

PART A — TERMS & CONDITIONS

Definitions

"Seller" means UPKEEP CO PTY LTD, its successors and assigns or any person acting on behalf of and with the authority of UPKEEP CO PTY LTD.

"Buyer" means the person/s buying the Goods as specified in any invoice, document or order, and if there is more than one Buyer is a reference to each Buyer jointly and severally.

"Goods" means all Goods or Services supplied by the Seller to the Buyer at the Buyer's request from time to time (where the context so permits the terms Goods or Services shall be interchangeable for the other).

"Price" means the Price payable for the Goods as agreed between the Seller and the Buyer in accordance with the Price and Payment clause below.

Price and Payment

The Price shall be as indicated on invoices provided by the Seller to the Buyer in respect of the Goods / Services supplied.

Payment is strictly due within fourteen (14) days from the date of invoice, in accordance with the Building and Construction Industry Security of Payment Act 1999 (NSW). This 14-day term governs and prevails over any longer or conflicting payment period stated elsewhere in this quotation or its Terms and Conditions of Trade. No purchase order, supplier portal, vendor onboarding document, or client-imposed payment terms will vary this period unless expressly agreed by UPKEEP Co in writing prior to commencement of works.

Unless otherwise stated the Price does not include GST. In addition to the Price the Buyer must pay to the Seller an amount equal to any GST the Seller must pay for any supply by the Seller under this or any other agreement for the sale of the Goods / Services. The Buyer must pay GST, without deduction or set off of any other amounts, at the same time and on the same basis as the Buyer pays the Price. In addition the Buyer must pay any other taxes and duties that may be applicable in addition to the Price except where they are expressly included in the Price.

Deposit & Materials Payment

An upfront deposit of ten percent (10%) of the Contract Price is required prior to commencing works on all jobs with a Contract Price of \$5,000 or more. Works will not commence until the deposit is received.

Where a job includes materials that must be pre-ordered or purchased in advance (including but not limited to ACP cladding, framework, and other made-to-order or specially procured materials), those materials must be paid in full prior to delivery to site.

The deposit and any materials payments are invoiced separately but are paid on account of the Contract Price and deducted from the final amount payable.

Default & Consequences of Default

Interest will be charged on any amount not paid by the due date, accruing daily from the due date until payment is made in full at a rate of two and a half percent (2.5%) per calendar month, compounding monthly, after as well as before any judgement.

If the Buyer owes the Seller any money the Buyer shall indemnify the Seller from and against all costs and disbursements incurred by the Seller in recovering the debt (including but not limited to internal administration fees, legal costs on a solicitor and own client basis, the Seller's contract default fee, and bank dishonour fees).

Further to any other rights or remedies the Seller may have under this contract, if a Buyer has made payment to the Seller by credit card, and the transaction is subsequently reversed, the Buyer shall be liable for the amount of the reversed transaction, in addition to any further costs incurred by the Seller under this clause where it can be proven that such reversal is found to be illegal, fraudulent or in contravention to the Buyer's obligations under this agreement.

Warranties

UPKEEP Co stands behind the quality of all works carried out under this quotation, backed by both a workmanship warranty and a product warranty.

- **Workmanship Warranty:** UPKEEP Co provides a five (5) year warranty covering the quality of workmanship carried out under this scope of works, covering defects arising from application, preparation, or installation carried out by UPKEEP Co as part of the contracted scope.
- **Product Warranty:** The manufacturer's product warranty applies to all coatings and materials used, typically up to ten (10) years depending on the specific product and manufacturer's terms. The product warranty is subject to the manufacturer's own terms, conditions, and claims process.
- **Conditions:** Warranties apply only to areas prepared and coated as part of this scope of works, and are void where the affected area is impacted by uncontracted repairs, substrate movement, water ingress, or damage outside of UPKEEP Co's control. A Workmanship Warranty Certificate and relevant Product Data Sheets will be provided upon completion of works.

General

The failure by the Seller to enforce any provision of these terms and conditions shall not be treated as a waiver of that provision, nor shall it affect the Seller's right to subsequently enforce that provision. If any provision of these terms and conditions shall be invalid, void, illegal or unenforceable the validity, existence, legality and enforceability of the remaining provisions shall not be affected, prejudiced or impaired.

These terms and conditions and any contract to which they apply shall be governed by the laws of the state in which the Seller has its principal place of business, and are subject to the jurisdiction of the courts in that state.

PART B — OPERATIVE CLAUSES

1. Interpretation

1.1 Definitions

In this Contract, unless the context otherwise requires:

Authority includes any governmental or semi-governmental or local government authority, administrative or judicial body or tribunal, department, commission, public authority, agency, Minister, statutory corporation or instrumentality and any private electricity, telecommunications, gas or other utility company having statutory rights in relation to the Works.

Business Day means any day other than: (a) a Saturday, Sunday or public holiday in New South Wales; or (b) 27, 28, 29, 30 and 31 December of each year.

Client's Representative means the person specified in the Contract Particulars.

Commencement Date means the date specified in the Contract Particulars.

Contract means this document and includes any annexures to it.

Contract Material means any Material created, written or otherwise brought into existence by or on behalf of UPKEEP in the course of performing this Contract in which subsists newly created Intellectual Property Rights.

Contract Particulars means the details set out in Part A of this Contract.

Contract Price means the Contract Price described in the Contract Particulars.

Date for Completion means the date specified in the Contract Particulars.

Defects Correction Period means the period specified in the Contract Particulars commencing on the date of completion as determined in accordance with clause 2.9.

Deposit means the deposit specified in the Contract Particulars.

Existing Contract Material means any Material which exists at the date of this Contract and which is incorporated in the Contract Material.

GST has the meaning given to it in the GST Law.

GST Law means A New Tax System (Goods and Services Tax) Act 1999 (Cth), related legislation and any delegated legislation made pursuant to such legislation.

Head Contract means all of the agreements in respect to the Project to which the Client and the Principal are both parties.

Intellectual Property Rights includes any and all intellectual and industrial property rights throughout the world, whether subsisting now or in the future and includes all copyright and analogous rights, all rights in relation to inventions (including patent rights), registered and unregistered trademarks, designs (whether or not registered or registrable), circuit layouts, trade names, trade secrets, business names, company names or internet domain names.

Interest Rate means for a Rate Period, the aggregate of 2 percent above the cash rate last published by the Reserve Bank of Australia, per annum.

Law means: (a) all Commonwealth, New South Wales or local government legislation including any regulations, ordinances, instruments, codes, requirements, by-laws, orders, proclamations and other subordinate legislation; (b) common law; and (c) Authority approvals and the lawful requirements of any person acting in the exercise of statutory powers enabling them to give directions affecting UPKEEP's activities.

Material includes documents, information and data stored by any means.

Notice means a written notice or other communication given in accordance with clause 14.

Personal Information has its meaning in the Privacy and Personal Information Protection Act 1998 (NSW).

Principal means the person specified in the Contract Particulars.

Privacy Laws means the Privacy and Personal Information Protection Act 1998 (NSW), the Privacy Act 1988 (Cth), any applicable principles, codes of conduct or directions issued under those Acts and all other applicable Law relating to privacy or personal information.

Project means the project described in the Contract Particulars.

UPKEEP's Representative means the person specified in the Contract Particulars.

Rate Period means a monthly period commencing on the first day interest is payable and ending on the day immediately preceding that day one month after it and each subsequent monthly period thereafter during which interest is payable.

Site means the site described in the Contract Particulars.

Unknown Site Conditions means any man-made physical and structural conditions (including old footings, underground structures, buildings, improvements, partially completed structures and in-ground works) or other artificial conditions or things, on, in or under, or in the vicinity of, the Site or its surroundings or adverse geotechnical conditions (including adverse ground water and geological conditions) on, in or under the Site, that: (a) are discovered by UPKEEP in the course of carrying out the Works; and (b) adversely affects or impacts the Works.

Works means all materials or other things to be provided and all work to be performed by the Client as described in the Client Particulars.

1.2 Interpretation

In this Contract, unless the context otherwise requires:

- (a) an obligation or a liability assumed by, or a right conferred on, two or more persons binds or benefits them jointly and severally;
- (b) references to a person include an individual, a body politic, the estate of an individual, a firm, a corporation, an authority, an association or joint venture (whether incorporated or unincorporated), a trust or a partnership;
- (c) a reference to a document (including this Contract) is to that document as varied, novated, ratified or replaced from time to time; a reference to a statute includes its delegated legislation and a reference to a statute or delegated legislation or a provision of either of these includes:
 - (i) all ordinances, by-laws, regulations of and other statutory instruments (however described) issued under that statute or delegated legislation; and
 - (ii) any consolidations, amendments, re-enactments and replacements.

2. Works and Other Obligations

2.1 UPKEEP Obligations

- (a) UPKEEP must provide the Works in accordance with this Contract.
- (b) Without limiting the generality of clause 2.1(a), UPKEEP must:
 - (i) commence and perform the Works from the Commencement Date if the following conditions are satisfied: (A) if UPKEEP has access to the Site, as contemplated by clause 2.6; (B) if approvals for the Works have been obtained, as contemplated by clause 2.7; and (C) the Client has paid the Deposit;
 - (ii) perform the Works in a diligent manner and to the professional standard of skill and care expected of a service provider qualified, competent and experienced in the provision of services of the nature of the Works;
 - (iii) comply with all obligations and meet all requirements set out in this Contract and all deliverables provided under this Contract are reasonably suitable for the purpose expressly referred to in this Contract;
 - (iv) comply with all applicable Laws, standards, codes and all applicable requirements of any Authority; and
 - (v) use all reasonable efforts to inform itself of the requirements of the Client and the Project and regularly consult with the Client during the performance of the Works.
- (c) UPKEEP warrants: (i) that UPKEEP has the skills, qualifications, expertise and experience necessary to assist with the proper provision of the Works; and (ii) UPKEEP has obtained all applicable licenses, permissions and authorisations necessary to provide the Works (other than any the approvals referred to in clause 2.4).

2.2 Prior Works

If at the Client's request, UPKEEP performs, before the date of this Contract or the Commencement Date, any work or services that is part of the Works, then: (a) the terms of this Contract apply to any such work and services; (b) the terms on which any such work and services were performed are superseded by the terms of this Contract; and (c) any payments made to UPKEEP by the Client in connection with any such work and services before this Contract became operative, will be treated as payments under this Contract.

2.3 Access to the Site

- (a) The Client must do all work necessary to provide access to the Site for vehicles and other equipment required by UPKEEP to carry out the Works.
- (b) The Client must give UPKEEP, and any employee or subcontractor of UPKEEP, reasonable access to the Site to enable UPKEEP to commence carrying out the Works by the Commencement Date. Any delay in giving UPKEEP access to the Site entitles UPKEEP to claim an extension of time.
- (c) The Client must allow UPKEEP, and any employee or subcontractor of UPKEEP, access to the Site during the currency of this Contract.

2.4 Approvals

Unless obtained by the Principal or the Client prior to the Commencement Date, the Client must promptly apply for, and bear the cost of, all necessary application fees for approval of the Works and all approvals required from any Authority to occupy and use the completed Works in connection with the Project. Any delay in the approval entitles UPKEEP to claim an extension of time.

2.5 Time for Completion

- (a) UPKEEP shall diligently proceed and complete the Works by the Date for Completion.
- (b) The period of time allowed for completion has taken into account any public holidays and other days when it is known that Works will not be performed.
- (c) If the Works is delayed by: (i) inclement weather or conditions resulting from inclement weather; (ii) any order of a court or tribunal that the Works be suspended, unless that order resulted from the fault of UPKEEP; (iii) any act or omission of the Client, including a delay in granting access to the Site as contemplated by clause 2.3 and a delay in obtaining approval of the Works, as contemplated by clause 2.4; (iv) any industrial dispute affecting the progress of the Works (not being a dispute limited to the Site or limited to employees of UPKEEP); (v) the unavailability of materials necessary for the continuation of the Works, unless due to the fault of UPKEEP; (vi) a variation to the Works; (vii) a suspension of the Works under clause 2.6 or 2.7; (viii) a delay event or equivalent event under the Head Contract; or (ix) any other matter, cause or thing beyond the control of UPKEEP, UPKEEP will be entitled to a reasonable extension of time to complete the Works. Both UPKEEP and the Client (if applicable) must take all reasonable steps to minimise any delay to the Works.

- (d) If UPKEEP wishes to claim an extension of time, UPKEEP must notify the Client in writing (EOT Notice) of the cause and estimated length of the delay within 10 Business Days of the occurrence of the event or, in the case of a variation, from the date of agreement to the variation.
- (e) If the Client does not, within a further 10 Business Days, notify UPKEEP in writing that the extension of time sought is unreasonable, the completion date for this Contract will be extended by the period notified to the Client.
- (f) If the Client gives UPKEEP a Notice disputing the extension of time claimed, and no agreement can be reached on the time to be allowed, the dispute must be dealt with in accordance with the dispute resolution procedure (clause 15).
- (g) If UPKEEP is entitled to an extension of time under this clause, UPKEEP is entitled to recover from the Client (whether under this Contract or otherwise at Law), any cost, expense, loss or damages (Delay and Disruption Costs): (i) arising from a delay for which Client is responsible; or (ii) arising from disruption for which the Client is responsible.
- (h) In respect of a claim for any Delay and Disruption Costs, the amount will be valued as follows: (i) if this Contract prescribes specific rates or prices to be applied in determining the value, those rates or prices must be used; (ii) to the extent that subparagraph (i) does not apply and this Contract includes rates or prices for similar work, such rates and prices must be used to the extent that it is reasonable to use them; and (iii) to the extent that neither subparagraph (i) nor (ii) applies, reasonable rates or prices must be used which are to include a reasonable amount for off-site overheads and profit (being, unless otherwise agreed, the percentage stated in this Contract Particulars).
- (i) If UPKEEP wishes to claim Delay and Disruption Costs, UPKEEP must provide information to substantiate the Delay and Disruption Costs in the EOT Notice.
- (j) If the Client does not, within a further 10 Business Days of the EOT Notice, notify UPKEEP in writing that the Delay and Disruption Costs sought are unreasonable, the Delay and Disruption Costs claimed are due and payable by the Client to UPKEEP.
- (k) If the Client gives UPKEEP a Notice disputing the Delay and Disruption Costs claimed, and no agreement can be reached on the amount of Delay and Disruption Costs, the dispute must be dealt with in accordance with the dispute resolution procedure (clause 15).

2.6 Suspension by the Client

- (a) The Client may, at any time by reasonable Notice to UPKEEP, immediately suspend the carrying out of the Works or any part thereof and payments relating to those suspended Works which are yet to be performed.
- (b) The Client may, at any time, give UPKEEP reasonable Notice to recommence carrying out those Works suspended.
- (c) The Client must pay the costs incurred by UPKEEP in connection with the suspension and recommencement of the Works if the cause of the suspension is not the result of UPKEEP's failure to perform its obligations under this Contract.

2.7 Suspension by UPKEEP

- (a) If the Client, without reasonable and substantial cause: (i) fails to pay an amount due under this Contract within 10 days after the amount is due; (ii) fails to pay an amount due to UPKEEP within the time allowed, but only if the Client fails to pay the amount due after a Notice from UPKEEP requiring payment within a further period of 5 Business Days; (iii) fails to advise UPKEEP promptly of any requirement of or notice from an Authority, if any, that affects the Works; (iv) fails to perform any work or supply materials as specified in clause 2.10 which prevents UPKEEP from continuing with the Works under this Contract; (v) denies UPKEEP or UPKEEP's subcontractors access to the site so as to prevent the Works from proceeding, or otherwise prevents UPKEEP from carrying on the Works; or (vi) if the Client becomes bankrupt, assigns assets for the benefit of creditors generally, makes a composition or other arrangement with creditors or, if the Client is a company, goes into liquidation or receivership or is otherwise without full capacity, UPKEEP may, without prejudice to any other rights under this Contract, suspend the Works by giving a Notice to the Client specifying the reason.
- (b) UPKEEP may, without prejudice to any other rights under this Contract, suspend the Works by giving a Notice to the Client, specifying the reason.
- (c) If the Client remedies the default, UPKEEP must recommence the Works within 10 Business Days unless UPKEEP has ended this Contract under clause 13.

2.8 Directions and Dealings with Others

UPKEEP must comply with the Client's reasonable directions. UPKEEP must not deal directly with or comply with the directions of:

- (a) the Principal; or (b) other contractors, without the prior written consent of the Client.

2.9 Completion

- (a) The Works will be complete when UPKEEP has finished the Works in accordance with this Contract and any variations, there are no omissions or defects that prevent the Works from being reasonably suitable for the purpose expressly referred to in this Contract, and all rubbish and surplus material has been removed from the Site.
- (b) When UPKEEP believes the Works is complete, UPKEEP must notify the Client in writing certifying that the Works have been completed in accordance with this Contract. Within 10 Business Days of receipt of a Notice from UPKEEP, the Client must advise UPKEEP in writing of any items of Works the Client considers to be incomplete or defective. If the Client does not so notify UPKEEP, the Works will be taken to be complete.
- (c) UPKEEP must complete any outstanding Works promptly and again notify the Client in writing. Unless the Client notifies UPKEEP in writing that any item is still incomplete or defective within a further 10 Business Days from receipt of notification by UPKEEP, the Works will be taken to be complete.
- (d) Should there be any dispute between the parties as to whether the Works has been completed, it must be dealt with in accordance with the dispute resolution procedure (clause 15).

2.10 Work Done and/or Materials Supplied by the Client

- (a) The Client will carry out the work and supply the materials described in the Contract Particulars. The cost of that work and materials is not included in the Contract Price.
- (b) The Client is responsible for the care of the work and materials referred to in paragraph (a) until they are delivered to UPKEEP.
- (c) UPKEEP may rely upon any work performed or materials supplied under paragraph (a) or the accuracy or adequacy of any such work or materials for performing the Works and does not provide any warranty in respect of any work performed or materials supplied under paragraph (a).

2.11 Defects

- (a) UPKEEP must rectify omissions and defects in the Works which become apparent within the Defects Correction Period.
- (b) The Client must notify UPKEEP in writing of any omissions or defects which need to be made good no later than 10 Business Days after the expiry of the Defects Correction Period. UPKEEP must rectify the omissions and defects at UPKEEP's own cost within 30 Business Days from receipt of such notification and the Client must give UPKEEP reasonable access for this purpose.
- (c) If there is a dispute between the parties as to whether any item of Works is defective, has been omitted or has been satisfactorily rectified the dispute must be dealt with in accordance with the dispute resolution clause (clause 15).

2.12 Care of the Works

UPKEEP is responsible for the care of the Works until completion of the Works is achieved in accordance with clause 2.9.

2.13 Working Hours

- (a) Unless stipulated otherwise by a court order, Law, an industrial instrument for the Site or a written direction by the Client, UPKEEP must perform work at or adjacent to the Site only during the working hours and working days stated in the Contract Particulars.
- (b) Working days do not include public holidays and the days between Christmas day and new year's day (both inclusive).

3. Confidentiality and Privacy

- (a) UPKEEP must not and must not permit its employees, agents and subcontractors to use or disclose to any person or make public any information obtained by it or them relating to the Project and any materials provided by the Client to UPKEEP for the purpose of performance of the Works or pursuant to this Contract except: (i) if the information is in the public domain (other than as a result of a breach of this Contract by UPKEEP); (ii) if required for the performance of the Works; (iii) if given to a court in the course of proceedings to which UPKEEP is a party; or (iv) if required by Law or to obtain legal advice in relation to this Contract.
- (b) UPKEEP must comply with all relevant Privacy Laws when providing the Works, including obtaining the consent of each individual where Personal Information of that individual is collected, used or disclosed.
- (c) Where UPKEEP is required to collect Personal Information on behalf of the Client, UPKEEP must comply with the Privacy and Personal Information Protection Act 1998 (NSW) as if it were the Client collecting the Personal Information.

4. Subcontracting

- (a) UPKEEP must not assign or subcontract any part of the Works without the prior written approval of the Client (which shall not be unreasonably withheld).

- (b) An approval given by the Client permitting UPKEEP to subcontract any portion of the Works does not relieve UPKEEP from its obligations and liabilities pursuant to this Contract and UPKEEP will be vicariously liable for the acts and omissions of its subcontractors.

5. Insurances

- (a) UPKEEP must maintain public liability insurance for the amount of \$10 million per occurrence and in aggregate, such insurance to be maintained during the currency of this Contract.
- (b) UPKEEP must take out and maintain all workers' compensation insurance required by applicable Law.
- (c) UPKEEP must produce, on demand, evidence of the insurance maintained in accordance with this clause 5, in the form of certificates of currency.
- (d) It is acknowledged that UPKEEP is not providing any design or professional services and accordingly, it is not required to provide any professional indemnity insurance.
- (e) UPKEEP has priced the Works on the basis that the Client or the Principal has works insurance that extends the Works. If UPKEEP is required to take out works insurance, the costs will be payable by the Client and the Client must issue a Variation.

6. Representative

- (a) UPKEEP represents and warrants that UPKEEP's Representative in respect of this Contract: (i) has the legal power to bind UPKEEP in respect of any matter arising in connection with the Works; and (ii) has the authority to receive directions on behalf of UPKEEP from the Client and the Client's Representative.
- (b) UPKEEP must promptly notify the Client of any proposed substitute representative.
- (c) The Client represents that the Client's Representative has the authority to act on behalf of the Client for all purposes in connection with this Contract.
- (d) The Client must promptly notify UPKEEP of any proposed substitute representative.

7. The Contract Price

7.1 Rise and Fall

When the Contract Price is on a time basis and the Works will be performed over a period which exceeds 12 months, then on or after each anniversary of the Commencement Date UPKEEP may submit revised rates for the following 12 month period, to allow for reasonable changes in its costs. If the Client does not accept the revised rates, the Client may dispute the rates or terminate this Contract immediately by giving a Notice to UPKEEP.

7.2 Taxes

- (a) Unless the Contract Price provides otherwise, the Client must pay all taxes that may be payable in respect of the Works, including any customs duty or tariff, and primage applicable to imported equipment and materials required for the Works.
- (b) The Contract Price may be increased by the amount of any increase in tax or duty or new tax or duty, which is imposed after the date of this Contract and which directly relates to work done or materials supplied under this Contract.

7.3 Provisional Sum

- (a) This clause applies if the Contract Price, as part of a lump sum, includes a provisional sum schedule for which UPKEEP cannot give a definite price. The provisional sums schedule set out the amount allowed for the cost of each item of work, including GST. Those provisional sums in the provisional sums schedule are not themselves payable to UPKEEP.
- (b) Where the Client directs UPKEEP to perform work to which a provisional sum relates, that work will be valued, and the Contract Price adjusted in the following manner: (i) If the actual cost to UPKEEP is greater than the provisional sum allowed, the excess amount together with a reasonable amount for UPKEEP's on-site and off-site overheads and profit (being, unless otherwise agreed, the percentage stated in this Contract Particulars) in respect of the applicable provisional sum work on the excess, shall be added to the Contract Price, along with the additional GST. (ii) If the actual cost to UPKEEP is less than the provisional sum allowed, the Contract Price will be reduced by the difference between the provisional sum allowed and the actual cost. (iii) Any such addition or deduction will be taken into account in the next payment claim or as agreed between the parties.
- (c) Where the Client does not direct UPKEEP to perform work to which a provisional sum relates, that work will be deemed to have been deleted from the Works and the relevant provisional sum will be deducted from the Contract Price together with a reasonable amount for UPKEEP's on-site and off-site overheads and profit (being, unless otherwise agreed, the percentage stated in this Contract Particulars) in respect of the applicable provisional sum work.

7.4 Unknown Site Conditions

- (a) Subject to paragraph (b), the Contract Price is based upon assumption that the Site has no Unknown Site Conditions.
- (b) If there is any Unknown Site Condition, the parties agree that Contract Price may be adjusted after the date of this Contract by UPKEEP submitting a variation and the value of that variation shall be determined in accordance with clause 8(b).

8. Variations

- (a) The Client may direct in writing that UPKEEP vary the Works (including, omitting or deleting Works), or the timing of the Works (including, the time for completion), or both (Variation). UPKEEP may only withhold its consent to a Variation that is outside the general scope of the Works.
- (b) The Client must specify a reasonable time by which UPKEEP must provide a written estimate of the time, cost and effects of a Variation. If no time is specified, UPKEEP must provide the estimate (Variation Proposal) within 14 days. The value of a Variation will be valued as follows: (i) where a Variation Proposal has been accepted by the Client, the amount set out in the Variation Proposal; or (ii) otherwise: (A) if there are rates set out in Contract Price referred to in the Contract Particulars that are applicable or reasonable to use for the purpose of valuing the Variation, a reasonable amount determined by the Client using those rates within 10 Business Days of the date of the Variation and if this valuation is not done by the end of those 10 Business Days, UPKEEP is not required to perform the Variation the subject of that Variation; and (B) to the extent that clause 8(b)(ii) does not apply, a reasonable amount proposed by the Client on an open book basis within 10 Business Days of the date of the Variation and if that proposal is not made or that proposal is not accepted by UPKEEP within 10 Business Days of receipt of that proposal, UPKEEP is not required to perform the Variation the subject of that Variation.
- (c) If UPKEEP considers that any other direction of the Client constitutes a variation, UPKEEP must submit to the Client a written claim within 10 Business Days of receiving such direction (and also provide any other information required by the Client).
- (d) As soon as practicable after receipt of a claim under clause 8(c), the Client's Representative will either issue a Variation or give a Notice to UPKEEP: (i) withdrawing the direction; or (ii) advising that the direction does not constitute or require the performance of a Variation, in which event UPKEEP must proceed to comply with the direction but may refer the matter to dispute resolution under clause 15.

9. Payment

- (a) Subject to UPKEEP performing the Works, the Client must pay UPKEEP the Contract Price and any disbursements detailed in the Contract Particulars for which it is entitled to payment, in accordance with this clause 9. Payment is strictly due within fourteen (14) days from the date of invoice in accordance with the Building and Construction Industry Security of Payment Act 1999 (NSW), and the Price and Payment terms in Part A prevail over any longer or conflicting payment period. Payment is to be made for progress completed against lump sum items in the Contract Price and for each day worked (nominally 8 hours) for schedule of rates items in the Contract Price.
- (b) The Client will only be entitled to reimbursement of disbursements incurred in the course of carrying out the Works if those disbursements: (i) have been reasonably and properly incurred for the sole purpose of performing the Works; and (ii) are supported by documentation provided to the Client. UPKEEP is entitled to mark up the disbursements that it is entitled to claim under this clause by 10%.
- (c) UPKEEP must submit claims for payment under this Contract at the times set out in the Contract Particulars and containing the details required by the Client. Any Deposit paid is deducted from the first payment claim.
- (d) Payment claims for payment on a time basis must be for the period up to the Business Day prior to the date of issue of the payment claim and include timesheets and a summary of the Works performed in the relevant period (if the Contract Price is based on a time costs basis).
- (e) The Client must issue a payment schedule within 10 Business Days of receiving a payment Claim.
- (f) The Client must, within fourteen (14) days following receipt of a payment claim pay the undisputed amount claimed by UPKEEP in its payment claim. The making of a payment by the Client is not evidence of the value of the Works performed and does not constitute an admission by the Client that any Works conform with the requirements of this Contract but is a payment on account only.
- (g) All monetary amounts and rates stated in this Contract are in Australian currency and are deemed to exclude GST and all payments due under this Contract must be made in Australian currency.

- (h) The Client will pay interest on any: (i) amount which has been set out as payable by the Client in a payment schedule under paragraph (e), but which is not paid by the Client within the time required by this Contract; (ii) damages; and (iii) amount which is found after the resolution of a dispute to be payable to UPKEEP, and which has not been paid by Client, from the date such amount was first due and payable until the date such amount is paid, at a rate of two and a half percent (2.5%) per calendar month, calculated on daily balances and compounded monthly.
- (i) If the Client's liability under this Contract is the subject of a judgment or order: (i) the Client must pay interest to UPKEEP at the higher of the rate payable under that judgment or order and the rate referred to in paragraph (h); (ii) the obligation to pay interest under this clause is an obligation separate from the judgment or order and will apply despite the making of the judgment or order; and (iii) the interest which accrues under this clause will be compounded monthly.
- (j) If an overdue invoice is submitted with a debt recovery agent this will be recoverable by the client.

10. GST

- (a) In this clause 10 terms used that are defined in the GST Act have the same meanings in this clause 10.
- (b) Each party acknowledges and agrees that at the time of entering into this Contract, it is registered for GST and it must: (i) promptly provide written evidence of its GST registration if so requested by the other party; (ii) indemnify the other party against any loss that may arise from it not being registered for GST; and (iii) promptly notify the other party in writing if it ceases to be registered for GST.
- (c) In respect of payments to be calculated under or in connection with this Contract: (i) when calculating the amount payable or other consideration to be provided for a supply, the amounts used in the calculation are to exclude any GST component; and (ii) if the payment is relevant to a cost, expense or loss suffered or incurred by a party, then the payment will be reduced by any input tax credit to which that party, or the representative member of any GST group of which that party is a member, is entitled in respect of that cost, expense or loss.
- (d) For each supply made by a party (Supply Party) under or in connection with this Contract on which GST is imposed: (i) the amount payable or to be provided for that supply under this Contract but for the application of this clause 10(d) (GST-exclusive Consideration) will be increased by, and the recipient of the supply (Recipient) must also pay to the Supply Party, an amount (GST Amount) equal to the GST-exclusive Consideration multiplied by the prevailing rate of GST; and (ii) the GST Amount must be paid to the Supply Party by the Recipient without set off, deduction or requirement for demand, at the same time as the GST-exclusive Consideration is payable or to be provided, subject to a valid tax invoice (Tax Invoice) being provided in respect of the GST-exclusive Consideration.
- (e) A Tax Invoice must be provided either by: (i) if the Client is the Recipient of the supply the Client providing UPKEEP with a recipient created tax invoice (RCTI) on or before making payment in respect of the supply; or (ii) if UPKEEP is the Recipient of the supply, the Client providing UPKEEP with a Tax Invoice before the due date for payment of the supply.
- (f) If clause 10(e)(i) applies: (i) UPKEEP must not issue a Tax Invoice in respect of any supply it makes to the Client; and (ii) the Client must notify UPKEEP if it ceases to comply with any of the requirements of any taxation ruling issued by an authority relating to the creation of RCTIs.
- (g) If and to the extent an adjustment event arises in respect of a supply made under or in connection with this Contract, then: (i) if the Supply Party's corrected GST Amount is: (A) less than the previously attributed GST Amount, the Supply Party must refund the difference to the Recipient; or (B) greater than the previously attributed GST Amount, the Recipient must pay the difference to the Supply Party; and (ii) the Client will issue an adjustment note to UPKEEP.

11. Intellectual Property Rights

11.1 Contract Material

- (a) Copyright (including future copyright) in all Contract Material vests in the Client or is otherwise hereby assigned by UPKEEP to the Client. Title to, and Intellectual Property Rights in, all Contract Material shall, on being created, written or otherwise brought into existence, vest or otherwise be assigned or transferred to the Client, without the need for further assurance.
- (b) The Client grants to UPKEEP a non-exclusive, royalty-free and transferable licence (which includes the right to sub-license to third parties) during the currency of this Contract to exercise Intellectual Property Rights in the Contract Material solely for the purpose of performing UPKEEP's obligations under this Contract.

11.2 Existing Contract Material

This Contract does not affect ownership of the Intellectual Property Rights in Existing Contract Material. UPKEEP hereby grants, and must ensure that relevant third parties grant, to the Client, at no additional cost to the Client, a perpetual, non-exclusive, royalty-free, irrevocable, transferable licence (which includes the right to sub-license to third parties) to exercise the Intellectual Property Rights in the Existing Contract Material for the purposes of the Project.

11.3 Perfection of Rights

UPKEEP must execute all documents and do all acts and things required, at its cost (unless otherwise agreed), for the purposes of giving effect to the provisions of this Contract dealing with Intellectual Property Rights.

11.4 Moral Rights

UPKEEP must hold, or obtain, irrevocable and unconditional consents from all authors of Contract Material for the use of and adaptation of the Contract Material by UPKEEP or the Client, without any requirement to attribute the Contract Material to its authors.

11.5 Limitations on the Use by UPKEEP of the Contract Material

UPKEEP must ensure that the Contract Material is used, copied, supplied or reproduced only for the purposes of this Contract unless it has obtained the prior written approval of the Client to do otherwise. Any such approval may be given on any terms or conditions the Client considers appropriate.

11.6 Warranty

UPKEEP represents and warrants that:

- (a) it has all appropriate licences of, or title to, all Intellectual Property Rights that is required by it for the purpose of its obligations under this Contract; and
- (b) it has authority to assign or license (as the case may be) all Intellectual Property Rights granted to the Client under this Contract.

12. Indemnity

- (a) UPKEEP must indemnify the Client against any: (i) claims by any person arising out of any alleged or actual infringement of Intellectual Property Rights in connection with the performance of the Works; and (ii) claims by any person against the Client in respect of personal injury or death, arising out of or in connection with any negligence in the performance of the Works.
- (b) Where UPKEEP indemnifies the Client under this Contract from and against any liability, claim or loss, UPKEEP's liability to indemnify the Client shall be reduced proportionately to the extent that: (i) a breach of this Contract by the Client; (ii) the act or omission of the Client or its employees, other contractors or agents; or (iii) a failure by the Client to use reasonable endeavours to mitigate the extent or consequences of the liability, caused or contributed to the liability.
- (c) UPKEEP's aggregate liability to the Client under this Contract (whether in contract, tort (including negligence) under any indemnity, under any warranty, under statute, equity, or otherwise) is limited to 100% of the total amount payable by the Client under this Contract under clause 9(a).
- (d) Neither party is liable under this Contract to the other party for any loss or revenue, loss of profit or loss of opportunity that is an indirect consequential loss suffered or incurred by the other party.

13. Termination

13.1 Termination by the Client

- (a) Without limiting any other provision of this Contract, the Client may terminate this Contract immediately by giving a Notice to UPKEEP if: (i) UPKEEP breaches any term of this Contract and the breach is not capable of being remedied or, if the breach is capable of being remedied, UPKEEP does not remedy that breach within 10 Business Days of the date of the Notice to UPKEEP specifying the breach; (ii) UPKEEP becomes, threatens, resolves to become or in the reasonable opinion of the Client is likely to become subject to any form of insolvency, administration, receivership, bankruptcy or liquidation; or (iii) UPKEEP enters into any composition or arrangement with its creditors or has a receiver appointed over any of its assets or is the subject of any resolution or petition for winding up.
- (b) Upon the earlier of completion of the Works or termination of this Contract and subject to clause 13(c), UPKEEP must immediately hand over to the Client: (i) all copies of any documents, samples, patterns, moulds and other information provided by the Client to UPKEEP; and (ii) all Contract Material, whether complete or not.
- (c) UPKEEP may retain one copy of the Contract Material for record keeping purposes, subject to the confidentiality and privacy requirements contained in this Contract.

13.2 Termination by UPKEEP

- (a) If the Client: (i) fails to pay an amount due under this Contract within 30 days after the amount is due; (ii) suspends Works under clause 2.6 for more than 3 months; (iii) fails to perform any work or supply materials as specified in clause 2.10 which prevents UPKEEP from continuing with the Works under this Contract; (iv) denies UPKEEP or UPKEEP's subcontractors access to the site so as to prevent the Works from proceeding, or otherwise prevents UPKEEP from carrying on the Works; (v) becomes bankrupt, assigns assets for the benefit of creditors generally, makes a composition or other arrangement with creditors or, if the Client is a company, goes into liquidation or receivership or is otherwise without full capacity, UPKEEP may, where such default can be remedied, notify the Client in writing that unless the default is remedied within 10 Business Days or such longer period as specified UPKEEP will terminate this Contract.
- (b) Unless the Client complies with UPKEEP's request within the time allowed, or if the default cannot be remedied, UPKEEP may terminate this Contract by giving Notice to this effect to the Client.
- (c) If UPKEEP terminates this Contract under this clause, UPKEEP may remove from the site and retain all unfixed materials, fittings and equipment supplied by UPKEEP and will be entitled to recover all losses and expenses arising from the termination of this Contract or to offset such amounts from any amount due to the Client.
- (d) UPKEEP may terminate this Contract by Notice to the Client if all necessary approvals for the work have not been obtained within 60 Business Days of the date of this Contract.

14. Notices

- (a) Any notices contemplated by this Contract must be in writing and delivered to the intended recipient at the address shown for the recipient in the Contract Particulars or to any new address or email address notified by the intended recipient to the sender.
- (b) A notice sent by email will be taken to have been received at the local time (in the place of receipt of that email) that would be determined if section 13A of the Electronic Transactions Act 2000 (NSW) were to apply.

15. Dispute Resolution

- (a) UPKEEP and the Client must endeavour to resolve any dispute expeditiously by negotiation. If a dispute between UPKEEP and the Client is not resolved by negotiation, then, subject to the parties' right to seek injunctive or urgent declaratory relief, before either party has recourse to litigation, the dispute must be referred to expert determination. If UPKEEP and the Client do not agree upon an independent expert, either party may request the President of the Institute of Arbitrators and Mediators Australia to nominate an expert.
- (b) The expert determination will be conducted in accordance with the Expert Determination Rules of the Institute of Arbitrators and Mediators, Australia and the parties must sign such form of engagement as the expert may reasonably require.
- (c) Except where the parties otherwise agree in writing or the Expert Determination Rules of the Institute of Arbitrators and Mediators, Australia rules otherwise provide: (i) each party must bear its own costs and pay one half of the expert's fees and expenses; (ii) the expert must not act as an arbitrator; and (iii) the determination of the expert will be final and binding on the parties.
- (d) Each party must continue to perform its obligations under this Contract despite the existence of a dispute.

16. General

16.1 Governing Law and Jurisdiction

- (a) This Contract is governed by and must be construed according to the Law in force in New South Wales.
- (b) Each party irrevocably submits to the non-exclusive jurisdiction of the courts of New South Wales, and the courts competent to determine appeals from those aforementioned courts, with respect to any proceedings which may be brought in connection with this Contract.

16.2 Amendments

This Contract may only be amended or replaced by a document signed by or on behalf of each party.

16.3 Entire Agreement

To the extent permitted by Law, in relation to its subject matter, this Contract: (a) embodies the entire understanding of the parties, and constitutes the entire terms agreed by the parties; and (b) supersedes any prior written or other agreement of the parties.

16.4 Severance

If at any time a provision of this Contract is or becomes illegal, invalid or unenforceable in any respect under the Law of any jurisdiction that will not affect or impair: (a) the legality, validity or enforceability in that jurisdiction of any other provision of this Contract; or (b) the legality, validity or enforceability under the Law of any other jurisdiction of that or any other provision of this

Contract.

16.5 Waiver

- (a) A waiver given by a party in accordance with this Contract is only effective and binding on that party if it is given or confirmed in writing by that party.
- (b) A failure to, a delay in or the partial exercise or enforcement of a right provided by Law or in accordance with this Contract by a party does not preclude, or operate as a waiver of, the exercise or enforcement, or further exercise or enforcement, of that or any other right provided by Law or in accordance with this Contract.
- (c) No waiver of a breach of a term of this Contract operates as a waiver of another breach of that term or of a breach of any other term of this Contract.

16.6 Counterparts

This Contract may be executed in any number of counterparts and by the parties on separate counterparts. Each counterpart constitutes the agreement of each party who has executed and delivered that counterpart.

16.7 Expenses

- (a) Each party must pay its own costs and expenses in connection with negotiating, preparing, executing and performing this Contract.
- (b) The Client must pay to UPKEEP on demand the amount of all costs and expenses incurred in connection with: (i) any default by the Client under this Contract and the enforcement or protection, or attempted enforcement or protection of any right under or in relation to this Contract; (ii) any bank dishonour fees incurred by UPKEEP arising from cheques of the Client being dishonoured; and (iii) the amount paid by the Client in connection with any amount due to UPKEEP under this Contract by credit card that is subsequently reversed for any reason, and the costs incurred by UPKEEP as a result of that credit card payment reversal; including legal expenses on a full indemnity basis, administration costs of UPKEEP and expenses incurred in engaging consultants.

16.8 Further Acts and Documents

Each party must promptly do all further acts and execute and deliver all further documents (in such form and content reasonably satisfactory to both parties) required by Law or reasonably requested by another party to give effect to this Contract.

16.9 Independent Contractor

The parties acknowledge that the grant of the rights under this Contract creates solely a contractor relationship between the parties and no other relationship type, including but not limited to that of employer and employee, licensor and licensee, or any other joint venture, partnership, directorship or any other implied or expressed relationship whether at Law or in equity.

17. Head Contract

17.1 Compliance with the Head Contract

The parties acknowledge that if UPKEEP is directed by the Client to assist the Client in complying with its obligations under the Head Contract, it will do so only if it is capable of providing that assistance and it is entitled to be paid in accordance with the schedule of rates specified for the Contract Price in the Contract Particulars.

17.2 Pass Down of Benefits under the Head Contract

The Client acknowledges that if it is entitled to a remedy under the Head Contract for the occurrence of a relief event or compensation event that affect the performance of the Works, it must inform UPKEEP and pass down the benefit of that relief event or compensation event to UPKEEP, by issuing a Variation under clause 8.

17.3 Reliance Information

The parties acknowledge that UPKEEP may rely on any reliance information that the Client can rely upon under the Head Contract, when performing the Works.

EXECUTION

Executed as an agreement.

Signed for and on behalf of UPKEEP CO PTY LTD

Signature

Name

Position

Date

Signed for and on behalf of the Client

Signature

Name

Position

Date