

## 1. INTERPRETATION

### 1.1 Definitions

Unless and to the extent the context otherwise requires or indicates:

**Act of Prevention** means:

- (a) a breach of this Services Agreement by Select;
  - (i) a variation to the Services pursuant to clause 8; or
  - (ii) a suspension of the Services under clause 11.8, not caused by an act or omission of the Services Provider or its employees, agents and subcontractors.

**Anti-Bribery and Anti-Corruption Legislation** means any statute, law, code, regulation or similar instrument in connection with the prohibition of bribery and corruption applicable to the performance of this Subcontract (including by virtue of the place of domicile or operations of the parties and their related bodies corporate), and includes the *Criminal Code Act 1995* (Cth), the *Crimes Act 1914* (Cth), the *Public Governance, Performance and Accountability Act 2013* (Cth), the *Corporations Act 2001* (Cth) and the *Bribery Act 2010* (UK).

**Associated Person** means a person or entity that performs services for another, including as an employee, agent, contractor, representative or subsidiary of that other person or entity.

**Australian Standards** means the Australian standards published by Standards Australia Limited.

**BCIIP Act** means the *Building and Construction Industry (Improving Productivity) Act 2016* (Cth).

**Authority** means any court or tribunal with the relevant jurisdiction, or any public or statutory or government (whether federal, state or local) body, authority, council, inspectorate, department, ministry, official or agency which in any way governs or affects any aspect of the Services.

**Building Code of Australia** means the most recent code by that name produced and maintained by the Australian Building Codes Board (or any replacement board or entity) on behalf of the Commonwealth, State, Territory or Local government, and as may be varied from time to time.

**Business Day** means:

- (a) if the governing law is not Victoria or Queensland, any day other than:
  - (i) a Saturday, Sunday or a public holiday (in the State or Territory of the Governing Law); or
  - (ii) 27, 28, 29, 30 and 31 December.
- (b) if the governing law is Victoria, Business Day means a day that is not:
  - (i) a Saturday or Sunday; or
  - (ii) a day that is wholly or partly observed as a public holiday throughout Victoria.
- (c) if the governing law is Queensland, Business Day means a day that is not:
  - (i) a Saturday or Sunday; or
  - (ii) a public holiday, special holiday or bank holiday in the place in which any relevant act is to be or may be done; or
  - (iii) any day occurring within any of the following periods:
    - (A) 22 to 24 December inclusive;
    - (B) 27 to 31 December inclusive;
    - (C) 2 to 10 January inclusive.

**Claim** means any claim for loss, damages, liabilities, expenses, costs, expenses, charges, fee adjustments or other amounts of any kind arising out of or in connection with the Services or relief from any of the Services Provider's obligations or liabilities under the Services Order Contract or otherwise at law or in equity (including under statute, in tort (including negligence), quantum meruit, unjust enrichment or restitution).

**Code** means the *Code for the Tendering and Performance of Building Work 2016* (available at [www.legislation.gov.au](http://www.legislation.gov.au)) made under the BCIIP Act as amended from time to time.

**Commencement Date** means the date stated in the Services Order.

**Confidential Information** means:

- (a) all information relating to the Services or this Services Agreement that concerns the technical or commercial know-how or systems, procedures, business, finances, plans, pricing, trade suppliers, construction methodology, construction techniques, construction planning, design, personnel, products, services, quotations, commercial feasibility, time, cost, demand projections, sizing, marketing, finance, income, public relations, client user group information, customer details, legal aspects or leasing arrangements;
- (b) all other information treated by Select as confidential; and
- (c) all copies of the information, notes and other records referred to in paragraphs (a) and (b), except information that is public knowledge (otherwise than as a result of a breach of confidentiality by the Services Provider or any of its permitted discloses).

**COR Laws** means Legislative Requirements relating to fatigue management, speed and mass, dimension and load restraint compliance requirements generally referred to as 'Chain of Responsibility' laws or 'Heavy Vehicle' laws.

**COR Systems** means policies, procedures, standards, training and systems designed to ensure, so far as is reasonably practicable, compliance with COR Laws.

**Damage** means any damage, loss, liability, cost, charge, expense, outgoing or payment suffered or incurred by Select.

**Debt Due** means any amounts recoverable from the Services Provider by Select pursuant to the Services Order Contract.

**Facilitation Payment** means a minor, often unofficial payment made to secure or expedite a routine government action by a government official or employee (but excludes a payment specifically authorised by the written domestic law of the country in which it is made).

**Former Code** means the *Building Code 2013* (Cth).

**Good Industry Practice** means that degree of skill, care, prudence, foresight and practice which would reasonably and ordinarily be expected from time to time of a skilled and experienced person, engaged in the same type of undertaking as that of the Services Provider, under the same or similar circumstances.

**Industrial Instrument** means an award or agreement, however designated, that is made under or recognised by an industrial law (within the meaning of the *Fair Work Act 2009* (Cth) as amended from time to time) and relates to the relationship between an employer and the employer's employees.

**Insolvency Event** means:

- (a) where a party, being a person:
  - (i) has judgment entered against him or her in any court in any jurisdiction; or
  - (ii) becomes the subject of a bankruptcy petition; or
  - (iii) commits an act of bankruptcy; or
  - (iv) is declared bankrupt; or
  - (v) has communications with creditors with a view to entering into, or enters into, any form of compromise or arrangement with his or her creditors; or
- (b) where a party is a company and any one of the following occur:
  - (i) notice is given of a meeting of creditors with a view to the corporation entering into a deed of company arrangement; or
  - (ii) the corporation entering a deed of company arrangement with creditors; or
  - (iii) a controller, administrator, receiver, manager, receiver and manager, trustee, provisional liquidator or liquidator is appointed to the corporation or any asset of the corporation; or
  - (iv) an application is made to a court (and is not stayed, withdrawn or dismissed within 10 Business Days) for an order, or an order is made, or a meeting is convened, or a resolution is passed, for the purpose of:
    - (A) appointing a controller, administrator, receiver, manager, receiver and manager, trustee, provisional liquidator or liquidator; or
    - (B) winding up the corporation; or
    - (C) proposing or implementing a scheme of arrangement in respect of the corporation; or
  - (v) a mortgagee of any property of the corporation takes possession of that property; or
  - (vi) a moratorium of any debts of the corporation or an official assignment or a composition or an arrangement (formal or informal) with the corporation's creditors or any similar proceeding or arrangement by which the assets of the corporation are subjected conditionally or unconditionally to the control of the corporation's creditors is ordered, declared or agreed to, or is applied for and the application is not withdrawn or dismissed within 10 Business Days; or
  - (vii) any writ of execution, garnishee order, mareva injunction or similar order, attachment, distress or other process is made, levied or issued against or in relation to any asset of the corporation; or
  - (viii) as a result of the operation of section 459F(1) of the *Corporations Act 2001* (Cth), it is taken to have failed to comply with a statutory demand; or
  - (ix) any act is done or event occurs which under the laws from time to time of a country other than Australia has an analogous or similar effect to any of the events above.

**Laing O'Rourke ABAC Policy** means the Laing O'Rourke Global Anti-Bribery and Corruption Policy available here: <http://www.laingorourke.com/who-we-are/governance/code-of-conduct.asp>

**Legislative Requirement** includes all Acts, ordinances, regulations, bylaws, orders, rules and other subordinate legislation, awards and proclamations of the Commonwealth and the State or Territory and Local Governments, codes (including the *Building Code of Australia*) and standards (including Australian Standards), certificates, licences, consents, permits, approvals, authorisations, permissions, determinations, notices, waivers and requirements of an Authority relevant to the Services or the Services Order Contract.

**NGER Legislation** means any statutory requirements, standards, codes and guidelines related to greenhouse gas and energy emissions and energy consumption, including without limitation, the *National Greenhouse and Energy Reporting Act 2007* (Cth), the *National Greenhouse and Energy Reporting Regulations 2008* (Cth), the *National Greenhouse and Energy Reporting (Measurement) Determination 2008* (Cth), and all related regulations and codes of practice.

**Nominated Product** means:

- (a) cement compound board
- (b) corrugated sheets
- (c) bitumen products used for damp-proofing
- (d) heat resistant sealing and caulking compounds
- (e) heating equipment
- (f) lagging
- (g) switchgear with washers
- (h) electrical panel partitioning
- (i) electrical cloths and tape
- (j) pre-assembled switch rooms
- (k) flash vessels
- (l) effluent treatment equipment
  - (i) various gaskets
  - (ii) joining material in flues
  - (iii) washers and friction materials

**Personal Information** means information or an opinion about an identified individual, or an individual who is reasonably identifiable, whether the information or opinion is true or not and whether the information or opinion is recorded in a material form or not, which is received, collected and/or handled in connection with the Services Order Contract.

**Personnel** means the Services Provider, consultants, suppliers, employees, agents and other persons engaged by the Services Provider.

**PPSA** means the *Personal Property Securities Act 2009* (Cth).

**PPS Register** means the Personal Property Securities Register established under the PPSA.

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

**Privacy Laws** means the *Privacy Act 1988* (Cth) and all other applicable legislation relating to the handling of Personal Information.  
**Prohibited Act** means, in connection with this the Services Order Contract, any act which would breach any applicable Anti-Bribery and Anti-Corruption Legislation and any other legal prohibitions on money laundering, trade control and sanctions, and the like, and includes offering, giving or agreeing to give to any person, or soliciting, accepting or agreeing to accept from any person (either directly or indirectly) anything of value in order

**Proportionate Liability Legislation means if the governing law is:**

- (a) the Australian Capital Territory, then the *Civil Law (Wrongs) Act 2002* (ACT) and the *Building Act 2004* (ACT);
- (b) New South Wales, then Part 4 of the *Civil Liability Act 2002* (NSW);
- (c) Northern Territory, then the *Proportionate Liability Act 2005* (NT);
- (d) Queensland, then Part 2 of the *Civil Liability Act 2003* (Qld);
- (e) South Australia, then Part 3 of the *Law Reform (Contributory Negligence and Apportionment of Liability) Act 2001* (SA);
- (f) Tasmania, then Part 9A of the *Civil Liability Act 2002* (Tas) and the *Building Act 2000* (Tas);
- (g) Victoria, then Part IVAA of the *Wrongs Act 1958* (Vic); or
- (h) Western Australia, then Part 1F of the *Civil Liability Act 2002* (WA).

**Public Official** is any person holding a legislative, administrative or judicial office, including any person employed by or acting on behalf of a public agency, a government controlled enterprise, a public international organisation, political parties, party officials and candidates for office, and any other person who, by reason of domestic law in any jurisdiction relevant to the Services Order Contract, would be considered or deemed to be a Public Official.

**Relevant Collateral** means Collateral which is the subject of a Security Interest granted under the Services Order Contract.

**Security Interest** has the meaning given in the PPSA.

**Select** means Select Plant Australia Pty Ltd (ABN 49 644 500 354). **Select-Supplied Information** means any information (whether written or otherwise) supplied or made available to the Services Provider by or on behalf of Select before or after the date of the Services Order in connection with the Services or the Site, other than this Services Agreement.

**Services** means the services to be provided, obligations to be fulfilled and all things to be supplied or provided by the Services Provider under the Services Order Contract, including the services set out in the Services Order and all services, obligations and things to be supplied or provided which arise therefrom or are reasonably incidental thereto.

**Services Agreement** means this services agreement.

**Services Fee** means the amount set out and calculated in accordance with the Services Order.

**Services Order** means the services order form issued by Select to the Services Provider which incorporates this Services Agreement by reference.

**Services Order Contract** means:

- (a) the Services Order and its attachments;
- (b) this Services Agreement; and
- (c) any other documents incorporated by reference in the Services Order or this Services Agreement.

**Site** means the location or locations stated in the Services Order.

**State Code** means, if the project to which the Services relate is located in:

- (a) New South Wales and the Services are part of building and construction work undertaken by or on behalf of a New South Wales Government department or public sector body (as defined in the *Public Sector Employment and Management Act 2002* (NSW)), the *NSW Code of Practice for Procurement (NSW Code)* and the *Implementation Guidelines to the New South Wales Code of Practice for Procurement: Building and Construction (NSW Guidelines)* and the provisions in clause 23;
- (b) Queensland and the Services are part of Queensland Government funded (in whole or in part) building and construction work, the *Queensland Code of Practice for the Building and Construction Industry (Queensland Code)* and the provisions in clause 24;
- (c) Western Australia, was released to market or the selected respondents (as the case may be), after 1 January 2017, is publicly or privately funded, and Select is participating in a 'Covered Tender Process' relating to 'State Building Work' or is performing work under a 'Covered Contract' for the performance of 'State Building Work' (as those terms are defined in the *Western Australian Building and Construction Industry Code of Conduct 2016 (WA Code)*), the WA Code and the provisions in clause 25; or
- (d) South Australia, and is managed or partly or fully funded by the South Australian Government, the *Code of Practice for the South Australian Construction Industry* dated March 2016 (*SA Code*) and the *Implementation Guidelines to the Code of Practice for the South Australian Construction Industry (SA Guidelines)* as amended from time to time and the provisions in clause 26.

**Term** means the period which commences on the Commencement Date and continues for the period set out in the Services Order as extended from time to time at the discretion of Select, unless the Services Order Contract is terminated earlier.

**Workplace Health and Safety Legislation** means any statutory requirements, standards, codes and guidelines related to workplace health and safety, including without limitation, the *Workplace Health and Safety Act 1995* (Qld) and related all regulations and codes of practice.

**Workplace Relations Management Plan** has the meaning given to 'WRMP' in the Code.

- 1.2 **Application of Services Agreement**  
This Services Agreement applies to the execution of the Services whether executed before, on or after the Commencement Date.

## 2. COMMENCEMENT AND CARRYING OUT

- 2.1 **Time for Commencement**  
The Services Provider shall immediately on and from the Commencement Date diligently and regularly continue to perform the Services.

- 2.2 **Access to the Site**  
(a) Select shall provide to the Services Provider reasonable access to the Site or sufficient of the Site to enable the Services Provider to perform the Services.  
(b) The Services Provider shall observe all security and safety measures and any other access requirements notified to it from time to time in connection with the Site.

- 2.3 **Documents to be provided by Services Provider**  
The Services Provider shall prepare all documents required to perform the Services, including but not limited the documents specified in the Services Order, within the timeframes required by Select.

- 2.4 **Standard of Services**  
In addition to any other obligation, representation or warranty, whether statutory or otherwise, the Services Provider shall to the satisfaction of Select:  
(a) perform the Services in accordance with the Services Order Contract using Good Industry Practice;  
(b) ensure that the Services comply with all the requirements of or to be inferred from:
  - (i) the Services Order Contract;
  - (ii) all relevant Legislative Requirements; and
  - (iii) all relevant Authorities;  
(c) exercise utmost good faith and full disclosure to Select in performing its obligations under the Services Order Contract including without limitation when it makes claims for payment; and  
(d) supply and execute items not expressly mentioned in the Services Order Contract but which are necessary or usual for work similar to the Services, without being entitled to any Claim.

- 2.5 **Performance**  
(a) The Services Provider must perform the Services on and from the Commencement Date until the expiry of the Term.  
(b) The Services Provider must be appropriately licensed/certified to perform its obligations under the Services Order Contract.  
(c) If the Services Provider becomes aware of any matter which may delay the Services or the achievement of any milestone it must notify Select in writing within 5 Business Days of the cause of delay, or within a shorter period if notified by Select. The Services Provider must promptly provide Select with any additional documentation or information in relation to the delay upon request. The Services Provider's notice under this clause 2.5(c) must include detailed particulars of the likely delay and recommendations as to how to minimise any adverse effect of the likely delay. If the delay exceeds 5 Business Days the Services Provider must update Select as often as requested by Select. Subject to clause 2.5(d), the Services Provider shall not be entitled to make a Claim for any such delay.  
(d) If the Services Provider is delayed in achieving a milestone by an Act of Prevention and has complied with the requirements of this clause 2.5, the Services Provider may claim a reasonable extension of the affected milestone. The Services Provider must submit any claim for an extension of time to Select in writing within 5 Business Days, or within a shorter period if notified by Select, of the cause of the delay ceasing.  
(e) Whether or not the Services Provider has claimed an extension of time, Select may in its absolute discretion extend the milestone or timeframe by written notice to the Services Provider.  
(f) If the Services Provider becomes aware of any matter which may cause interference or disruption to the Services, it must immediately notify Select of the cause of the interference or disruption, including detailed particulars of the likely interference or disruption and recommendations as to how to minimise any adverse effect of same. If the interference or disruption exceeds 5 Business Days the Services Provider must update Select as often as requested by Select. The Services Provider shall not be entitled to make a Claim for any such interference or disruption and shall not be entitled to payment for Services not provided.

- 2.6 **Co-operation with Select**  
In providing the Services, the Services Provider shall actively co-operate with Select (and its nominees), promptly provide all information that Select may request regarding the performance of the Services and promptly comply with all directions given by Select.

- 2.7 **Compliance with Legislative Requirements**  
The Services Provider shall comply with all Legislative Requirements in performing its obligations under this the Services Order Contract.

- 2.8 **Ambiguities or Discrepancies**  
The Services Provider shall identify and notify Select of any ambiguity, inconsistency or discrepancy in or between the terms of the Services Agreement and the Services Order. Select shall direct the Services Provider as to the interpretation to be adopted and the Services Provider, without being entitled to any Claim, shall comply with that direction.

- 2.9 **Select-Supplied Information**  
The Services Provider and Select agree that Select-Supplied Information has not been and will not be relied upon by the Services Provider for any purpose (including entering into the Services Order Contract or performing its obligations under the Services Order Contract).  
Select does not assume any responsibility or duty of care in respect of, or warrant, guarantee or make any representation as to, Select-Supplied Information (including its accuracy, completeness or adequacy). The Services Provider must satisfy itself as to the accuracy, completeness and adequacy of Select-Supplied Information and the Services Provider shall have no Claim arising out of or related to any Select-Supplied Information or any action or inaction taken by it in respect to any Select-Supplied Information.

- 2.10 **Reports and Records**  
The Services Provider shall establish and maintain any reports and records which Select reasonably requires.

- 2.11 Workplace Health and Safety**
- (a) The Services Provider must comply, and ensure that all persons for whom it is responsible or over whom it is capable of exercising control while executing the Services under the Services Order Contract, comply with all Workplace Health and Safety Legislation.
  - (b) The Services Provider must comply, and ensure that all persons for whom it is responsible or over whom it is capable of exercising control while executing the Services, comply with all reasonable directions of Select in relation to health and safety.
  - (c) The Services Provider indemnifies Select against any Damage arising out of or in connection with a failure by the Services Provider to comply with this clause 2.11.
  - (d) If any part or component of the Services or equipment utilised in the Services is imported and is a Nominated Product, the Services Provider must, before installing that part or component, or utilising that equipment provide to Select the results of tests performed on the part or component in a NATA accredited laboratory in accordance with AS 4964-2004 "Method for the qualitative identification of asbestos in bulk samples", following sampling in accordance with "AS 4433.1 Guide to the sampling of particulate materials Part 1: Sampling procedures".
  - (e) The Services Provider acknowledges that Select does not control or influence the Services Provider's activities except activities of the Services Provider performed on Select's premises.
  - (f) Without limiting the generality of any other clauses, the Services Provider must:
  - (g) comply with any obligation it has under WHS Legislation to consult, cooperate and coordinate activities with all other persons who have a work health and safety duty in relation to the same matter;
  - (h) comply with Select's Safety Management System as available at <https://lorhsems.com/>
  - (i) The Services Provider must at all times comply with all site safety, security, operational and procedural requirements, provided that such requirements are not illegal or unsafe.
  - (j) Select will provide the Services Provider with instructions that are reasonably necessary to enable the Services to be completed in a safe manner in accordance with relevant Laws. The Services Provider must advise Select if insufficient instructions have been received.
  - (k) Notwithstanding clause 2.11(j), Select is not liable in any way for any loss of any kind, arising out of any error, inaccuracy, incompleteness or other similar defect in the delivery instructions provided by Select to the Services Provider. Compliance by the Services Provider with this clause will not, of itself, relieve the Services Provider of any of its other obligations under this Services Order.
  - (l) Without limiting any other provision of this clause 2.11 or the Services Order generally, the Services Provider must ensure that all Services provided are carried out at a standard equal to or above the relevant Primary Standards (including all the additional Primary Standards and information noted within same) for Site Establishment and Logistics which available via the following links <https://lorhsems.com/safety/ps-site-establishment/> and <https://lorhsems.com/safety/ps-logistics/>
  - (m) Where Select reasonably suspects that during the Services any Law has been breached, or is anticipated to be breached, or there is a breach (or anticipated breach) of any site safety, security, operational and procedural requirements or any term of this Order, Select is entitled to immediately revoke the access of the Services Provider to the Site, and it is required that the Services Provider provide an alternate Services provider to carry out the Services.
  - (n) Select is entitled, on reasonable notice to the Services Provider, at any time within normal business hours to inspect the Services Provider's place of business, equipment and documentation to ensure that all relevant Laws have been and are being complied with
  - (o) Without limiting the generality of this clause, the Services Provider agrees to provide to Select on request any available data on any occupational health and safety incidents involving the Services Provider or its Personnel.

## 3. WARRANTIES

### 3.1 Services Provider Warranties

- The Services Provider represents and warrants that, in addition to any other representation or warranty given or obligation assumed:
- (a) it has specifically correlated all of its inspections and observations with the Services Order Contract Agreement and is satisfied that the provisions of this Services Order Contract are consistent and that none of them conflict;
  - (b) It will perform its obligations under the Services Order Contract in the most expeditious and economical manner and using Good Industry Practice;
  - (c) that the carrying out of the Services as contemplated by the Services Order Contract is practical and possible including any methods of working required by the terms of this Services Order Contract;
  - (d) that it has examined carefully and acquired actual knowledge of the contents of the Services Order Contract; and
  - (e) that it has all information obtainable by the making of reasonable enquiries and relevant to the risks, contingencies and other circumstances having an effect on its tender and to the risks and contingencies inherent in its Services Order Contract obligations.

## 4. DIRECTIONS

### 4.1 Compliance with Directions

The Services Provider shall comply with any direction given by Select or its authorised delegates.

## 5. SUBCONTRACTING AND ASSIGNMENT

The Services Provider must not subcontract or assign all or any part of the Services without Select's prior written approval. Select may assign the Services Order Contract at any time without the Services Provider's consent.

## 6. INDEMNITY

The Services Provider shall be liable for and will indemnify Select against:

- (a) any Damage in respect of any property real or personal; and
- (b) any Damage in respect of personal injury to or death of any person, arising out of or in connection with the performance of the Services.

## 7. INSURANCE

### 7.1 Insurances Required

The Services Provider shall as at Commencement Date take out all relevant insurances including at a minimum (but not limited to) public liability insurance for \$20 million, unlimited Workers Compensation and, where relevant, plant & equipment insurance for a minimum of the replacement value of any Plant. The insurances are to be provided for the periods stated in the Services Order and with a reputable insurer approved by Select.

The policy of public liability insurance shall:

- (a) be in the joint names of the Services Provider and Select;
- (b) include a cross-liability clause in which the insurer agrees to waive all rights of subrogation or action against any party comprising the insured and for the purposes of which the insurer accepts the term 'insured' as applying to each party comprising the insured as if a separate policy of insurance were issued to each of them; and
- (c) notwithstanding anything to the contrary elsewhere in the policy, not call into contribution any public liability policy held by Select, for any claim under the Services Provider's public liability policy.

### 7.2 Evidence of Insurance

Prior to the Commencement Date, the Services Provider shall provide copies of insurance policies required by the Services Order Contract together with certificates of currency. If the Services Provider fails to effect or maintain the required insurances, Select may, in its discretion, effect and maintain the insurance policies (or any of them) and all costs and expenses incurred by Select shall be recoverable from the Services Provider as a Debt Due to Select.

### 7.3 Notice of Claims or Occurrences

The Services Provider shall as soon as practicable inform Select in writing of any claim or occurrence that may give rise to a claim under a policy of insurance required by the Services Order Contract. The Services Provider shall give all information and assistance reasonably practicable as requested by Select in respect of any such claim or possible claim.

### 7.4 Deductibles and Excesses

The Services Provider shall be liable to pay to Select the amount of any deductible or excess which is paid or payable by Select or the Principal under any claim under any policy of insurance, where the incident resulting in the claim was caused or contributed to by an act, default or omission of the Services Provider.

## 8. VARIATIONS

- (a) The Services Provider shall not vary the Services except as directed in writing by Select.
- (b) Select may direct the Services Provider to make a change to the Services (including omitting the whole or part of the Services to perform those parts itself or have those parts performed by others) or to perform additional services.
- (c) The Services Provider will not be entitled to a Claim for any change to the Services or additional services unless, before the change to the Services was performed, it was expressly directed in writing by Select.
- (d) The parties must attempt to agree whether a change to the Services Fee is required as a result of a direction under clause 8(a) and if so, the amount of the change. In the absence of agreement, Select will determine any reasonable adjustment.
- (e) Select will only be liable for a payment in addition to the Services Fee, if the nature and extent of any additional services and the amount of the additional fees are approved in writing by Select.

## 9. PAYMENT

### 9.1 Services Fee

Subject to any conditions precedent otherwise set out in this Services Agreement, Select shall pay to the Services Provider the Services Fee as set out in the Services Order. Each Services Order Contract will specify whether the Services Provider will be paid on an hourly rate or lump sum basis.

### 9.2 Progress Claims

Subject to the Services Provider having:

- (a) provided the Services in accordance with the provisions of the Services Order Contract;
- (b) provided Select with daily timesheets approved by Select;
- (c) complied with clause 6; and
- (d) provided any other information to Select as required by the Services Order Contract or as otherwise requested by Select,
- (e) the Services Provider is entitled to make a claim for payment ('progress claim'):
- (a) monthly until the expiry of the Term; and
- (b) on the last day of the month immediately following the expiry of the Term.

Each progress claim must be submitted to Select evidencing details of the amount the Services Provider is entitled to claim pursuant to the Services Order, together with any information required under this clause 9.2.

If the Services Provider submits a progress claim before the date for submission of that claim, such early submission will be taken to be submitted on the date the Services Provider should have submitted the claim. A late progress claim will be deemed to have been made on the next date for making a progress claim.

- 9.3** Tax invoices, credit notes and progress claims issued pursuant to clauses 9.1 and 9.2 must:
- (a) clearly state the relevant Services Order number on the first page of the tax invoice;
  - (b) be provided with all delivery dockets and any other relevant documentation;
  - (c) be sent by:
    - (i) email to: [accountspayableaustralia@laingorourke.com.au](mailto:accountspayableaustralia@laingorourke.com.au); or
    - (ii) mail to: Select Plant Australia Pty Ltd  
Accounts Payable Shared Services Department  
GPO Box 5094, Brisbane QLD 4001
  - (d) where emailed:
    - (i) the tax invoice must be attached to the email as single PDF document. The first page of the PDF document must be the tax invoice. The following pages must be all delivery dockets and any other relevant documentation; and
    - (ii) where multiple tax invoices, each tax invoice must be provided in a separate email.
- 9.4** **Time for Payment**  
Subject to compliance with clause 9.1, 9.2 and 9.3 and proper performance of the Service provider's obligations, Select must pay the Services Provider the undisputed portion of that payment claim within:
- (a) 20 Business Days if Delivery Point is located in New South Wales; or
  - (b) 30 days if Delivery Point is not located in New South Wales, of receiving a valid progress claim under the Services Order Contract.
- 9.5** **Payment on Account**  
Any payment by Select to the Services Provider will be a payment on account only and will not be:
- (a) evidence that the Services Provider is entitled to payment in accordance with clause 9.2;
  - (b) an admission that the Services Provider has complied with its obligations under this Services Order Contract; nor
  - (c) a waiver of any of the Services Provider's obligations or Select's rights under this Services Order Contract.
- 9.6** **Goods and Services Tax (GST)**
- (a) Terms defined in *A New Tax System (Goods and Services Tax) Act 1999* (Cth) have the same meaning when used in this clause 9.6.
  - (b) If GST is payable on a taxable supply made under, by reference to or in connection with the Services Order Contract, the party providing the consideration for that taxable supply must also pay the GST amount as additional Consideration. This clause does not apply to the extent that the consideration for the taxable supply is expressly agreed to be GST inclusive.
  - (c) No payment of any amount pursuant to the Services Order Contract, and no payment of the GST amount where the consideration for the Taxable Supply is expressly agreed to be GST inclusive, is required until the Services Provider has provided a tax invoice to Select.
  - (d) Amounts for which a party is to be indemnified or reimbursed or which are used in determining the consideration payable under the Services Order Contract are to be net of any input tax credit for which the Services Provider is entitled and otherwise on GST exclusive basis.
- 9.7** **Set-Off**  
Without limiting Select's rights under the Services Order Contract, Select may set-off from any monies due to the Services Provider under the Services Order Contract (including any retention monies or proceeds of converted bank guarantees or other security) any debt, amount, claim for Damages or any other entitlement (including under an indemnity) Select may have against the Services Provider or which Select reasonably anticipates to become due arising from or incidental to the Services, under the terms and conditions of the Services Order Contract.
- 10.** **CODE AND INDUSTRIAL LAW COMPLIANCE**
- 10.1** **Industrial Disputes**
- (a) The Services Provider must:
    - (i) take all steps and measures to avoid and minimise the consequences of industrial disputes affecting the work under the Services Contract;
    - (ii) advise Select of any demarcation problem, demands, dispute or potential dispute that arises or is likely to arise amongst its employees or between its employees and the employees of others either on or off the Site; and
    - (iii) comply at its cost with any reasonable direction by Select issued with the objectives of reducing industrial dispute;
  - (b) The Services Provider shall not be entitled to any Claim arising out of or in connection with any industrial dispute and shall be liable to Select for the consequences to Select of any industrial disputes contributed to or caused by the Services Provider.
- 10.2** The Services Provider shall employ only competent, experienced, properly licensed and reliable personnel who are adequately trained, hold current certificates of competence. The Services Provider is responsible for any training, skill assessment or reclassification of personnel during the term of this Services Order Contract. Any Personnel must carry site identification or induction cards issued when on Site and comply with all Site access requirements.
- 10.3** The Services Provider is responsible for and will ensure that it complies with its obligations under any Industrial Instrument or Legislative Requirements that apply to it relating to their employees' entitlements, including:
- (a) paying all applicable wages, workers' compensation insurance, fringe benefits tax, all payroll taxes and other employee entitlements including in respect of any superannuation fund, scheme or arrangement for the benefit of their employees;

- (b) complying with all applicable Legislative Requirements with respect to the deduction and payment of tax instalment deductions from salaries and wages paid to employees; and
  - (c) not engaging in any unlawful arrangements or practices which may avoid obligations under awards, Industrial Instruments or Legislative Requirements including treating a genuine employee as an independent contractor or allowing an inappropriate application of the Pay as You Go (PAYG) system of taxation.
- 10.4** Where Select must comply with the Code or the Former Code on a project to which a Services Order Contract relates, the Services Provider must comply with any reasonable direction from Select to ensure that Select complies with the obligations that may apply under the Code or the Former Code (as relevant).
- 10.5** The parties acknowledge and agree that all requirements of contracts:
- (a) for 'building work' (as defined in the Code) specified in the Code; and
  - (b) contemplated by the relevant State Code,
  - (c) are deemed to be incorporated into each Services Order Contract.
- 10.6** Where the Code requires the Services to be performed in accordance with a Workplace Relations Management Plan, the parties agree that the Services Provider must comply with the version of the Workplace Relations Management Plan which Select advises the Services Provider has been approved by the Australian Building and Construction Commission.
- 10.7** Where a State Code applies to the Services, the Services Provider must comply with the relevant State Code.
- 11.** **BREACH AND TERMINATION**
- 11.1** **Select or Others May Perform if Default**  
If the Services Provider fails to perform or delays performance of any obligation under the Services Order Contract, Select may perform or retain others to perform the obligation on the Services Provider's behalf and any costs incurred by Select (including as a result of Select engaging additional supervision or other preventative measures) shall be recoverable from the Services Provider as a Debt Due from the Services Provider to Select.
- 11.2** **Default and Termination**
- (a) If the Services Provider commits a substantial or material breach of the Services Order Contract then, without limiting any other right of Select upon breach or repudiation by the Services Provider, Select may serve a written notice to show cause entitled 'Default Notice' requiring the Services Provider to show cause in writing why Select should not exercise a right referred to in this clause and specifying the time and date by which the Services Provider must show cause.
  - (b) If the Services Provider does not show reasonable cause or remedy the substantial or material breach to Select's reasonable satisfaction within the time prescribed in the Default Notice, Select may terminate the Services Order Contract.
- 11.3** **Right to Recover for Default or Insolvency**  
If Select exercises a right in clauses 11.2 or 11.4, Select may deduct, from moneys due or to become due to the Services Provider under the Services Order Contract or otherwise, the costs of completing the Services estimated by Select less the amount which would have been paid to the Services Provider if it had completed the Services.
- 11.4** **Termination for Insolvency**  
Select or the Services Provider, without prejudice to any other right it may have, may immediately terminate the Services Order Contract by notice in writing if an Insolvency Event occurs.
- 11.5** **Termination Without Default**  
Select may for its convenience, by written notice to the Services Provider, terminate the Services Order Contract at any time, and the Services Provider cannot make any Claim against the Principal or Select on any basis in any way arising out of or in connection with such termination.
- 11.6** **Entitlement on Termination (Excepting Default or Insolvency of Services Provider)**  
In the event:
- (a) of termination under clause 11.5;
  - (b) Select repudiates the Services Order Contract and that repudiation is accepted by the Services Provider; or
  - (c) the Services Order Contract is frustrated;
  - (d) the Services Provider's entitlement arising out of or in connection with the Services Order Contract shall be limited to:
    - (a) any amount then due from Select to the Services Provider but unpaid;
    - (b) an amount for the Services carried out in accordance with the Services Order Contract to the date of termination which is not included in a previous payment claim and which is properly payable; and
    - (c) the cost of goods, materials and equipment reasonably ordered by the Services Provider for the Services Order Contract in anticipation of performing the Services and which the Services Provider is liable to accept, but only if they will become Select's property upon payment (subject to the Services Provider taking all reasonable steps to mitigate such costs).
- Such entitlement shall be in full satisfaction of Select's liability to the Services Provider arising out of or in connection with the Services and the Services Order Contract.
- 11.7** **Select's Obligations on Termination**  
Upon termination of the Services Order Contract for any reason, the Services Provider must:
- (a) subject to subclause 11.7(f) below, immediately cease performance of the Services;

- (b) immediately take all possible action at its cost to ensure the safety of all persons and its employees, subcontractors, agents and representatives and the protection of all property;
- (c) immediately take all possible action to mitigate any liabilities incurred by it as a result of such termination;
- (d) if applicable, assign or sublicense to Select any intellectual property rights and licences required to complete the Services;
- (e) if applicable, procure from relevant third parties any moral rights consents required to complete the Services; and
- (f) take any other action reasonably required by Select in relation to the termination.

## 11.8 Suspension

Select may at any time by notice in writing suspend the Services in whole or part. Upon receipt of a notice of suspension, the Services Provider must cease performance of the Services as directed. The Services Provider must recommence the Services within 48 hours (or such other time) of being directed to do so by Select.

## 12. DISPUTES

### 12.1 Notice of Dispute

Subject to clause 12.2, if a dispute or difference ('dispute') between Select and Services Provider arises out of or in connection with the Services Order Contract, then either party may within 28 days of the occurrence of the circumstances that give rise to the dispute or difference, serve the other with a notice of dispute in writing, specifying:

- (a) the particularised assertion of fact giving rise to the entitlement (including reference to relevant Services Order Contract provisions);
- (b) the legal basis and cause of action;
- (c) the relief the party seeks; and
- (d) the calculation of any amounts of money or extensions of time claimed.

Notwithstanding the existence of a dispute or difference, the Services Provider shall continue to perform its obligations under the Services Order Contract.

### 12.2 Time for Disputing Direction

If the Services Provider disputes a direction given pursuant to the Services Order Contract then the Services Provider shall serve Select with a notice of dispute which complies with clause 12.1, within 5 days of the direction being given. If the Services Provider fails to serve a notice of dispute regarding a direction strictly in accordance with this clause 12.2, the Services Provider shall be forever barred from disputing Select's direction.

### 12.3 Meeting of Representatives

- (a) If a dispute notified under clauses 12.1 or 12.2 has not been settled within 7 days of the date of that notice, either party may serve the other with a notice in writing requesting the other party to attend negotiations in an attempt to resolve the dispute.
- (b) Such negotiations shall be:
  - (i) attended by senior executives of the respective parties, or their nominees, with authority to resolve the dispute; and
  - (ii) held by the parties in good faith with a view to resolving the dispute.
- (c) If the dispute has not been settled within 28 days of the date of the notice given under clause 12.3(a), either party may refer the dispute to expert determination.

### 12.4 Expert Determination

- (a) If a dispute is referred to expert determination in accordance with clause 12.3(c), the expert determination will be conducted by a person agreed between the parties.
- (b) If the parties fail to agree upon a person within 7 days of the notice being received, the person will be appointed (on application by either party) by the President of the Institute of Arbitrators and Mediators Australia.
- (c) The person appointed will not be:
  - (i) an employee of either party;
  - (ii) a person who has been connected with the Services or the Services Order Contract; or
  - (iii) a person who Select and the Services Provider have not been able to agree on.
- (d) An expert determination conducted under clause 12.4 is not an arbitration. The expert must make a determination as expert and not as arbitrator and may reach a decision from his or her own knowledge and expertise.
- (e) The expert will use the rules for expert determination published from time to time by the Institute of Arbitrators and Mediators Australia.
- (f) The determination of the expert:
  - (i) must be in writing; and
  - (ii) will be final and binding on both parties unless:
    - (A) the dispute is for an amount of or greater than \$250,000; and
    - (B) the party liable to pay the amount referred to in subclause 12.4(f)(i)(A) notifies the other party that it disputes the determination within 5 Business Days of the determination.

## 13. COMMUNICATIONS

Any notice or other communication required under the Services Order Contract must be delivered in writing. The notice will take effect from the time it is delivered to or received at the address noted in the Service Order.

## 14. CONFIDENTIALITY

### 14.1 Confidential Information

- (a) The Services Provider may use Confidential Information only for the purposes of the Services Order Contract and must keep confidential all Confidential Information except for disclosure permitted under clause 14.1(b) or required by law.

- (b) The Services Provider may disclose Confidential Information to its officers, employees, legal and other advisers and auditors who:
  - (i) have a need to know for the purposes of the Services Order Contract (and only to the extent that each has a need to know); and
  - (ii) before disclosure:
    - (A) in the case of the Services Provider's officers and employees, have been directed by the Services Provider to keep confidential all Confidential Information; and
    - (B) have agreed in writing with the Services Provider to comply with substantially the same obligations in respect of Confidential Information as those imposed on the Services Provider under this Services Agreement.

## 15. GENERAL

### 15.1 Governing Law

The Services Order Contract is subject to and is to be construed in accordance with the laws of the State or Territory in which the Site is situated and the parties submit to the non-exclusive jurisdiction of the Courts of that State or Territory.

### 15.2 Severability

Part or all of any provision of the Services Order Contract that is illegal or unenforceable may be severed from the Services Order Contract and the remaining provisions of the Services Order Contract continue in force.

### 15.3 Entire Agreement

The Services Order Contract is a complete and exclusive statement of all the terms of the agreement between the parties and supersedes all other communications or representations either oral or written between the parties. The Services Provider warrants that it has not relied upon any previous representations by Select or anyone acting on behalf of or as agent for Select as an inducement to enter into the Services Order Contract. The Services Provider acknowledges that any terms or conditions in the Services Provider's return schedules, delivery docket or the like do not apply to the Services Order Contract or in any way constitute an alternative offer.

## 16. ANTI-BRIBERY AND ANTI-CORRUPTION

### 16.1 Anti-Corruption Obligations

- (a) Select is committed to operating in a manner consistent with the laws of the jurisdictions in which it operates, including Anti-Bribery and Anti-Corruption Legislation.
- (b) The Services Provider must not, and must take reasonable steps to ensure that any of its Associated Persons do not, commit a Prohibited Act (the Anti-Corruption Obligations) and:
  - (i) must implement adequate policies and procedures to ensure compliance with its Anti-Corruption Obligations, and must disclose those policies and procedures to Select upon request; and
  - (ii) must use reasonable endeavours to require its Associated Persons to give an undertaking to and to implement adequate policies and procedures to ensure they will not commit a Prohibited Act and, if no such undertaking is forthcoming, will inform Select and seek alternative person(s) to perform those services.
- (c) The Services Provider represents and warrants that it has not in the past 10 years:
  - (i) been the subject of an investigation into its compliance with;
  - (ii) been convicted of any offence in connection with; or
  - (iii) entered into any settlement in connection with any alleged breach of,
- (d) any Anti-Bribery and Anti-Corruption Legislation.

### 16.2 Public Officials

The Services Provider represents and warrants that except as otherwise disclosed in writing to Select, at the date of issue of the Services Order and during the term of the Services Order Contract, no Public Official:

- (a) is or will become an Associated Person of the Services Provider;
- (b) is or will become involved in the management of the Services Provider, including being or becoming part of its board or other governing body;
- (c) holds or will hold a controlling or significant interest in the Services Provider; or
- (d) is an immediate family member of a member of the board or other governing body or senior management of the Services Provider.

### 16.3 Notification obligations

- (a) The Services Provider will immediately notify Select in writing if:
  - (i) it becomes aware that any representations and warranties in 16.1 and 16.2 are false;
  - (ii) it breaches the Anti-Corruption Obligations;
  - (iii) any of its Associated Persons breaches the Anti-Corruption Obligations; or
  - (iv) it becomes aware of any breach, alleged breach or facts or circumstances which could reasonably be considered to constitute a breach of Anti-Bribery and Anti-Corruption Legislation by it or an Associated Person.
- (b) Notification under clause 16.3(a) must set out:
  - (i) particulars of; and
  - (ii) ongoing steps the Services Provider has taken and proposes to take to investigate and address, the breach, alleged breach, facts or circumstances, investigation, conviction or settlement notified.

### 16.4 Investigation and audit rights

- (a) If the Services Provider notifies under clause 16.3, or if Select reasonably believes that the Services Provider or any of its Associated Persons may have breached the Anti-Corruption Obligations, the Services Provider must:

- (i) respond promptly to Select's reasonable enquiries and cooperate with Select in connection with its investigation into compliance with this clause 16 by the Services Provider or its Associated Persons; and
- (ii) allow Select to access to its books, records and any other relevant documentation for the purpose of assessing or verifying compliance with this clause 16.
- (b) The Services Provider must answer Select's reasonable questions and allow Select access to records relevant to:
- (i) the Services Provider's performance of the Services Order Contract, for the purpose of assessing compliance with this clause 16;
- (ii) legal or equitable interests in the Services Provider; and
- (iii) any ongoing background checks Select may wish to make in relation to the Services Provider's compliance with the Anti-Corruption Obligations.
- (c) The obligations in this clause 16.4 continue for 3 years following expiry or termination of the Services Order Contract.
- 16.5 Consequences of breach**
- (a) If the Services Provider is in breach of clause 16 or if Select reasonably believes such a breach has occurred or is imminent then Select:
- (i) may suspend performance and payment under the Services Order Contract; or
- (ii) may immediately (without prejudice to any other rights it may have) terminate the Services Order Contract; and
- (iii) is not obliged to make any payment to the Services Provider in respect of goods, services or other benefits procured through, or related to, the breach.
- (b) The rights in subclauses 9.1(a)(i), (ii) and (iii) above are cumulative.
- (c) The Services Provider will indemnify Select for any costs, losses, expenses, charges, damages or the like (including legal and other professional expenses) incurred by Select and arising from or related to a breach or alleged breach by the Services Provider or any of its Associated Persons of the Anti-Corruption Obligations, provided that such losses are reasonably foreseeable and mitigated if practicable.
- (d) The rights under this clause 16.5 are additional to any other rights Select may have under the Services Order Contract.
- 17. PRIVACY**
- The Services Provider must:
- (a) comply with all Privacy Laws;
- (b) use or disclose Personal Information only for the purposes of providing the Services or as expressly permitted under this Services Agreement;
- (c) take all reasonable steps to ensure that the Personal Information is protected against misuse, interference, loss and unauthorised access, modification or disclosure;
- (d) promptly notify Select if the Services Provider becomes aware of any actual or potential breach of the Services Provider's obligations under this clause, and comply with any reasonable direction from Select with respect to remedying that breach;
- (e) not do any act or engage in any practice that would breach any Privacy Law, or would result in Select breaching any Privacy Law;
- (f) not disclose or transfer any Personal Information outside of Australia without Select's prior written consent; and
- (g) on termination or expiry of the Services Order Contract return, destroy or otherwise deal with any Personal Information in accordance with the reasonable instructions of Select.
- 18. PPSA**
- 18.1** This clause applies where the Services Order Contract constitutes a Personal Property Securities (PPS) Lease.
- 18.2** If the Services Provider believes that a Security Interest arises under the Services Order Contract, it must notify Select at least 5 days before taking steps to register such Security Interest on the PPS Register.
- 18.3** Within 10 days of the earlier of:
- (a) the expiry or termination of this Agreement; or
- (b) the completion of the Services,
- (c) the Services Provider will at its cost procure the removal from the PPS Register each Security Interest it has registered in respect of any plant or materials, and must provide Select with verification of the removal of the Security Interests pursuant to section 157 of the PPSA.
- 18.4** The parties agree that for the purposes of section 115 of the PPSA, sections 120 (enforcement of liquid assets), 126 (apparent possession) and 128 (secured party may dispose of collateral) of the PPSA will not apply to any Relevant Collateral.
- 18.5** Select and the Services Provider each agree not to disclose any information of the kind described in section 275(1) of the PPSA, including:
- (a) information about this Agreement (including a copy of it);
- (b) information about the amount or obligation secured by any Security Interest created by or under the Services Order Contract, and the terms of such payment or performance at any time; or
- (c) information about this Agreement (including a copy of it);
- (d) information about the amount or obligation secured by any Security Interest created by or under the Services Order Contract, and the terms of such payment or performance at any time; or
- (e) information about Relevant Collateral at any time, without consent of the other party, to its officers, employees, legal and other advisors and auditors or, with prior notice to the other party to comply with any law, the rules of any securities or stock exchange or an order of a court or tribunal.

- 18.6** If Select sub-leases any plant valued individually by Select at a value greater than \$10,000, Select must register its Security Interest against the sub-lessee.
- 19. CHAIN OF RESPONSIBILITY LEGISLATION**
- To the extent heavy vehicles are used in the performance of Services, the Services Provider:
- (a) acknowledges that it is a primary duty holder under the COR Laws with responsibility for developing COR Systems and warrants that it is familiar with and has the capability and resources to comply with COR Laws and ensure that its Personnel complies with all COR Laws;
- (b) must ensure that any heavy vehicles are appropriately maintained with loads that do not exceed vehicle mass or dimension limits, are appropriately secured, and operators carrying freight containers have a valid container weight declaration and drivers do not exceed speed limits or regulated driving hours, do not drive while impaired by fatigue and observe minimum rest requirements;
- (c) must proactively provide reasonable assistance to Select to enable Select to satisfy its duties and responsibilities under COR Laws;
- (d) must obtain and maintain, and ensure that each of its personnel obtains and maintains all Approvals required to enable the applicable activity, function or task to be undertaken lawfully; and
- (e) shall undertake any audits or monitoring as requested by Select to demonstrate compliance with this clause.
- 20. COMPLIANCE WITH NGER LEGISLATION**
- The Services Provider acknowledges and agrees that:
- (a) its subcontractors, consultants, material suppliers, agents, representatives, employees and any related entity undertaking work in connection with the Services Order Contract do all things necessary to assist Select in complying with any reporting obligations Select may have under NGER Legislation, including in addition to the requirements of this clause, providing Select with any further information or documents reasonably required by Select to allow Select to comply with any reporting obligations under NGER legislation; and
- (b) it will provide any required emissions report and any further information provided under clause 20(a) to be copied, audited, verified by any persons authorised by Select or the Clean Energy Regulator, and cooperate with and provide all reasonable assistance to any such persons, including giving access to premises, plant and equipment and access to relevant documents.
- 21. LIMITATION OF LIABILITY**
- Notwithstanding any other provision in this Services Order Contract, Select shall not be liable to the Services Provider for any indirect or consequential loss, including but not limited to loss of goodwill, loss of business, loss of profits (anticipated, actual or otherwise), loss of savings, loss of hire or any and all other pure economic loss arising, out of or in connection with this Services Order Contract.
- 22. EXCLUSION OF PROPORTIONATE LIABILITY LEGISLATION**
- To the maximum extent permitted by law, the operation of the Proportionate Liability Legislation is excluded in relation to rights, obligations and liabilities under the Services Order Contract whether such rights, obligations or liabilities are sought to be enforced as a breach of contract or claim in tort (including negligence), in equity, under statute or otherwise at law.
- 23. STATE CODE COMPLIANCE – NEW SOUTH WALES**
- 23.1** The provisions in this clause 23 apply where the relevant State is New South Wales and the Supplier is required to comply with the State Code applicable to New South Wales.
- 23.2** In addition to terms defined in this document, terms used in this clause 23 have the same meaning as is attributed to them in the NSW Guidelines (as published by the NSW Treasury July 2013). The NSW Code and NSW Guidelines are available at [www.industrialrelations.nsw.gov.au](http://www.industrialrelations.nsw.gov.au).
- 23.3 Primary Obligation**
- (a) The Services Provider must at all times comply with, and meet any obligations imposed by, the NSW Code and NSW Guidelines.
- (b) The Services Provider must notify the CCU and the Client Agency of any possible non-compliance with the NSW Code and NSW Guidelines and of remedial action taken, within 24 hours of becoming aware of the possible non-compliance.
- (c) Where the Services Provider engages a subcontractor or consultant, the Services Provider must ensure that that contract imposes on the subcontractor or consultant equivalent obligations to those in this section 1.2 of Part A, including that the subcontractor or consultant must at all times comply with, and meet any obligations imposed by, the NSW Code and the NSW Guidelines.
- (d) The Services Provider must not appoint or engage another party in relation to the project where that appointment or engagement would breach a sanction imposed on the other party in relation to the NSW Code or NSW Guidelines.
- 23.4 Access and information**
- (a) The Services Provider must maintain adequate records of compliance with the NSW Code and NSW Guidelines by it, its subcontractors, consultants and related entities.
- (b) The Services Provider must allow, and take reasonable steps to facilitate, authorised personnel (including personnel of the CCU) to:
- (i) enter and have access to sites and premises controlled by the Services Provider, including but not limited to the project site;

- (ii) inspect any work, material, machinery, appliance, article or facility;
  - (iii) access information and documents;
  - (iv) inspect and copy any record relevant to the project;
  - (v) have access to personnel; and
  - (vi) interview any person,
- as is necessary for the authorised personnel to monitor and investigate compliance with the NSW Code and NSW Guidelines, by the Services Provider, its subcontractors, consultants, and related entities.
- (c) The Services Provider, and its related entities, must agree to, and comply with, a request from authorised personnel (including personnel of the CCU) for the production of specified documents by a certain date, whether in person, by post or electronic means.

## 23.5 Sanctions

- (a) The Services Provider warrants that at the time of entering into this contract, neither it, nor any of its related entities, are subject to a sanction in connection with the NSW Code or NSW Guidelines that would have precluded it from responding to a procurement process for work to which the NSW Code and NSW Guidelines apply.
- (b) If the Services Provider does not comply with, or fails to meet any obligation imposed by, the NSW Code or NSW Guidelines, a sanction may be imposed against it in connection with the NSW Code or NSW Guidelines.
- (c) Where a sanction is imposed:
- (i) it is without prejudice to any rights that would otherwise accrue to the parties; and
  - (ii) the State of NSW (through its agencies, Ministers and the CCU) is entitled to:
    - (A) record and disclose details of non-compliance with the NSW Code or NSW Guidelines and the sanction;
    - (B) take them into account in the evaluation of future procurement processes and responses that may be submitted by the Services Provider, and
    - (C) its related entities, in respect of work to which the NSW Code and NSW Guidelines apply.

## 23.6 Compliance

- (a) The Services Provider bears the cost of ensuring its compliance with the NSW Code and NSW Guidelines, including in respect of any positive steps it is obliged to take to meet its obligations under the NSW Guidelines. The Services Provider is not entitled to make a claim for reimbursement or an extension of time from the Client Agency or the State of NSW for such costs.
- (b) Compliance with the NSW Code and NSW Guidelines does not relieve the Services Provider from responsibility to perform the Services and any other obligation under the contract, or from liability for any defect in the Services or from any other legal liability, whether or not arising from its compliance with the NSW Code and NSW Guidelines.
- (c) Where a change in the contract or Services is proposed, and that change may, or may be likely to, affect compliance with the NSW Code and NSW Guidelines, the Services Provider must immediately notify the Client Agency (or nominee) of the change, or likely change and specify:
- (i) the circumstances of the proposed change;
  - (ii) the extent to which compliance with the NSW Code and NSW Guidelines will be, or is likely to be, affected by the change; and
  - (iii) what steps the Services Provider proposes to take to mitigate any adverse impact of the change (including any amendments it proposes to a Workplace Relations Management Plan or Work Health and Safety Management Plan), and
- the Client Agency will direct the Services Provider as to the course it must adopt within 10 Business Days of receiving notice.

## 24. STATE CODE COMPLIANCE – QUEENSLAND

**24.1** The provisions in this clause 24 apply where the relevant State is Queensland and the Supplier is required to comply with the State Code applicable to Queensland.

**24.2** In addition to terms defined in this Order, terms used in this clause 24, have the same meaning as is attributed to them in the Queensland Code (as published by the Department of Justice and Attorney- General). The Queensland Code is available at [www.treasury.qld.gov.au](http://www.treasury.qld.gov.au).

### 24.3 Primary Obligation

- (a) The Services Provider must comply with, and meet any obligations imposed by, the Queensland Code.
- (b) The Services Provider must notify the BCCB (or nominee) and the Client Agency of any alleged breaches of the Queensland Code and of voluntary remedial action taken, within 24 hours of becoming aware of the alleged breach.
- (c) Where the Services Provider is authorised to engage a subcontractor or consultant, and it does so, the Services Provider must ensure that any secondary contract imposes on the subcontractor or consultant equivalent obligations to those in this section 1.2 of Part B, including that the subcontractor or consultant must comply with, and meet any obligations imposed by, the Queensland Code.
- (d) The Services Provider must not appoint or engage another party in relation to the project where that appointment or engagement would breach a sanction imposed on the other party in relation to the Queensland Code.

### 24.4 Access and information

- (a) The Services Provider must maintain adequate records of compliance with the Queensland Code by it, its subcontractors, consultants and related entities.
- (b) The Services Provider must allow, and take reasonable steps to facilitate, Queensland Government authorised personnel (including personnel of the BCCB) to:
- (i) enter and have access to sites and premises controlled by the Services Provider, including the project site;

- (ii) inspect any work, material, machinery, appliance, article or facility;
  - (iii) access information and documents;
  - (iv) inspect and copy any record relevant to the project;
  - (v) have access to personnel; and
  - (vi) interview any person,
- as is necessary for the authorised personnel to monitor and investigate compliance with the Queensland Code and Queensland Guidelines, by the Services Provider, its subcontractors, consultants and related entities.
- (c) The Services Provider, and its related entities, must agree to, and comply with, a request from Queensland Government authorised personnel (including personnel of the BCCB) for the production of specified documents by a certain date, whether in person, by post or electronic means.

## 24.5 Sanctions

- (a) The Services Provider warrants that at the time of entering into this contract, neither it, nor any of its related entities, are subject to a sanction in connection with the Queensland Code that would have precluded it from tendering for work to which the Queensland Code applies.
- (b) If the Services Provider does not comply with, or fails to meet any obligation imposed by, the Queensland Code, a sanction may be imposed against it in connection with the Queensland Code.
- (c) Where a sanction is imposed:
- (i) it is without prejudice to any rights that would otherwise accrue to the parties; and
  - (ii) the State of Queensland (through its agencies, Ministers and the BCCB) is entitled to:
    - (A) record and disclose details of non-compliance with the Queensland Code and the sanction; and
    - (B) take them into account in the evaluation of future expressions of interest or tender responses that may be lodged by the Services Provider, or its related entities, in respect of work to which the Queensland Code applies.

## 24.6 Compliance

- (a) The Services Provider bears the cost of ensuring its compliance with the Queensland Code. The Services Provider is not entitled to make a claim for reimbursement or an extension of time from the Client Agency or the State of Queensland for such costs.
- (b) Compliance with the Queensland Code does not relieve the Services Provider from responsibility to perform the Services and any other obligation under the contract, or from liability for any defect in the Services or from any other legal liability, whether or not arising from its compliance with the Queensland Code.
- (c) Where a change in the contract or Services is proposed, and that change would, or would be likely to, affect compliance with the Queensland Code, the Services Provider must immediately notify the Client Agency (or nominee) of the change, or likely change and specify:
- (i) the circumstances of the proposed change;
  - (ii) the extent to which compliance with the Queensland Code will, or is likely to be, affected by the change; and
  - (iii) what steps the Services Provider proposes to take to mitigate any adverse impact of the change (including any amendments it proposes to a Workplace Relations Management Plan), and
- and the Client Agency will direct the Services Provider as to the course it must adopt within 5 Business Days of receiving notice.

## 25. STATE CODE COMPLIANCE – WESTERN AUSTRALIA

**25.1** The provisions in this clause 22 apply where the relevant State is Western Australia and the Supplier is required to comply with the State Code applicable to Western Australia.

**25.2** In addition to terms defined in this Order, terms used in this clause 22, have the same meaning as is attributed to them in the WA Code and WA Guidelines as published by the Department of Commerce. The WA Code and WA Guidelines are available at [www.commerce.wa.gov.au](http://www.commerce.wa.gov.au).

### 25.3 Primary Obligation

- (a) The Services Provider must comply with, and meet any obligations imposed by, the Western Australian Government's WA Code and WA Guidelines.
- (b) The Services Provider must notify the BCCMU (or nominee) of any suspected breaches of the WA Code and WA Guidelines as soon as practicable, but no later than 48 hours after becoming aware of the breach or suspected breach.
- (c) Where the Services Provider is authorised to engage a subcontractor or consultant, and it does so, the Services Provider must ensure that any secondary contract imposes on the subcontractor or consultant equivalent obligations to those in this section 1.2 of Part C, including that the subcontractor or consultant must comply with, and meet any obligations imposed by, the WA Code and WA Guidelines.
- (d) The Services Provider must not appoint or engage another party in relation to the project where that appointment or engagement would breach a sanction imposed on the other party in relation to the WA Code and WA Guidelines.

### 25.4 1.3 Access and information

- (a) The Services Provider must maintain adequate records of compliance with the WA Code and WA Guidelines by it, its subcontractors, consultants and related entities.
- (b) The Services Provider must allow, and take reasonable steps to facilitate and assist Select and Western Australian Government authorised personnel (including personnel of the BCCMU) to:

- (i) enter and have access to the Services Provider's business premises and any other places where records, documents or information is kept by the Services Provider, including the project site;
- (ii) locate, inspect, access and/or take copies of any record, document, information or other evidence whether in hard copy or electronic format;
- (iii) speak with or interview the Service Provider's employees or contractors; and
- (iv) respond to requests for information made by the BCCMU, as is necessary for the authorised personnel to monitor and investigate compliance with the WA Code and WA Guidelines, by the Services Provider, its subcontractors, consultants and related entities.
- (c) The Services Provider, and its related entities, must agree to, and comply with, a request from Select or Western Australian Government authorised personnel (including personnel of the BCCMU) for the production of specified documents by a certain date, whether in person, by post or electronic means.
- (d) The Service Provider and its related entities must not obstruct the BCCMU.

## 25.5 1.4 Finding of material WA Code non-compliance

- (a) The Services Provider warrants that at the time of entering into this contract, neither it, nor any of its related entities, are subject to a finding of material WA Code non-compliance in connection with the WA Code or WA Guidelines which may adversely affect the prospects of, or serve to prevent, the Services Provider and its Related Entities being awarded 'State Building Work'.
- (b) If the Services Provider does not comply with, or fails to meet any obligation imposed by, the WA Code and WA Guidelines, a finding of material WA Code non-compliance may be made against it in connection with the WA Code and WA Guidelines.
- (c) Where a finding of material WA Code non-compliance is made:
- (i) it is without prejudice to any rights that would otherwise accrue to the parties; and
- (ii) the State of Western Australia (through its agencies, Ministers and the BCCMU) and Select are entitled to take the finding into account which may adversely affect the prospects of, or serve to prevent, the Services Provider and its Related Entities being awarded the 'State Building Work' the subject of the procurement processes to which the WA Code and WA Guidelines apply.

## 25.6 Compliance

- (a) The Services Provider must initiate voluntary remedial action aimed at rectifying a finding of material WA Code non-compliance with the WA Code and WA Guidelines when it is drawn to their attention.
- (b) The Services Provider bears the cost of ensuring its compliance with the WA Code and WA Guidelines, including in respect of any positive steps it is obliged to take to meet its obligations under the WA Australia Code and WA Guidelines. The Services Provider is not entitled to make a claim for reimbursement or an extension of time from the State of Western Australia for such costs.
- (c) Compliance with the WA Code and WA Guidelines does not relieve the Services Provider from responsibility to perform the works and any other obligation under the contract, or from liability for any defect in the works or from any other legal liability, whether or not arising from its compliance with the WA Code and WA Guidelines.

## 26. STATE CODE COMPLIANCE - SOUTH AUSTRALIA

**26.1** The provisions in this clause 26 apply where the relevant State is South Australia and the Supplier is required to comply with the State Code applicable to South Australia.

**26.2** In addition to terms defined in this Order, the terms used in this clause 26 have the same meaning as is attributed to them in the SA Code and the SA Guidelines as amended from time to time.

## 26.3 Primary Obligation

The Services Provider must at all times:

- (a) comply with, and meet any obligations imposed by, the SA Code and the SA Guidelines;
- (b) ensure that its subcontractors comply with, and meet any obligations imposed by, the SA Code and the SA Guidelines; and
- (c) not cause Select to breach any of its obligations under the SA Code or the SA Guidelines.

## 26.4 Additional matters constituting a substantial breach

The parties acknowledge and agree that a failure by the Select to pay the Services Provider in accordance with the terms of this Services Agreement will constitute a substantial breach of this Services Agreement.

## 26.5 WHS Management System

The Services Provider acknowledges that it has an appropriate WHS management system in place that satisfies the requirements of the SA Code.

## 26.6 Notification of industrial relations matters

The Services Provider must promptly notify the Select of any industrial relations matters that may have an impact on the cost or completion of this Services Agreement or other contracts relating to the Project (including those to which the Services Provider is not a party).

## 26.7

### Skills Development Training

- (a) The Services Provider acknowledges its obligations under Schedule 6 of the SA Guidelines in relation to skills development training and undertakes to take all necessary steps to satisfy the requirements of Schedule 6 of the SA Guidelines, including by making such contributions to the Construction Industry Training Fund as are required.
- (b) If requested by the Select, the Services Provider must provide Select with proof of the Services Provider's or any of the Services Provider's subcontractors' payment of the Construction Industry Training Levy.
- (c) The Services Provider must comply with the South Australian Government's Workforce Participation in Government Construction Procurement Policy.

## 26.8

### Environmental management

The Services Provider acknowledges its obligations under Schedule 8 of the SA Guidelines in relation to environmental management and, without limiting its obligations under the SA Guidelines, undertakes to comply with the South Australian Government's Energy Efficiency Action Plan.