

CONTRACT PARTICULARS

Parties

Company's Address:	495 Victoria Avenue, Chatswood, NSW
Name of Principal:	Minister for Infrastructure and Transport for and on behalf of the Crown in Right of the State of South Australia

Services

Description of Services	Minor facilities maintenance services as specified in the relevant Work Order.
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Payment Terms

Period for payment	14 days
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GST Tax Invoices

Parties agree to the Company providing RCTIs	Yes
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CONTRACT CONDITIONS

1. CONTRACT

- 1.1 These Contract Conditions will be deemed to be accepted by the Contractor, and a Minor FM Services Contract (**Contract**) including these Contract Conditions will be deemed to be formed, on the date the Contractor first commences performing the work or services specified in a Work Order issued to it by the Company (**Commencement Date**).
- 1.2 This Contract is governed by and must be construed according to the law applying in the State of South Australia.
- 1.3 Each party to this Contract remains an independent contractor and is exclusively responsible for its employees and its subcontractors, suppliers and consultants (**subcontractors**).
- 1.4 This Contract contains the entire agreement between the parties and no regard will be had to any prior dealings. Any terms that may have been attached or embodied in the Contractor's tender or offer or other correspondence are deemed to have been withdrawn in favour of the terms stated in this Contract.

2. SERVICES

- 2.1 If the Company wishes to procure Services from the Contractor, it may from time to time issue a Work Order to the Contractor describing the Services to be provided by the Contractor. The Contractor must at all times remain willing and able to perform the Services, but has no entitlement to perform the Services and the Company has no obligation to issue any Work Orders to the Contractor and gives no guarantee, representation or warranty as to the volume of Work under this Contract (if any) the Contractor will be required to supply under this Contract.
- 2.2 The Contractor must, and represents and warrants to the Company that it, and each of its employees and subcontractors, will:
 - (a) comply with all statutory requirements, all authority requirements and any government code(s) that may apply to the Project, to the extent relevant to the Services; and
 - (b) hold and maintain all Authorisations and comply with the requirements of the Authorisations (and immediately notify the Company if any of the Authorisations is refused, revoked or qualified).
- 2.3 The Contractor must perform the Services:
 - (a) with due care using personnel with the necessary skills, qualifications, training and expertise;
 - (b) in a timely and professional manner, and to a professional standard; and
 - (c) in accordance with this Contract, Industry Best Practice, and the Law.
- 2.4 The Contractor warrants and represents that:
 - (a) all Services will be fit for purpose and of acceptable quality;
 - (b) it will comply with all reasonable and lawful directions of the Company or its representatives; and

- (c) it will not infringe any third party's intellectual property rights in performing the Services, and neither the Company's nor the Principal's use of the Deliverables will infringe the intellectual property rights of any person.
- 2.5 The Contractor must provide everything necessary (labour, plant, equipment and other items) to perform the Services.
- 2.6 The Contractor must complete and return to the Company any checklist, record or like document that the Company may reasonably require relevant to the Services.
- 2.7 The Services must be performed at the site address stated in the relevant Work Order (**site**).
- 2.8 The Contractor warrants that each item of the Services and Deliverables will operate without Defect for a period of 90 days after completion of the relevant works (**Warranty Period**).
- 2.9 Without limiting any other liability that the Contractor may have, under the Contract or otherwise at Law, if any Defect is:
 - (a) found at any time during the Warranty Period, the Contractor must remedy the Defect at and within such times and in such circumstances as the Company reasonably directs; or
 - (b) not remedied by the Contractor then the Company may have the Defect remedied (by itself or by other means) and the cost of doing so will constitute money owed by the Contractor to the Company and will be valued under clause 11.1(b).
- 2.10 Without limiting the Contractor's obligations under clause 19.20:
 - (a) the Contractor must provide any additional information in connection with the Services reasonably requested by the Company, including before and after photos where relevant or informative; and
 - (b) the Services or Deliverables will be deemed to be accepted unless the Company issues a direction or raises an issue within 12 Business Days following completion of the Services or provision of the relevant Deliverable.

3. REPRESENTATIVES

- 3.1 The Contractor must have a competent representative acceptable to the Company (acting reasonably) authorised to receive directions and notices from the Company and otherwise to carry out all the obligations of the Contractor to the satisfaction of the Company.
- 3.2 The Contractor's representative must be in attendance on site at all times during the performance of the Services at the site.
- 3.3 Unless this Contract expressly provides otherwise, the Contractor must not deal with or comply with the directions of any person other than an authorised representative of the Company. The Company will not be liable to pay for works and/or services directed by a person who is not an authorised representative of the Company.

4. CONTRACTOR'S EMPLOYEES

- 4.1 The Contractor must ensure, to the satisfaction of the Company, that each person required to perform the Services:
 - (a) is experienced, competent and fit to perform the work and/or service he/she is required to undertake;

- (b) complies with:
 - (i) legislative and the Company's site specific safety and environmental requirements;
 - (ii) (legislative industrial relations requirements;
 - (iii) the Company's local community relations requirements; and
 - (iv) relevant Australian Standards; and
- (c) is paid in accordance with relevant payment conditions and otherwise receives all relevant employee entitlements.

4.2 The Contractor warrants that it has read and will comply with the Code of Conduct and Critical Risk Protocols and any other Company policy identified in the Work Order or notified by the Company (acting reasonably) from time to time.

5. DURATION OF THE SERVICES

5.1 The Contractor must be ready and willing to commence the Services on and from the Commencement Date.

5.2 In the event the Company procures Services from the Contractor via Work Order(s), the Contractor must:

- (a) commence those Services on the applicable Start Date and Time;
- (b) and complete those Services by the applicable Due Date and Time,

(as both of those terms are defined in clause 20) specified in the relevant Work Order.

5.3 The Contractor must remove all of its resources from the site promptly upon termination of the Services at the site.

6. VARIATION

The parties acknowledge and agree that the Company may direct the Contractor to change the Services or perform additional work or services to those procured under an existing Work Order (each a Variation) and in such event:

- (a) the Contractor must comply with the direction, provided the variation is within the capability of the Contractor having regard to the Services they perform;
- (b) the Variation will not invalidate the Contract or the relevant Work Order and where the Variation involves the omission of any part(s) of the Services, the Company may itself, or engage others to, perform those part(s) omitted;
- (c) where the prescribed rates or prices agreed in accordance with clause 12.1 contain rates or prices which are applicable to the work the subject of the Variation, those rates and prices shall apply;
- (d) to the extent that the rates or prices referenced in clause 6(c) do not apply, the parties will use their best endeavours to agree new rates or prices for the changed or additional work or services relevant to the Variation;
- (e) if the parties are unable to agree new rates or prices within 10 Business Days, the Company may determine reasonable new rates or prices for the changed or additional work or services relevant to the Variation; and

- (f) the changed or additional work or services and the new agreed or determined rates or prices relevant to the Variation will be deemed to form part of the Services described in the Contract Particulars and/or Work Order and to be stated in the Contract Particulars and/or Work Order, respectively.

7. PLANT, EQUIPMENT AND OTHER ITEMS

- 7.1 The Contractor is responsible for the care of its plant, equipment and other items. The Company has no responsibility for any loss or damage to the Contractor's plant, equipment or other items.
- 7.2 The Contractor must:
 - (a) ensure that its plant, equipment and other items are properly maintained and/or repaired such that they are available to operate or use in an efficient, effective and safe manner at all times throughout the duration of the Services; and
 - (b) ensure that its plant, equipment and other items are registered and insured against loss or damage for their market value.

8. INDEMNITY

- 8.1 The Contractor must indemnify and keep indemnified the Company against:
 - (a) all physical loss or damage to property, including property of the Principal, arising out of or resulting from the performance of the Services;
 - (b) all loss or damage resulting from any:
 - (i) illness, death or personal injury arising out of or resulting from the performance of the Services; or
 - (ii) breach of this Contract by the Contractor; or
 - (iii) other negligent or unlawful act or omission of the Contractor or any person for whom it is responsible in connection with the provision of the Services (including its Subcontractors);
 - (c) any future claims for payments of taxes related to the provision of the Services;
 - (d) any loss suffered by the Company as a result of the Contractor not being registered for Australian Business Number and GST purposes;
- 8.2 The Contractor indemnifies and must keep indemnified the Company from and against all claims and losses (including legal costs on a full indemnity basis), arising out of or in connection with any claim by a third party that the Company's or the Principal's possession or use of any Deliverables in accordance with this Contract constitutes an infringement of any third party intellectual property rights.
- 8.3 The Contractor's liability under any indemnity in this Contract is reduced to the extent that any such loss or damage the subject of that indemnity was caused or contributed to by any act or omission of the Company, and to the extent the Company fails to take reasonable steps to mitigate its loss or damage.

9. CONSEQUENTIAL LOSS

Except where to do so would contravene any statute or cause any part of this clause to be void or unenforceable, to the extent permitted by law:

- (a) Each party excludes any and all liability of a party to the other party (whether arising in contract, tort (including negligence), under any statute or otherwise) for any Consequential Loss suffered by a party to this Contract other than in relation to or in connection with:
 - (i) death, personal injury, disease or illness caused by the Contractor or its Personnel;
 - (ii) Loss to property caused by the Contractor or its Personnel;
 - (iii) infringement of the Principal's Intellectual Property Rights;
 - (iv) a breach of the Contractor's confidentiality, privacy or data security obligations;
 - (v) fraud or wilful default by the Contractor or its Personnel;
 - (vi) breach of Law by the Contractor or its Personnel;
 - (vii) repudiation by the Contractor; and
 - (viii) restitution of amounts paid by mistake.

10. INSURANCE

10.1 Public Liability Insurance

The Contractor must effect a public liability policy of insurance to cover its liability and its subcontractors' liability to third parties for loss of or damage to property (including loss of use thereof) and the death of or injury to any person.

The insurance must:

- (a) be for an amount not less than \$20 million for any one claim and in the aggregate;
- (b) be maintained for the duration of the Services; and
- (c) include the interests of the Company as a principal in respect of matters that may arise out of the performance of the Services.

10.2 Professional Indemnity Insurance

If this Contract relates to the provision of professional services, the Contractor must effect and maintain a professional liability and indemnity policy of insurance.

The insurance must:

- (a) have an indemnity limit not less than \$10 million for any one claim and in the aggregate; and
- (b) be maintained to provide continuity of cover for the Contractor's potential liability at law.

10.3 Insurance of Employees

The Contractor must insure against liability for death of or injury to persons employed by the Contractor including liability by statute and at common law.

The insurance must be maintained for the duration of the Services.

The Contractor must ensure that each of its subcontractors is similarly insured.

If the Contractor is a sole trader then:

- (a) the preceding provisions of this clause 10.3 do not apply; but
- (b) the Contractor must have in place a personal accident and sickness policy of insurance on such terms and in such amount as is reasonably acceptable to the Company.

10.4 Motor Vehicle Insurance

The Contractor must effect a motor vehicle policy of insurance:

- (a) for not less than \$10 million or as otherwise agreed; and
- (b) which must be maintained for the duration of the Services.

10.5 Proof of Insurance

Each of the insurance policies required to be effected by the Contractor must be effected prior to the commencement of the Services.

Each policy must be taken out with an insurer and in terms approved by the Company.

Whenever requested by the Company, the Contractor must produce evidence to the satisfaction and approval of the Company that it has satisfied all of its insurance obligations under this Contract.

Insurance does not limit the Contractor's liability under this Contract or otherwise.

11. PAYMENT CLAIMS AND PAYMENT

11.1 Payments to be made to the Contractor in accordance with this clause 11 will take into account the following matters:

- (a) an amount calculated by multiplying the relevant GST exclusive rates and/or prices by the relevant quantities of the Services performed;
- (b) any reasonable amounts the Company may deduct as a result of:
 - (i) costs, losses or damage suffered by the Company if the Contractor does not fulfil its obligations under this Contract, in respect of matters that do and do not constitute taxable supplies for the purpose of the GST Act; and
 - (ii) subject to clause 13, the amount of GST relevant to the sum of paragraphs (a) and (b)(i) above.

- 11.2 Subject to the Contractor having:
- (a) paid its employees and subcontractors all amounts due and payable to them;
 - (b) paid all payroll tax due and payable in respect of wages paid or payable to employees engaged in connection with the Services; and
 - (c) complied with all of its insurance and statutory obligations in connection with the Services,
- the Contractor is entitled to submit payment claims on completion of the Services.
- 11.3 Payment claims must be in a form acceptable to the Company and accompanied by the information referred to in clauses 2.6, 2.10(a), 12.4 and 12.5.
- 11.4 Once approved by the Company, payment of the amounts calculated in clause 11.1 will be made by electronic funds transfer within the period for payment stated in the Contract Particulars and the date of payment will be regarded as the date on which the funds are cleared by the Company for payment, the funds being available to the Contractor within 2 business days thereafter.
- 11.5 The Company may, at any time and as a condition precedent to payment, require the Contractor to provide it with:
- (a) evidence and a written statement to the Company's satisfaction of the Contractor's compliance with clause 11.2; and/or
 - (b) the information referred to in clauses 2.6, 2.10(a), 12.4 and 12.5.
- 11.6 The Contractor acknowledges and agrees that the Company may assign, novate, transfer or otherwise deal with its interests, rights or obligations to pay under clause 11.3 of the Contract (including those which arose or accrued prior to the date of assignment, novation, transfer or other dealing) to another Ventia Group Company, and the Contractor expressly consents to any such assignment, novation, transfer or other dealing. The Contractor must do all things and execute all documents necessary to give effect to this clause 11.6.

12. RATES AND PRICES

- 12.1 The Contractor acknowledges and agrees that:
- (a) the rates and prices applicable to the Services will be agreed by the parties prior to the Company issuing any Work Orders to the Contractor;
 - (b) unless otherwise specified in this Contract or agreed by the parties in writing, those rates and prices will not be subject to change for any reason;
 - (c) the rates and prices applicable to a given Work Order will be specified in that Work Order, and will be consistent with the rates and prices referred to in paragraph (a); and
 - (d) the Contractor will be deemed to have accepted the rates and prices specified in a Work Order when it first commences performing the works or services set out in that Work Order.
- 12.2 The rates and/or prices stated in a Work Order:
- (a) are not subject to adjustment for rise and fall in cost for any cause whatsoever, except for labour rates which may be adjusted in accordance with the Rise and Fall

Adjustment formula on an annual basis using the Relevant ABS Stats, with adjustments taking effect from 1 July each year; and

- (b) will be deemed to compensate the Contractor for everything necessary (overheads, profits, administration, training, labour, tools, plant, equipment, materials, consumables and other items), to perform the Services and otherwise to fulfil all of its obligations under this Contract.

12.3 The Contractor acknowledges that:

- (a) no representations have been made to the Contractor regarding the extent of the Services; and
- (b) the rates and/or prices stated apply to whatever may be the extent of the Services directed by the Company.

12.4 Where the Services are to be paid for on a time charge basis, the Contractor must record and submit details of the resources deployed on the Services on completion of the Services.

12.5 Where the Services require the procurement of goods such as parts, materials, consumables or third party services such as tool and equipment hire or sub-subcontracted services, the Contractor must provide the Company with copies of third party invoices evidencing quantity and costs incurred by the Contractor. The Company may, at its discretion, agree to waive the requirement of a third party invoice for a one-off low value material and/or consumable provided that the amount claimed is reasonable.

13. CHANGE OF LAW

13.1 In the event that a change in Law directly results in increased costs for the Contractor in relation to the provision of the Services then the Company may consider, in good faith, an adjustment to the rates and/or prices in relation to those Services directly affected by the relevant change in Law.

13.2 Prior to any consideration of a change to rates and/or prices in accordance with clause 13.1, the Contractor must provide to the Company evidence to the Company's reasonable satisfaction that the increased costs associated with the relevant change in Law are:

- (a) unavoidable;
- (b) a direct result of the change in Law; and
- (c) not already covered through any indexation or adjustment mechanism set out in this Contract.

14. GOODS AND SERVICES TAX (GST)

14.1 Terms used in this clause 13 which are defined in the GST Act have the same meaning in this clause 13. The GST Act means *A New Tax System (Goods & Services) Act 1999* (Cth).

14.2 Each party acknowledges and agrees that:

- (a) at the time of entering into this Contract, it is registered for GST;
- (b) it must promptly provide written evidence of its GST registration if so requested by the other party;
- (c) it must indemnify the other party against any loss that may arise from it not being registered for GST; and

- (d) it must promptly notify the other party in writing if it ceases to be registered for GST.
- 14.3 In respect of payments to be calculated under or in connection with this Contract:
- (a) when calculating the amount payable or other consideration to be provided for a supply, the amounts used in the calculation must exclude any GST component; and
 - (b) if the payment is relevant to a loss, cost or expense incurred by a party, then the payment will be reduced by any input tax credit to which that party is entitled for that loss, cost or expense.
- 14.4 For each supply made by a party (Supplier) under or in connection with this Contract on which GST is imposed:
- (a) the consideration payable or to be provided for that supply under this Contract but for the application of this clause (**GST exclusive consideration**) will be increased by, and the recipient of the supply (**Recipient**) must also pay to the Supplier, an amount equal to the GST exclusive consideration multiplied by the prevailing rate of GST; and
 - (b) the amount by which the GST exclusive consideration is increased must be paid to the Supplier by the Recipient without set off, deduction or requirement for demand, at the same time as the GST exclusive consideration is payable or to be provided,
- subject to a valid tax invoice (**Tax Invoice**) being provided in respect of the GST exclusive consideration.
- 14.5 A Tax Invoice must be provided either by:
- (a) if the Company is the Recipient of the supply, the Company providing the Contractor with a recipient created tax invoice (**RCTI**) on or before making payment in respect of the supply; or
 - (b) if paragraph (a) above does not apply, the Supplier providing the Recipient with a Tax Invoice prior to the due date for payment of the supply.
- If paragraph (a) above applies:
- (c) the Contractor must not issue a Tax Invoice in respect of any supply it makes to the Company; and
 - (d) the Company must notify the Contractor if it ceases to comply with any of the requirements of any taxation ruling issued by an authority relating to the creation of RCTIs.
- 14.6 If, and to the extent an adjustment event arises in respect of a supply made under or in connection with this Contract, then:
- (a) if the Supplier's corrected GST amount is less than the previously attributed GST amount, the Supplier must refund the difference to the Recipient;
 - (b) if the Supplier's corrected GST amount is greater than the previously attributed GST amount, the Recipient must pay the difference to the Supplier; and
 - (c) the Supplier must issue an adjustment note to the Recipient (unless clause 14.5(a) above applies, in which case the Company will issue an adjustment note to the Contractor).

15. DEFAULT

Without limiting the Company's rights under clause 16, if the Contractor fails:

- (a) to promptly and properly make good any damage or loss for which the Contractor is responsible; or
- (b) to comply with any obligation it has, or remedy any default by it, under this Contract, within 5 Business Days after being directed to do so by the Company, then:
 - (c) the Company may, at its sole discretion and without obligation, remedy that failure and the cost of doing so will be valued under clause 11.1(b); and
 - (d) any cost, loss and/or damage that the Company has incurred or is likely to incur as a result of the Contractor's default will be valued under clause 11.1(b).

16. TERMINATION

16.1 In the event that:

- (a) the Contractor fails to comply with its obligations under this Contract (including, without limitation, failure to comply with its obligations in a timely manner) and, if the failure is capable of remedy, does not remedy that failure within 5 Business Days after being directed to do so by the Company;
- (b) the Contractor is insolvent or bankrupt;
- (c) (if a sole trader) the Contractor dies,

then the Company may, at its sole discretion, terminate this Contract or cancel any or all Work Orders.

16.2 If the Company terminates this Contract or cancels a Work Order under clause 16.1, any cost, loss and/or damage that the Company has incurred or is likely to incur as a result of the Contractor's default will be valued under clause 11.1(b).

16.3 The Company may, at any time and for any reasons (including for its own convenience) immediately terminate this Contract in whole or in part, or cancel any or all Work Orders, by notice in writing to the Contractor.

16.4 If the Company cancels a Work Order for convenience for convenience under clause 16.3:

- (a) the Company will pay the Contractor for Services carried out to the date of termination or cancellation; and
- (b) where the Contractor is able to demonstrate to the Company's reasonable satisfaction that:
 - (i) prior to receiving notice of termination or cancellation, the Contractor has incurred or irrevocably committed with a third party to incur costs for the purposes of providing any Services; and
 - (ii) the Contractor has not at the time of termination or cancellation become entitled to charge for those Services,

then the Company will reimburse the Contractor for those costs which the Company incurs.

16.5 If the Company terminates the Contract for convenience under clause 16.3 but such termination does not result in any Work Order being cancelled, the Contractor will have no claim arising from the termination.

16.6 The Contractor will have no claim arising from the cancellation of a Work Order or the termination of this Contract for convenience under clause 16.3 except as stated in clauses 16.3 and 16.5.

17. ASSIGNMENT AND SUB-CONTRACTING

17.1 The Contractor must not:

- (a) assign, novate, mortgage or encumber the whole or any part of this Contract nor any payment, right or interest thereunder; or
- (b) subcontract any of the Services without the Company's prior written approval of the Contractor's proposed subcontractor and that part of the Services proposed to be subcontracted. Approval to subcontract will:
 - (i) be at the discretion of the Company and may be conditional; and
 - (ii) not relieve the Contractor from any liability or obligation under this Contract.

17.2 Any subcontractor engaged by the Contractor in contravention of clause 17.1(b) will not be permitted to enter the site and the Company will not be liable to pay for any Services performed by that subcontractor.

18. QUALITY, SAFETY AND ENVIRONMENT

18.1 The Contractor must:

- (a) remain vigilant at all times and provide adequate and appropriate supervision to ensure that the Services are performed using safe work methods;
- (b) ensure that all persons engaged in performing the Services:
 - (i) wear appropriate personal protective equipment;
 - (ii) are not impaired by alcohol or drugs (prescribed and non-prescribed) or other substances that may compromise their own safety or the safety of others; and
 - (iii) are competent, qualified and, where necessary, hold appropriate permits, licences, certificates and accreditation to perform the work they are required to perform in a safe and competent manner;
- (c) prior to commencement of any Services, complete a job safety analyses (**JSA**), or where the Contractor is performing high risk work, a safe work method statement (**SWMS**) for that work or part thereof and the Contractor must ensure completed SWMS or JSA are at all times available for review and audit by the Company.

18.2 The Contractor acknowledges that the Company maintains an ISO accredited integrated quality and environmental management system (ISO 9001:2008 and 14001:2004) and agrees to support the Company in maintaining this accreditation by adhering to the Company's quality and environmental requirements as described within this Contract and advised from time to time.

18.3 The Contractor must comply with the requirements of the *Modern Slavery Act 2018* (Cth) including by producing a modern slavery statement or, if the Contractor is not required to produce a modern slavery statement, produce a voluntary modern slavery statement.

19. SPECIAL CONDITIONS

19.1 Order of precedence and defined terms

In the event that any of the provisions of clauses 1 to 19 (inclusive) conflict with any special conditions stated in this clause 19 then the special conditions will take precedence to the extent of such conflict.

19.2 State Policies and Participating Agency Requirements

- (a) The Contractor must provide the Services and Deliverables in accordance with:
- (i) any State policies; and
 - (ii) the policies and procedures of each Participating Agency,
- each as notified to it from time to time by the Company and to the extent applicable to the relevant Services and Deliverables.
- (b) To the extent that the policy or procedure of the Participating Agency is a Location-specific requirement under clause 19.12(c), the Contractor may have an entitlement under clause 19.12.

19.3 Suitable Persons

- (a) The Contractor:
- (i) must notify the Company if it becomes aware that any of its Personnel are or have become the subject of any allegation, arrest, charge or conviction for a sexual offence or an offence of indecency (**Unsuitable Person**); and
 - (ii) must not permit or allow any Unsuitable Person to:
 - (1) provide the Services at any Location at which children are present; or
 - (2) otherwise be present at any Location at which children are present.
- (b) If the Contractor becomes aware that it has breached clause 19.3(a)(ii) it must:
- (i) immediately procure the removal and ongoing exclusion of the Unsuitable Person from the relevant Location and any other Location at which children are present; and
 - (ii) immediately take all steps necessary to protect any children at the relevant Location from harm as a consequence of the presence of the Unsuitable Person, including by notifying South Australia Police, the Principal and the relevant Participating Agency of the Unsuitable Person's presence at the relevant Location.
- (c) The Contractor must comply with the Company's directions relating to Unsuitable Persons.

- (d) If the Contractor or any of its Personnel are an Unsuitable Person and the Contractor does not comply with this clause, the Contractor may, in its absolute discretion, suspend or terminate this Contract.

19.4 Respectful behaviour

- (a) The Contractor agrees that, in performing its obligations under this Contract, the Contractor's Personnel will at all times:
 - (i) act in a manner that is non-threatening, courteous, and respectful; and
 - (ii) comply with any instructions, policies, procedures or guidelines issued by the Principal or a Participating Agency regarding acceptable workplace behaviour.
- (b) If the Company believes that the Contractor's Personnel are failing to comply with the behavioural standards specified in this clause 19.4, then the Company may in its absolute discretion:
 - (i) prohibit access by the Contractor's relevant Personnel to the Principal's premises and any Location; and
 - (ii) direct the Contractor to withdraw the relevant Personnel from providing the Services.

19.5 Violence against women

The Contractor must:

- (a) comply with the Principal's and each Participating Agency's requirements and policies relating to violence against women both in the workplace and community;
- (b) adopt a zero tolerance policy relating to violence against women both in the workplace and community; and
- (c) comply with the Principal's and each Participating Agency's instructions, directions, policies, procedures and guidelines relating to acceptable workplace behaviour, notified to it from time to time by the Company, to the extent applicable.

19.6 Contractor's Personnel

(a) Conduct of Personnel

- (i) The Contractor must ensure that its Personnel who attend or access any Location:
 - (1) comply with the Principal's security, occupational health and safety and other relevant policies as notified by the Company to the Contractor from time to time and when attending Locations comply with all directions and procedures; and
 - (2) take all reasonable steps to minimise any inconvenience and disruption to the any persons located at each Location.
- (ii) The Contractor must conduct all relevant checks and comply with all necessary protocols as required under applicable Law for the employment or engagement of Personnel involved in providing the Services.

- (iii) The Contractor must ensure that that any Personnel providing Services are properly skilled, trained, licensed or registered (as required to provide the Services or as directed by the Company).

(b) Objection to Personnel

- (i) The Company may, by written notice to the Contractor, direct the Contractor to remove any Personnel (even where previously approved) from the provision of the Services within a stated time (Removed Personnel) if:
 - (1) the Personnel is, in the Company's reasonable opinion, negligent, unsafe, or not competent;
 - (2) the Personnel acts in a way that in the Company's reasonable opinion may cause harm or bring into disrepute or otherwise adversely affect the reputation of the Company, any Participating Agency, the Principal or the State; or
 - (3) directed by the Principal under the Main Contract.
- (ii) The Contractor will nominate for the Company's approval, replacement Personnel of equivalent or better expertise and qualifications than the Removed Personnel, within five business days of their removal.
- (iii) The Contractor must ensure that no Removed Personnel will provide the Services without the prior written consent of the Company.
- (iv) If the Contractor or any of the Contractor's Personnel acts in a way that in the State's reasonable opinion may cause harm or bring into disrepute or otherwise adversely affect the reputation of the Company, any Participating Agency, or the State, and the State directs the Company to terminate this Contract, the Company may terminate this Contract immediately by notice in writing to the Contractor.

(c) Security Clearances

All Personnel of the Contractor must, when attending Locations, comply with all rules, directions and procedures including those relating to the security and workplace health and safety notified to the Contractor by the Principal or Participating Agency. This includes any requirements to sign in to a visitor log, carry identification, or comply with any restricted access obligations.

(d) Other Personnel requirements

- (i) The Contractor must employ local skilled service providers in accordance with the Company's Industry Participation Plan.
- (ii) The Contractor must ensure that workforce participation targets notified by the Company are met for each target group, including employment and training of apprentices and trainees, cadets, Aboriginal people and local persons with barriers to employment and to upskill people engaged directly in connection with the performance of this Contract.

19.7 Work Health and Safety

(a) Compliance and cooperation

- (i) Without limiting any other right of the Company under this Contract, in the event of any material breach by the Contractor or the Contractor's Personnel of any applicable Work Health and Safety Legislation which:
 - (1) gives rise to circumstances which presents actual or potential risk to life or serious injury; or
 - (2) is otherwise required to be notified under Work Health and Safety Legislation,then:
 - (3) the Company is entitled to suspend the whole or part of the Services; and
 - (4) the Contractor must bear any cost which the Company incurs (including any liability to the Principal or a Participating Agency under the Main Contract) as a consequence of that suspension.
- (ii) The Contractor must at all times:
 - (1) comply with applicable Work Health and Safety Legislation and upon reasonable request by the Company, demonstrate such compliance by providing written evidence of measures taken to achieve such compliance;
 - (2) ensure that all Assets under its management and control are maintained in a safe condition and without risk to any person, including providing written evidence of measures taken to achieve compliance with this clause 19.7;
 - (3) maintain management and control over the work activities of its Subcontractors when carrying out the Services including coordinating, directing, overseeing and verifying the performance of the Services by the Subcontractors;
 - (4) cooperate with relevant Participating Agencies as necessary to provide for uniform safety practices at all places where the Services are being performed;
 - (5) immediately advise the Company in writing of any act, fact or circumstance relevant to the ability of the Contractor to carry out the Services without risk to health, safety or security;
 - (6) supply all items necessary to enable the Services to be performed without risk to work health and safety; and
 - (7) perform the Services in a manner that does not cause the Company, the Principal or any Participating Agency to breach any of the Principal's or any Participating Agencies' obligations under the Work Health and Safety Legislation.

(b) Work health and safety responsibilities

Without limiting the Contractor's obligations as specified in paragraph (a), the Contractor must:

- (i) manage risks to health and safety in accordance with Work Health and Safety Legislation;
- (ii) have in place an adequate safety management system that, when implemented, is capable of ensuring compliance with Work Health and Safety Legislation;
- (iii) provide the Company with access to such records as may be necessary to establish the Contractor's compliance with its duties and obligations under this clause;
- (iv) ensure that all of the Contractor's Personnel complete a satisfactory site induction (in accordance with the Company's and/or any Participating Agency requirements) before commencing any work and having regard to its requirements for access to Assets to carry out the Services;
- (v) immediately comply with any direction with respect to site safety issued by any Participating Agency having management and control of a site;
- (vi) provide all necessary training and equipment to meet its obligations under Work Health and Safety Legislation and any other requirements of this Contract;
- (vii) provide evidence when requested by the Company that the Contractor and its Personnel hold the registrations, licences, permits or certificates of competency that they are required by Law to hold as a condition for operating plant and equipment or performing the Services under this Contract;
- (viii) inform itself of all work health and safety policies, procedures or measures implemented or adopted by a relevant Participating Agency at any of its premises or in connection with a Participating Agency's Assets at or within which the Contractor will be performing the Services including:
 - (1) conditions applying to any site that is also a workplace; and
 - (2) the operation of existing facilities and access to existing facilities;
- (ix) consult with the Principal, the relevant Participating Agency, the Company and any person required under Workplace Health and Safety Legislation in relation to how the Services and related work can be undertaken in a way which prevents or minimises all risks to health and safety of all persons including identifying potential hazards associated with the Services; and
- (x) comply with directions on safety issued by the regulatory authority, the relevant Participating Agency, or the Principal within the time frame specified in the direction.

(c) Notification

The Contractor must:

- (i) promptly notify the Company in accordance with Work Health and Safety Legislation (and, in any case, within 24 hours) of any accident, Notifiable Incident, injury, property or environmental damage which:
 - (1) occurs during the performance of the Services; or
 - (2) is associated with any Asset;
- (ii) provide investigation reports and details of root causes, action and remedial work to be undertaken in connection with any such accident, Notifiable Incident, injury, property or environmental damage; and
- (iii) afford the Company and/or the Principal the opportunity to participate in the investigation of any such event described in this clause.

(d) Notification of incidents

- (i) The Contractor must notify the Company immediately if the Contractor:
 - (1) becomes aware of any incident or event occurring in connection with the performance of the Services under this Contract that is in breach of Work Health and Safety Legislation or is a Notifiable Incident under Work Health and Safety Legislation, and provide a copy of such notification to the regulatory authority;
 - (2) becomes aware of any event which occurs, in any way, as a result of the performance of the Services which results or may result in, injury to any person or damage to or failure of any plant or equipment;
 - (3) becomes aware that any of the Contractor's Personnel are not complying with the Work Health and Safety Legislation;
 - (4) reasonably suspects the Contractor or its Personnel have breached the Work Health and Safety Legislation;
 - (5) is issued any notice (including improvement and prohibition notices), order, demand, fines, charges or other written communication received from a Government Agency which relates to a breach by the Contractor (or its Personnel) of the Work Health and Safety Legislation, and provide a copy of such communication to the Company.
- (ii) The Contractor must notify the Company immediately in writing of any thing or circumstance affecting the Contractor's ability to perform the Services or work.
- (iii) The Contractor must provide the Company with any assistance, as requested, in relation to notifications given under this paragraph (d).

(e) Health and safety warranties

The Contractor warrants that:

- (i) it has the necessary knowledge, ability and resources (including sufficient information about the hazards and risks associated with the Services) to comply with Work Health and Safety Legislation;
- (ii) it has provided the Company with all necessary information to allow the Company to properly assess the Contractor's capacity to perform the Services safely; and
- (iii) it and the Contractor's Personnel:
 - (1) are qualified and competent to comply with the Contractor's obligations under this clause 19.7; and
 - (2) have the necessary knowledge and expertise to carry out their obligations in a manner that is without risk to the health and safety of any person.

(f) Health and safety audits

The Contractor agrees to cooperate with the Company, and do all other things reasonably necessary, to enable the Company to conduct any work health and safety audits which the Company is required to undertake under the Main Contract.

(g) Non-compliance

- (i) If the Company informs the Contractor that in its opinion, the Contractor or its Personnel are:
 - (1) not performing the Services in compliance with the Work Health and Safety Legislation or any safety requirements of this Contract; or
 - (2) performing the Services in such a way as to endanger the Principal's personnel, the relevant Participating Agency's personnel, the Company's personnel, the Contractor' Personnel or any other person,

then the Contractor must promptly remedy that situation.

- (ii) Without limiting the Company's rights under this paragraph (g), the Company may direct the Contractor to suspend its provision of the Services the subject of paragraph (i) until such time as the Contractor satisfies the Company that the relevant Services will be resumed in accordance with the Work Health and Safety Legislation or any other safety requirements of this Contract.
- (iii) During the periods of suspension referred to in paragraph (ii):
 - (1) the Contractor is not entitled to any payment in respect of the relevant Services; and
 - (2) the Contractor has no entitlement to:
 - (A) an extension of time; or

- (B) recover any loss, cost, damage or expense of any kind arising under this Contract or out of or in connection with the relevant Services (including a quantum meruit).

19.8 Confidentiality

(a) Obligations relating to Confidential Information

In respect of the other party's Confidential Information, each of the Contractor and the Company:

- (i) acknowledges that the Confidential Information is passed to and received by it in the strictest confidence;
- (ii) must use Confidential Information only for the purposes of carrying out its obligations under this Contract;
- (iii) must not disclose Confidential Information to any person except as permitted by this Contract;
- (iv) must ensure that any person who has access to Confidential Information does not make any unauthorised use, modification, reproduction or disclosure of that information and that the Confidential Information is protected against loss;
- (v) must not transfer Confidential Information outside Australia or allow a person outside Australia to have access to it without the prior written consent of the other party;
- (vi) must notify the other party as soon as practicable after it becomes aware of a breach of its obligations under this clause 19.8(a); and
- (vii) must co-operate with the other party in any reasonable action which the other party may take to protect the confidentiality of its Confidential Information.

(b) Disclosure of Confidential Information

- (i) A party may disclose Confidential Information of the other party:
 - (1) to its professional advisors, including its solicitors, auditors, insurers and accountants subject to the party ensuring that every person to whom disclosure is made pursuant to this clause uses the confidential information disclosed solely for the purpose of advising or reporting to the party and complies with this clause; or
 - (2) to any of its Personnel, but only to the extent necessary for the party to carry out its obligations or exercise its rights under this Contract and subject to the party ensuring that its Personnel comply with this clause 19.8.

(c) Disclosure by Law

A party may disclose Confidential Information to the extent required by law (excluding the *Freedom of Information Act 1991 (SA)*) and must immediately notify the other party if it becomes aware that such disclosure may be required.

(d) Disclosure by Personnel

Each party must ensure that Confidential Information is not misused, disclosed or distributed by its Personnel in breach of this Contract.

19.9 Publicity

- (a) The Contractor must not advertise, publish or release any information, publication, document or article for publication concerning the Services or this Contract in any media without the prior written approval of the Company.
- (b) Paragraph (a) does not apply to the extent the Contractor is required to make a public announcement in accordance with the rules of any stock exchange.
- (c) The Contractor must refer any enquiries concerning the Services or the Contract from third parties or the media to the Company as soon as reasonably practicable.

19.10 Privacy

(a) Privacy laws and directions

In Processing any Personal Information in connection with this Contract, the Contractor agrees that it will:

- (i) comply with all the Privacy Laws, irrespective of whether the Contractor is bound to comply at Law;
- (ii) only use the Personal Information for the purpose of performing its obligations under this Contract; and
- (iii) comply with all of the Principal's privacy, data protection and data security policies, procedures and directions, as notified to the Contractor from time to time.

(b) Privacy obligations

Without limiting the obligations of the Contractor under paragraph (a), the Contractor agrees that in Processing any Personal Information in connection with this Contract, it will:

- (i) only store Personal Information in Australia;
- (ii) maintain and enforce prudent security measures, procedures and protocols in respect of all such Personal Information (no less than those it applies to its own Confidential Information and as otherwise required by the Privacy Laws and South Australian Cyber Security Framework as updated or replaced from time to time);
- (iii) not transfer or disclose any Personal Information outside of Australia, except with the Company's prior written consent (which may be withheld or subject to conditions); and
- (iv) immediately notify the Company upon becoming aware of any breach or possible breach of the Privacy Laws or the Contractor's obligations under this Contract in relation to Personal Information, whether by the Contractor, its Personnel or any other person who has accessed Personal Information or to whom the Personal Information has been disclosed for the purposes of this Contract and comply with all directions of the Company in respect of the breach.

(c) **Personnel Compliance**

The Contractor must ensure that its Personnel who access or Process Personal Information in connection with this Contract are aware of the Contractor's obligations under this Contract in relation to such activities or practices, and are contractually required to comply with all such requirements in the course of performing their duties to the Contractor.

19.11 State Auditor General

Without limiting the Company's other audit rights, the Contractor acknowledges and agrees that:

- (a) the Auditor-General of the State has the power under the *Public Finance and Audit Act 1987* (SA) to conduct audits (including performance audits) of the Contractor in relation to the Main Contract;
- (b) the Auditor-General may give a copy of, or an extract from, a report on an audit in relation to the Main Contract to any person who, in the Auditor General's opinion, has a special interest in the report or the content of the extract; and
- (c) the State may authorise the Auditor-General, or a member of the staff of the Auditor-General's Department South Australia to access premises, records and accounts of the Contractor.

19.12 Location-specific requirements

- (a) The Contractor agrees to comply with any access plans for a Location (**Access Plans**) which are provided to it by the Company from time to time.
- (b) In addition to complying with the Access Plans, the Contractor must:
 - (i) comply with any Location-specific policies and procedures while attending a Location; and
 - (ii) subject to this clause, comply with all lawful reasonable directions issued by a Participating Agency or the Principal in relation to access to the relevant Location.
- (c) Where the Contractor attends at a Location and the Participating Agency seeks to impose a Location-specific requirement on the Contractor that has not previously been notified to the Contractor, then:
 - (i) if the Location-specific requirement prevents the Contractor from performing the Services, the Contractor must notify the Company and, if the Company determines the Location-specific requirement is unreasonable, the Contractor may recover a fee to compensate for the time of the attendance, calculated pro-rata as a proportion of the Contractor's hourly rate (provided the Contractor's entitlement will not exceed the corresponding amount, if any, the Company is entitled to recover under the Main Contract); and
 - (ii) if the Contractor is capable of complying with the requirement and performing the Services but at an additional cost, the Contractor must advise the additional cost to the Company and, if directed by the Company to perform the Services, will be entitled to charge that additional cost (or such other fee as agreed between the parties) in relation to the Services (provided the Contractor's entitlement will not exceed the

corresponding amount, if any, the Company is entitled to recover under the Main Contract).

- (d) The Contractor acknowledges that the Principal and the Participating Agencies (as applicable) will continue to use or occupy the Locations while the Contractor carries out the Services.
- (e) In performing the Services, the Contractor must keep the areas of the Locations in which the Services are being performed clean and tidy and regularly remove any rubbish or surplus materials.
- (f) The Contractor must take all protective measures necessary to avoid damage as a result of its provision of the Services to any Location or any property of the Principal, a Participating Agency or any other user or occupier of a Location and must, at its own cost, make good any damage caused by or in connection with its provision of the Services.
- (g) Unless otherwise specified in this Contract or agreed with the Company, all materials, plant, equipment, fixtures and other items salvaged from Locations as a result of the Services will be the property of the relevant Participating Agency.
- (h) The Company may request that the Contractor disposes of materials on behalf of the Participating Agency. If the Company makes such a request, the Contractor must dispose of the materials in accordance with all applicable State policies regarding salvage and disposal.
- (i) The Contractor must:
 - (i) perform the Services at each Location so as to avoid or minimise disruption to the normal functioning and operations of the relevant Participating Agency at the Location; and
 - (ii) take all steps reasonably necessary or required by the Company to minimise inconvenience to the Participating Agencies and users of a Location.

19.13 Co-operation with other providers

The Contractor must provide the Services and Deliverables in a manner that is generally consistent with any State policies notified to it from time to time by the Company, to the extent applicable.

19.14 Asbestos and dangerous materials

The Contractor must comply with all Laws and State policies (as notified to it from time to time) in relation to the handling of asbestos and other regulated, hazardous or dangerous materials, to the extent applicable.

19.15 Protection of aboriginal heritage and aboriginal rights

In the event that a Location contains an Aboriginal site or object, the Contractor must ensure that appropriate steps are taken to comply with the *Aboriginal Heritage Act 1988* (SA) and any applicable State policies (as notified by the Company to the Contractor from time to time).

19.16 Children and Young People Safety Act

The Contractor must:

- (a) ensure that all its Personnel comply with the *Children and Young People (Safety) Act 2017 (SA)*; and
- (b) comply with any applicable State and Participating Agency policies regarding child safety, as notified by the Company to the Contractor from time to time.

19.17 Emergency Management Act

- (a) In this clause 19.17, “**Emergency**” has the meaning given to that term in the *Emergency Management Act 2004 (SA)*.
- (b) The Contractor must provide all reasonable assistance to the Principal and each Participating Agency in the event of an Emergency, including by providing additional services or deliverables that are not otherwise Services or Deliverables for the purposes of this Contract.
- (c) In the event that the Contractor provides services or deliverables in an Emergency that are not otherwise Services or Deliverables, the Contractor and the Company will negotiate and agree in good faith on the amount payable by the Company to the Contractor in relation to those services or deliverables.
- (d) The Contractor must otherwise comply with all directions available outside of Australia, including where given to it pursuant to the *Emergency Management Act 2004 (SA)*.

19.18 Data management

- (a) The Contractor acknowledges that the Data is and at all times remains the property of the Principal.
- (b) The Contractor may access, use, disclose, modify or sub-licence the Data to the extent that the access, use, disclosure, modification or sub-licence is:
 - (i) necessary to perform the Contractor’s obligations under this Contract; and
 - (ii) in accordance with all applicable Laws.
- (c) The Contractor must not, without the Company’s prior written consent:
 - (i) commercialise any Data (including by scanning, searching or analysing the Data);
 - (ii) access, use, disclose or modify any Data for marketing, tracking, monitoring or profiling purposes, whether the Principal is identifiable from that Data or not; or
 - (iii) aggregate any Data with the Contractor’s own data or data of the Contractor’s other customers.
- (d) The Contractor must ensure that in performing the Services no part of the Data (as it exists from time to time) is corrupted, deleted or subjected to unauthorised use and that no errors are introduced into the Data.

- (e) The Contractor must, and must ensure its third party suppliers:
- (i) comply with all policies and procedures of the Principal as notified to the Contractor by the Company from time to time in relation to the use and protection of the Data, including without limitation the requirements of the South Australian Cyber Security Framework as updated or replaced from time to time;
 - (ii) maintain the confidentiality, integrity and availability of the Data at all times;
 - (iii) maintain safeguards against the destruction, unauthorised disclosure or access, loss or alteration of the Data in the course of delivering the Services;
 - (iv) comply with all Laws applicable to the Contractor's use and custody of the Data;
 - (v) comply at all times with the requirements of this Contract in relation to any Personal Information contained or referred to in the Data;
 - (vi) comply with all applicable Privacy Laws and other Law relating to the keeping, Processing, use and disclosure of any Personal Information contained or referred to in the Data;
 - (vii) notify the Company as soon as practicable of any breach or threatened breach of paragraphs (ii) to (vi);
 - (viii) upon request by the Company, provide an attestation as to its compliance with paragraphs (ii) to (vi); and
 - (ix) do not, without the Company's prior written consent take, disclose or make available the Data or allow the Data to be taken, disclosed or made available outside of Australia, including where stored in backup.

19.19 Harmful Code

If the Contractor accesses or uses any systems or software of the Company, the Principal and/or a Participating Agency in the course of performing the Services, the Contractor must prevent the introduction and propagation of Harmful Code in those systems or software.

19.20 System Engagement for Services

(a) System Engagement Requirements

- (i) The Contractor acknowledges that it must:
 - (1) be registered in SAP; and
 - (2) have access to the Subcontractor Portal,before it will be eligible to receive any Work Orders under this Contract.
- (ii) The Company will provide the Contractor with access to the Subcontractor Portal, and the Contractor must use that to:
 - (1) open, accept / reject Work Orders;
 - (2) update Work Order Status;

- (3) upload checklists, pictures, records or like documents relevant to the Services in accordance with clause 2.6;
- (4) record equipment condition data;
- (5) enter comments against Services;
- (6) request variations for any Work Orders not completed by the due date, or variations to the scope of the Work Order;
- (7) submit its payment claims for completed Services;
- (8) attach payment claim documentation; and
- (9) display RCTIs.

(b) Work Order Acceptance and Rejection

- (i) The Company may issue the Contractor a Work Order via the Subcontractor Portal. Each Work Order will contain nominated terms including Start Date and Time, Due Date and Time, a Pre-Approved Claim Amount and the description of the Services.
- (ii) The Contractor may accept the Work Order and its nominated terms by updating the Work Order Status to "Acknowledged".
- (iii) The Contractor may reject the Work Order by selecting the most appropriate Rejection Code.
- (iv) The Contractor must accept or reject the Work Order within a nominated time depending on the priority of the Services.
- (v) Without limiting clause 5, all Services must be completed by the nominated Due Date and Time.

(c) Work Order Status Updates

- (i) Work Order Status Updates will be used to monitor the Contractor's performance of Services. The mandatory status updates include "on-site", "in progress", "made safe", "on-hold" and "completed".
- (ii) A status update of "on-site" shall be made when the Contractor is on site and ready to initiate the Services.
- (iii) A status update of "in progress" shall be made when the Contractor is on site and has initiated the Services.
- (iv) A status update of "made safe" shall be made when Breakdown Services have been Resolved and an additional visit is required to Restore the Services.
- (v) A status update of "on-hold" must be made when the Services are awaiting on further actions such as variations, re-scheduling for additional materials or labour.
- (vi) A status update of "completed" shall be made when the Services described on the Work Order are actually complete. The Contractor must nominate the Actual Completion Date if different to the current date.

- (vii) All Service status updates must be provided by the Contractor in real time where the physical actions match the Work Order Status.

(d) Work Order Completion and Payment Claims

Without limiting clause 11;

- (i) On completion of the Services, the Contractor may submit a payment claim via the Subcontractor Portal.
- (ii) The Contractor must submit their payment claim and related Service records and supporting information, via the Subcontractor Portal.

(e) Preventative Maintenance - Variations

- (i) If the Contractor will be unable to complete a Preventative Maintenance Work Order by the nominated Due Date and Time, the Contractor must notify the Company prior to the Due Date and Time. The Company will review the notice and may act to reschedule, cancel or assign the Work Order to another contractor at its discretion.
- (ii) Subject to clause 19.20(e)(iii), cancellation of a Preventative Maintenance Work Order under this clause is a cancellation under clause 16.3 if the Contractor is unable to complete the Preventive Maintenance Work Order due to an event beyond its control, but is otherwise a cancellation under clause 16.1(a).
- (iii) If the Contractor claims its performance is affected by an event beyond its control, the Company may request evidence of:
 - (1) the circumstances of the event; and
 - (2) the effect of the event on the Contractor's performance,which the Contractor must provide within 5 Business Days of the Company's request.

(f) Breakdown Maintenance - Variations

- (i) If the Contractor will be unable to complete a Breakdown Maintenance Work Order prior to the nominated Due Date and Time, the Contractor must update the Work Order Status to "on-hold" and submit to the Company for approval:
 - (1) a revised due date and time
 - (2) the reason the Contractor was unable to complete the Work Order.
- (ii) The Company may approve or reject the Contractor's request which may include such actions as rescheduling, cancelling, or assigning the Work Order to another contractor at its discretion.
- (iii) Subject to clause 19.20(e)(iii), cancellation of the Work Order under this clause is a cancellation under clause 16.3 if the Contractor is unable to complete the Breakdown Maintenance Work Order due to an event beyond its control, but is otherwise a cancellation under clause 16.1(a).

(g) Breakdown Maintenance - Identification

If the Contractor identifies additional required Services during the performance of Preventative Maintenance Services. *i.e. a component of an Asset is found broken*, the Contractor must notify the Company of the additional Services and the Company will raise a Breakdown Maintenance Work Order for those Services.

(h) Breakdown Maintenance - Incident Management Timeframes

(i) The Contractor must perform Breakdown Maintenance Services in accordance with the Response and Resolve Incident timeframes provided below except where prevented by an Excusable Event (*HR – hours, D – Day*,

BD- Business Day, AA – As agreed by Company and Contractor):

Location	Metro & Regional		Remote		Isolated	
	Resp	Reso	Resp	Reso	Resp	Reso
1	1 HR	4 HR	4 HR	8 HR	1 BD	2 BD
2	1 BD	3 BD	3 BD	5 BD	5 BD	7 BD
3	5 D	AA	5 D	AA	14 D	AA
4	5 D	AA	14	AA	14D	AA

HR: hours; BD: Business Days; AA: agreed timeframe.

(ii) If the Contractor claims its performance is affected by an Excusable Event, the Company may request evidence of:

- (1) the circumstances of the event; and
- (2) the effect of the event on the Contractor’s performance,

which the Contractor must provide within 5 Business Days of the Company’s request.

(iii) The Contractor acknowledges that the timeframes above are included in the Company’s KPIs under the Main Contract and the Company is liable for service credits for failing to comply with the KPIs.

(i) Breakdown Maintenance - Pre-Approval

Breakdown Maintenance Work Orders are subject to pre-approval and the Contractor must only proceed in accordance with these two levels:

Spend (ex GST)	Requirement
Less than \$550	Contractor may commence the Services
Greater than \$550	Contractor must place the Work Order Status to “on-hold” and submit an estimate to the Company for approval before proceeding with the Services

The process and/or thresholds for Breakdown Maintenance pre-approval may be adjusted from time to time. The Contractor will be notified of any adjustments.

(j) Fixed Pricing and KPIs

The parties agree to negotiate in good faith to:

- (i) if required under the Main Contract, implement a fixed price arrangement to take effect from 1 July 2024; and
- (ii) implement KPIs.

20. DEFINED TERMS

In this Contract:

“Actual Completion Date” means the date on which the Services on site were actually completed;

“Asset” means each asset in respect of which the Contractor is required to provide the Services under this Contract;

“Authorisation” means any licence, accreditation, permit, registration, regulatory approval, right, consent or other documented authority (however described), required by Law and necessary for the delivery of the Services or the performance of this Contract;

“Breakdown Maintenance” means unplanned maintenance services to repair and restore the function, operation and condition of an asset in the event of a malfunction or breakdown;

“Confidential Information” means;

- (a) information submitted or disclosed by either party during negotiations, discussions and meetings relating to this Contract;
- (b) information that at the time of disclosure is identified by the Disclosing Party as being confidential;
- (c) Personal Information held by a Disclosing Party or disclosed to a Receiving Party;
- (d) all other information belonging or relating to a Disclosing Party, or any Related Body Corporate of that Disclosing Party, that is not generally available to the public at the time of disclosure other than by reason of a breach of this Contract or which the Receiving Party knows, or ought reasonable be expected to know, is confidential to that Disclosing Party or any Related Body Corporate of that Disclosing Party;
- (e) and includes any Data;

but does not include the terms of this Contract.

“Code of Conduct” means the Company’s Code of Conduct as may be amended or updated by the Company from time to time. A current version of the Code is available on the Company’s website: <https://www.ventia.com/who-we-are/code-of-conduct>;

“Consequential Loss” means Loss suffered or incurred by a party in connection with this Contract that does not arise naturally (that is, according to the usual course of things) from the event giving rise to the Loss;

“Critical Risk Protocols” means the protocols developed by the Company that outline the supervision and management of specific critical risks that people on the Company’s projects are commonly exposed to, including in relation to:

- (a) lifting operations;

- (b) working around mobile plant;
- (c) working at height;
- (d) working near traffic;
- (e) working near live services;
- (f) excavations;
- (g) hazardous energies;
- (h) confined spaces;
- (i) hazardous substances; and
- (j) driving and remote travel,

as may be amended or updated by the Company from time to time. A current version of the Critical Risk Protocols is available on the Company's website: <https://connect.ventia.com/safety/>;

"Data" means any data in connection with the Assets and any other data which is disclosed to the Contractor by the Company under this Contract, or which the Contractor otherwise obtains in connection with the Services;

"Disclosing Party" means the party to whom Confidential Information belongs or relates;

"Defect" means any non-conformance of the Services or Deliverables with this Contract (including any applicable specifications) or any failure of a Service or Deliverable to function properly and reliably

"Deliverables" means any goods or deliverables to be provided or produced by the Contractor in the provision of the Services;

"Due Date and Time" means the date and time by which all Services specified in a Work Order must be completed, as specified in the relevant Work Order;

"Excusable Event" means an event that is outside of the control of the Company which prevented compliance with a Work Order and must be either:

- (a) a Force Majeure Event; or
- (b) Contractor Personnel carrying out the work arrived at the Location on time but access to the Location was prevented by the Participating Agency.

determination by the Company to extend this Contract beyond the Term;

"Force Majeure Event" means any act, event or cause being:

- (a) an act of God, peril of the sea, accident of navigation, war, sabotage, riot, act of terrorism, insurrection, civil commotion, national emergency (whether in fact or Law), martial law, fire, lightning, flood, cyclone, earthquake, landslide, storm or other adverse weather conditions, explosion, power shortage, epidemic, pandemic, quarantine, radiation or radioactive contamination; or
- (b) an action or inaction of a Government Agency including expropriation, restraint, prohibition, intervention, requisition, requirement, direction or embargo by Law.

“Government Agency” means any government or any public, statutory, governmental (including local government), semi-governmental or judicial body, entity, department or authority (whether inside or outside Australia), and includes any self-regulatory organisation established under statute in the relevant jurisdiction;

“Harmful Code” means any virus, trojan horse, worm, logic bomb or other malicious code that could infect, manipulate, modify, deny, corrupt or inhibit the operation of the Principal’s IT Environment, a Participating Agency IT Environment or the Data;

“Incident” means any unplanned event which impacts the business services and causes, or may cause, an interruption to or a reduction in the ability of Participating Agency personnel to conduct business, including events which create safety issues, security issues, disruption and the degradation of the performance of any of the Services. Incidents are broken down into Response, Resolve and Restore and are within the scope of Breakdown Maintenance Services.

“Incident Management Timeframes” means the timeframes for Response and Restore of Incidents as defined under clause 19.20(h);

“Industry Best Practice” means in any circumstance the exercise of the highest degree of skill, care, prudence and foresight reasonably to be expected in those circumstances of skilled and experienced suppliers of services such as the Services anywhere in the world;

“Isolated” means a Location that has a drive time of more than three hours from the boundary of a Metro and Regional Centre;

“Law” means any applicable statute, regulation, by-law, ordinance, policy or subordinate legislation in force from time to time, and includes the common law and equity as applicable from time to time, any mandatory standards or industry codes of conduct and any public health orders or directives;

“Location” means a site owned or occupied by a Participating Agency;

“Loss” means any damage, loss, cost, expense or liability howsoever arising, whether present, unascertained, immediate, future or contingent, whether based in contract, civil, common law, tort (including negligence) or statute and whether involving a Party, third party or otherwise;

“Main Contract” means the contract between the Company and the Principal under which the Company undertakes to provide facilities management services to the Principal;

“Metro and Regional Centres” means a Location within 120 kilometres of the boundary of a South Australian urban centre with a population of 10,000 or more people;

“Notifiable Incident” has the same meaning as in section 35 of the Work Health and Safety Act 2012 (SA);

“Participating Agency” means each of the State agencies that are to receive the benefit of the Services;

“Personal Information” has the meaning given in the Privacy Act 1988 (Cth) (or, where the context requires, has the meaning given to corresponding terminology under another relevant Privacy Law);

“Personnel” means a party’s officers, employees, agents, Related Body Bodies Corporates, contractors, consultants, or subcontractors (of any tier);

“Pre-Approved Claim Amount” means the amount claimable by the Contractor and payable by the Company for appropriately performing the Services;

“Preventative Maintenance” means services (including inspections) in relation to the ongoing or general maintenance of an asset in order to maintain the function, operation and condition of that asset;

“Privacy Law” means:

- (a) the Privacy Act 1998 (Cth), including the Australian Privacy Principles (but having regard to this Special Condition, only insofar as required by the Company by notice to the Contractor from time to time);
- (b) the State’s Cabinet Administrative Instruction 1/89, also known as the Information Privacy Principles (IPPS) instruction;
- (c) the Public Sector (Data Sharing) Act 2016 (SA); and
- (d) all other Laws applicable to the Principal which relate to the collection, storage or handling of Personal Information;

“Processing” means collection, use, adaption, alteration, storage, transfer, disclosure, or any other handling of Personal Information;

“Receiving Party” means the party to whom Confidential Information is disclosed or who possesses or otherwise acquires Confidential Information belonging or relating to a Disclosing Party;

“Related Body Corporate” has the meaning given to that term in section 50 of the *Corporations Act 2001* (Cth);

“Rejection Code” means the appropriate code applicable to the circumstance where the Contractor is providing a reason to the Company as to why it rejects the performance of the Services;

“Remote” means a Work Order Location that is 120 kilometres or more from the boundary of a Metro & Regional Centre but is not an Isolated Location;

“Replacement/Refurbishment” means services in relation to the replacement, refurbishment or substantial reconditioning of an Asset at the end of that asset’s useful life;

“Resp” or **“Response”** means the time from when the Contractor becomes aware of the Incident to the time when work has commenced to Resolve an Incident;

“Reso” or **“Resolved”** means the time the asset is available for use by any user, either by a Work Around or the Asset is Restored;

“Restored” means the time the underlying problem causing the Incident is rectified and the Asset is restored to full and ongoing operations;

“Relevant ABS Stats” means

- (a) ABS LPI, Total Hourly Rates of Pay (excluding bonuses), All Industries, Private Sector, Australia (Cat 6345); and
- (b) ABS CPI, All Groups, Adelaide (Cat 6401) published by the Australian Bureau of Census and Statistics (“CPI”);

“Rise and Fall Adjustment” will be a percentage determined by calculating;

- (a) annual change in LPI x 0.5; then the

(b) annual change in CPI x 0.5; and then

(c) adding the two values;

“Services” means those services described in the Contract Particulars which may be procured from the Contractor via Preventative Maintenance Work Orders, Breakdown Maintenance Work Orders and/or Replacement/Refurbishment Work Orders;

“State” means the Crown in right of the State of South Australia;

“Start Date and Time” means the date and time for commencement of the Services specified in a Work Order;

“Subcontractor Portal” means the online portal used by the Contractor for Work Order management, submission of payment claims as further described in clause 19.20(a)(ii);

“Ventia Group Company” means Ventia Services Group Pty Limited and any Related Body Corporate or joint venture arrangement to which a Ventia Group Company is a party;

“Work Health and Safety Legislation” means the *Work Health and Safety Act 2012 (SA)* and associated regulations;

“Work Around” means a temporary fix to Resolve an Incident so that the asset and Location is safe and business users can return to work noting that further work will be required to Restore it;

“Work Order” means a work order/service order with a unique reference number which is issued by the Company to the Contractor via the Company’s Subcontractor Portal and specifies (but not limited to) a brief description of the Services, timeframes for attendance and completion, criticality, site and any other details relevant for the performance of the Services; and

“Work Order Status” means the status of the Work Order within the Subcontractor Portal, changed in accordance with clause 19.20(c).