

## 1. DEFINITIONS

### 1.1 Definitions:

**"Agreement"** means the agreement between Select and the Company, which consists of:

- (a) the Plant Hire Order;
- (b) these Plant Hire Terms and Conditions;
- (c) the Plant specification requirements set out in attachments (if any); and
- (d) any other documents incorporated by reference in the Plant Hire Order or these Plant Hire Terms and Conditions.

**"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 Agreement (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*, 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.

**"Business Day"** means a 'business day' as defined by the Security of Payment Act.

**"Clean Energy Regulator"** means the Clean Energy Regulator established in the *Clean Energy Regulator Act 2011* (Cth) or any future authority with similar functions.

**"Collateral"** has the meaning given in the PPSA.

**"Company"** means the person, firm or corporation identified as "Supplier" in the Plant Hire Order.

**"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.

**"Debt Due"** means an amount due and payable by the Company to Select. A Debt Due becomes due and payable at the time specified in this Agreement, or if no time is specified, it is payable on demand.

**"Delivery Date"** means the delivery date set out in the Plant Hire Order.

**"Environment"** includes any aspect of the Site and its surroundings, including physical, hydrological and climatic characteristics.

**"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).

**"Good Industry Practice"** means the practice followed when work (including any supply of Services, Plant or personnel) is undertaken in accordance with all of the following:

- (a) in a sound and workmanlike manner;
- (b) best work practices;
- (c) due care and skill;
- (d) all Legislative Requirements; and
- (e) due expedition and without unnecessary or unreasonable delays.

**"Governing Law"** means the laws of the State or Territory where the Site is situated.

**"Hire Charges"** means the charges for the supply of Plant, personnel and Services (as applicable) under this Agreement, calculated at the rates set out in the Plant Hire Order.

**"Hire Period"** means the period identified in the Plant Hire Order and defined in clause 3.

**"Industrial Instrument"** means an award or agreement, however designated, that:

- (a) 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
- (b) relates to the relationship between an employer and the employer's employees.

**"Laing O'Rourke ABAC Policy"** means the Laing O'Rourke Global Anti-Bribery and Corruption Policy available here: <https://www.laingorourke.com/company/governance/code-of-conduct/>

**"Legislative Requirements"** means all laws, legislation, ordinances, regulations, bylaws, orders, rules and other subordinate legislation, approvals, codes and relevant Australian, international and industry standards.

**"Liability"** means any debt, damage, loss, loss of use, liability, cost, charge, expense (including legal costs, deductibles, or increased premiums), fine, levy or compensation whether:

- (a) arising from or in connection with any obligation under or in connection with this Agreement (including an indemnity);
- (b) legal or equitable, and whether arising under or for a breach of contract, in tort (including negligence), restitution or at law; or
- (c) present, prospective or contingent.

**"Minimum Hire Period"** means any period specified in the Plant Hire Order to be the minimum period for which Select requires part or all of the Plant but does not include any hire periods described as expected, anticipated or estimated.

**"Minimum Hire Period Fees"** means the fee for the Minimum Hire Period specified in the Plant Hire Order, if any.

**"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) and *National Greenhouse and Energy Reporting (Measurement) Determination 2008* (Cth) and all related regulations and codes of practice.

**"Off-hire Notice"** means a notice issued by the Select Hire Desk which identifies the date on which the Hire Period is to end.

**"Personnel"** means, in respect of a party, that party's contractors, subcontractors, consultants, suppliers, employees, officers, agents and other persons engaged or invited onto the Site by such party, provided that Select's Personnel excludes the Company and the Company's Personnel.

**"Plant"** means the plant or the equipment and ancillary parts, goods and materials requested by Select or as described in the Plant Hire Order or elsewhere in the Agreement.

**"Plant Hire Order"** means the plant hire order form so entitled which forms part of the Agreement.

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

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

**"Prohibited Act"** means in connection with the Agreement, 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 to obtain, influence, induce or reward any improper advantage and Facilitation Payments.

**"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) South Australia, then Part 3 of the *Law Reform (Contributory Negligence and Apportionment of Liability) Act 2001* (SA);
- (e) Tasmania, then Part 9A of the *Civil Liability Act 2002* (Tas) and the *Building Act 2000* (Tas);
- (f) Victoria, then Part IVAA of the *Wrongs Act 1958* (Vic); or
- (g) Western Australia, then Part 1F of the *Civil Liability Act 2002* (WA).

**"Project"** means the project for which the Plant is ordered.

**"Project Requirements"** means any requirements of Select notified to the Company verbally or in writing and specific to the Project for which the Plant is ordered.

**"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 Agreement, would be considered or deemed to be a Public Official.

**"Relevant Collateral"** means Collateral which is the subject of a Security Interest granted under this Agreement.

**"Replacement Value"** means the reasonable market replacement cost of the Plant which is commensurate with the age and fair wear and tear of the particular Plant as determined by Select.

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

**"Security of Payment Act"** means if the Governing Law is:

- (a) the Australian Capital Territory, then the *Building and Construction Industry (Security of Payment) Act 2009* (ACT);
- (b) New South Wales, then the *Building and Construction Industry Security of Payment Act 1999* (NSW);

- (c) Northern Territory, then the *Construction Contracts (Security of Payment) Act 2004* (NT);

- (d) Queensland, then the *Building Industry Fairness (Security of Payment) Act 2017* (QLD);

- (e) South Australia, then the *Building and Construction Industry Security of Payment Act 2009* (SA);

- (f) Tasmania, then the *Building and Construction Industry Security of Payment Act 2009* (Tas);

- (g) Victoria, then the *Building and Construction Industry Security of Payment Act 2002* (Vic); or

- (h) Western Australia, then the *Building and Construction Industry (Security of Payment) Act 2021* (WA).

**"Select Hire Desk"** means the individual(s) authorised by Select to give and receive instructions to and from the Company in respect of the Plant Hire Order.

**"Select"** means Select Plant Australia Pty Ltd (ABN 49 644 500 354).

**"Services"** means any ancillary services to be provided by the Company requested by Select or as described in the Plant Hire Order or elsewhere in the Agreement.

**"Site"** means the location nominated in the Plant Hire Order.

**"State Code"** means, if the Site is located in:

- (a) New South Wales and the Project is 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 *New South Wales Industrial Relations Guidelines: Building and Construction Procurement, July 2013, Updated: September 2017* (**NSW Guidelines**);

- (b) Queensland and the Project is 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 *Queensland Government's Implementation Guidelines to the Queensland Code of Practice for the Building and Construction Industry* (**Queensland Guidelines**); or

- (c) 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**);

in each case, as amended, updated and replaced from time to time.

**"WHS Act"** means the principal work health and safety Act in the State or Territory in which the Site is situated, and, if any work is being carried out or Services provided in a different State or Territory to the location of the Site, the Act in that State or Territory. For clarity, the term WHS Act may include two or more Acts.

**"WHS Legislation"** means the WHS Act and the WHS Regulations and any other health and safety related legislation, codes of practice and guidance issued by any authority which is applicable to the Plant and the Services.

**"WHS Regulations"** means the Regulations associated with the WHS Act.

**"WHS Requirements"** means any and all directions, instructions, requests or requirements relevant to or associated with or necessary for compliance by the Company or Select with WHS Legislation, Select's management plans identified relating to work health and safety, and any other matters of which the Company has been informed by Select orally or in writing.

**"Wilful Misconduct"** means an act or failure to act by Select that was intended to cause or was in reckless disregard of, or with wanton indifference to, harmful consequences.

Terms defined or otherwise given meaning in the Plant Hire Order have the same meaning in these Plant Hire Terms and Conditions.

- 1.2 A reference to delivery by a Delivery Date is a reference to Delivery of each part of the Plant specified in the Plant Hire Order by the corresponding Delivery Date.

## 2. OBLIGATIONS OF THE COMPANY

### 2.1 The Company must:

- (a) provide Plant that complies with all applicable Legislative Requirements, is in good working order, is fit for the purpose as implied by any manufacturer's literature (including any specifications and manuals) and supported by evidence that it has been maintained strictly in accordance with the Plant manufacturer's recommendations (and at recommended service intervals) throughout its life;
- (b) deliver the Plant to the Site and (where the Plant Hire Order includes assembly) assemble and erect the Plant ready for use by Select by the Delivery Date;
- (c) provide the Services (if any) in accordance with this Agreement;
- (d) comply with all applicable Legislative Requirements in the performance of its obligations under the Agreement (and

provide such evidence of compliance as may be reasonably required by Select from time to time);

- (e) perform and complete its obligations under the Agreement in accordance with Good Industry Practice;
- (f) have the right to hire the Plant to Select;
- (g) prior to Plant mobilisation provide to the Select Hire Desk a completed pre-mobilisation checklist, service history, a copy of all manufacturer's literature (including any specifications and manuals) and any documents required under the Project Requirements;
- (h) supply the Plant and provide the Services (if any) in accordance with any Project Requirements;
- (i) ensure that the Plant and Services (if any) are suitable for the purposes set out in or reasonably ascertainable from the Agreement; and
- (j) subject to clause 2.2, ensure that the Plant will perform in accordance with any documentation provided by the Company for the Plant.

- 2.2 To the extent of any ambiguity, discrepancy or inconsistency between the documentation provided by the Company under clause 2.1 (j) and the documents referred to in clause 2.1 (g), the documents referred to in clause 2.1 (g) will take precedence.
- 2.3 Should the Company not own any part of the Plant, the Company must disclose this in writing to Select for approval prior to supply. Select in its sole discretion reserves the right to refuse Plant supplied by third party companies (acting reasonably).
- 2.4 The Company must attend all meetings which Select considers are reasonably necessary for the proper performance of its obligations under the Agreement.

### 3. HIRE PERIOD

- 3.1 The Hire Period shall exclude (except where the Plant is collected by Select at Select's own cost) all time in transporting the Plant to the Site and (where the Plant Hire Order includes assembly) the assembly or erection of the Plant and shall begin when the Plant is on the Site and available to Select and shall continue for the Hire Period. Any advice from the Select Hire Desk that the Hire Period is to end will have an Off-hire Notice reference number, which must be confirmed by the Company with the Select Hire Desk.
- 3.2 Should Select retain the Plant beyond any Minimum Hire Period, the terms of this Agreement shall be extended at rates to be agreed which shall not exceed the rates set out in the Plant Hire Order.

### 4. HIRE CHARGE

- 4.1 Select shall pay the Hire Charges for Plant and Services provided for the Hire Period subject to any entitlement Select has under this Agreement or at law to deduct or set-off amounts.
- 4.2 The Company will stand down the Plant during Christmas shut down periods and while the Plant is not available for use including but not limited to mechanical breakdown, wet weather and industrial action, and at other times when the Plant is not in use as agreed between the parties or directed by Select. There shall be no cost to Select during periods of stand down that are not directly caused by Select or its client.
- 4.3 For Plant that is supplied with Personnel, it is a condition precedent to payment that the Company provides:
  - (a) an accurate and completed emissions report in a format directed by Select up to the date for which the Company is claiming payment;
  - (b) weekly timesheets to be signed by a Select representative when Plant is supplied by the Company to substantiate the hire charges up to the date for which the Company is claiming payment; and
  - (c) a signed statutory declaration that:
    - (i) all plant operators' wages due in connection with the Agreement have been duly paid;
    - (ii) it is a registered employer in accordance with the applicable Income Tax Assessment Act, as amended from time to time, and that all deductions from employees' wages in compliance with that registration have been remitted to the Taxation Commissioner by the due date; and
    - (iii) provision has been made for all other employee entitlements in accordance with clause 8.

### 5. INVOICING AND PAYMENT

- 5.1 The Company shall issue invoices monthly for the Hire Charges. Included with any invoice must be any evidence of the amount claimed which may be reasonably required by Select and the Select Plant Hire Order number.
- 5.2 Tax invoices and credit notes must:
  - (a) clearly state the relevant Plant Hire 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:

accounts.payableaustralia@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.

5.3 Subject to compliance with clause 5.2 and the proper performance of the Company's obligations, Select shall pay the Company the Hire Charges for Plant and Services provided in accordance with this Agreement within:

- (a) 20 Business Days if Delivery Point is located in New South Wales; or
  - (b) 30 calendar days if Delivery Point is not located in New South Wales,
- of receipt of an invoice for Hire Charges that complies with this Agreement, provided that such invoice is received no later than:
- (c) 20 Business Days if Delivery Point is located in New South Wales; or
  - (d) 30 calendar days if Delivery Point is not located in New South Wales,

after the date that the invoice was due.

5.4 If the Agreement does not include the supply of fuel for the Hire Period, the Plant must be delivered full of fuel and any invoice for fuel upon completion of the Hire Period must be provided at the same time as any claim for payment under this clause.

5.5 Notwithstanding anything else in this Agreement and to the extent permitted by law, Select shall not be liable for any claim by the Company for loss, damage, cost or expense (whether in contract, tort, under statute or in equity) received later than 30 days after the expiration of the Hire Period.

### 6. TRANSPORTATION

Unless otherwise specified in the Agreement or otherwise reasonably directed by Select, the Company shall be responsible for all transportation costs for the Plant including but not limited to, loading and unloading costs, insurance, storage, carriage,

towage, salvage, waiting, detention and demurrage costs, including all damage or loss, direct or indirect and consequential however caused while the Plant is in transit (including during loading or unloading of the Plant) and during the entire period of the Agreement.

## 7. PLANT TO BE IN GOOD REPAIR

The Company shall provide written certification prior to transportation in the format reasonably required by Select that the Plant has been properly serviced and maintained before it is used on Site. Select may at any time (acting reasonably) inspect the Plant for deficiencies. The Company shall, at its own cost, maintain the Plant in good, safe and operating condition and in strictly in accordance with the Plant manufacturer's recommendations (and at recommended service intervals) including protection against freezing, corrosion and all other exposures. All equipment, accessories and attachments not listed in the Agreement that are necessary for the Company to perform the Agreement shall be furnished by the Company at its own expense.

## 8. SUPPLYING PERSONNEL TO SITE

### 8.1 The Company:

- (a) must ensure that all of its Personnel attending the Site in connection with the Services or the Company's obligations under the Agreement (including maintenance Personnel) are competent, experienced, appropriately licensed, qualified and where applicable, hold all appropriate permits, certificates and licences and must produce evidence of such licences, qualifications, experiences or authorisations to Select upon request.
- (b) if required by the Agreement to provide plant operators, shall employ only competent, experienced, properly licensed and reliable Personnel who are adequately trained, hold current certificates of competence to operate the Plant and will operate the Plant;
- (c) is responsible for site inductions of its company representatives and employees, training, skill assessment or reclassification as required during the Hire Period, including any associated costs; and
- (d) must ensure that all Personnel of the Company carries any site identification or induction cards issued when on Site and comply with all Site access requirements.

8.2 The Hire Rate stated in the Plant Hire Order shall be inclusive of such labour including any overtime unless specifically stated otherwise.

- 8.3 If Select makes any payment in respect of the Company's employees or suppliers or subcontractors of the Company in any circumstances, the amount thereof shall be deemed to be a Debt Due.
- 8.4 The Company 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.

## 9. SET OFF

- 9.1 Without limiting Select's rights under this Agreement or otherwise at law, Select may set-off or deduct from any monies due or that otherwise may become due to the Company (including any security) any:
  - (a) Debt Due; or
  - (b) other amount to which Select has a bona fide claim to the payment of money by the Company under, arising out of, or in connection with this Agreement, including any prospective or contingent Debt Due, claim for damages (whether arising under or for breach of contract, in tort (including negligence), restitution or at law) or any other entitlement (including under an indemnity).

## 10. DAMAGE TO EQUIPMENT

- 10.1 If the Plant is defective or damaged or made inoperable in any way during the Hire Period, including as a result of normal wear and tear (and without limiting any other rights Select may have):
  - (a) if discovered by Select (or a related company), Select will notify the Company of a reasonable time within which the defect or damage must be repaired; and

- (b) whether or not discovered by Select or the Company, the Company shall promptly notify Select of the defect or damage, specifying the extent and nature of the defect or damage and the steps taken to rectify the problem such that delays or interruptions to Select's use of the Plant will be prevented; and
- (c) if the Plant is inoperable and cannot be repaired within a reasonable time specified by Select, remove the Plant from Site within the time identified by Select in a written notice and (at Select's option, acting reasonably):
  - (i) at its own cost replace it with Plant that complies with this Agreement; or
  - (ii) pay to Select the cost to Select of replacing the inoperable or defective Plant.
- (d) Any loss, damage, expense or other costs incurred by Select due to the Plant failing to conform with the requirements of the Agreement including where the Plant is unfit for purpose, defective, damaged or inoperable (including as a result of fair wear and tear) during the Hire Period may be recovered as a Debt Due, save to the extent that such loss damage, expense or costs were incurred as a result of Select's negligence, breach of the Agreement or Wilful Misconduct.
- (e) To the extent the Agreement permits the Company to recover payment for any damaged Plant (whether during or after the Hire Period), the Company may be entitled to payment to the extent only that:
  - (i) prior to effecting the repairs:
    - (A) the Company notifies Select of the specific parts damaged and provides Select a reasonable opportunity to inspect the damage, not less than:
      - (B) 3 days, where the value of the damage claimed is <\$1000; and
      - (C) 5 days, where the value of the damage claimed is >\$1000; and
    - (ii) provides to Select images of the particular damage and details of the proposed repairs;
  - (f) after effecting the repairs, the Company provides evidence of the repairs including any parts used and a claim for payment which itemises parts and labour and is itemised in accordance with the Hire Charges (to the extent relevant); and
  - (g) if the damage is identified after the Hire Period, the Company notifies Select of the matters identified in clause

10.1 (c) (i) within 72 hours of the relevant Plant arriving at the Company's depot.

10.2 In the event of total loss of any Plant caused by Select during a Hire Period, Select's liability to the Company whether under the Agreement or otherwise shall in no event exceed the Replacement Value.

## 11. INDEMNITY

11.1 The Company indemnifies Select from and against any Liability suffered or incurred by Select in respect of any:

- (a) personal injury (including death);
- (b) damage to any real or personal property, including the Plant, or arising under any Legislative Requirements; or
- (c) breach, act, omission or wilful misconduct of the Company (including any of its Personnel),

arising in any manner out of or in connection with the operation or use of the Plant during the Hire Period or performance of the Services or out of or in connection with the Agreement, however the Company's liability to indemnify will be reduced to the extent that such Liability is caused or contributed to by any negligence of Select, breach of this Agreement by Select or Select's Wilful Misconduct.

11.2 Without limiting clause 11.1, the Company indemnifies Select from and against any Liability suffered or incurred by Select arising out of or in connection with any claim made by the Company's Personnel however the Company's liability to indemnify will be reduced to the extent that such Liability is caused or contributed to by any negligence of Select, breach of this Agreement by Select or Select's Wilful Misconduct..

11.3 Notwithstanding any other provision in this Agreement, neither party shall be liable to the other for any loss of goodwill, loss of business, loss of revenue or profits (anticipated, actual or otherwise), loss of savings, or loss of contract, arising out of or in connection with this Agreement.

## 12. INSURANCE

12.1 The Company shall provide and maintain:

- (a) insurance to cover its liabilities under the Agreement throughout the term of the Agreement and such insurance, where permitted by law, shall include Select as a joint insured; and
- (b) workers compensation insurance to comply with laws.

12.2 When requested by Select, the Company shall furnish evidence that such insurances have been effected and the premium paid.

Maintaining this insurance does not relieve the Company of its obligations defined in clause 11. Despite anything in the Plant Hire Order or otherwise, the Company may not claim any payment from Select associated with a Plant damage waiver.

## 13. TERMINATION

13.1 Select may by written notice terminate this Agreement:

- (a) if the Company fails to rectify a default under this Agreement within the time specified by Select in a written notice of default, effective immediately;
- (b) if the Company fails to deliver the Plant to the Site by the Delivery Date, effective immediately;
- (c) for its sole convenience, effective from the date stated in the notice provided reasonably in advance to the Company;
- (d) if the Company acts so as to endanger any property or any person, effective immediately; or
- (e) on insolvency or threatened insolvency of the Company, effective immediately.

13.2 On receiving a notice of termination Company must:

- (a) immediately off-hire the Plant;
- (b) make arrangements for collection of Plant; and
- (c) use all reasonable endeavours to minimise the costs of termination to Select.

If the Agreement is terminated under clause 13.1 (c) the Company must send to Select within 30 days of the date of termination a tax invoice for the value of any Hire Charges in accordance with clause 4.

13.3 If the Agreement is terminated under clause 13.1 (c) and the Agreement is for a fixed term or Minimum Hire Period, the Company's sole entitlement shall be payment of the costs reasonably incurred by the Company in connection with the termination, to the extent as set out below, and to the lesser amount of:

- (a) the difference in the Hire Charges between the long term hire rates and the normal, undiscounted hire rates for the hire period up to the date of termination as set out in the Plant Hire Order;
- (b) the actual direct out of pocket costs incurred by Company during the remainder of the Minimum Hire Period; or
- (c) 50% of the remaining Minimum Hire Period Fees.

13.4 Without prejudice to any other rights or remedies of Select, the Company shall be liable to Select for any loss or expense incurred by Select in connection with any termination of the Agreement

(other than a termination under clause 13.1 (c)) and such amount shall be deemed to be a Debt Due.

13.5 Upon any termination (other than a termination under clause 13.1 (c)), Select may take possession of and permit other persons to use the Plant and other things on the Site which are owned by the Company for the purpose of completion of the Project. The Company shall:

- (a) where the Agreement is terminated in accordance with clause 13.1 (e), have no right to any compensation or allowance for any action taken by Select pursuant to this clause; and
- (b) comply at its own cost with the reasonable directions of Select, which may include directions to:
  - (i) remove the Plant from Site within the time specified in a written notice from Select; or
  - (ii) not be entitled to the return of the Plant until such time as Select has completed the Project for which the Plant was hired.

13.6 The Company may:

- (a) by written notice, terminate this Agreement on Select's insolvency, effective immediately; or
- (b) where Select fails to pay an undisputed amount to the Company in accordance with clause 5.3, and fails to remedy such non-payment within 30 days after Select's receipt of a notice from the Company, terminate this Agreement upon 30 days written notice to Select, provided such amount remains unpaid.

## 14. GOODS AND SERVICES TAX

- (a) Terms defined in *A New Tax System (Plant and Services Tax) Act 1999* (Cth) have the same meaning when used in this clause.
- (b) Unless otherwise expressly stated, all prices or other sums payable or consideration to be provided under the Agreement are exclusive of GST.
- (c) If GST is payable on any supply made under the Agreement, the recipient must pay to the supplier an amount equal to the GST payable on the supply.
- (d) Subject to subclause (e), the recipient must pay the amount referred to in subclause (c) in addition to and at the same time as payment for the taxable supply is required to be made under the Agreement.

- (e) The supplier must deliver a tax invoice or an adjustment note to the recipient before the supplier is entitled to payment of an amount under subclause (c). The recipient can withhold payment of the amount until the supplier provides a tax invoice or an adjustment note, as appropriate.
- (f) If the Agreement requires a party to reimburse any other party for any expense, loss or outgoing (reimbursable expense) incurred by another party, the amount required to be reimbursed by the first party will be the sum of:
- (g) the amount of the reimbursable expense net of input tax credits (if any) to which the other party or the representative member of any GST group of which that party is a member is entitled in respect of the reimbursable expense; and
- (h) if the reimbursement is subject to GST, an amount equal to that GST.
- (i) If a GST inclusive price is charged or varied under the Agreement, the supplier must provide the recipient of the supply a valid tax invoice or adjustment note at or before the time of payment or variation.
- (j) If an adjustment event arises in respect of a taxable supply made by a supplier under the Agreement, the amount of GST paid by the recipient will be adjusted accordingly by a further payment by the recipient to the supplier or the supplier to the recipient as the case requires.
- (k) The Company must provide notice to Select of its entitlement (or not) to claim input tax credits in respect of premiums paid for relevant insurances under the Agreement as soon as practicable after the date of the Agreement.

## 15. TAXES

All other taxes, duties and levies arising out of or in connection with the Agreement or arising out of the use or possession of the Plant shall be paid by the Company and are deemed to be included in the Hire Charges.

## 16. SELECT'S RIGHT TO WITHHOLD TAX

- 16.1 Notwithstanding any other provision to the contrary, if Select considers it necessary to satisfy its obligations under any law (acting reasonably), Select may:
  - (a) withhold an amount from a payment to be made to the Company; and
  - (b) pay the withheld amount directly to the to the Commissioner of Taxation (**Commissioner**).
- 16.2 If the amount withheld in accordance with this clause is paid by Select to the Commissioner, it is deemed to have been paid to

the Company on the date on which the remainder of the payment to which it relates was paid to the Company.

- 16.3 To the extent permitted by law, the Company agrees and acknowledges that it has no Claim against Select for any amounts withheld and paid to the Commissioner in accordance with this clause, and Select will not be required to pay the Company by the amount withheld.
- 16.4 If Select does not withhold an amount under this clause which it is required to under any law, the Company agrees to pay that amount to Select, upon request by Select within 7 days and Select will remit this amount to the Australian Taxation Office.
- 16.5 The Company must indemnify Select from and against any Liability of any kind suffered or incurred by Select as a consequence of a breach of warranty, failure by the Company to provide information or assistance requested by Select, or provision of incorrect information, with respect to a withholding tax matter except to the extent caused or contributed to by the negligence, breach or Wilful Misconduct of Select.

## 17. ASSIGNMENT-- TRANSFER – SUBLETTING

The Company must not assign or sub-let any portion of this Agreement without the prior written consent of Select (which must not be unreasonably withheld but may be conditioned). Select may upon written notice to the Company assign its rights and entitlements under the Subcontract to any person. The Company shall not, in absence of Select's prior written consent, remove the Plant from the Site.

## 18. SUCCESSORS AND ASSIGNS

The Agreement shall be binding upon and shall inure to the benefit of the parties and their respective heirs, successors, administrators, executors, trustees and permitted assigns.

## 19. FORM OF AGREEMENT

- 19.1 The Agreement 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 Company warrants that it has not relied upon any previous representations by Select or any one acting on behalf of or as agent for Select as an inducement to enter into the Agreement. The Company acknowledges that any terms or conditions in the Company's hire schedule, delivery docket or the like do not apply to the Agreement or in any way constitute an alternative offer. This clause does not exclude a party's liability for prior false, misleading or deceptive statements or misrepresentations, whether oral or written.

- 19.2 The Agreement may only be modified in writing signed by the parties.

- 19.3 Except to the extent stated in this Agreement, the rights, powers and remedies provided in the Agreement are cumulative with and not exclusive of the rights, powers and remedies provided by law independently of the Agreement.

- 19.4 This Agreement may consist of a number of counterparts and, if so, the counterparts taken together constitute one document.

## 20. DISPUTES AND GOVERNING LAW

- 20.1 Before a party commences proceedings, it must request a without prejudice meeting between senior executives and attempt in good faith to negotiate a settlement and, despite the existence of a dispute, the parties must continue to perform their respective obligations under this Agreement.
- 20.2 Unless otherwise expressly required by the Security of Payment Act, any adjudication application made under the Security of Payment Act must be made with the Resolution Institute.
- 20.3 The Agreement is governed by the Governing Law and the parties submit to the non-exclusive jurisdiction of its Courts.

## 21. INTERACTIONS WITH SELECT

- 21.1 In the performance of the Agreement the Company shall take directions and instructions only from Select. Despite any other provision of this Agreement, the Company will have no entitlement or claim against Select for any cost, loss or damage associated with acts or omissions taken (or not taken) by it based on instructions from other sources.
- 21.2 Where a direction given by or on behalf of Select may cause any potential adverse impact to Select (including any adverse impact on the transportation, delivery, quality or cost of the Plant, the Services or the Project (as applicable)), the Company must warn Select in writing of any such potential detriment prior to complying with such direction.

## 22. EXCLUSION OF PROPORTIONATE LIABILITY LEGISLATION

To the extent permitted by law, the operation of the Proportionate Liability Legislation is excluded in relation to the Company's obligations and liabilities under or in connection with the Agreement and the Company must not seek to apply the provisions of the Proportionate Liability Legislation in relation to any claim by Select against the Company. This clause shall be limited to jurisdictions in which the parties are entitled to contract out of the Proportionate Liability Legislation.

## 23. ENVIRONMENTAL OBLIGATIONS

- 23.1 The Company must:

- (a) execute the Services so as to avoid:
    - (i) any adverse impact on the Environment; and
    - (ii) nuisance to, and damage or unlawful pollution of, the Site and its surroundings;
  - (b) comply with any project environmental plan provided by Select; and
  - (c) comply with all Legislative Requirements, policy, procedures and management plans relating to protection of the Environment required by Select, including any change or revision of such policy, procedures and management plans.
- 23.2 Where Services are performed in Victoria, the Company must, in performing the Services, minimise risks of harm to human health or the environment from pollution or waste so far as is reasonably possible, as required by the *Environmental Protection Act 2017* (VIC).
- 23.3 The Company will be responsible for and if reasonably requested by Select, will clean up and make good any damage to the Environment caused by execution of the Company's obligations under this Agreement or in performance of the Services.
- 23.4 If the Company fails to meet any of its environmental obligations under the Agreement, it must comply in a timely manner with any reasonable direction given by Select to rectify its failure and prevent its recurrence.
- 23.5 Select may direct the Company to perform or not perform certain actions for reasons of protection of the Environment (acting reasonably) and the Company must comply with such direction.
- 23.6 Without limiting any other obligation or liability of the Company under the Agreement or under any Legislative Requirement, the Company must notify Select immediately upon the occurrence of any environmental incident, whether caused by the Company or its Personnel.
- 23.7 The Company must comply with all reasonable requests from Select for information and records to allow Select to successfully discharge its obligations in accordance with Legislative Requirements, policy, procedures and management plans relating to protection of the Environment.
- 23.8 The Company must indemnify Select from and against any Liability arising out of or in connection with the Company's breach of this clause 23 except to the extent caused or contributed to by the negligence, breach or Wilful Misconduct of Select.
- 23.9 The Company acknowledges and agrees that:

- (a) its subcontractors, consultants, material suppliers, agents, representatives, employees and any related entity undertaking work in connection with Agreement also 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 and clause 4.3 (a), 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 the emissions report in accordance with clause 4.3 (a) and allow for the emissions report and further information provided under clause 23.1(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, production and access to relevant documents.

## 24. HEALTH AND SAFETY

- 24.1 The Company acknowledges that the Company has complete control in relation to, and will ensure, so far as is reasonably practicable, the health and safety of any plant operators or Personnel that it is required to provide under the Agreement including on Select's premises and that Select does not control or influence the Company's activities in relation to health and safety matters other than as set out in this clause 24.
- 24.2 The Company must and must ensure that its Personnel:
- (a) comply with WHS Legislation and all WHS Requirements;
  - (b) comply with any reasonable directions issued by Select in relation to work health and safety; and
  - (c) in relation to the Plant and the Services, not knowingly cause Select to be in breach of any WHS Legislation.
  - (d) ensure so far as is reasonably practicable, that the Plant is without risks to the health and safety of persons who may use, handle, store, construct, assemble or carry out any reasonably foreseeable activity including the proper storage, decommissioning, dismantling, demolition or disposal of the Plant;
  - (e) carry out, or arrange the carrying out of, any calculations, analysis, testing or examination that may be necessary for the performance of the duty imposed by subclause 24.2 (d); and
  - (f) give adequate information to Select concerning each purpose for which the Plant were designed or

manufactured, the results of testing referred to in sub-clause 24.2 (d) and any conditions necessary (including any written assurances) to ensure that the Plant are without risks to health and safety when used, including a description of the Plant and any faults in Plant that has been previously used.

- 24.3 If, during the performance of its obligations under the Agreement, Select informs the Company that it has failed or is likely to breach this clause 24 the Company must promptly remedy or take appropriate steps to prevent that breach and Select may, without prejudice to any other remedy it may have:

- (a) take any action (before or after informing the Company) that may be required to rectify or prevent the breach;
- (b) direct the Company to suspend performance of its obligations under the Agreement; or
- (c) take any action under clause 13 including termination of the Agreement.

## 24.4 The Company must:

- (a) regularly consult with Select in relation to the systems in place for ensuring safety of persons at and near the Site;
- (b) obtain regular written assurances from all Personnel regarding ongoing compliance with the WHS Legislation and all WHS Requirements and provide such written assurances to Select;
- (c) provide Select with a written report on all work health, safety and rehabilitation matters or any other relevant matters as Select may require from time to time;
- (d) consult and cooperate with all other contractors and Select to ensure that all parties are able to comply with their respective obligations under the WHS Legislation;
- (e) ensure that all Personnel have received such information, instruction, training or supervision (including any induction and training required by Select) necessary to protect persons from risks to their health and safety;
- (f) ensure all Personnel are appropriately licensed, qualified, experienced or authorised to carry out or be used in the course of performing any Services and produce evidence of such licences, qualifications, experience or authorisations to Select upon request; and
- (g) ensure its subcontracts or other supply chain contracts include provisions equivalent to the obligations imposed on the Company under this clause 24.

## 24.5 The Company acknowledges and agrees that:

- (a) all costs incurred by the Company in complying with this clause are included in the Hire Charges;
  - (b) to the extent permitted by law, it has no entitlement to any claim as a consequence of complying with this clause 24; and
  - (c) any costs incurred by Select in taking action under clause 24.3 will be a Debt Due.
- 24.6 The Company indemnifies Select against any Liability Select may suffer or incur as a result of a failure by the Company to comply with this clause 24 except to the extent caused or contributed to by the negligence, breach or Wilful Misconduct of Select.
- 24.7 The Company must promptly:
- (a) inform Select of all incidents involving any personnel engaged in connection with the performance of its obligations under the Agreement which results in:
    - (i) cessation of employee's work;
    - (ii) medical treatment;
    - (iii) damage to plant and equipment;
    - (iv) injury or damage to persons, property or materials; or
    - (v) a near miss that could have resulted in any of the occurrences described in paragraphs (i) to (iv); and
    - (vi) provide to Select a copy of an incident report for each incident, which must comply with the WHS Legislation, WHS Requirements and contain any information, details and documents requested by Select.

## 25. ANTI-BRIBERY AND ANTI-CORRUPTION

- 25.1 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. The Laing O'Rourke ABAC Policy prohibits corrupt acts, including Prohibited Acts, by Laing O'Rourke and its Associated Persons.
- 25.2 The Company 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:
- (a) 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
  - (b) must use reasonable endeavours 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.

- 25.3 The Company represents and warrants that except as otherwise disclosed in writing to Select, at the Award Date and during the term of the Agreement no Public Official:
- (a) is or will become an Associated Person of the Company;
  - (b) is or will become involved in the management of the Company, including being or becoming part of its board or other governing body;
  - (c) holds or will hold a controlling or significant interest the Company; or
  - (d) is an immediate family member of a member of the board or other governing body or senior management of the Company.
- 25.4 The Company represents and warrants that it has not in the past 10 years:
- (a) been the subject of an investigation into its compliance with;
  - (b) been convicted of any offence in connection with; or
  - (c) entered into any settlement in connection with any alleged breach of,
- any Anti-Bribery and Anti-Corruption Legislation.
- 25.5 The Company will promptly notify Select in writing if:
- (a) it becomes aware that any representations or warranties in clause 25.3 and 25.4 are false;
  - (b) it breaches the Anti-Corruption Obligations;
  - (c) any of its Associated Persons breaches the Anti-Corruption Obligations; or
  - (d) it becomes aware of a breach, alleged breach or facts or circumstances which could reasonably be considered to constitute a breach of the Anti-Bribery and Anti-Corruption Legislation by it or an Associated Person.
- 25.6 Notification under clause 25.5 must set out:
- (a) particulars of; and
  - (b) ongoing steps that the Company has taken and proposes to take to investigate and address,
- the breach, facts or circumstances, investigation, conviction or settlement as so notified.
- 25.7 If the Company notifies under clause 25.5, or if Select reasonably believes that the Company or any of its Associated Persons may have breached the Anti-Corruption Obligations, the Company must:

- (a) respond promptly to Select's reasonable enquiries and cooperate with Select in connection with its investigation into compliance with this clause 25 by the Company or its Associated Persons; and
- (b) allow Select access to its books, records and any other relevant documentation for the purpose of assessing or verifying compliance with this clause 25.

The obligations in this clause 25 continue for 3 years following expiry or termination of the Agreement.

- 25.8 The Company must answer Select's reasonable questions and allow Select access to records relevant to:
- (a) the Company's performance of the Agreement, for the purpose of assessing compliance with this clause;
  - (b) legal or equitable interests in the Company; and
  - (c) any ongoing background checks Select may wish to make in relation to the Company's compliance with the Anti-Corruption Obligations.
- 25.9 If the Company is in breach of this clause 25 or if Select reasonably believes such a breach has occurred or is imminent then Select may;
- (a) suspend performance and payment under the Agreement; or
  - (b) immediately (without prejudice to any other rights it may have) terminate the Agreement; and
  - (c) is not obliged to make any payment to the Company in respect of the Agreement or any benefits procured through, or related to, the breach.

The rights in this clause are cumulative and additional to any other rights Select may have under the Agreement.

- 25.10 The Company will indemnify Select for any Liability incurred by Select for and arising from or related to a breach or alleged breach by the Company or any of its Associated Persons of the Anti-Corruption Obligations, provided that such losses are reasonably foreseeable and mitigated if practicable and except to the extent caused or contributed to by the negligence, breach or Wilful Misconduct of Select.

## 26. MODERN SLAVERY

- (a) In this clause 26, 'Modern Slavery' means trafficking in persons, slavery, servitude, forced marriage, forced labour, debt bondage, deceptive recruiting for labour or services and the worst forms of child labour.
- (b) The Company must:

- (i) comply with all Legislative Requirements, including the *Modern Slavery Act 2018* (Cth);
- (ii) establish appropriate systems and processes to ensure risks or occurrences of Modern Slavery in its supply chains or any part of its business are identified, assessed and addressed; including:
  - (A) undertaking due diligence of its own suppliers and subcontractors to ensure that any risks or occurrences of Modern Slavery in their supply chains or any part of their businesses are identified, assessed and addressed;
  - (B) implementing a system of training for its employees in relation to the identification, assessment and addressing of Modern Slavery; and
  - (C) establishing mechanisms through which individuals can raise concerns about working conditions or modern slavery without fear of negative consequences;
- (iii) notify Select as soon as reasonably practicable after it becomes aware of, or reasonably suspects, Modern Slavery is occurring in its supply chains or any part of its business; and
- (iv) within such reasonable timeframes as are agreed with Select, undertake remediation to address any instances of Modern Slavery in its supply chains or any part of its business.
- (c) The Company must provide reasonable assistance (including the provision of information and access to documents, or completion of reports or questionnaires) that Select reasonably requires to enable Select to determine whether the Company is complying with its obligations under this clause and, if applicable, to assist with the obligations of Select under the *Modern Slavery Act 2018* (Cth).
- (d) The Company, if requested by Select, must prepare and provide to Select no later than within 20 Business Days an annual report documenting the steps taken to identify and address risks or occurrences of Modern Slavery in its supply chains, or in any part of its business.
- (e) Despite any other provision of this Agreement, if the Company refuses or fails to:
  - (i) comply with clause 26 B (ii) (A); or

- (ii) remediate and cease instances of Modern Slavery in its supply chains or any part of its business, to the satisfaction of Select,
- Select may immediately terminate this Agreement.
- (f) The Company indemnifies Select from and against any Liability Select may suffer or incur as a result of a failure by the Company to comply with its obligations under this clause 26 except to the extent caused or contributed to by the negligence, breach or Wilful Misconduct of Select. To the extent permitted by law, the Company releases Select from all claims which it may have against Select which relate to the exercise of Select's rights under this clause 26.

## 27. PPSA

- 27.1 This clause applies where the Agreement constitutes a PPS Lease.
- 27.2 The Company must notify Select at least 5 days before registering on the PPS Register any Security Interest in respect of the Plant.
- 27.3 Within 5 Business Days of the earlier of:
  - (a) the expiry or termination of this Agreement; or
  - (b) the issue by Select of an Off-Hire Notice,
 the Company will at its cost procure the removal from the PPS Register each Security Interest it has registered in respect of the Plant or the Relevant Collateral (as applicable), and must provide Select with verification of the removal of each Security Interest pursuant to section 157 of the PPSA.
- 27.4 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.
- 27.5 If Select sub-leases any Plant valued individually by Select at greater than \$10,000, Select may register its Security Interest against the sub-lessee.

## 28. SUSPENSION

- 28.1 Select may at any time and for any reason suspend performance of all or any of the Company's obligations under this Agreement by written notice effective upon receipt of the notice. The Company must suspend the performance of the obligations identified in the notice until Select directs the Company to resume performance of those obligations by further written notice. At such time, the Company must promptly recommence the performance of those obligations in accordance with this Agreement.

- 28.2 If the suspension is not as a result of an act or omission of the Company or its personnel, the Company will only be entitled to be paid the costs reasonably, directly and actually incurred by the Company.

## 29. CHAIN OF RESPONSIBILITY LEGISLATION

- 29.1 The Company:
  - (a) acknowledges that the Company or the Company's Personnel is the primary duty holder (including as the operator, packer, loading manager, loader and unloader), under the COR Laws with responsibility for developing COR Systems applicable to the supply of the Plant and any plant operators.
  - (b) warrants that itself and its Personnel are aware and comply with Company's COR Systems;
  - (c) must comply with all applicable road Legislative Requirements in the provision of the Delivery Services, including the COR Laws, the *Road Safety Remuneration Act 2012* (Cth) (and any regulation associated with that legislation, as updated from time to time);
  - (d) 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;
  - (e) must not coerce or demand their drivers to breach of any applicable road Legislative Requirement, exceed permitted driving hours, fail to have minimum rest periods, exceed the speed limit, carry goods that exceed vehicle dimension limits, inappropriately carry any goods on Select's behalf that are not appropriately secured, and breach any Legislative Requirement, in so far as it relates to their employment under this contract as a driver;
  - (f) will ensure that at all times all vehicles are duly registered and maintained and comply with any Legislative Requirement applicable to such vehicles including in respect of the use of such vehicles to provide the Delivery Services to Select;
  - (g) must proactively provide reasonable assistance to Select to enable Select to satisfy its duties and responsibilities under all relevant COR Laws;
  - (h) must ensure Personnel are qualified, experienced, observe good driver etiquette and take on reasonable instructions or guidelines notified by Select from time to time and must

obtain and maintain, and ensure that each of its personnel obtains and maintains all licences, approvals, notices and other legal requirements required to enable the applicable activity, function or task to be undertaken lawfully;

- (i) undertake any audits or monitoring as requested by Select to demonstrate compliance with this clause; and
- (j) warrants that it is familiar with and has the capability and resources to comply with all relevant COR Laws and ensure that its Personnel comply with all COR Laws.

## 29.2 The Company must promptly:

- (a) inform Select of all incidents involving any Personnel engaged in connection with the performance of its obligations under the Agreement which results in any non-compliance with this clause 29; and
- (b) comply with any reasonable direction given by Select to rectify or prevent that breach.

## 30. CONFIDENTIALITY

### 30.1 Confidential Information

- (a) In this clause, **Confidential Information** means information relating to the business, systems or affairs of Select or any other person in relation to the subject matter of this Agreement, and includes any:
  - (i) intellectual property rights, trade secrets, know-how, scientific and technical information;
  - (ii) product, customer, marketing or pricing information;
  - (iii) information relating to this Agreement or the Project; and
  - (iv) other information which Select notifies the Company is confidential or which the Company knows or ought reasonably to know is confidential,
  - (v) other than information that is already public knowledge (other than as a result of a breach of confidentiality by the Company or any of its disclosees).
- (b) The Company:
  - (i) may use Confidential Information only for the purposes of the Agreement;
  - (ii) must keep confidential all Confidential Information except for disclosure permitted under subclause (c); and
  - (iii) must return all documents and materials containing or based upon Confidential Information to Select upon request.
- (c) The Company may disclose Confidential Information:

- (i) to persons who have a need to know for the purposes of the Agreement (and only to the extent that each has a need to know) and before disclosure:

(A) in the case of the Company's officers and employees, such person has been directed by the Company to keep confidential all Confidential Information; and

(B) in the case of other persons approved in writing by Select, such person has agreed in writing to comply with substantially the same obligations in respect of Confidential Information as those imposed on the Company under the Agreement,

(each a Permission); or

- (ii) if the disclosure is necessary to comply with any applicable law, the rules of any securities or stock exchange or an order of a court or tribunal and Select is given prior notice of the disclosure.

- (d) The Company must:

- (i) ensure that each person to whom it discloses Confidential Information under subclause (c) (i) complies with its Permission; and
- (ii) notify Select of, and take all steps to prevent or stop, a suspected or actual breach of a Permission.

### 30.2 Press releases

The Company (including the Company's Personnel) must not make or authorise a press release or other public statement relating to any matter in connection with the Agreement or the Project unless:

- (a) it has the prior written approval of Select; or
- (b) it is required by law or the Listing Rules of ASX Limited and it has first given Select a reasonable opportunity to comment on the contents of, and the requirement for, any such statement.

## 31. STATE CODE COMPLIANCE – NEW SOUTH WALES

31.1 The provisions in this clause 31 apply where the State Code applies.

31.2 In addition to terms defined in this document, terms used in this clause 31 have the same meaning as is attributed to them in the NSW Guidelines. The NSW Guidelines are available at [www.industrialrelations.nsw.gov.au](http://www.industrialrelations.nsw.gov.au).

### 31.3 Primary Obligation

- (a) The Company must at all times comply with, and meet any obligations imposed by, the NSW Guidelines.
- (b) The Company must notify the CCU and the Client Agency of any possible non-compliance with the NSW Guidelines and of remedial action taken, within 24 hours of becoming aware of the possible non-compliance.
- (c) Where the Company engages a subcontractor or consultant, the Company must ensure that that contract imposes on the subcontractor or consultant equivalent obligations to those in this clause, including that the subcontractor or consultant must at all times comply with, and meet any obligations imposed by, the NSW Guidelines.
- (d) The Company 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 Guidelines.

### 31.4 Access and information

- (a) The Company must maintain adequate records of compliance with the NSW Guidelines by it, its subcontractors, consultants and related entities.
- (b) The Company must allow, and take reasonable steps to facilitate, authorised personnel (including personnel of the CCU and Select) to:
  - (i) enter and have access to sites and premises controlled by the Company, 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 NSW Guidelines, by the Company, its subcontractors, consultants, and related entities.
- (c) The Company, and its related entities, must agree to, and comply with, a request from authorised personnel (including personnel of the CCU and Select) for the production of specified documents by a certain date, whether in person, by post or electronic means.

### 31.5 Sanctions

- (a) The Company warrants that at the time of entering into this Agreement, neither it, nor any of its related entities, are subject to a sanction in connection with the NSW Guidelines that would have precluded it from responding to a procurement process for work to which the NSW Guidelines apply.
- (b) If the Company does not comply with, or fails to meet any obligation imposed by, the NSW Guidelines, a sanction may be imposed against it in connection with the 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 Guidelines and the sanction;
    - (B) take them into account in the evaluation of future procurement processes and responses that may be submitted by the Company or its related entities, in respect of work to which the NSW Guidelines apply.

## 31.6 Compliance

- (a) The Company bears the cost of ensuring its compliance with the NSW Guidelines, including in respect of any positive steps it is obliged to take to meet its obligations under the NSW Guidelines. The Company 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 Guidelines does not relieve the Company from responsibility for performance of its obligations under the Agreement, or from liability for failure to comply with any other obligation under the Agreement, or from any other legal liability, whether or not arising from its compliance with the 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 Guidelines, the Company 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 Guidelines will be, or is likely to be, affected by the change; and

- (iii) what steps the Company 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 Company as to the course it must adopt within 10 Business Days of receiving notice.

## 32. STATE CODE COMPLIANCE – QUEENSLAND

32.1 The provisions in this clause 32 apply where the State Code applies.

32.2 In addition to terms defined in this document, terms used in this clause 32, have the same meaning as is attributed to them in the Queensland Code. The Queensland Code is available at [www.oir.qld.gov.au](http://www.oir.qld.gov.au).

### 32.3 Primary Obligation

- (a) The Company must comply with, and meet any obligations imposed by, the Queensland Code and Queensland Guidelines.
- (b) The Company must notify the BCCB (or nominee) and the Client Agency of any alleged breaches of the Queensland Code and Queensland Guidelines and of voluntary remedial action taken, within 24 hours of becoming aware of the alleged breach.
- (c) Where the Company is authorised to engage a subcontractor or consultant, and it does so, the Company must ensure that any secondary contract imposes on the subcontractor or consultant equivalent obligations to those in this clause, including that the subcontractor or consultant must comply with, and meet any obligations imposed by, the Queensland Code and Queensland Guidelines.
- (d) The Company 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 or the Queensland Guidelines.

### 32.4 Access and information

- (a) The Company must maintain adequate records of compliance with the Queensland Code and Queensland Guidelines by it, its subcontractors, consultants and related entities.
- (b) The Company 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 Company, 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,
  - (vii) as is necessary for the authorised personnel to monitor and investigate compliance with the Queensland Code and Queensland Guidelines, by the Company, its subcontractors, consultants and related entities.

## 32.5 Sanctions

- (a) The Company warrants that at the time of entering into the Agreement, neither it, nor any of its related entities, are subject to a sanction in connection with the Queensland Code or Queensland Guidelines that would have precluded it from tendering for work to which the Queensland Code or Queensland Guidelines applies.
- (b) If the Company does not comply with, or fails to meet any obligation imposed by, the Queensland Code or Queensland Guidelines, a sanction may be imposed against it in connection with the Queensland Code or Queensland 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 Queensland (through its agencies, Ministers and the BCCB) is entitled to:
    - (A) record and disclose details of non-compliance with the Queensland Code or Queensland Guidelines 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 Company, or its related entities, in respect of work to which the Queensland Code or Queensland Guidelines applies.

## 32.6 Compliance

- (a) The Company bears the cost of ensuring its compliance with the Queensland Code and Queensland Guidelines. The Company 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 and Queensland Guidelines does not relieve the Company from responsibility for performance of its obligations under the Agreement, or from liability for failure to comply with any other obligation under the Agreement, 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 Company 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 Company proposes to take to mitigate any adverse impact of the change (including any amendments it proposes to a Workplace Relations Management Plan),and the Client Agency will direct the Company as to the course it must adopt within 5 Business Days of receiving notice.

## 33. NO WAIVER

The delay or non-exercise of a right (including a set off) does not operate as a waiver of that power or right, nor does any single exercise of a power or right preclude any other or future exercise of it or the exercise of any other power or right. Any waiver or consent given by Select will only be effective if given or confirmed in writing.