



### Class 3 Government Contract

<b>1. Document Numbers</b>	
D20/60847	
<b>2. Name and Address of the contractor</b>	
Reino International Pty Ltd t/a Duncan Solutions Australia	
5/39 Herbert St, St Leonards NSW 2065	
<b>3. Particulars of any related body corporate (within the meaning of the Corporations Act 2001 of the Commonwealth) in respect of the contractor, or any other private sector entity in which the contractor has an interest, that will be involved in carrying out any of the contractor's obligations under the contract or will receive a benefit under the contract</b>	
Not applicable.	
<b>4. The date on which the contract became effective and the duration of the contract</b>	
29/04/2020	8 years
<b>5. Particulars of the project to be undertaken, the goods or services to be provided or the real property to be leased or transferred under the contract</b>	
Installing and maintaining parking meters, and other work, services, things or tasks which the Contractor is to comply with under the Agreement.	
<b>6. The estimated amount payable to the contractor under the contract</b>	
\$9,390,442.42 (including GST)	
<b>7. A description of any provisions under which the amount payable to the contractor may be varied</b>	
<ul style="list-style-type: none"> <li>Principal Representative may issue document setting out details of a proposed variation that the Principal is considering.</li> <li>Whether or not the Principal Representative has issued a variation proposal, the Principal Representative may at any time during the Term direct the Contractor to carry out a variation by issuing a variation order.</li> <li>Contractor must comply with a variation order irrespective of the nature, extent or value of the work, location or timing, whether or not it agrees with any or all of the terms of the variation order or any disputed related to the variation.</li> </ul>	
<b>8. A description of any provisions with respect to the renegotiation of the contract</b>	
Not applicable.	
<b>9. In the case of a contract arising from a tendering process, the method of tendering and a summary of the criteria against which the various tenders were assessed</b>	
<p>Open Tender through Tenderlink.</p> <ul style="list-style-type: none"> <li>Compliance with the Technical specification</li> <li>Demonstrated experience in the supply, installation and maintenance of parking meters in similar local government areas and environments</li> <li>Key personnel on the project team</li> </ul>	

<ul style="list-style-type: none"> <li>• Quality, sustainability and environment systems</li> <li>• Demonstrated ability to interface with other parking technology providers/devices/systems and smart parking solutions</li> <li>• Value for money</li> <li>• Firm project delivery timeline</li> <li>• Work, health and safety</li> <li>• Financial and commercial trading integrity including insurances</li> </ul>
<b>10. A description of any provisions under which it is agreed that the contractor is to receive payment for providing operational or maintenance services</b>
<ul style="list-style-type: none"> <li>• Contractor must perform the Maintenance Services on each Replacement Parking Meter on and from the date of issue of the Certificate of Completion</li> <li>• Contractor must ensure that any replacement parking meter required to be maintained in accordance with all authorisations, best industry practice, maintenance plan, specification and applicable laws.</li> <li>• Contractor to ensure all replacement parking meters are done in accordance with the agreement.</li> <li>• Keep parking meters clean and free from waste material, rubbish and other surplus material.</li> </ul>
<b>11. Particulars of future transfers of significant assets to the State at zero, or nominal, cost to the State, including the date of their proposed transfer.</b>
Not applicable.
<b>12. Particulars of future transfers of significant assets to the contractor, including the date of their proposed transfer</b>
Not applicable.
<b>13. The results of any cost-benefit analysis of the contract conducted by the agency.</b>
Not applicable.
<b>14. The components and quantum of the public sector comparator if used.</b>
Not applicable.
<b>15. If relevant, a summary of information used in the contractor's full base case financial model (for example, the pricing formula for tolls or usage charges.</b>
Not applicable.
<b>16. If relevant, particulars of how risk, during the construction and operational phases of a contract to undertake a specific project (such as construction, infrastructure or property development), is to be apportioned between the parties, quantified (where practicable) in net present-value terms and specifying the major assumptions involved.</b>
Not applicable.



<b>17. Particulars as to any significant guarantees or undertakings between the parties, including any guarantees or undertakings with respect to loan agreements entered into or proposed to be entered into.</b>
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Not applicable.
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<b>18. Particulars of any other key elements of the contract.</b>
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Not applicable.
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A20/0144.

Date 29/4/2020

## On Street Meter Replacement Agreement

**Waverley Council**  
ABN 12 502 583 608

and

**Reino International Pty Ltd**  
**T/A Duncan Solutions Australia**  
ABN 75 079 147 201

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# On Street Meter Replacement Agreement

Dated        /        /

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## Parties

Name	Waverley Council (ABN 12 502 583 608)
Address	Cnr Bondi rd and paul St Street, Bondi Junction
Email	Ross.McLeod@waverley.nsw.gov.au
Contact	Ross Mcleod
Short name	<b>Principal</b>

Name	<b>Reino International Pty Ltd</b>
Address	5/39 Herbert St, St Leonards NSW 2065
Email	asohail@duncansolutions.com.au
Contact	Asim Sohail
Short name	<b>Contractor</b>

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## Background

- A. The Principal is a local government authority for its local government area constituted under the *Local Government Act 1993*.
- B. By the RFT process, the Principal sought tenders for the performance of the Activities.
- C. The Principal resolved by resolution dated 18 february 2020 to accept.
- D. The Contractor was selected to carry out the Activities under this Agreement.
- E. Subject to and upon the terms and conditions of this Agreement the Contractor has agreed to carry out the Activities.



## The Parties Agree

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### 1. Definitions and interpretation

#### 1.1 Definitions

In this Agreement, unless expressed or implied to the contrary:

**Abandon** means, where the Contractor does not perform any significant part of the Activities for a continuous period of 45 days and the Principal has reasonably determined the Contractor has formed the intention not to continue the Activities, except due to a failure on the part of the Principal to perform any of the Principal's obligations under this Agreement.

**Activities** means:

- (a) the Parking Meter Activities;
- (b) the Maintenance Services; and
- (c) all other work, services, activities, things or tasks which the Contractor is, or may be, required to do to comply with its obligations under this Agreement.

**Agreement** means:

- (a) this document;
- (b) the Specification;
- (c) all Schedules to it; and
- (d) all attachments to it.

**Application** means any application for an Authorisation relating to the Activities or a Replacement Parking Meter including, for the avoidance of doubt, applications specifically defined in this Agreement such as an Application for a Part 5 Planning Approval.

**Associate** means any Related Body Corporate of a party to this Agreement, or any officer, employee, agent, consultant, contractor or advisor of a party to this Agreement (including, with respect to the Contractor, any Subcontractor and any employee, agent, consultant, contractor, subcontractor or advisor of a Subcontractor).

**Authorisation** means:

- (a) without limiting paragraph (b), any Part 5 Planning Approval; and
- (b) an approval, consent, Direction, instruction, declaration, exemption, accreditation, notarisation, licence, permit, certificate, waiver or other authorisation, however described, given by any Authority,

including any variation, modification, renewal or amendment of such thing by any Authority, in connection with the Replacement Parking Meters or the carrying out of the Activities.

**Authorisation Documents** means all documents and other material required to be lodged in support of an Application to enable it to be assessed by the relevant Authority.

**Authority** or **Authorities** means any:

- (a) government, government department or government agency;

- (b) governmental, semi-governmental or judicial person carrying out any statutory authority or function; or
- (c) other person (whether autonomous or not) who is charged with the administration of a Law,

having jurisdiction over any Replacement Parking Meter, any part of the Activities or the subject matter of this Agreement including, for the avoidance of doubt, Authorities specifically defined in this Agreement and including the Principal when performing its statutory functions (but in that capacity only).

**Best Industry Practice** means the degree of skill, professionalism, care, prudence, diligence and contracting practice which would reasonably be expected from a skilled and experienced operator, contractor, manager or consultant engaged in the performance of work the same as, or substantially similar to, the Activities.

**Business Day** means any day other than:

- (a) a Saturday, Sunday or public holiday in the State of New South Wales; or
- (b) 27, 28, 29, 30 or 31 December.

**Certificate of Completion** means a certificate issued by the Principal Representative under clause 16.3.

**Change in Law** means:

- (a) a change in an existing Law; or
- (b) a new Law,

which takes effect after the Execution Date.

**Change of Control** means the change in direct or indirect legal or beneficial ownership of more than 50% of the issued share capital or (if it is convertible into shares), of the loan capital, of the Contractor.

**Claim** includes any claim, action, demand, proceeding, judgment or order (including for the payment of money or damages) however arising, at Law and including:

- (a) under, arising out of, or in any way in connection with this Agreement (including the Activities and any Direction given by the Principal Representative) or any other contract, deed or agreement;
- (b) by statute;
- (c) in tort for negligence or otherwise, including negligent misrepresentations;
- (d) for restitution;
- (e) on a quantum meruit;
- (f) under quasi contract; or
- (g) for unjust enrichment,

and includes any notice, order, demand or other official requirement of any Authority.

**Completion** means, in respect of each Precinct, that stage in the performance of the relevant Parking Meter Activities relating to that Precinct, when:



- (a) all of the Replacement Parking Meters have been installed and are operational in accordance with this Agreement, except for minor Defects which the Principal Representative determines:
  - (i) the Contractor has reasonable grounds for not promptly rectifying; or
  - (ii) do not prevent the relevant Replacement Parking Meters from being used for their Intended Purpose;
- (b) all Authorisations required to use, operate and maintain the relevant Precinct (including using the relevant Replacement Parking Meters for their Intended Purpose) or otherwise required in accordance with this Agreement, have been obtained, provided to the Principal Representative and complied with (insofar as they are required to have been complied with in respect of the design, supply or installation of the Precinct on the relevant Site);
- (c) each Site has been made good, each Existing Parking Meter has been removed and any materials, waste, spoil, debris and stock piles resulting from the Parking Meter Activities have been lawfully removed, disposed of and managed away from the relevant Site;
- (d) all temporary Utilities connected for the purposes of the relevant Parking Meter Activities have been disconnected and made safe in accordance with the requirements of relevant Authorities or Utilities providers;
- (e) all Installation Equipment has been removed from the relevant Site;
- (f) those tests which are required by this Agreement to be carried out and passed in respect of each Replacement Parking Meter have been carried out and passed (including any acceptance testing required by the Specification or the Final Rollout Plan);
- (g) all warranties, certificates, documents and other information:
  - (i) required under this Agreement; and
  - (ii) which, in the opinion of the Principal Representative, are essential for the use, operation and maintenance of the relevant Replacement Parking Meters,
 have been supplied to the Principal Representative; and
- (h) the Contractor has done everything that this Agreement requires the Contractor to do as a condition precedent to, or as a requirement of, Completion of the Precinct.

**Consequential Loss** means loss of profit, loss of revenue, loss of goodwill, loss of future opportunities and loss of anticipated savings by the relevant party, whether arising in contract, tort (including negligence), under statute or on any other basis at Law.

**Consultant** means any person engaged by the Contractor to perform consultancy services in connection with the Activities.

**Contamination** (of land) means the presence in, on or under land of a substance (whether a solid, liquid or gas) at a concentration above the concentration at which the substance is normally present on, in or under (respectively) land in the same locality, being a presence that presents a risk of harm to human health or to any other aspect of the Environment. For the purpose of this definition a substance may present a risk of harm either on its own or by reason of the presence of or interaction with another substance or aspect of the Environmental, structure or other matter (and **Contaminated** and **Contaminant** have corresponding meanings).

**Contractor Default Event** has the meaning given to that term in clause 28.1

**Contractor Representative** means the representative of the Contractor specified in Item 2, as changed from time to time in accordance with clause 22.2.6, and includes any delegate of that person.

**Corporations Act** means the *Corporations Act 2001* (Cth).

**Date for Completion** means, in respect of each Precinct, the relevant date which is set out in Schedule 15, but if any extension of time for Completion in respect of that Precinct is required or permitted under this Agreement or is otherwise Directed by the Principal or the Principal Representative or allowed in any arbitration, litigation or other final and binding dispute resolution process, it means the date resulting therefrom.

**Date of Completion** means, in respect of the relevant Precinct:

- (a) the date identified in the Certificate of Completion as the date on which Completion of that Precinct was achieved; or
- (b) where another date is determined in any arbitration, litigation or other final and binding dispute resolution process as the date upon which Completion of that Precinct was reached, that other date.

**[Deed of Guarantee** means a deed of guarantee provided by the Guarantor in accordance clause 26.8 in the form set out in Schedule 7.]

**Default Event** means in respect of the Contractor, an event specified in clause 28.1.

**Default Notice** means a notice under clause 28.2.

**Defect** means any defect, deficiency, fault, error or omission in or from the Activities or a Parking Meter, or any other aspect of the Activities or a Parking Meter that does not comply with the requirements of this Agreement.

**Delay Event** means any of the following:

- (a) an act, default or omission of the Principal Representative, the Principal or its consultants, agents or contractors (not being the Contractor or engaged by the Contractor); and
- (b) a Principal Initiated Variation.

**Designated Officers** means each of the designated officers appointed by the Contractor and Principal respectively under clause 29.2.

**Design Issue** means:

- (a) any:
  - (i) error in or omission from; or
  - (ii) ambiguity, inadequacy, discrepancy, inconsistency, incompleteness, lack of integration, lack of co-ordination or lack of detail in or between,  
the Specification or any other document or documents comprising this Agreement (insofar as they relate to design) and includes any non-compliance with any Law; or
- (b) any part of the Specification or any other document or documents referred to in this Agreement relating to design that requires further development, co-ordination or refinement prior to commencement of the manufacture, supply or installation of any Replacement Parking Meter to which that design or document relates.

**Direction** includes agreement, approval, assessment, authorisation, certificate, decision, demand, determination, explanation, instruction, notice, order, permission, rejection, request or requirement.



**Disclosed Information** means all of the information disclosed to the Contractor by or on behalf of the Principal which does not form part of this Agreement and includes all of the information listed or referred to in Schedule 5.

**Dispute** means any dispute or difference between the Principal and the Contractor arising out of or in connection with this Agreement.

**Encumbrance** means any mortgage, charge, pledge, lien, assignment, hypothecation, right of set-off, Security Interest, power or title retention, preferential right or trust arrangement or any other security agreement or arrangement whatsoever.

**Environment** means all components of the earth, including:

- (a) land, air and water;
- (b) any layer of the atmosphere;
- (c) any organic or inorganic matter;
- (d) any living organism; and
- (e) natural or man-made or modified features or structures,

and includes ecosystems and all elements of the biosphere.

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

**EPA** means the NSW Environment Protection Authority constituted under the *Protection of the Environment Administration Act 1991* (NSW).

**Execution Date** means the date on which the last party to sign this Agreement signs this Agreement.

**Existing Parking Meter** means any roadside parking meter that existed in the Principal LGA on the Execution Date, including those identified in the Specification.

**Existing Parking Meter Funds** means any moneys located in an Existing Parking Meter at the time of its removal.

**Extreme Event** has the meaning given in Schedule 12.

**Fee** means the sum of the following:

- (a) the Installation Fee; and
- (b) the Maintenance Fee.

**Final Certificate** means the final certificate referred to in clause 19.5.

**Final Finishes Documentation** means Finishes Documentation that:

- (a) is complete and capable of being used for installation purposes; and
- (b) has been submitted to the Principal Representative in accordance with clause 10.1.1 and in respect of which the relevant period of time in clause 10.1.2 has expired and the Principal Representative has not rejected the relevant Finishes Documentation.

**Final Review Documentation** means Review Documentation that has been submitted to the Principal Representative in accordance with clause 10.1.1 and in respect of which the relevant period of time in

clause 10.1.2 has expired and the Principal Representative has not rejected the relevant Review Documentation.

**Final Rollout Plan** means the rollout plan submitted under clause 10 which has not been rejected by the Principal Representative within the time referred to in clause 10.

**Final Payment Claim Date** means the date that is 20 Business Days after the expiry of the Term.

**Finishes Documentation** means documentation to be developed by or on behalf of the Contractor that specifies the finishes for the Replacement Parking Meters.

**Gross Negligence** means a negligent act or omission that arises as a result of a significant departure from the standard of care that would ordinarily be expected from a highly skilled and experienced person engaged in the same type of undertaking under the same or similar circumstances as the negligent person.

**Guarantor** means Aldo Investments Pty Ltd.

**Handover Maintenance Plan** means the handover maintenance plan set out or referred to in Schedule 10.

**Incomplete Design** means any aspect or element of any design or other technical requirement set out in the Specification that is incomplete or otherwise requires amendment or further development in order to enable the Contractor to carry out the Parking Meter Activities in accordance with this Agreement.

**Installation Unconditional Undertaking** means:

- (a) the unconditional undertaking to be provided under clause 26.1.1(a); and
- (b) each unconditional undertaking provided under clause 26 as a replacement for all or any part of such an unconditional undertaking.

**Installation Completion Amount** means the amount set out in Item 18.

**Installation Completion Payment Claim Date** means the date of the issue of the Certificate of Completion in respect of the last Precinct to achieve Completion.

**Installation Equipment** means the plant, equipment, apparatuses, vehicles and other items used, or to be used, by the Contractor to carry out the Parking Meter Activities, excluding a Replacement Parking Meter.

**Installation Fee** means the amount set out in Item 14, as may be adjusted in accordance with this Agreement.

**Installation Payment 1 Amount** means the amount set out in Item 15.

**Installation Payment 1 Claim Date** means the date which is seven days after the Execution Date.

**Installation Payment 2 Amount** means the amount set out in Item 16.

**Installation Payment 2 Claim Date** means the date which is the date of issue of the Certificate of Completion in respect of the last Precinct of the first third of all Precincts to achieve Completion.

**Installation Payment 3 Amount** means the amount set out in Item 17.

**Installation Payment 3 Claim Date** means the date which is the date of issue of the Certificate of Completion in respect of the last Precinct of the second third of all Precincts to achieve Completion.

**Insolvency Event** means, in relation to a person, any of the following events:



- (a) the person, being an individual, commits an act of bankruptcy;
- (b) the person becomes insolvent;
- (c) the person ceases, suspends or threatens to cease or suspend the conduct of a majority of its business, or disposes of or threatens to dispose of its assets, except for the purposes of a solvent reconstruction or amalgamation previously approved by the Principal;
- (d) the person is or states that it is, or under applicable legislation is taken to be, unable to pay its debts (other than as a result of a failure to pay a debt or claim that is the subject of a dispute in good faith), or stops or suspends, or threatens to stop or suspend, payment of all or a class of its debts;
- (e) a receiver, receiver and manager, administrator, controller or similar officer of any of the assets or the whole or any part of the undertaking of the person is appointed;
- (f) a resolution is passed by the person to appoint an administrator, or an administrator of the person is appointed;
- (g) an order is made to appoint a liquidator or a provisional liquidator of the person;
- (h) the person resolves to wind itself up or otherwise dissolve itself, or gives notice of its intention to do so, except for the purposes of a solvent reconstruction or amalgamation previously approved by the Principal, or is otherwise wound up or dissolved;
- (i) an order is made that the person be wound up;
- (j) the person is, or makes a statement from which it may be reasonably inferred by the Principal that the person is, the subject of an event described in s 459C(2) of the *Corporations Act 2001* (Cth);
- (k) the person assigns any of its property for the benefit of creditors or any class of them;
- (l) an order is made or a resolution is passed for the person to enter into any arrangement, compromise or composition with, or assignment for the benefit of, its creditors or any class of them, except for the purposes of a solvent reconstruction or amalgamation previously approved by the Principal;
- (m) any Security Interest becomes enforceable or is enforced against that person;
- (n) the person's interest in or under this Agreement or in the subject matter of this Agreement becomes attached or is taken, in execution or under any legal process;
- (o) a distress, attachment or other execution is levied or enforced against that person in excess of \$10,000;
- (p) the person has a judgment or order given against it in an amount exceeding \$10,000 (or the equivalent in another currency) and that judgment or order is not satisfied or quashed or stayed within 20 Business Days after being given;
- (q) any power of sale is exercised or steps are taken to take possession of any assets of the person subject to a Security Interest;
- (r) any step is taken to do anything listed in the above paragraphs; and
- (s) any event that is analogous or has a substantially similar effect to any of the events specified in this definition in any jurisdiction.

**Intellectual Property Rights** means all current and future registered and unregistered rights in respect of copyright, designs, circuit layouts, trademarks, know-how, confidential information, patents, inventions

and discoveries, all other intellectual property as defined in article 2 of the *Convention Establishing the World Intellectual Property Organisation 1967* (as amended from time to time) and all other proprietary rights and any rights of registration of such rights, whether created before or after the Execution Date in Australia or elsewhere.

**Intended Purpose** means the purpose:

- (a) stated in this Agreement (including the Specification); or
- (b) as can be reasonably inferred from what is stated in this Agreement (including the Specification).

**Item** means an item in Schedule 1.

**KPI** means a key performance indicator specified in Schedule 13.

**Law** includes any legislation or any rule, principle, duty or requirement of or under common law or equity, and for the avoidance of doubt includes any:

- (a) Authorisations and the lawful requirements of Authorities;
- (b) Environmental Law; and
- (c) WHS Law.

**Liability** means any liability or obligation (whether actual, contingent or prospective), including for any Loss irrespective of when the acts, events or things giving rise to the liability or obligation occurred.

**Loss** includes any damage, loss (including Consequential Loss), cost (including legal costs on a solicitor/own client basis), claim, charge, expense, duty, obligation or liability, either direct or indirect.

**Maintenance Unconditional Undertaking** means:

- (a) the unconditional undertaking to be provided under clause 26.1.1(b); and
- (b) each unconditional undertaking provided under clauses 26 as a replacement for all or any part of such an unconditional undertaking.

**Maintenance Equipment** means the plant, equipment, apparatuses, vehicles and other items used, or to be used, by the Contractor to perform the Maintenance Services.

**Maintenance Fee** means the amount calculated in accordance with Item 19, as may be adjusted in accordance with this Agreement.

**Maintenance Plan** means the document set out in Schedule 9 (as amended from time to time by any Variation).

**Maintenance Services** means maintenance work and activities which the Contractor is required to perform, including the rectification of Defects, in respect of the Replacement Parking Meters including in accordance with (or as more particularly described in) the Specification and in the Maintenance Plan.

**Mobilisation Notice** means a notice given by the Contractor in accordance with clause 12.1.1.

**Monthly Maintenance Amount** has the meaning given in Schedule 12, as may be adjusted in accordance with the Agreement.

**Moral Rights** has the meaning given to that term in the *Copyright Act 1968* (Cth).

**Outline Rollout Plan** means the draft Rollout Plan set out in **Error! Reference source not found..**



**Payment Claim** has the meaning given in clause 19.2.1.

**Payment Schedule** has the meaning given in clause 19.3.

**Parking Meter Activities** means all work and activities necessary and desirable for the Contractor to carry out in connection with the design, specification, supply and installation of any Replacement Parking Meter in accordance with this Agreement, including the:

- (a) Parking Meter Design Activities;
- (b) Parking Meter Supply Activities; and
- (c) Parking Meter Installation Activities.

**Parking Meter Design Activities** means all work and activities necessary to design and specify the Replacement Parking Meters in accordance with this Agreement, including all associated Variations.

**Parking Meter Supply Activities** means all work and activities necessary to supply the Replacement Parking Meters in accordance with this Agreement, including all associated Variations.

**Parking Meter Installation Activities** means:

- (a) all work and activities necessary to install the Replacement Parking Meters in accordance with this Agreement; and
- (b) the removal of the Existing Parking Meters,

including all associated Variations.

**Part 5 Assessment** means each assessment of the impact of the Activities on the Environment required under Part 5 of the *Environmental Planning and Assessment Act 1979* (NSW).

**Part 5 Planning Approval** means each determination made by the Council as a determining authority under Part 5 of the *Environmental Planning and Assessment Act 1979* (NSW).

**Permitted Encumbrance** means:

- (a) a lien arising by operation of Law securing money owing in respect of goods or services provided in the ordinary course of business where that money is duly paid on time or within any permitted payment terms;
- (b) an Encumbrance in favour of an Authority arising by operation of Law in the ordinary course of business where there is no default in payment of money owing in relation to that Encumbrance; or
- (c) an Encumbrance created or which exists with the Principal's prior written consent.

**Precinct** means the Replacement Parking Meters which are located, or are to be located (as applicable), in the precincts listed in Item 9.

**Pollution** means a release, emission or discharge into the Environment (including of a substance) which causes or has the potential to cause (directly or indirectly) damage or harm to any aspect of the Environment, including:

- (a) pollution of air;
- (b) pollution of waters;
- (a) noise; and

(b) pollution of land,

which is not within the limits permitted under or authorised by a licence obtained under the *Protection of the Environment Operations Act 1997* (NSW) or other Environmental Law.

**PPS Act** means the *Personal Property Securities Act 2009* (Cth).

**PPS Law** means the PPS Act and the regulations made pursuant thereto.

**Pre-Priced Variation** means the work described in Item 22.

**Pre-Priced Variation Price** means, in respect of a Pre-Priced Variation, the sum stated in Item 22.

**Principal Initiated Variation** means a Variation directed by the Principal under a Variation Order, other than a Variation Order issued under clause 17.2.2 or 20.6.1.

**Principal LGA** means the local government area for which the Principal is constituted as the local government authority under the *Local Government Act 1993* (NSW) as at the Execution Date and at any time during the Terms.

**Principal Representative** means the representative of the Principal specified in Item 1, as changed from time to time in accordance with clause 22.1.6, and includes any delegate of that person.

**Progressive Maintenance Payment Claim Date** means, in respect of each month, from the Date of Completion of the last Precinct to achieve Completion until the earlier of:

- (a) termination of the Agreement;
- (b) the date that the Principal exercises its rights to take out the whole of the Activities out of the hands of the Contractor; and
- (c) the end of the Term,

the date of that month specified in Item 20.

**Related Body Corporate** has the meaning it has in the Corporations Act.

**Relic** means:

- (a) a relic within the meaning of the *Heritage Act 1977* (NSW); or
- (b) an Aboriginal object or an Aboriginal place within the meaning of the *National Parks and Wildlife Act 1974* (NSW).

**Replacement Parking Meter** means any parking meter which replaces, or is required to replace, an Existing Parking Meter under this Agreement, including those identified the Specification.

**Reputable Insurer** means an insurance company operating in Australia, or London having a credit rating of not less than the Required Rating who are in the business of insuring the risks required to be covered under this Agreement.

**Required Rating** means A+ by Standard & Poor's (Australia) Pty Limited or A1 from Moody's Investors Service, Inc., or where either of these ratings agencies cease to operate in the Australian market, a rating and a ratings agency selected by the Principal Representative. If the description or nomenclature of a credit rating specified above or the manner in which a credit rating is calculated or determined changes after the Execution Date, then the reference to a credit rating in this definition is to be taken to be the credit rating which most closely corresponds to the credit rating so specified.

**Required Insurance** means the insurance required under clause 24.3.



**Review Documentation** means any:

- (a) Application;
- (b) Rollout Plan;
- (c) Authorisation Documents;
- (d) Finishes Documentation; and
- (e) other document, material or design submitted by, or on behalf of, the Contractor to the Principal under this Agreement.

**Resources Disposal Plan** means the document set out in Schedule 3.

**Rollout Plan** means:

- (a) the Outline Rollout Plan; or
- (b) if a Final Rollout Plan exists, the Final Rollout Plan.

**RFT** means the request for tender for the Activities.

**Schedule of Rates** means the schedule of Rates set out in Schedule 11 (as may be adjusted by written agreement of the parties).

**Security Contractor** means Chubb Fire and Security Pty Ltd or such other contractor as is notified to the Contractor.

**Security Interest** means:

- (a) any mortgage, pledge, lien, charge or other preferential right, trust arrangement, agreement or arrangement of any kind given or created by way of security, including a security interest (as defined in the *Personal Property Securities Act 2009*); and
- (b) any agreement to create or grant any arrangement described in paragraph (a).

**Security of Payment Act** means the *Building and Construction Industry Security of Payment Act 1999* (NSW).

**Separate Contractor** means any contractor or other person engaged or authorised by the Principal (other than the Contractor or its Subcontractors) to perform any work on, adjacent to or in proximity of any Site.

**Separate Contractor Works** means the work to be carried out, constructed, supplied, installed or erected by or on behalf of Separate Contractors.

**Site** means, in respect of each Replacement Parking Meter, the relevant location where that Replacement Parking Meter is, or is to be, installed (as applicable).

**Site Conditions** means any physical conditions encountered in the execution of the Activities above, upon, under or over the surface of, or in the vicinity of, any Site and includes:

- (a) surface water, ground water, ground water hydrology and the effects of any de-watering;
- (b) physical and structural conditions, above, upon and below any Site, including old footings, underground structures, buildings, improvements, partially completed structures or in-ground works;

- (c) topography of any Site, ground surface conditions and geology, including rock and sub-surface conditions or other materials encountered at, or in the vicinity of, any Site;
- (d) climatic and weather conditions, including rain, surface water run-off and drainage, floods, water seepage, wind blown dust and sand, salinity, salt, humidity, heat, sunshine, storms, wind, seasons and physical conditions that are a consequence of climatic and weather conditions;
- (e) all existing systems and Utilities, above or below ground level and all facilities with which such systems and Utilities are connected;
- (f) all improvements, including any artificial things, foundations, retaining walls and other structures installed by or on behalf of the Principal or others;
- (g) any Contamination, Pollution, or other rubbish, spoil or waste; and
- (h) underground strata forming part of any Site.

**Specification** means the documents contained in Schedule 2.

**Subcontractor** means any person engaged by the Contractor in connection with the Activities and includes a Consultant.

**Supporting Documentation** means:

- (a) a duly completed statutory declaration (in a form provided by the Principal Representative) by the Contractor, or where the Contractor is a corporation, by a representative of the Contractor who is in a position to know the facts attested to;
- (b) a duly completed Supporting Statement; and
- (c) any other materials or documentation which the Specification identifies as Supporting Documentation or which the Specification otherwise provides is to be provided with a Quarterly Payment Statement or prior to, or as a precondition of, payment.

**Supporting Statement** has the meaning given in section 13(9) of the Security of Payment Act.

**Tax** means a tax, levy, contribution requirement, duty, charge, deduction or withholding, however it is described, that is imposed by Law (including by an Authority), together with any related interest, penalty, fine or other charge, other than one that is imposed on net income in any jurisdiction.

**Tender** means the Contractor's proposal submitted in respect to the RFT dated 20 December 2019.

**Tender Documents** means the RFT and the Tender.

**Term** means the term of this Agreement, commencing on the Execution Date and ending on the earlier of:

- (a) the date immediately prior to the date which is 5 years after the Execution Date or as extended under clause 3.1.1; and
- (b) termination of this Agreement.

**Termination Amount** means an amount determined in accordance with clause 28.6.

**Unconditional Undertaking** means any one or more of the following:

- (a) the Installation Unconditional Undertaking; and



- (b) the Maintenance Unconditional Undertaking.

**Utility** means any utility, including water, electricity, gas, fuel, telephone, drainage (including piped, open or subsoil drains), sewerage, fire fighting, industrial waste disposal and electronic communications services (including internet access) and includes all plant and equipment and conduits in connection with those services.

**Utilities Cost** means the cost to the Principal of providing the Utilities to the Contractor for the purpose of the Activities, calculated by the Principal Representative.

**Variation** means a variation, addition or deletion to any part of the Activities or a Replacement Parking Meter, including:

- (a) increases or decreases in, or omissions from, the Activities (excluding design development);
- (b) changes in the character or quality of any material or work which are beyond design development;
- (c) changes in the levels, lines, positions or dimensions of any Replacement Parking Meter (excluding design development);
- (d) changes to the requirements of the Specification (in so far as the Specification relates to the Activities);
- (e) additions, changes to the location of or omissions of any Replacement Parking Meter; or
- (f) change to the requirements of the Maintenance Services.

**Variation Order** means a written document titled "Variation Order" directing the performance of a Variation.

**Voluntary Termination Date** has the meaning set out in clause 28.5.2.

**Voluntary Termination Notice** has the meaning set out in clause 28.5.1.

**WHS Act** means the *Work Health and Safety Act 2011* (NSW).

**WHS Law** means the WHS Act, the WHS Regulation, and any other work health and safety Law, regulation, by-law standards and codes of practice that applies to work being carried out as part of the Activities.

**WHS Regulation** means the *Work Health and Safety Regulation 2017* (NSW).

## 1.2 Priority of documents

- 1.2.1 The documents forming this Agreement are to be taken as mutually explanatory of one another. If either party discovers any error, inconsistency, ambiguity or discrepancy in any document prepared for the purpose of executing the Activities (including any document forming part of this Agreement), that party shall notify the Principal Representative in writing of the error, inconsistency, ambiguity or discrepancy.
- 1.2.2 In the event of an error, inconsistency, ambiguity or discrepancy being discovered and brought to the attention of the Principal Representative, or discovered by the Principal Representative, the Principal Representative will direct the Contractor as to the interpretation to be followed by the Contractor in carrying out the Activities. In giving such a Direction, the Principal Representative may, to the extent applicable, direct the higher standard, quality or quantum to apply.
- 1.2.3 The Contractor will not be entitled to make, and the Principal will not be liable upon, any Claim arising out of, or in any way in connection with, a Direction under clause 1.2.2.

### 1.3 Interpretation

In this Agreement:

- 1.3.1 a reference to this or other document includes the document as varied or replaced regardless of any change in the identity of the parties;
- 1.3.2 a reference to a clause, schedule, appendix or annexure is a reference to a clause, schedule, appendix or annexure in or to this Agreement, all of which are deemed part of this Agreement (except to the extent otherwise expressly provided in this Agreement);
- 1.3.3 a reference to writing includes all modes of representing or reproducing words in a legible, permanent and visible form;
- 1.3.4 headings and sub-headings are inserted for ease of reference only and do not affect the interpretation of this Agreement;
- 1.3.5 where an expression is defined, another part of speech or grammatical form of that expression has a corresponding meaning;
- 1.3.6 where the expression 'including' or 'includes' is used it means 'including but not limited to' or 'including without limitation';
- 1.3.7 references to 'shall' will (unless the context otherwise requires) be construed as references to 'must';
- 1.3.8 references to 'days' means calendar days and references to a person include an individual, firm or a body, corporate or unincorporated;
- 1.3.9 a reference to:
  - (a) the singular includes the plural and vice versa; and
  - (b) a gender includes the other genders;
- 1.3.10 a reference to a person includes:
  - (a) a firm, partnership, joint venture, association, corporation or other corporate body;
  - (b) a person includes the legal personal representatives, successors and permitted assigns of that person; and
- 1.3.11 a reference to any body which no longer exists or has been reconstituted, renamed, replaced or whose powers or functions have been removed or transferred to another body or agency, is a reference to the body which most closely serves the purposes or objects of the first-mentioned body;
- 1.3.12 a reference to legislation or any particular legislation includes any delegated legislation and any consolidations, amendments, re-enactments or replacements of any of that legislation from time to time;
- 1.3.13 a reference to '\$' or 'dollars' is a reference to Australian dollars;
- 1.3.14 a reference to any property or assets of a person includes the legal and beneficial interest of that person in those assets or property, whether as owner, lessee or lessor, licensee or licensor, trustee or beneficiary or otherwise;
- 1.3.15 a reference to a matter being to the knowledge of a person means the matter is to the best of the knowledge and belief of the person after making proper enquiry including enquiry which a reasonable person would be prompted to make by reason of knowledge of a fact; and



- 1.3.16 no rule of construction applies to the disadvantage of a party on the basis that the party put forward this Agreement or any part.

#### **1.4 Business Day**

If a payment or other act (other than the performance of any part of the Activities) is required by this Agreement to be made or done on a day which is not a Business Day, the payment or act must be made or done on the next following Business Day.

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## **2. Contractor's general obligations**

### **2.1 Appointment of Contractor**

The Principal appoints the Contractor as an independent and expert contractor with specialist skills and expertise not possessed by the Principal to carry out and provide the Activities subject to and in accordance with this Agreement and the Contractor accepts that appointment.

### **2.2 Contractor's general obligations**

- 2.2.1 The Contractor warrants that the Replacement Parking Meters will be designed, supplied, installed, operated, maintained and repaired so as to remain, at all times during the Term, fit for their Intended Purpose.
- 2.2.2 Without limiting any other provisions of this Agreement, the Contractor must:
- (a) carry out the Activities in accordance with the Specification and all other requirements of this Agreement and ensure that each Replacement Parking Meter complies with the Specification;
  - (b) comply with, and otherwise carry out the Activities in accordance with, the requirements of Law, and ensure that each of its Subcontractors comply with the requirements of Law; and
  - (c) design, supply and install the Replacement Parking Meters and remove the Existing Parking Meters in accordance with the Final Rollout Plan and all Laws so that the Replacement Parking Meters are and remain throughout the Term suitable for their Intended Purpose.

### **2.3 Primary obligation**

- 2.3.1 During the Term, but subject to clause 12.1.3, the Contractor must carry out the Activities continually and in accordance with:
- (a) all Authorisations;
  - (b) the Final Rollout Plan;
  - (c) all applicable Laws;
  - (d) the Maintenance Plan;
  - (e) Best Industry Practice; and
  - (f) the other requirements of this Agreement,
- and ensure that there is no disruption to the Activities except where expressly permitted by this Agreement.

## **2.4 Nature of the Activities**

The Contractor acknowledges and agrees that the Activities includes the provision and performance of all work, services and activities (including those which are not expressly mentioned in this Agreement), which should reasonably have been anticipated or inferred by a reasonably competent and experienced contractor at the Execution Date as being necessary or desirable for the performance of the Activities, or the completion or use of the Replacement Parking Meters, had such contractor inspected:

- 2.4.1 all information made available by or on behalf of the Principal to the Contractor for the purpose of tendering, or otherwise in connection with this Agreement, including the Disclosed Information;
- 2.4.2 all documents comprising this Agreement including the Specification;
- 2.4.3 all information relevant to risk allocation under this Agreement, which is reasonably obtainable by the making of reasonable enquiries; and
- 2.4.4 each Site and its surroundings.

## **2.5 Obligations remain unaffected**

The Contractor's warranties, obligations and liabilities arising under or in connection with this Agreement (including in clause 9) remain unaffected notwithstanding:

- 2.5.1 that design work may have been carried out by or on behalf of the Principal and included in the Specification;
- 2.5.2 any Variation; or
- 2.5.3 any Change in Law.

## **2.6 Acceptance of risks**

Except as otherwise expressly provided by this Agreement, the Contractor:

- 2.6.1 accepts all risks of and associated with each Site and the Activities including:
  - (a) liability for Taxes and the creation or imposition of Taxes or imposts, whether or not existing at the Execution Date;
  - (b) in connection with any Law (as at the Execution Date or in the future), including any Change in Law;
  - (c) industrial action or industrial interference from third parties;
  - (d) inclement weather;
  - (e) any matter of a type referred to in clause 5 or 6; and
  - (f) the requirements of or delay by any Authority, including the imposition of any conditions or delay in granting or issuing an Authorisation;
- 2.6.2 is solely responsible for the cost and conduct of the Activities, the performance and discharge of its other obligations under this Agreement and assumes the risk of all delay, increased costs and any Loss it suffers or incurs arising out of or in connection with the Activities; and
- 2.6.3 is not entitled to and must not make any Claim against the Principal (or any person acting on the Principal's behalf) arising out of or in connection with any such risk, cost or expense, identified in this clause 2.6, having eventuated or been incurred.



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### **3. Term**

- 3.1.1 Subject to clause 41.19 or earlier termination of this Agreement, this Agreement takes effect from the Execution Date and continues until the expiry of the Term, which may be extended:
- (a) by a further three years by notice from the Principal Representative to the Contractor three months prior to the expiry of the period which is five years after the Execution Date; and
  - (b) if the Term is extended under clause 3.1.1(a), by a further two years and six months by notice from the Principal Representative to the Contractor three months prior to the expiry of the period which is eight years after the Execution Date.

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### **4. Ownership**

- 4.1.1 Notwithstanding any other term of this Agreement, the Contractor acknowledges and agrees that:
- (a) each Existing Parking Meter which is owned by the Principal is vested in, and remains with, the Principal until such time as the relevant Existing Parking Meter is removed; and
  - (b) unencumbered title in each Replacement Parking Meter is transferred to the Principal once the relevant Replacement Parking Meter is affixed to the relevant Site.
- 4.1.2 Notwithstanding any other term of this Agreement, the Contractor acknowledges and agrees that:
- (a) subject to clause 4.1.2(b), in respect of each Precinct, all refuse and debris produced during the execution of the relevant Parking Meter Activities (which, for the avoidance of doubt does not include the Existing Parking Meter Funds) will be the property of the Contractor; and
  - (b) the Principal does not warrant, guarantee or make any representation about the value of the refuse and debris referred to in clause 4.1.2(a), or any other item salvaged by the Contractor as part of the Parking Meter Activities, and the Contractor will not be entitled to make, nor will the Principal be liable upon, any Claim in circumstances where such things have no value or a value less than anticipated by the Contractor (whether prior to the Execution Date or otherwise).
- 4.1.3 Without limiting or otherwise affecting the Contractor's obligations under clause 6, the Contractor must comply with all Laws, and such other requirements as may be notified by the Principal or the Principal Representative from time to time, for the disposal or recycling of materials to be removed from any Site, including the removal and disposal of the Existing Parking Meters and will use its best endeavours to dispose of the Existing Parking Meters in accordance with the Resources Disposal Plan.

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### **5. Site Conditions and Information**

#### **5.1 Site Conditions**

- 5.1.1 Without limiting or otherwise affecting clauses 5.1.2 and 5.2.1, the Contractor warrants that prior to the Execution Date, it:
- (a) examined, and relied solely upon its own assessment, skill, expertise and enquiries in respect of, all documents and other information relevant to the risks, contingencies and

other circumstances having an effect on its obligations under this Agreement and which were obtainable by the making of reasonable enquiries and investigations; and

- (b) was given the opportunity prior to the Execution Date to itself undertake, and to request others to undertake, tests, enquiries and investigations relating to the subject matter of the Disclosed Information and the Site Conditions and for this purpose was allowed access to any Site as it required.

5.1.2 Without limiting or otherwise affecting clause 5.2.1:

- (a) the Principal makes no representation and gives no warranty to the Contractor in respect of the Site Conditions likely to be encountered, or which may be encountered, during the execution of the Activities or otherwise in respect of the condition of:
  - (i) each Site; or
  - (ii) any structure or other thing on, under or adjacent to, or otherwise in the vicinity of, any Site (including any Existing Parking Meter or Replacement Parking Meter (if applicable));
- (b) subject to the Contractor's entitlements under Schedule 12 in respect of Extreme Events, the Contractor must accept:
  - (i) any Site; and
  - (ii) any structure or other thing on, under or adjacent to, or otherwise in the vicinity of, any Site and any Site Conditions (including any Existing Parking Meter or Replacement Parking Meter (if applicable)),in their existing condition subject to all defects; and
- (c) subject to the Contractor's entitlements under Schedule 12 in respect of Extreme Events, the Contractor agrees that it is responsible for, and assumes the risk of, and will not be entitled to make any Claim arising out of, or in any way in connection with, any additional work, increased costs and any damage, expense, Loss, Liability or delay (including any delay in achieving Completion of any Precinct) it suffers or incurs arising out of, or in any way in connection with:
  - (i) the Site Conditions actually encountered during the execution Activities; and
  - (ii) the Environment associated with any Site or its surroundings,including:
  - (iii) the existence of any Contamination or any decontamination or remediation required to carry out the Activities or otherwise use and occupy the Precinct; and
  - (iv) the suitability or otherwise of any Site for the Activities.

## 5.2 Information

- 5.2.1 The Principal does not warrant, guarantee, make any representation or assume any duty of care or other responsibility to the Contractor with respect to:
- (a) the suitability, completeness, accuracy or adequacy of any Disclosed Information;
  - (b) the adequacy of services available on any Site to meet the needs of the Contractor;



and the Contractor releases the Principal from any Claim, and indemnifies the Principal against any Claims against, or costs, Losses, expenses or damages suffered or incurred by the Principal, arising out of, or in any way in connection with, any of these matters.

5.2.2 The Contractor warrants that:

- (a) it has not relied upon and will not rely upon the suitability, completeness, accuracy or adequacy of any Disclosed Information; and
- (b) it enters into this Agreement based on its own investigations, interpretations, deductions, information and determinations.

The Contractor acknowledges that it is aware that:

- (c) the Principal has entered into this Agreement relying upon the warranties in this clause 5.2.2; and
- (d) the Principal would not have entered into this Agreement but for those warranties.

5.2.3 The Principal shall not be liable upon any Claim by the Contractor arising out of, or in any way in connection with:

- (a) any error in or omission from any Disclosed Information;
- (b) any use of or reliance upon any Disclosed Information by the Contractor;
- (c) any other fact, matter or thing arising out of, or in any way in connection with, any Disclosed Information; or
- (d) any failure by the Principal to make available to the Contractor any other document or information for the purposes of the Activities or this Agreement, including in relation to Site Conditions.

5.2.4 The Contractor:

- (a) accepts all risk arising out of its use of or reliance upon any Disclosed Information; and
- (b) releases and indemnifies the Principal from and against:
  - (i) any Claim against the Principal by, or liability of the Principal to, any person; or
  - (ii) any other costs, losses or damages suffered or incurred by the Principal, arising out of, or in any way in connection with:
    - (iii) the provision of, or the purported reliance upon, or use of, the Disclosed Information by the Contractor or any other person to whom the Disclosed Information are disclosed; or
    - (iv) the Disclosed Information being relied upon or otherwise used in the preparation of any information or document, including any information or document which is 'misleading or deceptive' or 'false or misleading' (within the meaning of those terms under the *Competition and Consumer Act 2010* (Cth)), or any equivalent provision of State or Territory legislation).

5.2.5 The Contractor acknowledges and agrees that the Disclosed Information was provided to the Contractor for the information only of the Contractor and do not form part of this Agreement.

### **5.3 Removal of items of value, materials, debris etc.**

- 5.3.1 Items of value (including any artefacts but excluding the Existing Parking Meter Funds) found on, in, over or under any Site belong, as between the Contractor and Principal, to the Contractor unless otherwise directed by the Principal.
- 5.3.2 If the Contractor discovers a Relic while carrying out the Activities, the Contractor must notify the Principal as soon as practicable and comply with all requirements of Authorities.

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## **6. Law and Safety**

### **6.1 Law generally**

The Contractor must, in connection with the Activities, comply with all applicable Laws (including any Change in Law), including by:

- 6.1.1 giving all notices and paying all fees, charges and other amounts payable in respect of the carrying out of its obligations under this Agreement (including long service levies payable in respect of the Activities under the *Building and Construction Industry Long Service Payments Act 1986* (NSW)); and
- 6.1.2 ensuring that its Associates have obtained all necessary Authorisations to perform any relevant part of the Activities.

### **6.2 Work Health and Safety**

The Contractor must:

- 6.2.1 comply with, and ensure that its workers, including its employees, contractors, Subcontractors and agents, comply with all WHS Law in connection with any Site and the performance of the Activities;
- 6.2.2 in performing the Activities take all possible and reasonably practicable steps and measures to eliminate risk to health and safety and to avoid and minimise the consequences of work health and safety issues;
- 6.2.3 ensure that it carries out the Activities in a manner which ensures that, and otherwise provide all required assistance to the Principal to ensure that, the Principal satisfies its obligations under the WHS Law in connection with the Activities;
- 6.2.4 ensure that there is no unreasonable risk to health, safety and welfare of any persons employed in connection with the Activities (whether by the Contractor, contractors, Subcontractors or otherwise);
- 6.2.5 manage risks associated with the carrying out of the Activities in accordance with Part 3.1 of the WHS Regulation;
- 6.2.6 ensure that if any Law requires that:
  - (a) a person:
    - (i) be authorised or licenced (in accordance with the WHS Act and WHS Regulation) to carry out any work at the workplace, that person is so authorised or licensed, and complies with any conditions of such authorisation or licence; and/or
    - (ii) has prescribed qualifications or experience or, if not, is to be supervised by a person who has prescribed qualifications or experience (as defined in the WHS



Act or WHS Regulation), that person has the required qualifications or experience or is so supervised; or

- (b) a workplace, plant, substance, design, or work (or class of work) be authorised, registered or licensed, that workplace, plant, substance, design, or work is so authorised, registered or licensed;
- 6.2.7 not direct or allow a person to carry out or use plant or substances at a workplace unless the requirements of clause 6.2.6 are met (including any requirement to be authorised, licensed, qualified or supervised);
- 6.2.8 if requested by the Principal Representative or required by the WHS Law, produce evidence of any Authorisations, registrations, prescribed qualifications or experience, or any other information relevant to work health and safety (as the case may be) to the satisfaction of the Principal Representative;
- 6.2.9 comply with the WHS Law, including to the extent that the Contractor is a person conducting a business or undertaking (including to whom any of sections 22, 23, 25 or 26 of the WHS Act applies); and
- 6.2.10 indemnify the Principal against all damage, expense, Loss or Liability suffered or incurred by the Principal arising out of, or in any way in connection with, any breach by the Contractor of its obligations under this clause 6.2 or clause 6.3.

The Contractor acknowledges and agrees that it:

- 6.2.11 has management and control of each Site, including all fixtures, fittings or plant including for the purposes of sections 20 and 21 of the WHS Act, at all times during the carrying out of the Parking Meter Activities and the Maintenance Services; and
- 6.2.12 must responsibly carry out the Activities at all times until the end of the Term.

### **6.3 Principal Contractor**

In respect of any works commissioned by, or carried out by or on behalf of, the Contractor on a Site (including in connection with the Activities), without limiting or otherwise affecting the obligations of the Contractor under any other provision of this Agreement, the Principal and Contractor agree that, to the extent such works are a construction project to which Chapter 6 of the WHS Regulation applies:

- 6.3.1 the Principal engages the Contractor as principal contractor in respect of such works at that Site;
- 6.3.2 the Principal authorises the Contractor to:
  - (a) have management and control of such works and the relevant Site; and
  - (b) discharge, exercise and fulfil the functions, duties and obligations of a principal contractor under Chapter 6 of the WHS Regulation in connection with such works and the relevant Site;
- 6.3.3 the Contractor accepts the engagement as principal contractor and agrees to discharge, exercise and fulfil the functions, duties and obligations imposed on a principal contractor by the WHS Law;
- 6.3.4 to the extent that the Contractor is for any reason, taken or otherwise found not to be the principal contractor for such works and the relevant Site, the Contractor nonetheless must discharge, exercise and fulfil the functions, duties and obligations of a principal contractor in respect of such works at the relevant Site as if the Contractor was the principal contractor for those works and that relevant Site; and

- 6.3.5 the Contractor is aware of its obligations as principal contractor, or its obligations that may otherwise arise under clause 6.3.4.

#### **6.4 WHS Law definitions**

Except as otherwise provided in clause 1.1, all terms used in clause 6.2 and 6.3 have the meanings given to them in the WHS Act and the WHS Regulation.

#### **6.5 Incidents**

- 6.5.1 The Contractor must immediately notify the Principal Representative in writing of any act, fact or circumstances associated with the Activities relevant to the ability of the Contractor to comply with the requirements of this clause 6.
- 6.5.2 Without limiting clause 6.5.1 or the incident notification requirements under the Specification, the Contractor must:
- (a) immediately notify the Principal Representative:
    - (i) of any Contamination or Pollution which is caused; or
    - (ii) of any accident, notifiable incident (being an incident which is notifiable under any WHS Law), injury or property damage which occurs,in connection with the Activities;
  - (b) do everything necessary to minimise harm to humans and the Environment in connection with the Activities; and
  - (c) within 24 hours of any such matter notified under paragraph (a), provide a written report to the Principal Representative giving complete details of the matter, including the results of investigations into its cause and any recommendations or strategies for prevention of a recurrence.

#### **6.6 Avoidance of nuisance and protection of people and property**

The Contractor must, in carrying out (and as part of) the Activities:

- 6.6.1 provide, or procure the provision of, all materials, equipment, labour, services and other things required for the timely performance of the Activities in accordance with this Agreement;
- 6.6.2 keep each Site free from all unnecessary obstruction and must periodically store or remove any surplus materials and clear away from each Site any wreckage, rubbish or temporary works;
- 6.6.3 suppress odours to minimise impacts on people;
- 6.6.4 ensure that vehicles leaving any Site do not track materials onto external surfaces;
- 6.6.5 ensure that Activities are carried out in a manner that will minimise emissions of dust from any Site;
- 6.6.6 prevent nuisance, hazard and other disturbance, including to:
- (a) the Principal and other users or occupiers of each Site;
  - (b) others having a right of access to each Site;
  - (c) owners, tenants, users or occupiers of any land adjoining or adjacent to each Site; and



- (d) any members of the public;
- 6.6.7 provide or procure the provision of all things and take all measures necessary to protect people and property, including by:
  - (a) erecting or removing hoardings or other secure fencing and scaffolding;
  - (b) erecting permanent quality directional and information signage (or permanent quality) directing persons and vehicles around and, if applicable, through each Site; and
  - (c) taking any other actions necessary to make each Site safe;
- 6.6.8 ensure that the carrying out of the Activities does not damage or interfere with the operation of any Utilities; and
- 6.6.9 when carrying out the Maintenance Services or the Parking Meter Activities, secure and keep any Site safe, subject to all other rights of the Principal and third parties as contemplated by this Agreement, and take necessary precautions to protect the health and safety of persons on or in the vicinity of any Site from risks arising from activities on any Site.

## **6.7 Direction to comply**

If, for any area of land forming part of any Site or any other land impacted by or disturbed by the conduct of the Activities, at any time from the Execution Date until the expiration of the Term, a Direction of an Authority is served on the Principal or Principal Representative or the Contractor or a Contractor's Associate in relation to the conduct of any Activities, the Principal Representative may by written notice to the Contractor, direct the Contractor to comply with that Direction.

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## **7. Applications**

### **7.1 Obtaining Authorisations**

- 7.1.1 Without limiting clauses 6.1, but subject to clause 7.1.3, the Contractor must:
  - (a) apply for and obtain all Authorisations; and
  - (b) pay all lodgement or other fees in relation to any Application.
- 7.1.2 The Contractor must ensure that all Authorisations are consistent with any relevant Part 5 Planning Approval and Part 5 Assessment, any then current Finishes Documentation and the Specification.
- 7.1.3 The Principal must apply for and obtain any required Part 5 Planning Approval.

### **7.2 Applicant for Applications**

- 7.2.1 The Contractor must be the applicant for any Application unless the Contractor and the Principal agree in writing otherwise.
- 7.2.2 Where an Authority requires the Principal to be the applicant for any Application, the Contractor will:
  - (a) prepare the Application for the Principal; and
  - (b) provide all other assistance required by the Principal in making that Application.

### **7.3 Consent to Applications**

- 7.3.1 The Contractor must not lodge, make or otherwise submit an Application to a relevant Authority (including the Principal) unless the Principal has granted a consent to lodge that Application.
- 7.3.2 The Contractor must not amend any Application or any Authorisation Documents in any material way after the Principal has consented to it, but must lodge the Application in exactly the same form and terms as that to which the consent to lodge has been granted by the Principal.

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## **8. Specification Not Comprehensive**

### **8.1 Incomplete Design**

The Contractor acknowledges and agrees that:

- 8.1.1 the Specification may not contain a complete or fulsome design of all or any part of the Replacement Parking Meters;
- 8.1.2 without limiting clause 5.2, neither the Principal nor any Principal's Associate has given any representation, warranty or undertaking in respect of the completeness, or the degree of completeness, accuracy or adequacy of any part of the Specification;
- 8.1.3 further design work and design development work will need to be carried out in respect of the design and other technical requirements set out in the Specification in order to prepare the Final Finishes Documentation, and otherwise carry out the Parking Meter Activities, including constructing the Replacement Parking Meters (and removing the Existing Parking Meters), where required by this Agreement), in accordance with this Agreement; and
- 8.1.4 any design contained in the Specification or otherwise in this Agreement has been prepared by the Contractor and the Contractor acknowledges and warrants that, in respect of any such design, that design:
  - (a) is fit for its Intended Purpose; and
  - (b) complies with and is otherwise consistent with:
    - (i) all other parts of the Specification;
    - (ii) all applicable Laws; and
    - (iii) the other requirements of this Agreement.

### **8.2 Acceptance by Contractor**

The Contractor:

- 8.2.1 acknowledges and warrants that:
  - (a) prior to the Execution Date, it fully and carefully reviewed the Specification and the other documents comprising this Agreement with a view to assessing the risk of all Incomplete Design and Design Issues and assuming the risk of any Incomplete Design and Design Issues;
  - (b) the Specification and the other documents comprising this Agreement are suitable, appropriate and adequate for its Intended Purpose; and



- (c) it has allowed for and included in each Date for Completion and the Fee, contingencies for the risk of any Incomplete Design and Design Issues, including such that the Date for Completion and such cost allowances cover, in addition to its other obligations under this Agreement, the risk of the Contractor being required to modify or re-design any existing design or provide further design and/or carry out additional design development, manufacture, supply, installation or other work arising out of, or in any way in connection with, Incomplete Design and Design Issues; and

8.2.2 acknowledges and agrees that:

- (a) any additional work or activities (including amendments to existing, or the preparation of additional, Finishes Documentation, the provision of different or additional Utilities, plant and work and/or the carrying out of new or additional manufacture, supply and installation work) which it is required to perform arising out of, or in connection with, overcoming or dealing with any Incomplete Design or Design Issue will be deemed to form part of the Activities and will not be a Variation, even if the relevant work or activity is not contained, designed (wholly or partially), described or referred to (either expressly or impliedly) in the Specification or any other document comprising this Agreement;
- (b) it bears the risk that the allowances it has made, including any contingencies included in each Date for Completion, for assuming the risk of any Incomplete Design and Design Issues are insufficient to properly compensate the Contractor for carrying out the Activities referred to in clause 8.2.2(a);
- (c) it is not entitled to make, and the Principal will not be liable upon, any Claim (including for any Liability or Loss suffered or incurred by the Contractor) arising out of, or in connection with, any Incomplete Design and Design Issues which it encounters, including anything referred to in clause 8.2.2(a), but nothing in this clause 8.2.2(c) limits or otherwise affects the Contractor's entitlement under clause 20 in respect of a Variation; and
- (d) the Principal does not owe or assume any duty of care to the Contractor in preparing, or providing it with, the Specification or the other documents comprising this Agreement.

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## **9. Design and Documentation**

### **9.1 Design warranties and obligations**

9.1.1 The Contractor warrants that:

- (a) it will design each Replacement Parking Meter by developing the design contained within the Specification (if any);
- (b) it will prepare all Finishes Documentation:
  - (i) in accordance with:
    - (A) all Authorisations;
    - (B) the Specification;
    - (C) all applicable Laws; and
    - (D) the other requirements of this Agreement;
  - (ii) in a timely and efficient manner, with due expedition and without delay, and otherwise so as to achieve Completion of each Precinct by the relevant Date for Completion; and

- (iii) in accordance with Best Industry Practice and using professionally qualified and suitably experienced design personnel;
  - (c) it will ensure that each Replacement Parking Meter is designed so as to, at the relevant Date of Completion, comply with the requirements of this Agreement and otherwise be fit for its Intended Purpose; and
  - (d) the installation of each Replacement Parking Meter completed in accordance with the Final Finishes Documentation will ensure that each Replacement Parking Meter will, at the relevant Date of Completion, comply with the requirements of this Agreement and otherwise be fit for its Intended Purpose.
- 9.1.2 Without limiting clause 9.1.1, the Contractor:
- (a) must undertake such design as is necessary to ensure that the design of each Replacement Parking Meter is complete for all purposes, using professionally qualified and suitably experienced design personnel;
  - (b) must prepare any Finishes Documentation necessary to ensure that each Replacement Parking Meter is manufactured, supplied and installed in accordance with the Principal's design intent, and all other specified requirements, evidenced in the Specification; and
  - (c) is solely responsible for preparing the Finishes Documentation and is solely responsible for ensuring that the Finishes Documentation and each Replacement Parking Meter is constructed and completed in accordance with those Finishes Documents and otherwise satisfies the requirements of the Specification and the other requirements of this Agreement.

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## **10. Review Documentation**

### **10.1 Provide Review Documentation to the Principal**

- 10.1.1 The Contractor must prepare, develop and complete the Review Documentation and progressively submit 2 copies of them to the Principal Representative, together with all relevant supporting documentation:
- (a) at the times required by the Agreement (including, in respect of the Rollout Plan, the time required by clause 11); and
  - (b) otherwise from time to time following any amendment to previous Review Documentation (including Final Review Documentation), including to take account of any:
    - (i) alterations permitted, approved or required under clause 10.1.3; or
    - (ii) Variations.
- 10.1.2 The Principal Representative may, but is not obliged to, review any Review Documentation submitted under clause 10.1.1 and may in its discretion at any time within 20 Business Days after the submission of that documentation, reject the Review Documentation if in the Principal Representative's opinion:
- (a) the Review Documentation does not comply with or may lead to a non-compliance with any requirement of this Agreement, any applicable Authorisations, any applicable Law or the Specification; or
  - (b) the Review Documentation does not adequately address, or may create, a risk to health or safety in relation to other users of any Site.



- 10.1.3 If the Principal Representative rejects the Review Documentation in accordance with clause 10.1.2, the Contractor must address the non-compliance or inadequacy in the Review Documentation submitted under clause 10.1.1 by amending the Review Documentation.
- 10.1.4 Following any amendment of the Review Documentation submitted under clause 10.1.1 to address any comments referred to in clause 10.1.2, the Contractor must resubmit the Review Documentation to the Principal Representative and the procedures set out in clause 10.1.2 to 10.1.4 will re-apply.

## **10.2 No obligation or liability**

The Contractor acknowledges and agrees that:

- 10.2.1 the Principal (or any person on its behalf) does not assume or owe any duty of care or other responsibility or obligation to the Contractor in relation to any Review Documentation, and will not be required to check such Review Documentation for suitability, errors, omissions or compliance with the requirements of Law, any Authority or this Agreement;
- 10.2.2 the Contractor will not be entitled to make, and the Principal will not be liable upon or in connection with, any Claim, Liability or Loss arising out of or in connection with any failure by the Principal (or any person on its behalf) to detect or notify the Contractor of any lack of suitability, errors, omissions or non-compliance with the requirements of Law, any Authority or this Agreement in any Review Documentation; and
- 10.2.3 the Contractor's warranties, obligations and liabilities arising under or in connection with this Agreement (including in clause 9) remain unaffected notwithstanding:

- (a) any review of, comment upon, Direction on, consent to, or approval or rejection of, or failure to review, comment upon, give a Direction on, consent to, approve or reject, by the Principal or the Principal Representative (or any person on their behalf), any:
  - (i) Review Documentation, revised Review Documentation, amended Review Documentation or change to a Review Documentation; or
  - (ii) aspect of the Activities performed by or on behalf of the Contractor,

and no review of, comment upon, Direction on, consent to, or approval or rejection of, or failure or refusal to review, comment upon, give a Direction on, consent to, or approve or reject, any:

- (b) Review Documentation, revised Review Documentation, amended Review Documentation or change to a Review Documentation; or
- (c) aspect of the Activities performed by or on behalf of the Contractor,

will:

- (d) relieve the Contractor from, or otherwise limit, alter or affect, the Contractor's liabilities or responsibilities under this Agreement or otherwise at Law or in equity, including the obligation to achieve Completion of each Precinct by the relevant Date for Completion;
- (e) relieve the Contractor from any of its liabilities or obligations;
- (f) evidence or constitute a Direction by the Principal Representative to accelerate, disrupt, prolong or vary any or all of the Activities or granting an extension of time;
- (g) affect the time for performance of the Principal's or the Principal Representative's obligations or functions; or
- (h) waive, prejudice or limit the Principal's rights against the Contractor whether under this Agreement or otherwise at Law or in equity.

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## **11. Rollout Plan**

### **11.1 Development of Outline Rollout Plan**

The Contractor must further develop and update the Outline Rollout Plan and provide it to the Principal Representative for review in accordance with clause 10 no later than 7 after the Execution Date.

### **11.2 Content of Rollout Plan**

The Rollout Plan submitted under clause 11.1 must at a minimum set out:

- 11.2.1 the breakdown of the Replacement Parking Meters into Precincts;
- 11.2.2 the dates and times for commencement of the Parking Meter Installation Activities in respect of each Precinct;
- 11.2.3 the process to be followed, works to be carried out and criteria to be satisfied (including all requirements for the Final Rollout Plan as set out in the Specification) to enable the Principal Representative to confirm that:
  - (a) each Replacement Parking Meter has been completed to the standards required by this Agreement;
  - (b) each Site has been protected as required by this Agreement;
  - (c) the transition between the Existing Parking Meters and the Replacement Parking Meters has been completed in accordance with the standards required by this Agreement, including all Laws;
  - (d) the Existing Parking Meter Funds have been handled in accordance with this Agreement, including all Laws; andthe arrangements and interfaces between the Parking Meter Activities and the work of the Security Contractor and any other relevant Separate Contractor are carried out in accordance with this Agreement.

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## **12. Mobilisation and commencement**

### **12.1 Mobilisation Notice**

- 12.1.1 Before the commencement of any Parking Meter Installation Activities in respect of a Precinct, the Contractor must give a notice to the Principal Representative, identifying the following details which must be consistent with the corresponding details in the Final Rollout Plan unless otherwise approved by the Principal Representative:
  - (a) the relevant Precinct that the notice relates to;
  - (b) when the Contractor proposes to commence the relevant Parking Meter Installation Activities for that Precinct;
  - (c) the location of the relevant Parking Meters in that Precinct;
  - (d) the dates and times for removal of the relevant Existing Parking Meters and the installation of the relevant Replacement Parking Meters;
  - (e) subject to clause 12.1.1(f), any Authorisations required to be obtained by the Contractor in respect of the relevant Precinct;



- (f) any Part 5 Planning Approval that, in the Contractor's opinion, will be required to be obtained by the Principal in respect of the relevant Precinct,

**(Mobilisation Notice).**

- 12.1.2 The Contractor may only issue a Mobilisation Notice in relation to a Precinct:
  - (a) after a Part 5 Planning Approval has been issued in respect of that Precinct; and
  - (b) after each Authorisation (other than a Part 5 Planning Approval) required to carry out the Parking Meter Activities in the Precinct has been obtained.
- 12.1.3 The Contractor must not commence any relevant Parking Meter Installation Activities earlier than 1 Business Day after the issue of the relevant Mobilisation Notice.

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## **13. Access to Site**

### **13.1 Access to any Site**

- 13.1.1 Subject to clauses 13.1.3 and 13.2, the Principal must provide access to the relevant Sites sufficient for the Contractor to carry out the Parking Meter Activities in accordance with the Agreement (including the Final Rollout Plan).
- 13.1.2 Subject to clauses 13.1.3 and 13.2, the Principal must provide access to the relevant Sites sufficient for the Contractor to carry out the Maintenance Services in accordance with the Agreement (including the Maintenance Plan).
- 13.1.3 The Contractor acknowledges and agrees that during the Term its entitlement to physically access any Site in respect of the Activities is non-exclusive and is subject to the requirements and restrictions set out in the Specification and the other provisions of this Agreement.

### **13.2 Access preconditions for the Activities**

- 13.2.1 The Principal is not obliged to provide access to any Site under clause 13.1 until:
  - (a) the occurrence of one Business Day after the relevant Mobilisation Notice has been issued;
  - (b) all necessary Authorisations for the commencement of any part of the relevant Activities have been obtained;
  - (c) each of the Required Insurances are held and in force and effect and continue to be in force and effect in accordance with this Agreement;
  - (d) [in respect of the Maintenance Services, the Maintenance Unconditional Undertaking has been given to the Principal Representative;]
  - (e) [in respect of the Parking Meter Activities, the Implementation Unconditional Undertaking has been given to the Principal Representative;]
  - (f) [a duly executed and enforceable Deed of Guarantee has been given to the Principal Representative in accordance with clause 26.8]; and
  - (g) the Contractor has satisfied or complied with any other requirement of the Specification that must be satisfied or complied with by the Contractor before it can commence the Activities.

### **13.3 Failure to provide access**

Any failure by the Principal to comply with clause 13 will not be a breach of this Agreement, but may be a Delay Event for the purpose of a claim for an extension of time under clause 15.2.

### **13.4 Working hours on any Site**

13.4.1 Without limiting the Contractor's obligations to comply with Law, during the Term, the Parking Meter Activities and the Maintenance Services must only be conducted on the relevant Site between 7am to 10pm unless the conditions of an Authorisation or other Law prescribe different hours (in which case those hours will apply) and must not be conducted on Sundays or NSW public holidays, unless the prior written approval of the Principal Representative has been obtained.

13.4.2 Without limiting clause 13.4.1, the Contractor must immediately notify the Principal Representative if it becomes aware of any proposal by an Authority to change the conditions of any relevant Authorisation to change the permitted times and days specified in clause 13.4.1.

### **13.5 Controlling access and coordinating Activities**

The Contractor must:

13.5.1 when carrying out the Maintenance Services, maintain access for the public to the relevant Replacement Parking Meter and relevant parking spaces in accordance with the Maintenance Plan;

13.5.2 when carrying out the Parking Meter Activities, maintain access for the public to the relevant Replacement Parking Meter and relevant parking spaces in accordance with the Final Rollout Plan; and

13.5.3 ensure the Principal Representative and any other person authorised by the Principal or the Principal Representative, have safe access to:

(a) any Site; and

(b) any other place where any part of the Activities are being carried out or performed,

for such purposes as are necessary for the purposes of this Agreement.

### **13.6 Access to Site for Separate Contractors**

13.6.1 The Principal will be entitled to arrange for Separate Contractors to carry out Separate Contractor Works, including on or adjacent to any Site, concurrently with the execution by the Contractor of the Activities.

13.6.2 The Principal or the Principal Representative will notify the Contractor in writing of the identity of Separate Contractors.

13.6.3 The Contractor:

(a) must cooperate with all Separate Contractors (including the Security Contractor) and the Principal working on, adjacent to or in proximity of any Site and facilitate the proper execution and integration of the Separate Contractor Works with the Activities;

(b) acknowledges that it will not be provided with possession of, or sole access to, any Site;

(c) must permit the execution of Separate Contractor Works by Separate Contractors;

(d) must, without limiting clause 15, carry out the Activities in such a way as to ensure that Separate Contractors may have access to any Site prior to Completion of the relevant



Replacement Parking Meter in order to carry out and complete Separate Contractor Works simultaneously with the execution of the Activities;

- (e) must, subject to compliance with the Contractor's reasonable requirements in relation to site safety, site safety induction and the provision and use of required personal protective equipment, allow each Separate Contractor and any person authorised by a Separate Contractor, at no cost, access to, and use of:
    - (i) the relevant part of any Site necessary for the purpose of the relevant Separate Contractor Works;
    - (ii) any part of any Site (including delivery areas) as may be necessary for the relevant Separate Contractor to have access to or egress from that part of any Site on which the relevant Separate Contractor Works are being carried out, or are to be carried out; and
    - (iii) power, water and other Utilities reasonably proximate to any Site;
  - (f) without limiting clauses 24.1 and 24.2, must not damage Separate Contractor Works and must take reasonable precautions to protect the Activities and the Replacement Parking Meters from damage by the carrying out of Separate Contractor Works;
  - (g) must comply with all reasonable directions by the Principal Representative in connection with the execution by each Separate Contractor of Separate Contractor Works and the co-ordination of the Activities with Separate Contractor Works;
  - (h) must attend meetings as directed by the Principal Representative from time to time during or otherwise in relation to the execution of Separate Contractor Works;
  - (i) must carefully co-ordinate the Activities with Separate Contractor Works;
  - (j) without limiting the Contractor's obligations under clause 15, must take such steps as are reasonably necessary or required for the expeditious completion of the Activities, including as directed by the Principal Representative; and
  - (k) without limiting clause 15, will use reasonable endeavours to avoid interfering with, disrupting or delaying Separate Contractors or the performance of Separate Contractor Works.
- 13.6.4 Subject to, and without limiting clause 13.6.3(g), the Principal will use reasonable endeavours to:
- (a) minimise delay and disruption to the execution of the Activities caused by Separate Contractor Works;
  - (b) facilitate the co-ordination of the execution of Separate Contractor Works with the execution of the Activities; and
  - (c) procure that Separate Contractors comply with the Contractor's reasonable requirements with regards to Site safety.
- 13.6.5 The Principal and Separate Contractors may, with the consent of the Contractor (which consent will not be unreasonably withheld), store goods, materials, machinery, plant and equipment on or about any Site, and have access to those goods, materials, machinery, plant and equipment.
- 13.6.6 The Contractor will provide all reasonable assistance to the Principal and Separate Contractors in connection with any Applications to Authorities in relation to Separate Contractor Works.

- 13.6.7 The Contractor acknowledges and agrees that delay or disruption to the execution of the Activities caused by the execution of Separate Contractor Works will not constitute a breach of this Agreement by the Principal but may (subject to the other terms of this Agreement) constitute a Delay Event that will entitle the Contractor to an extension of time under clause 15.2.
- 13.6.8 The Contractor releases the Principal from any Claim, other than in respect of any right which the Contractor may have to claim an extension of time under clause 15.2, which it now or in the future may have against the Principal arising out of, or in any way in connection with, any delay or disruption which a Separate Contractor may cause to the execution of the Activities.
- 13.6.9 The Contractor acknowledges and agrees that:
- (a) its obligations under this clause 13.6 apply irrespective of:
    - (i) whether the workforce that purports to use any facilities are engaged by the Principal, a Separate Contractor or its respective subcontractors; and
    - (ii) any requirement of any applicable award relating to the provision of any such facilities; and
  - (b) neither the Principal nor the Principal Representative assumes any duty of care or other responsibility to the Contractor in relation to the execution of the Separate Contractor Works other than as expressly provided in this clause 13.6.
- 13.6.10 This clause 13.6 does not otherwise limit or affect any other obligation or liability of the Contractor under this Agreement.

## **13.7 Inspections**

At any time during the Term:

- 13.7.1 one or more of the Principal and the Principal Representative may, subject to compliance with the reasonable requirements of the Contractor as to insurance, health, safety and site security, at any time:
- (a) enter any Site; and
  - (b) arrange or carry out inspections, monitoring or auditing as necessary (and without notice) including to ensure that the Contractor is complying with its obligations under this Agreement in relation to the Activities,
- but in doing so must use reasonable endeavours not to cause unnecessary inconvenience to the Contractor when carrying out an inspection. The Contractor must provide any reasonable assistance requested by the Principal or the Principal Representative, or a member of their respective staff or a third party engaged for this purpose;
- 13.7.2 if access to any documentation and records of the Contractor is required for the carrying out of any inspection, monitoring or audit referred to in clause 13.7.1, then the Contractor must provide sufficient access to such documentation and records as requested;
- 13.7.3 the Contractor must ensure that an appropriately informed and authorised representative is available to discuss the details of the Activities, compliance with applicable Authorisations, quality and other relevant matters during the inspections, with the person conducting the inspection, monitoring or audit;
- 13.7.4 the Contractor must promptly take any reasonable action required by the Principal or the Principal Representative to rectify any error, non-compliance or inaccuracy identified in an audit in relation to the Activities or the Contractor's performance of this Agreement; and



- 13.7.5 the Contractor must maintain written records of all Activities, until 7 years after the expiry of the Term, including maintain each record that is required to be maintained under the Specification.

### **13.8 Right of occupation**

- 13.8.1 Without limiting any other provision of this Agreement, during the Term, the Contractor has a personal right of occupation to any Site on the terms set out in this Agreement and has no interest in the land on which any Replacement Parking Meter is situated.
- 13.8.2 Without limiting any other provision of this Agreement including clauses 13.6 and 13.7:
- (a) the legal right to possession and control over the Sites remains vested in the Principal at all times including during the Term and after expiry of the Term; and
  - (b) the Contractor acknowledges and agrees that the Principal, the Principal Representative, the Principal's Associates and any other person or entity nominated by the Principal have an unfettered right to enter and remain on the Sites at all times for whatever purpose the Principal considers reasonable, provided the Principal does not unreasonably interfere with the Activities.

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## **14. Installation**

### **14.1 Installation obligations**

The Contractor must ensure that the Parking Meter Installation Activities are carried out, and each Replacement Parking Meter is manufactured, supplied and installed:

- 14.1.1 in accordance with:
- (a) all Authorisations;
  - (b) the Final Rollout Plan;
  - (c) the Final Finishes Documentation;
  - (d) Best Industry Practice;
  - (e) the Specification;
  - (f) all applicable Laws; and
  - (g) the other requirements of this Agreement;
- 14.1.2 in a proper and workmanlike manner, using proper and tradesman like workmanship by appropriately qualified and experienced tradespersons; and
- 14.1.3 using materials that are suitable, new, undamaged, of good merchantable quality, and which are otherwise fit for their Intended Purpose.

### **14.2 Installation warranties**

Without limiting clause 14.1, the Contractor warrants that:

- 14.2.1 it will procure and engage, and ensure that each relevant Subcontractor procures and engages, the resources, expertise and experience necessary to carry out the Activities, and otherwise install the Replacement Parking Meters, in accordance with the requirements of this Agreement;

14.2.2 each Replacement Parking Meter will, at Completion of the relevant Precinct:

- (a) comply with:
  - (i) all Authorisations;
  - (ii) the Final Finishes Documentation;
  - (iii) the Specification;
  - (iv) all applicable Laws; and
  - (v) the other requirements of this Agreement; and
- (b) be fit for its Intended Purpose; and

14.2.3 all materials used in connection with the manufacture, supply and installation of any Replacement Parking Meter will be:

- (a) new, of merchantable quality, free from Defects and are otherwise fit for their Intended Purpose; and
- (b) used, operated and installed in accordance with the relevant manufacturer's instructions, or as otherwise required by this Agreement.

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## **15. Time for Parking Meter Activities**

### **15.1 Time for carrying out Parking Meter Activities**

- 15.1.1 Without limiting clause 2.2 but subject to clause 12.1.3, the Contractor must proceed with the Parking Meter Activities with due expedition and without delay.
- 15.1.2 The Contractor must carry out the Parking Meter Activities in accordance with this Agreement, and so as to ensure that each Precinct reaches Completion on or before the relevant Date for Completion for that relevant Precinct.

### **15.2 Extension of time**

- 15.2.1 Notwithstanding any other term of this Agreement, the Contractor may not make a Claim against the Principal for or in connection with a delay or disruption to the Parking Meter Activities (or any other work or Activities) other than where permitted in accordance with this clause 15.
- 15.2.2 If the Contractor becomes aware of anything which may cause delay to the Activities (or any part of the Activities), the Contractor must promptly (and in any event within 5 Business Days of the occurrence of the relevant event) give the Principal Representative written notice of that cause and the estimated delay.
- 15.2.3 Subject to this clause 15, the Contractor will be entitled to such extension of time to the Date for Completion of a Precinct, as the Principal Representative assesses, if:
  - (a) in respect of the relevant Date for Completion, the Contractor is or will be delayed:
    - (i) prior to the relevant Date for Completion, by a Delay Event in a manner that will prevent it from achieving Completion of the relevant Precinct by the relevant Date for Completion; or



- (ii) on or after the relevant Date for Completion, by an event referred to in paragraph (a) of the definition of Delay Event in a manner that will delay it in achieving Completion of the relevant Precinct;
  - (b) the Contractor has given the Principal Representative, within 10 Business Days of the first occurrence of the relevant Delay Event, a written claim for an extension of time evidencing the facts of causation and of the delay (including extent) to Completion of the relevant Precinct.
- 15.2.4 If a Delay Event evidenced in a claim under clause 15.2.3(b) causes delay beyond the date that is 10 Business Days after the first occurrence of the Delay Event, the Contractor must give the Principal Representative a further written claim for an extension of time (or an updated claim for an extension of time) evidencing the facts of that delay (including extent) to Completion every 10 Business Days until the relevant delay ceases.
- 15.2.5 It is a condition precedent to the Contractor's entitlement to an extension of time to the relevant Date for Completion that the Contractor submits the notices required by clauses 15.2.2, 15.2.3 and 15.2.4, strictly in accordance with the requirements set out in those clauses and clause 15.2.6 (including in relation to timing). The Contractor releases the Principal from any Claim (including for an extension of time) arising out of, or in any way in connection with, a Delay Event where the Contractor has failed to submit the notices required by clauses 15.2.2, 15.2.3 and 15.2.4 strictly in accordance with the requirements set out in those clauses and clause 15.2.6 (including in relation to timing).
- 15.2.6 Each claim under clause 15.2.3 and 15.2.4 must include details of:
- (a) the Delay Event and all the relevant facts;
  - (b) how Completion of the relevant Precinct will be, or is likely to be, delayed;
  - (c) any expected impact on the Final Rollout Plan; and
  - (d) the number of working days' extension of time claimed.
- 15.2.7 The Contractor will not be entitled to an extension of time if the Delay Event is not a direct and material cause of the relevant delay.
- 15.2.8 The Contractor's entitlement to an extension of time under clause 15.2.7:
- (a) is reduced by the extent to which the Contractor or its Associates:
    - (i) caused or contributed to the Delay Event or the delay; or
    - (ii) did not take reasonable steps to minimise the consequences of the Delay Event and of the delay; and
  - (b) to the extent that the delay is caused by both a Delay Event and a cause which is not a Delay Event, will be based on the proportionate contribution to the delay by the Delay Event.
- 15.2.9 Except for an extension of time under this clause 15, the Contractor is not entitled to make any Claim against the Principal in respect of any Loss or otherwise in connection with a Delay Event or any other delay or disruption in relation to the Activities (or any other works or activities) or the avoidance of any such delay and the Contractor releases the Principal from any such Claim, including for delay costs of any type.
- 15.2.10 Without limiting the Contractor's entitlement under clause 15.2.3, the Principal may, in its absolute discretion and without any obligation to do so, extend any Date for Completion by written notice to the Contractor, whether or not the Contractor is entitled to or has claimed an extension of time.

- 15.2.11 If the Contractor is entitled to an extension of time to a Date for Completion under this clause 15.2, the Principal Representative will, within 20 Business Days of receipt of the last notice required by clauses 15.2.2, 15.2.3 and 15.2.4, assess and determine a reasonable extension of time to the relevant Date for Completion.

### **15.3 Suspension**

- 15.3.1 At any time during the Term, the Principal may direct the Contractor to suspend the carrying out of any part of the Activities for such time as the Principal thinks fit, including if the Principal is of the opinion that it is necessary:
- (a) because of an act, default or omission of:
    - (i) the Principal or its employees, consultants, contractors or agents (not being the Contractor or employed by the Contractor); or
    - (ii) the Contractor or its Subcontractors or the Contractor's Associates;
  - (b) for the protection or safety of any person or property; or
  - (c) to comply with a court order.
- 15.3.2 If the Contractor wishes to suspend the carrying out of any part of the Activities, otherwise than under a right under a Law, the Contractor must obtain the Principal's prior written approval. The Principal may in its absolute discretion approve, or refuse to approve, the suspension and may impose conditions of approval.
- 15.3.3 As soon as the Principal becomes aware that the reason for any suspension no longer exists, the Principal will direct the Contractor to recommence suspended Activities as soon as reasonably practicable.
- 15.3.4 The Contractor may recommence the Activities suspended under clause 15.3.1 at any time after reasonable notice to the Principal.
- 15.3.5 The Contractor will bear the cost of suspension under clause 15.3.1(a)(i). If the Contractor made the protection, safety, court order or suspension of work necessary, the Contractor will bear the cost of suspension under clause 15.3.1(b) or 15.3.1(c). If the Contractor otherwise incurs more or less cost than otherwise would have been incurred, the difference will be assessed by the Principal Representative and will be:
- (a) if the Contractor incurs more cost than otherwise would have been incurred, a debt due and owing from the Principal to the Contractor; or
  - (b) if the Contractor incurs less cost than otherwise would have been incurred, a debt due and owing from the Contractor to the Principal.

### **15.4 Liquidated damages for delay**

- 15.4.1 If a Precinct does not reach Completion by the relevant Date for Completion, the Contractor will be indebted to the Principal for, and will pay the Principal as a debt due and payable, liquidated damages at the rate in Item 13 for every day after the relevant Date for Completion to and including the earliest of the relevant Date of Completion or termination of the Agreement or the Principal taking the whole of the Activities out of the hands of the Contractor.
- 15.4.2 The parties acknowledge and agree that the amount of liquidated damages in Item 13 is an agreed genuine pre-estimate of the Principal's likely damages and in proportion to the Principal's legitimate interests if the Date of Completion does not occur by the Date for Completion.



- 15.4.3 The amount payable under this clause 15.4 will be a debt due from the Contractor to the Principal.
- 15.4.4 If an extension of time to the relevant Date for Completion is directed under clause 15.2 after the Contractor has paid or the Principal has set off liquidated damages, the Principal shall forthwith repay to the Contractor such of those liquidated damages as represent the days the subject of the extension.
- 15.4.5 If this clause 15.4 (or any part of this clause 15.4) is found for any reason to be void, invalid or otherwise inoperative, so as to disentitle the Principal from recovering liquidated damages for the Contractor's failure to achieve Completion by the Date for Completion, the Principal shall be entitled to claim and recover damages from the Contractor for such failure under general law.
- 15.4.6 Nothing in this clause 15.4 limits or otherwise affects any of the Principal's rights or the Contractor's liabilities and obligations under this Agreement or otherwise.

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## **16. Completion**

### **16.1 Notices of estimated achievement of Completion**

In respect of each Precinct, the Contractor must give the Principal Representative 1 Business Day written notice of the estimated date on which Completion of the relevant Precinct will be achieved.

### **16.2 Initial joint inspection**

The Principal Representative and the Contractor Representative must, within 2 Business Days after the Principal Representative receives the notice referred to in clause 16.1, jointly inspect the relevant Precinct the subject of the notice referred to in clause 16.1 at a mutually convenient time.

### **16.3 Certificate of Completion**

Following the joint inspection under clause 16.2, in respect of the relevant Precinct, the Principal Representative must:

- 16.3.1 if in the reasonable opinion of the Principal Representative, Completion of the relevant Precinct has been achieved:
- (a) notify the Contractor of the date on which the Contractor achieved Completion of the relevant Precinct; and
  - (b) issue to the Contractor the Certificate of Completion; or
- 16.3.2 if in the opinion of the Principal Representative, Completion of the relevant Precinct has not been achieved, notify the Contractor of the reasons for that opinion, after which the procedure in clauses 16.1 and 16.3 will reapply.

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## **17. Defects**

### **17.1 Defects Liability**

- 17.1.1 Subject to clause 17.2, the Contractor must rectify all Defects, or ensure that all Defects are rectified, whether or not they are identified and notified by the Principal Representative.

- 17.1.2 Without limiting the previous paragraph, the Contractor must ensure that any Defects existing at Completion of the relevant Precinct are rectified as soon as possible after Completion of the relevant Precinct.

## **17.2 Defect Notification**

If at any time prior to the expiry of the Term, the Principal or Principal Representative discovers or believes there is a Defect, the Principal Representative may give the Contractor a Direction identifying the Defect and doing one or more of the following:

- 17.2.1 requiring the Contractor to rectify the Defect, or any part of it, and specifying the time within which this must occur;
- 17.2.2 requiring the Contractor to carry out a Variation to overcome the Defect, or any part of it, and specifying the time within which this must be carried out; or
- 17.2.3 advising the Contractor that the Principal will procure, or has procured, another contractor to rectify the Defect, or any part of it, or carry out a Variation to overcome the Defect, or any part of it.

## **17.3 Rectification of Defect**

- 17.3.1 If the Principal Representative gives a Direction under clause 17.2.1 or 17.2.2, the Contractor must rectify the Defect (or the part of it notified) or carry out the Variation (as the case may be):

- (a) within the time specified in the Principal Representative's Direction; and
- (b) regardless of the existence of a Dispute as to whether the Principal Representative's Direction is valid or whether the subject matter of the notice is in fact a Defect.

- 17.3.2 If:

- (a) the Principal issues a notice under clause 17.2.3; or
- (b) the Contractor does not comply with clause 17.3.1,

the Principal may, without prejudice to any other rights that the Principal may have against the Contractor with respect to the Defect under this Agreement or otherwise at Law, have the rectification or Variation (or any part of either) carried out at the Contractor's expense, and the cost of the rectification or Variation incurred by the Principal will be a debt due from the Contractor to the Principal.

## **17.4 Claim for Variation**

Where a Variation to overcome a Defect has been directed under clause 17.2.2:

- 17.4.1 the Principal Representative will determine:

- (a) the value of the Variation in accordance with clause 20.4; and
- (b) the cost of rectifying the Defect (or the part notified), valued under clause 20.4 as if the work involved in the rectification of the Defect (or the part notified) were a Principal Initiated Variation;

- 17.4.2 the Installation Fee or the Monthly Maintenance Amount (as applicable) will be adjusted by the difference between the valuations in clause 17.4.1 as follows:

- (a) if the value under clause 17.4.1(a) is greater than the cost under clause 17.4.1(b), the Installation Fee or the Monthly Maintenance Amount (as applicable) will be increased; or



- (b) if the cost under clause 17.4.1(b) is greater than the value under clause 17.4.1(a), the Installation Fee or the Monthly Maintenance Amount (as applicable) will be decreased; and

17.4.3 the Contractor will not be entitled to an extension of time to any Date for Completion.

## **17.5 Rights Not Affected**

Neither the Principal's rights, nor the Contractor's Liability, whether under this Agreement or otherwise according to Law in respect of Defects, whether before or after the expiration of the Term, will be limited or otherwise affected by:

- 17.5.1 the rights conferred upon the Principal by this clause 17 or any other provision of this Agreement;
- 17.5.2 the exercise of, or the failure by the Principal to exercise, any such rights; or
- 17.5.3 any notice or direction of the Principal under clause 17.2.

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## **18. Maintenance Services**

### **18.1 Primary Maintenance Obligations**

18.1.1 The Contractor must perform the Maintenance Services on each Replacement Parking Meter on and from the date of issue of the Certificate of Completion in respect of the relevant Precinct in accordance with:

- (a) the Maintenance Plan; and
- (b) the Specification,

and otherwise in accordance with this Agreement, until the expiry of the Term.

18.1.2 The Contractor must ensure that in respect of any Replacement Parking Meter required to be maintained in accordance with clause 18.1.1:

- (a) those Replacement Parking Meters are maintained:

- (i) in accordance with:

- (A) all Authorisations;
- (B) Best Industry Practice;
- (C) the Maintenance Plan;
- (D) the Specification;
- (E) all applicable Laws; and
- (F) the other requirements of this Agreement; and

- (b) so that all preventative maintenance, repair, rectification, replacement and restoration work is carried out as may be necessary to ensure compliance with the Contractor warranties set out in clause 18.2;

- 18.1.3 except in the case of an emergency, provide advanced written notice to the Principal of any repair, replacement, reinstatement or rectification work that is to be performed in respect of those Replacement Parking Meters;
- 18.1.4 ensure that the carrying out of all required maintenance, repair, replacement, reinstatement or rectification work required by this Agreement does not hinder or prevent the continued performance by the Contractor of all other aspects of the Activities; and
- 18.1.5 keep those Replacement Parking Meters (and their relevant Sites) clean and free from waste material, rubbish and other surplus material, and store and dispose of waste material, rubbish and other surplus material in appropriate receptacles and otherwise in accordance with Law.

## 18.2 Maintenance warranties

The Contractor warrants that in respect of any Replacement Parking Meter required to be maintained in accordance with clause 18.1.1:

- 18.2.1 those Replacement Parking Meters will be maintained and repaired so as to remain, at all times during the Term, fit for their Intended Purpose;
- 18.2.2 those Replacement Parking Meters will be capable of continuous and reliable use and function throughout the Term;
- 18.2.3 all materials used in the performance of the maintenance work required by this clause 18, or incorporated into those Replacement Parking Meters, will be new, of merchantable quality, free from Defects and are otherwise fit for their Intended Purpose;
- 18.2.4 if, in the performance of the maintenance work required by this clause 18, replacement of any material or part forming part of those Replacement Parking Meters is required, the replacement material or part will be of equal quality to those required by this Agreement (if applicable), and otherwise fit for their Intended Purpose; and
- 18.2.5 all materials or parts used in connection with the performance of the Maintenance Services will be used, operated and installed in accordance with the relevant manufacturer's instructions, or as otherwise required by this Agreement.

## 18.3 Defects

Without limiting or otherwise affecting the Contractor's obligations and liabilities under clause 17, the Contractor must, during the Term, repair, rectify, reinstate, replace or otherwise make good any Defect as soon as reasonably practicable after the Contractor becomes aware, or should reasonably have become aware, of the Defect.

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## 19. Payment and KPIs

### 19.1 Payment entitlements

- 19.1.1 The Principal must pay the Contractor the Fee subject to and in accordance with the Agreement.

### 19.2 Payment claims

- 19.2.1 The Contractor must submit claims for payment (each a '**Payment Claim**'):
  - (a) on the Installation Payment 1 Claim Date on account of the Installation Payment 1 Amount;



- (b) on the Installation Payment 2 Claim Date on account of the Installation Payment 2 Amount;
- (c) on the Installation Payment 3 Claim Date on account of the Installation Payment 3 Amount;
- (d) on the Completion Payment Claim Date on account of the Installation Completion Amount;
- (e) on each Progressive Maintenance Payment Claim Date for the Maintenance Fee in respect of the relevant month; and
- (f) on the Final Payment Claim Date in accordance with clause 19.5,

and notwithstanding any other term of the Agreement, the Contractor will have no entitlement to any part of the Installation Fee in respect of:

- (g) the Installation Payment 1 Amount unless the Installation Guarantee has been provided;
- (h) the Installation Payment 2 Amount unless one third of the Precincts have achieved Completion;
- (i) the Installation Payment 3 Amount unless two thirds of the Precincts have achieved Completion; or
- (j) the Installation Completion Amount unless all of the Precincts have achieved Completion.

19.2.2 Each Payment Claim shall be given in writing to the Principal Representative and shall include:

- (a) details of the value of Activities performed and in respect of:
  - (i) the Installation Payment 1 Claim Date, this must not exceed the Installation Payment 1 Amount;
  - (ii) the Installation Payment 2 Claim Date, this must not exceed the Installation Payment 2 Amount;
  - (iii) the Installation Payment 3 Claim Date, this must not exceed the Installation Payment 3 Amount;
- (b) details of other moneys then due to the Contractor under provisions of the Contract;
- (c) the documents referred to in clause 19.12; and
- (d) such other details (including supporting documentation) as may be reasonably required by the Principal Representative.

### **19.3 Payment Schedules and payment**

19.3.1 The Principal Representative must, within 10 Business Days after receiving such a Payment Claim, issue to the Principal and the Contractor a payment schedule setting out:

- (a) the Payment Claim to which it relates;
- (b) the Principal Representative's determination of the amount which the Principal is entitled to retain, deduct, withhold or set-off under the Agreement or otherwise;
- (c) the Principal Representative's determination of:

- (i) the moneys due from the Principal to the Contractor which the Principal proposes to pay; and
- (ii) if the Principal Representative determines that no moneys are due from the Principal to the Contractor, the moneys due from the Contractor to the Principal; and
- (d) if the amount referred to in subparagraph (c)(i) is less than the amount claimed in the relevant payment claim, the reasons for the difference and, if it is less because of the withholding, retention, deduction or setting-off of payment for any reason, the reasons for withholding, retaining, deducting or setting-off payment,

(a 'Payment Schedule').

The Principal Representative may, whether or not the Contractor submits (or is entitled to submit) a Payment Claim in accordance with clause 19.2, issue a Payment Schedule.

If the Principal Representative, in a Payment Schedule (other than the Final Certificate):

- (e) determines that moneys are due from the Principal to the Contractor, the Principal must (subject to clause 19.7) within 15 Business Days of the payment claim (or if the Contractor does not make a payment claim and the Principal Representative nevertheless issues a Payment Schedule, within 16 days of the Payment Schedule) pay to the Contractor the amount set out in the Payment Schedule as due from the Principal to the Contractor; or
- (f) determines that moneys are due from the Contractor to the Principal, the Contractor must, within 15 Business Days of the Payment Claim (or if the Contractor does not make a Payment Claim and the Principal Representative nevertheless issues a Payment Schedule, within 16 days of the Payment Schedule) pay to the Principal the amount set out in the Payment Schedule as due from the Contractor to the Principal.

Any failure by the Principal or the Principal Representative to set off against the amount that would otherwise be payable under a Payment Schedule any amount under this clause 19.3 will not limit or otherwise affect the Principal's right to subsequently set off the amount under clause 19.7.

Neither a Payment Claim, a Payment Schedule (including the Final Certificate) nor a payment of moneys shall be evidence of the value of work or an admission of liability or evidence that the subject Activities have been carried out satisfactorily. Payment shall be payment on account only.

The Principal Representative may, in any Payment Schedule, correct any error in, or otherwise modify, any previous Payment Schedule.

#### **19.4 Unfixed plant and materials**

- 19.4.1 In respect of any Replacement Parking Meter for which the Contractor is entitled to claim payment but has not yet been installed, the Contractor must satisfy the Principal Representative that the relevant Replacement Parking Meters have been paid for, properly stored and protected, and labelled the property of the Principal Representative and will upon installation be the unencumbered property of the Principal.

#### **19.5 Final payment claim and certificate**

- 19.5.1 On the Final Payment Claim Date, the Contractor must give the Principal Representative a written final payment claim endorsed 'Final Payment Claim' being a payment claim together with all other claims whatsoever arising out of, or in any way in connection with, the subject matter of this Agreement.



- 19.5.2 Within 10 Business Days following receipt of the Final Payment Claim, the Principal Representative shall issue to the Contractor a Final Certificate in the form of a Payment Schedule which, in addition to the requirements of clause 19.3, certifies the moneys finally due and payable between the Contractor and the Principal on any account whatsoever arising out of, or in any way in connection with, the subject matter of the Agreement.
- 19.5.3 On and from the date that is 30 Business Days after the expiry of the Term, the Principal Representative may, whether or not the Contractor submits (or is entitled to submit) a Final Payment Claim in accordance with this clause 19.5, issue a Final Certificate.
- 19.5.4 Subject to clause 19.7, if the Principal Representative in the Final Certificate determines that moneys are due from the Principal to the Contractor, the Principal shall pay the amount set out in the Final Certificate as due from the Principal to the Contractor within 15 Business Days after receipt of the Final Payment Claim.
- 19.5.5 If moneys are set out in the Final Certificate as due from the Contractor to the Principal, the Contractor must pay the amount set out in the Final Certificate as due from the Contractor to the Principal within 5 Business Days after the issue of the Final Certificate.
- 19.5.6 On the date that is 25 Business Days after the expiry of the Term, the Contractor releases the Principal from any Claim in respect of any fact, matter or thing arising out of, or in any way in connection with, the Activities or the Agreement which occurred prior to the expiry of the Term, except for any claim included in the Final Payment Claim which is given to the Principal Representative in accordance with the terms of this clause 19.5 and on or before the date that is 25 Business Days after the expiry of the Term.

## **19.6 Interest**

- 19.6.1 Simple interest in Item 21 shall be due and payable after the date of default in payment.

## **19.7 Set off**

- 19.7.1 The Principal may:
- (a) deduct from moneys otherwise due to the Contractor:
    - (i) any debt or other moneys due from the Contractor to the Principal; or
    - (ii) any claim to money which the Principal may have against the Contractor whether for damages (liquidated or unliquidated) or otherwise,whether under the Agreement or on any other legal or equitable basis;
  - (b) without limiting clause 19.7.1(a), deduct from moneys otherwise due to the Contractor any amount that the Principal is obliged to withhold from payment to the Contractor under the Security of Payment Act;
  - (c) deduct from moneys otherwise due to the Contractor, in circumstances where the Contractor has not complied with clause 38.1, the full amount that would otherwise have been payable by the Principal to the Contractor in respect of a Payment Claim; and
  - (d) deduct from moneys otherwise due to the Contractor, any amount the Principal is entitled to withhold in accordance with any legislative requirement, including section 175B of the *Workers Compensation Act 1987* (NSW), Schedule 2 Part 5 of the *Payroll Tax Act 2007* (NSW) and section 127 of the *Industrial Relations Act 1996* (NSW).
- 19.7.2 Nothing in this clause 19.7 affects the right of the Principal to recover from the Contractor the whole of the debt or claim or any balance that remains owing.
- 19.7.3 This clause 19.7 will survive any termination of the Agreement.

## **19.8 Service of notices under the Security of Payment Act**

19.8.1 The Contractor shall:

- (a) ensure that a copy of any written communication it delivers or arranges to deliver to the Principal of whatever nature in relation to the Security of Payment Act (including, without limitation, payment claims under the Security of Payment Act), is provided to the Principal Representative at the same time; and
- (b) if the Contractor becomes aware that a Subcontractor is entitled to suspend work under the Security of Payment Act, promptly and without delay give the Principal and the Principal Representative a copy of any written communication of whatever nature in relation to the Security of Payment Act which the Contractor receives from a Subcontractor.

## **19.9 Role of Principal Representative**

19.9.1 In issuing payment schedules under the Security of Payment Act (but not in receiving payment claims under the Security of Payment Act), the Principal Representative acts as the agent of the Principal.

## **19.10 Payment Schedules**

19.10.1 The amount (if any) set out in a Payment Schedule (including the Final Certificate) as the amount of payment which the Principal proposes to make to the Contractor is, for the purposes of sections 8, 9, 10 and 11 of the Security of Payment Act, the amount of the "progress payment" (as defined in the Security of Payment Act) calculated in accordance with the Agreement which the Contractor is entitled to be paid under the Agreement.

19.10.2 Failure by the Superintendent to set out in a Payment Schedule an amount which the Principal is entitled to retain, deduct, withhold or set off (whether under the Agreement or otherwise) from the amount which would otherwise be payable to the Contractor by the Principal will not prejudice the Principal's right to subsequently exercise that right to retain, deduct, withhold or set off any amount.

## **19.11 Subcontractor suspension**

If the Principal becomes aware that a Subcontractor is entitled to suspend work under the Security of Payment Act, the Principal may (in its absolute discretion) pay the Subcontractor such money that is or may be owing to the Subcontractor in respect of that work, and any amount paid by the Principal shall be a debt due from the Contractor to the Principal.

## **19.12 Supporting Documentation**

19.12.1 The Contractor must submit the Supporting Documentation to the Principal Representative:

- (a) on the date that is seven days after the Execution Date;
- (b) on Completion of one third of the Precincts to achieve Completion;
- (c) on Completion of two thirds of the Precincts to achieve Completion;
- (d) on Completion of the last Precinct to achieve Completion;
- (e) from the Date of Completion of the last Precinct to achieve Completion, on the date specified in Item 20, until the expiry of the Term;
- (f) within 25 Business Days after the expiry of the Term; and
- (g) when otherwise requested by the Principal.



- 19.12.2 Supporting Documentation must be dated, and completed to, the end of the period to which the relevant Supporting Documentation relates (which must not be earlier than the relevant times prescribed by clause 19.12.1). The Contractor must not submit Supporting Documentation earlier than the relevant times prescribed by clause 19.12.1.

### 19.13 KPIs

- 19.13.1 The Contractor must meet or exceed the KPIs.
- 19.13.2 The Principal Representative will measure the Contractor's performance against the KPIs as set out in Schedule 13.
- 19.13.3 The Contractor must comply with its obligations relating to the measurement and reporting of KPIs and the remedy of any failure to meet or exceed any of the KPIs, as set out in Schedule 13.

### 19.14 Monthly Maintenance Amount CPI Increase

- 19.14.1 28 days prior to the annual anniversary of the commencement of the Term, the Contractor may request that the Monthly Maintenance Amount is increased by a reasonable amount to be determined by the Principal Representative on account of CPI increases. Upon receipt of such request, the Principal Representative shall determine the amount of such increase and the Monthly Maintenance Amount will be increased accordingly.

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## 20. Variations

### 20.1 Proposed Variations

- 20.1.1 At any time prior to the expiry of the Term (but without limiting clause 17.2.2) the Principal Representative may issue a document setting out details of a proposed Variation that the Principal is considering, and requesting the Contractor to provide a proposal in respect of that proposed Variation (**Variation Proposal Request**).
- 20.1.2 Within 10 Business Days of the receipt of a Variation Proposal Request, or at such other time as is approved by the Principal Representative, the Contractor must provide to the Principal Representative a written notice (**Variation Proposal**) setting out:
- (a) the amount the Contractor proposes as payable by the Principal to the Contractor, with details of how such amount has been calculated;
  - (b) if the proposed Variation is in respect of the Parking Meter Activities, the expected effect that the proposed Variation would have on the Final Rollout Plan and the Contractor achieving Completion of each Precinct by the relevant Date for Completion, with details of how the effect has been assessed;
  - (c) if the proposed Variation would entitle the Contractor to an extension of time, the amount of the extension of time that the Contractor would claim in respect of the proposed Variation, with details of how the amount has been calculated;
  - (d) sufficient details to allow the Principal to review the reasons, and, if desired, reconsider the need, for the Variation; and
  - (e) any other information concerning the proposed Variation that the Principal Representative requires.
- 20.1.3 The Principal is not obliged to proceed with any proposed Variation that is the subject of a Variation Proposal Request.

## **20.2 Variation Orders**

- 20.2.1 Whether or not the Principal Representative has issued a Variation Proposal Request under clause 20.1, the Principal Representative may at any time during the Term (but without limiting clause 17.2.2) direct the Contractor to carry out a Variation by issuing a Variation Order. The Principal Representative may, in any Variation Order, state that the proposed amount set out in any relevant Variation Proposal is agreed.
- 20.2.2 No Variation or direction to carry out a Variation will invalidate this Agreement.
- 20.2.3 The Contractor must comply with a Variation Order irrespective of:
- (a) the nature, extent or value of the work the subject of the Variation;
  - (b) the location or timing (including the impact on the achievement of Completion of each Precinct by the relevant Date for Completion) of the work involved in the Variation;
  - (c) whether or not it agrees with any or all of the terms of the Variation Order; or
  - (d) any Dispute related to the Variation.
- 20.2.4 The Contractor's entitlement (if any) to an extension of time arising out of a Principal Initiated Variation will be dealt with under clause 15.2 and not this clause 20.

## **20.3 Omissions**

If a Variation the subject of a direction by the Principal requires the omission or deletion of any part of the Activities:

- 20.3.1 the Principal may thereafter either perform this work itself or employ or engage any other person or persons to carry out and complete the omitted or deleted work; and
- 20.3.2 the Principal will not be liable upon any Claim by the Contractor arising out of or in connection with any work being omitted or deleted from the Activities, whether or not the Principal thereafter performs this work itself or employs or engages any other person or persons to carry out and complete the omitted or deleted work.

## **20.4 Valuation – Adjustment to Installation Fee or Monthly Maintenance Amount**

Subject to clauses 20.8 and 20.9, to the extent a Principal Initiated Variation relates to the Parking Meter Activities, or the Maintenance Services, the Installation Fee or the Monthly Maintenance Amount (as applicable) will be increased or decreased (as applicable) by an amount determined by the Principal Representative as follows:

- 20.4.1 where the relevant Variation Order stated that the proposed amount set out in the relevant Variation Proposal is agreed, the agreed amount as specified in the relevant Variation Proposal;
- 20.4.2 to the extent clause 20.4.1 does not apply, an amount determined by the Principal Representative on the basis of the Rates provided however that where the Principal Representative has issued a Variation Proposal Request in respect of the relevant Variation, the amount determined by the Principal Representative will not be greater than any relevant amount set out in any relevant Variation Proposal issued by the Contractor; or
- 20.4.3 to the extent clauses 20.4.1 and 20.4.2 do not apply, an amount determined by the Principal Representative on the basis of reasonable rates and prices, which will be increased, to the extent that those rates and prices are not already inclusive of overheads, preliminaries and profit, by the percentage set out in Item 7, provided however that where the Principal Representative has issued a Variation Proposal Request in respect of the relevant Variation,



the amount determined by the Principal Representative will not be greater than any relevant amount set out in any relevant Variation Proposal issued by the Contractor.

## **20.5 Variations Requested by Contractor**

The Contractor may, for its convenience, request the Principal Representative to direct a Variation. Any such request must be in writing and must contain the following details:

- 20.5.1 a full description of the proposed Variation, including any associated amendments to be made to any Review Documentation;
- 20.5.2 the additional or reduced cost or time involved in the Variation and any proposal for sharing any cost savings with the Principal, including the amount;
- 20.5.3 any benefits that would flow to the Principal or others;
- 20.5.4 the expected effect on the Final Rollout Plan and the achievement of any Date of Completion; and
- 20.5.5 detailed particulars as to whether the proposed Variation would:
  - (a) have an adverse effect on the workmanship, quality or durability of any part of a Replacement Parking Meter;
  - (b) breach any applicable Laws, or require any additional Approvals; or
  - (c) diminish the design quality indicated in the Specification or any other requirement of the Specification.

## **20.6 Determination by Principal**

- 20.6.1 If the Contractor makes a request in accordance with clause 20.5, the Principal Representative may, in its absolute discretion:
  - (a) give a written notice to the Contractor rejecting the request; or
  - (b) issue a Variation Order directing the Contractor to carry out the relevant Variation.
- 20.6.2 The Principal Representative will not be obliged to exercise its discretion reasonably, for the benefit of the Contractor, or at all.

## **20.7 Variation Approved by Principal**

- 20.7.1 If the Principal Representative issues a Variation Order under clause 20.6:
  - (a) unless otherwise agreed in the relevant Variation Order, the Contractor will not be entitled to make, and the Principal will not be liable upon, any Claim arising out of or in connection with the Variation;
  - (b) if the Contractor's request offered to share savings in cost with the Principal, the amount offered by the Contractor in its request, or such other amount as may have been agreed between the Principal and the Contractor prior to the issue of the relevant Variation Order, will (at the election of the Principal, to be made in the absolute discretion of the Principal) be applied to the calculation of the adjustment to the Installation Fee or the Monthly Maintenance Amount (as applicable); and
  - (c) the Contractor will be responsible for ensuring that all Replacement Parking Meters that are in any way affected by the Variation comply with the requirements of this Agreement, and that the performance of the Activities in accordance with this Agreement is not adversely effected by the Variation.

20.7.2 Unless and until the Principal issues a Variation Order under clause 20.6, no Variation will arise out of the Contractor's request, and the Contractor must at all times:

- (a) continue to carry out the Activities as required by this Agreement; and
- (b) otherwise comply with its obligations under this Agreement.

## **20.8 Notice of Variation**

20.8.1 If the Contractor believes that a direction by the Principal or the Principal Representative constitutes or involves a Variation, the Contractor must, if it wishes to make, and as a condition precedent to, a Claim against the Principal arising out of or in connection with the direction:

- (a) within 2 Business Days of receiving the direction and before commencing work on the subject matter of the direction, give notice to the Principal Representative that it considers the direction constitutes or involves a Variation;
- (b) within 5 Business Days of issuing the notice under clause 20.8.1(a), submit the Claim referred to in clause 20.8.2; and
- (c) continue to carry out its obligations in accordance with this Agreement and all directions of the Principal or the Principal Representative, including (subject to clause 20.8.1(c)) any direction in respect of which notice has been given under this clause 20.8.1.

20.8.2 Any written Claim referred to in clause 20.8.1(b) must include:

- (a) detailed particulars, including the date or dates, of the direction, including any related event, circumstance, act, omission, fact, matter or thing upon which the Claim is based;
- (b) the provisions of this Agreement or other legal basis upon which the Claim is based; and
- (c) details of the amount claimed and how it has been calculated.

20.8.3 If the Contractor issues a notice referred to in clause 20.8.1(a) or a Claim referred to in clause 20.8.1(b), the Principal Representative may:

- (a) confirm that the direction constitutes or involves a Variation by issuing a Variation Order, in which case the Contractor must continue to comply with the direction;
- (b) deny that the direction constitutes or involves a Variation, in which case:
  - (i) any Claim under clause 20.8.2 will be deemed to be rejected in full by the Principal;
  - (ii) the Contractor must continue to comply with the direction irrespective of any Claim or Dispute in relation to the direction or any part of it; and
  - (iii) the Contractor may issue a notice of Dispute under clause 29; or
- (c) withdraw the direction by written notice to the Contractor.

## **20.9 Pre-priced Variations**

20.9.1 The parties acknowledge and agree that:

- (a) as at the Execution Date, the Activities do not include the Pre-Priced Variations;



- (b) the Principal may, but is not obliged to, elect that the Contractor perform the Pre-Priced Variations and the Contractor shall comply with a Direction of the Principal Representative or the Principal in respect of such election; and
  - (c) the Pre-priced Variations are Variations which are of a character and extent contemplated by, and capable of being carried out under, the provisions of the Agreement.
- 20.9.2 If a Direction is issued under clause 20.9.1 directing the Contractor to carry out a Pre-Priced Variation, then:
  - (a) the Activities shall be deemed to include, or be amended by, the Pre-Priced Variation; and
  - (b) clause 20.4 shall not apply in respect of the Pre-priced Variation and the Monthly Maintenance Amount or Installation Fee (as applicable) shall be increased by the relevant Pre-Priced Variation Price only.
- 20.9.3 The amount to which the Contractor is entitled under clause 20.9.2 will be a limitation on the Principal's liability to the Contractor arising out of, or in any way in connection with, the Pre-Priced Variation and, notwithstanding any other provision of the Contract, the Contractor shall not have any entitlement to any Claim arising out of, or in any way in connection with, the Pre-Priced Variation other than as provided by clause 20.9.2.
- 20.9.4 Nothing in this clause 20.9 will limit or otherwise affect the right of the Principal Representative to issue a Variation Order.

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## **21. Contractor's personnel and Subcontractors**

### **21.1 Contractor not to contract without Principal consent**

The Contractor must not contract for the performance of any service, work or other activity or obligation under this Agreement by a Subcontractor without the prior written consent of the Principal, which consent (if provided) may be given subject to such conditions as the Principal considers appropriate in its discretion. The conditions of approval may include the provision of collateral warranties and acknowledgments of the Principal's rights under this Agreement sufficient to ensure that the Principal's rights are in no way affected or limited by the proposed contracting arrangement.

### **21.2 Warranties regarding Subcontractors**

The Contractor warrants and represents to the Principal that each Subcontractor engaged to perform any portion of the Activities will:

- 21.2.1 be appropriately licensed and registered in accordance with Law;
- 21.2.2 be professionally qualified and suitably experienced in the performance of services, works or other activities or obligations the same as, or substantially similar to, the relevant part of the Activities they are engaged to perform; and
- 21.2.3 exercise the degree of skill, professionalism, care, prudence, diligence and operating practice which would reasonably and ordinarily be expected from a skilled and experienced contractor engaged in the performance of services, works or other activities or obligations of a nature the same as, or substantially similar to, the relevant part of the Activities they are engaged to perform.

### **21.3 Liability unaffected**

- 21.3.1 The Contractor's obligations and liabilities under this Agreement remain unaffected notwithstanding the engagement of a Subcontractor or the Principal's consent to the identity of a Subcontractor or the terms of any contract with a Subcontractor.
- 21.3.2 The Contractor is liable for any act, omission, default or negligence of any Subcontractor (or any of its other Associates) as if it was the act, omission, default or negligence of the Contractor.

### **21.4 Contractor Personnel**

- 21.4.1 The Contractor must engage sufficient personnel to carry out the Activities in accordance with this Agreement.
- 21.4.2 The Contractor must use experienced and skilled personnel to perform its obligations in relation to the Activities.
- 21.4.3 Where, in the Principal's reasonable opinion, any staff or personnel engaged in connection with the performance of any part of the Activities (whether such staff or personnel have been engaged by, or are employees of, the Contractor or any Subcontractor):
- (a) is or has been negligent;
  - (b) is or has been guilty of misconduct or is committing an act or omission, or has committed an act or omission, that is or may be unsafe, or that may otherwise endanger people, property or the Environment; or
  - (c) is otherwise incompetent or not suitably skilled, qualified or experienced,

the Principal may issue a written notice requiring the relevant person to be removed from any Site and performance of the Activities (as applicable). The Contractor must immediately comply with any such notice, and not at any time thereafter engage the relevant person, and ensure that the relevant person is not at any time thereafter engaged, in the performance of the Activities (as applicable).

### **21.5 Subcontractor Warranty**

- 21.5.1 The Contractor must, as a condition precedent to Completion in respect of each Precinct, ensure that each Subcontractor of a category described in Item 23 provides a warranty in the form prescribed by Schedule 14 (or if no form of warranty is prescribed in Schedule 14, on terms reasonably commercially available having regard to the relevant Subcontractor and the nature of the work carried out by that Subcontractor), and covering the relevant period set out in Item 23 from the Date of Completion.

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## **22. Representatives**

### **22.1 Appointment and role of the Principal Representative**

- 22.1.1 The Principal Representative is appointed as the agent of the Principal for the purpose of this Agreement.
- 22.1.2 The Principal will appoint a person to be the Principal Representative for the purposes of this Agreement and will give written notice of that appointment (and any subsequent change) to the Contractor. The Principal Representative may delegate some or all of the Principal Representative's functions and powers under this Agreement to one or more persons, and vary or terminate, in whole or part, such delegations from time to time.



- 22.1.3 The Principal will ensure that at all times there is a Principal Representative.
- 22.1.4 The Principal and the Contractor acknowledge and agree that:
- (a) the role of the Principal Representative is to monitor the performance of the Contractor and its compliance with the requirements of this Agreement and to perform those functions allocated to the Principal Representative under this Agreement; and
  - (b) the Principal Representative is subject to the Directions of the Principal.
- 22.1.5 The Principal Representative's powers and functions are those given to it under this Agreement.
- 22.1.6 The Principal may from time to time replace the Principal Representative upon 5 days' written notice to the Contractor.
- 22.1.7 If the Contractor considers that any action of the Principal Representative is outside of the powers of the Principal Representative or is in breach of this Agreement, the Contractor must within 5 Business Days inform the Principal Representative in writing, giving details of the action and the reasons why the Contractor has formed that opinion. The Contractor must continue to perform in accordance with this Agreement.
- 22.1.8 The Contractor is not entitled to make any Claim against the Principal in respect of any Loss in connection with any action of the Principal Representative that is outside of the powers of the Principal Representative or is in breach of this Agreement that has not been notified to the Principal Representative under clause 22.1.7 and the Contractor releases the Principal from any such Claim.

## **22.2 Appointment and role of the Contractor Representative**

- 22.2.1 The Contractor Representative is the agent of the Contractor.
- 22.2.2 The Contractor must appoint a person to be the Contractor Representative for the purposes of this Agreement.
- 22.2.3 The Contractor will ensure that at all times:
- (a) the Contractor Representative acts reasonably and in good faith in relation to this Agreement; and
  - (b) in carrying out its functions under this Agreement, the Contractor Representative is to act within a reasonable time (and where no time is specified, within 7 days) and in accordance with this Agreement.
- 22.2.4 All communications, notices, documents or instruments under this Agreement may be served on the Contractor by serving on the Contractor Representative.
- 22.2.5 Matters within the Contractor Representative's knowledge (including Directions received from the Principal Representative) will be deemed to be within the Contractor's knowledge.
- 22.2.6 The Contractor may appoint an alternative Contractor Representative upon 5 days' written notice to the Principal of its intention to do so, provided that the Principal consents to the new appointment (such consent not to be unreasonably withheld).

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## **23. Notices**

### **23.1 Service of notice**

23.1.1 Subject to clause 23.3.2, a notice or other communication required or permitted, under this Agreement, to be served on a person must be in writing and may be served:

- (a) personally, on the person;
- (b) by leaving it at the person's current address for service;
- (c) by posting it by regular prepaid post, priority prepaid post, registered post, priority registered post or express post addressed to that person at the person's current address for service; or
- (d) by email:
  - (i) with a subject heading of the email containing the name of the notice that is being given in the following format: "On Street Meter Replacement – Supply, Install and Maintain – [name of notice]" – so that the nature of the email is readily identifiable by the recipient; and
  - (ii) to the email address set out on page 7 of this Agreement under the heading 'Parties', or such other email address notified for the purposes of this clause 23.1.1(d) by the recipient to the sender in writing from time to time.

23.1.2 If the person to be served is a company, the notice or other communication may be served on it at the company's registered office.

### **23.2 Particulars for service**

23.2.1 The address, facsimile number and email address of each party are set out on page 7 of this Agreement under the heading 'Parties' (or as notified by a party to the other parties in accordance with this clause).

23.2.2 Any party may change its address, facsimile number or email address for service by giving notice to the other party.

### **23.3 Time of service**

23.3.1 Subject to clause 23.3.2, a notice or other communication is deemed delivered:

- (a) if delivered personally or left at the person's address, upon delivery;
- (b) if posted within Australia to an Australian address:
  - (i) using regular prepaid post or registered post, 6 Business Days after posting;
  - (ii) using priority prepaid post or priority registered post, 4 Business Days after posting; and
  - (iii) using express post, 2 Business Days after posting;
- (c) if posted from a place to an address in a different country, 10 Business Days after posting;
- (d) if delivered by facsimile, subject to clause 23.3.1(f), at the time indicated on the transmission report produced by the sender's facsimile machine indicating that the facsimile was sent in its entirety to the recipient's facsimile;



- (e) if delivered by email, subject to clause 23.3.1(f), immediately upon the email being sent, unless the sender receives an automatically generated notification from the recipient, or the recipient's email system, that the notice or relevant email has not been delivered or received or that the delivery of the notice or relevant email has been delayed ('bounce back notification'), in which case the notice is not taken to have been effected;
- (f) if the facsimile or email (other than where the sender receives a bounce back notification from the recipient or the recipient's email system) is received:
  - (i) on a day which is not a Business Day in the place to which the notice is sent; or
  - (ii) (except in the case of a Payment Schedule) is received later than 4:00 pm (local time),

at 9.00am on the next Business Day.

23.3.2 Any notice, demand, consent or other communication given or made by the Contractor under or in connection with this Agreement which is purported to be given or made by way of email, will be of no effect if such notice, demand, consent or other communication is given in relation to clause 15, 24, 28 or 29.

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## **24. Risk and Insurance**

### **24.1 Contractor's obligation for care of any Site**

The Contractor is responsible for the care of each Replacement Parking Meter, each Site, the Construction Equipment, any associated temporary works and all materials and things in storage relating to the Parking Meter Activities which are not on the relevant Site or which are in transit to the relevant Site by the Contractor or the Contractor's Associates in connection with the Parking Meter Activities, from the Execution Date until the Date of Completion.

### **24.2 Contractor to rectify damage to property**

Where any loss of, or damage to:

- 24.2.1 the property referred to in clause 24.1 occurs during the period for which the Contractor is responsible for the care of the relevant property under clause 24.1; or
- 24.2.2 any other property occurs arising out of, or in any way in connection with, the performance of, or any act or omission of the Contractor or any Contractor's Associate in connection with, the Parking Meter Activities,

the Contractor must:

- 24.2.3 promptly notify the Principal of any material loss of, or material damage to, the relevant property; and
- 24.2.4 promptly rectify any loss of, or damage to, the relevant property (including so that, in respect of property referred to in clause 24.1, it conforms in every respect with the requirements of this Agreement).

### **24.3 Insurance**

On and from the Execution Date, the Contractor must effect and maintain the following insurances (and any other insurance required by Law or that a prudent design and construction contractor in the Contractor's position would take out) on the terms and conditions required by this clause 24:

- 24.3.1 workers compensation insurance for all employees employed by the Contractor, including liability under statute and at Law, and which otherwise complies with clause 24.4;
- 24.3.2 public and product liability insurance which covers:
- (a) the Contractor, the Contractor's Associates, the Principal and the Principal's Associates for their respective rights and interests; and
  - (b) liabilities to third parties for loss of or damage to property (other than property required to be insured under clause 24.3.3) and the death of, or injury to, any person, excluding personal injury to or death of a person who at the time is defined as a worker of the insured under any Law in relation to worker's compensation insurance of any Australian jurisdiction where such claims are made directly by the worker of the insured or any dependant of such worker (excepting worker to worker claims);
- 24.3.3 contract works insurance covering the Contractor, the Contractor's Associates and the Principal for risks including loss or damage to:
- (a) the relevant Site (including any associated temporary works);
  - (b) all materials and things (including Construction Equipment) brought onto, or in storage on, the relevant Site by the Contractor or the Contractor's Associates in connection with the Parking Meter Activities;
  - (c) all materials and things in storage relating to the Parking Meter Activities which are not on any Site or which are in transit to any Site including by sea or air shipment (and in this regard the Contractor must effect appropriate marine cargo insurance in connection with any materials to be imported into Australia); and
  - (d) the property of the Principal on any Site;
- 24.3.4 professional indemnity insurance which extends to any liability the Contractor may have to the Principal under this Agreement as a result of any failure by the Contractor or any of the Contractor's Associates to exercise due skill and care; and
- 24.3.5 motor vehicles insurance,

each policy for an amount not less than the applicable amount specified in Item 8 (subject to clause 24.8.2).

#### **24.4 Workers compensation**

The Contractor must from the Execution Date and until the expiry of the Term or earlier termination of their engagement or this Agreement, effect and maintain, and ensure that each Subcontractor effects and maintains, workers compensation insurance which covers liability of an employer for any injury, damage, expense, loss or liability suffered or incurred by any person engaged in the Activities (or their dependants) as required by any applicable Law.

#### **24.5 Insurances generally**

The Contractor must ensure that:

- 24.5.1 all Required Insurances are with a Reputable Insurer or with insurers otherwise approved in writing by the Principal;
- 24.5.2 except with respect to the Required Insurances referred to in clauses 24.3.1, 24.3.4 and 24.4, all Required Insurances are on terms and conditions (including as to endorsements, exclusions, alterations and deductibles) approved by the Principal;



- 24.5.3 all Required Insurances specified in clauses 24.3.2 and 24.3.3 provide cover for all Subcontractors engaged by the Contractor in relation to the Activities;
- 24.5.4 except for the Required Insurances specified in clauses 24.3.1 and 24.3.4, all Required Insurances provide cover for both the Principal and the Contractor (as well as such other names as the Agreement specifies, acting reasonably) and identify their respective rights and interests; and
- 24.5.5 any Required Insurances which provide cover for more than one person as an insured include a cross liability clause in which the insurer agrees:
- (a) to waive all rights, remedies or relief to which it may become entitled by way of subrogation against any of the persons comprising the insured;
  - (b) that the term 'insured' applies to each of the persons comprising the insured as if a separate policy of insurance had been issued to each of them;
  - (c) that any non-disclosure, breach of any duty or act or omission by one insured, or any failure by any insured to observe and fulfil the terms of the policy, does not prejudice the right of the other insured to claim under any Required Insurance; and
  - (d) notice of a claim by any insured will be accepted by the insurer as notice by all insureds.

#### **24.6 Evidence of policies**

- 24.6.1 The Contractor must, in respect of each of the Required Insurances, give the Principal Representative:
- (a) acceptable proof of currency of the insurances referred to in clause 24.3, on or before the Execution Date; and
  - (b) every year on renewal and otherwise on request, other evidence of the Required Insurances, including currency, which the Principal Representative reasonably requires.
- 24.6.2 If the Contractor does not comply with clause 24.6.1, the Principal may affect the Required Insurances and may:
- (a) recover the cost of doing so as a debt due from the Contractor; or
  - (b) deduct the premiums payable for them from amounts payable to the Contractor; or
  - (c) recover the cost from the proceeds of any Unconditional Undertaking held under this Agreement.

#### **24.7 Notices**

The Contractor must promptly notify the Principal Representative in writing each time an insurer under any of the Required Insurances gives the Contractor a notice of cancellation or any other material notice in respect of the relevant Required Insurance, including in respect of any variation of the policy terms.

#### **24.8 Premiums and quantum of insurance**

- 24.8.1 The Contractor must punctually pay all premiums at least yearly in advance in respect of all Required Insurances, and give the Principal Representative evidence of payments for premiums where reasonably requested.
- 24.8.2 Without limiting or reducing the Contractor's obligations under clause 24.3, the minimum dollar amounts of coverage for Required Insurances specified in Item 8 must be increased by the Contractor if the limits should be increased in accordance with Best Industry Practice.

#### **24.9 Undertaking to inform**

As soon as the Contractor becomes aware of any actual, threatened or likely claims under any of the Required Insurances under this Agreement or involve the Principal, the Contractor must inform the Principal Representative.

#### **24.10 Subcontractors**

Notwithstanding any other provision of this Agreement, the Contractor must ensure that its Subcontractors are insured as required by this clause 24, as is appropriate including with respect to the amount of insurance, types of insurance and period of insurance given the nature of services or work to be performed by them.

#### **24.11 Contractor's obligations not limited**

The effecting of the Required Insurances does not limit the liabilities or obligations of the Contractor under this Agreement.

#### **24.12 General insurance obligations**

##### **24.12.1 The Contractor:**

- (a) must not do anything which prejudices, or which may prejudice, any Required Insurances;
- (b) must rectify anything done by the Contractor or Contractor's Associates which prejudices, or which may prejudice, any Required Insurances;
- (c) must reinstate a Required Insurance if it lapses;
- (d) must not:
  - (i) cancel a Required Insurance;
  - (ii) vary any Required Insurance in a manner which materially or adversely affects the Principal; or
  - (iii) allow a Required Insurance to lapse,without the prior written consent of the Principal;
- (e) must immediately notify the Principal of any event which may result in a Required Insurance lapsing or being cancelled; and
- (f) must fully and promptly disclose all material information to all relevant insurers (and any persons acting on their behalf) relating to the Required Insurances (whether held solely or jointly with others) in all respects, including where failure to do so would vitiate or invalidate the relevant policy.

#### **24.13 Notices of potential claims**

##### **24.13.1 In addition to the obligations to notify the insurer under any Required Insurance, the Contractor must:**

- (a) notify the Principal of any occurrence under or in connection with this Agreement of which it is aware that may give rise to a claim under any Required Insurance; and
- (b) keep the Principal informed of subsequent developments of which it is aware concerning the claim.



24.13.2 The Contractor must not compromise, settle, prosecute or enforce a claim under any Required Insurances in respect of which claim the Principal would benefit under Required Insurance without the prior consent of the Principal. Such consent must not be unreasonably withheld or delayed in relation to enforcing any claim and will be deemed to have been given if an insurer compromises, settles, prosecutes or enforces a claim on behalf of the Contractor.

#### **24.14 Application of proceeds of insurance for damage or destruction**

If the Replacement Parking Meter or any other property referred to in clause 24.1 for which the Contractor has care of is damaged or destroyed the Contractor must comply with its repair and reinstatement obligations under this Agreement and all proceeds from any Required Insurances in respect of that damage or destruction are to be applied to repair or reinstate the relevant Replacement Parking Meter or relevant property (unless otherwise directed by the Principal Representative).

#### **24.15 Adequacy of proceeds**

24.15.1 If the Required Insurance proceeds in respect of any damage or destruction:

- (a) are less than the cost of repairing, replacing or reinstating the relevant Replacement Parking Meter or any other property referred to in clause 24.1 for which the Contractor has care of, or those Required Insurances are void or unenforceable and there are no proceeds, the Contractor must complete the repair, reinstatement and replacement of the relevant Replacement Parking Meter or any other property referred to in clause 24.1 for which the Contractor has care of using its own funds (to the extent it is obliged to carry out such repair, reinstatement and replacement of the relevant Replacement Parking Meter or any other property referred to in clause 24.1 for which the Contractor has care of under this Agreement); or
- (b) exceed the costs of repairing, replacing or reinstating the relevant Replacement Parking Meter or any other property referred to in clause 24.1 for which the Contractor has care of:
  - (i) if this Agreement has not been terminated, upon completion of the repair, reinstatement and replacement and payment of all costs the Contractor may keep that excess after first applying the balance towards amounts owing to the Principal by the Contractor under this Agreement; or
  - (ii) if this Agreement has been terminated, that excess will be held and applied towards amounts owing to the Principal by the Contractor under this Agreement with any excess being paid to the Contractor.

#### **24.16 Periods of insurance**

The Contractor must maintain:

- 24.16.1 the workers compensation insurance referred to in clause 24.3.1, until the expiry of the Term or earlier termination of this Agreement;
- 24.16.2 the public and product liability insurance referred to in clause 24.3.2, until the expiry of the Term or earlier termination of this Agreement;
- 24.16.3 the contract works insurance referred to in clause 24.3.3 until the expiry of the Term or earlier termination of this Agreement;
- 24.16.4 the professional indemnity insurance referred to in clause 24.3.4 until 7 years after the expiry of the Term or earlier termination of this Agreement; and
- 24.16.5 the motor vehicles insurance referred to in clause 24.3.5 until the expiry of the Term or earlier termination of this Agreement.



#### **24.17 Contractor not to void insurances; extra premiums**

- 24.17.1 The Contractor must not cause the rate of any insurance premium relating to any Site to be increased, or prejudiced or render void or voidable that insurance.
- 24.17.2 If the Principal approves (in its absolute discretion) any request of the Contractor whereby an insurable risk is increased, the Contractor must pay to it any extra premiums due to the increased risk.

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### **25. Indemnity and release**

#### **25.1 Contractor indemnity of the Principal**

- 25.1.1 The Contractor indemnifies and must keep indemnified the Principal and the Principal Representative from and against any Claim, Loss or Liability brought against, suffered or incurred by the Principal or the Principal Representative arising out of, or in any way in connection with:
- (a) a breach by the Contractor of any of its obligations under this Agreement;
  - (b) the negligence of the Contractor or any of the Contractor's Associates arising out of, or in any way in connection with the Activities;
  - (c) damage to, or loss or destruction of, any real or personal property (including property which the Contractor has care of in accordance with clause 24.1) arising out of, or in any way in connection with, the performance of, or any act or omission of the Contractor or any of Contractor's Associates in connection with, the Activities; or
  - (d) injury to, or illness or death of, any person arising out of, or in any way in connection with, the performance of, or any act or omission of the Contractor or any of the Contractor's Associates in connection with, the Activities.
- 25.1.2 The Contractor's liability to indemnify a person under this clause 25.1 will be proportionately reduced to the extent that a default or negligence of the Principal caused or contributed to the Claim, Loss or Liability.

#### **25.2 Contractor release of the Principal**

- 25.2.1 Subject to this Agreement (including clause 25.2.2), the Contractor releases the Principal and the Principal Representative and their respective officers, employees and agents, from any Loss, Claim, Liability, obligation or duty to the Contractor whatsoever in respect of or in connection with any or all of:
- (a) the suitability of any Site for the Parking Meter Activities;
  - (b) design of any Site and performance of the Activities and the Services;
  - (c) the suitability, location, adequacy, availability or capacity or any other aspect of an Existing Parking Meter;
  - (d) any death, illness or injury of any person to the extent arising as a result of the performance, or lack of performance, of the Activities; and
  - (e) any other risk accepted by the Contractor under clause 2.6.
- 25.2.2 For the avoidance of doubt, without limiting clause 25.2.1, the release applies to any Loss, Claim, Liability, obligation or duty in respect of the negligence of any person (including the



Principal or Principal Representative) in respect of the matters the subject of the release prior to the Execution Date.

### **25.3 Survives termination and preservation of Contractor's obligations**

- 25.3.1 Each indemnity in clause 25.1 survives termination of this Agreement.
- 25.3.2 The release in clause 25.2 survives termination of this Agreement.
- 25.3.3 The Contractor's obligations in this clause 25 are absolute, unconditional and irrevocable.
- 25.3.4 The liability of the Contractor under this Agreement is not affected by any circumstance, act or omission which, but for this clause 25.3, might otherwise affect them at Law or in equity.

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## **26. Security**

### **26.1 Provision of Unconditional Undertakings**

- 26.1.1 The Contractor must within 5 Business Days of the Execution Date:
  - (a) give the Principal an unconditional undertaking for an amount specified in Item 5; and
  - (b) give the Principal an unconditional undertaking for an amount specified in Item 6.
- 26.1.2 Each unconditional undertaking required under clause 26.1.1 must be:
  - (a) an irrevocable and unconditional on demand undertaking (with no expiry date) on terms approved in writing by the Principal (for which purpose the parties acknowledge and agree that the form set out in Schedule 6 is approved); and
  - (b) issued by a financial institution holding the Required Rating and which is otherwise approved in writing by the Principal.

### **26.2 Not used**

### **26.3 Recourse to a Unconditional Undertaking**

- 26.3.1 The Principal may itself or through the Principal Representative call on, or otherwise have recourse to, any or all of the Unconditional Undertaking (and the proceeds of those Unconditional Undertaking, including any interest earned in respect of such proceeds) at any time in respect of:
  - (a) any debt or other moneys due from the Contractor to the Principal; or
  - (b) any bona fide claim to money which the Principal has, or may have, against the Contractor whether for damages (liquidated or unliquidated) or otherwise,whether under this Agreement or otherwise in connection with the Activities.
- 26.3.2 The Contractor must, within 20 Business Days of notice that the Principal has had recourse to a Unconditional Undertaking, provide a replacement Unconditional Undertaking of the same amount as deducted to be held on the same terms as this clause 26.
- 26.3.3 The Contractor is not entitled to, and must not seek, an injunction against either the Principal or the issuer of any Unconditional Undertaking (if applicable) preventing a demand or payment under the relevant Unconditional Undertaking (whether the demand extends to the whole of the Unconditional Undertaking or part thereof) or the use to which the proceeds of such a demand can be put.

## **26.4 Release of Unconditional Undertaking**

- 26.4.1 Subject to the Principal's right to have recourse to the relevant Unconditional Undertaking, the Principal must return to the Contractor the Installation Unconditional Undertaking within 3 months after all Precincts have reached Completion.
- 26.4.2 The Principal must return the Maintenance Unconditional Undertaking to the Contractor within 6 months after the earlier of:
- (a) the date of termination of this Agreement; and
  - (b) the expiration of the Term.

## **26.5 Trusts and interest**

The Principal:

- 26.5.1 will not be obliged to pay the Contractor interest on:
- (a) the amount of any Unconditional Undertaking; or
  - (b) the proceeds of any Unconditional Undertaking if it is converted to cash; and
- 26.5.2 does not hold any Unconditional Undertaking, or the proceeds of any Unconditional Undertaking if it is converted to cash, on trust for the Contractor.

## **26.6 Replacement Unconditional Undertaking where Required Rating not achieved**

If the issuer of an Unconditional Undertaking ceases to have the Required Rating, the Contractor must:

- 26.6.1 promptly notify the Principal; and
- 26.6.2 provide to the Principal a replacement Unconditional Undertaking, for the same amount as the Unconditional Undertaking that is to be replaced, and from an issuer with the Required Rating, within 10 Business Days after receipt of a request to do so from the Principal.

## **26.7 Failure to provide replacement Unconditional Undertaking**

- 26.7.1 If the Contractor fails to provide the Principal with a replacement Unconditional Undertaking as required by clause 26.6, the Principal:
- (a) may call on the full amount of the Unconditional Undertaking held by the Principal without notice to the Contractor;
  - (b) must hold the amount of the Unconditional Undertaking called on under clause 26.7.1(a) as a cash deposit (**Cash Deposit**) in a separate bank account in the name of the Principal (**Cash Deposit Account**) and, if the Principal calls on more than one Unconditional Undertaking under this clause 26.7, each Cash Deposit must be in a separate Cash Deposit Account;
  - (c) may withdraw money (including accrued interest) from a Cash Deposit Account and use that money:
    - (i) in accordance with clause 26.3 as if the Cash Deposit were the amount secured by the Unconditional Undertaking;
    - (ii) to pay all costs and Taxes payable in connection with that Cash Deposit Account; and



- (d) must return the amount held in the relevant Cash Deposit Account (including accrued interest but less any amounts payable to or withdrawn by the Principal under clause 26.7.1(c)) to the Contractor in accordance with clause 26.4 as if the amount in that Cash Deposit Account were the relevant Unconditional Undertaking.

## **26.8 Deed of Guarantee**

The Contractor must, within 5 Business Days of the Execution Date, give the Principal a duly executed and enforceable Deed of Guarantee executed by the Guarantor.

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## **27. Principal may act**

### **27.1 Principal may act**

27.1.1 Without limiting any other provision of this Agreement, the Principal:

- (a) may, either itself or by a third party, do anything or carry out any obligation under this Agreement which the Contractor was obliged to carry out but which it failed to carry out within the time required in accordance with this Agreement or, where no time for performance is prescribed by this Agreement, within a reasonable time; and
- (b) may (and the Principal's Associates may) enter and remain on any Site for so long as it is necessary for that purpose.

27.1.2 The Principal may:

- (a) recover from the Contractor as a debt due to the Principal;
- (b) deduct from amounts payable to the Contractor; or
- (c) recover against any Unconditional Undertaking held by the Principal,

the amount of any Loss the Principal reasonably suffers or incurs in taking the action contemplated in clause 27.1.1 or as a result of the Contractor's failure to take that action.

27.1.3 Neither the Principal's rights, nor the Contractor's Liability, whether under this Agreement or otherwise according to Law, will be limited or otherwise affected by:

- (a) the rights conferred upon the Principal by this clause 27 or any other provision of this Agreement; or
- (b) the exercise of, or the failure by the Principal to exercise, any such rights.

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## **28. Default and Termination**

### **28.1 Contractor Default Event**

Each of the following events is a Contractor Default Event:

- 28.1.1 [the Guarantor becomes subject to an Insolvency Event];
- 28.1.2 the Contractor becomes subject to an Insolvency Event;
- 28.1.3 a Change of Control has occurred without the Principal's approval and the Contractor does not reverse the Change of Control within 60 days of it occurring;

- 28.1.4 the Contractor Abandons the Activities;
- 28.1.5 during the Term there is serious fraud, or intentional and dishonest, collusive, misleading or deceptive conduct affecting the Principal on the part of the Contractor in the performance of the Activities or any part of them; or
- 28.1.6 the Contractor or the Guarantor is in material breach of any warranty or obligation under, or is not materially complying with any provision of, this Agreement or the Deed of Guarantee referred to in clause 26.8 (as applicable).

## **28.2 Principal Default Event**

- 28.2.1 If the Principal breaches a material obligation imposed on it by this Agreement, other than those detailed in clause 28.2.3, the Contractor may provide written notice to the Principal describing the nature of the Principal's breach, when the breach occurred and what action, consistent with the rights and obligations of the parties under this Agreement, the Contractor requires the Principal to take in order to remedy such breach.
- 28.2.2 Unless this Agreement specifically provides otherwise, the Contractor is not entitled to terminate this Agreement for a breach by the Principal of its obligations under this Agreement whether or not notice was served in accordance with clause 28.2.1.
- 28.2.3 If the Principal's breach relates to an obligation of the Principal to pay money to the Contractor, provided the amount is not in dispute, the Contractor may provide written notice to the Principal sufficiently detailing the breach and requiring the breach to be remedied within 30 days from the date the notice is received by the Principal.
- 28.2.4 If on receipt of the Principal's notice served in accordance with clause 28.2.3 the Principal disputes that it is in breach of its obligations as set out in the Contractor's notice, then the Principal may, prior to the expiry of the 30 days referred to in clause 28.2.3, provide a notice of dispute to the Contractor accordingly and the matter will be a dispute for resolution under clause 29.
- 28.2.5 If it is agreed or determined under clause 29 that the Principal is in default as detailed in the Contractor's notice served in accordance with clause 28.2.3, then the Principal must remedy the breach within 30 days from the date of the agreement or determination (as the case may be).

## **28.3 Take out or termination by Principal**

- 28.3.1 If a Contractor Default Event occurs, the Principal may terminate this Agreement by notice in writing to the Contractor specifying the date on which this Agreement will terminate. This Agreement terminates on the date so specified.
- 28.3.2 The Contractor is not entitled to any payment or other consideration, and may not make any other Claim, if this Agreement is terminated under this clause 28.3.
- 28.3.3 If a Contractor Default Event specified in clause 28.1.2 occurs, the Principal may take out any or all of the Activities remaining to be completed under this Agreement out of the hands of the Contractor and (without limiting clause 28.3.4) recover from the Contractor as a debt due the costs incurred by the Principal, or that will be incurred by the Principal, in completing (or having others complete) the relevant Activities.
- 28.3.4 If this Agreement is terminated under clause 28.3.1 or all of the Activities remaining to be completed are taken out of the hands of the Contractor under clause 28.3.3, the Principal's remedies and rights, and the Contractor's Liabilities, will be the same as they would have been under the Law governing this Agreement had the Contractor repudiated this Agreement and the Principal elected to treat this Agreement at an end and elected to recover damages.



#### 28.4 Termination by Contractor

- 28.4.1 If the Principal fails to remedy a breach referred to in clause 28.2.1 or in accordance with clause 28.2.5, then the Contractor may serve a further written notice on the Contractor specifying that if the breach is not remedied within a further 30 days the Contractor intends to terminate this Agreement.
- 28.4.2 If the breach is not remedied by the Principal within the further 30 days notified by the Contractor under clause 28.4.1, then and only then may the Contractor by written notice served on the Principal, terminate this Agreement.

#### 28.5 Termination for convenience

- 28.5.1 Notwithstanding any other provision in this Agreement to the contrary, the Principal may elect, at any time (and for any reason), to terminate this Agreement by notice (**Voluntary Termination Notice**) to the Contractor stating:
- (a) the Principal is terminating this Agreement under this clause 28.5; and
  - (b) this Agreement will terminate on such date as specified in the Voluntary Termination Notice.
- 28.5.2 If the Principal issues a Voluntary Termination Notice, this Agreement will terminate on the date specified in clause 28.5.1(b) (the **Voluntary Termination Date**).
- 28.5.3 If the Principal terminates this Agreement under this clause 28.5, the Principal must pay to the Contractor on or before the Voluntary Termination Date the Termination Amount. The Contractor will not be entitled to any other payment, including (except as provided for in the Termination Amount) for Consequential Loss.

#### 28.6 Termination Amount

If this Agreement is terminated (or is deemed to have been terminated) in accordance with clause 28.5, the Termination Amount will be calculated as follows:

$$T = A + B$$

where:

- 28.6.1 **T** is the Termination Amount;
- 28.6.2 **A** is the reasonable, direct costs of removal of temporary work and other things from each Site incurred by the Contractor, but only if the Contractor takes reasonable steps to mitigate such costs; and
- 28.6.3 **B** is the costs reasonably incurred by the Contractor or committed by the Contractor (under executed subcontracts between the Contractor and Subcontractors) in the expectation of completing the Activities and not included in any other payment by the Principal.

#### 28.7 No prejudice to accrued rights

The termination of this Agreement is without prejudice to the accrued rights of the Principal at the time of such termination, including rights as to indemnification, payment or set off.

#### 28.8 Rights not limited

- 28.8.1 The provisions of this clause 28 are in addition to and do not limit:

- (a) any other rights, powers or privileges of the Principal and in particular any right of the Principal at Law or in equity to terminate this Agreement or to claim damages or other compensation; or
- (b) any Liability, duty or obligation of the Contractor.

28.8.2 The rights of the Principal under this clause 28 are not limited by anything in clause 27 and in particular the Principal may serve notices under clause 28.2 or 28.3 whether or not any notice has been served or action taken under clause 27.

## **28.9 Delivery of Final Finishes Documentation if Agreement terminated**

If this Agreement is terminated by the Principal, the Contractor must:

- 28.9.1 immediately deliver the original versions of all as-built drawings and design documentation (including the Final Finishes Documentation) then in existence in relation to the Parking Meter Activities and the Maintenance Activities to the Principal at no cost to the Principal; and
- 28.9.2 without limiting clause 38, within 15 Business Days of the date of termination, grant to the Principal and its nominee (if any) without cost, a non-exclusive, irrevocable, perpetual, royalty free and transferable licence (with a right to sub-licence) to use, reproduce, communicate to the public and adapt for the Principal's own purposes all Intellectual Property Rights in that design documentation and clause 38 will apply and have effect as if not terminated.

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## **29. Dispute resolution**

### **29.1 Procedure for resolving Disputes**

- 29.1.1 Unless otherwise expressly provided in this Agreement, the parties agree that any Dispute must be resolved in accordance with clauses 29.1.2, 29.2, 29.3, 29.4 and 29.5. This clause 29.1.1 does not limit clause 28.
- 29.1.2 The parties agree that they will attempt to resolve any Dispute:
  - (a) firstly, by negotiation of the Dispute under clause 29.4; and then
  - (b) by expert determination under clause 29.5.

### **29.2 Appointment of Designated Officers**

- 29.2.1 Each party appoints a Designated Officer for the purposes of this clause as follows:
  - (a) the Contractor appoints the person identified in Item 3; and
  - (b) the Principal appoints the person identified in Item 4.
- 29.2.2 A party may at any time substitute a person referred to in paragraph 29.2.1 with another person who must hold the same or higher position as the person being substituted. The party must promptly give written notice to the other party of the name of that substituted person.

### **29.3 Notice of Dispute**

If a Dispute arises then either party may give notice (**Dispute Notice**) to the other which must:

- 29.3.1 be in writing;
- 29.3.2 state that it is a notice under this clause 29.3; and



29.3.3 include or be accompanied by particulars of the Dispute.

#### **29.4 Negotiation between Designated Officers**

29.4.1 The parties must make diligent and good faith efforts to resolve all Disputes in accordance with this clause 29.4.

29.4.2 The parties must, within 5 Business Days of receipt of the Dispute Notice, seek to resolve the Dispute by discussion at the Principal's address between the Contractor Representative and the Principal Representative.

29.4.3 If the parties are unable to resolve the Dispute within 20 Business Days (or at such other time as agreed in writing by the parties) after receipt of the Dispute Notice, the Dispute will be referred to the Designated Officers.

29.4.4 The Designated Officers must meet at least once within 30 Business Days after receipt of the Dispute Notice (or at such other time as agreed in writing by the parties to the Dispute) in an attempt to resolve the Dispute in person at the Principal's address (unless otherwise agreed in writing by the parties).

#### **29.5 Expert determination**

Either party may refer the Dispute to an expert if the Dispute is not resolved within 30 Business Days (or such other period as agreed in writing by the parties to the Dispute) after receipt of the Dispute Notice.

#### **29.6 The expert**

The expert determination under clause 29.5 is to be conducted by:

29.6.1 the independent industry expert specified in Item 10; or

29.6.2 where:

- (a) no such person is specified; or
  - (b) the independent industry expert specified in Item 10 or an independent industry expert otherwise appointed under this clause 29.6:
    - (i) is unavailable;
    - (ii) declines to act;
    - (iii) does not respond within 14 days to a request by one or both parties for advice as to whether he or she is able to conduct the determination; or
    - (iv) does not make a determination within the time required by clause 29.11,
- an independent industry expert appointed by the person specified in Item 11.

#### **29.7 Not arbitration**

An expert determination conducted under this clause 29 is not arbitration and the expert is not an arbitrator. The expert may reach a decision from his or her own knowledge and expertise.

#### **29.8 Procedure for determination**

The expert will:

29.8.1 act as an expert and not as an arbitrator;

- 29.8.2 proceed in any manner he or she thinks fit but shall observe the rules of natural justice;
- 29.8.3 conduct any investigation which he or she considers necessary to resolve the Dispute;
- 29.8.4 examine such documents, and interview such persons, as he or she may require;
- 29.8.5 notwithstanding anything else, to the extent permissible by law, have no power to apply or have regard to the provisions of Part 4 of the *Civil Liability Act 2002* (NSW); and
- 29.8.6 make such directions for the conduct of the determination as he or she considers necessary.

#### **29.9 Disclosure of interest**

The expert shall:

- 29.9.1 disclose to the parties any interest he or she has in the outcome of the determination; and
- 29.9.2 not communicate with one party to the determination without the knowledge of the other.

#### **29.10 Costs**

Each party will:

- 29.10.1 bear its own costs in respect of any expert determination; and
- 29.10.2 unless determined otherwise by the expert, pay one-half of the expert's costs.

#### **29.11 Conclusion of expert determination**

Unless otherwise agreed between the parties, the expert shall notify the parties of his or her decision upon an expert determination conducted under this clause 29 within 28 days from the acceptance by the expert of his or her appointment.

#### **29.12 Liability of expert**

- 29.12.1 The expert will not be liable to the parties arising out of, or in connection with, the expert determination process, except in the case of fraud.
- 29.12.2 The parties shall enter into an agreement with the appointed expert on the terms prescribed in Item 12 or such other terms as the parties and the expert may agree.

#### **29.13 Determination of expert**

The determination of the expert:

- 29.13.1 shall be in writing;
- 29.13.2 will be final and binding, unless a party gives notice of appeal to the other party within 21 days of the determination; and
- 29.13.3 is to be given effect to by the parties unless and until it is reversed, overturned or otherwise changed under the procedure in clause 29.14.

#### **29.14 Litigation**

- 29.14.1 Subject to clause 29.14.2, the parties must follow the Dispute resolution procedures set out in this clause 29 before either commences litigation or takes similar action.



29.14.2 Nothing in this clause 29 will prejudice the right of a party to institute proceedings to enforce payment or to seek urgent injunctive or declaratory relief.

#### **29.15 No delay to the Activities**

Despite the existence of any Dispute unless notified in writing by the Principal the Contractor must continue to perform its obligations under this Agreement (including the Activities).

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### **30. Handover maintenance**

#### **30.1 Handover Maintenance**

The Contractor must:

30.1.1 no later than 6 months prior to the expiry of the Term, commence to carry out; and

30.1.2 no later than 3 months prior to the expiry of the Term, complete,

all work, activities and services and do all other things required by, and otherwise comply with and perform the handover maintenance in accordance with, the Handover Maintenance Plan.

The Contractor must notify the Principal when the Contractor has completed the handover maintenance in accordance with this clause 30.1.

#### **30.2 Transition of Handover**

The Contractor must:

30.2.1 during the period of 6 months prior to the expiry of the Term:

- (a) ensure it has done all things necessary to transfer all Authorisations to the Principal that the Principal will or may require to operate and maintain the Replacement Parking Meters from the expiry of the Term in accordance with all Laws;
- (b) without limiting clause 38, ensure it has granted, and will ensure third parties grant, to the Principal, without cost, the licence referred to in clause 38.2; and
- (c) otherwise carry out all work, activities and services and do all other things required by, and otherwise comply with and carry out the Activities in accordance with, the Handover Maintenance Plan; and

30.2.2 at 4pm on the last day of the Term, or upon termination of this Agreement:

- (a) vacate all of the Sites and leave the Sites in a safe condition; and
- (b) deliver to the Principal, or any person nominated by the Principal, all books, records, plans, drawings, specifications, manuals, plans and other documents (including all copies thereof) relating to the Sites or the carrying out of the Activities, however recorded and in whatever form.

#### **30.3 Condition Audit Prior to Handover**

The Contractor:

30.3.1 acknowledges and agrees that:

- (a) no later than 6 months prior to the expiry of the Term, the Principal may conduct, or have conducted, an audit on the condition and state of repair of all Replacement Parking Meters to determine the likelihood of the Contractor's compliance with clause 30.1; and
- (b) the Principal will, following completion of the audit referred to in clause 30.3.1(a), issue a written report to the Contractor setting out details of the repair and maintenance work that is necessary in order to ensure compliance with clause 30.1; and

30.3.2 must promptly carry out all repair and maintenance work identified in any audit report issued by the Principal under clause 30.3.1(b).

The Contractor may attend any inspection on any Site related to the audit conducted in accordance with clause 30.3.1(a).

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## **31. Record keeping, reporting and verification**

### **31.1 Record keeping**

31.1.1 The Contractor must implement a reporting system in regard to the Activities and maintain written records of all Activities, including Authorisations, including:

- (a) in relation to any Activities:
  - (i) all complaints concerning the Activities by Authorities, the Principal, users of any Site, and adjoining neighbours and the actions taken to rectify them;
  - (ii) the results of any investigations made into complaints; and
  - (iii) any accidents or other incidents where an injury or a possibility of injury to persons or property damage arose;
- (b) any breach of this Agreement by the Contractor;
- (c) any other information that is required to be recorded in accordance with the Specification or is reasonably requested by the Principal Representative and maintain those written records until 7 years after the expiry of the Term.

31.1.2 At any time during the Term the Principal Representative may request that the Contractor provide it with any or all of:

- (a) any information described in clause 31.1.1; and
- (b) other information in respect of the conduct of the Activities, which the Principal reasonably requires,

and the Contractor must promptly comply with that request.

31.1.3 At the expiry of the Term or termination of this Agreement, the Contractor must deliver to the Principal all information described in clause 31.1.1.

31.1.4 The Contractor must give to the Principal Representative during the Term:

- (a) promptly after it becomes aware of it, notice of any material damage to or Defect in any Activities;



- (b) promptly after it becomes aware of it, notice of any accidents giving rise to material loss, or damage to property, or injury to persons, on any Site or any land adjacent to any Site;
- (c) promptly after it becomes aware of it, notice of any act, omission or circumstances (including any lapse in safety precautions) which creates or poses (or created or posed) a risk to the health or safety of persons on any Site or any adjoining property, whether or not such act, omission or circumstance gives rise to any accidents of the type referred to in clause 31.1.4(b);
- (d) promptly after it becomes aware of it, notice of any industrial action or industrial dispute which materially affects, or may affect, the performance of the Contractor's obligations under this Agreement;
- (e) promptly after it becomes aware of it, notice of any event, occurrence or circumstance which is likely to materially adversely affect the performance of the Contractor's obligations under this Agreement;
- (f) promptly after it becomes aware of it, notice of any material breach of or material event under or in relation to this Agreement or an Authorisation, including particulars of the breach or event, the action (if any) proposed to be taken in respect of it and regular updates in relation to the breach or event and the action (if any) being taken in respect of it; and
- (g) promptly upon request, any other information in relation to the Contractor's financial condition or the carrying out (or otherwise) of any part of the Activities, as may be reasonably requested by the Principal from time to time.

## 31.2 Monthly reports

During the Term, the Contractor must at its cost:

- 31.2.1 deliver a report to the Principal Representative on the first Business Day of each month, in a format approved by the Principal Representative, including:
  - (a) the records it is required to keep under clause 31.1; and
  - (b) a summary of:
    - (i) any environmental or safety issues arising in the reporting period, and actions taken to mitigate those issues;
    - (ii) any technical or maintenance issues arising in the reporting period, and actions taken to mitigate those issues; and
    - (iii) any complaints received regarding the Activities, and actions taken in response to those complaints;
- 31.2.2 if directed by the Principal Representative provide some or all of the data contained in the report to the Principal Representative on a computer disc in a spread sheet or database package nominated by the Principal Representative; and
- 31.2.3 make the records available on demand for inspection by the Principal Representative or a person nominated by the Principal Representative. If directed by the Principal Representative, the Contractor must prepare a report on any issue arising from the records within any period specified by the Principal Representative.

### **31.3 Other reports**

- 31.3.1 In addition to the reports required under clause 31.2, the Contractor must during the Term at its cost deliver to the Principal Representative a written report on any aspect of this Agreement when requested.

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## **32. Representations and Warranties**

### **32.1 Representations and warranties by the Contractor**

The Contractor warrants to the Principal that:

- 32.1.1 it is a corporation (as defined in the Corporations Act) having limited liability, registered and validly existing under the Corporations Act;
- 32.1.2 it has corporate power to own its property and assets and to carry on its business as it is now being conducted;
- 32.1.3 it has full power and authority to enter into and perform its obligations under this Agreement and can do so without consent of any other person;
- 32.1.4 all necessary corporate and other action has been taken to authorise the execution, delivery and performance of its obligations under this Agreement;
- 32.1.5 the information provided by the Contractor to the Principal in connection with this Agreement, which has not been subsequently superseded by further information supplied by or on behalf of the Contractor to the Principal, is to the best of the Contractor's knowledge and belief true, accurate and complete in all material respects and not misleading in any material respect;
- 32.1.6 this Agreement constitutes the Contractor's valid, legal and binding obligations enforceable against it according to their terms, subject to equitable remedies and Laws in respect of enforcement of creditors' rights;
- 32.1.7 the execution, delivery and performance of this Agreement will not contravene:
- (a) any Law to which it is subject;
  - (b) its constitutional documents; or
  - (c) any document which is binding on it or any of its assets;
- 32.1.8 no Insolvency Event has occurred in respect of it, [or the Guarantor];
- 32.1.9 no litigation, arbitration, tax claim, dispute or administrative or other proceeding has been commenced or threatened against it which is likely to have a material adverse effect on it or its ability to perform its financial and other obligations under this Agreement to which it is or will become a party;
- 32.1.10 the Contractor is not the trustee or responsible entity of any trust, nor does it hold any property subject to or impressed by any trust;
- 32.1.11 none of the Contractor's property is subject to any Encumbrance, other than a Permitted Encumbrance;
- 32.1.12 except as contemplated under this Agreement or in connection with a transaction which is contemplated by this Agreement, the Contractor will not trade or incur liabilities or carry on business or enter into any documents or agreement other than this Agreement without the Principal's approval; and



32.1.13 it does not have any immunity in respect of its obligations under this Agreement from the jurisdiction of any court or any legal process for any reason.

## **32.2 Notification of proceedings**

The Contractor must immediately notify the Principal if any proceeding referred to in clause 32.1.9 becomes current, pending or threatened where that proceeding will or is likely to have a material adverse effect on the ability of the Contractor to perform its obligations under this Agreement.

## **32.3 Survival**

Except as otherwise provided in this Agreement, each representation and warranty by the Contractor and contained in this Agreement is made on the Execution Date and survives the execution and delivery of this Agreement and completion of the transactions contemplated by it and expiry or earlier termination of this Agreement.

## **32.4 Reliance**

The Contractor acknowledges that the Principal has relied on the representations and warranties contained in clause 32.1 and the acknowledgements contained in clause 5 in entering into this Agreement.

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# **33. Capacity of the Principal**

## **33.1 Principal as landowner**

33.1.1 The Principal enters into this Agreement as the registered proprietor and owner of the Sites (**Landowner**).

33.1.2 To the extent that the Principal gives any approval or consent contemplated under this Agreement, such approval or consent is given in its capacity as Landowner and not as an Authority (unless otherwise specified in writing by the Principal) nor as an expert.

## **33.2 Principal exercising statutory powers**

33.2.1 Nothing in this Agreement operates to restrict or otherwise affect the unfettered discretion of the Principal to exercise any of its functions and powers under any Law.

33.2.2 The Contractor agrees that the Principal is not liable for, and releases the Principal from, Liability or Loss arising from, and, subject to the provisions of this Agreement and the provisions of any applicable Law, costs incurred in connection with, the Principal's exercise of its functions and powers under any Law.

33.2.3 The Contractor must not interfere with the valid operations and functions of the Principal as a consent authority or as Landowner.

## **33.3 Contractor to disclose status**

33.3.1 The Contractor must at all times ensure that it and its Subcontractors make known to persons with whom they deal that it is an independent contractor of (but not agent of) the Principal.

33.3.2 The Contractor must not without the prior written approval of the Principal announce, advertise or publish in any media the fact that the Contractor has contracted with the Principal in the performance of its obligations under this Agreement.

### **33.4 Contractor has no authority to bind the Principal**

The Contractor expressly agrees and acknowledges that it has no authority, and this Agreement is not intended to grant to it any authority, to incur any liability or obligation by, for or on behalf of, or in the name of the Principal and the Contractor must not do any of these things.

### **33.5 Contractor to incur obligations in its own name**

All obligations incurred by the Contractor under contracts, agreements or other arrangements in order to fulfil its obligations under this Agreement must be incurred by the Contractor in its own name and on its own account.

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## **34. Disclaimer and entire agreement**

### **34.1 Entire Agreement**

This Agreement constitutes the entire understanding between the parties as to its subject matter. All previous agreements, representations, warranties, explanations and commitments, expressed or implied, affecting this subject matter are superseded by this Agreement and have no effect.

### **34.2 Tender documents have no effect**

Subject to clause 35.1.1, the Contractor acknowledges and agrees that:

- 34.2.1 no representation or warranty either express or implied is, has been or will be made by the Principal under or in respect of the Tender Documents;
- 34.2.2 statements by the Principal, the Contractor or any other person (whether contained within the Tender Documents or otherwise) prior to the Execution Date, or otherwise made in relation to the Activities at any time:
  - (a) are not binding on the Principal;
  - (b) do not commit the Principal to any action or position in respect of any matter; and
  - (c) do not waive, fetter, limit or otherwise affect any right, discretion, power or privilege of the Principal;
- 34.2.3 any representation, communication and prior agreement in relation to the subject matter of the Tender Documents are merged in and superseded by this Agreement; and
- 34.2.4 the Tender Documents may not be used as an aid to the interpretation of any provision of this Agreement in a way which would limit, reduce or waive any right of the Principal.

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## **35. Disclosure, confidentiality and the media**

### **35.1 Disclosure and confidentiality**

- 35.1.1 The Contractor acknowledges and agrees that the confidentiality arrangements contained in the Tender Documents continue in full force and effect after the Execution Date.
- 35.1.2 Without limiting the generality of clause 35.1.1 but subject to clauses 35.1.3 and 35.1.4, the Contractor must:



- (a) keep confidential the terms of this Agreement, including the discussions and negotiations leading to the creation of this Agreement, and any information relating to the Activities;
  - (b) ensure that each of the Contractor's Associates complies with the terms of paragraph (a); and
  - (c) during the Term, not make, cause or permit to be made, any statement or release any information about this Agreement or the Activities to the media without the Principal's written consent.
- 35.1.3 However, and without limiting the generality of clause 35.1.1, the Contractor is not obliged to keep confidential any information:
- (a) which is otherwise in the public domain through no default of that party; or
  - (b) the disclosure of which is:
    - (i) required by Law but only in accordance with and to the extent of that requirement;
    - (ii) given with the prior written consent of the Principal;
    - (iii) given to a court in the course of proceedings in which that party is involved;
    - (iv) made to a party's legal, financial or commercial adviser; or
    - (v) required by this Agreement.
- 35.1.4 The Contractor acknowledges that the Principal may publish or disclose any information about the Activities to an Authority.
- 35.1.5 The Contractor must:
- (a) not either itself or through its employees, agents or sub-contractors
    - (i) respond to any requests regarding the Activities or this Agreement directly, from the community, media or Authorities; or
    - (ii) make any statement to the media on behalf of the Principal or in relation to the performance of this Agreement, and must refer any enquiries to the Principal's Representative; and
  - (b) notify the Principal Representative immediately of any event arising in the course of performing the Activities, which may receive media attention.

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## 36. GIPA

- 36.1.1 Notwithstanding any other provisions of this Agreement, the Contractor acknowledges and agrees that under the *Government Information (Public Access) Act 2009* (NSW) the Principal may be required to publicly disclose information about this Agreement. As at the Execution Date, none of the disclosure obligations require the disclosure of:
- (a) the commercial-in-confidence provisions of a contract;
  - (b) any matter that could reasonably be expected to affect public safety or security; or
  - (c) information which would be exempt from disclosure if it were the subject of an application under the *Government Information (Public Access) Act 2009* (NSW).

- 36.1.2 The Contractor may at any time nominate any items that it considers are confidential and why, so as to assist the Principal in determining what items to disclose.
- 36.1.3 Subject to clause 36.1.4, in accordance with section 121 of the *Government Information (Public Access) Act 2009* (NSW), the Contractor agrees to allow the Principal immediate access to the following information contained in records held by the Contractor:
- (a) information that relates directly to the provision of the Activities by the Contractor;
  - (b) information collected by the Contractor from members of the public to whom the Contractor provides, or offers to provide, the Activities; and
  - (c) information received by the Contractor from the Principal to enable the Contractor to provide the Activities.
- 36.1.4 Nothing in clause 36.1.3 requires the Contractor to allow the Principal immediate access to:
- (a) information that discloses or would tend to disclose the Contractor's financing arrangements, financial modelling, cost structure or profit margins;
  - (b) information that the Contractor is prohibited from disclosing to the Principal by provision made by or under any Act (of New South Wales or another State or of the Commonwealth); or
  - (c) information that, if disclosed to the Principal, could reasonably be expected to place the Contractor at a substantial commercial disadvantage in relation to the Principal, whether at present or in the future.

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## **37. Principal logo and name**

The Contractor may not use the Principal's logo or name on any communication, hoarding, sign or document without the prior written permission of the Principal Representative in respect of the particular communication, hoarding, sign or document.

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## **38. Intellectual Property**

### **38.1 Ownership of Intellectual Property**

- 38.1.1 The Contractor warrants that:
- (a) the Contractor has or will have a right to use all design, materials, documents and methods of working produced by or on behalf of the Contractor for the purpose of the Activities, including the right to use such items for the purpose of designing, constructing, operating, performing, maintaining, repairing, rectifying, adding to and altering any Replacement Parking Meter; and
  - (b) any design, materials, documents and methods of working produced by or on behalf of the Contractor for the purpose of the Activities and their use for the purpose of the Activities (or activities the same as, or substantially similar to, the Activities) will not infringe any Intellectual Property Rights.
- 38.1.2 The Contractor indemnifies the Principal from and against any Claim, Loss or Liability brought against, suffered or incurred by the Principal arising out of, or in any way in connection with, any breach by the Contractor of the warranties under this clause 38.1.



## **38.2 Licence**

- 38.2.1 Subject to clause 38.2.2, the Contractor grants, and will ensure that relevant third parties grant, to the Principal from the Execution Date and without cost, a non-exclusive, perpetual, irrevocable, royalty free and transferable licence (with a right to sub-licence) to use, reproduce, communicate to the public and adapt for the Principal's own purposes all Intellectual Property Rights in all material created by or on behalf of the Contractor for the purpose of the Activities (or activities the same as, or substantially similar to, the Activities), including all documents (including the Final Finishes Documentation and data stored within software) and data stored by any means.
- 38.2.2 The licence in clause 38.2.1 does not include:
- (a) a right to use, reproduce, communicate to the public and adapt for the Principal's own purposes any Intellectual Property Rights in any software used by the Contractor for the purpose of the Activities; and
  - (b) a right to use, reproduce, communicate to the public and adapt for the Principal's own purposes any Intellectual Property Rights in the Final Finishes Documentation for any purpose other than for the purpose of the Activities (or activities the same as, or substantially similar to, the Activities).

## **38.3 Moral rights warranty**

The Contractor:

- 38.3.1 must ensure that it does not, and the Contractor's Associates do not, infringe any Moral Right in carrying out the Activities;
- 38.3.2 without limiting clause 38.3.1, must hold, or obtain, irrevocable consents, including for the benefit of the Principal and the Principal's licensees and successors in title, from all authors of any material created by or on behalf of the Contractor for the purpose of any Replacement Parking Meter, including documents, software and data stored by any means, allowing the material so created to be used and adapted by the Contractor and the Principal, without restriction and without any requirement to attribute such material to its authors; and
- 38.3.3 indemnifies the Principal from and against any Claim, Liability or Loss brought against, suffered or incurred by the Principal arising out of, or in any way in connection with, any breach by the Contractor of its obligations under clause 38.3.1 or 38.3.2.

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## **39. PPS Act**

### **39.1 Further Assurances**

The Contractor acknowledges that if this Agreement and the transactions contemplated by it, operate as, or give rise to, a Security Interest for the purposes of the PPS Law, the Contractor must do anything (including amending any document, obtaining consents, getting documents completed and signed and supplying information) that the Principal considers necessary under or as a result of the PPS Law for the purposes of:

- 39.1.1 ensuring that the Security Interest is enforceable, perfected or otherwise effective and has the highest priority possible under the PPS Law;
- 39.1.2 enabling the Principal to apply for any registration, or give any notification, in connection with the Security Interest, including the registration of a financing statement or financing change statement; or

- 39.1.3 enabling the Principal to exercise rights in connection with the Security Interest and this Agreement.

## **39.2 Contracting out of PPS Act**

If Chapter 4 of the PPS Act applies to the enforcement of the Security Interest, the Contractor agrees that sections 95, 96, 121(4), 125, 130, 132(3)(d), 132(4), 135, 142 and 143 of the PPS Act will not apply to the enforcement of the Security Interest.

## **39.3 Acknowledgements and undertakings**

The Contractor:

- 39.3.1 acknowledges that the Security Interests created under or pursuant to this Agreement relate to collateral and all proceeds in respect of that collateral (until the Contractor is paid in full for the collateral);
- 39.3.2 acknowledges that to the maximum extent permitted by Law, it waives any right to receive a verification statement under the PPS Law in respect of the Security Interest; and
- 39.3.3 undertakes it will not register a financing change statement without the prior written consent of the Principal.

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## **40. GST**

### **40.1 Definitions**

In this clause:

- 40.1.1 **GST Law** has the meaning given to that term in the *A New Tax System (Goods and Services Tax) Act 1999*; and
- 40.1.2 words and expressions that are not defined in this Agreement but which have a defined meaning in the GST Law have the same meaning as in the GST Law.

### **40.2 GST exclusive**

Except as otherwise provided by this clause, all consideration payable under this Agreement in relation to any supply is exclusive of GST.

### **40.3 Increase in consideration**

If GST is payable in respect of any supply made by a supplier under this Agreement (**GST Amount**), the recipient will pay to the supplier an amount equal to the GST payable on the supply.

### **40.4 Payment of GST**

Subject to clause 40.5 the recipient will pay the GST Amount at the same time and in the same manner as the consideration for the supply is to be provided under this Agreement.

### **40.5 Tax invoice**

The supplier must provide a tax invoice to the recipient before the supplier will be entitled to payment of the GST Amount under clause 40.4.



## **40.6 Reimbursements**

If this Agreement requires a party to reimburse an expense or outgoing of another party, the amount to be paid or reimbursed by the first party will be the sum of:

- 40.6.1 the amount of the expense or outgoing less any input tax credits in respect of the expense or outgoing to which the other party is entitled; and
- 40.6.2 if the payment or reimbursement is subject to GST, an amount equal to that GST.

## **40.7 Adjustment events**

If an adjustment event occurs in relation to a taxable supply under this Agreement:

- 40.7.1 the supplier must provide an adjustment note to the recipient within 10 Business Days of becoming aware of the adjustment; and
- 40.7.2 any payment necessary to give effect to the adjustment must be made within 7 days after the date of receipt of the adjustment note.

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## **41. General**

### **41.1 Amendment**

This Agreement may only be varied or replaced by a document duly executed by the parties.

### **41.2 Further assurance**

Each party must promptly execute and deliver all documents and take all other action necessary or desirable to effect, perfect or complete the transactions contemplated by this Agreement.

### **41.3 Costs, expenses and stamp duty**

- 41.3.1 Subject to paragraph 41.3.3, each party must pay its own legal costs and expenses in relation to the negotiating, preparation and execution of this Agreement, unless expressly stated otherwise.
- 41.3.2 The Contractor must:
  - (a) pay any stamp duty (including all fines and penalties except those arising from the default of another party) in respect of this Agreement and any transactions contemplated under this Agreement or otherwise arising out of, or incidental to, this Agreement; and
  - (b) in a timely manner attend to stamping of all documents in connection with this Agreement which require stamping and to pay all duty on or before the due date for payment.
- 41.3.3 The Contractor must indemnify the Principal against and must pay on demand the amount of any duty (together with any related fines, penalties or interest) that is payable on or in relation to this Agreement or any document, dealing or instrument contemplated by it.
- 41.3.4 A party which has an obligation to do anything under this Agreement must perform that obligation at its cost unless expressly stated otherwise. In particular, except as expressly provided in this Agreement, the Contractor is responsible for all costs and expenses of complying with its obligations, duties and responsibilities (express or implied) under this Agreement and:

- (a) unless a particular clause expressly states that the Principal will pay the costs, losses and expenses of or incurred by the Contractor in respect of or arising from any process, action, inaction, document or instrument contemplated or required by that clause, the Contractor will have no Claim against the Principal for any such costs, losses or expenses;
- (b) the Contractor releases the Principal absolutely from any Claim by or liability to the Contractor for any such costs, losses or expenses; and

41.3.5 this clause applies, without limitation, to the provision of documents, information or the taking of action at the request or Direction of the Principal or Principal Representative.

#### **41.4 Waiver and exercise of rights**

- 41.4.1 A single or partial exercise or waiver of a right relating to this Agreement does not prevent any other exercise of that right or the exercise of any other right.
- 41.4.2 No party will be liable for any loss or expenses incurred by another party caused or contributed to by the waiver, exercise, attempted exercise, failure to exercise or delay in the exercise of a right.

#### **41.5 Civil Liability Act**

- 41.5.1 It is agreed that, to the extent permitted by Law, the operation of any legislative proportionate liability regime (including Part 4 of the *Civil Liability Act 2002* (NSW)) is excluded in relation to all and any rights, obligations and liabilities arising under or in relation to this Agreement howsoever such rights, obligations or liabilities are sought to be enforced.
- 41.5.2 The Contractor further agrees that:
  - (a) in each subcontract into which it enters for the carrying out of the Activities, it will include provisions that, to the extent permitted by Law, effectively exclude the operation of any legislative proportionate liability regime (including Part 4 of the *Civil Liability Act 2002* (NSW)) in relation to all rights, obligations or liabilities arising under or in relation to each subcontract howsoever such rights, obligations or liabilities are sought to be enforced; and
  - (b) it will require and ensure that each Subcontractor will include in any further contract that it enters into with others for the carrying out of the Activities, provisions that, to the extent permitted by Law, each such further contract will include provisions that effectively exclude the operation of any legislative proportionate liability regime (including Part 4 of the *Civil Liability Act 2002* (NSW)) in relation to all rights, obligations or liabilities arising under or in relation to such further contract howsoever such rights, obligations or liabilities are sought to be enforced.

#### **41.6 Exclusion of liability for Consequential Loss**

To the extent permitted by Law, the Principal will not be liable to the Contractor for Consequential Loss.

#### **41.7 Change of Control in Contractor**

If, without the prior written approval of the Principal, a Change of Control occurs in respect of:

- 41.7.1 the Contractor; or
- 41.7.2 the holding company of the Contractor,

the Contractor acknowledges that it will be in breach of this Agreement.



#### **41.8 No assignment without consent**

- 41.8.1 The Contractor must not sell, assign, novate, transfer, delegate, licence or otherwise deal with, encumber or create a Security Interest over, any of its rights or interests under this Agreement without the prior written consent of the Principal.
- 41.8.2 For the purposes of paragraph 41.8.1, a Change of Control of the Contractor will be deemed to be an assignment by the Contractor respectively of its rights and interests under this Agreement.
- 41.8.3 The Principal may assign and may novate any of its rights, powers, obligations, duties or liabilities under or in connection with this Agreement to a Related Body Corporate, or another person of sufficient financial standing and capacity to meet the obligations of the Principal under this Agreement. The Contractor must sign all documents and do all other things reasonably required by the Principal to effect such assignment or novation.

#### **41.9 Warranty regarding Contractor solvency**

- 41.9.1 Each party represents and warrants that there are no reasonable grounds to suspect that it will not be able to pay its debts as and when they become due and payable.
- 41.9.2 The representation and warranty in this clause will be deemed to be repeated by the Contractor and the Principal on each day from the Execution Date until the earlier of:
- (a) the end of the Term; and
  - (b) the expiration or earlier termination of this Agreement,
- with reference to the facts and circumstances subsisting at that date.

#### **41.10 No relationship**

No party to this Agreement has the power to obligate or bind any other party. Nothing in this Agreement will be construed or deemed to constitute a partnership, joint venture or employee, employer or representative relationship between any of the parties. Nothing in this Agreement will be deemed to authorise or empower any of the parties to act as agent for or with any other party.

#### **41.11 Survival of indemnities**

Each indemnity in this Agreement is a continuing obligation, separate and independent from the other obligations of the parties and survives termination of this Agreement.

#### **41.12 Enforcement of indemnities**

It is not necessary for a party to incur expense or make payment before enforcing a right of indemnity conferred by this Agreement.

#### **41.13 No merger**

The warranties, undertakings, agreements and continuing obligations in this Agreement do not merge on completion.

#### **41.14 Rule of construction**

In the interpretation of this Agreement, no rule of construction applies to the disadvantage of the party preparing the document on the basis that it prepared or put forward this Agreement or any part of it.

#### **41.15 Governing law and jurisdiction**

This Agreement is governed by and is to be construed in accordance with the laws of New South Wales. Each party irrevocably and unconditionally submits to the non-exclusive jurisdiction of the courts of New South Wales and waives any right to object to proceedings being brought in those courts.

#### **41.16 Joint and several**

If a party consists of more than one person, this Agreement binds them jointly and each of them severally.

#### **41.17 Severance**

41.17.1 If a provision in this Agreement is held to be illegal, invalid, void, voidable or unenforceable, that provision must be read down to the extent necessary to ensure that it is not illegal, invalid, void, voidable or unenforceable.

41.17.2 If it is not possible to read down a provision as required in this clause, that provision is severable without affecting the validity or enforceability of the remaining part of that provision or the other provisions in this Agreement.

#### **41.18 Counterparts**

This Agreement may be executed in any number of counterparts all of which taken together constitute one instrument.

#### **41.19 Operation of certain clauses**

Clauses 1, 5, 19, 25, 26, 28.3, 28, 30.2.2(b), 31.1.3, 35, 38, 40 and 41, any rights or obligations that are expressed to continue after termination of this Agreement, all accrued rights and entitlements, and any other clause of this Agreement which, by its nature, should survive the termination of this Agreement, survive the termination or expiry of this Agreement.



## Schedule 1      Reference

Item	Description	Clause	Details
1.	Principal Representative	clause 22.1 and clause 1.1	Colin Handsaker, Manager Parking Patrol
2.	Contractor Representative	clause 22.2 and clause 1.1	<b>Robert Di Cristo, Solutions Director</b>
3.	Contractor Designated Officer	clause 29.2.1(a)	<b>Asim Sohail, Commercial Director</b>
4.	Principal Designated Officer	clause 29.2.1(b)	Tony Pavlovic, Executive Manager Compliance
5.	Installation Unconditional Undertaking	clause 26.1	3.5% of the Implementation Fee
6.	Maintenance Unconditional Undertaking	clause 26.1	Not used
7.	Percentage for overheads, preliminaries and profit	clause 20.4	20%
8.	Insurance	clause 24.3	<b>Public and product liability insurance:</b>  \$20 million for any one claim and unlimited in the aggregate.
			<b>Contract works insurance:</b>  An amount not less than the full value of all of the Replacement Parking Meters and the full value of the other property, material and things referred to in clause 24.3.3, in each case on a full reinstatement and replacement basis, plus:  (a) costs of demolition and removal of debris (to a limit of at least 10% of the value of all of the Replacement Parking Meters on a full reinstatement and replacement basis);  (b) additional consultants' and professionals' fees (to a limit of at least 10% of the value of all of the Replacement Parking Meters on a full reinstatement and replacement basis);

Item	Description	Clause	Details
			<p>(c) expediting costs (to a limit of at least 5% of the value of all of the Replacement Parking Meters on a full reinstatement and replacement basis); and</p> <p>(d) allowance for escalation of costs (to a limit of at least 4% per annum of the value of all of the Replacement Parking Meters on a full reinstatement and replacement basis).</p> <p><b>Professional indemnity insurance:</b></p> <p>\$10 million in the aggregate and for any one Claim.</p> <p><b>Motor vehicle insurance:</b></p> <p>Full replacement value.</p>
9.	Precincts	clause 1.1	<p><b>Zone 1 – 84 Bondi Junction</b></p> <p><b>Zone 2 – 152 Bondi Beach</b></p> <p><b>Zone 3 – 26 QED, Park Drive</b></p> <p><b>Zone 4 – 28 Bronte</b></p>
10.	Industry expert who will conduct determinations	clause 29.6.1	To be Advised
11.	Nominating authority for expert determinations	clause 29.6.2	Resolution Institute
12.	Terms of agreement between expert, Principal and Contractor	clause 29.12.2	The form of agreement contained in Schedule 4
13.	Rate of liquidated damages	clause 15.4	<p><i>For each meter that is not operational on a day the liquidated damages shall be an amount per day that the meter is not operational.</i></p> <p><i>That amount shall be the difference between the revenue that was generated from a meter in that location on the same date in the previous year and the amount which the new meter in that location generates this year.</i></p> <p><i>If the meter was not operational in the previous year or there was no meter in that location in the previous year the amount shall be the revenue that was generated from the nearest meter from that location on the same date in the previous year</i></p>



Item	Description	Clause	Details
14.	Installation Fee	1.1	[\$2,245,622.36 excluding GST]
15.	Installation Payment 1 Amount	1.1	30% of the Installation Fee
16.	Installation Payment 2 Amount	1.1	20% of the Installation Fee
17.	Installation Payment 3 Amount	1.1	20% of the Installation Fee
18.	Installation Completion Amount	1.1	The remainder of the Installation Fee that has not been paid as part of Installation Payment 1 Amount, Installation Payment 2 Amount and Installation Payment 3 Amount.
19.	Maintenance Fee	1.1	The amount calculated in accordance with Schedule 12.
20.	Progressive Maintenance Payment Claim Date	1.1	<b><i>Applicable from date of installation and comissioning</i></b>
21.	Interest rate	19.6.1	5%
22.	Pre-Priced Variations and Pre-Priced Variation Prices	20.9	20%
23.	Subcontractors to provide Subcontractor warranties	21.5	Subcontractor – Period of warranty <b><i>24 months for TX Machines</i></b> <b><i>48 months on Sensor battery life</i></b>

## Schedule 2 Specification

PART 2	GENERAL SPECIFICATION		
ITEM #	DESCRIPTION	COMPLIANCE	ADDITIONAL INFORMATION - SUPPORTING INFORMATION
<b>Introduction</b>	The following items apply to the parking meters unless otherwise stated		
<b>2.1</b>	<b>Description of Works</b>		
2.1.1	Tenderer shall provide equipment and services to design, supply, install, program, commission and maintain an on street parking system for Waverley Council.	FULLY COMPLIES	Duncan Solutions has over 22 years of experience designing, manufacturing and maintaining parking equipment and management solutions to meet the needs of councils right across Australian. Our operations teams are extremely experienced in delivering complex city on-street projects for parking meters, sensors and a range of other integrated technology solutions.
2.1.2	Tenderer shall provide all necessary communications devices and project management services and all equipment and hardware necessary to deliver a fully functioning system. This includes, but is not limited to, servers, SIM cards and data connection, equipment handling and installation, training, testing, programming, set-up services, and support service.	FULLY COMPLIES	
2.1.3	All parking control system equipment components shall be linked to a central management computer hosted by the Tenderer. The management computer will be the focal point for day-to-day monitoring, operational management and maintenance. All components of the system shall communicate in real time to the Management Server. A Council administrator must have complete control of the system in regards to managing tariffs and viewing system events.	FULLY COMPLIES	PEMS is the industry leading city parking management system for management of parking meters, enforcement, sensors and a range of other parking technologies.

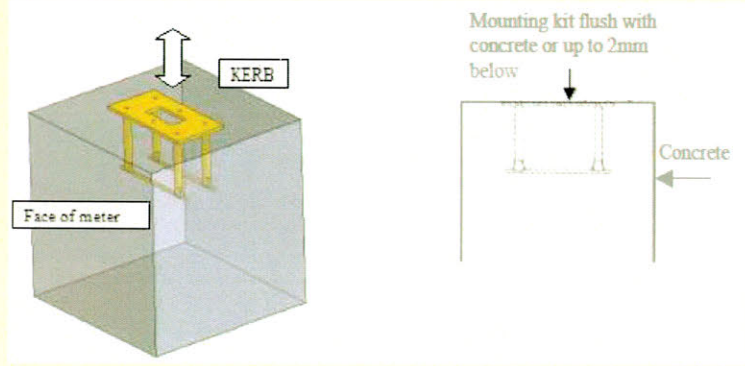


ITEM #	DESCRIPTION	COMPLIANCE	ADDITIONAL INFORMATION - SUPPORTING INFORMATION
2.1.4	The system must allow for remote management and control via web interface.	FULLY COMPLIES	
2.1.5	The solution will include the following main elements:	FULLY COMPLIES	
	Supply pay by plate meters with ticket function.	FULLY COMPLIES	
	Removal and disposal of old ticket machines	FULLY COMPLIES	
	Provision of maintenance for minimum of 5 + 3 + 2.5 years - comprehensive and preventative	FULLY COMPLIES	
	Demonstrate technical competence to integrate parking system into cloud based solutions (ePermits, mobile applications and licence plate based enforcement etc..)	FULLY COMPLIES	
2.1.5	Ability to upgrade pay by plate meters to remove ticket function in the future	FULLY COMPLIES	
	Central management system	FULLY COMPLIES	<p>The central management system Duncan Solutions proposes to use in this contract is PEMS. PEMS is the brain that unifies and integrates a wide range of parking technologies and services. It drives real-time data exchange and workflows between wirelessly-enabled in-field parking and enforcement devices. PEMS is a hosted solution. It is a High Availability (99.9%+ uptime), geographically redundant, PCI DSS Level 1 and ISO 27001 compliant system.</p> <p>PEMS supports managers, administrators and field teams involved in the operation and delivery of a parking system.</p> <p>It delivers rich business intelligence and analytics across a parking system to support revenue management, parking policy regulation, asset management and enforcement. Through PEMS, Duncan Solutions' clients can capitalise on intelligent, adaptable and next generation city parking solutions.</p>
	Provision of a call centre and Help desk	FULLY COMPLIES	

ITEM #	DESCRIPTION	COMPLIANCE	ADDITIONAL INFORMATION - SUPPORTING INFORMATION
2.1.6	The system should be scalable for future expansion including consumer apps and integrations, precinct wide parking guidance and smart city initiatives	FULLY COMPLIES	Duncan's PEMS currently supports wayfinding functionality through pay by phone solutions including NSW Government Park'NPay. PEMS also provides wayfinding functionality at state level i.e. NSW wide Park'NPay application and parking guidance solutions such as digital signage. PEMS also integrates and unifies other solutions such as digital permits, transactional occupancy, ANPR cameras, frictionless off-street parking, environmental sensors and electrical vehicle charging upgrades to parking machines.
2.1.7	Tenderer shall provide all necessary communications devices and project management services and all equipment and hardware necessary to deliver a fully functioning system. This includes, but is not limited to hosting, SIM cards and data connection, equipment handling and installation, training, testing, programming, set-up services, and support service.	FULLY COMPLIES	
2.1.8	All parking control system equipment components shall be linked to a central management computer hosted by the Tenderer. The management computer will be the focal point for day-to-day monitoring, operational management and maintenance. All components of the system shall communicate in real time to the Management Server. A Council administrator must have complete control of the system in regards to managing tariffs and viewing system events.	FULLY COMPLIES	<p>The central management system Duncan Solutions proposes to use in this contract is PEMS. PEMS is the brain that unifies and integrates a wide range of parking technologies and services. It drives real-time data exchange and workflows between wirelessly-enabled in-field parking and enforcement devices. PEMS is a hosted solution. It is a High Availability (99.9%+ uptime), geographically redundant, PCI DSS Level 1 and ISO 27001 compliant system.</p> <p>PEMS supports managers, administrators and field teams involved in the operation and delivery of a parking system.</p> <p>It delivers rich business intelligence and analytics across a parking system to support revenue management, parking policy regulation, asset management and enforcement. Through PEMS, Duncan Solutions' clients can capitalise on intelligent, adaptable and next generation city parking solutions.</p>



ITEM #	DESCRIPTION	COMPLIANCE	ADDITIONAL INFORMATION - SUPPORTING INFORMATION
2.1.9	The system must allow for remote management and control via web interface.	FULLY COMPLIES	
<b>2.2</b>	<b>Submittals</b>		
2.2.1	Submit manufacturer's product data, specifications, installation, and maintenance instructions for each type of parking equipment required. Product data is to be submitted with the Tenderer's bid. Detailed information about the software and associated hardware to include:	FULLY COMPLIES	Please refer to Supporting Documentation - On-Street Meter Replacement for details regarding the TX Machine (in section 4 of that document) and (PEMS in section 2)
	Communications Network diagram.	FULLY COMPLIES	<p>Communications Network Overview</p> <pre> graph LR     PM[TX or VX Parking Meter] --&gt; BS[Base Station]     BS --&gt; BSC[Base Station Controller with Packet Control Unit]     BSC --&gt; SN[Serving GPRS/3G Support Node]     SN --&gt; GN[Gateway GPRS/3G Support Node]     GN --&gt; IPWAN((IP WAN))     IPWAN --&gt; RMC[RMC - Cleaning House]     IPWAN --&gt; PEMS[PEMS - Parking Enterprise Management System server]     subgraph WirelessIPWAN [Wireless IP WAN]         BS         BSC         SN         GN         IPWAN     end </pre>

ITEM	DESCRIPTION	COMPLIANCE	ADDITIONAL INFORMATION - SUPPORTING INFORMATION
2.2.1	Hardware specification.	FULLY COMPLIES	<p>There are no requirements for Council to deploy any hardware or servers management solution - PEMS. The PEMS application is cloud based and secure ULR's. Please refer to Supporting Documentation - On-Street Met details regarding the TX Machine (in section 4 of that document) and (PE</p> <p>Duncan will endeavour to undertake installation on the existing footings o where we can with the following base.</p> 
	Communication protocol between devices.	FULLY COMPLIES	<p>There is real-time wireless communication between the TX Machine and PEMS, sensors, and other integrated software such as payment applications, infringement issuance and automated licence plate recognition programs. The TX Machine utilises Telstra wireless telecommunications networks for all of its data transfers. SIM cards are included.</p>
	Software platforms	FULLY COMPLIES	<p>Duncan will maintain and support PEMS for the life of the contract. This will include installation of periodic version upgrades as they are released. Version upgrades are thoroughly tested before they are installed in production</p>



ITEM	DESCRIPTION	COMPLIANCE	ADDITIONAL INFORMATION - SUPPORTING INFORMATION
2.2.1	Data storage and retrieval. Data Backup protocol.	FULLY COMPLIES	Duncan has well defined backup and recovery procedures as required as part of our PCI and ISO 27001 compliance. All data is backed up every night from disk to disk and replicated to our secondary data centre where it is archived to tape on a monthly basis and sent to a third-party provider for storage.
2.2.2	Submit samples of paint finish, tickets, standard reports, and other elements to be selected by Council within ten (10) days after approval of the contract. Approval/selections will be returned to the Tenderer within ten (10) days of submittal.	FULLY COMPLIES	
2.2.3	The tenderer must submit a Project Management Plan (PMP) and Gantt chart of the proposed time line as part of their tender submission. The PMP must include milestones such as: Contract execution, order of equipment, delivery of equipment to site, installation, training testing and commissioning.	FULLY COMPLIES	A project management plan and gantt chart have been submitted as part of Schedule T10 of the On Street Meter Replacement document.
2.2.4	Provide equipment layouts for proposed locations and any special installation requirements.	FULLY COMPLIES	Duncan will be removing the existing Parkeon meters and installing on existing footings where possible. Where this is not possible Duncan will install a new footing in either the same location or in very close proximity.
2.2.5	Operating manuals: Prior to the initiation of final testing and training, the Tenderer shall deliver the following operation and maintenance manuals:	FULLY COMPLIES	

ITEM	DESCRIPTION	COMPLIANCE	ADDITIONAL INFORMATION - SUPPORTING INFORMATION
2.2.6	<p>Administration Manual: This manual is designed for the Supervisor or Administrator for day-to-day operation of specified software package(s). It shall explain all the features and functions (e.g., log-on/off, monitors prepare and print standard and ad hoc reports) required for day-to-day management. The manual shall also have a section for problems and/or exception conditions so the Supervisor can resolve common operating problems. The manual shall also contain instructions on how to perform normal maintenance. At a minimum, the manual shall contain separate sections that cover the following topics: day-to-day operations, modification of field programmable settings, back-up and recovery, audit and control procedures, report production, contingency plans, configuration and system diagnostics. System Administration manual shall contain information on the proper administration and control of the security features built into the system. Some of the information to be contained in this section includes: maintenance of user identifiers, password control, and security policy review.</p>	FULLY COMPLIES	To be provided prior to the 'go live' date of the sites



ITEM	DESCRIPTION	COMPLIANCE	ADDITIONAL INFORMATION - SUPPORTING INFORMATION
2.2.7	<p>Maintenance Manual: This manual shall contain detailed instructions on how to perform regular and preventative maintenance on all components of the parking control system and communications network that can be performed by Council's staff. The manual shall include: Description of unit and component parts, including part number of all replaceable parts.</p> <p>Include routine operations; guide to trouble shooting; servicing and cleaning schedule; list of cleaning agents required; sequence of operation for common processes; as-installed control diagrams; and a list of spare parts and recommended quantities to be maintained in storage on-site. Include trouble-shooting guide for repairs that can be performed by Council's staff. Include manufacturer's product data with each sheet annotated to clearly identify the data applicable to the installation. Supplement product data with drawings as necessary to clearly illustrate component parts of equipment and systems.</p>	FULLY COMPLIES	To be provided prior to the 'go live' date of the sites
2.2.8	<p>Testing Plan and Documentation: Provide a test plan for review and approval by Project Manager prior to start of first test. The plan shall include demonstrations of compliance with specifications, contractual compliance, definitions of all test objectives, participant responsibilities, documentation for tests, and procedures for dealing with failures during test. Provide copies of checklists which detail tests for every functional requirement, specified supplies/spare parts, training, operating and maintenance manuals and provide space for sign-offs by Tenderer and Council's Representative.</p>	FULLY COMPLIES	To be provided prior to the 'go live' date of the sites

ITEM	DESCRIPTION	COMPLIANCE	ADDITIONAL INFORMATION - SUPPORTING INFORMATION
2.2.9	If Applicable - The Tenderer shall also deliver to the Council original copies of all licenses, registrations, documentation and other media as may have been included with those commercially available software packages provided with the system. In addition, the Tenderer shall ensure that all licenses, registrations and warranties have been transferred to the Council.	FULLY COMPLIES	To be provided upon request from Council
<b>2.3</b>	<b>Qualifications</b>		
2.3.3	Tenderer shall have at least 5 years experience in the parking control field and maintain an adequate supply of replacement parts for the equipment specified. Tenderer shall have current version of each primary component currently operating successfully in five or more parking facilities of similar size and activity.	FULLY COMPLIES	Duncan Solutions has over 22 years of experience designing, manufacturing and maintaining parking equipment and management solutions to meet Australian Councils needs and requirements. Collectively, our team has hundreds of years of experience in designing, supporting and project managing city parking solutions.
2.3.4	Tenderer to provide details of five recent installations sites in the Sydney metropolitan area. 1. Location and organisation 2. Contact name and title 3. Phone number and email address	FULLY COMPLIES	Ryde - Anita Leighton Team Leader Business Administration COMMUNITY AND RANGER SERVICES (02) 9952 8294 Liverpool Council, Alex Helderan Parking Services Coordinator 02 8711 7498 Northern Beaches - Emily Carson, Manager, Community Transport & Parking Operations Parking Operations 02 9976 1645 National Parks - Andrew Thornton, Manager Commercial Partnerships Unit (02 9585 6588) Property NSW, Katherine Harris, Project Manager   Capital Programs Public Works Advisory   Department of Planning, Industry and Environment 02 9240 8794



<b>2.3</b>	<b>Qualifications</b>		
2.3.5	Tenderer shall have sufficient resources and have an approved equipment service office in sufficient proximity to respond to on-site service calls within a two hour period. Tenderer to outline methodology to achieve this response time - consideration being given to the site being close to Sydney CBD.	FULLY COMPLIES	Waverley Council will receive support from the Operations Centre in St Leonards. Duncan technicians are in the field across metropolitan Sydney and the City of Sydney 365 days per annum (~25 per day minimum). They are mobile, with branded service vehicles that contain a sufficient stock of parking equipment and spare parts. All technician vehicles display the Duncan Solutions logo and appropriate signage. Duncan Solutions currently runs a fleet of Toyota Yaris vehicles for our service operations. These are extremely functional and reliable vehicles with the added benefit of producing low-emissions and maximum fuel efficiency. Duncan has a team of highly trained technicians operating across Australia but most importantly in neighbouring councils such as Woollahra and City of Sydney 7 days per week.
2.3.6	Tenderer shall have sufficient resources to respond to online/phone service calls within a thirty minute (30 mins) period. Tenderer to outline methodology to achieve this response time.	FULLY COMPLIES	Duncan Solutions ensures that we have an Operations Manager and an Account Manager that is contactable during business hours, or a 24 hour help line that is available and will respond immediately to any concerns.
2.3.7	Tenderer shall list all subcontractors involved in the installation and maintenance of any part of the parking system	FULLY COMPLIES	Heggie Maintenance Pty Ltd: assistance with civil works

<b>2.4</b>	<b>Quality Assurance</b>		
2.4.1	To ensure reliability, serviceability, and quality of the parking equipment provided under this specification, it is recommended that the major equipment components shall be the standard product of the manufacturer. Any communication equipment components required of this system shall be provided by the same manufacturer who provides the parking equipment. This is expected to ensure that service and support of the equipment shall be carried out in a timely manner and will guarantee that one party shall be responsible for that service and support. It is expected that the Manufacturer can support the system with spare parts for a minimum of 5 years from date of commissioning	FULLY COMPLIES	Duncan Solutions is unique in the Australian market having end to end control of product design, manufacturing and support. Duncan TX Machines are designed and manufactured in Australia. Duncan TX machines, PEMS, AutoISSUE and sensors are extensively tested and proven. All manufacturing is under ISO9001, ISO14001 operations with quality control guidelines. We acknowledge the requirement and consider it a low risk of occurrence based on empirical evidence of historically higher uptime than other market products.
2.4.2	A Parking system incorporating features which minimise maintenance, shall be provided and meet the following requirements:	FULLY COMPLIES	
	i. Provide for ease of performance verification and failure detection while minimising effort required for rectification	FULLY COMPLIES	<p>TX Machines are designed to meet the highest standards of performance including continuously high uptime. Smart electronics/sensors detect and alert operators to any potential faults or attempted security breaches via real time wireless communications.</p> <p>The TX is fitted with alarms and tamper switches that register all events at the machine (door open, door closed, cashbox removed/replaced, etc) and alert technicians and Council to any unlawful entry into the machine. In terms of meter status, information is constantly fed back to PEMS.</p> <p>This workflow includes event alerts for the type of issues identified by Council. Specific events trigger automated alerts within PEMS - FMS such as a call for cash collection, replacement battery, paper jam, coin jam or other requirement.</p>



<b>2.4</b>	<b>Quality Assurance</b>		
	ii. Minimise requirements for special tools and test equipment.	FULLY COMPLIES	Duncan TX Machines don't require special tools or testing equipment
	iii. Provide a system and components that have a service life of 5 years (minimum). Specify periodic maintenance requirements in the maintenance manual to meet that life expectancy.	FULLY COMPLIES	Duncan TX Machines have an average life well in excess of 5 years.
2.4.3	Tenderer to state the 5 most common faults and include the estimated repair time and associated costs	FULLY COMPLIES	Printer Jam - 5 minutes to repair Coin Jam - 5 minutes to repair Credit card jam - 5 minutes to repair Graffiti - 5 minutes to repair Foreign object in credit card reader - 5-10 minutes to repair
2.4.4	All data must be held in Australian Sovereign Territory.	FULLY COMPLIES	All servers are hosted within Australia ensuring that the highest level of data sovereignty is maintained. This allows Duncan to also react to any updates and unplanned issues in a timely manner that cannot be achieved when using offshore servers.
<b>2.5</b>	<b>Project Site Conditions</b>		
2.5.1	The sites for the meters will be in close proximity to SAND and SEA WATER. Tenderer must have proven machines that are resilient to these conditions. Provide Reference Site Contacts for Machines that have been in situ for >5 Years.	FULLY COMPLIES	National Parks - Meters are installed along NSW coast line Newcastle Council - Exposed to harsh sea spray along coast line Cairns Council- Exposed to high humidity, sea and sand including extreme heat Wollongong Council - Exposed to sand and sea water Port Phillip Bay - Exposed to sand and sea spray
<b>2.6</b>	<b>Management System</b>		
2.6.1	It is anticipated that in the event that any system component fails, that neither the transparent operation of the facilities nor the integrity of the data records shall be compromised. For meters, if the device fails to communicate wirelessly, Tenderer to describe how the system is managed in off-line mode. Tenderer to specify the number of transactions that can be retained in the system.	FULLY COMPLIES	Duncan machines are unique and certified to process offline credit card transactions in the event of a network outage. This functionality is already operational at various sites across Australia.

<b>2.7</b>	<b>User groups and Transaction Work flows</b>		
2.7.1	TENDERER TO DESCRIBE THE CUSTOMER WORKFLOW FOR EACH USER GROUP		
2.7.2	Cash / Coin Paying Parkers	FULLY COMPLIES	Enter licence plate number > Insert coins until desired time is met on screen > Print ticket
2.7.3	Credit Card Paying Parkers	FULLY COMPLIES	Enter licence plate information > Select desired time by add/subtracting time on machine > Tap/insert card > Print ticket
2.7.4	Pay by Phone / Mobile App Paying Parkers (DCA Paystay is currently used)	FULLY COMPLIES	Undertake all relevant signup processes on the Park'NPay app including registering a vehicle, adding credit card information > in the app, select the amount of time you wish to park for > press pay
2.7.5	Loading Zone - Free Ticket up to 30mins	FULLY COMPLIES	Duncan meters manage a range of different loading zone requirements within a council area as has been the case with the City of Sydney where we current process 15 and 30 minute free loading zone tickets.



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## Schedule 3      Resources Disposal Plan

*Duncan Solutions will remove the existing machines and will be recycling the metal by disassembling the machine and electronic componentary.*

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## **Schedule 4      Terms of agreement between the expert, the Principal and the Contractor**

**THIS AGREEMENT** is made on the date set out in Item 1 of the Particulars.

**BETWEEN                      THE PERSON DESCRIBED IN ITEM 2 OF THE PARTICULARS ('Principal')**  
**AND                              THE PERSON DESCRIBED IN ITEM 3 OF THE PARTICULARS ('Contractor')**  
**AND                              THE PERSON DESCRIBED IN ITEM 4 OF THE PARTICULARS ('Expert')**

### **RECITALS**

- A.      The Principal and the Contractor have entered into the Contract.
- B.      The Principal and the Contractor have agreed to refer the Dispute for determination by the Expert acting as an expert and not as an arbitrator.

### **OPERATIVE**

#### **1. INTERPRETATION**

Words and phrases used in this Agreement, unless the contrary intention appears or they are otherwise defined in this Agreement, have the meaning attributed to those words and phrases in the Contract.

#### **2. DEFINITIONS**

'Contract' means the contract entered into between the Principal and the Contractor described in Item 5 of the Particulars.

'Dispute' means the dispute or difference described in Item 5A of the Particulars.

#### **3. DECIDE ON DISPUTES**

The Expert shall:

- (a)            determine the Dispute and not any other matter; and
- (b)            in discharging his or her obligations under this Agreement, abide and be bound by the provisions of the Contract.

#### **4. PROCEDURES**

Subject to clause 6, the Expert shall determine the Dispute in accordance with the procedures set out in Item 6 of the Particulars unless varied, amended or otherwise changed by agreement between the Principal, the Contractor and the Expert.

#### **5. THE EXPERT RELEASED**

The Expert is not liable to the Principal and the Contractor jointly, or either of them separately, or to any third party for anything done or omitted by him or her under this Agreement.

The Principal and the Contractor release and indemnify the Expert from and against any claims:

- (a)            including (without limitation) negligence; but



- (b) excluding actual fraud,

in the course of discharging his or her obligations under this Agreement.

## **6. EXPERT'S POWERS**

The Expert shall in discharging his or her obligations under this Agreement:

- (a) act as an expert and not as an arbitrator;
- (b) proceed in such manner as the Expert thinks fit without being bound to observe the rules of evidence but subject to the rule of natural justice;
- (c) take into consideration all documents, information and other written and oral material that the Principal and the Contractor place before the Expert including documents, information and material relating to the facts the subject of the Dispute and to arguments and submissions upon the matters the subject of the Dispute;
- (d) not be expected or required to obtain or refer to any other documents, information or material but may do so if he or she so desires;
- (e) without giving reasons, make a decision in such form as he or she considers appropriate stating the determination of the Dispute; and
- (f) act with expedition with a view to making a decision within the time period specified in Item 7 of the Particulars.

## **7. MEET WITH PARTIES**

If as part of the procedures under clause 4, the Expert meets with the Principal and the Contractor:

- (a) the Principal and the Contractor may be accompanied by their legal representatives if so specified in Item 8 of the Particulars; and
- (b) the Principal and the Contractor agree to be bound by such procedural directions as may be given by the Expert both in preparation for, and during the course of, the meeting.

The parties agree that any such meeting or meetings are not in any way to be regarded as a formal hearing.

## **8. DECISION BINDING**

Unless otherwise provided by the Contract or Item 9 of the Particulars, the Expert's determination of the Dispute is final and binding.

## **9. REMUNERATION**

In consideration of the Expert performing his or her obligations under this Agreement the party or parties as specified in Item 10 of the Particulars shall pay to the Expert the amount set out in Item 11 of the Particulars or such other amount as is agreed between the Principal, the Contractor and the Expert.

## **10. CONFIDENTIALITY**

The Expert shall not at any time, without the consent of both the Principal and the Contractor, disclose or suffer or permit his or her employees, consultants or agents to disclose to any person:

- (a) any details concerning the subject matter of the Dispute;

- (b) any of the contents of the Contract, this Agreement or any other collateral or supplemental agreements or any of the commercial bases or any information relating to the negotiations concerning the same; or
- (c) any other information which may have come to the Expert's knowledge in the course of this Agreement including (without limitation) information concerning the operations, dealings, transactions, contracts, commercial or financial arrangements or affairs of the Principal or the Contractor.

## **11. NATURE OF EXPERT'S ROLE**

The Expert:

- (a) is to be independent from the Principal and the Contractor; and
- (b) without limitation, warrants that he or she has no conflict of interest in acting under this Agreement.

Nothing in this Agreement will be deemed to make the Expert an agent, employee or partner of the Principal or the Contractor.

The Expert shall assume full responsibility and liability for the payment of all taxes due on moneys received by him or her under this Agreement.

## **12. TERMINATION**

This Agreement may be terminated by either the Principal or the Contractor in any of the following events:

- (a) the Expert being declared of unsound mind or mentally ill;
- (b) the Expert being declared bankrupt;
- (c) the Expert committing any proven act of dishonesty or, by wilful act or omission or by gross neglect, behaving in a fashion clearly prejudicial to the interests of the Principal or the Contractor;
- (d) the Expert failing to observe and fulfil any of the substantive terms of this Agreement; or
- (e) the Expert being prevented by prolonged illness or incapacity from performing his or her obligations under this Agreement.

## **13. NOTICES**

All notices to be given to the Expert under this Agreement will be deemed to be properly given if:

- (a) hand delivered to the Expert;
- (b) sent by certified or registered mail to the Expert's address set out in Item 12 of the Particulars or to such other address as the Expert may from time to time advise by notice in writing; or
- (c) forwarded by facsimile transmission to the Expert's facsimile number as set out in Item 13 of the Particulars or to such other facsimile number as the Expert may from time to time advise by notice in writing.

## **14. GOVERNING LAW**

Unless specified otherwise in Item 14 of the Particulars, this Agreement is to be construed for all purposes in accordance with the laws applying to the Contract.



## **15. INCONSISTENCY BETWEEN AGREEMENT AND CONTRACT**

If there is any inconsistency between the terms of this Agreement and the Contract, then unless otherwise specified in Item 15 of the Particulars the terms of the Contract will prevail.

### **PARTICULARS**

Item 1: Date of Agreement

Item 2: Principal

Item 3: Contractor

Item 4: Expert

Item 5: Details of Contract  
(clause 2)

Item 5A: Dispute  
(clause 2)

Item 6: Procedure  
(clause 4)

Item 7: Decision Time Limit  
(clause 6)

Item 8: Legal Representation  
(clause 7)

Item 9: Decision Binding  
(clause 8)

Item 10: Costs Arrangement  
(clause 9)

Item 11: Expert's Remuneration  
(clause 9)

Item 12: Expert's Address  
(clause 13)

Item 13: Expert's Facsimile  
(clause 13)

Item 14: Governing Law  
(clause 14)

Item 15: Inconsistency  
(clause 15)

**SIGNED by THE PRINCIPAL**  
in the presence of:

)  
)

.....

.....  
(Signature of Witness)

.....  
(Name of Witness in Full)

**SIGNED by THE CONTRACTOR**  
in the presence of:

)  
)

.....

.....  
(Signature of Witness)

.....  
(Name of Witness in Full)

**SIGNED by THE EXPERT**  
in the presence of:

)  
)

.....

.....  
(Signature of Witness)

.....  
(Name of Witness in Full)



---

## Schedule 5 Disclosed Information

The following documents are Disclosed Information: Not Applicable

## Disclosed Information - Attachments



## Schedule 6      Approved Form of Unconditional undertaking

### Approved form of Unconditional undertaking

At the request of .....  
ACN ..... ABN (the *Contractor*) and in consideration of Waverley Council ABN 12 502 583 608 (the *Principal*) accepting this undertaking in respect of the On Street Meter Replacement Agreement (the *Agreement*) .....  
ACN ..... ABN ..... (the *Financial Institution*) unconditionally undertakes to pay on demand any sum or sums which may from time to time be demanded by the *Principal* to a maximum aggregate sum of .....  
..... (\$ ..... )

The undertaking is to continue until notification has been received from the *Principal* that the sum is no longer required by the *Principal* or until this undertaking is returned to the *Financial Institution* or until payment to the *Principal* by the *Financial Institution* of the whole of the sum or such part as the *Principal* may require.

Should the *Financial Institution* be notified in writing, purporting to be signed by .....  
..... for and on behalf of the *Principal* that the *Principal* desires payment to be made of the whole or any part or parts of the sum, it is unconditionally agreed that the *Financial Institution* will make the payment or payments to the *Principal* forthwith without reference to the *Contractor* and notwithstanding any notice given by the *Contractor* not to pay same.

Provided always that the *Financial Institution* may at any time without being required to do so pay to the *Principal* the sum of .....  
..... (\$ ..... )

less any amount or amounts it may previously have paid under this undertaking or such lesser sum as may be required and specified by the *Principal* and thereupon the liability of the *Financial Institution* hereunder will immediately cease.

Dated at ..... this ..... day of ..... 20 .....

## Schedule 7      Deed of Guarantee

**Date** 22<sup>nd</sup> April 2020

## Parties

Name Aldo Investments Pty Ltd ACN 608 492 422 ('Guarantor')

Notice details 15/39 Herbert Street, St Leonards NSW 2065

Name Waverley Council ABN 12 502 583 608 ('Council')

Notice details Cnr Bondi rd and paul St Street, Bondi Junction

## Background

A The *Contractor* has, or will enter into, the *Deed with Council*.

B At the request of *Council*, the *Guarantor* has agreed to provide a guarantee in favour of *Council* in relation to the due and punctual performance of the *Obligations* by the *Contractor* on the terms and conditions of this deed.

C The *Guarantor* considers that by providing this guarantee and indemnity there has been or will be a commercial benefit flowing to the *Guarantor*.

## Agreed terms

## 1 DEFINED TERMS & INTERPRETATION

### 1.1 Defined terms

In this deed:

*'Abandonment'* means the Contractor wholly or substantially abandons the Activities.

*'Business Day'* has the same meaning as in the *Deed*.

'Contractor' means Reino International Ptd Limited.

*'Corporations Act'* means the *Corporations Act 2001* (Cth).

*'Deed'* means the deed between *Council* and the *Contractor* dated on or about [## to be inserted] in relation to the *Activities*.

*'Insolvency Event'* means the *Contractor* entering into any form of formal or informal insolvency administration including:

- (a) if the *Contractor* becomes insolvent;
- (b) if a liquidator, controller or administrator is appointed to it;
- (c) if proceedings or steps are brought, taken or threatened for the purpose of winding up or making such an appointment; or
- (d) the *Contractor* is unable to pay its debts as they fall due.



'*Liability*' means any debt, obligation, cost, expense, loss, damage, compensation, charge or liability of any kind, including those that are prospective or contingent and those the amount of which is not ascertained or ascertainable.

'*Loss*' means any liability (including legal and other professional expenses) of any kind whatsoever and includes but is not limited to direct and indirect, consequential or special damage, loss of profits, loss of use, loss of revenue, anticipated revenue, interest or other such claim arising from any cause whatsoever whether or not such loss, damage or claim is based on contract, statute, warranty, tort (including negligence), indemnity or otherwise.

'*Obligations*' means all the obligations and liabilities of the *Contractor* to *Council* (whether liquidated or not, whether contingent or presently accrued due and whether relating to the payment of money or the performance or omission of any act or thing) that are now in existence, or may hereafter come into existence, pursuant to the *Deed*.

'*Activities*' has the same meaning as '*Activities*' in the *Deed*.

## 1.2 Interpretation

In this deed:

- (a) headings are for convenience only and do not affect the interpretation of this deed;
- (b) a reference to a party includes that party's executors, administrators, successors and permitted assigns, including persons taking by way of novation;
- (c) a reference to any statute or to any statutory provision includes any statutory modification or re-enactment of it or any statutory provision substituted for it, and all ordinances, bylaws, regulations, rules and statutory instruments (however described) issued under it;
- (d) a reference to \$ or dollar is to Australian currency;
- (e) a word importing the singular includes the plural (and vice versa), and a word indicating a gender includes every gender;
- (f) where the day on which or by which any act, matter or thing is to be done under this deed is not a *Business Day*, that act, matter or thing will be done on the next following *Business Day*; and
- (g) includes and cognate expressions indicate what is included without limiting what may be included.

## 1.3 Guarantor's warranty as to capacity

The *Guarantor* warrants that it enters this deed in its own right and not as a trustee or in any other representative capacity.

## 1.4 Consideration

Each party acknowledges to each other party that it enters into this deed and incurs obligations and gives rights under it for valuable consideration from the other party.

## 1.5 Reliance

The *Guarantor* acknowledges that:

- (a) *Council* has entered into the *Deed* in reliance on the representations and warranties in clause 4; and
- (b) it has not entered into this deed in reliance on any representation, warranty, promise or statement of *Council* or of any person on behalf of *Council*.

## 2 GUARANTEE AND INDEMNITY

### 2.1 Guarantee

- (a) The *Guarantor* irrevocably and unconditionally guarantees to *Council* the due and punctual performance by the *Contractor* of all the *Obligations*.
- (b) Subject to clause 3.2, if the *Contractor* does not perform an *Obligation*, the *Guarantor* must:
  - (i) perform that *Obligation*; or
  - (ii) procure the performance of that *Obligation*,  
on demand from *Council*. A demand may be made by *Council* at any time and from time to time after failure by the *Contractor* to perform any of its *Obligations* in accordance with the *Deed*.

### 2.2 Payment by the Guarantor

If the *Contractor* does not pay any monetary *Obligation* when due, the *Guarantor* must within 2 *Business Days* of receipt of a written demand from *Council* pay that amount to, or as directed by, *Council*.

### 2.3 Indemnity

The *Guarantor* indemnifies *Council* against any *Loss* *Council* suffers or incurs:

- (a) if the *Contractor* does not, or is unable to, perform an *Obligation* (including the payment of a monetary *Obligation*);
- (b) if an *Obligation* (including the payment of a monetary *Obligation*) is found to be unenforceable, invalid, illegal or void;
- (c) if an obligation the *Guarantor* would otherwise have under clauses 2.1 or 2.2 is found to be unenforceable, invalid, illegal or void;
- (d) as a result of an *Insolvency Event* in respect of the *Contractor*; or
- (e) if the *Guarantor* is in breach of this deed,

in each case, for any reason and whether or not *Council* knew or ought to have known anything about those matters.

The *Guarantor* agrees to pay amounts under this indemnity within 2 *Business Days* of receipt of a written demand from *Council* to pay such amounts to *Council*.



### 3 LIABILITY OF THE GUARANTOR

#### 3.1 No reduction or release

The *Liability* of the *Guarantor* and the rights of *Council* under this deed will not be affected by any act, omission, matter or thing that would otherwise operate in law or in equity to reduce or release the *Guarantor* from *Liability* under this deed.

Without limiting the generality of the foregoing, the *Guarantor's Liability* will not be affected by:

- (a) the granting by *Council* to the *Contractor* of time, waiver, indulgence or concession or the making of any composition or compromise with the *Contractor*;
- (b) *Council* forbearing to enforce or neglecting to exercise any right against the *Contractor*;
- (c) any laches, acquiescence or other act, neglect, default, omission or mistake by *Council*;
- (d) any variation of any of the *Obligations* or of the *Deed*, made either with or without the knowledge of the *Guarantor*;
- (e) the loss or release of any security or any variation in the order of priorities relating to that security;
- (f) any failure by *Council* to disclose to the *Guarantor* any fact, circumstance or event relating to the *Contractor* at any time before or during the currency of this deed;
- (g) the cessation of the obligations, in whole or in part, of any person under any document or agreement;
- (h) the liquidation of any person;
- (i) any arrangement, composition or compromise entered into by *Council* or any other person;
- (j) any document or agreement being in whole or in part illegal, void, voidable, avoided, unenforceable or otherwise of limited force or effect;
- (k) any extinguishment, failure, loss, release, discharge, *Abandonment*, impairment, compound, composition or compromise, in whole or in part of any agreement;
- (l) any security being given to *Council* by any person;
- (m) any moratorium or other suspension of any right of *Council*;
- (n) *Council* or any receiver or attorney exercising or enforcing, delaying or refraining from exercising or enforcing, or being not entitled or unable to exercise or enforce any right of *Council*;
- (o) *Council* obtaining a judgment against any person for the payment or performance of any of the *Obligations*;
- (p) any transaction, agreement or arrangement that may take place with *Council* or any other person;

- (q) any payment to *Council*, including any payment which at the payment date or at any time after the payment date is, in whole or in part, illegal, void, voidable, avoided or unenforceable;
- (r) any failure to give effective notice to any person of any default under the *Deed* or other document or agreement;
- (s) the acceptance of the repudiation of, or termination of the *Deed*; or
- (t) any assignment, novation or other dealing with, any rights or obligations under the *Deed*.

### 3.2 Reinstatement of rights

If a claim is made that all or part of a payment, obligation, settlement, transaction, conveyance or transfer in satisfaction of an *Obligation* is void or voidable:

- (a) under any law relating to liquidation, administration, insolvency or the protection of creditors; or
- (b) for any other reason,

provided the *Guarantor* is liable under this deed in respect of the *Obligation* and the claim is upheld by a court of law, conceded or compromised, then:

- (c) *Council* is entitled immediately as against the *Guarantor* to the rights in respect of the *Obligation* to which it would have been entitled if all or that part of that payment, obligation, settlement, transaction, conveyance or transfer had not taken place; and
- (d) the *Guarantor* must immediately take all action and sign all documents reasonably required by *Council* to restore to *Council* the benefit of the *Liability* of the *Guarantor* under this deed in place immediately before the payment or transaction.

### 3.3 Continuing obligations

- (a) The guarantee and indemnity contained in this deed are continuing obligations of the *Guarantor* and remain in full force and effect until all:
  - (i) the obligations owing to *Council* under this deed, contingently or otherwise, have been performed in full; and
  - (ii) the monetary obligations and all other moneys owing to *Council* under this deed, contingently or otherwise, have been paid in full.
- (b) *Council's* rights under this deed are additional to and do not merge with or affect and are not affected by any other obligation of the *Guarantor* to *Council*, despite any rule of law or equity or any statutory provision to the contrary.

### 3.4 Independent obligation

The guarantee in clause 2.1, the undertaking to pay in clause 2.2 and the indemnity in clause 2.3 contained in this deed are separate and independent obligations of the *Guarantor* and neither limits the generality of the other.

### 3.5 Immediate recourse

The *Guarantor* waives any right it may have to require *Council* to proceed against, or enforce any other rights or security or claim payment from, any other person before claiming from the



*Guarantor* under this deed. This waiver applies irrespective of any law or any provision of the *Deed* to the contrary.

#### **4 REPRESENTATIONS AND WARRANTIES**

The *Guarantor* represents and warrants that:

- (a) this deed constitutes a valid and legally binding obligation of it in accordance with its terms;
- (b) the execution, delivery and performance of this deed does not violate its constitution, any law applying to it or any agreement or instrument binding on it or any of its property;
- (c) it has the power, and has taken all corporate and other action required, to enter into this deed and to authorise its execution and delivery and the performance of its obligations under it;
- (d) it is a corporation as that expression is defined in the *Corporations Act* and validly existing under that Act;
- (e) it is solvent and no *Insolvency Event* has occurred in respect of it;
- (f) it has taken all necessary corporate action to authorise the entry into and performance of this deed and to carry out the transactions contemplated by it; and
- (g) all information provided to *Council* by or on behalf of the *Guarantor* and all representations made in this deed are true and correct in all material respects and are not, whether by omission of information or otherwise, misleading.

The *Guarantor* will be taken to have repeated the representations and warranties in this clause 4 on each day during the term of this deed.

#### **5 DEFENCES AND CROSS CLAIMS AVAILABLE TO GUARANTOR**

Notwithstanding any other provision of this deed, the aggregate liability of the *Guarantor* under this deed will not exceed the aggregate liability of the *Contractor* under the *Deed* (including any liability which would have been due if the *Deed* or the liability was enforceable, valid and not illegal).

#### **6 NOT USED**

#### **7 COSTS AND EXPENSES**

- (a) The *Guarantor* must pay all taxes, duties, fees, costs and expenses in relation to the delivery, stamping, registration and discharge of this deed.
- (b) The *Guarantor* must on demand reimburse *Council* for all expenses (including legal costs and disbursements on a solicitor/own client basis) incurred by *Council* in connection with the enforcement, attempted enforcement or preservation of any rights under this deed.
- (c) The *Guarantor* will be solely responsible for the payment of any and all taxes imposed by the government of any jurisdiction with respect to or by reason of the receipt or derivation of any and all actual or constructive payments to it under this deed, including any retrospective assessments or taxes that may be made at any time during or after the term of this deed by any duly constituted revenue authority.
- (d) All payments under this deed will be made without any deduction or withholding for or on account of any *Tax* except to the extent, if any, that such deduction or withholding is required by any applicable law, including any practical application thereof by any relevant revenue authority.

- (e) Where the *Guarantor* is so required to make such a deduction or withholding with respect to any payment to *Council* under this deed, the *Guarantor* will:
- (i) notify *Council* of such requirement;
  - (ii) pay to the relevant revenue authority the full amount required to be deducted or withheld in accordance with the applicable law as applied; and
  - (iii) provide *Council* with an official receipt or certification or other documentation reasonably acceptable to *Council*, evidencing such payment.
- (f) In this clause 7 '*Tax*' means withholding or other tax imposed pursuant to the *Income Tax Assessment Act 1936* (Cth), the *Income Tax Assessment Act 1997* (Cth), the *Taxation Administration Act 1953* (Cth), the rating Acts and other applicable tax legislation, regulations and delegated legislation (including interest, penalties, fines or charges with respect thereto).

## 7.1 Legal advice

The *Guarantor* acknowledges that before executing this deed the *Guarantor*:

- (a) was advised by *Council* to consult and receive advice as to the purport, effect and consequences of and obligations created by this deed from a solicitor or barrister independent of *Council*; and
- (b) was aware of and fully understood the purport, effect and consequences of and the obligations created by this deed.

## 8 MISCELLANEOUS

### 8.1 Severance

Any provision of this deed which is illegal, void or unenforceable will be ineffective to the extent only of that illegality, voidness or unenforceability without invalidating the remaining provisions of this deed.

### 8.2 Notices

All notices and other communications to a party in connection with this deed may be made by delivering or posting the notice or communication to the address of the party or sent by facsimile to the facsimile number of the party, as notified to the other party from time to time.

### 8.3 Waivers

- (a) Waiver of any right arising from a breach of this deed or of any power arising upon default under this deed must be in writing and signed by the party granting the waiver.
- (b) A failure or delay in exercise, or partial exercise, of:
  - (i) a right arising from a breach of this deed; or
  - (ii) a right, power, authority, discretion, or remedy created or arising upon default under this deed,does not result in a waiver of that right, power, authority, discretion, or remedy.
- (c) A party is not entitled to rely on a delay in the exercise or non-exercise of a right, power, authority, discretion, or remedy arising from a breach of this deed or on a default under this deed as constituting a waiver of that right, power, authority, discretion, or remedy.



- (d) A party may not rely on any conduct of another party as a defence to the exercise of a right, power, authority, discretion, or remedy by that other party.
- (e) This clause may not itself be waived except by writing.

#### 8.4 Variation

A variation of any provision of this deed must be in writing and signed by the parties.

#### 8.5 Further assurances

Each party must do all things and execute all further documents necessary to give full effect to this deed.

#### 8.6 Entire agreement

This deed supersedes all previous agreements in respect of its subject matter and embodies the entire agreement between the parties.

#### 8.7 To the extent not excluded by law

The rights, duties and remedies granted or imposed under this deed operate to the extent not excluded by law.

#### 8.8 Information

The *Guarantor* agrees to, promptly after request by *Council*, provide any financial and other information in relation to the *Guarantor* reasonably requested by *Council*.

#### 8.9 Government Information

The *Guarantor* acknowledges and agrees that *Council* may disclose this deed (and information concerning the terms of this deed) under or in accordance with any law, including the *Government Information (Public Access) Act 2009* (NSW).

### 9 GOVERNING LAW AND JURISDICTION

#### 9.1 Governing law

This deed is governed by and will be construed according to the laws of New South Wales, Australia.

#### 9.2 Jurisdiction

- (a) Each party irrevocably submits to the non-exclusive jurisdiction of the courts of New South Wales, Australia, and the courts competent to determine appeals from those courts, with respect to any proceedings which may be brought at any time relating in any way to this deed.
- (b) Each party irrevocably waives any objection it may now or in the future have to the venue of any proceedings, and any claim it may now or in the future have that any proceedings have been brought in an inconvenient forum, where that venue falls within paragraph (a) of this subclause 9.2.

## 10 COUNTERPARTS

This deed may be executed in any number of counterparts and by the parties on separate counterparts. Each counterpart constitutes an original of this deed, all of which together constitute one agreement.

## 11 ASSIGNMENT

### 11.1 Assignment/novation by Council

*Council* may novate, assign or charge its rights under this deed without the prior written consent of the *Guarantor* to any person.

### 11.2 No assignment by the Guarantor

The *Guarantor* may not assign any of its rights under this deed without the prior written consent of *Council*. *Council* may withhold consent in its absolute discretion.

### EXECUTED as a deed

EXECUTED by Waverley Council )  
ABN 12 502 583 608 by )  
[ROSS MCLEOD] in the presence of: )

..... )  
Signature of witness )

COIN HANDSAKER..... )  
Name of witness (block letters) )

..... )  
Signature of [ ] ROSS MCLEOD )  
GENERAL MANAGER )

EXECUTED by Aldo Investments Pty Ltd ACN )  
608 492 422 in accordance with Section 127 )  
of the Corporations Act 2001 (Cth) in the )  
presence of: )

..... )  
Trent Loebel )

..... )  
15/39 Herbert St, St Leonards, NSW 2065 )

..... )  
Mark Byrne )

..... )  
15/39 Herbert St, St Leonards, NSW 2065 )

Director

Full name

Usual address

Company Secretary

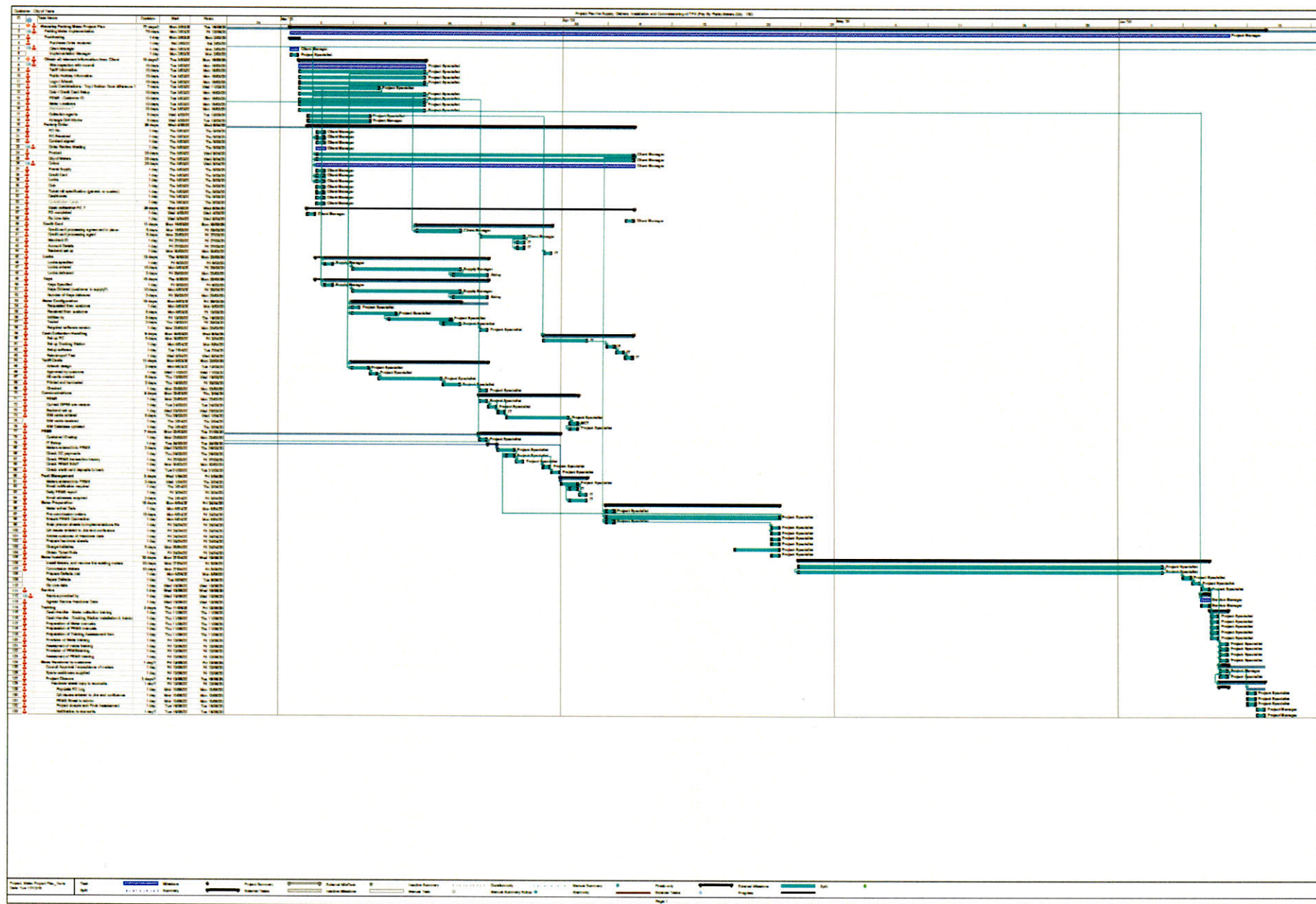
Full name

Usual address



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## Schedule 8      Outline Rollout Plan





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## Schedule 9      Maintenance Plan

### Maintenance

#### Approach to Maintenance Services

The Duncan Solutions team is committed to Delivering Exceptional Service. We understand that it is required to complete regular routine, preventative and reactive maintenance to keep all machines in functional operation to the maximum availability. Duncan Solutions is contracted to provide very similar maintenance services for a number of large Australian municipal clients including City of Sydney, Melbourne, Canberra and many of the major inner metropolitan councils across Australia. Using this experience, we are confident that we have formulated a suitable programme to meet all the requirements of Waverley Council under the contract term.

#### Operations Plan

For each maintenance client, Duncan develops a customised maintenance Operations Plan (OP). This plan assigns responsibilities to relevant people and identifies the resources and processes that will be required to meet the client's objectives. The client specific details of the OP is further refined after consultation with Waverley Council.

This Operations Plan outlines Duncan's understanding of the requirements for the Maintenance of Parking Control Devices, and details our processes for delivery of the following:

- Routine inspections and reactive maintenance
- Preventative maintenance
- Ensuring faulty devices are repaired, as a minimum, within the time limits required by Waverley Council
- Ensuring meter uptime exceeds the average 99% total required by Waverley Council
- Achieving the Average Daily Revenue target for the Top 100 devices
- Cleaning of machines, including the removal of dirt, grime, graffiti, and bill posters
- Minor vandalism and accidental damage repair commencement within four hours/repared within eight hours
- Significant vandalism and accidental damage repair completed within agreed timeframes
- Provision of customer management services, including the use of shared software systems and databases with Waverley Council
- Auditing of service delivery
- Maintenance of databases, ensuring that Waverley Council's Asset & Information management systems are kept up to date with accurate information and all project data entered and completed within agreed timeframes
- Data collection, information analyses and reporting
- Monthly inspections
- Resourcing (staff, spare parts, vehicles, offices)
- Training of both staff and client stakeholders
- Programming and tariff changes
- Management of daylight savings and public holidays

- Management of battery replacements
- Management of preventative and proactive maintenance work orders
- Management of dispatching
- Management of ad-hoc work requests
- WHS site plan
- Component replacement
- Cleaning and maintenance of ticket parking machine internals
- Supply of spare parts and consumables
- Associated Customer Call Centre services
- Provision of information for the resolution of infringement disputes
- Communications Management System – hosting and maintenance
- Reporting and regular meetings/Waverley Council liaison
- Provision of continuous improvement outcomes across all aspects of the services provided.

Duncan's Head Office and Operations Centre is a large, well-equipped facility that is stocked with all required tools and equipment for the ongoing service technician support and operations.

Duncan will draw upon our existing experienced workforce of over 40 highly trained technical personnel operating in our St. Leonards office to support Waverley Council, particularly in the initial phases as we transition into the contract.

Our St. Leonards office also houses substantial repairs facility for the repair and refurbishment of spare parts. This is the major warehouse from which parts distribution will be managed.

The below table defines Duncan Solutions' recommendations for the delivery of Comprehensive Maintenance Services.

**Table 1: Recommended Maintenance Schedule**

Name	SLA	Performance Requirement
Preventative Maintenance (Machines)	<b>Clean</b> <ul style="list-style-type: none"> <li>▪ Shell</li> <li>▪ Solar panel lens</li> <li>▪ Tariff Lexan</li> <li>▪ Display glass</li> <li>▪ Coin runway</li> <li>▪ Buttons</li> <li>▪ Validators</li> </ul>	Carried out <b>quarterly</b> .



Name	SLA	Performance Requirement
	<ul style="list-style-type: none"> <li>▪ Credit card reader</li> </ul> <b>Check</b> <ul style="list-style-type: none"> <li>▪ Street Signs match Tariff card</li> <li>▪ "Take Ticket" and "P" stickers</li> <li>▪ Ticket door retracting</li> <li>▪ Bottom decal</li> <li>▪ "\$3.80" test (\$2, \$1, 50c, 20c, 10c)</li> <li>▪ Check coin return chute</li> <li>▪ Credit card test (offline)</li> <li>▪ Printer test</li> <li>▪ Cashbox test</li> <li>▪ Adjust doors</li> <li>▪ Lubricate hinges</li> <li>▪ Lubricate lock bars</li> <li>▪ Lubricate lock cams</li> </ul>	
<b>Reactive Maintenance</b>	<ul style="list-style-type: none"> <li>▪ Repair meter faults and conduct a full inspection</li> <li>▪ Repair urgent faults/vandalism which compromises security of the meter or public safety</li> </ul>	<b>1.5 -hour response time</b> during normal operating hours (7am to 10pm)
<b>Routine Maintenance (Inspections – not part of quarterly Preventative Maintenance)</b>	Remove cobwebs, dirt, foreign matter, labels and stickers, posters and substances from parking meter housing <ul style="list-style-type: none"> <li>▪ Remove graffiti</li> <li>▪ Check coin path and validation</li> <li>▪ "\$3.80" test (\$2, \$1, 50c, 20c, 10c)</li> <li>▪ Check credit card reader (offline)</li> <li>▪ Check date and time are accurate</li> <li>▪ Check buttons functioning</li> <li>▪ Check accuracy of signage against programs</li> <li>▪ Obtain test tickets</li> <li>▪ Check for any damage to panels, tariff cards and outer shell</li> </ul>	Carried out <b>Monthly</b> .

Name			SLA	Performance Requirement
Target Availability	Parking Meter		<ul style="list-style-type: none"> <li>All meters must be maintained in accordance with the requirements of the specifications</li> </ul>	>99.5% monthly average uptime per PEMS reports
Work Instructions			<ul style="list-style-type: none"> <li>Major Maintenance: install, remove or relocate a parking meter.</li> <li>Minor Maintenance: change of program/meter tariff, repair faults, replace parts</li> </ul>	<p>Major Maintenance to be conducted within 7 days of request</p> <p>Minor maintenance to be conducted within 5 days of request.</p> <p>Multiple requests may be subject to additional lead times.</p>
Incident Reporting			<ul style="list-style-type: none"> <li>Within 48 hours</li> </ul>	
Communications Management System Maintenance			<ul style="list-style-type: none"> <li>Operations, monitoring &amp; maintenance</li> </ul>	Monitoring conducted 14hrs per day
Customer Service Centre (for Call Centre)			<ul style="list-style-type: none"> <li>Provision required for all calls during evenings and Public holidays.</li> <li>All call to be tracked, identified and resolved</li> <li>Details of all calls received to be provided to council weekly.</li> </ul>	<p>Call to be answered within 3 rings</p> <p>No cap on call volumes per day</p>
Emergency Call Out			<ul style="list-style-type: none"> <li>Escalated and Managed by Support Officers and Operations Supervisors</li> </ul>	Response 1hrs during Business hours

#### Motor Vehicles

Duncan technicians move around the site in branded service vehicles that contain a sufficient stock of parking equipment and spare parts. All technician vehicles display the Duncan Solutions logo and appropriate signage. Duncan Solutions currently runs a fleet of Toyota Yaris vehicles for our service operations. These are extremely functional and reliable vehicles with the added benefit of producing low-emissions and maximum fuel efficiency.





## Uniformed

All Duncan Solutions staff are supplied with a WHS certified corporate uniform and photographic identification tags. This ensures that they are easily identifiable and recognisable when working in the field.

### **Routine Maintenance**

The Routine Maintenance program will include regular monitoring and actioning of fault alarms generated by the Parking Machines. This will be achieved by real-time monitoring from PEMS. All faults will be attended to and resolved as per the agreed service levels which takes account of the severity of the fault.

A program will be established to manage the scheduling of Routine Maintenance tasks / procedures where each machine is inspected regardless of any faults / alarms reported by PEMS. This service includes the following activities for each machine:

- Remove:
  - cobwebs,
  - dirt
  - foreign matter
  - replacement of damaged decals / labels and stickers
  - posters and
  - substances from parking meter housing
- Cleaning of external surfaces including removal of graffiti
- Check coin path and validation
- "\$3.80" test (\$2, \$1, 50c, 20c, 10c)
- Check credit card reader (offline)
- Check date and time are accurate
- Check buttons functioning
- Check accuracy of signage against programs
- Obtain test tickets
- Check for any damage to panels, tariff cards and outer shell
- Replacing of ticket rolls
- Adjustments of time clocks for daylight saving changes
- Program adjustments needed for changes in tariff, parking restrictions and/operational time changes
- Maintenance and replacement of batteries and ticket rolls
- Minor adjustments and servicing of components to maintain functionality and accuracy and
- Representing the Waverley Council in court actions in respect of contested parking fines



## Preventative Maintenance

Preventative maintenance is critical to ensuring the ongoing reliable operation of parking machines, and for maximising their useful life. We recommend that this be performed on all meters covered under the maintenance agreement, every 3 months.

All servicing requirements are carried out using an inspection checklist as shown in Table 2. Parts used during any repairs will also be captured to ensure that detailed audit reporting is supported, and inventory tracking takes place.

**Table 2 Inspection Checklist for Quarterly Preventative Maintenance**

Duncan Solutions Quarterly Preventive Maintenance Checklist TX Ticket Machine					
	Meter Name:				
	Meter ID:				
	Technician Name:				
	Date:				
Task #	Task	Completed		Rework complete	Rework Date
1	Clean shell	Y	N		
2	Clean Solar panel lens	Y	N		
3	Clean Tariff Lens	Y	N		
4	Check Street Signs match Tariff card	Y	N		
5	Clean Display glass	Y	N		
6	Clean Buttons	Y	N		
7	Clean credit card bezel	Y	N		
8	Check "Take Ticket" and "P" stickers	Y	N		
9	Ensure ticket door retracting correctly	Y	N		
10	Check Top Door decal	Y	N		
11	Ensure ground mount is tight	Y	N		
12	"\$3.80" test (\$2, \$1, 50c, 20c, 10c)	Y	N		
13	Maximum coin test	Y	N		
14	5c coin test (machine does not accept)	Y	N		
15	Coin runway cleaned	Y	N		

16	Clean Validators	Y	N		
17	Check coin return chute	Y	N		
18	Credit card test (offline)	Y	N		
19	Clean credit cards reader (offline)	Y	N		
20	Check latest printer installed	Y	N		
21	Printer test	Y	N		
22	Cashbox test	Y	N		
23	Solar Panel Voltage check	Y	N		
24	Adjust doors	Y	N		
25	Lubricate hinges	Y	N		
26	Lubricate lock bars	Y	N		
27	Lubricate lock cams	Y	N		
28	Lower Snow door cleaned	Y	N		

A Preventative Maintenance summary report is provided. This illustrates the condition of the installed equipment. This information is one of the inputs clients can use to inform future decisions to upgrade parking machines, such as when with to provide component/technology upgrades.

This information also becomes a future source to understand and analysis of all significant repair works that were undertaken.

#### **Reactive Maintenance**

All maintenance jobs are managed via Duncan Solutions' Field Management System (FMS). This system records all job details from notification time, allocation of issues to the appropriate service technician, through to resolution time and parts used.

Real-time monitoring of response time is performed via FMS to ensure that the service level for each issue is met. Escalation procedures for faults that threaten our service response time allow re-allocation of issues to resources better positioned to rectify the fault.

Parking Meter or Handheld Device faults may be discovered during preventative maintenance or through notification by the Parking Enterprise Management System (PEMS). Parking Rangers and drivers may also report faults to Duncan Solutions' Support Centre.

#### **Communications Management**

Duncan Solutions recognises that effective communication and relationship management will underpin overall success. Our approach is customer centric. Collaboration is a method we embrace to ensure our clients benefit from the wealth of experience we bring.



We know that successful parking systems are built on a long-term partnership approach with the client. Waverley Council is an essential part of this. Duncan is committed to working in partnership and building a trusted relationship with Waverley Council. Duncan's goal is to always make life easier, safer and more convenient.

Duncan is always willing to accommodate discussions and negotiations during the life of the project. Duncan will have a dedicated Account Manager managing the partnership during the contract. The contract delivery and ongoing performance will also be monitored by Duncan Chief Operating Officer, along with Duncan Executive team. There will be regular health checks with the Account Manager to ensure that Duncan is performing to standards which set it apart from the competition.

To achieve this, Duncan's key project personnel will develop a greater understanding of the Waverley Council's current team framework and spend time on site and over the phone building a trusting, constructive relationship with all of the relevant stakeholders during the preliminary stages. Duncan will adopt a structured approach to managing the relationship with, and ongoing provision of service delivery to, Waverley Council. This will consist of:

- informal, day-to-day discussions and interactions between Duncan's project team members and Waverley Council's contract manager and relevant entity staff, and
- formal meetings at pre-determined intervals (monthly, half-yearly and/or annual) with nominated personnel from both Duncan Solutions and Waverley Council.

Duncan's typical approach to managing the relationship for our long-term client contracts is outlined below.

**Table 3 Communication approach**

Meeting/ Type	Communication Purpose
One on One	Each party nominates one person with the appropriate skills and experience as its representative to be responsible for the coordination and management between the parties over the life of the contract.
Monthly Performance review meetings	Nominated representatives, including Duncan's Project Manager and Waverley Council's contract manager, meet formally at least once a month to review performance. This meeting is aimed at discussing and resolving any minor issues relating to the performance of the contract, and introducing concepts that, if adopted, may improve or create efficiencies within the current service offering.
Contract Management Committee	At least annually, or as otherwise agreed, a formal meeting is held under the auspices of this committee. The committee comprises senior people from Waverley Council and Duncan Solutions service delivery team. The purpose of the meeting is to formally monitor performance of the contract, consider any

Meeting/ Type	Communication Purpose
	ways in which services may be improved, consider any amendments to service levels and resolve, where possible, any issues that remain unresolved from the monthly contract meetings.
Extraordinary senior management meetings	A meeting is held as and when required between the senior executives of both parties. These meetings look to resolve issues that may not have been suitably addressed after previously being raised at the monthly and/or contract Management Committee meetings, and review the overall relationship between the parties. They may also facilitate immediate discussions concerning opportunities for the contractor to help improve the Waverley Council's business.

Servicing functions undertaken through reactive maintenance include:

- Addressing faults or warnings or suspected faults or warnings
- Clearing of coin jams
- Changing ticket rolls
- Replacing batteries
- Replacing parts
- Removal of graffiti, foreign objects or other substances from the meters and
- Response to inactivity notifications from meters.
- The basic process for reactive maintenance repairs is as follows:
- Customer Service Centre or Team Leader via PEMS/FMS informs technician of fault
- Technician assesses the response capabilities and acknowledges or rejects the call/issue
  - Rejected issues are escalated within the Despatch Centre and re-assigned to another Technician

Once the call/issue has been accepted, the allocated technician proceeds to the appropriate meter, assesses requirements and affects repairs. Once the meter has been repaired, the call/issue is to be closed and details of the repair are logged.

#### Spare Parts and Consumables

If included by Waverley Council as their preferred option, Duncan Solutions' Supply Chain personnel ensure that there is always a required stock of spare parts available to satisfy normal demand across the customer base. Our warehousing of required spare parts is based upon ongoing review of demand and detailed repair and fault analysis. In addition to this, our vehicles hold a sufficient quantity of spare parking equipment stock to ensure that the vast majority of minor and medium level maintenance and/or repairs can be completed on-site.



#### Battery Replacements

Battery replacements are scheduled when the voltage reaches <11.9 Volts. Technicians will react to any such "low voltage" alarm by installing a fully charged battery (~13V, 35Ahr) into the meter. The discharged battery is returned to the office where it will be recharged and installed in the next meter exhibiting a low voltage warning.

#### Reconfiguration of equipment

Where required, programme changes can be made quickly to the site via PEMS. For the parking machines, there are a number of ways that configuration upgrades can be completed:

- Configurations modified manually at the meter;
- Programme changes made in-house and inserted on a USB flash drive to the meters; and
- Files downloaded to the meters via wireless communications (if GPRS/3G communication systems are being used).

Duncan Solutions advises that programme changes can be made quickly, with modified configurations subsequently uploaded to the site via wireless communications. Once completed, the technicians can exchange tariff/information cards as required.

#### Exclusions from the CMA

Relocation / reconfiguration / tariff change

Should the client require scheduled works, such as the reconfiguration or relocation of equipment, Duncan will respond quickly to each individual request.

Any required relocation of equipment is completed following clear discussion with the client to ensure precise requirements are provided and understood. This includes the new location(s), time-lines, modifications to configurations, and agreed re-instatement of surrounding areas.

Required works will be completed as approved by the client. Duncan Solutions will undertake all scheduled works in accordance with recognised legislative and (local) government requirements. Duncan Solutions has substantial experience in managing complex installation and civil works in urban environments.

#### Vandalism and Accidental Damage

Once reported or discovered by Duncan Solutions, vandalism and accidental damage are treated in the same way as repairs.

A service report can be provided summarising all vandalism and accidental damage activities during the preceding month.

## Schedule of Spare Parts

Table 4 Schedule of Spare Parts

Item Number	Item Description	Location	Numbers Kept
820-0000-1257-A	Munzprufer APD - Display Loom TX	Sydney	10
820-0000-1287-A	Loom CPU to TX Cashbox	Sydney	10
820-0000-1295-A	Magtek I-65 Card Reader	Sydney	10
820-0000-1329-A	TX Munz Validator - Display Loom	Sydney	10
820-0000-1330-A	Seiko Printer Data - Carrier TX Loom	Sydney	10
820-0000-1331-B	TX Printer On/Off Carrier Loom	Sydney	10
820-0000-1348-A	TX Piezo Button Recessed	Sydney	20
820-0000-1349-A	TX APD MUNZPRUFER	Sydney	20
820-0000-1350-A	TX VALIDATOR MUNZ AUD0.1,0.2,0.5,1.0,2.0	Sydney	20
820-0000-1351-A	TX ESCROW MUNZPRUFER	Sydney	20
820-0000-1352-A	TX ARM MUNZPRUFER	Sydney	20
820-0000-1425-C	TVX Contactless PCA	Sydney	30
820-0000-1467-B	TVX Carrier PCA (Rev 3.5)	Sydney	30
820-0000-1525-B	Loom 4.4" Display to Carrier	Sydney	10
820-0000-1528-A	Modem Interface Board U-blox Lisa	Sydney	20
820-0000-1532-A	TX Universal Contactless CC Reader - MC & Visa	Sydney	5
820-0000-1547-A	TX-C Display Window Front	Sydney	10
820-0000-1548-A	TX-C MBR keypad window rear with printing	Sydney	10
820-0000-1549-A	TX-C QWERTY Keypad	Sydney	10
820-0000-1554-A	TX-C MBR capsense panel-Capsense PCA	Sydney	10
820-0000-1555-A	PCA cap sense MBR TTX	Sydney	10
820-0000-1556-A	TX-C Display Interface PCA	Sydney	10
820-0000-1557-A	PCA 4.4" LCD for TTX MBR	Sydney	10
820-0000-1558-A	TX-C MBR capsense panel-LCD PCA bracket with studs	Sydney	10
820-0000-1559-A	TX-C capsense keypad-gasket	Sydney	10
820-0000-1560-A	PCA cap sense keypad TTX	Sydney	10
820-0000-1562-A	TX-C capsense keypad-PCA gasket	Sydney	10
820-0000-1570-A	TX-C Top Door Decal Set Coin & CC	Sydney	10



820-0000-1578-A	Loom 4.4" Display to Carrier 630mm	Sydney	10
820-0000-1589-A	TX-C MBR gasket set	Sydney	10
820-0000-1628-A	Loom TX-C Carrier to Display	Sydney	10
820-0000-1636-A	TX-C Capsense Keypad - PCA fot PBS	Sydney	10
820-0000-1637-A	TX-C PBS Numeric key panel	Sydney	10
820-0000-1648-C	Loom TX-C PBS Carrier to Display	Sydney	5
820-0000-1650-A	TX-C PBS Display Window Rear	Sydney	10
820-0000-1669-A	Decal TX-C Univ Contactless MC + Visa + Amex	Sydney	20

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## Schedule 10     Handover Maintenance Plan

### Meetings

At a time convenient to the Council, the Duncan Solutions Account Manager will meet with and provide all reasonable assistance to facilitate the transition in plan for the Council or for the incoming provider.

Duncan Solutions is committed to be collegial, cooperative and professional in all its dealings after advice of a requirement to commence transition out activities.

We would expect that Council, or an incoming provider would also wish to undertake a site audit to fully understand asset condition and test the data that is available to it from the tender period. We will provide and facilitate this activity in all reasonable ways. At the initial meeting we would seek to understand the intended program to commence this work and make a skilled and knowledgeable team member available to assist with any questions arising.

### Handover of Documents/ Data

Duncan will facilitate any data transfer activities during the transition out phase to ensure continuity of services for Councils. We will facilitate required integrations during the transition out phase, subject to scope and requirement discussion during project initiation meeting to understand the incoming provider needs.

### Service Continuity

We expect that Council, or an incoming provider would have developed a plan for handover of assets in the negotiation or pre-commencement period. We will support and work towards the agreed handover date, taking the lead from the Council or an incoming provider intended method of operation. Duncan Solutions would take all reasonable steps to facilitate access to dedicated personnel working on the contract, who may not have comparable employment options with Duncan Solutions resulting from the transition.



## Schedule 11      Schedule of Rates

The Rates included in this Schedule 11 include all costs associated with the design, supply and installation of the relevant Replacement Parking Meters in accordance with the requirements of the Specification.

ITEM	CATEGORY	ITEM	ADDITIONAL INFORMATION	UNIT	QUANTITY	UNIT COST \$	TOTAL \$ EX GST	COMMENTS
1	Pay & Display Meter with Ticket Function	Solar Powered Pay & Display Parking Meters - with pay and display ticket function	Coin and credit card payments Credit Card Ingenico EMV Insertion & Contactless Reader (iUR255 insert reader + iUI120 controller + iUC150B compact contactless reader Ticket paper roll Wireless comms and SIM Solar Panel & Battery Decals - P type and instructional Software - firmware plus tariff configuration Cashbox (labelled), keys (engraved), locks Pedestal, footings Commissioned	per machine			\$1,791,915.66	The Ingenico EMV Insertion & Contactless Reader (iUR255 insert reader + iUI120 controller + iUC150B compact contactless reader is but one of many of EMV card readers available. Duncan Solutions have selected the IDTech VP5300 card reader (hybrid insert and NFC antenna) as our preferred EMVCo certified and PCI-PTS certified card readers. There is no advantage offered by the Ingenico Reader. In fact the Ingenico reader is 'locked' to a specific credit card payment gateway provider for the life of the card reader whereas Duncan Solutions offers Council choice of bank and payment gateway provider.
		Option	Above without Insert Reader (Coin and Contactless only)	per machine	1			Duncan Tx PND Machine with Coin and Contactless Option
		Option	Pay By Plate - same cost as Pay &	per machine	1			Duncan Tx PbP Machine with Coin, Contact and Contactless Option. Bay

			Display					numbering not applicable with Pay by Plate.
		<b>Option</b>	Pay By Plate Cashless, Ticketless	per machine	1			Duncan Tx PbP Machine with Coin, Contactless and Ticketless Option. Bay numbering not applicable with Pay by Plate.
		<b>Option</b>	Pay By Space Upgrade	per machine			\$37,440	Duncan TX Pay by Space upgrade kit. Bay marking price is \$21 per space.
		<b>Option</b>	Pay by Plate conversion to Ticketless	per machine			\$46,800	Conversion of TX from ticket to ticketless
		<b>Option</b>	Advertising Stickers on Meter and Advertising on LCD Screen	per machine	1	\$30.00		Please note that this cost is conservative but can vary based upon the size of the Advertising Stickers required.
2	<b>Bolt down</b>	Install and commission unit	Footings, bolt down, make good	per machine			\$162,400.00	
3	<b>Removal</b>	Remove existing meters	Remove & dispose of existing ticket machine Install new rag bolt assembly or adapter plate, above surface, if the footing location will be re-used Make good and repair damaged surface or re-pave as required	per machine			\$75,400.00	Removal and disposal for ticket machine. Assuming that existing locations will be used to install new machines.
<b>ITEM</b>	<b>CATEGORY</b>	<b>ITEM</b>	<b>ADDITIONAL INFORMATION</b>	<b>UNIT</b>	<b>QUANTITY</b>	<b>UNIT COST \$</b>	<b>TOTAL \$ EX GST</b>	<b>COMMENTS</b>



4	Central Management System	Set up fee	Supply and commission of communication and management system Hosted Service Reporting modules Licences Remote access for Council Software updates Data Backup Note: Tenderer to allow for all machines communicating	once	1			
5	Training	Manuals - PDF	Soft copy (CD or USB)	once	1	\$ -	\$ -	Waived
6		Training at Waverley Council	16 hours initial and additional 8 hours follow up training	24 hours	1			Price is inclusive of 3 days of on-site training
7	Freight		State if Airfreight or Sea freight is used	included	1	\$ -	\$ -	Duncan TX Machines are designed and manufactured in Australia. Installation of new Meters by 9th June 2020 Mandatory based upon Project Plan timeline.
	Installation				Subtotal		\$2,130,275.66	

ANNUAL SERVICES AND MAINTANCE								
	CATEGORY	ITEM	ADDITIONAL INFORMATION	UNIT	QUANTITY	UNIT COST \$	TOTAL \$ EX GST	COMMENTS
8	Central Management System	Annual Hosting Fee for years 1	Annual Maintenance fee Includes SIM cards	per machine/ per annum	1			PEMS standard version

		and 2	Data Charges Software updates					
9		Annual Hosting Fee years 3 to 5	Annual Maintenance fee Includes SIM cards Data Charges Software updates	per machine/ per annum	1			Annual CPI adjustments applies from Y3 onwards
10		Annual Hosting Fee years 6 to 8	Annual Maintenance fee Includes SIM cards Data Charges Software updates	per machine/ per annum	1			Annual CPI adjustments applies from Y3 onwards
11		Annual Hosting Fee years 8 to 10.5	Annual Maintenance fee Includes SIM cards Data Charges Software updates	per machine/ per annum	1			Annual CPI adjustments applies from Y3 onwards



ITEM	CATEGORY	ITEM	ADDITIONAL INFORMATION	UNIT	QUANTITY	UNIT COST \$	TOTAL \$ EX GST	COMMENTS
12	Comprehensive Maintenance	First 24 months	Includes Parts replacement and Labour and Travel (business hours) Preventative Maintenance (quarterly including parts) Online diagnostics and phone support	per machine/ per annum	1			Annual CPI adjustments applies from Y3 onwards
13		Year 3	Includes Parts replacement and Labour and Travel (business hours) Preventative Maintenance (quarterly including parts) Online diagnostics and phone support	per machine/ per annum	1			Annual CPI adjustments applies from Y3 onwards
14		Year 4	Includes Parts replacement and Labour and Travel (business hours) Preventative Maintenance (quarterly including parts) Online diagnostics and phone support	per machine/ per annum	1			Annual CPI adjustments applies from Y3 onwards
15		Year 5	Includes Parts replacement and Labour and Travel (business hours) Preventative Maintenance (quarterly including parts) Online diagnostics and phone support	per machine/ per annum	1			Annual CPI adjustments applies from Y3 onwards
16		Year 6	Includes Parts replacement and Labour and Travel (business hours) Preventative Maintenance (quarterly including parts) Online diagnostics and phone support	per machine/ per annum	1			Annual CPI adjustments applies from Y3 onwards

17		Year 7	Includes Parts replacement and Labour and Travel (business hours) Preventative Maintenance (quarterly including parts) Online diagnostics and phone support	per machine/ per annum	1			Annual CPI adjustments applies from Y3 onwards
18		Year 8	Includes Parts replacement and Labour and Travel (business hours) Preventative Maintenance (quarterly including parts) Online diagnostics and phone support	per machine/ per annum	1			Annual CPI adjustments applies from Y3 onwards
19		Year 9	Includes Parts replacement and Labour and Travel (business hours) Preventative Maintenance (quarterly including parts) Online diagnostics and phone support	per machine/ per annum	1			Annual CPI adjustments applies from Y3 onwards
20		Year 10.5 (note: one and one half years to be priced)	Includes Parts replacement and Labour and Travel (business hours) Preventative Maintenance (quarterly including parts) Online diagnostics and phone support	per machine/ per annum	1			Annual CPI adjustments applies from Y3 onwards

ITEM	CATEGORY	ITEM	ADDITIONAL INFORMATION	UNIT	QUANTITY	UNIT COST \$	TOTAL \$ EX GST	COMMENTS
21	Call Centre/Help Desk	Provision of Call Centre Services	Handling inbound technical issues from the Public	per machine/ per annum	1			Annual CPI adjustment applies



22	Call Centre/Help Desk	Provision of Call Centre Services	Handling inbound technical issues reported by Council	per machine/ per annum	1			
23	Call Centre/Help Desk	Provision of Call Centre Services	Handling inbound emails by Public or Council		1			
24	Credit Card Clearing	Tender to provide gateway network management portal Reporting System	Council currently utilises Advam as their credit card gateway for off-street processing and will process on-street as well. The equipment shall be Ingenico compatible with EMV / PCI 4.0 P2PE DSS compliant using ADVAM as the gateway facilitator. Council currently banks with CBA and if Council changes banks there will be no additional cost for this change	once off	1			Duncan proposes MasterCard Payment Gateway service with choice of bank with CBA and Westpac. Advam is an alternative option as agreed with Brendan Williams.
25		Transaction fees Yrs 1 & 2	Per transaction cost gateway	per trans.	1			MasterCard Payment Gateway Service

26		Transaction fees Yrs 3 & 4	Per transaction cost gateway	per trans.	1			Annual CPI adjustments applies from Y3 onwards
27		Transaction fees Yrs 5 & 6	Per transaction cost gateway	per trans.	1			Annual CPI adjustments applies from Y3 onwards
28		Transaction fees Yrs 7 & 8	Per transaction cost gateway	per trans.	1			Annual CPI adjustments applies from Y3 onwards
29		Transaction fees Yrs 9 & 10.5	Per transaction cost gateway	per trans.	1			Annual CPI adjustments applies from Y3 onwards
30	<b>Merchant Services Fee (Optional)</b>	Transaction fees Yrs 1 & 2	Per transaction cost Merchant Services Fee (MSF)	per trans/percentage (Tenderer to Specify)	1		\$ -	Not applicable
31		Transaction fees Yrs 3 & 4	Per transaction cost MSF	per trans/percentage (Tenderer to Specify)	1		\$ -	Not applicable
32		Transaction fees Yrs 5 & 6	Per transaction cost MSF	per trans/percentage (Tenderer to Specify)	1		\$ -	Not applicable
33		Transaction fees Yrs 7 & 8	Per transaction cost MSF	per trans/percentage (Tenderer to Specify)	1		\$ -	Not applicable
34		Transaction fees Yrs 9 & 10.5	Per transaction cost MSF	per trans/percentage (Tenderer to Specify)	1		\$ -	Not applicable

ITEM	CATEGORY	ITEM	ADDITIONAL INFORMATION	UNIT	QUANTITY	UNIT COST \$	TOTAL \$ EX GST	COMMENTS
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35	Onsite Support Costs	Travel to site	Call out rate	per call out	1			
		Per hour rate while on site	Business hours	per hour	1			
		Per hour rate while on site	After hours	per hour	1			Minimum 3 hours

ITEM	CATEGORY	ITEM	ADDITIONAL INFORMATION	UNIT	QUANTITY	UNIT COST \$	TOTAL \$ EX GST	COMMENTS
36	Spare Parts list	Solar panel including gasket		per unit	1			
		Solar cover		per unit	1	N/A	\$ -	
		Sensors		per unit	1			
		Solar regulator/charger		per unit	1	N/A	\$ -	
		Aerial		per unit	1			
		Top door		per unit	1	POA	\$ -	
		Bottom door		per unit	1	POA	\$ -	
		Vault door		per unit	1	POA	\$ -	
		Door seals		per unit	1	N/A	\$ -	
		Pedestal	As applicable	per unit	1	N/A	\$ -	
		Special plastic fascias		per unit	1	N/A	\$ -	
		Credit card reader (EMV)	Non motorised	per unit	1			
		Contactless reader (EMV)		per unit	1			
		LED Display		per unit	1			
		LED cover including gasket		per unit	1	N/A	\$ -	
		Buttons		per unit	1			
		Printer unit		per unit	1			
		Printer head		per	1			



			unit				
	Lock cylinder		per unit	1			
	Cashbox lock		per unit	1			
	Door lock slide bar		per unit	1	N/A	\$ -	
	Keys		per unit	1			
	Key hole flap		per unit	1	N/A	\$ -	
	Switches		per unit	1	N/A	\$ -	
	Anti vandal coin shutter mechanism.	As applicable	per unit	1			
	Coin Validator - programmed		per unit	1			
	Coin selector	As applicable	per unit	1	N/A	\$ -	
	CPU		per unit	1			
	Daughter board	Tenderer specify to	per unit	1	N/A	\$ -	
	Modem	If separate	per unit	1			
	Escrow Unit		per unit	1			
	Solenoids		per unit	1	N/A	\$ -	
	Footing system		per unit	1			
	Coin reject flap	As applicable	per unit	1	POA	\$ -	
	Ticket dispenser flap	As applicable	per unit	1	POA	\$ -	
	Cashbox lid		per unit	1	N/A	\$ -	

	CATEGORY	ITEM	ADDITIONAL INFORMATION	UNIT	QUANTITY	UNIT COST \$	TOTAL \$ EX GST	COMMENTS
	Spare Parts list	Cashbox handle		per unit	1	N/A	\$ -	
		Replacement keypad	820-0000-1549	per unit	1			
		Cables	820-0000-1628	per unit	1			
		Brackets (internal)		per unit	1	N/A	\$ -	
		Decals P type	380-0200-0051	per unit	1			
		Decals other	820-0000-1570	per unit	1			
		Battery	820-0000-1504	per unit	1			
		ARM	820-0000-1352	per unit	1			
		Display Window	820-0000-1547	per unit	1			
		Cashbox	820-0000-1286	per unit	1			



ADD / ALTERNATIVES Option Price								
	CATEGORY	ITEM	ADDITIONAL INFORMATION	UNIT	QUANTITY	UNIT COST \$	TOTAL \$ EX GST	Comments
37	Count & Enforcement Sensors that Communicate with Parking Meter	RMS Approved In Ground Sensors & Line Marking for Spaces	Provides court admissible infringement evidence report for contested infringement. Includes installation, bay line marking (if required), service fee. If Sensors are challenged in Court, Supplier will bear all costs.	Annual Fee			\$ 115,346.70	Sensor pricing is inclusive of assumed repeater and gateway quantities. Pricing is inclusive of comprehensive support and maintenance and PEMS licence fees for 60 months. Bay marking price is \$21 per space.
38	Enforcement Alerts	Overstay alert	Fee to alert Patrol officers of overstays using sensor communication.	Annual Fee	1	\$ -	\$ -	Included
39	Pay-by Plate Enforcement	The pay by plate solution must integrate with the current DCA solution and include an API output for future enforcement purposes.	Costs of additional enforcement portals for Pay-by-plate, must be included in the pricing schedules. Tenderer to specify which enforcement solutions they are currently integrated with.	once	1	\$ -	\$ -	PEMS is integrated with DCA PinForce and in operation in other councils today. This assumes that DCA do not charge any fee to activate this service in Waverley. Duncan Solutions SDRO certified AutoISSUE parking enforcement solution is included for no additional cost as part of the PEMS service. Additional fees apply for excessive data storage costs and non-parking local laws.
40	Phone App	Consumer Phone Application	Tender to offer with their Sensor solution a Public mobile app which provides trip planning, rate information and wayfinding guidance to	Annual Fee	1	\$ -	\$ -	NSW Government ParkNPay

			open spaces.					
41	NSW Government	"Park n Pay" Application	Tender to provide the cost and timeframe to integrate the Meter to work in conjunction with the NSW Government "Park n Pay" Application	Annual Fee	1			<p>\$360 configuration fee per unique rate/tariff establishment</p> <p>\$0.20 fee is charged for each Transaction plus 2.5% for each Transaction (subject to review depending upon payment types used).</p> <p>A Transaction Fee includes (a) each time an End User requests permission for a payment or to verify that there are sufficient funds available on the payment card and that the payment card is valid or</p> <p>(b) when an End User successfully requests payment from the card issuer to complete the Transaction or</p> <p>(c) for both (a) and (b) above and include payments declined for any reason.</p>
42	Pay by Phone App	Set up fee	Supply and commission of communication and management system Hosted Service Reporting modules Licences Remote access for Council Software updates Data Backup Note: Tenderer to allow for all machines communicating	once	1	\$ -	\$ -	No setup fee / establishment fee for Park'nPay



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## Schedule 12 Maintenance Fee

The **Maintenance Fee** is calculated monthly based on the following:

$MF = MMA + EEA - KPI \text{ Reductions}$ ,

where:

**MF** = Maintenance Fee.

**MMA** = Monthly Maintenance Amount.

**Monthly Maintenance Amount** = as per Schedule 11 from the issue of the Certificate of Completion in respect of the last Precinct to achieve Completion until the expiry of the Term, as adjusted in accordance with the Agreement.

**EEA** = Extreme Event Amount, being the sum of the products ascertained by multiplying the relevant rates set out in Schedule 11 by the hours required for the performance of Maintenance Services arising out of Extreme Events during the relevant month.

**Extreme Events** =

- material vandalism events; or
- one in one hundred year storm events, as determined by the Bureau of Meteorology, that is localised in the Waverley Council LGA.

**KPI Reductions** = An amount determined as a result of each failure by the Contractor to meet a KPI in the relevant month, including any of the following (if applicable):

- 5% of the MMA for a failure to meet any of the KPIs; and
- the amount which is equal to the estimated lost income resulting from reduced performance of a Replacement Parking Meter (as reasonably determined by the Principal Representative), where the ongoing service and maintenance of Replacement Parking Meters fails to meet the 99.5% uptime KPI to such an extent that the Replacement Parking Meter has fallen below 99% uptime.

## Schedule 13 KPIs

Item (in each case, as set out in more detail in other parts of the Agreement, including the Specification)	Basis for KPI measurement (if applicable)	Measure used for KPI (if applicable)	KPI	Method for measurement (if applicable)	Frequency of monitoring and reporting (if applicable)
Ongoing service and maintenance of Replacement Parking Meters	Based on route assigned to each technician	Number of times area is canvased	99.5% uptime	Attendance reports with times. Electronic attendance Control room reports.	Monitored daily/reported monthly.
Incident reports - vandalism and damage	Based on observation	Recorded in asset register	90% reported	Daily activity report sent to head contractor/supervisor Unresolved actions are escalated to Principal Representative.	Monitored daily. Issues are sent to Principal Representative for actioning on an incident by incident basis.
Payment Claims	In line with Agreement		100% compliance	All action items are addressed in timely fashion.	
Monthly meetings, including the preparation of meeting minutes	In the first 12 months meetings will be held every two weeks. Then each month for the life of the Agreement.	Monthly	100% attendance and preparation of minutes		
Complaints from public in regards to technicians	Complaints are noted by personnel and control room if the complaint was reported twice	Phone, email	Nil complaints	Staff counselling. Ensure correspondence with complainant track performance.	
Monthly reports	Within 7 days from month end		100% preparation of reports which comply with the Agreement	Includes Uptime and meter performance. Financial data. Report to include spare parts usage and existing inventory.	
Absenteeism of field staff in connection with the Maintenance Services			<= 16 hours per month	Ensure there are backfill staff to manage sick leave, annual leave and terminations.	



Item (in each case, as set out in more detail in other parts of the Agreement, including the Specification)	Basis for KPI measurement (if applicable)	Measure used for KPI (if applicable)	KPI	Method for measurement (if applicable)	Frequency of monitoring and reporting (if applicable)
Principal Site induction	All relevant Contractor employees & subcontractors shall have undergone Principal Site induction		100% compliance		
WH&S Compliance	Contractor's WH&S policy is adhered to by Contractor Induction procedures are conducted	Conduct regular checks of staff compliance	100% compliance	Regular audits. Regular meetings with documented and tracked issues	Monthly
Insurance compliance	Compliance with all relevant insurance obligations of the Contractor under the Contract		100% compliance		
WH&S Incidents	report immediately	submit incident report within 2 hours	Nil incidents		Monthly
Lost time Injury			Nil lost time injuries		Monthly
No. of work cover claims			Nil work cover claims		Monthly
<b>Call Centre/Helpdesk Responses - 6AM to 10PM</b>					
Calls made within 6am to 10pm answered in under 30 seconds			>=90%		Monthly
Calls which have been made within 6am to 10pm which have been abandoned			<= 5%		Monthly
Notices in respect of Defects to be rectified are answered within 7 days			>= 98%		Monthly

Item (in each case, as set out in more detail in other parts of the Agreement, including the Specification)	Basis for KPI measurement (if applicable)	Measure used for KPI (if applicable)	KPI	Method for measurement (if applicable)	Frequency of monitoring and reporting (if applicable)
<b>REACTIVE MAINTENANCE SERVICES</b>					
Respond to Replacement Parking Machine faults within 1.5 hours of notification, as further detailed in the Specification.		Report from control room, report direct from parking management System	90%. Note that this is not an uptime stat. It refers to the frequency of success in regards to attending faults in a timely manner	Log issue and resolution on handheld enforcement device. Update records to track the issue. Contractor is at the site, carrying out the works to correct issue and/or restore machine to full operation. Replace component; if repairs, maintenance or adjustment do not or cannot remedy a fault so that the Machine performs to the manufacturer's standard and specifications.	Monitored daily/reported monthly
Respond (and repair) to vault section issue where access to vault is prevented within 2 hours.			100%	Notify Council, Obtain key from Council, Carry out works under supervision	Monthly
Respond to a lower door which is not closed or secure within 1.5 hours and repaired a lower door which is not closed or secure within 2 hours.			100%	Notify Council, Obtain key from Council, Carry out works under supervision	Monthly
Online/phone support within 30 minutes			100%		Monthly
Online/phone support within 2 hours (after hours)			100%		Monthly
Tenderer to provide support after hours on phone or online (Tenderer to specify the level of support provided)			100%		Monthly
Respond to excessive damage to parking machine/parking machine footing within 1.5 hours			100%	Take photographic evidence and notify the Principal. Cover parking meter. Deter access/entry to site and maximise safety of pedestrians Remove sim card and existing internal components	Monthly



Item (in each case, as set out in more detail in other parts of the Agreement, including the Specification)	Basis for KPI measurement (if applicable)	Measure used for KPI (if applicable)	KPI	Method for measurement (if applicable)	Frequency of monitoring and reporting (if applicable)
Remove damaged parking machine and/or footing	within 24 hours		100%	Erect appropriate sign Secure site, barricade/tape footings maximise safety of pedestrians and deter access/entry to site. Cover machine until removed Remove parking machine Transfer to storage facility	Monthly
Relocate Replacement Parking Meter and install new Replacement Parking Meter from one Site to another within 5 Business Days of request			100%	Transfer to new site - install and test.	Monthly
Install new parking machine within 5 Business Days of request			100%	Install to manufacturers specifications so as to be operational, test and commission.	Monthly
Programming		within 5 business days		Configure/change to manufacturers specification so as to be correct and operational.	Monthly
Summer Rate Changes - If the supplier fails to update the summer rate change the difference will be reimbursed to Council from the next monthly payment.		Bi - Annual		Configure/change to manufacturers specification so as to be correct and operational.	Bi - Annual
<b>MACHINE PERFORMANCE</b>					
Replacement Parking Meters perform at 99.5% uptime based on monthly average performance and based on both coin and credit card functions operating.			99.5%		Monthly
Principal's access to the management system portal and all administration and reporting modules.			99%		Monthly
Principal's access to the credit card gateway portal and all administration and reporting			99%		Monthly

modules.					
<b>Item (in each case, as set out in more detail in other parts of the Agreement, including the Specification)</b>	<b>Basis for KPI measurement (if applicable)</b>	<b>Measure used for KPI (if applicable)</b>	<b>KPI</b>	<b>Method for measurement (if applicable)</b>	<b>Frequency of monitoring and reporting (if applicable)</b>
Management portals are to have an uptime above 99%.			99%		Monthly
Software Integrations requested in the tender specification will be required to be provided via an API by the successful tenderer and must be delivered within three (3) months of the request from Council or non-performance rebates for failure to deliver the requested integrations within the three (3) month time frame. For excessive delays, a financial credit to the Council's Management equivalent to 50% of the annual contract value will be payable, until the integration is delivered.					Once



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**Schedule 14      Warranty**

Not applicable

## Schedule 15 Dates for Completion

[illegible]




## Signing page


Executed as a deed

DATED: 29 APRIL 2020


EXECUTED by **Waverley Council**  
ABN 12 502 583 608 by  
in the presence of:

  
Signature of witness


COLIN HANDSPEIL  
Name of witness (block letters)

  
Signature of ROSS MCLEOD  
GENERAL MANAGER

EXECUTED by **Reino International  
Pty Ltd T/A Duncan Solutions**  
Australia ACN 079 147 201 in  
accordance with section 127(1) of the  
*Corporations Act 2001* (Cth) by  
authority of its directors:

  
Signature of director

TRENT LOESER  
Name of director (block letters)

  
Signature of ~~director~~/company  
secretary\*  
\*delete whichever is not applicable  
Mark Byrne  
Name of ~~director~~/company secretary\*  
(block letters)  
\*delete whichever is not applicable