

Note: These Contract Conditions will be deemed to be accepted by the Contractor, and a Minor Supply Contract including these Contract Conditions will be deemed to be formed on the date the Contractor first commences performing the work or services or supply of goods specified in a Work Order issued to it by the Company.

## CONTRACT PARTICULARS

### Parties

<b>Company's Name and Address:</b>	Ventia Australia Pty Limited located at Level 8, 80 Pacific Highway, North Sydney, NSW 2060
<b>Name of Principal:</b>	Western Australian Land Authority t/a DevelopmentWA of Level 2, The Esplanade, Perth, WA 6000
<b>Name of the Contractor:</b>	The entity that receives the Work Order.

### Supply (Goods and/or Services)

#### Services

<b>Description of Services</b>	Minor facilities maintenance services as specified in the relevant Work Order.
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#### Goods

<b>Description of Goods</b>	Supply of Goods as specified in the relevant Work Order.
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#### Payment Terms

<b>Time for submission of claims for payment</b>	The 25th day of each month, or the next Business Day if the day of the 25th is not a Business Day.
<b>Period for payment</b>	25 Business Days after the claim for payment is submitted.

#### GST Tax Invoices

<b>Parties agree to the Company providing RCTIs</b>	Yes
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#### Insurances

Type of Insurance	Cover Amount
<b>Public and Products Liability</b>	For an amount not less than \$50 million any one occurrence and in the aggregate during any 12 month period of insurance for products liability insurance.
<b>Environmental Risk Insurance</b>	For an amount not less than \$10 million any one claim and in the aggregate during any one 12 month period of insurance.
<b>Plant and Equipment</b>	For an amount not less than market value and \$30 million any one event for third party liability.
<b>Employers' Liability and Workers' Compensation</b>	\$50 million any one event.
<b>Comprehensive Motor Vehicle</b>	For an amount not less than market value and \$30 million any one event for third party liability.
<b>Compulsory 3rd Party Vehicle</b>	As required by law.
<b>Cyber Liability</b>	For an amount not less than \$10 million any one claim and in the aggregate during any one 12 month period of insurance.

## 1. CONTRACT

- 1.1 These Contract Conditions will be deemed to be accepted by the Contractor, and a Minor Supply Contract (Contract) including these Contract Conditions will be deemed to be formed on the date the Contractor first commences performing the work or services or supply of goods 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 Western 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 quotation, tender or offer or other correspondence are deemed to have been withdrawn in favour of the terms stated in this Contract.

## 2. SUPPLY

- 2.1 The Contractor will provide the Supply described in this Contract and/or as specified in a Work Order. If the Company wishes to procure Supply from the Contractor, it may from time to time issue a Work Order to the Contractor describing the Supply to be provided by the Contractor. The Contractor must at all times remain willing and able to perform the Supply but has no entitlement to perform the Supply 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. The Company is entitled, as it sees fit, to award to other contractors, works, supply of goods and/or services the same or a similar nature to the Supply.
- 2.2 The Contractor:
- (a) must, and represents and warrants to the Company that it, and each of its employees and subcontractors, will:
    - (i) comply with all statutory requirements, all authority requirements and any government code(s) that may apply to the Supply; and
    - (ii) 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); and
  - (b) ensure that all “building work” to be performed under this Contract is performed consistently with the requirements of any applicable Workplace Relations Management Plan (**WRMP**) that has been notified to the Contractor from time to time. Without limitation, the Contractor warrants that it will have no restrictions on its ability to comply with the requirements of such WRMP and agrees that it will ensure all each of its subcontractors also comply with the WRMP.
- 2.3 The Contractor must perform the Supply:
- (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; and
  - (d) in the case of the Goods, Goods supplied must meet all applicable Australian standards and/or other referenced codes, the requirements of the relevant statutory authorities and all applicable laws, including without limitation all statutory obligations in relation to occupational health and safety.

- 2.4 The Contractor warrants and represents that:
- (a) all Supply 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 Supply, and neither the Company's nor the Principal's use of the Deliverables will infringe the intellectual property rights of any person. 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.
- 2.5 Unless stated otherwise in this Contract or a Work Order the Contractor must provide everything necessary (management, supervision, labour, plant, equipment, tools, materials, consumables, user manuals, commissioning documentation and other items or documentation) to perform the Supply.
- 2.6 The Contractor must complete and return to the Company any checklist, record or like document that the Company (acting reasonably) may provide to the Contractor relevant to the Supply.
- 2.7 Where relevant, the Services must be performed at the site address stated in the relevant Work Order (**site**).
- 2.8 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 within 12 months after the completion of the Supply, 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 9.2(b).
- 2.9 The Contractor must perform the Services as directed by the Company in an effective, efficient, careful, skilful, diligent and safe manner at the times required by Company.
- 2.10 Without limiting the Contractor's other obligations under this Contract:
- (a) the Contractor must provide any additional information reasonably requested by the Company in connection with the Services, 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.
- 2.11 Unless otherwise specified in the Work Order, Goods must be delivered FOT, adequately packaged and protected to ensure safe delivery, to the delivery point and by the delivery date(s) specified in the Work Order.
- 2.12 The Goods will become the property of the Company upon delivery of the Goods to the Company, as evidenced by the signature on the delivery docket of a duly authorised representative of the Company. Such signature is not, and will not be deemed to be, an acknowledgement of the acceptability of the Goods. Notwithstanding that the Company has taken delivery of the Goods, the Contractor will remain responsible for any loss or damage to the Goods, which may have occurred prior to delivery, and for any non-compliance of the Goods with the requirements of the Work Order.

- 2.13 The Contractor must take all reasonable steps to minimise or prevent any delay in the performance of the Services or the delivery of the Goods. The Company may grant an extension of time to the nominated delivery date provided or in the performance of the Services provided:
- (a) the delay is caused by any reason completely beyond the control of the Supplier, including any Statewide or National industrial disputes, acts of God, war, riot, fire, storm or flood; and
  - (b) the Contractor has notified the Company in writing within 7 days of the Contractor becoming aware of the delay. The Company shall not be liable for any extension of time claim that is not lodged in writing with the Company within 7 days of the Contractor becoming aware of the delay.
- 2.14 If the Contractor fails to deliver the Goods by the specified delivery date(s), and does not remedy that failure within 3 Business Days after the relevant delivery date(s), the Customer may terminate the Work Order either in whole or in part for default, in accordance with the provisions of clause 14.1 and/or deduct from monies due to the Contractor as liquidated damages, representing a genuine pre-estimate of the Company's damages and not as a penalty, the amount specified in the Work Order, for each week or part thereof in which the non-performance continues or delivery exceeds the specified delivery date.

### **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 Unless otherwise specified by the Company in writing, the Contractor's representative must be in attendance on site at all times during the performance of the Supply 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 or supply of goods 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) holds appropriate licence and certificates;
  - (c) complies with:
    - (i) legislative and the Company's site specific safety and environmental requirements (which may include (without limitation) attendance at a safety induction course, supply and use of appropriate personal protective equipment and working in accordance with safe working procedures);
    - (ii) legislative industrial relations requirements;
    - (iii) the Company's local community relations requirements; and
    - (iv) relevant Australian Standards; and
  - (d) is paid in accordance with relevant payment conditions and otherwise receives all relevant employee entitlements.

- 4.2 The Supplier warrants that it has read and will comply with the Code of Conduct and Critical Risk Protocols and any other Ventia policy identified in the Purchase/Service Order or notified in writing by Ventia (acting reasonably) from time to time.

## 5. DURATION OF THE SUPPLY

- 5.1 The Contractor must be ready and willing to commence the Supply on and from the Commencement Date.
- 5.2 In the event the Company procures any Supply from the Contractor via Work Order(s), the Contractor must:
- (a) commence that Supply on the applicable Start Date and Time; and
  - (b) and complete that Supply by the applicable Due Date and Time.
- 5.3 The Contractor must remove all of its resources from the site promptly upon termination of the Supply at the site.

## 6. VARIATION

- 6.1 The parties acknowledge and agree that the Company may direct the Contractor to change the Supply or perform additional supply of goods or 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 Supply 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 Supply, 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 10.1 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 6.1(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 Supply described in the Contract Particulars and/or Work Order and to be stated in the Contract Particulars and/or Work Order, respectively.
- 6.2 The Contractor must not vary the work under the Work Order or any condition thereof, except as directed and approved by the Company in writing.

## 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 Supply; 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 Company or the Principal, arising out of or resulting from the performance of the Supply;
- (b) all loss or damage resulting from any:
  - (i) illness, death or personal injury arising out of or resulting from the performance of the Supply; 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 Supply (including its Subcontractors); or
  - (iv) any Defect in the Goods.

8.2 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. PAYMENT CLAIMS AND PAYMENT

9.1 The Contractor must use the Company's nominated WMS to submit a claim for payment or a Tax Invoice under this Contract unless directed otherwise in writing by the Company.

9.2 Payments to be made to the Contractor in accordance with this clause 9 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 Supply 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 12, the amount of GST relevant to the sum of paragraphs 9.2(a) and (b)(i) above.

9.3 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 the date stated in the Contract Particulars.

9.4 Payment claims must be in a form acceptable to the Company and accompanied by the information to support the claim as requested by the Company, which may include the information referred to in

clauses 2.6, 2.10(a), 10.4 and/or 10.5. The Company may, within 15 Business Days after receiving a valid payment claim submitted in accordance with clause this clause 9, issue a payment schedule to the Contractor with its determination under this clause 9.

- 9.5 Once approved by the Company, payment of the approved amounts calculated in clause 9.1 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.
- 9.6 The Company may, at any time, require the Contractor to provide it with:
- (a) evidence to the Company’s satisfaction of the Contractor’s compliance with clause 9.1; and/or
  - (b) the information referred to in clauses 2.6, 2.10(a), 10.4 and 10.5.
- 9.7 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 9.5 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 9.6.

## 10. RATES AND PRICES

- 10.1 The Contractor acknowledges and agrees that:
- (a) the rates and prices applicable to the Supply 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 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.
- 10.2 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 Supply and otherwise to fulfil all of its obligations under this Contract.
- 10.3 The Contractor acknowledges that:
- (a) no representations have been made to the Contractor regarding the extent of the Supply; and
  - (b) the rates and/or prices stated apply to whatever may be the extent of the Supply directed by the Company.



- 10.4 Where any Services are to be paid for on a cost reimbursable time and materials charge basis, the Contractor must record and submit details of the resources deployed on the Services on completion of the Services.
- 10.5 Where any Services are to be paid for on a cost reimbursable time and materials charge basis, and 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.

## 11. CHANGE OF LAW

- 11.1 The Contractor acknowledges that it must, in performing the Services, comply with all applicable Legislative Requirements, and is not entitled to any compensation or extension of time or relief from performance of its obligations under this Contract as a result of any Change in Law.
- 11.2 If a Change in Law occurs after the date the Company issues a Work Order and the Contractor believes that the Change in Law is a Discriminatory Change in Law, the Contractor may give the Company a notice of the Discriminatory Change in Law, and if the Company acting reasonably accepts that the Change in Law is a Discriminatory Change in Law and has a material effect on the performance of the Supply, the parties will follow the process set out in clause 6 as if the Discriminatory Change in Law constitutes a Variation.

## 12. GOODS AND SERVICES TAX (GST)

- 12.1 Terms used in this clause 11 which are defined in the GST Act have the same meaning in this clause 11. The GST Act means *A New Tax System (Goods & Services) Act 1999* (Cth).
- 12.2 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.
- 12.3 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.
- 12.4 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.

12.5 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.

12.6 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 12.5(a) above applies, in which case the Company will issue an adjustment note to the Contractor).

## 13. DEFAULT

Without limiting the Company's rights under clause 14, 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 9.2(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 9.2(b).

## 14. TERMINATION

14.1 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; or
- (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.

- 14.2 If the Company terminates this Contract or cancels a Work Order under clause 14.1 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 9.2(b) and a debt due and owing by the Contractor.
- 14.3 The Company may, at any time and for any reason (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.
- 14.4 If the Company terminates this Contract or cancels a Work Order for convenience under clause 14.3:
- (a) the Company will pay the Contractor for Services carried out to the date of termination or cancellation; and
  - (b) the cost of materials and equipment reasonably ordered by the Contractor to perform the relevant Services which the Contractor is liable to accept and is unable to allocate to another client, but only if the materials and equipment will become the Company's property upon payment.
- 14.5 The Contractor will have no claim arising from the cancellation of a Work Order or the termination of this Contract for convenience under clause 14.3 except as stated in clause 14.4.
- 14.6 If the Company terminates the Contract for convenience under clause 14.3 but such termination does not result in any Work Order being cancelled, the Contractor will have no claim arising from the termination.

## 15. ASSIGNMENT AND SUB-CONTRACTING

- 15.1 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 Supply without the Company's prior written approval of the Contractor's proposed subcontractor and that part of the Supply 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.
- 15.2 Any subcontractor engaged by the Contractor in contravention of clause 15.1(b) will not be permitted to enter the Site and the Company will not be liable to pay for any Supply performed by that subcontractor.

## 16. QUALITY, SAFETY AND ENVIRONMENT

- 16.1 The Contractor must:
- (a) remain vigilant at all times and provide adequate and appropriate supervision to ensure that the Supply is performed using safe work methods;
  - (b) ensure that all persons engaged in performing the Supply:
    - (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.

16.2 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.

16.3 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.

## 17. SPECIAL CONDITIONS

### 17.1 Order of precedence and defined terms

All of the provisions in this clause 17 to clause 37 (inclusive) are considered special conditions. In the event that any of the provisions of clauses 1 to 16 (inclusive) conflict with any special conditions stated in clauses 17 to 37 then the special conditions will take precedence to the extent of such conflict.

### 17.2 System Engagement for Supply

#### (a) Ariba System Engagement Requirements

The Contractor acknowledges and agrees that:

- (i) the Company employs Ariba for the transmission of Work Orders and facilitation of invoices and payment under this Contract;
- (ii) all contractors must have access to Ariba to receive Work Orders, submit invoices and receive payment;
- (iii) the Contractor will register a standard account (as a minimum) with Ariba prior to submission of their first payment claim; and
- (iv) the Company may nominate an alternative system at its discretion from time to time by written notice to the Contractor.

#### (b) Rapid Global System Engagement Requirements

The Contractor acknowledges and agrees that:

- (i) the Company employs Rapid Global Workforce Management Software (**Rapid Global**) to manage the lifecycle of its contractors and suppliers from a SHEQ and compliance perspective;
- (ii) all contractors and suppliers are required to register in Rapid Global, upload and maintain insurances as well as ensure that to the extent relevant all its personnel and suppliers complete the mandatory inductions, including updating relevant Police Checks, security checks and any other checks, certifications or clearances required relevant to the services they perform;
- (iii) the Contractor will register an account with Rapid Global and complete the necessary onboarding and inductions prior to supplying any Goods or Services; and
- (iv) the Company may nominate an alternative system at its discretion from time to time by written notice to the Contractor.

## 18. PUBLIC HEALTH ORDERS

- 18.1 With respect to any Public Health Order that imposes obligations on the Contractor or the Company in relation to all or part of the AMC CUF Infrastructure, Site, Users or the Contractor's Personnel, the Contractor agrees to:
- (a) do all things and take all steps necessary to promptly comply with any such Public Health Order; and
  - (b) if the Public Health Order applies to the Company solely or jointly with the Contractor, do all things and take all steps necessary to promptly ensure the Company also complies with the Public Health Order with respect to activities at the AMC CUF Infrastructure.
- 18.2 The Contractor must promptly comply with the Company's reasonable directions notified to the Contractor in relation to:
- (a) compliance with any Public Health Order relating to the AMC CUF Infrastructure, Site, Users or the Contractor's Personnel; or
  - (b) an epidemic, pandemic or public health event or risks, including but not limited to COVID-19.

## 19. SIDE DEED, COLLATERAL WARRANTY AND NOVATION

- 19.1 The Contractor must, upon request by the Company, enter into a side deed and collateral warranty with the Principal on terms that are reasonably satisfactory to the parties.
- 19.2 If the Head Contract is terminated, the Contractor must, upon request by the Company, novate this Contract to the Principal, on the terms of a novation deed that are reasonably satisfactory to the parties.

## 20. IMPACT ON NEIGHBOURS

- 20.1 When performing the Supply or otherwise accessing the Site, the Contractor must not, except as set out in this Contract:
- (a) do or permit anything which, having regard to the purposes for which the Contractor is granted access under this Contract, is or might be a nuisance or unreasonable annoyance to, or an unreasonable interference with the lawful operations of any owner, tenant or occupier of adjoining or nearby land, including (without limitation) by way of sound pressure, radiation, vibration and lighting; or
  - (b) damage any property owned by the Principal, the Company or third parties.

## 21. ACCEPTANCE OF SITE AND AMC CUF INFRASTRUCTURE "AS IS"

- 21.1 Without limiting any other provision in this Contract, the Company makes no representation and gives no warranty regarding the Physical Matters.
- 21.2 The Contractor acknowledges and agrees that:
- (a) the Company and the Principal will be held harmless and free from any loss of income which the Contractor may suffer as a result of or in connection with the Physical Matters; and
  - (b) under no circumstances will the Company be responsible for undertaking any works or procuring the Contractor to undertake any works at the Company's expense to address any Physical Matters in, on or under the Site or the AMC CUF Infrastructure.
- 21.3 The Contractor acknowledges and agrees that the Company has advised the Contractor that above and below ground Utility lines and infrastructure and other improvements exist on the Site. The Contractor must not, without the specific prior written approval of the Company, damage or interfere with any such Utility

lines, infrastructure or improvements. Should any such Utility lines, infrastructure or improvements be damaged by the Contractor, the Contractor must, immediately and at its own cost, procure the repair of any such damage in accordance with all relevant Legislative Requirements.

## 22. MANNER OF PERFORMANCE

22.1 The Contractor must:

- (a) perform the Supply in accordance with Good Engineering Practices (as applicable);
- (b) act reasonably and in good faith at all times in relation to the provision of the Supply and compliance with its obligations under this Contract more generally;
- (c) keep the Company fully informed about all relevant aspects of the Supply;
- (d) promptly notify the Company's Representative of any error or failing in the provision of any of the Supply and rectify the error or failing (at its own cost) when and in the manner reasonably directed; and
- (e) not engage with or contact any Ministers of State or Federal Government, Government officials or any other representative of the State or Federal Governments in relation to the Australian Marine Complex or the Supply, unless expressly authorised or requested by the Company.

## 23. CONSENTS

23.1 Unless expressly provided elsewhere in this Contract, the Contractor must, at its sole cost and in a timely manner, perform its obligations and perform and provide the Supply so as to comply with and not to cause a breach of the terms of any of the Consents in effect from time to time (to the extent the terms of the Consents have been notified to the Contractor).

## 24. NO CONFLICT OF INTEREST

24.1 The Contractor warrants that:

- (a) it is not using, and will not use, the AMC CUF Infrastructure as a User; and
- (b) unless managed to the Company's satisfaction in accordance with the requirements of this clause 25.1, neither it nor any Associate or Personnel, has any, or will have any, dealings with or any interest in any Users which will or could cause a conflict of interest, having regard to the Contractor's obligations under this Contract,

and this warranty is repeated on each day throughout the Term.

24.2 Without limiting 25.1, the Contractor agrees that to the best of its knowledge, no other conflict of interest exists or is likely to arise in the performance of the Supply and its obligations under this Contract.

24.3 The Contractor agrees that in the performance of the Supply it will not do anything which may give rise to a conflict of interest with its obligations under this Contract, including but not limited to entering into a transaction or dealing with any party (whether or not that party is an Associate, Personnel or a customer or client of those parties), which creates or may create a conflict of interest.

24.4 The Contractor must immediately disclose to the Company any activity which constitutes or may constitute a conflict of interest and identify how (if at all) the conflict (or possible conflict) can be managed.

24.5 If:

- (a) the Company is satisfied (at its discretion) that the conflict (or possible conflict) can be managed satisfactorily so as not to impact on the Contractor's ability to fulfil its obligations under this Contract or to impact adversely on the achievement of the State's Objectives, the Contractor

must, thereafter, take such steps as the parties agree to manage that conflict if it pursues the relevant activity; and

- (b) the Company is not satisfied (at its discretion) that the conflict (or possible conflict) can be managed satisfactorily so as not to impact on the Contractor's ability to fulfil its obligations under this Contract or to impact adversely on the achievement of the State's Objectives, the Contractor must terminate or otherwise not pursue the activity.

24.6 For the purposes of this clause 25, the Company considers that a conflict of interest may arise if the Contractor or any of the Contractor's Associates, Personnel or a customer or client of those parties may use the AMC CUF Infrastructure.

## 25. SITE SECURITY AND REGULATORY REQUIREMENTS

25.1 The Contractor:

- (a) acknowledges that the Australian Marine Complex is classified as a 'Security Regulated Port Facility' under the *Maritime Transport and Offshore Facilities Security Act 2003* (Cth);
- (b) acknowledges that the Australian Marine Complex is a cargo terminal for the purposes of the *Customs Act 1901* (Cth); and
- (c) acknowledges that the Australian Marine Complex is subject to the Defence Security and Other Requirements; and
- (d) acknowledges that it may need to become a member of the Defence Industry Security Program if the Contractor interacts with Defence at AMC CUF.

## 26. ENVIRONMENTAL OBLIGATIONS

26.1 At all times when providing the Supply, the Contractor must and in respect of clause 26.1(a) and (b), must use its best endeavours to ensure that the User's Personnel and Visitors:

- (a) comply with all applicable Environmental Laws and all relevant industry standards and codes of practice;
- (b) not Contaminate, Pollute or bring any Waste on to the Site, or any area in the vicinity of the Site;
- (c) remove any Waste arising from the provision of the Supply from the Site;
- (d) keep the Site in a good and safe condition such that it does not present a risk to the health or safety of any person or a risk of harm to the Environment;
- (e) within the Site, ensure the safety of people and the protection of the Environment from harm;
- (f) appropriately handle, store and dispose of any Dangerous Substances used or discovered by the Contractor;
- (g) notify the Company immediately if, in the course of providing the Supply:
  - (i) an incident occurs which could be a breach of an Environmental Law, including, for the avoidance of doubt, any breach of a Consent;
  - (ii) the Contractor becomes aware that a complaint has been made in relation to Contamination of or Pollution of or from the Site; or
  - (iii) any other breach of any obligation under this clause occurs;
- (h) provide the Company with any information held or controlled by the Contractor relating to any Contamination affecting, or Pollution of or from, the Site;

- (i) at its own cost undertake all necessary remediation work so that the Site does not present a risk of harm to the Environment and is suitable for the proposed use as described in this Contract;
- (j) promptly comply with any Environmental Notice served on the Contractor, the Company or the Principal, if relating to Contamination of, a Pollution of or from or the disposal on or removal of Waste from the Site; and
- (k) provide to the Company:
  - (i) within one Business Day of receipt of any Environmental Notice served on the Contractor, a copy of such Environmental Notice;
  - (ii) promptly, copies of all reports, invoices and other documents relating to the Contractor's compliance with any Environmental Notice and any other information relating to the Environmental Notice or the Contractor's compliance with it as the Company may reasonably request.

## 27. WORKPLACE HEALTH AND SAFETY

- 27.1 If the Contractor or its Personnel attend site, the Contractor must ensure its Personnel comply with OHS Laws and any policies, signage, rules, requirements, procedures and directions of the Company (and, if applicable, the appointed principal contractor) at the site in connection with health and safety.
- 27.2 The Contractor must immediately notify the Company:
- (a) if the Contractor is, or becomes, unable to comply with this clause 27 for any reason;
  - (b) of any injury, property damage, accident or incident related to the provision of the Supply which is a Notifiable Incident under the relevant OHS Law, and provide the Company with any further information requested by the Company;
  - (c) of any property or environmental damage, arising from, or in connection with the performance of the Supply; and
  - (d) of any other matter which will, or is likely to, have any material adverse effect on the Contractor's capacity to provide the Supply, or the timing of the provision of those Supply, or the Company's or the Principal's goodwill, commercial reputation or overall public image.
- 27.3 The Contractor warrants that:
- (a) it has the relevant expertise and licenses required to perform the Supply;
  - (b) all plant and equipment it will use to perform the Supply are:
    - (i) fit for purpose; and
    - (ii) in good working order;
  - (c) it has undertaken a hazard and risk assessment for all work and tasks associated with the performance of the Services, and will eliminate all risks to health and safety so far as is reasonably practicable, or if it is not reasonably practicable to eliminate risks to health and safety, it will minimise those risks so far as is reasonably practicable; and
  - (d) the Company has advised it of all relevant health and safety risks it is aware of at the time of entering into this Contract associated with the Services.
- 27.4 The Contractor agrees that, when requested to do so by the Company, it will at its own cost cooperate, and direct its Personnel to cooperate, in any investigation or information gathering process related to a safety risk, hazard or injury (including providing any information, documents or reports the Company considers necessary);



27.5 If the Contractor fails to comply with, or otherwise breaches, any requirement of this clause 27, the Company may:

- (a) direct the Contractor to temporarily cease performing the Supply, or any works associated with the Supply; and/or
- (b) if the breach or failure has not been remedied within 2 Business Days after notice is given to the Contractor, or is incapable of remedy, terminate this Contract.

27.6 Where, in the Company's view (acting reasonably), the Contractor cannot, or can no longer reasonably perform the Supply safely, or has engaged in serious unsafe conduct, the Company may terminate this Contract without notice.

## 28. DEFECTS IN CAPITAL WORKS UNDERTAKEN BY OTHERS

28.1 The Contractor acknowledges that the Principal or the State may engage the Company or other contractors to undertake Capital Works. Following practical completion of any Capital Works by the Company or other contractors, the Contractor must promptly notify the Company if it becomes aware of any Capital Works Defects in the relevant CUF assets which arise during any applicable defects liability period and provide all reasonable assistance to enable the Company, the Principal or the State to have the Capital Works Defects rectified, including by facilitating access to the Site by the relevant contractors (or their subcontractors) to perform their rectification works in accordance with the terms of the relevant Capital Works Contracts.

## 29. RECORDS

29.1 Without limiting any other clause of this Contract, the Company has the right to request that the Contractor make available to, and upon such request the Contractor must make available to, the Company any information, records and other documentation in whatever form which relate to this Contract, the Supply and the Site on an open book basis, including by providing hard copies or electronic copies of the same. For the purposes of this clause 29.1, 'open book basis' includes the Contractor providing to the Company any information, records and documentation in a timely and clear and transparent manner which allows the Company to properly understand the records and documentation and making available all appropriately qualified Personnel to explain the information, records and documentation or answer any questions the Company may have in respect of the information, records and documentation.

29.2 The Contractor must allow the Company to review and undertake audits to enable it to verify compliance with this clause 29.

29.3 The Contractor shall maintain all records pertaining to the Supply, the AMC CUF Infrastructure and the Site:

- (a) consistent with all Legislative Requirements, where applicable; and
- (b) reasonably expected of a competent and prudent party with similar obligations to those which the Contractor has under this Contract,

**(Records)** and retain the Records for a minimum period of 7 years following the earlier of the termination of this Contract in accordance with its terms or the expiry of the Term. If the Company requires retention of any Records beyond 7 years, the Company shall give reasonable notice to the Contractor and the Contractor must, at its option, either retain the Records or deliver the Records to the Company. Following termination or expiry of this Contract, the Contractor must deliver all Records pertaining to the Supply, the AMC CUF Infrastructure or the Site remaining in its possession to the Company but shall be entitled to retain one copy of each of those Records for archival purposes.

## 30. INSURANCE

30.1 The Contractor must effect and keep in force the following insurances for amounts not less than the amount specified in the Contract Particulars from the Date for Commencement and be maintained in accordance with this clause 30:

- (a) Public and products liability insurance: a public and products liability insurance policy, written on an occurrence basis, which covers the legal liability of the Contractor, and legal liability of the Company and the Principal and their respective Personnel relating to, arising from or in connection with any acts or omission of the Contractor, its Personnel and/or an Associate, to any person in respect of:
- (i) damage to, loss or destruction of, or loss of use of, real or personal property;
  - (ii) injury to, or death or disease of, any persons (other than liability required under the Workers' Compensation and Injury Management Act 1981 (WA)) including liability caused by the use of any motor vehicle arising out of or in connection with the Supply (other than for liability covered by compulsory third party motor vehicle insurance);
  - (iii) any claims, risks and events covered under the indemnities covered under clause 31 in respect of which insurance is ordinarily available;
  - (iv) liability arising out of any Contamination, Pollution or Environmental Harm to the Site arising out of a sudden, accidental and/or unforeseen event;
  - (v) advertising injury or advertising liability risks (including libel, slander or defamation, infringement of copyright or of title or slogan, piracy or unfair competition or idea misappropriation under an implied contract and invasion of privacy) committed or alleged to have been committed in any advertisement, publicity article, broadcast or telecast;
  - (vi) liability arising out of the ownership, operation or use of self-propelled watercraft 10 metres or less in length; and
  - (vii) to the extent relevant to the Supply, liability arising out of the ownership, operation or use of self-propelled watercraft exceeding 10 metres in length where the liability is in respect of:
    - (1) plant or equipment or other property whilst temporarily mounted upon any watercraft;
    - (2) the use of or existence of explosives on or from any watercraft; whether in, over or under water or otherwise;
    - (3) the watercraft is operated by independent contractors who are not an insured on the policy;
    - (4) watercraft used by the insured on the policy for business entertainment;
    - (5) hand propelled or sailing craft in Australian territorial waters;
    - (6) work undertaken on watercraft; or
    - (7) power driven waterborne craft used on inland or coastal waters,
- arising out of, or in connection with, or as a result of the Supply;

- (b) Environmental risk insurance: an environmental risk insurance policy providing coverage for liability to the extent specified in an Environmental Notice arising out of Contamination, Pollution or Environmental Harm to the extent specified in the Contract Particulars and covering:
- (i) clean up and remediation costs for gradual pollution events, including cover for third party bodily injury, death or illness and property damage arising from gradual pollution;
  - (ii) complying with notices and orders made by any Authority;
  - (iii) on site monitoring, removing, neutralising or cleaning up of Pollution, Contamination or Environmental Harm;
  - (iv) site contamination assessments;
  - (v) damage to natural resources;
  - (vi) clean up and mitigation costs incurred by the Contractor or any Authority in an emergency;
  - (vii) civil fines, penalties and regulatory costs; and
  - (viii) transportation and disposal;
- (c) Plant and equipment insurance: a plant and equipment insurance policy which covers:
- (i) physical loss of, destruction or damage to any plant or equipment from any cause or event not otherwise excluded; and
  - (ii) third party liability for property loss or damage and bodily injury or death (other than for liability covered by compulsory third party motor vehicle insurance) for registered plant or equipment,
- (whether owned, hired or leased by the Contractor or its Personnel) which is used in connection with the carrying out of the Supply;
- (d) Employers' liability and workers' compensation insurance: workers' compensation and employer's liability insurance in respect of liability arising whether at common law or under statute as required by Legislative Requirements relating to workers' compensation or employer's liability in relation to injury to, or death or disease of, any employee of the Contractor or any person deemed to be an employee of the Contractor;
- (e) Comprehensive motor vehicle insurance: a motor vehicle insurance policy which covers:
- (i) physical loss or damage to motor vehicles (whether owned, hired or leased by the Contractor) from any cause or event not otherwise excluded which are used in connection with the Supply; and
  - (ii) third party property loss or damage and bodily injury to or death of persons (other than compulsory third party motor vehicle insurance) caused by any motor vehicles which are used in connection with the Supply;
- (f) Compulsory third party motor vehicle insurance: compulsory third party motor vehicle insurance, in respect of all registrable motor vehicles which are used in connection with the Supply;
- (g) Cyber liability insurance: an insurance policy which covers liability, expenses and loss arising from cyber incidents, including data breaches, data theft, cyber-attacks and similar risks occurring in connection with the CUF and Supply; and

- (h) such other insurances as the Company requires from time to time that are consistent with good industry practice and which a prudent subcontractor would reasonably procure in connection with this Contract, on such terms and in such form as required by the Company.
- 30.2 Save for the Insurances in clauses 30.1(c), (d), (f) and (g), the Insurances must name each of the Company and the Principal as a joint insured for their respective rights and interests relating to, arising from or in connection with any acts or omissions of the Contractor, its Personnel and/or an Associate and/or in the property insured under the Insurances. The Insurance in clause 30.1(d) must name the Company and the Principal as principals and be endorsed to include a principal's indemnity extension for statutory benefits and at common law to cover the Company and the Principal against any liability they may incur under Legislative Requirements and/or common law in relation to any injury to or disease of or death of any employees of the Contractor.
- 30.3 The Contractor shall ensure that any of its subcontractors effect and keep in force insurance policies to the same effect and on the same terms as the Insurances.
- 30.4 All Insurances effected and maintained by the Contractor in compliance with this clause 30:
- (a) (insurers): must be taken out and maintained with Reputable Insurers as approved by the Company's Representative (such approval not to be unreasonably withheld);
  - (b) (terms): must be on the terms (including terms as to exclusions, deductibles and premiums) as required by this clause 30 and otherwise as approved by the Company's Representative (such approval not to be unreasonably withheld);
  - (c) (exclusions): must not contain any exclusion, endorsement or alteration unless approved in writing by the Company's Representative (such approval not to be unreasonably withheld);
  - (d) (contractually assumed liability): not expressly exclude any alleged or actual liability or obligation assumed by a policy's insured under any agreement or contract;
  - (e) (proportionate liability): in the case of the Insurances specified in clauses 30.1(a), (b), (e) and (g), must:
    - (i) cover any alleged or actual liability or obligation assumed by a policy's insured under any agreement or contract to the extent that the Contractor and any other policy's insured under those Insurances have contracted out of the operation of Part 1F of the *Civil Liability Act 2002 (WA)* or assumed liability for others under this Contract;
    - (ii) without limiting clause 30.4(e)(i) above, cover the Contractor for potential liability to the Company assumed by reason of the exclusion of Part 1F of the *Civil Liability Act 2002 (WA)*; and
    - (iii) not exclude any potential liability the Contractor may have to the Company under or by reason of this Contract;
  - (f) (waiver and cross liability clause): which name more than one insured, must include a waiver and cross liability clause in which the insurer agrees:
    - (i) to waive all rights of subrogation or action that it may have or acquire against all or any of the persons comprising the insured for all insurance policies for which the Company or the Principal is a named insured or an insured party;
    - (ii) that the term "insured" applies to each of the persons comprising the insured as if a separate policy of insurance had been issued to each of them (subject always to the overall sum insured not being increased as a result); and
    - (iii) that any non-disclosure, breach of any duty or act or omission by one insured does not prejudice the right of any other insured to claim under any Insurance;

- (g) (prior notice): in the case where the Company or the Principal is a joint insured on the Insurances, must contain a term which requires the insurer to give the Company and the Principal 30 Business Days' notice prior to:
  - (i) the insurer giving the Contractor a notice of cancellation;
  - (ii) the insurer cancelling the policy on the request of the Contractor;
  - (iii) the Contractor allowing the policy to expire; or
  - (iv) the insurer giving the Contractor any other notice in respect of the policy;
- (h) (notice of a claim): must provide that notice of a claim by any insured will be accepted by the insurer as notice by all insureds;
- (i) (imputed knowledge or intention): to the extent permitted by law, the insurer of the Insurances will not impute to any insured party any knowledge or intention, or a state of mind possessed or allegedly possessed by any other insured party;
- (j) (breach of conditions): in the case of Insurances in accordance with which the Company or the Principal is also entitled to cover, any breach of the conditions of the Insurances by an insured other than the Company or the Principal, must not in any way prejudice or diminish any rights which the Company or the Principal has under the Insurances;
- (k) (primary insurance): in the case of Insurances in accordance with which the Company or the Principal is also entitled to cover, the relevant Insurance is primary with respect to the interests of the Company and the Principal, and any other insurance or self-insurance arrangements maintained by the State is excess to and not contributory with the Insurances;
- (l) (duration of Insurances): in the case of Insurances specified in clauses 30.1(b) and (g) must be current and in place for the duration of the Supply and until a date which is seven (7) years after the final Supply if the Contract is not terminated or a date which is seven (7) years after the termination of the Contract if the Contract is terminated;
- (m) (territorial limit) all Insurances must as a minimum provide cover under Australian territorial limits and be governed by the laws and jurisdiction of Western Australia; and
- (n) (primary position) the Insurances are primary and not secondary to the indemnities referred to in this Contract.

30.5 The Contractor must punctually pay all premiums and other amounts payable in respect of the Insurances effected by it, and give the Company evidence of payments for premiums if and when requested by the Company.

30.6 In respect of the Insurances required to be effected and maintained by the Contractor under clause 30.1, the Contractor must give the Company's Representative:

- (a) certified copies of all renewal certificates within 10 Business Days after it receives them from the insurer or broker; and
- (b) a certificate of currency satisfactory to the Company's Representative (acting reasonably) to confirm that the Insurances which the Contractor must effect and keep in force pursuant to this clause 30 have been effected and kept in force in accordance with the requirements of this clause 30, whenever requested by the Company's Representative;
- (c) a copy of the principal's indemnity extension to workers' compensation policy maintained in accordance with clause 30.1(d); and

Subject to the Company providing reasonable prior notice to the Contractor, the Contractor must arrange and permit any persons nominated by the Company to inspect and view copies of the policies (including

policy schedules, wordings, extensions and endorsements), in respect of the Insurances required to be effected and maintained by the Contractor under clause 30.1, at the Contractor's office or at the Perth office of its insurance broker.

30.7 If the Contractor fails to provide evidence satisfactory to the Company's Representative in accordance with clause 30.6(b) or within 10 Business Days of a request under clause 30.6(b), the Company may effect and maintain the relevant Insurances and pay the premium. The costs incurred by the Company in connection with taking such action will be recoverable from the Contractor as a debt due and payable from the Contractor to the Company.

30.8 The Contractor's obligation to effect and keep in force the Insurances in clause 30.1 is independent of and in no way limits the liabilities or obligations of the Contractor under this Contract including the indemnities in clause 31. Neither party represents to the other that the Insurances required to be effected and maintained under this Contract are adequate for either party's proportionate risks and liabilities. The Contractor is not restricted from obtaining the Insurances for sums greater than those required under this Contract or insuring other risks not identified in this Contract.

30.9 The Contractor must:

- (a) not knowingly do or permit, or omit to do, anything which prejudices any of the Insurances;
- (b) comply with all terms, conditions and warranties of the Insurances;
- (c) not do or fail to do any act that may cause any of the Insurances to be prejudiced or liable to be cancelled or avoided or any claim on the Insurances be reduced or payment withheld by the insurer either in whole or in part;
- (d) rectify anything which might prejudice any Insurance;
- (e) promptly reinstate any Insurance required to be maintained under clause 30.1 if it lapses, is cancelled or if cover is exhausted;
- (f) not cancel, vary or allow any Insurance required to be maintained under clause 30.1 to lapse without the prior written consent of the Company's Representative;
- (g) immediately notify the Company of any fact or circumstance or change in circumstances which may prejudice an Insurance;
- (h) without limiting clause 30.10(a), immediately notify the Company's Representative if it receives any claim or notice in connection with an Insurance;
- (i) give full and true particular information to the insurer of all matters and things the non-disclosure of which might in any way prejudice or affect any such policy or the payment of all or any benefits under the Insurance; and
- (j) comply at all times with the terms of each Insurance.

30.10 In addition to the obligations to notify the insurer under any Insurance, the Contractor must:

- (a) notify the Company's Representative of any occurrence of which it is aware that gives rise or may give rise to a claim or of an actual claim (other than a claim by the Principal, the Company or either's Associates) under any Insurance;
- (b) keep the Company's Representative informed of subsequent developments of which it is aware concerning circumstances which it is aware that give rise or may give rise to a claim or of an actual claim under any Insurance;
- (c) do everything reasonably required by the Company or the Principal (or any other person in whose name the relevant policy is effected) to enable the Company or the Principal or such other person to claim, collect or recover money due under an Insurance;



- (d) subject to clause 30.10(e), diligently pursue any material claim which it has under any Insurance in relation to that occurrence; and
- (e) not compromise, settle, prosecute or enforce a claim under any Insurance without the prior written consent of the Company's Representative (which must not be unreasonably withheld or delayed).

## 31. INDEMNITY

31.1 To the extent permitted by Legislative Requirements, the Contractor is liable for and must indemnify the Company and keep the Company indemnified from and against all and any Claims and Loss directly or indirectly relating to, arising out of or in connection with:

- (a) any breach of this Contract by the Contractor, its Personnel or an Associate, including but not limited to:
  - (i) a breach or other event which is a basis for terminating this Contract under clause 14.1;
  - (ii) a breach of a Legislative Requirement by the Contractor, its Personnel or an Associate;
  - (iii) a failure to comply with a Consent by the Contractor, its Personnel or an Associate;
  - (iv) the actual or alleged infringement of any Intellectual Property Rights;
- (b) injury to, death of or illness or disease of any of the Contractor's Personnel relating to, arising out of or in connection with the performance, purported performance and/or non-performance of the Supply or in connection with this Contract;
- (c) any damage to, loss or destruction of any property (including the Site, the AMC CUF Infrastructure and third party property) and any injury to, death of or illness or disease of any person (whether on the Site or in the vicinity of the Site or the AMC CUF Infrastructure) caused or contributed to by any act or omission of the Contractor, its Personnel or an Associate relating to, arising out of or in connection with the performance, purported performance and/or non-performance of the Supply or in connection with this Contract;
- (d) any criminal act, fraud or wilful act or omission by the Contractor, its Personnel or an Associate relating to, arising out of or in connection with the performance, purported performance and/or non-performance of the Supply or in connection with this Contract;
- (e) any act or omission of the Contractor, its Personnel or an Associate which causes or contributes to the Company breaching the Head Contract or the Principal breaching an AMC Agreement;
- (f) any act or omission of the Contractor, its Personnel or an Associate relating to, arising out of or in connection with the performance, purported performance and/or non-performance of the Supply or in connection with this Contract which results in any penalty being imposed for breach of a Legislative Requirement; and
- (g) any Claims against the Company by the Contractor, its Personnel or an Associate related to income tax, workers' compensation, annual leave, long service leave, superannuation or any applicable award, determination or agreement of a tribunal.

31.2 Each indemnity in this Contract is a continuing obligation separate and independent from the Contractor's other obligations and survives termination or expiration of this Contract.

## 32. CONSEQUENTIAL LOSS

32.1 Subject to clauses 32.2 and 32.3, a party will not be liable to the other party for any kind of Consequential Loss on any basis whatsoever, whether in contract, tort (including negligence) or otherwise.



- 32.2 The exclusion of liability for Consequential Loss above in clause 32.1 does not limit the Contractor's liability for Consequential Loss arising from or in connection with any of the following:
- (a) any personal injury to, or death or disease of, any persons to the extent caused or contributed to by an act or omission of the Contractor or its Personnel;
  - (b) wilful default or reckless acts or omissions by the Contractor or its Personnel;
  - (c) breach of confidentiality and/or privacy obligations or any actual or alleged infringement of any Intellectual Property Rights by the Contractor or its Personnel;
  - (d) liability that cannot be limited at law;
  - (e) any fraudulent misrepresentation, wilful or deliberate breach of this Contract, or wilful misconduct or criminal conduct by the Contractor or its Personnel;
  - (f) the Contractor's abandonment of its obligations under this Contract;
  - (g) liability of the kind referred to in clauses 32.3(a) and 32.3(b); or
  - (h) any damage to, loss of or destruction to property to the extent caused or contributed to by an act or omission of the Contractor, its Personnel or Associates that occurs on or after the Commencement Date (**Event**), where:
    - (i) a Claim is made by a third party against the Principal for, among other things, Consequential Loss (**Property Loss Claim**);
    - (ii) the Property Loss Claim is not solely pursued in contract against the Principal; and
    - (iii) the Event arises out of or in connection with the Contractor's performance or non-performance of this Contract.

- 32.3 The exclusion of liability for Consequential Loss in clause 32.1 does not apply to liability which:
- (a) is actually recovered under any of the Insurances up to the limits of liability of the Insurances specified in the Contract Particulars with no deduction to be made for any excess, deductible and/or self-insured retention paid or payable under any of the Insurances; or
  - (b) would have been recovered under the Insurances or paid or payable by way of an excess, deductible and/or self-insured retention under any of the Insurances:
    - (i) if the Contract Manager or its Personnel had:
      - (1) promptly claimed and diligently pursued a claim under the Insurances; and
      - (2) complied with the terms and conditions (including disclosure obligations) of the Insurances and the Contractor's obligations under this Contract; or
    - (ii) but for an insurer relying on the failure of the Contractor or its Personnel to comply with clause 32.3(b)(i) to avoid or reduce its liability under the Insurances.

### 33. CONFIDENTIAL INFORMATION

- 33.1 "**Confidential Information**" of a party ("Disclosing Party") means:
- (a) the terms of this Contract;
  - (b) the terms of the Head Contract and any AMC Agreement or other agreement collateral or supplemental to the Head Contract including but not limited to a User Agreement;

- (c) the Management Plans;
- (d) the Business Development and Marketing Plan;
- (e) any manual, procedure, plan, specification, map or any other document (including any document used in the preparation or development of anything referred to in clauses (a) to (e) of this definition);
- (f) the Intellectual Property Rights;
- (g) all trade secrets, ideas, know-how, concepts and information whether in writing or otherwise relating in any way to the subject matter of this Contract;
- (h) any information regarding the commercial bases of, or any negotiations or disputes in relation to or connected with, anything referred to in clauses (a) to (h) of this definition; and
- (i) any information that is confidential, or is made available by the party on a confidential basis, or in respect of which the party is bound by and discloses an obligation of confidentiality,

except information that is public knowledge (otherwise than as a result of a breach of confidentiality the other party or any of its permitted discloses).

33.2 Each party (**Recipient**):

- (a) may use Confidential Information of a Disclosing Party only for the purposes of this Contract; and
- (b) must keep confidential all Confidential Information of each Disclosing Party except:
  - (i) for disclosures permitted under clause 33.3; and
  - (ii) to the extent (if any) the Recipient is required by law to disclose any Confidential Information.

33.3 A Recipient may disclose Confidential Information of a Disclosing Party to persons who:

- (a) have a need to know for the purposes of this Contract (and only to the extent that each has a need to know); and
- (b) before disclosure:
  - (i) in the case of the Recipient's officers and employees, have been directed by the Recipient to keep confidential all Confidential Information of the Disclosing Party; and
  - (ii) in the case of other persons approved in writing by the Disclosing Party, have agreed in writing with the Recipient to comply with substantially the same obligations in respect of Confidential Information of the Disclosing Party as those imposed on the Recipient under this Contract,

(each a **Direction**).

33.4 A Recipient must:

- (a) ensure that each person to whom it discloses Confidential Information of a Disclosing Party under clause 33.3 complies with its Direction; and
- (b) notify the Disclosing Party of, and take all steps to prevent or stop, any suspected or actual breach of a Direction.

- 33.5 If a Recipient is required by law to disclose any Confidential Information of a Disclosing Party to a third person (including, but not limited to, government) the Recipient must:
- (a) before doing so:
    - (i) notify the Disclosing Party; and
    - (ii) give the Disclosing Party a reasonable opportunity to take any steps that the Disclosing Party considers necessary to protect the confidentiality of that information; and
  - (b) notify the third person that the information is confidential information of the Disclosing Party.
- 33.6 Each Party must use all reasonable endeavours to ensure that its Personnel and advisers:
- (a) are made aware of their respective obligations contained in this clause 32.1; and
  - (b) do not disclose any Confidential Information except as permitted by clause 33.3.
- 33.7 Notwithstanding anything in this clause 32.1, the Company may provide Confidential Information of the Contractor to the Principal for the purposes of the Company complying with its obligations under the Head Contract.
- 33.8 This clause 32.1 survives the expiry or earlier termination of this Contract.

## 34. PRIVACY

- 34.1 The Contractor agrees to be bound by all applicable privacy and data protection Legislative Requirements with respect to any act done or practice engaged in by the Contractor for the purposes of this Contract in the same way and to the same extent as the Company or the Principal would have been bound by them in respect of that act or practice had it been directly done or engaged in by the Company or the Principal.
- Without limiting clause 34.1 or clause 22, the Contractor must (and must ensure that its Personnel) comply with:
- (a) the Privacy Act;
  - (b) any other applicable privacy and data protection Legislative Requirements; and
  - (c) the privacy procedures or policies which form part of the Company's or the Principal's policies.
- 34.2 If the Contractor collects or has access to Personal Information in connection with providing the Supply, the Contractor must:
- (a) take all reasonable steps to ensure that the Personal Information is protected against misuse and loss, and from unauthorised access, modification or disclosure;
  - (b) provide appropriate training to its Personnel with respect to the correct handling of the Personal Information so as to minimise the risk of accidental security breaches;
  - (c) ensure that its internal operating systems only permit properly authorised Personnel to access the Personal Information; and
  - (d) give the Company notice as soon as the Contractor becomes aware that use or disclosure of the Personal Information is required or authorised by or under a Legislative Requirement.
- 34.3 The Contractor may only use any Personal Information collected or accessed in connection with this Contract to the extent necessary to provide the Supply.

- 34.4 If the Contractor collects or has access to Personal Information in connection with providing the Supply, the Contractor:
- (a) may disclose the Personal Information to its Personnel but only to those who need to know for the purposes of this Contract (and only to that extent); and
  - (b) must not otherwise disclose (directly or indirectly) the Personal Information to any other person without the Company's prior written consent.

34.5 If the Contractor becomes aware that it or its Personnel (or any of their respective Personnel) is using or disclosing, or has used or disclosed, Personal Information in contravention of this clause 34, the Contractor must promptly give the Company notice of the full details of the contravention. The Company's knowledge of, or response to, any such notice, in whatever form that may take, does not affect any other rights of the Company under this Contract.

## 35. DATA PROTECTION

- 35.1 The Contractor must not (and must ensure that its Personnel do not):
- (a) use Data held by the Contractor, or to which the Contractor has access, other than for the purposes of fulfilling its obligations under this Contract;
  - (b) purport to sell, let for hire, assign rights in or otherwise dispose of any Data (unless the Company expressly consents in writing to the doing of any such act); or
  - (c) alter Data in any way, other than to provide the Supply in accordance with this Contract.
- 35.2 Unless otherwise notified by the Company in writing, the Contractor must ensure that all Data is identifiable as the property of the Principal and must not cause or have caused any Security Interest to be placed on the Data or any database (whether electronic or otherwise) in which such Data is stored.
- To the extent applicable to the provision of the Supply, the Contractor must ensure that all Data is stored, maintained and capable of being accessed by the Company and the Principal in accordance with the standards published from time to time by the Public Record Office of Western Australia.
- 35.3 The Contractor must establish and maintain safeguards against the destruction, loss, alteration or unauthorised access of Data in the possession, custody or control of the Contractor that:
- (a) are no less rigorous than those safeguards that meet generally accepted industry standards;
  - (b) comply with ISO/IEC 27001;
  - (c) meets the requirements of the Australian Signals Directorate Essential Eight Maturity Model and the Western Australian Government Digital Security Policy; and
  - (d) comply with all applicable Legislative Requirements regarding privacy and data protection.
- 35.4 The Contractor must maintain and comply with a security framework and associated security policies which:
- (a) any applicable Defence Security and Other Requirements, to the extent notified by the Company in writing from time to time; and
  - (b) aim to ensure compliance with this clause 35.

35.5 Other than to the extent necessary or integral to the performance of the Supply, the Contractor must not damage, lose or destroy, or adversely impact the Data or any part of the Data other than where destruction of Data is specifically required as part of the Supply or is otherwise agreed in writing between the parties.

35.6 If the Contractor is authorised in writing by the Company to dispose of any Data or other records of the Contractor, it must ensure that such disposal is undertaken so as to ensure that no reconstruction of the

Data or record is possible and that such disposal complies with the requirements in the Australian Signal Directorate's Australian Government Information Security Manual.

35.7 Without limiting the rights or obligations of either party under this Contract, the Contractor must:

- (a) at least once in every twelve month period during the Term; and
- (b) promptly on request by the Company at any other time during the Term,

provide the Company with a copy of all Data stored by the Contractor on its servers or otherwise in its possession or control, in an open, industry standard format as reasonably directed by the Company.

35.8 Without limiting any other right or remedy of the Company under or in connection with this Contract, the Contractor must use its best efforts to assist the Company to recover and restore any Data of the Principal that has been damaged, lost or destroyed to the last viable backup:

- (a) at no additional cost, to the extent that the damage, loss or destruction was caused by the Contractor or any of its Personnel; and
- (b) at an agreed fee, to the extent that the damage, loss or destruction was due to any other cause.

35.9 In providing the Supply, the Contractor must not:

- (a) disclose any Data or Personal Information collected by the Contractor in connection with the Supply to any person who is not in Australia; or
- (b) store or process Data or Personal Information collected by the Contractor in connection with the Supply in any country outside Australia,

without the Company's prior written consent.

35.10 The Contractor must ensure that any secondary subcontract entered into for the purpose of fulfilling its obligations under this this Contract imposes on the Secondary Subcontractor the same obligations as the Contractor has under this clause 20.

## 36. DATA BREACHES

36.1 If the Contractor becomes aware or suspects that:

- (a) there has been unauthorised access to, or disclosure of any Data or any Personal Information; or
- (b) Data has been lost in circumstances where unauthorised access to, or unauthorised disclosure of, the Data may occur,

(a **Data Breach**), the Contractor must promptly notify the Company of that Data Breach.

36.2 Any notice received in accordance with clause 36.1 must provide all information known to the Contractor at the time of the notice, including the nature and details of the Data Breach and the categories of Personal Information potentially affected.

36.3 If:

- (a) the Company becomes aware, or suspects, that a Data Breach has occurred; or
- (b) the Contractor has notified the Company of a Data Breach in accordance with clause 36.1,
- (c) then the Contractor must:

- (d) promptly disclose to the Company all information relevant to the actual or suspected Data Breach;
- (e) promptly (and in any event, within 5 days of becoming aware or suspecting that a Data Breach has occurred) investigate whether a Data Breach has in fact occurred and the circumstances surrounding that Data Breach;
- (f) discuss in good faith the results of the investigation with the Company, including providing the Company with access to and copies of relevant records relating to the investigation; and
- (g) comply with any reasonable directions issued by the Company in respect of any preventative, remedial or other action to be taken by the Contractor.

36.4 The Contractor must keep the Company up-to-date and informed about any new information or developments in respect of any investigation conducted by the Contractor or otherwise relating to the Data Breach, as and when they arise.

36.5 The Contractor:

- (a) acknowledges and agrees that the Company is solely responsible for determining whether a Data Breach results in a real risk of serious harm to any of the individuals to whom the Personal Information relates;
- (b) must co-operate with the Company to assist it in making the determination referred to in clause 36.3(a);
- (c) where the Company determines that:
  - (i) a Data Breach has occurred; and
  - (ii) the Data Breach results in a real risk of serious harm, must:
    - (iii) discuss in good faith and comply with any reasonable directions issued by the Company, including whether the Principal, the Company or the Contractor will be the party responsible for fulfilling the relevant notification requirements under the Privacy Act in respect of the Data Breach; and
    - (iv) must not disclose to any third party (including the Office of the Australian Information Commissioner (**OAIC**) or any other Authority) the existence or circumstances surrounding any Data Breach without the prior written approval of the Company (not to be unreasonably withheld).

Where the parties determine that the Contractor will be the party responsible for fulfilling the relevant notification requirements under the Privacy Act, the Contractor must:

- (a) comply with all such requirements in accordance with the Privacy Act in respect of the Data Breach; and
- (b) consult with the Company prior to issuing any relevant notification statements to the OAIC and affected individuals, including providing the Company with an opportunity to review any draft statements. The subcontractor agrees to incorporate any reasonable changes requested by the Company in relation to such statements.

36.6 Without limiting the Contractor's other obligations under this Contract, if the Contractor becomes aware of a Data Breach, the Contractor must:

- (a) take all reasonable steps to contain and remedy the Data Breach; and

- (b) promptly take appropriate remedial action to:
  - (i) mitigate any loss or interference with privacy flowing from the incident;
  - (ii) prevent any potential further serious harm to any individuals; and
  - (iii) protect the affected Personal Information from further misuse or breach,
 as appropriate, depending on the nature and circumstances of the particular Data Breach.

36.7 Without limiting clauses 36.1 to 36.5 (inclusive), the Contractor must cooperate with and provide all reasonable assistance to the Company for the purpose of ensuring that the Company complies with its obligations under the Privacy Act in respect of Personal Information disclosed or otherwise made available by the Company to the Contractor.

36.8 The Contractor must ensure that any secondary subcontract entered into for the purpose of fulfilling its obligations under this Contract imposes on each Secondary Subcontractor the same obligations as imposed on the Facility Manager under this clause 36.

### 37. PROBITY EVENT

37.1 The Contractor must give notice to the Company promptly upon becoming aware that a Probity Event has occurred or is likely to occur. The notice, must, at a minimum, describe the Probity Event, when the Probity Event occurred, or is likely to occur, and the circumstances giving rise to the Probity Event. Promptly, and in any case no later than 5 Business Days after the Company receives a notice becomes aware of a Probity Event, the Contractor must meet with the Company to agree a course of action to remedy or otherwise address the Probity Event and the timeframe in which that will occur and comply with any agreement made in the agreed timeframe. If the Company and the Contractor fail to agree to a course of action (including where the Contractor fails to meet with the Company, the Contractor must, at its cost, take any action reasonably required by the Company to investigate and remedy the Probity Event in accordance with any timeframe determined by the Company.

37.2 The Contractor must give notice to the Company promptly upon becoming aware of any allegation that a Probity Event has occurred or is likely to occur.

37.3 The Contractor agrees that the Company may, or may require the Contractor at any time to, conduct an investigation, at the Company's cost, in respect of:

- (a) any allegation a Probity Event has occurred or is likely to occur;
- (b) any Relevant Person; or
- (c) any person who is proposed to become a Relevant Person.

37.4 The Contractor must obtain all relevant consents from any person in connection with an investigation in respect of an alleged Probity Event.

37.5 Where the Company requires the Contractor to conduct an investigation in accordance with clause 37.3 the Contractor must promptly:

- (a) conduct the investigation; and
- (b) communicate the findings of that investigation to the Company in the form required by the Company.



37.6 The Contractor must bear all costs or reimburse the Company for all costs reasonably and properly incurred by the Company (as applicable) in connection with a Probity Event (but not a mere allegation of a Probity Event) or any investigation that finds a Probity Event has occurred.

## 38. DEFINED TERMS

In this Contract:

**"AMC Agreements"** means the agreements relating to the AMC, as notified by the Company from time to time.

**"AMC CUF Infrastructure"** means:

- (a) the Common User Facility;
- (b) the Floating Dock Infrastructure and the SPMTs;
- (c) the Ancillary Equipment;
- (d) any other items on the Inventory (not including the Consumables);
- (e) Utilities and all other improvements and property on the Site owned by, under the control of or used by the Principal that are or is incidental or necessary for the proper and convenient use and operation of the Site; and
- (f) anything else in or on the AMC that the Company notifies to the Contractor in writing from time to time.

**"Ancillary Equipment"** means all mechanical equipment, tools, machines, spare parts and other items which are necessary for the operation and maintenance of the AMC CUF Infrastructure and performance of the Services which are not Consumables.

**"Australian Marine Complex"** or **"AMC"** means the heavy industry fabrication and maintenance facility, comprising the Site and the AMC CUF Infrastructure together and also includes the Leasehold Lots.

**"Ariba"** means the Company's Web-based Service Procurement Application that handles all transactions associated with the management of procurement activities.

**"Asset"** means each asset that forms a part of the AMC CUF infrastructure in respect of which the Contractor is required to provide the Supply under this Contract.

**"Associate"** means, in relation to a party, any body corporate which is a Related Body Corporate of a party or any body corporate acting under that party's direction, as the case requires.

**"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 Supply or the performance of this Contract.

**"Authority"** or **"Authorities"** means all Commonwealth, state, territorial and local government departments, bodies, trusts, agencies, instrumentalities and other public authorities.

**"Building Act"** means the Building and Construction Industry (Improving Productivity) Act 2016 (Cth) as amended, superseded, replaced or varied from time to time.

**"Business Day"** means any day, excluding:

- (a) a Saturday or Sunday;
- (b) a gazetted public holiday in Perth, Western Australia under the Public and Bank Holidays Act 1972 (WA); or

(c) 27, 28, 29, 30 or 31 December.

**"Capital Works"** means the procurement and construction of new infrastructure on the Site in furtherance of the State's Objectives.

**"Capital Works Contract"** means any contract entered into by the Principal or the State for any Capital Works or related Design Works after the 17 May 2022 or where the works the subject of the Capital Works Contract have not been completed as at 17 May 2022.

**"Capital Works Defect"** means any failures, errors, defects or non-conformances in any assets comprising the CUF which may have arisen from breaches, acts, errors or omissions of a contractor or subcontractor engaged pursuant to a Capital Works Contract.

**"Change in Law"** means:

- (a) coming into effect or implementation after the date the Company issues the affected Work Order of any:
  - (i) acts, ordinances, regulations, awards and proclamations of the Commonwealth and/or the State applicable to the Supply, other than any such acts, ordinances, regulations, awards and proclamations which on the date the Work Order was issued had been published or is reasonably foreseeable; or
  - (ii) requirements of any local government body having jurisdiction in connection with the Supply, the AMC CUF Infrastructure or the AMC more generally; or
- (b) any applicable judgement of a relevant court of law delivered after the date the Company issues the affected Work Order which changes a binding precedent.

**"Claim"** means any claim, demand, remedy, injury, damage, cost, loss, expense, liability, suit, action, proceeding, verdict, judgement, right of action or debt whether arising at law, in equity, under statute or otherwise.

**"Code of Conduct"** means Ventia's Code of Conduct, as updated from time to time, available on Ventia's website. A current version of the Code of Conduct is available on Ventia's website: <https://www.ventia.com/who-we-are/code-of-conduct>.

**"Common User Facility"** or **"CUF"** means the area including the facilities depicted in the Schedule to this Contract, which may be developed or enhanced from time to time with Capital Works.

**"Consequential Loss"** means the following Losses whether arising from breach of this Contract, by law (to the extent permitted) or otherwise (including negligence):

- (a) losses that do not arise naturally (that is, according to the usual course of things) from the breach or occurrence giving rise to the loss;
- (b) indirect costs, losses, liability or damage;
- (c) financing costs;
- (d) business interruption;
- (e) loss of use;
- (f) profit and anticipated profit; and
- (g) anticipated revenue,

and despite paragraphs (a) to (g) above, does not include any amount or part of an amount expressly provided for under this Contract.

**"Consents"** means:

- (a) all certificates, licences, consents, permits, registrations, qualifications, authorisations or approvals required to meet all applicable Legislative Requirements applicable to the performance of the Supply and, where applicable, development of the AMC CUF Infrastructure and the Site more generally;
- (b) (without limiting paragraph (a)) all certificates, licences, consents, permits, registrations, qualifications, authorisations or approvals required to meet the Defence Security and Other Requirements; and

such other certificates, licences, consents, permits, registrations, authorisations or approvals required for the performance of the Supply as may be notified in writing by the Company from time to time.

**"Consumables"** means all items consumed by, or needing regular replacement during, the operation and maintenance of the AMC CUF Infrastructure, including small tools, lubricants, filters, additives, and other expendable materials, which are required to be procured and replaced (as applicable).

**"Contamination"** has the meaning given to that term in Section 4 of the *Contaminated Sites Act 2003* (WA).

**"Critical Risk Protocols"** means the protocols developed by Ventia that outline the supervision and management of specific critical risks that people on Ventia'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 Ventia from time to time. A current version of the Critical Risk Protocols are available on Ventia's website: <https://connect.ventia.com/safety/>.

**"Dangerous Substance"** means a substance which, because it is toxic, corrosive, flammable, explosive or infectious or possesses some other dangerous characteristics, is potentially dangerous to the Environment:

- (a) when stored or handled; or
- (b) when any part of the Environment is exposed to it. **"Data"** means all:
  - (c) data, information and other materials, in whatever format, provided to the Contractor by on behalf of the Principal for the purposes of providing the Supply (Raw Data); and
  - (d) data, information and other materials, in whatever format, generated, stored, processed, retrieved, printed or produced utilising the Raw Data or otherwise generated, stored, processed,

retrieved, printed or produced by or on behalf of the Contractor in the course of providing the Supply (Processed Data),

and includes:

- (e) data created by the operation of any computer language or software, regardless of where such software is operated, executed or resident; and
- (f) input files, output files, import files, export files and configuration data.

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

**"Defence Security and Other Requirements"** means all security and other requirements of the Department of Defence and any other Federal, State or Local Government Department, Authority or agency, including membership of the Defence Industry Security Program, as notified from time to time.

**"Deliverables"** means any goods or deliverables to be provided or produced by the Contractor in the provision of the Supply.

**"Discriminatory Change in Law"** means a Change in Law that:

- (a) as at the date the Company issued the affected Work Order would not have been reasonably anticipated by a competent provider of equivalent Goods or Services exercising Good Engineering and Operating Practice;
- (b) has a disproportionate effect on the AMC CUF Infrastructure or the AMC CUF more generally and any similar facilities (including ports and cargo terminals) in WA or Australia; and
- (c) will cause the Contractor to incur materially more cost than otherwise would have been incurred in performing the Supply.

**"Due Date and Time"** means the date and time by which all Supply specified in a Work Order must be completed or the date by which Goods must be delivered, as specified in the relevant Work Order.

**"Disclosing Party"** is defined in clause 33.1.

**"Defence Industry Security Program"** or **"DISP"** means the program operated by the Department of Defence which is detailed on <https://www.defence.gov.au/security/industry>.

**"Emergency"** means a situation involving actual or reasonably apprehended, substantial damage to or loss of property, injury to persons or loss of life or substantial damage to the Environment.

**"Environment"** means each of the following:

- (a) the components of the earth, including soil, the atmosphere and water;
- (b) any organic or inorganic matter and any living organism;
- (c) human made or modified structures and areas;
- (d) ecosystems and their constituent parts, including people and communities;
- (e) the qualities and characteristics of places and areas that contribute to their biological diversity and ecological integrity, scientific value and amenity;
- (f) the interactions and interdependencies within and between the things mentioned in paragraphs (a) to (e); and

- (g) the social, aesthetic, cultural and economic conditions that affect, or are affected by, the things mentioned in paragraphs (a) to (e).

**"Environmental Harm"** has the same meaning as that term is defined in the *Environmental Protection Act 1986* (WA).

**"Environmental Law"** means any Legislative Requirement:

- (h) relating to the storage, handling or transportation of Dangerous Substances;
- (i) relating to occupational health and safety; or
- (j) which has as one of its purposes or effects the protection of the Environment.

**"Environmental Notice"** means a notice issued by an Authority in respect of a matter or matters pertaining to the Environment.

**"Floating Dock Infrastructure"** means:

- (a) the 99 metre x 53 metre floating dock as shown marked on the plan in the Schedule to this Contract;
- (b) the SPMTs; and
- (c) the land transfer interface on the Site over which vessels and cargo will be transferred from the floating dock to the hardstand on the shore,

and includes all associated infrastructure and equipment such as:

- (d) equipment systems;
- (e) portable roadway and access ramps;
- (f) dock shore power, sewerage transfer and holding, refuelling, fresh water services;
- (g) hoses, cables, ropes, layup moorings and any other connection between the floating dock and the shore;
- (h) SPMT maintenance facilities, wash down and separator equipment;
- (i) wharves and heavy load roadways as applicable to SPMT operations; and
- (j) cradles and dock blocks.

**"FOT"** means, in relation to delivery of the Goods, free on truck (or other transport) and includes the responsibility (and associated costs) for packing, loading, transportation and insurance (for the full replacement value of the Goods) to the nominated delivery point for the Goods.

**"Goods"** means all goods, equipment, materials, articles, or any other property or parts described in the Contract Particulars which may be procured from the Contractor via Work Orders and includes, without limitation, all ancillary activities such as design, manufacture, inspection, testing, expediting, quality assurance and control, painting, packing and delivery as specified or required hereunder.

**"Good Engineering Practice"** means the practices, methods and acts carried out by a person who exercises that degree of diligence, prudence and foresight reasonably and ordinarily exercised by skilled and experienced managers and operators engaged in the same type of undertaking under the same or similar circumstances and conditions. Good Engineering Practice includes but is not limited ensuring that:

- (a) to the extent relevant to the Supply, the AMC CUF Infrastructure is operated in a manner safe to people and the Environment and in accordance with all relevant Legislative Requirements;

- (b) to the extent relevant to the Supply, sufficient, experienced and trained operating personnel are available to operate the AMC CUF Infrastructure properly and efficiently and are able to meet the needs of Users and respond to Emergency conditions so as to minimise any disruption in connection with the use of the AMC CUF Infrastructure by Users;
- (c) adequate materials, resources and supplies are available to meet the needs of the AMC CUF Infrastructure and the Users;
- (d) reasonably prudent cost and budget controls;
- (e) all maintenance and repairs are carried out to provide long term and reliable operation and are performed by knowledgeable, trained and experienced personnel using proper equipment, tools and procedures in accordance with manufacturer's recommendations;
- (f) appropriate monitoring and testing is carried out to ensure that the AMC CUF Infrastructure will function properly under normal and Emergency conditions; and
- (g) industry best practices and quality standards are adhered in all relevant respects.

**"Head Contract"** means the contract between the Company and the Principal under which the Company undertakes to provide facilities management and other services to the Principal.

**"Insurances"** means the insurances set out in clause 33.1 (or any one or more of them, as the context requires).

**"Leasehold Lots"** means the leasehold lots adjacent to the Common User Facility, as indicated approximately on the plan in the Schedule attached to this Contract.

**"Legislative Requirements"** or **"Laws"** include:

- (a) acts, ordinances, regulations, by-laws, orders, policies, awards and proclamations of the Commonwealth and the State applicable to the Supply, the AMC CUF Infrastructure and the Australian Marine Complex more generally;
- (b) certificates, licences, consents, permits, approvals, codes, quality standards and requirements of organisations having jurisdiction in connection with or recognised generally as applicable to the Supply, including the requirements of any council, industry, body or other Authority and the requirements of any development consent issued in relation to the AMC CUF Infrastructure or the Australian Marine Complex more generally.

**"Loss"** means loss of any kind whatsoever whether direct or indirect which includes but is not limited to legal expenses, consequential or special damage, loss of profits, loss of use, loss of revenue, anticipated revenue or interest arising from any cause whatsoever.

**"Notifiable Incident"** means any health or safety incident (including a near miss) that is required to be reported to the relevant health and safety regulator or Authority.

**"OHS Law"** means all Legal Requirements concerning occupational health and safety and welfare of people at work that are, or come into, force during the duration of the Supply in the State of Western Australia and includes the *Occupational Safety and Health Act 1984 (WA)*, the *Occupational Safety and Health Regulations 1996 (WA)*, or the *Work Health and Safety Act 2020 (WA)* and its accompanying regulations.

**"Personnel"** means a party's officers, employees, agents, Related Body Bodies Corporates, contractors, consultants, or subcontractors (of any tier).

**"Physical Matters"** means:

- (a) the condition and state of repair of the Site and the AMC CUF Infrastructure;

- (b) the existence of any defects (latent or patent) affecting the Site and the AMC CUF Infrastructure, including but not limited to any soil or sub-soil conditions or subsidence;
- (c) whether the Site is or may be Contaminated;
- (d) the presence, extent, location and condition of any asbestos and asbestos containing material in or on the Site;
- (e) the fitness or suitability of the Site and the AMC CUF Infrastructure for any use or purpose; and
- (f) the existence, location or condition of Utilities connected to or within the Site.

"PPS Law" means:

- (a) the Personal Property Securities Act 2009 (Cth) and any regulation made at any time under that Act, including the Personal Property Securities Regulations 2010 (Cth) (each as amended from time to time); and
- (b) any amendment made at any time to any other legislation as a consequence of a law or regulation referred to in paragraph (a).

"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 in respect of the Contractor, the officers, employees, agents, contractors and subcontractors of the Contractor.

"Planned 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 Act" means the *Privacy Act 1988* (Cth).

"Probity Event" includes any event or thing which occurs before or after the date of this Contract until the expiration or earlier termination of the Contract which:

- (a) has a material adverse effect on, or on the perception of, the character, integrity or honesty of a Relevant Person;
- (b) relates to a Relevant Person and has or may have a material adverse effect on the public interest, or public confidence, in the Australian Marine Complex;
- (c) involves a breach by a Relevant Person of any law in relation to bribery, anti-corruption or dishonesty offences; or
- (d) involves a material failure of a Relevant Person to achieve or maintain:
  - (i) reasonable standards of ethical behaviour;
  - (ii) the avoidance of conflicts of interest which will have, or are likely to have, a material adverse effect on the ability of a Relevant Person to carry out and observe the Contractor's obligations in connection with the Australian Marine Complex; or
  - (iii) other standards of conduct that would otherwise be reasonably expected of a party involved in, or associated with, a facility or service funded by the State.

"Public Health Order" means an order, declaration, direction or notice issued by an Authority in accordance with public health legislation or regulations, including under any delegated authority relating to the same.



“**Reactive Maintenance**” means maintenance that is not Planned Maintenance, but which is necessarily undertaken in response to an unforeseen or emergency breakdown, performance issue or other similar issue arising in respect of an Asset and includes unplanned maintenance services to repair and restore the function, operation and condition of an Asset in the event of a malfunction or breakdown;

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

“**Relevant Person**” means the Contractor, any Personnel and any Related Body Corporate of the Contractor, in each case, who has an involvement in any activity, function or task related to the performance of the Contractor's obligations under this Contract.

“**Reputable Insurer**” means:

- (a) an insurer authorised to operate in Australia by the Australian Prudential Regulatory Authority with the Required Rating; or
- (b) a reputable and solvent overseas insurer regulated by a body equivalent to the Australian Prudential Regulatory Authority with the Required Rating; or
- (c) an insurer established under either Commonwealth or State Legislative Requirements.

“**Required Rating**” means a credit rating of at least A- by Standard and Poor's (Australia) Pty Limited or an equivalent long term credit rating from another internationally recognised rating agency.

“**Services**” means those services described in the Contract Particulars which may be procured from the Contractor via Planned Maintenance Work Orders and Reactive Maintenance Work Orders;

“**Site**” means those parts of the AMC more particularly described on the plan in the Schedule to this Contract.

“**State**” means the Crown in right of the State of Western Australia;

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

“**Security Interest**” means any:

- (a) 'security interest' as defined in the PPS Law;
- (b) security for payment of money, performance of obligations or protection against default (including a mortgage, bill of sale, charge, lien, pledge, trust, power or title retention arrangement, right of set-off, assignment of income, garnishee order or monetary claim and flawed deposit arrangements); and
- (c) thing or preferential interest or arrangement of any kind giving a person priority or preference over claims of other persons or creditors with respect to any property or asset,

and includes any agreement to create any of them or allow them to exist.

“**Self-Propelled Modular Transporters**” or “**SPMT**” means the 512-wheeled self-propelled modular transporters transfer system for moving vessels and cargo at the AMC.

“**State**” means the State of Western Australia.

“**State's Objectives**” include:

- (a) providing an internationally competitive complex for manufacturing, fabrication, assembly, technology, repair and maintenance servicing activities in the marine, defence and resource

industries and maintaining and enhancing the AMC's reputation as a world class centre of excellence in respect of the same;

- (b) ensuring fair and equitable third-party access to the AMC CUF Infrastructure, including the Common User Facility;
- (c) ensuring that the Common User Facility is used for its highest and best use and in a manner likely to generate the greatest economic benefit for Western Australia;
- (d) directly and indirectly generating local business and employment in connection with the operation of the Common User Facility, including by working with agencies to foster local content in fabrication, refit and maintenance work;
- (e) achieving best industry practice in the operation and maintenance of the Common User Facility and other assets at the AMC; and
- (f) ensuring the State's compliance with the requirements of the AMC Agreements and all relevant Legislative Requirements.

**"Supply"** means the supply of Goods and/or Services described in the Contract Particulars, to be delivered in accordance with a Work Order.

**"User"** means a person who has or proposes to have a contract or arrangement to occupy or utilise part or all of the AMC CUF Infrastructure or the Site, as the context requires.

**"User Agreement"** means a contract between the Principal and a User in the form prescribed by the Principal from time to time, setting out the terms on which the User is entitled to occupy or utilise part or all of the AMC CUF Infrastructure (but not including the Floating Dock Infrastructure or the SPMTs) or the Site (as applicable).

**"Utilities"** means water, electricity, gas, telecommunications and sewerage services to the Site.

**"Visitors"** in relation to a person means the clients, customers, invitees, licensees and visitors of the person.

**"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.

**"Waste"** has the same meaning given to that term under the Environmental Protection Act 1986 (WA).

**"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 WMS and specifies (but not limited to) a brief description of the Supply, timeframes for attendance and completion, criticality, site and any other details relevant for the performance of the Supply;

**"WMS"** means the Company's work management or compliance management system referred to in 17.2 which may include:

- (a) the Company's Ariba platform;
- (b) the Company's WorkMetrics platform;
- (c) the Company's Rapid Global platform;
- (d) a system or platform required by the Principal in relation to the Supply;
- (e) any other system or platform used by the Company in relation to this Contract or the Supply,

which must be used by the Contractor if directed or notified by the Company in writing.

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**SCHEDULE – SITE PLAN**

### LEGEND

- B** Breakwaters
  - H** Harbour
  - NH** CUF North Harbour
  - W1** Wharf AMC1
  - W2** Wharf AMC2
  - W3** Wharf AMC3
  - W4** Wharf AMC4
  - W5** Wharf AMC5
  - W6** Wharf AMC6
  - 1** Building B001 Fabrication Hall No. 1
  - 2** Building B002 Project Office & Amenities
  - 3** Building B003 Project Offices
  - 4** Building B004 Tradeshop & Workshop
  - 5** Building B005 Workshop
  - 6** Building B006 Project Office
  - 7** Building B007 Facility Manager Administration Building
  - 8** Building B008 Security & Gate House at Quill Way entrance
  - 9** Building B009 Fabrication Hall No. 2
  - 10** Building B010 Warehouse
  - 11** Building B011 Floating Dock Office & SPMT Garage
  - 12** Building B012 Converter 1 near AMC1/2
  - 13** Building B013 Converter 2 near AMC3
  - 14** Building B014 Converter 3 near AMC4
  - 15** Building B015 Pump House 1 near BOO5
  - 16** Building B016 Pump House 2 near AMC1
  - 17** Building B017 Pump House 3 near B011
  - 18** Building B018 Switch Room near B011
  - 20** Building B020 Transportable near AMC5
  - 21** Building B021 Transportable Office near AMC5
  - 22** Building B022 Transportable near AMC5
  - 23** Building B023 Security & Gate House at AMC5
  - 52** Building B052 Transportable Toilet for B004
  - 53** Building B053 Transportable Office
  - 54** Building B054 Transportable Induction Room
  - 55** Building B055 Transportable Public Toilet
  - 56** Building B056 Security & Gate House at AMC4
  - 57** Building B057 Crib Room near AMC4
  - 58** Building B058 Transportable Project Office
  - 60** Building B060 Transportable near B003
  - 61** Building B061 Ablution near AMC4
  - 64** Building B064 Transportable near AMC1/2
  - 65** Building B065 Transportable near AMC1/2
  - 66** Building B066 Transportable near AMC1/2
  - 67** Building B067 Transportable near AMC4
  - 68** Building B068 Transportable near AMC4
  - 70** Building B070 Transportable Operations Administration Building
  - 79** Building B079 Southern Gatehouse at Nautical Drive entrance
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- CUF
  - CUF North
  - CUF North Jetty
  - Laydown Area -Lot 101
  - Laydown Area -1 Alarcity
  - Gen Maintenance, Sump D - Laydown Area (South)
  - P B7 Car Park (North)
  - P B2 Car Park (North)
  - P B3 Car Park (North)
  - ii Public Toilets
  - S Secure Entrances
  - CS Customs Secure Wharf Entrance
  - E Entrance via boom, gate or air key

