



AGREEMENT TO PROVIDE AUDITING SERVICES (HEAD AGREEMENT)

[auditee name]



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AUDIT ENGAGEMENT

PARTIES

1. The Auditor–General for New South Wales, appointed pursuant to Part 3 of the *Government Sector Audit Act 1983* (NSW) (the ‘**Auditor–General**’).
2. [insert Audit Service Provider name and ABN] (the ‘**Audit Service Provider**’).

AUDITEE

[insert auditee name] (the ‘**Auditee**’).

THE PARTIES AGREE

1 Interpretation

- 1.1 The Agreement to provide Auditing Services comprises:
 - a) The Audit Engagement (clauses 1 to 5).
 - b) The Standard Terms and Conditions, which include clauses 6 to 23 and the attached Schedules I to IV.
 - c) The agreed components of the tender proposal submitted by the ‘Audit Service Provider’ attached as Schedule V.

In the event of an inconsistency between any parts of the Agreement to provide Auditing Services, the part listed higher in this clause 1.1 will prevail to the extent of the inconsistency.

2 Audit

- 2.1 The Auditor–General appoints the Audit Service Provider to audit the Auditee.
- 2.2 The Period of Appointment is set out in the Standard Terms and Conditions, Schedule I.

3 Audit Service Provider

- 3.1 The Audit Service Provider is the person or firm as set out in the Standard Terms and Conditions, Schedule I.

4 Payment for Auditing Services

- 4.1 The Fee for Auditing Services for the Initial Year is the total amount set out in the Standard Terms and Conditions, Schedule II. For subsequent years, the Fee is determined in accordance with clauses 18.3 to 18.5 in the Standard Terms and Conditions.

5 Insurance cover

- 5.1 The declaration of the Audit Service Provider’s insurance cover, detailing professional indemnity, public liability, workers’ compensation and cyber security insurance policies is set out in the Standard Terms and Conditions, Schedule III.

STANDARD TERMS AND CONDITIONS

6 Appointment and engagement of the Audit Service Provider

6.1 Appointment of an Audit Service Provider pursuant to:

- i) section 35(1) of the *Government Sector Audit Act 1983* (NSW) ('**GSA Act**') in respect of an Auditee subject to the audit provisions of the GSA Act; and
- ii) section 422(2) of the *Local Government Act 1993* (NSW) ('**LG Act**') in respect of an Auditee subject to the audit provisions of the LG Act,

is the sole prerogative of the Auditor-General, and the appointment of the Audit Service Provider pursuant to this Agreement may be revoked at any time by the Auditor-General, notwithstanding any other terms of this Agreement. No compensation will be paid as a result of any revocation of the appointment of the Audit Service Provider. Subject to the Auditor-General's right of revocation, this Agreement may also be terminated by:

- a) either party during the Period of Appointment by giving 90 calendar days' notice in writing of the intention to terminate pursuant to clause 21.2; and
- b) the Auditor-General pursuant to clause 21 and other provisions in this Agreement.

6.2 The Audit Service Provider hereby accepts the appointment and agrees to undertake the Auditing Services on the terms and conditions contained in this Agreement.

6.3 The parties acknowledge and agree that the Audit Service Provider's Assistants are not 'employees' of the Auditor-General or the State of New South Wales for any purpose, including statutes regarding employment benefits, superannuation benefits, workers' compensation, or the GSA Act, the GSF Act or LG Act, as applicable.

6.4 The Audit Service Provider shall appoint an Engagement Quality Control Review Partner upon consultation with, or if required to do so by, the Engagement Controller.

6.5 The Engagement Partner and Engagement Quality Control Review Partner, if appointed, named in Schedule I, must conduct the audit for the Audit Service Provider. Where the Audit Service Provider wishes to replace or rotate the Engagement Partner or Engagement Quality Control Review Partner, it must seek the prior written approval of the Auditor-General.

6.6 The Audit Service Provider must ensure that all of the Audit Service Provider's Assistants are aware of their general law and statutory obligations in connection with the provision of the Auditing Services including, without limitation, the requirements:

- a) of the secrecy provisions in section 38 of the GSA Act or section 425 of the LG Act, as applicable, and
- b) regarding confidential information in section 36A of the GSA Act or section 423A of the LG Act, as applicable.

6.7 The Audit Service Provider must ensure that all of the Audit Service Provider's Assistants have satisfactorily passed a National Police Check before carrying out the Auditing Services.

7 Audit Service Provider's duties

7.1 The Audit Service Provider must provide the Auditing Services and carry out the Auditing Services with all reasonable skill and care.

7.2 The Audit Service Provider has discretion on how the Auditing Services will be performed but shall be bound by:

- a) standards, guidance statements, guidance notes and miscellaneous professional statements issued from time to time by the Australian Auditing and Assurance Standards Board;
- b) ethical statements and codes of professional conduct of the Accounting Professional and Ethical Standards Board;
- c) the GSA Act and any regulations thereunder;

- d) where an Auditee is an entity or entities subject to the audit provisions of the LG Act, the LG Act and any regulations and guidelines thereunder as amended or updated from time to time, including, without limitation, the 'Local Government Code of Accounting Practice and Financial Reporting' published by the Office of Local Government within the Department of Planning and Environment;
 - e) any provisions specified in any other legislation applicable to the Auditing Services;
 - f) the Audit Office's audit and assurance policies as amended or updated from time to time and available at <https://www.audit.nsw.gov.au/work-with-us/audit-service-providers/audit-and-assurance-policies>;
 - g) the requirements of the Audit Service Providers Manual issued by the Audit Office as amended or updated from time to time and available at <https://www.audit.nsw.gov.au/audit-service-providers/work-with-us/audit-service-providers/resources-for-audit-service-providers>;
 - h) the Audit Office's Third Party Security Policy as amended or updated from time to time and available at https://www.audit.nsw.gov.au/sites/default/files/documents/Third%20Party%20Security%20Policy_0.pdf; and
 - i) the Audit Office's [Statement of Business Ethics](#) available on the Audit Office website.
- 7.3 While carrying out the Auditing Services, the Audit Service Provider and the Audit Service Provider's Assistants must comply with the provisions of the *Anti-Discrimination Act 1977* (NSW).
- 7.4 In addition to the matters set out in clause 7.2 of this Agreement, the Audit Service Provider must comply with any directions specified for the Auditing Services by the Auditor-General provided such directions are not inconsistent with standards issued by the Australian Auditing and Assurance Standards Board.
- 7.5 The Audit Service Provider and the Audit Service Provider's Assistant are considered public officials for the purposes of the *Public Interest Disclosure Act 2022*. While carrying out the Auditing Services, the Audit Service Provider and the Audit Service Provider's Assistants shall:
- a) undertake actions to implement and comply with requirements with respect to 'Internal Disclosures' specified in the ASP Manual
 - b) acknowledge that the regulations made under the *Public Interest Disclosures Act 2022* may make further provision about terms that must, or must not, be included an Audit Service Provider agreement.
- 7.6 The Audit Service Provider shall consult with the Engagement Controller to agree a plan for the completion of the Auditing Services. This includes developing a timetable setting out commencement and completion dates for the various stages of the audit, dates for submission of forms specified in the Audit Service Providers Manual, the provision of working papers for review by the Engagement Controller. The plan should be consistent with the proforma calendar of audit events in the Audit Service Providers Manual.
- 7.7 The Audit Service Provider must ensure all deadlines are met so recommendations and reports are made to the Auditor-General within the timeframes agreed in the plan.
- 7.8 If the Audit Service Provider becomes aware of any matter that could change the scope or timing of the Auditing Services, the Audit Service Provider will promptly give written notice to the Engagement Controller and provide particulars of such change and their effects and seek approval for any proposed adjustments.
- 7.9 Any adjustments proposed by the Audit Service Provider in accordance with clause 7.8 will require the Engagement Controller's approval before they become effective.
- 7.10 The Audit Service Provider undertakes to the Auditor-General that, in the event that it becomes aware of, or has any uncertainty or doubt whatsoever about:
- a) a matter that is material (either quantitatively or qualitatively);
 - b) the treatment of items that are material either individually or in aggregate;

- c) the treatment of a material item that is not the preferred treatment of the Audit Service Provider;
- d) the sufficiency of audit scope where the total of corrected and uncorrected errors approaches or exceeds planning materiality; or
- e) the treatment of ethical or independence issues and the appropriateness of safeguards applied,

the Audit Service Provider must immediately notify the Engagement Controller of that concern.

7.11 The Audit Service Provider shall cooperate at all times with the reasonable directions and requests of the Auditor-General, the Engagement Controller and the Audit Office in connection with the performance of the Auditing Services and this Agreement.

7.12 The Audit Service Provider must:

- a) comply with all applicable laws and regulations including (but not limited to) complying with obligations (if any) under or arising pursuant to the *Privacy Act 1998* (Cth), *Privacy and Personal Information Protection Act 1998* (NSW) and *Health Records and Information Privacy Act 2002* (NSW) and other State legislation relating to privacy to the extent that such legislation is relevant to this Agreement and the performance of the Auditing Services;
- b) comply with the Information Protection Principles in Part 2 of the *Privacy and Personal Information Protection Act 1998* (NSW) (as if the Audit Service Provider were a “public sector agency” within the meaning of that Act) to the extent that those Information Protection Principles are not inconsistent with any legal obligations that the Audit Service Provider otherwise has under or arising pursuant to the *Privacy Act 1988* (Cth) or other legislation relating to privacy; and
- c) not do anything that would cause the Auditor-General to breach its obligations under any such legislation.

7.13 The Audit Service Provider is bound by the secrecy provisions in:

- a) section 38 of the GSA Act where the Auditee is subject to the audit provisions of the GSA Act; and
- b) section 425 of the LG Act where the Auditee is subject to the provisions of the LG Act.

7.14 The Audit Service Provider is bound by the offence provisions in (as applicable):

- a) the GSA Act;
- b) section 664 of the LG Act,

and any other applicable legislation which provides that persons who contravene or fail to comply with any provision of the GSA Act or LG Act (as applicable) or the prescribed requirements of those Acts are guilty of an offence.

7.15 Without limiting what is required for an Audit Service Provider to comply with the provisions identified in clause 7.13 or clause 7.14, the Audit Service Provider must ensure that the Audit Service Provider’s Assistants do not communicate to any person any matter or thing that comes to the knowledge of the Audit Service Provider in the performance of the Auditing Services or:

- a) in the exercise of any function under the GSA Act, where the Auditee is subject to the audit provisions of the GSA Act; or
- b) in the exercise of any function under the LG Act, where the Auditee is subject to the audit provisions of the LG Act.

7.16 The Audit Service Provider may only use subcontractors approved by the Engagement Controller for the provision of the Auditing Services. The Audit Service Provider must ensure that subcontractors agree to perform the subcontracted services in accordance with the terms of this Agreement, including by complying with the secrecy provisions in the GSA Act or the LG Act, as applicable.

7.17 The Audit Service Provider must maintain, enforce and continuously improve its information

safeguards and security measures, and take all reasonable steps, to ensure that Audit Material are protected against misuse, interference, loss, and unauthorised access, modification or disclosure.

- 7.18 Access to Audit Material, and any other audit related information or data connected with the Auditing Services and this Agreement, by the Audit Service Provider's Assistants (or any other employee of the Audit Service Provider) must be on a need-to-know basis and appropriate information security and confidentiality access restrictions and protections must be applied by the Audit Service Provider to all information connected with the Auditing Services and this Agreement.
- 7.19 The Audit Service Provider must immediately notify the Engagement Controller and the Audit Office at databreach.notification@audit.nsw.gov.au of a suspected, alleged or actual cyber security incident or breach that relates to any documents, software, data, systems infrastructure or processes used by the Audit Service Provider in performing the Auditing Services or otherwise in connection with its arrangement with the Auditor-General. The Audit Service Provider must promptly follow all reasonable directions from the Auditor-General (including from the Engagement Controller) arising from any Cyber Security Incident investigations.
- 7.20 The Audit Service Provider must not report any notifiable data breaches to the Office of the Australian Information Commissioner, the Information and Privacy Commission New South Wales, the Australian Signals Directorate or equivalent bodies without prior written approval from the Auditor-General. In most cases, the Auditor-General will be responsible for this reporting.
- 7.21 The Audit Service Provider acknowledges and agrees that, in accordance with the Audit Office's Third Party Security Policy, the Auditor-General will perform an annual reassessment of the Audit Service Provider to assess security risk. The Audit Service Provider must follow all reasonable directions from the Auditor-General in relation to the reassessment. The parties will negotiate in good faith to agree on any steps to be taken by the Audit Service Provider to mitigate any risks identified as a result of the reassessment.
- 7.22 The Audit Service Provider must promptly inform the Auditor-General of known critical vulnerabilities in the information security environment used to provide the Auditing Services. Critical vulnerabilities must be communicated via email to the Audit Office at: procurement@audit.nsw.gov.au.
- 7.23 The Audit Service Provider must promptly inform the Auditor-General of the use (or proposed use) of new software products, or significant changes to existing software products used, in delivering the Auditing Services. This is to assist the Audit Office to complete an information security assessment.
- 7.24 The Audit Service Provider must follow all reasonable directions from the Auditor-General in relation to, or arising from, the information security assessment referred to in clause 7.20. The parties will negotiate in good faith to agree on any steps to be taken by the Audit Service Provider to mitigate any risks identified as a result of the information security assessment.
- 7.25 The Audit Service Provider must seek the Auditor-General's approval to change the data storage location(s) used as part of the Auditing Services.
- 7.26 *Insert details of any specific agreed mitigation steps identified as a result of a Third Party Security Assessment which apply to this specified contract. If these mitigation steps are included in a separate document, then the document should be referred to and incorporated into this agreement]*

8 Conflicts of Interest and Threats to Professional Independence

- 8.1 The Audit Service Provider warrants that, to the best of its knowledge, information and belief, as at the date of the Agreement, no Conflict of Interest or Threats to Professional Independence exist or are likely to arise in the performance of its obligations under the Agreement. If during the term of the Agreement a Conflict of Interest or the risk of a Conflict of Interest or Threat to Professional Independence arises, the Audit Service Provider must notify the Auditor-General (via the Engagement Controller) immediately in writing of that Conflict of Interest or Threat to Professional Independence or risk of Conflict of Interest or Threat to Professional Independence. A failure by the Audit Service Provider to notify the Auditor-General if a Conflict of Interest or Threat to Professional Independence exists or arises will entitle the Auditor-General to terminate this Agreement immediately by written notice to the Audit Service Provider in accordance with clause 21.5.
- 8.2 Without limiting clause 8.1, the Audit Service Provider will take all reasonable measures to ensure its partners, employees, agents and subcontractors (including service providers like 'valuers') do not, during the term of the Agreement, engage in any activity or obtain any interest or relationship with an auditee (including the Auditee and any person related to the Auditee) which threatens or may be perceived to threaten the independence of the Auditor-General, or which conflicts with providing the Auditing Services to the Auditor-General. Any such activity, interest or relationship must be disclosed to the Auditor-General (via the Engagement Controller) immediately. This includes any circumstance where the Audit Service Provider is proposing to partner or work with an auditee to undertake any activity for their joint benefit or to provide goods or services to third parties.
- 8.3 Where the Engagement Controller receives a notice of a Conflict of Interest or Threat to Professional Independence or risk of a Conflict of Interest or Threat to Professional Independence under clause 8.1 or a notice under clause 8.2, the Auditor-General (or delegate) may give the Audit Service Provider a notice requiring the Audit Service Provider to remedy the Conflict of Interest or Threat to Professional Independence, or perceived Conflict of Interest or Threat to Professional Independence, of the Auditor-General. A failure by the Audit Service Provider to remedy the Conflict of Interest or Threat to Professional Independence, or perceived Conflict of Interest or Threat to Professional Independence, of the Auditor-General within the time specified in the notice issued under this clause will entitle the Auditor-General to terminate the Agreement immediately by written notice to the Audit Service Provider in accordance with clause 21.5.
- 8.4 The Audit Service Provider and the Audit Service Provider's Assistants must not, without the prior written approval of the Auditor-General (or delegate), engage in the provision of Other Audit and Related Services to an Auditee during the Period of Appointment other than the Auditing Services.
- 8.5 The Audit Service Provider or the Audit Service Provider's Assistants must not engage in the provision of Non-Audit Related Services, such as advisory or consultancy services, to an Auditee.
- 8.6 Prior to accepting any engagements with *[the regulator or equivalent]* which relate to the Auditee, the Audit Service Provider must notify the Auditor-General (or delegate) in writing of the nature of the services to be provided under the engagement. The notification must address the safeguards the Audit Service Provider will implement to mitigate the independence threats in APES 110 'Code of Ethics for Professional Accountants (including Independence Standards)'.
- 8.7 Where the Auditor-General (or delegate) believes the notification does not contain adequate measures to mitigate the independence threats created by an engagement with the *[regulator or equivalent of the Auditee]* as referred to in clause 8.6, the Audit Service Provider will work with the Auditor-General (or delegate) to agree further appropriate safeguards.
- 8.8 A failure to agree on appropriate safeguards will entitle the Auditor-General to terminate the Agreement immediately by written notice to the Audit Service Provider.

9 Auditor-General's duties

- 9.1 The Auditor-General may assist the Audit Service Provider by making available to the Audit Service Provider such accounts, information, documentation and like material as the Auditor-General may consider is necessary for the Audit Service Provider to carry out the Auditing Services.
- 9.2 To facilitate the Audit Service Provider's access to documents and records where the Auditee is an entity or entities subject to the audit provisions of the LG Act, the Auditor-General authorises the Audit Service Provider to exercise the rights and functions conferred on the Auditor-General pursuant to sections 423 and 424 of the LG Act.
- 9.3 If the Auditor-General becomes aware of any matter that will change the scope or timing of the Auditing Services, the Auditor-General will give written notice to the Audit Service Provider and where practicable in the circumstances, provide particulars of such change and their effects.
- 9.4 The Auditor-General shall appoint a person to act as the Engagement Controller.
- 9.5 The Auditor-General may delegate any of their functions under this Agreement that includes the exercise of any of the Auditor-General's statutory functions to duly authorised delegates under section 33G of the GSA Act.

10 Auditing Services

- 10.1 The Auditing Services provided shall include an Attest Audit Coverage.
- 10.2 For Auditees subject to the audit provisions of the LG Act, the Auditing Services shall include an Attest Audit Coverage and:
 - a) special purpose financial statements;
 - b) Special Schedule - Permissible Income for General rates;
 - c) Application for Payment of Pensioner Concession Subsidy; and
 - d) Part 1 Chief Executive Officer's Financial Statement for the Roads to Recovery Program under the *National Land Transport Act 2014* (Cth)
- 10.3 As a general rule, the Audit Service Provider is expected to attend audit and risk committee meetings held by the Auditee throughout the year. This may be via physical presence at the meeting or through teleconference or video conference facilities.
- 10.4 In addition to the obligation in clause 10.3, for Auditees subject to the audit provisions of the LG Act, the Audit Service Provider must attend the council meeting where the audited financial statements, Independent Auditor's Report and the report on the conduct of the audit are presented. Attendance may be via physical presence at the meeting or through teleconference or video conference facilities.
- 10.5 During the conduct of audits and related service engagements, Audit Service Providers are also expected to be alert to, and raise for discussion with the Engagement Controller, matters that give rise to public concern related to financial prudence, probity and waste – regardless of whether the matter results in a material misstatement. This includes the Auditee's or a related entity's internal control and governance processes such as (but not limited to):
 - a) deficiencies in internal control, including but not limited to those related to business processes, information technology and security, governance, and to the prevention and detection of fraud. Where appropriate, this can include the operating effectiveness of key internal controls implemented by an Auditee to manage its risks;
 - b) review the governance and practices of specific areas of focus each year, as determined by the Audit Office through its annual work plan e.g. project management, procurement practices, use of credit cards;
 - c) instances of actual or possible fraud, including management fraud;
 - d) non-compliance with laws and regulations, such as international or legislative non-compliance, with a focus on laws and regulations key to the Auditee's public and financial administration;

- e) appropriateness of the entity's delegations to support timely and effective decision making;
 - f) processes/decision making around the use of public resources not demonstrating appropriate probity and/or resulting in waste; and
 - g) issues identified during the conduct of the audit that are not material to the financial statements but pose a heightened strategic, operational, or reputational risk to the Auditee.
- 10.6 Where practicable, the Audit Service Provider shall implement innovative practices to achieve continuous improvements in the efficiency and effectiveness of each audit.
- 10.7 Notwithstanding clause 10.1, the Audit Service Provider must provide to the Auditor-General:
- a) an Audit Service Provider representation letter recommending the form and content of the audit opinion to be expressed on the Auditee's financial report;
 - b) a recommendation on the form and content of the 'Report on the Conduct of the Audit', where applicable, for the Auditee to be issued by the Engagement Controller in accordance with the LG Act;
 - c) a recommendation on the form and content of the 'Statutory Audit Report', where applicable, for the Auditee to be issued by the Engagement Controller in accordance with the GSA Act;
 - d) reporting material which will be used by the Auditor-General in the Auditor-General's Annual Report to Parliament or other reports issued by the Auditor-General in accordance with the GSA Act and the LG Act, as applicable. The Auditor-General may identify specific issues requiring comment for inclusion in such reports;
 - e) a report on whether or not the Auditee has complied in all material respects with the GSA Act, GSF Act or LG Act (as applicable) and, where appropriate, the *Corporations Act 2001* (Cth). Such a report is to contain details of inconsistencies in the Annual Report of the Auditee in relation to the information contained in the audited financial reports;
 - f) a schedule of the Auditee's corrected and uncorrected misstatements discovered during the course of the audit;
 - g) a report on weaknesses in the Auditee's internal controls discovered during the course of the audit; and
 - h) suggestions to improve the operations of the Auditee through the efficient and economic use of public resources.
- 10.8 In addition to the Attest Audit Coverage, the Auditing Services provided should also include reasonable services which a professional Audit Service Provider would normally supply as part of an audit. The Auditing Services to be provided by the Audit Service Provider may also include such other services as agreed to in writing between the Audit Service Provider and the Auditor-General.

11 General conditions

- 11.1 If requested by the Auditor-General or the Engagement Controller, the Audit Service Provider and/or an Audit Service Provider's Assistant shall join with the Engagement Controller or a nominated representative of the Auditor-General in discussions with the Auditee.
- 11.2 The Audit Service Provider and Engagement Partner, the Engagement Quality Control Review Partner (if any), and each of the Audit Service Provider's Assistants are required to adhere to the ethical pronouncements on independence issued by the Accounting Professional and Ethical Standards Board
- 11.3 If any event has occurred or is likely to occur which threatens or may be perceived to threaten the independence of the Audit Service Provider or the Audit Service Provider's Assistants in connection with the provision of the Auditing Services or performance of this Agreement, the Audit Service Provider must immediately inform the Engagement Controller in writing.
- 11.4 The Auditor-General reserves the right to engage other Audit Service Providers.
- 11.5 The engagement of the Audit Service Provider by the Auditor-General to provide Auditing Services does not and shall not be deemed to create any Audit Service Provider/client contractual relationship between the Audit Service Provider and the Auditee. In all circumstances the Auditor-General remains the appointed Auditor.
- 11.6 If circumstances arise which require the services of a specialist or expert outside the field of the Audit Service Provider's expertise, the Audit Service Provider may, with the prior written approval of the Engagement Controller, engage an appropriate consultant. Any approval given by the Engagement Controller does not relieve the Audit Service Provider from its obligations under this Agreement.
- 11.7 Audit Service Providers performing audits on behalf of the Auditor-General will be subject to, and required to participate in, each of the following review programs:
- a) The GSA Act provides for a review of the Audit Office of New South Wales in respect of adherence to auditing practices and standards. Such review is conducted by a reviewer appointed by the Public Accounts Committee.
 - b) The Auditing Standards require the Audit Office of New South Wales to monitor the quality of its audits in respect of adherence to auditing practices and standards. The Audit Office of New South Wales' Quality Audit Review Committee ('QARC') monitors the quality of its audits in accordance with the Audit Office of New South Wales' policy, which is published on the internet.
 - c) The Audit Office of New South Wales may request a peer review of aspects of its quality control system.

The Audit Service Provider must participate in any of the above reviews if notified in writing by the Auditor-General and must provide all reasonable assistance to such review.

- 11.8 The Auditor-General may, by notice in writing to the Audit Service Provider, require the Audit Service Provider to provide (subject to the Audit Service Provider's compliance with clause 7.12 and any applicable law) any or all of the following:
- a) details of the Audit Service Provider's internal quality monitoring policy, and confirmation that the policy has been complied with during the Period of Appointment;
 - b) a summary of thematic findings from all internal and external quality monitoring reviews covering the Audit Service Provider during the Period of Appointment;
 - c) results of all internal quality monitoring reviews conducted over the audit of the Auditee during the Period of Appointment;
 - d) a summary of adverse findings from internal quality monitoring reviews conducted over any audit of the Engagement Partner during the Period of Appointment;
 - e) a summary of adverse findings from external quality monitoring reviews conducted over any audit of the Engagement Partner during the Period of Appointment;
 - f) details of all disciplinary actions taken by the Australian Securities and Investments

Commission, CPA Australia or Chartered Accountants Australia and New Zealand against the Audit Service Provider, the Engagement Partner, the Engagement Quality Control Review Partner (if any), or any Audit Service Provider's Assistants during the Period of Appointment.

12 Audit materials, working papers and reports

- 12.1 The Audit Service Provider agrees and acknowledges that ownership of Intellectual Property in or in relation to all Audit Material vests upon its creation in the Auditor-General. The Audit Service Provider undertakes and agrees that, it will (at its own cost) do all things necessary, including without limitation execute all documents, to effect the vesting of ownership and title of Intellectual Property in the Audit Material in the Auditor-General. Without limiting the foregoing, the Audit Service Provider must obtain from all Audit Service Provider's Assistants:
- a) a written assignment to the Auditor-General of the Intellectual Property in any Audit Material created as a result of the Audit Service Provider's Assistant performing any part of the Auditing Services; and
 - b) moral rights consents in which all Audit Service Provider's Assistants agree to waive any right such persons would otherwise have to be attributed as the author and provide all other necessary consents as authors of any Audit Materials to any use, modification or adaptation of such Audit Materials, and to any other dealing which might otherwise constitute an infringement of the author's moral rights, so as to enable the Auditor-General to fully exercise its rights and duties under the GSA Act, the LG Act, any other applicable statute and this Agreement.
- 12.2 If ownership of or title in Intellectual Property in relation to any of the Audit Materials is not capable of being vested in the Auditor-General under clause 12.1 because the Audit Service Provider itself does not own, and is unable at a reasonable cost to obtain ownership of, that Intellectual Property, the Audit Service Provider must at its own cost procure in favour of the Auditor-General an irrevocable, non-exclusive, transferable, worldwide, royalty-free licence to use, reproduce, communicate to the public, and adapt and to sub-license the use of that Audit Materials including any Intellectual Property in or in relation to that Audit Material.
- 12.3 This Agreement does not affect the Intellectual Property of the Audit Service Provider and/or of third parties in any material which existed at the date of this Agreement and which is incorporated with or used to create the Audit Material. The Audit Service Provider:
- a) hereby grants, and agrees to ensure that relevant third parties grant, to the Auditor-General, without additional cost, a non-exclusive, irrevocable, transferable, worldwide, royalty-free licence to use, reproduce, communicate to the public and adapt for its own purposes the Existing Material, and the right to sub-license the use of the Existing Material but only as part of the Audit Material and any development or use of that Audit Material; and
 - b) must, prior to provision for use in connection with this Agreement, obtain any necessary moral rights consents from all authors of any Existing Material to enable the Auditor-General to use the Audit Material as contemplated by this Agreement and fully exercise its rights and duties under this Agreement.
- 12.4 The Audit Service Provider must ensure all licence fees are paid and consents required under law are obtained as a result of any reproduction, adaptation or use of any Intellectual Property, including Intellectual Property in any Audit Material, which are required for the provision of the Auditing Services.
- 12.5 The Audit Service Provider must not store, access, transfer, take or transmit Audit Material outside Australia, without the Auditor-General's (or delegates) prior written approval.
- 12.6 The Audit Service Provider must not carry out any Auditing Services outside Australia without prior written approval from the Auditor-General (or delegate).
- 12.7 The Audit Service Provider acknowledges that Audit Materials (whether hard copy or electronic) are records under the control of the Auditor-General and subject to the *State Records Act 1998* (NSW). The Audit Service Provider must at all times ensure it complies with that Act.

- 12.8 Unless it has obtained the prior written approval of the Auditor-General to do otherwise, the Audit Service Provider must ensure that the Audit Material is used, copied, supplied or reproduced only for the purposes of the Auditing Services. The Audit Service Provider must not supply the Audit Material to a professional body or industry regulator without the written approval of the Auditor-General. The approval of the Auditor-General may be given or withheld in its absolute discretion and may be subject to such terms and conditions as the Auditor-General considers appropriate.
- 12.9 The Audit Service Provider must ensure that Audit Material are neatly and legibly compiled, contain adequate documentation to demonstrate the nature and extent of the Auditing Services, and contain sufficient audit evidence to support all audit conclusions, findings and opinions.
- 12.10 The Audit Service Provider must deliver to the Auditor-General an electronic copy of the Audit Material in a secure way as agreed with the Engagement Controller within 30 calendar days of the Auditor-General (or delegate) signing the Auditee's Independent Auditor's Report.
- 12.11 The Audit Service Provider undertakes to provide access to any program, software or platform required to read all electronic Audit Material files upon request by the Auditor-General.
- 12.12 Without limiting the provisions of clause 12.10, the Audit Service Provider must provide access to and deliver a complete electronic copy of all Audit Material and other audit documents to the Engagement Controller upon completion of an assignment, or within seven calendar days of termination or expiration of the Agreement, and must also provide access to and deliver an electronic copy of any Audit Material and other audit documents to the Engagement Controller at such times as reasonably requested by the Engagement Controller.
- 12.13 Where an audit file can only be read with the use of the Audit Service Provider's (or other third party) proprietary software, the Audit Service Provider will ensure a version of software is available upon which the file can be accessed and read for a minimum period of seven years from the date of the signing of the Independent Auditor's Report, and otherwise comply with the *State Records Act 1998* (NSW) and any applicable Museums of History NSW (formerly the NSW State Archives and Records Authority) functional retention and disposal authorities.
- 12.14 The Audit Service Provider must provide copies of any Audit Material or other audit documents in connection with the Auditing Services, in hard or soft copy, that the Auditor-General or the Engagement Controller requests during the Period of Appointment, or for a period of seven years following the signing of the Independent Auditor's Report.
- 12.15 Storage of all Audit Material and other audit documents in connection with the Auditing Services will be determined by negotiation and agreement between the Auditor-General and the Audit Service Provider. If the Audit Service Provider is storing these documents the Audit Service Provider must retain them for a period of seven years following the signing of the Independent Auditor's Report and must ensure adequate access protections are applied to protect the confidentiality and integrity of the Audit Material.
- 12.16 If agreed that the Audit Service Provider should retain the Audit Material and other audit documents and the Audit Service Provider within this seven-year period no longer provides Auditing Services the Audit Service Provider must advise the Auditor-General or Engagement Controller in writing so that alternative arrangements can be made for their storage.
- 12.17 At the completion of each audit, the Audit Service Provider must remove all Audit Material not contained within the audit file from shared directories; individual or shared OneDrive; individual or shared email mailboxes; USB devices and external hard drives; and any other location that is not the audit file.
- 12.18 The Audit Service Provider must report to the Auditor-General or Engagement Controller on the Auditing Services in accordance with the requirements set out in this Agreement.
- 12.19 The Audit Service Provider must use Audit Office Templates for communications to the Auditee and when preparing reports for the Auditor-General, or Engagement Controller, or those charged with governance of the Auditee.
- 12.20 When preparing reports and significant correspondence, the Audit Service Provider must follow the following procedure:
- a) the Audit Service Provider is responsible for proposing the content of the reports to, and

- must consult in respect of that content with, the Engagement Controller;
- b) the Audit Service Provider must first send draft reports and significant correspondence to the Engagement Controller for review;
 - c) the Engagement Controller will finalise the documents and send all such final documents to the Auditee; and
 - d) all documents sent to the Auditee by the Engagement Controller under clause 12.20(b) above must only be signed by the Engagement Controller, rather than the Audit Service Provider or the Audit Service Provider's Assistants.

13 Performance evaluation

- 13.1 The continuation of this Agreement is subject to the evaluation of the Audit Service Provider's performance by the Auditor-General.
- 13.2 The Auditor-General may at any time conduct a review of the Audit Service Provider's performance to ensure that the Audit Service Provider has provided, or is providing, the Auditing Services in accordance with the requirements of this Agreement.
- 13.3 The Auditor-General will communicate the results of the evaluation to the Audit Service Provider and provide feedback on the Audit Service Provider's performance.
- 13.4 Subject to the results of performance evaluations, the Auditor-General may request the Audit Service Provider to remedy or improve performance within a specified timeframe where the Auditor-General is of the opinion that the Audit Service Provider's performance of its obligations under this Agreement is unsatisfactory. Where the Auditor-General is of the opinion that the Audit Service Provider has not remedied or sufficiently improved its performance within the timeframe specified in the notice, the Auditor-General may terminate this agreement in accordance with clause 21.6.

14 Audit Service Provider's workers and work health and safety

- 14.1 The Audit Service Provider must do all acts and things required, at its own cost (unless otherwise agreed), for the purposes of giving effect to the provisions of this Agreement.
- 14.2 The Audit Service Provider must effect and maintain at its own cost and expense insurance against such liability as may arise by virtue of any relevant workers' compensation legislation, or common law action associated therewith, in respect of any activity carried out by the Audit Service Provider or the Audit Service Provider's Assistants.
- 14.3 Evidence, in the form of certificates of currency, of up to date workers' compensation insurance cover must be provided to the Audit Office's Executive Director, Finance and Performance within 30 calendar days of the date of this Agreement as set out in Schedule III.
- 14.4 The Audit Service Provider must have in place work health and safety policies and procedures that are designed to ensure compliance with the *Work Health and Safety Act 2011* (NSW) and must ensure its workers are provided with appropriate training in respect of those policies and procedures.
- 14.5 The Audit Service Provider must ensure its workers take reasonable care for their own health and safety and the health and safety of others and that they comply with any reasonable instructions, policies and procedures that apply to their work in performing the Auditing Services.
- 14.6 The Audit Service Provider must immediately report any work health and safety incident that directly relates to the Auditing Services to the Auditor-General by emailing the Audit Office at procurement@audit.nsw.gov.au (subject to the Audit Service Provider's compliance with clause 7.12).
- 14.7 The Auditor-General may, by notice in writing request the Audit Service Provider to:
 - a) attest to compliance with legislative requirements (in the form of a self-assessment certification); or
 - b) provide its work health and safety policies to the Auditor-General.

15 Fraud, corruption, irregularity, misfeasance, malfeasance, etc.

- 15.1 If, during the course of an audit assignment, the Audit Service Provider or any of the Audit Service Provider's Assistants detect possible fraud, misfeasance, malfeasance, breach of statutory requirements, or material discrepancy of any nature, the Audit Service Provider must immediately report the facts of the matter to the Engagement Controller, and forthwith thereafter must confirm the report in writing to the Auditor-General.
- 15.2 Immediately upon becoming aware of any matter that the Audit Service Provider suspects on reasonable grounds concerns or may concern corrupt conduct within the meaning of the *Independent Commission Against Corruption Act 1988* (NSW), the Audit Service Provider must in writing inform and make known the matter to the Auditor-General.
- 15.3 Immediately upon becoming aware of any matter the Audit Service Provider suspects requires reporting to the Australian Securities and Investments Commission under section 311 of the *Corporations Act 2001* (Cth), the Audit Service Provider must in writing inform and make known the matter to the Auditor-General.
- 15.4 The Audit Service Provider shall not give any advice or information regarding the matter to any person whatsoever in the absence of written directions from the Engagement Controller or the Auditor-General or unless otherwise required by law.

16 Modern slavery compliance, due diligence, information and termination

- 16.1 The Audit Service Provider represents, warrants and undertakes that, as at the date of its execution of this Agreement, neither the Audit Service Provider, any entity that it owns or controls or, to the best of its knowledge, any subcontractor of the Audit Service Provider, has been convicted of a Modern Slavery offence under the Modern Slavery Laws.
- 16.2 For the purpose of this clause, information may include (as applicable) information as to any risks of, actual or suspected occurrences of, and remedial action taken in respect of, Modern Slavery but excludes Personal Information.
- a) The Audit Service Provider must:
- i) subject to any restrictions under any applicable laws by which it is bound, provide to the Auditor-General any Information and other assistance, as reasonably requested by the Auditor-General, to enable the Auditor-General to meet any of its obligations under the Modern Slavery Laws and associated regulatory requirements (for example, any applicable annual reporting requirements and New South Wales Procurement Board Directions); and
 - ii) notify the Auditor-General in writing as soon as it becomes aware of either or both of the following:
 - a material change to any of the Information it has provided to the Auditor-General in relation to Modern Slavery; and
 - any actual or suspected occurrence of Modern Slavery in its operations or supply chains (or those of any entity that it owns or controls).
- b) The Audit Service Provider may provide any Information or report requested by the Auditor-General in the form of a previously prepared statement or re-purposed report, for example a statement provided in response to a similar request for Information from another Australian public sector agency, or refer the Auditor-General to its publicly available Modern Slavery Statement, provided that such statement or report provides generally the same Information as that sought by the Auditor-General.
- c) The Audit Service Provider must, during the Period of Appointment and for a period of seven years thereafter:
- i) maintain; and
 - ii) upon the Auditor-General's reasonable request, give the Auditor-General access to, and/or copies of, records in the possession or control of the Audit Service Provider to trace, so far as practicable, the supply chains of all Auditing Services and associated deliverables provided under this Agreement and to enable the Auditor-General to assess the Audit Service Provider's compliance with this clause 16.

- 16.3 The Audit Service Provider must take reasonable steps to ensure that Modern Slavery is not occurring in the operations and supply chains of the Audit Service Provider and any entity that it owns or controls.
- 16.4 In respect of any subcontracts that relate to the Audit Service Provider's Auditing Services, or the whole or any part of this Agreement (and without limiting the Audit Service Provider's obligations under any Modern Slavery Laws), the Audit Service Provider must take reasonable steps to ensure that those subcontracts contain:
- a) in relation to subcontracts that relate exclusively to the Auditor-General, provisions in relation to Modern Slavery that are substantially the same provisions as this clause 16; and
 - b) in all other cases, Modern Slavery provisions that are reasonably consistent with the provisions in this clause 16.
- 16.5 If the Audit Service Provider becomes aware of any actual or suspected occurrence of Modern Slavery in its operations or supply chains (or in those of any entity that it owns or controls):
- a) the Audit Service Provider must take reasonable steps to respond to the occurrence in accordance with any internal Modern Slavery strategy and procedures of the Audit Service Provider and any relevant policies, codes and standards (including any code of practice or conduct) or other guidance issued by any relevant authority or (if the Auditor-General notifies the Audit Service Provider that it requires the Audit Service Provider to comply with any relevant New South Wales Procurement Board code, direction, policy or guidance) by the New South Wales Procurement Board; and
 - b) any action taken by the Audit Service Provider under clause 16.5(a) will not affect any rights of the Auditor-General under this Agreement, including its rights under clause 16.6.
- 16.6 In addition to any other rights or remedies under this Agreement or at law, the Auditor-General may terminate this Agreement, upon written notice and with immediate effect if, in the Auditor-General's reasonable view, the Audit Service Provider has:
- a) failed to notify the Auditor-General as soon as it became aware of an actual or suspected occurrence of Modern Slavery in its operations or supply chains (or in those of any entity that it owns or controls);
 - b) failed to take reasonable steps to respond to an actual or suspected occurrence of Modern Slavery in its operations or supply chains (or in those of any entity that it owns or controls); or
 - c) otherwise committed a substantial breach or multiple minor (non-trivial) breaches of its obligations under this clause and the breach (or breaches) is not remedied within 15 calendar days of the Audit Service Provider receiving a notice to remedy.

17 Insurance cover and scope of liability

- 17.1 The Audit Service Provider must, at its own cost and expense, effect and maintain with a reputable insurance company for the term of this Agreement each of the following insurances:
- a) public liability insurance with a limit of cover of not less than A\$20 million in respect of each and every occurrence and unlimited in aggregate for any one period of cover, such insurance covering the Audit Service Provider and Audit Service Provider's Assistants;
 - b) as required by clause 14, workers compensation insurance as required by all relevant laws of Australia relating to workers compensation, such insurance covering the Audit Service Provider and Audit Service Provider's Assistants;
 - c) professional indemnity insurance with a limit of cover to the value of the minimum relevant amount prescribed under the Chartered Accountants Australia and New Zealand Professional Standards Scheme (NSW) and the CPA Australia Professional Standards Scheme approved under the *Professional Standards Act 1994* (NSW) ('PS Act'), with such insurance covering the Audit Service Provider and all of the Audit Service Provider's Assistants involved in the provision of the Auditing Services, to be held for the duration of the Auditing Services and for at least seven years thereafter;

- d) subject to clause 17.1(c), if the Audit Service Provider is not a member of a professional standards scheme approved under the PS Act, professional indemnity insurance with a limit of cover of not less than A\$10 million in respect of each occurrence and unlimited in the aggregate, to be held for the duration of the Auditing Services and for at least seven years thereafter, such insurance must cover the Audit Service Provider and all of the Audit Service Provider's Assistants involved in the provision of the Auditing Services; and
- e) cyber security insurance with a limit of cover of not less than [~~\$5~~/~~\$10~~/~~\$20~~] million in respect of each occurrence.

Evidence, in the form of certificates of currency, from an insurer or insurance broker of the insurance cover required under this clause 17.1 must be provided to the Auditor General via email to the Audit Office at procurement@audit.nsw.gov.au within 30 calendar days of the date of this Agreement as set out in Schedule III.

17.2 The Audit Service Provider must ensure that any approved subcontractor will arrange and maintain with a reputable insurance company for the term of this Agreement:

- a) public liability insurance with a limit of cover of not less than A\$20 million in respect of each and every occurrence and unlimited in aggregate for any one period of cover;
- b) workers compensation insurance as required by all relevant laws of Australia relating to workers compensation; and
- c) professional indemnity insurance, to be held for the duration of the Auditing Services and for at least seven years thereafter:
 - i) to the value of the amount prescribed under an approved scheme under the PS Act, if the approved subcontractor is a member of such an approved scheme; or
 - ii) to the value of A\$10 million in respect of each claim, if the approved subcontractor is not a member of a professional standards scheme approved under the PS Act.

The Audit Service Provider must, on request from time to time by the Auditor-General, produce to the Engagement Controller satisfactory evidence, in the form of certificates of currency, of the insurance cover required under this clause 17.2.

17.3 The Audit Service Provider must ensure that the insurance policies referred to in clauses 17.1 and 17.2 are effective from commencement of this Agreement and are maintained for the term of this Agreement. However, professional indemnity insurance shall, unless the Auditor-General otherwise agrees or requires in writing, be continued to be maintained for a period of seven years following the expiry or earlier termination of this Agreement.

17.4 Subject to clause 17.5, the Audit Service Provider agrees to indemnify and hold harmless the Auditor-General, its employees, agents and contractors ("those indemnified"), against any and all losses, claims, costs, expenses, actions, demands, damages, liabilities or any other proceedings, (whether direct, indirect or consequential), whatsoever incurred by those indemnified, in connection with the Auditing Services, including (without limitation) liability for any negligent act or omission by the Audit Service Provider or the Audit Service Provider's Assistants.

17.5 The Audit Service Provider's liability under clause 17.4 is limited (to the extent to which the liability results in damages exceeding such cap) to the applicable amount specified under the Chartered Accountants Australia and New Zealand Professional Standards Scheme and the CPA Australia Professional Standards Scheme approved under the PS Act.

17.6 The Auditor-General agrees to indemnify and hold harmless the Audit Service Provider against any and all losses, claims, costs, expenses, actions, demands, damages, liabilities or any other proceedings, whatsoever incurred by the Audit Service Provider in respect of any claim by a third party arising from a breach by the Auditor-General of the Auditor-General's duties in this Agreement.

17.7 The Audit Service Provider shall not be liable for any losses, claims, expenses, actions, demands, damages, liabilities, or any other proceedings arising, to the extent of, reliance on any information provided by the Auditor-General or its representatives, which is false, misleading or incomplete. The Auditor-General agrees to indemnify and hold harmless the Audit Service

Provider from any such liabilities the Audit Service Provider may have to the Auditor-General or any third party as a result of reliance by the Audit Service Provider on any information provided by the Auditor-General or any of its representatives, which is false, misleading or incomplete.

18 Fees

- 18.1 The Auditor-General shall, in consideration of the Audit Service Provider performing its obligations in accordance with this Agreement, pay to the Audit Service Provider the Fee in accordance with this clause 18, subject to the Engagement Controller being reasonably satisfied as to Auditing Services having been provided to such value and the Audit Service Provider's continuing compliance with the terms of this Agreement.
- 18.2 The Fee for the Initial Year is set out in Schedule II. Such amount is fixed and exclusive of direct reimbursable expenses which are capped. The Audit Service Provider will be reimbursed for actual costs incurred for direct reimbursable expenses up to the capped amount.
- 18.3 The basis for escalating the Fee, including direct reimbursable expenses, in years subsequent to the Initial Year is set out in Schedule II.
- 18.4 Applications to vary the amount of the Fee for subsequent years must be submitted by the Audit Service Provider to the Engagement Controller by no later than five months prior to the Auditee's financial year end which precedes the anniversary of the commencement of the Period of Appointment.
- 18.5 The onus shall be on the Audit Service Provider to prove all details supporting any variation to the amount of the Fee to the satisfaction of the Engagement Controller.
- 18.6 The Engagement Controller reserves the right, upon receipt of such application from the Audit Service Provider, to grant or refuse it in part, at their absolute discretion. The Engagement Controller will notify the Audit Service Provider of the amount of the Fee for a subsequent year (or years).
- 18.7 If the Audit Service Provider does not accept the amount of the Fee as notified by the Auditor-General pursuant to clause 18.6, the Auditor-General may terminate the Agreement by giving 90 calendar days' notice in writing of the intention to terminate.
- 18.8 Any invoice seeking payment of the Fee, or part of the Fee, must be a Correctly Rendered Invoice. Any invoice will need to be approved by the Engagement Controller to confirm that it is a Correctly Rendered Invoice. A Correctly Rendered Invoice shall be paid in full within 30 calendar days of its receipt by the Audit Office. Invoices must be submitted in accordance with the billing arrangements set out in the Audit Service Providers Manual issued by the Auditor-General and the requirements of the Annual Engagement Plan ('AEP').
- 18.9 In the event of any dispute concerning the whole or any amount of any invoice submitted by the Audit Service Provider, the Audit Service Provider and the Engagement Controller shall meet for the purposes of discussing and resolving the dispute. If the dispute is not resolved in this manner the Audit Service Provider may forward a notice to the Auditor-General informing them that the dispute or part thereof is not resolved. If the dispute remains unresolved within twenty-one calendar days from the date of the notice then such dispute shall be resolved by the method referred to in clause 20.1.
- 18.10 The Auditor-General may withhold payment of the Fee, or any part of the Fee, where the Engagement Controller is reasonably satisfied that the Audit Service Provider has failed to comply with its obligations under this Agreement. Fees may be withheld until such time as the Engagement Controller is reasonably satisfied the Audit Service Provider has fulfilled its obligations.

19 Goods and Services Tax (GST)

- 19.1 Unless otherwise specified, all amounts specified in this Agreement are exclusive of GST. However, the Auditor-General will, subject to receipt from the Audit Service Provider of a Correctly Rendered Invoice pay, in addition to the Fee for the Auditing Services, an amount equivalent to the GST payable by the Audit Service Provider in respect of any taxable supply.
- 19.2 The Audit Service Provider must provide the Auditor-General with sufficient information to

enable the Auditor-General to claim an input tax credit (if the Auditor-General is entitled to claim such input tax credit) in respect of any amount of GST paid to the Audit Service Provider.

- 19.3 The Audit Service Provider will comply with all applicable standards, laws and regulations, including but not limited to complying with its obligations (if any) under or arising pursuant to the *Competition and Consumer Act 2010* (Cth) and the *Fair Trading Act 1987* (NSW).

20 Dispute resolution

- 20.1 If the Auditor-General and the Audit Service Provider are in dispute regarding any matter arising out of this Agreement, either party may, by notice in writing, served on the other, require that such dispute be resolved by the determination of an independent third party acceptable to both parties. If the parties cannot agree upon an independent third party within 7 calendar days of the date of service of the notice, either party may request the President of CPA Australia to nominate an independent third party for this purpose. The third party appointed to resolve the dispute in this matter shall act as an expert and not as an arbitrator and their decision shall be final and binding upon the Auditor-General and the Audit Service Provider.

21 Termination of Auditing Services

- 21.1 For the avoidance of doubt, the Audit Service Provider's appointment may be revoked at any time by the Auditor-General notwithstanding any other terms of this Agreement. This Agreement will terminate on the date specified by the Auditor-General in the notice of revocation.
- 21.2 This Agreement may be terminated by either party during the Period of Appointment by the giving in writing of 90 calendar days' notice of the intention to terminate.
- 21.3 The Audit Service Provider must advise the Auditor-General immediately if the Engagement Partner:
- a) is declared bankrupt or makes any arrangements or composition with his or her creditors;
 - b) is found guilty of professional misconduct or is convicted by any court of any offence;
 - c) is suspended from or ceases membership of the professional accounting body referred to in clause 17 of this Agreement or any other professional accounting body of which proof of membership was required by the Auditor-General prior to commencement of this Agreement;
 - d) ceases to hold any of the practice certificates or registrations of which proof of existence was required by the Auditor-General prior to commencement of this Agreement;
 - e) acts in any way, which would be deemed by a reasonable person to have rendered the Audit Service Provider unable to continue the engagement without a Conflict of Interest and/or impairment of audit independence;
 - f) is affected by any event that has occurred or is likely to occur which might result in the Audit Service Provider or an associate having a direct or indirect personal interest in any matter the subject of an audit examination, or maintaining any relationship or interest that conflicts with the relevant professional independence requirements in APES 110, Prudential Standard SPS 510, or is prohibited under Part 2M.4 Division 3 of the *Corporations Act 2001* (Cth);
 - g) is the subject of disciplinary action of the Companies Auditors Disciplinary Board resulting in an admonishment, reprimand or enforceable undertaking; or
 - h) is the subject of any proceedings or investigations commenced or threatened by the Australian Securities and Investments Commission, the Independent Commission Against Corruption, the Australian Taxation Office, any Australian police service/force or any similar investigative, regulatory or public accountability or oversight body.
- 21.4 The Audit Service Provider must advise the Auditor-General immediately if:
- a) any of the Audit Service Providers' audit partners (or equivalent) are subject of any proceedings or investigations commenced or threatened by the Australian Securities and Investments Commission, the Independent Commission Against Corruption, the Australian Taxation Office, any Australian police service/force or any similar investigative,

regulatory or public accountability or oversight body, or

- b) in the opinion of the Audit Service Provider, the Audit Service Provider is subject to any significant proceedings or investigations commenced or threatened by the Australian Securities and Investments Commission, the Independent Commission Against Corruption, the Australian Taxation Office, any Australian police service/force or any similar investigative, regulatory or public accountability or oversight body that would bring into disrepute the relationship with the Auditor-General.
- 21.5 Upon the occurrence of any of the matters noted in clause 21.3(a) to (h) and 21.4(a) and (b), the Auditor-General may:
- a) immediately terminate this Agreement by notice in writing to the Audit Service Provider; or
 - b) immediately require the removal of the Engagement Partner and the appointment of another suitable Engagement Partner from the Audit Service Provider.
- 21.6 Without limiting clause 21.5, the Auditor-General may, by notice in writing to the Audit Service Provider, immediately terminate this Agreement if the Audit Service Provider:
- a) undergoes a change in its business structure or operations which in the opinion of the Auditor-General adversely affects the capacity of the Audit Service Provider to provide the Auditing Services in accordance with this Agreement;
 - b) commits a material breach of this Agreement which, in the Auditor-General's opinion, is not capable of being remedied;
 - c) fails to remedy a material breach which, in the Auditor-General's opinion is capable of being remedied, within 5 business days of receiving a notice from the Auditor-General requiring it to remedy that breach, or such longer period as the Auditor-General may reasonably allow having regard to the nature of the breach;
 - d) fails to remedy a Conflict of Interest or a Threat or perceived Threat to the Independence of the Auditor-General within the time specified in a notice issued by the Auditor-General (or delegate) to the Audit Service Provider under clause 8.3;
 - e) fails to remedy unsatisfactory performance referred to in clause 13.4 within the specified timeframe referred to in that clause;
 - f) or any of the Audit Service Provider's Assistants, becomes bankrupt, or insolvent, or becomes subject to bankruptcy proceedings or becomes subject to any form of insolvency administration;
 - g) of any of the Audit Service Provider's Assistants, is the subject of proceedings or investigations commenced or threatened by the Australian Securities and Investments Commission, the Independent Commission Against Corruption, the Australian Taxation Office, any Australian police service/force or any similar investigative, regulatory or public accountability or oversight body;
 - h) fails to carry out the Auditing Services with due diligence and competence;
 - i) fails to carry out the Auditing Services with reasonable care and skill;
 - j) suspends the carrying out of the Auditing Services without reasonable cause;
 - k) in the Auditor-General's opinion, cannot continue to provide Auditing Services due to a change in Government policy, legislation or restructure of any authority; or
 - l) the Audit Service Provider's are found to be the subject of a finding of serious wrongdoing or other misconduct.
- 21.7 If this Agreement is terminated by the Auditor-General pursuant to clause 21.1 or 21.2, the Audit Service Provider shall be entitled to be paid the Fee, or part of the Fee, for work done prior to the date of termination. No other compensation will be paid. Furthermore, if this Agreement is terminated by the Auditor-General pursuant to clause 21.5 or 21.6, such payment will take into account any adjustments and deductions for loss or damage suffered, or reasonably likely to be suffered, by the Auditor-General as a consequence of breach of this Agreement by the Audit Service Provider or any of the matters identified in clauses 21.3, 21.4 and 21.6.

- 21.8 If this Agreement is terminated by the Audit Service Provider pursuant to clause 21.2:
- a) the Audit Service Provider shall be entitled to be paid the Fee, or part of the Fee, for work done prior to the date of termination; and
 - b) if, after receipt the notice, the Auditor-General becomes aware of the occurrence of any of the matters in clauses 21.3, 21.4 or 21.6, the Auditor-General may deduct from the amount in clause 21.8(a) an amount for loss or damage suffered, or reasonably likely to be suffered, by the Auditor-General as a consequence of the occurrence of any of those matters.
- 21.9 Termination by the Auditor-General under this Agreement will not release the Audit Service Provider from liability for any breach of, or non-performance of, any obligation under the Agreement.

22 Miscellaneous

- 22.1 This Agreement shall be governed by and construed in accordance with the laws for the time being in force in the State of New South Wales.
- 22.2 The following clauses survive termination, revocation or expiry of this Agreement:
- a) clauses 7.13 to 7.20 and 7.25 (ASP duties)
 - b) clause 11.5 (General conditions)
 - c) clause 12 (Audit materials, working papers and reports)
 - d) clause 17 (Insurance cover and scope of liability)
 - e) clause 20 (Dispute resolution)
 - f) clause 21 (Termination of Auditing Services)
- and any other clause which by its nature is intended to survive this Agreement.
- 22.3 All amendments to this Agreement must be in writing and signed by both parties.
- 22.4 The Audit Service Provider must not assign or otherwise transfer any right or obligation under this Agreement without the Auditor-General's prior written consent.
- 22.5 If any part of this Agreement is prohibited, void, voidable, illegal or unenforceable, then that part is severed from this Agreement but without affecting the continued operation of the remainder of the Agreement.
- 22.6 The Agreement constitutes the entire agreement and understanding between the parties as to the subject matter of this Agreement. Any prior arrangements, representations or undertakings as to the subject matter of this Agreement are superseded.
- 22.7 Failure or omission by the Auditor-General at any time to enforce or require strict or timely compliance with any provision of the Agreement will not in any way affect, waive or impair that provision or the right of the Auditor-General to avail itself of the remedies it may have in respect of any breach of a provision.
- 22.8 This Agreement may consist of a number of counterparts and if so the counterparts taken together constitute one and the same instrument.
- 22.9 Any notice required to be served by the:
- a) Auditor-General on the Audit Service Provider shall be signed by the Auditor-General (or delegate) and shall be sufficiently served if forwarded to the Audit Service Provider at the address referred to in Schedule I by prepaid registered post or by hand delivery or by email to the Engagement Partner; and
 - b) Audit Service Provider on the Auditor-General shall be signed by the Engagement Partner on behalf of the Audit Service Provider and shall be sufficiently served if forwarded to the Auditor-General at the Audit Office of New South Wales, Level 19, Darling Park Tower 2, 201 Sussex Street, Sydney, New South Wales, 2000, by prepaid registered post or by hand delivery or by email to the Engagement Controller..

22.10 References to the Auditor-General shall include, as required, the person for the time being acting as such and, where required, the Engagement Controller and any other authorised representative of the Auditor-General acting on behalf of the Auditor-General in relation to this Agreement and any duly authorised delegate of the Auditor-General acting in their capacity as such.

22.11 Neither party is an employee, agent or partner of the other for any purpose.

22.12 Unless the context otherwise requires:

- a) the singular includes the plural and vice versa;
- b) the headings to clauses shall not in any way affect their interpretation;
- c) a reference to a statute, regulation, ordinance or by-law will be deemed to extend to include a reference to all statutes, regulations, ordinances or by-laws amending, consolidating or replacing that law from time to time;
- d) a reference to a person which has ceased to exist or has been reconstituted, amalgamated or merged, or other functions of which have become exercisable by any other person or body in its place, shall be taken to refer to the person or body established or constituted in its place by which its functions have become exercisable;
- e) no rule of construction operates to the detriment of a party only because that party was responsible for the preparation of this Agreement or any part of it;
- f) where there occurs a reference to the doing of anything by the Auditor-General including giving any notice, consent, direction or waiver, this may be done by any duly authorised officer of the Auditor-General;
- g) where the Audit Service Provider comprises more than one person, each obligation of the Audit Service Provider will bind those persons jointly and severally and will be enforceable against them jointly and severally;
- h) where the Auditor-General is required to act reasonably in the performance of this Agreement, that shall be read as a requirement to act as would a party in the position of the Auditor-General which is acting reasonably in its own best interests;
- i) persons will be taken to include any natural or legal person;
- j) a reference to a group of persons is a reference to all of them collectively and to any two or more of them collectively and to each of them individually;
- k) a reference to a party means a party to this Agreement; and
- l) where a word or phrase is defined in this Agreement, any other grammatical form in respect of such word or phrase will have a corresponding meaning.

23 Definitions

23.1 Unless the context otherwise indicates or requires:

'Agreement' means this agreement, which for the avoidance of doubt includes the Schedules to this agreement, as amended from time to time in accordance with clause 22.3.

'Annual Engagement Plan' sets out the terms and conditions for the conduct of the audit of the Auditee under this Agreement.

'Attest Audit Coverage' means the audit work necessary to enable an opinion to be expressed as to whether the financial report is presented fairly in accordance with the requirements of:

- a) in the case of Auditees subject to the audit provisions of the GSA Act, the GSA Act and any applicable reporting provisions in the GSF Act;
- b) in the case of Auditees subject to the audit provisions of the LG Act, the LG Act;
- c) other applicable statutory requirements;
- d) the Australian Accounting Standards (including Australian accounting interpretations); and
- e) other mandatory professional reporting requirements forming part of the financial reporting framework.

'Audit Material' means all records in whatever form, created in the course of performing the Auditing Services and includes, without limitation, all audit materials, working papers, electronic files, reports and financial reports.

'Audit Office Templates' mean those templates provided by the Auditor-General or the Engagement Controller to the Audit Service Provider to be used in relation to the Auditing Services, from time to time.

'Audit Service Provider' means the person or firm named in the Agreement. The Audit Service Provider may at any time alter its membership by addition or deletion of partners, or change the structure of the auditing practice in accordance with the rules of the Chartered Accountants Australia and New Zealand or CPA Australia.

'Audit Service Provider's Assistants' shall include any partner, employee or other person employed or engaged by the Audit Service Provider in the performance of the Auditing Services.

'Auditing Services' means the audit of the Auditee, and other services provided, by the Audit Service Provider in accordance with this Agreement.

'Conflict of Interest' means a situation where the exercise of a person's duty or decision-making is influenced, potentially influenced, or may appear to be influenced, by a secondary interest, including (but not limited to) a private or business interest. A 'Conflict of Interest' includes (without limitation) a conflict of interest that would contravene any applicable code of professional conduct, the *Corporations Act 2001* (Cth), or Prudential Standard SPS 510 if applicable.

'Correctly Rendered Invoice' means an invoice that at a minimum satisfies the following:

- a) is a tax invoice within the meaning of the GST Law,
- b) clearly identifies the Fee claimed and the GST component,
- c) includes the audit name and year-end, and
- d) includes the Audit Office purchase order number.

'Cyber Security Incident' means an identified compromise of confidentiality, integrity or availability of systems or data. A cyber incident may result in a loss of confidentiality, integrity or availability that impacts a digital asset (server, network, user, media, person or data) and requires corrective action beyond ordinary security practices.

'Engagement Controller' means the person appointed by the Auditor-General in accordance with clause 9.4.

'Engagement Partner' means the Audit Service Provider's Engagement Partner as specified in Schedule I. The Engagement Partner must be a registered member of the Chartered Accountants Australia and New Zealand or CPA Australia Ltd.

'Engagement Quality Control Review Partner' means the Audit Service Provider's Engagement Quality Control Review Partner as specified in Schedule I and defined in Auditing Standard ASA 220 'Quality Control for an Audit of a Financial Report and Other Historical Financial Information'.

'Fee' means:

- a) in respect of the Initial Year, the amount specified as the 'Total Fee for the Initial Year of the Auditing Service' in Schedule II: Payment for Auditing Services excluding direct reimbursable expenses; and
- b) in respect of any subsequent years, the amount determined in accordance with clauses 18.3 to 18.6.

'GSA Act' means the *Government Sector Audit Act 1983* (NSW).

'GSF Act' means the *Government Sector Finance Act 2018* (NSW).

'GST' has the meaning given to this term in the GST Law.

'GST Law' means *A New Tax System (Goods and Services Tax) Act 1999* (Cth), related legislation and any delegated legislation.

'Independent Auditor's Report' means the provision of the Audit Service Provider's recommended audit opinion as described in the Audit Service Provider's Manual

'Initial Year' means the first 12 month period of the Period of Appointment, or part there-of.

'Intellectual Property' means all intellectual property rights, including, without limitation, patent, know-how, copyright, moral rights, design, semi-conductor or circuit layout rights, trade marks, trade, business or company names or other proprietary rights, and any rights to registration of such rights, whether arising or created before or after the date of this Agreement in Australia or elsewhere.

'LG Act' means the *Local Government Act 1993* (NSW).

'Modern Slavery' has the same meaning as in the Modern Slavery Laws and includes slavery, servitude, forced labour, human trafficking, debt bondage, organ trafficking, forced marriage and the exploitation of children.

'Modern Slavery Laws' means the *Modern Slavery Act 2018* (NSW), *Modern Slavery Act 2018* (Cth) and any other applicable legislation addressing similar subject matter.

'Non-Audit Related Services' means a service that is not considered to be "Other audit and related services".

'Other Audit and Related Services' means engagements conducted under Auditing and Assurance Standards, Review Standards and Related Services standards issued by the Australian Auditing and Assurance Standards Board. These include audits and reviews of special purpose financial statements, compliance audits and reviews, and acquittal of grant funding.

'Period of Appointment' means the period of appointment set out in Schedule I.

'Personal Information' means:

- a) information or an opinion about an identified individual (that is, a natural person) or an individual who is reasonably identifiable whether the information or opinion is:
 - (i) true or not; and
 - (ii) recorded in a material form or not; and
- b) information defined as such under applicable privacy laws including: the *Privacy Act 1988* (Cth); *Privacy and Personal Information Protection Act 1998* (NSW); *Health Records and Information Privacy Act 2002* (NSW); any legislation (to the extent that such legislation applies) from time to time in force in any Australian jurisdiction and any other jurisdiction affecting privacy or Personal Information, provided that the Audit Service Provider complies at all times with the privacy laws applicable in New South Wales; and any ancillary rules, guidelines, orders, directions, directives, codes of conduct or other instruments made or issued under any of the legislation referred to in this definition, as amended from time to time.

'PS Act' means the *Professional Standards Act 1994* (NSW).

'Threats to Professional Independence' refer to the circumstances and relationships which present threats to independence as described in *APES 110 Code of Ethics for Professional Accountants* (including Independence Standards).

This Agreement is made between:

The Auditor-General for New South Wales

Signed by [insert name] as duly authorised
delegate of the Auditor-General for New South
Wales:

Level 19, Darling Park Tower 2,
201 Sussex Street
SYDNEY NSW 2000

Date:

AND

[insert name of ASP]:

Signed for and on behalf of the Audit Service
Provider by [insert name]

Date:

SCHEDULE I: AUDIT SERVICE PROVIDER AND PERIOD OF APPOINTMENT

1. Full Name of Person or Firm:

2. Business Address:

3. Postal Address:

4. Period of Appointment is from commencement of the audit for the financial year ending 30 June 2024 to the conclusion of the audit for the financial year ended 30 June 2025.

5. Full Name of Engagement Partner:

6. Professional membership number and membership levels of Engagement Partner:

7. Practice certificates and/or registrations held by Engagement Partner:

8. Full Name of Engagement Quality Control Review Partner:

9. Professional membership number and membership levels of Engagement Quality Control Review Partner:

10. Practice certificates and/or registrations held by Engagement Quality Control Review Partner:

SCHEDULE II: PAYMENT FOR AUDITING SERVICES

Bases Used in Calculation – [Auditee Name]

Hours and cost for initial year [include a separate table per audited client/Auditee]

| Classification | Hours | | | Total | Hourly Rate \$ | Total Cost \$ |
|--|----------------|-----------------|----------------------|-------|----------------|---------------|
| | Audit Planning | Audit Fieldwork | Review and Reporting | | | |
| Lead partner | | | | | \$ | \$ |
| Review Partner | | | | | \$ | \$ |
| Audit Manager | | | | | \$ | \$ |
| Other Qualified Staff | | | | | \$ | \$ |
| Staff Not Yet Qualified | | | | | \$ | \$ |
| Information Systems Auditor | | | | | \$ | \$ |
| Taxation Specialist | | | | | \$ | \$ |
| Independent Valuer | | | | | \$ | \$ |
| Actuary Specialist | | | | | \$ | \$ |
| Other internal expert or specialist assistant | | | | | \$ | \$ |
| Total Fixed Fee for the Initial Year of the Auditing Service (GST exclusive) | | | | | | \$ |
| <i>Less Discount</i> [if applicable] | | | | | | \$ |
| Total Fixed Fee for the Initial Year of the Auditing Service (GST exclusive) | | | | | | \$ |
| GST | | | | | | \$ |
| Total Fixed Fee for the Initial Year of the Auditing Services (GST inclusive) | | | | | | \$ |

SCHEDULE III: DECLARATION OF INSURANCE COVER

Declaration of Insurance Cover

With reference to clauses 14.1, 17.1, and 17.2 I hereby certify that the following details of insurance cover are correct and that I have attached valid and current certificates of currency in respect of each of the following insurance policies.

| Schedule of insurance information | Public Liability Insurance | |
|--|----------------------------------|--|
| Provide details of all relevant insurances maintained by the Audit Service Provider and attach a copy of the current certificates. | Name of insurer: | |
| | Insured | |
| | Insured Entity's ABN | |
| | Policy number(s): | |
| | Expiry dates: | |
| | Limit of liability: | |
| | Relevant exclusions: | |
| | Professional Indemnity Insurance | |
| | Name of insurer: | |
| | Insured | |
| | Insured Entity's ABN | |
| | Policy number(s): | |
| | Expiry dates: | |
| | Limit of liability: | |
| | Relevant exclusions: | |
| | Workers Compensation Insurance | |
| | Name of insurer: | |
| | Insured | |
| | Insured Entity's ABN | |
| | Policy number(s): | |
| | Expiry dates: | |
| | No of Workers | |
| | Wages | |
| | Cyber Security Insurance | |
| | Name of insurer: | |
| | Insured | |
| | Insured Entity's ABN | |
| | Policy number(s): | |
| | Expiry dates: | |
| | Limit of liability: | |
| | Relevant exclusions: | |

Signed for: [insert name of Audit Service Provider]

By: [insert name of certifying Partner of Audit Service Provider]

**Audit Partner
signature:**

Date:

Confidential

SCHEDULE IV: DECLARATION OF INDEPENDENCE

Relationships/Interests

1. I, and my close and immediate family members, do not have, have not had, and agree not to have during the term of this Agreement, any relationship or interest in relation to this audit that would or could or could be perceived to:
 - cause any conflict of interest
 - be seen to impair my independence
 - contravene:
 - any applicable code of professional conduct
 - the independence requirements of the *Corporations Act 2001* (Cth)
 - the independence requirements in Prudential Standard SPS 510.

OR (please cross out whichever clause does not apply before signing)

2. I declare the following relationships and interests in relation to this audit that may be seen to:
 - cause a conflict of interest
 - be seen to impair my independence
 - contravene:
 - any applicable code of professional conduct
 - the independence requirements of the *Corporations Act 2001*
 - the independence requirements in Prudential Standard SPS 510.
 -

| Relationship or Interest | Nature and Details of Relationship/ Position held or Interest | Organisation |
|---|--|----------------------|
| (E.g. Self, family member, business partner etc.) | (E.g. Accountant, Finance Officer, ownership of shares in relevant company etc.) | (e.g., Council etc.) |

For: [insert name of Audit Service Provider]

By: [insert name of person engaged in Auditing Services]

Signature of declarant:

Date:

SCHEDULE V: AGREED COMPONENTS OF TENDER PROPOSAL