

TERMS OF BUSINESS (CONTRACTOR)

Terms and Conditions for the Provision of Services by a Contractor or Consultant to Sterling

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STERLING'S DETAILS:	STERLING INFRASTRUCTURE Pty Ltd (ACN 139 882 376) ("Sterling") of 105 Bakehouse Rd, Kensington, Victoria, 3031

OVERVIEW:

- A. Sterling is a company which provides a range of engineering related consultancy services and construction services to its clients, primarily in the rail and public services areas.
- B. The Contractor is a company which provides services which will assist Sterling in the delivery of its services to its clients.
- C. Sterling has requested the Contractor to perform the Services as set out in a Work Order or Work Request issued under these Terms of Business.
- D. The Contractor has agreed to provide the Services and has been provided with, or has had access to, a copy of these Terms of Business (hereinafter referred to as the "Terms"). After being provided with a copy of these Terms by Sterling, and then agreeing to provide the Services (whether agreeing in writing, verbally or by commencing work), the Contractor is deemed to have accepted these Terms to the exclusion of all other terms. By allowing the Contractor to commence performing the Services, Sterling has accepted that these Terms apply to the provision of such Services.
- E. Sterling will pay the Contractor for the provision of its Services in accordance with these Terms.

Upon acceptance by the Contractor, these Terms of Business (hereinafter referred to simply as "Terms") form an agreement between the Parties on the following terms:

1 PRELIMINARY MATTERS

1.1 Definitions

In these Terms, except where the context otherwise requires:

These **Terms** means the terms of this document, the Schedule, any active Work Order/s or Work Request and any other documents referred to expressly as being incorporated into these Terms.

Claim means suit, cause of action, defence, set-off or demand, (including for time, cost, moneys, damages, loss or expenses) under, arising out of, or in connection with, a Work Order, these Terms or the Services.

Commencement Date means the date provided for in clause 1.4(a)

Consequential Loss: For the purposes of these Terms, Consequential Loss means a loss of revenue, loss of profit, loss of goodwill, loss of business, loss of business opportunity, loss of production, or a loss of anticipated savings;

Defective Services means defective services as described in clause 6.1

Due Date means the date specified in a Work Order or Work Request by which the Services must be completed to the satisfaction of Sterling.

Equipment means any equipment, tools, facilities, software, vehicles, building aids or other things that are used in the provision of the Services by the Contractor.

Fees means the fees set out in a Work Order or Work Request.

Insolvency Event means, in respect of a party, the occurrence of any one or more of the following events:

- (a) the party is unable to pay its debts as they fall due;
- (b) the party enters into any form of external administration, including but not limited to receivership, administration, or liquidation;
- (c) the party becomes subject to a scheme of arrangement, compromise, or composition with its creditors;
- (d) a receiver, receiver and manager, or similar official is appointed over any of the party's assets;
- (e) the party becomes insolvent or is deemed insolvent under any applicable Laws; or
- (f) anything analogous or having a substantially similar effect to any of the events specified above happens under the law of any applicable jurisdiction.

Laws means, all applicable:

- (a) Acts, ordinances, regulations, by-laws, orders, awards and proclamations;
- (b) standards, codes and guidelines;
- (c) certificates, licenses, consents, permits, approvals, requirements and directions of organisations.

In the State or Territory in which the work is being carried out.

Liquidated Damages means the genuine pre-estimate of Losses (as set out in a Work Order or as provided for in a Work Request) that Sterling would incur in the event of the Contractor not completing the Services by the Due Date.

Loss includes any cost, expense (including any legal and other professional charges and expenses on a full indemnity basis), loss, damage or liability whether direct or indirect and any liability under an indemnity.

Materials means any consumables, items, articles, documents, building materials or other thing that is used in the provision of the Services and which may or may not become a part of the final product or work for Sterling or Sterling's client.

Personnel means all employees and officers, delegates, subcontractors, partners, agents and service providers of any nature;

Relevant Documentation means any drawings, Standards, Specification, Designs etc which are noted in a Work Order (or referred to in a Work Request) as specifically applying to the Services

Services means the services to be performed or provided to Sterling by the Contractor as detailed in a Work Order.

Sterling Policies and Procedures means Sterling's written policies, guidelines, procedures and standards, which are notified in writing to the Contractor by Sterling from time to time and as may be updated from time to time, including those relating to quality, the environment and work health and safety,

Subcontractor means any subcontractor of the Contractor approved by Sterling under clause 4.9.

Tax Invoice has the same meaning as in the GST Act.

Work Order has the meaning set out in clause 2.1. Wherever the words “Work Order” are used in these Terms (other than in Clauses 2.1(a), (b) and (c)), it is assumed it is an “active” Work Order in accordance with clause 2.1(d).

Work Request has the meaning set out in clause 2.1. Wherever the words “Work Request” are used in these Terms (other than in Clauses 2.1(a), (b) and (c)), it is assumed it is an “active” Work Request in accordance with clause 2.1(e).

1.2 **Scope and Consideration**

- (a) The Contractor shall perform the Services in accordance with these Terms (which includes the terms of any Work Order or Work Request).
- (b) Subject to the Contractor performing the Services in accordance with these Terms, Sterling will pay the Contractor the Fees.

1.3 **Priority of Documents**

- (a) In the event of any inconsistency between a Work Order or Work Request and the clauses of these Terms, the following order of priority shall apply in relation to that inconsistency:
 1. the Work Order or Work Request; then
 2. the clauses of these Terms.

1.4 **Term, Activation, Other Documentation & Variation**

- (a) **Commencement:** These Terms shall commence on the either:
 - (i) The date agreed to in writing by the parties (whether agreed to in a Work Order, Work Request or otherwise in writing);
 - (ii) if nothing has been agreed in writing, then the date the Contractor actually commences work with Sterling’s permission.
- (b) **Term:** These Terms shall continue in force until terminated in accordance with clause 3.
- (c) **Activation:** These Terms are activated whenever a Work Order or Work Request becomes active in accordance with clause 2.1.
- (d) **Other Documentation:** While these Terms will not prevail over a signed agreement which covers the provision of the Services by the Contractor to Sterling, they will prevail over any other any terms which may appear on any of the Contractor’s or Sterling’s documentation.
- (e) **Variation:** These Terms may only be varied by written agreement of the Parties after the Commencement Date.

1.5 **Relationship between the Parties**

- (a) The relationship between Sterling and the Contractor is that of principal and independent Contractor. The Contractor shall not (and shall ensure that its employees, subcontractors and agents shall not) represent themselves as employees or agents of Sterling.

1.6 **Key Contacts & Representatives**

- (a) **Sterling’s Key Contact & Representative**
 - (i) Sterling will notify the Contractor as to who will be Sterling’s Key Contact. This Key Contact will undertake overall management of these Terms and the relationship with the Contractor.
 - (ii) The person specified in the relevant Work Order (or noted in a Work Request) will be Sterling’s Representative for the purposes of the Services to be performed under that Work Order or Work Request.
 - (iii) Sterling’s Representative has authority to receive notices from the Contractor.
- (b) **Contractor’s Key Contact & Representative**
 - (i) The Contractor will notify Sterling as to who will be the Contractor’s Key Contact. This Key Contact will undertake overall responsibility and management of these Terms and the relationship with Sterling.
 - (ii) The person specified in the relevant Work Order (or noted in a Work Request) will be the Contractor’s Representative for the purposes of the Services to be performed under that Work Order or Work Request.
 - (iii) The Contractor’s Representative has authority to receive notices from Sterling.
 - (iv) The Contractor may only change its representative during the Agreement by notice in writing to Sterling.
 - (v) The Contractor is responsible for all acts and omissions of the Contractor’s Key Contact and Representative.

2 **WORK ORDERS**

2.1 **Work Orders and Work Requests**

- (a) Details of a particular piece of work or job required to be performed by the Contractor shall be set out in either:
 - (i) a formal written document known as a “**Work Order**”; or
 - (ii) a less formal method of communication known as a “**Work Request**” which is usually a written communication such as an email, but may in some cases be a verbal communication.
- (b) If Sterling requires Services to be provided by the Contractor, it shall issue the Contractor with a Work Order or a Work Request.
- (c) A Work Order or Work Request will set out the specific details and requirements of the Services required for a particular job or project and shall also set out the Fees for that job or project. A Work Order or Work Request will also set out what, if any, Materials or Equipment must be provided by the Contractor and what Materials or Equipment will be provided by Sterling for use by the Contractor.
- (d) If a Work Order is being used, as soon as both Parties sign the Work Order, these Terms will become “active” .
- (e) If a Work Request is being used instead of a Work Order, these Terms will become “active” once the Contractor agrees to perform the Services (whether such agreement is communicated verbally, in writing or by actual commencement of performance of the Services).

2.2 **Varying Work Orders**

- (a) From time to time, Sterling may wish to amend or vary the terms of a Work Order or a Work Request. In such cases, Sterling will provide the Contractor with notice of the proposed changes and the parties will discuss with a view to agreeing to the variations.
- (b) If agreement cannot be reached to any proposed variations, Sterling may cancel the Work Order or Work Request in accordance with clause 2.4(b).

2.3 **Suspending Work Orders or Work Requests**

- (a) Sterling may at any time by notice in writing suspend the performance of Services under a Work Order or Work Request.
- (b) The Contractor must recommence performance of the Services on or by the date directed by Sterling.
- (c) If the suspension is not caused or contributed to in any way by the Contractor (for example, where Sterling’s client suspends work or where work cannot continue due to extreme weather conditions), the Contractor shall be entitled to be paid:

- (i) any amounts approved by Sterling for Services performed up to the date of suspension; and
- (ii) any costs reasonably incurred by the Contractor during, and as a result of, the suspension and agreed to by Sterling.
- (d) If the suspension is caused or contributed to in any way by the default of the Contractor (for example, the Contractor has breached its obligations under these Terms or under a Work Order or Work Request) the Contractor shall be entitled to be paid:
 - (i) any amounts approved by Sterling for Services performed up to the date of suspension; and
 - (ii) any costs reasonably incurred by the Contractor during, and as a result of, the suspension and agreed to by Sterling after first deducting any costs incurred by Sterling as a result of the Contractor's default.
- (e) The suspension of a Work Order or Work Request does not render it inactive. There is still an active Work Order or Work Request in force.

2.4 Cancelling Work Orders or Work Requests

- (a) Sterling may at any time by notice in writing cancel the performance of some or all Services under a Work Order or Work Request.
- (b) If the cancellation is not caused or contributed to in any way by the Contractor (for example, where Sterling's client cancels the job or project or where Sterling and the Contractor cannot agree to a variation to a Work Order or Work Request), the Contractor shall be entitled to be paid:
 - (i) any amounts approved by Sterling for work performed up to the date of cancellation; and
 - (ii) any costs reasonably incurred by the Contractor as a result of the cancellation and agreed to by Sterling.
- (c) If the cancellation is caused or contributed to in any way by the default of the Contractor (for example, the Contractor has breached its obligations under these Terms or under a Work Order or a Work Request) the Contractor shall be entitled to be paid:
 - (i) any amounts approved by Sterling for work performed up to the date of cancellation; and
 - (ii) any costs reasonably incurred by the Contractor as a result of the cancellation and agreed to by Sterling after first deducting any costs incurred by Sterling as a result of the Contractor's default.
- (d) An Insolvency Event is to be considered a "default of the Contractor" for the purposes of clause 2.4(c).
- (e) Once a Work Order or Work Request is cancelled, there is no longer an active Work Order or Work Request in force.

2.5 Completion of Work Orders or Work Request

- (a) Once all Services have been performed by the Contractor in accordance with these Terms and to the satisfaction of Sterling, the Work Order or Work Request will be considered completed and is no longer active.
- (b) Notwithstanding sub-clause 2.5(a) above, if it is subsequently discovered that there are Defective Services or that the Services were not fully performed and rectification work is required to be done pursuant to clause 6, these Terms shall continue to govern the performance of the Services until rectification is complete to the satisfaction of Sterling.

3 TERMINATION OF THE AGREEMENT

3.1 Termination of the Agreement

- (a) Subject to clause 2.5(b), if there is no active Work Order or Work Request in force, either Party may terminate the agreement formed by these Terms by providing the other with written notice.
- (b) If there is an active Work Order or Work Request in force, neither Party has a right to terminate the agreement formed by these Terms until all Work Orders or Work Requests are completed or cancelled in accordance with these Terms.

4 CONTRACTOR'S OBLIGATIONS

4.1 Performance of the Services

The Contractor shall:

- (a) perform the Services in accordance with these Terms, any Work Order or Work Request and all reasonable directions of Sterling;
- (b) perform the Services in accordance with any of Sterling's Policies and Procedures which relate to the performance of the Services;
- (c) perform the Services on the date/s as set out in a Work Order or Work Request;
- (d) perform the Services in accordance with any Relevant Documentation;
- (e) perform the Services with the highest level of workmanship, care, skill and judgment;
- (f) perform the Services in an efficient, professional and cost-effective manner in accordance with relevant professional principles and standards (including any Australian Standards where applicable);
- (g) perform the Services using its best endeavors to overcome any delays (regardless of what caused the delays);
- (h) perform the Services in accordance with the Work Order or Work Request so that the Services, when completed, are fit for their intended purpose and comply with the requirements of these Terms;
- (i) Complete the Services by the Due Date;
- (j) comply with the Quality, Environment and Work Health & Safety Requirements set out in the Schedule to these Terms;
- (k) ensure that it, and all its employees, agents and subcontractors are suitably qualified and experienced and comply with any safety, security and general site rules specified by Sterling when attending a job site;
- (l) **Reports:** The Contractor shall provide reports in accordance with any requirements set out in the Work Order or Work Request or as otherwise required by Sterling from time to time; and
- (m) **Records:** The Contractor shall keep accurate and comprehensive records in relation to the performance of the Services and provide Sterling with access to them at any time.

4.2 Provision of Materials and/or Equipment

- (a) Where a Work Order or Work Request sets out that certain Materials must be provided by the Contractor, those Materials must:
 - (i) Be provided with clear title;
 - (ii) match the description of the Materials ordered;
 - (iii) match the quantity of Materials ordered;
 - (iv) be fit for the purpose specified by Sterling or made known to the Supplier to be the purpose;
 - (v) be of acceptable and merchantable quality, and are free from defects in material and workmanship;
 - (vi) meet any specifications;
 - (vii) meet any applicable Laws and Australian Standards and any other accepted Industry Standards;
 - (viii) meet any additional standards, quality or other criteria as required by Sterling from time to time and agreed in writing by the Supplier; and

(ix) not infringe the intellectual property rights of any third party.

(b) Where a Work Order or Work Request sets out that certain Equipment must be provided by the Contractor, that Equipment must:

- (i) be fit for the purpose for which it is being used;
- (ii) be free from defects in material and workmanship;
- (iii) be safe for use in a workplace;
- (iv) meet any specifications; and
- (v) meet any applicable Laws and Australian Standards and any other accepted Industry Standards.

(c) A Work Order or Work Request may set out certain Materials or Equipment that shall be provided by Sterling for use by the Contractor during the provision of the Services.

4.3 Compliance with law

The Contractor shall:

- (a) comply with all applicable Laws; and
- (b) ensure that it possesses all relevant authorisations, permits and licenses required by Laws to provide the Services.

4.4 Changes to the Quality, Environment and Work Health & Safety Requirements

(a) Notwithstanding anything else provided in these Terms, and subject to clause 4.4(b) below, Sterling may at any time change or update the Quality, Environment and Work Health & Safety Requirements as set out in the Schedule to these Terms.

(b) Before enforcing any change or update made under clause 4.4(a), Sterling agrees to:

- (i) give notice to the Contractor of any material changes or updates;
- (ii) give consideration to any concerns or objections made by the Contractor to the changes or updates; and
- (iii) reasonably consider compensating the Contractor where the Contractor can provide evidence of significant additional expense caused by any such change or update.

4.5 Insurance responsibilities

The Contractor shall:

- (a) at all times effect and maintain at its own expense:
 - (i) insurance policies as detailed in the Work Order or Work Request (“the Insurances”); and
 - (ii) workers compensation insurance as set out in the Work Order or Work Request and if none specified, then as required by law.
- (b) submit copies of all current certificates of currency relevant to the Insurances prior to starting work; and
- (c) ensure that the insurers are of good standing and approved by Sterling.

4.6 Provision of Information

The Contractor shall promptly notify Sterling of:

- (a) any matter which could have an impact on the Contractor’s ability to perform the Services or to do so in a timely manner;
- (b) any information as may be reasonably requested by Sterling including, but not limited to, subcontractor safe work method statements and subcontractor insurance details;
- (c) any matter which may impact Sterling’s ability to perform its obligations under these Terms or to perform its role as contractor to its client.

4.7 Changes to Contractor information

The Contractor must immediately notify Sterling of any material changes to the following:

- (a) the Contractor’s address and contact details;
- (b) the Contractor Representative;
- (c) the addresses and details of any approved Subcontractor;
- (d) the Contractor’s safe work method statements; and
- (e) the Contractor’s insurance details.

4.8 Right to verify, audit and inspect

(a) The Contractor must permit Sterling (acting reasonably), or its contractors or agents, to enter the Contractor’s premises at any time to review, inspect, audit compliance or otherwise observe the Contractor’s quality, WHS management systems, work practices or procedures applicable to the Contractor’s performance of the Agreement and the Services.

(b) Where directed by Sterling (acting reasonably), the Contractor must, at its own expense, promptly submit to Sterling third party independent verification of the Contractor’s compliance with WHS Laws and Environmental Laws.

4.9 Subcontracting

(a) The Contractor shall not subcontract any part of the Services or these Terms without Sterling’s prior written approval which shall not be unreasonably withheld but which may be subject to conditions.

(b) If the Contractor subcontracts any part of the Services or this Agreement in accordance with this clause:

- (i) It must ensure that the Subcontractor is aware of, and is legally bound to the Contractor to comply with the same obligations that the Contractor is legally bound to comply with under these Terms, with particular attention given to the obligations set out in clause 4; and
- (ii) it remains fully liable for the performance of the Services and this Agreement and for the acts and omissions of the Subcontractor as if they were the performance, acts or omissions of the Contractor.

(c) Any Subcontractor appointed by the Contractor that has been approved by Sterling as at the date of commencement of a Work Order, shall be listed in the Work Order or may be referred to in a Work Request.

5 PAYMENT

5.1 Contractor invoices for work performed

Unless otherwise agreed and set out in a Work Order or Work Request, the Payment process shall be as follows:

- (a) The Contractor shall provide a valid Tax Invoice for payment of the Fees due to the Contractor on a monthly basis.
- (b) Invoices must be received by Sterling no later than the second day after the end of the month during which the Services were performed.
- (c) The Contractor must provide reasonable records or other evidence setting out the rates, charges and expenses incurred to support each invoice.

- (d) Sterling shall review Contractor Invoices for validity against the work performed, these Terms and the terms of any relevant Work Order or Work Request. Sterling reserves the right to reject an invoice or part thereof that does not correspond to these Terms, a Work Order or a Work Request or which does not properly represent work performed.
- (e) Provided the matters set out in (a) to (d) above are met to Sterling's satisfaction, Sterling will pay invoices within 30 days of the end of the month in which a valid tax invoice is received.

5.2 Set-off

Sterling may set off any amount owed by the Contractor under these Terms against any amount payable by Sterling to the Contractor. This right to set off is in addition to any other rights or remedies available to Sterling under these Terms or at law.

5.3 Taxes

The Fees are exclusive of, and the Contractor shall be responsible for, the prompt and timely payment of all taxes (including any goods and services or similar tax payable in connection with the Agreement and any Services performed under the Agreement and shall indemnify Sterling against all such taxes including any taxes arising from:

- (a) the Contractor's engagement; or
- (b) the Contractor, or any of the Contractor's employees, being deemed to be an employee of Sterling for the purposes of any Laws.

6 DEFECTIVE SERVICES**6.1 Defective Services**

Any Services performed or work done that breaches the requirements of any clause of these Terms (in particular, clause 4.1, 4.2 and 4.3) or otherwise does not conform with the terms of these Terms will be considered to be Defective Services.

6.2 Notification and Direction to rectify Defective Services

Subject to clauses 6.3 and 6.4, where Sterling becomes aware of Defective Services:

- (a) it will advise the Contractor's Representative;
- (b) it will give details of the Defective Services; and
- (c) it will direct the Contractor to rectify the Defective Services:
 - (i) in the manner and to the standard as directed by Sterling;
 - (ii) at the Contractor's sole cost; and
 - (iii) within the time frame specified by Sterling.

6.3 Defective Services (Sterling becomes aware before completion)

- (a) Where Sterling becomes aware of Defective Services before completion of a Work Order or Work Request, it may take the steps set out in clause 6.2.
- (b) If the Contractor doesn't comply with any direction given pursuant to clause 6.2(c) then Sterling may arrange for rectification of the Defective Services by an alternative contractor or itself and charge the Contractor the costs incurred in doing so. The indemnity provided by the Contractor in clause 8.1 applies to any Loss suffered by Sterling in arranging for rectification of Defective Services under this clause 6.3(b).
- (c) Nothing in this clause limits Sterling's rights to any other remedy available to it for the Defective Services.

6.4 Defective Services (Sterling becomes aware after completion)

- (a) Where Sterling becomes aware of Defective Services after completion of a Work Order the situation will be managed in either of 2 ways, depending on whether the Work Order or Work Request specifies a Defects Liability Period.
- (b) If the Work Order or Work Request specifies a Defects Liability Period then Sterling may take the steps set out in clause 6.2 at any time before the expiry of the Defects Liability Period.
- (c) If the Work Order or Work Request does not specify a Defects Liability Period then Sterling may take the steps set out in clause 6.2 at any reasonable time after completion. The reasonableness of the time period will depend on factors such as standard warranty periods in the industry for the type of work done and any related period specified in Sterling's contract with its Client.
- (d) If the Contractor doesn't comply with the direction given pursuant to clause 6.2(c) then Sterling may arrange for rectification of the Defective Services by an alternative contractor or itself and charge the Contractor the costs incurred in doing so. The indemnity provided by the Contractor in clause 8.1 applies to any Loss suffered by Sterling in arranging for rectification of Defective Services under this clause 6.4(b).
- (d) Nothing in this clause limits Sterling's rights to any other remedy available to it for the Defective Services.

7 LIQUIDATED DAMAGES**7.1 Liquidated Damages**

A Work Order or Work Request will specify whether the Liquidated Damages obligations set out in this Clause 7 apply to the performance of the Services under that Work Order. A Work Request may also stipulate whether this clause 7 applies to the arrangement with the Contractor.

7.2 Liquidated Damages for delay

If a Work Order or Work Request specifies that Liquidated Damages apply to the Services under that Work Order or Work Request, then the following applies:

- (a) If the Contractor fails to complete the Services by the Due Date, the Contractor shall pay the amount set out in the Liquidated Damages clause of the relevant Work Order or Work Request for every day after the Due Date until the Services are completed to Sterling's satisfaction. The Parties agree that the Liquidated Damages in the relevant Work Order or Work Request are a fair and reasonable pre-estimate of the damages likely to be sustained by Sterling if the Services are delayed.
- (b) If the Work Order or Work Request provides a cap on the Contractor's liability for Liquidated Damages then the Contractor's liability to pay Liquidated Damages under this clause 7.2 will be capped to that amount.

7.3 Payment of Liquidated Damages

The Contractor will pay Sterling any Liquidated Damages payable under clause 7.2 within 30 days of notification by Sterling or within such timeframe as otherwise as otherwise agreed by Sterling and the Contractor.

8 LIABILITY AND INDEMNITY

8.1 **Indemnity by Contractor**

The Contractor indemnifies Sterling and its officers, employees, contractors and clients against any Claim against, or Loss suffered or incurred by, Sterling and its officers, employees, contractors or clients (as applicable), arising out of, or in connection with, or related to:

- (a) any breach of these Terms by the Contractor (including delays or Defective Services); and/or
- (b) any:
 - (i) act or omission of the Contractor or its employees, agents or subcontractors, including any fraudulent, reckless, unlawful or negligent act or omission;
 - (ii) personal injury to, disease of, or death of, any person; and/or
 - (iii) loss of, or damage to, and the resultant loss of use of any property, including property of Sterling and property of Sterling's officers, employees, contractors or clients,arising out of, or in connection with, or related to, these Terms, the Services or the performance of the Services.
- (c) The Contractor's liability under this clause 8.1 is reduced to the extent that a breach of these Terms by, or the negligence of, Sterling contributes to the Claim or Loss.

8.2 **Limitation of Liability - Consequential Loss**

Subject to clause 8.4, neither party is liable to the other under these Terms, law of tort (including negligence), statute, in equity or otherwise for any kind of Consequential Loss arising out of or in connection with these Terms.

8.3 **Limitation of liability - Other**

- (a) A Work Order shall specify whether or not this clause 8.3 applies to the performance of the Services under that Work Order. A Work Request may also stipulate whether this clause 8.3 applies to the arrangement with the Contractor.
- (b) If a Work Order or Work Request does specify that this clause 8.3 applies to the performance of the Services under that Work Order or Work Request, then, subject to clause 8.4, if the Contractor is liable to Sterling for any Losses under these Terms, the amount recoverable by Sterling from the Contractor (excluding any costs and expenses of the recovery of those damages) shall not exceed in the aggregate an amount equivalent to the greater of:
 - (i) the Insurance Limit; or
 - (ii) the Amount set out in the Work Order or Work Request;

For the purposes of this clause 8.3, the "Insurance Limit" means an amount equivalent to the level of insurance required to be taken out by the Contractor under these Terms.

8.4 **Exceptions to the limits of the Contractor's liability**

The limitation of liability in clause 8.3 does not apply:

- (a) to a breach of the warranty provided for in clause 9.3(a);
- (b) to the indemnity provided in clause 8.1(b)(ii);
- (c) to a breach by the Contractor of the Contractor's obligation to rectify Defective Services as provided for in clause 6;
- (d) to the indemnities provided in clauses S1.6 in the Quality, Environment and Work Health & Safety Requirements set out in the Schedule to this Agreement; and
- (e) to any liability that cannot be excluded or limited at law.

8.5 **Security to be provided by the Contractor**

- (a) A Work Order will specify whether this clause 8.5 applies to the performance of the Services under that Work Order. A Work Request may also stipulate whether this clause 8.5 applies to the arrangement with the Contractor
- (b) If a Work Order or Work Request does specify that this clause 8.5 applies, the Contractor is required to provide security in the form and in the amount as set out in the Work Order or Work Request to secure payment of any amount that the Contractor may become liable to pay Sterling under these Terms. The Security will be released when Sterling is satisfied that no amounts (or further amounts) are due or likely to be due to Sterling.

9 INTELLECTUAL PROPERTY

9.1 **Definitions:** for the purposes of these Terms,

Intellectual Property Rights means:

- (a) inventions, discoveries and novel designs, whether or not registered or registrable as patents or designs, including developments or improvements of equipment, products, technology, processes, methods or techniques;
- (b) copyright (including future copyright) throughout the world in all literary works, artistic works, computer software, engineering designs, reports and documents prepared for Sterling and any other works or subject matter in which copyright subsists and may in the future subsist;
- (c) confidential information and trade secrets;
- (d) trade and service marks (whether registered or unregistered) business names, trade names, domain names, logos and get-up;
- (e) all present and future rights conferred by statute, common law or equity in or in relation to circuit layouts, computer software, copyright, designs, formulae, and other results of intellectual activity in the industrial, commercial, scientific, literary or artistic fields, the benefit of any application to register such a right and the benefit of any renewal or extension of such a right; and
- (f) moral rights in relation to any Intellectual Property Rights.

Contractor IP means all Intellectual Property Rights in written materials provided by the Contractor to Sterling under these Terms which:

- (a) the Contractor creates other than in the course of performing its obligations under these Terms; or
- (b) are owned by the Contractor as at the commencement date of these Terms.

9.2 **Intellectual Property Rights vested in Sterling**

- (a) The Contractor agrees and acknowledges that all Intellectual Property Rights discovered or coming into existence as a result of the performance of the Services in accordance with these Terms, shall be vested in, and owned by, Sterling.

- (b) Where the Contractor engages others to perform Services on its behalf (including employees and contractors) and Intellectual Property rights exist in the works they create, the Contractor must ensure that it secures the right to own and transfer ownership of those rights to Sterling pursuant to clause 9.2(a). This includes, without limitation, any moral rights that the creator may have had in relation to the works.
- (c) Where any Intellectual property vests in Sterling pursuant to clause 9.2(a) but is presented or communicated in a form that incorporates Contractor IP, then the Contractor grants to Sterling an unconditional, irrevocable, perpetual and worldwide license to reproduce and use that Contractor IP in any manner that Sterling sees fit in the course of conducting its business (including to provide it to Suppliers, or sell it to customers). By way of example, if certain information or data is provided to Sterling in the form of a spreadsheet, then Sterling will exclusively own the data and information (to the exclusion of the Contractor) but will also have an unconditional, irrevocable, perpetual and worldwide license to reproduce and use (including sell) the presentation and layout of the spreadsheet and the formulas used.

9.3 **Services not to infringe third party Intellectual Property Rights**

- (a) The Contractor warrants that performance of the Services in accordance with the Agreement, and the possession or use by Sterling of the Contractor IP (as provided to Sterling by the Contractor) in accordance with these Terms, shall not infringe the Intellectual Property Rights of any third party.
- (b) The Contractor shall indemnify Sterling against any Losses arising out of or in connection with any infringements of the Intellectual Property Rights of any third party.

9.4 **No use of Logos or Intellectual Property for promotional purposes**

- (a) For the avoidance of doubt, clauses 9 and 10 mean that (among other things):
 - (i) The Contractor must not disclose to anyone that it is providing services to Sterling or Sterling's Clients, including verbally or in any promotional material;
 - (ii) The Contractor must not disclose to anyone the nature or details of the work being provided to Sterling under this Agreement, including verbally or in any promotional material;
 - (iii) the Contractor must not use any logo or branding belonging to Sterling, Sterling's Clients or anyone associated with Sterling or the Client in any promotional material"**promotional material**" includes (but is not limited to) promotional activities, anything posted on social media, anything included in emails or on email signatures, any documents or presentations used to promote or tender.

10 **CONFIDENTIALITY**

10.1 **Confidentiality**

- (a) During the course of dealing with Sterling, the Contractor may be provided with, or otherwise have access to, confidential information relating to Sterling's business or the business of Sterling's Clients. This information may include (but is not limited to) information relating to:
 - (i) Sterling's or Sterling's Client's practices, business or financial affairs,
 - (ii) Identification of Sterling's or Sterling's Client's customers and their practices, business or financial affairs, and
 - (iii) The designs or other technical information of Sterling's or Sterling's Clients, but does not include information already in the public domain, or otherwise known to the Contractor through legitimate means ("**Confidential Information**").
- (b) The Contractor:
 - (i) must keep all Confidential Information private and secret;
 - (ii) must not disclose Confidential Information except as permitted under these Terms;
 - (iii) must take all steps reasonably necessary to safeguard Confidential Information from unauthorised access, use or disclosure;
 - (iv) must use Confidential Information for the sole purpose of providing Services pursuant to these Terms;
 - (v) must not use Confidential Information in a manner which is inconsistent with Sterling's interests;
 - (vi) acknowledges that Confidential Information is the property of Sterling.
- (c) During the process of negotiating and conducting business dealings, the Contractor may find it necessary to disclose all or part of the Confidential Information to an employee or contractor in order to perform its obligations to Sterling. Before doing so, however, they must comply with the following obligations:-
 - (i) before any disclosure, advise Sterling of the names of the employees/contractors, their positions and the reasons why Confidential Information needs to be disclosed to those employees/contractors; and
 - (ii) ensure that such employees/contractors sign a specific confidentiality agreement in substantially the same form as provided for in this clause so that the employees/contractors becomes personally bound to the same obligations as the Contractor is bound to under these Terms.
- (d) This clause continues without limitation in time.

11 **DISPUTES**

11.1 **Application of procedure**

If a dispute arises between the Parties in relation to a matter under these Terms, a Work Order or Work Request, the parties shall act in good faith and use their reasonable endeavours to work together to resolve the dispute.

11.2 **Discussions between the parties**

- (a) If a dispute arises, then either party shall deliver to the other party a notice of dispute in writing adequately identifying and providing details of the dispute (Notice of Dispute).
- (b) Within 10 Business Days from receipt of the notice of dispute, Sterling's Key Contact and Representative and the Contractor's Key Contact and representative shall meet to negotiate in good faith to reach a mutually acceptable agreement.
- (c) Should the parties be unable to reach agreement, the parties shall discuss whether they agree to using an alternative dispute resolution process as a condition precedent to commencing legal proceedings.

12 **MISCELLANEOUS**

12.1 **Variations**

Any variation to the terms of these Terms or any Work Order must in writing and signed by both Parties.

12.2 Governing Law

These Terms shall be interpreted under and governed by the laws of the State in which the Services are carried out.

12.3 Exclusive jurisdiction

Each party irrevocably submits to the exclusive jurisdiction of the courts of the State in which the Services are carried out.

12.4 Assignment

The Contractor shall not assign the agreement that is formed as a result of these Terms or any part of it without the prior written consent of Sterling.

12.5 Severability

If the whole or any part of a provision of these Terms is void, unenforceable or illegal in a jurisdiction, it is severed for that jurisdiction. The remainder of these Terms have full force and effect and the validity and enforceability of that provision in any other jurisdiction is not affected. This clause has no effect if the severance alters the basic nature of these Terms or is contrary to public policy.

12.6 No waiver unless in writing

Except as provided in law or in equity or elsewhere in these Terms, none of the provisions of these Terms may be waived, discharged or released except with the prior written consent of the Parties.

12.7 Failure to insist not a waiver of subsequent breach

A failure by a party to insist upon a strict performance of any of these Terms is not deemed a waiver of any subsequent breach or default of these Terms.

12.8 Rights, powers and remedies

The rights, powers and remedies of Sterling provided in these Terms are cumulative and not exclusive of any right, power or remedy provided by law.

12.9 Joint and several liability of the Contractor

Where two or more persons comprise the Contractor, the covenants and agreements on the part of the Contractor bind and must be observed and performed by them jointly and each of them severally.

12.10 Entire Agreement

The agreement formed as a result of acceptance of these Terms constitutes the entire agreement of the Parties about their subject matter and any previous agreements, arrangements or understandings in relation to that subject matter cease to have any effect.

SCHEDULE

WORK HEALTH AND SAFETY & ENVIRONMENT REQUIREMENTS

The following clauses do not limit the operation of any other clause in these Terms.

S1.1 DEFINITIONS

Contamination means the presence in, on or under any land or water, or in the air, of a substance at a concentration above the concentration at which the substance is normally present in, on or under (respectively) land, water or air, in the same locality, being a presence that presents a risk of harm to human health or any other aspect of the environment.

Environmental Harm means any material adverse impact on the environment, including Contamination

An **Environmental Hazard** is something that can cause harm to the environment or human health from pollution or waste.

An **Environmental Risk** is the threat that a hazard poses to human health and the environment.

Environmental Law means any Law which regulates or has as its purpose, objective or effect the regulation, protection or enhancement of any aspect of the environment.

Hazardous Materials means any material or substance which, because it possesses some dangerous characteristic, would or might reasonably be expected to cause damage or injury to any person, any property or the environment.

Heritage Item means an item listed on a Commonwealth, State, Territory or Local Government register relating to indigenous or non-indigenous heritage.

Heritage Laws means any Law which deals with the registration or preservation or other matters of Heritage Items.

HSE means health, safety and environment.

Law means, all applicable:

- (a) Acts, ordinances, regulations, by-laws, orders, awards and proclamations;
 - (b) standards, codes and guidelines;
 - (c) certificates, licenses, consents, permits, approvals, requirements and directions of organisations.
- In the State or Territory in which the work is being carried out.

Laws means the model Work Health and Safety Act (and its Regulations) applicable to the jurisdiction where the Services are being performed and the Victorian Occupational Health and Safety Act (and its Regulations) and any amendments or replacement legislation to those Acts and Regulations enacted after the Commencement Date. It also includes any other Acts, Regulations or other legal requirements that relate in some way to health and safety in the workplace.

Waste includes things having or potentially having a material impact on the environment including:

- (a) any substance (whether solid, liquid or gaseous) that is discharged, emitted or deposited in the environment in such volume, constituency or manner as to cause an alteration in the environment; or
- (b) any discarded, rejected, unwanted, surplus or abandoned substance; or

- (c) any otherwise discarded, rejected, unwanted, surplus or abandoned substance intended for sale or for recycling, processing, recovery or purification by a separate operation from that which produced the substance.

S1.2 Compliance

The Contractor must, as a minimum, comply with all WHS Laws which are in any way applicable to the Contractor’s performance of the Services or other obligations under these Terms (including under any Work Order).

S1.3 Safe Work Method Statements

Should any of the Services to be performed by the Contractor under a Work Order or Work Request involve “High Risk Construction Work” as defined under OHS or WHS laws, then before commencing performance of the Services, the Contractor must create and implement appropriate safe work method statements (“SWMS”) and provide these to Sterling upon request.

S1.4 Incident reporting

- (a) For the purposes of this clause 13.4, the following definitions apply:
- (i) **“Incident”** means an injury or illness to any person, property damage, and Environmental Incident or a near miss.
 - (ii) **“Environmental Incident”** means an act or omission that is a breach of, or is reportable under and Environmental Law or which results in Contamination or Environmental Harm.
 - (iii) **“Serious Injury, Illness or situation”** means an injury, illness or situation to which the “Notifiable Incidents” sections of relevant WHS legislation applies.
- (b) The Contractor must notify the Sterling Representative of any Incident involving the Contractor that occurs during the performance of the Services.
- (c) The timing and manner in which the incident must be reported is as follows:

<ul style="list-style-type: none"> • Death; • Serious Injury, Illness or situation; • Environmental Incident 	<ul style="list-style-type: none"> • The Contractor must notify the Sterling Representative immediately by the fastest means possible as soon as it becomes aware of the Incident.
<ul style="list-style-type: none"> • All other Incidents. 	<ul style="list-style-type: none"> • The Contractor must notify the Sterling Representative within 24 hours upon becoming aware of the Incident or at the next Agreement review meeting, whichever is sooner.

- (d) The Contractor, when requested, must provide Sterling with a copy of the Contractor’s incident investigation documentation and subsequent action plans for all Incidents.
- (e) For all Incidents where the Notifiable Incidents sections of the relevant WHS Laws are applicable, the Contractor must comply with the Site preservation obligations set out in that legislation.

S1.5 Contamination

- (a) The Contractor must:
- (i) conduct regular site inspections to monitor its compliance with Environmental and WHS Laws ;
 - (ii) not Contaminate any land, soil or waters;
 - (iii) not leave any Waste Materials at any Site where Services are performed and must dispose of Waste Materials in accordance with any relevant Environmental Law;
 - (iv) not handle, store or use Hazardous Materials in a manner that is reasonably likely to give rise to an Environmental Hazard, except with prior written agreement of Sterling. Sterling’s agreement will depend on the extent that the Environmental Hazard can be appropriately dealt with by a person who is appropriately accredited (if applicable) and otherwise competent having regard to the nature of the work or services to be undertaken:
 - A. in accordance with applicable WHS and Environmental Laws; and
 - B. adopting appropriate WHS procedures having regard to the Environmental hazard;
 - (v) not dump Hazardous Materials in on or under such infrastructure, or permit Hazardous Materials to emanate from such infrastructure;
 - (vi) not cause or contribute to an environmental hazard in connection with any infrastructure;
 - (vii) not cause or contribute to any Contamination in, on, under or emanating to or from any infrastructure;
 - (viii) comply with all applicable environmental laws in connection with any infrastructure during construction activities forming part of the Services, keep each Site in a good and safe condition so that it does not present a risk to the health or safety of any person or a risk to the environment;
 - (ix) at its own cost:
 - A. promptly comply with any written or unwritten requirement from any Authority, to take any action or refrain from taking any action in relation to any aspect of the environment in respect of the Services or any Site, that is served on it (or any of its subcontractors) during the term of the Agreement;
 - B. clean up and remediate any damage to the environment caused or contributed to by the Contractor or its employees, agents or subcontractors, during the performance of the Agreement, including any Contamination of land, soil or waters; and
 - C. where requested by Sterling, provide a statement from an independent and appropriately qualified person approved by Sterling that the clean-up and remediation carried out under (B) occurred in compliance with and to the standard required by all relevant Environmental and WHS Laws and sound environmental management practices and that the damaged Site or area has been restored to the condition it was in prior to the damage caused by the Contractor.

S1.6 Environmental release and indemnity

- (a) In addition to the indemnities set out in clause 8 of the Agreement, the Contractor indemnifies and releases Sterling, its employees and agents from any liability to the Contractor in respect of:
- (i) Contamination of or from any Site or land adjacent to any Site to the extent caused or contributed to, whether lawfully or unlawfully, by the acts or omissions of the Contractor or its employees, agents or subcontractors; and

- (ii) the disposal of Waste on or from the Site by or on behalf of the Contractor or its employees, agents or subcontractors or during the Term, however caused.
- (b) The Contractor indemnifies Sterling against any Claim made against Sterling as a result of:
 - (i) any breach by the Contractor of any Environmental Law during the performance of the Services;
 - (ii) any Contamination of any Site or land adjacent to any Site to the extent caused or contributed to, whether lawfully or unlawfully, by the acts or omissions of the Contractor or its employees, agents or subcontractors; and
 - (iii) any pollution of or from any Site or land adjacent to any Site or disposal of Waste from any Site by or on behalf of the Contractor or its employees, agents or subcontractors.

S1.7 EPA

The Contractor must assist and cooperate with Sterling for the purposes of enabling compliance with applicable EPA policies and guidelines, including by:

- (a) accurately recording, measuring and sorting prescribed industrial waste data;
- (b) retaining prescribed industrial waste records for 7 years from the end of the year in which the Services are provided or such other period as required by Sterling;
- (c) providing the prescribed industrial waste data and records to Sterling upon request and by the time identified in that request;
- (d) if requested by Sterling, assisting in the preparation and/or preparing any reports or documentation required under any applicable guidelines (with such reports or documentation being in the format and provided within the time requested by Sterling); and
- (e) cooperating with any audit conducted regarding environmental compliance.

S1.8 Heritage Items

- (a) The Contractor must comply with all relevant Heritage Laws and take reasonable steps to identify and protect Heritage Items in, on or at a Site at which Services are performed.
- (b) Where the Contractor discovers any items of archaeological, cultural or heritage significance or otherwise of special interest on, in or at a Site at which Services are performed:
 - (i) the Contractor must protect the Heritage Item and take all reasonable steps not to disturb, interfere with or damage the items;
 - (ii) the Contractor must immediately notify Sterling's Representative and comply with any lawful direction of Sterling in relation to those Heritage Items; and
- (c) In the event that the provision of the Services needs to be suspended (or cancelled) as a result of the discovery of any Heritage Item, then clauses 2.3(c) or 2.4(b) shall apply.

S1.9 Clean Up

The Contractor shall keep the Site and the areas where the Services are performed in a clean and tidy state, and shall regularly remove rubbish and surplus material and comply with the requirements concerning clean up and related matters in the Agreement.