



NSW Land and Housing Corporation Specialised Fire Safety Services Contract

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

and

Firecorp Australia Pty Ltd
ABN 88 101 279 725

Date: 2024

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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)

Firecorp Australia Pty Ltd (ABN 88 101 279 725)
of 27 Holden Street, Ashfield, New South Wales 2131

(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 Areas and the Alternative Contract Areas.
- C. The Principal has agreed to engage the Contractor to perform Maintenance Works in the Allocated Contract Areas and Alternative Contract Areas, in accordance with this Contract.

Operative Terms

1 General

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 41 (inclusive) (the **General Terms**);
- (c) Schedule 1 (Contract Details);
- (d) Schedule 2 (Maintenance Works);
- (e) Schedule 3 (Operational Requirements);
- (f) Schedule 4 (Servicing Requirements);
- (g) Schedule 5 (Technical Specification);
- (h) Schedule 6 (Component Requirements);
- (i) Schedule 7 (SoR);
- (j) Schedule 8 (Fee and Payment);

- (k) Schedule 9 (Key Performance Indicators);
- (l) Schedule 10 (Reporting Templates);
- (m) Schedule 11 (Communication Requirements);
- (n) Schedule 12 (IT Requirements);
- (o) Schedule 13 (Contract Areas);
- (p) Schedule 14 (Contract Area Property List);
- (q) Schedule 15 (Form of Statutory Declaration);
- (r) Schedule 16 (Form of Parent Company Guarantee); and
- (s) Schedule 17 (Home Building Act Requirements),

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.

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 20;
 - (ii) clauses 1, 2, 6.5(b), 8.3, 10.2, 11.7, 14, 23, 24, 27, 28, 29, 30, 31, 33, 34, 35, 35.13, 36, 37, 38, 40 and 41; 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

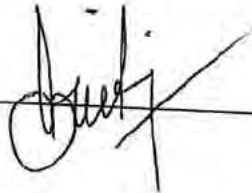
- (a) This Contract is governed by the laws of the State of New South Wales, Australia.
- (b) The parties submit to the exclusive jurisdiction of the courts in the State of New South Wales, Australia, and any courts that may hear appeals from these courts regarding any proceedings under or in connection 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
Firecorp Australia Pty Ltd (ABN: 88 101 279 725) in
accordance with section 127 of the *Corporations
Act 2001* (Cth):

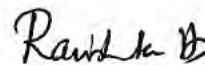
A Director



A Eduardo ERMILIO
Full name of Director

A

Director/Secretary



A RAVISHANKAR SHIVARAM
Full name of Director/Secretary

Executed for and on behalf of
New South Wales Land and Housing Corporation
on 10/7/24 by its duly authorised officer in
the presence of:

A Signature of witness



A Joy Bramham
Name of witness (print)

A Signature of Authorised Officer

A Michael James Ryan
Full Name of Authorised Officer

A Director, Legal
Office Held

General Terms

1 Defined terms and interpretation

1.1 Definitions

Abatement means each of the abatements identified in, and calculated in accordance with, Schedule 9 (Key Performance Indicators).

Abatement Condition means each of the abatement conditions for each KPI set out in Schedule 9 (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.

Accredited Practitioner (Fire Safety) has the meaning given in the *Environmental Planning and Assessment Regulation 2021* (NSW) and **APFS** has the same meaning.

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.

Additional Maintenance Works means any Maintenance Works which are not included in the SoR and performed by the Contractor pursuant to a Work Order issued under clause 8.9.

Additional Maintenance Works Price means the amount included in a Work Order reflecting the agreed price for Additional Maintenance Works, as issued by the Principal in accordance with clause 8.9(c).

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).

AFSS Due Date means the date for completion of an AFSS for each Property as set out in Contract Area Property List.

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 SFSS Contract where one or more of the Allocated Contract Areas is listed as an "alternative contract area" in that SFSS 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).

Approvals means any authorisation, consent, approval, licence, accreditation or registration from or with any Responsible Authority that the Principal is required to obtain (excluding any Permit).

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 and notified to the Contractor prior to the delivery of such document or Deliverable.

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 12.1.

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.

CGC or Contract Governance Committee has the meaning given to it in clause 15.1(a).

CGC Members means the persons nominated by each party to sit on the CGC in accordance with clause 15.1.

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 or mandatory industry standard, after the Date of Contract, but does not include:

- (a) any change in Law in any jurisdiction other than the Commonwealth or New South Wales; 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.

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.

Common Areas means those parts of a Property which do not form part of an SOU and includes the lobby, hallways, stairways, parking lots, roof, lift and lift shafts, maintenance rooms and utility spaces.

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(h)(v) of Schedule 3 (Operational Requirements); and
- (c) either, the Contractor has submitted a Contractor Invoice in accordance with clause 11.3, or the Principal has submitted an RCTI in accordance with clause 11.5.

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

Confidential Information of a party means any information:

- (a) about the business and affairs of that party;
- (b) about the customers, clients, employees, subcontractors or other persons doing business with that party;
- (c) which is by its nature confidential;
- (d) which is designated as confidential by that party;
- (e) which is Principal Supplied Information; or
- (f) which the other party knows or ought to know, is confidential,

and all trade secrets, financial information (including but not limited to cost and pricing information), source codes, technical information, operations, and other commercially valuable information of that party, but does not include information or material which:

- (g) is or becomes generally known to the public other than through a breach of this agreement;
- (h) at the time it was first disclosed to a party, was already in that party's lawful possession;
- (i) is developed independently by a party; or

is disclosed to a party by a third party entitled to disclose it.

Confirmation Notification means a written notification to the relevant Tenant, which sets out:

- (a) the estimated time it will take the Contractor to complete the Maintenance Works the subject of the relevant Work Order;
- (b) the contact details of the Contractor;
- (c) any required disruption to utility services or other aspects/areas of the Property;
- (d) the date and time (or time period) during which the Contractor will attend the Property; and
- (e) any other relevant information (if any and including as directed by the Principal from time to time).

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 areas identified as such in Schedule 13 (Contract Areas).

Contract Area Property List means the list of Properties issued by the Principal in accordance with clause 7.6(d). Schedule 14 (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 12 month period during the Term commencing on each anniversary of the Maintenance Works Commencement Date.

Contract Year 1 means the period of 12 months commencing on the Maintenance Works Commencement Date.

Contractor Invoice means a valid and fully supported Tax Invoice issued by the Contractor which satisfies all of the requirements specified in clause 11.3.

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, including those required to be developed during the Transition In Period (and each subsequent revision).

Contractor-caused Suspension means a suspension by the Principal in accordance with clause 26 necessitated by a breach of this Contract by the Contractor.

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.

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

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, with respect to a Work Order, the date stated as such in that Work Order.

Date for Works Completion means, with respect to a Work Order, the date and time stated in that Work Order as the date for Works Completion, as may be adjusted under clause 8.4.

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, excluding where due to fair wear and tear or operational misuse, 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 21.1.

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 36.3 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).

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, 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.

Escalated Matter means any matter that is the subject of an order or direction of the NSW Civil and Administrative Tribunal or any other court or tribunal (including where Maintenance Works, or the need for Maintenance Works, is the subject of such an order or direction).

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:

- (e) 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); or
- (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 9 (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 8 (Fee and Payment)).

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).

Fixed Percentage means the fixed percentage for each Contract Area as set out in Schedule 8 (Fee and Payment).

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 applicable Laws;
- (f) subject to clause 8.10, 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).

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 five years 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 19.4 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 9 (Key Performance Indicators).

Law includes:

- (a) statutes, regulations, subordinate legislation, Australian Standards, ordinance, code, rule 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 guidelines or policy of a Responsible Authority notified to the relevant party;
- (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.

Learning Worker means any person who is a:

- (a) trainee; or
- (b) a person who is updating their qualifications to meet the needs of the Maintenance Works.

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

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) Programmed Maintenance Works (including Supplementary Works and Additional Maintenance Works);
- (b) Responsive Maintenance Works (including Supplementary Works and Additional Maintenance Works);
- (c) any rectification works; and
- (d) 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 (c) 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;
- (c) Schedule 4 (Servicing Requirements);
- (d) Schedule 5 (Technical Specification); and
- (e) Schedule 6 (Component Requirements).

Management Fee means the management fee described in Schedule 8 (Fee and Payment).

Message Card means a physical card which includes the Contractor's name and contact details, the reason for the Contractor's attendance at the relevant SOU and the date and time of the attempted attendance by the Contractor.

Non Conformance Notice or **NCN** has the meaning given to it in clause 14.1.

Non-residential Property means:

- (a) any Property which is not used for residential purposes; or
- (b) or any tenancy within a Property which is not used for residential purposes.

Notice of Work means a written notification in the Approved Form to the relevant Tenant, which sets out:

- (a) the nature of the Maintenance Works;
- (b) the date and time which the Contractor will be attending the Property to carry out the relevant Maintenance Works;
- (c) the estimated time it will take the Contractor to complete the Maintenance Works at each SOU;
- (d) the contact details of the Contractor and a request for the Tenant to call and confirm an appointment time;

- (e) any required disruption to power, gas, water or sewerage or other aspects/areas of the Property; and
- (f) any other relevant information (if any and including as directed by the Principal from time to time).

Observation Notice means a notice issued by the Principal under section 6.3 of Schedule 3 (Operational Requirements).

Occupied means tenanted under a tenancy arrangement.

Operational Requirements means Schedule 3 (Operational Requirements).

Parent Company Guarantee means the parent company guarantee provided by the Guarantor in the form specified in clause 12.2.

Performance Benchmark means each of the performance benchmarks for each KPI set out in Schedule 9 (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 14.2.

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 14.2.

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 in accordance with clause 8.10).

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 26 other than a Contractor-caused Suspension.