub-license to third parties) to exercise the Intellectual Property Rights in the Existing Contract Material for the purposes of the Project or any other activities of the Principal.

14.3 **Perfection of rights**

The Contractor must execute all documents and do all acts and things required, at its cost (unless otherwise agreed), for the purposes of giving effect to the provisions of this Agreement dealing with Intellectual Property Rights.

14.4 **Moral Rights**

The Contractor must:

- (a) hold, or obtain, consents from all authors of Contract Material for the use of and adaptation of the Contract Material by the Contractor or the Principal, its licensees and successors in title, without restriction even if that use or act would infringe any "moral rights" (as that expression is defined in the Copyright Act 1968 (Cth)) and without any requirement to attribute the Contract Material to its authors; and
- (b) promptly provide the Principal with written evidence of all such consents if required by the Principal.

14.5 **Limitations on the use by the Contractor of the Contract Material**

The Contractor must ensure that the Contract Material is used, copied, supplied or reproduced only for the purposes of this Agreement unless it has obtained the prior written approval of the Principal to do otherwise. Any such approval may be given on any terms or conditions the Principal considers appropriate.

14.6 **Warranty**

The Contractor represents and warrants that:

- (a) it has all appropriate licences of, or title to, all Intellectual Property Rights that are required by it for the purpose of its obligations under this Agreement;
- (b) it has authority to assign or license (as the case may be) all Intellectual Property Rights granted to the Principal under this Agreement;
- (a) in providing the Services, the Contractor will not infringe the Intellectual Property Rights any person; and
- (c) the Principal's use of the Services for any purpose will not infringe the Intellectual Property Rights of the Contractor or any third party.

15 **INDEMNITY**

15.1 **Indemnity**

- (a) The Contractor agrees to indemnify and keep indemnified the Principal (other than its consultants and contractors) (**Indemnified Parties**) against any loss,

damages, liability or costs incurred or suffered by Indemnified Parties where such liability or loss is incurred by reason of or in direct connection with:

- (i) loss of, loss of use of, destruction or damage to real or personal property, including existing property;
- (ii) injury to, or disease or illness (including mental illness) or death of, persons;
- (iii) any infringement or alleged infringement of any Intellectual Property Rights (including Moral Rights) arising out of the supply or use of the Services or any Contract Material provided under this Agreement; and/or
- (iv) any unlawful, wrongful, wilful or negligent act or omission in connection with this Agreement,

by, or on behalf of the Contractor or its Personnel.

- (b) The Contractor's liability to indemnify the Indemnified Parties under this Agreement shall be reduced proportionally to the extent that any act or omission or default of the Indemnified Parties, its Personnel or its other consultants or contractors caused or contributed to the liability or loss.
- (c) The indemnity contained in this clause 15 is a continuing obligation of the Contractor separate and independent of any other responsibility or obligation of the Contractor and will continue beyond the Term.

15.2 Other beneficiaries of indemnity

To the extent that the indemnity in clause 15.1 extends to persons who are not parties to this Agreement, the Principal has sought and obtained that indemnity as agent for and on behalf of those persons and holds the benefit of that indemnity as trustee for those persons. It is further agreed that the Principal may enforce the indemnity for and on behalf of any relevant Principal's Personnel for their benefit and that such persons may plead the indemnity in answer to any claim made by the Contractor against them.

16 LIMITATION OF LIABILITY

- (a) Subject to clauses 16(b) and 16(c), the Contractor's aggregate liability to the Principal in contract, tort (including negligence) or otherwise under this Agreement is limited to the greater of:
 - (i) the amount stated in Item 19 of the Contract Particulars, or if no amount is stated, \$5 million; and
 - (ii) the Contractor's statutory limit of liability under the Professional Standards Act 1994 (NSW).
- (b) Except to the extent that clause 16(c)(iv) applies, neither party is liable to the other with respect to any Consequential Loss or Damage suffered or incurred by the other party.
- (c) The limitation of liability in clause 16(a) will not apply to any liability arising out of or in any way in connection with:

- (i) liability which cannot be limited at Law;
- (ii) fraud, wilful misconduct or criminal conduct by the Contractor or any of its employees, servants or agents;
- (iii) infringement of third party Intellectual Property Rights by the Contractor or its subcontractors,

in which case the Contractor's liability in respect of such events will be unlimited; or

- (iv) a liability, event, risk or other matter for which the Contractor is required to insure against under this Agreement, in which case the Contractor's liability will be limited to the greater of:
 - (A) the amount recoverable under a policy of insurance held or maintained (or required to be held or maintained) under this Agreement; or
 - (B) the amount which would have been recoverable under a policy of insurance held or maintained (or required to be held or maintained) under this Agreement if the Contractor had:
 1. promptly claimed, and diligently pursued the claim, under the policy of insurance; and
 2. complied with the terms and conditions of the policy of insurance and its obligations under this Agreement and at law in respect of the police of insurance; or
 - (C) the amount contemplated by clause 16(a).
- (d) Nothing in this clause 16 limits or otherwise restricts the Contractor's obligations to comply with the Professional Standards Act 1994 (NSW).

17 FORCE MAJEURE

- (a) A party is not liable for any failure to observe its obligations under this Agreement where that failure is wholly or substantially due to a force majeure event.
- (b) A force majeure event includes any cause beyond the control of that party, including strike, industrial action, war, sabotage, terrorist activity, national emergency, pandemic, blockade or governmental action, inaction or request, and act of God, 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 event and perform its obligations under this Agreement as quickly as possible.
- (d) Where the force majeure event prevents a party from performing a material obligation under this Agreement for a period in excess of 3 months, then the

other party may by notice terminate this Agreement, which will be effective immediately, unless otherwise stated in the notice.

- (e) A force majeure event will not relieve either party from its obligations to make payments of amounts then due and payable in respect of obligations under this Agreement which have been performed prior to the occurrence of the force majeure event.

18 TERMINATION

18.1 Termination for convenience

- (a) The Principal may terminate this Agreement at any time for its absolute and sole convenience, and for any or no reason, by not less than 10 Business Days written notice to the Contractor.
- (b) If the Principal terminates this Agreement pursuant to this clause 18.1 the provision of the Services must cease from the time and date specified in the notice under clause 18.1(a), or if no time and date is stated, within 10 Business Days of receipt by the Contractor of the notice.

18.2 Termination by the Principal for insolvency or default by the Contractor

If the Contractor:

- (a) is subject to an Event of Insolvency;
- (b) without reasonable cause suspends the carrying out of the Services;
- (c) commits a breach of this Agreement;
- (d) in the opinion of the Principal has a conflict of interest in performing the Services; or
- (e) is, or has engaged a person who is, the subject of proceedings or investigations commenced or threatened by ICAC, the police force or similar investigative body,

then the Principal may, without prejudice to its right to terminate this Agreement under clause 18.1:

- (f) in the case of the circumstances specified in clause 18.2(a), 18.2(b), 18.2(d) and 18.2(e) or where the breach is not capable of remedy, immediately terminate this Agreement by written notice to the Contractor; or
- (g) in the case of the circumstances specified in clause 18.2(c):
 - (i) give written notice to the Contractor specifying the circumstance and requiring the Contractor to remedy it;
 - (ii) if the Contractor fails to remedy the circumstance within 5 Business Days of the notice under clause 18.2(g)(i), the Principal may issue a further notice to the Contractor requiring the Contractor to remedy it; and
 - (iii) if the Contractor fails to remedy the circumstance within 5 Business Days of the notice under clause 18.2(g)(ii) :

- (A) suspend the Contractor's obligations to perform this Agreement; or
- (B) terminate this Agreement by a further written notice to the Contractor.

18.3 Termination for breach by the Principal

If:

- (a) the Principal has failed to pay an amount due to the Contractor under this Agreement and the amount is not the subject of a bona fide dispute;
- (b) the Contractor serves a notice on the Principal;
 - (i) stating that the amount referred to in clause 18.3(a) is overdue;
 - (ii) stating that if the amount referred to in clause 18.3(a) is not paid within 45 days of receipt of the notice, the Contractor proposes to exercise its rights under this clause 18.3; and
 - (iii) attaching a copy of the relevant Payment Claim; and
- (c) the Principal has not made payment of the amount referred to in clause 18.3(a) within 45 days of receipt of the notice referred to in 18.3(b), then the Contractor may terminate this Agreement by further notice to the Principal.

18.4 Effect of termination

Termination of this Agreement by either party is without prejudice to any accrued rights or remedies of either party. Following termination of the Agreement under clause 18.1, 18.2 or 18.3 the Principal may, in its absolute discretion:

- (a) carry out or complete the provision of the Services; or
- (b) enter into a contract with any person to carry out or complete provision of the Services.

18.5 Payment on termination

- (a) Upon termination of this Agreement under clause 18.1, the Principal must reimburse the Contractor for the cost of Services performed to the date of termination plus the direct costs reasonably incurred by the Contractor as a result of the termination. Such payment will not include any amount for the Contractor's profit or margin and will be a limitation upon the Principal's total liability to the Contractor in connection with the termination of this Agreement.
- (b) Upon termination of this Agreement under clause 18.2 or clause 18.3 the Principal will pay the Contractor for the Services performed by the Contractor in accordance with this Agreement up to the date of termination, such payment which;
 - (i) to the maximum extent permitted by Law, will be a limitation upon the Principal's total liability to the Contractor arising out of or in any way in connection with the termination of this Agreement under clauses 18.2 and 18.3; and

- (ii) shall take into account any adjustments and deductions for loss or damage suffered, or reasonably likely to be suffered, by the Principal as a consequence of breach of this Agreement by the Contractor or other circumstance specified in clause 18.2.
- (c) In accordance with clause 12.5, the Principal may offset any money due to the Contractor under this clause 18.5 against any money payable by the Contractor to the Principal and recover any shortfall from the Contractor as a debt immediately due and payable.

18.6 Consequences of termination

- (a) Without limiting the Principal's rights in relation to this Agreement, if the Principal prepaid any amounts to the Contractor for Services to be performed which at the date of termination have not been performed and this Agreement is terminated for any reason:
 - (i) the Contractor must refund to the Principal such prepaid amounts, within 5 Business Days of termination of this Agreement; and
 - (ii) the Principal may recover in an appropriate court the balance of any prepaid amount not refunded as a debt due and payable by the Contractor to the Principal.
- (b) The Contractor must, except to the extent approved by the Principal in writing and subject to clause 18.6(c), deliver to the Principal, within 5 Business Days of termination or expiry of this Agreement:
 - (i) all Confidential Information of the Principal;
 - (ii) all Existing Contract Material, Contract Material and the Principal's Material; and
 - (iii) all copies of the material referred to in clauses 18.6(b)(i) and 18.6(b)(ii) above.
- (c) The Contractor may retain one copy of the Contract Material for record keeping purposes, subject to the confidentiality and privacy requirements contained in this Agreement.
- (d) The Contractor must, for a minimum period of seven (7) years following the termination or expiry of this Agreement, keep any operational records and project data relating to the provision of the Services securely and in a form and manner as to facilitate access and inspection under this Agreement.
- (e) Clauses in this Agreement dealing with access to records, licences, consents, confidentiality, intellectual property, fitness for purpose, insurances, effect of termination, consequences of termination, payment, indemnities, dispute resolution, and any other provision of this Agreement which by its nature should survive termination or which is capable of continuing to apply after the Services are completed or terminated for any reason shall survive termination, expiry or repudiation of this Agreement.

19 NOTICES

- (a) Any notice or other communication given under this Agreement:

- (i) must be in writing addressed to the intended recipient at the address shown for the recipient in Item 20 of the Contract Particulars or the address last notified by the intended recipient to the sender;
 - (ii) must be signed by an authorised officer of the sender;
 - (iii) will be taken to have been delivered:
 - (A) in the case of delivery in person – when delivered to the recipient's address for service;
 - (B) in the case of delivery by post – within 3 Business Days of posting;
 - (C) if sent by email – the date for receipt of an "electronic communication" that would be determined if section 13A of the Electronic Transactions Act 2000 (NSW) were to apply in respect of the email.
- (b) If delivery or receipt of a notice occurs on a day that is not a Business Day, or occurs later than 5.00 pm (local time) on any day, it will be taken to have occurred at the commencement of business on the next Business Day.
- (c) The parties acknowledge and agree that any notice, approval, consent or other communication in connection with this Agreement given by email must, if it relates to or is in connection with:
- (i) the Fee, novation or any Variation;
 - (ii) termination of this Agreement; or
 - (iii) any dispute under this Agreement,
- in addition to being given an email, also be sent either by post or facsimile or given by hand.

20 DISPUTE RESOLUTION

20.1 Notice of Dispute

- (a) This clause applies to any dispute which arises between the parties in connection with this Agreement (**Dispute**). The parties must follow the dispute resolution process in this clause before either commences court proceedings or takes similar action, except to seek an urgent injunction or declaration.
- (b) If a party considers that a Dispute has arisen, it may give notice to the other party of the Dispute, setting out reasonable particulars of the matters in dispute (**Dispute Notice**). The Dispute Notice must be given within 14 days of the party becoming aware of the issue.

20.2 Discussions

- (a) The parties must promptly hold good faith discussions between the Contractor's Representative and the person nominated by the Principal's Representative after issue of a Dispute Notice to attempt to resolve the Dispute (**First Level Discussions**) and must (subject to privilege) furnish to

the other party all information with respect to the Dispute which is appropriate in connection with its resolution.

- (b) If the Dispute has not been resolved within 5 Business Days after commencement of First Level Discussions, the parties must attempt to resolve the Dispute by holding good faith discussions between a senior executive to be nominated by each Party and who in respect of the Principal, where the Principal's Representative is a senior executive, may be the Principal's Representative (**Second Level Discussions**).

20.3 **Arbitration**

- (a) If the Dispute has not been resolved within 10 Business Days after commencement of Second Level Discussions, then the dispute may be referred to arbitration by written Notice from either party to the other (**Arbitration Notice**).
- (b) In respect of arbitration pursuant to clause 20.3(a):
 - (iv) the arbitration will be conducted in accordance with the Rules of Arbitration of the Institute of Arbitrators and Mediators Australia (**the Rules**) current at the time of the reference to arbitration and as otherwise set out in this clause;
 - (v) one arbitrator will be appointed by agreement between the parties or, if agreement on the appointment of the arbitrator is not reached within 10 Business Days of the Arbitration Notice, in accordance with the Rules;
 - (vi) the seat of the arbitration will be Sydney and all hearings shall be heard in Sydney unless otherwise agreed by the parties; and
 - (vii) the determination of the arbitrator will be final and binding on the parties.
- (b) Nothing in this clause 20 will prejudice the right of a party to seek urgent injunctive, interlocutory or declaratory relief.
- (c) This clause 20 will survive expiration of the Term or termination of this Agreement.

20.4 **Continuing performance**

Each party must continue to perform its obligations under this Agreement notwithstanding the existence of any Dispute, unless the nature of the Dispute renders it impossible to do so or unless and until such obligations are terminated or expire in accordance with this Agreement.

21 **NOT USED**

22 **GENERAL**

22.1 **Governing Law**

This Agreement is governed by and must be construed according to the Law applying in New South Wales and, subject to clause 20, the parties submit to the non-exclusive jurisdiction of the courts of New South Wales.

22.2 Amendments

Subject to a direction to carry out a Variation in accordance with clause 11, this Agreement may only be varied by a document signed by or on behalf of each party.

22.3 Waiver

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

22.4 Further acts and documents

Each party must promptly do all further acts and execute and deliver all further documents (in form and content reasonably satisfactory to the other party) required by Law or reasonably requested by the other party to give effect to this Agreement.

22.5 Consents

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

22.6 Assignment

- (a) The Contractor cannot assign, novate or otherwise transfer any of its rights or obligations under this Agreement without the prior written consent of the Principal.
- (b) The Principal may require that the Agreement be novated to a third party by notifying the Contractor in writing and without the Contractor's consent. If the Agreement is to be novated under this clause 22.6(b) the Contractor agrees to enter into a Deed of Novation.
- (c) Without limiting clause 22.6(b), the Principal may, for its sole convenience and at its absolute discretion, assign or otherwise deal with its rights and obligations under this Agreement without the Contractor's consent to any third party. The Contractor must execute any document reasonably required to give effect to the assignment or other dealing.

22.7 No representation or reliance

- (a) Each party acknowledges that no party (nor any person acting on a party's behalf) has made any representation or other inducement to it to enter into this Agreement, except for representations or inducements expressly set out in this Agreement.

- (b) Each party acknowledges and confirms that it does not enter into this Agreement in reliance on any representation or other inducement by or on behalf of any other party, except for representations or inducements expressly set out in this Agreement.

22.8 Entire agreement

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

- (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.

22.9 Severance

If at any time a provision of this Agreement is or becomes illegal, void, 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 Agreement; or
- (b) the legality, validity or enforceability under the Law of any other jurisdiction of that or any other provision of this Agreement.

22.10 Exclusivity

- (a) The Contractor must not and must procure that:

- (i) any Related Entity of the Contractor; and
- (ii) any employees, agents, subcontractors and consultants who are involved in the provision of the Services,

do not, prior to the date of completion of the Project:

- (iii) have any direct or indirect involvement in the Project other than for the Principal or the New South Wales Government; or
- (iv) 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 sole discretion.

- (b) The Contractor agrees that:

- (i) having regard to the Project and the Services, clause 22.10(a) is reasonable as regards 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 22.10(a) 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 Contractor, in addition to any other remedies available at Law or in equity.

22.11 **Publicity**

The Contractor must obtain the written approval of the Principal before publishing or publicising any information associated with the Project, the Principal or the Services or seeking to use the Principal's name as a reference.

EXECUTED as an agreement

Signed for and on behalf of
Infrastructure NSW by its authorised
delegate in the presence of:

Signature


Name

Signature

Janine Lonergan
Name of authorised officer

Date: 7 July 2023

[This execution block to be used when the Contractor is a company]

Signed by **Architectus Australia Pty Ltd ABN 90 131 245 684** in
accordance with
section 127 of the Corporations Act 2001
(Cth):

Signature of Director

Full Name of Director

07.07.2023
Dated:

Signature of Company Secretary

Full Name of Company Secretary

07.07.2023
Dated:

[This execution block to be used when the Contractor is a partnership]

Signed by [insert name of the partner who
is authorised to sign on behalf of the
partnership] for and on behalf of [insert
name of Contractor] [ABN] in the
presence of:

Signature of Witness

Full Name of Witness

Signature of Partner

Full Name of Partner

Dated:

[This execution block to be used when the Contractor is an individual]

Signed by [insert name of individual] in the presence of:

Signature of Witness

Signature of Contractor

Print name

Full Name of Contractor

Address

Dated:

ANNEXURE "A" – Contract Particulars

- Item 1:
Services**
(clause 1.1 & 2) The Services are as described in the Services Brief and as per the Contractor's Submission dated 18 May 2023.
- Item 2:
Fees**
(clauses 1.1 & 12.1) The Upper Limiting Fee is \$7,391,068 (excluding GST) and the Principal will not be liable for any amount incurred in excess of this amount without varying the Agreement.
- The Fee is to be calculated as follows:
- for the relevant portion of the fee upon the achievement of the relevant milestone set out in the Services Brief.
- Refer Annexure A1 Fee Breakdown.
- Item 3:
Commencement Date**
(clause 1.1 & 2.2) 10 July 2023
- Item 4:
End Date**
(clause 1.1 & 2.2) At the completion of Stage 6 Construction and Post Construction Stage Services refer to Appendix A2 Milestones.
- Item 5:
Number of additional periods**
(clause 2.2) N/A
- Item 6:
Length of additional periods**
(clause 2.2) N/A
- Item 7:
Premises**
(clauses 1.1 and 2.13) Level 18, 25 Martin Place, Sydney NSW 2000
- Item 8:
Worksite**
(clauses 1.1 & 2.14) Level 27, 201 Kent Street, Sydney NSW 2000
- Item 9:
Key People**
(clauses 1.1 & 2.5) Refer to Annexure A3
- Item 10:
Date for completion of Services**
(clause 2.4(b)(i)) At the completion of Stage 6 Construction and Post Construction Stage Services refer to Appendix A2 Milestones.
- Item 11:
Program**
(clause 2.8 and 10.1) Program for performance and completion of the Services is required
- The Program is to be developed in accordance with clause 10.1(a)
- Item 12:** As required by clause 295 of the Work Health and Safety

Safety Report
(clause 2.17(b))

Regulation 2017 (NSW) or when requested by the Principal.

**Item 13:
Insurances**
(clause 7)

Public Liability Insurance: [REDACTED]

Products Liability Insurance: [REDACTED]

Professional Indemnity Insurance: [REDACTED]

Time for maintaining Professional Indemnity Insurance:
[REDACTED]

**Item 14:
Contractor's
Representative**
(clause 1.1 and 9.1)

[REDACTED]

**Item 15:
Principal's
Representative**
(clause 1.1 and 9.3)

Daniel Noaen, Development Director, Infrastructure NSW

**Item 16:
Disbursements**
(clause 12.1)

The Principal will reimburse any expenses properly and necessarily incurred by the Contractor in carrying out the Services with prior written consent.

**Item 17:
Payment Claim**
(clause 12.2)

Within 5 Business Days of the end of each calendar month.

**Item 18:
Period for payment**
(clause 12.4)

30 Business Days from the date of receipt of the Payment Claim.

**Item 19:
Limitation of Liability**
(clause 16)

[REDACTED]

**Item 20:
Notices**
(clause 19)

Principal

Infrastructure NSW
ABN: 85 031 302 516
Address: Level 27, 201 Kent Street, Sydney NSW 2000
Email address: daniel.noaen@infrastructure.nsw.gov.au
Tel: 02 8016 0100
Attention: Daniel Noaen

Contractor

Architectus Australia Pty Ltd
ABN: 90 131 245 684
Address: Level 18, 25 Martin Place, Sydney NSW 2000
Email address: [REDACTED]
[REDACTED]

**Item 21:
Quality management**

AS/NZS ISO 9001

system
(Annexure B)

Item 22:
Work Health & Safety
System
(Annexure B)

If no standard is specified, the default standard is the NSW Government Work Health and Safety management guidelines for construction procurement.

ANNEXURE "A1" – Fee Breakdown

Harbour Park Design Competition		
Fee Template - Schedule of Fees (Lump Sum and %)		
Columns B-G must be expressed as a lump sum fee ex. GST. Column I will automatically calculate the overall percentage of the fee against the construction contract value or public art budget respectively.		
Please complete yellow cells.		
REQUIRED DESIGN, OTHER REQUIRED & DISCRETIONARY CONSULTANTS		
Consultants (Entity)	Total (ex. GST)	% of total construction contract value
Schedule 1 - Required Design, Other Required & Discretionary Consultant Fees		

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ANNEXURE "A2" – Milestones

ANNEXURE A2 - Milestones

Stage	Stage name	Duration
Stage 1	[REDACTED]	
Stage 2		
Stage 3		
Stage 4		
Stage 5		
Stage 6		

ANNEXURE "A3" – Key People

ANNEXURE A3 - Key People

Consultant Role	Consultant Trading Name	ABN	Project Lead (Personnel)
Required Design Consultants			
1.			
2.			
3.			
Public			
4.			
4.			
5.			
Other			
6.			
7.			
8.			
9.			
10.			
11.			
12.			
13.			
14.			
15.			

Consultant Role

Consultant Trading Name

ABN

Project Lead (Personnel)

16.			
17.			
18.			
19.			
20.			
21.			
22.			
23.			
24.			
25.	/s		
26.			
27.			
28.			
29.			
30.	ltant		
31.			

Discretionary Consultants

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ANNEXURE "B" – Policies, Codes and Standards

All clause references in this Annexure are references to clauses in this Annexure unless otherwise indicated.

1 Contractor's compliance with Government Policies and Agreements

- (a) The Contractor acknowledges that when selecting the Contractor, the Principal, as a NSW Government authority, was obliged to consider the Contractor's compliance with the:
 - (i) NSW Government Procurement Policy Framework;
 - (ii) NSW Government Procurement: Small and Medium Enterprises Regional Procurement Policy;
 - (iii) Australian New Zealand Government Procurement Agreement; and
 - (iv) Australia-United States Free Trade Agreement.
- (b) The Contractor warrants that any information it provided to the Principal in its tender proposal in respect of its compliance with the requirements of the documents listed in clause 2(a) will remain true for the duration of this Agreement.

2 Quality Management

- (a) If required by Item 21 of the Contract Particulars, the Contractor must establish, implement and maintain for the duration of this Agreement a quality management system complying with AS/NZS ISO 9001. If the Contractor does not have AS/NZS ISO 9001 certification at the date of this Agreement, it must obtain that certification within 6 months of the date of this Agreement.
- (b) Any quality system must be used only as an aid to achieving compliance with this Agreement and to document such compliance and does not discharge the Contractor's other obligations under this Agreement.
- (c) The Contractor will not be relieved from compliance with any of its obligations, or any of its liabilities, under this Agreement or otherwise at Law as a result of:
 - (i) the implementation of, and compliance with, the quality system requirements of this Agreement;
 - (ii) any direction by the Principal's Representative concerning the Contractor's quality system or its compliance or non-compliance with that system; or
 - (iii) any audit or other monitoring by the Principal's Representative of the Contractor's compliance with the quality system.

3 Work Health and Safety

- (a) If required in Item 22 of the Contract Particulars, the Contractor must establish, implement and maintain for the duration of this Agreement, a Work Health and Safety System complying with the Principal's Policies, Codes and Standards and the WHS Legislation.
- (b) The Contractor must comply with the WHS Legislation, as well as any work health and safety policy, practice or procedure adopted or required by the Principal from time to time. The Contractor acknowledges and agrees that:
 - (i) the Principal may in its absolute discretion, direct changes to the Work Health and Safety System; and
 - (ii) in the event that the Principal gives a direction in accordance with clause 3(b)(i), the responsibility of the Contractor under this Agreement will not be relieved or reduced nor will the Principal be made responsible to the Contractor as a result of issuing that direction except to the extent that it gives rise to a Variation.

4 Competitive Pricing

4.1 Competitive pricing principles

The Principal and the Contractor agree that it is their common intention that the Fee will be (and will remain for the duration of this Agreement) commercially competitive in terms of:

- (a) the price offered by the Contractor to other customers whose orders for its services are of a comparable type to the Services; and
- (b) prices and terms and conditions offered by other providers in the market for services that are the same as or equivalent to the Services.

4.2 Most favoured pricing

The Contractor must ensure at all times during the duration of this Agreement that the Fee is no less favourable than any price at which the Contractor provides or offers to provide services that are equivalent or similar to the services supplied to any other customer of the Contractor, whose orders for its supply of services are of a comparable type to the Services.

5 No Public Statements

The Contractor must not disclose or advertise the existence of this Agreement, or issue any information, publication, document or article or make any statement to or advertise in any media any matters relating to this Agreement without the prior written consent of the Principal's Representative (unless required to do so by Law).

6 Additional policies, codes and standards

- (a) The Contractor acknowledges and agrees that:
- (i) prior to commencing performance of the Services it has, and it will ensure that its Personnel have, read each of the documents set out in clause 6(c) (as replaced, amended or updated from time to time);
 - (ii) it will, and will ensure that its Personnel, comply with the policies, codes and standards set out in clause 6(c):
 - (A) when undertaking the Services or any other activities under or in connection with the Agreement; and
 - (B) unless the context requires otherwise, as though references to the Principal and its Personnel in the Principal's policies, codes and standards referred to in clause 6(c) were references to the Contractor and its Personnel; and
 - (iii) it will not, and it will ensure that its Personnel do not, put the Principal in breach of any of the Principal's policies, codes and standards referred to in clause 6(c).
- (b) The policies, codes and standards referred to in clause 0 are available from the Principal.

The Contractor and its Personnel must comply with all of the following Principal's policies, codes and standards, any other policies, rules and standards notified by the Principal to the Contractor from time to time during the Term.

- (c) Infrastructure NSW Policies, codes and standards:
- I. The Code of Ethics and Conduct
 - II. Gifts, Benefits and Hospitality Policy
 - III. Statement of Business Ethics

ANNEXURE “C” – Services Brief and Stage Two Competition Documents

- Services Brief
- Stage Two Competition Documents

Services Brief

Harbour Park Principal Consultant

Draft V3.0

July 2023

1. Introduction

The Principal Consultant is responsible for the design development of Harbour Park (Project) from concept design to Project construction and completion. This document forms part of the Professional Services Contract (Agreement) between the Principal Consultant and Infrastructure NSW (INSW) and is to be read in conjunction with the Harbour Park Design Competition Stage One and Stage Two documents (Competition Documents) and Project Brief.

The services outlined in Sections 4.0 to 13.0 are to be delivered as part of the Project Stages outlined in Section 14.0.

The items outlined in this Services Brief are descriptive in nature only and are not intended to be an all-inclusive description of the scope of services. The Principal Consultant is to provide all services necessary for the satisfactory performance and completion of the Project as per standard professional practice.

2. Project Team Overview

The Project Team is the Winning Competitor nominated during the Harbour Park Design Competition (Competition), unless otherwise agreed by INSW in writing. The Project Team is inclusive of the Design Team, as outlined in Section 2.1 and the Technical Team, as outlined in Section 2.2.

INSW will directly engage a Project Manager to oversee the Principal Consultant and to work closely with the Project Team to successfully deliver the Project. The Project Team will not include the Project Manager as the Project Manager will be a part of the Client Team as outlined in Section 3.0.

2.1 Design Team

The Design Team will include the entities nominated during the Competition, unless otherwise agreed by INSW in writing. The below list outlines the Design Team required for the Project, including a broad description of their role.

The Design Team list and role description is the minimum required expertise and is not exhaustive. The Design Team is to include all design expertise required to successfully deliver the Project.

The Project Construction Budget is [REDACTED] (excluding art works), should the project budget be formally increased by INSW by greater than 5%, the Design Team will be entitled to review its fees commensurate with the increased effort required.

2.1.1 Principal Consultant

The Principal Consultant is the lead designer nominated by the Winning Competitor during the Competition, unless otherwise agreed by INSW in writing, and will be the entity contracted to INSW. The Principal Consultant must be registered as a business in Australia with an ABN no less than 10 years old. The Principal Consultant must engage, manage and coordinate the Design Team and Technical Team to successfully deliver the Project.

2.1.2 Landscape Architect

The Landscape Architect is the entity nominated during the Competition, unless otherwise agreed by INSW in writing. The Landscape Architect must be registered within their practice registration territory and can be the Principal Consultant if nominated as the lead designer during the Competition. The Landscape Architect is to deliver all services necessary for the satisfactory performance and completion of the landscape component of the Project.

2.1.3 Artist(s) and (if applicable) Art Curator

The Artist(s) and (if applicable) Art Curator are the entities nominated during the Competition, unless otherwise agreed by INSW in writing. The Artist(s) and (if applicable) Art Curator is to work closely with the Barangaroo Curator and Arts and Culture Panel (ACP) to deliver all services necessary for the satisfactory performance and completion of the public art component of the Project.

Artist fee based on competition scope and deliverables is as per following:

- Art thinking, design, cultural and intellectual input from the artist team.
- Meetings and workshops as required.
- Provide developed 3d models at each stage for integration with surrounding landscape and architectural elements.
- Development of fabrication and construction methodology in coordination with other specialist consultants and contractors. Provide construction ready 3d model at completion of construction documentation stage.
- Diagrams, views, details, and annotations as required for each stage.
- Selection and review of artwork material.
- Coordination and management of the public art design package.

2.1.4 Architect

The Architect is the entity nominated during the Competition, unless otherwise agreed by INSW in writing. The Architect must be registered within their practice registration territory and can be the Principal Consultant if nominated as the lead designer during the Competition. The Architect is to deliver all services necessary for the satisfactory performance and completion of the architectural component of the Project including, but not limited to, the amenities building and any other built form(s) proposed for the Project.

All architectural services in relation to the Project must be completed by a practicing Architect, architectural company or architectural partnership that is registered as an Architect in NSW, Australia pursuant to the Architects Act 2003 (NSW).

2.2 Technical Team

The Technical Team will include a team of sub-consultants with the expertise and skills required to deliver the services necessary for the satisfactory performance and completion of the Project. The Technical Team will be the entities nominated during the Competition, unless otherwise agreed by INSW in writing. The below

list outlines the Technical Team expertise and skills required for the Project, including a broad description of their role and services.

The Technical Team list and role description is the minimum recommended expertise and is not exhaustive. The Principal Consultant is to engage all Technical Team members and expertise required to successfully deliver the Project and to meet the Secretary's Environmental Assessment Requirements (SEARs) for the Projects State Significant Development Application (SSDA). The [SEARs is available on the Planning Portal](#).

2.2.1 Designing with Country

Inform and collaborate with the Project Team to develop a Connecting with Country response to the NSW Government Connecting with Country framework for the Project. The response is to also consider the outcome of the Aboriginal Cultural Heritage Assessment (ACHA), Statement of Heritage Impact (SOHI) and Historical Archaeological Assessment. The consultant will engage with the FNWG and community members throughout the Project, and present progress on the design proposal and framework to Project Stakeholders, as required. A community engagement strategy will be prepared by INSW and will outline the community members to be consulted at various stages.

2.2.2 Wind Consultant

Review, analyse and report on potential wind and solar impacts relating to the design, including both mitigation measures to minimise impacts to adjacent areas and amelioration ideas to create a comfortable public space in this exposed harbourside location. The Project will need to address the wind criteria stipulated for the southern end of the Project, as outlined in the Competition Documents.

2.2.3 Surveyor

Undertake a survey of the Project site, including a topographical survey, and develop a digital terrain model to inform the development of a 3D model of existing infrastructure.

The site survey is to identify topography and features, cadastral and property boundaries, easements, and locate services including, but not limited to utility services pit lid levels, HV, LV, CCTV camera poles and optic fibres, lighting controls and poles, telecommunications, sewer, potable water, irrigation, stormwater pipes and invert levels, structures, fixtures, pavements, trees and landscaping onsite.

The survey shall connect to the existing state survey control marks and include installation of two permanent survey control marks.

It is assumed that INSW will provide suitable As-Builts for the existing works completed to date and that inground service scans are not required.

2.2.4 Civil Engineer and Flood Modelling

Consult with the Project Team to assess the existing site conditions and document strategies to deliver services and utilities infrastructure, civil structures, civil / site drainage, and features for the Project. The drainage design should consider how the Project addresses and responds to the context and site constraints and opportunities including precinct wide strategies.

The Civil Engineer will undertake flood modelling for the Project site based on, and informed by existing precinct flood models provided by INSW, and will prepare an integrated water management plan and water balance model in coordination with the Client Team.

The design for Harbour Park will ensure levels, features and structures do not impede overland flows from Central Barangaroo Development Area and permit Central Barangaroo overland flows to flow in a westerly direction and discharge into Sydney Harbour.

2.2.5 Geotechnical Engineer

Review, analyse and report on potential impacts of the design on ground and water conditions. The consultant is to provide a geotechnical assessment, surface and groundwater impact assessment and salinity management plan and/or Acid Sulfate Soils Management Plan.

2.2.6 Hydraulic Engineer

Prepare a hydraulic and drainage design for the Project as it relates to proposed buildings on the site including potable water, sanitary and stormwater, trade waste drainage, recycled water, and rainwater reuse. Fire hydrant design for buildings and site to meet authority requirements.

2.2.7 Structural Engineer

Advise and design the structural requirements of the amenities building and any other built form proposed for the Project.

2.2.8 Fire Engineer

Review and advise on the fire services required to satisfy applicable regulations and standards, particularly as they relate to the amenities building and the food and Beverage offering. The Fire Engineer should coordinate with the Hydraulic Engineer as directed by the Principal Consultant.

2.2.9 Traffic Engineer

Review, advise and report on the construction and operational impact of the proposal and provide all necessary documentation for the SSDA and Construction Certificate, including a Transport and Accessibility Impact Assessment, and a Construction Pedestrian and Traffic Management Plan. Review Barangaroo traffic management strategies to ensure the proposal aligns with precinct wide approaches.

2.2.10 Acoustic Engineer

Advise and report on the noise and vibration impact of the construction and operational on nearby sensitive receivers and structures and outline the proposed management and mitigation measures that would be implemented. The Acoustic Engineer is to prepare a Noise and Impact Assessment to support the SSDA, and a Construction Noise and Vibration Assessment and Management Plan that meets the requirements of the SSDA.

2.2.11 Planning Consultant

Prepare, coordinate and review all necessary documentation for the SSDA and provide all necessary planning advice, as required, through the Project Stages. The consultant will prepare the Environmental Impact Statement (EIS), Visual Impact Assessment and the Social Impact Assessment for the SSDA and therefore must be a suitably qualified, experienced and skilled environmental assessment practitioner who is registered under an accredited Registered Environmental Assessment Practitioner (REAP) scheme. The consultant will be required to complete the requisite REAP declaration in line with Environmental Planning and Assessment Regulation (EP&A Regulation) 2021. The Planning Consultant is to provide all documentation to the INSW Planning Advisor for peer review and must address comments as required.

2.2.12 Universal Access and DDA Design Consultant

Provide access, inclusion and DDA Design advice and report on all aspects of the design, identifying issues and working through solutions with the team, as required, to ensure the project is designed with dignity and as inclusive as possible. The consultant is to prepare an Accessibility Report for the Project.

2.2.13 Waste Engineer

Provide a Waste Management Plan for construction and operational waste. The Waste Management Plan is to be in accordance with all relevant waste guidelines and regulations. The consultant should liaise with INSW and its Development Partners as outlined in section 3.3.5 to ensure the Waste Management Plan aligns with Barangaroo's sustainability objectives and sitewide waste strategy, as outlined in the Project Brief.

2.2.14 Irrigation Consultant

Design and report on all required irrigation for the Project and integrate into the precinct-wide irrigation system in coordination with the Project Team.

2.2.15 Arborist

The Project Arborist is to develop in coordination with the Project Team and Barangaroo Arborist, all arborist advice and reporting requirements, including an Urban Canopy Cover Analysis Plan at 5 and 10 years. Provide detailed input on the planting strategy and schedule and the early consolidated tree procurement strategy.

2.2.16 Horticulturist

Provide all horticulturist advice and reporting requirements to the Project Team in coordination with the Barangaroo Horticulturist. The Project Horticulturist is to provide detailed input on the planting strategy and schedule including the planting program and methodology.

2.2.17 Environmental Consultant

Advise and report on all necessary environmental considerations for the Project including but not limited to, ecological and biodiversity considerations and opportunities for climate adaptation and resilience.

2.2.18 Soil Specialist

Advise and report on all necessary soil mediums and climatic conditions for the Project. Assist the Principal Consultant with decision making regarding appropriate planting schedule.

2.2.19 Remediation Specialist

Assess and quantify any site contamination to the extent required to determine the site is suitable, or will be suitable following remediation, for the project based on the contamination scoping summary document *Harbour Park - Services Brief - Contamination and Remediation detailed scope - 23Jun2023* ” provided by INSW 23rd June 2023, and attached as appendix 2 to this document.

2.2.20 Electrical and Lighting Engineer/s

Advise on all electrical, lighting, CCTV, and AV services required for the Project in coordination with the Barangaroo precinct sitewide infrastructure. The consultant is to develop a street and pedestrian lighting strategy.

2.2.21 Security CPTED Consultant

Undertake a Crime Prevention through Environmental Design (CPTED) study for the Project and work with the Project Team to address all risks identified, excluding TVRA or SRA relating to terrorism risk. The Security CPTED Consultant is to prepare a CPTED Report.

2.2.22 Security Consultant

Undertake a Vehicle Dynamics Assessment (VDA) and prepare a Hostile Vehicle Mitigation Report that assesses all hostile and accidental vehicle threats to the Project and potential mitigation options in accordance with relevant standards including, but not limited to, Australia’s Hostile Vehicle Guidelines for Crowded Places and UFC 4-022-02 Selection and Application for Vehicle Barriers.

2.2.23 Heritage Consultant

Assess, advise and report on all heritage aspects for the Project including but not limited to, preparing a Statement of Heritage Impact (SOHI) and supporting information such as an Archaeological Assessment, as required.

2.2.24 Sustainability Consultant

Review, advise and report on sustainable design and operation, including but not limited to, confirmation that the design meets or exceeds Barangaroo sustainability and climate positive commitments. The consultant is to prepare an Ecological Sustainable Development (ESD) Report for the Project.

2.2.25 Building Code of Australia Consultant

Provide advice and reporting on all design, authority and compliance requirements to satisfy applicable regulations and standards, particularly as they relate to the amenities building. The consultant is to provide a Building Code of Australia (BCA) Compliance Report.

2.2.26 Risk Consultant

Assist the Principal Consultant, as required, with safety in design considerations and develop and manage risk assessments and a design risk register for design decisions, as shown in the NSW Government Code of Practice, Safe Design of Structures (SafeWork NSW, August 2019). The risk assessment and risk register is to include, the design and its intended purpose, materials to be used, construction, maintenance, operation, demolition or dismantling and disposal methods and relevant legislation, codes of practice and standards for consideration and compliance. The consultant is to liaise with the Project Team and INSW Project Risk and Safety Team to mitigate all items identified to a satisfactory level.

2.2.27 Event and Venue Consultant

The Event and Venue consultant shall provide advice to the design team and Principal with regard to the use of the park for public events, ensuring the park is capable of meeting the event requirements agreed with INSW and throughout the competition brief. This includes consideration of varying audio visual and lighting systems, event capacity and capability, identification of event accessibility and scenario modelling for up to six (6) different event types to ensure all relevant statutory planning requirements are satisfied.

3.0 Client Team Overview

3.1 INSW

INSW is the principal for the Project, as defined in the Agreement and is required to review and approve all Project documents. INSW will establish an INSW Harbour Park Team who will work closely with the Project Manager to oversee the Principal Consultant. The INSW Harbour Park Team will work with the Project Team, where required, to successfully deliver the Project.

3.2 Project Manager

INSW will directly engage a Project Manager for the Project. The Project Manager will oversee the Principal Consultant and will work with the Project Team, where required, to successfully deliver the Project. The Project Manager will be the Principal Consultant's primary contact for all Project Stages. The Project Manager will receive and review all Project documents provided by the Project Team before forwarding to INSW for approval.

3.3 INSW Planning Advisor

INSW will engage a Planning Advisor (INSW Planning Advisor) to peer review all documentation prepared by the Project Planning Consultant. The INSW Planning Advisor will liaise with the Project Planning Consultant, where required, to successfully deliver the Project and will formally submit the SSDA in the NSW Government Planning Portal with the Project Manager and INSW.

3.4 Barangaroo Art Curator

The role of the Barangaroo Public Art Curatorial Advisor (Barangaroo Art Curator) is to provide on-going curatorial support to the Project Team throughout the Project Stages in coordination with the Project Artist(s) and (if applicable) Art Curator.

3.5 Barangaroo Arborist

The role of the Barangaroo Arborist is to provide on-going advice and support to the Project Team for the early consolidated tree procurement including technical support for progressive tree inspections in coordination with the Project Arborist. The Barangaroo Arborist will peer review the Urban Canopy Cover Analysis Plan.

3.6 Barangaroo Horticulturist

The role of the Barangaroo Horticulturist is to provide on-going advice on the planting strategy and schedule and support to the Project Team throughout the Project Stages in coordination with the Project Horticulturist.

3.7 Project Stakeholders

The Principal Consultant is to liaise with all Project Stakeholders as required for all Project Stages to successfully deliver the Project. The below list outlines the Project Stakeholders and includes a broad description of their role.

The Project Stakeholder list and role description is not exhaustive.

3.7.1 Barangaroo Design Excellence Advisory Panel (DEAP)

The role of the Barangaroo Design Excellence Advisory Panel (DEAP) is to ensure all parties involved in the Project are committed to the pursuit of design excellence, and to ensure the Project delivers value for money. INSW may change the composition of the DEAP at any time.

The Design Team will need to engage (via presentations and workshops) with the DEAP throughout the design and construction process. One or more DEAP member(s) may be nominated as DEAP representatives for the Project, who will work closely with the Project Team during the relevant Project Stages. The DEAP and DEAP representatives will:

- Provide guidance and advice to INSW and the Principal Consultant on the design of the Project;
- Review and assess the design to ensure design excellence is realised; and
- Ensure the design integrity is not impacted if there are any major design changes.

3.7.2 Barangaroo Arts and Culture Panel (ACP)

The role of the Barangaroo Arts and Culture Panel (ACP) is to provide expert advice on developing the character and identity of Barangaroo through a range of arts, culture and other public programs including events and activities of civic importance. INSW will consider advice provided by the ACP as part of its decision-making and may seek advice from other parties where required.

The Design Team will need to engage with the ACP throughout the design process. The Design Team will need to consult with the ACP on:

- The strategy for development and delivery of public art and culture, civic and community programs for the Project including advice on the development of concepts and ideas for public art and interpretation;

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- Ensuring public art and culture, civic and community programming and heritage interpretation for the Project align with the overall aims and objectives articulated by the Barangaroo Public Art and Cultural Plan (2015), the Barangaroo Heritage Interpretation Plan (2022), the Sydney Metro Heritage Interpretation Plan and the Art Implementation Plan (2023); and
- The integration of high-quality art and culture, heritage interpretation and civic and community experiences across the Project;
- Project budget and expenditure of the Barangaroo Arts & Culture Levy; and
- Upholding the principles of curatorial and design excellence.

3.7.3 First Nations Working Group (FNWG)

The role of the First Nations Working Group (FNWG) is to provide expert advice on Aboriginal and Torres Strait Islander cultural matters. The advice will support the Design Team in developing the character and identity of the Project through the design and delivery of public spaces, as well as the delivery of a range of arts, cultural and other public programs. INSW will consider advice provided by the FNWG as part of its decision-making and may seek advice from other parties where required.

The Design Team will need to engage with the FNWG throughout the design process. The FNWG will:

- Guide design and delivery of a Connecting with Country response, inclusive of public art relating to First Nations culture and interpretation;
- Provide advice and make recommendations on the overall delivery of public art and/or heritage interpretation, notably, public art or interpretive elements which involve Aboriginal culture, tradition and/or language; and
- Provide advice and make recommendations on First Nations community engagement and communications to support the Project design and delivery.

3.7.4 Placemaking NSW

Placemaking NSW is responsible for the ongoing design quality, usability, management and maintenance of the Project following construction and completion. The Design Team will need to engage (via presentations and workshops) with Placemaking NSW as required during all Project Stages. Placemaking NSW will:

- Provide a functional brief to help guide the Project as it relates to ongoing use, management and maintenance; and
- Review the design to ensure consideration of ongoing design quality, usability, management and maintenance.

3.7.5 Development Partners

The Principal Consultant is to liaise with INSW's development partners for Barangaroo as required to successfully deliver the Project. The development partners include Aqualand, Lendlease, Crown Resort and Sydney Metro. INSW will facilitate any engagement with development partners where required.

The design and development of the Central Barangaroo Development Area is ongoing and may be subject to change throughout the Project Stages. The Principal Consultant is to work collaboratively with the developer for the Central Barangaroo Development Area, Aqualand, where required by INSW, to ensure the seamless integration between the Project and the Central Barangaroo Development Area.

Scope of Services

4.0 General

The Principal Consultant must:

- Manage all aspects of design and quality of the Project;
- Design, coordinate and document to deliver the Project to meet the Barangaroo strategic plan outcomes and Project objectives, any constraints or special needs, performance requirements, requirements for approvals and acceptable levels of service;
- Coordinate and manage all Project Team engagements and their quality, programming and document requirements for the Project;
- Assist the Project Manager with obtaining necessary permits;
- Assist in consultation with all stakeholders, including local communities, in conjunction with the Project Manager and INSW and ensure acceptance of the Project scope;
- Take all necessary action to maintain overall progress and deliver specified deliverables in accordance with the approved budget and program;
- Ensure the design complies with all relevant NSW Government legislation and regulations;
- Manage the potential for benefits and adverse impacts, and demonstrate the cost, time, fee, health and safety and functional ramifications to enable informed decisions to be made on proposed variations and changes of scope;
- Design the base structure of the public domain and inaccessible services/infrastructure to achieve a minimum life span of 50 years;
- Design the key public domain finishes to achieve a minimum life span of 30 years;
- Design the amenities building and other permanent built forms and structures to achieve a minimum life span of 50 years;
- Design, fabricate and install the artwork(s) to achieve a minimum life span of 25 years;
- Present design progress to INSW, the Project Manager and Project Stakeholders, as required;
- Keep a record of INSW's approved changes to Project scope and associated revisions to the budget and program;
- Remain aware of the Project budget, including the public art budget, as advised by INSW and, in circumstances where the Project budget is likely to be exceeded, provide value engineering options as directed by INSW;
- Not change the Project scope without written approval from INSW including confirmation of INSW's understanding of the rationale and ramifications;
- Have all services under the Agreement, including services by the Project Team, carried out under a management system certified as meeting the requirements of AS/NZS ISO 9001:2016 or equivalent;

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- Ensure full statutory compliance with all relevant legislation, including the provisions of the Work Health Safety (WHS) Act 2011, WHS Regulation 2017 and the NSW Government Safe Design of Structures Code of Practice 2019;
- Identify and comply with any other industry, government or internal performance or quality assurance standard(s) which must be followed for the course of the services;
- Respond to INSW queries and directions in a timely manner as agreed with INSW;
- Engage with Project Stakeholders, as required, and respond to all commentary received as agreed with INSW;
- Liaise with the INSW Infrastructure Team and Aqualand in relation to the adjacent development blocks and adjust the design and services as necessary to ensure a holistic and coordinated public domain for Barangaroo;
- Ensure satisfactory management of third-party utilities interfaces including, but not limited to Ausgrid, Sydney Metro, Transport for NSW, City of Sydney, Sydney Water, NSW/Telecommunications and Jemena;
- Develop and document a quality design outcome which meets the Project Brief and is within the approved budget; and
- Fulfill all requirements of the Project Brief unless otherwise instructed by INSW.

5.0 Management of Project Team

The Principal Consultant is responsible for the management and monitoring of the Project Team. The Principal Consultant must ensure, as a minimum, that the Project Team:

- Is appropriately qualified, competent and experienced in the type of services required;
- Undertake all services necessary to accomplish the objectives and requirements of the Design Brief and Scope of Services;
- Include all incidentals required to deliver the services, including but not limited to, printing costs, delivery costs and travel costs, in their contract and associated fee;
- Provide services that align with contract conditions and relevant quality standards;
- Provide services within budget, program and quality criteria as defined and agreed with INSW;
- Include an uncapped allowance for document reviews, amendments and INSW feedback in relevant contracts noting all changes and improvements to the design are subject to INSW approval;
- Liaise with the Quantity Surveyor appointed by INSW to assist with development of Project cost estimates and monitoring;
- Include and maintain Insurances as required in contracts;
- Ensure all members of the Project Team have and maintain relevant insurances;
- Provide input into the Principal Consultant's quality, WHS and environmental management system;
- Comply with provisions of the WHS Act 2011, WHS Regulation 2017, the NSW Government Safe Design of Structures Code of Practice 2019 and INSW's audit and reporting requirements related to their scope of services;
- Provide response to requests for information (RFI's) and supply responses by written instruction, and keep records of the transaction;

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- Provide services that satisfy INSW, relevant authorities, and comply with relevant codes, ordinances, regulations and standards;
- Supply certification of deliverables for compliance with the relevant specification, statutory requirements, and codes;
- Provide all WHS and environmental management plans to the Principal Consultant for review and assessment for quality purposes;
- Obtain the relevant Statutory Authorities' approval for any variation from acceptable standards;
- Provide final documents in electronic format and compatible as follows (documentation should be legible when printed at A3 format):
 - All electronic drawing files shall be compatible with Adobe Illustrator (.ai) or CAD (.dwg format) and readable in Adobe Acrobat Reader (.pdf);
 - All written documents, specifications and manuals shall be compatible with Microsoft Word / Excel and readable in Adobe Acrobat Reader (.pdf); and
 - All public art files to be compatible with Adobe Illustrator / In-Design and readable in Adobe Acrobat Reader (.pdf).

6.0 Services Delivery Plan

Within 4 weeks of commissioning, the Principal Consultant must prepare and issue for approval to the Project Manager a Service Delivery Plan (SDP) that complies with AS/NZS ISO 9001: 2016 or equivalent. The SDP is to reference the SDP drafted by the Project Manager, once approved by INSW. The SDP is to include inputs from the Project Team, as required, including, but not limited to:

- Work Health and Safety (with specific reference to how the requirements of the Code of Practice Safe Design of Structures, SafeWork NSW August 2019 will be addressed), risk, quality and environmental management;
- Project organisation;
- Design management including Project Stage services;
- Project program integration with the services;
- Budget breakdown for the design services;
- Cost planning integration with the services (management of the Project Team);
- Construction Project Stage services;
- Design services communications strategy;
- Scope and change management;
- Stakeholder co-ordination and liaison, including Project Stakeholders as outlined in section 3.7;
- Information management and record keeping;
- Reporting; and
- Commissioning and handover services.

The Principal Consultant must provide the Project Manager with an updated SDP at the end of each Project Stage.

7.0 Risk Management Plan

The Principal Consultant must:

- Assess and manage design risk as an integral part of the services in accordance with AS/NZS ISO 31000:2018 or equivalent;
- Ensure full compliance with provisions of the WHS Act 2011, WHS Regulation 2017 and the NSW Government Safe Design of Structures Code of Practice 2019;
- Using the INSW template, identify and document in a risk register at the start of each Project Stage all significant risks to the Project; for the sake of certainty, a reference to risk in this Section 7.0 is a reference to Inherent risk, i.e. before any risk treatments/mitigation actions are put in place;
- Analyse and monitor all medium rated risks to ensure they do not increase in risk profile;
- For all risks rated as High or Very High, analyse and make recommendations to the Project Manager for risk treatment mitigation actions to bring the risk to an acceptable level, and act on the Project Manager's direction;
- Monitor and report on the management and impacts of medium, high and very high rated risks; and
- Supply on request evidence of particular risk management processes.

8.0 Work Health Safety Management Plan

The Principal Consultant must prepare a WHS Management Plan for approval by INSW and the Project Manager, prior to Stage 4 as outlined in Section 14.0. The WHS Management Plan is to reference the WHS Management Plan prepared by the Project Manager for the Project and must meet or exceed the requirements of the INSW Safety Management System (InfraSafe) and WHS Act 2011.

The aim of the WHS Management Plan is to identify risks throughout the lifecycle of the Project and eliminate those risks so far as is reasonably practicable, and where it is not reasonably practicable, to minimise risks, so far as is reasonably practicable.

The WHS Management Plan will:

- Describe how the Project Team will manage any identified project risks;
- Describe how Safety in Design is and will be considered in design decisions about the design and its intended purpose, materials to be used, construction, maintenance, operation, demolition or dismantling and disposal methods and relevant legislation, codes of practice and standards for consideration and compliance.

The Principal Consultant must maintain and ensure its WHS Management Plan is up to date throughout all Project Stages and must undertake a risk review of the WHS Management Plan every six months.

The Project Team is required to demonstrate compliance with the safe design and other obligations of the WHS Act, WHS Regulation and the NSW Government Code of Practice Safe Design of Structures (SafeWork NSW, August 2019). This includes, but is not limited to:

- Consulting with INSW and stakeholders to identify structure lifecycle risks, and so far as is reasonably practicable, eliminate or minimise the risks;
- Providing adequate information about:
 - The purpose for which the Project was designed;
 - The results of any calculations, testing, analysis or examination; and

- Any conditions necessary to ensure that Project risks are minimised to the extent reasonably practicable.
- Providing a written report that specifies the hazards relating to the design that, so far as the Principal Consultant is reasonably aware, create a risk to persons carrying out the construction work.

INSW may use independent auditors to examine the Principal Consultant's implementation of the WHS Management Plan.

9.0 Change Management

The Principal Consultant must ensure the design fulfills the objectives of the Project Brief and is not altered unless by written agreement with INSW. In doing so, the Principal Consultant must prepare and present a monthly Project report to INSW and the Project Manager addressing:

- Status against the approved program;
- Cost to date compared with the approved budget;
- Status of any site inspections;
- Status of RFI's and requests for clarification (RFC's);
- Progress reports from the Project Team;
- Decisions affecting or likely to significantly affect the Project;
- Potential issues affecting or likely to significantly affect the Project;
- Industrial or other disputes affecting progress;
- Photographs and/or video footage of progress, where necessary; and
- Any other significant matters, including potential claims, delays and disputes, with recommended action(s) to keep the Project on time and budget.

10.0 Reporting and Communications

The Principal Consultant must maintain contact with INSW for the duration of the Agreement via the Project Manager, who will develop formal Project meetings, reporting and communication requirements for the services. The reporting structure for the Project Team is provided in Figure 1.

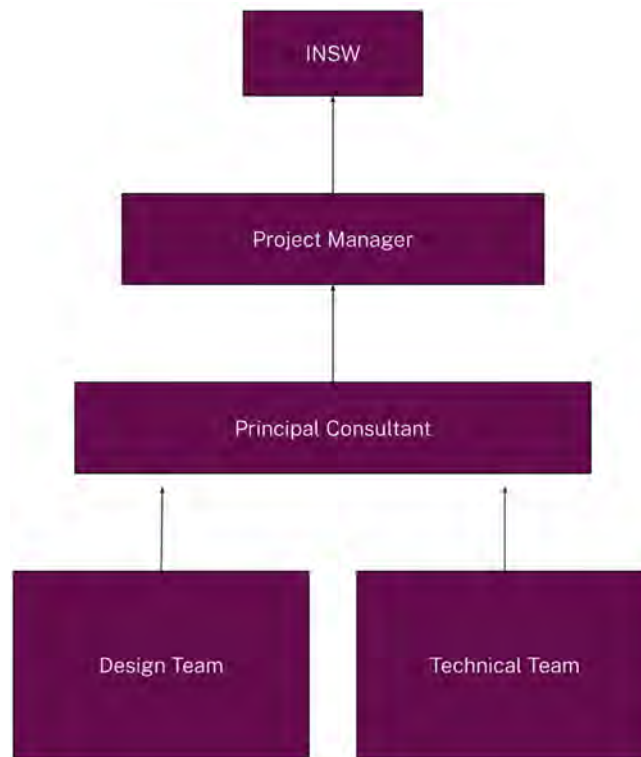


Figure 1 Project Team Reporting Structure

The Principal Consultant is expected to provide monthly Progress Reports to INSW, the Project Manager and Project Stakeholders, as a minimum, to support overall Project reporting requirements. The Project Manager will determine the form and content required from the Principal Consultant. As a minimum, the Progress Report is to include:

- A design update;
- A planning update;
- A program report update; and
- A budget report update.

The Principal Consultant must report annually to INSW against its Aboriginal Participation Plan, Small and Medium Enterprise Participation Plan and Local Participation Plan requirements.

Reports and communications are expected to identify key project actions, issues and decisions to ensure the Project is appropriately controlled by the Principal Consultant with reference to the Project Brief.

The Principal Consultant must not make any substantial alteration to, addition to or omission from the plans, drawings, layouts, design, specifications or other material previously approved, without the prior written approval of INSW.

11.0 Liaison & Coordination

The Principal Consultant must:

- Work collaboratively with INSW, the Project Team, Project Manager, Project Stakeholders, Government Agencies and INSW's service providers, as required, to successfully deliver the Project;
- Work collaboratively with the INSW Communications and Engagement Team, where required. This includes attending all community consultation and engagement meetings to present the Project design

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development and providing responses to community comments, where required; Keep a record and track Project Stakeholder requests and incorporate the requests into Project progress, subject to INSW written approval;

- Engage, brief, coordinate, direct, supervise and control the activities and documentation of the Project Team for satisfactory completion of the Project within the program and budget, as approved by INSW;
- Secure all approvals from INSW, the Project Manager and other relevant Agencies and Project Stakeholders, as required;
- Bring issues that require consideration and/or decision by INSW to the Project Manager's attention as they arise, including options for their resolution, a recommended course of action and the impact, if any, on the Project and its program;
- Take all necessary action for and assist in effective and timely resolution of issues;
- Prepare correspondence, submissions, reports and briefing notes for INSW, the Project Manager and other interested parties, as necessary and instructed by INSW;
- Liaise and provide information to the Quantity Surveyor for preparation of budget estimates and adjustment of the project cost plan progressively during Project Stages; and
- Conduct consultation, cooperation and coordination as it relates to WHS in accordance with the NSW Government Code of Practice Work Health and Safety Consultation, Cooperation and Coordination (SafeWork August 2019);

12.0 Meetings

The Principal Consultant must arrange and participate in meetings and workshops as required to successfully deliver the Project. The meetings and workshops required may differ throughout the Project Stages. The Principal Consultant is to engage with all Project Stakeholders as required by INSW to successfully deliver the Project. The Principal Consultant must, as a minimum:

- Attend the Project commencement meeting and site inspection with INSW and the Design Team;
- Conduct weekly coordination meetings with INSW, the Design Team, the Project Manager and Project Stakeholders;
- Participate in Project workshops with INSW, the Design Team, the Project Manager and Project Stakeholders at key milestones and as required;
- Attend monthly Project Team meetings;
- Attend monthly design review meetings;
- Conduct design coordination meetings with the developer for the Central Barangaroo Development Area, Aqualand, as required;
- Present monthly progress to INSW, the Project Manager and Project Stakeholders, as required;
- Liaise and coordinate with Project Stakeholders, as required;
- Participate in community consultation and liaison meetings including all planning, preparation and notices, production of graphics, management and support, as required; and
- Present to the State Design Review Panel (SDRP), as required, and update the design to address comments received and as agreed by INSW.

13.0 Record Keeping

The Principal Consultant must:

- Establish a suitable project management software in liaison with the Project Manager, provided by INSW for use by the Project Team during all Project Stages. The Principal Consultant is to ensure that the Design Team and Technical Team use the project management software consistently and as required;
- Maintain accurate records of all meetings, reports, financial monitoring, drawings, specifications, briefs, approvals, work-as-executed records and test records related to the Project;
- Take delivery and record the receipt of all deliverables from the Project Team;
- Transfer and record the transmission of all deliverables via Objective or such other system as approved by INSW, to INSW, the Public Domain Administrator (currently PlaceMaking NSW) and the Project Manager;
- Follow INSW's accounting and administrative procedures set out under the Agreement and as advised by INSW and the Project Manager. These requirements may change from time to time; and
- Retain a copy of all Agreement-related files for seven (7) years from Project completion or termination and make these accessible to INSW on request.

14.0 Project Stages and Deliverables

The Project includes six Project Stages identified as part of design, construction, and completion to deliver the services. The Project Stages are to be managed by the Principal Consultant and delivered by the relevant Project Team member. The six Project Stages are:

- Stage 1 – Competition Design Refinement & Concept Design
- Stage 2 – Design Development
- Stage 3 – State Significant Development Application
- Stage 4 – Tender Documentation
- Stage 5 – Construction Documentation
- Stage 6 – Construction and Post Construction Stage Services

14.1 Stage 1: Competition Design Refinement & Concept Design

In Stage 1, the Principal Consultant must prepare a Competition Design Refinement Report and final concept design package for review and INSW approval. In doing so, the Principal Consultant must, as a minimum:

- Review and interrogate and update the Winning Competitor design and Competition Documents, responding to and incorporating comments received from the Jury, INSW, the Quantity Surveyor and Project Stakeholders and demonstrate that all requirements are met;
- Review and edit the Competition Documents into one concise Project Brief, inclusive of an Art Brief, for reference throughout the Project Stages. The Project Brief is to consider all comments received from the Jury, INSW, the Quantity Surveyor and Project Stakeholders and is to be reviewed and approved by INSW;
- Review the [SEARs, available on the planning portal](#), to understand the full extent of works required and the implications of the policies and requirements on the Project and the Competition design;

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- Obtain and analyse all existing site information to determine gaps in information. Existing site information may include, but is not limited to, planning and development controls, site information, services and authority requirements. The site information provided as part of the Competition Documents is for information only and its use during the Project Stages will need to be agreed by INSW in writing. The Principal Consultant is to take full responsibility for identifying any gaps in information, devising a strategy to obtain required details and verifying information by inspecting the site, as required;
- Develop a staging plan that outlines any staging works required for the existing conditions and final design in consideration of the site and adjacent developments (both complete and in construction). The staging plan is to consider temporary provisions for amenities and infrastructure;
- Prepare a preliminary planting strategy including an early tree procurement strategy that considers availability, value for money, quality and consistency of staged supply;
- Coordinate with the DEAP to determine how the Competition design, and subsequent concept design, will be carried out in accordance with the approved Design Excellence Strategy and consistent with the NSW SDRP: Guidelines for Project Teams document for review by the SDRP;
- Understand authority requirements with regard to site constraints and access;
- Liaise with the Quantity Surveyor and Project Manager to develop a detailed Project program and preliminary budget for approval by INSW;
- Prepare preliminary supply and usage calculations for all services and confirm as to whether any additional services are required to support the concept design; and
- Define quality requirements for recycled water.

14.1.1 Stage 1 Deliverables

Competition Design Refinement Report

The Principal Consultant is to deliver a Competition Design Refinement Report in PDF format including, as a minimum, the following elements:

- Summary of all comments received on the Winning Competitor design;
- Detailed response to the comments, outlining how each will be addressed in the concept design;
- Identify any areas of the Competition design that may be further interrogated during concept design by the Design Team;
- Clarifications needed from INSW relating to the Project Brief, if required;
- Detailed Project program and a preliminary budget; and
- Design statement outlining the way forward to realise and deliver the Competition design.

Concept design package

The Principal Consultant is to deliver a succinct concept design package in PDF and CAD (.dwg) format including, at a minimum, the following elements:

- Consolidated Project Brief;
- Contextual analysis and principles diagrams presented in graphic style;
- Precedents and ideas to illustrate the concept design quality and cost. A minimum of six (6) precedents is to be provided;
- The preferred concept design, including the artwork concept proposal;

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- Alternate viable concept design options considered;
- Statement confirming the concept design meets the intent and requirements of the Project Brief;
- Statement and response to the NSW Government Connecting with Country framework, including but not limited to, design methodology, design team approach and application of First Nations Design Principles, community engagement strategy, documenting discussions with the FNWG and community engagement to date;
- Statement outlining the design strategy and any site constraints and opportunities; Statement listing design progress since Competition completion and how the concept design has addressed all commentary on the Competition design;
- Approach to design excellence and sustainability;
- Area calculations and area schedule;
- Preliminary planting strategy including an early consolidated tree procurement strategy; and
- Coordinated set of Project Team documentation including but not limited to landscape , architectural, civil drawings and Technical Team drawings and due diligence reports.

The Principal Consultant is to coordinate the Artist(s) and (if required) Art Curator and the Barangaroo Curator for the public art component of the concept design package. In doing so, the public art component must, as a minimum:

- Include within the concept design package:
 - Drawings of the developed artwork concept which addresses any feedback from the Design Competition process. Drawings must follow the appropriate form, scaling and siting of the work within the public domain;
 - Detailed Project program and budget;
 - Preliminary maquettes or models of work;
 - Materials and finishes; and
 - Proposed construction and installation methodologies.
- Consider the potential risks associated with the artwork concept and develop a preliminary risk register which identifies:
 - Risk to the artwork(s) itself given its location;
 - Public safety and soundness of fabrication;
 - Resistance to weather, wear and tear and vandalism;
 - Maintenance requirements; and
 - Ability to achieve a minimum life span of 25 years.
- Consider and adhere to sustainability principles and seek to develop an artwork concept that is environmentally aware and sustainable. In doing so, the artwork concept should ensure all materials and methods used in art making practice are non-toxic, energy efficient, and low waste. The artwork(s) should, where possible:
 - Be energy efficient;
 - Source local, low impact materials and making methods that are sustainable, non-toxic and petroleum-free;
 - Avoid single-use materials, support re-use and recycling;

- Have targeted durability;
- Use sustainable design standards; and
- Identify and mitigate potential impacts such as water run-off, noise and carbon emissions at the site and the surrounding areas during construction and for the life span of the artwork(s).

The concept design package will undergo review and approval by INSW, DEAP, ACP, FNWG, Project Stakeholders and Authorities, as required. The Principal Consultant is to:

- Manage all reviews, amendments and responses including resolution of all related conditions and queries and distributions of documents for approval;
- Consolidate comments for consideration in the design development package;

The Principal Consultant is to obtain INSW approval for the Competition Design Refinement Report and concept design package prior to commencing Stage 2.

14.2 Stage 2: Design Development

During Stage 2, the Principal Consultant must prepare a 50%, 80% and Final design package for INSW review and approval. In doing so, the Principal Consultant must, as a minimum:

- Review and update the design to respond to all feedback received during Stage 1 and at key milestones during Stage 2;
- Coordinate with the Project Team to prepare the design development documents and Technical Team packages, including but not limited to, reports, schedules, drawings, services designs and technical specifications;
- Liaise and provide information to the Quantity Surveyor progressively for preparation of Project budget estimates and adjustment of the Project cost plan;
- Liaise with the Barangaroo Arborist and Barangaroo Horticulturist to finalise the planting strategy and the early consolidated tree procurement strategy for INSW approval. The Principal Consultant is to provide ongoing technical assistance to INSW during the tree procurement process;
- Ensure the Artist(s) and (if required) Art Curator:
 - Consult with the Barangaroo ACP, Barangaroo Curator and all relevant Project Stakeholders and community groups, as required, to support the design development of the artwork concept;
 - Prepare all necessary prototypes and material samples to support the design development of the artwork concept; and
 - Update the risk register to address any actions, as required.
- Prepare a Lifecycle Management Plan for the Project that outlines, as a minimum, a register of key assets, the expected life of all assets and the expected annual maintenance and operational costs for key assets. The Lifecycle Management Plan is to be reviewed and approved by INSW and PlaceMaking NSW;
- Prepare a cycling strategy with parking stations and end of trip facilities and defined pedestrian links;
- Undertake a Safety in Design Assessment which identifies hazards and proposes ways to eliminate, minimise or mitigate the inherent risks and incorporate all safety measures into the design;
- Ensure that the design complies with all relevant Authority requirements and standards including, but not limited to, the requirements of the:
 - WHS Act 2011 (NSW), including the NSW Government Code of Practice Safe Design of Structures;
 - BCA;

- Local Council;
- Environmental Protection Authority; and
- Disability Discrimination Act.

The 50%, 80% and Final design development package will undergo review by DEAP, ACP, FNWG, Project Stakeholders, SDRP and Authorities, and approval by INSW. The Principal Consultant is required to:

- Present 50%, 80% and Final design development packages, as required;
- Manage all reviews, amendments and responses including resolution of all related conditions and queries and distributions of documentation for approval;
- Consolidate comments from the 50% and 80% packages for consideration in the Final design package;

14.2.1 Stage 2 Deliverables

The Principal Consultant is to deliver 50%, 80% and Final (100%) design packages and a design development report in PDF and CAD (.dwg) format including, at a minimum, the following elements:

- Statement confirming the design addresses and responds to context, site constraints (land contamination, hydrology, flooding, wind) overshadowing, site opportunities, access and circulation, heritage, character and visual amenity, character and spatial quantities for play and recreation, streetscape and existing and future character.
- An appropriate planting schedule and early consolidated tree procurement strategy for INSW approval, including:
 - location, number and species of planting, heights of trees when procured, delivered to the Project site and at maturity, amenity and proposed canopy coverage at 5 and 10 years (percentage of the Project area);
 - location and details of tree pits in deep soil and constructed stratavault soil cells or continuous soil trenches, as applicable;
 - planting and procurement program and methodology; and
 - Technical assistance to INSW, as required, for the early consolidated tree procurement.
- A consolidated drawing set for costing by the Quantity Surveyor and allowance for clarification sessions to review the cost estimates as required;
- A revised Project Brief or a statement confirming the design meets the intent and requirements of the Project Brief and lists any changes to the Project Brief, as approved by INSW;
- Statement confirming the design aligns with the concept design and any changes, as approved by INSW;
- Statement confirming that all fixtures and fittings are resistance to weather, wear and tear and vandalism. Fixtures and fittings should be appropriately specified for ease of cleaning and repair of damages;
- Statement confirming the design aligns with the approved Design Excellence Strategy, is consistent with the NSW SDRP: Guidelines for Project Teams document and has been reviewed by the SDRP;
- A coordinated set of design development documents including, but not limited to, Project Team documentation, drawings (plans, elevations, sections, details), draft specifications, and a 3D BIM model;
- Statement confirming the design meets the sustainability approach for the Project;
- Connecting with Country report demonstrating how the proposal responds to Aboriginal cultural connections to Country;

- Statement confirming the design meets all statutory authority and certification requirements;
- Sufficient information for an adequate cost review;
- Schedule of finishes, FF&E and hardware;
- Area calculations and area schedule;
- Room data sheets;
- Physical model at a scale to be confirmed with INSW;
- Prototypes and material samples as necessary to support the design and artwork design development;
- Safety in Design Report which includes a Safety in Design register and relevant meeting minutes;
- A Lifecycle Management Plan for the Project; and
- Coordinate the Artist(s) and (if required) Art Curator to ensure the public art component of each design development package (updated at each milestone) includes:
 - Drawings, specifications, 3D modelling and renders;
 - Dimensions and weight;
 - Detailed artwork location(s) on a plan;
 - Specifications of materials, colours, fixing and footing details;
 - Full set of drawings including typical sections and elevations;
 - Fabrication methodology (if not provided as part of the landscape architecture package);
 - Packing, freighting and installation methodology;
 - Maintenance advice and a maintenance manual; and
 - Updated budget and delivery program inclusive of indicative maintenance costs.

The Principal Consultant is to obtain INSW approval for the 50% design development package prior to commencement of Stage 3. Following approval, the completion of Stage 2 and the commencement of Stage 3 may be concurrent.

The Principal Consultant is to obtain INSW approval of the Final (100%) design development package prior to commencing Stage 4.

14.3 Stage 3: State Significant Development Application

During Stage 3, the Principal Consultant must prepare one SSDA package for INSW approval and assist INSW with lodging the formal application. In doing so, the Principal Consultant, must, as a minimum:

- Review and update the design package in response to Stage 2 stakeholder feedback;
- Prepare relevant submissions required to the consent authority for all approvals in connection with the Project and in accordance with the Project specific SEARs;
- Liaise and coordinate with the INSW Planning Advisor and the Planning Consultant, within the Technical Team, to prepare the SSDA package suitable for lodgement and respond to comments provided.
- Ensure the Planning Consultant, within the Technical Team, reviews all SSDA documentation before it is issued to INSW and/or the Project Manager;
- Liaise and provide information to the Quantity Surveyor for preparation of budget estimates and adjustment of the project cost plan progressively during Stage 3;

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- Coordinate the Project Team to prepare all information required to complete the SSDA lodgement including, as a minimum, relevant plans, elevations, sections, documentation to address planning controls, model, materials schedule, spatial allowances for services and a design statement;
- Ensure the Artist(s) and (if required) Art Curator update the risk register to address any actions, as required;
- Coordinate resolution of all related submissions, conditions and queries relating to Authority approvals including amending and reissuing documentation as required, in order to achieve SSDA approval;
- Present to relevant Authorities and Project Stakeholders during the SSDA process, including but not limited to, pre-SSDA meetings and the SDRP; and
- Assist INSW with lodging the formal SSDA.

14.3.1 Stage 3 Deliverables

The Principal Consultant is to deliver Draft and Final SSDA packages in PDF and CAD (.dwg) where required, including, as a minimum, the following elements:

- All statements, reports and drawings required to enable lodgement with the relevant planning authority, in the format required that represents the final SSDA design for approval;
- A revised Project Brief or a statement confirming the design meets the intent and requirements of the Project Brief and lists any changes to the Project Brief, as approved by INSW;
- Statement confirming the design aligns with the approved design package and any approved changes to the design package;
- Statement confirming the design aligns with the approved Design Excellence Strategy and has been reviewed by the SDRP;
- Artist statement for the public art component of the Project; and
- A response to submission report, including but not limited to, updated drawings as required, which responds to all submissions received during the SSDA process.
- Coordinate the Artist(s) and (if required) Art Curator to ensure the artwork proposal is integrated within the SSDA package including:
 - Plans, elevations and drawings;
 - Visual documentation in the form of computer-rendered images, sketches and/or models which demonstrate the scale and location of the artwork(s) within the Project site;
 - Technical Team reports and specifications;
 - Updated maintenance manual outlining the anticipated maintenance requirements; and
 - Updated public art concept and Artist statement.

14.4 Stage 4 Tender Documentation

During Stage 4, the Principal Consultant must prepare comprehensive tender documentation that addresses all SSDA conditions. The tender documentation is to be based on the requirements of the final design development package, as agreed by INSW in writing. The Principal Consultant must, as a minimum:

- Review and update all documentation, as required and agreed by INSW, to address any changes resulting from the SSDA lodgement and planning approval process, and Stage 2 stakeholder feedback;

- Prepare required documentation for issue of tender documents and approvals by other relevant authorities;
- Liaise with the Principal Certifying Authority to confirm that documentation is in accordance with all approvals, the BCA and other relevant legislation;
- Liaise and provide information to the Quantity Surveyor for preparation of budget estimates and adjustment of the project cost plan progressively during Stage 4;
- Determine any staging works required for existing conditions; and
- Assist in evaluating bids and answering tenderer's queries, including drafting responses and addendums, as required.

14.4.1 Stage 4 Deliverables

The Principal Consultant is to deliver Draft and Final tender documentation including, as a minimum, the following elements:

- Coordinated full set of documents that detail the tender documentation design and the respective final approvals;
- Coordinated full set of Project Team documentation including, but not limited to, final draft technical specifications;
- A revised Project Brief or a statement that the design meets the requirements of the Project Brief and lists any changes to the Project Brief, as approved by INSW,
- A statement that the design meets the conditions of the SSDA approval and all Authority and Statutory requirements;
- A technical advisor report to the tender evaluation panel; and
- Coordinate the Artist(s) and (if applicable) Art Curator for the public art component of the tender documentation to ensure the package includes:
 - Drawings, specifications, 3D BIM modelling and renders;
 - Fabrication details;
 - Dimensions and weight;
 - Detailed artwork location(s) on a plan;
 - Specification of materials, colours, fixing and footing details where relevant;
 - Fabrication methodology (if not provided as part of the landscape architecture package);
 - Packing, freighting and installation methodology (if relevant);
 - Maintenance advice and maintenance manual;
 - Updated budget and delivery program inclusive of indicative maintenance costs; and
 - List of sub-contractors, suppliers and specialist fabricators

The Principal Consultant is to provide clarifications including responses and addendums, as required, during the tender period.

14.5 Stage 5 Construction Documentation

INSW is committed to the Design Team role being prominent throughout the Project delivery. The Design Team and relevant Technical Team members will be novated to the Contractor and is to:

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- Prepare all relevant construction and design documentation and specifications, as required for the successful delivery of the Project. Documentation is to include, as a minimum, dimensions, layouts, construction details, levels and materials including written specifications;
- Ensure all drawings and specifications are adequately detailed, cross-referenced and fully coordinated with other Contractor's sub-consultants' documentation to enable construction to proceed;
- Liaise with the Principal Certifying Authority, as required, and negotiate design outcomes in conjunction with the Contractor;
- Review the construction certificate approval, analyse the conditions of consent, recommend amendments where appropriate and incorporate the requirements into the design as applicable;
- Coordinate the Artist(s) and (if required) Art Curator to review and approve the Contractor shop drawings to ensure the artistic intent and artwork integrity; and
- Provide a safety report and risk register.

14.5.1 Stage 5 Deliverables

The Principal Consultant is to coordinate with the Project Team and with the Contractor's sub-consultants to deliver document packages suitable for the successful deliver of the Project. The document packages are to include, at a minimum:

- 'For Construction' drawings in appropriate formats including PDF and CAD (.dwg);
- Plans, sections, elevations, detailed drawings, planting schedule and component scheduling;
- Technical specifications;
- Sufficient BCA and accessibility reports;
- Safety Report and Risk Register; and
- Coordinate the Artist(s) and (if required) Art Curator for the public art component of the construction documentation to ensure the package includes a full set of drawings, plans, sections, and elevations which outline the fabrication and installation of the artwork(s) (if not provided as part of the landscape architecture package)

14.6 Stage 6 Construction and Post Construction Stage Services

INSW is committed to the Design Team role being prominent throughout the Project delivery. The Design Team and relevant Technical Team members will be novated to the Contractor and is to:

- Undertake all necessary inspections during construction which shall include final inspection, defect rectification and acceptance
- Establish an assurance regime for quality, WHS and risk;
- Provide ongoing lead design consultancy advice;
- Respond to RFI's in a timely manner;
- Issue Technical Team packages if the Technical Team remains under the Principal Consultant;
- Review and assist in design resolution of shop drawings, data and document submissions and contractor proposals;
- Review or prepare all necessary certification, along with other sub-consultants to facilitate practical completion and issue of occupation certificates; and
- Certify practical completion in conjunction with the Contractor.

14.6.1 Stage 6 Deliverables

Anticipated deliverables for Stage 6 are:

- Updated construction documentation that reflects design changes that occurred during construction, such that effective construction documentation can be readily communicated to all relevant parties;
- Report on Contractor proposals, shop drawings and defects;
- An assurance regime for quality, WHS and risk;
- Prepare detailed ‘as-builts’ in PDF and CAD (.dwg) upon completion;
- An updated 3D BIM model;
- Supply of final Operations and Maintenance Manual(s); and
- Coordinate the Artist(s) and (if required) Art Curator for the public art component of the construction and post construction to ensure the package includes:
 - A progress report at 25%, 50% and 100% complete fabrication which includes photographic documentation of progress at 50% and 100% completion (if not provided as part of the landscape architecture package);
 - Supply of final Operations and Maintenance Manual(s);
 - Supply completed Barangaroo Art Asset Register Form; and
 - Prepare and/or review and approve artwork attribution signage and any supporting public art interpretation.
- Artist(s) and (if required) Art Curator are to be involved in the planning, launch, media and marketing of the artwork post-completion in collaboration with INSW and the Barangaroo Art Curator.

Definitions

Agreement means the Professional Services Contract executed between INSW and the Principal Consultant.

Central Barangaroo Development Area means the area within the Barangaroo precinct under the development management of Aqualand.

Contractor means the building contractor to be procured and engaged by INSW for construction of the Project.

Competition means the Harbour Park Design Competition inclusive of Stage One and Stage Two.

Competition Documents means the Harbour Park Design Competition Stage One Design Brief, Conditions and Appendices and the Harbour Park Design Competition Stage Two Design Brief, Conditions and Appendices.

Design Team means a team that consists of the Principal Consultant, a Landscape Architect, Architect and Artist(s) and (if required) Art Curator as defined in Section 2.1.

INSW Harbour Park Team means the Project management team located within Infrastructure NSW.

Principal Consultant means the entity commissioned by INSW to undertake the Project as defined in Section 2.1.1. The Principal Consultant is referred to as the Contractor within the Professional Services Contract executed between the Principal Consultant and INSW.

Project means the Harbour Park as described in the Services Brief.

Project Brief means the Stage One Harbour Park Design Competition Brief and Stage Two Harbour Park Design Competition Brief as refined and consolidated by the Principal Consultant and approved by INSW.

Project Manager means the entity commissioned by INSW to oversee the Principal Consultant for the Project as defined in Section 2.

Project Stages means the six Project Stages as outlined in section 14.0.

Project Stakeholders as defined in Section 3.7.

Services Brief means this Services Brief, inclusive of any appendices.

Winning Competitor means the Design Team, as outlined in Section 2.1 and Technical Team as outlined in Section 2.2, nominated during the Competition, unless otherwise Agreed by INSW in writing.

Acronyms

ACP means Barangaroo Arts and Culture Panel

BCA means Building Code of Australia

CPTED means Crime Prevention Through Environmental Design

DEAP means Barangaroo Design Excellence Advisory Panel

FNWG means Barangaroo First Nations Working Group

INSW means Infrastructure New South Wales

RFC means Request for Clarification

RFI means Request for Information

SEARS means Secretary's Environmental Assessment Requirements

SDRP means Government Architect New South Wales State Design Review Panel

SDP means Service Delivery Plan

SSDA means State Significant Development Application

WHS means Work Health and Safety

DRAFT

Appendix 2 - Harbour Park - Services Brief - Contamination and Remediation detailed scope - 23Jun2023

Harbour Park

Services Brief Design Team – Contamination and Remediation – Detailed Scope

This document has been issued to provide clarifications to Section 2.2.19 of the Services Brief and set out the detailed scope requirements to be delivered by a Remediation Specialist and a NSW EPA Accredited Site Auditor as part of the package of works to be delivered to INSW by the Harbour Park Design Team.

Background Information on Contamination Investigations and Remediation at Barangaroo

Since 2007, extensive intrusive investigations, remediation and validation works have been undertaken across the area known as Barangaroo South, which extends from the northern end of King Street Wharf in the south to the northern edge of the Crown Resort site and the One Sydney Harbour site. Numerous intrusive investigations and some limited remediation works have also been undertaken across the area known as Central Barangaroo, including the area on which the Harbour Park will be developed, which extends from the northern boundary of the Crown Resort site and the One Sydney Harbour site to Nawi Cove in the north.

Part of the area now occupied by the One Sydney Harbour site on Barangaroo South, a small area located adjacent to the One Sydney Harbour site but within Central Barangaroo and the adjacent area of Hickson Road were formerly declared by NSW EPA as containing soil and groundwater contamination that was significant enough to warrant regulation by the NSW EPA (the Declaration). The contamination was present as a result of the historical operation of the Millers Point Gasworks, which was a coal fired gasworks that operated on this area between the 1840s and 1920s. Between 2016 and 2020 extensive remediation and validation works were undertaken by INSW. The NSW EPA Accredited Site Auditor, Ms Rowena Salmon of Ramboll Australia, certified that the remediation works had been successfully completed and ultimately issued Section A Site Audit Statements certifying the suitability of the One Sydney Harbour site and Crown Resort site as being suitable for their intended uses. In June 2020, the NSW EPA confirmed that the remediation and validation works had been successfully completed and subsequently revoked the Declaration.

It is noted that the majority of Central Barangaroo, the Crown Resort site and the foreshore areas at Barangaroo, including the area of the Harbour Park, is located on wholly on land that been historically reclaimed from Darling Harbour. The reclamation activities were conducted between the 1950s and 1970s using materials of unknown origin.

The Declaration Area did not extend to the Crown Resort site nor across the majority of Central Barangaroo, including the area of the Harbour Park. This was due to the fact that the results of investigation works confirmed that the lateral extent of significant contamination was limited to areas within the Declaration Area. Notwithstanding this, some limited gasworks related contamination was identified to be present in fill materials and groundwater in some areas of Central Barangaroo directly to the west of the Declaration Area and also in limited locations on the Crown Resort site.

The planned development on the Central Barangaroo site comprises a mix of high density residential, retail, commercial and open space uses and remediation planning for the works required to ensure that the area is made suitable for these uses was undertaken in 2013 with the *“Remedial Action Plan, Barangaroo Central”* prepared by JBS Environmental Pty Ltd and dated May 2013 (the Central RAP). A Site Audit Report and Site Audit Statement on the Central RAP was then issued by the then NSW EPA Accredited Site Auditor for the project, Mr Graeme Nyland (Environ) and dated July 2013 (the 2013 SAS). The Site Audit Report and Site Audit Statement certified that if the Central RAP was implemented during the development works, along with the conditions set out on the Site Audit Statement, that the Central Barangaroo site would be made suitable for its intended final land use. This included that the area of the Harbour Park could be made suitable for open space and recreational land use if the Central RAP and subsequent further assessment works and documentation required by the 2013 SAS were implemented.

INSW require that the pathway to the achievement of land use suitability of the Harbour Park adopt the requirements of the Central RAP and the 2013 SAS to ensure that the land is made suitable for its final intended uses. INSW advise that it is expected that the remediation to be adopted for the Harbour Park will comprise a capping, containing and long-term management approach, as set out in the Central RAP and that the detailed methodologies to achieve this will be documented in a Remedial Works Plan for the Harbour Park. INSW require that the Remedial Works Plan and any other relevant documentation prepared by the Remediation Specialist will be subject to review and acceptance as appropriate by a NSW EPA Accredited Site Auditor.

Scope for Remediation Specialist

Objective

The objective for the Remediation Specialist is to:

- Ensure that the requirements of the Central RAP and July 2013 SAS are satisfied such that an appropriately detailed plan is prepared that sets out the works that will be undertaken, as part of the development, to ensure that the Harbour Park is made suitable for its intended open space and recreational land use;
- Ensure that the requirements of the SEARs in relation to Contamination (Including but not necessarily limited to Condition 16 of the SEARs) are satisfied.

Scope of Work

The scope of work for the Remediation Specialist is as follows:

Stage 1 – Detailed Review

- Complete a detailed review of the reports on intrusive investigations completed on the area of the Harbour Park:
 - *'Supplementary Data Gap Investigation, VMP Area, Hickson Road Millers Point NSW'* prepared by AECOM and dated 9 March 2012;
 - *'Data Gap Investigation, Barangaroo Central, Hickson Road, Sydney NSW'* prepared by JBS Environmental Pty Ltd dated August 2012;
 - Central RAP
 - *'Site Audit Report and Site Audit Statement Remedial Action Plan, Barangaroo Central'*, prepared by Graeme Nyland of Environ Australia Pty Ltd dated July 2013 (the 2013 SAS);
 - *'Suitability of JBS Remedial Action Plan for Central Barangaroo MP06_0162 (Mod 9)'* prepared by Rowena Salmon of Ramboll Australia Pty Ltd dated 15 November 2021 (the 2021 Audit Advice)
- The review must be undertaken with respect to the requirements of the guidelines made and approved by the NSW EPA under section 105 of the *Contaminated Land Management Act* to assess the technical reliance that can be placed on the existing data set and site specific criteria for use in the preparation of a Remedial Works Plan for the Harbour Park. This review must be undertaken with respect to the conclusions of the 2021 Audit Advice. The outcomes of this review, including clearly setting out works to be undertaken to satisfy the requirements of the Central RAP and 2013 SAS, must be documented in a report to be issued to INSW and to the Site Auditor for their review and acceptance prior to progressing to further stages of the scope of works. It is anticipated that at least two rounds of draft reporting and review will be required prior to finalisation;

Stage 2 – Remedial Works Plan

- Prepare a Remedial Works Plan
 - The Remedial Works Plan must be prepared to detail the capping, containment and long-term management approach for the Harbour Park and include the methodologies, capping design and other relevant detail including the requirements that the long-term management plan will need to address;

- The Remedial Works Plan must be prepared to comply with the requirements of the Central RAP, the 2013 SAS and where relevant the 2021 Audit Advice. Where compliance has not been achieved then the Remedial Works Plan must set out a clear and justified rationale for this and how the relevant matters/aspects have been addressed or otherwise;
- The Remedial Works Plan must be prepared with reference to the relevant and applicable requirements for Remediation Action Plans set out in the NSW EPA *Guidelines for Consultants Reporting on Contaminated Sites* (2020), noting that all requirements for Remediation Action Plans will not be required to be addressed in the Remedial Works Plan;
- The Remedial Works Plan must be issued to INSW and to the Site Auditor for their review and acceptance prior to its inclusion in the EIS. It is anticipated that at least two rounds of draft reporting and review will be required prior to finalisation;

Stage 3 – Inputs into EIS to satisfy SEARs

- Prepare and/or review any summary information to be included in the EIS to address the SEARs relevant to contamination and achievement of land use suitability;
- This will include ensuring that the EIS appropriately addresses the pathway already established for the achievement of site suitability for the Harbour Park.

All Stages

- Undertake any required liaison and communications with the Site Auditor and INSW as required.

Costing

It is requested that the following information be provided:

- Details of the team proposed, including details of the consultants in the team that are certified under either the Environment Institute of Australia and New Zealand's Certified Environmental Practitioner (Site Contamination) scheme (CEnvP(SC)) or the Soil Science Australia Certified Professional Soil Scientist Contaminated Site Assessment and Management (CPSS CSAM) scheme.
- Hourly and daily rates for the team;
- Estimation of hours required to complete the tasks set out in the Scope of Work above. Please include allowance for the following:
 - Allowance for the issue of draft versions of the reporting deliverables for review by INSW and the Site Auditor and the addressing of comments, assuming 2 rounds of draft reporting and comments, and then the finalisation of those deliverables.
- Please note that any variations to the above are to be managed using agreed rates.

Scope for NSW EPA Accredited Site Auditor

Objective

The objective for the NSW EPA Accredited Site Auditor is to provide review of the Remediation Specialist's works, specifically of the Remedial Works Plan, and accept the plan as being appropriate for implementation such that the Harbour Park will be made suitable for its intended open space and recreational land use.

The works to be undertaken by the NSW EPA Accredited Site Auditor for this design stage and for inclusion in the EIS, is considered by INSW to be a non-statutory Site Audit. INSW expect that the development consent for the Harbour Park will condition the requirement for a Section A Site Audit Statement to be issued at the completion of the Harbour Park. Consequently, at the time of issue of the consent the Site Audit would then be converted to a statutory audit.

As noted previously, INSW strongly advise that Ms Rowena Salmon of Ramboll Australia be engaged as the NSW EPA Accredited Site Auditor for this design stage of the Harbour Park. Ms Salmon has been and continues to be engaged as the Site Auditor on all other parts of Barangaroo and has over a decade of continuous engagement and experience in delivering Site Audits across Barangaroo for a range of different parties. INSW considers that there are significant program and costs efficiencies for the Harbour Park Design Team in engaging Ms Salmon in this role.

Scope of Work

- Undertake a non-statutory Site Audit that will ultimately achieve the issue of an Interim Audit Advice on the Remedial Works Plan that provides acceptance of the plan as appropriate;
- In completing this Site Audit, the Site Auditor will be required to review the following reports to be prepared by the Remediation Specialist:
 - Report on the outcomes of the detailed review of previous reports;
 - Remedial Works Plan
- Following the Site Auditor's review of documents, the Site Auditor will be required to issue the outcomes of the review in the form of interim audit advice, that then, where required, will be responded to by the Remediation Specialist;
- It is expected that for the Remedial Works Plan, an interim audit advice will need to be issued on the finalised version of the plan. This interim audit advice, along with the Remedial Works Plan will then be included as part of the EIS for the Harbour Park;
- Undertake all Site Audit works to comply with the relevant guidelines made or endorsed by NSW EPA;
- Undertake any required liaison and communications with the Remediation Specialist or other consultants on the Design Team and/or INSW as required.

Costing

It is requested that the following information be provided:

- Where a Site Auditor other than Rowena Salmon is proposed the details of the NSW EPA Accredited Site Auditor proposed must be provided, along with details of any members proposed for the Site Auditor's expert support team;
- Hourly and daily rates for the NSW EPA Accredited Site Auditor and any members proposed for the Site Auditor's expert support team
- Estimation of hours required to complete the tasks set out in the Scope of Work above by the NSW EPA Accredited Site Auditor and any support team members (a breakdown of hours by these tasks is requested).
- Please note that any variations to the above are to be managed using agreed rates.

- (i) is by its nature confidential; and / or
- (ii) is designated as confidential by the Principal from time to time; and
- (d) any other information which by its nature should reasonably be considered to be the confidential information of the Principal, or which the Recipient knows is confidential,
- (e) knows is confidential,

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

- (a) the Recipient can demonstrate to be in the public domain or was known to the Recipient at the time of disclosure other than through a breach of this Deed;
- (b) is in the lawful possession of the Recipient without restriction in relation to disclosure before the date of receipt of the information from the Principal;
- (c) was independently developed by the Recipient; or
- (d) is required by Law to be disclosed.

Deed means this Deed Poll.

Document includes:

- (a) paper or other material on which there is writing, printing, marks, figures, symbols or perforations having a meaning for persons qualified to interpret them; and
- (b) any material from which sounds, images, writing or messages can be reproduced.

Law means the common law and any legislation of the Parliament of the Commonwealth of Australia, of any State or Territory of the Commonwealth of Australia or of any other jurisdiction in force at any time and any rule, regulation, ordinance, by-law, statutory instrument, order or notice at any time made under that legislation and, in each case, any consolidations, amendments, re-enactments and replacement and any order of a court, tribunal, governmental or regulatory body or the listing rules of the ASX Limited.

Notes means any notes or other Documents which include the Confidential Information or any summary, extract or part of it.

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

Personnel means, as applicable, an officer, employee, agent, contractor, subcontractor, or professional adviser of the Principal that is engaged in connection with the Permitted Use.

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 Laws relating to privacy or personal information.

Representative means an employee, officer, agent, adviser or consultant of the Recipient engaged in connection with the Permitted Use.

1.2 Interpretation

Except where the context otherwise requires:

- (a) the clause and clause headings are for reference only and have no effect in limiting or extending the language of the provisions to which they refer;
- (b) words in the singular include the plural and vice versa;
- (c) words importing a gender include any other gender;
- (d) a reference to a person includes a partnership and a body whether corporate or otherwise;
- (e) a reference to a clause or a clause heading is a reference to a clause or clauses in this Deed; and
- (f) whether a word or phrase is given a particular meaning, other parts of speech and grammatical forms of that word or phrase have corresponding meanings.

2 Disclosure and Use of Confidential Information

2.1 Recipient obligations

The Recipient warrants and represents that it will:

- (a) subject to clause 2.5, keep confidential and not disclose to any person the Confidential Information;
- (b) not use or permit the use of the Confidential Information for any purpose other than the Permitted Use unless authorised by a separate agreement between the parties and then only to the extent permitted by that agreement;
- (c) 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 Principal and its Personnel;
- (d) not copy or reproduce the Confidential Information except to the extent necessary for the Permitted Use;
- (e) not make Notes except to the extent necessary for the Permitted Use; and
- (f) not attempt to access any Confidential Information other than the Confidential Information that they need to know and access for the purposes of the Permitted Use.

2.2 Comply with Privacy Laws

In relation to any Personal Information provided by the Principal to the Recipient in connection with this Deed, the Recipient warrants that it will comply with all applicable Privacy Laws including, if applicable, obtaining the consent of each individual to whom the Personal Information relates for the collection use and disclosure of that Personal Information.

2.3 Not cause breach by the Principal

Where the Recipient is required to access, collect or disclose Personal Information on behalf of the Principal, then the Recipient must comply with the Privacy and Personal Information Protection Act 1998 (NSW) as if it were the Principal accessing, collecting or disclosing the Personal Information.

2.4 Security measures

The Recipient must ensure that any Confidential Information in its and / or any Representatives possession, custody or control is kept secure at all times. Without limiting this obligation, where the Recipient has access to Confidential Information by password or other secure means, the Recipient must not disclose that password or means of access to any other person unless it has been authorised in writing to do so by the Principal.

2.5 When Recipient may disclose

The Recipient may disclose the Confidential Information:

- (a) with the prior written consent of the Principal;
- (b) to other Personnel or its Representatives, but only to the extent that each has a need to know the Confidential Information for the purposes of the Permitted Use; and
- (c) subject to clause 2.6, to the extent required by Law to do so.

2.6 Disclosure required by Law

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

2.7 Inspections and audit

The Recipient consents, and must procure the necessary consents from any Representatives, to which the Confidential Information is disclosed by the Recipient, to such inspections and audits as may be reasonably required by the Principal for the purpose of auditing compliance by the Recipient and any relevant Representatives with the terms of this Deed.

2.8 Breach of confidentiality obligations

If the Recipient becomes aware of any actual, threatened or suspected breach of this Deed, including by the Recipient or any Representative of the Recipient, the Recipient must:

- (a) immediately notify the Principal in writing and take all steps necessary to remedy, prevent or stop the actual, threatened or suspected breach of this Deed and comply with any reasonable directions issued by the Principal regarding any unauthorised use or disclosure of the Confidential Information; and
- (b) provide such other assistance as may be reasonably required by the Principal, including in relation to any claim or proceedings that the Principal may bring against any third party for unauthorised use or disclosure of the Confidential Information.

3 Return of Confidential Information

If requested by the Principal, the Recipient must:

- (a) promptly return to the Principal all documents and other physical records of Confidential Information in its and / or any Representatives possession, custody or control; and
- (b) delete the Confidential Information from any computer system or other device operated or controlled by, or which may be accessed by, the Recipient and / or its Representatives to which the Confidential Information has been disclosed by the Recipient; and
- (c) provide a statutory declaration to the Principal confirming that all those records and any copies have been returned or erased, as appropriate.

provided that the Recipient may retain archival copies of any Confidential Information for legal and compliance purposes or to comply with any genuine document retention policy.

4 The Principal may enforce Deed

4.1 Recipient acknowledgements

The Recipient:

- (a) agrees that the obligations in this Deed are for the benefit of the Principal, and that the Principal may enforce the obligations contained in this Deed; and
- (b) acknowledges that:
 - (i) the Confidential Information is valuable to the Principal;
 - (ii) damages may not be an adequate remedy for the Principal for any breach of this Deed by the Recipient; and
 - (iii) the Principal is entitled to seek injunctive relief as a remedy for any breach or threatened breach of this Deed by the Recipient, in addition to any other remedies available at Law or in equity under or independently of this Deed.

4.2 Breach by Representative

Where the Recipient discloses the Confidential Information to a Representative, a breach of a provision of this Deed by the relevant Representative will be deemed to be a breach of this Deed by the Recipient.

5 Indemnity

The Recipient indemnifies and must keep indemnified the Principal in respect of any liability, loss, damage, cost or expense, suffered or incurred in connection with, or arising from:

- (a) any breach of this Deed by the Recipient or a Representative to which the Confidential Information has been disclosed by the Recipient; and / or
- (b) any disclosure of the Confidential Information by the Recipient or a Representative to which the Confidential Information has been disclosed by the Recipient.

6 General

6.1 No exclusion of Law or equity

This Deed must not be construed to exclude the operation of any principle of Law or equity intended to protect and preserve the confidentiality of the Confidential Information.

6.2 Waiver

The Recipient acknowledges and agrees that:

- (a) no waiver by the Principal of one breach of any obligation or provision herein contained or implied shall operate as a waiver of another breach of the same or of any other obligation or provision herein contained or implied; and
- (b) none of the provisions hereof shall be taken either at Law or in equity to have been varied, waived, discharged or released by the Principal unless by its express consent in writing.

6.3 Governing Law

This Deed will be governed by and construed in accordance with the Law in force in the State of New South Wales. Each party submits to the exclusive jurisdiction of the Supreme Court of New South Wales or the Federal Court of Australia, as relevant, and the courts competent to determine appeals from those courts.

6.4 Continuing obligation

The obligations of the Recipient under this Deed continue after the completion or termination of any employment, engagement or assignment in respect of the Permitted Use.

7 No Revocation or amendment

This Deed may not be revoked or otherwise modified or amended without the prior written consent of the Principal.

EXECUTED AS A DEED POLL

[This execution block to be used when the Recipient is a company]

Signed, sealed and delivered by **[insert company name (insert ABN)]** in accordance with section 127 of the Corporations Act 2001 (Cth):

Signature of director

Signature of director/company secretary

Full name of director (print)

Full name of director/company secretary (print)

[This execution block to be used when the Recipient is an individual]

Signed, sealed and delivered by **[insert name of individual]** in the presence of:

Signature of witness

Signature of Recipient

Print name and position of witness (print)

Full name and position of Recipient (print)

Address of witness (print)

Address of Recipient (print)

Date:

ANNEXURE "E" – Statement of Associations and Interests

Statement of Associations and Interests

To: Infrastructure NSW ("the Principal")

I, (Name), acknowledge and agree that:

1. I declare below any associations and / or interests.
2. I am not aware of any existing or potential conflicts of interest between my personal interests and the impartial performance of my duties as a permanent or temporary employee, consultant, advisor, agent or contractor of the Principal, other than those declared below.
3. If I become aware of any actual or potential conflict of interest, I will disclose it to the Principal's Representative at the first reasonable opportunity.

List any associations and / or interests below:

.....

Signed

.....

Name and Organisation

Date:

ANNEXURE "F" – Schedule of Rates

The daily rate is the maximum amount that can be charged in respect of a person performing the Services in a day commencing at midnight and ending 24 hours later.

Any agreed Variations will be charged at the rates set out in Annexure F or as otherwise agreed between the parties.

ANNEXURE F - Schedule of Rates

Harbour Park Design Competition

Please provide \$ rates (ex. GST) in columns B-D for all personnel.

Fee Template - Schedule of Rates

	Hourly Rate	Daily Rate	Weekly Rate
	\$ ex GST	\$ ex GST	\$ ex GST
Required Design Consultants			
Lead Designer			
Principal			
Associate Principal			
Senior Associate			
Associate			
Senior Professional			
Professional			
Assistant / Graduate			
Student			
<i>[Add or delete rows as necessary]</i>			
Landscape Architect			
Design Director			
Senior Design Manager			
Project Team Lead			
Landscape Architect			
Graduate			
Technical / CAD			
<i>[Add or delete rows as necessary]</i>			
Architect			
Principal			
Associate Principal			
Senior Associate			
Associate			
Senior Professional			
Professional			
Assistant / Graduate			
Student			
<i>[Add or delete rows as necessary]</i>			

Other Required Consultants

Designing With Country

CWC Design Lead	
Senior Community Engagement Manager	
CWC Project Officer	
<i>[Add rows as necessary]</i>	

Wind Consultant

Principal	
Associate Principal	
Associate	
Senior Specialist	
Senior Engineer	
Engineer	
Graduate Engineer	
Undergraduate Engineer	
BIM Manager	
Senior Modeller	
Modeller	
<i>[Add rows as necessary]</i>	

Surveyor

Field team	
Registered Surveyor (office)	
Graduate/Technician Surveyor (office)	
CAD	
<i>[Add rows as necessary]</i>	

Civil Engineer

Principal	
Associate Principal	
Associate	
Senior Specialist	
Senior Engineer	
Engineer	
Graduate Engineer	
Undergraduate Engineer	

BIM Manager			
Senior Modeller			
Modeller			

[Add rows as necessary]

Geotechnical Engineer

Principal			
Associate Principal			
Associate			
Senior Specialist			
Senior Engineer			
Engineer			
Graduate Engineer			
Undergraduate Engineer			
BIM Manager			
Senior Modeller			
Modeller			

[Add rows as necessary]

Hydraulic Engineer

Principal			
Associate Principal			
Associate			
Senior Specialist			
Senior Engineer			
Engineer			
Graduate Engineer			
Undergraduate Engineer			
BIM Manager			
Senior Modeller			
Modeller			

[Add rows as necessary]

Structural Engineer

Principal			
Associate Principal			
Associate			
Senior Specialist			

Senior Engineer			
Engineer			
Graduate Engineer			
Undergraduate Engineer			
BIM Manager			
Senior Modeller			
Modeller			

[Add rows as necessary]

Fire Engineer

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Principal			
Associate Principal			
Associate			
Senior Specialist			
Senior Engineer			
Engineer			
Graduate Engineer			
Undergraduate Engineer			
BIM Manager			
Senior Modeller			
Modeller			

[Add rows as necessary]

Traffic Engineer

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Principal			
Associate Principal			
Associate			
Senior Specialist			
Senior Engineer			
Engineer			
Graduate Engineer			
Undergraduate Engineer			
BIM Manager			
Senior Modeller			
Modeller			

[Add rows as necessary]

Acoustic Engineer

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Principal			
Associate Principal			
Associate			
Senior Specialist			
Senior Engineer			
Engineer			
Graduate Engineer			
Undergraduate Engineer			
BIM Manager			
Senior Modeller			
Modeller			
[Add rows as necessary]			

Planning Consultant

Principal			
Associate Principal			
Senior Associate			
Associate			
Senior Professional			
Professional			
Assistant / Graduate			
Student			
[Add rows as necessary]			

Universal Access and DDA Design Consultant

Director			
Associate Director / Associate			
Senior Access Consultant			
Access Consultant			
[Add rows as necessary]			

Waste Engineer

Principal			
Associate Principal			
Associate			
Senior Specialist			
Senior Engineer			
Engineer			

Graduate Engineer			
Undergraduate Engineer			
BIM Manager			
Senior Modeller			
Modeller			
[Add rows as necessary]			
Irrigation Consultant			
Irrigation Consultant			
Team Leader - Drafting & Design			
Technical Director			
[Add rows as necessary]			
Arborist			
Director			
Senior Arboricultural Consultant			
[Add rows as necessary]			
Horticulturalist			
Director			
[Add rows as necessary]			
Environmental Consultant			
Director			
[Add rows as necessary]			
Soil Specialist			
Director			
[Add rows as necessary]			
Remediation Specialist			
Principal			
Associate Principal			
Associate			
Senior Specialist			
Senior Engineer			
Engineer			
Graduate Engineer			

Undergraduate Engineer	[Redacted]		
BIM Manager			
Senior Modeller			
Modeller			
[Add rows as necessary]			

Electrical and Lighting Engineer/s

[Redacted]			
Principal	[Redacted]		
Associate Principal			
Associate			
Senior Specialist			
Senior Engineer			
Engineer			
Graduate Engineer			
Undergraduate Engineer			
BIM Manager			
Senior Modeller			
Modeller			
[Add rows as necessary]			

Security CPTED Consultant

[Redacted]			
Principal	[Redacted]		
Associate Principal			
Associate			
Senior Specialist			
Senior Engineer			
Engineer			
Graduate Engineer			
Undergraduate Engineer			
BIM Manager			
Senior Modeller			
Modeller			
[Add rows as necessary]			

Security Consultant

[Redacted]	
Principal	[Redacted]
Associate Principal	
Associate	

Senior Specialist			
Senior Engineer			
Engineer			
Graduate Engineer			
Undergraduate Engineer			
BIM Manager			
Senior Modeller			
Modeller			
[Add rows as necessary]			
Heritage Consultant			
Senior Project Officer			
Peer Reviewer			
Project Officer			
[Add rows as necessary]			
Sustainability Consultant			
Principal			
Associate Principal			
Associate			
Senior Specialist			
Senior Engineer			
Engineer			
Graduate Engineer			
Undergraduate Engineer			
BIM Manager			
Senior Modeller			
Modeller			
[Add rows as necessary]			
Building Code of Australia Consultant			
Director			
Technical Director			
Building Surveyor			
[Add rows as necessary]			
Risk consultant			
Safety in Design Director/Senior Risk Consultant			

Safety in Design Risk Consultant			
Project Risk Director/Senior Risk Consultant			
Project Risk Consultant			
[Add rows as necessary]			

Artist team

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Artist - Jacob Nash			

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Artist - Chris Fox			
Senior Art Strategist - [Redacted]			
Public Art Specialist Designer - [Redacted]			
Public Art Specialist Designer - [Redacted]			

[Add rows as necessary]			
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Discretionary Consultants

Pedestrian Modelling

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Principal			
Associate Principal			
Associate			
Senior Engineer			
Engineer			
Graduate Engineer			
Undergraduate Engineer			
BIM Manager			
Senior Modeller			
Modeller			

Event and Venue Consulting

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Principal			
Associate Principal			
Associate			
Senior Specialist			
Engineer			
Graduate Engineer			
Undergraduate Engineer			

ANNEXURE "G" – Statutory Declaration and Subcontractor's Statement

Note: Statutory Declaration and Subcontractor's Statement is only required to be included with a payment certificate where the service requires a subcontractor or sub-consultant or where the contractor proposes to use one

Statutory Declaration	
<p>I, _____ of _____ do solemnly and sincerely declare that:</p> <p>1. I am a representative of _____ ("Contractor") in the Office Bearer capacity of _____</p> <p>2. The Contractor has a contract with _____ to carry out certain works for _____ ("Contract")</p> <p>3. All workmen who are or at any time have been engaged on the work under the Contract have been paid in full all wages and allowances which have become payable to them by virtue of their employment on the Services under the Contract.</p> <p>4. All subcontractors who are or at any time have been engaged on the Work under the Contract have been paid in full all amounts which have become payable to them by virtue of their subcontracts with the Contractor.</p> <p>5. Attached to and forming part of this declaration is a signed statement (Subcontractor's Statement) given by the Contractor in its capacity as 'subcontractor' (as that term is defined in the Workers Compensation Act 1987, Payroll Tax Act 2007 and Industrial Relations Act 1996) which is a written statement:</p> <p style="margin-left: 20px;">(a) under the Workers Compensation Act 1987, section 175B, in the form and providing the detail required by that legislation;</p> <p style="margin-left: 20px;">(b) under the Payroll Tax Act 2007, Schedule 2 Part 5, in the form and providing the detail required by that legislation; and</p> <p style="margin-left: 20px;">(c) under the Industrial Relations Act 1996, section 127, in the form and providing the detail required by that legislation.</p> <p>6. I personally know the truth of the matters which are contained in this declaration and the attached Subcontractor's Statement.</p> <p>7. If the Contractor has subcontractors the Contractor has received from each of those subcontractors a statutory declaration and Subcontractor's Statement in equivalent terms to this declaration (made no earlier than 14 days before the date of this declaration).</p> <p>8. All statutory declarations and Subcontractor's Statements received by the Contractor from subcontractors referred to in clause 7 were:</p> <p style="margin-left: 20px;">(a) given to the Contractor in its capacity as 'Principal Contractor' as defined in the Workers Compensation Act 1987, the Payroll Tax Act 2007 and the Industrial Relations Act 1996 ('Acts'); and</p> <p style="margin-left: 20px;">(b) given by the subcontractors in their capacity as 'Subcontractors' as defined in the Acts.</p> <p>9. I am not aware of anything that would contradict the statements made in the statutory declarations and Subcontractor's Statements provided to the Contractor by its Subcontractors.</p>	<p>Insert name of Declarant</p> <p>Insert address</p> <p>Insert name of Contractor and ABN if applicable Insert position title of Declarant Insert name of Counterparty to Contract and details of Contract</p>

10. The period of the Contract covered by this declaration and the attached Subcontractor's Statement is from _____ to _____.
11. The Contractor is not, under any law, insolvent or unable to pay its debts as and when they fall due.

Insert the relevant payment period

And I make this solemn declaration conscientiously believing it to be true and by virtue of the Oaths Act 1900 (NSW). I am aware that I may be subject to punishment by law if I wilfully make a false statement in this declaration.

Declared at _____ (place where declaration made)

on _____ (date of declaration) by

Signature of person making the declaration

Certificate of witness

I certify the following matters concerning the person who made the declaration (the declarant):

[* please strike out the option in each paragraph that does not apply]

1. * I saw the face of the declarant OR * I did not see the face of the declarant because the declarant was wearing a face covering, but I am satisfied that the declarant had a special justification for not removing the covering; and
2. * I have known the declarant for at least 12 months OR * I have confirmed the declarant's identity using the following identification document:

Identification document relied on (may be original or certified copy)

before me:

Justice of the Peace/Solicitor of the Supreme Court of New South Wales

[or other person legally authorised to administer an oath under the Oaths Act 1900 (NSW) or where the declaration is sworn outside the State of New South Wales, any person having authority to administer an oath in that place]

SUBCONTRACTOR'S STATEMENT REGARDING WORKERS COMPENSATION, PAY-ROLL TAX AND REMUNERATION (Note 1)

- | | | |
|---|--|---|
| <input type="checkbox"/> Workers Compensation | <input type="checkbox"/> Payroll tax | <input type="checkbox"/> Remuneration |
| s175B Workers Compensation Act 1987 | Schedule 2 Part 5 Payroll Tax Act 2007 | ss127, 127A Industrial Relations Act 1996 |

Sub-contractor: _____ ABN: _____

(Business name) _____

of (Address of Subcontractor) _____

has entered into a contract with:

(Business name of principal contractor) _____

ABN: _____ For work between: ____ / ____ / ____ and ____ / ____ / ____

and/or Payment Claim Details: _____

Nature of contract work: _____

DECLARATION

I, _____ a Director of / a person authorised by the subcontractor on whose (*delete as appropriate*) behalf this declaration is made, hereby state that the abovementioned subcontractor:

Is either

- A sole trader or partnership without workers or subcontractors (*Note 6*).

OR

- Has and will maintain in force valid workers compensation insurance, policy _____ (*Policy number*) held with _____ (*Insurance Company*) as indicated on the attached Certificate of Currency dated _____, in respect of work done in connection with the contract, during any period of the contract and has paid all workers compensation insurance premiums payable in connection with the contract (*Note 7*).

- Is Is not also a principal contractor in connection with the work under contract (*Note 8*).

- Has Has not been given a written statement by subcontractors in connection with the work.

- Is Is not required to be registered as an employer under the Payroll Tax Act 2007 _____ (*Payroll tax client No.*)

- Has paid all pay-roll tax due in respect of employees who performed the work for the principal contractor, as required at the date of this statement (*Note 9*).

- Has paid all remuneration payable to relevant employees, for work done under the contract during the period outlined above (*Note 10*).

Signature _____ Full Name _____ (please print)

Position/Title _____ Dated _____

WARNING

Any subcontractor, who knowingly provides a principal contractor with a written statement that is false, is guilty of an offence (Maximum penalty 100 units or \$11,000).
Any written statement will not relieve the principal contractor of liability if, at the time the written statement was provided, the principal contractor believed the written statement to be false.
The principal contractor must retain a copy of any written statement for a period of not less than five years (Pay-roll tax), six years (Remuneration) or seven years (Workers compensation).
This statement must be accompanied by the relevant Certificate of Currency to comply with section 175B of the Workers Compensation Act 1987.

NOTES

2. This form is prepared for the purpose of section 175B of the Workers Compensation Act 1987, Schedule 2 Part 5 of the Payroll Tax Act 2007 and section 127 of the Industrial Relations Act 1996. If this form is completed in accordance with these provisions, a principal contractor is relieved of liability for workers compensation premiums, pay-roll tax and remuneration payable by the subcontractor.
3. For the purpose of this 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.
4. In order to meet the requirements of s127 Industrial Relations Act 1996, a statement in relation to remuneration must state the period to which the statement relates.
5. Section 127(6) Industrial Relations Act 1996 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.'
6. Section 127(11) of the Industrial Relations Act 1996 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.'
7. Payment claim details – Where a subcontractor has entered into a payment schedule with a principal contractor they must identify the period or payment to which the statement applies.
8. An accurate description of the work covered by the contract must be included.
9. In completing the statement, a subcontractor declares that they are a sole trader or partnership without workers or subcontractors and is not required to hold workers compensation insurance.
10. In completing the statement, a subcontractor declares that workers compensation 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.
11. It is important to note that a business could be both a subcontractor and a principal contractor, if a business 'in turn' engages subcontractors to carry out work. If your business falls within this category you should also obtain statements from your subcontractors.
12. In completing the statement, a subcontractor declares that all pay-roll tax payable relating to work undertaken as part of the contract has been paid.
13. In completing the statement, a subcontractor declares that all remuneration payable has been paid.
14. It is noted that definitions of employer, employee, remuneration, and specific provisions for employers of outworkers in the clothing trades are as defined in s127A of the Industrial Relations Act 1996.
15. Failure to complete this statement may result in the principal contractor withholding any payment due to the subcontractor. Any penalty for late payment under the contract does not apply to any payment withheld under this subsection. Subcontractors may wish to keep a copy of the statement for their own records.

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

ANNEXURE "H" - Form of Supporting Statement

SUPPORTING STATEMENT BY HEAD CONTRACTOR REGARDING PAYMENT TO SUBCONTRACTORS

Supporting statement by head contractor regarding payment to subcontractors

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

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

Head contractor: _____

ABN: _____

1. has entered into a contract with: _____

OR

2. has entered into a contract with the subcontractors listed on page 2 of this statement

This statement applies for work between ___(Date)_____

inclusive (the construction work concerned), 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 contractor on whose behalf this declaration is made, hereby declare that I am in a position to know the truth of the matters that are contained in this supporting statement and declare that, to the best of my knowledge and belief, all amounts due and payable to subcontractors, have been paid (not including any amount identified in the attachment on page 2 of this form as an amount in dispute).

NOTE: it is an offence under the Building and Construction Security of Payment Act 1999 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 1,000 penalty units (currently \$110,000) for corporations, or 200 penalty units (currently \$22,000) for an individual.

It is also an offence under the Act, for a head contractor to knowingly make a statement that is false or misleading in a material particular in the particular circumstances. The maximum penalty is 1,000 penalty units (currently \$110,000) for corporations, or 200 penalty units (currently \$22,000) or 3 months imprisonment (or both) for individuals.

SUPPORTING STATEMENT BY HEAD CONTRACTOR REGARDING PAYMENT TO SUBCONTRACTORS

Supporting statement by head contractor regarding payment to subcontractors

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

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

Head contractor: [business name of head contractor]

ABN:

1. has entered into a contract with: [business name of sub contractor]

ABN:

Contract number/ identifier

OR

2. has entered into a contract with the subcontractors listed on page 2 of this statement

This statement applies for work between [start date] and [end date]

inclusive (the construction work concerned), 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 contractor on whose behalf this declaration is made, hereby declare that I am in a position to know the truth of the matters that are contained in this supporting statement and declare that, to the best of my knowledge and belief, all amounts due and payable to subcontractors, have been paid (not including any amount identified in the attachment on page 2 of this form as an amount in dispute).

NOTE: it is an offence under the *Building and Construction Security of Payment Act 1999* 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 1,000 penalty units (currently \$110,000) for corporations, or 200 penalty units (currently \$22,000) for an individual.

It is also an offence under the Act, for a head contractor to knowingly make a statement that is false or misleading in a material particular in the particular circumstances. The maximum penalty is 1,000 penalty units (currently \$110,000) for corporations, or 200 penalty units (currently \$22,000) or 3 months imprisonment (or both) for individuals.

Signature

Full name:

X

Position/ Title:

Date:

Attachment

Schedule of subcontractors paid all amounts due and payable

Subcontractor	ABN	Contract number/identifier	Date of works (period)	Date of payment claim (head contractor claim)

Schedule of subcontractors for which an amount is in dispute and has not been paid

Subcontractor	ABN	Contract number/identifier	Date of works (period)	Date of payment claim (head contractor claim)

ANNEXURE "I" - Program

ANNEXURE "J" - Deed of Novation

DEED OF NOVATION

KEY DETAILS

1	Date	See Execution on page 81
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2	Parties	
	Outgoing Party	
	Name	Infrastructure NSW
		ABN 85 031 302 516
	Address	Level 27, 201 Kent Street, Sydney NSW 2000 NSW 2000
	Attention of	##
	Incoming Party	
	Name	##Incoming Party
		##ABN/ACN/ARBN ##number
	Address	##
		##
	Attention	##
	Continuing Party	
	Name	##Continuing Party
		##ABN/ACN/ARBN ##number
	Address	##
		##
	Attention	##

3	Contract	##description of the relevant subcontract being novated 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 fax to the fax number, 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 by its authorised
delegate in the presence of:

Signature

Signature of authorised officer

Name

Name of authorised officer

Date: _____

[This execution block to be used when the Contractor is a company]

Signed by **[insert company name of Contractor]** **[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:

Dated:

[This execution block to be used when the Contractor is a partnership]

Signed by [insert name of the partner who is authorised to sign on behalf of the partnership] for and on behalf of **[insert name of Contractor] [ABN]** in the presence of:

Signature of Witness

Signature of Partner

Full Name of Witness

Full Name of Partner

Dated:

[This execution block to be used when the Contractor is an individual]

Signed by [insert name of individual] in the presence of:

Signature of Witness

Signature of Contractor

Print name

Full Name of Contractor

Address

Dated: