



Agreement for the Provision of Services (One-off)

South East Water Corporation

ABN 89 066 902 547

and

Detection Services Pty Ltd

ABN 96 114 845 215

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BETWEEN:

- (1) **South East Water Corporation** ABN 89 066 902 547 (the **Corporation**); and
- (2) The party specified in Item 1 of Schedule 1 (the **Supplier**).

BACKGROUND

- (A) The Corporation wishes to engage the Supplier to provide the Services on and subject to the terms of this Agreement.
- (B) The Corporation has agreed to engage the Supplier to provide the Services on and subject to the terms of this Agreement.

AGREED TERMS1. **INTERPRETATION**1.1 **Definitions**

In this Agreement:

Agreement means this agreement and includes the schedules and any annexures to it or documents incorporated by reference.

Authorised Representative means, in respect of the Corporation, any person who holds themselves out as having authority to bind the Corporation.

Business Day means a day which is not a Saturday, Sunday or public holiday (being a public holiday appointed as such under the *Public Holidays Act 1993* (Vic)) in Melbourne.

Business Management System means the quality and safety plans and procedures, organisation structure, responsibilities, activities, capabilities and resources which the Supplier is required to have in place and operate in accordance with, as required by this Agreement.

Claim means any claim, action, proceeding or demand made against the person concerned, however it arises and whether it is present or future, fixed or unascertained, actual or contingent.

Code of Conduct means the Code of Conduct for Victorian Public Sector Employees (2015) issued by the Public Sector Commissioner pursuant to section 61 of the *Public Administration Act 2004* (Vic), as amended from time to time.

Code of Practice means a code of practice as defined in, and approved under, the *Privacy and Data Protection Act 2014* (Vic).

Commencement Date means the date set out in Item 2 of Schedule 1.

Commissioners mean the Privacy and Data Protection Deputy Commissioner appointed under the *Privacy and Data Protection Act 2014* (Vic) and the Information Commissioner and the Public Access Deputy Commissioner appointed under the *Freedom of Information Act 1982* (Vic).

Common Courtesy means polite, basic and modest.

Completion Date means the date set out in Item 2 of Schedule 1, as that date may be extended in accordance with this Agreement.

Confidential Information means any technical, scientific, commercial, financial or other information of, about or in any way related to, the Corporation, including any information designated by the Corporation as confidential, which is disclosed, made available, communicated or delivered to the Supplier in connection with this Agreement, but excludes information which:

- (a) is in or which subsequently enters the public domain other than as a result of a breach of this Agreement;
- (b) the Supplier can demonstrate was in its possession prior to the date of this Agreement;
- (c) the Supplier can demonstrate was independently developed by the Supplier;
- (d) is lawfully obtained by the Supplier from another person entitled to disclose such information; or
- (e) is disclosed pursuant to legal requirement or order (provided the Supplier co-operates fully with the Corporation to lawfully avoid or limit the scope of that disclosure).

Consequential Loss means loss of profits, loss of revenue and loss of opportunity.

Contract Intellectual Property means any and all Intellectual Property Rights incorporated or comprised in any documents or materials created by or on behalf of the Supplier in the course of providing the Services to the Corporation under this Agreement.

Contract Manager means the person nominated by the Corporation pursuant to clause 9.1(a) for the time being.

Control means, in relation to any body corporate, the ability of any person directly or indirectly to exercise effective control over the body corporate (including the ability to determine the outcome of decisions about the financial and operating and other policies of that body corporate) by virtue of the holding of voting shares, units or other interests in that body corporate or by any other means.

Corporation's Materials means any materials in any form including text, graphics, photos, designs, trademarks or other artwork owned by the Corporation and which are provided by the Corporation to the Supplier for use in the Services or otherwise in connection with this Agreement.

Data means all data, information, text, drawings, statistics, analysis and other materials embodied in any form which is:

- (a) supplied by or on behalf of the Corporation in connection with this Agreement (**Input Data**); or
- (b) generated, placed, stored, processed, retrieved, printed, accessed or produced utilising the Input Data or the Services.

Environment includes the meaning given to that term in any legislation in force in the State of Victoria and includes the physical factors of the surroundings of persons including the land, water, atmosphere, climate, sound, odours, taste, the biological factors of animals and plants and the social factor of aesthetics.

Environmental Law means a relevant Law regulating or otherwise relating to the Environment, including but not limited to any law relating to land use, planning, pollution of air or water, soil or groundwater, chemicals, waste, the use, transport, storage and

handling of dangerous goods, the health or safety of any person, or to any other aspects of protection of the Environment, health or property.

Fees means a fixed fee payable to the Supplier for the provision of the Services, determined in accordance with the Price Schedule.

Gift means anything of monetary or other value and includes free or discounted:

- (a) items or services;
- (b) benefits (such as preferential treatment, privileged access, favours or other advantages or intangibles); and
- (c) Hospitality that exceeds Common Courtesy,

but does not include anything given by the Supplier or its Personnel to the Corporation or the Corporation's Personnel in connection with the provision of the Services under this Agreement.

Governmental Agency means:

- (a) a government or government department or other body;
- (b) a governmental, semi-governmental or judicial person including a statutory corporation; or
- (c) a person (whether autonomous or not) who is charged with the administration of a law.

Health Privacy Principles means the health privacy principles set out in the *Health Records Act 2001* (Vic).

Hospitality means the friendly reception and treatment of guests, and includes offers of food, drink, travel, accommodation, events and activities.

Information Privacy Principles means the information privacy principles set out in the *Privacy and Data Protection Act 2014* (Vic).

Insolvency Event means, in relation to the Supplier, any of the following:

- (a) anything that reasonably indicates that there is a significant risk that the Supplier is or will become unable to pay debts as they fall due, including:
 - (i) execution or distress being levied against any income or assets of the Supplier;
 - (ii) a meeting of the Supplier's creditors being called or held;
 - (iii) a security becoming enforceable or being enforced in relation to any of the Supplier's assets or undertakings;
 - (iv) a step being taken to make the Supplier bankrupt or to wind the Supplier up;
 - (v) the appointment to the Supplier of a controller or administrator as defined in section 9 of the *Corporations Act 2001* (Cth);
 - (vi) the Supplier entering into any type of agreement, composition or arrangement with, or assignment for the benefit of, all or any class of its creditors; or

- (vii) the Supplier being made subject to a deed of company arrangement;
- (b) a step being taken to have a receiver, receiver and manager, liquidator or provisional liquidator appointed to the Supplier or any of its assets; or
- (c) the Supplier ceasing, or indicating that it is about to cease, carrying on business.

Intellectual Property Rights includes all present and future copyright and neighbouring rights, all proprietary rights in relation to inventions (including patents), registered and unregistered trademarks, confidential information (including trade secrets and know how), registered designs, circuit layouts, and all other proprietary rights resulting from intellectual activity in the industrial, scientific, literary or artistic fields.

Laws means:

- (a) the law in force in Victoria and the Commonwealth of Australia, including common law and legislation; and
- (b) ordinances, regulations and by-laws of relevant government, semi-government or local authorities.

Legitimate Business Reason means a business purpose that furthers the official business or other legitimate goals of the Corporation, the public sector or the State of Victoria.

Loss includes any loss, damage, liability, obligation, compensation, fine, penalty, charge, payment, cost or expense (including all legal and settlement costs and expenses on a full indemnity basis) incurred by the person concerned, however it arises and whether it is present or future, fixed or unascertained, actual or contingent but excluding Consequential Loss.

Milestone means a milestone specified in Item 2 of Schedule 2.

Milestone Date for a Milestone, means the date specified in Item 2 of Schedule 2 by which the Supplier must perform the Milestone.

Moral Rights means rights of integrity of authorship, rights of attribution or authorship, rights not to have authorship falsely attributed, and rights of a similar nature conferred by statute in Australia that may now exist or that may come to exist in relation to the Services.

Near Miss or **Close Call** means an incident at a workplace that exposed a person in the immediate vicinity of the incident to an immediate risk to the person's health and safety.

Notifiable Incident or **Statutory Reportable Incidents** means an incident which is notifiable under applicable health and safety Law, and includes the death of a person, a person requiring immediate treatment as an inpatient in a hospital, a serious head or eye injury or a serious laceration.

OH&S Act means the *Occupational Health and Safety Act 2004* (Vic).

OH&S Regulations means the *Occupational Health and Safety Regulations 2017* (Vic).

OH&S Standards means the Corporation's occupational health and safety standards as notified by the Corporation to the Supplier from time to time.

Other Incidents means all incidents including accidents, Near Misses and external regulator visits (including the Environment Protection Authority Victoria and the Victorian WorkCover Authority) which are not Notifiable Incidents.

Personal Information has the meaning given to that term in the *Privacy and Data Protection Act 2014* (Vic).

Personnel of a party includes the officers, employees, agents and sub-contractors of the party.

Pre-Existing Intellectual Property means any and all Intellectual Property Rights in any works, items or systems created by or the property of the Supplier prior to the commencement of the provision of the Services.

Price Schedule means the schedule of Rates and Fees payable by the Corporation to the Supplier for the provision of the Services as set out in Schedule 2.

Prohibited Gift means a Gift that is given or offered to a board member or employee of the Corporation as a result of their role with the Corporation and that:

- (a) is money, similar to money, or easily converted into money;
- (b) may establish a real, potential or perceived conflict of interest between the public duty of the recipient to act in the best interests of the Corporation and their private interests;
- (c) could create a reasonable perception that it is offered to influence, or could influence, the judgement of the recipient;
- (d) is inconsistent with community expectations;
- (e) could bring the integrity of the recipient or the Corporation into disrepute;
- (f) unless there is a Legitimate Business Reason for the recipient to accept it:
 - (i) exceeds \$50 in value (either alone or in combination with other Gifts or offers of Gifts made by that person to the recipient in the previous 12 months); or
 - (ii) is of cultural, historic or other significance; or
- (g) is otherwise classified as a "prohibited gift" in the Department of Environment, Land, Water and Planning, "Gifts, benefits and hospitality" Model Policy as amended from time to time.

Protective Data Security Standards means any standard issued under Part 4 of the *Privacy and Data Protection Act 2014* (Vic) and any policies or protocols issued by the Corporation to ensure compliance with those standards.

Public Sector Employee has the same meaning as in the *Public Administration Act 2004* (Vic).

Rates means the rates (whether charged on a time related or project basis) payable to the Supplier for the provision of the Services, determined in accordance with the Price Schedule.

Record means any document within the meaning of the *Evidence Act 2008* (Vic), including:

- (a) anything on which there is writing;
- (b) anything on which there are marks, figures, symbols or perforations having a meaning for persons qualified to interpret them;
- (c) anything from which sounds, images or writings can be reproduced with or without the aid of anything else; or

(d) a map, plan, drawing or photograph.

Recordkeeping means making and maintaining complete, accurate and reliable evidence of business transactions in the form of recorded information.

Relationship Manager means the person nominated by the Supplier pursuant to clause 9(b) for the time being.

Safety Management Plan means the safety management plan referred to in clause 5.2.

Safety Management System means the safety management system referred to in clause 5.1(d).

Service Credit means the amount by which the sums paid by the Corporation will be reduced for a failure by the Supplier to meet the Service Levels, as calculated in accordance with Schedule 3.

Service Levels means the service levels the Supplier must comply with in performing its obligations under this Agreement, as specified in Schedule 3, and as amended from time to time in accordance with clause 9.2(a).

Services means the Services (or any of them) specified in Schedule 2.

Staff Costs means Pay as You Go tax, withholding tax, superannuation contributions or charge amounts, fringe benefits tax, workers' compensation insurance premiums, payroll tax and any like taxes and charges arising out of or in relation to this Agreement, or any engagement arising under this Agreement (together with all interest or penalties payable by reference to those costs).

Term means the duration of this Agreement, as calculated in accordance with clause 15.

Variation means a variation to the services and/or the Services Levels made in accordance with Clause 2.7.

VIPP means the Victorian Government's Victorian Industry Participation Policy which requires Victorian government departments and agencies to consider competitive local suppliers when awarding certain contracts, which is published by the Victorian Government, as amended from time to time.

Workplace Injury or **Medically Treated Injuries** means a serious injury requiring treatment from a medical practitioner but which does not constitute a Notifiable Incident.

Work Site means a specific location at which Services are being performed.

1.2 Interpretation

Unless expressed to the contrary, in this Agreement:

- (a) words in the singular include the plural and vice versa;
- (b) any gender includes the other genders;
- (c) if a word or phrase is defined its other grammatical forms have corresponding meanings;
- (d) if an example is given of anything (including a right, obligation or concept), such as by saying it includes something else, the example does not limit the scope of that thing;

- (e) no rule of construction will apply to a clause to the disadvantage of a party merely because that party put forward the clause or would otherwise benefit from it;
- (f) a reference to:
 - (i) a person includes a partnership, joint venture, unincorporated association, corporation and a government or statutory body or authority;
 - (ii) a person includes the person's legal personal representatives, successors, assigns and persons substituted by novation;
 - (iii) any legislation includes subordinate legislation under it and includes that legislation and subordinate legislation as modified or replaced;
 - (iv) an obligation includes a warranty or representation and a reference to a failure to comply with an obligation includes a breach of warranty or representation;
 - (v) "\$", "dollars" or "AUD" is a reference to the lawful currency of the Commonwealth of Australia; and
 - (vi) a party or parties is a reference to the Corporation and the Supplier (as the case requires);
- (g) if the date on or by which any act must be done under this Agreement is not a Business Day, the act must be done on or by the next Business Day;
- (h) the obligations of the Supplier, if more than one person, under this Agreement are joint and several and each person constituting the Supplier acknowledges and agrees that it will be causally responsible for the acts and omissions, including breaches of this Agreement, of the other as if those acts or omissions were its own; and
- (i) the rights of the Supplier, if more than one person, under this Agreement, including the right to payment, jointly benefit each person constituting the Supplier.

1.3 **Headings**

Headings do not affect the interpretation of this Agreement.

2. **PERFORMANCE OF SERVICES**

2.1 **Provision of Services**

The Supplier must provide the Services, on and subject to the terms of this Agreement.

2.2 **Commencement and Completion**

The Supplier must commence performance of the Services on the Commencement Date and complete the Services by the Completion Date and meet each Milestone by its Milestone Date and in accordance with any other dates for delivery specified in Schedule 2. However, for the avoidance of doubt, this Agreement applies to any Services performed prior to the date of this Agreement.

2.3 **Services to be performed in accordance with Service Levels**

Without limiting clause 5, the Supplier must provide the Services to a standard that reaches or exceeds the Service Levels, and in accordance with all other requirements set out in Schedule 2. In addition, the Supplier must:

- (a) ensure the highest quality of work and deliver the Services with the utmost efficiency;
- (b) act in good faith and in the best interests of the Corporation;
- (c) keep the Corporation informed of all matters of which it ought reasonably be made aware, and provide such information in relation to the provision of the Services as may reasonably be required by the Corporation including any matter that may affect the Supplier's ability to:
 - (i) achieve a Milestone;
 - (ii) achieve a Completion Date or a Milestone Date;
 - (iii) meet the Service Levels; or
 - (iv) complete the Services at the agreed cost,
 and must keep the Corporation reasonably informed as to steps being taken or proposed by the Supplier to remedy or mitigate the foregoing;
- (d) carry out its obligations and duties and complete the provision of the Services to the reasonable satisfaction of and in accordance with the requirements, instructions and directions of the Corporation; and
- (e) promptly advise the Corporation of any material information that comes to the attention of the Supplier in the course of performance of the Services as to the condition, state of repair or fitness for purpose of any part of the Corporation's water or sewage network, for the purpose of enabling the Corporation to better plan maintenance, repair, renewal or replacement of its network.

2.4 **Supplier to provide equipment**

Unless otherwise agreed with or directed by the Corporation, the Supplier must provide (at its own cost) any and all equipment (including computer hardware and software and any ancillary support), staff and facilities necessary for the performance of the Services.

2.5 **Delay**

If the Supplier is delayed or is likely to be delayed, for whatever reason, in the supply of the Services in accordance with this Agreement, the Supplier:

- (a) must immediately notify the Corporation of that fact; and
- (b) if due to any cause beyond its reasonable control, may make application in writing to the Contract Manager, immediately upon becoming aware of such delay, requesting an extension of the Completion Date and/or Milestone Date(s). Such request must set out in reasonable detail the circumstances giving rise to such delay, and the likely length of such delay (and provide such other information as the Contract Manager may reasonably request). The Contract Manager may agree to extend the Completion Date and/or the Milestone Date(s) if, in the reasonable opinion of the Contract Manager, the circumstances giving rise to the delay are legitimate and warrant an extension of time. The Contract Manager will promptly notify the Supplier in writing of any agreed revised Milestone Date(s) and/or Completion Date.

2.6 **Liquidated damages payable for failing to meet required dates**

- (a) If liquidated damages apply, as indicated by Item 2 of Schedule 1, and the Supplier fails to provide the relevant Services, or the Corporation does not accept the relevant Services, by the dates specified in Item 2 of Schedule 2, the Corporation may recover from the Supplier (or deduct from money owed to the Supplier) liquidated damages.
- (b) Liquidated damages will be payable at the rate specified in Item 2 of Schedule 1 for each day that the Supplier does not provide the Services or the Corporation does not accept the Services after the relevant date for performance. The Supplier will not be required to pay liquidated damages to the extent that a delay is caused by the Corporation.
- (c) The parties agree that any such liquidated damages constitute a genuine and reasonable pre-estimate of the loss that would be incurred by the Corporation arising from such failure by the Supplier, and are not the Corporation's sole remedy in relation to the circumstances giving rise to the liquidated damages.

2.7 **Variations**

Either party may, at any time, give written notice to the other party proposing a variation to the scope of the Services or the Service Levels (including any necessary extension of the Completion Date or a Milestone Date). The Supplier must, within 5 Business Days of such notice being received by the relevant party, provide a written proposal as to varied Rates or Fees (based on the value for money proposition reflected in the then current Price Schedule), or Completion Date and/or Milestone Date(s), that would apply with respect to the provision of the varied Services or Service Levels. The Corporation may accept such proposal by notifying the Supplier in writing. In the absence of such acceptance, the Services must be performed in accordance with this Agreement without such variation.

2.8 **Acceptance**

- (a) After performance of the Services, the Corporation may undertake such reviews as it considers necessary to determine whether the Services are fit for purpose and comply with this Agreement (including the Service Levels). After reviewing the Services, the Corporation may notify the Supplier in writing:
 - (i) of its acceptance of the Services if it is satisfied that the Services are fit for purpose and comply with this Agreement; or
 - (ii) if the Services are not fit for purpose or do not comply with this Agreement, in which case clause 2.8(b) will apply.
- (b) If the Corporation notifies the Supplier that the Services are not fit for purpose or do not comply with this Agreement the Supplier must promptly rectify the non-compliance in the Services, following which the Corporation will undertake further review of the Services in accordance with clause 2.8(a). This process will continue until, at the Corporation's discretion, the Corporation:
 - (i) waives, in writing, the requirement for the Services to comply with this Agreement;
 - (ii) is satisfied that the Services comply with this Agreement and accepts the Services in accordance with clause 2.8(a)(i);
 - (iii) conditionally accepts the Services, subject to the Supplier agreeing to rectify the non-compliance within a fixed timeframe and on such terms as the Corporation specifies; or

- (iv) subject to the Corporation having provided the Supplier with at least one opportunity to rectify the non-compliance pursuant to clause 2.8(a)(ii), immediately terminate this Agreement by written notice to the Supplier. If the Corporation terminates this Agreement under this clause 2.8(b)(iv), the Corporation will be entitled to a full refund of all moneys paid to the Supplier in respect of the relevant Services which the Corporation is unable to use following termination.
- (c) If the Corporation fails to notify the Supplier of its acceptance or rejection of the Services pursuant to clause 2.8(a)(i) or 2.8(a)(ii) within a reasonable period following performance of the Services, the Supplier may notify the Corporation in writing of this fact, following which the Corporation must promptly respond to the Supplier in accordance with clause 2.8(a)(i) or 2.8(a)(ii), as the case may be.
- (d) No act or omission on the part of the Corporation in connection with this clause 2.8 constitutes deemed acceptance of Services.

2.9 **Co-operation with third parties**

Where the Corporation engages a third party to provide goods or services which are related to or otherwise necessary for the Corporation to receive the Services, the Supplier agrees to provide all reasonable assistance and co-operation as required by that third party to ensure that the Corporation receives the third party's goods or services, and the Services, in a seamless and efficient manner.

3. **SUPPLIER'S STAFF**

- (a) If key Personnel of the Supplier are required to perform the Services, as indicated by Item 11 of Schedule 1, then the Services must be performed by the persons specified in Item 11 of Schedule 1 (**Key Personnel**). The Supplier may not remove or replace any Key Personnel without the Corporation's written consent, which will not be unreasonably withheld.
- (b) If any of the Key Personnel are unavailable or otherwise unable to provide the Services, the Supplier must promptly notify the Corporation of that fact and provide details of alternate, suitably skilled, qualified and experienced staff to replace such Key Personnel (**Replacement Staff**).
- (c) The Corporation must notify the Supplier in writing within 10 Business Days of receiving the notice from the Supplier pursuant to clause 3(b) as to whether or not it accepts the Replacement Staff proposed by the Supplier pursuant to clause 3(b). The Supplier acknowledges and agrees that the Corporation will be under no obligation to accept any person proposed by the Supplier if the Corporation is not satisfied as to the qualifications and experience of such person.
- (d) The Corporation may request that the Supplier withdraw any of its Personnel (including any Key Personnel) from providing any part of the Services. If the Corporation makes a request under this clause 3(d), the Supplier must:
 - (i) promptly arrange for that person to cease being involved in providing the Services;
 - (ii) ensure that the person does not return to the Corporation's premises except with the Corporation's prior written consent, which may be withheld in its absolute discretion; and

- (iii) replace that person with another person of suitable ability and qualifications, at no additional charge within the time period specified by the Corporation, which must be reasonable in the circumstances.

4. **PRICE FOR THE SERVICES**

- (a) The Price Schedule (including the Rates and the Fees) according to which the Supplier must charge the Corporation for the Services is set out in Schedule 2. Subject to any change in the Rates or Fees for the Services resulting from the application of any express provision of this Agreement (including for the avoidance of doubt an express provision in Schedule 2, or by the operation of Item 4 of Schedule 1), the Rates and Fees are fixed for the Term and are inclusive of all taxes (excluding GST).
- (b) Expenses or other disbursements may only be charged by the Supplier in accordance with Schedule 2.

5. **OBLIGATIONS DURING PERFORMANCE OF SERVICES**

5.1 **Health and Safety**

- (a) The Supplier must:
 - (i) comply with all Laws (including the OH&S Act, OH&S Regulations, codes of practice and compliance codes), and the requirements of all Governmental Agencies (including issuing all notices to Governmental Agencies, if required, under applicable health and safety Laws), applicable to health and safety; and
 - (ii) implement and comply with safety requirements, including OH&S Standards, as reasonably required or approved by the Corporation for the Services (including on a Work Site).
- (b) The Supplier must take all necessary and reasonable precautions in order to ensure the safety and health of all its Personnel, the Corporation's Personnel, members of the public and third parties.
- (c) The Supplier must do all that is reasonably required to enable the Corporation to satisfy the Corporation's obligations regarding occupational health and safety under any Law.
- (d) Without limiting the Supplier's obligations under this Agreement, the Supplier:
 - (i) must, if required for specific activities, employ or engage a suitably qualified person for the Term as required by section 22(2)(b) of the OH&S Act; and
 - (ii) without limiting clause 5.2, must:
 - (A) if required as indicated in Item 12 of Schedule 1, effect and maintain, and work under, a safety management system certified to AS4801 or equivalent standard (**Safety Management System**) and provide evidence of the currency and certification of the Safety Management System when requested by the Corporation; and
 - (B) if the Supplier's Safety Management System is not certified, procure a suitably qualified person to verify, in writing, that the Supplier's Safety Management System is robust in content that when implemented, will be adequate to protect those involved or impacted on by the Supplier's scope of Services, and provide such written verification when requested to the Corporation.

- (e) The Supplier acknowledges the Corporation's right to undertake safety audits:
 - (i) on the implementation of the Supplier's Safety Management System; and
 - (ii) of any Work Site,
 at reasonable times, and must provide reasonable assistance to the auditors as required.
- (f) If the Supplier fails to comply with the requirements of this clause 5.1, then the Corporation may, after giving reasonable notice to the Supplier, arrange for the Supplier's obligations to be completed by others, or by the Corporation. This work must be undertaken at the Supplier's cost, and will be a debt due from the Supplier to the Corporation.
- (g) The Supplier indemnifies the Corporation against any Loss or Claim by or against the Corporation arising out of or in connection with a breach of the Supplier's obligations under this clause 5.1.
- (h) In the event of any disagreement between the Corporation and the Supplier in relation to occupational health and safety issues, the view of the Corporation will prevail.

5.2 **Safety Management Plan**

- (a) If required as indicated in Item 12 of Schedule 1, prior to commencing any Services under this Agreement, the Supplier must submit a draft Safety Management Plan for all Services which may be provided by the Supplier under this Agreement for review by the Corporation. The Safety Management Plan must comply with, and be in accordance with, any relevant Laws.
- (b) After incorporating any comments the Corporation may have, the draft Safety Management Plan will become the Safety Management Plan. The Supplier must ensure that:
 - (i) the Safety Management Plan and any work method statements contained within the Safety Management Plan are complied with at all times; and
 - (ii) its Personnel understand how the Safety Management Plan is to be implemented during the provision of the Services.

5.3 **Incident Reporting**

- (a) The Supplier must:
 - (i) report all Notifiable Incidents and all Workplace Injuries to the Contract Manager immediately after becoming aware of a Notifiable Incident or Workplace Injuries;
 - (ii) manage all Notifiable Incidents and Workplace Injuries in accordance with the applicable Laws;
 - (iii) conduct a debrief for all Notifiable Incidents and invite the Corporation, in writing, to attend such debrief. The Supplier must provide appropriate written notice to the Corporation for the scheduled debrief having regard to the nature and seriousness of the Notifiable Incident, and allowing the Corporation sufficient time to arrange a representative to attend the de-brief. The debrief must identify the reasons for the incident and recommend process changes

to decrease the likelihood that a similar incident occurs again. The written results of the debrief must be submitted to the Corporation within 3 Business Days of any incident occurring;

- (iv) notify the Corporation immediately upon receipt of any "Prohibition Notices" or "Improvement Notices" issued to the Supplier, or any person performing any part of the Services, by the Victorian Workcover Authority or any person authorised under the OH&S Act, and must give the Corporation such information (including written reports) as may be requested by the Corporation in relation to such notices;
 - (v) report all Other Incidents to the Corporation within 24 hours after becoming aware of the Other Incident;
 - (vi) provide the Corporation with contact details for its Personnel responsible for 24-hour emergency assistance in the event of any incident;
 - (vii) maintain a register of Notifiable Incidents, Other Incidents, Workplace Injuries and Near Misses for inspection by the Corporation upon request, in a format required by the Corporation. The updated register must be provided to the Corporation on a monthly basis or more regularly if otherwise requested by the Corporation; and
 - (viii) provide the Corporation with a safety performance data report in the format set out in Schedule 4 or in the format otherwise required by the Corporation from time to time. The safety performance data report must be provided to the Corporation on a monthly basis (within 3 Business Days after the 25th of each month for the previous month).
- (b) Clause 5.3(a) applies to all incidents and events, whether involving:
- (i) Personnel of the Supplier or of the Corporation; or
 - (ii) members of the public.
- (c) If the Supplier fails to comply with the requirements of this clause 5.3, then the Corporation may, after giving reasonable notice to the Supplier, arrange for the Supplier's obligations to be completed by others, or by the Corporation. This work must be undertaken at the Supplier's cost, and will be a debt due from the Supplier to the Corporation.
- (d) The Supplier indemnifies the Corporation against any Loss or Claim by or against the Corporation arising out of or in connection with a breach of the Supplier's obligations under this clause 5.3.

5.4 **Supplier's Personnel**

The Supplier must employ or engage, at its own expense, its Personnel and must ensure that its Personnel carry Corporation approved identification at all times when undertaking the Services on a Work Site on behalf of the Corporation.

5.5 **Environment**

- (a) The Supplier must comply with Environmental Law and the Corporation's environmental policies as notified by the Corporation to the Supplier, which relates to the provision of the Services and to the Environment where the Services are performed.

- (b) If the Supplier fails to comply with the requirements of this clause 5.5, the Corporation may, after giving reasonable notice to the Supplier, take such action as is necessary to remedy such failure, at the expense of the Supplier, and such cost will be a debt due and owing from the Supplier to the Corporation.

5.6 **Work Sites**

The Supplier must only access Work Sites in accordance with the Corporation's policies and procedures as advised to the Supplier from time to time. The Supplier must ensure that all approvals and permits required to access any Work Site are obtained prior to accessing the Work Site.

5.7 **Prohibited Gifts**

- (a) The Supplier must not, and must ensure that its Personnel do not, give or offer to give a Prohibited Gift directly or indirectly to a board member or employee of the Corporation.
- (b) A Prohibited Gift is given, or offered to be given, indirectly to a board member or employee of the Corporation if it is given, or offered to be given, to that person's relative or close associate including:
 - (i) a member of their immediate family;
 - (ii) a regular member of their household, whether or not they are related; or
 - (iii) another of their close associates.

6. **INVOICING AND PAYMENT**

6.1 **Invoicing**

- (a) The Supplier must submit to the Corporation a tax invoice or tax invoices in respect of the Services:
 - (i) as soon as practicable after the acceptance of the Services by the Corporation in accordance with clause 2.8; or
 - (ii) at such other time or times set out in Schedule 2; or
 - (iii) as otherwise agreed by the parties in writing.
- (b) A tax invoice submitted for payment pursuant to clause 6.1(a) must contain each of the matters specified in Item 5 of Schedule 1 and be sent to the address specified in Item 5 of Schedule 1 (or such other address as may be specified by the Corporation).

6.2 **Payment of invoice**

- (a) Subject to the remainder of this clause 6.2, the Corporation must pay the invoiced amount to the Supplier within 30 days of receipt of the invoice, in the manner specified in Item 6 of Schedule 1.
- (b) An invoice will not be paid until such time as the invoice is certified for payment by the Authorised Representative of the Corporation. An invoice will not be certified for payment unless the Authorised Representative of the Corporation is satisfied that it is correctly calculated with respect to the Services for which payment is sought and that the Supplier is entitled to claim payment.

- (c) If the Authorised Representative of the Corporation disputes the invoiced amount (whether in whole or in part) for any reason the Corporation must pay the undisputed amount of such invoice (if any), and notify the Supplier of the amount the Corporation believes is due for payment. If the Corporation and the Supplier are unable to agree on the balance of the invoiced amount, the dispute will be referred for determination in accordance with clause 20. If requested, the Supplier will withdraw the disputed invoice and issue a replacement invoice for the undisputed amount.
- (d) Payment of an invoice is **not** to be taken as:
 - (i) evidence or an admission that the Services have been provided in accordance with the Service Levels and otherwise in accordance with this Agreement;
 - (ii) evidence of the value of the Services supplied;
 - (iii) an admission of liability; or
 - (iv) acceptance or approval of the Supplier's performance,
 but must be taken only as payment on account.

7. **WARRANTIES AND QUALITY ASSURANCE REQUIREMENTS**

- (a) The Supplier represents and warrants to the Corporation that:
 - (i) it has the right to enter into this Agreement and perform the Services;
 - (ii) the execution, delivery and performance of this Agreement by it does not contravene any contractual, legal or other obligation that applies to it;
 - (iii) it holds all licences, permits, consents and authorisations required under any Law in relation to the provision of the Services;
 - (iv) it is entitled to use and deal with any Intellectual Property Rights, and obtained all necessary consents to use and deal with any Moral Rights, which may be used by it in connection with the Services and to grant to the Corporation the licences contemplated by this Agreement;
 - (v) the receipt and use of the Services by the Corporation will not infringe the Intellectual Property Rights or other rights of any person or any Laws;
 - (vi) the Services will be:
 - (A) provided with due care and skill;
 - (B) provided in accordance with all applicable standards, principles, practices and in accordance with the requirements of this Agreement (including the Service Levels); and
 - (C) completed within a reasonable time;
 - (vii) it has the accreditation or membership of professional or other bodies in relation to the provision of the Services as disclosed by the Supplier (or as otherwise advised to the Corporation) and that it will use its best endeavours to maintain such accreditation or membership during the Term;

- (viii) it and its Personnel are appropriately qualified and have the requisite knowledge, skill and expertise to provide the Services in accordance with this Agreement;
 - (ix) whilst on premises owned or controlled by the Corporation, the Supplier and its Personnel will at all times comply with the Corporation's lawful directions and policies of which the Supplier is notified or is otherwise aware, including any applicable occupational health and safety and security policies;
 - (x) where the Corporation has, either expressly or by implication, made known to the Supplier any particular purpose for which the Services are required, the Services will be performed in such a way as to achieve that result;
 - (xi) all representations made by the Supplier prior to the date of this Agreement were and remain accurate and the Supplier has and will maintain during the Term the quality assurance arrangements set out in the Service Levels;
 - (xii) the information disclosed to the Corporation as to the structure, viability, reliability, insurance cover, capacity, experience and expertise of the Supplier, its Personnel is correct; and
 - (xiii) any and all equipment provided in accordance with clause 2.4 is fit for purpose, regularly maintained and serviced and complies with all Australian Standards or other industry standards and any Laws applicable to the provision and use of the equipment.
- (b) Without limiting the quality assurance arrangements set out in the Service Levels, the Supplier must:
- (i) if required as indicated in Item 12 of Schedule 1, adopt and document a Business Management System. If certification is not required, the required Business Management System must be consistent with the certification principles. The Supplier must ensure that any required Business Management System complements that of the Corporation, and that all Personnel engaged by the Supplier comply with the requirements of the Supplier's Business Management System;
 - (ii) identify any environmental risks associated with its operations (including the provision of the Services under this Agreement) and manage them according to the principles of ISO14001;
 - (iii) carry out quality surveillance and audits of any required Business Management System. The Supplier must provide the Corporation with copies of the results of such audits at the contract management review meetings conducted under clause 9.3;
 - (iv) in the event of non-conformance with any required Business Management System that affects the subject matter of this Agreement, the Supplier must advise the Contract Manager of the non-conformance and the Supplier's proposed corrective actions; and
 - (v) maintain and provide to the Corporation upon request all records and documentation necessary to establish the degree to which the Supplier is meeting its requirements under this Agreement.
- (c) The Supplier must implement a continuous improvement process as part of any required Business Management System to accord with changing requirements and procedures under this Agreement and in provision of the Services.

- (d) The Corporation reserves the right to audit the Supplier's compliance with any required Business Management System and that of the Supplier's Personnel providing any part of the Services. The Supplier must do all that is necessary to assist the Corporation with the audit.
- (e) If requested by the Corporation, the Supplier must provide evidence which demonstrates to the satisfaction of the Corporation:
 - (i) the effective implementation of any required Business Management System;
 - (ii) the conformance of any required Business Management System against the requirements of this Agreement;
 - (iii) that any required Business Management System consistently meets the quality and environmental objectives of the Corporation and that the requirements of this Agreement are met through the maintenance of any required Business Management System; and
 - (iv) where any required Business Management System is certified, a copy of the certificate of registration.

8. **LIABILITY AND INDEMNITY**

- (a) To the full extent permitted by Law, the Supplier indemnifies the Corporation and its Personnel (the **Indemnified Party**) against, and must pay the Indemnified Parties on demand, the amount of all Losses arising out of, or in any way connected with any:
 - (i) personal injury (including sickness and death);
 - (ii) property damage (including the property, equipment and assets of the Corporation);
 - (iii) fraudulent acts or omissions;
 - (iv) wilful misconduct or unlawful act or omission;
 - (v) breaches of security;
 - (vi) loss or corruption of Data;
 - (vii) breach of this Agreement (including breach of representation or warranty) or any negligent act or omission of the Supplier or its Personnel;
 - (viii) breach of an obligation of confidence or privacy, whether under this Agreement or otherwise;
 - (ix) infringement or alleged infringement of the Intellectual Property Rights, Moral Rights or any other rights of any person, including any third party; or
 - (x) claim in respect of workers' compensation, salary, wages, holiday pay, sick pay, long service leave or superannuation which the Supplier may make against the Corporation,

which was caused, or contributed to, by any act or omission of the Supplier or any of its Personnel.

- (b) The Supplier's liability to indemnify the Corporation under clause 8(a) is reduced to the extent that any wilful, unlawful or negligent act or omission of the Corporation or its Personnel contributed to the Loss.
- (c) 'Notwithstanding any other provision of this Agreement, but subject always to the Supplier holding the insurances required by this Agreement, to the extent permitted by Law the aggregate liability of the Supplier to the Corporation arising out of or in connection with this Agreement (however arising, including for breach of contract, for tort including negligence, statute or on any other legal basis) is limited to the maximum value of the insurance it holds. However, the Supplier's liability is not limited (and does not count towards the limit of liability) in relation to the following:
 - (i) injury to, or illness or death of, any person;
 - (ii) damage to, or loss or destruction of, any third party's property;
 - (iii) breach by the Supplier or any of its Personnel of any Intellectual Property Rights or Moral Rights;
 - (iv) to the extent that the Supplier recovers insurance proceeds in respect of that liability, or would have recovered insurance proceeds if it had complied with this Agreement and taken all reasonable steps to do so, in each case up to the limits of insurance required under this Agreement; and
 - (v) fraud, criminal offence, wilful default or wilful misconduct of the Supplier or any of its Personnel.
- (d) The Corporation may recover a payment under an indemnity in this Agreement before it makes the payment in respect of which the indemnity is given.
- (e) If any indemnity payment is made by the Supplier under this clause 8, the Supplier must also pay to the Indemnified Party an additional amount equal to any tax which is payable by the Indemnified Party in respect of that indemnity payment.
- (f) The Supplier, to the full extent permitted by Law, releases and forever discharges the Indemnified Parties from all Claims and Losses which the Supplier or any of its Personnel have, or at any future time may have or may bring, or but for this Agreement might have had or brought, against the Indemnified Parties in relation to:
 - (i) anything permitted by or done in accordance with this Agreement;
 - (ii) the Supplier or the Personnel breaching this Agreement (including a breach arising from the act, omission or negligence of the Supplier or the Personnel); or
 - (iii) a breach of the Intellectual Property Rights of the Supplier,

except to the extent caused or contributed to by a breach of this Agreement by, or a wilful, unlawful or negligent act or omission of, the Corporation or its Personnel.
- (g) If a provision of this Agreement is expressed to:
 - (i) indemnify;
 - (ii) exclude or limit any liability of; or
 - (iii) otherwise benefit,

a person who is not a party to this document, the Supplier agrees that the Corporation holds the benefit of that indemnity, exclusion, limitation or other benefit on trust for that person and may enforce this Agreement on their behalf and for their benefit.

9. **CONTRACT MANAGEMENT**

9.1 **Contract Manager and Relationship Manager**

For the purposes of ensuring a productive and efficient relationship between the Corporation and the Supplier under this Agreement:

- (a) the Corporation nominates the person or persons specified in Item 3 of Schedule 1 as its Contract Manager; and
- (b) the Supplier nominates the person or persons specified in Item 3 of Schedule 1 as its Relationship Manager and alternate.

9.2 **Service Levels**

- (a) The Supplier must comply with the Service Levels during the Term. The Corporation may amend the Service Levels by giving the Supplier a reasonable amount of prior written notice.
- (b) Performance against the Service Levels must be tracked, monitored and reported on by the Supplier to the Corporation by the measurement periods and categories set out in Schedule 3.
- (c) If the Corporation makes an amendment to the Service Levels in accordance with 9.2(a) which results directly in an increase in the cost to the Supplier in providing the Services, the Supplier may request a review of the Rates or Fees applicable to the provision of the relevant Services. The review will be negotiated between the Corporation and the Supplier in good faith, and must be based on evidence provided by the Supplier.

9.3 **Contract management review**

- (a) The Contract Manager and the Relationship Manager must meet on an as-needs basis, and at a minimum at the time and in the manner specified in Item 7 of Schedule 1, to discuss contract management issues and to review the Supplier's performance under this Agreement.
- (b) The Contract Manager and the Relationship Manager must alternately take minutes of the meetings.

10. **ACCESS TO RECORDS**

10.1 **Supplier to retain records**

- (a) The Supplier must implement and administer, in accordance with standards issued under the *Public Records Act 1973* (Vic), a Recordkeeping system that creates, maintains, stores and secures full and accurate hard copy and/or electronic accounts and Records relating to the performance of the Services and otherwise in connection with this Agreement (**Supplier's Records**).
- (b) The Corporation retains legal ownership of the Supplier's Records, and owns all Intellectual Property Rights in the Supplier's Records. The Corporation grants the

Supplier a perpetual, world-wide, non-exclusive, non-transferable licence for use of the Intellectual Property Rights in the Supplier's Records owned by the Corporation.

- (c) The Supplier must only dispose of the Supplier's Records in accordance with standards issued under the *Public Records Act 1973* (Vic) and in accordance with any specific instructions provided by the Corporation from time to time.
- (d) When reasonably requested by the Corporation, and upon completion, expiry or termination of this Agreement, the Supplier must transfer custody of all Supplier's Records to the Corporation in a format and manner which allows the Supplier's Records to be quickly and easily retrieved, reviewed and used by the Corporation.

10.2 **Right to access and audit**

- (a) The Corporation or its duly Authorised Representatives may (at the expense of the Corporation), after giving reasonable notice (unless the Corporation determines that notice is not practicable or appropriate) at any time during business hours, examine, inspect, audit and/or transcribe from the Supplier's Records. Such representatives will be entitled (at the expense of the Corporation) to take copies of or extracts from the Supplier's Records (with the names of other customers of the Supplier removed).
- (b) The Supplier must participate promptly and co-operatively in any audits conducted by the Corporation or its Authorised Representative.
- (c) The right of access and audit granted under clause 10.2(a) may be exercised by the Corporation at any time prior to the expiry or termination of this Agreement or in the seven year period following the expiry or termination of this Agreement.
- (d) The Supplier must promptly take corrective action in order to rectify any error, non-compliance or inaccuracy identified in any audit relating to the way the Supplier has, under this Agreement:
 - (i) provided the Services; or
 - (ii) calculated any Rates and Fees or any other amounts or fees billed to the Corporation.
- (e) The Supplier must immediately provide access to the Supplier's Records in the following circumstances:
 - (i) in accordance with the requirements of the *Public Records Act 1973* (Vic) and all relevant Laws, including the *Privacy and Data Protection Act 2014* (Vic), *Freedom of Information Act 1982* (Vic), *Health Records Act 2001* (Vic) and *Evidence Act 2008* (Vic);
 - (ii) to the Victorian Auditor-General or Victorian Ombudsman upon request in writing; or
 - (iii) to a Government representative upon request in writing.

11. **INTELLECTUAL PROPERTY RIGHTS**

11.1 **Warranty and indemnity by Supplier**

- (a) The Supplier warrants to the Corporation that it is entitled to use and deal with any Intellectual Property Rights which may be used by it in connection with the provision of the Services under this Agreement.

- (b) The Supplier indemnifies and will at all times keep the Corporation indemnified against any Loss or Claim arising out of or otherwise in connection with any breach or alleged breach by the Supplier of any third party's Intellectual Property Rights relating to the provision of the Services under this Agreement or relating to the Corporation's use of the Services.

11.2 **Ownership of Contract Intellectual Property**

- (a) Subject to clause 11.3, as between the parties, all Contract Intellectual Property vests in and is the property of the Corporation from the time of its creation.
- (b) Subject to clause 11.3, the Supplier hereby irrevocably and unconditionally assigns to the Corporation, free of additional charge, all of its right, title and interest in and to the Contract Intellectual Property, and the Supplier must sign all documents and do all things reasonably required to ensure that such assignment is effected.
- (c) The Supplier must procure from all of its Personnel and third parties who are authors or makers of any Contract Intellectual Property (and must procure that any contract with any third party for the creation of any Contract Intellectual Property includes a provision that requires such person to obtain from its officers, employees, agents and contractors) a written assignment of all Intellectual Property Rights of the employee, agent, contractor or third party in the Contract Intellectual Property as necessary to give effect to clauses 11.2(a) and 11.2(b) and a written consent from all individuals involved in the creation of any Contract Intellectual Property irrevocably consenting to the Corporation exercising its rights in the Contract Intellectual Property in a manner that, but for the consent, would otherwise infringe the Moral Rights of those individuals.

11.3 **Ownership of Pre-Existing Intellectual Property**

All Pre-Existing Intellectual Property used by the Supplier in connection with the provision of Services under this Agreement or the creation of Contract Intellectual Property remains the property of the Supplier or its licensors.

11.4 **Licence of Pre-Existing Intellectual Property**

- (a) Subject to clause 11.4(b), the Supplier hereby irrevocably and unconditionally grants to the Corporation, free of additional charge, a non-exclusive, worldwide licence to use any Pre-Existing Intellectual Property to the extent that such Pre-Existing Intellectual Property forms part of or is integral to, any works or other items created by the Supplier for the Corporation in connection with the provision of Services under this Agreement or the creation of Contract Intellectual Property.
- (b) The licence granted in clause 11.4(a) is limited to use of the relevant Pre-Existing Intellectual Property by the Corporation for the purposes of the Corporation and for no other purpose.

11.5 **Corporation's Materials**

- (a) Subject to clause 11.5(b), the Corporation grants to the Supplier for the Term a non-exclusive, royalty-free licence (without the right to grant sub-licences) to use the Corporation's Materials solely for the purpose of providing the Services in accordance with this Agreement. The Supplier must comply with all directions and requirements of the Corporation in relation to the use of the Corporations Materials.
- (b) Where the Corporation's Materials include any of the Corporation's trademarks, service marks, trade names, logos or other commercial or product designations (collectively, the **Corporation's Marks**), the Corporation may terminate the licence

granted to the Supplier under clause 11.5(a) if the Corporation considers that the Supplier's use of any of the Corporation's Marks does not conform to the Corporation's standards. The Supplier acknowledges and agrees that all rights and title to and ownership of all the Corporation's Marks shall remain with the Corporation and that the provisions of section 26 of the *Trade Marks Act 1995* (Cth) shall not apply to this Agreement and are expressly excluded. The Supplier must use the Corporation's Marks exactly in the form provided and in conformance with any directions of the Corporation from time to time and in particular must not use any of the Corporation's Marks in combination with other marks without the Corporation's prior written approval. The Supplier must not take any action inconsistent with the Corporation's ownership of the Corporation's Marks and the Supplier acknowledges and agrees that any benefits accruing from use of any of the Corporation's Marks shall automatically vest in the Corporation.

- (c) The Supplier indemnifies and will at all times keep the Corporation indemnified against any Loss or Claim arising out of or in respect of any use of the Corporation's Materials or the Corporation's Marks.

11.6 **Data**

- (a) Data will remain (and, if necessary, will become) the property of the Corporation. The Supplier will assign to the Corporation from the date of creation all Intellectual Property Rights in any Data created by or on behalf of the Supplier.
- (b) If the Supplier or a sub-contractor is deemed to be the first owner of any database right or other Intellectual Property Rights in the Data, it must assign those Intellectual Property Rights to the Corporation.
- (c) The Supplier must only use the Data to the extent necessary to perform its obligations under this Agreement.
- (d) The Supplier must:
 - (i) subject to any more stringent requirements imposed pursuant to this Agreement, prohibit and prevent any person who does not have the appropriate level of security clearance from gaining access to the Data; and
 - (ii) comply with any policies of the Corporation in effect from time to time in respect of the secure disposal of equipment and destruction of records and the Data.
- (e) If the Supplier suspects that any Data has (or may) become lost or corrupted or there is unauthorised access to that Data, it will immediately notify the Corporation and propose remedial action, including action to ensure that this does not recur.
- (f) The Supplier must not, and must ensure that its Personnel and sub-contractors do not, without the Corporation's prior written consent:
 - (i) remove Data or allow the Data to be removed from the Corporation's premises or equipment; or
 - (ii) take, disclose or make available the Data or allow the Data to be taken, disclosed or made available outside of Victoria.

12. **FAILURE TO PERFORM**

- (a) Without limiting any other clause of this Agreement, or any other remedy the Corporation may have, if the Supplier fails to provide or perform any of the Services

in accordance with the requirements of this Agreement or the applicable Service Levels, the Corporation will not be required to pay for those Services and may, by notice in writing to the Supplier, require the Supplier to (at the Supplier's own cost and expense):

- (i) remedy any default (if the default is capable of being remedied); or
- (ii) re-perform the Services (if the Services are capable of being re-performed by the Supplier),

within the time specified in the notice (which must be reasonable having regard to the nature of the Services).

- (b) If the remedied or re-performed Services are remedied or re-performed in accordance with the applicable Service Levels and otherwise to the satisfaction of the Corporation, then the Corporation will pay the applicable Rates or Fees for those remedied or re-performed Services (which the parties acknowledge may be less than the cost to the Supplier of remedying or re-performing the Services).
- (c) If the default referred to in clause 12(a) is not capable of being remedied or the Services are not capable of being re-performed, or the Supplier fails within the time specified to remedy the default or re-perform the Services, the Corporation may either:
 - (i) remedy that default or re-perform the Services itself; or
 - (ii) have the Services remedied or re-performed by a third party,

and in either case, any costs or expenses incurred by the Corporation in exercising its rights under this clause 12(c) will be a debt due and owing from the Supplier to the Corporation.

- (d) Without limiting any other clause of this Agreement, or any other remedy the Corporation may have, if there is any failure by the Supplier to meet a Service Level, Service Credits will be payable by the Supplier if specified in Schedule 3. If applicable, the parties agree that the Service Credits are a genuine pre-estimate of the loss likely to be suffered by the Corporation as a result of the Supplier's actions, including the diminution in value of the Services resulting from the failure and do not constitute a penalty.

13. **CONFLICT OF INTEREST**

- (a) The Supplier warrants to the Corporation that it does not, and will ensure that its Personnel do not, hold any office or possess any property, are not engaged in any business, trade or calling and do not have any obligations by virtue of any contract whereby, directly or indirectly, duties or interests are or might be created in conflict with or might appear to be created in conflict with their duties and interest under this Agreement.
- (b) The Supplier must not, and must ensure that its Personnel do not, directly or indirectly, offer, promise, agree to pay, give, receive, accept or solicit anything of value (including to or from any third party) in order to secure any reward or improper benefit other than payment for the performance of their obligations under this Agreement, without the prior written consent of the Contract Manager. The Corporation may terminate this Agreement immediately on notice to the Supplier if the Supplier or any of its Personnel is found to have engaged in any such conduct and recover the amount of any Loss resulting from such termination as a debt due from the Supplier.

- (c) The Supplier must promptly inform the Corporation of any matter which may give rise to an actual or potential conflict of interest at any time during the Term and comply with any reasonable directions given by the Corporation in terms of dealing with that conflict.
- (d) The Supplier acknowledges and agrees that failure to comply with this clause 13 will constitute a breach of a fundamental term of this Agreement.

14. **CHANGE IN CONTROL**

- (a) The Supplier must notify the Corporation in writing of any proposed or impending change in Control of the Supplier (or of the ultimate holding company of the Supplier) of which it becomes aware and obtain the Corporation's prior written consent to such change in Control.
- (b) In determining whether or not to provide its consent to a change in Control, the Corporation may consider such information as it considers relevant or necessary, including:
 - (i) compliance by the proposed owner with Governmental policies;
 - (ii) insurance coverage maintained by the proposed owner;
 - (iii) the financial viability of the proposed owner; and
 - (iv) the likely ability of the proposed owner to satisfy the requirements set out in this Agreement.
- (c) If the Corporation notifies the Supplier that it does not consent to the proposed or impending change in Control, and the change in Control occurs notwithstanding, the Corporation may, by notice in writing to the Supplier, terminate this Agreement, such termination to take effect at any nominated time within the immediately succeeding 12 months.

15. **TERM**

15.1 **Initial Term**

This Agreement begins on the Commencement Date and continues until the later of:

- (a) the Completion Date; or
- (b) acceptance by the Corporation of all Services to be provided by the Supplier to the Corporation under this Agreement,

unless extended in accordance with clause 15.2 or terminated earlier in accordance with clauses 14 and 16.

15.2 **Extension**

- (a) This Agreement may be extended beyond the Completion Date, as agreed by the parties in writing, for the period or periods specified in Item 2 of Schedule 1.
- (b) Any such further term or terms will be on the same terms and conditions as this Agreement (excluding, in respect of the final further period, this clause 15.2).

16. **TERMINATION AND SUSPENSION**

16.1 **Grounds for termination by the Corporation**

The Corporation may terminate this Agreement by notice in writing to the Supplier (with immediate effect or with effect from a specified date) if:

- (a) the Supplier:
 - (i) fails to provide the Services in accordance with all applicable Laws (including the VIPP if applicable), the Service Levels or otherwise in accordance with the requirements of this Agreement or the lawful directions of the Corporation;
 - (ii) breaches any provision of this Agreement and, where the breach is capable of remedy, fails to remedy the breach within 14 days after receiving written notice requiring it to do so (or such later date as may be specified in that notice);
 - (iii) breaches any material provision of this Agreement that is not capable of remedy (for the avoidance of doubt, this right to terminate will apply to a breach of clause 5.7 of this Agreement by the Supplier);
 - (iv) or any of its Personnel involved in the provision of the Services are guilty of fraud, dishonesty or any other serious misconduct;
 - (v) commits any act or does anything that may be prejudicial or otherwise detrimental to the reputation of the Corporation;
 - (vi) suffers from an Insolvency Event; or
- (b) during the Term there is a change in governmental policy that affects the Corporation's ability to perform its obligations under this Agreement or which, in the reasonable opinion of the Corporation, has the effect of making the provision of Services under this Agreement unviable, inappropriate or otherwise unsuitable.

16.2 **Termination by the Corporation for convenience**

- (a) The Corporation may terminate this Agreement without cause at any time by providing written notice to the Supplier (such termination to take effect upon receipt of the notice by the Supplier or such later date as specified in the notice).
- (b) If this Agreement is terminated pursuant to clause 16.2(a), the Corporation will pay the Supplier:
 - (i) for the Services performed in accordance with this Agreement up to the date of the termination; and
 - (ii) the unavoidable and substantiated costs incurred by the Supplier as a direct result of the termination, excluding any loss of profit,

and the Corporation has no other liability to the Supplier in relation to that termination.
- (c) When the Corporation issues a notice under clause 16.2(a), the Supplier must immediately comply with any directions given in the notice and do all that is possible to mitigate its losses arising from the termination of this Agreement.

16.3 **Grounds for termination by the Supplier**

- (a) The Supplier may terminate this Agreement by giving at least 90 days' notice in writing to the Corporation (with a copy to the Contract Manager) if the Corporation fails to pay amounts due under this Agreement which have the following characteristics:
 - (i) are the subject of tax invoices complying with this Agreement;
 - (ii) are due and payable in accordance with this Agreement;
 - (iii) are not the subject of a good faith dispute;
 - (iv) are overdue for a period of at least 60 Business Days; and
 - (v) are amounts for which a demand has been made, provided that the demand clearly states that the amount has been overdue for a period of at least 60 Business Days and that the Supplier will have the right to terminate this Agreement on 90 days' notice after the expiration of five Business Days following service of the demand if the demand is not met within that five Business Day period.
- (b) Clause 16.3(a) constitutes the Supplier's sole and exclusive right to terminate this Agreement.

16.4 **Consequences of termination or expiry**

- (a) Termination or expiry of this Agreement will not prejudice any right of action or remedy which may have accrued to either party prior to termination or expiry (as the case may be).
- (b) Upon termination or expiry of this Agreement, the Corporation must pay to the Supplier all amounts owing that have been completed but not billed as at the date of termination or expiry (provided that such Services have been provided in accordance with the Service Levels, any applicable performance standards and otherwise in accordance with the terms of this Agreement).
- (c) If this Agreement is terminated by the Corporation pursuant to clause 16.1(b), the Supplier may request that the Corporation pay to the Supplier, in addition to any amounts payable pursuant to clause 16.4(b), an amount referable to the reasonable cost to the Supplier of implementing any systems required to perform its obligations under this Agreement (which systems the Supplier will not be able to otherwise make use of in the conduct of its ordinary business), as demonstrated by the Supplier to the reasonable satisfaction of the Corporation. The Supplier acknowledges and agrees that:
 - (i) any amount paid by the Corporation pursuant to this clause 16.4 will be finally determined by the Corporation in its absolute discretion and confirmed to the Supplier in writing; and
 - (ii) in no event will the Corporation be liable to the Supplier in respect of any Consequential Loss.
- (d) If this Agreement is terminated by the Corporation pursuant to clause 16.1(a), and if the Corporation acquires the Services from a supplier other than the Supplier at a cost greater than the amount which would have been paid to the Supplier by the Corporation, such cost shall be a debt due and owing to the Corporation by the Supplier.

- (e) On termination or expiration of this Agreement, the Supplier must immediately cease using all materials (whether in written or electronic form) that contain or encapsulate any Data or Confidential Information.

16.5 **Transitional assistance**

- (a) The Supplier acknowledges and agrees that on termination or expiry of this Agreement the Supplier will provide all such transitional assistance as may be reasonably necessary or requested by the Corporation to facilitate the smooth transition of any relevant information, knowledge, systems or assets from the Supplier to the Corporation (or to a third party nominated by the Corporation) to enable the Corporation to continue to obtain the benefit of such information, knowledge, systems or assets for the business purposes of the Corporation, following the termination or expiry of this Agreement.
- (b) On termination or expiry of this Agreement, the Corporation will have the first right to purchase from the Supplier any physical assets which have not been fully depreciated by the Supplier, and which are required by the Corporation for the ongoing provision of the Services. The Corporation will be entitled to exercise its right to purchase any physical assets in its absolute discretion, and where it does so, it will pay fair compensation to the Supplier in respect of such physical assets.

16.6 **Survival**

Clauses 1, 2.3, 2.6, 2.8, 5.1(f), 5.1(g), 5.1(h), 5.3(c), 5.3(d), 5.5(b), 7(a), 8, 10, 11, 12, 16.2(b), 16.2(c), 16.4, 16.5, 16.6, 17 (in respect of professional indemnity insurance), 19, 20, 23.2, 24, 25, 26 and 27 of this Agreement survive the termination or expiry of this Agreement and may be enforced at any time.

16.7 **Suspension for breach**

- (a) Without prejudice to the rights of the Corporation under clauses 16.1, 16.2 and 16.4, the Corporation may order a suspension of provision of the Services by the Supplier where in the reasonable view of the Corporation, the Supplier or any of its Personnel engaged in the provision of the Services, is in breach of any obligations under this Agreement, including without limitation where the Corporation is of the view that the Services do not meet the Service Levels. In these circumstances the Corporation may enter into an agreement for provision of the same Services by another person, and the Corporation is not liable to the Supplier in any way in connection with the suspension, or for the provision of the Services supplied or not supplied by the Supplier during the period of any suspension.
- (b) If the Corporation engages any other person to provide the Services, including Services which the Supplier has commenced providing or sourcing and which were suspended under clause 16.7(a), the Supplier indemnifies the Corporation against, and the Corporation may deduct and set-off from monies otherwise due to the Supplier, any costs, losses or expenses reasonably incurred by the Corporation as a result of the suspension, or engagement of any person to provide any suspended Services.
- (c) The Supplier must recommence performance of its obligations under this Agreement if directed by the Corporation. The Supplier must recommence performance in compliance with any reasonable directions given by, or reasonable requirements of, the Corporation.

16.8 **Suspension when no breach**

- (a) Without prejudice to the rights of the Corporation under clauses 16.1, 16.2 and 16.4, and notwithstanding that the Supplier has not breached any of its obligations under this Agreement, the Corporation may order a suspension of provision of the Services by the Supplier.
- (b) If the Supplier is ordered to suspend provision of the Services pursuant to clause 16.8(a), the Supplier is entitled to be paid by the Corporation the reasonable extra costs incurred by the Supplier as a result of the suspension, but the Supplier must take all steps possible to minimise those extra costs, and must provide sufficient documentation to the Corporation to evidence those extra costs. Any amount payable under this clause will be full compensation for the suspension and the Corporation will not be liable to the Supplier in any other way in connection with the suspension, or for the provision of the Services supplied or not supplied by the Supplier during the period of any suspension.
- (c) The Supplier must recommence performance of its obligations under this Agreement if directed by the Corporation. The Supplier must recommence performance in compliance with any reasonable directions given by, or reasonable requirements of, the Corporation.

17. **INSURANCE**

17.1 **Supplier to maintain insurance**

- (a) The Supplier must (and must ensure that any sub-contractors appointed by it under clause 22) obtain and maintain for the later of the expiry of the Term or the completion of all Services (including the rectification of all defects) under this Agreement, the insurances specified in Item 8 of Schedule 1. The Supplier acknowledges and agrees that any professional indemnity insurance policy must also be maintained for a period of seven years after the later of the expiry or termination of this Agreement or completion of the last of the Services under this Agreement.
- (b) The Supplier must within 10 Business Days of a request by the Corporation provide the Corporation with evidence of the currency of any insurance it is required to obtain under this Agreement.
- (c) Where any insurance the Supplier is required to obtain and maintain is due to expire (the **Initial Insurance**), the Supplier must, on request by the Corporation, provide the Corporation with evidence of the currency of relevant replacement insurance prior to the expiration of the Initial Insurance.
- (d) Any insurance obtained pursuant to clause 17.1(a) or 17.1(c) must be:
 - (i) taken out with an insurer which has a minimum Standard and Poor's rating of A- or equivalent rating from another ratings agency or such other insurer as approved by the Corporation acting reasonably; and
 - (ii) on terms (including any excess) that a prudent insured providing the Services would reasonably effect and maintain, including incorporating any terms and conditions specified in Item 8 of Schedule 1.

18. **ACCIDENT COMPENSATION**

The Supplier must ensure that, in respect of its Personnel and any other persons engaged by the Supplier to provide the Services, it:

- (a) complies with the provisions of the *Workplace Injury Rehabilitation and Compensation Act 2013* (Vic);
- (b) insures against its liability to pay compensation whether under legislation or otherwise; and
- (c) produces to the Corporation on request any certificates or like documentation required by the *Workplace Injury Rehabilitation and Compensation Act 2013* (Vic).

19. **CONFIDENTIALITY AND PRIVACY**

19.1 **Use of Confidential Information**

- (a) The Supplier must (and must ensure that its Personnel and advisers must):
 - (i) use and reproduce Confidential Information only to perform its obligations under this Agreement;
 - (ii) not disclose or otherwise make available Confidential Information other than to Personnel who have a strict need to know the information to enable the Supplier to perform its obligations under this Agreement; and
 - (iii) not disclose or otherwise make available Confidential Information other than to legal and financial advisors if and when such disclosure becomes necessary, provided the names of the advisors are first provided to the Corporation and the Corporation provides prior written consent for such disclosure.
- (b) All Confidential Information and Corporation's Materials will remain the property of the Corporation and all copies or other records containing the Confidential Information, Data or the Corporation's Materials (or any part of them) must, except to the extent necessary to comply with:
 - (i) clause 10.1;
 - (ii) any requirement of Law; or
 - (iii) any reasonable requirements of professional indemnity insurance,

upon request or upon termination or expiry of this Agreement, be returned by the Supplier to the Corporation (at no additional cost to the Corporation), or at the election of the Corporation, be deleted or destroyed.
- (c) Upon the occurrence of any of the events specified in clause 19.1(b), the Supplier must not make any further use of, exploit or deal with in any way the relevant Confidential Information, Data or Corporation's Materials unless expressly permitted to do so by clause 19.1.
- (d) The Supplier must not refuse to comply with, or delay the performance of, its obligations under clause 19.1(b) and 19.1(c) whether on the basis of any alleged lien, set off, proprietary or quasi proprietary right or any other claim or demand against the Corporation or any other person.
- (e) The Supplier acknowledges that the Corporation will be entitled (in addition to any other remedy it may have) to seek an injunction or other equitable relief with respect to any actual or threatened breach by the Supplier of this clause 19 and without the need on the part of the Corporation to prove any special damage or comply with the requirements in clause 20.

- (f) If required by the Corporation, the Supplier must, and must ensure that any person reasonably requested by the Corporation who is to be provided with Confidential Information, executes a confidentiality agreement in favour of the Corporation. The confidentiality agreement must contain clauses and conditions approved by the Corporation and be executed before any Confidential Information is disclosed to or otherwise provided to them.

19.2 Disclosure of Supplier's information

- (a) Subject to clause 19.2(b), the Corporation agrees to treat as confidential all information of or relating to the Supplier that is provided to it, whether under this Agreement or in any tender or proposal, by or on behalf of the Supplier.
- (b) The Supplier hereby acknowledges and/or consents to the Corporation publishing or otherwise making available information in relation to the Supplier (and the provision of the Services):
 - (i) as may be required in order to comply with contract publishing rules applicable to the Corporation;
 - (ii) to other Victorian Public Entities or Ministers of the State of Victoria in connection with the use of the Services;
 - (iii) to any public sector agency (of the State of Victoria, any other state or territory or the Commonwealth) for the purposes of benchmarking, provided that it will not identify the Supplier;
 - (iv) to the office of the Auditor General appointed under section 94A of the *Constitution Act 1975* (Vic) or the ombudsman appointed under the *Ombudsman Act 1973* (Vic) (**Ombudsman**) or to the Victorian Auditor-General;
 - (v) to the commission established under the *Independent Broad-based Anti-corruption Commission Act 2011* (Vic); and
 - (vi) to comply with the Law, including the *Freedom of Information Act 1982* (Vic).

19.3 Privacy

- (a) Without in any way limiting any other clause of this Agreement, the Supplier acknowledges that the Corporation is bound by and subject to privacy obligations and requirements imposed by, among other things:
 - (i) the Essential Services Commission's Customer Service Code for Urban Water Businesses;
 - (ii) any express customer contract entered into by the Corporation with a customer of the Corporation that the Corporation notifies the Supplier of;
 - (iii) the *Privacy and Data Protection Act 2014* (Vic), including the Information Privacy Principles, any applicable Code of Practice;
 - (iv) the *Health Records Act 2001* (Vic), including the Health Privacy Principles;
 - (v) the Protective Data Security Standards;
 - (vi) any other Laws relating to privacy;

- (vii) any privacy codes of practice, privacy policies, guidelines or standards binding on or adopted by the Corporation from time to time that the Corporation notifies the Supplier of; and
 - (viii) any amendments to or replacement or extension of any of the above,
- (together referred to as the **Privacy Obligations**).
- (b) Without limiting any other provision of this Agreement, the Supplier:
- (i) agrees to be bound by and represents and warrants that it will fully comply with, and must ensure that its Personnel agree to be bound by and warrant that they will fully comply with, the Privacy Obligations with respect to any obligation binding on or act done or practice engaged in by the Supplier or any of its Personnel pursuant to or for the purposes of this Agreement, in the same way and to the same extent as the Corporation would be bound by them in respect of that obligation, act or practice had it been directly complied with, done or engaged in by the Corporation;
 - (ii) if required by the Corporation, must, and must ensure that its Personnel, undertake such acts and adopt such procedures, systems and documentation as required by the Corporation, for the purposes of complying with the Privacy Obligations and this clause 19.3;
 - (iii) must assist the Corporation to comply with its obligations under the Privacy Obligations, to the extent possible;
 - (iv) warrants that it will fully comply with, and ensure that its Personnel fully comply with, all Laws relating to privacy binding on them;
 - (v) must permit, and must ensure that its Personnel permit, the Corporation or any of its authorised personnel, upon request to inspect at any time, any site where any obligation, act or practice pursuant to or for the purposes of this Agreement is being carried out, or Personal Information, Confidential Information or other property of the Corporation is held, for the purposes of checking that the Supplier and its Personnel are complying with the Privacy Obligations and this clause 19.3;
 - (vi) must ensure that its Personnel provide such information relating to and evidence of compliance with the Privacy Obligations and this clause 19.3, and details and copies of Personal Information, collected or held or used or disclosed by it or them for the purposes of carrying out their obligations under this Agreement, as required by the Corporation;
 - (vii) must immediately notify the Corporation upon becoming aware of any breach or suspected breach of the Privacy Obligations and comply with all directions of the Corporation in respect of the breach or suspected breach;
 - (viii) must provide the Corporation with such co-operation as the Corporation requires in relation to resolving any complaint concerning privacy;
 - (ix) must provide access to or amendment of any record as directed by the Corporation;
 - (x) must comply with any directions made by any of the Commissioners, the Commonwealth Privacy Commissioner or the Victorian Health Services Commissioner relevant to this Agreement;

- (xi) on termination or expiry of this Agreement, must return, and must ensure that its Personnel return, to the Corporation or destroy as required by the Corporation, all Personal Information, collected or held or used or disclosed by it or them for the purposes of this Agreement; and
- (xii) must be liable for and must indemnify and hold the Corporation harmless from and against:
 - (A) any and all Loss incurred, suffered or paid by, or claimed against the Corporation arising out of or in connection with the breach by the Supplier, or any of its Personnel, of any of the Privacy Obligations or this clause 19.3; and
 - (B) any Ombudsman Costs.
- (c) For the purposes of clause 19.3(b)(xii)(B), the term "Ombudsman Costs" means any charges, fees or penalties imposed or levied upon the Corporation by the Energy and Water Ombudsman (Victoria) Limited (**EWOV**), in respect of an inquiry, consultation, complaint or dispute regarding:
 - (i) Personal Information collected or held or used or disclosed by the Supplier and its Personnel for the purposes of this Agreement; or
 - (ii) any obligation, act or practice of the Supplier and Personnel, arising out of or in relation to this Agreement (**Subject Matter**), and where the charges, fees, or penalties are not precisely or directly referable to the Subject Matter, an approximate charge, fee or penalty as may be reasonable having regard to the charges, fees or penalties levied upon the Corporation by the EWOV.
- (d) Without limiting clauses 19.3(a), (b) and (c), in relation to any Personal Information obtained by the Supplier in connection with this Agreement, the Supplier must:
 - (i) not collect, use, disclose, store, transfer or handle the information except in accordance with the Privacy Obligations;
 - (ii) not, without the prior consent of the Corporation, disclose the information to a person who is outside Victoria;
 - (iii) take all reasonable steps to ensure that the information is protected from misuse, interference or loss, and from unauthorised access, modification or disclosure;
 - (iv) take all reasonable steps to destroy or permanently de-identify information that is no longer needed for the purposes of this Agreement;
 - (v) co-operate with any reasonable request or direction the Corporation makes which relates to the protection of the information or the exercise of the functions of any of the Commissioners, the Commonwealth Privacy Commissioner or the Victorian Health Services Commissioner;
 - (vi) ensure that access to the information is limited to those of its Personnel who are required to access that information for the purposes of this Agreement; and
 - (vii) comply with any reasonable direction of the Corporation in relation to a complaint concerning privacy received by either party.

19.4 **Media**

- (a) The Supplier must not make any statement to the media on behalf of the Corporation. All enquiries from the media in relation to the Services and this Agreement must be referred to the Contract Manager. The Supplier must notify the Contract Manager of all events which arise in the course of providing the Services which are likely to receive media attention.
- (b) The Supplier must not, without first obtaining the written consent of the Corporation, in any manner advertise or publish the fact, including by making a public announcement, that the Supplier is contracted with the Corporation for the provision of the Services.

20. **DISPUTES**

20.1 **Parties to meet**

If any dispute arises under or in connection with this Agreement (the **Dispute**) and that Dispute is not able to be resolved by the Contract Manager and the Relationship Manager within 14 days, the nominated senior executive officer (or equivalent) of each of the Corporation (on the one hand) and the Supplier (on the other hand) will promptly meet and discuss in good faith with a view to resolving such Dispute.

20.2 **Mediation**

- (a) If any Dispute is unable to be resolved in accordance with clause 20.1 within 14 days, the parties agree to endeavour in good faith to settle the Dispute by mediation administered by the Australian Dispute Centre (the **ADC**) before having recourse to arbitration or litigation.
- (b) The mediation will be conducted in accordance with the mediation guidelines of ADC (the **Guidelines**) which set out the procedures to be adopted, the process of selection of the mediator and the costs involved and the terms of those Guidelines are incorporated in this Agreement.

20.3 **Arbitration or litigation**

- (a) If the parties fail to settle any Dispute in accordance with clause 20.2 the parties may agree to submit the Dispute for resolution to final and binding arbitration under the Rules of Arbitration of the Institute of Arbitrators and Mediators Australia by one or more arbitrators appointed in accordance with those rules.
- (b) If the parties do not agree to refer the Dispute to arbitration in accordance with clause 20.3(a), either party may submit the Dispute for resolution to the exclusive jurisdiction of the Courts of Victoria, Australia.

20.4 **Performance during dispute resolution**

The parties to a Dispute will continue to perform their respective obligations under this Agreement, pending the resolution of a Dispute under this clause 20.

20.5 **Interlocutory relief**

Nothing in this clause 20 is to be taken as preventing any party to a Dispute from seeking interlocutory relief in respect of such Dispute.

21. COMPLIANCE WITH LAW

- (a) The Supplier must, in performing its obligations under this Agreement, comply with all Laws affecting or applicable to the provision of Services by the Supplier. Without limitation to the foregoing, the Supplier must comply with the VIPP (if applicable).
- (b) Without limiting clause 21(a), where, in the course of providing the Services, the Supplier, or its Personnel:
 - (i) supervise Public Sector Employees;
 - (ii) undertake work that is of a similar nature to the work undertaken by Public Sector Employees at a premises or location generally regarded as a public sector workplace; or
 - (iii) use or have access to public sector resources or information that are not normally accessible or available to the public,
 the Supplier must (and must ensure that its employees and sub-contractors) comply with the Code of Conduct.
- (c) The Supplier and any Personnel engaged in the provision of the Services must not:
 - (i) engage in unethical work practices; or
 - (ii) engage employees or sub-contracted workers upon terms and conditions which do not meet industry standards generally applicable in Victoria.
- (d) Where a federal industrial award may apply to the capacity in which an employee is engaged by the Supplier, or by a sub-contractor, in the provision of the Services, the Supplier must:
 - (i) where applicable, comply with the better off overall test under section 193 of the *Fair Work Act 2009* (Cth) in relation to any enterprise agreement it is bound by; or
 - (ii) otherwise ensure that the conditions on which that employee is engaged must be no less beneficial to the employee than the rates and conditions under that award.
- (e) The Supplier must hold and keep current all licences, permits, consents, assurances, authorisations and approvals necessary for the carrying out of the Services and the performance of any other obligations under or relating to this Agreement.

22. SUB-CONTRACTING

- (a) Except as expressly provided in this Agreement, the Supplier must not sub-contract to any third person any of its obligations under this Agreement without the prior written consent of the Corporation, which consent may be given or withheld by the Corporation in its absolute discretion.
- (b) The Supplier must ensure that any sub-contractor engaged by it complies with all obligations imposed on the Supplier by this Agreement.
- (c) The Supplier will not, as a result of any sub-contracting arrangement, be relieved from the performance of any obligation under this Agreement and will be liable for all acts and omissions of a sub-contractor as though they were the actions of the Supplier itself.

23. ACCESS AND SAFETY

23.1 Access obligations

Without limiting the Supplier's obligations under this Agreement, when the Supplier enters or accesses the premises or property of the Corporation, the Supplier must, and must ensure that its Personnel must, use reasonable endeavours to:

- (a) act in a safe and lawful manner and comply with the safety, occupational health and safety, security, environment and employee relations standards, policies, procedures and directions of the Corporation (as notified to the Supplier);
- (b) clean up and remove any material dispersed on the premises while providing the Services;
- (c) take into account existing and future hazards associated with providing the Services; and
- (d) participate in any induction or training at the direction of the Contract Manager.

23.2 No occupier's liability

- (a) The Corporation and its Personnel will not be responsible for any damage done to the Supplier's property or to that of any of the Supplier's Personnel or for any personal injury sustained by any of the Supplier's Personnel occurring on the Corporation's premises arising directly or indirectly as a result of:
 - (i) the negligence or recklessness of such Personnel of the Supplier; or
 - (ii) the failure of such Personnel of the Supplier to comply with the occupational health and safety and security standards, policies, procedures and directions of the Corporation (as notified to the Supplier).
- (b) The Supplier unconditionally and irrevocably releases the Corporation and its Personnel from all such responsibility and agrees to indemnify the Corporation and its Personnel (the **Indemnified Party**) against any Loss that the Indemnified Party may suffer as a result of any third party bringing an action against that Indemnified Party in relation to any such circumstances, except to the extent that such circumstances were caused directly as a result of the Indemnified Party's proven negligence.

24. GST

24.1 Definitions

Terms used in this clause have the same meanings given to them in the *A New Tax System (Goods and Services Tax) Act 1999* (Cth).

24.2 Consideration is exclusive of GST

Unless otherwise expressly stated, all prices or other sums payable or consideration to be provided under or in accordance with this Agreement are exclusive of GST.

24.3 GST Gross Up

If GST is imposed on any supply made under or in accordance with this Agreement, the recipient of the taxable supply must pay to the party making the taxable supply an amount equal to the GST payable on or for the taxable supply. Subject to the recipient first receiving

a valid tax invoice, payment of the GST amount will be made at the same time as the consideration for the taxable supply is to be paid or provided in accordance with this Agreement.

24.4 **Reimbursement**

If this Agreement requires a party to pay for, reimburse or contribute to any expense, loss or outgoing (**Reimbursable Expense**) suffered or incurred by another party, the amount required to be paid, reimbursed or contributed by the first party will be the amount of the Reimbursable Expense net of input tax credits (if any) to which the other party is entitled in respect of the Reimbursable Expense plus any GST payable by the other party.

24.5 **Adjustment Event**

If an adjustment arises in relation to a taxable supply made under this Agreement, the party making the taxable supply must recalculate the amount payable on account of GST under clause 24.3 to take account of the adjustment event. The party making the taxable supply must issue an adjustment note to the other party within 28 days of becoming aware of the adjustment event. The necessary payment to reflect the adjustment must be made by the relevant party.

24.6 **CPI Reviews**

The Supplier agrees that, if:

- (a) an express provision of this Agreement results in there being a review of the Rates and/or the Fees by reference to a specific index or indices (**Index**); and
- (b) such Index is increased as a result of any change to either (or both) the GST rate or the GST base,

the impact of that GST related increase on the Index will be excluded for the purposes of calculating any consideration or other adjustments under this Agreement. If requested by the Corporation, the parties must use their best endeavours to agree either a replacement Index, or an adjustment to the published Index, for the purposes of excluding the impact of the GST related increase on the Index. If the parties cannot agree within 10 Business Days on either a replacement Index, or an adjustment to the published Index, the dispute will be resolved in accordance with clause 20.

24.7 **Other taxes**

Subject to the other provisions of this Agreement, the Rates and/or Fees include all taxes (other than GST), duties (including stamp duty), charges, fees and other imposts of whatever kind (including any fine or penalty imposed in connection with them) that may be levied, assessed, charged or collected in connection with this Agreement.

25. **STAFF COSTS**

- (a) The Supplier indemnifies and will keep indemnified the Corporation from and against all liability for the Staff Costs in any way relating to the Services.
- (b) If the Corporation is or becomes liable to pay any Staff Costs, the Corporation may deduct the amount of its liability for the Staff Costs from any amount due by the Corporation to the Supplier, whether under this Agreement or otherwise.

26. **NOTICES**

26.1 **Giving a communication**

A notice, demand, certification, process or other communication relating to this Agreement must be in writing in the English language, and may (in addition to any other method permitted by law) be sent by pre-paid post, pre-paid courier or by electronic mail as follows:

- (a) to the Corporation: at the address which is set out in Item 9 of Schedule 1 (or such other address that the Corporation notifies to the Supplier from time to time); and
- (b) to the Supplier: at the address which is set out in Item 9 of Schedule 1 (or such other address that the Supplier notifies to the Corporation from time to time).

26.2 **Time of delivery**

A notice or document shall be taken to be delivered or served as follows:

- (a) in the case of delivery in person or by courier, when delivered;
- (b) in the case of delivery by post within Australia, five Business Days after the date of posting;
- (c) in the case of delivery by post to or from an address outside Australia, ten days after the date of posting; and
- (d) in the case of electronic mail, if the message is correctly addressed to and successfully transmitted to that party's electronic mail address (e-mail address), when the sender receives confirmation on its server that the message has been transmitted.

26.3 **After hours communications**

If any notice or document is delivered or deemed to be delivered:

- (a) after 5.00 pm in the place of receipt; or
- (b) on a day which is a Saturday, Sunday or public holiday in the place of receipt,

it is taken as having been delivered at 9.00 am on the next day which is not a Saturday, Sunday or public holiday in that place.

27. **GENERAL**

27.1 **Legal costs**

Except as expressly stated otherwise in this Agreement, each party must pay its own legal and other costs and expenses of negotiating, preparing, executing and performing its obligations under this Agreement.

27.2 **Amendment**

This Agreement may only be varied or replaced by a document executed by the Corporation and the Supplier.

27.3 **Waiver and exercise of rights**

- (a) A right may only be waived in writing, signed by the party giving the waiver.

- (b) A single or partial exercise or waiver by a party of a right relating to this Agreement does not prevent any other exercise of that right or the exercise of any other right.
- (c) A party is not liable for any loss, cost or expense of any other party caused or contributed to by the waiver, exercise, attempted exercise, failure to exercise or delay in the exercise of a right by the first party.

27.4 **Severability**

Any provision of this Agreement which is invalid or unenforceable is to be read down, if possible, so as to be valid and enforceable, and, if that is not possible, the provision shall, to the extent that it is capable, be severed to the extent of the invalidity or unenforceability, without affecting the remaining provisions.

27.5 **Rights cumulative**

Except as expressly stated otherwise in this Agreement, the rights of a party under this Agreement are cumulative and are in addition to any other rights of that party.

27.6 **Set off**

The Corporation may set off against any sum owing to the Supplier under this Agreement any amount then owing by the Supplier to the Corporation.

27.7 **Governing law and jurisdiction**

- (a) This Agreement is governed by and is to be construed in accordance with the laws applicable in Victoria.
- (b) Each party irrevocably and unconditionally submits to the exclusive jurisdiction of the courts of Victoria and any courts which have jurisdiction to hear appeals from any of those courts and waives any right to object to any proceedings being brought in those courts.

27.8 **Assignment of rights**

- (a) The Supplier may assign any right under this Agreement with the prior written consent of the Corporation.
- (b) The Supplier will not, as a result of any assignment pursuant to clause 27.8(a), be relieved from the performance of any obligation under this Agreement, and will be responsible for acts and omissions of any assignee.
- (c) The Corporation may at any time assign any or all of its rights under this Agreement.

27.9 **Counterparts**

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

27.10 **Entire understanding**

- (a) This Agreement, together with any other documents or representations specified in Item 10 of Schedule 1, contains the entire understanding between the parties as to the subject matter of this Agreement.
- (b) Except as otherwise provided in clause 27.10(a):

- (i) all previous negotiations, understandings, representations, warranties, memoranda or commitments concerning the subject matter of this Agreement are merged in and superseded by this Agreement and are of no effect; and
- (ii) no oral explanation or information provided by any party to another:
 - (A) affects the meaning or interpretation of this Agreement; or
 - (B) constitutes any collateral agreement, warranty or understanding between any of the parties.

27.11 **Relationship of parties**

- (a) This Agreement is not intended to create a partnership, joint venture, employment or agency relationship between the parties, and the Supplier is engaged as an independent contractor to provide the Services.
- (b) The Supplier acknowledges that it has no authority to bind the Corporation or otherwise to hold itself out as an agent of the Corporation without the Corporation's specific consent.

27.12 **Further Assurances**

Each party agrees at its own expense, on the request of another party, to do everything reasonably necessary to give effect to this Agreement and the transactions contemplated by it, including, but not limited to, the execution of documents.

27.13 **Time of the essence**

Time is of the essence in relation to the provision of the Services under this Agreement.

SCHEDULE 1**Contract Variables****ITEM 1: SUPPLIER (DESCRIPTION OF THE PARTIES)**

Detection Services Pty Ltd ABN 96 114 545 215 whose office is at 23/189B South Centre Road, Tullamarine VIC 3043

ITEM 2: COMMENCEMENT AND COMPLETION (CLAUSE 2)

Commencement Date: 11 May 2020

Completion Date: 10 May 2022

Extension period: Two – 1 year extension at South East Water's discretion.

Liquidated Damages: Not Applicable

ITEM 3: CONTRACT MANAGER AND RELATIONSHIP MANAGER (CLAUSE 9.1)**Corporation's Contract Manager(s)**

Name: Nico Macwilliams
 Title: Water Network Optimisation Engineer
 Telephone: 03 9552 3043
 Mobile: Personal Data
 Email: Nico.Macwilliams@sew.com.au

Supplier's Relationship Manager

Name: Chris Evans
 Title: General Manager
 Mobile: Personal Data
 Email: chrise@detectionservices.com.au

Supplier's Relationship Manager's Alternate

Name: Stuart Stapely
 Title: Vic Business Unit Manager
 Mobile: Personal Data
 Email: stuarts@detectionservices.com.au

ITEM 4: PRICE REVIEW**Review Mechanism:**

Price will be fixed as per Schedule 2, Item 2 – Price Schedule

ITEM 5: INVOICING (CLAUSE 6.1)**Invoice requirements:**

Invoices must contain the information necessary to be a tax invoice for the purposes of the *A New Tax System (Goods and Services Tax) Act 1999* (Cth) in addition to the following:

Invoice must be submitted with details of tasks carried out/completed including sufficient breakdown details to enable reconciliation prior to the payment.

Invoice must indicate a valid South East Water Purchase Order Number, and the name of Contract Manager.

Address for invoice:

To be emailed to Accountspayable@sew.com.au OR Nico.Macwilliams@sew.com.au

ITEM 6: PAYMENT (CLAUSE 6.2)

Payment for Services is to be made in accordance with clause 6.2, and may include any of the following methods:

Electronic transfer of funds**ITEM 7: CONTRACT MANAGEMENT REVIEW (CLAUSE 9.3)**

The Supplier will undergo regular formal reviews at twelve (12) monthly intervals at which times the Supplier and South East Water will consider the efficiency, effectiveness and practicality for the services provided, the quality of the deliverables and the levels of stakeholder satisfaction being achieved.

South East Water's Contract Manager and the Supplier shall hold formal Annual Meetings. The purpose of these meetings is to:

- review the Supplier's data, information, and reports;
- review the results of the performance monitoring measures and key performance indicators, inspections, audits, quality surveys, stakeholder satisfaction;
- discuss the efficiency, effectiveness and practicality for the services provided, current issues and priorities; and
- agree on any rectification measures, if required.

ITEM 8: INSURANCE (CLAUSE 17)

Tick one or more of the boxes below to specify the types and amount of insurance that the Supplier is required to obtain and maintain during the Term:

Type of coverage	Amount (AUD)
Public liability insurance	Irrelevant & Sensitive
Professional indemnity insurance	
Workers compensation insurance covering the Supplier's legal liability to its employees as required by Law. The Supplier must ensure that any subcontractors are similarly insured.	As required by Law

ITEM 9: NOTICE PARTICULARS (CLAUSE 26)**Corporation**

Address: 101 Wells Street, Frankston VIC 3199

Email: Nico.Macwilliams@sew.com.au

Addressee: Nico Macwilliams

Supplier

Address: 23/189B South Centre Road, Tullamarine VIC 3043

Email: chrise@etectionservices.com.au

Addressee: Chris Evans

ITEM 10: DOCUMENTATION (CLAUSE 27.10)

Insert details of any additional documentation that forms part of this Agreement:

Returnable Price Schedule and Returnable Part D submitted to South East Water in response to tender, TN201926 – Leak Detection Services.

In the event and to the extent of any inconsistency between the items listed above, the provisions of the earlier mentioned item will prevail to the extent of the inconsistency (noting however that the clauses and the schedules of this Agreement prevail over the items listed above). If the inconsistency remains incapable of resolution by reading down, the inconsistent provisions will be severed from the item lower in the order of precedence without otherwise diminishing the enforceability of the remaining provisions of that item.

ITEM 11: SUPPLIER'S KEY PERSONNEL (CLAUSE 3)

Insert details of the Supplier's Key Personnel, if any, who will be engaged in the provision of the Services: N/A

ITEM 12: MANAGEMENT SYSTEMS**Safety Management System (clause 5.1(d)(ii)(A))**

- ☐ Not required
☒ Required

Safety Management Plan (clause 5.2)

- ☐ Not required
☒ Required

Business Management System (clause 7(b))

- ☒ Not required
☐ Required
 ☐ Certification
 ☐ ISO 9001:2015 or equivalent (quality)
 ☐ AS/NZ4801:2001 or equivalent (safety)
 ☐ ISO 14001:2015 or equivalent (environment)

SCHEDULE 2

Services and Price Schedule

South East Water (SEW) wishes to undertake leak detection across our reticulation network to identify assets that contribute to Non-Revenue Water (NRW). This program is essential in identifying leaks for follow up maintenance and repair in an effort to reduce NRW. This specification details the works required to deliver Leak Detection services. The number of km's to be detected is subject to change throughout the term of the contract, however will aim for approximately 1,200 km each financial year.

Item 1 – Work Program

Scope of Works

South East Water's Leak Detection Technicians (Active) will:

- Prepare plans with South East Water assets marked up
- Create jobs on Montage and allocate works to the Supplier
- Provide Electronic Listening Sticks (Palmer LMic), PPE, South East Water logo car magnets.

For the allocated areas on the provided plan, the Supplier will:

- Conduct Leak Detection requirements (Listed below)
- Sign in and Sign out of allocated tasks via the Mobile Field Terminal (MFT)
- Provide job record sheets and monthly summary of works electronically.

Leak Detection Requirements

Visual Inspection (Meters, Stop Taps, Hydrants Etc)

A visual inspection of the meter taps / stop taps is undertaken to determine if leakage is present. When a leakage is detected, this should be noted in the job record sheet and South East Water Leak Detection Technician should be notified.

Acoustic Sounding and Testing

All meters and fittings are acoustically tested for any evidence of leakage either on the service pipe, tapping, main or private leak. Any evidence of any possible leakage is noted on the job record sheet provided for follow up and retesting at a later time by the South East Water Leak Detection Technician (Active).

Reporting Minor/Major Leaks

For major / urgent leaks or bursts (i.e. those that are clearly visible at ground level), report these directly to the South East Water's Faults Line on 13 28 12. The operator will automatically put through a repair job to a service crew.

- Identify yourself as South East Water's Leak Detection Supplier.
- Ask the operator to give you the job reference number.
- Advise Leak Detection Technician (Active) of the job reference number.
- Isolate the area with stakes and tape if safe to do so.
- Take photos and upload this via the Mobile Field terminal (MFT)

Repair of Stop Tap Leaks

A common fault found during a leak detection program is leaking and weeping meter stop taps and meter connections, though generally small, accumulatively can contribute to a significant portion of NRW.

These leaks are repairable on site by the Supplier by tightening the gland nut and recorded. On average over 40 stop taps have been repaired on site per month.

Reporting Inconsistent GIS Information

Upon discovering inconsistencies between assets marked in GIS plans during leak detection work, the Supplier will be required to mark these up on the supplied plan, take photos of the asset/absence of the asset and include these within the monthly report to South East Water. Inconsistent information may include missing assets and assets that are located in a location significantly different to the plan.

Use of Mobile Field Terminal (MFT)

The Supplier will be granted access to the South East Water MFT via their SMART phones. Through the use of the MFT, the Contractor will record job activity in their allocated task. Records will include ON-SITE/OFF-SITE information, related photos and additional notes taken for the task.

Minor Non-Technical Tasks

The Supplier may be requested to perform minor tasks outside of the usual Leak Detection work. These tasks should be prioritised over Leak Detection work. This work will generally involve dropping off letters and notifying customers on an as-needed basis, as the rate agreed in the Returnable Price Schedule.

Monthly Reporting

The Supplier must provide monthly reports electronically in an Ms-Excel spreadsheet and include Kms surveyed, leak types identified, quantity and flow rate, inconsistencies detected with supplied plan etc.

Please note: The content and other details may change based on South East Water's guidelines and requirements to improve reporting.

FACTORS IMPACTING ON PERFORMANCE

The Supplier shall undertake the Contract works, record keeping and reporting to meet or exceed the outcomes of this specification. Successful achievement of these outcomes is likely to be influenced by the following:

- Season of the year
- Weather conditions (rainfall, temperature peaks, troughs and averages, etc.)
- The nature of the water supply zone or area being assessed. Some of South East Water network is located in areas of a hilly nature (i.e. Belgrave and McCrae) and other areas are relatively flat (Cranbourne).
- The age and type of pipeline being inspected will result in a different number of leaks detected.

The Supplier is required to account for the above influencing factors and other reasonably foreseeable factors and manage these accordingly to ensure consistent and effective performance throughout the Contract.

WORKING HOURS

The Supplier must conduct all the tasks between 7:00 am to 5:00 pm Monday to Friday.

QUALITY OF SERVICE PERSONNEL

Prior to the Commencement Date, and on an as required basis to reflect changes, the Supplier must submit a Service Personnel Report to the Contract Manager. This report shall list the names of the Supplier Representative and all personnel and approved subcontractors directly employed by the Supplier that are engaged to deliver the service. It must clearly indicate the complete hierarchy, including position title, the name of person allocated to that position, contact telephone numbers (office and mobile) and vehicle number, where applicable.

The Supplier must ensure that each service personnel member (for the work / activity to be carried out) has:

- had their employment history investigated;
- obtained a police security check and clearance;
- completed an induction program, if working on the Organisation's premises;
- the necessary skills and experience to effectively deliver the required services.
- completed the South East Water's web-based induction program
- South East Water's induction and identification card on the premises at all times.

The Supplier shall ensure all personnel undertaking field work have successfully completed construction induction awarded through Work Safe. Training requirements shall be identified by the Supplier to enable the Services to be undertaken in a safe manner and in accordance with the requirements of South East Water.

The Supplier shall maintain records of training undertaken by personnel and make these available to the South East Water on request.

Unless otherwise agreed, the Supplier shall be responsible for all costs associated with training and accreditation of personnel.

The Supplier must provide the Contract Manager with written confirmation that all personnel and subcontractors (if applicable) have been security checked and cleared, in a report that is updated on a half-yearly basis.

Staff Conduct and Presentation

The Supplier, Supplier's employees and approved subcontractors must at all times represent South East Water in a proper manner and all contact with the stakeholders must be courteous and cooperative.

The Supplier must ensure that all personnel:

- a) wear appropriate attire which includes safety equipment/clothing and footwear as required by the nature of the work being performed while on South East Water premises at all times;
- b) display good and proper conduct while performing the Services at South East Water's premises;
- c) do not engage in any sexual harassment or bullying behaviour;
- d) demonstrate the necessary skill and experience to competently perform their duties;
- e) ensure that the Services operations cause as little disturbance as possible to stakeholders; and
- f) do not move, or remove items belonging to South East Water or its stakeholders, except upon request by the South East Water representative to enable the delivery of Services.

The Supplier must ensure that under no circumstances may any personnel:

- a) use a telephone or other equipment belonging to South East Water without prior consent of South East Water respectively,
- b) smoke in South East Water's building or premises, or
- c) consume alcohol or any other illegal substance, before or whilst on duty.

If in the reasonable opinion of South East Water, the work standard of any personnel of the Supplier is unsuitable, or does not comply with the requirements, the Supplier must, at the request of the Contract Manager, have the personnel removed from site and/or cease performing work for South East Water.

Subcontracting

Under no circumstances is the Supplier allowed to subcontract any part of the contract to a third party under this Contract without the prior written consent of South East Water, which consent may be given or withheld by South East Water in its absolute discretion.

To apply for consent from South East Water for the engagement of a subcontractor, the Supplier shall advise and provide South East Water the following:

- a) the name and address of the subcontractor;
- b) the hours to be worked by the subcontractor;
- c) the reasons for engaging the subcontractor; and
- d) Documentation to verify the subcontractors' qualifications.

Occupational Health & Safety Plan

The Supplier must, prior to the Commencement Date, submit a draft Health and Safety Plan in the format and content required by South East Water and specific to the site, to the Contract Manager for written approval. The Supplier must incorporate any alterations or modifications required by South East Water and ensure that the Plan is finalised and approved by South East Water within one month of the Commencement Date.

The Health and Safety Plan shall be:

- a) in accordance with the requirements of the Occupational Health and Safety Act 2004 and the Occupational Health and Safety Regulations 2007;
- b) implemented by the Supplier on an on-going basis during the Contract Term; and
- c) reviewed by the Supplier and Contract Manager on a quarterly basis, or more often as necessary, to determine the Supplier's performance of its obligations under the Health and Safety Plan.

South East Water's OH&S Requirements

South East Water requires that the Supplier comply with the requirements set out in South East Water's Occupational Health and Safety policy and procedures. Specifically, and in addition to these requirements, the Supplier must ensure that:

- a) safe working standards and practices are implemented at all times and ensure compliance with the requirements of the Occupational Health and Safety Act 2004 all relevant regulations, codes, practices and Australian Standards relating to the Services;
- b) all personnel undertake OH&S induction training and proof is provided to South East Water;

Prior to commencing works, and during the delivery of the Services, the Supplier shall provide to South East Water copies of the following:

- a) Safe Work Method Statements (SWMS) and/or Job Safety Analysis (JSAs) for all tasks;

All incidents/accidents are to be reported in writing by the Supplier to the Contract Manager within 24 hours in general or immediately if it is a notifiable incident or accident under the Occupational Health and Safety Act 2004.

Records of all OH&S incidents are to be reported to the Contract Manager.

The Supplier acknowledges that it will comply with the South East Water's OH&S policy and practices as required.

Reporting on Incidents

The Supplier must provide the Contract Manager with details of any accident or incident involving any person or party, which may or may not lead to investigation by the Supplier, by South East Water or an insurance claim against either party. When requested by the Contract Manager, the Supplier must provide all specified details of any such incident.

The request is likely to arise from a report or complaint by South East Water's employee or a member of the public in relation to the Supplier's operations in the provision of the service. The required information is to be provided without delay.

The required information may include, but will not necessarily be restricted to, the full details of the personnel, facilities, vehicles and equipment involved, the date and place, the nature of any damage to property or injury to personnel and the action taken by the Supplier to prevent recurrence.

WORKPLACE HEALTH AND SAFETY

In carrying out the Services, or performing any work under the contract, the Supplier must in addition to, and not in derogation of the requirements of the contract:

- a) take all reasonable precautions for the safety of the general public, South East Water personnel and personnel of the Supplier engaged in performing Services under the contract, and comply with such reasonable directions as the Contract Manager may from time to time give to the Supplier;
- b) inform itself of, and comply with, any health and safety procedures that South East Water may have in force at the Site covering conditions applying to the work place, the operation of existing facilities and access to existing facilities, (including without limitation, access permit systems and procedures);
- c) ensure that all personnel employed on the Site and all visitors to the Site comply with the Supplier's and South East Water's requirements in relation to clothing and Personal Protective Equipment (PPE);
- d) immediately notify the Contract Manager of any notifiable workplace incidents involving death or serious injury to personnel or any other person resulting from or related to the Supplier's performance of Services under the contract;
- e) immediately notify the Contract Manager of any notifiable workplace dangerous occurrence involving an immediate risk to the health and safety of the Supplier's personnel or any other person ;

- f) immediately notify the Contract Manager of any other workplace incidents involving an immediate risk to the health and safety of the Supplier's personnel or any other person as a result of Services being provided under the contract;
- g) report the status of the implementation and outcomes of corrective action undertaken as a result of Occupational Health and Safety inspections and risk assessments carried out by the Supplier and / or the Contract Manager.

APPROVED ACCOUNT MANAGER

The Supplier shall nominate an Account Manager as the single point of contact with South East Water, and this person must be approved by South East Water.

The Account Manager is responsible for liaising with South East Water's Contract Manager to ensure that the contract is being delivered in accordance with agreed performance criteria. The Account Manager is also responsible for providing a range of services that will further strengthen the relationship between South East Water and the Supplier.

The approved Account Manager will undertake the following, but not be limited to:

- Dispute resolution;
- Reporting and performance evaluation; and
- Quality auditing

The Account Manager will be required to attend South East Water's contract review meetings, and other meetings as required. In the event that it is necessary for the approved Account Manager to be replaced, mechanisms must be in place to ensure a smooth transition. The replacement Account Manager must also be approved by South East Water.

PROPOSED STAFF RESOURCES

South East Water expects the Supplier's proposed staff resources to be carrying out the work required for the provision of the Services. Any substitutions shall be first discussed and approved by South East Water.

TRANSITION OUT

If for any reason the contract is terminated, the Supplier shall advise South East Water of the status of the performance of the Service, and any other relevant details / documentation.

The Supplier shall deliver to South East Water all documentation prepared in relation to the Services including emails, draft documents and memos. Any material stored in electronic form shall be delivered in a form electronically readable by standard corporate equipment / software.

DELIVERABLES

The deliverables for the contract include, but are not limited to:

- Leak Detection work and accompanying reports and updates to Montage task
- Reports regarding inconsistent GIS information
- Minor non-technical tasks on an as-need basis
- Monthly reports with all the data

INFORMATION SECURITY

Information provided by South East Water to the Supplier or any service personnel or subcontractors of the Supplier, whilst carrying out their duties will contain intellectual property, commercially sensitive or personal data content.

All such information is to be treated in a secure manner at all times to preserve confidentiality, integrity, or availability of the data including any governing Privacy legislation requirement.

Failure to satisfy these requirements could result in legal action against the Supplier or any service personnel or subcontractors of the Supplier.

The Supplier, any service personnel or subcontractors of the Supplier must comply with the applicable state and territory regulations under Australian Privacy Protection requirements and cooperate with South East Water under its obligations to the Victorian Data & Privacy Act 2014.

The Supplier, any service personnel or subcontractors of the Supplier must also seek formal endorsement from South East Water to transfer or store any personal data provided by South East Water outside Australia.

Notwithstanding any other conditions of the contract, the service may be terminated by South East Water forthwith, if in South East Water's opinion, details of any confidential information are made known to any person or persons by the Supplier or those service personnel.

Item 2 – Price Schedule

Cost for Leak Detection & Reporting	Proposed Personnel	Unit of Measure	Year 1	Year 2
			Rate (\$ ex. GST)	Rate (\$ ex. GST)
Leak Detection - Base Coverage	Technician	per km	Irrelevant & Sensitive	
Leak Detection - Additional Coverage	Technician	per km		
Detailed Sweep of area	Technician	per hour		
Minor Non-Technical Duties	Technician	per hour		

Detecting Inconsistencies & monthly reporting	Unit of Measure	Year 1	Year 2
		Rate (\$ ex. GST)	Rate (\$ ex. GST)
Reporting Field Inconsistencies with supplied plan	Units of 15	Irrelevant & Sensitive	
Monthly reporting	per month		

SCHEDULE 3

Service Levels

In providing the Services and otherwise performing its obligations under the Agreement, the Supplier must comply with the following Service Levels:

Occupational Health and Safety Reporting:

- The Supplier must achieve a Service Level of 100% for reporting all Near Misses within 24 hours after becoming aware of the Near Miss.
- The Supplier must achieve a Service Level of 100% for providing a complete safety performance data report to the Corporation on time.

KEY PERFORMANCE INDICATORS

The successful Supplier must meet the following key performance indicators when providing the Services:

Description	Indicator	Target
Attendance at Meetings	Attendance at all meetings	100%
Response Time	Responding to South East Water's request for confirmation of works within 2 working days.	100%
Leak Detection Coverage	Minimum target of 1,200km covered across the year	100%
Safety	All service personnel have relevant qualifications to perform the work.	100%
GIS Inconsistencies verified	Inconsistencies between GIS plan and field assets identified and verified by South East Water Leak Detection Technician	85%
Monthly Reporting	All job records, findings of leaks and hazards for the previous month are recorded and submitted within first week of the following month	90%
Photos uploaded to Montage task	Photos uploaded on observed leaks in field	3 photos /leak observed

SCHEDULE 4**Format of Safety Performance Data Report**

Ref #	Reporting Item	Item Data	Unit
1	Total Hours Worked (Direct Employees)		Hours
2	Total Hours Worked (Sub-contractors)		Hours
3	Lost Time Injury (LTI)		No.
4	Medical Treatment Injury (MTI)		No.
5	Restricted Work Injury (RWI)		No.
6	First Aid Injury (FAI)		No.
7	Near Miss / Close Call		No.
8	Service Strike		No.

Definitions for purposes of safety performance data report only:

1. Total Hours Worked (Direct Employees): Total hours worked by full time and part time employees for the reporting period.
2. Total Hours Worked (Sub-Contractors): Where a Supplier engages a sub-contractor to perform work on behalf of the Supplier, the total hours worked by sub-contractor(s) for the reporting period.
3. Lost Time Injury (LTI): A work related incident that results in a fatality, permanent disability or time lost from work of one day/shift or more (This does not apply to employees/contractors on leave, such as, annual, sick, etc.)
4. Medical Treatment Injury (MTI): An injury or disease that resulted in a certain level of treatment (not First Aid Treatment) given by a physician or other medical personnel. Treatment may be at a medical facility, hospital or administered by an ambulance crew. An MTI results in an approved workers compensation claim, injury or disease. Excludes injuries already reported as LTI.
5. Restricted Work Injury (RWI): A work related injury or illness (physical or psychological) that results in an employee being kept by their employer, or by recommendation of a registered / licensed physician or health care professional, from performing one or more of their routine job functions or from working a full shift they would otherwise have worked but not including the day of injury/illness occurrence. Excludes injuries already reported as LTI or MTI.
6. First Aid Injury (FAI): Work related injury or disease that requires first aid treatment only. The worker would typically return to their normal duties (even if a medical practitioner administers the first aid). Injury or disease that complies with the following criteria:

- a. Treatment of superficial partial thickness burns;
- b. One time administration of oxygen;
- c. Application of ointments to abrasions to prevent them from drying or cracking;
- d. X-ray or other diagnostic investigation not resulting in medical treatment;
- e. ECG with no abnormality identified;
- f. Physical examination if no condition is identified or medical treatment is not administered;
- g. Hospitalisation for standard period of observation only and where investigations return abnormal findings relating to the incident;
- h. Using a non-prescription medication at non-prescription strength (for medications available in both prescription and non-prescription form, a recommendation by a physician or other licensed health care professional to use a non-prescription medication at prescription strength is considered medical treatment for recordkeeping purposes);
- i. Administering tetanus immunizations (other immunizations, such as Hepatitis B vaccine or rabies vaccine, are not considered medical treatment as they are precautionary only);
- j. Cleaning, flushing or soaking wounds on the surface of the skin;
- k. Using wound coverings such as bandages, Band-Aids™, gauze pads, etc.; or using butterfly bandages or Steri-Strips™ (other wound closing devices such as sutures, staples, etc. are considered medical treatment);
- l. Using hot or cold therapy;
- m. Using any non-rigid means of support, such as elastic bandages, wraps, non-rigid back belts, etc. (devices with rigid stays or other systems designed to immobilize parts of the body are considered medical treatment for recordkeeping purposes);
- n. Using temporary immobilization devices while transporting an accident victim (e.g., splints, slings, neck collars, backboards, etc.);
- o. drilling of a fingernail or toenail to relieve pressure, or draining fluid from a blister;
- p. using eye patches;
- q. removing foreign bodies from the eye using only irrigation or a cotton swab;
- r. removing splinters or foreign material from areas other than the eye by irrigation, tweezers, cotton swabs or other simple means;
- s. using finger guards;
- t. using massages (physical therapy or chiropractic treatment are considered medical treatment for recordkeeping purposes); or
- u. drinking fluids for relief of heat stress.

7. Near Miss/Close Call: an incident at a workplace that exposed a person in the immediate vicinity of the incident to an immediate risk to the person's health and safety.
8. Service Strike: When the Corporation's asset is struck, damaged, penetrated or brought down resulting in damage to the asset.

This Agreement is made on 5 May 2020

Executed as an agreement.

SIGNED for **SOUTH EAST WATER CORPORATION** by its duly authorised officer, in the presence of:

Personal Data

Signature of officer

Personal Data

Signature of witness

John Hribar
Name

Julie Hutchings
Name

Executed by Detection Services Pty Ltd)
)

Personal Data

.....
...

Company Secretary/Director

Chris Evans

.....
...

Name of Company Secretary/Director
(print)

.....
...

Director

.....
...

Name of Director (print)