1. **Access, Inspection and General Testing**
	1. **Inspection of and access to Work, other Activities and the System**
2. GA, any GA Personnel and GA's nominees may inspect, observe, attend:
	1. the design, construction, testing, commissioning, integration, completion, delivery (as applicable), operation and maintenance of the Work and/or the System and the condition and state of the Work and/or System;
	2. other Activities at any place where constituent parts of the Activities are being performed or stored (including any Contractor's or Subcontractor's workshop); and
	3. any tests and trials supervised or required by any Authority on any parts of the Work and/or System whether or not installed.
3. The Contractor must ensure, and procure that, GA, any GA Personnel and GA’s nominees have access to the Work and the System and any place where constituent parts of the Activities are being performed or stored (including any Contractor's or Subcontractor's workshop) so that they can inspect, observe, attend and/or test the Work in progress, other Activities being performed or stored, any tests and trials, the condition or state of the Work and/or the System and exercise their rights and obligations arising from or in connection with this Contract.
4. GA may not and must ensure that any GA Personnel and GA's nominees do not, in exercising rights under clauses 7.1(a) and 7.1(b), unreasonably disrupt the Contractor’s performance of its obligations under this Contract. When accessing any site where the Contractor's obligations under any Project Document are being performed, GA must and must procure any GA Personnel and GA's nominees to comply with any site access protocols which apply on a business as usual basis at the relevant site and which have been provided to GA prior to the exercise of such rights but only to the extent those procedures are generally applicable to persons in the ordinary course of business at such site.
5. The Contractor must conduct such tests and examinations as are normally carried out in connection with inspection of works and services similar to the Activities and constituent parts thereof (including those to satisfy the requirements of Authorities and Best Industry Practice and those required pursuant to this Contract including section 11 of the Statement of Requirements) as soon as practicable.
	1. **GA may order tests or V&V activities**
6. Subject to clause 7.2(b), GA may direct the Contractor to test (or undertake any V&V activity on) any material, equipment, part or whole of the Work and/or the System and the Contractor must comply with that direction.
7. GA's directions for testing or V&V activities under clause 7.2(a) must be reasonable having regard to:
	1. its belief (acting reasonably) as to whether any material, equipment, part or whole of the Work and/or the System is not in compliance with the Contract and that direction must identify the relevant non-compliance;
	2. the progress of the Work;
	3. the service life of the System; and
	4. the number and nature of tests and V&V activities already carried out on the Work and the System.
8. GA may reasonably direct that any part of the Work must not be made inaccessible without GA's prior approval.
9. If requested by GA, the Contractor must assist GA in connection with any inspection or testing or V&V activity in accordance with this clause 7.2 and 7.3, and under any Law, including by:
	1. preparing samples of materials used in connection with the Work as required by GA; and
	2. forwarding the samples prepared in accordance with clause 7.2(d)(i) to GA or such other place or person notified by GA.
	3. **Conducting Tests**
10. Subject to this clause 7, where the Contractor fails to perform any test or any V&V activity required by this Contract (where GA is entitled to give a direction under clause 7.2(b) and the Contractor fails to perform that test or that V&V activity within a reasonable time after the Contractor receives that direction), GA, any GA Personnel or a person nominated by GA may conduct that test or V&V activity provided that such person is appropriately qualified and skilled to perform that test or V&V activity and those tests or V&V activities are non-invasive and non-destructive.
11. Testing and V&V activities required under this Contract must be carried out by an appropriately qualified and skilled person. Those tests and V&V activities must be chosen (and those testing and V&V activities must be carried out) in the manner that will minimise to the extent reasonably practicable any delay to the Work or System or delay to the performance of the Activities.
	1. **Results of tests**
12. Results of any tests and V&V activities performed under any Project Document must be promptly made available by the Contractor to GA.
13. On completion of any such tests and V&V activities, the Contractor must promptly make good the materials, equipment or any part of the Work or System tested or the subject of those V&V activities (and which it provided or performed as part of this Contract) so that it or they fully comply with this Contract.
	1. **Costs of testing and attendance**
14. Subject to clauses 7.5(b) and 7.5(c), each party will bear its own costs in respect of any access, inspection, observation and attendance at testing and V&V activities under this Contract.
15. Subject to clause 7.2(c) and 7.5(c), GA must bear the reasonable cost incurred by the Contractor of any test or V&V activity referred to in clause 7.2(a) which is an Additional Test except where that test or V&V activity:
16. demonstrates that the non-compliance identified in that direction applies to the material, equipment, part or whole of the Work and/or the System identified in the direction; or
17. relates to any material, equipment, part of the Work, which was made inaccessible without GA's prior approval.
18. Where either clause 7.5(b)(i) or 7.5(b)(ii) applies, the Contractor must pay GA for all additional reasonable costs incurred by GA and its nominees as a result of accessing, inspecting or observing the testing or V&V activity which revealed that non compliance and the work, investigations and further tests required in relation to Work made in accessible without approval.
19. For the avoidance of doubt:
	1. nothing in this clause 7 will make GA liable to bear the cost of any tests or V&V activities referred to in this Contract other than those identified in clause 7.5(b); and
	2. the tests and V&V activities referred to in this Contract form part of the Activities, the cost of which is included in the Contract Price, the Milestone Payments and the Monthly Service Payments.
	3. **Other obligations remain unaffected by testing**
20. The obligations of the Contractor in relation to the quality and suitability of the materials, equipment, the Work and the System are not in any way limited or reduced by carrying out any tests or V&V activity under this clause 7.
21. Except as expressly stated in clause 7.5(b) or in relation to the Additional Test identified in paragraph (e) of the definition of Extension Event, the Contractor is not entitled to an adjustment to any Milestone Event, Milestone Date (Scheduled), the Contract Price, any Milestone Payment, any Monthly Service Payment or any other obligation arising from or in connection with this Contract or to Claim from GA any Loss incurred by the Contractor arising from or in connection with:
	1. complying with the requirements of this clause 7;
	2. GA, any GA Personnel or its nominees failing to notify the Contractor of any Defect; or
	3. any act permitted by this clause 7 by either GA, any GA Personnel its nominees or the Contractor.

**17 Project Security**

1. The Contractor must not create or allow to be created any Security Interest over any part or the whole of the Work, the System or any item of GFX without first obtaining the written consent of GA, such consent being subject to any conditions required by GA.

**27. Insurance**

**27.1 Insurances**

Without limiting its obligations under clause 3, the Contractor must effect and maintain or cause to be effected and maintained:

1. the Insurances:
	1. upon the minimum terms (including the period) specified in Schedule 6; and
	2. to the extent not so specified, upon terms no less favourable than a reasonable and commercially prudent person in the position of the Contractor would procure and maintain in respect of a project of this nature, in light of all relevant circumstances including the Contractor's obligations under this Contract; and
2. any additional insurance which:
	1. the Contractor using Best Industry Practice believes they should obtain and maintain when undertaking work or carrying out activities of a similar nature to the Contractor in the period from the Commencement Date to the FQR Date including undertaking the Work, operating and maintaining a system and providing services of a similar nature to the System and the Services; and
	2. a prudent service provider would maintain when operating and maintaining a system and providing services of a similar nature to the System and the Services in the period from the FQR Date to the Expiry Date.

**27.2 Insurance Premiums**

1. GA must pay the Contractor:
	1. the aggregate of the cost of any premiums necessary to procure and maintain in force Post-FQR Insurances approved by GA in accordance with clause 27.3;
	2. plus the amount which is 2% of that aggregate amount (Insurance Uplift).
2. The cost of those premiums identified in clause 27.2(a)(i) shall be paid by GA to the Contractor as Pass Through Costs.
3. The Contractor must claim such amounts including the Insurance Uplift in the relevant Month within which those costs are incurred and GA must pay those amounts in accordance with Schedule 4.

**27.3 Placement of Post-FQR Insurances**

1. For each Post-FQR Insurance policy (other than those Insurance Policies identified in Tables 11 and 12 in Schedule 6), at least 2 months prior to the FQR Date, the Contractor must:
	1. appoint a Contractor preferred insurance broker(s) to prepare submissions to the insurance markets, then enter the market and obtain quotes from Reputable Insurers with respect to the premium cost for each Insurance Year in each case for the Post-FQR Insurances, to be procured in accordance with clause 27.1 including any other expenses and brokerage fees necessary to procure and maintain in force those Post-FQR Insurances. The Contractor must, through its preferred insurance broker obtain competitive quotes to place the coverages required under this Contract in relation to the Post-FQR Insurances, which may require one or multiple insurers combined into a quotashare structure; and
	2. provide to GA:
		1. an insurance proposal containing information reasonably required by GA, which must at a minimum include those competitive quotes and details of the cost of the premium and any other expenses and brokerage fees necessary to procure and maintain in force each Post- FQR Insurances for that Insurance Year;
		2. the Contractor's recommendation with respect to procuring or maintaining the relevant Post-FQR Insurances, including details of the Contractor's preferred quotations and insurers and the appointed insurance broker who will place the coverages (Preferred Insurance Arrangement);
		3. such other documentation as GA reasonably requires to confirm the Contractor's compliance with clause 27.3(a)(i); and
		4. where the procedure set out in this clause 27.3(a) is being repeated pursuant to clause 27.3(c), a written report (if relevant) setting out the reasons for any material increase in insurance premiums and/or any other expenses and brokerage fees necessary to procure and maintain in force the relevant Post-FQR Insurances.
2. Within 10 Business Days after GA has received the information specified in clause 27.3(a), GA must advise the Contractor either that GA:
	1. agrees with the Preferred Insurance Arrangement identified by the Contractor and the Contractor must procure the relevant Post-FQR Insurance in accordance with the Preferred Insurance Arrangement; or
	2. does not agree with the Contractor’s preferred insurer or the terms on which those Post-FQR Insurances will be issued under the Preferred Insurance Arrangement, GA will advise the Contractor of its choice of insurers from the quotations obtained by the Contractor pursuant to clause 27.3(a) and any reasons therefore and each of GA and the Contractor will use reasonable endeavours to reach agreement on such matters.
3. The parties must, no later than one month prior to each Insurance Review Date, repeat the procedures under clauses 27.3(a) and 27.3(b) as needed to conclude the placements of the relevant Post-FQR Insurances provided however that for the purpose of repeating those procedures, references to the "FQR Date" in those clauses shall be read as references to the "Insurance Review Date".
4. If the Contractor disagrees with the GA's choice of insurers pursuant to clause 27.3(b), the cost of the premiums and any other expenses necessary to procure and maintain in force the relevant Post-FQR Insurances for an Insurance Year pursuant to clause 27.1 and 27.3 or any other terms and conditions of the Insurances proposed under clause 27.1 and 27.3, for the Project for the ensuing Insurance Year:
	1. the Contractor must procure the Post-FQR Insurances for the ensuing Insurance Year with the insurer identified by GA; and
	2. that Dispute must be referred to expedited arbitration under clause 36.

**27.4 General insurance requirements**

The Contractor must:

1. effect all Insurances with Reputable Insurers;
2. subject to clause 27.2(a), punctually pay all premiums and other amounts payable in connection with the Insurances, and provide GA proof of wire transfer or payment of premiums and such other amounts if and when requested by GA;
3. not alter, extend, discontinue or cancel any Insurance, or allow any Insurance to lapse, where this would result in the relevant Insurance not meeting the requirements of this Contract, without the prior approval of GA;
4. not do or permit, or omit to do, anything which prejudices any Insurance;
5. promptly rectify anything which might, if not rectified, prejudice any Insurance;
6. fully and promptly disclose all material information to all Relevant Insurers (and any persons acting on their behalf) relating to the Insurances;
7. comply at all times, with the terms of each Insurance;
8. do everything reasonably required by GA or any GA Personnel to whom the benefit of such Insurance extends, to enable GA or any GA Personnel (as the case may be) to claim, and to collect or recover, money due under that Insurance;
9. ensure that the Insurances cover any item of GFX between the date on which GA delivers or provides that GFX to the Contractor and the date on which the Contractor is obliged to return that GFX to GA;
10. if at any time the financial strength rating of the insurer or underwriter of an Insurance Policy is withdrawn or falls below the Required Rating:
	1. promptly notify GA of such withdrawal or downgrade; and
	2. within 20 Business Days after that financial strength rating is withdrawn or falls below the relevant Required Rating:
		1. procure a replacement Insurance Policy or replace the insurer’s participation from or using a Reputable Insurer that complies with the requirements of this Contract and maintain it for the relevant period set out in this Contract and the cost of procurement of that replacement Insurance Policy will be at the cost of the Contractor other than where the Post-FQR Insurance is procured or maintained using a stand-alone Insurance Policy for the Project and in such case, at the cost of GA; and
		2. provide GA with the information set out in clause 27.9;
11. if the Contractor has not complied with clause 27.4(j) within the relevant timeframes, irrespective of anything contained in and without limiting GA's rights under this Contract or the Insurance Policy issued by the person whose financial strength rating has been withdrawn or downgraded, GA may procure that replacement Insurance Policy and any costs incurred by GA in doing so (in relation to the replaced Insurance Policy) will in the case of:
	1. the Pre-FQR Insurances be a debt due and payable by the Contractor to GA and the Contractor shall be entitled to any refund of premium the Contractor is able to obtain from the prior insurance company or underwriter whose financial strength rating has been withdrawn or downgraded; and
	2. the Post-FQR Insurances will be borne by GA provided however that GA shall be entitled to any refund of premium to which the Contractor is entitled from the prior insurance company or underwriter whose financial strength rating has been withdrawn or downgraded and the Contractor shall promptly pay that amount to GA; and
12. obtain all insurances that it is required to procure and maintain in accordance with any applicable Law.

**27.5 Terms of Insurances**

The Contractor must ensure that each of the Insurances:

1. contains terms, to the extent applicable and permitted by Law, to the effect that the insurer:
	1. does not require GA and the GA Personnel to exhaust indemnities given by the Contractor and the Contractor Personnel to GA or the GA Personnel under any Project Document, before the insurer pays proceeds in respect of any claim under the Insurance;
	2. will not impute to any Insured any knowledge or intention or a state of mind possessed or allegedly possessed by any other Insured;
	3. in the case of Insurances under which GA or the GA Personnel are also Insureds, agrees that the interests of the Insured include the Work, System and each item of GFX provided to the Contractor and waives any rights of subrogation which it may have against any Insured;
	4. in the case of liability Insurances, agrees to treat each Insured as a separate Insured as though a separate contract of insurance had been entered into with each of the Insured, without increasing the deductibles or reducing the overall limit of indemnity;
	5. agrees that no reduction in limits or coverage affecting the Project, the Work or the System will be made during the period of insurance, except under the circumstances and to the extent permitted by the Insurance Contracts Act 1984 (Cth) and with not less than 20 Business Days prior notice to GA;
2. is appropriate given the nature and objectives of the Project and the responsibilities and entitlements of the various Insureds in connection with this Contract;
3. is consistent with the terms set out in this clause 27 and Schedule 6; and
4. contains terms, where relevant, to the effect that for any Insurance which provides an indemnity in respect of loss of or damage to property owned by GA, that GA is named as loss payee and the proceeds of any claim in respect of loss of or damage to property owned by GA must be paid to GA or into the Insurance Proceeds Account

**27.6 Insurances primary**

1. GA is not obliged to make a Claim or institute proceedings against any insurer under the Insurances before enforcing any of its rights or remedies under the indemnities referred to in any Project Document or at law.
2. The Contractor is not relieved from and remains fully responsible for its obligations under this Contract regardless of whether the Insurances respond or fail to respond to any claim and regardless of the reason why any Insurance responds or fails to respond.

**27.7 Notification and making of claims**

The Contractor must:

1. promptly notify GA of any occurrence that is likely to give rise to a material claim in connection with the Project under any Insurance, except in relation to any workers' compensation insurance;
2. keep GA informed of subsequent developments concerning the occurrence under clause 27.7(a);
3. diligently pursue any claim which it has under any Insurance which has arisen in connection with the Project;
4. [Not used]; and
5. where GA wishes to pursue any claim under any Insurance, provide assistance to GA (including providing access to Contractor and the Contractor Personnel) and documentation relevant to that claim.

**27.8 Marketplace Availability**

The parties acknowledge and agree that:

1. the terms and requirements specified in Schedule 6 for all Insurances are a reflection of the insurance market as at the Commencement Date;
2. if throughout the period from the FQR Date to the Expiry Date, either party considers (acting reasonably) that the terms set out in Schedule 6 in relation to the Post-FQR Insurances are no longer, either:
	1. being offered in the commercial insurance markets in Australia or the United Kingdom; or
	2. a reflection of the terms of the insurance that an operator of services similar to the Services exercising Best Industry Practices would procure and maintain on commercially reasonable terms and prices, then that party may send a written notice to the other party advising it of the same and GA and the Contractor (both acting reasonably) will agree the replacement terms or requirements (as applicable); and
3. if the parties fail to agree to any replacement terms or requirements in accordance with clause 27.8(b), such Dispute must be referred for resolution by expedited arbitration in accordance with clause 36.3.

**27.9 Evidence of Insurances**

The Contractor must give GA relevant information satisfactory to GA which demonstrates that the Insurances have been procured and continue to be maintained under this Contract, whenever reasonably requested by GA including by providing:

1. certificates of currency detailing
	1. name of the insurance provider;
	2. type of insurance;
	3. terms of the insurance including any material exclusions that may apply;
	4. limits of liability per claim or occurrence and details of any aggregate limits or relevant sub-limits which apply;
	5. whether or not any past or current claims made under the policy have materially affected, or are likely to materially affect, the amount of cover available under the policy;
	6. deductible amounts; and
	7. period of insurance;
2. in relation to the Aviation Products Liability Insurance identified in Table 10b of Schedule 6, the full insurance policy wording;
3. confirmation that all the requirements of the Insurances specified in Schedule 6 are included in the relevant Insurances; and
4. relevant information relating to erosion and reinstatement of limits as GA may reasonably require, to enable it to satisfy itself that the Contractor is complying with all of the Insurance requirements for the Project under this Contract.

**27.10 [Not used]**

**27.11 Insurance Proceeds Account**

1. Within 20 Business Days (or such longer period agreed by the parties) after the Contractor makes a material claim made under the Asset Damages Insurances, the Contractor must establish the Insurance Proceeds Account and provide evidence that it has done so. The Contractor must use reasonable endeavours to ensure that amounts in the Insurance Proceed Account earn a reasonable rate of interests having regard to deposit accounts in Australia.
2. All Insurance proceeds received from insurers by the Contractor or GA relating to repair or reinstatement of any part or the whole of the Work and/or the System must be deposited by the recipient into the Insurance Proceeds Account. The claim amounts in the Insurance Proceeds Account must be held by the Contractor on trust for GA. The Insurance Proceeds Account shall be named “Lockheed Martin Australia Pty Limited held in trust for GA”.
3. Subject to clause 27.11(e), amounts deposited in the Insurance Proceeds Account must only be applied towards the repair or reinstatement of the Work and/or the System or deducted from any Termination Payment calculated in accordance with clauses 35.2 to 35.4 (as applicable).
4. The Contractor must (with a reasonable period but no later than 20 Business Days) after receipt of a request to do so) provide to GA details and evidence of transactions into and out of Insurance Proceeds Account to enable GA to reconcile receipts into and expenditure from that account.
5. Any amount remaining in the Insurance Proceeds Account after application in connection with repair or reinstatement of the Work and/or System will be payable to the Contractor and GA in equal shares.

**27.12 Proportionate liability**

1. The Contractor must ensure that all Insurances which are specific only to the Project, do not reduce or exclude the insurance cover in connection with liabilities governed by any legislative proportionate liability regime, by reason of the manner in which that legislation operates or does not operate, as the case may be, in light of any of the provisions of this Contract and the obligations undertaken by the Contractor in connection with it.
2. To the extent that the Insurance is not specific to the Project, the Contractor is only required to use its Reasonable Endeavours to procure insurance on the terms referred to in clause 27.12(a).

**27.13 Deductibles**

1. Subject to 27.13(b), the Contractor will be responsible for the payment of all amounts by way of deductibles or excesses which apply to a claim made under any Insurances.
2. Where the event that is insured under any Insurances is loss or damage to the Work and/or System caused by a breach of any Project Document by GA or a fraudulent, reckless, unlawful or malicious act or omission of GA or GA Personnel when acting in respect of the Project or is caused by an Extension Event or a Relief Event, the related deductible or excess will be paid by GA.

**27.14 Failure to obtain any Insurance**

1. [Not used]
2. During the period when the Contractor is obliged to obtain a policy of Insurance and that relevant Insurance has not been obtained or maintained in accordance with this Contract, the Contractor must not (and must ensure that its Subcontractors do not) undertake any action or omit to do anything which materially increases the risk that GA will suffer any loss or damage or will not be able to recover any amount which would have been covered by that Insurance which has not been obtained or maintained.
3. To avoid doubt, the Contractor will not be relieved of any responsibility, be entitled to make any Claim against GA nor to any adjustment of any Milestone Event, Milestone Date (Scheduled), Milestone Payments, the Contract Price, Monthly Service Payment or any other obligation arising from or in connection with this Contract arising from or in connection with any delay resulting from the Contractor complying with its obligations under clause 27.14(b).
4. In the event the Contractor fails to procure or maintain Insurance in accordance with this Contract, GA may (but is not obliged to) procure or maintain such an insurance policy in accordance with this clause 27.14 provided however that GA must not do so unless it has provided the Contractor with at least 3 Business Days prior written notice of GA's intention to do so and the Contractor has not demonstrated that the Contractor has procured or maintained the relevant Insurance in accordance with this Contract by the end of that 3 Business Day period. All costs incurred by GA in relation to procuring or maintaining Insurance in accordance with this clause 27.14 will in the case of:
	1. the Pre-FQR Insurances be a debt due and payable by the Contractor to GA; and
	2. the Post-FQR Insurances will be borne by GA.

**27.15 Insurance proceeds received after the Expiry Date**

1. Where the Contractor receives any insurances proceeds after the Expiry Date (which the Contractor would have been obliged to deposit into the Insurance Proceeds Account had this Contract had not expired or been terminated) and those proceeds were not taken into account in calculating any Termination Payment under clauses 35.2 or 35.3, those proceeds are held on trust by the Contractor for GA, and the Contractor must pay those proceeds, or cause those proceeds to be paid, to GA for GA's retention promptly on receipt.
2. To the extent that such proceeds have not yet been received by GA or the Contractor, then to the maximum extent legally possible, GA will be subrogated to the rights of the Contractor in respect of those proceeds and entitled to recover and retain the proceeds accordingly. The rights and obligations in this clause 27.15 survive the expiry or early termination of this Contract.

**28. Intellectual Property Rights**

**28.1 GA Material and GA Information**

1. Any GA Materials and GA Information and associated Intellectual Property Rights, provided by or on behalf of GA or any GA Personnel to the Contractor or to which the Contractor gains access under this Contract (as between the parties) remain the property of GA and nothing in this Contract transfers or assigns any Intellectual Property Rights in any GA Materials and GA Information to the Contractor.
2. GA grants to the Contractor a worldwide, revocable, non-exclusive, royalty free, nontransferable licence (with the right to sublicense to Subcontractors as necessary) to use GA Materials and GA Information during the Term of this Contract for the sole purpose of the performance of the Contractor's obligations under this Contract and under the conditions as defined in clause 28.2. The Contractor acknowledges and agrees that the licence provided under this clause 28.1 in connection with the Spacecraft and/or GA Payload will be subject to and limited by conditions imposed by GA's supplier with which the Contractor must comply.
3. GA may notify the Contractor of additional terms applicable to the licence of any particular GA Materials and GA Information provided to the Contractor or to which the Contractor gains access under this Contract including any terms of any Third Party licensor of GA Materials or GA Information, provided that such terms do not adversely affect the ability of the Contractor to perform its obligations under this Contract, and the Contractor must comply with such terms.

**28.2 Use of GA Materials and GA Information**

1. The Contractor must not:
	1. use GA Materials or GA Information (or any part of them) for any purpose other than the performance of its obligations under this Contract;
	2. sell, lease, transfer, assign, sub license, license or otherwise part with possession of GA Materials or GA Information, or any part of them, except as expressly permitted in this Contract, including for the issuance of Subcontracts under this Contract;
	3. create or allow to be created or subsist any Security Interest over any GA Materials or GA Information or any part of them;
	4. attempt to disassemble, decompile or otherwise reverse engineer any software comprised in GA Materials or GA Information, except as permitted by the Copyright Act 1968 (Cth);
	5. alter, customise, modify or create derivative works of any software comprised in GA Materials or GA Information except as expressly permitted in this Contract or required to perform the Work or other Activities; or
	6. remove, obliterate or alter any proprietary notice on any software comprised in GA Materials or GA Information.
2. For the avoidance of doubt, clause 28.2(a) does not apply to any Intellectual Property Rights of the Contractor in the Contractor Materials.

**28.3 Contractor Material**

1. Any Contractor Materials and associated Intellectual Property Rights, provided by or on behalf of Contractor to GA or any GA Personnel under this Contract (as between the parties) remain the property of the Contractor and nothing in this Contract transfers or assigns any Intellectual Property Rights in any Contractor Materials to GA.
2. The Contractor grants to GA:
	1. subject to clause 28.3(e), a worldwide, perpetual, irrevocable, non-exclusive, royalty free and non-transferrable licence to Use all Contractor Materials (excluding Source Code) for the Permitted Purposes; and
	2. the right to sublicense its rights under clause 28.3(b)(i) to any Third Party for the Permitted Purposes provided that such sublicence is to a person who is permitted to receive Materials, disclosures and/or other information pursuant to clause 40.
3. Where GA sublicenses its rights under clause 28.3(b)(ii), the Contractor's rights and remedies for misuse of Confidential Information or Intellectual Property Rights by that sublicensee shall remain directly against GA.
4. GA must not:
	1. use Contractor Materials (or any part of them) except as authorised under this Contract;
	2. sell, lease, transfer, assign, sub license, licence or otherwise part with possession of the Contractor Materials or any part of them, except as expressly permitted in this Contract;
	3. create or allow to be created or subsist any Security Interest over any Contractor Materials or any part of them;
	4. attempt to disassemble, decompile or otherwise reverse engineer any software comprised in the Contractor Materials, except as permitted under this Contract or by the Copyright Act 1968 (Cth) or analogous statute or otherwise anywhere in the world;
	5. alter, customise, modify or create derivative works of any software comprised in the Contractor Materials except as expressly permitted under this Contract; or
	6. remove, obliterate or alter any proprietary notice on any software comprised in the Contractor Materials.
5. The Contractor agrees that the licence identified in clause 28.3(b)(i) is transferrable by GA in the circumstances and to the persons set out or determined in accordance with clause 43(b) or 43(c).

**28.4 Third Party licences**

1. To the extent that any item of Contractor Material (excluding Source Code) is commercially available off-the-shelf Third Party software, the obligation of the Contractor is to (at GA's option):
	1. license that item of Contractor Material to GA, if the Contractor is legally able to do so, and on the terms of the licence granted to the Contractor by the Third Party licensor (and the Contractor must use all Reasonable Endeavours to procure the consent of that licensor to grant that licence to GA); or
	2. procure (at the Contractor's cost) a licence of that item of the Contractor Material from the Third Party licensor to GA on terms approved by GA (acting reasonably).
2. If, despite using all Reasonable Endeavours to do so, the Contractor is unable to license (or, if applicable, procure a licence of) any Contractor Material owned by a Third Party to GA, as required under clause 28.4(a), the Contractor must consult with GA and do all things reasonably necessary to obtain for GA's benefit such Intellectual Property Rights which the Contractor is obliged to provide under clause 28.3 and which has not been granted or licensed to GA provided that if the Third Party does not offer the licence on the applicable terms, as required under clause 28.4(a), the Contractor must negotiate, subject to GA's approval, the best available commercial terms from the Third Party and will offer those terms to GA for its acceptance or rejection.

**28.5 Source Code**

1. For Source Code owned by the Contractor (and/or its Related Bodies Corporate) related to software used in the Work and/or System, with effect from the occurrence of the relevant Source Code Release Event (Contractor), the Contractor grants GA a perpetual, irrevocable, non-exclusive, royalty free and transferrable licence to exercise all Intellectual Property Rights comprised in such Source Code (including the right to access and Use the Source Code) in the Relevant Jurisdictions for the purpose of using, installing, operating, maintaining or modifying the Work and/or System or otherwise exercising its rights arising from or in connection with this Contract, including the right, when necessary for the purposes of the Project to sublicense its rights under this clause 28.5(a) for the Project to the GA Personnel as necessary.
2. For Source Code owned by a Key Subcontractor (other than LMC), related to software used in the Work and/or System, with effect from the occurrence of the relevant Source Code Release Event (Key Subcontractor), the Contractor grants GA a perpetual, irrevocable, non-exclusive, royalty free and transferrable licence to exercise all Intellectual Property Rights comprised in such Source Code (including the right to access and Use the Source Code) in the Relevant Jurisdictions for the purpose of using, installing, operating, maintaining or modifying the Work and/or System or otherwise exercising its rights arising from or in connection with this Contract, including the right, when necessary for the purposes of the Project to sublicense its rights under this clause 28.5(b) for the Project to the GA Personnel as necessary.
3. Where a Source Code Release Event (Contractor) occurs and it is not as a result of a Source Code Release Event (Key Subcontractor), GA's rights to the Intellectual Property Rights comprised in such Source Code (including the right to access and Use the Source Code owned by that Key Subcontractor) are set out in the relevant Key Subcontractor Direct Deed related to that Key Subcontractor.
4. All Source Code subject to this clause 28.5 shall be listed in Schedule 5.

**28.6 Moral Rights**

1. The Contractor represents and warrants that the use of the Work and/or System for the Permitted Purposes or other purposes permitted by the Contract will not infringe the Moral Rights of the Contractor or any Contractor Personnel.
2. The Contractor must not and (must ensure that none of its Contractor Personnel) institute, maintain or support any Claim against GA or any GA Personnel for infringement of any of their Moral Rights as they relate to the Materials delivered under the Contract.
3. To the extent individuals are entitled to assert any Moral Rights, the Contractor must use reasonable endeavours to obtain from any Contractor Personnel who is an author of Material assigned, licensed or supplied to GA under this Contract, all necessary consents and waivers in writing authorising GA to do any act or omission that would otherwise infringe that person's Moral Rights.
4. Not Used.

**28.7 No Virus or Harmful Code in Supplies**

1. Consistent with the Statement of Requirements, the Contractor must do all things reasonably practicable to ensure that neither it, nor any Contractor Personnel nor anyone else introduce or include any Virus or Harmful Code into any Work, the System, any GFX or any other equipment, software, system or environment of GA or GA Personnel.
2. The Contractor must on request promptly provide GA with full details of all processes and procedures the Contractor has in place to comply with its obligations under clause 28.7(a).
3. The Contractor must promptly notify GA if it knows or reasonably suspects that a Virus or Harmful Code has been introduced to any Work, the System, any GFX or any other equipment, software, system or environment of GA or GA Personnel and provide full information and details of its effects
4. If any Virus or Harmful Code is found (or is reasonably suspected) to have been introduced or included into any Work, the System, any GFX or any other equipment, software, system or environment of GA or any GA Personnel by the Contractor, any Contractor Personnel or any other party, the Contractor must take at no cost to GA all reasonable actions to contain and eliminate the Virus or Harmful Code and minimize, any actual or potential loss of or threat to GA's operations or any GA Personnel's operations, activities and efficiency.
5. Without limiting clause 28.7(a), unless GA specifically directs the Contractor to do so in writing, the Contractor must not (and must ensure that the Contractor Personnel do not) insert or knowingly permit any Third Party to insert into any Work, the System, any GFX or any other equipment, software, system or environment of GA or any GA Personnel:
	1. any code that would have the effect or intended effect of shutting down, disabling or otherwise inhibiting all or any portion;
	2. any back door, time bomb, drop dead device, or any other code designed to disable or reduce the functionality;
	3. any virus, trojan horse, worm, Harmful Code or other software routine designed to permit unauthorised access to, disable, damage, or reduce the functionality;
	4. any means which enables or potentially enables covert remote access; and
	5. any functionality or feature that has not been disclosed to, and agreed prior to the date of supply with, GA, including any additional or undisclosed functionality or feature that might create a security vulnerability, in each case of, to or in any such Work, the System, any GFM or any other equipment, software, system or environment of GA or any GA Personnel under any circumstances.

**29. Health, Safety and Contamination**

**29.1 Definitions**

In this clause 29, Inspector, Notifiable Incident, Regulator and WHS Entry Permit Holder have

the meanings given in the WHS Act or when relevant to any Activities undertaken in New

Zealand, the corresponding persons and roles under the applicable WHS Laws in New

Zealand.

**29.2 Inconsistency with WHS Laws**

If there is any inconsistency between this clause 29 and the WHS Laws, the WHS Laws

prevail to the extent of the inconsistency.

**29.3 General obligations**

The Contractor must:

1. ensure that the Contractor's obligations under the Project Documents including the Activities are performed in a safe manner in compliance with the WHS Laws which apply to the Contractor, the Contractor Personnel and Activities;
2. not (and must ensure that the Contractor Personnel do not) by act or omission place GA or any GA Personnel in breach of its obligations under any WHS Laws;
3. ensure that Contractor Personnel, if using or accessing any Site, comply with all reasonable instructions, directions, policies and procedures relating to work health and safety in operation at any such Site whether specifically drawn to the attention of the Contractor or as might reasonably be inferred from the circumstances;
4. consult, cooperate and coordinate with GA as required under the WHS Laws, where the health and safety of any person may be affected by the performance of the Activities;
5. inform itself, and ensure that Contractor Personnel inform themselves, of GA's and any GA Personnel's work health and safety policies and procedures relevant to the Activities; and
6. must ensure that the Contractor Personnel, in relation to the Activities:
	1. comply with the WHS Laws;
	2. comply with all relevant work health and safety policies and procedures of GA or any GA Personnel whether specifically drawn to the attention of the Contractor or as might reasonably be inferred from the circumstances; and
	3. immediately comply with any reasonable instruction from GA regarding work health and safety.

**29.4 Notifying GA**

1. The Contractor must:
	1. notify GA as soon as practicable of any concern the Contractor has regarding work health and safety in relation to the Activities performed by the Contractor or any Contractor Personnel;
	2. immediately notify GA of any:
		* 1. breach or suspected breach of the WHS Laws in relation to provision of the Activities;
			2. incident or event that occurred in connection with the Activities that had the potential to cause (but did not cause) a serious injury or death to any person;
			3. cessation of work on the Activities, or direction to cease work on the Activities from the Regulator or any Authority (or any person holding a similar role) related to work health and safety;
			4. entry by a WHS Entry Permit Holder or Inspector (or any person holding a similar role) to any place where Activities are being performed; or
			5. proceedings against the Regulator (or any person holding a similar role) by, decision by the Regulator (or any person holding a similar role) in relation to or request from the Regulator to, the Contractor or Contractor Personnel under the WHS Laws;
	3. as soon as possible and in any event within 24 hours after receipt, provide to GA a copy of any notice issued to the Contractor under the WHS Laws in relation to the Activities;
	4. if it is required by the WHS Laws to report a Notifiable Incident (or any similar event or incident) to the Regulator (or any person holding a similar role) in relation to the Activities, then as soon as is practicable in the circumstances:
		1. notify GA of the Notifiable Incident (or any similar event or incident) and, if requested by GA, provide a copy of any written notice given to the Regulator (or any person holding a similar role) on the day that it is submitted; and
		2. if requested by GA, the Contractor will provide factual information reasonably required by GA (having regard to the circumstances) within the timeframe specified by GA, a report on the Notifiable Incident (or any similar event or incident), the results of any investigations about the Notifiable Incident (or any similar event or incident), and any recommendations for prevention in the future; and
	5. as soon as practicable notify GA of any concern the Contractor has regarding work health and safety in relation to the Activities.
2. In respect of each incident referred to in clause 29.4(a)(ii), if required by GA, the Contractor must provide GA with the following information in writing in the timeframe specified by GA:
	1. a brief description of how it occurred;
	2. the precise location where it occurred;
	3. when it occurred;
	4. the names, positions and employers (if any) of the persons involved;
	5. details of any known injuries or property damage;
	6. the names, positions and employers (if any) of the persons who saw the incident or were present when it occurred; and
	7. any additional factual information reasonably required by GA (having regard to the circumstances) as being necessary for it to comply with its own notification and reporting obligations under the WHS Laws.
3. If GA wishes to conduct its own investigation of any work, health and/or safety incident connected with the Activities, the Contractor must, and must ensure that the Contractor Personnel, cooperate fully with GA's investigation including by promptly providing all factual information reasonably required by GA (having regard to the circumstances) and documents requested by GA and access to the Contractor Personnel, including for the purpose of GA conducting interviews with them.
4. If GA considers that action or intervention is required to respond to an incident listed in clause 29.4(a)(ii) or 29.4(a)(iv), or a direction is given by a Regulator (or person holding a similar role) under the WHS Laws that action or intervention is required, GA may, if and to the extent that the Contractor is responsible for the relevant incident:
	1. direct the Contractor to take the action or intervention, in which case the Contractor must take whatever action or intervention is required at its own cost; or
	2. where GA considers it reasonable in the circumstances, take the action or intervention itself, in which case the reasonable costs and charges incurred by GA are a debt due and payable by the Contractor to GA.

**29.5 Relationship to other obligations**

1. The Contractor acknowledges that it is responsible for:
	1. complying with its obligations under WHS Laws; and
	2. providing the Activities in accordance with this Contract; and will not be relieved of that responsibility because of:
	3. anything in this clause 29 or in any policy or procedure referred to in this clause 29;
	4. any instruction or direction or failure to give an instruction or direction under this clause 29;
	5. any exercise of, or failure to exercise, GA's rights under this clause 29; or
	6. any notice or other document or communication from the Contractor under this clause 29.
2. To the extent permitted by Law, GA is not liable to the Contractor for any Loss in connection with work health and safety in relation to performing the Activities, including in relation to any Contractor Personnel.

**29.6 Non-compliance**

If, during the performance of any work under this Contract, GA notifies the Contractor that GA

is satisfied that the Contractor is:

1. not performing the work in compliance with this clause 29, the Contractor's WHS Management Plan, relevant legislation or work health and safety procedures provided by GA from time to time (including the WHS Law); or
2. performing the work in a way that endangers the health and safety of the Contractor, Contractor Personnel or any other person, the Contractor must promptly remedy that breach of health and safety.

**29.7 Suspension**

1. GA may direct the Contractor to suspend the Activities until the Contractor satisfies GA that the Activities will be resumed in conformity with WHS Laws, the work health and safety requirements of this Contract and any work health and safety policies and procedures of GA. During periods of suspension, GA will not be required to make any payment whatsoever to the Contractor.
2. If the Contractor fails to rectify any breach of health and safety which resulted in the Activities being suspended (within a reasonable period but no later than 10 Business Days after receiving notice from GA to do so), or if the Contractor's performance has involved recurring breaches of health and safety, GA may, at its option, immediately terminate this Contract or reduce the scope of the Contract, without further obligation to the Contractor. In this event, GA's liability will be limited to payment of the Termination Payment calculated as if this Contract was terminated or is deemed to have been terminated as a result of the occurrence of a Default Termination Event.

**29.8 Principal Contractor**

On and from the Commencement Date until the end of the Term, GA hereby appoints the

Contractor as its "principal contractor" or "main contractor" in connection with the Activities to

the extent it or the Contractor or any Key Subcontractor will be carrying out "construction

work" within the meaning of any WHS Law including regulation 293 and 308 to 315 of the

WHS Regulations (to the extent it applies to the Contractor or the Key Subcontractor) and

authorises the Contractor to manage or control the Sites to the extent necessary to discharge

the duties of a principal contractor under the WHS Laws (to the extent they apply to the

Contractor or the Key Subcontractor).

**29.9 Workplace Gender Equality**

1. This clause 29.9 applies only to the extent that the Contractor is a ‘relevant employer’ for the purposes of the WGE Act.
2. The Contractor must comply with its obligations, if any, under the WGE Act.
3. If the Contractor becomes non-compliant with the WGE Act during the Term, the Contractor must immediately notify GA.
4. The Contractor must provide to GA a current letter of compliance with the WGE Act within 18 months after the Commencement Date and following this annually to GA.
5. Compliance with the WGE Act does not relieve the Contractor from its responsibility to comply with its other obligations under this Contract.

**29.10 Environmental**

1. The Contractor shall (and must procure the Contractor Personnel to) perform its obligations under this Contract in such a way that:
	1. it and its Contractor Personnel are not in breach;
	2. does not put GA in breach of;
	3. GA is able to use, operate and maintain the System and the Activities for the purpose for which they are intended without being in breach of; and
	4. the End-Users are able to use the Services without being in breach of, any Environmental Law.
2. The Contractor represents and warrants that:
	1. it has given careful, prudent and professional consideration to the environmental implications of the Activities to be performed by it under this Contract in the location where those Activities are to be performed; and
	2. as at the Commencement Date, the proposed method of performance of those Activities complies with all Environmental Laws.
3. The Contractor must:
	1. not, and must procure that the Contractor Personnel do not:
		1. cause, contribute to or exacerbate any Contamination;
		2. except where it is authorised pursuant to any Approval, cause any Pollution on, in, under or emanating from any Site;
		3. abandon or dump any Hazardous Substance at any Site; or
		4. except as authorised by Law or an Authorisation, handle, disturb, discharge or release any Hazardous Substance at any Site or cause any Hazardous Substance to migrate from any Site in a manner which is likely to cause or contribute to an Environmental Hazard.
	2. (and must procure that the Contractor Personnel), at all times carry out the Activities in an environmentally responsible manner and Best Industry Practice and so as to protect the Environment;
	3. manage, remove and dispose of all waste, rubbish, debris, redundant materials, spoil and Hazardous Substances produced by the Activities in accordance with Best Industry Practice and this Contract; and
	4. assist GA to comply with any of its obligations pursuant the Law in relation to matters relating to the Environment at the relevant GFF Sites.
4. If the Contractor becomes aware of any intention on the part of an Authority to cancel, revoke or amend an Authorisation (including under an Environmental Law) which the Contractor requires to carry out any Activity under this Contract, it shall notify GA without delay, giving full particulars (so far as they are known to it).
5. Without limiting clauses 7 and 39, the Contractor must give the GA Representative and any person authorised by the GA Representative access to:
	1. its and its Subcontractors' premises for the purpose of monitoring the Contractor’s compliance with any Laws or plans in connection with the protection of the Environment; and
	2. an executive summary of any internal audit report and results and a full copy of any Third Party audit report and results (on a non-reliance basis), in each case in relation to the Environment on, in, over, under or emanating from any GFF Site.

**29.11 Contamination**

1. Without limiting clause 29.10(c)(iv), the Contractor:
	1. must not (and must procure its Subcontractors do not) by any act or omission cause or contribute to any Contamination in, on, over, under or emanating from any Site; and
	2. prevent or minimise any Contamination occurring on, or emanating from, any Site, in accordance with Best Industry Practice.
2. Each party must promptly provide the other with a copy of any Contamination Remediation Notice served on it, and of all related correspondence which precedes or follows the issue of the Contamination Remediation Notice.
3. If the Contractor discovers any Contamination in, on, over, under or emanating from any GFF Site (whether or not the Contractor has caused or contributed to that Contamination), it must notify GA as soon as practicable, and in any event within 5 Business Days after it discovers the Contamination and the Contractor must provide to GA a copy of any notices it provides to the Authority in relation to that Contamination.
4. The Contractor's notice under clause 29.11(c) must contain all relevant details in relation to the Contamination, including:
	1. the type of Contamination;
	2. the location of the Contamination;
	3. the nature and extent of the Contamination; and
	4. whether it considers the Remediation of the Contamination will give rise to a Contamination Compensation Event, to the extent such details are known at the time the notice is provided.
5. On and after the Commencement Date, the Contractor must:
	1. Remediate:
		1. any Contamination in, on, over or under any Site; or
		2. any Contamination that is emanating, or has emanated, from any Site, or that is migrating, or has migrated, onto any Site, where such Remediation is necessary to:
		3. comply with any Contamination Remediation Notice, regardless of whether:
			1. the Contamination Remediation Notice is addressed to GA, the Contractor or any other person; or
			2. the Contamination occurred before or after the Contractor or any other person was given access to any Site;
		4. ensure that there is no unacceptable risk of harm to human health or the Environment as a consequence of the Contamination, having regard to Best Industry Practice;
		5. render any Site suitable for occupation of the System as envisaged by this Contract; or
		6. prevent the migration of Contamination from any Site to adjoining properties or other sites; and
	2. comply with all requirements of any Authority in connection with any Contamination referred to in this clause 29.11(e) or the Remediation of that Contamination.
6. Nothing in this clause 29.11 prevents the Contractor from disputing the issue of a Contamination Remediation Notice with any Authority or taking an action against a third party with respect to the Contamination.

**29.12 Contamination Remediation Plan**

1. Promptly on discovering, or becoming aware of, any Contamination in, on, over, under or emanating from any GFF Site which the Contractor is required to Remediate in accordance with clause 29.11(e), the Contractor must submit to GA a plan for the Remediation of that Contamination (Contamination Remediation Plan) for review in accordance with clause 6 as if that plan was a Document Deliverable.
2. A Contamination Remediation Plan submitted in accordance with clause 29.12(a) must include details of:
	1. all investigations carried out, or to be carried out, in relation to the Contamination;
	2. to the extent that any details were not known at the time of the notice given under clause 29.11(c), the details required under clause 29.11(d);
	3. any proposed works to effect the Remediation;
	4. the proposed timeframe for executing the proposed Remediation works; and
	5. the estimated cost of executing the Contamination Remediation Plan.
3. the Contractor must Remediate any Contamination it is required to Remediate under clause 29.11 in accordance with the relevant Contamination Remediation Plan that has been reviewed in accordance with clause 6 as if that plan was a Document Deliverable.

**29.13 The Contractor's entitlement to compensation for Remediation**

If the requirement to Remediate Contamination under clause 29.11 is a Contamination

Compensation Event, to claim an extension of time, relief from performance or compensation

the Contractor must provide a notice to GA within 20 Business Days after it becomes aware

of that Contamination Compensation Event. On receipt of that notice, GA will be deemed to

have issued a Modification Request under clause 19 to Remediate that Contamination

identified under clause 29.11 and the parties agree that the process under clause 19 applies.

The Contractor is not permitted to make a Claim against GA in respect of any Contamination

Compensation Event (including its impacts) unless it has provided the relevant notice to GA

pursuant to this clause 29.13.

**34. Defaults, Major Defaults and Default Termination Events**

**34.1 Notice of Default by GA**

If a Default (other than in respect of any breach of a Key Performance Indicators) occurs, GA

may give the Contractor a notice in writing stating that such a Default has occurred, identifying

and providing details of the Default and requiring the Contractor to cure the Default within 20

Business Days (or such other period as mutually agreed) after the Contractor receives that

notice (Default Notice).

**34.2 The Contractor to notify GA**

The Contractor must immediately notify GA when it becomes aware of the occurrence of:

1. any Default, Major Default or Default Termination Event; and
2. any event which, with the effluxion of time is likely to become a Default, Major Default or Default Termination Event, and that notice must identify and provide details of the Default, Major Default, Default Termination Event or potential Major Default or Default Termination Event.

**34.3 Major Default**

If a Major Default occurs, GA may give the Contractor a notice in writing stating that a Major

Default has occurred, identifying and providing details of the Major Default and identifying

whether that Major Default is capable of cure (Major Default Notice).

**34.4 Major Default capable of cure**

1. Where the Major Default is capable of cure, GA must identify in the Major Default Notice:
	1. the Major Default;
	2. the period within which the Contractor must cure the Major Default, such period being reasonable having regard to the nature and urgency of the Major Default provided that GA shall not in any circumstance specify a period which in all cases is less than 30 days.
2. If GA issues a Major Default Notice, the Contractor shall:
	1. promptly commence and continue to diligently remedy or cure the Major Default within the period specified in the Major Default Notice;
	2. comply with any reasonable directions given to the Contractor by GA in relation to the Major Default; and
	3. mitigate all Liabilities (including the costs of its compliance with any reasonable directions) in connection with the Major Default including those arising from affected Subcontracts.
3. If the Contractor fails to remedy the Major Default within the period specified in the Major Default Notice, GA may terminate this Contract in accordance with clause 35.4 or reduce the scope of this Contract by notice in writing to the Contractor in accordance with clause 35.10.

**34.5 Major Default not capable of cure**

1. Subject to clause 34.5(c), if a Major Default is not capable of being cured, the Contractor must promptly (and not later than 20 Business Days after receipt of the Major Default Notice) submit to GA for review and approval (such approval not to be unreasonably withheld), a plan (Prevention Plan) which sets out:
	1. the reasons why the Major Default is incapable of being cured;
	2. the steps being taken or to be taken by the Contractor which will overcome the consequences of the Major Default;
	3. how the Contractor intends to address the underlying issue that gave rise to that Major Default; and
	4. a time frame within which the Contractor will overcome the consequences of the Major Default.
2. If GA, acting reasonably:
	1. agrees to the Prevention Plan, the Contractor must:
		1. comply with and diligently pursue the Prevention Plan; and
		2. comply with the timeframes specified in the Prevention Plan for the Contractor to overcome the consequences of the Major Default; or
	2. does not agree to the Prevention Plan, the Contractor must diligently comply with any reasonable requirements of GA to overcome the consequences of the Major Default, within the timeframe specified by the GA Representative in any Major Default Notice or subsequent notice from the GA Representative.
3. If after reviewing the Prevention Plan:
	1. GA forms the view (acting reasonably) that there are no reasonable requirements that can be met by the Contractor to overcome the consequences of the Major Default; or
	2. the Contractor fails to comply with an agreed Prevention Plan and does not otherwise comply with clause 34.5(b)(ii), or after the Contractor fails to provide that Prevention Plan to GA within that 20 Business Day period, in each case the relevant Major Default will be deemed to be a Default Termination Event and GA may terminate this Contract in accordance with clause 35.4 as if a Default Termination Event had occurred or reduce the scope of this Contract by notice in writing to the Contractor in accordance with clause 35.10.

**34.6 Impact of an Extension Event or Relief Event**

Where the Contractor is entitled to an extension of time pursuant to clause 11 or relief from

performance of its obligations pursuant to clause 20, each of that extension of time and relief

from performance of the Contractor's obligations must be taken into account prior to

determining whether a Default, Major Default or Default Termination Event has occurred under

this Contract.

**34.7 Effect of curing**

If a Major Default or Default Termination Event occurs and is cured by any person, any rights

in respect of that Major Default or Default Termination Event (as the case may be) not

exercised prior to it being cured may not thereafter be exercised.

**34.8 Meaning of remedy or cure**

1. Where the word 'remedy' or 'cure' or ‘overcome the consequences’ or any other grammatical form of that word is used in this clause 34, it means to cure or redress the relevant occurrence or overcome its consequences so that there ceases to be any continuing detrimental effect of that potential or actual Default, Major Default or Default Termination Event and so that any prior detrimental effect is rectified so that GA and any GA Personnel is in the position it would be in as if the relevant occurrence had not taken place.
2. The cure of a Major Default or Default Termination Event may include (where GA requires) replacing any Subcontractor responsible for the Major Default or Default Termination Event and the Contractor must comply with the requirements of this clause 34 requiring such a replacement, within as soon as reasonably practicable but in no event longer than 180 calendar days of notice being given by GA and, where GA requires such a replacement, diligently pursuing a replacement Subcontractor and implementing all reasonable measures to implement the Work or perform the Activities in accordance with this Contract.

**34.9 Impact of dispute resolution**

If a party to this Contract requires a Dispute to be resolved in accordance with clause 36, or if

a Dispute has been referred to dispute resolution in accordance with that clause, such referral

does not affect or prevent a Default, Major Default or Default Termination Event occurring or

prevent a party exercising its rights with respect to the Default, Major Default or Default

Termination Event under this Contract.

**35. Termination**

**35.1 Sole basis**

1. Termination under this clause 35 or under clause 3.4 is the sole basis at Law or otherwise upon which GA or the Contractor is entitled to terminate, rescind or accept a repudiation of this Contract.
2. The parties acknowledge and agree that each Termination Payment payable in accordance with this clause 35 is a genuine pre-estimate of the loss (if any) which will be suffered by GA or the Contractor (as applicable) as a consequence of that termination.
3. Subject to clause 24.3, termination and the payment of the relevant Termination Payment will not in any way prejudice or limit either party's Liability to the other in respect of the events giving rise to the termination.

**35.2 Termination for convenience**

1. GA may, at any time, in its sole and absolute discretion, terminate this Contract by giving the Contractor not less than 20 Business Days' notice. GA need not give any reason or show any cause for termination in accordance with this clause 35.2.
2. Termination of this Contract for convenience will take effect upon the date specified in the notice given under clause 35.2(a).
3. If GA issues a notice under clause 35.2(a), the Contractor must:
	1. stop work in accordance with the notice;
	2. comply with any reasonable directions given to the Contractor by GA; and
	3. use Reasonable Endeavours to mitigate all Liabilities (including the costs of its compliance with any directions) and expenses in connection with the termination, including those arising from affected Subcontracts.
4. Subject to clause 35.11, if this Contract is terminated in accordance with this clause 35.2, the Termination Payment shall be calculated as follows:
	1. the Direct Costs incurred (or in relation to clause 35.2(d)(i)(C) and 35.2(d)(i)(D) only, to be incurred) by the Contractor (for the avoidance of doubt Direct Costs that fall into more than one category below shall only be accounted for in one of the categories):
		1. for Work which has been performed in accordance with this Contract up to and including the date on which this Contract is terminated pursuant to clause 35.2(a) provided however that such amount shall in no circumstances exceed the Contract Price;
		2. for Services which have been performed in accordance with this Contract up to and including the date on which this Contract is terminated pursuant to the Contractor received the notice identified in clause 35.2(a) but which does not form part of any Monthly Service Payment which has been paid by GA to the Contractor provided however that such amount shall in no circumstances exceed the Monthly Service Payment for the Month within which this Contract is terminated;
		3. in relation to the demobilisation of the Contractor after the termination date including the cost incurred by the Contractor for Subcontractors engaged in the Works demobilising from Sites;
		4. in relation to performing its obligations under clause 13.1 or 35.6; and
		5. for Products supplied to GA as part of the Services or procured by the Contractor in accordance with the Contract, provided that title to those Products has transferred to GA in accordance with clause 22.1 and any applicable Subcontracts are novated to GA, plus, Mark-up (on those Direct Costs); less
	2. the amount of all Milestone Payments paid by GA to the Contractor; less
	3. the aggregate of any amount standing (or which should have been standing) to the credit of the Insurance Proceeds Account as at the date on which this Contract is terminated pursuant to clause 35.2(a) and the amount of any insurance proceeds that would have been received but for any act, omission or breach by the Contractor or any Contractor Personnel of this Contract; less
	4. any other amount owing by the Contractor to GA arising from or in connection with this Contract (including all amounts in respect of which GA is entitled to deduct or set off under this Contract); plus
	5. any other amount owing by GA to the Contractor arising from or in connection with this Contract.

**35.3 Termination for Force Majeure**

1. If a Force Majeure Termination Event occurs, GA may terminate this Contract by giving notice to the Contractor as a result of that Force Majeure Termination Event.
2. Termination of this Contract for a Force Majeure Termination Event will take effect upon the date specified in the notice given under clause 35.3(a).
3. Subject to clause 35.11, if this Contract is terminated in accordance with clause 35.3(a), the Termination Payment shall be calculated in accordance with clause 35.2(d) (except that the Contractor and its Key Subcontractors will not be entitled to profit on Direct Costs identified in clauses 35.2(d)(i)(C) and 35.2(d)(i)(D)).

**35.4 Termination for Default Termination Event**

1. If a Default Termination Event occurs, GA may terminate this Contract by giving 20 Business Days' notice to the Contractor.
2. Termination of this Contract for a Default Termination Event will take effect upon the date specified in the notice given under clause 35.4(a) (but that date must be no less than 20 Business Days after the date on which the Contractor receives that notice).
3. Subject to clause 35.11, 24.1 and 24.3, if this Contract is terminated for a Default Termination Event
	1. each party will be entitled to any and all Liabilities (if any) determined in accordance with the Laws of the Australian Capital Territory; and
	2. in addition the Contractor must pay GA, the aggregate of any amount standing (or which should have been standing) to the credit of the Insurance Proceeds Account as at the date on which the Contractor received the notice identified in clause 35.4(a) and the amount of any insurance proceeds that would have been received but for any act, omission or breach by the Contractor or any Contractor Personnel of this Contract.

**35.5 Termination and payments under this Contract**

Except as expressly permitted pursuant to clause 35 to be included in a Termination Payment,

upon termination under this clause 35, GA's future obligation to pay the Contract Price or

Monthly Service Payments to the Contractor will cease.

**35.6 Assistance**

The Contractor must use Reasonable Endeavours to assist GA in the exercise of GA's rights

in accordance with this clause 35.

**35.7 Payment on Termination**

1. Subject to clause 35.7(b), no later than the Termination Payment Date:
	1. where the Termination Payment calculated pursuant to clause 35.2 or 35.3 is a positive amount, GA must pay to the Contractor;
	2. where the Termination Payment calculated pursuant to clause 35.2 or 35.3 is a negative amount, the Contractor must pay to GA;
	3. where either:
		1. GA owes the Contractor any amount; or
		2. the Contractor owes GA any amount, in each case as determined pursuant to clause 35.4, the relevant party owing that amount must pay the other party; as a debt due and payable, the absolute value of the relevant Termination Payment or amount (as applicable). GA's obligation to pay a Termination Payment under this clause 35 is subject to the Contractor having handed over, delivered up or transferred (to the extent it is obliged to do so) the Work, the System and each item of GFX to GA pursuant to clause 13 and this clause 35, and otherwise having satisfied its other obligations under this Contract.
2. The Contractor must provide to GA details the calculation of the relevant Termination Payment within 75 Business Days (or such longer time as agreed by the parties having regard to all the circumstances) after this Contract is terminated including sufficient information and evidence to enable the Termination Payment to be determined.
3. In calculating any Termination Payment, there will be no double counting of amounts.

**35.8 [Not used]**

**35.9 Additional rights and obligations on Termination**

The additional rights and obligations of the parties on a termination of this Contract include

those set out in clause 13.

**35.10 Reduction in scope on Default Termination Event or Force Majeure Termination**

**Event**

1. Notwithstanding anything else to the contrary in this Contract and in addition to any other rights GA has under this Contract or at Law, where a Default Termination Event or Force Majeure Termination Event occurs, GA may elect to omit or remove the Work or other Activities to which that Default Termination Event or Force Majeure Termination Event relates from this Contract by issuing a notice to that effect to the Contractor as an alternative to terminating this Contract.
2. Where GA issues a notice under clause 35.10(a):
	1. the Contractor shall mitigate all Liabilities (including the Liabilities relating to complying with any directions) arising from or in connection with the reduction in scope including those arising from affected Subcontracts; and
	2. GA will be deemed to have issued a Modification Request which requests the omission or removal of that part or all of the Work or other Activities provided however that in determining the Contractor's entitlements under clause 19:
		1. the Contractor and Contractor Personnel are not entitled to any Markup on any part of the Work or other Activities yet to be commenced and which have been omitted or removed pursuant to this Contract;
		2. GA's liability to make payments under this Contract will, unless there is agreement in writing to the contrary, reduce proportionately in accordance with the reduction in scope of the Contract; and
		3. GA will be deemed to have issued a Modification Order taking into account the adjustments identified in clauses 35.10(b)(ii)(A) and 35.10(b)(ii)(B).

**35.11 Compensation for loss of prospective profits**

Neither the Contractor nor any Subcontractors shall be entitled to any compensation for loss of

prospective profits on any part of the Contract terminated or reduced in scope other than the

payments expressly provided for in this clause 35.

**35.12 Key Subcontracts**

1. In each Key Subcontract, the Contractor must secure an equivalent right to terminate and to omit or remove the Work and other Activities which are functionally equivalent to that of GA under this clause 35, mutatis mutandis. The provisions for compensation for that right to terminate or to omit or remove Work and other Activities must be equivalent to GA's rights under this clause 35, mutatis mutandis.
2. Where the Contractor fails to include in a Key Subcontract a right to terminate, or to omit or remove any Work or other Activities, and provisions for payment of Termination Payments equivalent to that which GA has under clause 35 (mutatis mutandis), the amount for which GA is liable under clause 35 in relation to that Key Subcontract (if any) will be calculated on the basis that such right to terminate, or to omit or remove the Work or other Activities and those provisions for payment of Termination Payments(mutatis mutandis) are included in that Key Subcontract.

**37. Change in Control**

**37.1 Prohibition**

1. Subject to clauses 37.1(b) and 37.1(e), the Contractor shall ensure that there is no Change in Control of the Contractor without the prior consent of the GA Representative (such consent not to be unreasonably withheld or delayed).
2. If:
	1. a Change in Control of the Contractor occurs as a result of the transfer of shares or other interests or other dealings on a listed stock exchange; or
	2. it is not reasonably practicable to obtain GA's prior consent to a Change in Control of the Contractor by reason of constraints on disclosure at law,

the consent of GA to that Change in Control of the Contractor must be sought by the Contractor as soon as reasonably practicable but no later than 5 Business Days after the occurrence of that Change in Control of the Contractor and the Contractor must procure that the Controller ceases to have the Control which resulted from the Change in Control of the Contractor within 60 Business Days after receiving notice that GA does not consent to the Change in Control of the Contractor;

1. The consent of GA under clause 37.1(a) and 37.1(b) may only be withheld where one or more of the factors referred to in clause 37.2 arises.
2. The GA Representative's consent under this clause 37 may be given subject to any reasonable conditions that the GA Representative considers appropriate and the Contractor shall comply with such reasonable conditions.
3. The parties agree that the consequence of an internal voluntary corporate restructure, amalgamation or merger shall not constitute a Change of Control for the purpose of this clause.

**37.2 GA's right to withhold consent**

GA may only withhold its consent to a proposed Change in Control of the Contractor or (in the

situation to which clause 37.1(b) applies) the Change in Control of the Contractor if it is of the

opinion (acting reasonably) that:

1. the proposed Controller or Controller as applicable:
	1. is not solvent or reputable;
	2. has an interest which conflicts in a material way with the interests of GA or whose activities are incompatible with the Activities, Project and use of the System; or
	3. does not have a sufficient level of financial, managerial and technical capacity to support its obligations in relation to the Project; or
2. the proposed Change in Control of the Contractor or (in the situation to which clause 37.1(b) applies) the Change in Control of the Contractor:
	1. is against the public interest or National Security;
	2. would adversely affect the ability or capability of the Contractor to perform its obligations in accordance with any Project Document;
	3. [Not used];
	4. would have a material adverse effect on the Project; or
	5. would increase the Liability of, or risks accepted by GA under the Project Documents or in any other way in connection with the Project.

**37.3 Further Information**

The Contractor must promptly provide such further information as the GA Representative at

the time reasonably requires in order to determine whether to grant consent to a proposed

Change in Control of the Contractor or (in the situation to which clause 37.1(b) applies) the

Change in Control of the Contractor under this clause 37.

**37.4 GA response to a Proposed Change in Control or Change in Control of the**

**Contractor**

Within 15 Business Days after the GA Representative (acting reasonably) has received

sufficient information to make a determination to grant consent to a proposed Change in

Control of the Contractor or (in the situation to which clause 37.1(b) applies) the Change in Control of the Contractor under this clause 37, the GA Representative must inform the

Contractor whether the GA Representative:

1. consents to the proposed Change in Control of the Contractor or (in the situation to which clause 37.1(b) applies) the Change in Control of the Contractor; or
2. does not consent to the proposed Change in Control of the Contractor or (in the situation to which clause 37.1(b) applies) the Change in Control of the Contractor.

**37.5 Proposed Change in Control or Change in Control of any Key Subcontractor**

1. The Contractor must notify GA as soon as reasonably practicable after it becomes aware of any proposed Change in Control or any Change in Control of any Key Subcontractor. That notice must identify the person which is the subject of the proposed Change in Control or Change in Control and include details of the proposed Controller, the Controller, the proposed Change in Control or Change in Control.
2. The Contractor must promptly provide such further information as the GA Representative at the time reasonably requests in order to enable GA to consider that proposed Controller, Controller, proposed Change in Control or Change in Control.
3. If GA determines (acting reasonably):
	1. the proposed Controller or Controller of the Key Subcontractor as applicable:
		1. is not solvent or reputable;
		2. has an interest which conflicts in a material way with the interests of GA or whose activities are incompatible with the Activities, Project and use of the System; or
		3. does not have a sufficient level of financial, managerial and technical capacity to support its obligations in relation to the Project; or
	2. the proposed Change in Control of the Key Subcontractor or the Change in Control of the relevant Key Subcontractor as applicable:
		1. is against the public interest or National Security;
		2. would adversely affect the ability or capability of the Contractor to perform its obligations in accordance with any Project Document;
		3. [Not used];
		4. would have a material adverse effect on the Project; or
		5. would increase the Liability of, or risks accepted by GA under the Project Documents or in any other way in connection with the Project. in each case, GA and the Contractor shall promptly discuss GA's determination (to the extent that GA is permitted to do so). If GA and the Contractor are unable to agree on a remedy for the determination reached by GA and either the Change in Control has occurred or the proposed Change in Control occurs, GA may in its sole and absolute discretion terminate this Contract immediately by providing notice in writing to the Contractor and that termination will be deemed to be a Force Majeure Termination Event.

**38. Contractor's Records**

**38.1 Records**

1. The Contractor must (and must procure the Key Subcontract to):
	1. keep comprehensive, accurate and adequate books of account, records and all other documents (however stored) in relation to the Project (Accounts and Records); and
	2. keep those Accounts and Records at the Contractor's or relevant Key Subcontractor's offices (as applicable).
2. [Not used]
3. The Contractor must:
	1. ensure that its Accounts and Records are prepared in accordance with the Corporations Act and generally accepted Australian Accounting Standards and practices consistently applied, and fairly represent its operations and financial condition or consolidated financial position (as the case may be); and
	2. procure that the Key Subcontractor's Accounts and Records truly reflect the status and scheduled achievement of the Project and are prepared in accordance with Generally Accepted Accounting Principles (GAAP) or equivalent and fairly represent its operations and financial condition or consolidated financial position (as the case may be).
4. The Contractor must ensure that its Accounts and Records are available to GA and its nominee at any time during business hours (subject to receiving 2 Business Days' prior notice from GA) during the Term and for a period of seven years after the termination or expiry of this Contract for examination, audit, inspection, transcription and copying and must ensure that each Key Subcontractor does likewise.
5. Without limiting its obligations under this Contract, if this Contract is terminated for default, the Contractor must give to GA and its nominee access to all of its Accounts and Records which are necessary for the carrying out of the Activities and must ensure that each Key Subcontractor does likewise in relation to each of its or their Accounts and Records.
6. The Contractor must retain and must procure that each Key Subcontractor retains all Accounts and Records relating to the Work or other Activities for a period of seven years after termination or expiration of this Contract or such longer period as may be required by Law.
7. The Contractor must bear its own costs of complying with this clause 38.
8. This clause applies for the Term and for a period of seven years from the termination or expiry of this Contract.
	1. GA may, at reasonable times and on providing reasonable prior notice to the Contractor, require assistance in respect of any inquiry into or concerning the Activities or any Project Document and the Contractor must provide that assistance promptly after receipt of that notice. For these purposes an inquiry includes any administrative or statutory review, audit or inquiry (whether within or external to GA), any request for information directed to GA, and any inquiry conducted by Parliament or any Parliamentary committee.

**38.2 Access to records**

1. During the performance of this Contract, the Contractor shall give GA and its nominee access to:
	1. its premises; and
	2. any of its Accounts and Records, relevant to or impacting on the performance of Activities under this Contract, including the right to copy any Accounts and Records for the purposes of this Contract.
2. The Contractor shall ensure that each Key Subcontractor gives GA and its nominee, access to its or their:
	1. premises; and
	2. Accounts and Records,

relevant to or impacting on the performance of Work or other Activities under the relevant Subcontract including the right to copy any Accounts or Records for the purposes of this Contract.

1. GA acknowledges that the rights to access and copy Accounts and Records are not to be used for the purposes of examining or challenging the make up or composition of the Contract Price.

**38.3 Financial statements**

As soon as practicable upon request (and in any event not later than 120 days) after the close

of each Financial Year, the Contractor must give to GA certified copies of:

1. the consolidated (if applicable) and unconsolidated audited financial statements for the previous Financial Year for the Contractor and LMC; and
2. if requested by GA, the consolidated audited financial statements for the previous Financial Year for each Relevant Party.

**38.4 Other information**

The Contractor must (and must procure each Relevant Party to) give to GA the following

information upon request:

1. copies of all publicly available documents or information given or received by the Contractor or the Parent Company to or from the Australian Securities & Investments Commission or Australian Stock Exchange Limited or similar applicable foreign institutions or exchanges which would prejudice the ability of the Contractor to perform its obligations under any Project Document;
2. details of any changes to the constitutions or trust deed of any Relevant Party within 20 Business Days after the change;
3. details of any material change in the financial condition of the Contractor (after the Contract Date) or any of its Related Bodies Corporate, LMC and/or any Key Subcontractor (in each case since the Contract Date) which would prejudice the ability of the Contractor to perform its obligations under any Project Document; and
4. such other financial and associated information relating to the Project as GA may reasonably require from time to time in relation to exercise of GA's rights, complying with GA's obligations and the Contractor's compliance with its obligations, in each case arising from or in connection with this Contract and the Contractor agrees to provide (such agreement not to be unreasonably withheld or delayed).

**39. Audit and access**

**39.1 Right to conduct audits**

GA or its nominee (including an Auditor) may conduct audits relevant to the performance of

the Contractor's obligations under any Project Document. Audits may be conducted in relation

to:

1. the Contractor's operational practices and procedures as they relate to any Project Document, including security procedures, protocols and guidelines;
2. the accuracy of the Contractor's invoices and reports in relation to the performance of Activities arising from or in connection with any Project Document;
3. the Contractor's compliance with its confidentiality, privacy and security requirements and obligations under any Project Document;
4. the Contractor's compliance with all its obligations under any Project Document;
5. the Contractor's compliance with its obligations in relation to GA policies under any Project Document;
6. the Contractor's compliance with its quality assurance obligations under any Project Document;
7. material (including books and records) of the Contractor relevant to the Activities or any Project Document; and
8. any other matters determined by GA to be relevant to the Activities or any Project Document.

**39.2 Access by GA**

1. Unless restricted by Export Control, GA may at reasonable times and on giving reasonable notice to the Contractor:
	1. access the Contractor's premises to the extent relevant to the performance of any Project Document, including for the purposes of clause 39.1;
	2. require the provision by the Contractor, its employees, agents or Subcontractors, of records and information in a data format and storage medium accessible by GA by use of GA's existing computer hardware and software and the Contractor must provide those records and information within a reasonable period after receipt of a request to do so;
	3. inspect and copy documentation, books and records, however stored, in the custody or under the control of the Contractor, its employees, agents or Subcontractors; and
	4. require assistance in respect of any inquiry into or concerning the Activities or any Project Document. For these purposes an inquiry includes any administrative or statutory review, audit or inquiry (whether within or external to GA), any request for information directed to GA, and any inquiry conducted by Parliament or any Parliamentary committee.
2. The Contractor must provide access to its computer hardware and software and equipment to the extent necessary for GA to exercise its rights under this clause, and provide GA with any reasonable assistance requested by GA to use that hardware and software.
3. GA must comply with, and must require any nominee authorised by GA to comply with, any reasonable GA safety and security requirements or codes of behaviour for the premises.

**39.3 Conduct of audit and access**

GA must use reasonable endeavours to ensure that:

1. audits performed pursuant to clause 39.1; and
2. the exercise of the general rights granted by clause 39.2 by GA, do not unreasonably delay or disrupt in any material respect the Contractor's performance of its obligations under any Project Document.

**39.4 Costs**

1. Each party must bear its own costs of any review and/or audits.
2. If any review or audit is in respect of any amount to which the Contractor is entitled and such audit or inspection reveals that the Contractor has overcharged GA, the Contractor must promptly reimburse GA for those costs overcharged following any request by GA to do so.
3. If any audit reveals that Contractor's Tax Invoices for the audited period are not correct for such period:
	1. the Contractor must promptly reimburse GA for the amount of any overcharges; or
	2. GA must promptly pay to the Contractor the amount of any undercharges, as the case may be.

**39.5 Auditor-General, Privacy Commissioner, Information Commissioner and Freedom of**

**Information Commissioner**

The rights of GA under clause 39 apply equally to the Auditor-General, the Privacy

Commissioner, the Freedom of Information Commissioner and/or the Information

Commissioner, or his or her respective delegate, for the purpose of performing the Auditor-

General's, Privacy Commissioner's, Freedom of Information Commissioner's and/or

Information Commissioner's statutory functions or powers.

**39.6 Contractor to comply with Auditor-General's, Privacy Commissioner's, Freedom of**

**Information Commissioner's and Information Commissioner's requirements**

The Contractor must do all things necessary to comply with the Auditor-General’s, the Privacy

Commissioner's, the Freedom of Information Commissioner's, the Information

Commissioner's, or his or her respective delegate's requirements, notified by GA under clause

39.2, provided such requirements are legally enforceable and within the power of the Auditor-

General, the Privacy Commissioner, the Freedom of Information Commissioner and/or the

Information Commissioner, or his or her respective delegate.

**39.7 No reduction in responsibility**

1. The requirement for, and participation in, audits does not in any way reduce the Contractor's responsibility to perform its obligations in accordance with any Project Document.
2. Any inspection, audit, acceptance certificate, approval, attendance, permission, comment or recommendation by, or on behalf of, GA will not:
	1. constitute waiver of any default or acceptance of any act or omission on the part of the Contractor; or
	2. affect or modify any Contractor's obligation to perform any Project Document in accordance with its terms and conditions.
3. GA does not owe the Contractor any duty of care, whether as a result of this Contract or otherwise.

**39.8 [Not used]**

**39.9 No restriction**

Nothing in this Contract reduces, limits or restricts in any way any function, power, right or

entitlement of the Auditor-General, the Privacy Commissioner, the Freedom of Information

Commissioner and/or the Information Commissioner, or his or her respective delegate. The

rights of GA under this Contract are in addition to any other power, right or entitlement of the Auditor-General, the Privacy Commissioner, the Freedom of Information Commissioner and/or

the Information Commissioner, or his or her respective delegate.

**39.10 Survival**

This clause applies for the Term and for a period of seven years from the termination or expiry

of this Contract.

**40. Confidentiality and Privacy**

**40.1 Confidential Information not to be disclosed**

1. Subject to clause 40.3, a party must not, without the prior consent of the other party, disclose any Confidential Information of the other party to a Third Party.
2. In giving written consent to the disclosure of Confidential Information, a party may impose such conditions as it thinks fit, and the other party agrees to comply with these conditions.
3. The Contractor, when directed by GA in writing, agrees to return or destroy any document in its possession, power or control which contains or relates to any Confidential Information created by or on behalf of or received by the Contractor or any Contractor Personnel in relation to the Project within a reasonable time of being requested to do so by GA. Where the Contractor has provided that information to any Contractor Personnel, it must recover that Confidential Information for the purpose of complying with this clause 40.
4. Return or destruction of the documents referred to in this clause 40.1 does not release the Contractor from its obligations under this Contract.

**40.2 Written undertakings**

1. GA may at any time require the Contractor to arrange for:
	1. any Contractor Personnel (other than an employee); or
	2. any other Third Party, other than an employee, to whom Confidential Information may be disclosed pursuant to clause 40.3(a) or 40.3(e), to give a written undertaking to GA in a form acceptable to GA relating to the use and non-disclosure of Confidential Information which they have received.
	3. If the Contractor receives a request under clause 40.2(a), it must promptly arrange for all such undertakings to be given to GA.

**40.3 Exceptions to obligations**

The obligations on the parties under this clause 40 will not be taken to have been breached to

the extent that Confidential Information is:

1. disclosed by a party to its advisers (including legal, insurance or financial advisers), owners, officers, servants, employees or Contractor Personnel solely in order to comply with obligations, or to exercise rights, under this Contract;
2. disclosed to a party's internal management personnel, solely to enable effective management or auditing of Contract related activities, and to the internal management personnel of a Related Body Corporate of a party provided that the internal management personnel of such Related Body Corporate requires the Confidential Information solely for the financial management of the Related Body Corporate and any supervisory activities undertaken by the Related Body Corporate in respect of the relevant party;
3. disclosed by GA to a Minister or the GA Personnel;
4. disclosed by GA, in response to a request by a House or a Committee of the Parliament of the Commonwealth or New Zealand;
5. shared by GA within GA's organisation or with another Authority;
6. authorised or required by Law to be disclosed provided that:
	1. in the case of the Contractor:
		1. it notifies GA of the requirement to make that disclosure;
		2. it takes all reasonable steps to minimise the extent of the disclosure and to ensure the information is disclosed on a basis that the recipient agrees to maintain the confidentiality of the information; and
	2. this paragraph does not require GA to disclose any information of the kind referred to in section 275(1) of the PPSA;
7. disclosed to a court or recognised dispute resolution process in the course of proceedings or matter to which any of GA or the Contractor is a party;
8. authorised or required by the rules of a recognised stock exchange on which the Contractor's shares or units are listed, including under this Contract, under a licence or otherwise, to be disclosed; or
9. in the public domain or becomes public knowledge otherwise than due to a breach of this Contract including this clause 40.

**40.4 Obligations on disclosure**

Where a party discloses Confidential Information to another person:

1. pursuant to clauses 40.3(a), 40.3(b) or 40.3(e) (Exceptions to obligations), the disclosing party must:
	1. notify the receiving person that the information is Confidential Information; and
	2. not provide the information unless the receiving person agrees to keep the information confidential; or
2. pursuant to clauses 40.3(c) and 40.3(d), the disclosing party must notify the receiving party that the information is Confidential Information.

**40.5 Additional confidential information**

1. The parties may agree in writing after the Contract Date that certain additional information is to constitute Confidential Information for the purposes of this Contract.
2. Without limiting any rights of GA provided for elsewhere in this Contract, the Contractor grants to GA the right to disclose information relating to communication protocols, interface standards, message formats, or any other electrical, mechanical or optical interface or other requirements which may be required to be released by GA so as to allow software or equipment to connect to or communicate with any Material, the Work and any part or the whole of the System.

**40.6 No reduction in privacy obligations**

Nothing in this clause 40 derogates from any obligation which either party may have either

under Law (including the Privacy Laws), or under this Contract, in relation to the protection of

Personal Information and security.

**40.7 Freedom of Information**

1. Where GA has received a request for access to a document created by, or in the possession of, the Contractor or any Subcontractor that relates to the performance of any Project Document (and not to the entry into any Project Document), GA may at any time by written notice require the Contractor to provide the document to GA and the Contractor shall, at no additional cost to GA, promptly comply with the notice.
2. The Contractor shall include in any Key Subcontract provisions that will enable the Contractor to comply with its obligations under this clause 40.7.
3. In this clause 40.7, 'document' has the same meaning as in the Freedom of Information Act 1982 (Cth) or the Official Information Act 1982 (NZ) (as applicable).

**40.8 Archives Act**

1. The Contractor acknowledges that GA is the owner of certain records (including those required to be delivered to GA in accordance with this Contract) that are created or maintained by the Contractor and that these records are to be dealt with in accordance with the Archives Act 1983 (Cth).
2. The Contractor will not (and must procure each Key Subcontractor not to) take any action which would cause GA to be in breach of its obligations under that Act and shall comply with any direction given by GA for the purpose of maintaining records relating to the Activities and/or the System and its operation.

**40.9 Public announcements**

1. The Contractor shall not make any public disclosures, announcements or other statements in relation to the Project or which refers or is connected to this Contract without GA's prior consent.
2. For the purposes of clause 40.9(a), the Contractor is not required to obtain GA's consent or approval to the extent that any disclosure, announcement or statement is:
	1. required by Law, provided that it:
		1. notifies GA of the requirement to make that disclosure; and
		2. takes all reasonable steps to minimise the extent of the disclosure and to ensure the information is disclosed on a basis that the recipient agrees to maintain the confidentiality of the information;
	2. required to be made to a court or recognised dispute resolution process in the course of proceedings or matter to which the Contractor is a party; or
	3. required by a recognised stock exchange on which the Contractor's shares or units are listed.
3. Neither party shall use the other party's logo without first obtaining consent of the other party.

**40.10 Probity Event**

1. The Contractor must give notice to GA immediately upon becoming aware that a Probity Event has occurred or is likely to occur for the Contractor or any Key Contractor Personnel. That notice must at a minimum describe the Probity Event, when the Probity Event occurred or is likely to occur and the circumstances giving rise to the Probity Event.
2. Within 10 Business Days of receipt of a notice under clause 40.10(a) or otherwise upon the occurrence of a Probity Event regarding the Contractor or any Key Contractor Personnel:
	1. GA and the Contractor must meet to agree a course of action to remedy or otherwise address that Probity Event and the timeframe in which that will occur; and
	2. the Contractor must comply with any agreement made in accordance with clause 40.10(b)(i) in accordance with the timeframe agreed.
3. If GA and the Contractor fail to agree to a course of action in accordance with clause 40.10(b)(ii), the Contractor must take any reasonable action as required by GA to remedy or otherwise address that Probity Event immediately in accordance with any reasonable timeframe determined by GA. Where the Contractor considers that the actions required by GA under this clause 40.10 are unreasonable, it must refer that issue for determination by expedited arbitration in accordance with clause 36.3.
4. The Contractor must ensure that each Contractor Personnel (other than the Contractor and Key Contractor Personnel) comply with the Contractor's Supplier Code of Conduct which the Contractor applies in its ordinary course of business. The Contractor must provide to GA within 10 Business Days after:
	1. it becomes aware of any failure by any of the Contractor Personnel (other than the Contractor and Key Contractor Personnel) to comply with the Contractor's Supplier Code of Conduct which the Contractor applies in the ordinary course of its business, details of the relevant failure and the steps which it is taking to remedy or otherwise address that failure and the timeframe within which that will occur; and
	2. receipt to do so, a copy of the current version of that Supplier Code of Conduct.

**41. Protection of Personal Information**

**41.1 Application of the clause**

This clause applies only where the Contractor deals with Personal Information of GA

Personnel when, and for the purpose of, undertaking the Activities under this Contract.

**41.2 Privacy Incidents**

If a Privacy Incident occurs, the Contractor must:

1. immediately notify GA; and
2. do all things required by GA in relation to that Privacy Incident.

**41.3 Eligible Data Breaches**

1. If the Contractor becomes aware that there are reasonable grounds to suspect that there may have been an Eligible Data Breach (as defined in the Australian Privacy Act) in relation to any Personal Information held by the Contractor as a result of this Contract or its performance of any Activities, the Contractor must:
	1. notify GA in writing immediately;
	2. unless otherwise directed by GA, carry out an assessment in accordance with the requirements of the Australian Privacy Act; and
	3. where requested by GA, assist GA in carrying out an assessment of the consequences to GA of the Eligible Data Breach.
2. Where the Operator is aware that there are reasonable grounds to believe there has been, or where GA notifies the Operator that there has been, an Eligible Data Breach in relation to any Personal Information held by the Operator as a result of this Contract or its performance of any Activities Agreement, the Operator must:
	1. take all reasonable action to mitigate the risk of the Eligible Data Breach causing serious harm to any of the individuals to whom the Personal Information relates;
	2. unless otherwise directed by GA, take all other action necessary to comply with the requirements of the Privacy Act; and
	3. take any other action as reasonably directed by GA.

**41.4 Obligations**

1. The Contractor acknowledges that it is a 'contracted service provider' within the meaning of section 6 of the Australian Privacy Act, and agrees to:
	1. use or disclose Personal Information only for the purposes of this Contract;
	2. only disclose Personal Information to the Contractor Personnel:
		1. who need to know that information for the purpose of performing the Activities (and only to that extent); and
		2. who have been made aware of the obligations of the Contractor set out in this clause 41;
	3. maintain reasonable safeguards against loss, unauthorised access, use, modification or disclosure and other misuse of Personal Information held in connection with any Project Document;
	4. comply with, and at all times act in a manner that is consistent with, the APPs which apply to organisations (as defined under the Australian Privacy Act), including developing and implementing practices, procedures and systems:
		1. to ensure the Contractor and its Key Subcontractors comply with the APPs;
		2. that will enable GA to comply with the APPs;
		3. that will enable the Contractor to deal with inquiries or complaints from individuals about the Contractor's or the Activities' compliance with the APPs or any code registered or approved under the Privacy Act which is binding on the Contractor; and
		4. to maintain records of the Personal Information held by the Contractor in relation to any Project Document;
	5. not do any act or engage in any practice that would breach an APP if done or engaged in by an Agency;
	6. comply with all other applicable Privacy Laws in relation to the handling of Personal Information;
	7. notify individuals whose Personal Information the Contractor holds that complaints about acts or practices of the Contractor that may be investigated by the Privacy Commissioner who has power to award compensation against the Contractor in appropriate circumstances;
	8. not to use or disclose Personal Information for the purpose of direct marketing unless the Contractor collected the information for the purpose of meeting (directly or indirectly) an obligation under this Contract and the use or disclosure is necessary to meet (directly or indirectly) the obligation;
	9. to the extent required by Law and in performing this Contract, and consistent with APPs 12 and 13, ensure mechanisms are in place (which may be reviewed by GA) to deal with requests for access to, or correction of, Personal Information;
	10. immediately notify GA if the Contractor becomes aware of a breach or possible breach of any of the obligations contained in, or referred to in, this clause 41, whether by the Contractor or any Contractor Personnel;
	11. not disclose any Personal Information held in relation to any Project Document to an overseas recipient, without the written prior consent of GA or in the event of routine administration tasks performed by third parties and Subcontractors as necessary, provided those third parties and Subcontractors are required to comply with obligations that are consistent with this clause 41;
	12. comply with any directions, rules, guidelines, determinations or recommendations of the Information Commissioner or the Privacy Commissioner, to the extent that they are not inconsistent with the requirements of this clause 41;
	13. ensure that any Contractor Personnel who are required to deal with Personal Information for the purposes of any Project Document are made aware of the obligations of the Contractor set out in this clause 41; and
	14. not do any act or engage in any practice that would breach any Australian Privacy Principle (as defined under the Australian Privacy Act) (or similar Law).
2. Nothing in clause 41 derogates from any obligation which either party may have either under the Privacy Act (if any), or under this Contract, in relation to the protection of Personal Information.

**41.5 Subcontracts**

Subject to clause 14.1(f)(ii), the Contractor must ensure that any Key Subcontract which it enters into for the purpose of fulfilling its obligations under this Contract contains provisions to ensure that the Key Subcontractor has the same awareness and obligations as the Contractor has under this clause 41, including the requirement in relation to Key Subcontracts.

**41.6 Indemnity**

Subject to clause 24.3, the Contractor indemnifies GA in respect of any Loss suffered or

incurred by GA which arises directly or indirectly from a breach of any of the obligations of the

Contractor under this clause 41, or a Key Subcontractor under the Key Subcontract provisions

referred to in clause 41.5.

**43. Assignment and transfer of contractual rights**

1. The Contractor must not (and must ensure that each Relevant Party and each Key Subcontractor does not) assign, novate or transfer any of its rights and/or obligations (as applicable) or otherwise deal with any of its rights, title and interests under any of the Project Documents without the prior written consent of GA.
2. Subject to clause 43(c), GA must not assign, novate or transfer any of its rights and/or obligations (as applicable) or otherwise deal with any of its rights, title and interest under any of the Project Documents (as applicable) without the prior written consent of the Contractor, such consent not to be unreasonably withheld or delayed.
3. GA may assign, novate or transfer any of its rights and/or obligations (as applicable) or otherwise deal with any of its rights, title and interest under any of the Project Documents (as applicable) (Dealing), (and the Contractor consents to such Dealing),

if:

1. it has provided the Contractor with written details of the proposed transferee and the terms and conditions of the proposed transfer, including the effective date of the Dealing; and
2. the proposed transferee is an emanation of the Crown in the right of the Commonwealth or any other government authority, department, agency, statutory corporation or instrumentality the obligations of which are supported by the Crown in the right of the Commonwealth and which has agreed to be bound by the relevant Project Documents as if it were GA.
3. Where GA implements a Dealing in accordance with clause 43(c), the Contractor irrevocably accepts, consents to and shall be bound by the relevant Dealing on and from the effective date of that Dealing without the need to execute any further documentation to facilitate the Dealing.
4. Any purported dealing in breach of this clause is of no effect other than for the purpose of a Major Default or Default Termination Event under this Contract.

**44. Security**

**44.1 Compliance with GA requirements**

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

1. comply with all relevant security and other requirements specified in the Protective Security Policy Framework;
2. ensure that any material and property provided by GA for the purposes of the Contract is protected at all times from unauthorised access, unauthorised use by a Third Party, misuse, damage and destruction and is returned as directed by GA;
3. when accessing any GA place, area or facility, the Contractor must comply with any security requirements notified to the Contractor by GA or of which the Contractor is, or should reasonably be, aware;
4. comply with any other security procedures or requirements notified, in writing, by GA to the Contractor. The Contractor must comply with such a security procedure or requirement, from the date specified in the notice, or if none is specified, within five Business Days of receipt of the notice; and
5. comply with those parts of the Security Guide which are expressed to be mandatory and use Reasonable Endeavours to comply with the remainder of the Security Guide, provided however that the Contractor is only obliged to procure that this clause 44.1(e) apply to any Contactor Personnel to the extent applicable.

**44.2 [Not used]**

**44.3 Storage, disclosure and access of security classified information**

1. This clause 44.3 applies where the Contractor will handle or store security classified information of GA outside GA's premises and / or systems.
2. The Contractor must ensure that (in such circumstances) the premises and facilities used to handle or store security classified information of GA meet the appropriate security level set out in the Protective Security Policy Framework or as otherwise determined by GA.
3. The Contractor must not permit any of the Contractor Personnel to access security classified information unless the individual concerned has a security clearance to the appropriate level and the need-to-know.
4. The Contractor must ensure that no security classified information furnished or generated under this Contract is released to a third party without the prior written approval of GA.
5. The Contractor must (in such circumstances) have the appropriate systems able to meet designated information security standards for the electronic processing, storage, transmission and disposal of official information.
6. The Contractor bears all the costs and expenses associated with ensuring that the storage of security classified information meets the appropriate security level set out in the Protective Security Policy Framework or as otherwise determined by GA.
7. The Contractor must notify GA if any Contractor Personnel have any incidental or accidental access to security classified information or otherwise access security classified information in a manner that is not in accordance with this clause 44 within five Business Days after the date on which that occurs.

**44.4 Other Information**

In relation to Official Information, the Contractor must:

1. if and when requested by GA, arrange for it and the Contractor Personnel to promptly execute a declaration of interest and deed of non-disclosure, in a form reasonably required by GA, relating to the use and non-disclosure of Official Information in connection with this Contract;
2. promptly notify and disclose to GA any conflict of interest affecting it or the Contractor Personnel that may impact on security in the performance of the Contractor's obligations with respect to Official Information under this Contract;
3. promptly inform, and keep informed, the Contractor Personnel in respect of all of GA's security requirements and the Contractor's security obligations under this Contract, including that the obligation to maintain confidentiality of Official Information is ongoing (notwithstanding termination or expiry of this Contract or the Contractor Personnel's involvement with this Contract); and
4. ensure that the Contractor Personnel have and use solutions that meet the designated information security standards under the Australian Government Information Security Manual, for the electronic processing, storage, transmission and disposal of Official Information.

**44.5 Highest level of Security Classified Information**

The Contractor may have access to security classified information up to the level specified in

Schedule 1.

**44.6 Security clearances**

If required by GA, each of the Contractor Personnel must hold and maintain an Australian

Government and/or New Zealand security clearance to the level required by GA, and:

1. GA will facilitate the obtaining of security clearances; and
2. the cost of security clearances will be borne by the Contractor.

**44.7 Removal of GA Information**

The Contractor must not, and must ensure that its Contractor Personnel do not:

1. other than GA Information which has been provided by GA to the Contractor pursuant to this Contract, remove GA Information or allow GA Information to be removed from GA's premises; or
2. [Not used],

without GA's prior written consent.

**44.8 Loss of Security Clearance and Security breaches**

1. The Contractor acknowledges that if any Contractor Personnel loses their security clearance after consultation with the Contractor, GA may require the immediate removal of that person and replacement of that person as soon as reasonably practicable and in any event within 7 days (or such longer period as agreed between the parties).
2. The Contractor acknowledges that if any Contractor Personnel causes a security breach, then GA may at its election deem that a security breach is a Major Default and provide notice to that effect to the Contractor.

**44.9 Notifications of breach**

The Contractor must proactively monitor compliance with its obligations under this clause 44,

and if it becomes aware of any breach or potential breach of those obligations, then it must

give GA immediate notice of that breach or potential breach, and will:

1. immediately comply with all directions of GA in order to address the incident or breach, and ensure it does not occur again;
2. provide all information requested by GA in relation to the breach of this clause 44;
3. take all action necessary to:
	1. eliminate or minimise the impact of such breach or potential breach (including all steps necessary to prevent fraud through the misuse of GA Information); and
	2. prevent any repeat of such breach in the future;
4. if the breach causes a loss of GA Information, take all steps necessary to mitigate the losses and restore the GA Information;
5. retain evidence and logs regarding the incident to help in determining cause, damage and likely source; and
6. ensure that the Contractor has sufficient resources and technology available to meet its obligations under this clause 44.

**46.6 Conflict of Interest**

1. The Contractor warrants that, to the best of its knowledge after making diligent inquiry, at the date of signing this Contract, no Conflict of Interest exists or is likely to arise in the performance of its obligations under any Project Document.
2. If, during the performance of the Activities a Conflict of Interest arises of which the Contractor becomes aware, or appears likely to arise, the Contractor must:
	1. notify GA immediately in writing;
	2. make full disclosure of all relevant information relating to the Conflict of Interest and setting out the steps the Contractor proposes to take to resolve or otherwise deal with the Conflict of Interest; and
	3. take such steps as GA reasonably requires to resolve or otherwise deal with the Conflict of Interest.