**EVSE Supply, Installation and Services Standard Form Agreement**

General Conditions of Contract

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| 1. Definitions |  |
| Approval | Any certificate, licence, consent, permit, approval, direction or requirement of any Authority in any way in connection with the Works (including the use or occupation of the Works). |
| Authorised Person | The person stated in Item 1 of the Contract Information or nominated by the Principal under clause 2C.1. |
| Authority | Any statutory, public, municipal, government or administrative department, commission, authority, agency or entity or any private electricity, telecommunications, gas, water, sewer or other utility company having jurisdiction in any way in connection with the Works (including the use or occupation of the Works). |
| Business Day | Any day other than a Saturday, Sunday, public holiday in NSW or 27, 28, 29, 30 or 31 December. |
| CAAS Services | The Contractor providing electric vehicle charging as a service, via the use of the EVSE Goods and the provision of associated services, to be performed under, or otherwise contemplated by, clause 28. |
| CAAS Fee | The amount set out in, or calculated in accordance with, Item 16(f) payable in respect of the CAAS Services, as adjusted in accordance with the Contract. |
| CAAS Levels | The performance and availability requirements that the EVSE Goods and the CAAS Services must satisfy, as set out in the EVSE Specifications. |
| CAAS Term | Has the meaning given to that term in clause 28.2. |
| Completion | The state of the Works (except in respect of the Maintenance Services (if applicable) and the CAAS Services (if applicable)) when:   1. the Works are complete in accordance with the Contract and capable of use for the purpose of the Works stated in, or reasonably inferred from what is stated in, the Contract and the Project Requirements; 2. the Works have passed all required tests; 3. the Works are free from any known Defects or omissions; 4. the Contractor has provided all the required documents; 5. the Contractor has made good the Site and surroundings; 6. the Contractor has obtained all Approvals which it is required to obtain under clause 9A and provided the Principal with a copy of those Approvals; and 7. the Contractor has otherwise done all things and completed all tasks required by the Contract to be done or completed as a condition or requirement of, or prior to, Completion. |
| Contract | The agreement between the Parties for the performance of the Works as set out in the Contract Documents. |
| Contract Date | 1. If Item 1A of the Contract Information states that the Contract will be formed by a Letter of Award, the Contract Date is the date of the Letter of Award (irrespective of whether the Letter of Award is conditional or unconditional and irrespective of whether the Principal also requires execution of a formal agreement or deed). 2. If Item 1A of the Contract Information states that the Contract will be formed by a Formal Instrument of Agreement, the Contract Date is the date of execution of the Formal Instrument of Agreement by the last party to execute. |
| Contract Documents | 1. If the Contract is formed by a Letter of Award:    1. the Letter of Award;    2. this document    3. the Contract Information and other Schedules to this document;    4. the Works Description;    5. the EVSE Specifications; and    6. the other documents described as Contract Documents in the Letter of Award. 2. If the Contract is formed by a Formal Instrument of Agreement:    1. the Formal Instrument of Agreement;    2. this document    3. the Contract Information and other Schedules to this document;    4. the Works Description;    5. the EVSE Specifications; and    6. the other documents described as Contract Documents in the Formal Instrument of Agreement. |
| Contract Price | The total of the following component amounts (in each case, as applicable):   1. the Design, Supply and Construction Fee; 2. the Maintenance Fee; and 3. the CAAS Fee. |
| Contractor | The entity stated in Item 2A of the Contract Information. |
| Corrective Maintenance Services | The maintenance or repair services of a corrective, reactive or unplanned nature that are (or may be) required to be carried out by the Contractor in accordance with the clauses 27.8 to 27.15. |
| Corrective Maintenance Services Order | A written direction given by the Principal in accordance with clause 27.10. |
| Date for Completion | The date or the end of the period of time specified in Item 4 of the Contract Information, but if any extension to that date or period of time is directed by the Principal or otherwise allowed in any expert determination, litigation or other binding dispute resolution process, it means that date or the end of that period as so extended. |
| Date of Completion | The date that the Principal identifies in writing as being the date the Contractor achieved Completion. |
| DBP Act | *Design and Building Practitioners Act 2020* (NSW). |
| DBP Regulation | *Design and Building Practitioners Regulation 2021* (NSW). |
| Defect | Any aspect of the Works that does not conform with the Contract. |
| Design, Supply and Construction Fee | The lump sum stated in Item 6 of the Contract Information payable in respect of the design, supply and construction of the Works, as adjusted in accordance with the Contract. |
| EVSE Goods | The equipment described as the “EVSE Goods” in the Works Description |
| EVSE Scheme | The NSW Government Electric Vehicle Charging Infrastructure – SCM13381. |
| EVSE Specifications | The EVSE Specifications which form part of the EVSE Scheme. |
| Formal Instrument of Agreement | The formal instrument (if any) to which these general conditions of contract are attached. |
| Letter of Award | A letter from the Principal to the Contractor (if any) awarding the Contract to the Contractor. |
| Maintenance Fee | The amount set out in Item 15(g) payable in respect of the Maintenance Services, as adjusted in accordance with the Contract. |
| Maintenance Items | The portions of the Works (or all of the Works) set out in Item 15(h) of the Contract Information or as varied from time to time. |
| Maintenance Services | The Planned Maintenance Services and the Corrective Maintenance Services. |
| Maintenance Term | Has the meaning given to that term in clause 27.2. |
| Owner | Has the meaning given in Part 4 of the DBP Act and includes any subsequent owner. |
| Parties | The Principal and the Contractor. |
| Post Completion Period | The period stated in Item 5 of the Contract Information which commences on the Date of Completion. |
| Planned Maintenance Services | The preventative maintenance, repair, rectification, replacement and restoration work to the Maintenance Items required to be carried out by the Contractor in accordance with the clause 27.6. |
| Principal | The entity stated in Item 2 of the Contract Information. |
| Project Requirements | The requirements for the Works as stated in, or reasonably inferable from (including within any documents contained or referred to in):   1. the Works Description; and 2. the EVSE Specifications. |
| RAB (CEP) Act | *Residential Apartment Buildings (Compliance and Enforcement Powers) Act 2020* (NSW). |
| Schedule of Rates | The rates and prices set out in Schedule 7 or, if no rates and prices are set out in Schedule 7, the rates and prices set out in the Contractor’s rate card under the EVSE Scheme at the time the Contractor tendered or quoted for the Works or the lower rates and prices the Contractor submitted with its tender or quote for the Works. |
| Selected Subcontract Work | The work specified in Item 14 of the Contract Information. |
| Selected Subcontractor | In respect of each package of Selected Subcontract Work, the relevant subcontractor (if any) specified in Item 14 of the Contract Information or as otherwise nominated by the Principal under clause 19.3(a) or approved by the Principal under clause 19.3(b). |
| Site | The lands and other places made available to the Contractor by the Principal for the purposes of the Contract. |
| Statutory Requirements | Include:   1. Acts, Ordinances, regulations, by-laws, orders, awards and proclamations of the Commonwealth, the State or Territory in which the Works or any part thereof is being carried out and any relevant local government; 2. Approvals (including all conditions of Approvals); and 3. fees and charges payable in connection with the foregoing. |
| Subcontractor | Any person engaged by the Contractor in connection with the Works, and includes a supplier and a consultant. |
| Tenancy Agreement | Any lease, tenancy or licence (including any agreement to grant or vary any lease, tenancy or licence) over any part of the Site or the Works entered, or proposed to be entered, into by the Principal and referred to in Item 11 of the Contract Information or as notified by the Principal to the Contractor from time to time. |
| Tenancy Requirements | The requirements arising under, or relating to, a Tenancy Agreement (including any tenancy fitout manual) attached at, or referred to in, Item 11 of the Contract Information, or as notified by the Principal to the Contractor from time to time. |
| Variation | Any change to the character, form, quality and extent of the Works instructed or accepted in writing by the Principal, including deleting or omitting any part of the Works. |
| Warranty Deed Poll | A warranty deed poll completed and duly executed by the Contractor, in the form set out in Schedule 6. |
| WHS Act | The *Work Health and Safety Act 2011* (NSW). |
| WHS Laws | The WHS Act, the WHS Regulation, and any other Statutory Requirements relating to workplace health and safety. |
| WHS Regulation | The *Work Health and Safety Regulation 2017* (NSW). |
| Works | The whole of the work and services to be carried out and materials to be provided by the Contractor under the Contract, including:   1. the construction works to be carried out by the Contractor; 2. the supply and installation of equipment (including the EVSE Goods); 3. the design work to be carried out by the Contractor (if applicable); 4. the Maintenance Services (if applicable); and 5. the CAAS Services (if applicable). |
| Works Description | The description of the Works in Schedule 2. |
| 2. General | 1. The NSW Government’s Supplier Code of Conduct (**NSW Code**), the NSW Industrial Relations Guidelines: Building and Construction Procurement (**NSW Guidelines**) and the NSW Government Procurement Policy Framework apply to the Contract. By undertaking to perform the Works, the Contractor warrants it is not precluded from entering the contract and accepting the work under the Contract and agrees that it will be taken to have read and understood, and that it will comply with, the NSW Code and NSW Guidelines.   1A. The Contractor agrees to support skills development in the performance of the Works.   1. The Parties are to do all they reasonably can to co-operate in all matters relating to the Contract. 2. Unless otherwise instructed or agreed, the Contractor is to comply, within 3 Business Days, with any instruction given by the Principal. 3. The Parties consent for notices and communications to be by electronic communication in accordance with the *Electronic Transactions Act 2000* (NSW). 4. The Contractor is to set reasonable standards of conduct and ensure they are met by persons engaged in carrying out the Works. The Principal may instruct the Contractor to remove a person from the Site for failing to meet reasonable standards of conduct. 5. The Contractor is responsible for determining the location and type of all existing services and public utilities, both above and below ground. Where an existing service is damaged by the Contractor for any reason whatsoever, the Contractor must bear all costs and any delays for repairing the service (where it is to be continued) or disconnecting it (where it is to be abandoned). 6. The Parties may only change the terms and conditions of this Contract by written agreement. 7. This Contract:    1. constitutes the entire agreement between the parties; and    2. supersedes any contract, deed, arrangement, related condition, collateral arrangement, condition, warranty, indemnity or representation imposed, given or made by a party (or an agent of a party) prior to entering into the Contract. 8. This Contract is governed by the laws of New South Wales and, subject to clause 14, the Parties agree to submit to the non-exclusive jurisdiction of the courts of New South Wales. 9. The Parties agree that to the extent permitted by law, the operation of Part 4 of the *Civil Liability Act 2002* (NSW) is excluded in relation to all and any rights, obligations and liabilities arising under, out of, or in any way in connection with, the Contract or the Works whether such rights, obligations or liabilities are sought to be enforced in contract, in tort (including negligence) or otherwise. The Contractor further agrees that in any subcontract which it enters into in connection with the carrying out of the Works it will include provisions that, to the extent permitted by law, effectively exclude the operation of Part 4 of the *Civil Liability Act 2002* (NSW) in relation to all rights, obligations or liabilities which are sought to be enforced in contract, in tort (including negligence) or otherwise. 10. If a party consists of 2 or more people or entities, an obligation of that party binds each of them jointly and severally. 11. Work not expressly stated in the Contract but which is reasonably necessary for the due and proper performance of Works and completion of the Works, in order for the Works to achieve a standard and level of finish consistent with the requirements of the Contract, will be deemed to be included as part of the Works. |
| 2A. The Works | 1. The Contractor must carry out the Works in accordance with the Contract and comply with all directions of the Principal. 2. The Contractor warrants that, upon Completion, the Works will comply with:    1. the Contract;    2. the Project Requirements; and    3. all Statutory Requirements. |
| 2B. Design | *[User Note: In Item 9B of the Contract Information, you should elect the extent to which the Contractor is responsible for the design of the Works (Item 9B sets out examples of the extent to which the Contractor may be responsible for the design of the Works). The Contractor may be responsible for the design of all of the Works. If the Contractor is not responsible for any part of the design of the Works, then this clause 2B will not apply.]*   1. This clause 2B only applies where provided in Item 8 of the Contract Information. 2. The Contractor is to complete the Principal’s design to the extent stated in Item 9 of the Contract Information. 3. The Contractor is not to depart from the Principal’s design unless instructed by the Principal. The Principal retains responsibility for the design carried out by the Principal. 4. The Contractor has sole responsibility for the Contractor’s design. The Principal relies on the Contractor’s care, knowledge and skill in carrying out this responsibility. 5. The Contractor’s completed design must:    1. conform with the Contract and the Project Requirements and be fit for the purpose of the Works stated in, or reasonably inferred from what is stated in, the Contract and the Project Requirements;    2. comply with all Statutory Requirements; and    3. comply with all Tenancy Requirements. 6. The Contractor is to progressively submit the designs it has completed (comprising drawings, specifications, calculations and any statutory certificates required) to the Authorised Person. The Authorised Person may, within 10 Business Days after the submission by the Contractor of any material in accordance with this clause 2B.6, or any resubmitted material, reject the material if in the Authorised Person’s reasonable opinion the material does not comply with the requirements of the Contract or will result in the Contractor not complying with the requirements of the Contract. If any material is rejected, the Contractor shall submit amended material to the Authorised Person. 7. If required by the Tenancy Requirements or otherwise directed by the Principal, the Contractor must obtain the approval of the lessor and/or owner of any relevant part of the Site for its designs before the Contractor uses its designs for the manufacture, construction or installation of the relevant part of the Works. 8. The Principal (including the Authorised Person) is not bound to check the completed design for errors, omissions or non-conformance with the Contract. Nothing the Principal (including the Authorised Person) does or omits to do in connection with the completed design relieves the Contractor of the Contractor’s obligations and liabilities under the Contract. The Principal is not liable to the Contractor for any claim whatsoever that relates to the Principal (including the Authorised Person) not detecting or notifying the Contractor of any error, omission or non-conformance with the Contract in the completed design. 9. All intellectual property and moral rights in any design created specifically for the Contract shall vest in the Principal upon their creation. The Contractor grants to the Principal an irrevocable, royalty free, non-exclusive, transferable, perpetual licence (with a right to sub-license) to use for any purpose in connection with the Works all other Contractor and all third party intellectual property rights in or associated with any design, materials, documents and methods of working provided, prepared or used by the Contractor or those it engages (including Subcontractors) for the Works or under, or in connection with the Contract, for any purpose. The Contractor must include in each subcontract with a Subcontractor provisions equivalent to this clause 2B.9. 10. Without limiting clause 2A.1, the Contractor is to manufacture, construct and install the Works in accordance with the completed design. 11. The Contractor is to provide items not included in the completed design that are needed to satisfactorily complete the Works. |
| 2C. Authorised Person | 1. If the name of the Authorised Person is not stated in Item 1 of the Contract Information, the Principal is to nominate the Authorised Person in writing within 10 Business Days of the Contract Date. The Principal may for any reason and at any time change the Authorised Person by giving the Contractor notice in writing. 2. The Authorised Person is appointed by the Principal to act with its full authority in all matters relating to the Contract. 3. The Authorised Person will exercise their functions under the Contract as agent of the Principal (and not as independent certifier, assessor or valuer). In receiving payment claims and issuing payment schedules under the Contract and the *Building and Construction Industry Security of Payment Act 1999* (NSW), the Authorised Person does so as the agent of the Principal. 4. Any direction given by the Authorised Person shall be considered a direction given by the Principal for the purposes of the Contract. 5. All correspondence to the Principal is to go to the address of the Authorised Person. |
| 3. Site and Access | 1. Within 5 Business Days after the date of award of contract (or such other date notified by the Principal), the Principal is to give the Contractor access to sufficient of the Site to allow the Contractor to start work, but is not required to give the Contractor sole or uninterrupted possession of or access to the Site. 2. The Contractor is to start work on the Site as soon as practicable after being given access in accordance with clause 3.1, but not before satisfying all the necessary requirements. 3. The Contractor is to give anyone authorised by the Principal reasonable access to the Site for any purpose. 4. The Contractor must:    1. provide the Principal with all reasonable assistance to enable the Principal to obtain the approval of any party (other than the Principal) to a Tenancy Agreement for the carrying out of the Works (to the extent such approval has not already been obtained);    2. comply with any Tenancy Requirements; and    3. not otherwise do, or omit to do, anything that causes or contributes to the Principal being in breach of any Tenancy Requirements. |
| 4. Care of People, Property and the Environment | 1. From the time access to any part of the Site is given to the Contractor until Completion and then during the Maintenance Term (if applicable) or the CAAS Term (if applicable) except as expressly provided for in clause 28.12, the Contractor is responsible for the care of, and is to make good at the Contractor’s expense, any loss or damage which occurs to:    1. the Works, the Site or their respective surroundings;    2. construction plant; or    3. things entrusted to the Contractor by the Principal for the purpose of carrying out the Works. 2. In carrying out the Works, the Contractor is to minimise inconvenience to others. 3. The Contractor is liable for any loss or damage caused by the Contractor whilst making good Defects. 4. The Contractor indemnifies the Principal against any:    1. legal liability for injury or death;    2. breach of intellectual property rights in relation to material provided by or for the Contractor; and    3. loss of, or damage to, property of the Principal or others, or harm to the environment,   in respect of, or arising out of, or in connection with any act, default or omission of the Contractor or any of its employees, Subcontractor or agents, arising out of, or in connection with, the carrying out of the Works.   1. If:    1. action is required to avoid injury, death, harm to the environment or loss of, or damage to, property, and the Contractor does not take the necessary action when the Principal instructs it; or    2. urgent action is required,   then the Principal may take the action without relieving the Contractor of its obligations or liabilities and the cost of the action will be a debt due and payable by the Contractor to the Principal. |
| 5. Work Health & Safety Management | 1. The Contractor is responsible for the Works and is engaged as principal contractor for the work, in accordance with clause 293 of the WHS Regulation, and authorised to exercise such control of the workplace as is necessary to discharge the duties of principal contractor under the WHS Regulation. 2. No later than 5 Business Days before starting work on the Site, the Contractor is to submit a Work Health and Safety (WHS) Management Plan for the Works that complies with the current NSW Government *Work Health and Safety management guidelines (for Construction Procurement) 6th Edition.* 3. The WHS Management Plan is to address all the relevant issues in the Contract Schedule – WHS Management Plan and Safe Work Method Statements, together with any other risks and hazards, and is to be implemented on the Site. 4. Work is not to start without a complying WHS Management Plan. 5. All safety incidents, including near misses, and all visits by SafeWork NSW are to be reported immediately to the Authorised Person. 6. If instructed by the Authorised Person, the Contractor must investigate and submit a written report as soon as practicable after an incident occurs. |
| 6. Long Service Levy | 1. If the Contract Price is $25,000 or more (unless all the work under the Contract is routine maintenance, repairs or demolition), before starting work, the Contractor must pay to the Building and Construction Industry Long Service Corporation or the Corporation’s agent the amount of the long service levy payable under the *Building and Construction Industry Long Service Payments Act 1986*. Documentary evidence of payment of the levy must be provided to the Principal before starting work. |
| 7. Environmental Management | 1. No later than 3 Business Days before starting work on the Site, the Contractor is to submit an Environmental Management Plan for the Works that complies with the NSW Government *Environmental management guidelines 4th Edition*. 2. The Environmental Management Plan is to address all the relevant issues in the Contract Schedule – Environmental Management Plan, together with any other risks and hazards, and is to be implemented on the Site. 3. Work is not to start until a complying Environmental Management Plan has been submitted. 4. Submit a progress report and a summary report before Completion in accordance with tables 1 to 5 of the NSW EPA ‘Construction and demolition waste’ toolkit as refenced in the Contract Schedule - Environmental Management Plan. 5. All environmental incidents, including near misses, and visits by environmental regulators, are to be reported immediately to the Authorised Person. |
| 8. Insurance | 1. Before starting work in connection with the Contract, the Contractor must effect and maintain an insurance policy covering workers compensation and ensure that every Subcontractor holds equivalent insurance, where applicable. 2. If the Contract Information states that the Contractor is to arrange public and product liability insurance and insurance of the Works then, before starting work on the Site, the Contractor must effect and maintain:    1. a public and products liability policy of insurance which:       1. covers the Contractor, the Principal and Subcontractors as insured entities; and       2. is for an amount in respect of any single occurrence of not less than the amount stated in Item 3 of the Contract Information;    2. an insurance of the Works policy of insurance which:       1. covers the Contractor, the Principal and Subcontractors as insured entities;       2. covers loss of, or damage to, the Works, any temporary works and all materials, equipment, plant and other things that are brought onto the Site by or on behalf of the Contractor or are entrusted to the Contractor by the Principal; and       3. is for an amount in respect of any single occurrence of not less than the amount stated in Item 3 of the Contract Information. 3. The Contractor must maintain:    1. the public and products liability policy of insurance referred to in clause 8.2 until the later of:       1. the expiry of the Post Completion Period;       2. the expiry of the Maintenance Term (if applicable); and       3. the expiry of the CAAS Term (if applicable); and    2. the Works policy of insurance until the expiry of the Post Completion Period. 4. Where clause 27 or clause 28 applies, the Contractor must, as a condition precedent to Completion, effect a policy of insurance that:    1. covers the Contractor, the Principal and Subcontractors (engaged in respect of the Maintenance Services or the CAAS Services) as insured entities; and    2. covers loss of, or damage to, the Maintenance Items or EVSE Goods (as applicable). 5. The Contractor must maintain the policy of insurance referred to in clause 8.4 until:    1. where clause 27 applies, the Maintenance Term expires; and    2. where clause 28 applies, the CAAS Term expires. 6. The policies required under clauses 8.2 and 8.4 are to:    1. include cross liability and waiver of subrogation clauses under which the insurer, in respect of liability, agrees that the term 'insured' applies to each of the entities covered as if a separate insurance policy had been issued to each of them, and agrees to waive all rights of subrogation or action against any of the entities covered;    2. be with insurers and in terms approved by the Principal; and    3. comply with any Tenancy Requirements, including (if applicable):       1. naming the lessor and/or owner of the Site as an insured entity;       2. covering any items required by the Tenancy Requirements; and       3. being for amounts required by the Tenancy Requirements. 7. If Item 3 of the Contract Information states that the Principal has arranged, or is to arrange, insurance of the Works and public and product liability insurance, then a policy of insurance for the Works and a policy of public and product liability insurance covering the Contractor, Principal and Subcontractors will come into effect on the Contract Date. The Principal is to pay the insurance premiums. 8. For any insurance the Contractor is required to arrange under the Contract, the Contractor is to pay all premiums, maintain the policies until the times specified in clauses 8.3(a), 8.3(b) and 8.5 (as applicable), and provide evidence of currency of the policies to the Principal before starting the relevant work and whenever requested by the Principal from time to time. 9. The Contractor is responsible for making and managing any insurance claims and meeting the cost of any deductibles, even if the Principal arranged the insurance. |
| 8A. Professional Indemnity Insurance | *[User Note: If the Contractor is not responsible for the design of any part of the Works, then it may be applicable not to require the Contractor to effect and maintain PI insurance.]*   1. This clause 8A only applies where provided in Item 10 of the Contract Information. 2. Before starting the Works, the Contractor must effect professional indemnity insurance with levels of cover not less than that specified in Item 10 of the Contract Information. The Contractor must maintain such insurance until the date that is 7 years after the expiration of the Post Completion Period. 3. The requirements of clauses 8.3, 8.4, 8.5 and 8.6 apply to such insurance. 4. Without limiting the Contractor’s obligations under clause 18, where the Contractor engages Subcontractors to carry out any the design of the Works, the Contractor must ensure that such Subcontractors effect and maintain professional indemnity insurance that is the same as, or substantially similar to, that required by clause 8A.2. |
| 9. Materials and Work | 1. The Contractor is to supply materials which are new (unless otherwise specified), free from Defects, fit for the purposes required by the Contract and conform with the Contract, relevant Australian Standards, codes of practice and Statutory Requirements. 2. The Contractor is to use standards of workmanship and work methods which conform with the Contract, relevant Australian Standards, codes of practice and the lawful requirements of any authority. 3. Subject to clause 2B, the Contractor is responsible for any design required to complete the Works. 4. The Contractor is to make good any Defect when it becomes apparent. 5. The Principal may, in its absolute discretion, propose to accept the Works with any specified Defect not made good, on specified terms. If the Contractor does not accept the Principal’s terms within 5 Business Days, the Contractor is to make good the Defect. |
| 9A. Statutory Requirements | 1. The Contractor must:    1. satisfy all Statutory Requirements; and    2. obtain all Approvals,   except to the extent otherwise specified in Item 12 of the Contract Information.   1. Without limiting clause 5 or any Tenancy Requirements, the Contractor must comply with all applicable WHS Laws and the Principal’s requirements as to work health and safety notified to the Contractor from time to time. 2. The Contractor must, whenever requested by the Principal from time to time, promptly provide the Principal with:    1. a list of the Approvals the Contractor is required to obtain under the Contract; and    2. a copy of the Approvals the Contractor has obtained. 3. The Principal is not bound to check which Approvals the Contractor is required to obtain, or the Approvals that the Contractor has obtained, under the Contract. The Principal is not liable to the Contractor for any claim whatsoever that relates to the Principal not detecting or notifying the Contractor of any error, omission or non-conformance of the Approvals or not notifying the Contractor of any Approvals the Contractor is required to obtain. 4. The Contractor (to the extent permitted by law) indemnifies the Principal against any claims against, or loss suffered or incurred by, the Principal arising out of, or in connection with, a breach by the Contractor of this clause 9A or any of its obligations under all applicable WHS Laws. |
| 9B. Banned building products | 1. Without limiting clauses 9 or 9A, the Contractor shall:    1. where the Contractor, in performing the Contractor’s design obligations under clause 2B, specifies any materials for use or incorporation as part of the Works, ensure that all such materials are not banned or otherwise prohibited under any Statutory Requirement, including the *Building Products (Safety) Act 2017* (NSW); and    2. ensure that any materials used or incorporated into the Works are not banned or otherwise prohibited under any Statutory Requirement, including the *Building Products (Safety) Act 2017* (NSW). |
| 10. Variations | 1. At any time prior to Completion (in respect of the Works other than the Maintenance Services or the CAAS Services), the expiry of the Maintenance Term (in respect of Maintenance Services) or the expiry of the CAAS Term (in respect of CAAS Services), the Principal may direct the Contractor to carry out or perform a Variation. The Contractor is not to change the Works without a direction from the Principal or written acceptance by the Principal of a proposal from the Contractor. 2. The Contractor may request a Variation where a site condition that could not reasonably have been expected at the Contract Date, or an unexpected change in Statutory Requirements that could not reasonably have been expected at the Contract Date, requires a change to the Works. With any request for a Variation, the Contractor must provide the Principal the details required for a proposed variation under clause 10.4. 3. The Contractor is to take all reasonable steps to carry out Variations concurrently with other work and to otherwise minimise any delays. 4. The Principal may request the Contractor submit a proposal in respect of a possible Variation. Within 5 Business Days after receiving a request from the Principal to do so, the Contractor must submit its proposal to the Principal, including details the effect of the proposed Variation on each component of the Contract Price, the time required to reach Completion and any other implications for the Contract or the Works. To the extent applicable, the proposal must be based on the Schedule of Rates. If the proposed Variation will involve additional work, the proposal must include the Contractor’s direct costs plus a margin of 10% on the direct costs. If the proposed Variation will involve less work, the proposal must include the deduction in direct costs and a margin of 10% on the direct costs. 5. Within 10 Business Days after receiving the Contractor’s request for a Variation under clause 10.2 or proposal for a Variation under clause 10.4, the Principal is to notify the Contractor in writing whether or not the proposal or request is accepted. If the Principal accepts the request or proposal, the Principal’s acceptance will constitute a direction to carry out or perform a Variation and the Contractor’s entitlements arising out of or in connection with the Variation will be limited to those specified in the request or proposal. 6. Within 10 Business Days of receiving a direction to carry out or perform a Variation, the Contractor must submit a written claim to the Principal for any increase to the Contract Price (or each relevant component of the Contract Price). 7. The Principal must, within a reasonable time following receipt of the Contractor’s claim under clause 10.6, value each Variation which the Contractor is required to carry out or perform in accordance with the following decreasing order of precedence:    1. the Contractor’s proposal (if any) or request (if any), but only to the extent accepted by the Principal;    2. prior agreement between the parties (if any);    3. rates and prices set out in the Schedule of Rates (to the extent the Principal considers them to be applicable); and    4. reasonable rates or prices, which valuation will be increased by 10%. 8. The power to direct a Variation omitting any part of the Works includes the power to have such omitted work carried out by the Principal or by others, including at the same time as the Contractor is carrying out the Works. 9. A Variation shall not invalidate the Contract. |
| 11. Date for Completion | 1. The Date for Completion is as stated in Item 4 of the Contract Information. 2. The Contractor is to notify the Principal if it expects to be delayed in reaching Completion. 3. If the Contractor is delayed in reaching Completion by any event or circumstance beyond the Contractor’s reasonable control, the Contractor may submit a claim to the Principal for an extension of time to the Date for Completion. The Principal must assess the Contractor’s claim for an extension of time and grant the Contractor a reasonable extension of time to the Date for Completion to the extent that the Contractor has reasonably demonstrated that it was delayed in reaching Completion by an event or circumstance beyond its reasonable control. The Contractor will not be entitled to an extension of time to the extent that it caused or contributed to the cause of the delay or failed to take reasonable steps to mitigate the delay. The Principal may extend the Date for Completion for any reason. 4. The Contractor has no entitlement to costs for any delay or disruption, other than the margin included in any agreed or assessed Variation. |
| 12. Post Completion Period | 1. At any time during the Post Completion Period, the Principal may direct the Contractor to make good a Defect within a specified time and at a time convenient to the Principal. 2. If the Contractor does not make good the Defect within the time specified, then the Principal may have the Defect made good by others and all associated costs will be a debt due and payable by the Contractor to the Principal. |
| 12A. Warranty | 1. This clause 12A (other than this clause 12A.1) does not apply where Item 16(a) of the Contract Information specifies that clause 28 applies. 2. The Contractor must, as a condition precedent to Completion, provide the Principal with a completed and duly executed warranty in the form prescribed by Schedule 6. |
| 13. Payment | 1. The Contractor may submit payment claims on account of the Contract Price and other amounts due under the Contract for completed work and services monthly on and from the first business day of each calendar month and for amounts calculated as follows:    1. for work or services for which the Principal accepted rates, an amount calculated by applying the rates to the quantities of work carried out;    2. for work for services or which the Principal accepted a lump sum, an instalment of that lump sum which reflects the value of the work or services carried out; and    3. for any other entitlements claimed for which the Principal has agreed or assessed an amount in writing, or for which an amount has been finally determined by an expert under clause 14, the proportion of the amount which reflects the value of the entitlement,   at the date of the payment claim, less amounts previously paid, amounts payable by the Contractor to the Principal, and any amounts the Principal is entitled to deduct.   1. Payment Claims are to be submitted to the Authorised Person at the address shown in Item 1 of the Contract Information. 2. Quantities of work set out in any Schedule of Rates are estimates only. The Contractor is responsible for providing evidence of the quantities actually carried out, to the extent relevant to the payment claim. 3. With each payment claim, the Contractor is to give to the Principal:    1. the conformance records and other information required under the Contract; and    2. a completed and true Supporting Statement and a completed and true Subcontractor’s Statement in the form of the attached Contract Schedule, executed on the date of the payment claim. 4. Within 10 Business Days after receipt of the Contractor’s payment claim, the Principal is to provide to the Contractor a payment schedule identifying the payment claim to which it relates and stating the payment, if any, that the Principal will be making. If the payment is to be less than the amount claimed by the Contractor, the payment schedule is to indicate why it is less, and may indicate that an amount is payable by the Contractor to the Principal. Whether or not the Contractor has submitted, or is entitled to submit, a payment claim, the Principal may nevertheless issue a payment schedule. 5. Payment by the Principal in accordance with a payment schedule is to be made within 15 Business Days after the date the Contractor’s payment claim was served (or, if the Principal issues the relevant payment schedule otherwise than in response to a payment claim, within 20 Business Days after the issue of the relevant payment schedule). The Principal will issue a tax invoice to the Contractor in the form of a Recipient Created Tax Invoice (RCTI) with the payment. Payment by the Contractor in accordance with a payment schedule is to be made within 15 Business Days after the issue of the relevant payment schedule. 6. With reference to the relevant legislation identified in the Subcontractor’s Statement, the Principal may reduce the progress payment due to the Contractor to account for its increased liability if a completed Subcontractor Statement is not provided. 7. Unless otherwise stated, all payments are to be made by electronic funds transfer to a bank, building society or credit union account nominated by the Contractor. To avoid delay, the Contractor is to provide details of its nominated account within 10 Business Days after the Contract Date. The Principal requires a minimum of 5 Business Days written notice of any changes to the nominated account to avoid payments being made into a previously nominated account. 8. Payment is not evidence of the value of work, or that the work is satisfactory, or an admission of liability, but is payment on account only. 9. Not used. 10. Within 30 Business Days after the end of any Post Completion Period, the Maintenance Term (if applicable) or the CAAS Term (if applicable), whichever is later, the Principal is to issue a final payment summary accounting for the amount due less any amounts payable by the Contractor to the Principal and the release of any retention amount. 11. If a final payment is due to the Contractor, the Contractor must submit a payment claim complying with clauses 13.1, 13.4 and 13.14 for the amount stated in the final payment summary and, if requested by the Principal, a valid tax invoice for that amount. 12. If no payment claim is served within 20 Business Days after the date of issue of the final payment summary, the Principal is to pay the Contractor the amount due in accordance with the final payment schedule, subject to clause 13.7. 13. Each payment claim must separately identify amounts claimed on account of:     1. the Design, Supply and Construction Fee;     2. the Maintenance Fee (if applicable); and     3. the CAAS Fee (if applicable). 14. To the extent permitted by law, the Principal may retain, deduct, withhold or set-off from moneys otherwise due to the Contractor:     1. any debt or other moneys due from the Contractor to the Principal or claim to money which the Principal may have against the Contractor, whether under the Contract or otherwise;     2. any amount that the Principal is permitted or obliged to withhold from payment to the Contractor in accordance with any Statutory Requirements, including the *Building and Construction Industry Security of Payment Act 1999* (NSW);     3. in circumstances where the Contractor has not complied with clauses 8, 8A, 13.4 and 13A at the time a payment claim is issued, the full amount that would otherwise be payable in respect of that payment claim; and     4. amounts in accordance with clause 13A. 15. Without limiting clause 13.15, or any claim, right or entitlement the Principal may have against the Contractor, the Contractor’s entitlement to payment in respect of any payment claim under clause 13 will be $0, to the extent that the Contractor has not complied with clauses 8, 8A 13.4 and 13A on the date of submission of the payment claim. |
| 13A. Security | 1. The Contractor must, at the time specified in Item 13 of the Contract Information, provide security to the Principal in the form and amount (if any) set out in Item 13 of the Contract Information. 2. The Principal may call on and otherwise have recourse to the security in respect of any debt or other moneys due from the Contractor to the Principal or any claim to money which the Principal has, or may have, against the Contractor, whether under the Contract or otherwise in connection with the Works. 3. Subject to clause 13A.2, the Principal’s entitlement to security held under this clause 13A will reduce to 50% of the amount required under clause 13A.1 on Completion and the Principal will release and return to the Contractor the security then held under this clause 13A in excess of its entitlement within 10 Business Days. 4. Subject to clause 13A.2, the Principal must release and return to the Contractor any remaining security it is holding under this clause 13A within 10 Business Days after the latest to occur of:    1. the expiration of the Post Completion Period, the Maintenance Term (if applicable) or the CAAS Term (if applicable), whichever is later;    2. satisfactory rectification of all Defects; and    3. final resolution of any dispute notified under clause 14. |
| 13B. Unfixed materials and/or goods | 1. The Contractor is not entitled to claim payment, and the Principal is not required to make payment, for unfixed materials (including EVSE Goods) unless otherwise approved by the Principal (which approval may be withheld in the Principal absolute discretion and subject to conditions). |
| 13C. Passing of title | 1. Except as provided by clause 28.5 and without limiting clause 13B or the Principal’s rights at law, unencumbered title in the plant, equipment, materials and any other items forming part of or to form part of the Works (including EVSE Goods) will pass to the Principal, and the Contractor must do all things necessary to ensure that such unencumbered title passes to the Principal, upon the earlier of:    1. payment being made by or on behalf of the Principal to the Contractor (or, in the case of payment directly to a Subcontractor by the Principal, upon receipt of payment by that Subcontractor) of that part of the Contract Price relating to such plant, equipment, materials and items, including where the Principal has exercised a right under clause 13.15 in respect of such payment; and    2. delivery of such plant, equipment, materials and items to the Site. |
| 14. Disputes | 1. If a Party is dissatisfied with an act or omission of the other Party in connection with the Contract then, within 20 Business Days after the act or omission, the dissatisfied Party is to notify the other Party in writing of a dispute. The notification is to include the legal and factual basis of the dispute. 2. The Parties are to confer to try to resolve the dispute. If the dispute is not resolved within 20 Business Days then the Parties are to attempt to agree upon an independent expert to resolve the dispute and the terms for the expert’s engagement. If the Parties cannot agree on an expert within a further 15 Business Days then either may request the Chief Executive Officer, Australian Disputes Centre (https://www.disputescentre.com.au/) to nominate an expert. 3. The Parties are to share equally the expert’s fees and out-of-pocket expenses, including any security required for the expert’s fees. Each party is to otherwise bear its own costs and share equally any other costs of the process. 4. Within 15 Business Days after the appointment of the expert, the notifying Party is to make its submission on the dispute to the expert. 5. Within 15 Business Days after receiving a copy of that submission, the other Party is to make its submission in response, if any. 6. The expert may request further information from either Party. The Party must respond within 15 Business Days after receiving the request. 7. The Parties are to treat each determination of the expert as final and binding and give effect to it. |
| 15. Suspension | 1. The Principal may instruct the Contractor to suspend carrying out all or part of the Works and the conditions on which work is to recommence. |
| 16. Termination by the Principal | 1. Without prejudice to any other rights which the Principal has, if the Contractor commits a substantial breach of the Contract, including:    1. failing to carry out an instruction of the Principal within the time specified;    2. not progressing the Works at a reasonable rate;    3. failing to effect or maintain any insurance required by the Contract;   or if a receiver, manager or receiver and manager is appointed or the Contractor commits an act of insolvency, the Principal may, in writing, specify the breach and ask the Contractor to give reasons why the Principal should not take further action.   1. If the Contractor either fails to give a written response within 5 Business Days after receiving the Principal’s notice, or fails to give reasons satisfactory to the Principal, then:    1. the Principal may immediately terminate the Contract by notice in writing to the Contractor, in which case the respective rights and liabilities of the Parties shall be the same as they would be at common law if the Contractor had wrongfully repudiated the Contract; or    2. the Principal may immediately take over the incomplete Works by notice in writing, suspend payments due or which would become due under clause 13, and have others complete the Works.   The Principal is to calculate the difference between the costs of having the Works completed by others and the amount of suspended payments held. If the calculation shows a shortfall to the Principal, the Contractor is to pay the amount of the shortfall to the Principal within 10 Business Days of a written demand for payment. If the calculation shows an excess to the Principal, the Principal is to pay the amount of the excess to the Contractor. |
| 17. Termination for the Principal’s Convenience | 1. The Principal may terminate the Contract for its convenience and without giving reasons by giving written notice to the Contractor, with effect from the date stated in the notice. The Contractor is to leave the Site by the date stated and comply with any other instructions in the notice. 2. If the Contract is terminated for the Principal’s convenience, then, as full compensation for termination under this clause, the Contractor’s total entitlement in respect of the Contract is the sum of the following and the Contractor has no claim for damages or other entitlement whether under the Contract or otherwise:    1. for the Works carried out prior to the date of termination, the amount that would have been payable to the Contractor under the Contract if the Contract had not been terminated and the Contractor submitted a payment claim in accordance with clause 13 for those Works; plus    2. the amount set out in Item 17 of the Contract Information; plus    3. where clause 28 applies pursuant to Item 16(a) of the Contract Information, the amount stated in Item 16(h) of the Contract Information. |
| 18. Subcontracting | 1. The Principal may at any time novate this Contract to any person or assign all or any part of its rights and/or interests under the Contract to any other person, without the need to obtain the consent of the Contractor. The Contractor agrees, on the request of the Principal, to do everything necessary to give effect to any such assignment or novation (including by executing a deed of novation on terms required by the Principal). 2. The Contractor must not, without the Principal’s prior written approval:    1. assign the Contract or any payment or any other right, benefit or interest under or in respect of the Contract;    2. subcontract the whole or any part of the Works (except in respect of the subcontracting of Selected Subcontract Work to a Selected Subcontractor) in accordance with clause 19; or    3. allow a Subcontractor to assign a subcontract or any payment or any other right, benefit or interest under or in respect of a subcontract. 3. Approval to subcontract may be conditional, including by being conditional upon the subcontract including:    1. provision that the Subcontractor must not assign nor further subcontract without the Contractor’s written consent;    2. provisions which may be reasonably necessary to enable the Contractor to fulfil the Subcontractor’s obligations to the Principal;    3. provision that if this Contract is terminated, and upon request by the Principal, the Contractor and the Subcontractor must promptly execute a deed of novation on terms required by the Principal; and    4. a provision that the Subcontractor must effect and maintain insurance on the same terms as are required pursuant to this Contract. 4. Approval to subcontract and any subcontracting will not limit or otherwise affect any of the Works or obligations of the Contractor arising under, out of or in connection with the Contract. The Contractor will be liable to the Principal for the acts, defaults and omissions of its Subcontractors as if they were acts, defaults or omissions of the Contractor. |
| 19. Selected Subcontract Work | 1. If Item 14 of the Contract Information specifies one or more Selected Subcontractors for particular work, the Contractor must subcontract that work to the relevant Selected Subcontractor and thereupon give the Principal written notice of that Selected Subcontractor’s name. 2. If no Selected Subcontractor will subcontract to carry out the Selected Subcontract Work, the Contractor must as soon as practicable:    1. notify the Principal in writing that no Selected Subcontractor will subcontract to carry out the Selected Subcontract Work; and    2. give the Principal a list of subcontractors which the Contractor is able to subcontract to carry out the Selected Subcontract Work. 3. The Principal may at any time:    1. nominate other Selected Subcontractors; and    2. approve a subcontractor which the Contractor has provided in a list of subcontractors under clause 19.2(b) to be a Selected Subcontractor. |
| 20. DBP Act | 1. This clause 20 (other than this clause 20.1) only applies to the extent the DBP Act and the DBP Regulation applies in respect of the Works or the carrying out of any work by the Principal in respect of the Works. 2. The Contractor:    1. acknowledges and agrees that it owes a duty to the Principal (including as if the Principal was an Owner for the purposes of Part 4 of the DBP Act, the Works were construction work for the purposes of Part 4 of the DBP Act and the Contractor was a person who carries out construction work for the purposes of Part 4 of the DBP Act) to exercise reasonable care to avoid economic loss (as contemplated by Part 4 of the DBP Act and whether suffered or incurred by the Principal or any Owner) arising out of or in connection with any Defect or otherwise arising out of or in connection with the Works;    2. without limiting clause 20.2(a) or 20.2(c), will be liable to the Principal as if section 37 of the DBP Act applied in respect of the Works, the Principal was an Owner for the purposes of Part 4 of the DBP Act, the Works were construction work for the purposes of Part 4 of the DBP Act and the Contractor was a person who carries out construction work for the purposes of Part 4 of the DBP Act; and    3. indemnifies the Principal against any liability or loss suffered or incurred by the Principal arising out of or in connection with Part 4 of the DBP Act (including any claim by any Owner against the Principal in connection with any breach of any duty owed by the Principal in accordance with Part 4 of the DBP Act), to the extent such liability or losses arise out of or in connection with any act or omission of the Contractor or any of its employees, Subcontractor or agents, including any breach by the Contractor of the duty referred to in clause 20.2(a). 3. The Contractor warrants that, if the Contractor is responsible under the Contract for the design of any part of the Works, at all times while carrying out the Works:    1. it is (and will be) registered as a registered design practitioner as required by the DBP Act and the DBP Regulation;    2. its registration under the DBP Act authorises it to:       1. prepare regulated designs; and       2. provide design compliance declarations,   in respect of the Works; and   * 1. on and from the date required by the DBP Regulation, it will be adequately insured in accordance with the DBP Act and the DBP Regulation.  1. Without limiting any other obligation of the Contractor under the Contract, the Contractor must ensure that the Contractor and any of its employees, Subcontractors or agents:    1. comply with the DBP Act and the DBP Regulation, including by preparing, providing and lodging all necessary or relevant documentation as and when required by, and in the form and method required by, the DBP Act and the DBP Regulation; and    2. do not do anything, or omit to do anything, that would cause the Principal to breach its obligations under the DBP Act and the DBP Regulation. 2. The Contractor indemnifies the Principal against any loss suffered or incurred by the Principal arising out of or in connection with any breach by the Contractor of this clause 20. 3. Except as otherwise provided in clause 1, all terms used in this clause 20 have the meanings given to them in the DBP Act and the DBP Regulation. |
| 21. RAB (CEP Act) | 1. This clause 21 (other than this clause 21.1) only applies if the RAB (CEP) Act applies in respect of the Works. Nothing in clauses 21.2 to 21.5 will limit or otherwise affect any other liability or obligation of the Contractor. 2. The Contractor must ensure that the Contractor and all of its employees, Subcontractors and agents:    1. comply with the RAB (CEP) Act;    2. do not cause the Principal to contravene the RAB (CEP) Act;    3. do not carry out the Works in a manner that could result in:       1. a serious defect in relation to a residential apartment building;       2. significant harm or loss to the public or occupiers or potential occupiers of any building to which the Works relate; or       3. significant damage to property; and    4. do not, by any act or omission, cause or contribute to any serious defect or the issue of any prohibition order, stop work order or building work rectification order. 3. The Contractor must immediately provide the Principal with a copy of any notice issued to the Contractor under the RAB (CEP) Act. 4. The Contractor indemnifies the Principal against any loss suffered or incurred by the Principal arising out of or in connection with any breach by the Contractor of this clause 21. 5. Except as otherwise provided in clause 1, all terms used in this clause 21 have the meanings given to them in the RAB (CEP) Act. |
| 22. Modern Slavery | 1. In this clause 22:    1. “**Anti-slavery Commissioner**” means the Anti-slavery Commissioner appointed under the *Modern Slavery Act 2018* (NSW).    2. “**Information**” may include (as applicable) information as to any risks of, actual or suspected occurrences of, and remedial action taken in respect of, Modern Slavery but excludes ”personal information” as defined in the *Privacy and Personal Information Protection Act 1998* (NSW) or information which tends to identify individuals.    3. “**Modern Slavery**” has the same meaning as in the Modern Slavery Laws and includes slavery, servitude, forced labour, human trafficking, debt bondage, organ trafficking, forced marriage and the exploitation of children.    4. “**Modern Slavery Laws**” means, as applicable, the *Modern Slavery Act 2018* (NSW) and the *Modern Slavery Act 2018* (Cth).    5. “**Modern Slavery Offence**” has the same meaning as in the *Modern Slavery Act 2018* (NSW).    6. “**Modern Slavery Statement**” means a modern slavery statement as required or volunteered under the *Modern Slavery Act 2018* (Cth). 2. The Contractor warrants that, as at the Contract Date, neither the Contractor, any entity that it owns or controls or, to the best of its knowledge, any Subcontractor, has been convicted of a Modern Slavery Offence. 3. The Contractor must:    1. subject to any restrictions under any applicable laws by which it is bound, provide to the Principal, within 30 days of a request by the Principal, any Information and other assistance, as reasonably requested by the Principal, to enable the Principal to meet its obligations under the *Modern Slavery Act 2018* (NSW) and associated regulatory requirements (for example, annual reporting requirements and NSW Procurement Board directions), including cooperating in any Modern Slavery audit undertaken by the Principal (including by a third party on behalf of the Principal) or the NSW Audit Office, providing reasonable access to the Principal’s/Audit Office’s auditors to interview the Contractor’s staff and, so far as these matters are known to the Contractor, disclosing the source, place and country of origin of goods and services being supplied;    2. within 7 days of providing a Modern Slavery Statement to the Commonwealth, provide a copy of that Modern Slavery Statement to the Principal; and    3. notify the Principal in writing as soon as it becomes aware of either or both of the following:       1. a material change to any of the Information it has provided to the Principal in relation to Modern Slavery; and       2. any actual or suspected occurrence of Modern Slavery in its operations or supply chains (or those of any entity that it owns or controls).    4. The Contractor may provide any Information or report requested by the Principal in the form of a previously prepared statement or re-purposed report, for example a statement provided in response to a similar request for information from another Australian public sector agency, or refer the Principal to its publicly available Modern Slavery Statement, provided that such statement or report provides generally the same Information as that sought by the Principal.    5. The Contractor must, during the term of this Contract and for a further period of seven (7) years:       1. maintain; and       2. upon the Principal’s reasonable request, give the Principal access to, and/or copies of,   a complete set of records in the possession or control of the Contractor to trace, so far as practicable, the supply chain of all goods and services provided under this Contract and to enable the Principal to assess the Contractor’s compliance with this clause 22.   1. The Contractor must take reasonable steps to ensure that:    1. Modern Slavery is not occurring in the operations and supply chains of the Contractor and any entity that it owns or controls; and    2. it does not use, nor procure, any goods, plant, equipment or other materials and work or services that are the product of Modern Slavery. 2. The Contractor must take reasonable steps to ensure that all subcontracts in relation to this Contract contain Modern Slavery provisions that are reasonably consistent with the provisions in this clause 22, having regard to the nature of the procurement. 3. If the Contractor becomes aware of any actual or suspected occurrence of Modern Slavery in its operations or supply chains (or in those of any entity that it owns or controls), the Contractor must take reasonable steps to respond to and address the occurrence in accordance with any internal Modern Slavery strategy and procedures of the Contractor and any relevant Code of Practice/Conduct or other guidance issued by the Anti-slavery Commissioner or (if the Principal notifies the Contractor that it requires the Contractor to comply with the relevant NSW Procurement Board Code/guidance) by the NSW Procurement Board. 4. Any action taken by the Contractor under clause 22.6 will not affect any rights of the Principal under this Contract, including its rights under clause 22.8. 5. In addition to any other right or remedy of the Principal under this Contract or at law, including rights of termination, or rights to damages, the Principal may, in its sole discretion, terminate this Contract, upon written notice, with immediate effect and without any requirement to pay compensation in respect of such termination (other than payment for work performed by the Contractor under this Contract and unpaid up until the date of termination), on any one or more of the following grounds:    1. the Contractor has failed to disclose to the Principal, prior to the Contract Date, that the Contractor, or any entity owned or controlled by the Contractor, has been convicted of a Modern Slavery Offence;    2. the Contractor, or any entity owned or controlled by the Contractor, is convicted of a Modern Slavery Offence during the term of this Contract;    3. in the Principal’s reasonable view, the Contractor has failed to notify the Principal as soon as it became aware of an actual or suspected occurrence of Modern Slavery in its operations or supply chains (or in those of any entity that it owns or controls);    4. in the Principal’s reasonable view, the Contractor has failed to take reasonable steps to respond to and address an actual or suspected occurrence of Modern Slavery in its operations or supply chains (or in those of any entity that it owns or controls); or    5. in the Principal’s reasonable view, the Contractor has otherwise committed a substantial breach (including multiple minor (non-trivial) breaches) of clause 22.2 or clause 22.3. |
| 23. Records | 1. The Contactor must keep complete and accurate records and books of account in respect of the Works and must retain such records and books of account for a minimum of 7 years after the expiry or termination of this Contract. 2. The Contractor acknowledges and agrees that the Principal and its nominees may undertake audits, examine and inspect, at reasonable times and on reasonable notice to the Contractor, any records and books of account held by the Contractor, and allow these to be copied. The Contractor must give all reasonable assistance in order for the Principal or its nominee to properly carry out any audit, examination or inspection referred to in this clause 23. |
| 24. No Fetter | 1. The Contract shall not in any way unlawfully restrict or otherwise unlawfully affect the unfettered discretion of the Principal to exercise any of its functions and powers under any law and no exercise of any such functions or powers shall entitle the Contractor to make any claim against the Principal. |
| 25. Principal May Act | 1. Without limiting any other provision of the Contract, the Principal may, either itself or by a third party, carry out an obligation under the Contract which the Contractor was obliged to carry out but which it failed to carry out within the time required in accordance with the Contract (or, where no time for performance is prescribed in the Contract, within a reasonable time). The reasonable costs, expenses and damages suffered or incurred by the Principal in so carrying out such a Contract obligation will be a debt due from the Contractor to the Principal. |
| 26. Information | 1. The Parties acknowledge that the name of the Contractor, its Subcontractors, consultants and suppliers and their respective employees must be presented in the Principal's records and may be made public in accordance with the *Government Information (Public Access) Act 2009* (NSW). 2. The Contractor acknowledges that the Principal may disclose the Contract (and information concerning the terms of the Contract) under or in accordance with any law, including the *Government Information (Public Access) Act 2009* (NSW) and the *Freedom of Information Act 1982* (Cth). 3. Where the Principal has received a request for access to a document created by, or in the possession of, the Contractor or any Subcontractor, consultant or supplier that relates to the Contract or the Works, the Principal may at any time by written notice require the Contractor to provide, or to procure the relevant Subcontractor, consultant or supplier to provide, the document to the Principal and the Contractor must, at no cost to the Principal, promptly comply with the notice. |
| 27. Maintenance | **Application**   1. Subject to clause 28.10, this clause 27 (other than this clause 27.1) only applies where Item 15(a) of the Contract Information specifies this clause 27 applies.   **Maintenance Term**   1. The Maintenance Term is the period specified in Item 15(b) of the Contract Information which commences at the time specified in Item 15(c) and as may be extended in accordance with clause 27.3. 2. Subject to clause 27.4, the Principal may, at any time in its absolute discretion, extend the Maintenance Term by a period of up to the period stated in Item 15(d) of the Contract Information by notice in writing to the Contractor prior to the date that is 10 days prior to the expiry of the Maintenance Term. 3. The Principal may not extend the Maintenance Term beyond the time stated in Item 15(e) of the Contract Information unless otherwise agreed by the parties in writing.   **Planned Maintenance Services**   1. From the commencement of the Maintenance Term, the Contractor must carry out the Planned Maintenance Services periodically and at intervals of no less frequently than the period of time specified in Item 15(f). 2. The Contractor must:    1. during the Maintenance Term, carry out all necessary preventative maintenance, repair, rectification, replacement and restoration work to the Maintenance Items:       1. to ensure that the Maintenance Items are at all times:          1. in good condition;          2. fit for their intended purpose stated in, or reasonably inferred from what is stated in, the Contract and the Project Requirements;          3. able to be used for its intended purpose stated in, or reasonably inferred from what is stated in, the Contract and the Project Requirements; and          4. in accordance with the requirements of the EVSE Specification and the other requirements of the Contract; and       2. to ensure that the Contractor is at all times in compliance with its obligations and warranties under this Contract and the Warranty Deed in respect of the quality and condition of the Maintenance Items;    2. in carrying out its obligations under clause 27.6(a):       1. if replacement of any worn, failed or defective parts is required, use replacement parts of equal or better quality to those required under this Contract and that are fit for their intended purposes stated in, or reasonably inferred from what is stated in, the Contract and the Project Requirements;       2. minimise the disruption to the use of the Maintenance Items, other parts of the Works or the Site and their respective surrounds; and       3. avoid any loss or damage to the Maintenance Items, other parts of the Works or the Site and their respective surrounds; and    3. notify the Principal in writing at least 10 Business Days in advance of when the Contractor will carry out any planned preventative maintenance, repair, rectification, replacement and restoration work to the Maintenance Items. 3. The Contractor warrants that:    1. the maintenance of the Maintenance Items in accordance with this clause 27 will result in the Maintenance Items remaining fit for their intended purpose stated in, or reasonably inferred from what is stated in, the Contract and the Project Requirements, during the Maintenance Term; and    2. all parts of the Maintenance Items will be maintained and repaired so as to remain fit for their intended purpose stated in, or reasonably inferred from what is stated in, the Contract and the Project Requirements, at all times during the Maintenance Term.   **Corrective Maintenance Services**   1. The Contractor must notify the Principal as soon as reasonably practicable, and in any event within 24 hours, after it becomes aware that Corrective Maintenance Services are required in respect of the Maintenance Items in order for those Maintenance Items to comply with the Contract. 2. The Contractor’s notice under clause 27.8 must set out:    1. the Maintenance Items which require the Corrective Maintenance Services (including details of the location on the Site);    2. the issue and probable cause of the issue; and    3. the Corrective Maintenance Services required, including any parts of the Maintenance Items to be replaced. 3. Whether or not the Contractor has provided a notice under clause 27.8, the Principal may, at any time before the expiry of the Maintenance Term, give the Contractor a direction for the Contractor to carry out Corrective Maintenance Services. 4. Each Corrective Maintenance Services Order must set out:    1. the Corrective Maintenance Services required;    2. the time in which the Contractor must carry out the Corrective Maintenance Services; and    3. the location of the Maintenance Items which require the Corrective Maintenance Services. 5. The Principal may give the Contractor an oral direction to perform urgent Corrective Maintenance Services, but must confirm the oral direction with a written Corrective Maintenance Services Order within 24 hours after the direction. 6. The Contractor must comply with a Corrective Maintenance Services Order or an oral direction to perform urgent Corrective Maintenance Services given by the Principal under clause 27.12. 7. For the avoidance of doubt, the issue of a Corrective Maintenance Services Order, or an oral direction under clause 27.12, will not be considered as a direction to carry out a Variation.   **Site and Access**   1. The Principal will, subject to any Tenancy Requirements, give the Contractor sufficient access to the Site to allow the Contractor to perform the Maintenance Services. 2. Without limiting or otherwise affecting clauses 3 or 4, in accessing the Site to perform the Maintenance Services, and while performing the Maintenance Services, the Contractor must:    1. comply with any Tenancy Requirements;    2. comply with the Principal’s policies and procedures applicable to accessing and carrying out any works or services on the Site;    3. make good at the Contractor’s expense any loss or damage which occurs to the Works, the Site or any third party property; and    4. minimise disruption and inconvenience to others.   **Payment for the Maintenance Services**   1. The Contractor will be entitled to payment of the Maintenance Fee during the Maintenance Term. The Contractor must claim payment for the Maintenance Fee in accordance with clause 13. 2. Despite any other provision of this Contract, the Contractor will not be entitled to make, and the Principal will not be liable upon, any claim arising out of, or in any way in connection with, any Defect, including any increased maintenance requirements resulting from any Defect or to the extent that the Contractor would have otherwise been required to carry out work of the same or similar nature as any Corrective Maintenance Services under the Warranty Deed Poll.   **Other**   1. For the avoidance of doubt, the whole or any part of the Works may be added to or removed from the Maintenance Items in accordance with clause 10. 2. Nothing in this clause 27 will limit or otherwise affect the Contractor’s obligations under the Warranty Deed Poll. |
| 28. CAAS Services | **Application**   1. This clause 28 (other than this clause 28.1) only applies where Item 16(a) of the Contract Information specifies that clause 28 applies.   **CAAS Service Term**   1. The CAAS Term is the period specified in Item 16(b) of the Contract Information which commences at the time specified in Item 16(c) and as may be extended in accordance with clause 28.3. 2. Subject to clause 28.4, the Principal may, at any time in its absolute discretion, extend the CAAS Term by a period of up to the period stated in Item 16(d) of the Contract Information by notice in writing to the Contractor prior to the date that is 10 days prior to the expiry of the Service Term. 3. The Principal may not extend the Maintenance Term beyond the time stated in Item 16(e) of the Contract Information unless otherwise agreed by the parties in writing.   **Ownership and use of the EVSE Goods**   1. The Contractor will remain the owner of the EVSE Goods.   **CAAS Services**   1. The Principal, and any other person permitted by the Principal, may use the EVSE Goods during the CAAS Term. 2. The Contractor must provide the CAAS Services to the Principal to a standard that meets or exceeds any applicable CAAS Levels and the other requirements of the Contract. 3. The Contractor must, without any additional payment to the Contractor (other than the CAAS Fee), provide any incidental or related services not specifically described in the Contract which are required for the proper performance or use of the CAAS Services. 4. The Contractor must ensure it maintains sufficient capability and resources in relation to CAAS Services to meet its obligations under the Contract. 5. During the CAAS Term, the Contractor must, without any additional payment to the Contractor (other than the CAAS Fee), carry out the Maintenance Services in accordance with clause 27, and the Principal may exercise its rights under clauses 27.8 to 27.13, as if the EVSE Goods were the Maintenance Items and the CAAS Term was the Maintenance Term. 6. During the CAAS Term, the Principal must ensure that it, and any other person that it permits to use the EVSE Goods:    1. use the EVSE Goods only in accordance with:       1. the EVSE Specifications;       2. the other requirements of the Contract; and       3. any other reasonable requirements for the use and operation of the EVSE Goods provided to the Principal in writing by the Contractor (provided that such requirements are not inconsistent with the EVSE Specifications or the Contract); and    2. does not cause any loss or damage to the EVSE Goods. 7. The Contractor will be entitled to be paid by the Principal the reasonable cost of rectifying any loss or damage that is caused to the EVSE Goods by a negligent act or omission of the Principal, or any person permitted by the Principal to use the EVSE Goods, or any of their respective employees, contractor or agents.   **Site and Access**   1. The Principal will, subject to any Tenancy Requirements, give the Contractor sufficient access to the Site to allow the Contractor to perform the CAAS Services. 2. Without limiting or otherwise affecting clauses 3 or 4, in accessing the Site to perform the CAAS Services, and while performing the CAAS Services, the Contractor must:    1. comply with any Tenancy Requirements;    2. comply with the Principal’s policies and procedures applicable to accessing and carrying out any works or services on the Site;    3. make good at the Contractor’s expense any loss or damage which occurs to the Works or the Site; and    4. minimise inconvenience to others. 3. The parties acknowledge and agree:    1. if required by Item 16(g) of the Contract Information, the Contractor must obtain a licence from the owner or lessor of the Site to enable the Contractor to install and keep the EVSE Goods on the Site (**Licence**);    2. the Principal must provide the Contractor with all reasonable assistance to enable the Contractor to obtain the Licence;    3. the Contractor must provide the Principal with a copy of the Licence; and    4. the Contractor is responsible for all costs associated with the Licence (including any costs associated with obtaining the Licence).   **Payment for the CAAS Services**   1. The Contractor must claim payment for the CAAS Fee in accordance with clause 13. 2. The Contractor’s entitlement to the CAAS Fee will be reduced by a reasonable amount determined by the Principal to the extent that the CAAS Services do not meet the CAAS Levels.   **Removal of the EVSE Goods**   1. At the expiration of the CAAS Term or the earlier termination of the Contract, the Contractor must remove the EVSE Goods from the Site at a time agreed with the Principal and make good the Site and surroundings (unless otherwise agreed by the parties in writing). |

Schedule 1 – Contract Information

|  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |
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| 1A. Formation of Contract  *[User Note: Include Option 1 or Option 2. Delete the options that do not apply. Use Option 1 if the contract will be formed by the Principal and the Contractor executing a formal instrument of agreement. Use Option 2 if the contract will be formed by the principal issuing a letter of award to the principal.]*  [Option 1]   |  |  | | --- | --- | | The Contract will be formed by: | The execution of the Formal Instrument of Agreement. |   [Option 2]   |  |  | | --- | --- | | The Contract will be formed by: | The issue of the Letter of Award. |   1. Authorised Person  *[User Note: Insert the name, title and contact details of the authorised person. this will be the person administering the contract on a day-to-day basis.]*   |  |  | | --- | --- | | The Authorised Person is: | [## insert name] | | Title: | [## insert details] | | Office address: (for delivery by hand) | [## insert address] | | Postal address: (for delivery by post) | [## insert address] | | Telephone number: | [## insert number] | | email address: | [## insert email address] |   2. Principal  *[User Note: The Principal must be an entity that is legally capable of entering the contract. For example the Principal could be a government owned corporation or a Minister of the Crown if appropriate statutory power exists. If the agency responsible for the work is a corporation, including statutory corporations such as the Health Administration Corporation or an Area Health Service or a local government council, then the corporation may elect to be named as the Principal.*  *If the agency is not a corporation but part of the Crown, it may elect to name its Minister as the Principal. If it is proposed to name a Minister as the Principal, use the form "Minister for [portfolio] for the State of NSW". The choice of the minister to be named as principal is a matter for the responsible agency and the decision should be based on an understanding of the functions of the principal and its capacity to perform them.*  *The Minister for Finance and Services should not be named as the Principal unless an agreement for such an arrangement has been established between NSW Public Works and the responsible agency to indemnify the minister for Finance and Services against all claims by the contractor.*  *For further information, contact the NSW Procurement Client Support Centre at nswbuy@treasury.nsw.gov.au, or by telephone: 1800 679 289.]*   |  |  | | --- | --- | | The Principal is: | [## Insert name of the Principal] |   2A. Contractor   |  |  | | --- | --- | | The Contractor is: | [## Insert name of the Contractor]  [## Insert ACN of the Contractor]  [## Insert ABN of the Contractor]  [## Insert address of the Contractor] |   3. Insurance of the Works and Public and Products Liability Insurance  *[User Note: Include Option 1 or Option 2. Delete the options that do not apply. Use Option 1 where insurance of the works and public and product liability insurance are to be arranged by the contractor. Use option 2 if the principal is to otherwise arrange insurance.]*  [Option 1]   |  |  | | --- | --- | | **Insurance of the Works** | | | Insurance of the Works is to be arranged by: | Contractor | | Minimum amount of insurance of the Works: | $[## insert amount]  If no amount is stated, then the minimum amount is the Contract Price. | | **Public and products liability insurance** | | | Public and products liability insurance is to be arranged by: | Contractor | | Minimum amount of public and products liability insurance: | $[## insert amount]  If no amount is stated, then the minimum amount is $20 million. |   [Option 1]   |  |  | | --- | --- | | Insurance of the Works and public and products liability insurance are to be arranged by: | Principal. |  **4.** **Date for** **Completion** *[User Note: Include Option 1 or Option 2. delete the options that do not apply. Use OPTION 1 where there is a period of time for completion. Use option 2 if completion must be achieved by a certain date.]*  [Option 1]   |  |  | | --- | --- | | The Date for Completion is: | [## insert number of weeks] weeks from the Contract Date |   [Option 2]   |  |  | | --- | --- | | The Date for Completion is: | [## insert date] |  **5. Post Completion Period and Retention Amount** *[User Note: The post completion period is the period after completion of the works during which the principal continues to hold the retention amount.*  *No Post Completion Period is required for demolition work. for construction work, a Post Completion Period of 52 or 26 calendar weeks may be included in the contract depending on the risks identified (e.g. 52 weeks would be reasonable for ensuring that air conditioning plant is operational under all seasonal conditions).*  *Note that the contractor still has obligations to rectify defects after the Post Completion Period has ended. However, after retention has been released, the Principal no longer has the option of rectifying the defect and then deducting the cost from the retention.]*   |  |  | | --- | --- | | The Post Completion Period is: | [## insert number of weeks] weeks.  If no time is stated, then a Post Completion Period of 52 weeks applies. |  **6. Design, Supply and Construction Fee**   |  |  | | --- | --- | | The Design, Supply and Construction Fee: | *User Note: This would usually be “Nil” or “Not Applicable” where clause 28 (CAAS Services) applies.]*  $[## insert amount](exclusive of GST) |  **7. Site**   |  |  | | --- | --- | | Site name: | [## insert site name] | | Site address: | [## insert site address] | | Site description: | [## insert description of the site if necessary to specify the location of the site with further particularity (description of the site may be by reference to a plan: e.g. the highlighted area shown on the following plan).] |  **8. Extent of Design**   |  |  | | --- | --- | | Clause 2B applies: | [## Yes / No] |   *[User Note: Include Option 1 or Option 2 or Option 3. Delete the options that do not apply.*  *To comply with the contract and achieve fitness for purpose, there will always be an element of design by the Contractor, even if it is only to implement good trade practice. Use option 1 where The principal’s design includes for all elements of the works. do not alter the text. Use option 2 where there are specific elements of the works that are to be designed by the contractor – e.g. a ramp for disabled access or an air-conditioning system. Use option 3 where the contractor is to design virtually all of the works.]*  [Option 1]   |  |  | | --- | --- | | The Contractor is to complete the Principal’s design to the extent of: | Design that is necessary to comply with clauses 2B.5 and 2B.11, including the design of minor items and shop detailing. |   [Option 2]  *[User Note: Insert descriptions of the specific elements of the Works to be designed by the Contractor. Ensure the Contract specification details the relevant design criteria and compliance requirements.]*   |  |  | | --- | --- | | The Contractor is to complete the Principal’s design to the extent of: | 1. design development, documentation, integration with the Principal’s design and coordination of engineering and architectural design disciplines for the following elements of the Works:   * [## insert details]; * [## insert details]; * [## insert details]; and   2. for all other elements of the Works, design that is necessary to comply with clauses 2B.5 and 2B.11, including the design of minor items and shop detailing. |   [Option 3]   |  |  | | --- | --- | | The Contractor is to complete the Principal’s design to the extent of: | Full design of the Works including all design development, documentation, including shop detailing, integration with the Principal’s design and coordination of engineering and architectural design disciplines. |  **9. Design Documents** *[User Note: Include either Option 1 or Option 2 and delete the option that does not apply. Use OPTION 1 where the Contractor is not required to submit any design documents (including workshop drawings). Otherwise use OPTION 2 and insert a suitable period between 5 and 15 Business days. A longer period should be inserted for significant design or where a consultant is needed to review the completed design.]*  [Option 1]   |  |  | | --- | --- | | The time to submit the completed design is: | Not applicable. The Contractor need not submit the completed design. |   [Option 2]   |  |  | | --- | --- | | The time to submit the completed design is: | [## insert number of days] Business Days before it is to be used for construction, manufacture or installation.  If no time is stated, then it is 5 Business Days before the completed design is to be used for construction, manufacture or installation. |  **10. Professional Indemnity Insurance**  |  |  | | --- | --- | | Clause 8A applies | [## Yes / No] | | Amount | $[## insert amount]  If no amount is stated, then the minimum amount is $500,000. |  **11. Tenancy Agreement**  |  |  | | --- | --- | | The Tenancy Agreement | [## Set out the Tenancy Agreement (If any) that applies to the Site] | | Tenancy Requirements | [## Set out any Tenancy Requirements] |  **12. Statutory Requirements**  |  |  | | --- | --- | | Statutory Requirements | The Statutory Requirements not required to be satisfied by the Contractor are:  [##insert] | | Approvals | The Approvals not required to be obtained by the Contractor are:  [##insert] |  **13. Security**  |  |  | | --- | --- | | Form and amount: | **Retention moneys:** 10% of each amount that would otherwise be payable under clause 13 retained until 4% of the Contract Price is retained  OR  **Unconditional undertakings:** Two unconditional undertakings each for 2% of the Contract Price provided by a bank, building society, credit union or insurance company acceptable to the Principal and in a form approved by the Principal, to be provided by the Contractor on the Contract Date. |  **14. Selected Subcontractor and Selected Subcontract Work** *[User Note: The Principal may specify certain subcontractors that it requires the Contractor to use in carrying out the Works. However, it is not necessary for the Principal to specify any subcontractors and it can simply be left up to the Contractor to engage its own subcontractors. This option should generally be used where the Principal is required to use certain subcontractors (e.g. if the use of a certain subcontractor is a landlord requirement) or has a preference for a certain subcontractor.]]*   |  |  | | --- | --- | | Selected Subcontract Work: | Selected Subcontractor(s): | | [## insert description of work] | [##insert name of subcontractor(s) for the particular work described] |  **15. Maintenance Services**  |  |  | | --- | --- | | (a) Maintenance Services | Clause 27 [does / does not] apply. | | (b) Maintenance Term | [## insert] years. | | (c) Time of the commencement of the Maintenance Term | [## insert date]  If no time is stated, the time of the commencement of the Maintenance Term is the Date of Completion. | | (d) Period the Principal may extend the Maintenance Term | [## insert] year(s).  *[User Note: A period of 1 year will generally be appropriate (i.e. the Principal will be able to extend the Maintenance Term by a period of 1 year and may be able to do this multiple times subject to item 15(e).]* | | (e) Time beyond which the Maintenance Term may not be extended (unless otherwise agreed in writing by the parties) | [## insert] years from the Date of Completion. | | (f) Minimum frequency the Contractor must carry out the Planned Maintenance Services | [## insert] months | | (g) Maintenance Fee | *[User Note: This would usually be “Nil” or “Not Applicable” where clause 28 (CAAS Services) applies.*  *Use Option 1 of the fee will be a fixed amount. Use Option 2 if the fee will be calculated using the Schedule of Rates. Delete the options not used.]*  *[Option 1]*  $[AMOUNT] per [month / year]  *[Option 2]*  The amount calculated in accordance with the Schedule of Rates for Planned Maintenance Services performed by the Contractor in accordance with the Contract during the Maintenance Term. | | (h) Maintenance Items | [## insert]  *[User Note: Set out the parts of the Works which the Contractor will be required to carry out maintenance for. You may wish to specify “All of the Works” (if the Contractor is required to maintain all of the Works), “The EVSE Goods” (if the Contractor is only required to maintain the EVSE Goods), or another portion of the Works as applicable.]* |  **16. CAAS Services**  |  |  | | --- | --- | | (a) CAAS Services | Clause 28 [does / does not] apply. | | (b) CAAS Term | [## insert] years. | | (c) Time of the commencement of the CAAS Term | [## insert date]  If no time is stated, the time of the commencement of the CAAS Term is the Date of Completion. | | (d) Period the Principal may extend the CAAS Term | [## insert] year(s). | | (e) Time beyond which the CAAS Term may not be extended (unless otherwise agreed in writing by the parties) | [## insert] years from the Date of Completion. | | (f) CAAS Fee | *[User Note: Use Option 1 of the fee will be a fixed amount. Use Option 2 if the fee will be calculated using the Schedule of Rates. Use Option 3 if the fee will be a fixed amount plus other amounts calculated using the Schedule of Rates. Delete the options not used.]*  *[Option 1]*  $[AMOUNT] per [month / year]  *[Option 2]*  The amount calculated in accordance with the Schedule of Rates for CAAS Services performed by the Contractor in accordance with the Contract during the CAAS Term.  *[Option 3]*  $[AMOUNT] per [month / year] plus the amount calculated in accordance with the Schedule of Rates for CAAS Services performed by the Contractor in accordance with the Contract during the CAAS Term. | | (g) The Contractor is required to obtain a licence from the lessor or landlord to keep and install the EVSE Goods on Site | [Yes / No] | | (h) Amount payable where the Contract is terminated for convenience under clause 17. | $[AMOUNT] less the total of the amounts previously paid by the Principal to the Contractor for the CAAS Services  *[User Note: Where the Contractor is carrying out the Works at a reduced cost (or for no cost) on the basis that it will be charging the Principal for the CAAS Services, the Contractor may require an amount to be payable where the Contract is terminated for convenience.]* |  **17. Amount payable upon termination for convenience by Principal**  |  |  | | --- | --- | | Amount payable upon termination for convenience by Principal | $[AMOUNT] | |  |

Schedule 2 – Works Description

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| --- | --- | --- |
| W1 Site name and address | 1. Site name: | See Item 7 of the Contract Information |
| 1. Site address: | See Item 7 of the Contract Information |
| W2 Site Requirements | 1. Subject to the requirements of the Contract (including any Tenancy Requirements) and any restrictions on working hours imposed by law, the Site will be available to the Contractor to carry out the Works between the hours of 7am and 5pm, Mondays to Fridays inclusive, on the Business Days defined in the General Conditions of Contract. Work outside these times may only be undertaken if approved in writing by the Principal and will be subject to any conditions the Principal may require7am and 5pm Mondays to Fridays.   *[User Note: Insert any other Site access restrictions here]* | |
| W3 Existing Services | 1. Before starting construction of the Works:    1. establish the precise locations of all underground and other services at and around the Site. Utilize *Dial Before You Dig,* service owner information, service locators, pot-holing and other non-destructive techniques; and    2. comply with the NSW Government *Code of Practice Construction Work.* Isolate services where necessary to prevent unplanned contact with live services. 2. Safely mark the locations of all services prominently on the Site, document them on a site plan and provide a copy of the site plan to the Principal and to each Subcontractor before the Subcontractor starts construction of the Works. 3. Before undertaking any concrete cutting or other work penetrating the building fabric (floor, walls or ceiling):    1. ensure the services are isolated in the relevant work area;    2. for school buildings, obtain prior approval from the Principal, schedule such work **outside normal school hours** and isolate electrical and gas services for the whole building; and    3. before restoring services, check all penetrations for live or damaged wiring or gas pipes**.** | |
| W4 Asbestos Removal | 1. Where asbestos removal work is carried out, comply with the relevant Statutory Requirements, standards, codes and guidelines. 2. Not less than 5 Business Days before starting any asbestos removal work, notify the Principal and, if required under WHS Laws, the SafeWork NSW, of the intention to carry out that work. 3. Where the WHS Laws require a licence for asbestos removal work, before the work starts, submit to the Principal a copy of the current licence held by the entity that will undertake the work and a copy of any SafeWork NSW permit required for the work. 4. Provide air monitoring by an independent testing authority on each day during asbestos removal and on completion of each area where removal has been undertaken. 5. Submit to the Principal a clearance certificate from an independent testing authority at the completion of the asbestos removal work. | |
| W5 Unexpected Discovery of Hazardous Substances | 1. If any unexpected hazardous substance not identified in the Contract Documents is discovered on the Site, suspend all work which may result in exposure to such hazardous substance and notify the Principal immediately of the type of substance and its location. 2. If above clause W5.12 applies, then as soon as possible, submit to the Principal details including:    1. the additional work and resources the Contractor estimates are necessary to deal with the substance so that work and subsequent use of the Works may proceed safely and without risk to health;    2. the Contractor’s estimate of the cost of the measures necessary to deal with the substance; and    3. other details reasonably required by the Principal. 3. If instructed by the Principal to carry out work to deal with the hazardous substance:    1. carry out the work concurrently with other work wherever possible; and    2. otherwise minimise effects of the work on the time required to reach Completion. | |
| W6 Works description | **DESCRIPTION OF THE WORKS**  *[User Note: Insert below a description of work to be performed under the Contract.]*   1. The Works include the following:    1. the supply, installation and commissioning of the EVSE Goods;    2. » 2. The EVSE Goods includes:    1. *[User Note: List the EVSE Goods to be supplied by the Contractor]*   *[User Note: Insert below any drawings and other relevant contract documents which the Contractor will be required to carry out the Works in accordance with.]*   1. Carry out the Works in accordance with the following:    1. » 2. In addition to the above:   *[User Note: Amend and add to the below requirements as applicable.]*   * 1. provide fencing, hoardings and warning notices;   2. remove from the Site all rubbish, debris, rubble, hazardous substances and other items not salvaged or preserved. Except for the Works, restore the Site and surrounds to a pre-existing condition;   3. »   *[User Note: If the Works include demolition, insert the following as applicable, otherwise delete unnecessary clauses.]*   1. Perform any demolition necessary to carry out the work under the Contract in compliance with SafeWork NSW Code of Practice Demolition Work and:    1. comply with the WHS Laws;    2. keep on the Site a copy of AS 2601-2001;    3. provide photographic records of the condition of adjoining property features, structures, facilities, surfaces and the like, which are in a damaged condition or may be damaged during the Works;    4. give at least 10 Business Days’ notice to owners of adjoining properties in respect of any work which may affect their property, themselves or tenants, including contact details and any proposed safeguards;    5. carry out decontamination of hazardous substances that are the responsibility of the Contractor, including substances identified in the Contract Documents and other substances to be located and dealt with by the Contractor; and    6. handle, use, isolate, remove and dispose of such substances in accordance with Statutory Requirements at suitable disposal sites. | |
| W7 Contract Schedules | **CONTRACT SCHEDULES**   1. The following Schedules apply to the Contract:    1. Schedule 1: Contract Information    2. Schedule 2: Works Description    3. Schedule 3: WHS Management Plan and Safe Work Method Statements;    4. Schedule 4: Supporting Statement and Subcontractor’s Statement;    5. Schedule 5: Environmental Management Plan;    6. Schedule 6: Form of Warranty Deed Poll;    7. Schedule 7: Schedule of Rates; and    8. Schedule 8: Contract Price Breakdown. | |

Schedule 3 – WHS Management Plan and Safe Work Method Statements

A WHS Management Plan (WHSMP) sets out the arrangements to manage work health and safety on a construction project. In accordance with General Conditions of Contract clause 5 *Work Health and Safety Management*, the Contractor is to document and implement a WHSMP that addresses all health and safety hazards and manages the risks associated with carrying out the Works.

The Contractor's WHS Management Plan must:

* be signed and dated by a senior manager under the Contractor’s letterhead authorising the Plan for use;
* identify the Contract, work activities, work sites and person who prepared the Plan;
* be implemented, maintained and kept up to date during the work on the Site

**and must include:**

* **Statement of responsibilities** – names, positions and contact details of people who will be responsible for WHS management on the Site, including the work activities and a description of those responsibilities;
* **Risk management** – identification of the hazards associated with each work activity and assessment of the associated risks, with documented actions proposed to eliminate or minimise the risks and methods for managing and monitoring these risk controls (include any WHS risks identified by the Principal);
* **WHS training** **and communication**– arrangements for WHS training, including industry and site induction training and toolbox meetings as well as the consultation, cooperation and coordination of activities;
* **Incident and emergency management** – arrangements for managing accidents, incidents and near misses, with the name(s) of responsible persons and their contact details, including after-hours contact(s);
* **Site Safety Rules** – a copy of the rules must be displayed on the Site, covering as a minimum:
* industry/site induction, toolbox meetings and other safety training;
* safety helmets, safety footwear and safety vests
* personal protective equipment, injury management and first aid arrangements;
* site access, vehicle movements and security;
* accident/incident and emergency procedures;
* protection of all workers and the public;
* working at heights and in deep excavations;
* electrical work and equipment, including leads, power tools and overhead wiring;
* locating and preventing unplanned contact with underground, hidden and overhead services;
* demolition, excavation, mobile plant, formwork and other temporary structural frames;
* recording, handling, storage and disposal of hazardous materials and dangerous goods; and
* safe working, including SWMS, fire prevention, alcohol and drug prohibition and general housekeeping/ access to suitable amenities;
* **Safe Work Method Statements** for high-risk construction work, which must:
* be on the letterhead of the organisation carrying out the work, showing the name and registered office address of the organisation; and
* be signed and dated as authorised for use by a senior manager of the organisation, and describe:
* the address where the high-risk construction work will be carried out;
* the high-risk construction work activities to be undertaken;
* potential health and safety hazards and risks associated with the high-risk construction work;
* risk management controls that will be in place to eliminate the risk or, if not reasonably practicable to eliminate the risk, minimise the hazards and significant risks;
* all work health and safety instructions to be given to persons involved with the work;
* names and qualifications of those who will supervise the work and inspect and approve for use work areas, work methods, protective measures, plant and equipment (including power tools);
* what training is required, and will be or has been given to each of the people involved in the work;
* names of all those involved in the work, and those who will be or have been trained in the work activities described in the SWMS, and the names and qualifications of those responsible for training them;
* plant and equipment that will most likely be used on the work site (e.g. ladders, scaffolds, grinders, electrical leads, welding machines, fire extinguishers and the like);
* any SafeWork NSW permits required to complete the work;
* inspection and maintenance checks that will be or have been carried out prior to use of the plant and equipment listed; and
* A review date to allow feedback and improvements to be made.

Schedule 4 – Supporting Statement and Subcontractor’s Statement

Refer to clause 13.4 of the Mini Minor Works General Conditions of Contract.

The Contractor is required to complete these two statements and submit both statements with each payment claim. Do not alter the forms.

Relevant legislation includes Workers Compensation Act 1987 (NSW), s175B; Payroll Tax Act 2007 (NSW), Schedule 2 Part 5; Industrial Relations Act 1996 (NSW), s127 and Building and Construction Industry Security of Payment Act 1999 (NSW), ss13(7) and 13(9).

**Supporting Statement**

The Contractor is the “head contractor” in terms of the Building and Construction Industry Security of Payment Act 1999 (NSW) and makes relevant statements below accordingly. The Contractor, as the “head contractor”, carries out the construction work for the Principal under the Contract.

The Supporting Statement must be signed by the Contractor, a director of the Contractor or a person authorised by the Contractor.

**Subcontractor’s Statement**

The Contractor is a “subcontractor” in terms of the Workers Compensation Act 1987 (NSW), Payroll Tax Act 2007 (NSW) and Industrial Relations Act 1996 (NSW) and makes relevant statements below accordingly. The Contractor as the “subcontractor” carries out the construction work for the Principal under the Contract. The Principal is called the “principal contractor” in these Acts.

For clarity the Subcontractor’s Statement refers to the ‘Contractor’ and ‘Principal’ under the Contract rather than the “subcontractor” and “principal contractor” under the above Acts.

The Subcontractor’s Statement must be signed by the Contractor (or by a person who is authorised, or held out as being authorised, by the Contractor to sign the statement).

Information, including Notes, Statement Retention and Offences under various Acts, is included in the notes at the end of the Subcontractor’s Statement.

Infor

including Notes, Statement Retention and Offences under various Acts, is included at the end of the Subcontractor’s

#### Supporting Statement

**Construction Contracts**

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

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

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

|  |  |  |  |
| --- | --- | --- | --- |
| Head contractor  (business name of head contractor): |  | | |
| **1.** has entered into a contract with: (business name of subcontractor) |  | | |
| ABN of subcontractor |  | | |
| Contract number/identifier | [9101581:35188976\_9] | | |
| **or** | | | |
| **2.** has entered into a contract with the subcontractors listed in Schedule 1 | | | |
|  | | | |
| This statement applies to work between (start date) |  | and  (end date) |  |
| **or** | | | |
| This statement applies to work completed in Stage (number) of the construction contract |  | | |
|  | | | |
| Subject of the payment claim dated (date) |  | | |

**Declaration for Supporting Statement**

|  |  |
| --- | --- |
| 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 to the best of my knowledge and belief all subcontractors, if any, have been paid all amounts that have become due and payable in relation to the construction work that is the subject of this payment claim.  These subcontractors and the amounts paid to them are identified in Schedule 1 on page 3 of this Supporting Statement. | |
| **It is an offence under section 13(7) of the Act for a head contractor to serve a payment claim on the principal, if it is not accompanied by a supporting statement that indicates that it relates to that payment claim. The maximum penalty is $110,000 for corporations, and $22,000 for an individual.**  **It is also an offence under the Act for a head contractor to serve a payment claim accompanied by a supporting statement knowing that the statement is false or misleading in a material particular in the particular circumstances. The maximum penalty is $110,000 for corporations, and $22,000 or 3 months imprisonment (or both) for individuals.** | |
| Full Name of Individual |  |
| Position/Title |  |
| Signature |  |
| Date |  |

**Schedule 1** (*page 3* *of Supporting Statement*)

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

|  |  |  |  |  |
| --- | --- | --- | --- | --- |
| Name of subcontractor | ABN | Contract number/ identifier | Date of works (period or stage) | Date of subcontractor’s payment claim |
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Approved form under *Building and Construction Industry Security of Payment Act 1999* - Section 13(9)

For more information visit Fair Trading website: **www.fairtrading.nsw.gov.au/trades-and-businesses/construction-and-trade-essentials/security-of-payment**.

#### Subcontractor’s Statement

**Main Contract**

**(Note 2)**

**(Note 3)**

|  |  |  |  |  |
| --- | --- | --- | --- | --- |
| Contractor: | |  | ABN: |  |
| *(Business name of the Contractor)* |
| of |  | |  |  |
| *(Address of the Contractor)* | |
| has entered into a contract with | |  | ABN: |  |
| *(Business name of the Principal)* |

Contract number/identifier:[9101581:35188976\_9]

**Subcontracts**

The Contractor has entered into a contract with the subcontractors listed in the attachment to this Statement.

**Period**

**(Note 4)**

|  |  |  |  |  |  |
| --- | --- | --- | --- | --- | --- |
| This Statement applies for work between: |  | and |  | inclusive, |  |
| subject of the payment claim dated: |  |  | | | **(Note 5)** |

I, …………………………………………………………………. a director or a person authorised by the 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 statement and declare that, to the best of my knowledge and belief:

1. The abovementioned Contractor has either employed or engaged workers or subcontractors during the above period of this Contract.

**(Note 6)**

Tick  if true and comply with **(b)** to **(g)** below, as applicable.

If it is not the case that workers or subcontractors are involved, or you are an exempt employer for workers compensation purposes tick  and only complete **(e)** to **(g)** below. You must mark one box.

1. All workers compensation insurance premiums payable by the Contractor in respect of the work done under the Contract have been paid.

**(Note 7)**

The Certificate of Currency for that insurance is attached and is dated…………………………

**(Note 8)**

1. All remuneration payable to relevant employees for work under the contract for the above period has been paid.
2. Where the Contractor is required to be registered as an employer under the *Payroll Tax Act 2007*, the Contractor has paid all payroll tax due in respect of employees who performed work under the Contract, as required at the date of this statement.

**(Note 9)**

1. Where the Contractor is also a principal contractor to subcontracts in connection with the work, the Contractor has in its capacity of principal contractor been given a written Subcontractor’s Statement by its subcontractor(s) in connection with that work for the period stated above.

**(Note 10)**

1. Signature ………………………………………… Full name …………………………………………………
2. Position/Title Date……………………………

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

**Notes to the Subcontractor’s Statement**

These notes have been prepared using the terms in the referenced acts. Where this Statement is being completed for the purposes of this Contract, (unless the context otherwise requires) ‘subcontractor’ means the ‘Contractor’ and ‘principal contractor’ means the ‘Principal’.

1. This form is prepared for the purpose of section 175B of the *Workers Compensation Act 1987*, Schedule 2 Part 5 of the *Payroll Tax Act 2007,* section 127 of the *Industrial Relations Act 1996* and sections 13(7) and 13(9) of the *Building and Construction Industry Security of Payment Act 1999*. If this form is completed in accordance with these provisions, a principal contractor is relieved of liability for workers compensation premiums, payroll tax and remuneration payable by the subcontractor.

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

1. For the purpose of this Subcontractor’s Statement, a principal contractor is a person (or other legal entity), who has entered into a contract with another person (or other legal entity) referred to as the subcontractor, and employees/workers of that subcontractor will perform the work under contract. The work must be connected to the business undertaking of the principal contractor.
2. Provide the unique contract number, title, or other information that identifies the Contract.
3. In order to meet the requirements of s127 of the *Industrial Relations Act 1996*, a statement in relation to remuneration must state the period to which the statement relates. For sequential Statements ensure that the dates provide continuous coverage.

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

Section 127(11) of the *Industrial Relations Act 1996* 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.’

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

**Statement Retention**

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

|  |
| --- |
| **Offences in respect of a false Statement** |
| In terms of s127(8) of the *Industrial Relations Act 1996*, a person who gives the principal contractor a written statement knowing it to be false is guilty of an offence if:   1. the person is the subcontractor; 2. the person is authorised by the subcontractor to give the statement on behalf of the subcontractor; or 3. the person holds out or represents that the person is authorised by the subcontractor to give the statement on behalf of the subcontractor.   In terms of s175B of the *Workers Compensation Act 1987* and clause 18 of Schedule 2 of the *Payroll Tax Act 2007* a person who gives the principal contractor a written statement knowing it to be false is guilty of an offence. |

**Further Information**

For more information visit SafeWork website https://www.safework.nsw.gov.au/, iCare (for Workers Compensation queries) via the **iCare website** or NSW Industrial Relations website, **http://www.industrialrelations.nsw.gov.au**

Copies of relevant legislation can be found at **www.legislation.nsw.gov.au**.

Schedule 5 – Environmental Management Plan

Amend the following environmental management plan so that it identifies the significant known environmental risks and opportunities involved in carrying out the works, and the actions required to manage them. delete items that are not applicable.

consider, for example: specific undertakings arising from any environmental impact assessment; statutory obligations;

consent conditions; pollution control approvals and any conditions attached to the approvals;

Refer to General Conditions of Contract Clause – *Environmental Management*. Complete the Plan by inserting contract specific requirements, or ‘NA’ where a particular item is not applicable.

| **ENVIRONMENTAL OBJECTIVES** | **[9101581:35188976\_9] [9101581:35188976\_9]**  **ACTION TO BE TAKEN** | **WHEN ACTION WILL BE TAKEN** | **PERSON RESPONSIBLE** | **ACTION COMPLETED** |
| --- | --- | --- | --- | --- |
| **1. CONSERVATION OF PLANTS & WILDLIFE** | | | | |
| 1.1 Protect flora and fauna | Protect existing trees and plants at and around the Site from damage unless approved by the Principal |  |  |  |
| Do not remove trees and plants without approval from the Principal |  |  |  |
| Control weeds on the Site |  |  |  |
| Protect birds, fish and animals at and around the Site from harm |  |  |  |
| Do not remove birds, fish and animals from the Site without the written agreement of the Principal |  |  |  |
| Do not bring birds, fish, animals and plants onto the Site without written agreement from the Principal |  |  |  |
| Minimise the use of pesticides and herbicides for minimal impact on the environment |  |  |  |
|  |  |  |  |
| 1.2 Control movement of pedestrians, materials, vehicles and plant to minimise damage to the environment | Use only designated routes for access to the Site |  |  |  |
| Use designated site roads and access routes for all movements on and adjacent to the Site |  |  |  |
| Locate compounds, and park all vehicles and plant, in designated areas on the Site |  |  |  |
|  |  |  |  |
| **2.** **CONSERVATION OF RESOURCES** | | | | |
| 2.1 Design for energy efficiency  2.2 Select materials to minimise:   * resource use and waste * ozone depleting effects * detrimental effects on air, water, and land quality | Adopt energy efficiency, environmental enhancement and waste minimisation as design criteria |  |  |  |
| Use low energy usage construction, fittings and appliances (including heating/cooling and lighting) |  |  |  |
| Incorporate conservation of resources obligations into subcontracts |  |  |  |
| Reuse all topsoil on the Site and minimise the use of imported topsoil |  |  |  |
| Mulch and chip cleared vegetation as appropriate |  |  |  |
| Maximise use of materials that are recyclable or from a sustainable source |  |  |  |
| Use timber from sustainable managed sources only |  |  |  |
| Implement a strategy to reduce the quantity of waste, including minimising and recycling packaging |  |  |  |
| Use low water demand fittings & appliances (dual flush toilets, water conserving shower roses & taps) |  |  |  |
| Minimise the use of solvents, glues, paints and other materials which release odours or vapour |  |  |  |

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| **ENVIRONMENTAL OBJECTIVES** | **[9101581:35188976\_9] [9101581:35188976\_9]**  **ACTION TO BE TAKEN** | | **WHEN ACTION WILL BE TAKEN** | | **PERSON RESPONSIBLE** | | **ACTION COMPLETED** | |
| **2.** **CONSERVATION OF RESOURCES (continued)** | | | | | | | | |
| 2.3 Conserve heritage items and other physical attributes of the Site | | Comply with Statutory Requirements for conservation of heritage items | |  | |  | |  |
| Manage the conservation of physical attributes of the Site, including (*List applicable attributes)* | |  | |  | |  |
| **3. POLLUTION CONTROL** | | | | | | | | |
| 3.1 Control discharges and emissions from vehicles and plant to minimise damage to the environment | | Do not use vehicles, plant or equipment that produce excessive emissions | |  | |  | |  |
| Monitor emissions from vehicles and plant | |  | |  | |  |
| Do not bring vehicles or plant and equipment with hydraulic fluid, fuel or oil leaks to the Site | |  | |  | |  |
| Wash down vehicles, plant and equipment only in controlled areas acceptable to the Principal | |  | |  | |  |
| Prevent and clean up any spills from transport vehicles | |  | |  | |  |
|  | |  | |  | |  |
| 3.2 Prevent pollution of stormwater and adverse effects on land and vegetation by control of cleaning activities and discharges | | Use only water based, non-toxic paints and use only water to clean paint brushes and rollers | |  | |  | |  |
| Control all run-off from cleaning activities | |  | |  | |  |
| Discharge only non-toxic cleaning products generally | |  | |  | |  |
|  | |  | |  | |  |
| 3.3 Control soil erosion | | Identify the existing drainage paths on the Site and protect them against siltation | |  | |  | |  |
| Protect vulnerable and exposed surfaces and stockpiles against scouring | |  | |  | |  |
| Install the following sediment control devices before starting construction (*List applicable devices)* | |  | |  | |  |
| Monitor and manage the effectiveness of sediment control devices | |  | |  | |  |
| Remove sediment control devices when no longer required | |  | |  | |  |
|  | |  | |  | |  |
| 3.4 Prevent release of soil contamination to the environment | | Establish, before starting work on the Site, in consultation with the Principal, if contaminated soil is present at the Site | |  | |  | |  |
| If contaminated soil is present, manage the work to prevent release to the environment | |  | |  | |  |
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| **ENVIRONMENTAL OBJECTIVES** | **[9101581:35188976\_9] [9101581:35188976\_9]**  **ACTION TO BE TAKEN** | | | **WHEN ACTION WILL BE TAKEN** | **PERSON RESPONSIBLE** | | **ACTION COMPLETED** | |
| **3. POLLUTION CONTROL (continued)** | | | | | | | | |
| 3.5 Manage refrigerants and other dangerous goods to meet Statutory Requirements | | Ensure the procedures used for the charging and disposal of refrigerants and use of dangerous goods meet statutory obligations |  | | |  | |  |
| Use appropriately trained employees |  | | |  | |  |
| Obtain the licences required |  | | |  | |  |
| Document dangerous goods identification, disposal and management, and retain the documentation |  | | |  | |  |
|  |  | | |  | |  |
| 3.6 Minimise noise and vibration impacts on neighbours, occupants and users of any facility | | Comply with noise limits and conditions prescribed by the EPA, Office of Environment and Heritage and Council (as applicable) |  | | |  | |  |
| Use equipment in good repair and condition |  | | |  | |  |
| Use noise suppression equipment (e.g. silencers on compressors) and acoustic barriers as required |  | | |  | |  |
| Do not expose workers, neighbours or visitors to excessive noise, and cooperate and coordinate with operators of any neighbouring facility |  | | |  | |  |
| Do not expose people or property to excessive vibrations |  | | |  | |  |
|  |  | | |  | |  |
| 3.7 Comply with Trade Waste Licence conditions applicable to the facility | | Implement procedures to avoid breaches of the Trade Waste Licence conditions (may apply to discharges from cooling water systems, condenser water systems, heating water systems, cooking facilities, engine discharges, water treated with chemicals or where large sediment loads exist) |  | | |  | |  |
|  |  | | |  | |  |
| 3.8 Minimise air pollution from dust and emissions | | Minimise areas of exposed earth and stockpiles |  | | |  | |  |
| Cover and secure materials in open transport |  | | |  | |  |
| Use water sprays and/or other means to control dust |  | | |  | |  |
| Keep emissions within statutory or other required limits |  | | |  | |  |
| Minimise fire risks, and prevent and control fires |  | | |  | |  |
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| **ENVIRONMENTAL OBJECTIVES** | **[9101581:35188976\_9] [9101581:35188976\_9]**  **ACTION TO BE TAKEN** | | | **WHEN ACTION WILL BE TAKEN** | **PERSON RESPONSIBLE** | | **ACTION COMPLETED** | |
| **3. POLLUTION CONTROL (continued)** | | | | | | | | |
| 3.9 Dispose of waste in accordance with Statutory Requirements | | Implement appropriate disposal procedures for all waste items, including using lawful places for disposal, recording and reporting on the method and location of disposal and any non-conformances |  | | |  | |  |
| EITHER  Provide valid disposal certificates for each applicable item  OR  Provide company certification of appropriate disposal of the following *(List the items):* |  | | |  | |  |
| * Packaging materials * Replaced or redundant materials * Chemicals * Oils and greases from machinery, cooking and other processes * Paints and solvents, including those used to clean equipment, tools and brushes * Cleaning materials and rags * Materials unsuitable for re-use, including hazardous materials such as asbestos |  | | |
|  |  | | |  | |  |
| 3.10 Minimise damage to the environment from emergencies | | Document emergency procedures to manage all reasonably foreseeable harm, including spills and other environmental emergencies |  | | |  | |  |
| Ensure emergency procedures are followed |  | | |  | |  |
| Obtain the agreement of the Principal to procedures for handling oil, chemicals and other dangerous goods before placing them on the Site, including secure storage arrangements |  | | |  | |  |
| Reinstate and clean damaged areas and features, including work areas |  | | |  | |  |
| Reinstate damaged eco-systems and features to their previous condition |  | | |  | |  |
| Identify key contacts: *(List names & roles)* |  | | |  | |  |
| 3.11 Comply with environmental requirements and rectify breaches | | Inspect the Site daily to ensure appropriate environmental controls are in place and operating effectively, and that all environmental management requirements are being met |  | | |  | |  |
| Cooperate with environmental audits by others |  | | |  | |  |
| Rectify any environmental breaches identified within the time specified in an audit or by the Principal |  | | |  | |  |
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| --- | --- | --- | --- | --- | --- | --- | --- | --- |
| **ENVIRONMENTAL OBJECTIVES** | **[9101581:35188976\_9] [9101581:35188976\_9]**  **ACTION TO BE TAKEN** | | | **WHEN ACTION WILL BE TAKEN** | **PERSON RESPONSIBLE** | | **ACTION COMPLETED** | |
| **4. RECORDS AND REPORTING** | | | | | | | | |
| 4.1 Provide sufficient documentation to demonstrate appropriate environmental management | | Prepare, submit and update the Environmental Management Plan |  | | |  | |  |
| Maintain and submit records of environmental training |  | | |  | |  |
| Report on implementation of the Environmental Management Plan |  | | |  | |  |
| Submit to the Principal copies of correspondence with regulators, including incident reports and notification of non-compliances or fines |  | | |  | |  |
| Submit documentation evidencing that the causes of non-compliances have been corrected |  | | |  | |  |
| Keep records for inspection securely filed using an effective document retrieval system |  | | |  | |  |
| Monitor and record the volumes of waste and the methods and locations of disposal.  Submit a progress report and a summary report before Completion in accordance with tables 1 to 5 of the NSW EPA ‘Construction and demolition waste’ toolkit available at https://www.epa.nsw.gov.au/your-environment/waste/industrial-waste/construction-demolition |  | | |  | |  |
| 4.2 Report environmental incidents | | Immediately report all environmental incidents to the Principal |  | | |  | |  |
| Immediately report environmental incidents as otherwise required |  | | |  | |  |
|  |  | | |  | |  |

Schedule 6 – Form of Warranty Deed Poll

**This Deed Poll is made the day of 20**

By: That person described in Item 1 of the Schedule (**"Warrantor"**) (which expression will include its successors and assigns)

in favour of: That person described in Item 3 of the Schedule (**"Principal"**) (which expression will include its successors and assigns)

Recitals

1. The Warrantor has supplied the items and carried out the works described in Item 2 of the Schedule (**"Warrantor Works"**) to the Principal for the works (**"Works"**) being carried out by the Warrantor under the contract described in Item 4 of the Schedule (**"Contract"**).
2. It is a requirement imposed by the Principal under the Contract that the Warrantor give the following warranties in favour of the Principal with respect to the Warrantor Works.

Operative

1. Quality

The Warrantor:

* + 1. warrants to the Principal that the Warrantor Works will be carried out and completed in accordance with, and comply in all respects with, the requirements of the Contract; and
    2. without limiting or otherwise affecting clause 1(a), warrants that the Warrantor Works will be carried out and completed:
       1. in a safe, workmanlike, diligent and timely manner;
       2. in accordance with:
          1. design documents that have been submitted to the Principal and not rejected by the Principal;
          2. any relevant approvals; and
          3. approvals or consents granted by the Principal;
       3. in accordance with any direction of the Principal;
       4. in accordance with all relevant laws, Australian Standards, building codes and reasonable building practices; and
       5. so as to ensure that the Warrantor Works, upon completion:
          1. comply with:

design documents that have been submitted to the Principal and not rejected by the Principal;

the requirements of the Contract; and

all relevant laws, Australian Standards, building codes and reasonable building practices; and

* + - * 1. are fit for their intended purpose.

The above warranties are in addition to and do not derogate from any warranty implied by law in respect of the Warrantor Works.

1. Replacement or making good

The Warrantor warrants to the Principal that it will replace or make good so much of the Warrantor Works as within the period described in Item 5 of the Schedule (**"Warranty Period"**):

* + 1. is found to be of a lower quality or standard than that referred to in clause 1 or that otherwise do not comply with clause 1; or
    2. shows deterioration of such extent that in the opinion of the Principal the Warrantor Works ought to be made good or replaced in order to achieve fitness for the purpose for which it is required, whether on account of utility, performance, appearance or otherwise.

1. Warrantor to bear cost

The Warrantor covenants to the Principal that it will bear the cost of any work necessary to any part of the Works to enable the requirements of clause 2 to be carried out or to make good the Works afterwards.

1. Notice of Defects

The Principal may, prior to the expiry of the Warranty Period, notify the Warrantor in writing if it considers there has been any breach of any provision of this deed poll.

1. Time to remedy

The Warrantor must do everything necessary to remedy all breaches notified to it by the Principal under clause 4 within a reasonable time after the Principal’s notice.

1. Failure to remedy
   * 1. If the Warrantor fails to comply with clause 5 within a period determined by the Principal to be reasonable in the circumstances, the Principal may give written notice to the Warrantor that the Principal intends to have that work carried out by others. This notice must allow a reasonable period for the Warrantor to respond.
     2. If the Warrantor fails to complete the work by the date specified in the notice given pursuant to clause 6(a), the Principal may have the work carried out by others, and the costs, losses and damages suffered or incurred by the Principal in doing so will be a debt due from the Warrantor to the Principal.
2. Urgent action by the Principal
   * 1. The Principal may take any urgent action necessary to protect the Works, other property or people as a result of a breach of clause 1.
     2. The Warrantor agrees that the Principal taking such action does not affect any obligation of the Warrantor under this deed poll.
     3. The Warrantor indemnifies the Principal against all costs, losses and damages suffered or incurred by the Principal in taking that action.
3. Other work by the Warrantor

Without limiting or affecting the Warrantor’s obligations or liability under any other part of this deed, the Warrantor must provide the work and services described in Item 6 of the Schedule for the Warranty Period.

1. No limitation

Nothing in this deed poll limits or otherwise affects:

* + 1. the Principal’s rights and entitlements arising out of a breach of clause 1 or the Contract;
    2. the Principal’s common law rights; and
    3. the Contractor’s obligations under the Contract (including, for the avoidance of doubt, clause 12 and clause 27 (if applicable) of the Contract).

1. The Principal not liable

The Warrantor acknowledges to the Principal that nothing contained in this deed poll is intended to nor will render the Principal in any way liable to the Warrantor in relation to any matters arising out of the Contract or otherwise.

1. This deed poll may not be revoked

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

1. Governing Law

This deed poll is governed by the laws of the State of New South Wales.

1. Jurisdiction

The Warrantor irrevocably submits to the non-exclusive jurisdiction of the Courts of New South Wales and any courts that may hear appeals from any of those courts, for any proceedings in connection with this deed poll, and waives any right it might have to claim that those courts are an inconvenient forum.

Schedule

Item 1: Name and Address of Warrantor

Item 2: Warrantor Works  
(Recital A)

Item 3: Principal  
(Recital A)

Item 4: Contract  
(Recital A)

Item 5: Period of Years  
(Clause 2)

**[## Insert period]** years from the "Date of Completion" as defined in the Contract.

Item 6: Other Work  
(Clause 8)

[## Describe any additional services the Warrantor is required to provide for the duration of the Warranty Period (i.e. the period in Item 5). For example, an annual inspection of the Warrantor Works.]

**Executed** as a deed poll.

|  |  |  |
| --- | --- | --- |
| **Executed as a deed** by **[## Insert name of Warrantor]** **(ABN [## Insert ABN])** in accordance with sections 127(1) and 127(3) of the *Corporations Act 2001* (Cth): |  |  |
| Signature of Director |  | Signature of Director/Secretary |
| Full Name of Director |  | Full Name of Director/Secretary |

Schedule 7 – Schedule of Rates

*[User Note: Insert Schedule of Rates. The Schedule of Rates should be either the Contractor’s rate card under the EVSE Scheme at the time the Contractor tendered or quoted for the Works or the lower rates and prices the Contractor submitted with its tender or quote for the Works.]*

Schedule 8 – Contract Price Breakdown

The Contract Price breakdown forms part of the Contract only for the purposes of assessing payment claims submitted by the Contractor and/or issuing payment schedules.

*[User Note: Insert Contract Price breakdown.]*