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## **NSW Land and Housing Corporation Lift Maintenance Contract**

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New South Wales Land and Housing Corporation  
ABN 24 960 729 253

and

TK Elevator Australia Pty Ltd  
ACN 073 056 149

Date: 15 October 2024

## Table of contents

<b>1</b>	<b>General.....</b>	<b>1</b>
1.1	Contract Documents	1
1.2	Documents complementary	2
1.3	Costs and expenses	2
1.4	Survival of Obligations	3
1.5	Law and Jurisdiction	3
<b>1</b>	<b>Defined terms and interpretation .....</b>	<b>1</b>
1.1	Definitions	16
1.2	General	17
1.3	Codes and standards	18
1.4	Construction	18
<b>2</b>	<b>Contract Objectives.....</b>	<b>18</b>
2.1	Contract Objectives	18
2.2	Continuous Improvement	19
<b>3</b>	<b>Transition In.....</b>	<b>19</b>
3.1	Transition In Period	19
3.2	Access Keys	19
3.3	Transition Activities	19
3.4	Safe Work Method Statements	20
3.5	Transfer of Spare Parts	21
<b>4</b>	<b>SUI .....</b>	<b>21</b>
4.1	Development of the SUI	21
4.2	SUI Availability	21
4.3	SUI Terms of Use	21
4.4	SUI Costs	21
<b>5</b>	<b>Term .....</b>	<b>21</b>
5.1	Commencement of the Maintenance Works	22
5.2	Initial Term	22
5.3	Extension to Term	22
<b>6</b>	<b>Contract Areas.....</b>	<b>22</b>
6.1	Contract Area Property List and the Contract Areas	22
6.2	Maintenance Works performed by others	23
6.3	No representation or warranty	23
6.4	Composition of Contract Areas	23
6.5	Rectification of defective or incomplete work	24
6.6	Removal or Addition of Properties	24
<b>7</b>	<b>Maintenance Works.....</b>	<b>24</b>
7.1	Lift Availability	25
7.2	Contractor's readiness	25
7.3	Lift Monitoring Changeover	25
7.4	Annual Program – Submission	26
7.5	Annual Program - Requirements	26
7.6	Routine Maintenance Work	27
7.7	Responsive Work	27
7.8	Failure to perform Responsive Work	27
7.9	Failure to perform Servicing Works	27
7.10	Chargeable Works	27

**NSW Land and Housing Corporation**  
**Lift Maintenance Contract**

7.11	Quotable Works Quotation	28
7.12	AFSS	29
7.13	Spare Parts	29
7.14	Communication	30
7.15	Issuing Work Orders	31
7.16	Work Order Extension	32
7.17	Late completion of Work Order or rectification work	32
7.18	No Separate Agreement	33
7.19	Amendment of SoR	33
<b>8</b>	<b>Communication and Information Technology Requirements .....</b>	<b>33</b>
8.1	Single User Interface (SUI) and IT Requirements	33
8.2	Communication	34
8.3	When taken to be received	35
<b>9</b>	<b>Fees .....</b>	<b>35</b>
9.1	Fee	35
9.2	Contractor's Warranty in relation to Fee	35
9.3	Adjustments	36
9.4	Currencies	37
9.5	Revision of Servicing Fee	37
9.6	Independent determination	38
<b>10</b>	<b>Terms of Payment .....</b>	<b>40</b>
10.1	Payments	40
10.2	Invoicing Methodology	40
10.3	Contractor Invoices	41
10.4	Payment of Contractor Invoices	41
10.5	RCTIs	42
10.6	Payment of RCTIs	42
10.7	Payment on account	43
10.8	Set off	43
10.9	Security of Payment Act	43
10.10	Statutory Declaration	44
<b>11</b>	<b>Security .....</b>	<b>44</b>
11.1	Bank Guarantee	44
11.2	Parent Company Guarantee	44
11.3	Bank Guarantee Replacement	44
11.4	Conversion of Bank Guarantee	45
11.5	Invalidity and unenforceability	45
<b>12</b>	<b>Key Performance Indicators .....</b>	<b>45</b>
12.1	Key Performance Indicators	45
12.2	Abatements	46
<b>13</b>	<b>NCNs, Audits and Records .....</b>	<b>46</b>
13.1	Non-conformance notices	46
13.2	Inspections	47
13.3	Audits	47
13.4	Other investigations	48
13.5	Contractor's records	48
13.6	Records retention	48
<b>14</b>	<b>Plans, Reporting and Meetings .....</b>	<b>49</b>
14.1	General	49
14.2	Reports	49
14.3	Contractor Plans, Policies and Procedures	49
14.4	Works Reports	50

14.5	No relief	50
14.6	Meetings	50
14.7	Reviews	50
14.8	Briefings	50
<b>15</b>	<b>Subcontracts .....</b>	<b>51</b>
15.1	Subcontracting	51
15.2	Responsibility	51
15.3	Subcontractors	51
<b>16</b>	<b>Representatives .....</b>	<b>52</b>
16.1	Contractor's Representative	52
<b>17</b>	<b>Contractor's Personnel .....</b>	<b>52</b>
17.1	Contractor to appoint suitable personnel	52
17.2	Organisation and Personnel	52
17.3	Inductions and Site requirements	53
17.4	Key Personnel	53
17.5	Replacement of persons	53
<b>18</b>	<b>Warranties and standard of Maintenance Works.....</b>	<b>54</b>
18.1	Contractor must do all necessary work	54
18.2	Warranties relating to the Maintenance Works	54
18.3	Disclosure	55
18.4	No warranty from the Principal	56
18.5	Contractor deemed to satisfy itself	56
18.6	Warranty of Equipment and workmanship	56
18.7	Warranties and obligations unaffected	57
18.8	Interface with Tenants	57
18.9	Cleaning up	58
18.10	Supervision	58
<b>19</b>	<b>Defects .....</b>	<b>58</b>
19.1	Contractor to rectify	58
19.2	General obligations	58
19.3	Rights at Law	59
<b>20</b>	<b>Risk and Ownership .....</b>	<b>59</b>
20.1	Transfer of ownership	59
20.2	Risk in and ownership of Contractor's Equipment	59
20.3	Risk and Reinstatement	59
20.4	Liens and Encumbrances	60
<b>21</b>	<b>Indemnities .....</b>	<b>60</b>
21.1	Contractor's indemnity	60
21.2	Indemnification Procedures	61
21.3	Survival	61
<b>22</b>	<b>Insurance .....</b>	<b>61</b>
22.1	Principal Insurances	61
22.2	Contractor Insurances	62
22.3	Obligations on Contractor	63
22.4	Duration of insurances	63
22.5	Failure to Insure	63
22.6	Insurance excess	63
22.7	General Obligations	63
<b>23</b>	<b>Event of Force Majeure .....</b>	<b>64</b>
23.1	No responsibility	64

**NSW Land and Housing Corporation**  
**Lift Maintenance Contract**

23.2	Notification of Event of Force Majeure	64
23.3	Obligation to mitigate	65
23.4	Recommencement of performance	65
23.5	No relief from pre-existing obligations	65
23.6	Liability for costs	65
<b>24</b>	<b>Suspension .....</b>	<b>65</b>
24.1	Suspension by the Principal	65
24.2	Resumption of Maintenance Works	66
24.3	Costs Incurred during Principal's Suspension	66
<b>25</b>	<b>Intellectual Property Rights.....</b>	<b>66</b>
25.1	Contractor to obtain all necessary rights	66
25.2	Ownership of the Principal IP	66
25.3	Ownership of Project IP	66
25.4	Licence of Project IP and Principal IP	67
25.5	Licence of Contractor IP	67
25.6	Intellectual Property warranty	67
25.7	Intellectual Property indemnity	67
25.8	Moral rights	68
25.9	No third party payments	68
25.10	Return of material forms of Principal IP	68
25.11	Survival obligations	68
<b>26</b>	<b>Confidential Information .....</b>	<b>68</b>
26.1	Non-disclosure of Confidential Information	68
26.2	Permitted disclosure	68
26.3	Publicity and media releases	69
26.4	Community liaison	69
26.5	Disclosure to professional advisors	69
26.6	Survival of obligations	69
<b>27</b>	<b>Privacy.....</b>	<b>70</b>
27.1	Privacy Compliance	70
27.2	General Privacy Obligations	70
27.3	Consents	71
27.4	Images of Properties	71
<b>28</b>	<b>GIPA .....</b>	<b>71</b>
28.1	Disclosure log	71
28.2	Access to information	71
28.3	Consultation	72
<b>29</b>	<b>Statutory and NSW Government Requirements .....</b>	<b>73</b>
29.1	Laws and Responsible Authorities	73
29.2	Permits	73
29.3	Change in Law	73
29.4	Industrial Relations	74
29.5	Work health and safety and the Environment	75
29.6	Appointment as Principal Contractor	75
29.7	Hazardous Substance	76
29.8	Notification	77
29.9	Home Building Act	77
29.10	Conflicts of Interest	79
<b>30</b>	<b>Social Obligations.....</b>	<b>79</b>
30.1	Aboriginal Participation	79
30.2	Changes to targets	79

**NSW Land and Housing Corporation  
Lift Maintenance Contract**

<b>31</b>	<b>Taxes .....</b>	<b>80</b>
31.1	Contractor to pay Taxes	80
31.2	Exemptions and concessions	80
31.3	Survival	80
<b>32</b>	<b>GST .....</b>	<b>81</b>
32.1	Definitions	81
32.2	GST Exclusive	81
32.3	Taxable Supply	81
32.4	Recipient Created Tax Invoices	81
32.5	Principal GST warranties	81
32.6	Contractor GST warranties	82
32.7	Later GST charge	82
32.8	Reimbursement or indemnity	82
32.9	Progressive or Periodic Supplies	82
<b>33</b>	<b>Termination .....</b>	<b>82</b>
33.1	Termination of Contract for convenience	82
33.2	Immediate termination for the Contractor's default	82
33.3	Principal may issue notice	83
33.4	Termination for Principal's default	84
33.5	Termination for Event of Force Majeure	84
33.6	Procedure on termination for the Contractor's default	85
33.7	Procedure on termination for convenience	85
33.8	Return of Property	86
33.9	Termination general	86
33.10	Transition Out	86
33.11	No limitation	87
<b>34</b>	<b>Dispute Resolution .....</b>	<b>87</b>
34.1	Application of procedure	87
34.2	Referral to Representatives	87
34.3	Referral to Dispute Panel	88
34.4	Procedure for resolution	88
34.5	Arbitration	88
34.6	Seat of arbitration	88
34.7	Arbitrator	88
34.8	Arbitration award final and binding	89
34.9	Exceptions	89
34.10	Performance of obligations pending resolution of Dispute	89
34.11	Survival	89
<b>35</b>	<b>General Representations and Warranties .....</b>	<b>89</b>
<b>36</b>	<b>Assignment and Change in Control .....</b>	<b>90</b>
36.1	No assignment by Contractor	90
36.2	No Change in Control without approval	91
36.3	Assignment by Principal	91
<b>37</b>	<b>Personal Property Securities Act .....</b>	<b>91</b>
<b>38</b>	<b>Proportionate Liability .....</b>	<b>92</b>
38.1	Proportionate liability	92
<b>39</b>	<b>General .....</b>	<b>93</b>
39.1	Ministerial control	93
39.2	No fetter	93
39.3	Independent legal advice	93
39.4	Amendment	93

**NSW Land and Housing Corporation**  
**Lift Maintenance Contract**

39.5	Independent contractor	93
39.6	Non-waiver	94
39.7	Severability	94
39.8	Comments, review, representation or approval by the Principal	94
39.9	Entire agreement	94
39.10	Counterparts	94
39.11	Amounts due and payable	94
39.12	Further assurances	95
<b>Schedule 1</b>	<b>(Contract Details)</b>	<b>96</b>
<b>Schedule 2</b>	<b>(Maintenance Works)</b>	<b>99</b>
<b>Schedule 3</b>	<b>(Operational Requirements)</b>	<b>102</b>
<b>Schedule 4</b>	<b>(Technical Specification)</b>	<b>117</b>
<b>Schedule 5</b>	<b>(SoR)</b>	<b>139</b>
<b>Schedule 6</b>	<b>(Fee and Payment)</b>	<b>140</b>
<b>Schedule 7</b>	<b>(Key Performance Indicators)</b>	<b>147</b>
<b>Schedule 8</b>	<b>(Reporting Templates)</b>	<b>156</b>
<b>Schedule 9</b>	<b>(Communications Requirements)</b>	<b>159</b>
<b>Schedule 10</b>	<b>(IT Requirements)</b>	<b>178</b>
<b>Schedule 11</b>	<b>(Contract Area Property List)</b>	<b>225</b>
<b>Schedule 12</b>	<b>(Form of Statutory Declaration)</b>	<b>226</b>
<b>Schedule 13</b>	<b>(Form of Parent Company Guarantee)</b>	<b>230</b>
<b>Schedule 14</b>	<b>(Home Building Act Requirements)</b>	<b>234</b>
<b>Schedule 15</b>	<b>(Spare Parts List)</b>	<b>237</b>

# Formal Instrument of Agreement

## Parties

**New South Wales Land and Housing Corporation** (ABN 24 960 729 253)

of 4 Parramatta Square, 12 Darcy Street, Parramatta, New South Wales 2150

(Principal)

**TK Elevator Australia Pty Ltd** (ACN 073 056 149)

of Shed 73, The Woolstores, 2/4E Huntley Street, Alexandria, New South Wales 2015

(Contractor)

## Background

- A. The Principal is a statutory corporation constituted under section 6 of the Housing Act. The Principal owns and manages land, buildings and other assets within its Portfolio across New South Wales.
- B. The Principal has sought offers from contractors to perform Maintenance Works. The Contractor has represented to the Principal that it has the capability and resources to deliver the Maintenance Works in the Allocated Contract Area and the Alternative Contract Area.
- C. The Principal has agreed to engage the Contractor to perform Maintenance Works in the Allocated Contract Area and Alternative Contract Area, in accordance with this Contract.

## Operative Terms

### 1 General

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#### 1.1 Contract Documents

The following documents and their attachments (if any) together constitute the Contract Documents:

- (a) this Formal Instrument of Agreement;
- (b) the terms and conditions incorporating clauses 1 to 39 (inclusive) (the **General Terms**);
- (c) Schedule 1 (Contract Details);
- (d) Schedule 2 (Maintenance Works);
- (e) Schedule 3 (Operational Requirements);
- (f) Schedule 4 (Technical Specification);
- (g) Schedule 5 (SoR);
- (h) Schedule 6 (Fee and Payment);
- (i) Schedule 7 (Key Performance Indicators);
- (j) Schedule 8 (Reporting Templates);



- (k) Schedule 9 (Communication Requirements);
- (l) Schedule 10 (IT Requirements);
- (m) Schedule 11 (Contract Area Property List);
- (n) Schedule 12 (Form of Statutory Declaration);
- (o) Schedule 13 (Form of Parent Company Guarantee);
- (p) Schedule 14 (Home Building Act Requirements);
- (q) Schedule 15 (Spare Parts List),

including any documents expressly incorporated by reference therein.

#### **1.2 Documents complementary**

- (a) The Contract Documents are intended to be correlative, complementary and mutually explanatory of one another. The Contract Documents must be read as a whole.
- (b) If this Contract provides for differing standards of service, product, workmanship or finish, then the greater or higher standard, product, workmanship or finish will prevail.
- (c) If the ambiguity, discrepancy or inconsistency in a Contract Document or between two or more Contract Documents is not resolved under clause 1.2(b), the Principal (in its absolute discretion) will determine the interpretation of any and issue a direction to the Contractor as to the interpretation to be followed by the Contractor. The Contractor will have no Claim arising out of or in connection with the Principal's determination or associated direction.

#### **1.3 Costs and expenses**

Each party will bear its own costs of preparing, negotiating and executing this Contract.

#### **1.4 Survival of Obligations**

- (a) If this Contract expires or is terminated then, except where this Contract provides otherwise:
  - (i) the parties are released from their obligations to continue to perform this Contract except the obligations which are expressed to or by their nature, survive termination;
  - (ii) each party retains the rights and claims it has against the other party for any past breach of this Contract; and
  - (iii) the provisions of this Contract survive termination to the extent necessary to give effect to clause 1.4(a)(i).
- (b) The following survive termination of this Contract:
  - (i) any warranties provided by the Contractor, including pursuant to clause 18;
  - (ii) clauses 1, 2, 6, 9.2, 10.7, 13, 21, 22, 25, 26, 27, 28, 29, 31, 32, 33, 33.10, 34, 35, 36, 38 and 39; and
  - (iii) clauses 1.4 and 1.5 of this Formal Instrument of Agreement.

- (c) The indemnities in this Contract are:
  - (i) continuing, separate and independent obligations of the parties from their other obligations and survive termination of this Contract; and
  - (ii) absolute and unconditional and unaffected by anything that might have the effect of prejudicing, releasing, discharging or affecting in any other way the liability of the party giving the indemnity.

**1.5 Law and Jurisdiction**

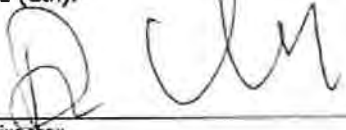
- (a) This Contract is governed by the laws of the State of New South Wales, Australia.
- (b) The parties submit to the exclusive jurisdiction of the courts in the State of New South Wales, Australia, and any courts that may hear appeals from these courts regarding any proceedings under or in connection with this Contract.
- (c) Subject to any express provisions to the contrary, any person who is not a party to this Contract has no rights under or in connection with this Contract.

## Execution

Executed as a Deed

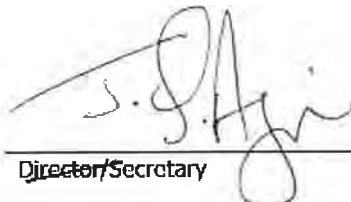
Signed sealed and delivered  
by

TK Elevator Australia Pty Ltd (ACN: 073 056 149) in  
accordance with section 127 of the *Corporations  
Act 2001* (Cth):

  
A Director

David Husoy  
Managing Director

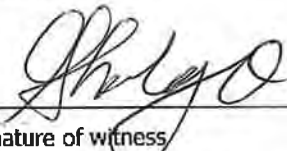
A Full name of Director

  
A Director/Secretary

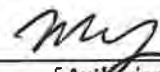
Jude Ariyaratnam

A Full name of Director/Secretary

Executed for and on behalf of  
New South Wales Land and Housing Corporation  
on 15/10/2024 by its duly authorised officer in  
the presence of:

  
A Signature of witness

Giancarlo Macabulos Nalpo  
A Name of witness (print)

  
A Signature of Authorised Officer

Michael James Ryan  
A Full Name of Authorised Officer

Director, Legal  
A Office Held

## General Terms

### 1 Defined terms and interpretation

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#### 1.1 Definitions

**Abatement** means each of the abatements identified in, and calculated in accordance with, Schedule 7 (Key Performance Indicators).

**Abatement Condition** means each of the abatement conditions for each KPI set out in Schedule 7 (Key Performance Indicators).

**Aboriginal Business** means a business that has at least 50 per cent Aboriginal or Torres Strait Islander ownership and that is recognised as such through an appropriate indigenous business verification organisation, including Supply Nation or the NSW Indigenous Chamber of Commerce.

**Act of Insolvency** means, in relation to the Contractor (as applicable):

- (a) an application is made to a court for an order, or an order is made, that it be wound up, declared bankrupt or that a provisional liquidator or receiver or receiver and manager be appointed;
- (b) a party is seeking, or makes a statement, or conducts itself in a manner, from which it may reasonably be deduced that the person is seeking, to take advantage of the safe harbour against insolvent trading available under Division 3, Part 5.7B of the Corporations Act;
- (c) a liquidator or provisional liquidator is appointed to it;
- (d) an administrator is appointed to it under sections 436A, 436B or 436C of the Corporations Act;
- (e) a Controller (as defined in section 9 of the Corporations Act) is appointed to it or any of its assets;
- (f) a receiver is appointed to it or any of its assets;
- (g) it enters into an arrangement or composition with one or more of its creditors, or an assignment for the benefit of one or more of its creditors, in each case other than to perform a reconstruction or amalgamation while solvent on terms approved by the other party;
- (h) it proposes a winding-up, dissolution or reorganisation, moratorium, deed of company arrangement or other administration involving one or more of its creditors;
- (i) It is insolvent as disclosed in its accounts or otherwise, states that it is insolvent, is presumed to be insolvent under an applicable law (including under sections 459C(2) or 585 of the Corporations Act) or otherwise is, or states that it is, unable to pay all its debts as and when they become due and payable;
- (j) it is taken to have failed to comply with a statutory demand as a result of section 459F(1) of the Corporations Act;
- (k) a writ of execution is levied against it or its property which is not dismissed within 21 days; or

- (l) anything occurs under the law of any jurisdiction which has a substantially similar effect to any of the events set out in the above paragraphs of this definition.

**Act of Terrorism** means an unlawful act of force or violence perpetrated by one or more individuals acting on behalf of or in connection with any organisation, with the apparent purpose of furthering a political, religious or ideological aim.

**Affiliate** means, in respect of each party, any company which is controlled (as described in section 50AA of the Corporations Act) by the Principal or the Contractor (as the case may be).

**Alarm** means any notification from a communication system within a Lift.

**Allocated Contract Area(s)** means each of the Contract Areas identified in Item 5 of the Contract Details.

**Alternative Contract Area(s)** means each of the Contract Areas identified in Item 6 of the Contract Details.

**Alternative Contractor** means a third party engaged by the Principal under a Lift Maintenance Contract where one or more of the Allocated Contract Area is listed as an "alternative contract area" in that Lift Maintenance Contract.

**Annual Fire Safety Statements or AFSS** has the meaning given in the *Environmental Planning and Assessment (Development Certification and Fire Safety) Regulation 2021* (NSW).

**Annual Program** means a program for the performance of Routine Maintenance Works in the Allocated Contract Areas which complies with the requirements of this Contract and which has been approved by the Principal.

**Approved Form** means:

- (a) the form of any document or other Deliverable as specified in a Schedule to this Contract (as modified from time to time by the Principal); or
- (b) where the form of document or other Deliverable is not specified in a Schedule to this Contract, a form as reasonably approved by the Principal.

**Approved Provider** means a bank or financial institution:

- (a) with a credit rating or financial strength rating of A- (Standard & Poor's, Fitch) or A3 (Moody's);
- (b) with a branch capable of accepting calls upon bank guarantees in Sydney NSW; and
- (c) that is an Australian trading bank registered pursuant to the *Banking Act 1959* (Cth).

**Bank Guarantee** means an unconditional undertaking that complies with the requirements set out in clause 11.1.

**Business Day** means a day that is not:

- (a) a Saturday or Sunday; or
- (b) a public holiday in Sydney; or
- (c) 27, 28, 29, 30 and 31 December.

**Change in Control** means any change whatsoever in Control, whether effected directly or indirectly.

**Change in Law** means the enactment, adoption, promulgation, modification, amendment or repeal of any Law, after the Date of Contract, but does not include:

- (a) any change in Law in relation to any Taxes; or
- (b) any change in Law of which notice of the change or proposed change had been given publicly prior to the Date of Contract in a government gazette by way of bill, draft bill or draft statutory instrument and which is in the same or substantially the same form as the change in Law which occurred after the Date of Contract.

**Chargeable Event** means:

- (a) an event for Force Majeure;
- (b) an act of vandalism; or
- (c) damage caused to the Lift by third parties.

**Chargeable Markup** means the percentage listed in section 3.3 of Schedule 6 (Fee and Payments).

**Chargeable Rate** means each of the rates and prices listed in the SoR.

**Chargeable Work Order** means a work order which is designated by the Principal as a work order for Chargeable Works.

**Chargeable Works** means the works, services and activities:

- (a) required to be performed on a Lift as a result of a Chargeable Event; or
- (b) performed pursuant to a Chargeable Work Order.

**Civil Liability Act** means *Civil Liability Act 2002* (NSW).

**Claim** includes any allegation, debt, cause of action, claim, entitlement, proceeding, suit or demand of any nature howsoever arising and whether present or future, fixed or unascertained, actual or contingent, whether at Law, in equity, under statute or otherwise made:

- (a) under or in connection with this Contract (including the Maintenance Works); or
- (b) against the Principal or its Personnel,

for monies (including damages) or for any adjustment to the Fee or for Loss on any basis whatsoever including a claim:

- (c) under a Law;
- (d) in tort (including negligence);
- (e) on a quantum meruit;
- (f) pursuant to quasi contract;
- (g) for unjust enrichment; or
- (h) pursuant to any other principle of law or equity.

**Completion** means, in respect of a Work Order, the stage in the performance of the Work Order where:

- (a) Works Completion has been achieved;
- (b) the Contractor has submitted all relevant documentation and evidence required by section 1.1(f) of Schedule 3 (Operational Requirements); and
- (c) for Chargeable Works only:
  - (i) the Contractor has submitted a Contractor Invoice in accordance with clause 10.3; or
  - (ii) the Principal has submitted an RCTI in accordance with clause 10.5.

**Component Register** means a register (in the Approved Form) which documents the services, utilities, systems and components (including Major Components) (including the service or maintenance history of each) in a Property.

**Consumables** means any and all lubricants, seals, chemicals, nuts, bolts, string fuses, washers and other consumables that are required for the proper performance of the Maintenance Works.

**Contract** means this document entered into between the Principal and the Contractor, including the Contract Documents.

**Contract Area(s)** means each of the two areas identified in Schedule 11 (Contract Area Property List) as 'Contract Area A' and 'Contract Area B', as updated by the Principal from time to time in accordance with the terms of this Contract.

**Contract Area Property List** means the list of Properties issued by the Principal in accordance with clause 6.6(d). Schedule 11 (Contract Area Property List) contains the Contract Area Property List as at the Date of Contract.

**Contract Details** means Schedule 1 (Contract Details).

**Contract Documents** means those documents forming this Contract, as set out in clause 1 of the Formal Instrument of Agreement.

**Contract Objectives** has the meaning given in clause 2.1(a).

**Contract Year** means:

- (a) Contract Year 1; and
- (b) each subsequent 12 month period during the Term commencing on 1 July in a calendar year and ending on 30 June in the following calendar year.

**Contract Year 1** or **Contract Year One** means the period of eight (8) months commencing on the Maintenance Works Commencement Date and ending on 30 June 2025.

**Contractor Invoice** means a valid and fully supported Tax Invoice issued by the Contractor which satisfies all of the requirements specified in clause 10.3.

**Contractor IP** means Intellectual Property owned by or licensed to the Contractor (including know-how and technical information) which exists prior to the Date of Contract or is developed or acquired by the Contractor independently of this Contract which is used by the Contractor in the performance of the Maintenance Works or otherwise made available to the Principal under or in connection with this Contract, but does not include the Project IP.

**Contractor Plans, Policies and Procedures** mean each of the plans, policies, systems and other documents to be developed by the Contractor, in accordance with the timing, form and content requirements set out in the Contract.

**Contractor-caused Suspension** means a suspension by the Principal in accordance with clause 24 necessitated by a breach of this Contract by the Contractor or the acts or omissions of the Contractor or its Personnel.

**Contractor's Equipment** means any and all equipment supplied by the Contractor in order to properly perform the Maintenance Works but which is not incorporated into a Property.

**Control** means:

- (a) control or influence of, or having the capacity to control or influence the composition of the board, or decision making, directly or indirectly, in relation to the financial and operating policies;
- (b) being in a position to cast, or control the casting of, 50.1% or more of the maximum number of votes that may be cast at a general meeting; or
- (c) having a relevant interest in 50.1% or more of the securities, of a relevant entity.

**Corporations Act** means the *Corporations Act 2001* (Cth).

**COVID19** means the coronavirus disease known as "COVID-19" and includes any variants or related strains.

**Data** means all data, information, documents or records of whatever nature and in whatever form relating to:

- (a) the business, networks and operations of the Principal, including data, information, documents or records in relation to the Personnel of the Principal; or
- (b) the Maintenance Works, including data, information, documents or records provided or required to be provided by the Contractor to Tenants or Properties,

whether existing or created before, during or after the Date of Contract and all data, information, documents or records created, generated or processed by the Contractor as part of, or in connection with, the Maintenance Works or its other obligations under this Contract, and includes:

- (c) data that is Personal Information;
- (d) data that is corporate, proprietary or financial information;
- (e) diagrammatic or schematic data, including data representing networks, maps or technology;
- (f) all data (including metadata) processed, communicated or generated in performance of the Maintenance Works, including coding and performance data; and
- (g) all transformations, modifications, derivations or insights created or generation from any other Data.

**Data Breach** means any:

- (a) unauthorised access to, or unauthorised disclosure of, or breach of security relating to any Personal Information or Data; or
- (b) loss, corruption or damage to any Personal Information or Data.



**Date for Work Order Commencement** means the date stated as such in that Work Order (if any) or where no date is stated, the date and time on which the Work Order is issued by the Principal.

**Date for Works Completion** means the date and time stated in that Work Order as the date for Works Completion, as may be adjusted under clause 7.16.

**Date of Contract** means the date of this Contract, being the date that all parties have executed this Contract.

**Defect** means any defect, design error, error, deficiency, omission, non-conformity, fault, failure, shrinkage, subsidence, malfunction, irregularity or other defect in or of the Maintenance Works or the Equipment, or in any performance characteristic of the Maintenance Works or the Equipment, and any failure of these to comply with this Contract (including any warranties given in relation to the Maintenance Works).

**Defect Notice** has the meaning given in clause 19.1.

**Deliverable** means each of the documents and other deliverables required under this Contract to be submitted by the Contractor to the Principal, including those specified in the Maintenance Works Specification.

**Determination** means *Goods and Services Tax: Classes of Recipient Created Tax Invoice Determination (No. 23) 2015* or any replacement determination from time to time.

**Dispute** means any dispute, difference of opinion or disagreement between the parties, arising out of or in connection with this Contract.

**Dispute Panel** means the panel established for the purpose of clause 34.3 comprising a senior executive from each party with the authority to resolve the Dispute, each as named in the Contract Details (or as otherwise notified by either party from time to time).

**Entrapment Event** means an occasion where a person is unable to exit a Lift.

**Environment** includes all aspects of the surroundings of human beings including:

- (a) the physical characteristics of those surroundings such as the land, the waters and the atmosphere; and
- (b) the biological characteristics of those surroundings such as the animals, plants and other forms of life.

**Environmental Notice** means any notice, order or request for Information issued by any Responsible Authority regarding a matter concerning the Environment.

**Equipment** means equipment, plant, fixtures, fittings, components (including Major Components), machinery, apparatus, materials, articles and things of all kinds to be provided by the Contractor in accordance with this Contract (including under the Maintenance Works Specification) including the Consumables which are intended to be installed at or form part of a Property, but does not include Contractor's Equipment.

**Equipment Cost** has the meaning given in Schedule 6 (Fee and Payments).

**Event of Force Majeure** means an event or circumstance, or combination of events or circumstances, which:

- (a) is beyond the reasonable control of the party affected by the event or circumstance, or combination of events or circumstances (**Affected Party**);

- (b) prevents the performance by the Affected Party of any of its obligations under this Contract;
- (c) is not caused or contributed to by any acts or omissions of the Affected Party or its Personnel; and
- (d) where the Contractor is the Affected Party, could not reasonably have been expected to have been prevented, avoided or overcome by exercising a standard of skill, care and diligence consistent with that of a prudent, competent and experienced contractor in the circumstances,

provided that such event or circumstance is limited to the following occurring in Australia:

- (c) Act of Terrorism;
- (f) riot, war, invasion, act of foreign enemies, hostilities (whether war be declared or not), civil war, rebellion, revolution, insurrection of military or usurped power, requisition or compulsory acquisition by any Responsible Authority of any part of the Site;
- (g) ionising radiation or contamination, radio activity from any nuclear fuel or from any nuclear waste from the combustion of nuclear fuel, radioactive toxic explosive or other hazardous properties of any explosive assembly or nuclear component;
- (h) strikes at national or State-wide level or industrial disputes at a national or State-wide level which prevents the performance of an essential portion of the Maintenance Works, but excluding any industrial dispute which is specific to the performance of the Maintenance Works or this Contract;
- (i) an act of God, earthquake, lightning, cyclone, tsunami, fire emanating from outside the Property, explosion, flood, landslide, drought or meteor;
- (j) a pandemic or epidemic (other than COVID19);
- (k) act of public enemy, sabotage, malicious damage, civil unrest or acts of piracy.

**Expiry Date** means the last day of the Term (as may be extended in accordance with clause 5.3(a)).

**Failure Threshold** means each of the failure thresholds for each KPI set out in Schedule 7 (Key Performance Indicators).

**Fee** means the fee to be paid to the Contractor for the performance of the Maintenance Works as set out and calculated strictly in accordance with this Contract (including Schedule 6 (Fee and Payments)).

**Fire Safety Laws** means any Laws for the regulation of fire safety activities including the:

- (a) *Building and Development and Certifiers Act 2018* (NSW);
- (b) *Environmental Planning and Assessment Regulation 2000* (NSW);
- (c) *Environmental Planning and Assessment Regulation 2021* (NSW); and
- (d) *Environmental Planning and Assessment (Development Certification and Fire Safety) Regulation 2021* (NSW).

**Fire Safety Schedule or FSS** has the meaning given in the *Environmental Planning and Assessment (Development Certification and Fire Safety) Regulation 2021* (NSW) and, for the avoidance of doubt, with respect to 'Crown Developments' means a document which takes the

form of a 'fire safety schedule' under the *Environmental Planning and Assessment (Development Certification and Fire Safety) Regulation 2021* (NSW).

**Fire Safety Statement** means an Annual Fire Safety Statement or a Supplementary Fire Safety Statement.

**First Extended Term** has the meaning given in clause 5.3(a).

**Follow Up Notice** means a notice from the Principal that the Contractor has failed to rectify a Defect the subject of a Defect Notice.

**General Terms** has the meaning given in the Formal Instrument of Agreement.

**GIPA Act** means the *Government Information (Public Access) Act 2009* (NSW).

**Good Industry Practices** means the practices followed when work is undertaken in accordance with all of the following:

- (a) in a sound and workmanlike manner;
- (b) with due care and skill;
- (c) using materials of acceptable quality and merchantable quality which are fit for the Intended Purpose;
- (d) with due expedition and without unnecessary or unreasonable delays;
- (e) in accordance with all Laws;
- (f) in accordance with the Principal Plans, Policies and Procedures and Contractor Plans, Policies and Procedures; and
- (g) consistently with best practice for a nationally experienced contractor of the highest skill and quality, taking into account the nature of the Properties and the Portfolio.

**Gross Negligence** means a negligent act or omission which, in addition to constituting negligence, results from a deliberate, wilful or reckless disregard of the consequences of such act or omission, but does not include any innocent act or omission, mistake or error of judgement.

**GST** has the meaning given to that term in the GST Law.

**GST Law** has the meaning given to that term in the *A New Tax System (Goods and Services Tax) Act 1999* (Cth).

**Guarantor** means the entity or person identified in Item 4 of the Contract Details.

**Hazardous Substance** means any substance which would or might reasonably be expected to cause damage or injury to human beings, property or the Environment.

**Home Building Act** means the *Home Building Act 1989* (NSW) and any regulations or other instruments made under it.

**Housing Act** means the *Housing Act 2001* (NSW).

**Independent Quantity Surveyor** means the independent quantity surveyor appointed in accordance with clause 9.6.

**Industrial Matter** means industrial action of any sort involving or which could involve the Contractor (or its Personnel) or the Principal (or its Personnel) in connection with the

performance of the Maintenance Works, including industrial action that is happening, threatened, impending, probable or being organised.

**Initial Term** means the period of four years and eight months commencing on the Maintenance Works Commencement Date.

**Intellectual Property** means all intellectual property rights conferred by Law, at common law or in equity and subsisting anywhere in the world, including:

- (a) the following:
  - (i) copyright;
  - (ii) designs (whether registered or not);
  - (iii) inventions (including patents, innovation patents and utility models);
  - (iv) trademarks and service marks (whether registered or not); and
  - (v) circuit layout designs and rights in databases, whether or not any of these is registered, registrable or patentable;
- (b) any similar rights resulting from intellectual activity in the industrial, commercial, scientific, literary or artistic fields which subsist now or in the future; and
- (c) any applications and the right to apply for registration of any of the above,

but excluding non-assignable moral rights and similar personal rights which by Law are non-assignable.

**Intended Purpose** means the intended purpose of the Maintenance Works:

- (a) as stated in this Contract (including the Maintenance Works Specification); and
- (b) as could be reasonably inferred by a reasonable and prudent Contractor from what is stated in this Contract (including in the Maintenance Works Specification).

**Invoice** means a Contractor Invoice or an RCTI, as the case may be.

**Key Personnel** means the Contractor's Personnel specified in Item 7 of the Contract Details and engaged under clause 17.4 who are, in the opinion of the Principal, critical to the performance, quality and safety of the Maintenance Works.

**KPI** means each key performance indicator set out in Schedule 7 (Key Performance Indicators).

**Law** includes:

- (a) statutes, regulations, subordinate legislation or by-laws of a Responsible Authority;
- (b) the laws of New South Wales or Commonwealth of Australia;
- (c) requirements, orders, directives and mandatory approvals (including conditions) of a Responsible Authority;
- (d) any statute, ordinance, code, decree, circular, rule, guidelines or policy of a Responsible Authority;
- (e) the requirements or conditions of any Permits,

irrespective of whether they are in force as at the Date of Contract or come into force on or after the Date of Contract.

**Lien** means any mortgage, lien, pledge, claim, charge, lease, easement, security interest or encumbrance of any kind.

**Lift** means each individual lift within a Property.

**Lift Maintenance Contract** means a contract between the Principal and a third party contractor for the provision of maintenance works of the same or similar nature to the Maintenance Works at Properties in the Portfolio.

**Lift Maintenance Contractor** means a third party contractor engaged by the Principal under a Lift Maintenance Contract.

**Loss** includes costs and expenses of whatsoever nature (including legal fees and expenses), loss, damages or liability (including any fine, penalty or fee) whether arising under contract or in equity, under statute (to the maximum extent possible), in tort (including for negligence) or otherwise.

**Maintenance Works** means all works and activities undertaken or required to be undertaken by the Contractor to comply with this Contract and includes:

- (a) Servicing Works;
- (b) Chargeable Works;
- (c) any rectification works;
- (d) any Quotable Works; and
- (e) any other ancillary or incidental works or activities (including the procurement and supply of Equipment and Consumables) in connection with the works identified in paragraphs (a) to (d) above.

**Maintenance Works Commencement Date** means the date stated in Item 8 of the Contract Details.

**Maintenance Works Specification** means the specifications and requirements in relation to the Maintenance Works set out in:

- (a) Schedule 2 (Maintenance Works);
- (b) the SoR; and
- (c) Schedule 4 (Technical Specification).

**Major Component** means the controller, drive, hoisting machine motor, hoisting machine gearbox, sheaves, buttons / indication, car interior, door operator and door locks, components of a Lift, and any other component or part of a Lift that is notified by the Principal to the Contractor from time to time as a Major Component.

**Month** means a calendar month.

**Non Conformance Notice** or **NCN** has the meaning given to it in clause 13.1.

**Observation Notice** means a notice issued by the Principal under section 6.2 of Schedule 3 (Operational Requirements).

**Operational Requirements** means Schedule 3 (Operational Requirements).

**Outage** means, in respect of a Lift, any time at which the Lift is not functional.

**Parent Company Guarantee** means the parent company guarantee provided by the Guarantor in the form specified in clause 11.2.

**Performance Benchmark** means each of the performance benchmarks for each KPI set out in Schedule 7 (Key Performance Indicators).

**Permit** means any authorisation, consent, approval, licence, accreditation or registration from or with any Responsible Authority that is required to be held by the Contractor to carry out the Maintenance Works or to perform any obligation under this Contract.

**Personal Information** means has the meaning given in the Privacy Laws.

**Personnel** means:

- (a) for the Principal: each of the Principal's employees, agents, consultants, directors, representatives and contractors (other than the Contractor and its Personnel); and
- (b) for the Contractor: each of the Contractor's employees, agents, consultants, directors, representatives (including the Contractor's Representative), each Subcontractor and each Subcontractor's employees, agents, consultants, representatives and subcontractors.

**Portfolio** means the portfolio of Properties owned and managed by the Principal from time to time.

**Post Work Inspection** has the meaning given to it in clause 13.2.

**PPSA** means the *Personal Property Securities Act 2009* (Cth) and any regulations made at any time under the PPS Act, as amended from time to time.

**Pre-Completion Inspection** has the meaning given to it in clause 13.2.

**Principal Contractor** means the principal contractor for the purposes of the Work Health and Safety Requirements.

**Principal IP** means Intellectual Property owned by or licensed to the Principal (including know-how and technical information) but does not include Contractor IP or Project IP.

**Principal Plans, Policies and Procedures** means the Principal's plans, policies and procedures as set out in Item 12 of the Contract Details (as amended from time to time) and any other plans, policies and procedures notified by the Principal to the Contractor from time to time.

**Principal Supplied Information** means any information provided by the Principal to the Contractor, whether before or after the Date of Contract.

**Principal Initiated Suspension** means a suspension in accordance with clause 24 other than a Contractor-caused Suspension.

**Privacy Laws** means the *Privacy and Personal Information Protection Act 1998* (NSW), the *Health Records and Information Privacy Act 2002* (NSW) and the *Privacy Act 1988* (Cth).

**Project IP** means all Intellectual Property arising out of, created or developed by the Contractor, a Subcontractor or any of the Contractor's Personnel in performing the Maintenance Works and its other obligations under or in connection with this Contract, including all software, documents, drawings, designs and other materials created or arising in the performance of the Maintenance Works, but does not include Contractor IP or Principal IP.

**Property** means any land, building or asset owned, maintained or managed by the Principal and includes any and all fixtures and fittings.

**Qualifying Change in Law** means a Change in Law which:

- (a) necessitates a change to the Maintenance Works Specification; and
- (b) makes completion of the Maintenance Works or the Contractor's activities to be performed under this Contract more burdensome than the requirements specified in this Contract prior to the Change in Law,

but for the avoidance of doubt excludes:

- (c) *Environmental Planning and Assessment (Development Certification and Fire safety) Amendment (Fire safety) Regulation 2022 (NSW)*; and
- (d) any changes associated with or arising from that regulation.

**Quarter** means each of the following periods:

- (a) the period 1 July to 30 September (inclusive) in any year;
- (a) the period 1 October to 31 December (inclusive) in any year;
- (b) the period 1 January to 31 March (inclusive) in any year; and
- (c) the period 1 April to 30 June (inclusive) in any year.

**Quotable Works** means any works, services or activities that the Principal may require the Contractor to perform on an ad hoc basis on, or in relation to, a Lift located at any of the Properties in the Portfolio (and which are neither Chargeable Works or Servicing Works).

**RAPM Contract** means a contract between the Principal and a third party contractor for the provision of responsive and programmed maintenance works at Properties in the Portfolio.

**RAPM Contractor** means a third party contractor engaged by the Principal under an RAPM Contract.

**RCTI or Recipient Created Tax Invoice** means a recipient created tax invoice issued in respect of a supply made by the Contractor under or in connection with this document and has the meaning given to that term in the GST Law.

**Relevant Time** means within 28 days of the relevant Taxable Supply being made, or the Principal determining the value of the relevant Taxable Supply, whichever is later.

**Relief Event** means:

- (a) a Tenant physically preventing or hindering the Maintenance Works;
- (b) an industry-wide and market-wide unavailability of Equipment (not limited to the Contractor's Subcontractors or broader supply chain);
- (c) a breach of the Contract by the Principal;
- (d) an Event of Force Majeure;
- (e) unforeseeable physical conditions of the Site which:

- (i) render it unsafe to perform the Maintenance Works in accordance with applicable Work Health and Safety Requirements;
  - (ii) physically prevent the Contractor from carrying out Maintenance Works; or
  - (iii) necessarily prevent the Contractor from completing the Maintenance Works by the Date for Works Completion; and
- (f) with respect to Chargeable Works and Routine Maintenance Works only, inclement weather (and the effects thereof), but only to the extent that the inclement or effects thereof occur at the relevant Site the subject of the relevant Work Order.

**Replacement Security** means any guarantee or other security procured or provided by the Contractor in favour of the Principal in accordance with clause 11.

**Reporting Templates** means each of the templates included in Schedule 8 (Reporting Templates) and any other report template provided by the Principal to the Contractor (whether before or after the Date of Contract).

**Residential Tenancies Act or RTA** means the *Residential Tenancies Act 2010* (NSW).

**Responsible Authority** means any national, local, regional, territorial or municipal government, ministry, governmental department, commission, board, bureau, agency, instrumentality, executive, legislative, judicial or administrative body, having jurisdiction over the Maintenance Works, the Properties, the Contractor or the Principal.

**Responsive Works** means the works, services and activities in response to an Alarm, an Outage, an Entrapment Event or a Work Order for Responsive Works.

**Routine Maintenance Works** means those works, services and activities required to service and maintain each lift in accordance with the Maintenance Works Requirements, Good Industry Practice and otherwise to ensure that each Lift is in good working order.

**RTA** means the *Residential Tenancies Act 2010* (NSW).

**Ruling** means Goods and Services Tax Ruling 2000/10, or any replacement ruling from time to time.

**Second Extended Term** has the meaning given in clause 5.3(b).

**Security Interest** means any mortgage, pledge, encumbrance, Lien or charge or any security or preferential interest or arrangement of any kind, including:

- (a) anything which gives a creditor priority to other creditors with respect to any asset;
- (b) any assignment by way of security, hypothecation, option, lease, trust or assignment;
- (c) retention of title;
- (d) a "security interest" as defined in sections 12(1) or 12(2) of the PPSA; or
- (e) any agreement to create or give an arrangement to effect any of the above.

**Security of Payment Act** means the *Building and Construction Industry Security of Payment Act 1999* (NSW).

**Servicing Works** means Routine Maintenance Works and Responsive Works.



**Servicing Works Price** means the amount determined under section 2 of Schedule 6 (Fee and Payments) for the performance of Servicing Works upon each relevant Lift in Schedule 11 (Contract Area Property List).

**SFSS Contractor** means a third party engaged by the Principal for the performance of maintenance works on fire safety systems within the Portfolio.

**Site** means that part of a Property where the Contractor carries out, or is required to carry out, Maintenance Works (including any part used as access or egress).

**Site Conditions** means the conditions of the Site and its surrounds including:

- (a) the general and local conditions for environment, meteorological, seismic activity, climatic conditions and solar and wind conditions;
- (b) transportation, access, waste disposal, handling and storage of materials;
- (c) the physical condition of:
  - (i) the relevant Lift and its associated infrastructure; and
  - (ii) any buildings and assets, including any and all fixtures, fittings and building materials;
- (d) availability and quality of all necessary utilities and availability and condition of roads;
- (e) topography and ground surface conditions, subsurface geology and conditions, nature and quantity of surface and subsurface materials to be encountered, location of underground utilities and the condition of existing structures; and
- (f) any other site conditions set out in the Contract Documents or the Principal Supplied Information.

**SoR** means the schedule of rates and prices included in Schedule 5 (SoR).

**Spare Parts List** means the list of parts and quantities included in Schedule 15 (Spare Parts List), as amended under clause 7.13.

**Specified Steps** means each of the steps and activities set out in section 1 of Schedule 3 (Operational Requirements).

**Subcontract** means any agreement under which the Contractor subcontracts any part of the Maintenance Works to a Subcontractor.

**Subcontractor** means any person to whom performance of any part of the Maintenance Works is subcontracted by the Contractor.

**SUI or Single User Interface** means the Principal's IT system as described in Schedule 10 (IT Requirements).

**SUI Availability Notice** has the meaning given in clause 4.2(a).

**SUI Commencement Date** means the date that the Contractor will commence its access and use of the SUI (as may be specified in the SUI Availability Notice).

**SUI Terms and Conditions of Use** means the terms and conditions then applicable to the access and use of the SUI by the Contractor and the Contractor's Personnel.

**Supplementary Fire Safety Statement** has the meaning given in *Environmental Planning and Assessment (Development Certification and Fire Safety) Regulation 2021* (NSW).

**Supply** has the meaning given in the GST Law.

**Tax** means all taxes pursuant to any Law (whether currently in force or coming into force on or after the Date of Contract), including, all sales, excise and storage taxes, licence and permit-fees, income, profit, fringe benefit, franchise, personal property taxes, payroll and employment taxes, levies, imposts, deductions, charges, withholdings and duties (including, stamp and transaction duties), together with any related interest, penalties, additional tax, fines and other statutory charges and whether imposed by Responsible Authority.

**Tax Invoice** has the meaning given to that term in the GST Law.

**Taxable Supply** has the meaning given in the GST Law.

**Tenant** means any person occupying a Property.

**Term** means the Initial Term, as may be extended under clause 5.3 (including the First Extended Term, Second Extended Term and Third Extended Term) and any period of holding over.

**Third Extended Term** has the meaning given in clause 5.3(c).

**Transfer List** has the meaning given in clause 3.5(a)

**Transferred Parts** means any parts listed on the Transfer List which are collected (or to be collected) by the Contractor under clause 3.5.

**Transition Activities** means all of the works and activities required during the Transition In Period, including those activities described in clause 3, and any other matters or items directed by the Principal, whether as part of the workshop referred to in clause 3.3(a) or otherwise.

**Transition Completion** means the successful completion of all Transition Activities (and associated milestones) and satisfaction of all criteria or requirements for the performance or completion of the Transition Activities.

**Transition In Period** means the period commencing on the Date of Contract and ending one day prior to the Maintenance Works Commencement Date.

**Uptime** means any period during which a Lift is:

- (a) not subject to:
  - (i) an Outage; or
  - (ii) an Entrapment Event;
- (b) available for use by all Tenants and other persons accessing the building in the relevant Property (provided that where a Property consists of two or more buildings, the Lift must only be available for use by all Tenants in the relevant building); or
- (c) unavailable due to:
  - (i) a Chargeable Event;
  - (ii) the physical performance by the Contractor of Routine Maintenance Works or Chargeable Works.

**Warranty** includes:

- (a) an installation or workmanship warranty;
- (a) a manufacturers' warranty;
- (b) certification by, for, or as the result of a requirement of a Responsible Authority; or
- (c) self-certification by the persons completing the performance of the relevant Maintenance Works.

**Wilful Misconduct** means, regarding a party:

- (a) any fraud, fraudulent concealment or dishonesty;
- (b) any conduct, act or omission having substantially harmful consequences, done or omitted to be done intentionally and with conscious or indifference to, or disregard for, the rights or welfare of those who are or may be thereby affected; or
- (c) any criminal or malicious act or omission of the party or any of its Personnel.

**Work Health and Safety Requirements** means the following requirements related to work health and safety, dangerous goods or electricity safety:

- (a) the *Work Health and Safety Act 2011* (NSW) and the *Work Health and Safety Regulations 2017* (NSW) and lawful directions and notices issued thereunder;
- (b) the 'SafeWork NSW Construction Work Code of Practice'; and
- (c) all other relevant health and safety regulations, codes of practice or safety standards as applicable (where such standard and codes have the force of law) or any other Law dealing with work health and safety that may apply from time to time.

**Work Order** means a work order issued by the Principal under this Contract for Maintenance Works (of any kind).

**Works Completion** means, in respect of a Work Order, the stage in the performance of the Work Order where the Contractor has:

- (a) completed the performance of all Maintenance Works in that Work Order (if any) in accordance with this Contract (and all such Maintenance Works are free of Defects);
- (a) completed and submitted to the Principal any reports and certifications required by the Maintenance Works Specification, in the form of the Reporting Templates (where applicable);
- (b) tidied the Site and secured the Property (where appropriate); and
- (c) notified the Principal that it has completed all of the Maintenance Works for the relevant Work Order in accordance with section 1 of Schedule 3 (Operational Requirements).

## 1.2 General

In this Contract, unless the contrary intention appears:

- (a) a term that is defined in these General Terms, Schedule 2 (Maintenance Works), Schedule 3 (Operational Requirements), Schedule 6 (Fee and Payments) or Schedule 7 (Key Performance Indicators) shall have that defined meaning in all Contract Documents;
- (b) a reference to a document is to the document as varied, amended, supplemented, novated or replaced from time to time;

- (c) a reference to a standard, statute, ordinance, code or other Law includes regulations and other instruments under it and consolidations, amendments, re-enactments or replacements of any of them;
- (d) the singular includes the plural and vice versa;
- (e) if a period of time is specified and dates from a given day or the day of an actual event, it is to be calculated exclusive of that day;
- (f) a reference to time is to local time in Sydney;
- (g) a reference to a party, clause, paragraph, Annexure or Schedule is a reference to a party, clause, paragraph, Annexure or Schedule to this Contract;
- (h) headings and the table of contents are for reference only and do not form part of this Contract;
- (i) references to the word "include" and "including" are not words of limitation and any time such term is used in this Contract it is to be construed as if the words "without limitation" are included immediately after such term;
- (j) an example or a list of examples is not limited to those items or to items of a similar kind;
- (k) a word that is derived from a defined word has a corresponding meaning;
- (l) words denoting any gender include all genders;
- (m) where an obligation or liability is imposed on a party under this Contract, that obligation or liability is not to be limited or affected by an obligation or liability imposed in another provision of this Contract unless expressly stated;
- (n) the Principal does need not to have made any payments in respect of any cost or expense before enforcing any indemnity contained in this Contract;
- (o) where a right or remedy is conferred on a party under this Contract, that right or remedy is in addition to, and not in substitution of, any other right or remedy conferred on the Principal under this Contract or otherwise according to Law;
- (p) the term 'may' when used in the context of a power or right exercisable by a party means that that party can exercise that right or power in its absolute and unfettered discretion and that party has no obligation to the other party to do so;
- (q) subject to the terms of this Contract, where under this Contract the Principal may (or it is otherwise contemplated that the Principal can) give or withhold its consent or approval, the Principal has an absolute and unfettered discretion as to whether it gives, conditionally or unconditionally, or withholds that consent or approval;
- (r) references to '\$' or 'AUD' is to Australian currency; and
- (s) references to the word 'person' includes an individual, corporation, partnership, joint venture, association, trust, unincorporated organisation or Responsible Authority or any other entity, and includes executors their successors, personal representatives, permitted substitutes (including persons taking by novation) and permitted assigns.

### **1.3 Codes and standards**

Wherever references are made in this Contract to codes and standards under which the Maintenance Works are to be performed, the most recent edition or the revised version of such codes and standards applies, unless otherwise specified.

#### **1.4 Construction**

Neither this Contract nor any part of it is to be construed against a party on the basis that the party or its lawyers were responsible for its drafting.

## **2 Contract Objectives**

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### **2.1 Contract Objectives**

- (a) The Contractor acknowledges that the high-level objectives of this Contract are as follows:
  - (i) maintaining each Lift within each relevant Property in compliance with Law, all applicable standards and the Maintenance Works Requirements; and
  - (ii) minimising risk to persons and property through the delivery of high quality and timely Maintenance Works,(each a **Contract Objective**).
- (b) The Contract Objectives are flexible and are intended to generally describe the outcomes sought by the Principal under this Contract.
- (c) The parties acknowledge and agree that the Contract Objectives are not a comprehensive statement of outcomes and that the provisions of this Contract will not be construed in a manner which alleviates the Contractor of or derogates in any way from any obligation under this Contract.

### **2.2 Continuous Improvement**

The Contractor must:

- (a) continuously review its activities, systems, ways of working and performance with a view to identifying ways in which the Contractor can improve the efficiency, quality and timeliness of delivery of the Maintenance Works, having regard to the Contract Objectives and the requirements of this Contract;
- (b) continuously identify, consider and develop strategies to:
  - (i) improve the efficiency and effectiveness of the Maintenance Works (including cost savings to the Principal);
  - (ii) improve processes and procedures for achieving the Contract Objectives;
  - (iii) utilise capacity;
  - (iv) improve Tenant satisfaction; and
  - (v) manage and implement changes in Good Industry Practice including by identifying to the Principal emerging trends in relation to the Maintenance Works; and
- (c) when requested by the Principal, provide a written report to the Principal identifying the matters referred to in clauses 2.2(a) and 2.2(b) above, together with details of the steps taken by the Contractor to realise any opportunities identified by the Contractor.

### **3 Transition In**

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#### **3.1 Transition In Period**

Subject to clause 32, this Contract commences on the Date of Contract and will be in the Transition In Period until the Maintenance Works Commencement Date.

#### **3.2 Access Keys**

- (a) The Principal may provide to the Contractor a set of keys for each Lift in a Property and a key register of keys provided for that Property.
- (b) Upon receipt of the keys and key register for a Property, the Contractor is responsible for the management, maintenance and safe keeping of those keys and key register.
- (c) If, in the course of performing the Transition Activities the Contractor identifies missing keys for any Property:
  - (i) the Contractor must identify the location of the relevant lock to the Principal;
  - (ii) the Principal may procure a key and provide it to the Contractor; and
  - (iii) upon receipt of a key from the Principal, the Contractor must update the relevant key register and maintain safe custody of that key.
- (d) If at any time following the Maintenance Works Commencement Date:
  - (i) a key which is held by the Contractor is lost, stolen, broken or otherwise becomes unavailable for use, the Contractor must:
    - (A) procure such replacement at its cost;
    - (B) provide a copy of the replacement key to the Principal; and
    - (C) update the relevant key register;
  - (ii) the Principal (directly or through a third party) replaces a lock, the Principal may:
    - (A) provide a copy of the replacement key to the Contractor; and
    - (B) the Contractor must update the relevant key register.

#### **3.3 Transition Activities**

- (a) Within 15 days after the Date of Contract (or such other time period as directed by the Principal in its sole discretion) the Contractor must attend a 'start up' workshop with the Principal (on a date and at a time and location notified by the Principal).
- (b) The Contractor must perform all Transition Activities in a way that causes no disruption to the existing maintenance works on the Properties in the Portfolio undertaken by existing contractors.

#### **3.4 Safe Work Method Statements**

- (a) The Contractor must, within 10 Business Days of the Maintenance Works Commencement Date, provide to the Principal all 'safe work method statements' required for the performance of the Maintenance Works.

- (b) If at any time during the Term, the Contractor considers that either:
  - (i) a new 'safe work method statement' is required; or
  - (ii) an amendment is required to an existing 'safe work method statement',the Contractor must promptly provide the relevant documents to the Principal.

### **3.5 Transfer of Spare Parts**

- (a) The Principal may (whether before or after the Maintenance Works Commencement Date) provide to the Contractor a list of parts which are held by the Principal's lift maintenance contractors (**Transfer List**).
- (b) Within 20 Business Days of the Maintenance Works Commencement Date, the Contractor must:
  - (i) liaise with the Principal's previous lift maintenance contractors; and
  - (ii) collect each of the parts in the list provided by the Principal under clause 3.5(a).
- (c) Within 2 Business Days of the date upon which the Contractor takes possession of the Transferred Parts, the Contractor must inspect and audit those parts collected and notify the Principal of:
  - (i) any parts that were not available for collection; and
  - (ii) any parts which, in the Contractor's opinion, are unsuitable for use in the Maintenance Works.
- (d) The Contractor acknowledges and agrees that:
  - (i) the Transfer List is Principal Supplied Information;
  - (ii) the Principal does not give any warranty or undertaking as to the completeness, accuracy, fitness for any purpose, suitability, compliance with any law or regulation, or condition of the Transferred Parts;
  - (iii) the Contractor is solely responsible for collecting, reviewing, testing, investigating and any usage of the Transferred Parts; and
  - (iv) any error, omissions, inaccuracies, defects, deficiencies or inadequacy in the Transfer List or the Transferred Parts do not detract from or otherwise affect the Contractor's warranties, obligations or liabilities under or in connection with this Contract.
- (e) Without limiting clause 3.5(d), neither the Principal, nor any of the Principal's Affiliates, is liable to the Contractor for any Claim as a result of:
  - (i) any inaccuracy, omission, unfitness for any purpose or inadequacy of any kind whatsoever in the Transfer List or the Transferred Parts;
  - (ii) any failure to make available to the Contractor the Transfer List; or
  - (iii) any unavailability of any part listed on the Transfer list.

## **4 SUI**

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### **4.1 Development of the SUI**

The Contractor acknowledges and agrees that:

- (a) as at the Date of Contract, the SUI is still under development and will not be available on the Maintenance Works Commencement Date; and
- (b) prior to the SUI Commencement Date, any reference to the SUI in this Contract (including without limitation in Schedule 9 (Communication Requirements)) as a means of communication between the parties shall be construed as a reference to the temporary means of communication set out in clause 7.14(b) instead.

### **4.2 SUI Availability**

- (a) At any time during the Term, the Principal may give the Contractor written notice that the SUI is available and that it requires the Contractor to access and use the SUI from the SUI Commencement Date for the purpose of complying with its relevant obligations under this Contract (**SUI Availability Notice**).
- (b) Prior to the SUI Commencement Date, the Principal may require that the Contractor attend a 'SUI startup' workshop with the Principal (on the date and at a time and location notified by the Principal) for the purpose of further discussing the access and use of the SUI by the Contractor.
- (c) The Contractor will access and use the SUI on and from the SUI Commencement Date for the purpose of complying with its relevant obligations under this Contract.
- (d) The Contractor warrants that, from the SUI Commencement Date, the Contractor (and the Contractor's IT systems) will continue to comply with Schedule 10 (IT Requirements) and any other requirements the Principal considers necessary to ensure the ongoing effectiveness of the SUI, as is further set out in clause 8.1.

### **4.3 SUI Terms of Use**

The Contractor shall comply, and shall be responsible for ensuring that its Personnel comply, with the SUI Terms and Conditions of Use in relation to each of their access and use of the SUI.

### **4.4 SUI Costs**

The Contractor warrants, acknowledges and agrees that:

- (a) the Servicing Works Price, the Chargeable Rates, and the Chargeable Markup include any and all allowances for costs and expenses the Contractor incurs as part of (or which are incidental to) its access and use of the SUI; and
- (b) notwithstanding anything to the contrary contained in this Contract, no other amounts shall be payable by the Principal to the Contractor in respect of the Contractor's access and use of the SUI.

## **5 Term**

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### **5.1 Commencement of the Maintenance Works**

- (a) Subject to clause 7.3, from the Maintenance Works Commencement Date to the Expiry Date, the Contractor will diligently and expeditiously perform the Maintenance Works in accordance with this Contract for the Fee.



- (b) Notwithstanding anything to the contrary contained in this Contract, the Principal will not be liable under this Contract or otherwise for any payment to the Contractor, prior to the Maintenance Works Commencement Date or for any activities carried out prior to the Maintenance Works Commencement Date.

## **5.2 Initial Term**

Subject to the terms of this Contract, the Principal engages the Contractor to perform the Maintenance Works for the Initial Term.

## **5.3 Extension to Term**

- (a) The Principal may in its absolute discretion extend the Initial Term for a period of, or up to, 2 years (**First Extended Term**) by giving the Contractor written notice no later than 3 months prior to the expiry of the Initial Term.
- (b) The Principal may in its absolute discretion extend the First Extended Term for a period of, or up to, 2 years (**Second Extended Term**) by giving the Contractor written notice no later than 3 months prior to the expiry of the First Extended Term.
- (c) The Principal may in its absolute discretion extend the Second Extended Term for a period of, or up to, 1 year (**Third Extended Term**) by giving the Contractor written notice no later than 3 months prior to the expiry of the Second Extended Term.
- (d) If the Principal exercises its option to extend the Initial Term, the First Extended Term or the Second Extended Term (as applicable):
  - (i) this Contract will be extended for the relevant period as contemplated by clauses 5.3(a), 5.3(b) or 5.3(c) (as applicable); and
  - (ii) the parties will continue to be bound by the terms of this Contract and the First Extended Term, the Second Extended Term and the Third Extended Term will be governed by the same terms and conditions that apply to the Initial Term.

## **6 Contract Areas**

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### **6.1 Contract Area Property List and the Contract Areas**

- (a) Subject to clauses 6.2, 6.4, 6.5, 6.6, 19.2(b) and 32, the Contractor will, during the Term carry out and complete the Maintenance Works on each Lift in the Contract Area Property List.
- (b) The Contractor:
  - (i) may be appointed by the Principal as an 'alternative contractor' to the Alternative Contract Area; and
  - (ii) acknowledges that the Principal may also appoint other contractors as 'Alternative Contractors' to the Allocated Contract Area.

### **6.2 Maintenance Works performed by others**

Without limiting any other provision of this Contract, or the Principal's rights under this Contract or otherwise at law, the Contractor acknowledges and agrees that:

- (a) the Principal has no obligation to issue any Work Orders to the Contractor under this Contract;

- (b) the Principal may at any time, and from time to time, in its absolute discretion engage third parties to carry out any Maintenance Works on any Lift in the Contract Area Property List, or otherwise in the Allocated Contract Area or the Alternative Contract Area; and
- (c) the Contractor will have no Claim against the Principal, and irrevocably releases the Principal from any Claim, arising out of or in connection with the Principal engaging third parties to carry out the Maintenance Works on any Lift in the Contract Area property List, or otherwise in the Allocated Contract Area or the Alternative Contract Area (whether under a provision of this Contract or otherwise).

**6.3 No representation or warranty**

- (a) The Principal makes no representation or warranty as to:
  - (i) the value of the Servicing Works or Chargeable Works that may be required to be performed under this Contract;
  - (ii) the number of Work Orders that will or may be issued under this Contract (if any);
  - (iii) the proportion of Servicing Works to Chargeable Works;
  - (iv) the nature, composition and type of Routine Maintenance Works, Responsive Works or Chargeable Works that may be carried out under this Contract;
  - (v) the specific locations of the Maintenance Works that may be carried out in the relevant Contract Areas; or
  - (vi) whether and the extent to which it will add Properties to or remove Properties from the Contract Area Property List under clause 6.6.
- (b) The Contractor shall have no Claim against the Principal, and irrevocably releases and discharges the Principal from any Claim, arising out of or in connection with any of the matters identified in clause 6.3(a).

**6.4 Composition of Contract Areas**

- (a) The Contractor acknowledges and agrees that at any time and from time to time during the Term, the Principal may make changes to the composition of the Portfolio, including by buying, selling or otherwise transferring responsibility for the management of any Property to or from a third party (including a Responsible Authority).
- (b) Notwithstanding clause 6.6, where the Principal purchases, sells or otherwise transfers responsibility for the management of any Property to or from a third party, the Principal may update the Contract Area Property List to add that Property to, or omit that Property from, the relevant Contract Area on not less than 15 days notice.

**6.5 Rectification of defective or incomplete work**

At any time and from time to time during the Term, the Principal may direct the Contractor to rectify any defective or incomplete works of another Lift Maintenance Contractor in any Allocated Contract Area or Alternative Contract Area, by issuing a Work Order identifying the rectification works. The Contractor must carry out such rectification works in accordance with the Work Order and this Contract.

## **6.6 Removal or Addition of Properties**

- (a) The Principal may from time to time and in its absolute discretion provide written notice to the Contractor:
  - (i) directing that any Property is removed from any Allocated Contract Area or Alternative Contract Area, in which case the Principal may add such Property to an 'alternative Contract Area' or an 'allocated Contract Area' under another Lift Maintenance Contract; and/or
  - (ii) directing that any Property is added to any Allocated Contract Area or Alternative Contract Area, including where:
    - (A) the Principal removes that Property from an 'alternative Contract Area' or an 'allocated Contract Area' under another Lift Maintenance Contract; and/or
    - (B) the Principal has previously removed that Property from any Allocated Contract Area or Alternative Contract Area under clause 6.6(a)(i).
- (b) A notice from the Principal under clause 6.6(a) may be given in relation to any number of Properties in any Allocated Contract Area or Alternative Contract Area (including all Properties in any Allocated Contract Area or Alternative Contract Area).
- (c) Any notice under clause 6.6(a) will take effect on the first day of the month which is one month after the month in which the notice is given. For example, if the notice is given any time in January, the notice will take effect on 1 March.
- (d) For each month in which a notice under clause 6.6(a) takes effect the Principal will, on or before the last Business Day of the prior month issue to the Contractor an updated Contract Area Property List. For example, if the notice takes effect on 1 March, the Principal will issue an updated Contract Area Property List on or before the last Business Day of February.
- (e) The Contractor will have no Claim, and irrevocably releases the Principal from any Claim, arising out of or in connection with the Principal:
  - (i) adding or removing any one or more Properties to an Allocated Contract Area or Alternative Contract Area; or
  - (ii) not adding or removing any one or more Properties to an Allocated Contract Area or Alternative Contract Area,including where the Principal adds every Property in an Alternative Contract Area to the Contract Area Property List.
- (f) This clause 6.6 does not in any way limit any other provision of this Contract or any of the Principal's rights under or connection with this Contract or otherwise at law.

## **7 Maintenance Works**

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### **7.1 Lift Availability**

The Contractor must ensure that each Lift in the Contract Area Property List has an Uptime of equal to or greater than 95% of the available minutes in each Month.

## **7.2 Contractor's readiness**

The Contractor warrants that:

- (a) it is (and will remain at all times during the Term) ready, willing and able to undertake the Maintenance Works; and
- (b) it will, for the duration of the Term, maintain a level of committed resources and personnel to enable the Contractor to undertake the Maintenance Works and fulfil all other obligations under the Contract.

## **7.3 Lift Monitoring Changeover**

- (a) On and from the Maintenance Works Commencement Date, the Contractor must instal and implement the monitoring system of each Lift such that it interfaces with the Contractor's systems.
- (b) Within seven (7) days of the Date of Contract, the Contractor must provide to the Principal a schedule in an Approved Form setting out the dates and times upon which the Contractor will install the lift monitoring systems at each Property.
- (c) The Principal may provide comments upon or require that the Contractor make changes to the installation schedule, in which case the Contractor must make any changes to the installation schedule and resubmit it to the Principal.
- (d) The installation and implementation of the monitoring systems for each Lift in the Contract Area Property List must:
  - (i) be completed in accordance with the schedule provided and updated under this clause 7.3 and in any event within 60 days of the Date of Contract;
  - (ii) be performed in accordance with the Maintenance Work Specification; and
  - (iii) facilitate and ensure ongoing access (whether by way of a licence pursuant to clause 25.5 or otherwise) to the monitoring systems for each Lift by the Principal throughout the Term, where such access will be provided in such manner as the Principal may direct in its sole discretion and which may include the Contractor ensuring that the Principal can access the monitoring systems:
    - (A) directly; or
    - (B) via the interface with the Contractor's IT systems.

## **7.4 Annual Program – Submission**

- (a) The Contractor must:
  - (i) prepare and provide to the Principal, no later than 10 Business Days from the Date of Contract, a draft Annual Program for the performance of Routine Maintenance Work at each Property in the Contract Area Property List during each month of Contract Year One;
  - (ii) prepare and provide to the Principal a draft Annual Program for each Contract Year after Contract Year One such that the draft Annual Program is provided to the Principal on the day which is 60 days before the commencement of each Contract Year other than Contract Year One; and
  - (iii) ensure that each draft Annual Program meets or exceeds the requirements of this Contract, including clause 7.5.

- (b) If the Principal has comments in relation to a draft Annual Program, the Principal will provide notice to the Contractor and the Contractor must, within 10 Business Days after receiving the Principal's comments, address any comments and amend the Annual Program so that it:
  - (i) addresses the Principal's comments; and
  - (ii) complies with the requirements of this Contract,in which case the Contractor must resubmit the draft Annual Program and this clause 7.4(b) will apply to the amended document.
- (c) Where the Principal updates the Contract Area Property List, the Contractor must revise and resubmit the relevant Annual Program to reflect the relevant amendments.

#### **7.5 Annual Program - Requirements**

Each Annual Program must:

- (a) specify the calendar day in each month during which the Contractor will perform the Routine Maintenance Works at each Property in the Contract Area Property List;
- (b) appropriately spread out the performance of the Routine Maintenance Works such that:
  - (i) the Routine Maintenance Works are consistently and evenly spread out throughout each month; and
  - (ii) the Routine Maintenance Works for each Property are consistently performed at the same time from month to month; and
- (c) be in the Approved Form.

#### **7.6 Routine Maintenance Work**

- (a) The Contractor must, in accordance with:
  - (i) each Work Order for Routine Maintenance Works;
  - (ii) the Operational Requirements; and
  - (iii) the Maintenance Works Specification,perform the Routine Maintenance Work at each Property in the Contract Area Property List each Month during the Term.
- (b) A Work Order for Routine Maintenance Work may include codes for each component included within a Lift. The Contractor must ensure that, where it performs Routine Maintenance Works, the relevant component codes are updated in the SUI.
- (c) In the event that the Principal does not issue a Work Order in respect of certain Routine Maintenance Works, the Contractor must commence those Routine Maintenance Works not more than 2 days prior to, and not more than 2 days after, the scheduled date of commencement for such Routine Maintenance Works specified in the Annual Program, except where the 2 days falls within the next calendar month, in which case the relevant Routine Maintenance Works must be undertaken within the scheduled month set out in the Annual Program.

**7.7 Responsive Work**

Where:

- (a) an Alarm is triggered;
- (b) the Contractor is notified of an Entrapment Event;
- (c) an Outage occurs; or
- (d) the Contractor receives a Work Order for Responsive Works,

the Contractor must carry out and complete the Responsive Works and comply with all of its other obligations in accordance with the Operational Requirements and the Maintenance Works Specification.

**7.8 Failure to perform Responsive Work**

Where the Contractor does not attend the relevant Site within the time required by section 1.2 of the Operational Requirements, the Responsive Maintenance Works includes the rectification of any damage caused by third parties (including any emergency services personnel).

**7.9 Failure to perform Servicing Works**

- (a) Where the Contractor fails to perform the Servicing Works on any Lift in accordance with the Contract, the Principal may:
  - (i) recover from the Contractor as a debt due and payable:
    - (A) the liquated sum determined under Item 10 Schedule 1 (Contract Details) for each and every occasion that the Principal (or a third party engaged by the Principal) attends the Site for an inspection (including the first inspection) in connection with the Servicing Works or any Defect (as applicable);
    - (B) the value of the Servicing Works Price for the relevant Lift in the relevant Month as determined under section 2 of Schedule 6 (Fee and Payments); and
    - (C) any other Loss incurred by the Principal as a result of the Contractor's failure to carry out and complete the Servicing Works on any Lift; and
  - (ii) have a third party perform any works, activities or services which should have been performed by the Contractor and recover the cost of doing so as a debt due and payable.

**7.10 Chargeable Works**

- (a) Where:
    - (i) a Chargeable Event occurs and that Chargeable Event necessitates the performance of Chargeable Works in order to rectify or reinstate damage to a Lift; or
    - (ii) the Principal issues the Contractor with a Work Order for Chargeable Works,
- the Contractor must carry out and complete the Chargeable Works in accordance with the Maintenance Works Specification and the Operational Requirements (and, if applicable, a Work Order).

- (b) Where the Contractor performs Chargeable Works, it must provide to the Principal:
  - (i) evidence of the hours reasonably and necessarily incurred in performing the Chargeable Works; and
  - (ii) evidence of the Equipment Cost.
- (c) The Principal may, from time to time and at any time during the Term, issue a Work Order to the Contractor for Chargeable Works at any of the Properties in the Contract Area Property Lists (as amended and updated from time to time in accordance with this Contract) including under clause 6.5.
- (d) Chargeable Works will be valued by the Principal in accordance with section 3 of Schedule 6 (Fee and Payments).
- (e) The Contractor is not entitled to claim as Chargeable Works, any items, activities or works which form part of the Servicing Works.

#### **7.11 Quotable Works Quotation**

- (a) The Principal may, at any time, request in writing that the Contractor provide a quotation to perform Quotable Works.
- (b) The Contractor must, within the time period stated in the Principal's notice, provide a written quotation. The Contractor must ensure that its proposed price in the written quotation is reasonable in the circumstances, taking into account (without limitation) the Quotable Works the Principal has requested be performed and the condition of the relevant Lift(s).
- (c) The Principal may require the Contractor to include in its quotation:
  - (i) a breakdown of the Quotable Works, including an estimate of the hours required for each trade;
  - (ii) quotations from suppliers for the supply of Equipment required to perform the Quotable Works;
  - (iii) a program of work setting out the activities to be performed by the Contractor (including a commencement date and a completion date); and
  - (iv) a detailed breakdown of the Contractor's price for the Quotable Works.
- (d) The Principal is under no obligation to accept the Contractor's quotation.
- (e) If the Principal wishes to accept the Contractor's quotation, the Principal may issue a Work Order for the Quotable Works, in which case the Contractor will perform the Quotable Works in accordance with the Contract and will be paid the amount included in the Work Order in accordance with clause 10.
- (f) The Contractor acknowledges and agrees that the Fee includes adequate compensation for the preparation of quotations for Quotable Works.
- (g) If the Principal considers that a request under clause 7.11(a) will involve relocating one or more Tenants from the relevant Property while the Quotable Works are performed, the Principal may (but is not required to) notify the Contractor stating the number of Tenants affected by the Quotable Works. The Contractor agrees that, in these circumstances (and irrespective of whether any notice is provided to the Contractor under this clause 7.11(g)), the Principal may (in its sole discretion) apply liquidated damages (calculated in accordance with this clause 7.11(g)) if the Quotable Works are not completed by the

Date for Works Completion of the relevant Work Order. The rate of liquidated damages for each day that the Quotable Works are not completed after the Date for Works Completion of the relevant Work Order will be the amount stated in Item 11 of Schedule 1 (Contract Details) multiplied by the number of Tenants relocated by the Principal.

- (h) The Principal may give a demand (or demands) for liquidated damages referred to in clause 7.11(g), and other Losses up to the date of the demand, at any time after the Date for Works Completion of the relevant Work Order.
- (i) Liquidated damages and Losses payable under clause 7.11(g) become a debt due and payable 5 Business Days after being demanded under clause 7.11(h).
- (j) Nothing in this clause limits or otherwise affects the operation of the Key Performance Indicators, including any Abatements under Schedule 7 (Key Performance Indicators).

#### **7.12 AFSS**

The Contractor acknowledges and agrees that:

- (a) the Principal has engaged SFSS Contractors and RAPM Contractors to perform maintenance works on the fire safety systems within each Property;
- (b) each SFSS Contractor and RAPM Contractor is, on an ongoing basis, required to prepare a fire safety statements for relevant Properties;
- (c) the relevant SFSS Contractor or RAPM Contractor will contact the Contractor as it prepares the fire safety statements for relevant Properties; and
- (d) the Contractor must (and warrants that it will):
  - (i) cooperate with each SFSS Contractor and RAPM Contractor, including by responding to requests and providing documents in a timely manner;
  - (ii) comply with its obligations under the Fire Safety Laws; and
  - (iii) prepare, complete and execute each Fire Safety Statement for each relevant Property such that the SFSS Contractor and RAPM Contractor is able to comply with its obligations:
    - (A) to the Principal;
    - (B) to the relevant Responsible Authority; and
    - (C) otherwise at Law.

#### **7.13 Spare Parts**

- (a) Throughout the Term, the Contractor must procure and ensure that it at all times has on hand each of the parts:
  - (i) listed in; and
  - (ii) in the quantities nominated in,the Spare Parts List.
- (b) Where the Contractor uses a part which is listed in the Spare Parts List, the Contractor must place an order for the procurement of a replacement part within 2 Business Days of using the part. Upon request by the Principal, the Contractor shall provide written



evidence to the Principal demonstrating that the relevant order for the procurement of the replacement part was made within the 2 Business Day time frame set out in this clause 7.13(b).

- (c) The Principal, at any time and from time to time, may by written notice change the Spare Parts List by issuing an amended Spare Parts List. If the Principal issues a notice under this clause 7.13(c), the amended Spare Parts List will take effect immediately upon the Principal issuing the notice.
- (d) The Contractor:
  - (i) acknowledges and agrees that the cost procuring and maintaining each of the parts in the Spare Parts List throughout the Term is included in the Price; and
  - (ii) except as set out in clause 7.13(d)(i), will have no Claim against the Principal, and irrevocably releases the Principal from any Claim, arising out of or in connection with the Spare Parts List.
- (e) The Contractor acknowledges and agrees that:
  - (i) title in each of the parts it procures in accordance with this clause 7.13 vests immediately in the Principal as soon as the Contractor obtains title to the relevant part; and
  - (ii) risk in each of the parts it procures in accordance with this clause 7.13 transfers to the Principal upon successful installation of the relevant part into the relevant Lift by the Contractor in accordance with the relevant Work Order.

#### **7.14 Communication**

The Contractor acknowledges and agrees that:

- (a) all communication between the Contractor and the Principal in relation to the Maintenance Works will be governed by clause 8 and the Operational Requirements;
- (b) prior to the SUI Commencement Date (and due to the unavailability of the SUI (as further detailed in clause 4.1)):
  - (i) communication in relation to all or part of the Maintenance Works, and the provision of any information required under the terms of the Contract, will occur by email as follows:
    - (A) the Principal will issue communications, and provide any information required under the terms of the Contract, to the email address set out in Item 19 of Schedule 1 (Contract Details); and
    - (B) the Contractor must send all communications, and provide any information required under the terms of the Contract, to the Principal to any email address(es) notified by the Principal; and
  - (ii) the Contractor must otherwise comply with all directions from the Principal regarding communication and the giving of notices under or in connection with the Contract;
- (c) if, after the SUI Commencement Date, the SUI becomes unavailable for any reason:
  - (i) the Principal may direct that communication in relation to all or part of the Maintenance Works will occur by email, in which case:

- (A) the Principal will issue communications to the email address set out in Item 19 of Schedule 1 (Contract Details); and
- (B) the Contractor must send all communications to the Principal to any email address(es) notified by the Principal; and
- (ii) the Contractor must otherwise comply with all directions from the Principal regarding communication and the giving of notices under or in connection with the Contract.

#### **7.15 Issuing Work Orders**

- (a) The Principal may, but is not obliged to, issue Work Orders for the carrying out of Maintenance Works.
- (b) The Contractor's obligation to perform Maintenance Works in accordance with this Contract is not reduced, limited or otherwise affected by the Principal refraining from issuing a Work Order for any Maintenance Works.
- (c) The Principal will issue any Work Orders via the SUI unless the SUI becomes unavailable for any reason, in which case the Principal may issue Work Orders via email to the email address set out in Item 19 of Schedule 1 (Contract Details).
- (d) The Contractor will have no Claim against the Principal, and irrevocably releases the Principal from any Claim arising out of compliance with clause 7.15(a).
- (e) The Principal will include in each Work Order:
  - (i) the address of the Property, where the Maintenance Works are to be carried out;
  - (ii) (if applicable) a statement that the Work Order is for Chargeable Works, Responsive Works or Routine Maintenance Works;
  - (iii) (if applicable) a Date for Work Order Commencement;
  - (iv) (if applicable) a Date for Works Completion; and
  - (v) (if applicable) the scope of the Maintenance Works covered by the Work Order.
- (f) The Principal may (but is not obliged to) include additional information in a Work Order which the Principal considers is relevant to the Maintenance Works the subject of the Work Order. Any such inclusion will not invalidate a Work Order, derogate from the Contractor's obligations or entitle the Contractor to make any Claim.
- (g) If the Contractor receives a Work Order, the Contractor must:
  - (i) commence the Maintenance Works the subject of the Work Order not more than 2 days prior to, and not more than 2 days after, the Date for Work Order Commencement;
  - (ii) carry out and complete the Maintenance Works the subject of the Work Order in accordance with the Contract (including the Operational Requirements and Maintenance Works Specification); and
  - (iii) without limiting any other provision of the Contract, comply with the processes and requirements set out in the Operational Requirements.
- (h) The Principal may at any time and from time to time:

- (i) cancel a Work Order; and
- (ii) vary any aspect of a Work Order in accordance with the Operational Requirements.

#### **7.16 Work Order Extension**

- (a) If, in relation to a Work Order which includes a Date for Works Completion, the Contractor:
  - (i) is or will be prevented by a Relief Event from achieving Works Completion of the Work Order by the Date for Works Completion;
  - (ii) takes all reasonable steps to avoid, mitigate and overcome the Relief Event and the effects of the Relief Event;
  - (iii) has, in relation to the Work Order, satisfied each of the applicable Specified Steps by the dates and times required in the Operational Requirements; and
  - (iv) as soon as practicable after becoming aware that the Contractor is or will be prevented by a Relief Event from achieving Works Completion by the Date for Works Completion (and in any event, no later than the Date for Works Completion), provides to the Principal a written Claim for an extension of the Date for Works Completion, including all appropriate written substantiation and evidence of each of the matters set out in clause 7.16(a)(i) – 7.16(a)(iii) (inclusive),then the Principal will determine whether (and the extent to which) the time for Works Completion of the Work Order will be extended.
- (b) The Contractor acknowledges and agrees that the matters set out in clause 7.16(a) are a mandatory precondition to any extension of the time for Works Completion of a Work Order. If the Contractor does not satisfy each of the matters set out in clause 7.16(a), the Principal is under no obligation to make any determination under clause 7.16(a) (or to extend the time for Works Completion of a Work Order).
- (c) If the Principal determines to extend the time for Works Completion of a Work Order, the Principal will provide written notification to the Contractor and will extend the date and time for Works Completion of the Work Order by the period so determined, in the SUI.
- (d) The Principal may at any time in its absolute and sole discretion, and solely for the Principal's convenience, extend the time for Works Completion of any Work Order. The Principal is under no obligation to:
  - (i) act reasonably or fairly in exercising its discretion (or deciding not to exercise its discretion); or
  - (ii) exercise its discretion for the benefit of the Contractor.

#### **7.17 Late completion of Work Order or rectification work**

- (a) Without limiting any other provision of this Contract, if the Contractor:
  - (i) does not achieve Works Completion of a Work Order by the Date for Works Completion; or
  - (ii) does not rectify a Defect by the date specified in a Defect Notice,

then the Principal may recover from the Contractor as a debt due and payable any Loss incurred by the Principal as a result of the Contractor's failure, including the cost of the Principal (or a third party engaged by the Principal) attending the Site for any inspection in connection with the Work Order or the Defect.

- (b) Nothing in this clause limits or otherwise affects the operation of the Key Performance Indicators, including any Abatements under Schedule 7 (Key Performance Indicators).

#### **7.18 No Separate Agreement**

- (a) Work Orders are not and do not form separate or independent contracts between the Principal and the Contractor.
- (b) Each Work Order forms an independent scope of works for the Maintenance Works carried out under this Contract, and time is of the essence for the Contractor's obligations under each Work Order.

#### **7.19 Amendment of SoR**

- (a) If the Principal wishes to add an additional Chargeable Rate, the Principal:
  - (i) will engage a quantity surveyor to prepare a Chargeable Rate:
    - (A) having due regard to any relevant Chargeable Rates in the SoR; and
    - (B) current market pricing for New South Wales; and
  - (ii) will provide written notice to the Contractor, setting out the additional Chargeable Rate; and
  - (iii) may issue the same notice to one or more Lift Maintenance Contractors.
- (b) The additional Chargeable Rate will be added to the SoR on or after the date of the Principal's notice under clause 7.19(a)(ii).
- (c) The Principal may, at any time and from time to time, update the short or long description of any Chargeable Rate in the SoR to clarify the scope of the Maintenance Works.

### **8 Communication and Information Technology Requirements**

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#### **8.1 Single User Interface (SUI) and IT Requirements**

- (a) If:
  - (i) "Option 1" has been selected in Item 13 of the Schedule 1 (Contract Details), then the provisions set out in "Option 1" in Schedule 10 (IT Requirements) apply; and
  - (ii) "Option 2" has been selected in Item 13 of the Schedule 1 (Contract Details), then the provisions set out in "Option 2" in Schedule 10 (IT Requirements) apply.
- (b) The Contractor must at all times:
  - (i) comply with Schedule 10 (IT Requirements) (as applicable);
  - (ii) ensure that its own information technology system has the required capability and is configured (and at all times during the Term remains configured) so as to

- enable the Contractor to comply with Schedule 10 (IT Requirements) (as applicable); and
- (iii) must ensure that any and all Information, documents, data and other Deliverables to be provided by the Contractor or its Personnel to the Principal are each in a format that is compatible with the SUI.
- (c) If, during the Term, the Contractor wishes to change the 'option selected' in Item 13 of the Schedule 1 (Contract Details) it must notify the Principal in writing and if the Principal agrees to change the 'option selected' in Item 13 of the Schedule 1 (Contract Details), then:
  - (i) the parties will work together to agree a program for transition in the method of interface between the Contractor and the SUI;
  - (ii) the Contractor will comply with:
    - (A) before and during the transition, the directions of the Principal for the transition; and
    - (B) after the transition is complete, the requirements of either "Option 1" or "Option 2" as applicable; and
  - (iii) the Principal may recover any cost it incurs as a result of the transition from the Contractor as a debt due and payable.

## **8.2 Communication**

- (a) Unless otherwise stated in this Contract, all notices, correspondence, approvals, Work Orders, consents, directions, instructions, orders, requests and certificates or other communication (**notice**) given under or in connection with this Contract must:
  - (i) be given in accordance with Schedule 9 (Communication Requirements) and clause 8.2(b); and
  - (ii) be typed or legibly written in English.
- (b) All notices will be issued in accordance with Schedule 9 (Communication Requirements) such that, for any given notice, where in Schedule 9 (Communication Requirements):
  - (i) 'SUI' is selected, the notice must be issued on the SUI in accordance with Schedule 10 (IT Requirements);
  - (ii) 'email' is selected, the notice must be sent by email to the email address(es) set out at Item 18 of Schedule 1 (Contract Details), or any other email addresses notified by the Principal from time to time; or
  - (iii) both 'SUI' and 'email' are selected, the notice must be issued on the SUI and sent by email to the prescribed email address(es) set out at Item 18 of Schedule 1 (Contract Details), or any other email addresses notified by the Principal from time to time.
- (c) Where a:
  - (i) notice is required to be issued on the SUI; or
  - (ii) a document is required to be issued on the SUI; and

- (iii) the means of submitting the relevant notice or document requires the Contractor to update the SUI by inputting data (for example, into a webform with date and text fields),

the Contractor will have discharged its obligation to notify the Principal when:

- (iv) it has completed the relevant means of identifying the update to the Principal (e.g. by clicking 'submit'); or
  - (v) it has otherwise accurately inputted all of the required data into the SUI.
- (d) The Contractor acknowledges and agrees that the Principal may, at any time and from time to time, change Schedule 9 (Communication Requirements) by notice in writing to the Contractor (and such notice will include the amended Schedule 9 (Communication Requirements)). If the Principal issues a notice under this clause 8.2(d), the amended Schedule 9 (Communication Requirements) will take effect immediately upon the Contractor receiving the Principal's notice.
- (e) Contractor must be responsive, courteous, polite and respectful in any communication with the Principal.
- (f) This clause 8.2 is subject to the provisions of clause 4.1.

### **8.3 When taken to be received**

A notice is taken to be received:

- (a) if issued on the SUI, the time recorded in the SUI as the time at which the notice was issued;
- (b) if sent by email, at the time the email is received by the recipient's email server (as recorded on the recipient's server); and
- (c) if both issued on the SUI and sent by email, the time recorded in the SUI as the time at which the notice was issued.

## **9 Fees**

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### **9.1 Fee**

The Fee is comprised of:

- (a) the Servicing Works Price for each Property in the Contract Area Property List; and
- (b) the value of the Chargeable Works; and
- (c) if applicable, the value of any Quotable Works,

each calculated strictly in accordance with Schedule 6 (Fee and Payments)

### **9.2 Contractor's Warranty in relation to Fee**

The Contractor warrants that:

- (a) it has relied solely upon its own assessment, skill, expertise and enquiries in respect of all information relevant to the risks, contingencies and other circumstances having an effect on the Maintenance Works and determining the Fee;

- (b) it has made full and adequate allowance in the Fee for the costs of:
  - (i) all Taxes and fees for which the Contractor is responsible for paying;
  - (ii) all matters and things necessary for the performance of the Maintenance Works in accordance with this Contract, including all risks, contingencies and other allowances; and
  - (iii) complying with all of the Contractor's obligations under this Contract; and
- (c) the Fee represents its full and complete payment for:
  - (i) all matters and things necessary for the performance of the Maintenance Works in accordance with the Contract; and
  - (ii) all of the Contractor's obligations under this Contract.
- (d) The Contractor irrevocably releases and discharges the Principal from any Claim for any payments or compensation over and above the Fee payable in accordance with this Contract.

### **9.3 Adjustments**

- (a) The Servicing Works Price:
  - (i) for Contract Year 1 is as stated in Schedule 6 (Fee and Payments);
  - (ii) for each Contract Year (other than Contract Year 1) will be determined in accordance with Schedule 6 (Fee and Payments).
- (b) Each of the Chargeable Rates will be adjusted annually in accordance with Schedule 6 (Fee and Payments).
- (c) The Chargeable Markup will remain fixed and firm for the duration of the Term and will not be subject to any adjustment for any reason.
- (d) Except for any adjustments made strictly in accordance with Schedule 6 (Fee and Payments), each of the Chargeable Rates, the Chargeable Markup and the Servicing Works Price will not be adjusted or be subject to any rise and fall for any reason whatsoever, including:
  - (i) the value of Maintenance Works performed;
  - (ii) the nature or volume of Servicing Works (including the nature or cause of the need to perform Servicing Works);
  - (iii) the number of Work Orders issued by the Principal;
  - (iv) the nature, composition and type of Maintenance Works carried out by the Contractor;
  - (v) the specific location of the Maintenance Works carried out within the relevant Contract Areas;
  - (vi) market conditions, economic conditions and macro-economic conditions, including inflation;
  - (vii) supply chain disruption and delays;

- (viii) the nature and condition of the Site and the Properties;
- (ix) a change in the composition of the Portfolio;
- (x) the cost to the Contractor of performing the Maintenance Works (however arising), including any increase in such costs at any time throughout the Term;
- (xi) any Force Majeure Events; and
- (xii) any directions from the Principal:
  - (A) requiring the Contractor to carry out Maintenance Works (including rectification works) in the Alternative Contract Area (or Allocated Contract Area); and
  - (B) adding or removing any one or more Properties from the Contract Area Property List (whether to an Alternative Contract Area or an Allocated Contract Area).
- (e) Except for adjustments made strictly in accordance with Schedule 6 (Fee and Payments), the Contractor has no Claim for the increase of any component of the Fee and irrevocably releases and discharges the Principal from any Claim:
  - (i) for the increase of any component of the Fee or for payment or compensation of any kind in addition to the Fee;
  - (ii) arising out of or in connection with any of the matters identified in clause 9.3(d).

#### **9.4 Currencies**

The Fee is payable in Australian Dollars. The Contractor agrees that it has no right to receive payment in a currency other than Australian Dollars, or for any adjustment to be made to the Fee for any reason, including foreign exchange fluctuations or the Contractor making any expenditure in a currency other than Australian Dollars.

#### **9.5 Revision of Servicing Fee**

- (a) The Contractor acknowledges and agrees that the Servicing Works Price for each Lift has been priced by the Contractor with reference to the Lift as it existed at the Date of Contract.
- (b) Where the Principal:
  - (i) materially alters a Lift after the Date of Contract by upgrading or replacing the Lift (whether through engagement of the Contractor or a third party); or
  - (ii) adds a new Lift to the Contract Area Property List,the Principal may require the Contractor to:
  - (iii) inspect the Lift and any documentation provided by the Principal; and
  - (iv) propose to the Principal:
    - (A) in the case of an alteration to the Lift, a revised Servicing Works Price; or
    - (B) in the case of the inclusion of a new Lift in the Contract Area Property List, a Servicing Works Price,



for the relevant Lift.

- (c) Any proposal by the Contractor must:
  - (i) be a lump sum price for the performance of the Servicing Works on that Lift;
  - (ii) be proportionate and consistent with the Servicing Works Price for all other Lifts; and
  - (iii) account for the differences (if applicable) between the Lift prior to the relevant upgrade or replacement and the Lift following the upgrade or replacement.
- (d) The Contractor must:
  - (i) provide to the Principal any information requested by the Principal relevant to the Contractor's pricing that underpins the revised Servicing Works Price proposed by the Contractor; and
  - (ii) if requested by the Principal, review the Contractor's proposal and resubmit the relevant Servicing Works Price.
- (e) If the Principal (in its sole discretion) accepts the Contractor's proposal for the Servicing Works Price, the Principal will issue:
  - (i) a written notice to the Contractor; and
  - (ii) the Contract Area Property List will be updated and re-issued by the Principal.
- (f) If the Principal (in its sole discretion) does not accept one or more Servicing Works Prices proposed by the Contractor, the Principal will notify the Contractor and may refer the matter to independent determination in accordance with clause 9.6, in which case the Independent Quantity Surveyor will determine the Servicing Works Price for the relevant Lift, provided that in determining those matters, the Independent Quantity Surveyor must determine a Servicing Works Price:
  - (i) that is proportionate and consistent with the relevant Servicing Works Price for the applicable Lift as at the Date of Contract, taking into account the extent of the difference between the Lift as it existed at the Date of Contract and the upgraded or replaced Lift; and
  - (ii) that is a lump sum amount for the performance of the relevant Servicing Works on the Lift.

#### **9.6 Independent determination**

- (a) This clause 9.6 applies where a matter is referred for resolution by independent determination under clause 9.5.
- (b) The procedure for the appointment of an Independent Quantity Surveyor is as follows:
  - (i) the party wishing the appointment to be made must give notice to that effect to the other party giving full details of the matter or matters which it proposes to be resolved by the Independent Quantity Surveyor;
  - (ii) the parties must meet within 5 Business Days after receipt of the notice under clause 9.6(b)(i) in an endeavour to agree upon a single Independent Quantity Surveyor (who will be independent of the parties, must be a qualified quantity surveyor) to whom the matter will be referred for determination;

- (iii) if within 10 Business Days of the notice referred to in clause 9.6(b)(i) the parties have not met or fail to agree upon the appointment of a single Independent Quantity Surveyor, the parties must request the Resolution Institute to appoint the Independent Quantity Surveyor (who will be independent of the parties and must be a qualified quantity surveyor).
- (c) The Independent Quantity Surveyor will be instructed to:
  - (i) determine the matter within the shortest practicable time, and in any event within 20 Business Days unless otherwise agreed by the parties; and
  - (ii) deliver a report to the parties stating the Independent Quantity Surveyor's determination and setting out the reasons for the determination.
- (d) Without affecting the generality of clause 9.6(c), the parties must use all reasonable endeavours to make sure that any matter is heard and resolved as expeditiously as possible. Notwithstanding the existence of any independent determination process under this clause 9.6:
  - (i) the parties must continue to perform their respective obligations under or in connection with this Contract;
  - (ii) the independent determination process under this clause 9.6 will not (where it is required in relation to a Work Order that is yet to be executed by the parties) delay the execution of that Work Order and, if required, the Work Order will refer to the Fee that will be ultimately payable in respect of that Work Order as being that which is determined pursuant to the independent determination process under this clause 9.6; and
  - (iii) In the case of the Contractor, the Contractor acknowledges and agrees that:
    - (A) the Contractor will continue to be bound by the relevant Work Order, including any Date for Works Completion (and any other timeframes) set out in the relevant Work Order; and
    - (B) its obligation to deliver the Maintenance Works and achieve the Contract Objectives will be unaffected throughout the duration of any independent determination process under this clause 9.6,such that the provision of the Maintenance Works the subject of the relevant Work Order are unaffected and not compromised (whether in relation to the time for performance of Maintenance Works or otherwise).
- (e) The Independent Quantity Surveyor must determine the procedures for the conduct of the process in order to make the determination and must provide each party with a fair opportunity to make submissions in relation to the matter in issue. Without limiting the generality of this clause 9.6:
  - (i) each party will be entitled to make written submissions to the Independent Quantity Surveyor concerning directions (including the timetable) sought by that party for the conduct of the determination process;
  - (ii) the Independent Quantity Surveyor will have the power to make directions (including providing a timetable) for the conduct, and concerning matters about the conduct, of the determination process; and
  - (iii) the Independent Quantity Surveyor will have the power to order that the determination process is terminated if a party unreasonably (in the sole opinion of Independent Quantity Surveyor, having first received written submissions from

the parties) fails to comply with a direction made by the Independent Quantity Surveyor.

- (f) Any process or determination by the Independent Quantity Surveyor will be made as an expert and not as an arbitrator. The determination of the Independent Quantity Surveyor will be final and binding on the parties, except where there exists a manifest error in the process of determination or the determination itself or in the event of fraud or misconduct by the Independent Quantity Surveyor.
- (g) If a circumstance described in clause 9.6(f) arises, then either party may commence court proceedings in relation to the subject matter of the independent determination.
- (h) Each party will bear its own costs of the independent determination process and will share the costs of the Independent Quantity Surveyor on a 50/50 basis.

## **10 Terms of Payment**

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### **10.1 Payments**

- (a) The parties agree that the Contractor is not entitled to Claim, and the Principal is not required to make, any payment under this Contract unless the Contractor has:
  - (i) achieved Transition Completion;
  - (ii) delivered the Parent Company Guarantee to the Principal under clause 11.2;
  - (iii) delivered the Bank Guarantee to the Principal under clause 11.1;
  - (iv) provided to the Principal copies of certificates of insurance or insurance policies under clause 22; and
  - (v) provided a statutory declaration in accordance with, and at the times required by, clause 10.10.
- (b) Unless otherwise agreed by the parties, all payments by the Principal to the Contractor will be by electronic funds transfer to a bank account notified by the Contractor to the Principal.

### **10.2 Invoicing Methodology**

- (a) Instead of the Contractor issuing a Contractor Invoice, the Contractor acknowledges and agrees that the Principal has the option of issuing an RCTI to the Contractor in respect of supplies made by the Contractor under or in connection with this document.
- (b) If:
  - (i) "Option 1" has been selected in Item 9 of Schedule 1 (Contract Details), then:
    - (A) clauses 10.3, 10.4 and 32.3 will apply; and
    - (B) clauses 10.5, 10.6 and 32.4 will not apply; or
  - (ii) "Option 2" has been selected in Item 9 of Schedule 1 (Contract Details), then:
    - (A) clauses 10.5, 10.6 and 32.4 will apply; and
    - (B) clauses 10.3, 10.4 and 32.3 will not apply.

- (c) At any time during the Term, the Principal may change the 'option selected' in Item 9 of Schedule 1 (Contract Details) by providing the Contractor with not less than 30 days notice of such change.

### **10.3 Contractor Invoices**

- (a) The Contractor will issue:
  - (i) a single Contractor Invoice for Chargeable Works after the relevant Chargeable Works have been completed in accordance this Contract;
  - (ii) a single Contractor Invoice once per month for the value of the Servicing Works Price for each Lift in the Contract Area Property List for which the Contractor carried out and completed the Servicing Works in the prior month; and
  - (iii) if applicable, a single Contractor Invoice for any Quotable Works after the relevant Quotable Works have been completed in accordance this Contract,in each case calculated strictly in accordance with Schedule 6 (Fee and Payments).
- (b) Each Contractor Invoice must include the value of the Fee being claimed, which is payable in arrears, including:
  - (i) the amount of the Servicing Works Price being claimed (if any);
  - (ii) details of any Chargeable Works performed;
  - (iii) if applicable, details of any Quotable Works performed; and
  - (iv) details of each and every Work Order to which the Contractor Invoice relates, together with the value of the Fee claimed for each Work Order (if any).
- (c) The Principal may request any further Information from the Contractor regarding any Contractor Invoice submitted under clause 10.3(a) and the Contractor must promptly provide such Information in the Approved Form.
- (d) If the Principal considers that the documents and information submitted in relation to the Maintenance Works claimed in any Contractor Invoice are insufficient to enable it to make a proper assessment of the invoice, the Principal may reject the Contractor Invoice or delay payment of the Contractor Invoice until the Contractor has provided the information reasonably required by the Principal under clause 10.3(c).

### **10.4 Payment of Contractor Invoices**

- (a) If the Principal considers that a Contractor Invoice contains any amount:
  - (i) that has not been calculated strictly in accordance with Schedule 6 (Fee and Payments) or any other provision of this Contract; or
  - (ii) that is not properly due and payable to the Contractor (including where the Contractor has not fully complied with its obligations relevant to the Maintenance Works and amounts claimed in the Contractor Invoice),the Principal may reject the Contractor Invoice (and in doing so will provide brief reasons for any rejection).
- (b) In respect of each Contractor Invoice, if the Principal has not rejected the Contractor Invoice within 15 Business Days after receiving it, the Principal will (subject to clause

10.7) pay the amount claimed in the Contractor Invoice, less any amounts retained, withdrawn or set off under clause 10.8.

#### **10.5 RCTIs**

- (a) The Contractor will provide the Principal with any information necessary to enable the Principal to determine the value of a Taxable Supply and issue an RCTI in accordance with clause 32.4. Such information will:
  - (i) be provided to the Principal in the Approved Form within 7 days of the completion of the relevant Chargeable Works or Servicing Works to which that information relates; and
  - (ii) include the value of the Fee being claimed by the Contractor, including:
    - (A) the amount of the Service Works Price being claimed (if any);
    - (B) details of any Servicing Works or Chargeable Works performed;
    - (C) if applicable, details of any Quotable Works performed; and
    - (D) details of each Work Order to which the RCTI should relate, together with the value of the Fee claimed for each Work Order (if any).
- (b) Upon the Principal's request, the Contractor will promptly provide such further information (in the Approved Form) as is required by the Principal to enable the Principal to make a proper assessment of the value of the Taxable Supply to be invoiced under the RCTI.
- (c) In the event of any Dispute arising in relation to the information provided by the Contractor under either clause 10.5(a) or 10.5(b), such Dispute will be resolved by the parties in accordance with clause 34.
- (d) Subject to the Contractor's compliance with its obligations under clause 10.5(a), 10.5(b) and 10.5(c), the Principal will issue to the Contractor:
  - (i) a single RCTI for Chargeable Works after the relevant Chargeable Works have been completed in accordance with this Contract;
  - (ii) a single RCTI once per month for the value of the Servicing Works Price for each Lift in the Contract Area Property List for which the Contractor carried out and completed the Servicing Works in the prior month; and
  - (iii) if applicable, a single RCTI for Quotable Works after the relevant Quotable Works have been completed in accordance with this Contract,in each case calculated strictly in accordance with Schedule 6 (Fee and Payments) by the Relevant Time.
- (e) The Contractor acknowledges and agrees that the Principal is reliant on the Contractor's compliance with its obligations under clause 10.5(a), 10.5(b) and 10.5(c) for the Principal to be able to determine the value of the relevant Taxable Supply applicable under an RCTI and issue the relevant RCTI to the Contractor.

#### **10.6 Payment of RCTIs**

In respect of each RCTI, the Principal will (subject to clause 10.7) pay the amount set out in the RCTI, less any amounts retained, withdrawn or set off under clause 10.8.

**10.7 Payment on account**

- (a) Neither payment by the Principal of an Invoice, nor the failure to reject an Invoice (including a failure to reject a Contractor Invoice before making payment or within 15 Business Days after receiving it):
  - (i) constitutes the Principal's acceptance of, or agreement with, the Invoice;
  - (ii) constitutes acceptance by the Principal of the Maintenance Works or any part thereof;
  - (iii) constitutes acceptance by the Principal that the Contractor has fully complied with its obligations relevant to the Maintenance Works and amounts set out in the Invoice; or
  - (iv) releases or relieves the Contractor in any way from any of its warranties, obligations or liabilities under or in connection with this Contract.
- (b) Payment by the Principal is on account only and the Principal may (at any time and from time to time) revisit, revalue or reassess any:
  - (i) Invoice; and
  - (ii) payment made by the Principal.
- (c) If the Principal wishes to recover from the Contractor any amount previously paid by the Principal, the Principal will issue a notice in writing to the Contractor, providing details of the amount claimed and brief reasons why the Principal considers such amount to be owing to the Principal. The Principal may recover such amount as a debt due and payable 10 Business Days after the Contractor receives the Principal's notice.

**10.8 Set off**

Without limiting clause 10.7, and without prejudice to any other rights or remedies, the Principal may at any time deduct from or set off against any moneys which are or may be payable to the Contractor under or in connection with this Contract, any money which the Principal considers is or may become payable by the Contractor to the Principal under or in connection with this Contract. Nothing in this clause 10.8 affects the right of the Principal to recover from the Contractor the whole of the debt or any balance that remains owing after any deduction.

**10.9 Security of Payment Act**

- (a) The Contractor must immediately give the Principal a copy of any notice the Contractor receives from (or is otherwise given to the Contractor by) a Subcontractor under any section of the Security of Payment Act.
- (b) The Contractor indemnifies, and holds harmless, the Principal against any Loss or Claim of any nature arising under, out of or in connection with:
  - (i) a suspension by a Subcontractor of work (which forms part of the Maintenance Works) pursuant to a relevant section of the Security of Payment Act;
  - (ii) a failure by the Contractor to comply with its obligations under this clause 10.9; and
  - (iii) a notice or Claim under the Security of Payment Act or any other Law being served on the Principal in connection with a Subcontractor exercising a Lien or charge over the Maintenance Works.

#### **10.10 Statutory Declaration**

On the last Business Day of each month, the Contractor must provide to the Principal a statutory declaration in the form set out in Schedule 12 (Form of Statutory Declaration) (or, if directed by the Principal, in the Approved Form) executed by a current director of the Contractor (or an authorised representative of the Contractor).

### **11 Security**

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#### **11.1 Bank Guarantee**

- (a) The Contractor must, within 5 days after the Date of Contract deliver to the Principal Bank Guarantees for each Contract Area in the Approved Form, from a bank that is an Approved Provider and for amounts equal to that set out in Item 15 of the Contract Details.
- (b) The Bank Guarantees will be returned by the Principal to the Contractor within 20 Business Days after the later of:
  - (i) the Expiry Date; and
  - (ii) the completion by the Contractor of all of its obligations under or arising out of this Contract.

#### **11.2 Parent Company Guarantee**

The Contractor must, within one calendar month of the Date of Contract, provide to the Principal the Parent Company Guarantees from the Guarantor in the Approved Form.

#### **11.3 Bank Guarantee Replacement**

- (a) If a Bank Guarantee has been provided to the Principal under this clause 11, and the financial institution that issued that Bank Guarantee:
  - (i) ceases to hold a Required Rating; or
  - (ii) ceases to maintain a Sydney branch,then the Contractor must immediately notify the Principal and provide the Principal with a replacement Bank Guarantee within 10 Business Days of the date upon which the above event (as applicable) occurs.
- (b) Each replacement Bank Guarantee which the Contractor is required to provide to the Principal under clause 11.3(a) must be:
  - (i) for the same amount as the Bank Guarantee it is replacing (subject to clause 11.1(b));
  - (ii) provided with an expiry date no earlier than the expiry date of the Bank Guarantee it is replacing;
  - (iii) in the Approved Form; and
  - (iv) issued by an Approved Provider,and the provisions of clause 11.3 will apply in relation to any such replacement Bank Guarantee.

#### **11.4 Conversion of Bank Guarantee**

- (a) Without limiting the unconditional nature of the Bank Guarantee and the Principal's right to demand, receive or use the proceeds of the Bank Guarantee, the Principal may demand, receive and use the proceeds of the Bank Guarantee, without notice to the Contractor, whenever the Principal asserts a right to the payment of money by the Contractor under, arising out of or in connection with this Contract.
- (b) Where the Principal makes a demand on the Bank Guarantee in respect of an amount and it is subsequently determined that the amount was not payable, or the Contractor is not liable to the Principal for the amount:
  - (i) the Principal must pay that amount to the Contractor within 20 Business Days; and
  - (ii) payment by the Principal under clause 11.4(b)(i) will be the Contractor's sole remedy against the Principal for making the demand.
- (c) The Contractor warrants that it will not institute any proceedings, or exercise any right or take any steps to restrain or injunct either the bank or financial institution that issued the Bank Guarantee or the Principal from, performing its obligations or exercising its rights (as the case may be) under the Bank Guarantee, even where the Contractor disputes the Principal's Claim (including where dispute resolution proceedings have been commenced pursuant to clause 34).
- (d) Nothing in clause 11.4(c) prejudices the Contractor's right to commence proceedings under clause 34 (other than to restrain or injunct) to dispute the Principal's Claim forming the basis of the Principal making a demand on the Bank Guarantee pursuant to clause 11.4(a).

#### **11.5 Invalidity and unenforceability**

- (a) Notwithstanding the foregoing provisions of this clause 11, where the Principal considers that a Bank Guarantee provided pursuant to this clause 11 is or may become void, invalid, unenforceable or expires before the relevant expiry date stated in clauses 11.3 for any reason, the Contractor must provide a replacement Bank Guarantee in accordance with the relevant requirements of this clause 11 not later than:
  - (i) 10 Business Days following the date on which the Principal notifies the Contractor that it considers that the Bank Guarantee is or may be found to be void, invalid or unenforceable; or
  - (ii) 20 Business Days prior to the date on which the Bank Guarantee expires.
- (b) If the Contractor does not comply with this clause 11.5, without limiting the Principal's rights under or in connection with this Contract, the Principal may immediately convert into money the full amount of the relevant Bank Guarantee.

### **12 Key Performance Indicators**

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#### **12.1 Key Performance Indicators**

The Contractor must carry out the Maintenance Works and take all other steps to meet or exceed the Performance Benchmark for each of the KPIs in accordance with Schedule 7 (Key Performance Indicators).



## **12.2 Abatements**

- (a) The Principal may recover as a debt due and payable, the amount of any Abatement calculated in accordance with, and at the times stated in, Schedule 7 (Key Performance Indicators).
- (b) The Contractor acknowledges and agrees that each of the Abatements:
  - (i) are not a sole and exclusive remedy for the Contractor's failure to meet or exceed the Performance Benchmark for any KPI or the Contractor's failure to comply with any other provision of this Contract; and
  - (ii) reflect an agreed and appropriate reduction of the Fee, based upon:
    - (A) the requirements that underpin each of the KPIs and applicable Performance Benchmarks; and
    - (B) the outcomes achieved by the Contractor, as measured and calculated in accordance with Schedule 7 (Key Performance Indicators).

## **13 NCNs, Audits and Records**

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### **13.1 Non-conformance notices**

- (a) Without limiting any other provision of this Contract (including the Principal's rights under any other provision of this Contract), the Principal may issue a notice to the Contractor requiring the Contractor to remedy any non-conformance or non-compliance with any requirement of this Contract (**Non-conformance Notice or NCN**).
- (b) An NCN:
  - (i) will identify the non-conformance or non-compliance; and
  - (ii) may specify a date by which the Contractor must remedy the relevant non-conformance or non-compliance.
- (c) Following receipt of an NCN:
  - (i) the Contractor must, at its cost, remedy (as applicable) the relevant non-conformance or non-compliance by the date(s) identified in the NCN;
  - (ii) notify the Principal when the Contractor has remedied all of the non-conformance or non-compliance and provide evidence of that fact to the reasonable satisfaction of the Principal; and
  - (iii) if requested by the Principal:
    - (A) demonstrate to the Principal how the Contractor will comply with its obligation under clause 13.1(c)(i);
    - (B) identify and demonstrate to the Principal what steps the Contractor proposes to take (and will take) to ensure that the Contractor does not commit the same non-conformance or non-compliance set out in the NCN in the future; and
    - (C) attend any meeting to discuss the NCN or the proposed steps and/or the Contractor's implementation of those steps.

- (d) The Contractor acknowledges and agrees that:
  - (i) an NCN may include a Defect in the Maintenance Works as the relevant non-conformance or non-compliance in circumstances where it appears to the Principal that there is a repetition of that Defect in the Maintenance Works; and
  - (ii) if an NCN includes a Defect in the Maintenance Works as the relevant non-conformance or non-compliance, the issuance of the NCN by the Principal does not in any way derogate from or otherwise affect the Contractor's obligations under clause 19, including to comply with a Defect Notice.

### **13.2 Inspections**

- (a) The Principal may in its absolute discretion inspect (or procure that a third party inspects) any Property, Site or Maintenance Works:
  - (i) at any time during the performance of the Maintenance Works (**Pre-Completion Inspection**); and/or
  - (ii) following notification from the Contractor that it has completed the relevant Maintenance Works (**Post Work Inspection**).
- (b) The Contractor must allow the Principal full and unfettered access to the Property, Site or Maintenance Works for the purposes of the Principal performing a Pre-Completion Inspection or a Post Work Inspection.
- (c) If the Principal discovers a Defect (or any other non-compliance with any requirement of the Contract) at or following any Post Work Inspection, the Principal may recover from the Contractor as a debt due and payable the liquidated sum set out in Item 10 of the Contract Details for:
  - (i) the first Post Work Inspection; and
  - (ii) each subsequent Post Work Inspection in connection with the relevant Defect, associated rectification works or other non-compliance.

### **13.3 Audits**

- (a) The Principal (and any person authorised by the Principal) may at any time and from time to time audit and investigate any matter in connection with this Contract, including:
  - (i) the performance or non-performance of the Maintenance Works;
  - (ii) KPIs and Abatements, including any KPI Improvement Plan;
  - (iii) Contractor Invoices and RCTIs;
  - (iv) Defects and the rectification of Defects;
  - (v) Work Health and Safety Requirements;
  - (vi) the reasonableness and value for money of any quotation for any Chargeable Works or the amount claimed for any Chargeable Works;
  - (vii) the activities being performed by the Contractor's Key Personnel, supervisory personnel and any other personnel included in the Contractor's organisational chart referred to in clause 17.2;
  - (viii) the Contractor's compliance with Schedule 3 (Operational Requirements); and

- (ix) the Contractor's compliance or non compliance with any of its other obligations under this Contract (including with the warranty in sections 2.2(b)(i), 5.5 and 5.6 in Schedule 6 (Fee and Payments)).
- (b) The Contractor must:
  - (i) provide all assistance to the Principal (and any person authorised by the Principal) in the conduct of an audit or investigation under this clause 13.3;
  - (ii) make available to the Principal (and any person authorised by the Principal) all records, data, documents and accounts requested by the Principal in the conduct of an audit or investigation under this clause 13.3, including providing access to the Contractor's information management system;
  - (iii) make the Contractor's relevant Personnel available to respond to questions and requests from the Principal in order to facilitate an audit or investigation;
  - (iv) if requested by the Principal, meet with the Principal to discuss the outcomes of an audit or investigation;
  - (v) if requested by the Principal, provide a secure and private area in the Contractor's office to conduct an audit or investigation;
  - (vi) comply with any directions from the Principal regarding corrective actions that the Principal requires the Contractor to take following the outcome of an audit or investigation; and
  - (vii) if requested by the Principal, provide a detailed written cure plan to the Principal in an Approved Form, outlining how the Contractor propose to address any issues arising out of the audit or investigation, or how the Contractor will carry out and complete any corrective actions required by the Principal.

#### **13.4 Other investigations**

The Contractor must, within the time required by the Principal, provide all assistance reasonably requested by the Principal in respect of any complaint, investigation or inquiry in connection with Maintenance Works or this Contract (including in connection with any Tenant complaint, the requirements of any Responsible Authority including the New South Wales Auditor General, a coronial inquiry or the requirements of Parliamentary accountability).

#### **13.5 Contractor's records**

- (a) The Contractor must, and must ensure all Subcontractors engaged in respect of the Maintenance Works, keep and maintain at its or their own cost (as the case may be) complete and detailed records, data, documents and accounts in relation to the performance of the Maintenance Works and any other obligations under this Contract.
- (b) The Contractor must ensure full and unfettered access to all such records, data, documents and accounts for the purposes of any audit conducted by or on behalf of the Principal.

#### **13.6 Records retention**

Without limiting the Contractor's obligation to provide information to the Principal (whether on the SUI or otherwise), the Contractor must retain and preserve all records, reports, documents and data, including all data retrievable from an electronic data storage source, created in connection with the Maintenance Works, and all costs and operating data. The Contractor must maintain custody of such material until either the date which is three years after the Term or such other time as the Principal notifies the Contractor to dispose or hand-over such material.

## **14 Plans, Reporting and Meetings**

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### **14.1 General**

- (a) The Contractor must prepare and submit for review all Deliverables and other plans, documentation and reports required by any provision of this Contract or as otherwise requested by the Principal from time to time.
- (b) The Contractor must develop, implement, maintain and comply with the plans specified in clause 14.3.

### **14.2 Reports**

- (a) The Contractor must provide regular reports to the Principal:
  - (i) at the times and intervals directed by the Principal; and
  - (ii) in the Approved Form (including the Reporting Templates, where applicable).
- (b) The Contractor will have no Claim against the Principal, and irrevocably releases the Principal from any Claim, arising out of compliance with clause 14.2(a) (including a direction issued by the Principal as contemplated in clause 14.2(a)).

### **14.3 Contractor Plans, Policies and Procedures**

The Contractor must:

- (a) within 28 days of the commencement of the Transition In Period, prepare and issue to the Principal a completed:
  - (i) quality management plan;
  - (ii) safety management plan;
  - (iii) training management plan;
  - (iv) Aboriginal participation plan;
  - (v) workplace relations management plan;
  - (vi) warranty management plan;
  - (vii) environmental management plan; and
- (b) amend each of the Contractor Plans, Policies and Procedures to address any comments which the Principal may have (if any);
- (c) ensure appropriate linkages and consistency between each of the Contractor Plans, Policies and Procedures;
- (d) keep each of the Contractor Plans, Policies and Procedures updated throughout the Term;
- (e) when requested by the Principal, demonstrate active compliance with each of the Contractor Plans, Policies and Procedures; and
- (f) provide copies of each of the Contractor Plans, Policies and Procedures to the Principal upon request.

#### **14.4 Works Reports**

The Contractor must maintain all reports and records (documenting the performance of the Maintenance Works) consistent with Good Industry Practice.

#### **14.5 No relief**

The Contractor acknowledges and agrees that any submission or review of the plans, reports and other information under this clause 14.5 does not detract from or otherwise affect the Contractor's warranties, obligations or liabilities under or in connection with this Contract.

#### **14.6 Meetings**

- (a) The Contractor must attend any ad hoc or regular meetings as directed by the Principal from time to time.
- (b) The Contractor must ensure that:
  - (i) it is appropriately represented at all meetings, having regard to the subject matter and attendees of each meeting; and
  - (ii) (where requested) it circulates to all attendees meeting agendas and meeting minutes.

#### **14.7 Reviews**

The Principal may hold monthly, quarterly and or annual reviews. The agenda for such reviews will be specified by the Principal but may include:

- (a) the Maintenance Works performed (or not performed) at any one or more Properties;
- (b) Work Orders (including those which have and have not achieved Works Completion);
- (c) the KPI scores during the relevant period, along with the Contractor's compliance with any KPI Improvement Plan and or Executive Improvement Plan;
- (d) any Defect Notices and NCN Notices (whether rectified or un-rectified);
- (e) changes to any of the Contractor's Plans, Policies or Procedures or the Principal's Plans, Policies or Procedures;
- (f) outcomes of any Post Work Inspections or audits;
- (g) changes to any Subcontractors or Key Personnel;
- (h) the Contractor's usage of the SUI; and
- (i) the effectiveness of coordination and contract administration between the parties.

#### **14.8 Briefings**

The Contractor must prepare and provide briefings (at a location nominated by the Principal) on aspects of the Maintenance Works to the Principal, other contractors of the Principal (including any other Lift Maintenance Contractor or RAPM Contractor), its Subcontractors and Tenants as required (including as directed by the Principal) during the Term.

## **15 Subcontracts**

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### **15.1 Subcontracting**

Subject to this clause 15, the Contractor:

- (a) must not subcontract the whole of the Maintenance Works;
- (b) may subcontract any part of the Maintenance Works with the prior consent of the Principal (in its sole discretion);
- (c) must only engage Subcontractors who are safe, careful, skilled, qualified, experienced and competent and, where applicable, licenced and accredited in their respective disciplines;
- (d) if requested by the Principal, must demonstrate to the Principal that proposed Subcontractors have these attributes before engaging the Subcontractor;
- (e) must not allow a Subcontractor to sub-subcontract any part of the Maintenance Works; and
- (f) must not subcontract or otherwise outsource the supervisory personnel or the responsibilities of those personnel, without the prior written consent of the Principal, which may be withheld at its sole discretion.

### **15.2 Responsibility**

- (a) Subcontracting does not relieve the Contractor from any of its warranties, liabilities or obligations under or in connection with this Contract.
- (b) The Contractor is fully and vicariously liable to the Principal for the acts and omissions of each of its Personnel if they were acts or omissions of the Contractor.

### **15.3 Subcontractors**

- (a) The Contractor must ensure that:
  - (i) each Subcontract includes provisions which enable the Contractor to discharge each of the Contractor's warranties, obligations and liabilities to the Principal under or in connection with this Contract; and
  - (ii) where the Contract requires the Contractor to procure or provide a warranty in respect of Equipment supplied as of the Maintenance Works, each Subcontractor supplying such Equipment provides the Contractor with any and all warranties in the Approved Form for the benefit of, or transferable to, the Principal.
- (b) If the Principal considers that any Subcontractor engaged by the Contractor is not fit to carry out any part of the Maintenance Works, the Principal may direct the Contractor to terminate the Subcontract with that Subcontractor. The Contractor must promptly comply with such direction and must not:
  - (i) engage that Subcontractor in connection with the Maintenance Works; and
  - (ii) be entitled to any compensation or to make any Claim, arising out of or in connection with the Principal's direction.
- (c) The Contractor must keep a written report of all Subcontractors engaged by the Contractor in connection with the Maintenance Works recording, at a minimum, the

identity of the Subcontractor, the type of work the Subcontractor is engaged to carry out, the locations where the Subcontractor does or will carry out works and any and all licences and accreditations held (and required to be held) by each Subcontractor. The Contractor must:

- (i) provide the Principal with a copy of an update report at least monthly; and
- (ii) when requested by the Principal, provide evidence that any Subcontractors or any other Personnel hold appropriate and required licences and accreditations.

## **16 Representatives**

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### **16.1 Contractor's Representative**

- (a) The Contractor's Representative as at the Date of Contract is the person named in Item 3 of the Contract Details.
- (b) The Contractor must ensure that the Contractor's Representative is suitably experienced, qualified and licensed, and able, to carry out the obligations of the Contractor's Representative in accordance with the Contract.
- (c) The Contractor's Representative represents and acts for the Contractor at all times during the Term of this Contract.
- (d) The Contractor is bound by the actions and omissions of the Contractor's Representative. Matters within the knowledge of the Contractor's Representative are deemed to be within the knowledge of the Contractor.
- (e) The Contractor's Representative must be fluent (verbally and in writing) in the English language.
- (f) All notices, instructions, information and all other communications to be given by the Principal to the Contractor under this Contract may be given to the Contractor's Representative, except as otherwise provided by the Contract.
- (g) The Contractor may replace the Contractor's Representative with a substitute Contractor's Representative upon 10 Business Days' prior written notice to the Principal by the Contractor. The Contractor must ensure that any substitute of the Contractor's Representative is suitably experienced, qualified and licensed, and able, to carry out the obligations of the Contractor's Representative in accordance with the Contract.

## **17 Contractor's Personnel**

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### **17.1 Contractor to appoint suitable personnel**

Without limiting its obligations under clauses 17.2 to 17.5 (inclusive), the Contractor must provide sufficient numbers of suitably qualified, experienced and competent personnel as are required for the performance of the Maintenance Works and the Contractor's other obligations under this Contract.

### **17.2 Organisation and Personnel**

- (a) Within the time specified in Item 16 of the Contract Details, the Contractor must submit for approval an organisation chart showing (at a minimum):
  - (i) the proposed organisation to be established by the Contractor for performing the Maintenance Works;

- (ii) the identities of the Contractor's proposed Key Personnel, together with the curricula vitae of such proposed Key Personnel to be employed in the Maintenance Works; and
  - (iii) the identities of the Contractor's supervisory personnel that will be involved in the supervision of any aspect of the Maintenance Works carried out on Site, together with the curricula vitae of such proposed personnel.
- (b) The Contractor must promptly inform the Principal of any proposed revision or alteration of the organisation chart, including supervisory personnel. Where practical the Contractor must obtain the Principal's consent (not to be unreasonably withheld) before affecting any proposed changes to the organisation chart, including the supervisory personnel.

### **17.3 Inductions and Site requirements**

The Contractor must ensure that all Personnel:

- (a) have undertaken any required induction and other training before being permitted to access the Site; and
- (b) comply with the Contractor's and the Principal's other requirements,

including as required by the Maintenance Works Specification.

### **17.4 Key Personnel**

- (a) The Contractor must engage the Key Personnel (if any) for the performance of the Maintenance Works in accordance with Item 7 of the Contract Details.
- (b) The Contractor must ensure that any individual member of its Key Personnel:
  - (i) where relevant, satisfies the qualification requirements specified in the Contract Details; and
  - (ii) is readily available to discuss, explain or make presentations on that part of the Maintenance Works for which it is responsible.
- (c) The Contractor must not remove or replace any Key Personnel without prior approval of the Principal. Any substitute Personnel must be at least equally qualified for the duties of the position as the persons for whom they are substituted. The Contractor must provide an uninterrupted transition between the Key Personnel and their replacements.

### **17.5 Replacement of persons**

- (a) The Principal may by notice to the Contractor direct the removal of any person engaged in the performance of the Maintenance Works if in the Principal's reasonable opinion that person's performance or conduct is or has been unsatisfactory.
- (b) Upon receipt of that notice, the Contractor must at its own expense remove, or arrange to be removed, such person from the Site and must not employ that person on the Site or in activities connected with the Maintenance Works without the Principal's prior approval. The Contractor must appoint a suitable replacement at its sole expense.



## **18 Warranties and standard of Maintenance Works**

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### **18.1 Contractor must do all necessary work**

The Contractor acknowledges and agrees that:

- (a) the description of the Maintenance Works specified in this Contract (including the Maintenance Works Specification) represents the Principal's and the Contractor's best efforts to define the technical information and tasks necessary for performance of the Maintenance Works;
- (b) the Contractor must perform and provide all works, activities, services, materials, Equipment and Maintenance Works that are not specifically mentioned in this Contract but which are required for the proper performance of the Maintenance Works and the Contractor's other obligations under this Contract (as if such works, activities, services, materials, Equipment and Maintenance Works were expressly mentioned in this Contract), including any all works, activities, services, materials, Equipment and Maintenance Works:
  - (i) that could be reasonably inferred from the Contract Documents; or
  - (ii) which a reasonable and prudent contractor, experienced in undertaking works of a similar nature to the Maintenance Works, ought to have inferred from the Contract Documents;
- (c) except as expressly stated otherwise in this Contract, the Contractor is not entitled to:
  - (i) Claim any adjustment to any part of the Fee; or
  - (ii) make any Claim under this Contract, any applicable Law, at common law, in equity or otherwise,

regarding its compliance with clauses 18.1(a) and 18.1(b).

### **18.2 Warranties relating to the Maintenance Works**

- (a) Without prejudice to any other warranties expressed elsewhere in this Contract, the Contractor warrants that:
  - (i) the Maintenance Works will be performed with all the skill and care to be expected of professional, appropriately qualified and experienced contractors with experience in performing Maintenance Works of a similar size, type, nature, purpose and complexity to the Maintenance Works and in accordance with Good Industry Practices;
  - (ii) the Maintenance Works will be performed in accordance with all Laws and the requirements of this Contract (including the Maintenance Works Specification);
  - (iii) the Maintenance Works will be performed in accordance with the Principal Plans, Policies and Procedures and Contractor Plans, Policies and Procedures;
  - (iv) the Maintenance Works will be performed with the highest regard for safety and protection of the safety and wellbeing of Tenants and the Environment, and so that the Property is capable of being utilised under all applicable Laws;
  - (v) the Maintenance Works will be fit for the Intended Purpose;
  - (vi) the Equipment will:

- (A) be new and unused (except where the Principal provides its prior written consent);
- (B) be fit for the Intended Purpose and of a quality reasonably expected in the Australian manufacturing and construction industries;
- (C) be free from Defects of any kind;
- (D) be free from any encumbrance or Security Interest; and
- (E) conform to the requirements specified in this Contract;
- (vii) except as otherwise expressly provided in this Contract, it accepts all risk, responsibility and liability regarding the Site and the Site Conditions;
- (viii) the Maintenance Works, the Equipment and the Contractor's Equipment will comply with all applicable Laws;
- (ix) it is familiar with and has the capabilities (including workplace, health and safety management systems and safe work procedures in which all relevant officers and employees have been instructed and trained) to comply with all Work Health and Safety Requirements;
- (x) it has and will maintain:
  - (A) a quality management system equivalent or greater to ISO: 9001-2015;
  - (B) a safety management system equivalent or greater to ISO: 45001 – 2018; and
  - (C) an environmental management system equivalent or greater to ISO: 14001 – 2015; andthat each system is and will remain certified by accredited third parties;
- (xi) the Maintenance Works Specification has been examined and thoroughly reviewed, and is suitable, appropriate and adequate for the Intended Purpose; and
- (xii) it will cooperate and coordinate with, and provide assistance to, any other Lift Maintenance Contractor, as may be required by the Principal, and will do so in an efficient and commercially reasonable manner (and the Contractor acknowledges that any cooperation, coordination or assistance rendered pursuant to this clause 18.2(a)(xii) is appropriately covered by the Fee).
- (b) The Contractor acknowledges that the Principal has entered into this Contract on the basis of and in full reliance upon the Contractor's warranties.
- (c) Each of the warranties is construed as a separate and independent warranty and (save where expressly provided to the contrary) is not limited or restricted by reference to or inference from any other terms of this Contract or any other warranty.

### **18.3 Disclosure**

The Contractor must immediately disclose in writing to the Principal any event or circumstance which may arise or become known to it after the Date of Contract which is materially inconsistent with any of the warranties it has provided under this Contract or which has or is likely to have an adverse effect on a Property or the Portfolio.

**18.4 No warranty from the Principal**

- (a) The Contractor acknowledges and agrees that:
  - (i) unless expressly provided otherwise in this Contract, the Principal Supplied Information is supplied for the information convenience of the Contractor only and may not be relied on by the Contractor;
  - (ii) the Contractor enters into this Contract based on its own investigations and determinations as to the completeness, accuracy and adequacy of the Principal Supplied Information, the SoR and the Maintenance Works Specification and any other information the Contractor may have regarding the Properties, the Maintenance Works, the Sites and the Contract Documents;
  - (iii) any errors, omissions, inaccuracies or inadequacies in the Principal Supplied Information, the SoR, the Maintenance Works Specification and the other Contract Documents do not detract from or otherwise affect the Contractor's warranties, obligations or liabilities under or in connection with this Contract; and
  - (iv) it is not entitled to Claim payment of any amount, or any adjustment to any part of the Fee, or to make any Claim arising out of or in connection with any errors, omissions, inaccuracies and inadequacies in the Principal Supplied Information, the SoR, the Maintenance Works Specification and the Contract Documents.
- (b) Without limiting clause 18.4(a), the Principal does not give any warranty or undertaking as to the completeness, accuracy or fitness for any purpose of any of the Principal Supplied Information, and neither the Principal nor any of the Principal's Affiliates is liable to the Contractor for any Claim as a result of:
  - (i) any inaccuracy, omission, unfitness for any purpose or inadequacy of any kind whatsoever in the Principal Supplied Information; or
  - (ii) any failure to make available to the Contractor any materials, documents, drawings, plans or other information relating to the Properties.
- (c) Nothing in this clause 18.4 limits or otherwise affects the Contractor's entitlement to be paid the Fee (calculated in accordance with this Contract) for carrying out and completing Maintenance Works pursuant to a Work Order issued by the Principal.

**18.5 Contractor deemed to satisfy itself**

The Contractor is deemed to have:

- (a) satisfied itself as to the nature and extent of the risks assumed by it under or in connection with this Contract; and
- (b) gathered all information necessary to perform its obligations under or in connection with this Contract.

**18.6 Warranty of Equipment and workmanship**

- (a) The Contractor warrants that all Equipment used by the Contractor in the provision of Maintenance Works during the Term will be free from Defects in design, material and workmanship.
- (b) Where:
  - (i) required by Law;

- (ii) appropriate to meet standards of Good Industry Practice;
- (iii) obtainable in the market; or
- (iv) otherwise required by any provision of this Contract (including the Maintenance Works Specifications),

the Contractor must obtain and provide to the Principal all Warranties in connection with the Maintenance Works and any Equipment (including from, any Personnel, manufacturers, agents, suppliers or installers);

- (c) If the Contractor is not able to obtain and assign such Warranties to and for the benefit of the Principal:
  - (i) the Contractor must hold the benefit of such warranties on trust for the Principal and must, if requested by the Principal, enforce them on behalf of the Principal; and
  - (ii) the Contractor is responsible for the administration of any claims, whether made by the Principal or by the Contractor, made under warranties for components procured by the Contractor in accordance with clause 18.6(b).
- (d) The Contractor acknowledges and agrees that the cost of any repair, refurbishment or replacement of damaged or defective components used by the Contractor in the Maintenance Works, or stored for use in the Maintenance Works, during the Term and are included as part of the Fee.
- (e) Notwithstanding any other provision of this Contract, the cost for the supply of a material or a part (as contemplated by this clause 18.6) will be borne by the Contractor.

#### **18.7 Warranties and obligations unaffected**

The warranties under clause 18 remain unaffected notwithstanding:

- (a) any information supplied by or on behalf of the Principal (including any inaccuracy, incompleteness or inadequacy in any Principal Supplied Information);
- (b) the issue of (or failure to issue) any Work Orders;
- (c) the issue of any certification regarding the Maintenance Works;
- (d) the review, approval, consent (including any failure to review, approve or consent) or otherwise by or on behalf of the Principal of any Deliverable or other document or thing;
- (e) a change to the allocation of Contract Areas or to the Portfolio; or
- (f) the suspension, expiry or termination of this Contract.

#### **18.8 Interface with Tenants**

- (a) The Contractor must ensure that, at all times when it interfaces with Tenants (including when carrying out Maintenance Works), it will be courteous, respectful, helpful, facilitative, will strive to ensure the achievement of the Contract Objectives and will at all times comply with the Operational Requirements.
- (b) The Contractor will ensure that its Subcontractors and other Personnel comply with the requirements of clause 18.8(a).

- (c) The Contractor must immediately notify the Principal upon becoming aware of a breach or potential or suspected breach of clause 18.8(a), providing adequate details and any additional information required by the Principal.

#### **18.9 Cleaning up**

- (a) The Contractor must at all times keep the Site clean and tidy.
- (b) The Contractor must regularly remove rubbish, refuse and surplus material from the Site which is brought onto the Site or produced by the Contractor or its Personnel.
- (c) The Contractor must ensure that all Contractor's Equipment are clean before those vehicles enter the Site in order to minimise the possibility of bringing weeds and other contaminants from other areas onto the Site.

#### **18.10 Supervision**

The Contractor:

- (a) warrants that it has made appropriate allowances:
  - (i) in its resources and organisational chart; and
  - (ii) in the relevant components of the Fee,for the full level of management supervision (including appropriately experienced and qualified management and supervisory personnel) required to enable the Contractor to satisfy and comply with all of its obligations under this Contract (including all of the warranties and obligations in clause 18); and
- (b) shall have no Claim (other than an entitlement to claim payment of the Fee strictly in accordance with the Contract) against the Principal irrespective of the extent of management and supervision (and the number of management or supervisory personnel) required to enable the Contractor to satisfy and comply with all of its obligations under this Contract (including all of the warranties and obligations in clause 18).

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### **19 Defects**

#### **19.1 Contractor to rectify**

- (a) The Contractor must rectify all Defects at its cost.
- (b) The Principal may direct the Contractor in writing to rectify a Defect (**Defect Notice**).
- (c) The Principal's Defect Notice may specify a date by which the Contractor must complete the relevant rectification work.

#### **19.2 General obligations**

- (a) Upon receipt of a Defect Notice, the Contractor must, at its cost:
  - (i) rectify the Defect by the date specified in the Defect Notice (if any), or if no date is specified, within a reasonable time, having regard to the nature of the Defect and Good Industry Practice; and
  - (ii) comply with the requirements of the Operational Requirements relating to Defects and the rectification of Defects.

- (b) Without limiting any other provision of this Contract or any of the Principal's rights under or in connection with this Contract if the Contractor fails to perform its obligations with respect to identifying, rectifying or procuring the rectification of Defects (including in response to Defect Notice issued by the Principal), the Principal may engage other contractors (including an Alternative Contractor) to rectify the Defect at the Contractor's cost.
- (c) The Losses incurred by the Principal in having the rectification work carried out will be a debt due and payable from the Contractor to the Principal 5 Business Days after the Principal makes written demand for such payment.

### **19.3 Rights at Law**

Neither the Principal's rights, nor the Contractor's liabilities, under this Contract or at Law in respect of Defects, will be affected or limited by:

- (a) the rights conferred on the Principal by this clause 19;
- (b) the exercise of such rights, or the failure to exercise any such rights, by the Principal; or
- (c) any direction by the Principal, including a Defects Notice issued by the Principal, under this clause 19.

For the avoidance of doubt, the Principal may rectify, or have rectified, any Defect at any time without the need to notify the Contractor, issue a Defects Notice or allow the Contractor the opportunity to remedy the Defect under this clause 19 or otherwise.

## **20 Risk and Ownership**

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### **20.1 Transfer of ownership**

Except for ownership of any parts that the Contractor procures (in respect of which ownership shall transfer to the Principal in accordance with clause 7.13), the ownership of any other item that is supplied by or on behalf of the Contractor as part of the Maintenance Works (including the Equipment and Consumables) transfers to the Principal on the earlier of:

- (a) payment to the Contractor for those items; and
- (b) installation at the Site.

### **20.2 Risk in and ownership of Contractor's Equipment**

The ownership of and risk of loss in the Contractor's Equipment and all other property owned and used by the Contractor and its Subcontractors in connection with the Maintenance Works remains at all times with the Contractor or its Subcontractors.

### **20.3 Risk and Reinstatement**

The Contractor acknowledges and agrees to the following:

- (a) the Contractor is responsible for the care and custody of the Site and the Maintenance Works (including any Equipment) while the Contractor is on Site performing the Maintenance Works; and
- (b) where any loss or damage is caused to any part of the Site or the Maintenance Works (including any Equipment) while the Contractor is responsible for their care and custody, the Contractor must:

- (i) immediately notify the Principal of the relevant loss or damage (and provide all information as reasonably requested by the Principal) and make the Site and Property safe;
- (ii) unless and to the extent otherwise directed in writing by the Principal, at its own cost immediately reinstate the relevant loss or damage using Good Industry Practices; and
- (iii) promptly notify the Principal when the relevant loss or damage is reinstated by the Contractor.

#### **20.4 Liens and Encumbrances**

Notwithstanding any other provision in this Contract, the Contractor must ensure that the Maintenance Works (and Equipment) are free of any Liens upon installation.

### **21 Indemnities**

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#### **21.1 Contractor's indemnity**

- (a) The Contractor indemnifies and holds harmless the Principal and its Personnel from and against any and all Claims under any applicable Law, at common law, in equity or otherwise and Losses of any nature arising under, out of, or in connection with:
  - (i) any breach or failure to observe any of the obligations, agreements and conditions to be observed and performed under this Contract by the Contractor or any of its Personnel;
  - (ii) damage to, loss of or destruction of, any real or personal property (including property belonging to the Principal), which is caused or contributed to by the Contractor or its Personnel;
  - (iii) any amount payable by the Principal to a third party to the extent caused or contributed to by a breach by the Contractor of its obligations under this Contract;
  - (iv) any injury to, or death or disease of, persons which is caused or contributed to by the Contractor or its Personnel;
  - (v) a breach of its obligations under clause 29.6; and
  - (vi) damage to persons, property, roads, bridges or any other traffic facilities which is caused or contributed to by the Contractor or its Personnel in connection with the procurement, transportation or delivery of all such materials or things to the Site or the failure by the Contractor to obtain the required Permits for the transportation of the Equipment or Contractor's Equipment.
- (b) The Contractor's liability to indemnify the Principal and its Personnel under clause 21.1(a) will be reduced proportionally to the extent that any negligence, fraud, or Wilful Misconduct by the Principal or its Personnel contributed to the relevant Claim or Loss.
- (c) Clause 21.1(a) does not apply to:
  - (i) exclude any other right of the Principal to be indemnified by the Contractor; and
  - (ii) claims in respect of the right of the Principal to have the Maintenance Works performed.

### **21.2 Indemnification Procedures**

- (a) The Principal may, by notice to the Contractor, seek to enforce an indemnity given under this Contract. It is not necessary for the Principal or its Personnel to incur an expense before enforcing a right of indemnity conferred by this Contract.
- (b) The Contractor must pay, as debt due and payable on demand, any amount it is obliged to pay to the Principal or any of its Personnel under an indemnity in this Contract.

### **21.3 Survival**

The indemnities given under this clause 21 and each indemnity given by the Contractor under this Contract, is a continuing obligation, separate and independent from the other obligations of the parties and survives the completion, expiry or termination of this Contract.

## **22 Insurance**

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### **22.1 Principal Insurances**

- (a) The Principal will take out and maintain a contract works 'Material Damage' insurance policy for material damage arising from the provision of Maintenance Works in respect of any one occurrence, in the name of the Principal and the Contractor. Sub-limits apply to expenses, fees, debris removal, formwork and temporary works. The policy contains a number of exclusions, including the exclusion of construction plant and equipment and existing property. The policy shall include:
  - (i) coverage for the reinstatement value of the works up to a maximum of \$2,000,000; and
  - (ii) a deductible of \$25,000 each and every claim.
- (b) The Principal will take out and maintain a contract works 'Public, Products and Environmental Impairment Liability' (third party legal liability) insurance policy in the name of the Principal and the Contractor. Subject to its terms and provisions, the policy provides an indemnity for those Insured (as such term is defined in the relevant Principal insurance policy) where legally liable, for any third party personal injury or property damage arising out of the provision of the Maintenance Works. The policy shall be:
  - (i) for an amount not less than \$20,000,000 any one Occurrence (as such term is defined in the relevant Principal insurance policy) (and in the aggregate for 'Environmental Impairment Liability');
  - (ii) with a deductible of \$150,000 for each and every loss in respect of 'worker to worker' claims (a claim brought by a worker employed by another company for personal injury damages following an incident in which the host employer or other contractors are liable); and
  - (iii) with a deductible of \$100,000 for each and every claim in respect of all other losses.
- (c) Where the Contractor makes a claim in respect of the contract works 'Material Damage' or contract works 'Public, Products and Environmental Impairment Liability' insurance policies under this clause 22.1, the Contractor shall be liable in all circumstances to pay the insurance policy deductibles stated in paragraphs 22.1(a)(ii), 22.1(b)(ii) and 22.1(b)(iii).



## **22.2 Contractor Insurances**

Before commencing any activities under this Contract, the Contractor must at its cost take out and maintain the following insurance policies:

- (a) 'Motor vehicle (third party liability)' insurance written on an occurrence basis:
  - (i) for an amount not less than \$20,000,000 in respect of any one occurrence;
  - (ii) with a maximum deductible determined by the Contractor for each occurrence covering the Contractor (and the Contractor's Personnel) for third party property damage in respect of all vehicles used in connection with the project or the Maintenance Works.
- (b) 'Compulsory Third Party (CTP)' insurance as required by Law. The Contractor must ensure that the Contractor's Personnel procure equivalent policies).
- (c) 'Workers compensation' insurance as required by Law. The Contractor must ensure that the Contractor's Personnel procure equivalent policies. The policy must, where permitted by Law, extend to indemnify the Principal for the Principal's vicarious liability and common law liability of the Principal to persons employed by the Contractor.
- (d) 'Professional Indemnity (PI)' Insurance:
  - (i) for an amount not less than \$5,000,000 in respect of any one occurrence and in the annual aggregate;
  - (ii) covering liability arising from an act error or omission of the insured in relation to the performance of each insured's professional activities and duties in connection with the Maintenance Works;
  - (iii) ensuring that the policy includes:
    - (A) liability under the *Competition and Consumer Act 2010* (Cth) and similar state legislation elsewhere in Australia;
    - (B) if the policy covers multiple Insureds, an extension to provide an indemnity to the Principal and non-imputation clauses;
    - (C) include cover for cost and expenses incurred to rectify the act or to mitigate the act, error or omission;
    - (D) liability of the Principal in respect of their vicarious liability arising out of or in connection with the Maintenance Works;
    - (E) one reinstatement of the full sum insured in any one period of the insurance;
    - (F) fraud, dishonesty, defamation, breach of confidentiality, infringement of patent, copyright, design and intellectual property;
    - (G) loss of or damage to documents and data; and
    - (H) to the extent available on commercially reasonable terms contractual liability, in respect of hold harmless provisions, and proportionate liability; and
  - (iv) for a period commencing on the Date of Contract until the period which is 6 years after the end of the Term.

- (c) 'Home warranty' insurance as required by the Home Building Act, to the extent the exemption set out in section 103E of the Home Building Act does not apply. The Contractor must pay all required premiums and provide a copy of the 'Certificate of Insurance to do Residential Building Work' covering the relevant property to the Principal.

### **22.3 Obligations on Contractor**

- (a) The insurances required to be taken out and maintained in accordance with clause 22.2 must be taken out with reputable insurers having a financial strength rating of at least A- (Standard and Poor's, Fitch) or A3 (Moody's).
- (b) Evidence of:
  - (i) the currency of the required insurances; and
  - (ii) the Contractor's compliance with this clause 22,must be given in writing to the Principal prior to the Date of Contract, and otherwise at any time upon request by the Principal.
- (c) The Contractor is responsible for insuring the Contractor's Equipment. The Contractor is solely liable and responsible for any and all loss and damage to any of the Contractor's Equipment (including where such loss and damage occurs on Site).

### **22.4 Duration of insurances**

The Contractor must ensure that each of the policies referred to in clause 22.2 are in force prior to the Date of Contract and maintained until the expiry of the Term.

### **22.5 Failure to insure**

If the Contractor fails to obtain or maintain any insurance required under clause 22.2 or fails to provide satisfactory evidence of insurance, the Principal may obtain the relevant insurance and the Contractor will be indebted to the Principal for its costs of doing so.

### **22.6 Insurance excess**

The Contractor will be liable for any deductibles or excesses for any claim the Contractor makes under any policy of insurance effected by the Principal or the Contractor, which relate to the Contract or the Maintenance Works.

### **22.7 General Obligations**

- (a) The Contractor must ensure that, in respect of each insurance required to be taken out and maintained by the Principal under this Contract, it:
  - (i) does not do anything which prejudices any insurance;
  - (ii) if necessary, rectifies anything which might prejudice any insurance;
  - (iii) immediately notifies the Principal of any event which may prejudice any insurance (including anything which may result in an insurance policy being cancelled); and
  - (iv) gives full and true information to its insurer of all matters and things the non-disclosure of which might in any way prejudice or affect any such policy or the payment of all or any benefits under the insurance.
- (b) The Contractor must ensure that, in respect of each insurance required to be taken out and maintained by the Contractor under this Contract, it:

- (i) does not do anything which prejudices any insurance;
  - (ii) if necessary, rectifies anything which might prejudice any insurance;
  - (iii) immediately reinstates an insurance policy if it lapses;
  - (iv) does not cancel, vary in a way to make the policy non-compliant with the Contract, or allow an insurance policy to lapse;
  - (v) immediately notifies the Principal of any event which may result in an insurance policy lapsing or being cancelled;
  - (vi) gives full and true information to its insurer of all matters and things the non-disclosure of which might in any way prejudice or affect any such policy or the payment of all or any benefits under the insurance; and
  - (vii) ensures that any non-disclosure by one insured does not prejudice the right of any other insured to claim on the policy.
- (c) Nothing in this Contract relating to insurances will operate as a limitation of the Contractor's liability (however arising) or the Contractor's obligations under this Contract or otherwise at law.

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## **23 Event of Force Majeure**

### **23.1 No responsibility**

- (a) Neither party is responsible for any failure to perform its obligations under this Contract, to the extent it is prevented in performing those obligations by an Event of Force Majeure.
- (b) Except as expressly provided for in this Contract, the Contractor will not be entitled to any relief from carrying out its obligations under this Contract arising from or in connection with the occurrence of an Event of Force Majeure.

### **23.2 Notification of Event of Force Majeure**

- (a) Where there is an Event of Force Majeure, the Affected Party must immediately notify the other party giving:
  - (i) full particulars of the Event of Force Majeure;
  - (ii) details of each of the obligations prevented or delayed by the Event of Force Majeure;
  - (iii) the reasons for the Event of Force Majeure preventing that party from performing its obligations under this Contract;
  - (iv) the estimated time required to overcome the Event of Force Majeure; and
  - (v) the proposed actions for mitigating the consequences of the Event of Force Majeure.
- (b) If, following the issue of any notice referred to in clause 23.2(a), the Affected Party claiming relief receives or becomes aware of any further information relating to the Event of Force Majeure (or any failure to perform), it must submit such further information to the other party as soon as reasonably possible.

### **23.3 Obligation to mitigate**

- (a) The Affected Party must:
  - (i) use all reasonable diligence and reasonable means to remedy, abate, mitigate or minimise the effect of the Event of Force Majeure;
  - (ii) notify the other party in writing when the Event of Force Majeure has terminated or abated to an extent which permits the resumption of performance to occur; and
  - (iii) promptly resume performance (and give written notice of such resumption) as soon as reasonably possible after the termination of the Event of Force Majeure and its consequences or after the Event of Force Majeure and its consequences have abated to an extent which permits the resumption of performance to occur.
- (b) The Affected Party is not relieved from liability under this Contract to the extent that it is not able to perform, or has not in fact performed, its obligations under this Contract due to its failure to comply with its obligations under clause 23.3(a).

### **23.4 Recommencement of performance**

Upon completion of the Event of Force Majeure, the Affected Party must, as soon as reasonably practicable, recommence the performance of its obligations under this Contract.

### **23.5 No relief from pre-existing obligations**

An Event of Force Majeure does not relieve a party from liability for an obligation which arose before the occurrence of that event, nor does that event affect the obligation to pay money in a timely manner which matured prior to the occurrence of that event.

### **23.6 Liability for costs**

The Contractor has no entitlement and the Principal has no liability for:

- (a) any costs, losses, expenses, damages or the payment of any part of the Fee during an Event of Force Majeure; and
- (b) any delay costs in any way incurred by the Contractor due to an Event of Force Majeure.

## **24 Suspension**

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### **24.1 Suspension by the Principal**

- (a) The Principal may by notice to the Contractor order the Contractor to suspend performance of all or any of its obligations under this Contract.
- (b) A notice provided in accordance with clause 24.1(a) must specify:
  - (i) the obligation which is to be suspended;
  - (ii) the effective date of the suspension; and
  - (iii) the reasons for the suspension (including whether the suspension is a Principal Initiated Suspension or a Contractor-caused Suspension),and state that it is a notice under this clause 24.1.

- (c) Upon receipt of such notice from the Principal, the Contractor must promptly suspend performance of the obligation until directed to resume performance by the Principal.

#### **24.2 Resumption of Maintenance Works**

- (a) At any time during a suspension directed under clause 24.1 the Principal may give notice to the Contractor to resume the obligations which are the subject of the suspension as directed under clause 24.1.
- (b) Upon receipt of such a notice to resume the obligations, the Contractor must resume the Maintenance Works by the date specified in the Principal's notice.

#### **24.3 Costs incurred during Principal's Suspension**

- (a) Where all or some of the performance of the Maintenance Works is suspended due to a Principal Initiated Suspension:
  - (i) the Principal will pay to the Contractor any unavoidable costs that the Contractor necessarily incurs as a direct result of the suspension, provided that the Contractor takes all reasonable steps to avoid and mitigate such costs (and provides evidence to the Principal of all such steps); and
  - (ii) during the period of the suspension, the Contractor must continue to provide all Maintenance Works not affected by the Principal's Suspension.
- (b) Despite any other provision of this Contract, the Contractor has no entitlement, and the Principal has no obligation or liability for, any costs, losses, expenses, damages, or the payment of any part of the Fee, in the case of a suspension caused by the failure of the Contractor to fulfil its obligations under this Contract or a Contractor-caused Suspension.

### **25 Intellectual Property Rights**

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#### **25.1 Contractor to obtain all necessary rights**

The Contractor must at its own cost ensure that it has (where necessary in the Principal's name) all necessary rights and licences:

- (a) to Intellectual Property subsisting in any matter, thing or process (including documentation, drawings and software) used or to be used by or on behalf of the Contractor in performing the Maintenance Works or delivered or to be delivered by it to the Principal under this Contract, including any third party Intellectual Property forming part of the Contractor IP or the Project IP; and
- (b) to grant the rights required by the Principal to use such Intellectual Property in accordance with clause 25.5.

#### **25.2 Ownership of the Principal IP**

The Principal IP is and remains the sole property of the Principal. Unless otherwise agreed in writing between the parties or as expressly provided under clause 25.4, the Contractor will have no rights regarding any of the Principal IP.

#### **25.3 Ownership of Project IP**

Subject to clause 25.4, upon creation, all Project IP vests in and is the sole and exclusive property of the Principal and to the extent permitted by Law the Contractor hereby assigns all rights, title and interest in and to such Project IP to the Principal.

#### **25.4 Licence of Project IP and Principal IP**

The Principal grants to the Contractor a non-exclusive, royalty-free, non-transferable licence (with the right to sublicense) to use, reproduce, modify and adapt the Project IP and the Principal IP for the sole purpose of performing the Maintenance Works and performing its other obligations under or in connection with this Contract. The licence will continue until the earlier of termination of this Contract and the Expiry Date.

#### **25.5 Licence of Contractor IP**

- (a) The Contractor grants to the Principal, its Affiliates, their assignees, transferees and successors in title a perpetual, irrevocable, non-exclusive, transferable (in whole or in part, whether by assignment or otherwise), royalty-free, worldwide licence (or sublicense, as the case may be) of the Contractor IP to use, reproduce, modify and adapt the Contractor IP to the extent necessary to exercise its rights regarding the Project IP with the right to sublicense (or sub-sublicense) to any person, for any purpose it deems fit in connection with the Site or the Property. Any fees regarding the granting of this licence are deemed to form part of the Fees. The Principal may permit any other person to exercise the rights granted under this clause 25.5(a).
- (b) The Contractor must procure that all agreements which the Contractor may enter into with any Subcontractor in connection with this Contract will provide for an Irrevocable, perpetual, non-exclusive, transferable (in whole or in part, whether by assignment or otherwise), royalty-free, worldwide licence (or sublicense, as the case may be) to the Contractor to use, reproduce, modify and adapt all third party Intellectual Property comprising Contractor IP, with the right to sublicense (or sub-sublicense) to the Principal on the terms of clause 25.5(a) in connection with the Site or the Property.

#### **25.6 Intellectual Property warranty**

The Contractor warrants and represents that:

- (a) it either owns or has the right to use all Intellectual Property which is necessary or desirable for the purposes of performing the Maintenance Works;
- (b) it has, or prior to the commencement of Maintenance Works will have, all rights and licences necessary to grant the Principal the licence (or sublicense, as the case may be) of the Contractor IP granted under clauses 25.5(a) and 25.5(b) and all other rights which are necessary or desirable for the purposes of performing the Maintenance Works and it is, or prior to the commencement of the Maintenance Works will be, entitled to grant the licence (or sublicense, as the case may be); and
- (c) the performance of the Maintenance Works, the provision of the Project IP and the Contractor IP and any use of it by or on behalf of the Principal or any other person with a right to use the Project IP or Contractor IP under clauses 25.4 and 25.5, whether in the operation, maintenance, repair, refurbishment or modification of Property or otherwise, will not infringe the Intellectual Property rights of any third party.

#### **25.7 Intellectual Property Indemnity**

The Contractor agrees to hold harmless and indemnify on demand the Principal and its Personnel (**Indemnified Persons**) from and against all Claims and Losses (including but not limited to legal costs on an indemnity basis) arising out of or in any way in connection with:

- (a) any Claim that the Project IP or the Contractor IP or any use, reproduction, modification or adaptation by or on behalf of the Indemnified Persons infringes the Intellectual Property, moral rights or any other rights of any third party or entitles any third party to Claim any compensation, royalty fee or other amount; and

- (b) any breach by the Contractor of the warranties in clause 25.6 or 25.8.

#### **25.8 Moral rights**

The Contractor warrants and represents that the performance of the Maintenance Works, the provision of the Project IP or Contractor IP to the Principal and the use of the Project IP or the Contractor IP by the Principal or its licensees and sub-licensees will not:

- (a) require the Principal or its licensees and sub-licensees to identify the authority of any such work; or
- (b) infringe or contravene any moral rights or similar personal rights which by Law are not assignable, of any person,

and all necessary consents or waivers to give effect to this warranty have been or will be obtained, and will be effective and irrevocable.

#### **25.9 No third party payments**

The Contractor represents and warrants that except for amounts included in the Fee, no royalties or other payments are due or payable by the Principal to the Contractor or any other person regarding the Project IP or the Contractor use of or the grant of a right to use the Contractor IP.

#### **25.10 Return of material forms of Principal IP**

Within 20 Business Days after the earlier of termination of this Contract and Expiry Date, the Contractor must deliver to the Principal in the Approved Form all forms of the Principal IP in the possession, power or control of the Contractor or its Personnel.

#### **25.11 Survival obligations**

Subject to clause 25.10, the rights and obligations in this clause 25 will not cease on the completion, expiry or termination of this Contract.

### **26 Confidential Information**

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#### **26.1 Non-disclosure of Confidential Information**

Subject to clause 26.2, the Contractor must:

- (a) keep confidential this Contract, all Principal Supplied Information and any information and discussions relating to the Maintenance Works, the Contract or the Principal Supplied Information;
- (b) not use the information referred to in clause 26.1(a) except as necessary for the performance of the Contractor's obligations under this Contract; and
- (c) ensure that its Personnel complies with the terms of 26.1(a) and 26.1(b) and that all Personnel with access to the information referred to clause 26.1(a) are aware of their obligations.

#### **26.2 Permitted disclosure**

- (a) The Contractor is not obliged to keep confidential any information:
  - (i) which is in the public domain through no default of the Contractor;
  - (ii) the disclosure of which is:

- (A) required by Law; and
  - (B) consented to in writing by the Principal.
- (b) The Contractor acknowledges that the Principal may disclose this Contract and information concerning this Contract (including the Contractor's performance or non-performance of its obligations under the Contract) under or in accordance with any one or more of the following:
  - (i) the GIPA Act (in which case the Contractor must comply with clause 28);
  - (ii) to satisfy the disclosure requirements of the New South Wales Auditor General or to satisfy the requirements of Parliamentary accountability; and
  - (iii) any other Law.
- (c) Without limiting clause 28, the Contractor must provide to the Principal any information which the Principal reasonably requires to comply with its obligations referred to in clause 26.2(b).

#### **26.3 Publicity and media releases**

Except for notices which the Contractor is required to disclose to any recognised stock exchange, the Contractor must:

- (a) not make any public announcements or statements in relation to the Maintenance Works or the Contract (including by posting any information on any) without the Principal's prior consent;
- (b) give the Principal a draft of any proposed media release relating to the Maintenance Works or the Contract and obtain the Principal's approval of the media release before distributing it;
- (c) prior to release, revise the wording and timing of all media releases, public announcements and statements by the Contractor or the Contractor's Personnel relating to the Maintenance Works or the Contract as requested by the Principal;
- (d) not issue any post of any nature on any social media platform relating to the Maintenance Works or the Contract;
- (e) ensure that the Contractor's Personnel comply with the requirements referred to in this clause 26.3.

#### **26.4 Community liaison**

The Contractor must, as requested by the Principal, participate in liaison with the public and community groups regarding this Contract. The Contractor must not perform any such liaison other than in conjunction with the Principal.

#### **26.5 Disclosure to professional advisors**

All obligations imposed on the Principal by this clause 26.5 are subject to the Principal's unfettered right to disclose any information to its professional advisors, including Confidential Information of the Contractor.

#### **26.6 Survival of obligations**

The obligations in this clause 26 survive the completion, expiry or termination of this Contract.



## **27 Privacy**

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### **27.1 Privacy Compliance**

If the Contractor collects, uses, discloses, transfers or otherwise handles any Personal Information in connection with this Contract or the Maintenance Works, it must:

- (a) comply with all applicable Privacy Laws as if it were a person subject to the Privacy Laws;
- (b) comply with any of Principal Plans Policies and Procedures related to privacy; and
- (c) not do or omit to do anything or engage in any practice which if done or engaged in by the Principal, would be a breach of any Privacy Laws.

### **27.2 General Privacy Obligations**

Without limiting clause 27.1, the Contractor must:

- (a) (and must ensure its Personnel) collect, use, disclose, transfer or handle any Personal Information only to the extent necessary to perform its obligations in accordance with this Contract;
- (b) not disclose any Personal Information to any other person (including to a Subcontractor) without the prior consent of the Principal or, subject to clause 27.2(e), as required by Law;
- (c) ensure that its Personnel with access to any Personal Information:
  - (i) are made aware of the obligations in this clause 27; and
  - (ii) if requested by the Principal, ensure that such Personnel sign written undertakings (in a form acceptable to the Principal) to comply with the obligations in this clause 27;
- (d) without limiting any of the Contractor's other obligations under this Contract, take all technical, organisational and other security measures as are reasonably within the Contractor's power to protect any Personal Information from:
  - (i) misuse, interference and loss; and
  - (ii) unauthorised access, modification or disclosure;
- (e) notify the Principal:
  - (i) as soon as reasonably practicable after the Contractor receives any request or complaint concerning any Personal Information;
  - (ii) immediately after the Contractor becomes aware that a disclosure of any Personal Information may be required by Law; and
  - (iii) immediately if the Contractor becomes aware of any breach of this clause 27, or of any Data Breach which has occurred or which the Contractor has reasonable grounds to suspect may have occurred;
- (f) promptly comply with any requests and/or directions from the Principal from time to time;

- (i) concerning the collection, use, disclosure, transfer, handling, access or correction of any Personal Information; and
  - (ii) for information, assistance and co-operation to allow the Principal to investigate breaches of this clause 27, or a Data Breach and to comply with its obligations under the Privacy Laws; and
- (g) without limiting the above, in relation to the Data Breach, if the Contractor forms the view that it is or may be required to notify affected individuals of a Data Breach under the Privacy Laws, ensure that:
- (i) before making any such notification it promptly discusses such matter with the Principal and complies with any reasonable directions issued by the Principal in relation to such notification, including as to whether the Contractor or the Principal will be the person responsible for fulfilling the relevant notification requirements; and
  - (ii) where the Principal determines that the Contractor will be the party responsible for fulfilling the relevant notification requirements, comply with all such notification requirements in accordance with the Privacy Laws.

### **27.3 Consents**

- (a) In relation to any Personal Information collected by Contractor or its Personnel in connection with the Maintenance Works, the Contractor must ensure that it obtains all consents and makes all disclosures required under Privacy Law for the collection, use and disclosure of that Personal Information to and by the Principal and the Principal's Personnel.
- (b) Without limiting the Contractor's obligations under clause 27.3(a):
  - (i) in obtaining such consents and making such disclosures in connection with the Maintenance Works, the Contractor must include in its privacy policy a statement which covers the requirements of clause 27.3(a); and
  - (ii) the Contractor must provide a copy of its privacy policy and associated collection statements to the Principal for its review and approval prior to the Date of Contract.

### **27.4 Images of Properties**

The Contractor must not, and the Contractor must ensure that its Personnel do not, provide to any third party or share or post on any website any images of any Properties or the property of any Tenant.

## **28 GIPA**

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### **28.1 Disclosure log**

The Contractor acknowledges that the Principal may disclose certain information about this Contract in accordance with the Principal's obligations under the GIPA Act, including making certain information about this Contract (and a copy of this Contract) publicly available in any disclosure log of contracts the Principal is required to maintain.

### **28.2 Access to information**

- (a) The Contractor must, within 5 Business Days of receiving a written request by the Principal, provide the Principal with immediate access to the following information

contained in records held by or under the control of the Contractor or the Contractor's Personnel:

- (i) information that relates directly to the performance of the Maintenance Works provided to the Contractor by the Principal pursuant to this Contract;
  - (ii) information collected by the Contractor from members of the public; and
  - (iii) information received by the Contractor from the Principal to enable it to perform the Maintenance Works pursuant to this Contract.
- (b) For the purposes of clause 28.2(a), such information does not include:
- (i) information that discloses or would tend to disclose the Contractor's financing arrangements, financial modelling, cost structure or profit margin;
  - (ii) information that the Contractor is prohibited from disclosing to the Principal by provision made by or under any Laws, whether of any Australian state or territory, or of the Commonwealth; or
  - (iii) information that, if disclosed to the Principal, could reasonably be expected to place the Contractor at a substantial commercial disadvantage in relation to the Principal, whether at present or in the future.
- (c) The Contractor must provide copies of any of the information requested by the Principal in accordance with clause 28.2(a) at the Contractor's own expense.

### **28.3 Consultation**

- (a) The Principal will take reasonably practicable steps to consult with the Contractor before providing any person with access to information relating to this Contract, in response to an access application under the GIPA Act, if it appears that:
- (i) the information:
    - (A) includes Personal Information about the Contractor or its employees;
    - (B) concerns the Contractor's business, commercial, professional or financial interests; or
    - (C) concerns research that has been, is being, or is intended to be, carried out by or on behalf of the Contractor;
  - (ii) the Contractor may reasonably be expected to have concerns about the disclosure of the Information; and
  - (iii) those concerns may reasonably be expected to be relevant to the question of whether there is a public interest consideration against disclosure of the information.
- (b) If, following consultation between the Principal and the Contractor, the Contractor objects to disclosure of some or all of the information, the Contractor must provide details of any such objection (including the information objected to and the reasons for any such objection) to the Principal within 5 Business Days of the conclusion of the consultation process.
- (c) In determining whether there is an overriding public interest against disclosure of the information, the Principal will take into account any objection received from the Contractor.

- (d) If the Contractor objects to the disclosure of some or all of the information but the Principal nonetheless decides to release the information, the Principal must give the Contractor notice of the Principal's decision and notice of the Contractor's right to have that decision reviewed.
- (e) Where the Principal has given notice to the Contractor in accordance with clause 28.3(d), the Principal must not provide access to the information:
  - (i) before the period for applying for review of the decision under Part 5 of the GIPA Act has expired; or
  - (ii) where any review of the decision duly applied for is pending.

## **29 Statutory and NSW Government Requirements**

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### **29.1 Laws and Responsible Authorities**

The Contractor must comply with, and must ensure that its Personnel comply with:

- (a) all Laws that are applicable to the Maintenance Works, the Properties, this Contract and the Contractor and its Personnel; and
- (b) subject to clause 29.3, any changed or additional Laws that commence or come into force after the Maintenance Works Commencement Date.

### **29.2 Permits**

- (a) Without limiting clause 29.1, the Contractor must:
  - (i) acquire, renew and maintain the Permits;
  - (ii) upon the Principal's request and as otherwise required by this Contract, provide the Principal with evidence of its compliance with this clause 29.2 (including original approvals and other documents);
  - (iii) comply with, and must ensure that its Personnel comply with, the Permits; and
  - (iv) notify the Principal in writing as soon as the Contractor becomes aware in the performance of the Maintenance Works of any non-compliance or otherwise with the terms of the Permits or other requirements of any Laws.
- (b) The Contractor agrees to hold harmless and indemnifies on demand the Principal from and against any and all Claims and Losses of whatever nature arising out of or in any way in connection with any failure by the Contractor to comply with clause 29.

### **29.3 Change in Law**

- (a) The Contractor must comply with any Change in Law. The Contractor agrees that such compliance does not detract from or otherwise affect the Contractor's warranties, obligations or liabilities under or in connection with this Contract.
- (b) If there is a Qualifying Change in Law, the Contractor must promptly upon becoming aware of any actual or impending Change in Law give notice to the Principal with:
  - (i) details of the Qualifying Change in Law;
  - (ii) details of any change it believes is required to the Maintenance Works Specification; and

- (iii) any other information which the Principal reasonably requires (including the Contractor's estimate of any increase or decrease in any component of the Fee arising from complying with a Qualifying Change in Law).
- (c) If the Principal, acting reasonably, determines that the Qualifying Change in Law requires a variation to the Maintenance Works Specification or this Contract, the Principal will within 15 Business Days after receiving the Contractor's notification provide a direction to either:
  - (i) proceed with the change to the Maintenance Works Specification as proposed by the Contractor; or
  - (ii) vary the Maintenance Works Specification on a different basis, as directed by the Principal.

#### **29.4 Industrial Relations**

- (a) The Contractor must:
  - (i) comply with, and ensure its Personnel comply with:
    - (A) all Laws regarding industrial and employment relations;
    - (B) the Contractor Plans, Policies and Procedures and Principal Plans, Policies and Procedures regarding industrial and employment relations; and
    - (C) any industrial and employment relations requirements specified in the Maintenance Works Specification or elsewhere in this Contract;
  - (ii) establish and maintain all necessary policies to secure harmonious industrial and employment relations in connection with the performance of the Maintenance Works;
  - (iii) conduct its industrial and employment relations with its Personnel in a manner conducive to preventing any disruption in, the Maintenance Works, including by taking all prudent steps to maintain harmonious and productive relations with its Personnel; and
  - (iv) perform the Maintenance Works, and must ensure that its Personnel perform the Maintenance Works, in a manner which avoids Industrial Matters.
- (b) If an Industrial Matter arises, the Contractor must:
  - (i) immediately notify the Principal on becoming aware of any Industrial Matter;
  - (ii) meet with the Principal, as soon as practicable after such notification, for the purpose of discussing and agreeing on any necessary or appropriate action to be taken to resolve the Industrial Matter;
  - (iii) perform any necessary or appropriate action to be taken to resolve the Industrial Matter as agreed between the Principal and the Contractor under clause 29.4(b)(ii); and
  - (iv) in the absence of agreement regarding necessary or appropriate action to be taken to resolve an Industrial Matter:
    - (A) prevent or minimise any potential or likely harm or prejudice caused by the Industrial Matter;

- (B) rectify any harm or prejudice caused by the Industrial Matter; and
- (C) prevent or minimise any further harm or prejudice.

## **29.5 Work health and safety and the Environment**

The Contractor must:

- (a) comply with, and ensure its Personnel comply with:
  - (i) all Laws regarding work health and safety and the Environment;
  - (ii) the Contractor Plans, Policies and Procedures and Principal Plans, Policies and Procedures regarding work health and safety and the Environment; and
  - (iii) the Work Health and Safety Requirements; and
  - (iv) when requested to do so by the Principal, submit to the Principal documents in the Approved Form that show that the Contractor and its Personnel are complying with their respective duties under the Work Health and Safety Requirements;
- (b) proactively ensure that its working environment is safe, that safety and health hazards and risks to its Personnel, Tenants and the Principal, or any member of the public or any other party on Site are managed to levels which are as low as reasonably practicable;
- (c) if required to notify a Responsible Authority of an incident concerning any aspect of the Contractor's performance of the Maintenance Works, also notify the Principal as soon as possible of the Incident (and in any event within 1 Business Day) and provide the Principal with a copy of any notification documentation provided to such Responsible Authority;
- (d) if requested to do so by the Principal, give to the Principal all other documents relevant to the incident notified under clause 29.5(c) and authorise the Principal and its Personnel to conduct interviews with the Contractor's Personnel regarding the incident;
- (e) as soon as reasonably practical, but in any case within 1 Business Day, after an actual occurrence or incident notify the Principal of any other incident (including an incident that had potential to result in injury to a person, or damage to property or the environment (commonly referred to as a 'near miss')), injury, loss or damage of any kind which occurs in connection with the Maintenance Works; and
- (f) at all times maintain accreditation under the Australian Government Building and Construction WHS Accreditation Scheme, as established by the *Building and Construction Industry (Improving Productivity) Act 2016* (Cth) and enabled by the *Fair Work (Building Industry – Accreditation Scheme) Regulation 2016* (Cth), as though the project was being funded directly or indirectly by the Australian Government.

## **29.6 Appointment as Principal Contractor**

- (a) The Principal appoints the Contractor as the Principal Contractor for the Maintenance Works and authorises the Contractor to:
  - (i) have management and control of the Site; and
  - (ii) discharge the duties imposed on the Principal Contractor for the Maintenance Works under the *Work Health and Safety Regulation 2017* (NSW),

for the period during which the Contractor is the 'person in control' of the Site on which the Maintenance Works are performed, unless and to the extent that such authorisation is withdrawn by the Principal in writing prior to the end of that period (and only for the period of time such authorisation is withdrawn).

- (b) The Contractor acknowledges and accepts:
  - (i) its appointment as the Principal Contractor; and
  - (ii) that it must discharge and perform the responsibilities and functions of the Principal Contractor for the Maintenance Works.

#### **29.7 Hazardous Substance**

- (a) The Contractor must:
  - (i) handle, transport, store and dispose of Hazardous Substances in a manner which:
    - (A) complies with all applicable Laws;
    - (B) reflects Good Industry Practices; and
    - (C) is safe and appropriate given the nature of the Hazardous Substance;
  - (ii) not leave any Hazardous Substance at the Site or any Property (or allow any Hazardous Substance to be abandoned or dumped at the Site or any Property);
  - (iii) not handle or deal in any way with Hazardous Substances in a manner which may or is likely to cause danger to human beings or the Environment, whether imminent or otherwise, including resulting from the location, storage, handling or release of any substance having toxic, corrosive, flammable, explosive, infectious or otherwise dangerous characteristics;
  - (iv) at all times carry out, and ensure its Personnel carry out, the Maintenance Works in an environmentally responsible manner, in accordance with Good Industry Practice, and so as to protect the Environment and keep the Site in a good and safe condition, including keeping the Site free from pollution and contamination;
  - (v) comply with, and ensure that its Personnel in performing the Maintenance Works, comply with:
    - (A) all Laws regarding the Environment;
    - (B) all Principal Plans, Policies and Procedures and Contractor Plans, Policies and Procedures regarding the Environment; and
    - (C) all Environmental Notices;
  - (vi) immediately notify the Principal in writing as soon as the Contractor:
    - (A) becomes aware in the course of the performance of the Maintenance Works of any non-compliance or otherwise with the requirements of any Law or Permit regarding the Environment;
    - (B) becomes aware of any information, fact or circumstance where, if the Principal were to be aware of such information, fact or circumstance, the Principal would be required to notify any Responsible Authority of that information, fact or circumstance under any Law relating to the

Environment (without limiting any other obligation of the Contractor regarding the information, fact or circumstances); or

- (C) notifies any Responsible Authority of any matter under any Law relating to the Environment, in which case the Contractor must provide to the Principal a copy of such notification and of any subsequent correspondence with the Responsible Authority regarding the subject of the notification;
  - (vii) provide all reasonable assistance to the Principal (at the Contractor's cost) if the Principal is required to respond to any Responsible Authority in relation to any environmental matter arising out of or in connection with the Maintenance Works; and
  - (viii) hold harmless and indemnify on demand the Principal from and against any claim, loss, damage, expense or cost brought against, suffered or incurred by the Principal arising out of or in any way in connection with a breach by the Contractor of its obligations under this clause 29.7.
- (b) The Contractor acknowledges that there is a likelihood that:
- (i) asbestos will be present at any Properties constructed in or before 1987; and
  - (ii) lead based paint will be present at any Properties constructed in or before 1970,
- and the Contractor must take all necessary steps to deal with any asbestos and lead based paint in accordance with this Contract and all applicable Laws.

#### **29.8 Notification**

The Contractor must immediately notify the Principal of:

- (a) any breach (or potential breach) by the Contractor or any Personnel of the Work Health and Safety Requirements;
- (b) any notice or direction received by the Contractor or any Personnel under or in connection with the Work Health and Safety Requirements (including by providing a copy of the notice or direction to the Principal); and
- (c) all safety incidents or accidents to any person (including 'notifiable incidents' under the Work Health and Safety Requirements).

#### **29.9 Home Building Act**

- (a) This clause 29.9 applies to the extent that the Maintenance Works is 'residential building work' as defined in the Home Building Act.
- (b) The Contractor warrants that:
  - (i) the Maintenance Works will be done with due care and skill and in accordance with the plans and specifications set out in the Contract;
  - (ii) all materials supplied by the Contractor will be good and suitable for the purpose for which they are used and, unless otherwise required by the Contract, will be new;
  - (iii) the Maintenance Works will be done in accordance with, and will comply with, the Home Building Act and any other applicable Laws;



- (iv) the Maintenance Works will be done with due diligence and within the time stipulated in this Contract or if no time is stipulated, within a reasonable time;
  - (v) any 'dwelling' (or part of a 'dwelling'), as defined by the Home Building Act, which forms part of the Maintenance Works, will be reasonably fit for occupation as a dwelling; and
  - (vi) the Maintenance Works and all materials used in doing the Maintenance Works will be reasonably fit for the specified purpose or result, if the Principal expressly makes it known to the Contractor, the particular purpose for which the work is required or the result that the Principal desires the Maintenance Works to achieve, so as to show that the Principal relies on the Contractor's skill and judgment.
- (c) The Contractor warrants that:
- (i) it has, and will hold, a valid licence when doing the Maintenance Works, as required under the Home Building Act;
  - (ii) the Contractor's licence number authorising the Contractor to contract to Principal is stated in Item 14 of the Contract Details;
  - (iii) it has not done, and will not do, anything that could give rise to the cancellation or suspension of the Contractor's licence or the issuing of a warning notice in relation to the Contractor's licence under the Home Building Act; and
  - (iv) all plans and specifications for the Maintenance Works, including any variations to those plans and specifications, are taken to form part of the Contract.
- (d) The Maintenance Works must comply with:
- (i) the Building Code of Australia (to the extent required under the *Environmental Planning and Assessment Act 1979* (NSW), including any regulation or other instrument made under the *Environmental Planning and Assessment Act 1979* (NSW);
  - (ii) all other relevant codes, standards and specifications that the Principal is required to comply with under any Laws; and
  - (iii) the conditions of any relevant development consent or complying development certificate.
- (e) The warnings and explanations of any provisions of this Contract which may vary any consideration payable to the Contractor are included to satisfy the requirements of the Home Building Act. None of the provisions of this Contract will be construed or interpreted by reference to those warnings and explanations.
- (f) The checklist required to be included as part of this Contract pursuant to section 8 of the *Home Building Regulation 2014* (NSW) is included at Schedule 14 (Home Building Act Requirements).
- (g) Each of the Principal and the Contractor acknowledge and agree that this Contract may be terminated in circumstances provided by the general law and that this does not prevent the parties agreeing to additional circumstances in which this Contract may be terminated.
- (h) The Contractor acknowledges and agrees that the warranties and obligations in this clause 29.9:

- (i) are required by the Home Building Act; and
  - (ii) do not derogate from, or limit, the other provisions of this Contract.
- (i) The parties acknowledge and agree that the Contractor relies upon the exemption set out in section 103E(2) of the Home Building Act.

#### **29.10 Conflicts of Interest**

- (a) The Contractor warrants that the Contractor and its Personnel have no conflicts of interest in the performance of its obligations under this Contract.
- (b) The Contractor must:
  - (i) notify and consult with Principal immediately upon becoming aware of the existence of or potential for a conflict of interest; and
  - (ii) comply with any direction given by the Principal in relation to those circumstances to manage the conflict of interest (or potential conflict of interest).
- (c) For the purposes of this clause 29.10, a 'conflict of interest' includes engaging in any activity, or obtaining any interest, likely to conflict with or in any way restrict the performance by the Contractor of its obligations under this Contract.

### **30 Social Obligations**

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#### **30.1 Aboriginal Participation**

- (a) The Contractor must provide genuine opportunities for persons identifying as Aboriginal or Torres Strait Islander to perform aspects of the Maintenance Works.
- (b) Without limiting clause 30.1(a), the Contractor must ensure that not less than 1.5% of:
  - (i) the Fee in each Contract Year is subcontracted to Aboriginal Businesses; or
  - (ii) the full-time equivalent workforce engaged by the Contractor and its Personnel are Aboriginal or Torres Strait Islander peoples; or
  - (iii) the Fee in each Contract Year is applied to the cost of education, training or capability building for Aboriginal staff or businesses directly contributing to the Contract.

#### **30.2 Changes to targets**

- (a) The Contractor acknowledges and agrees that:
  - (i) the target in clause 30.1 may be subject to change in the event that there is a change to the Principal Plans, Policies and Procedures or any relevant Law; and
  - (ii) the change contemplated in clause 30.2(a)(i) may involve an increase in any one or more of the targets specified in clause 30.1; and
- (b) In the event of any change contemplated in clause 30.2(a)(i):
  - (i) the Principal will provide 6 months' written notice to the Contractor prior to the effective date of such change, including details of the revised target(s);

- (ii) the Contractor must comply with and achieved the revised target(s) from the effective date set out in the Principal's notice; and
- (iii) the Contractor will have no Claim against the Principal, and irrevocably releases the Principal from any Claim, arising out of or in connection with the Contractor's compliance with and achievement of the revised target(s).

## **31 Taxes**

### **31.1 Contractor to pay Taxes**

- (a) Unless specifically stated elsewhere in this Contract, the Contractor is solely liable for payment of, or to ensure the payment of:
  - (i) all Taxes imposed and assessments made regarding the Contractor's Equipment, Equipment and the Maintenance Works;
  - (ii) all contributions payable by Law, award and under any contract with an industrial or trade union or other association of employees or otherwise regarding or ascertained by reference to the wages, salaries or other compensation paid to the Contractor's Personnel regarding the Maintenance Works, including taxes or contributions for workers' compensation, unemployment or sickness benefit, old age benefit, welfare funds, pensions and disability insurance;
  - (iii) the cost of all import or export licences if required and all import or export Taxes or duties (including anti-dumping duties, if any) or tariffs on Maintenance Works and Equipment imported or exported by the Contractor in connection with or for the purposes of this Contract; and
  - (iv) all harbour dues, pilotage fees, port fees, wharf fees, loading or unloading costs, gang fees and all excesses for such dues, costs or fees.
- (b) The Contractor holds harmless and indemnifies on demand the Principal from and against all liability for payment or non-payment of all of the above Taxes, assessments and contributions, dues, costs and fees and all Claims or Losses arising from or in connection with any non-payment.

### **31.2 Exemptions and concessions**

- (a) The benefit of any Tax exemption or concessional rate available when the Contractor purchased Equipment must, as far as possible, be claimed by the Contractor and passed onto the Principal if the cost of the relevant Equipment is charged to the Principal under this Contract.
- (b) Where the Principal and its contractors (including the Contractor) are entitled to an exemption or concession concerning any Tax or import duty regarding Equipment, under this Contract, the Principal will use reasonable endeavours to assist the Contractor in its claim for such concession or exemption.

### **31.3 Survival**

The obligations of the parties under this clause 31 will survive the completion, expiry or termination of this Contract.

## **32 GST**

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### **32.1 Definitions**

Any terms capitalised in clause 32 and not already defined in clause 1.1 have the same meaning given to those terms in the GST Law.

### **32.2 GST Exclusive**

Except under this clause 32, the consideration for a Supply made under or in connection with this document does not include GST.

### **32.3 Taxable Supply**

If a Supply made under or in connection with this document is a Taxable Supply, then at or before the time any part of the consideration for the Supply is payable:

- (a) the Recipient must pay the Supplier an amount equal to the total GST for the Supply, in addition to and in the same manner as the consideration otherwise payable under this document for that Supply; and
- (b) except where a Recipient Created Tax Invoice is issued in accordance with clause 32.4, the Supplier must give the Recipient a Tax Invoice for the Supply.

### **32.4 Recipient Created Tax Invoices**

The parties acknowledge and agree that the Principal may issue a Recipient Created Tax Invoice in respect of all Supplies provided by the Contractor under this document in accordance with the GST Law and Determination.

### **32.5 Principal GST warranties**

The Principal warrants to the Contractor that:

- (a) it is Registered for GST purposes and will notify the Contractor immediately in writing if it is no longer Registered;
- (b) it will issue each Recipient Created Tax Invoice relating to Supplies under this document:
  - (i) by the Relevant Time; and
  - (ii) only if it is eligible to do so;
- (c) it will cease to issue Recipient Created Tax Invoices if either the Principal or the Contractor fail to comply with the requirements of the GST Law, the Determination and any relevant ATO commentary, including the Ruling;
- (d) it will immediately notify the Contractor in writing if it is of the view that requirements of the GST Law, the Determination or the Ruling have not been complied with;
- (e) it will reasonably comply with its obligations under the taxation laws; and
- (f) if for any reason the Principal is not eligible to issue Recipient Created Tax Invoices, the Principal will provide sufficient information (and supporting evidence) to the Contractor to enable the Contractor to issue a Tax Invoice in relation to the Supply.

### **32.6 Contractor GST warranties**

- (a) The Contractor warrants to the Principal that:
  - (i) it is Registered for GST purposes and will notify the Principal immediately in writing if it is no longer Registered; and
  - (ii) it is able to issue, but will not issue Tax Invoices regarding Supplies it makes to the Principal under this document for which the Principal has issued a Recipient Created Tax Invoice.
- (b) If the Principal notifies the Contractor that it is not eligible (or otherwise does not propose) to issue a Recipient Created Tax Invoice in respect of a Supply made by the Contractor under this document, the Contractor must provide a valid Tax Invoice to the Principal for that Supply in accordance with clause 32.3.

### **32.7 Later GST charge**

For clarity, the GST payable under clause 32.3 or 32.4 (as applicable) is correspondingly increased or decreased by any subsequent adjustment to the amount of GST for the Supply for which the Supplier is liable, however caused.

### **32.8 Reimbursement or indemnity**

If either party has the right under this document to be reimbursed or indemnified by another party for a cost incurred in connection with this document, that reimbursement or indemnity excludes any GST component of that cost for which an Input Tax Credit may be claimed by the party being reimbursed or indemnified, or by its Representative Member, Joint Venture Operator or other similar person entitled to the Input Tax Credit (if any).

### **32.9 Progressive or Periodic Supplies**

Where a Supply is made under or in connection with this Contract is a Progressive or Periodic Supply, clause 32.3 or 32.4 (as applicable) apply to each component of the Progressive or Periodic Supply as if it were a separate Supply.

## **33 Termination**

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### **33.1 Termination of Contract for convenience**

The Principal may, in its sole and absolute discretion at any time (and without the need to give any reasons), terminate this Contract on 6 months' written notice for any reason or no reason (and without any obligation to give any reason).

### **33.2 Immediate termination for the Contractor's default**

The Principal may, without prejudice to any other rights or remedies it may possess under or in connection with this Contract, immediately terminate this Contract by giving a notice of termination to the Contractor referring to this clause 33.2 if:

- (a) an Act of Insolvency occurs in respect of the Contractor or the issuer of the Parent Company Guarantee under clause 11;
- (b) the Contractor is in breach of clause 36;
- (c) the Contractor has provided a statutory declaration which the Contractor is required to provide in accordance with clause 10.10 and such statements are determined by the Principal (acting reasonably) to be untrue, false or misleading (as applicable);

- (d) the Contractor fails to provide a statutory declaration which the Contractor is required to provide in accordance with clause 10.10;
- (e) the Contractor fails to procure, maintain or provide evidence of any of the insurances required by this Contract within 15 Business Days from the Principal's notice requesting the same;
- (f) the Contractor breaches any Work Health and Safety Requirements which presents, or in the Principal's opinion could present, an actual or potential risk to the health, safety or welfare of any person;
- (g) the Contractor fails to perform the Maintenance Works in accordance with the Maintenance Works Specification and such failure presents, or in the Principal's opinion could present, an actual or potential risk to the health, safety or welfare of any person;
- (h) any Permit is terminated or revoked; or
- (i) the Contractor fails to provide a replacement Parent Company Guarantee (as applicable) in accordance with clause 11.2.

### **33.3 Principal may issue notice**

- (a) If the Contractor:
  - (i) has without valid reason:
    - (A) failed to diligently commence and proceed with the Maintenance Works;  
or
    - (B) suspended the Maintenance Works without due cause;
  - (ii) provides a KPI Improvement Plan and the Principal is not satisfied with the contents of the KPI Improvement Plan or the actions taken by the Contractor to address any matters included in the KPI Improvement Plan;
  - (iii) refuses or is unable to provide sufficient materials or labour to perform and complete the Maintenance Works in the manner specified in this Contract;
  - (iv) breaches any obligation under or in connection with this Contract or defaults in the performance of any provision of this Contract; or
  - (v) the Contractor abandons any part of the Maintenance Works or repudiates this Contract,

then the Principal may, without prejudice to any other rights it may have under or in connection with this Contract, give a notice to the Contractor stating the nature of the default, and requiring the Contractor to:

  - (vi) remedy the default; and/or
  - (vii) show cause why the Principal should not exercise any of the rights under clause 33.3(d).
- (b) If the Principal has required the Contractor to remedy the default in accordance with clause 33.3(a)(vi) and, in the Principal's opinion (acting in its sole discretion), the Contractor fails to remedy or to take adequate steps to remedy the default within 15 Business Days after its receipt of the Principal's notice (or within any other time as the parties may agree), then the Principal may immediately terminate this Contract by giving

a notice of termination or removal (as applicable) to the Contractor which refers to this clause 33.3.

- (c) On giving a notice under clause 33.3(a), the Principal may suspend payments to the Contractor until the date on which the Contractor remedies the relevant default. Upon the suspension being lifted after the relevant default being remedied, the Principal will promptly make payment of the amounts outstanding.
- (d) If the Principal has required the Contractor to show cause in accordance with clause 33.3(a)(vii) and, in the Principal's opinion (in its sole discretion), the Contractor fails to show cause within 5 Business Days after its receipt of the Principal's notice, why the Principal should not take any of the steps contemplated under this clause 33.3(d), then the Principal may immediately terminate this Contract by giving a notice of termination or removal (as applicable) to the Contractor which refers to this clause 33.3.

#### **33.4 Termination for Principal's default**

- (a) If the Principal has failed to pay the Contractor an undisputed amount due to the Contractor as determined by the Principal under clause 10, the Contractor may give a notice to the Principal stating the nature of the default, and requiring the Principal to remedy the default (**Principal Default Notice**).
- (b) If the Contractor gives the Principal a notice under clause 33.4(a), the Principal must comply with the Principal Default Notice.
- (c) If within 15 Business Days after the Principal has received a notice under clause 33.4(a) the Principal fails to remedy the relevant default, the Contractor may by written notice to the Principal suspend the whole or any part of the Maintenance Works.
- (d) The Contractor must immediately lift any suspension pursuant to clause 33.4(c) if the Principal remedies the relevant default.
- (e) If the Principal fails to remedy the relevant default referred to in the Principal Default Notice, then within 60 Business Days after receipt of the Principal Default Notice, the Contractor may by a further notice to the Principal which refers to this clause 33.4, terminate this Contract.

#### **33.5 Termination for Event of Force Majeure**

- (a) If the performance of the whole of the Maintenance Works is suspended for a continuous period of 180 days by reason of an Event of Force Majeure, either party may terminate this Contract by at least 20 Business Days prior written notice referring to this clause 33.5 and the particular Event of Force Majeure.
- (b) Subject to clause 33.5(c), if this Contract is terminated under clause 33.5(a) neither party will have any liability to each other or Claim against the other in respect of any such termination of this Contract to the extent caused by the Event of Force Majeure, provided that such termination will not affect any rights and obligations which may have accrued prior to the commencement of the Event of Force Majeure.
- (c) Where this Contract is terminated by the Principal under clause 33.5(a), the Contractor's sole entitlement to payment will be (without double counting):
  - (i) the value of that proportion of the Maintenance Works completed but not paid for by the Principal to the Contractor when this Contract was terminated; and
  - (ii) the cost of any Equipment ordered for the Maintenance Works for which the Contractor has paid or is legally bound to pay provided that, on payment, title in such parts will transfer to the Principal (to the extent that title has not already

transferred pursuant to clause 7.13(c)) and the Contractor will deliver such parts to the Principal,

subject to the Contractor's duty to mitigate its Loss.

**33.6 Procedure on termination for the Contractor's default**

- (a) If the Principal terminates the Contract under clauses 33.2 or 33.3, the Principal (without prejudice to any of its other rights under the Contract or any Law):
  - (i) may employ and pay other persons to complete the Maintenance Works (including an Alternative Contractor);
  - (ii) will be entitled to recover from the Contractor:
    - (A) all payments due from the Contractor to the Principal under this Contract;
    - (B) any Loss incurred by the Principal as a result of, or arising out of, such termination; and
    - (C) all reasonable increased costs which the Principal reasonably incurs by reason of having the Maintenance Works rendered either by another person or by the Principal itself for the remainder of the Term,subject to the Principal's duty to mitigate its Loss; and
  - (iii) may require the Contractor to handover to the Principal or the Principal's nominee all relevant manuals and other historical documents of operations, maintenance, replacement or repair work for the Maintenance Works.
- (b) The Principal will not be obliged to make any further payments to the Contractor of the Fee for the Maintenance Works provided prior to the termination date, including any money the subject of a Contractor Invoice issued in accordance with clause 10.2(c) unless:
  - (i) all documents required for performance of the Maintenance Works have been provided by the Contractor to the Principal; and
  - (ii) the amounts which the Principal is entitled to recover from the Contractor arising from termination are less than the amount payable to the Contractor under this Contract.

**33.7 Procedure on termination for convenience**

- (a) If the Contract is terminated by the Contractor under clause 33.4 or 33.5, or by the Principal under clause 33.1:
  - (i) the Contractor must comply with clause 33.10;
  - (ii) the Contractor must, from the relevant date of termination, cease all Maintenance Works and handover any documents required by the Principal; and
  - (iii) the Contractor's sole entitlement to compensation for termination will be (without double counting and subject to the Principal's right to withhold or set-off any amounts in accordance with the Contract) payment of the Fee that is properly payable to the Contractor up to the date of termination, calculated strictly in accordance with this Contract.



- (b) The Contractor will only be entitled to recover the amount of any Fee (or any payments) where:
  - (i) all documents required to be provided by the Contractor as specified under this Contract have been provided by the Contractor to the Principal; and
  - (ii) the amounts which the Principal is entitled to recover from the Contractor arising from termination is less than the amount payable to the Contractor.

### **33.8 Return of Property**

On termination of this Contract for any reason, the Contractor must return as soon as reasonably practicable to the Principal any property of the Principal in the possession of the Contractor or its Personnel.

### **33.9 Termination general**

Termination of this Contract by the Principal under this clause 32 is without prejudice to any other rights or remedies which may be exercised by the Principal under or in connection with this Contract.

### **33.10 Transition Out**

- (a) The Principal may, at any time, direct the Contractor to prepare a transition out plan. The Contractor must prepare and provide a draft of the transition out plan to the Principal within 20 Business Days of a direction by the Principal to do so.
- (b) The Principal may prescribe the matters or actions which the transition out plan is to address. In any event, the transition out plan must describe the steps to be taken by the Contractor to ensure that:
  - (i) the Principal obtains all of the information which the Contractor is required to provide under this Contract;
  - (ii) the incoming contractor is capable of taking over the performance of the maintenance Activities; and
  - (iii) the Principal receives each of the benefits to which it is entitled under this Contract, including with respect to Warranties.
- (c) Without limiting the generality of clause 33.10(b), the Contractor must:
  - (i) provide updates to the Principal of the progress of its transition out activities;
  - (ii) attend meetings with the Principal and any incoming contractor, during or following which the Contractor shall diligently answer any questions;
  - (iii) provide appropriate training to the staff of any incoming contractor;
  - (iv) provide the Principal and the incoming contractor with any records, documents or information in connection with the delivery of the Maintenance Works;
  - (v) upon request and in a navigable format, provide all documentation under the Contract, including (without limitation) maintenance manuals, schedules, Equipment logbooks and the names of recommended suppliers of spare parts and other relevant Equipment;
  - (vi) manage changeover with the incoming contractor of the Allocated Contract Area(s) to ensure that:

- (A) there is no disruption to the Maintenance Works in the Allocated Contract Area(s);
  - (B) the Maintenance Works in the Allocated Contract Area(s) continues to fully comply with all Law (including the Contract);
- (vii) allow staff availability to meet with the incoming contractor; and
- (viii) provide all assistance as reasonably required by the incoming contractor to ensure there is continuity with the Maintenance Works in the Allocated Contract Area(s).
- (d) The Contractor must ensure that in the 6 months prior to the Expiry Date or, where directed by the Principal, as soon as is reasonably practicable after termination of this Contract, it implements a transition out process that:
  - (i) minimises any adverse impact on the Portfolio; and
  - (ii) allows for the continuous provision of the Maintenance Works until the Expiry Date or effective date of termination.
- (e) The Contractor acknowledges that it is critical to the Principal that the Maintenance Works continue to be delivered to the requirements of this Contract during the transition out period and agrees to use all reasonable endeavours to ensure that the Maintenance Works are delivered accordingly.
- (f) The Contractor must, at no additional cost, provide the Principal and any incoming Contractor with such cooperation and assistance during the transition out process up to the Expiry Date or the effective date of termination as is reasonably required to ensure the smooth and efficient transition in the provision of Maintenance Works after such date.
- (g) The Contractor indemnifies the Principal against any Loss it may incur as a result of the Contractor's failure to comply with its obligations under this clause 33.10.

#### **33.11 No limitation**

Nothing in clause 32 in any way limits any other provision of this Contract or any of the Principal's rights under or in connection with this Contract.

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### **34 Dispute Resolution**

#### **34.1 Application of procedure**

Any Dispute that arises must be dealt with under this clause 34. The parties must use their best efforts in good faith to co-operatively resolve a Dispute.

#### **34.2 Referral to Representatives**

- (a) Either party may give written notice of a Dispute to the other party. Any such notice will include detailed particulars of the matters the subject of the Dispute.
- (b) Within 10 Business Days after a notice is issued under clause 34.2(a), representatives of each party will meet to discuss and attempt to resolve the Dispute.

### **34.3 Referral to Dispute Panel**

If the Dispute has not been resolved within 20 Business Days after a notice is issued under clause 34.2(a), either party may by written notice to the other refer the Dispute to the Dispute Panel for resolution.

### **34.4 Procedure for resolution**

If the Dispute is not resolved by the Dispute Panel within 20 Business Days after the referral, either party may by written notice to the other refer to the Dispute to arbitration, following which the Dispute will be dealt with under clauses 34.5 to 34.8.

### **34.5 Arbitration**

- (a) Where the Dispute is referred to arbitration in accordance with clause 34.4 the arbitration will be conducted under the then current Resolution Institute Arbitration Rules (**Rules**).
- (b) The parties agree that:
  - (i) they have entered into the arbitration agreement under this clause 34.5 for the purposes of achieving a just, quick and cost-effective resolution of any Dispute;
  - (ii) the parties and the arbitrator(s) will keep confidential and not use for any collateral or other purpose not related to the resolution of the Dispute the subject matter of the arbitration and all information (whether given orally, in writing or otherwise) produced for, or arising in relation to, the arbitration, including any award arising out of it, except insofar as is necessary to implement and enforce any award or otherwise as required by Law;
  - (iii) all evidence in chief must be in writing unless otherwise ordered by the arbitrator(s); and
  - (iv) in conducting the arbitration, the arbitrator(s) must take into account the matters set out in clause 34.5(b)(i).
- (c) To the extent permitted by Law, the arbitrator(s) will have no power to apply or to have regard to the provisions of any proportional liability legislation which might, in the absence of this clause 34.5(c), have applied to any Dispute referred to arbitration in accordance with this clause 34.
- (d) The Law governing this arbitration agreement is the same law governing this Contract.

### **34.6 Seat of arbitration**

The seat of arbitration will be Sydney, Australia and the language of the arbitration will be English.

### **34.7 Arbitrator**

- (a) The arbitration will take place before a single arbitrator.
- (b) If the parties fail to appoint an arbitrator within 15 Business Days of the referral of the Dispute to arbitration under clause 34.4, either party may apply to the Chair of the New South Wales Chapter of the Resolution Institute to have an arbitrator appointed in accordance with the Rules.

- (c) The arbitrator must:
- (i) be legally qualified and have appropriate skills and qualifications to determine the Dispute;
  - (ii) be impartial;
  - (iii) not be an employee or ex-employee of a party or of an entity related to a party; and
  - (iv) not be connected with the performance of this Contract.

#### **34.8 Arbitration award final and binding**

The parties agree that any arbitration award awarded by the arbitrator(s) appointed under clause 34.7 during an arbitration conducted in accordance with the Rules will be final and binding upon the parties (except for manifest error on the face of the award), and to the fullest extent permitted by applicable Law, the parties waive their right to any form of appeal or other similar recourse to a court of law (except for manifest error on the face of the award).

#### **34.9 Exceptions**

Nothing in this clause 34 will prevent a party from:

- (a) applying to a court of competent jurisdiction to seek urgent relief; or
- (b) initiating any legal process immediately prior to the end of any period specified by a relevant Law during which legal process or the bringing of an action must be initiated.

#### **34.10 Performance of obligations pending resolution of Dispute**

Despite the existence of a Dispute, the parties must continue to perform their respective obligations under or in connection with this Contract.

#### **34.11 Survival**

This clause 34 survives the completion, expiry or termination of this Contract.

### **35 General Representations and Warranties**

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Without prejudice to any other warranties expressed elsewhere in this Contract, at law or otherwise, the Contractor makes the following representations and warranties to the Principal each of which is true and correct on the Date of Contract:

- (a) it has been incorporated as a company under the Laws of Australia, is validly existing under those Laws and has the power and authority to carry on its business in Australia;
- (b) it has power to enter into this Contract and comply with its obligations under it and is not doing so as agent or trustee for any other party;
- (c) this Contract and the transactions under it do not contravene its constituent documents or any Law or obligation by which it is bound or to which any of its assets are subject or cause a limitation of powers or the powers of its directors to be exceeded;
- (d) it has in full force and effect the authorisations necessary for it to enter into this Contract and the transactions under it;

- (e) its obligations under or in connection with this Contract are valid and binding and are enforceable against it under the terms of this Contract;
- (f) it is not in breach of any Law or obligation affecting it or its assets in a way which may result in a material adverse effect on the business or financial condition of the Contractor;
- (g) there is no pending or threatened proceeding affecting the Contractor or any of its assets that would affect:
  - (i) the validity or enforceability of this Contract;
  - (ii) the ability of the Contractor to fulfil its commitments under or in connection with this Contract in any material respect; or
  - (iii) that could result in any material adverse change in the business or financial condition of the Contractor;
- (h) there are no reasonable grounds to suspect that it is unable to pay its debts as and when they become due and payable;
- (i) It has the necessary skills and experience to perform the Maintenance Works under or in connection with this Contract;
- (j) no conflict of interest exists or is likely to arise in the performance of its obligations under or in connection with this Contract, by it or its Personnel;
- (k) it does not have immunity from the jurisdiction of a court or from legal process (whether through service of notice, attachment prior to judgment, attachment in aid of execution, execution or otherwise);
- (l) all Permits required for the conduct of the Maintenance Works under this Contract which are the responsibility of the Contractor and which are required to be in place by the Date of Contract are in full force and effect as at the Date of Contract. The Contractor warrants that it knows of no reason (having made all reasonable enquiries in this regard) why any other Permits for which it is responsible will not be granted on reasonable terms by the time it is required to obtain such Permits;
- (m) no proceedings or any other steps have been taken or, to the best of the knowledge of the Contractor (having made all reasonable enquiries), threatened for the winding-up or liquidation (whether voluntary or involuntary, provisional or final), judicial management (whether provisional or final), business rescue or deregistration of the Contractor or for the appointment of a liquidator, judicial manager or similar officer over it or over any of its assets; and
- (n) all information disclosed by or on behalf of the Contractor to the Principal at any time up to the Date of Contract is true, complete and accurate in all material respects and the Contractor is not aware of any material facts or circumstances not disclosed to the Principal which would, if disclosed, be likely to have an adverse effect on the Principal's decision (acting reasonably) to enter into this Contract with the Contractor.

## **36 Assignment and Change in Control**

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### **36.1 No assignment by Contractor**

Except as approved in writing by the Principal (in the Principal's absolute discretion), neither this Contract nor any obligations, rights, benefits or interests nor any Claim under or in connection with this Contract nor any sum or sums which may become due or owing to the Contractor as a

result of the Contractor's performance of the Maintenance Works, may be assigned, novated, transferred, pledged, charged or mortgaged by the Contractor.

**36.2 No Change in Control without approval**

The Contractor must not effect a Change in Control without the prior written approval of the Principal (which may be withheld or delayed in the Principal's absolute discretion).

**36.3 Assignment by Principal**

The Principal may assign or novate this Contract to any party (including to another Responsible Authority or its nominee) or assign a right under this Contract by notice to the Contractor. The Contractor must execute any document reasonably required by the Principal to affect its rights under this clause 36.3.

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**37 Personal Property Securities Act**

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- (a) If the Principal determines that this Contract (or a transaction in connection with it) is or contains a Security Interest, the Contractor agrees to do anything (including obtaining consents, signing and producing documents, getting documents completed and signed and supplying information) as the Principal may reasonably require for the purposes of:
  - (i) ensuring that the Security Interest is enforceable, perfected and otherwise effective and ranks ahead of other Security Interests;
  - (ii) enabling the Principal to apply for, and obtain, any registration or providing any notification in accordance with the PPSA; and
  - (iii) enabling the Principal to exercise any right in connection with the Security Interest or the property the subject of the Security Interest.
- (b) The Contractor waives each right to receive any notice from the Principal under the PPSA (including notice of a verification statement) that can be waived.
- (c) Except as expressly agreed in writing to the contrary, the Contractor:
  - (i) acknowledges that neither this Contract nor a transaction in connection with it is intended to provide for a Security Interest in favour of the Contractor; and
  - (ii) agrees that it will not register or otherwise perfect or seek to perfect any Security Interest, and will remove any registration, in respect of this Contract or a transaction in connection with it.
- (d) The Contractor must:
  - (i) promptly notify the Principal if it knows or becomes aware (whether by receipt of a notice under the PPSA or otherwise) that a third party has or claims a Security Interest in any goods or materials:
    - (A) owned by the Principal;
    - (B) supplied or to be supplied by the Contractor to the Principal; or
    - (C) in which the Principal has an interest;
  - (ii) give the Principal any information reasonably required by the Principal in relation to any such Security Interest or Claim; and

- (iii) on request by the Principal, use best endeavours to ensure that the third party:
  - (A) discharges any such Security Interest, and does not register or otherwise perfect or seek to perfect, and removes any registration, in respect of any such Security Interest; or
  - (B) subordinates any such Security Interest to the interest of the Principal, by an agreement in form and substance satisfactory to the Principal.
- (c) Without limiting clauses 37(c) and 37(d) above, at any time when title to or ownership of any plant, goods or materials is passed to the Principal, the Contractor must ensure that title or ownership is passed free of any Security Interest of the Contractor or any other person.
- (f) The Contractor must ensure that each subcontract has, for the benefit of the Principal, a clause that reflects this clause 37.
- (g) Without limiting clause 26, neither the Principal nor the Contractor will disclose information of the kind mentioned in section 275(1) of the PPSA and the Contractor will not authorize, and will ensure that no other party authorises, the disclosure of such information. However this does not prevent disclosure where required under section 275 of the PPSA because of the operation of section 275(7) of the PPSA.

## **38 Proportionate Liability**

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### **38.1 Proportionate liability**

- (a) To the extent permitted by law, the operation of Part 4 of the Civil Liability Act (and any equivalent statutory provision in any other state or territory) is excluded in relation to all and any rights of the Principal and all and any obligations or liabilities of the Contractor under this Contract whether such rights, obligations or liabilities are sought to be enforced in contract, tort or otherwise.
- (b) The Contractor must indemnify the Principal for the difference (if any) between:
  - (i) the amount of any liability or claim suffered or incurred by the Principal for which, but for the Civil Liability Act, the Principal would have been entitled to recover from the Contractor arising out of or in connection with an act or omission of the Contractor under this Contract; and
  - (ii) the liability of the Contractor to the Principal as determined by the Court pursuant to the Civil Liability Act arising out of or in connection with an act or omission of the Contractor,subject to the Principal using reasonable endeavours to mitigate the amount of any such loss or damage to the extent not prejudicial to the interests of the Principal.
- (c) If, despite the previous clauses 38.1(a) and 38.1(b), the Civil Liability Act does apply, then:
  - (i) the Contractor acknowledges and agrees that, for the purposes of the Civil Liability Act, the Contractor is entirely and solely responsible for any failure to take reasonable care on the part of any of its Personnel; and
  - (ii) the Contractor undertakes to the Principal, as a separate and independent obligation, to:
    - (A) rectify or complete any Maintenance Works:

- (1) which are Defective or incomplete or which are not in conformance with the requirements of this Contract; and
  - (2) which would otherwise be a breach of the Contractor's obligations under this Contract; or
  - (3) compensate the Principal for any Loss incurred by the Principal as a result of having such work rectified or completed.
- (d) The Contractor must ensure that all policies of insurance covering third party liability which the Contractor is required by this Contract to effect and maintain:
  - (i) cover the Contractor for potential liability to the Principal assumed by reason of the exclusion of the apportionment of liability provisions in the Civil Liability Act; and
  - (ii) do not exclude any potential liability the Contractor may have to the Principal under or by reason of this Contract.
- (e) To the extent that any provisions of the Civil Liability Act (and any equivalent statutory provision in any other state or territory relating to proportionate liability) apply or would apply, but for clause 38.1(a) and 38.1(b) apply, to any claim between the Principal and the Contractor whether in contract, tort or otherwise, or the Principal seeks to enforce the indemnity in 38.1(b), it is acknowledged that the parties do not intend to modify the Contractor's rights against any third party (including the right to bring a subrogated claim against the concurrent wrongdoer).

## **39 General**

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### **39.1 Ministerial control**

The Contractor acknowledges that the Principal is subject to the control and direction of the Minister pursuant to the Housing Act.

### **39.2 No fetter**

Nothing in this Contract in any way restricts or otherwise affects the Principal's unfettered discretion to exercise its statutory powers as a public authority.

### **39.3 Independent legal advice**

The Contractor acknowledges that it has obtained independent legal advice in relation to the terms and conditions of this Contract and understands and acknowledges its rights and obligations herein.

### **39.4 Amendment**

No amendment or other variation of this Contract is effective unless it is in writing, dated, expressly refers to this Contract, and signed by a duly authorised representative of each party.

### **39.5 Independent contractor**

The Contractor is an independent contractor performing this Contract. This Contract does not create any agency, partnership, joint venture, consortium or other joint relationship between the parties.



**39.6 Non-waiver**

- (a) Subject to clause 39.6(b), no relaxation, forbearance, delay or indulgence by either party in enforcing any of the terms and conditions of this Contract or the granting of time by either party to the other prejudices, affects or restricts the rights of that party under or in connection with this Contract, nor does any waiver by either party of any breach of this Contract operate as a waiver of any subsequent or continuing breach of this Contract.
- (b) Any waiver of a party's rights, powers or remedies under or in connection with this Contract must be in writing, dated and signed by an authorised representative of the party granting such waiver, and must specify the right and the extent to which it is being waived.

**39.7 Severability**

If the whole or any part of a clause of this Contract is held to be void, unenforceable or illegal by any court of competent jurisdiction:

- (a) it must be read down to such extent as may be necessary to ensure that it is not illegal, invalid or unenforceable and as may be reasonable in all the circumstances so as to give it a valid operation; and
- (b) if the provision or part thereof cannot be so read down, it must be severed without affecting the validity and enforceability of the remaining provisions of this Contract.

**39.8 Comments, review, representation or approval by the Principal**

The Contractor agrees that any advice, directions, approvals, review, comment on (or absence of comment) by the Principal or the Principal's Personnel in connection with the Maintenance Works or this Contract do not detract from or otherwise affect the Contractor's warranties, obligations and liabilities under or in connection with this Contract.

**39.9 Entire agreement**

- (a) This Contract is the entire agreement between the parties and sets out a full statement of the contractual rights and liabilities of the Principal and the Contractor regarding the Maintenance Works and replaces all previous contracts, undertakings, agreements, understandings, representations, communications, whether written or oral, and no warranties given prior to the Date of Contract regarding the Maintenance Works is of any contractual effect.
- (b) Each party warrants that any pre-contractual representations and warranties, whether made orally or in writing, are of no legal effect whatsoever, with the result that neither party is entitled to make a Claim for damages or specific performance in reliance on them.

**39.10 Counterparts**

This Contract may be executed in any number of counterparts. Those counterparts together make one instrument.

**39.11 Amounts due and payable**

Any amount which the Contractor is expressly liable to pay or reimburse to the Principal under the Contract will be a debt due and payable to the Principal in the time expressly provided or otherwise on demand.

**39.12 Further assurances**

Except as expressly provided in this Contract, each party must, at its own expense, do all things reasonably necessary (including executing documents) to give full effect to this Contract and the matters contemplated by it in a timely manner.

**NSW Land and Housing Corporation**  
**Lift Maintenance Contract**  
**Schedule 1 (Contract Details)**

## Schedule 1 (Contract Details)

Item	Description	Detail
Item 1	Principal (clause 1.1)	Name: New South Wales Land and Housing Corporation ABN: 24 960 729 253 Address: 4 Parramatta Square, 12 Darcy Street, Parramatta, New South Wales 2150
Item 2	Contractor (clause 1.1)	Name: TK Elevator Australia Pty Ltd ABN: 12 073 056 149 ACN: 073 056 149 Address: Shed 73, The Woolstores, 2/4E Huntley Street, Alexandria, New South Wales 2015
Item 3	Contractor's Representative (clause 1.1)	Name: Danny Merrison, New South Wales Operations Manager Email: Danny.Merrison@tkelevator.com
Item 4	Guarantor (clause 1.1)	Name: Not applicable ABN: Not applicable ACN: Not applicable Address: Not applicable
Item 5	Allocated Contract Area(s) (clause 1.1)	Contract Area B
Item 6	Alternative Contract Area(s) (clause 1.1)	Not applicable (no Alternative Contract Area)
Item 7	Key Personnel (clause 1.1)	Name: Alvin Chen Role: Business Development Manager
Item 8	Maintenance Works Commencement Date (clause 1.1)	1 November 2024
Item 9	Invoicing Methodology (clause 10.2)	Option 1 – Contractor Invoice <input checked="" type="checkbox"/>
		Option 2 – RCTI <input type="checkbox"/>
Item 10	Inspection liquidated damages (per inspection) (clause 7.17(a)(i))	

**NSW Land and Housing Corporation  
Lift Maintenance Contract  
Schedule 1 (Contract Details)**

Item 11	Quotable Works Liquidated Damages (clause 7.11(g))		
Item 12	Principal Plans, Policies and Procedures (clause 1.1)	The Principal's plans, policies and procedures include the New South Wales Land and Housing Corporation Contractor's Code of Conduct, and are as otherwise set out in the Schedules.	
Item 13	IT Requirements and SUI Options (clause 8.1)	Option 1	<input type="checkbox"/>
		Option 2	<input checked="" type="checkbox"/>
Item 14	Home Building Licence Number (clause 29.9(b))	Not applicable	
Item 15	Amount of Security (clause 11.1)		
Item 16	Time for submission of an organisation chart (clause 17.2)	The Contractor will initially provide a proposed organisation chart within 28 days after the Date of Contract and will provide a revised and updated organisation chart no later than 30 days before the Maintenance Works Commencement Date.	
Item 17	Dispute Panel (clause 34.3)	Principal – Head of Portfolio Management (Assets) Contractor – Andrew Dussek, New South Wales Branch Manager	
Item 18		Attention: Mike Mahendran, Contract Manager	

**NSW Land and Housing Corporation  
Lift Maintenance Contract  
Schedule 1 (Contract Details)**

	Notice details of the Principal (clause 8)	Address: 4 Parramatta Square, 12 Darcy Street, Parramatta, New South Wales 2150 Phone: 0411 160 687 Email: Mike.Mahendran@homes.nsw.gov.au
Item 19	Notice details of the Contractor (clause 8)	Attention: Alvin Chen, Business Development Manager Address: Shed 73, The Woolstores, 2/4E Huntley Street, Alexandria, New South Wales 2015 Phone: 0413 152 315 Email: Alvin.Chen@tkelevator.com



## Schedule 2 (Maintenance Works)

### 1 Purpose and Application

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This Schedule sets out a high-level description of the types of Maintenance Works which the Contractor may be required to perform in response to a Work Order. The detailed requirements and specifications for the Maintenance Works are set out in other Contract Documents.

### 2 Servicing Works

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#### 2.1 Nature

Servicing Works are those Maintenance Works which the Principal includes in a Work Order and which may be designated as either Responsive Works or Routine Maintenance Works.

Work Orders for Responsive Works will typically be issued by the Principal in response to a request for maintenance from or on behalf of a Tenant or other third party, with the exception of any Responsive Works required due to an Entrapment Event, an Alarm or Outage (or other call to the Contractor that is generated from the Lift phone).

#### 2.2 Scope and Specifications

The specifications in relation to the Servicing Works are set out in:

- (a) the Maintenance Works Specification;
- (b) the Operational Requirements;
- (c) the Servicing Works Price;
- (d) the relevant Work Order (if applicable);
- (e) the Principal Plans, Policies and Procedures; and
- (f) the Contractor Plans, Policies and Procedures.

### 3 Chargeable Works

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#### 3.1 Nature

Chargeable Works are those Maintenance Works which the Principal includes in a Chargeable Work Order.

Chargeable Work Orders will typically be issued by the Principal in response to a Chargeable Event.

#### 3.2 Scope and Specifications

The specifications in relation to the Chargeable Works are set out in:

- (a) the Maintenance Works Specification;

- (b) the Operational Requirements;
- (c) the Chargeable Work Order;
- (d) the Principal Plans, Policies and Procedures; and
- (e) the Contractor Plans, Policies and Procedures.

## **4 Quotable Works**

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### **4.1 Nature**

Quotable Works are those Maintenance Works which the Principal requests the Contractor provide on an ad hoc basis pursuant to clause 7.11 of the General Terms.

### **4.2 Scope and Specifications**

The specifications in relation to the Quotable Works are set out in:

- (a) the Maintenance Works Specification (if applicable);
- (b) the Operational Requirements (if applicable);
- (c) the Contractor's written quotation for the Quotable Works (provided in accordance with clause 7.11 of the General Terms);
- (d) the relevant Work Order;
- (e) the Principal Plans, Policies and Procedures; and
- (f) the Contractor Plans, Policies and Procedures.

## **5 Timeframes for Maintenance Works**

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### **5.1 Responsive Works**

- (a) The Contractor's response time to an incident is typically within 30 minutes, 45 minutes, or 60 minutes of the relevant Entrapment Event, Alarm or Outage in respect of which Responsive Works are required (as is further set out in the table below), provided that the Principal may issue a Work Order for Responsive Works with any work priority response time frame.

#### **(b) Responsive Works Response Times**

<b>Incident</b>	<b>Maximum response time to an incident</b>	
	<b>Working Hours**</b>	<b>Outside Working Hours**</b>
Entrapment Event (all Lifts)	30 minutes	30 minutes
Alarm (all Lifts)	30 minutes	30 minutes
Outage (subject to the below)	60 minutes	60 minutes



**NSW Land and Housing Corporation**  
**Lift Maintenance Contract**  
**Schedule 2 (Maintenance Works)**

Outage in Property where there is only one Lift Outage in Property where one Lift is already out of service	45 minutes	60 minutes
Minor incident*	Next Business Day	Next Business Day

- (c) \*A minor incident is classified as any fault other than an Outage.
- (d) \*\*For the purposes of the above table "**Working Hours**" means between the hours of 07.30am and 4.00pm on Business Days, and "**Outside Working Hours**" means any time outside of Working Hours.
- (e) The response time for an Entrapment Event is measured from the time that the Contractor first becomes aware of the relevant Entrapment Event.
- (f) The response time for an Alarm is measured from the time that the relevant Alarm is first activated.
- (g) The response time for an Outage is measured from the time that the Contractor first becomes aware of the relevant Outage.
- (h) The resolution times for incidents set out in the table above are further described in Schedule 3 (Operational Requirements).
- (i) For the avoidance of doubt, the response obligations set out in the table above are in addition to (and without prejudice) to any other response, resolution or notification obligations that the Contractor may have in relation to an incident, as further described in Schedule 3 (Operational Requirements).

## 5.2 Routine Maintenance Works

Routine Maintenance Works are required to be completed by the Contractor on a calendar monthly basis in accordance with the Annual Program.

## 5.3 Chargeable Works and Quotable Works

Chargeable Works and Quotable Works are required to be completed by the Contractor in accordance with the time frame agreed by the parties in the Work Order for the relevant Chargeable Works or Quotable Works, or such time frame as is otherwise directed by the Principal.

## Schedule 3 (Operational Requirements)

### 1 Maintenance Works

---

#### 1.1 Routine Maintenance Works

For each Lift, in each Month, the Contractor must:

- (a) attend the relevant Property and perform the Routine Maintenance Works upon each Lift:
  - (i) in accordance with each Work Order issued by the Principal; or
  - (ii) where a Work Order has not been issued for a Property, during the date and time in the relevant Annual Program; and
- (b) while attending the Property, comply with its obligations under sections 2, 3, 4 and 6;
- (c) appropriately sign-post the Lift within the building to indicate the performance of the Maintenance Works to Tenants;
- (d) where the Contractor is unable to perform all Routine Maintenance Works, the Contractor must before departing site:
  - (i) identify to the Principal the affected aspects of the Routine Maintenance Work which could not be completed; and
  - (ii) identify to the Principal the earliest date upon which the Contractor could complete the affected aspects of the Routine Maintenance Works;
- (e) immediately notify the Principal once it has completed the Routine Maintenance Works for the relevant Lift by:
  - (i) updating the SUI with the date and time that the Routine Maintenance Work was completed;
  - (ii) updating the Work Order by including the relevant Chargeable Rate (including all applicable \$0 Chargeable Rate) and any comment to properly describe the nature of the Maintenance Work performed;
  - (iii) the Routine Maintenance Works Completion Checklist for the relevant Lift; and
  - (iv) completing the condition rating for each Major Component SoR in the Work Order; and
- (f) provide to the Principal (unless otherwise directed, via the SUI) the evidence required by section 5.1 within 10 days of the Contractor's notice under section 1.1(e).

#### 1.2 Responsive Works

- (a) Where:
  - (i) an Alarm is activated; or

- (ii) the Contractor is notified (by a Lift passenger, Tenant, the Principal or any other person) that an Entrapment Event has occurred,
- the Contractor must:
- (iii) immediately notify the Principal (initially by telephone, and subsequently with a further communication in accordance with the prescribed method set out in Schedule 9 (Communications Requirements)) of the Alarm or the Entrapment Event (including the time at which the Alarm was activated, or the Contractor first became aware of the Entrapment Event), as applicable;
  - (iv) attend the relevant Property within 30 minutes of:
    - (A) the time that the Alarm is first activated; or
    - (B) the time that the Contractor first becomes aware of the Entrapment Event;
  - (v) (if applicable) resolve the cause of the Alarm within 60 minutes from the time that the Alarm is first activated;
  - (vi) (if applicable) release the person the subject of the Entrapment Event immediately upon arrival at the site, and in any event within 60 minutes of the time that the Contractor first becomes aware of the Entrapment Event;
  - (vii) while attending site, perform any works, services or activities to restore the Lift to working order, or where the Contractor is unable to perform all works, services or activities necessary to restore the Lift to working order, the Contractor must before departing site:
    - (A) identify to the Principal the affected aspects of the Lift which could not be restored; and
    - (B) identify to the Principal the earliest date upon which the Contractor could restore the Lift;
  - (viii) notify the Principal of the cause of the Alarm or the Entrapment Event; and
  - (ix) notify the Principal of the time:
    - (A) (if applicable) that the Alarm was first activated (for the relevant event, determined by reference to the alarm system);
    - (B) (if applicable) that it first became aware of the Entrapment Event;
    - (C) that the Contractor arrived at the Property; and
    - (D) that the Contractor either:
      - (I) resolved the cause of the Alarm; or
      - (II) released the person the subject of an Entrapment Event,as applicable.

- (b) Where the Contractor becomes aware (from any source) of an Outage, the Contractor must:
  - (i) immediately notify the Principal (initially by telephone, and subsequently with a further communication in accordance with the prescribed method set out in Schedule 9 (Communications Requirements)) that an Outage has occurred (including the time at which the Contractor first became aware of the Outage);
  - (ii) attend the relevant Property the subject of the Outage within 60 minutes of the time that the Contractor first becomes aware of the Outage (unless the Outage has occurred between the hours of 07.30am and 4.00pm on Business Days in respect of a Property where there is only one Lift or a Property where one Lift is already out of service, in which case the Contractor must attend the relevant Property the subject of the Outage within 45 minutes of the time that the Contractor first becomes aware of the Outage);
  - (iii) notify the Principal when the Contractor arrives at the Property;
  - (iv) either:
    - (A) resolve the cause of the Outage within 120 minutes of the time at which the Contractor arrived at the Property; or
    - (B) where the Contractor is unable to resolve the cause of the Outage, the Contractor must before departing site:
      - (I) identify to the Principal the affected aspects of the Responsive Maintenance Work which could not be completed; and
      - (II) identify to the Principal the earliest date upon which the Contractor could complete the affected aspects of the Responsive Maintenance Works; and
  - (v) notify the Principal of the cause of the Outage together with the date and time that the Outage was resolved by the Contractor.
- (c) The Principal may issue two or more Work Orders in relation to any outage for the administrative purpose of tracking the Contractor's attendance at the relevant Property and the completion of any Maintenance Works.

### **1.3 Chargeable Works**

- (a) Where Chargeable Works are required to be performed, the Contractor must:
  - (i) notify the Principal of its intention to perform Chargeable Works including the Chargeable Rates which it proposes to use;
  - (ii) attend the relevant Property and perform the Chargeable Works;
  - (iii) while attending the Property, comply with its obligations under sections 2, 3, 4 and 6;
  - (iv) immediately notify the Principal once it has completed the Chargeable Works; and
  - (v) before submitting any Invoice for the Chargeable Works, provide to the Principal:

- (A) evidence for the need for the Chargeable Works;
  - (B) evidence of the Chargeable Works performed (including time records for labour and third party invoices for Equipment); and
  - (C) any other evidence required by section 5.1,
- (b) The Contractor will not be entitled to claim for any activities, work or services which it purports to perform as Chargeable Works if it has not strictly complied with the requirements of section 1.3(a).
- (c) Where the Contractor performs Chargeable Works for which the parties have agreed a price and the Contractor determines that additional activities, work, services or Equipment not included in the agreed price (for the purposes of this clause, the **Additions**) are required, the Contractor must:
  - (i) document and evidence the need for the Additions and send such evidence to the Principal on the SUI;
  - (ii) contact the Principal (via telephone or such other means as directed by the Principal from time to time) to:
    - (A) identify the need for the Additions; and
    - (B) confirm receipt of the evidence uploaded and provide any further evidence which may be requested;
  - (iii) comply with any directions given by the Principal to:
    - (A) proceed with the Chargeable Works without the Additions;
    - (B) suspend the performance of the Chargeable Works while the Principal investigates the need for the Additions;
    - (C) where the Additions are goods or materials, procure multiple quotations (where possible) for those Additions; or
    - (D) proceed with the Chargeable Works including the Additions;
  - (iv) document and evidence the performance of the Additions (if any) which were included in a revised Work Order (or otherwise accepted by the Principal); and
  - (v) include evidence of such performance in its documentation submitted to the Principal.
- (d) The Contractor will not be entitled to claim for any activities, work or services which it purports to perform as Chargeable Works (where a price has been agreed with the Principal) if it has not strictly complied with the requirements of section 1.3(c).

#### **1.4 Work Orders**

- (a) In respect of any Work Order which includes a Date for Work Order Commencement the Contractor must not commence the performance of the Maintenance Works the subject of that Work Order prior to the Date for Work Order Commencement. If no Date for Work Order Commencement is included in a Work Order, the Date for Work Order Commencement is the date that the Work Order is issued by the Principal.

- (b) The time of issue of a Work Order is taken to be:
  - (i) where the Work Order is issued on the SUI, the time that the Work Order is issued to the Contractor on the SUI, as recorded in the SUI; or
  - (ii) where the Work Order is issued via email pursuant to clause 7.14(b) or 7.15(c) of the General Terms, the time that the email was sent to the Contractor, as recorded in the Principal's email server.
- (c) Where a Work Order does not include a Date for Work Order Commencement, the Date for Work Order Commencement is the time of issue as determined under section 1.4(b).
- (d) Where a Work Order:
  - (i) does not include specific contact name(s) and/or telephone number(s) for the Principal that will be used for that particular Work Order, the Contractor is to contact the Principal in accordance with the General Terms; or
  - (ii) includes specific contact name(s) and/or telephone number(s) for the Principal that will be used for that particular Work Order, the Contractor must use that number for all telephone correspondence in connection with that Work Order (unless directed otherwise by the Principal).
- (e) The Principal may, at any time prior to Works Completion of the Work Order cancel a Work Order.

## **1.5 Replacement of Major Components**

- (a) Where the Contractor considers that a Major Component of a Lift needs to be replaced, the Contractor must notify the Principal, identifying:
  - (i) the specific Major Component;
  - (ii) the reason that the Contractor proposes to replace the Major Component; and
  - (iii) the replacement Major Component which the Contractor proposes to instal into the Lift.
- (b) The Contractor shall notify the Principal immediately upon completion of the installation of the replacement Major Component in the relevant Lift.

## **2 Information**

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### **2.1 General**

The Principal may at any time (including within or following the issuance of a Work Order) provide or make available to the Contractor additional information in relation to any one or more Lift or Property. Such information may include:

- (a) person alerts as detailed in section 2.2;
- (b) property alerts as detailed in section 2.3;
- (c) access information as detailed in section 2.4;

- (d) specific Portfolio requirements, including the requirements of other entities which may be involved in the ownership, management or maintenance of a Property; and
- (e) any other information which the Principal considers may be relevant to the Work Order, its contextual background or the Contractor's performance of its obligations in relation to that Work Order.

## **2.2 Person Alerts**

- (a) The Principal may issue an alert in relation to person(s) who may be in attendance or in the vicinity of a Property.
- (b) The Contractor is to take all appropriate steps to ensure that it undertakes the Maintenance Works in a way that effectively manages and caters for the subject matter of the person alert.

## **2.3 Property Alerts**

- (a) The Principal may issue an alert in relation to any aspect, characteristic or condition of a Property or its surrounds.
- (b) The Contractor is to take all appropriate steps to ensure that it undertakes the Maintenance Works in a way that effectively manages and caters for the contents of the property alert.

## **2.4 Access Information**

- (a) The Principal may make available information in relation to the means of access to the specific Property or part of a Property.
- (b) The Contractor is to take all appropriate steps to ensure that it undertakes the Maintenance Works in a way that effectively manages and caters for the contents of such information.

## **2.5 No Claim**

The Contractor will have no Claim arising out of or in connection with the provision or failure to provide of any information referred to in this section 2, including where the Contractor deploys additional resources (including Personnel) to facilitate, supervise or otherwise attend to any activity in the course of completing the relevant Maintenance Works.

# **3 General Obligations**

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## **3.1 Notice of Disruption**

The Contractor must:

- (a) where a Lift will be unavailable for use by Tenants and other persons for a continuous period of greater than two hours:
  - (i) where practicable, provide the Principal with prior written notice; and
  - (ii) comply with any directions issued by the Principal in relation to the Lift;
- (b) where a Property has:

- (i) more than one Lift, only take one Lift 'out of service' for the performance of Maintenance Works at a time (such that the other Lift remains available for use by Tenants and other persons; and
- (ii) only one Lift, only take the Lift 'out of service' for the performance of Maintenance Works for the shortest possible period of time; and
- (c) ensure that it places signage in the form set out in Attachment A ('Lift Out of Service' Template) to this Schedule 3 (Operational Requirements) (as such form may be updated by the Principal from time to time upon notice to LAHC) outside the affected Lift and at all other appropriate locations so that Tenants are aware that the Contractor is performing Maintenance Works at the Property and that the Lift is out of service or may be unavailable for periods of time.

### **3.2 Proactive Approach**

Without in any way limiting the Contractor's obligations under the Contract, the Contractor must at all times:

- (a) take a pragmatic, flexible, adaptable, conscientious and common sense approach to the performance of, and the delivery of, the Maintenance Works; and
- (b) take proactive steps to ensure that the Maintenance Works are carried out as efficiently as possible.

### **3.3 Residential Tenancies Act**

The Contractor must ensure that it, at all times, complies with the requirements of the RTA, as if the Contractor was a 'landlord' for the purposes of the RTA.

### **3.4 Identifying the need for other maintenance**

- (a) If, while on Site, the Contractor identifies any aspect of the Site or any other part of a Property which may require maintenance, the Contractor must:
  - (i) where practicable document such aspects, including (if appropriate) through photographs; and
  - (ii) as soon as reasonably practicable, inform the Principal and provide relevant evidence and documentation.
- (b) The Contractor must ensure that, in any interactions with Tenants relating to any potential Maintenance Works not included in a Work Order, it:
  - (i) complies with the Principal's Plans, Policies and Procedures;
  - (ii) does not make any comments or representations to the Tenant regarding the need or time frame for any potential Maintenance Works; and
  - (iii) otherwise directs the Tenant to contact the Principal.

### **3.5 Utility Outages**

Where any Maintenance Works will require the disconnection of any power, gas, sewerage or water at a Property, the Contractor must:



- (a) unless it is unsafe to do delay the disconnection, notify the Principal of the expected duration of the disconnection and the reason for the disconnection;
- (b) where it is unsafe to delay the disconnection, complete the disconnection and then notify the Principal of the disconnection, including its reason and expected duration;
- (c) ensure that the power, gas, sewerage or water (as applicable) are reinstated as soon as is possible and in any event, prior to departing the relevant Property at the end of each day; and
- (d) comply with any direction of the Principal, including as to the timing or sequencing of the relevant Maintenance Works.

### **3.6 Contractor's Equipment**

- (a) The Contractor must ensure all Contractor's Equipment:
  - (i) is fit for purpose;
  - (ii) is in a safe and operational condition; and
  - (iii) where required, has passed its periodic inspections, or compliance or maintenance checks including any NATA certification.
- (b) If the Maintenance Works requires the use of specialised equipment (for example elevated work platforms, scaffolding or scissor lifts), the Contractor must before commencing the relevant Maintenance Works provide to the Principal:
  - (i) a work methodology describing how the specialised equipment will be used, how it will be installed, and how long it will be at the Property;
  - (ii) a completed risk assessment (which will include how the safety and convenience of the Tenants and the general public will be maintained);
  - (iii) any 'safe work method statements' and 'safe work instructions';
  - (iv) where applicable, copies of operator licenses and associated qualifications for the use of or installation of the equipment; and
  - (v) any other specific requirements to ensure compliance with current Safe Work NSW requirements (i.e., working at heights, confined space, etc.).

### **3.7 Replacement**

- (a) If a system or Major Component in a Lift is replaced, the Contractor must prepare and issue a report (in the Approved Form) to the Principal detailing the condition of the faulty system / Major Component.
- (b) Any product or work must be of at least the same standard as the product or work which it replaces or interfaces with, and in any event, must comply with the Maintenance Works Specification.

### **3.8 Supervision**

The Contractor must:

- (a) assess and provide the level of supervision appropriate to the scope of the Maintenance Works; and
- (b) ensure that any apprentices, trainees and all other personnel deployed receive the appropriate level of supervision at each Property in accordance with Good Industry Practices.

### **3.9 Identification**

- (a) The Contractor must ensure that any Personnel attending a Property are readily identifiable while on site including by ensuring that person attending carries an identification card issued by the Contractor.
- (b) Any identification card issued by the Contractor must:
  - (i) comply with AS 4718 for card type ID-1 save that no card is required to be machine-readable;
  - (ii) clearly display the:
    - (A) Contractor's ABN, registered business name and contact number;
    - (B) the name of the person to whom the card is issued and the business entity that person works for (where that entity is not the Contractor);
    - (C) a colour photograph and copy of the signature of the person to whom the card is issued;
    - (D) an expiry date for the card;
    - (E) a card registration number; and
    - (F) indicate that the holder is engaged on behalf of the NSW Land and Housing Corporation.
- (c) The Contractor must record and track the issuance, use and return of all identification cards.

### **3.10 Site Layout**

The Contractor must ensure appropriate site demarcation, barricades, and WHS and/or environmental protocols are used.

### **3.11 Utilities and Facilities**

The Contractor must not:

- (a) use, or seek to use, any property of any Tenant (for example, the Contractor must, where appropriate, provide its own vacuum cleaner and power to operate a vacuum cleaner, and must not seek to use a vacuum cleaner belonging to the relevant Tenant); and
- (b) use the washroom facilities of a Tenant.

### **3.12 No Obstruction**

The Contractor must take all measures necessary to:

- (a) avoid unnecessary interference with the passage of people and/or vehicles;
- (b) keep all relevant Tenants informed of the status of power, gas, water and sewerage utilities in the Property;
- (c) prevent nuisance, unreasonable noise and disturbance;
- (d) minimise inconvenience to Tenants; and
- (e) keep the Site safe, clean and tidy (including by regularly removing used packaging, rubbish and keeping tools and materials together).

Where it is not possible to perform the Maintenance Works without blocking property access for Tenants or vehicles, the Contractor must inform the Principal and comply with any direction of the Principal regarding access.

### **3.13 Cause of Maintenance Works**

If, while on Site, the Contractor identifies or has reason to suspect that the need for the performance Maintenance Works was caused by:

- (a) work performed by any third party; or
- (b) vandalism, sabotage or tampering by any person,

the Contractor must notify the Principal, including by providing any relevant evidence or details.

### **3.14 Identification of other issues**

- (a) If, while on Site, the Contractor identifies or has reason to suspect anything which should be brought to the attention of the Principal, the Contractor must:
  - (i) where practicable document such aspects, including (if appropriate) through photographs; and
  - (ii) as soon as reasonably practicable, inform the Principal and provide relevant evidence and documentation.
- (b) The types of issues which are to be brought to the Principal's attention include:
  - (i) illegal additions, structures or activities;
  - (ii) health and safety issues;
  - (iii) threat to life or person;
  - (iv) hazards;
  - (v) significant asset damage; and
  - (vi) any deleterious or poor conditions.

## **4 Incidents**

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### **4.1 Notification**

- (a) The Contractor must promptly, and in any event within 1 hour of its Personnel becoming aware, notify the Principal (initially by telephone, and subsequently with a further communication in accordance with the prescribed method set out in Schedule 9 (Communications Requirements)) of any:
  - (i) circumstance, occurrence, event, incident or altercation which may:
    - (A) lead to a complaint from a Tenant;
    - (B) require reporting to or investigation by any Responsible Authority, industry body or law enforcement agency; or
    - (C) otherwise require investigation by the Contractor or the Principal; or
  - (ii) complaint (of any kind) which it or its Personnel receive from a Tenant.
- (b) The Contractor must, in response to an incident complete any forms or documents (as directed by the Principal) in the Approved Form. The Principal may require the use of online reporting tools or portals for the submission of reports and notifications which relate to the Work Health and Safety Requirements.

### **4.2 Investigation**

The Contractor must:

- (a) investigate, in accordance with Good Industry Practices, any circumstance, occurrence, event, incident or altercation which would have required a notification to the Principal under section 4.1(a)(i);
- (b) cooperate with any law enforcement agency;
- (c) allow the Principal:
  - (i) access to any Personnel; and
  - (ii) the opportunity to participate in any investigation; and
- (d) provide the Principal with a copy of any document or report produced as a result of any investigation (which should include, where appropriate, the steps which the Contractor will take to avoid another similar circumstance, occurrence, event, incident or altercation).

### **4.3 Imminent Threat to Life**

Where the Contractor considers that there may be an imminent threat to the life of any person, it must take all appropriate steps including immediately contacting emergency services and informing the Principal including via telephone.

## **5 Records and Reports**

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### **5.1 Documentation**

The Contractor is to fully document its performance of the Maintenance Works, including by:

- (a) recording photographic evidence (date and time stamped) including:
  - (i) the condition of the Site prior to performing the Maintenance Works;
  - (ii) the completed Maintenance Works;
  - (iii) any matters or issues identified in section 3.14; and
- (b) recording and retaining the details of any equipment used to test systems (including any NATA certifications or calibration reports);
- (c) providing technical specifications, datasheets, test results and certificates for all materials used in the Maintenance Works, and where requested by the Principal, operational manuals and drawings; and
- (d) providing system or component test records, installation certificates and any other relevant information that substantiates the performance of the Maintenance Works.

### **5.2 Retention**

The Contractor must produce and maintain accurate records, logs, statements, and reports in accordance with Schedule 4 (Technical Specification) and otherwise as required to properly substantiate its performance of the Maintenance Works.

### **5.3 SUI**

All information recorded by the Contractor must be:

- (a) provided to the Principal in accordance with clause 8 of the General Terms;
- (b) with respect to photographs:
  - (i) taken digitally and have file names that reference the relevant Property and Lift;
  - (ii) taken using a camera which is capable of recording the GPS coordinates at the time the image was captured, such that the location data is recorded and stored as part of the metadata for the image;
  - (iii) dated and time-stamped when the photograph is taken, in a form that is not capable of being altered; and
  - (iv) taken at a minimum 5MP resolution.

## 6 Inspections

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### 6.1 Property Inspection

The Contractor must ensure that it plans and programs its inspections of each Lift in a manner which causes the least impact to Tenants, including by scheduling inspections outside of ordinary working hours.

### 6.2 Observation Notices

- (a) Without limiting the Principal's rights under this Contract or otherwise at law (including the right to issue a Defects Notice), where the Principal attends a Site (including during the course of the Contractor carrying out Maintenance Works) and considers that an aspect of the Maintenance Works may not comply with the requirements of the Contract, the Principal may issue an observation notice to the Contractor (**Observation Notice**).
- (b) The Contractor must consider the content of any Observation Notice and take any steps required to ensure that the Maintenance Works are completed in accordance with the requirements of the Contract.

### 6.3 Participation during Principal's Inspections

- (a) Where directed by the Principal, the Contractor must:
  - (i) attend and participate in; and
  - (ii) procure that any of its Personnel nominated by the Principal attend and participate in,any Pre-Completion Inspection or Post Work Inspection, at the date and time nominated by the Principal. For the purposes of this section, participation includes the submission of documents or responses to questions.
- (b) The Principal is not required to involve the Contractor in any Pre-Completion Inspection or Post Work Inspection.
- (c) The Contractor acknowledges and agrees that it will, and will procure that its Personnel will, participate in any inspection by the Principal in an open, honest and transparent manner.

## 7 Defects Procedure

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### 7.1 Performance

Upon receipt of either a Defect Notice under clause 19 of the General Terms or a notice from the Principal that the Contractor has failed to rectify a Defect the subject of a Defect Notice (a **Follow Up Notice**) the Contractor must:

- (a) attend the relevant Property and commence performance of the relevant Maintenance Work within the time period which an experienced and competent contractor, acting in accordance with Good Industry Practices and the intent to complete the Maintenance Works by the time stated in the Defect Notice, would have attended the relevant Property and commenced the Maintenance Work; and

- (b) while attending the Property, comply with its obligations under this Schedule; and
- (c) complete the performance of the Maintenance Work required by the Defect Notice or the Follow Up Notice:
  - (i) by the time stated in the Defect Notice or the Follow Up Notice; or
  - (ii) where no time is stated in either the Defect Notice or the Follow Up Notice, within a reasonable period having regard to the nature of the Defect or the contents of the Follow Up Notice; and
- (d) immediately notify the Principal upon completion of the Maintenance Work the subject of the Defect Notice or Follow Up Notice; and
- (e) provide to the Principal the evidence required by section 5.1 on the SUI promptly upon completion of the Maintenance Work the subject of the Defect Notice or Follow Up Notice.

## **7.2 No modification**

This section 7 does not limit or otherwise affect the Contractor's other obligations regarding any Defects or a Defect Notice.

## Attachment A 'Lift Out of Service' Template

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This Lift is temporarily out of service due to [Contractor to insert and complete]

A mechanic attended on [Contractor to insert and complete]

The anticipated repair date is [Contractor to insert and complete]

We thank you for your patience and apologise for any inconvenience.

Please call your local housing office during office hours or 1300 468 746 after hours if you require assistance during the service outage.



## Schedule 4 (Technical Specification)



Please consider the environment before printing this document

# **Lift Maintenance Technical Specification**

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**New South Wales  
Land and Housing Corporation**

## TABLES OF CONTENTS

<b>1</b>	<b>Introduction-----</b>	<b>121</b>
1.1	Standards	121
1.2	Materials and Workmanship	121
<b>2</b>	<b>Lift Maintenance Services -----</b>	<b>123</b>
2.1	Maintenance Requirements Generally	123
2.2	Principal Owned Components	123
2.3	Component Register & Risk Analysis	123
2.4	Routine Maintenance Works	125
2.5	Lift Remote Monitoring	127
2.6	Lift Maintenance Frequencies and Extra Requirements	128
2.7	Chargeable Work	129
2.8	Lift Audits	130
2.9	Quotes	130
2.10	Work by Others	131
2.11	Maintenance Records, Reports & Communications	131
<b>3</b>	<b>Definitions-----</b>	<b>135</b>
3.1	General	135
	<b>Appendix B-1 - Lift Component Register-----</b>	<b>137</b>
	<b>Appendix B-2 – Risk Analysis -----</b>	<b>138</b>

## **1 Introduction**

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Clause, section and appendix references in this Schedule are, unless noted otherwise, references to these aspects of this Schedule.

### **1.1 Standards**

The Contractor must maintain all Components and Subcomponents in the relevant Lift to a standard necessary to maintain effective operation of all Lifts, regardless of:

- (a) whether the Components or Subcomponents are recorded or not recorded in this Schedule or the relevant Lift Component Register;
- (b) whether individual items are replaced, modified or changed under this Contract or by others; and
- (c) whether the maintenance requirements and the Australian Standards applicable to the Services cover all items found in the Property or contain complete information for a Component or Subcomponent.

### **1.2 Materials and Workmanship**

#### **1.2.1 General**

The Contractor must provide all power, materials, plant and equipment necessary to perform the Maintenance Works and ensure they are in good working order, calibrated to manufacturer's standards and maintained in a safe and clean condition.

The Contractor must provide all consumables necessary for the performance of the Maintenance Works.

Materials supplied must be fit for purpose and comply with the requirements of the Specifications. Work must conform to good trade practice and the relevant industry codes of practice currently applicable, and used in Australia.

All materials must be handled, stored and installed in accordance with the manufacturers' recommendations. The Contractor must adhere to the manufacturers' recommendations where proprietary processes are required.

There are no storage facilities or other accommodation available at any Property for use by the Contractor for storage or any other purpose. Under no circumstances must any chemicals and/or hazardous substances or materials be left at any Site including any Lift motor room.

#### **1.2.2 Disposal of Waste, Materials and Equipment**

The Contractor must dispose of all waste and redundant material resulting from any Maintenance Works performed at a Property:

- (a) progressively, as required, to prevent a safety or security hazard and to maintain access;
- (b) and at the end of the day; and
- (c) in accordance with the other requirements of the Contract.

### **1.2.3 Cleaning**

The Contractor must:

- (a) ensure that Lift motor rooms, Lift shafts and other areas where the Lift equipment is located are kept clean, tidy at all times; and
- (b) clean and vacuum all car and landing door sills as part of servicing.

### **1.2.4 Installation of Ducts and Conduits**

The Contractor must:

- (a) re-use existing conduits for the new services where possible, and avoid new surface mounted conduits where possible; and
- (b) where new ducts and conduits are required as part of a Scope of Work, or otherwise, submit details of the method of installation at least 7 days prior to commencing work related to ducts and conduits.

### **1.2.5 Keys and Access**

The Contractor is required to:

- (a) prepare a police incident report relating to any lost or stolen keys;
- (b) dot mark or otherwise label keys in any manner that enables the Property, to which the keys apply, to be identified;
- (c) keep Lift machine room keys and well access devices in their designated locations at all times; and
- (d) return all keys listed on the key register to the Principal at the end of the Contract or as directed by the Principal.

## 2 Lift Maintenance Services

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### 2.1 Maintenance Requirements Generally

#### Management of Maintenance Services

The management of Maintenance Works under this Contract requires the Contractor (as a minimum) to:

- (a) maintain, repair or restore the function of a Component or Subcomponent to the condition and standard to which it is designed by the manufacturer and implemented;
- (b) maintain all Lifts to a standard complying with the performance standards of the Lift as constructed, taking into account any upgrades and enhancements that have been undertaken; and
- (c) ensure that all statutory obligations for Tests and inspections are undertaken.

#### Reports

The Contractor is required to submit the following regular reports:

- (a) **WHS Management Report** (monthly); and
- (b) **Lift Maintenance Report** (monthly, quarterly, annually),

as further detailed in section 2.11.3.

### 2.2 Principal Owned Components

Where a part is suitable for use in the maintenance works being performed by a Lift Maintenance Contractor then:

- (a) the Contractor is to arrange, or may be required by the Principal to arrange, to acquire the relevant part in accordance with the terms of clause 7.13 of the General Terms; and
- (b) where the Contractor has no planned use for the part in the near future (within 1 month), the Contractor is, upon the Principal's direction, to supply the part to the Lift Maintenance Contractor and notify the Principal accordingly.

At the end of the Contract, any remaining parts will be transferred to the Principal, or a Lift Maintenance Contractor, for the purpose of inventory management, as directed by the Principal in its sole discretion.

### 2.3 Component Register & Risk Analysis

- (a) The purpose of the Lift Component Register is to:
  - (i) record current and accurate information on Lifts;
  - (ii) maintain a current list of Components that require servicing; and
  - (iii) record and update the risk analyses for Lifts and of 'Key Components'.

- (b) A barcode, provided by the Principal, is to be installed by the Contractor for each Lift at ground floor positioned centrally at the top of the door frame. The barcode reference numbers are to be recorded in the Lift Component Register.
- (c) The risk analysis methodology, including Risk Factor Elements, Risks and Key Components is attached as Appendix B-2 to this Schedule. Alternative risk analysis methodologies and risk criteria may be proposed by the Contractor.
- (d) Within the first 3 months after the Date of Contract (except where otherwise agreed by the Principal) the Contractor must:
- (i) validate, i.e. confirm the accuracy of the data or correct / complete the data in, the Lift Component Register for each Property;
  - (ii) install the barcodes; and
  - (iii) assign a 'risk' to Key Components and a 'risk factor' to each Lift utilizing the accepted risk analysis methodology.

- (e) With respect to the register in Appendix B-1 to this Schedule, the fields (columns) requiring validation are:

1) Number of Landings	2) Manufacture
3) Speed	4) Type
5) Lift & Component Upgrade dates	6) Upgraded Components
7) Equipment Type	8) Capacity
9) Barcode	10) Model
11) Occupant Profile (based on Risk advised by the Principal)	12) Parts Availability (based on Contractor assessment)
13) Reliability History (based initially on information provided by Principal and subsequently on Contractor records)	14) Obsolescence, (auto complete based on last upgrade date for component). Information to provide an estimated date of obsolescence
15) Depth of Lift pit	16) Water Ingress (based initially on information provided by the Principal and subsequently on monthly inspections.

- (f) The Contractor must update the Lift Component Register and risk analysis (where applicable) within 30 days after Lift Components are replaced or upgraded or new Components installed. The Contractor must complete all fields for new Lifts and input data into the following fields for new, replaced or upgraded Components:

1) Type of Component	2) Capacity
3) Model	4) Install Date
5) Manufacturer	6) Lift Upgrade date
7) Upgrading Company	8) Parts Availability
9) Component Upgrade dates	

- (g) The Contractor must update, on an on-going basis, the Lift Component Register and risk analysis, in compliance with section 2.5 of this Schedule and at least every 6 months from the Date of Contract. The Contractor must input data into the following fields, as applicable, for all Components:

1) Lift Upgrade date & Company	2) Parts Availability
3) Occupant Profile (if changes advised by Principal)	4) Water Ingress
5) Reliability History	

- (h) The risk analysis determines a Risk Factor for a Lift. The Risk Factor is between 1 and 5. The target Risk Factor is 2.5 or below. Where the Risk Factor is above 3.0, the Contractor must review assessed risks (particularly for the following Risk Factor Elements: 'Reliability History', 'Parts Availability' and 'Obsolescence') and identify risk mitigation strategies to reduce risks and achieve the target Risk Factor. The Contractor must prioritize Lifts with higher Risk Factors. The Contractor must report on progress of risk mitigation strategies in the Quarterly Lift Maintenance Report.

## **2.4 Routine Maintenance Works**

- (a) Primary objectives of the Routine Maintenance Works include;
- (i) maintaining Lifts to reduce the Lift downtime on major services (example-replacement of lifting ropes) being required and/or to extend the service life of Lift through selective replacement of Components; and
  - (ii) identifying and carrying out replacements and repair works before failure.
- (b) Achieving these objectives requires assessments of the risks of failure of Components and the development of a Lift maintenance schedule that takes into account the identified risks.
- (c) Accordingly, the Contractor must:
- (i) record and analyse Lift maintenance data, maintenance and vandalism history, Component and Subcomponent lifecycle, parts availability, maintenance trends, risk and mitigation factors and Testing results;
  - (ii) systemically apply this analysis to planning maintenance, particularly in developing a pro-active approach to component replacement; and
  - (iii) develop the Lift maintenance and Component replacement schedules utilizing this analysis.
- (d) Routine Maintenance Works shall be carried out at monthly intervals for each Lift, unless earlier intervention is warranted. Routine Maintenance Works must be completed within 2 days of either side of the proposed scheduled service day/date (in accordance with clause 7.6(c) of the General Terms, unless the 2 days falls within the next month, in which case servicing must be undertaken within the scheduled month. The plan must include the following:
- (i) comprehensive preventative maintenance and inspections in accordance with any manufacturer's instructions, the Specification, Good Industry Practices, the requirements of Australian Standards, BCA and other relevant regulations;



- (ii) scheduling the replacement of any Components or Subcomponents showing signs of wear and tear that may lead to potential failure within the schedule period in order to minimise the down time due to failure;
- (iii) replacement of Components or Subcomponents as scheduled or where identified as showing signs of wear and tear that may lead to potential failure;
- (iv) replacement of hoisting and governor ropes within 6 months of rust (rouge) starting to show. Note – removal of rust and lubricating the ropes will not be accepted as an alternative to replacement. Note - all hoisting ropes in the set must be replaced even if just 1 rope is rusty;
- (v) maintaining an available local supply of components to ensure required components are readily available to meet the comprehensive maintenance contract terms and conditions;
- (vi) carrying out regular inspections, maintenance, adjustments and lubrication of each Lift in accordance with the maintenance schedule;
- (vii) identifying and carrying out major replacements and repair works;
- (viii) repair of failed Components and Subcomponents where replacement is not feasible;
- (ix) maintenance of lighting in the Lift car, Lift well and machine room and replacing failed lamps or control equipment to ensure that all lights are fully functional;
- (x) maintenance of communication equipment, including Testing of emergency phones at regular inspections and ensuring emergency phone systems are operational;
- (xi) ensuring carrier services are reliable and operational, including:
  - (A) implementing effective alternate arrangements for emergency communications between Lift cars and call centres where services fail, and
  - (B) rectifying, reinstating and/ or replacing failed communication systems as a priority;
- (xii) inspection and Tests on the safety equipment and circuits at the frequency recommended in the relevant manufacturer's specification;
- (xiii) Testing of speed governor, safety gear, machine brake, rope brake, safety switches and door safety circuits;
- (xiv) cleaning of the Lift well, pit and all associated equipment at intervals specified in section 2.6 and in accordance with section 1.2.3;
- (xv) any additional tasks listed in section 2.6;
- (xvi) removal of any water from the Lift well and pit;
- (xvii) the provision of lubricants, hydraulic fluid, lubricants, compounds and cotton waste;
- (xviii) checking door operation and protection;

- (xix) checking car buttons and indicators within the Lift car and repair as required;
  - (xx) checking the stop, alarm, door open and door close buttons;
  - (xxi) checking the emergency car phone and repair as required;
  - (xxii) checking and cleaning door tracks;
  - (xxiii) checking landing buttons and indicators at each floor and repair as required;
  - (xxiv) updating the Lift Component Register after each scheduled maintenance visit;
  - (xxv) checking the load notice;
  - (xxvi) ensuring all Lifts comply with the Performance Criteria in section 2.3; and
  - (xxvii) incorporating the requirements for work performed by third parties.
- (e) The Contractor must load the schedules and Data into the Principal's SUI in order to maintain a detailed record of all planned maintenance tasks undertaken under the Routine Maintenance Works category and submit to the Principal within 3 Months of the Date of Contract.
- (f) The Contractor must maintain and update a detailed record of all planned maintenance tasks and component registers in a consistent format and manage the storage and transfer of Data to SPM Assets in accordance with section 2.

## **2.5 Lift Remote Monitoring**

The obligations set out in this section 2.5 are in addition (and without prejudice) to the Contractor's obligations in relation to the Lift monitoring system set out in clause 7.3 of the General Terms.

All passenger Lifts in the Portfolio are to have the following functions remotely monitored by the Contractor. The monitoring shall include certain Lift functions that shall be stored in a cloud based system via the 4G mobile phone network. The stored information shall be accessible by the Principal 24/7 via a straightforward easily navigable "dashboard" interface. In accordance with clause 7.3 of the General Terms, the monitoring system of each Lift must be installed and implemented by the Contractor so that it interfaces with the Contractor's systems.

The Contractor will ensure that the Principal's access to the monitoring system for each Lift is maintained in accordance with clause 7.3 of the General Terms. This will include (where applicable) the Contractor updating and maintaining the monitoring system as necessary to ensure that it continues to interface correctly with the Contractor's IT systems.

The monitoring is to be at real time and continuous. Any unplanned or extended interruption, excluding cellular network failure, of monitoring shall be a significant KPI breach.

The following functions and operations where available shall be monitored:

- Lift out of service;
- Lift on fire service;
- Alarm button pressed;
- Lift on independent service; and

- Lift on maintenance (this maybe initiated by a switch in the Lift's controller).

The Contractor must also provide all software and hardware necessary for the correct monitoring of the Lifts, including but not limited to, control logic and / or outputs from the existing Lift controllers, wiring, contacts, relays, terminal strips, sim cards, adequate cloud storage space, modem, dashboard, etc.

The Contractor will be responsible for maintaining the monitoring system, SIM card fees and cloud storage costs.

\*Preference shall be given to a non-proprietary monitoring system if at all possible.

The Contractor must provide:

- all connections, wiring, hardware, software, cloud storage for the correct operation of the Lift monitoring;
- dual SIM network connectivity with Telstra and Optus or equivalent other service contractors for a reliable and continuous coverage;
- ensure ACMA compliance approval to Australian Standards and a legal comms device;
- management of the SIM cards;
- battery backup, replacement and monitoring;
- non-proprietary technology if possible;
- monitoring fees (these fees are not aligned with the Contract, i.e. the monitoring can be cancelled without affecting the Lift maintenance service or charges);
- dashboard internet reporting, dashboard app and email alerts; and
- reports as requested by the Principal.

The Contractor acknowledges and agrees that any charges or costs in connection with, or associated to, any Lift monitoring system or Lift monitoring by the Contractor, are included in the Servicing Works Price and no additional amounts shall be chargeable by the Contractor in this regard.

## **2.6 Lift Maintenance Frequencies and Extra Requirements**

The Contractor must carry out the following additional tasks and provide a Test result for each Lift within 10 days of performing Routine Maintenance Works on the relevant Lift and include before and after photos of Defects rectified.

During Routine Maintenance Works the Contractor will need to check and report to ensure critical Components are operating correctly, such critical Components to include (but not be limited to):

- (a) Major Components;
- (b) Lift door scanner;
- (c) Lift doors (and that they are not noisy, slam shut or have excessive gaps);
- (d) Lift floor levelling accurately;

- (e) Lift car position indication;
- (f) Guards are in place in the Lift machine room, pit and car top;
- (g) Lighting in the Lift machine room, car top and car;
- (h) Buttons and fire service key switches (excludes vandalism);
- (i) Excessive noises (governor, brakes, pit equipment, etc.) and Lift car vibrations;
- (j) Excessive oil leaks/spills in the Lift machine room and pit;
- (k) Clean and tidy Lift machine room, car top and pit; and
- (l) No rust on hoisting or governor ropes.

## **2.7 Chargeable Work**

- (a) Chargeable Works do not include:
  - (i) failure of any parts, Components or Subcomponents that was not the direct consequence of wilful damage or water damage;
  - (ii) the repair and replacement of damaged parts, Components or Subcomponents that were scheduled for repair or replacement respectively within 6 months of the damage occurring;
  - (iii) the repair and replacement of damaged parts, Components or Subcomponents where the failure of the relevant parts, Components or Subcomponents could have been avoided by complying with the Contractor's obligations under this Contract; or
  - (iv) the repair and replacement of damaged parts, Components or Subcomponents where there is insufficient evidence that the wilful damage or water damage had occurred prior to the call-out.
- (b) The Contractor is solely responsible for dealing with any possible Chargeable Work:
  - (i) so as to minimise delay;
  - (ii) so as to minimise increased costs; and
  - (iii) without awaiting any direction from the Principal, but must comply with any direction given by the Principal.
- (c) The Contractor must notify the Principal within 2 hours of arriving on site of any work that is deemed to be Chargeable Work. Within 24 hours of arriving on site, the Contractor must provide a preliminary report to the Principal which includes the following:
  - (i) time on site required to rectify the fault; and
  - (ii) materials and time required to procure materials.

Notwithstanding this notification to the Principal and any preliminary report provided, the Principal is not obliged to comment on whether it agrees that the service or work required is Chargeable Work.

- (d) The Contractor must provide the following for all claims associated with Chargeable Work:
  - (i) time of call out;
  - (ii) duration of call out;
  - (iii) a detailed description of the nature of the call out;
  - (iv) a full diagnosis of the fault and why it should be considered as a Chargeable Work;
  - (v) photographic evidence to support the claim, date and time stamped to reflect the time arrived on site; and
  - (vi) if the work is combined with the monthly maintenance, the proportion of the call out that related to Chargeable Work;
- (e) The Principal will determine if the service or work required is Chargeable Work following review of the information required to be provided with the Contractor's claim, subject to the information provided being sufficient to allow a reasonable assessment to be made.

## **2.8 Lift Audits**

At the request of the Principal, the Contractor will schedule and undertake audits of Lift installations (including aspects of the construction of Lift wells / enclosures that affect Lift operation and maintenance) for Lifts that have been recently completed under other contracts. Each audit must be by qualified personnel independent of the Lift company that installed the Lift and include inspections and checks included in section 2.6. The format of the audit report is to be agreed with the Principal.

## **2.9 Quotes**

- (a) Where the Contractor is required to provide a quote to the Principal for the performance of any Maintenance Works under this agreement, the Contractor must include in its quote:
  - (i) a detailed description of the works to be carried out, itemised, including quantities of work and materials required;
  - (ii) where required, the removal and disposal of equipment that is obsolete or no longer required;
  - (iii) a detailed work method statement setting out the Contractor's approach to undertaking the work including minimising disruption to the Tenants;
  - (iv) a detailed works program;
  - (v) any comments relating to the Maintenance Works that the Contractor deems necessary to support the Scope of Work;
  - (vi) a fixed price quotation for the Scope of Work separately identifying the labour and material cost components; and
  - (vii) any other items specified in the General Terms as needing to be included in its quote.
- (b) Materials specified in the Scope of Work must be manufacturer approved unless otherwise agreed by the Principal.

- (c) The Principal may provide a detailed specification for the Contractor to assess and quote.
- (d) The Principal has no obligation to proceed with any quote provided by the Contractor.

## **2.10 Work by Others**

- (a) Where the Principal either:
  - (i) exercises its right pursuant to clause 6.2 of the General Terms and engages a third party to carry out Maintenance Works in respect of a Lift; or
  - (ii) removes a Property from the Contract Area Property List and scope of this Contract pursuant to clause 6.6 of the General Terms,

such that a Lift(s) is removed (whether permanently or on a temporary basis while the relevant Maintenance Works are performed by the third party) from the scope of Maintenance Works to be provided by the Contractor under this Contract, the Contractor agrees that it must promptly advise the Principal of any impact that the Principal's actions under subparagraphs (i) or (ii) above will have on the Annual Program and the Contractor's wider maintenance schedule under the Contract. Any change to the Annual Program or the Contractor's wider maintenance schedule under the Contract will be subject to the Principal's prior written consent.

- (b) Where a Lift:
  - (i) has been removed from the scope of Maintenance Works to be provided by the Contractor under this Contract in accordance with paragraph 2.10(a) above; or
  - (ii) is still subject to a third party's 'Defect Liability Period' (such that responsibility for maintenance of the Lift lies with the relevant third party and not the Contractor during the applicable 'Defect Liability Period'),

the Contractor agrees that if it receives any information (including in relation to any maintenance to be performed under a 'Defect Liability Period') or call relevant to the affected Lift, then it must:

- (iii) promptly provide all such information to both the relevant third party responsible for the affected Lift, and the Principal's nominated contact for the affected Lift (as is specified on the relevant Work Order or notified by the Principal to the Contractor from time to time (and in the event of no such Principal nominated contact being identifiable, to the person identified at Item 18 of Schedule 1 of the Contract)); and
- (iv) immediately relay or forward any call to the relevant third party responsible for the affected Lift, and promptly provide written notification of the call to the Principal's nominated contact for the affected Lift (as is specified on the relevant Work Order or notified by the Principal to the Contractor from time to time (and in the event of no such Principal nominated contact being identifiable, to the person identified at Item 18 of Schedule 1 of the Contract)).

## **2.11 Maintenance Records, Reports & Communications**

### **2.11.1 Annual Safety Inspection Statement**

The Contractor must provide a statement to the Principal to verify that the Lift is safe to operate and to support the SafeWork NSW re-registration of all Lifts in November of each Contract Year

(unless otherwise advised by the Principal), and also within 7 days after a request from the Principal.

The Contractor is to provide plant registration certification and other documentation to the Principal once registration is completed. Any penalties incurred by the Principal due to late submission of Lift registration shall be a debt due and payable from the Contractor to the Principal.

### **2.11.2 Annual Fire Safety Statement**

The Contractor must ensure that the annual assessment of fire safety measures and the confirmation that the relevant Lift is capable of performing to the installed standard of performance of the Lift is carried out by an appropriately qualified person.

The Contractor must provide the necessary data in a timely manner to allow the SFSS Contractor or the RAPM Contractor (as applicable) to submit the AFSS by the due date. The Contractor acknowledges that the Principal may incur a penalty for the late submission of an AFSS. Where the late submission of an AFSS is due to the Contractor's late provision of the necessary Data to either the SFSS Contractor or the RAPM Contractor, the additional cost due to the penalty incurred by the Principal shall be a debt due and payable from the Contractor to the Principal.

The Principal may direct the Contractor to provide Data for other Properties incorporating Lifts for the purpose of an AFSS.

### **2.11.3 Reporting Requirements**

Provide monthly, quarterly and annual Lift Maintenance Reports and monthly WHS Management Reports. The Reports are required to be provided electronically using the excel template provided in Schedule 8 (Reporting Templates). For each Report the Contractor must:

- address the fields identified in the template;
- expand the template to provide the required information and any additional comments;
- use a minimum of font 11 for text;
- add additional information where required elsewhere in the Contract Documents; and
- attach required and supporting attachments, including the updated Lift Component Register.

The Principal may amend the Report template and require additional information, where reasonable to do so, and the Contractor is to comply.

#### **Monthly Lift Maintenance Report**

The Contractor must:

- (a) provide a monthly report 10 Business Days following the end of each Month for all Lifts in each Contract Area;
- (b) complete all fields in the template where not noted as applying to a Quarterly Lift Maintenance Report only; and
- (c) attach the updated Lift Component Register.

#### Quarterly Lift Maintenance Report

The Contractor must:

- (a) provide a quarterly report 5 Business Days following the end of each Quarter;
- (b) complete all fields in the template;
- (c) identify performance trends over the period from the Date of Contract to a limit of 12 months prior to the end of the relevant Quarter; and
- (d) provide comments covering the relevant Quarter.

A League Table may be maintained by the Principal and updated quarterly following the quarterly review meetings to detail and compare the level of performance between each Contract Area.

#### Annual Lift Maintenance Report

The Contractor must provide an annual report 10 Business Days following the end of each Contract Year. This must include a summary of the records provided in Quarterly Lift Maintenance Reports for the relevant Contract Year and:

- (a) an overall summary of Contractor performance;
- (b) performance trends for the Contract Year;
- (c) recommended upgrades based on the trends and risk analysis of Maintenance Works;
- (d) confirmation that all requirements at Law have been met including the completion of the Annual Safety Inspection; and
- (e) the updated Lift Component Register.

#### 2.11.4 Communication Requirements

- (a) The Contractor must develop a **Communications Plan** that incorporates:
  - (i) immediate notification as per clause 2.4 (and otherwise in accordance with the Operational Requirements) where the Contractor becomes aware of any Lift breakdown where the Lift cannot be repaired within approximately 1 hour of arriving at the Site;
  - (ii) prompt notification to Tenants of Lift 'out of service' status in accordance with the procedure detailed below;
  - (iii) prompt notification to the Principal of Lift 'out of service' status, other than for planned maintenance where 'out of service' is less than 2 hrs;
  - (iv) prompt notification to the Principal of a change of 'out of service' status where a longer period of 'out of service' is required or other change of circumstance has occurred (e.g. parts availability);
  - (v) immediate notification to the Principal of a site access issue requiring withdrawal from the Property or where Police or Emergency Services were called;



- (vi) attendance at monthly, quarterly and annual performance review meetings. The monthly review meetings will be used to verify the Contractor's compliance against the KPIs and the Communications Plan and review the status of the Lift Component Register and risk analysis; and
  - (vii) any other required notifications including lost keys, Chargeable Works, Quotable Works, Defects, and site attendance delays.
- (b) The Contractor must submit the Communications Plan within 28 days of the Date of Contract.
- (c) For the purposes of this Schedule, and unless otherwise specified in the Contract Documents:
  - (i) 'timely' notification means notification in writing within 8 hours;
  - (ii) 'prompt' notification means verbal notification within 2 hours and written notification with details of the effect of any change of circumstance within 4 hours;
  - (iii) 'immediate' notification means verbal notification as soon as the referenced circumstances have occurred and written confirmation as soon as possible and within 2 hours.

#### **'Out of Service' Notification**

The Contractor is to display a current 'Out of Service' notice at the location designated by the Principal in the Lift foyer of an out of service Lift (**Notice**).

The Notice is to include those details specified in the template included as Attachment A to Schedule 3 (Operational Requirements) of the Contract. The Contractor is to have sufficient copies to allow an updated Notice to be displayed after each visit. At the initial visit to the Lift site for an 'out of Service Lift' the Contractor is to:

- (a) insert in simple words the main cause of the 'out of service';
- (b) record the date of the visit (day and month; e.g. 23 January); and
- (c) record the expected date for the completion of repairs.

At subsequent site visits for 'out of Service Lift', the Contractor is to:

- (a) replace the Notice with an updated Notice if the Lift repair has not been completed; or
- (b) remove the Notice if the Lift repair has been completed.

The Contractor's obligations in this 'Out of Service' Notification section are in addition (and without prejudice) to the Contractor's obligations set out in section 3.1(c) of Schedule 3 (Operational Requirements) of the Contract.

#### **Note:**

- (a) the Notice must be at least size A3;
- (b) the text of the Notice should not be altered from that set out in Attachment A to Schedule 3 (Operational Requirements) of the Contract;

- (c) the dates and text recorded on the Notice should be neatly written in similar size font – with a ‘medium’ thickness felt pen or if by computer in Ariel 48 pt;
- (d) the Notice should be used where the Lift is only planned to be out of service for a short (less than a day) maintenance period; and
- (e) where the Contractor will return later than 24 hrs after the time indicated on the Notice to complete the repair, the Contractor must arrange for the time on the Notice to be corrected and notify the Principal.

### **3 Definitions**

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#### **3.1 General**

##### **Annual Safety Inspection**

The Annual Safety Inspection is the annual inspection required to all Lifts as described in clause 2.11.1.

##### **Australian Standards**

See Standards.

##### **Communications Plan**

See section 2.11.4.

##### **Component**

A part of a Lift having its own functional identity, and which includes Major Components. Refer to Appendix B-1.

##### **Contractor’s Authorised Person**

The person appointed to act for the Contractor under clause 16 of the General Terms, including as named in Item 3 of Schedule 1 (Contract Details).

##### **Key Components**

Refer to Appendix B-2 to this Schedule 4 (Technical Specification).

##### **LAHC**

New South Wales Land and Housing Corporation (being the Principal under the General Terms).

##### **League Table**

A ranking of Lift Maintenance Contractors based on a set of criteria (such as KPIs).

**Lift Component Register**

See definition of Component Register in the General Terms.

**Lift Maintenance Report**

Monthly Lift Maintenance Report, Quarterly Lift Maintenance Report and Annual Lift Maintenance Report.

**Records**

Includes any and all records, documents or Data related to this Contract or the performance of the Maintenance Works. Records includes information, including phone records, required to verify performance under this Contract.

**Report**

Lift Maintenance Report and WHS Management Report.

**Risk Factor**

Refer to Appendix B-2 to this Schedule 4 (Technical Specification).

**Risk Factor Elements**

Refer to Appendix B-2 to this Schedule 4 (Technical Specification).

**Scope of Work**

A description of work which identifies the work required to be carried out.

**Specification**

The detailed descriptions of Maintenance Works to be provided under this Contract that are set out in this Schedule and any other of the Contract Documents.

**Standards**

Australian Standards, where such exist and are applicable to the Maintenance Works, and includes international standards in the event of the lack of an applicable Australian Standard.

**Subcomponent**

A part of a Component. The repair of a Component may be carried out at a Subcomponent level in order to return to meet the requirements of the Contract.

**Test**

To examine, inspect, measure, prove and trial, including opening up of any part covered up, if necessary; Testing and other derivatives of Test have a corresponding meaning.

## Appendix B-1 - Lift Component Register

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The information contained in the Lift Component Register is provided as a Microsoft Excel PivotTable allowing data summarisation against listed fields.

Refer to section 2.3 for fields that require validation and input.

The Lift Component Register is included separately as an excel-pdf file with the file name: 'Lift Maintenance Services RFT Component Register App B-1'.

## Appendix B-2 – Risk Analysis

### Risk Factor Calculation

#### Method to determination of a Risk Factor for Lift or Key Component

1. Assign a Risk (no. between 1 and 5) to each Risk Factor Element for the Lift or Key Component;
2. Where insufficient information is available to determine a risk for an element, assign the No. 3;
3. Calculate the risk factor by averaging the Risks (nos.);
4. Thus if the assigned risks are 3, 4, 2, 5, 2, 3 & 2, the Risk Factor is: 3.0

### Key Components

The Key Components are:

- Lift Controller
- Lift Drive
- Door Operator
- Motors
- Controller card

### Risk Factor Elements

The Risk Factor Elements are:

<b>TENANT PROFILE</b> (Principal to provide after Awards)	<b>RISK</b>
• Over 50% of Tenants elderly or with mobility impairment	5
• Up to 50% of Tenants elderly or with mobility impairment	4
• History of behavioural issues e.g. vandalism	4
• Up to 25% of Tenants elderly or with mobility impairment	3
• Less than 10% of Tenants elderly or with mobility impairment	2
• Tenant profile would not impact on component	1
<b>NO of LIFTS</b> (auto. calculation of Risk in Register for Lift)	
• 1 Lift serving site	5
• 2 Lifts serving site	2
• 4 Lifts serving site	1
<b>NO of LANDINGS</b> (auto. calculation of Risk in Register for Lift)	
• 10 or more	5
• 5 to 9	4

• 3 to 4	3
• 2	2
<b>PARTS AVAILABILITY</b>	
• Parts availability unknown	5
• Parts not in stock cannot guarantee obtainable within 7 days	5
• Parts not in stock but readily sourced and obtainable within 7 days	4
• Parts not in stock but obtainable within 1 working day	3
• Parts held in LAHC stock	1
<b>RELIABILITY HISTORY</b> (whichever is highest)	
• Averages more than 1 breakdown/ month	5
• If breakdown occurs resulting in Lift shut down component would take longer than 7 days to return to service	5
• If breakdown occurs resulting in Lift 'out of service', component would take longer than 7 days to return to service	4
• If breakdown occurs resulting in Lift 'out of service', component would take up to 7 days to effect repairs and return to service	4
• Lift in operation less than 90% of time	3
• Lift in operation more than 90% of time	2
• If breakdown occurs Lift would be returned to service within 3 days	2
• If breakdown occurs Lift would be returned to service within 1 day	1
<b>OBSOLESCENCE</b> (auto. calculation of Risk in Register for component)	
• 20 years or longer since installation or upgrade of component	5
• 10-20 years since installation or upgrade of component	4
• 5-10 years since installation or upgrade of component	3
• Component installed or upgraded within last 5 years	2
<b>WATER INGRESS RESULTING IN LIFT SHUT DOWN</b>	
• Lifts have been shut down within last 2 years due to water ingress into Lift shaft and pit. No remedial treatment applied.	5
• Lifts have been shut down within last 2 years due to water ingress into Lift shaft and pit. Cause identified and remedial treatment applied by internal water proofing coating to Lift pit only. No subsequent indication of water ingress	4
• Lifts have been shut down within last 2 years due to water ingress into Lift shaft and pit. Cause identified and comprehensive remedial treatment applied. No subsequent indication of water ingress.	2
• Lifts have no shut down within last 2 years due to water ingress into Lift shaft and pit or water ingress problems have been rectified in last year.	1

## Schedule 8 (Reporting Templates)

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**Annexure A – Monthly Performance Meeting Template**

**Annexure B – Condition Rating Template**

## Annexure A – Monthly Performance Meeting Template

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Annexure A



AHC Monthly Performance Meeting Template		PERFORMANCE			
Responsive Services: Performance Issues:					
Routine Maintenance : Performance Issues:					
Chargeable Works: Performance Issues:					
	KPI	No.	KPI Measure	Performance Indicator and Logic	Minimum Performance Level
1	1a. Service Timeliness - Entrapment		1.1 (KPI 1.1) Responses for breakdowns with passengers	Contractor responds and attends breakdowns with passengers trapped in lift	100%
	1b. Service Timeliness - Other Timeliness		1.2 (KPI 1.2) Responses for breakdown without passengers	Contractor responds and attends to lift breakdowns	95%
			1.3 (KPI 1.3) Minimum operating time	Contractor achieves the minimum required operating time for each lift	95%
2	Work Order Timeliness		2.1 (KPI 2.1) Scopes and quotes submitted by due date	Contractor submitted scope and quote requests	95%
			2.2 (KPI 2.2) Work completed by due date	Contractor completes quoted and responsive work	95%
			2.3 (KPI 2.3) Overdue Work completed by end of the reporting month	Contractor submits scope of work and/or completes overdue quoted and responsive work	100%
3	Governance		3.1 (KPI 3.1) Principal notices actioned within timeframe	Contractor resolves Principal notices within required timeframes	95%
			3.2 (KPI 3.2) Scheduled tasks completed on time	Contractor undertakes all scheduled tasks for Planned Services incl. updating Component Register within task due dates	95%
			3.3 (KPI 3.3) Services undertaken to required level of quality	Contractor meets quality requirements of services provided	95%
Monthly Review		Calculated KPI %			
1.1					
1.2					
1.3					
2.1					
2.2					
2.3					
3.1					
3.2					
3.3					
Monthly Performance Score (MPS)					
Quarterly Review		KPI Trend Review (expand or attach details)			
(Quarter means Contract Quarter)		Calculated KPI Performance Level for Contract Quarter	Review/ Comments	trend %	Improvement Recommendations
MPS for 1st Contract Month in Quarter					
MPS for 2nd Contract Month in Quarter					
MPS for 3rd Contract Month in Quarter					
Average Performance Score (APS) for Quarter					
Abatement for Quarter (%)					
Abatement for Quarter (\$)					

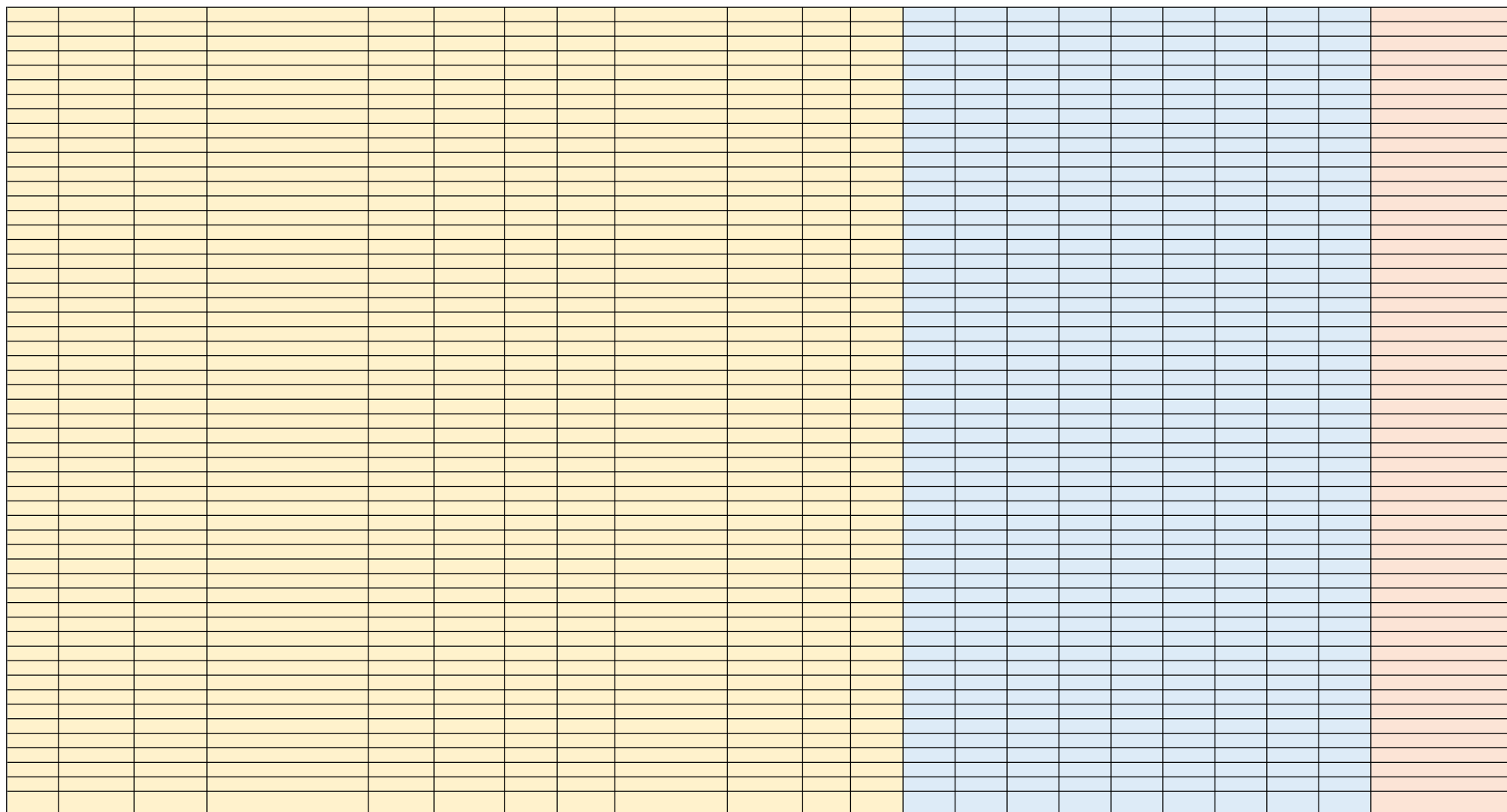
KPI	KPI Measure	Indicator	Target
KPI-1.1	Response is for breakdown	Contractor responds and attends breakdowns with passengers trapped in lift	100%
KPI-1.2	Response is for breakdown	Contractor responds and attends to lift breakdowns	95%
KPI-1.3	Minimum operating time	Contractor achieves the minimum required operating time for each lift	95%
KPI-2.1	(KPI 2.1) Scopes and quotes	Contractor submitted scope and quote requests	95%
KPI-2.2	(KPI 2.2) Work complete	Contractor completes quoted and responsive work	95%
KPI-6	Undertake all scheduled tasks for Planned Services incl. updating Component Register	Percentage of scheduled tasks completed	95%
KPI-7	Percentage of scheduled tasks completed	Percentage of scheduled tasks completed	95%

# Annexure B – Condition Rating Template

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[illegible]



## Schedule 9 (Communication Requirements)

Topic	Clause Name	Contract Document	Clause / Section	Type of Communication	SUI	Email
<b>Continuous Improvement</b>	Continuous Improvement	General Terms	2.2	Written report of continuous improvement activities	<input type="checkbox"/>	<input checked="" type="checkbox"/>
<b>Transition-In</b>	Access Keys	General Terms	3.2(a)	Principal's provision of key registers (where applicable)	<input type="checkbox"/>	<input checked="" type="checkbox"/>
	Access Keys	General Terms	3.2(c)	Contractor's notice of missing keys	<input type="checkbox"/>	<input checked="" type="checkbox"/>
	Transition In Activities	General Terms	3.3(a)	Principal's notice of 'start up' workshop	<input type="checkbox"/>	<input checked="" type="checkbox"/>
	Safe Work Method Statements	General Terms	3.4(a)	Contractor's initial provision of 'safe work method statements'	<input type="checkbox"/>	<input checked="" type="checkbox"/>
	Safe Work Method Statements	General Terms	3.4(b)	Contractor's provision of updated 'safe work method statements' during the Term	<input type="checkbox"/>	<input checked="" type="checkbox"/>
	Transfer of Spare Parts	General Terms	3.5(a)	Principal's provision of Transfer List	<input type="checkbox"/>	<input checked="" type="checkbox"/>
	Transfer of Spare Parts	General Terms	3.5(b)	Contractor's liaison with the Principal regarding previous contractors	<input type="checkbox"/>	<input checked="" type="checkbox"/>
	Transfer of Spare Parts	General Terms	3.5(c)	Contractor's notice of unavailable and unsuitable spare parts	<input type="checkbox"/>	<input checked="" type="checkbox"/>
<b>SUI</b>	SUI Availability	General Terms	4.2(a)	Principal's notice that SUI is available	<input type="checkbox"/>	<input checked="" type="checkbox"/>

**NSW Land and Housing Corporation**  
**Lift Maintenance Contract**  
**Schedule 9 (Communication Requirements)**

Topic	Clause Name	Contract Document	Clause / Section	Type of Communication	SUI	Email
	SUI Availability	General Terms	4.2(b)	Principal's notice requiring Contractor to attend 'SUI startup' workshop	<input type="checkbox"/>	<input checked="" type="checkbox"/>
<b>Contract Extension</b>	Extension to Term	General Terms	5.3(a), 5.3(b), 5.3(c)	Notice from the Principal of extension of Contract Term	<input type="checkbox"/>	<input checked="" type="checkbox"/>
<b>Contract Areas</b>	Composition of Contract Areas	General Terms	6.4(b)	Notice from the Principal of change of Contract Area Property List	<input type="checkbox"/>	<input checked="" type="checkbox"/>
	Rectification of defective or incomplete work	General Terms	6.5	Direction to the Contractor to rectify a defect or incomplete works in an Alternative Contract Area	<input checked="" type="checkbox"/>	<input type="checkbox"/>
	Removal or Addition of Properties	General Terms	6.6(a)	Principal's notice of changes to Properties in Contract Area	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>
	Removal or Addition of Properties	General Terms	6.6(d)	Principal's provision of updated Contract Area Property List	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>
<b>Maintenance Works</b>	Lift Monitoring Changeover	General Terms	7.3(b), 7.3(c)	Contractor's provision of schedule for installation of lift monitoring system, and subsequent exchanges between the parties	<input type="checkbox"/>	<input checked="" type="checkbox"/>
	Lift Monitoring Changeover	General Terms	7.3(d)	Principal's direction as to the manner of access to the Lift monitoring systems	<input type="checkbox"/>	<input checked="" type="checkbox"/>
	Annual Program – Submission	General Terms	7.4	Contractor's provision of draft Annual Program, and subsequent exchanges between the parties	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>
	Routine Maintenance Work	General Terms	7.6(b)	Contractor's provision of updated component codes in the SUI	<input checked="" type="checkbox"/>	<input type="checkbox"/>

**NSW Land and Housing Corporation**  
**Lift Maintenance Contract**  
**Schedule 9 (Communication Requirements)**

Topic	Clause Name	Contract Document	Clause / Section	Type of Communication	SUI	Email
	Responsive Work	General Terms	7.7(a), 7.7(b), 7.7(c)	Contractor notified of Alarm, Entrapment Event or Outage (in addition to notification via the relevant Lift monitoring system)	<input checked="" type="checkbox"/>	<input type="checkbox"/>
	Responsive Work	General Terms	7.7(d)	Contractor's receipt of a Work Order for Responsive Works	<input checked="" type="checkbox"/>	<input type="checkbox"/>
	Chargeable Works	General Terms	7.10(b)	Contractor's provision of evidence of Chargeable Works	<input checked="" type="checkbox"/>	<input type="checkbox"/>
	Chargeable Works, Quotable Works Quotation	General Terms	7.10(c), 7.11(f)	Principal issues a Work Order for Chargeable Works or Quotable Works	<input checked="" type="checkbox"/>	<input type="checkbox"/>
	Quotable Works Quotation	General Terms	7.11	Principal's request for a quote for Quotable Works, and subsequent exchanges between the parties (including provision of quotation and related information by Contractor)	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>
	Quotable Works Quotation	General Terms	7.11(g)	Principal's notification to Contractor that Tenants may be affected by Quotable Works	<input type="checkbox"/>	<input checked="" type="checkbox"/>
	Quotable Works Quotation	General Terms	7.11(h)	Principal's demand for the payment of liquidated damages	<input checked="" type="checkbox"/>	<input type="checkbox"/>
	AFSS	General Terms	7.12	SFSS Contractor or RAPM Contractor contact with Contractor regarding fire safety statements, and subsequent exchanges between the parties	<input type="checkbox"/>	<input checked="" type="checkbox"/>
	AFSS	Schedule 4 (Technical Specification)	S 2.11.2	Provision of necessary data in timely manner to allow SFSS	<input type="checkbox"/>	<input checked="" type="checkbox"/>

**NSW Land and Housing Corporation**  
**Lift Maintenance Contract**  
**Schedule 9 (Communication Requirements)**

Topic	Clause Name	Contract Document	Clause / Section	Type of Communication	SUI	Email
				Contractor or RAPM Contractor to submit AFSS by due date		
	Spare Parts	General Terms	7.13(b)	Contractor's provision of written evidence demonstrating relevant order for procurement of replacement parts	<input type="checkbox"/>	<input checked="" type="checkbox"/>
	Spare Parts	General Terms	7.13(c)	Principal's notice and issuance of amended Spare Parts List	<input type="checkbox"/>	<input checked="" type="checkbox"/>
	Communication	General Terms	7.14(c)	Direction by Principal due to the SUI becoming unavailable	<input type="checkbox"/>	<input checked="" type="checkbox"/>
	Issuing Work Orders	General Terms	7.15(b), 7.15(c)	Principal's issuance of Work Orders	<input checked="" type="checkbox"/>	<input type="checkbox"/>
	Issuing Work Orders	General Terms	7.15(h)	Principal cancelling or varying any aspect of a Work Order	<input checked="" type="checkbox"/>	<input type="checkbox"/>
<b>Time</b>	Work Order Extension	General Terms	7.16(a)(iv)	Contractor's notice of delay and extension of time claim	<input checked="" type="checkbox"/>	<input type="checkbox"/>
		General Terms	7.16(a)	The Principal's determination of an extension of time claim for a Work Order	<input checked="" type="checkbox"/>	<input type="checkbox"/>
		General Terms	7.16(c)-(d)	The Principal exercising its discretion to extend time for a Work Order	<input checked="" type="checkbox"/>	<input type="checkbox"/>
<b>SoR</b>	Amendment of SoR	General Terms	7.19(a)	Principal's notice of additional Chargeable Rate	<input checked="" type="checkbox"/>	<input type="checkbox"/>
<b>Communication and Information Technology Requirements</b>	Single User Interface (SUI) and IT Requirements	General Terms	8.1(c)	Contractor's notice of change in IT configuration option, and subsequent exchanges between the parties	<input type="checkbox"/>	<input checked="" type="checkbox"/>



**NSW Land and Housing Corporation**  
**Lift Maintenance Contract**  
**Schedule 9 (Communication Requirements)**

Topic	Clause Name	Contract Document	Clause / Section	Type of Communication	SUI	Email
<b>Fees</b>	Revision of Servicing Fee	General Terms	9.5(b), 9.5(d)	Contractor's proposal of revised Servicing Works Price, and subsequent exchanges between the parties	<input type="checkbox"/>	<input checked="" type="checkbox"/>
	Revision of Servicing Fee	General Terms	9.5(e)	Principal's notification to the Contractor that it accepts the Contractor's proposal of a revised Servicing Works Price	<input type="checkbox"/>	<input checked="" type="checkbox"/>
	Revision of Servicing Fee	General Terms	9.5(f)	Principal's notification to the Contractor that it does not accept the Contractor's proposal of a revised Servicing Works Price	<input type="checkbox"/>	<input checked="" type="checkbox"/>
	Independent determination	General Terms	9.6	Either party's referral to independent determination	<input type="checkbox"/>	<input checked="" type="checkbox"/>
<b>Payment Process</b>	Invoicing Methodology	General Terms	10.2(c)	Principal's notice of invoicing methodology selection change	<input type="checkbox"/>	<input checked="" type="checkbox"/>
	Contractor Invoices	General Terms	10.3(a)	Contractor Invoices for Chargeable Works, the Servicing Works Price, and Quotable Works (if applicable)	<input checked="" type="checkbox"/>	<input type="checkbox"/>
	Contractor Invoices	General Terms	10.3(c)	Request by the Principal for further information regarding any Contractor Invoice	<input checked="" type="checkbox"/>	<input type="checkbox"/>
	Contractor Invoices	General Terms	10.3(c)	Provision of further information by the Contractor in response to a request by the Principal	<input checked="" type="checkbox"/>	<input type="checkbox"/>
	Payment of Contractor Invoices	General Terms	10.4(a)	The Principal's rejection of Contractor Invoices	<input checked="" type="checkbox"/>	<input type="checkbox"/>

**NSW Land and Housing Corporation**  
**Lift Maintenance Contract**  
**Schedule 9 (Communication Requirements)**

Topic	Clause Name	Contract Document	Clause / Section	Type of Communication	SUI	Email
	RCTIs	General Terms	10.5(a), 10.5(b)	Contractor's provision of information to enable Principal to raise RCTI	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>
	RCTIs	General Terms	10.5(b)	Principal's request for further information in relation to RCTI	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>
	RCTIs	General Terms	10.5(d)	Principal's issuance of RCTI	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>
	Payment on Account	General Terms	10.7(c)	Principal's notice to recover amounts from Contractor	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>
	Set off	General Terms	10.8	Notice of set off	<input checked="" type="checkbox"/>	<input type="checkbox"/>
	Security of Payment Act	General Terms	10.9	Contractor providing a copy of any notice it receives from a Subcontractor under the Security of Payment Act	<input checked="" type="checkbox"/>	<input type="checkbox"/>
	Statutory Declaration	General Terms	10.10	Contractor's statutory declaration (provided once per month)	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>
	Bank Guarantee Replacement	General Terms	11.3	The Contractor's notification regarding a replacement bank guarantee	<input type="checkbox"/>	<input checked="" type="checkbox"/>
	Principal GST warranties	General Terms	32.5(a), 32.5(d)	Principal's notification that it is no longer Registered, or if it is of the view that requirements of GST Law, the Determination, or the Ruling have not been complied with	<input type="checkbox"/>	<input checked="" type="checkbox"/>
<b>Non-conformance Notices</b>	Non-conformance Notices	General Terms	13.1(a)	The Principal issuing a Non-conformance Notice	<input checked="" type="checkbox"/>	<input type="checkbox"/>
	Non-conformance Notices	General Terms	13.1(c)	Contractor's notification that it has remedied an NCN and Contractor's notice demonstrating	<input checked="" type="checkbox"/>	<input type="checkbox"/>

**NSW Land and Housing Corporation**  
**Lift Maintenance Contract**  
**Schedule 9 (Communication Requirements)**

Topic	Clause Name	Contract Document	Clause / Section	Type of Communication	SUI	Email
				how Contractor will comply with an NCN and ensure that the Contractor will not commit the same non-conformance moving forward		
<b>Audits and Investigations</b>	Audits	General Terms	13.3	The Principal's notice requiring an audit	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>
	Audits	General Terms	13.3(b)(vii)	Provision by the Contractor of a cure plan	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>
	Other investigations	General Terms	13.4	The Principal's notice requiring the Contractor to assist with or provide information relevant to an investigation	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>
	Other investigations	General Terms	13.4	Provision by the Contractor of documents and information relevant to an investigation	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>
	Records Retention	General Terms	13.6	Principal's notice to dispose of or hand over documents/records	<input type="checkbox"/>	<input checked="" type="checkbox"/>
<b>Plans, Reports and Meetings</b>	General	General Terms	14.1	Provision by the Contractor of Deliverables and other plans and reports requested	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>
	Reports	General Terms	14.2(a)	Contractor's regular reports (as directed by the Principal)	<input checked="" type="checkbox"/>	<input type="checkbox"/>
	Contractor Plans, Policies and Procedures	General Terms	14.3	Contractor's Plans, Policies and Procedures (including ongoing updated whenever such documents are revised and updated)	<input type="checkbox"/>	<input checked="" type="checkbox"/>

**NSW Land and Housing Corporation**  
**Lift Maintenance Contract**  
**Schedule 9 (Communication Requirements)**

Topic	Clause Name	Contract Document	Clause / Section	Type of Communication	SUI	Email
	Meetings	General Terms	14.6(b)	Provision of meeting agendas and meeting minutes to meeting attendees	<input type="checkbox"/>	<input checked="" type="checkbox"/>
	Reviews	General Terms	14.7	Principal's periodical reviews and agenda for such periodical reviews	<input type="checkbox"/>	<input checked="" type="checkbox"/>
	Briefings	General Terms	14.8	Contractor's provision of briefings on the Maintenance Works	<input type="checkbox"/>	<input checked="" type="checkbox"/>
	Reporting Requirements	Schedule 4 (Technical Specification)	S 2.11.3	Contractor's provision of Lift Maintenance Reports (on a monthly, quarterly and annual basis) and WHS Management Reports	<input checked="" type="checkbox"/>	<input type="checkbox"/>
	Communication Plan	Schedule 4 (Technical Specification)	S 2.11.4	Contractor's submission of Communication Plan within 28 days of Date of Contract	<input type="checkbox"/>	<input checked="" type="checkbox"/>
<b>Subcontractors and Personnel</b>	Subcontractors	General Terms	15.3(c)(ii)	Contractor's evidence that a Subcontractor holds appropriate and required licences and accreditations	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>
	Organisation and Personnel	General Terms	17.2	Contractor's organisational chart for the Principal's approval and notices from the Contractor seeking approval for amendments to the organisational chart	<input type="checkbox"/>	<input checked="" type="checkbox"/>
	Key Personnel	General Terms	17.4(c)	Contractor's notice, and Principal response, in relation to the proposed removal of any Key Personnel	<input type="checkbox"/>	<input checked="" type="checkbox"/>

**NSW Land and Housing Corporation**  
**Lift Maintenance Contract**  
**Schedule 9 (Communication Requirements)**

Topic	Clause Name	Contract Document	Clause / Section	Type of Communication	SUI	Email
	Replacement of persons	General Terms	17.5(a)	The Principal's direction to remove any person engaged in the performance of the Maintenance Works	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>
<b>Warranties and standards of Maintenance Works</b>	Disclosure	General Terms	18.3	Contractor's notice that it is aware of an event or circumstances which is inconsistent with any warranties provided	<input type="checkbox"/>	<input checked="" type="checkbox"/>
	Warranty of Equipment and Workmanship	General Terms	18.6(b)	Contractor's provision of Warranties in relation to the Maintenance Works and any Equipment	<input checked="" type="checkbox"/>	<input type="checkbox"/>
	Interface with Tenants	General Terms	18.8(c)	Contractor's notice of breach of potential breach of Tenant interface requirements in clause 18.8(a)	<input type="checkbox"/>	<input checked="" type="checkbox"/>
<b>Defects</b>	Contractor to rectify	General Terms	19.1(b)	The Principal's Defect Notice	<input checked="" type="checkbox"/>	<input type="checkbox"/>
	Notice of rectification	Schedule 3 (Operational Requirements)	S 7.1(d)	Contractor's notice of completion of Maintenance Works following receipt of a Defect Notice or Follow Up Notice	<input checked="" type="checkbox"/>	<input type="checkbox"/>
<b>Indemnities and Insurance</b>	Indemnification procedures	General Terms	21.2(a)	The Principal's notice of enforcement of an indemnity	<input checked="" type="checkbox"/>	<input type="checkbox"/>
	Obligation on Contractor	General Terms	22.3(b)	Contractor's provision of evidence of currency of required insurances and clause 22 compliance	<input type="checkbox"/>	<input checked="" type="checkbox"/>
	General Obligations	General Terms	22.7(a)(iii)	Contractor's notice to Principal of any event that may prejudice any	<input type="checkbox"/>	<input checked="" type="checkbox"/>

**NSW Land and Housing Corporation**  
**Lift Maintenance Contract**  
**Schedule 9 (Communication Requirements)**

Topic	Clause Name	Contract Document	Clause / Section	Type of Communication	SUI	Email
				insurance the Principal has taken out		
	General Obligations	General Terms	22.7(b)(v)	Contractor's notice to Principal of any event that may result in Contractor's insurance lapsing or being cancelled	<input type="checkbox"/>	<input checked="" type="checkbox"/>
<b>Force Majeure and Suspension</b>	Notification of Event of Force Majeure	General Terms	23.2(a)	Either party's notice that it is affected by a Force Majeure Event	<input type="checkbox"/>	<input checked="" type="checkbox"/>
	Suspension by the Principal	General Terms	24.1(a)	The Principal's notice of suspension	<input checked="" type="checkbox"/>	<input type="checkbox"/>
	Resumption of Maintenance Works	General Terms	24.2(a)	The Principal's notice of resumption of Maintenance Works following a suspension	<input checked="" type="checkbox"/>	<input type="checkbox"/>
<b>Privacy, publicity and GIPA</b>	Publicity and media release	General Terms	26.3(b)	Contractor's draft media release and publicity communication	<input type="checkbox"/>	<input checked="" type="checkbox"/>
	General Privacy Obligations	General Terms	27.2(e)	Contractor's notification regarding Personal Information	<input type="checkbox"/>	<input checked="" type="checkbox"/>
	General Privacy Obligations	General Terms	27.2(f)	The Principal's directions regarding collection and use of Personal Information	<input type="checkbox"/>	<input checked="" type="checkbox"/>
	Consents	General Terms	27.3(b)(ii)	Contractor's provision of its privacy policy and associated collection statements	<input type="checkbox"/>	<input checked="" type="checkbox"/>
	Access to Information	General Terms	28.2(a)	The Principal's direction requiring access to Contractor's information	<input type="checkbox"/>	<input checked="" type="checkbox"/>
	Consultation	General Terms	28.3(b)	Contractor's provision of any objection to disclosure under the GIPA Act	<input type="checkbox"/>	<input checked="" type="checkbox"/>

**NSW Land and Housing Corporation**  
**Lift Maintenance Contract**  
**Schedule 9 (Communication Requirements)**

Topic	Clause Name	Contract Document	Clause / Section	Type of Communication	SUI	Email
	Consultation	General Terms	28.3(d)	Principal's notice of its decision to release information and of the Contractor's right to review the decision	<input type="checkbox"/>	<input checked="" type="checkbox"/>
<b>Statutory Requirements</b>	Permits	General Terms	29.2(a)(iv)	Contractor's notice of non-compliance with a Permit	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>
	Change in Law	General Terms	29.3(b)	Contractor's notice of a Qualifying Change in Law	<input type="checkbox"/>	<input checked="" type="checkbox"/>
	Change in Law	General Terms	29.3(c)	The Principal's direction regarding Qualifying Change in Law	<input type="checkbox"/>	<input checked="" type="checkbox"/>
	Industrial Relations	General Terms	22.4(b)	Contractor's notification of its awareness of Industrial Matter and any corresponding Principal direction in relation to that Industrial Matter	<input type="checkbox"/>	<input checked="" type="checkbox"/>
	Work, health, safety and the Environment	General Terms	29.5(c), (d) and (e)	Contractor's notification of an incident, Contractor's provision of information in relation to an incident and the Principal's directions in relation to an incident	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>
	Hazardous Substances	General Terms	29.7(a)(vi)	Contractor's notification in connection with any event relating to the Environment (including incidents and potential breaches)	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>
	Notification	General Terms	29.8	Contractor's notification of any breach, infringement or event regarding Work Health and Safety Requirements	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>

**NSW Land and Housing Corporation**  
**Lift Maintenance Contract**  
**Schedule 9 (Communication Requirements)**

Topic	Clause Name	Contract Document	Clause / Section	Type of Communication	SUI	Email
	Conflicts of Interest	General Terms	29.10(b)	Contractor's notification regarding potential conflict of interest	<input type="checkbox"/>	<input checked="" type="checkbox"/>
	Social Obligations	General Terms	30.2(b)	Principal's notice of change in any targets regarding Contractor's social obligations	<input type="checkbox"/>	<input checked="" type="checkbox"/>
<b>Termination and Show Cause</b>	Termination	General Terms	33	<ul style="list-style-type: none"> <li>The Principal's termination notices (whether for breach or for convenience);</li> <li>The Principal's 'show cause' notice;</li> <li>Contractor's response to a show cause notice;</li> <li>Contractor's termination notice (for the Principal's breach)</li> </ul>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
<b>Transition Out</b>	Transition Out	General Terms	33.10(a) and (c)	<ul style="list-style-type: none"> <li>The Principal's direction for the Contractor to provide a Transition Out Plan;</li> <li>Contractor's provision of the Transition Out Plan</li> </ul>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
<b>Site based interactions</b>	Routine Maintenance Works	Schedule 3 (Operational Requirements)	S 1.1(d)	Contractor's notification it has been unable to perform Routine Maintenance Works due to availability of Equipment (including affected aspects of the Routine Maintenance Works and earliest revised date for completion)	<input checked="" type="checkbox"/>	<input type="checkbox"/>
	Routine Maintenance Works	Schedule 3 (Operational Requirements)	S 1.1(e)	Contractor's notification that it has completed the Routine Maintenance Works (including updating the Work Order, and	<input checked="" type="checkbox"/>	<input type="checkbox"/>



**NSW Land and Housing Corporation**  
**Lift Maintenance Contract**  
**Schedule 9 (Communication Requirements)**

Topic	Clause Name	Contract Document	Clause / Section	Type of Communication	SUI	Email
				completing the Routine Maintenance Works Completion Checklist)		
	Routine Maintenance Work	Schedule 3 (Operational Requirements)	S 1.1(f)	Contractor's provision to Principal of evidence of performance of Maintenance Works	<input checked="" type="checkbox"/>	<input type="checkbox"/>
	Responsive Works	Schedule 3 (Operational Requirements)	S 1.2(a)(iii)	Contractor's notice of Alarm or Entrapment Event (in addition to notification via the relevant Lift monitoring system)	<input type="checkbox"/>	<input checked="" type="checkbox"/>
	Responsive Works	Schedule 3 (Operational Requirements)	S 1.2(a)(vii)	Contractor's notice that it was unable to restore Lift (including affected aspects of Lift that could not be restored and earliest date it could restore the Lift) (in addition to notification via the relevant Lift monitoring system)	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>
	Responsive Works	Schedule 3 (Operational Requirements)	S 1.2(a)(viii)	Contractor's notice of cause of Alarm or Entrapment Event (in addition to notification via the relevant Lift monitoring system)	<input checked="" type="checkbox"/>	<input type="checkbox"/>
	Responsive Works	Schedule 3 (Operational Requirements)	S 1.2(a)(ix)	Contractor's notice of timing relating to Responsive Works	<input checked="" type="checkbox"/>	<input type="checkbox"/>
	Responsive Works	Schedule 3 (Operational Requirements)	S 1.2(b)(i), (iii), (iv), (v)	Contractor's notices regarding Outages (occurrence, arrival at Property, resolution / non-resolution, cause of Outage)	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>
	Chargeable Works	Schedule 3 (Operational Requirements)	S 1.3(a)	Contractor's notices regarding Chargeable Works (occurrence, arrival at Property, completion)	<input checked="" type="checkbox"/>	<input type="checkbox"/>

**NSW Land and Housing Corporation**  
**Lift Maintenance Contract**  
**Schedule 9 (Communication Requirements)**

Topic	Clause Name	Contract Document	Clause / Section	Type of Communication	SUI	Email
	Chargeable Works	Schedule 4 (Technical Specification)	S 2.7(c)	Contractor's notification of arrival on site and provision of preliminary report	<input checked="" type="checkbox"/>	<input type="checkbox"/>
	Chargeable Works	Schedule 3 (Operational Requirements)	S 1.3(a)(v)	Contractor's provision of evidence regarding Chargeable Works performed	<input checked="" type="checkbox"/>	<input type="checkbox"/>
	Chargeable Works	Schedule 3 (Operational Requirements)	S 1.3(c)(i)	Contractor's provision of evidence of need for Additions	<input checked="" type="checkbox"/>	<input type="checkbox"/>
	Chargeable Works	Schedule 3 (Operational Requirements)	S 1.3(c)(ii)	Contractor's notice of need for Additions	<input checked="" type="checkbox"/>	<input type="checkbox"/>
	Chargeable Works	Schedule 3 (Operational Requirements)	S 1.3(c)(iii)	Principal's directions relating to Additions	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>
	Chargeable Works	Schedule 3 (Operational Requirements)	S 1.3(c)(iv), 1.3(c)(v)	Contractor's provision of evidence of performance of Additions	<input checked="" type="checkbox"/>	<input type="checkbox"/>
	Replacement of parts and components	Schedule 3 (Operational Requirements)	S 1.5	Contractor's notification of need for Major Component replacement and completion of installation of replacement Major Component	<input checked="" type="checkbox"/>	<input type="checkbox"/>
	Notice of Disruption	Schedule 3 (Operational Requirements)	S 3.1	Contractor's notice of unavailable Lifts, and subsequent exchanges between the parties	<input checked="" type="checkbox"/>	<input type="checkbox"/>
	Identifying the need for other maintenance	Schedule 3 (Operational Requirements)	S 3.4(a)	Contractor's notice and provision of evidence identifying additional maintenance	<input checked="" type="checkbox"/>	<input type="checkbox"/>

**NSW Land and Housing Corporation**  
**Lift Maintenance Contract**  
**Schedule 9 (Communication Requirements)**

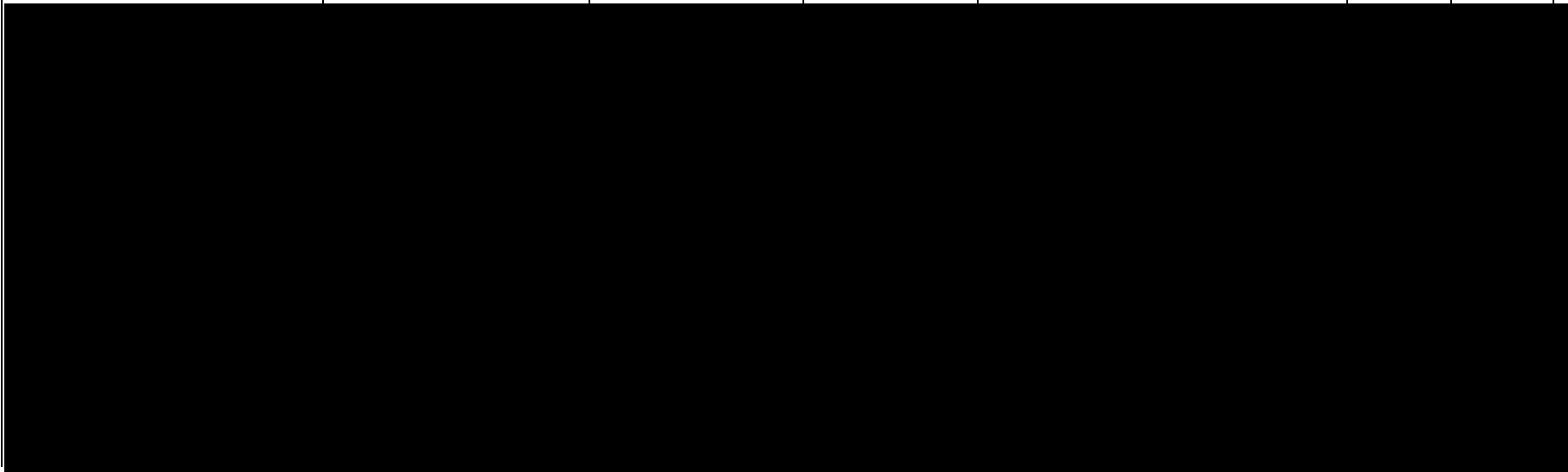
Topic	Clause Name	Contract Document	Clause / Section	Type of Communication	SUI	Email
	Utility Outages	Schedule 3 (Operational Requirements)	S 3.5	Contractor's notice to Principal of any utility outages	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>
	Contractor's Equipment	Schedule 3 (Operational Requirements)	S 3.6(b)	Contractor's provision of information and documentation relating to specialised equipment	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>
	Replacement	Schedule 3 (Operational Requirements)	S 3.7	Contractor's report regarding replacement of faulty Major Component / system	<input checked="" type="checkbox"/>	<input type="checkbox"/>
	No Obstruction	Schedule 3 (Operational Requirements)	S 3.12	Contractor's notice to Principal regarding non-performance of Maintenance Works due to blocking property access, and subsequent exchanges between the parties	<input checked="" type="checkbox"/>	<input type="checkbox"/>
	Cause of Maintenance Works	Schedule 3 (Operational Requirements)	S 3.13	Contractor's notice and provision of information of third party causes of Maintenance Works	<input checked="" type="checkbox"/>	<input type="checkbox"/>
	Identification of other issues	Schedule 3 (Operational Requirements)	S 3.14	Contractor's notice and provision of information of other issues on Site	<input checked="" type="checkbox"/>	<input type="checkbox"/>
	Notification	Schedule 3 (Operational Requirements)	S 4.1	Notification by the Contractor of any incident at a Site and provision of subsequent documents	<input checked="" type="checkbox"/>	<input type="checkbox"/>
	Investigation	Schedule 3 (Operational Requirements)	S 4.2	Contractor's provision of documents produced during an investigation	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>

**NSW Land and Housing Corporation**  
**Lift Maintenance Contract**  
**Schedule 9 (Communication Requirements)**

Topic	Clause Name	Contract Document	Clause / Section	Type of Communication	SUI	Email
	Observation Notices	Schedule 3 (Operational Requirements)	S 6.2	Principal's issuance of Observation Notice	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>
	Participation during Principal's Inspections	Schedule 3 (Operational Requirements)	S 6.3	Direction by the Principal to attend an inspection of a Property	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>
	Annual Safety Inspection Statement	Schedule 4 (Technical Specification)	S 2.11.1	Contractor's provision of safety inspection statement to Principal	<input type="checkbox"/>	<input checked="" type="checkbox"/>
<b>Evidence of Works</b>	Documentation	Schedule 3 (Operational Requirements)	S 5.1(c)	Contractor's provision of documentation for materials used and, upon request, operational manuals and drawings	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>
	Documentation, Retention	Schedule 3 (Operational Requirements)	S 5.1(d), 5.2	Contractor's provision of information substantiating performance of Maintenance Works	<input checked="" type="checkbox"/>	<input type="checkbox"/>
	Performance	Schedule 3 (Operational Requirements)	S 7.1(d)	Notification by Contractor of completion of Maintenance Works the subject of Defect Notice	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>
	Performance	Schedule 3 (Operational Requirements)	S 7.1(e)	Submission by the Contractor of evidence of its completion of Maintenance Works the subject of Defect Notice	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>
	Routine Maintenance Works	Schedule 4 (Technical Specification)	S 2.4(e)	Upload by Contractor of all Data relating to all planned maintenance tasks within 3 months of Date of Contract	<input type="checkbox"/>	<input checked="" type="checkbox"/>

**NSW Land and Housing Corporation**  
**Lift Maintenance Contract**  
**Schedule 9 (Communication Requirements)**

Topic	Clause Name	Contract Document	Clause / Section	Type of Communication	SUI	Email
	Lift Maintenance Frequencies and Extra Requirements	Schedule 4 (Technical Specification)	S 2.6	Provision of Test results for each Lift following performance of Routine Maintenance Works	<input type="checkbox"/>	<input checked="" type="checkbox"/>
	Lift Audits	Schedule 4 (Technical Specification)	S 2.8	Principal's request for Contractor to schedule and undertake audits of Lift installations	<input type="checkbox"/>	<input checked="" type="checkbox"/>
	Work by Others	Schedule 4 (Technical Specification)	S 2.10	Contractor's reporting and provision of information to Principal in relation to work done on Lifts by third parties and subsequent exchanges between the parties	<input type="checkbox"/>	<input checked="" type="checkbox"/>
<b>Cancellation</b>	Work Orders	Schedule 3 (Operational Requirements)	S 1.4(e)	The Principal's notice of cancellation of a Work Order	<input checked="" type="checkbox"/>	<input type="checkbox"/>



Topic	Clause Name	Contract Document	Clause / Section	Type of Communication	SUI	Email

**NSW Land and Housing Corporation**  
**Lift Maintenance Contract**  
**Schedule 9 (Communication Requirements)**

Topic	Clause Name	Contract Document	Clause / Section	Type of Communication	SUI	Email
<b>Communication</b>	Communication	General Terms	8.2	Notice by the Principal of a change to Schedule 9 (Communication Requirements)	<input type="checkbox"/>	<input checked="" type="checkbox"/>
<b>Other</b>	General	NA	NA	All other notices not specifically referred to above	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>

## Schedule 12 (Form of Statutory Declaration)

### STATUTORY DECLARATION (New South Wales)

I, \_\_\_\_\_ of \_\_\_\_\_, do solemnly and sincerely declare as follows:

1. I am [Position held in Contractor's organisation] of Liftronic Pty Ltd (ABN 99 002 886 213; ACN 002 886 213) (Contractor).
2. The Contractor has a contract with the New South Wales Land and Housing Corporation (ABN 24 960 729 253) for Lift Maintenance dated [Date] (Contract).
3. All subcontractors, Contractors and consultants engaged by the Contractor with respect to the work under the Contract have been paid all moneys due and payable to them in respect of work carried out for or materials supplied to the Contractor.
4. All workers who have been employed by the Contractor for the work under the Contract have been paid all monies due and payable to them in respect of their employment on the work under the Contract (and otherwise have been paid in accordance with all relevant Legislative Requirements, including the *Fair Work Act 2009* (Cth));
5. The Contractor is solvent and is not subject to an Insolvency Event as that term is defined in the Contract.
6. Attached to and forming part of this declaration is a subcontractor's statement given by the Contractor in its capacity as 'subcontractor' (as that term is defined in the *Workers Compensation Act 1987*, *Pay-roll Tax Act 2007* and *Industrial Relations Act 1996*) (Acts) which is a written statement:
  - (a) under section 175B of the *Workers Compensation Act 1987*, in the form and providing the detail required by that legislation;
  - (b) under Schedule 2, Part 5, ss17-20 *Payroll Tax Act 2007*, in the form and providing the detail required by that legislation; and
  - (c) under section 127 of the *Industrial Relations Act 1996*, in the form and providing the detail required by that legislation.
7. The matters which are contained in this declaration and the attached subcontractor's statement are true.
8. If the Contractor has subcontractors, the Contractor has received from each of those subcontractors a statutory declaration and subcontractor's statement in equivalent terms to this declaration (made no earlier than 10 Business Days before the date of this declaration).
9. All statutory declarations and subcontractor's statements received by the Contractor from subcontractors referred to in clause 4 of this statutory declaration were:
  - (a) given to the Contractor in its capacity as 'principal contractor' as defined in the Acts; and
  - (b) given by the subcontractors in their capacity as 'subcontractors' as defined in the Acts.
10. The period of the Contract covered by this declaration and the attached subcontractor's statement is from \_\_\_\_\_ to \_\_\_\_\_.

And I make this solemn declaration conscientiously believing the same to be true and by virtue of the *Oaths Act 1900* (NSW).

Declared at \_\_\_\_\_ on \_\_\_\_\_  
(place where declaration made) (date of declaration)

by \_\_\_\_\_  
Signature of person making the declaration

in the presence of an authorised witness, who states:

I, [Name of authorised witness], a [qualification of authorised witness],

certify the following matters concerning the making of this statutory declaration by the person who made it:

1. I saw the face of the person; and
2. I have known the person for at least 12 months.

OR



1. I did not see the face of the person because the person was wearing a face covering, but I am satisfied that the person had a special justification for not removing the covering, and
2. I have confirmed the person's identity using an identification document and the document I relied on was [identification document relied on].

.....  
Signature of authorised witness      date



**SUBCONTRACTOR'S STATEMENT  
REGARDING WORKER'S COMPENSATION, PAYROLL TAX AND  
REMUNERATION (Note 1 – see back of form)**

New South Wales

For the purposes of this Statement a 'subcontractor' is a person (or other legal entity) that has entered into a contract with a 'principal contractor' to carry out work.

This Statement must be signed by a 'subcontractor' (or by a person who is authorised, or held out as being authorised, to sign the statement by the subcontractor) referred to in any of s175B *Workers Compensation Act 1987*, Schedule 2 Part 5 *Payroll Tax Act 2007*, and s127 *Industrial Relations Act 1996* where the 'subcontractor' has employed or engaged workers or subcontractors during the period of the contract to which the form applies under the relevant Act(s). The signed Statement is to be submitted to the relevant principal contractor.

**SUBCONTRACTOR'S STATEMENT (Refer to the back of this form for Notes, period of Statement retention, and Offences under various Acts.)**

Subcontractor: \_\_\_\_\_ ABN: \_\_\_\_\_  
(Business name)

Of \_\_\_\_\_  
(Address of subcontractor)

has entered into a contract with \_\_\_\_\_ ABN: \_\_\_\_\_ (Note 2)  
(Business name of principal contractor)

Contract number/identifier: \_\_\_\_\_ (Note 3)

This Statement applies for work between: \_\_\_\_/\_\_\_\_/\_\_\_\_ and \_\_\_\_/\_\_\_\_/\_\_\_\_ inclusive, (Note 4)

subject of the payment claim dated: \_\_\_\_\_. (Note 5)

I, \_\_\_\_\_ a Director or a person authorised by the Subcontractor on whose behalf this declaration is made, hereby declare that I am in the position to know the truth of the matters which are contained in this Subcontractor's Statement and declare the following to the best of my knowledge and belief:

- (a) The abovementioned Subcontractor has either employed or engaged workers or subcontractors during the above period of this contract. Tick [ ] if true and comply with (b) to (g) below, as applicable. If it is not the case that workers or subcontractors are involved or you are an exempt employer for workers compensation purposes tick [ ] and only complete (f) and (g) below. You must tick one box. (Note 6)
- (b) All workers compensation insurance premiums payable by the Subcontractor in respect of the work done under the contract have been paid. The Certificate of Currency for that insurance is attached and is dated \_\_\_\_/\_\_\_\_/\_\_\_\_ (Note 7)
- (c) All remuneration payable to relevant employees for work under the contract for the above period has been paid. (Note 8)
- (d) Where the Subcontractor is required to be registered as an employer under the *Payroll Tax Act 2007*, the Subcontractor has paid all payroll tax due in respect of employees who performed work under the contract, as required at the date of this Subcontractor's Statement. (Note 9)

**NSW Land and Housing Corporation**  
**Lift Maintenance Contract**  
**Schedule 12 (Form of Statutory Declaration)**

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- (e) Where the Subcontractor is also a principal contractor in connection with the work, the Subcontractor has in its capacity of principal contractor been given a written Subcontractor's Statement by its subcontractor(s) in connection with that work for the period stated above. (Note 10)

(f) Signature \_\_\_\_\_ Full Name \_\_\_\_\_

(g) Position/Title \_\_\_\_\_ Date \_\_\_\_/\_\_\_\_/\_\_\_\_

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

**Notes**

1. This form is prepared for the purpose of section 175B of the *Workers Compensation Act 1987*, Schedule 2, Part 5 *Pay-roll Tax Act 2007* and section 127 of the *Industrial Relations Act 1996*. If this form is completed in accordance with these provisions, a principal contractor is relieved of liability for workers compensation premiums, pay-roll tax and remuneration payable by the subcontractor.

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

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

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

Section 127(11) *Industrial Relations Act 1996* states '*to avoid doubt, this section extends to a principal contractor who is the owner or occupier of a building for the carrying out of work in connection with the building so long as the building is owned or occupied by the principal contractor in connection with a business undertaking of the principal contractor.*'

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

### Statement Retention

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

#### Offences in respect of a false Statement

In terms of s127(8) of the *Industrial Relations Act 1996*, a person who gives the principal contractor a written statement knowing it to be false is guilty of an offence if:

- (a) the person is the subcontractor;
- (b) the person is authorised by the subcontractor to give the statement on behalf of the subcontractor; or
- (c) the person holds out or represents that the person is authorised by the subcontractor to give the statement on behalf of the subcontractor.

In terms of s175B of the *Workers Compensation Act 1987* and clause 18 of Schedule 2 of the *Payroll Tax Act 2007* a person who gives the principal contractor a written statement knowing it to be false is guilty of an offence.

### Further Information

For more information, visit the WorkCover website [www.workcover.nsw.gov.au](http://www.workcover.nsw.gov.au), Office of State Revenue website [www.osr.nsw.gov.au](http://www.osr.nsw.gov.au) or Office of Industrial Relations, Authority of Commerce website [www.commerce.nsw.gov.au](http://www.commerce.nsw.gov.au). Copies of the *Workers Compensation Act 1987*, the *Pay-roll Tax Act 2007* and the *Industrial Relations Act 1996* can be found at [www.legislation.nsw.gov.au](http://www.legislation.nsw.gov.au)

## Schedule 13 (Form of Parent Company Guarantee)

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# Deed of guarantee, undertaking and substitution

## Parties

This Deed made the ..... day of ..... 20.....

**BY:**

**[Name and ACN of Guarantor]**

of **[Address of Guarantor]**

**(Guarantor)**

**IN FAVOUR OF:**

**New South Wales Land and Housing Corporation**

(ABN 24 960 729 253)

of 4 Parramatta Square, 12 Darcy Street, Parramatta, New South Wales 2150

**(Principal)**

## Background

- A The Principal and Liftronic Pty Ltd (ABN 99 002 886 213; ACN 002 886 213) **(Contractor)** have entered into a contract dated **[Date]** **(Contract)** in relation to Lift Maintenance.
- B The Principal has entered into the Contract:
- (i) at the request of the Guarantor (which request is confirmed by the Guarantor's execution of this Deed); and
  - (ii) conditionally upon the Guarantor signing this Deed.

## Operative Terms

### 1 Guarantee of Performance

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The Guarantor guarantees to the Principal the due and punctual performance of every legal, equitable, contractual, statutory or other duty, undertaking, warranty, guarantee, indemnity, covenant, agreement or other obligation ('obligation') on the part of the Contractor which at any time arises under or in connection with the Contract including without limitation:

- (a) any obligation on the part of the Contractor to pay the Principal any costs, expenses, damages or other liabilities, whether present, future, actual or contingent, liquidated or unliquidated;
- (b) any obligation arising from any variation to the Contract:
  - (i) agreed between the Contractor and the Principal; or
  - (ii) made in accordance with the Contract,

at any time, whether or not the Guarantor is aware of or consents to the variation; and

- (c) the unenforceable Contractor's obligations referred to in clause 6 of this Deed,  
(Contractor's obligations).

## **2 Indemnity for loss**

---

The Guarantor indemnifies the Principal and agrees at all times hereafter to keep the Principal indemnified from and against all damages, costs, losses, expenses and liabilities which the Principal may suffer or incur consequent upon or arising out of the Contractor's obligations not being performed, observed or fulfilled and the Guarantor agrees that the indemnity given by the Guarantor under this clause:

- (a) is a separate and additional obligation of the Guarantor under this Deed;
- (b) is given by the Guarantor as a principal indemnifier and not as a surety;
- (c) applies even though the Principal may not be entitled for any reason to recover those amounts from the Contractor, with the effect that the moneys are not recoverable from the Guarantor on the basis that the Guarantor has otherwise only given a guarantee in respect of payment of those amounts; and
- (d) is given on the other terms of this Deed (with all necessary changes being made) so far as those other terms can apply.

## **3 Continuing guarantee and indemnity**

---

This Deed shall be a continuing obligation and security and shall not be considered as wholly or partially satisfied or discharged by the payment at any time or times hereafter of any sum or sums of money for the time being due to the Principal under the Contract or by any settlement of any other obligation or any other matter or thing.

## **4 Liability not discharged by other events**

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The liability of the Guarantor and the rights of the Principal under this Deed shall not be affected by:

- (a) the granting of time or other indulgence or concession to the Contractor;
- (b) the compounding, compromise, release, abandonment, waiver, variation, relinquishment or renewal of any of the rights of the Principal against the Contractor;
- (c) any neglect or omission to enforce such rights;
- (d) the liquidation of the Contractor;
- (e) the termination, cancellation, rescission, assignment or novation of the Contract in whole or in part;
- (f) the Contract being or becoming void or voidable in whole or in part; or
- (g) any other act, matter or thing which under the law relating to sureties would or might but for this provision release the Guarantor from its obligations under this Deed or any part of them.

## **5 Assignment by the Principal**

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The Principal may assign the benefit of this Deed to the extent that the assignee also accepts an assignment of the whole or any part of the Contractor's obligations. The Principal shall be entitled to provide any information it may have concerning the Guarantor to any proposed assignee.

## **6 Invalidity of Contractor's obligations**

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Despite any other provisions of this Deed, the guarantee and indemnity given by the Guarantor under this Deed shall also extend and apply to obligations on the part of the Contractor which were void from the beginning, or have been subsequently avoided or are otherwise unenforceable by the Principal as a result of:

- (a) any legal limitation, disability or incapacity relating to the Contractor;
- (b) any delay, neglect or failure to register or perfect the Contract or obtain any consent or authorisation necessary to give legal effect to the Contract (other than by reason of an act or omission of the Principal);
- (c) the Contractor's failure to comply with any law; or
- (d) any death, mental incapacity, winding up, liquidation, bankruptcy, insolvency, voluntary administration, composition of debts, scheme of reconstruction, official management, receivership, assignment of property, scheme of arrangement or other incapacity, insolvency or demise on the part of or entered into by the Contractor,

whether or not the Principal should have known about the same (**unenforceable Contractor's obligations**).

## **7 Governing law**

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This Deed and any matter arising in connection with it shall be governed by the laws of the State of New South Wales, and the parties submit to the non-exclusive jurisdiction of the Courts of that State.

## **8 Parties successors and assigns**

---

References in this Deed to the Guarantor, the Principal and the Contractor shall be taken to include their respective successors and assigns.

The parties have signed, sealed and delivered this Deed on the day and year mentioned above.

## Execution

Executed as a Deed

by  
[Guarantor] (ACN: [insert]) in accordance with  
section 127 of the *Corporations Act 2001* (Cth):

^ \_\_\_\_\_  
Director

^ \_\_\_\_\_  
Director/Secretary

^ \_\_\_\_\_  
Full name of Director

^ \_\_\_\_\_  
Full name of Director/Secretary

Executed for and on behalf of  
New South Wales Land and Housing Corporation  
on     /     /     by its duly authorised officer in  
the presence of:

^ \_\_\_\_\_  
Signature of Authorised Officer

^ \_\_\_\_\_  
Signature of witness

^ \_\_\_\_\_  
Full Name of Authorised Officer

^ \_\_\_\_\_  
Name of witness (print)

^ \_\_\_\_\_  
Office Held

## Schedule 14 (Home Building Act Requirements)

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This Schedule applies to the extent that the Home Building Act applies to either this Contract or to any Work Order issued pursuant to this Contract.



## CHECKLIST UNDER SCHEDULE 2 OF THE HOME BUILDING REGULATION

1.	Have you checked that contractor holds a current contractor licence?	Yes <input type="checkbox"/>	No <input type="checkbox"/>
2.	Does the licence cover the type of work included in the contract?	Yes <input type="checkbox"/>	No <input type="checkbox"/>
3.	Is the name and number on the contractor's licence the same as on the contract?	Yes <input type="checkbox"/>	No <input type="checkbox"/>
4.	Is the work to be undertaken covered in the contract, drawings or specifications?	Yes <input type="checkbox"/>	No <input type="checkbox"/>
5.	Does the contract clearly state a contract price or contain a warning that the contract price is not known?	Yes <input type="checkbox"/>	No <input type="checkbox"/>
6.	If the contract price may be varied, is there a warning and an explanation about how it may be varied?	Yes <input type="checkbox"/>	No <input type="checkbox"/>
7.	Are you aware of the cooling-off provisions relating to the contract?	Yes <input type="checkbox"/>	No <input type="checkbox"/>
8.	Is the deposit within the legal limit of 10%?	Yes <input type="checkbox"/>	No <input type="checkbox"/>
9.	Does the contract include details of the progress payments payable under the contract?	Yes <input type="checkbox"/>	No <input type="checkbox"/>
10.	Do you understand the procedure to make a variation to the contract?	Yes <input type="checkbox"/>	No <input type="checkbox"/>
11.	Are you aware of who is to obtain any council or other approval for the work?	Yes <input type="checkbox"/>	No <input type="checkbox"/>
12.	Do you understand that any registered certifier required to certify work under the contract is to be selected by you and the contractor cannot object to your selection?	Yes <input type="checkbox"/>	No <input type="checkbox"/>
13.	Do you understand that you are not required to pay the contractor a deposit or any progress payments until the contractor has given you a certificate of insurance under Part 6 or Part 6B of the <i>Home Building Act 1989</i> (except where the work is of a kind that does not require insurance)?	Yes <input type="checkbox"/>	No <input type="checkbox"/>
14.	Does the contract include either of the following: (a) the cost of the insurance under Part 6 of the <i>Home Building Act 1989</i> , (b) the cost of the alternative indemnity product under Part 6B of the <i>Home Building Act 1989</i> ?	Yes <input type="checkbox"/>	No <input type="checkbox"/>
15.	Has the contractor given you a copy of the Consumer Building Guide, which provides key information about your rights and responsibilities under NSW's home building laws and where to get more information?	Yes <input type="checkbox"/>	No <input type="checkbox"/>

NSW Land and Housing Corporation  
Lift Maintenance Contract  
Schedule 14 (Home Building Act Requirements)

16.	Does the contract include a statement about the circumstances in which the contract may be terminated?	Yes <input type="checkbox"/> No <input type="checkbox"/>
17.	Does the contract include the Security of Payment Guide which provides key information about your rights and responsibilities under the Building and Construction Industry Security of Payment Act 1999 and the Building and Construction Industry Security of Payment Regulation 2020?	Yes <input type="checkbox"/> No <input type="checkbox"/>

**Signatures**

Do not sign the contract unless you have read and understand the clauses as well as the notes and explanations contained in the contract and this document.

If you have answered "no" to any question in the checklist, you may not be ready to sign the contract.

Both the contractor and the owner should retain an identical signed copy of the contract including the drawings, specifications and other attached documents. Make sure that you initial all attached documents and any amendments or deletions to the contract.

**Signed copy of contract**

Under the *Home Building Act 1989* a signed copy of the contract must be given to the owner within 5 working days after the contract is entered into.

**Home Building Compensation Fund**

The contractor must provide you with a certificate of insurance under the Home Building Compensation Fund before the contractor commences work and before the contractor can request or receive any payment.

**Acknowledgement of owners**

I/We have been given a copy of the Consumer Building Guide and I/we have read and understand it.

I/We have completed the checklist and answered "Yes" to all items on it.

**Note**

Where the owner is a company or partnership or the contract is to be signed by an authorised agent of the owner, the capacity of the person signing the contract, eg director, must be inserted

Signature

Name [*print*]

Capacity [*print*]

Signature

Name [*print*]

Capacity [*print*]

## Schedule 15 (Spare Parts List)

### Spare Parts List – Contract Area A

Spare Part	Quantity
Kone Drive Unit	1
Kone P/N, KM720251H01 Landing Button Panel Mounting	1
Kone P/N, KM720280G08 Landing Button Panel	1
Kone P/N, KM602810G01 Door Control Board	1
Kone P/N, KM713100G01 Cross Connection Board	1
Kone Door Operator Motor	1
Dewhurst VR Button Pressels and bases (G-29 High and Low Volts)	15
ALC VR Button Pressels and bases (G-29 High and Low Volts)	15
Liftronic, Archer Court KEB Drive Unit	1
Liftronic, Archer Court Main Control Board	1
Liftronic, Archer Court MCE Inductor Board	1
Liftronic Door Operator (MCE)	1
Liftronic, Selcom P/N 901160G01 Door Operator Board	1
Liftronic Drive Unit	1
Dewhurst ULS52 Dot Matrix Indicators	1
TL Jones D300SL Door Protection Units	2
Dewhurst ULS32 Dot Matrix Indicators	2
18W twin fluorescent light fitting with battery back up (600mm)	1
ALC VR Button Pressels and bases (G-29 High and Low Volts)	15
Dewhurst VR Button Pressels and bases (G-29 High and Low Volts)	15
Lamp E1011x32 14V, 3W	60