

Client Agreement – Design, Certification and Installation Services

General Terms and Conditions

1. Client Agreement between Client and Coates

These General Terms and Conditions, together with:

- (a) each Proposal provided to the Client by Coates; and
- (b) any other drawings or documents referenced within or attached to the Proposal and provided to the Client by Coates with respect to the Project;

set out the terms and conditions between the Client and Coates for the provision of design, certification and installation services (the "Agreement"). The provision or acceptance of a purchase order shall not form a separate agreement between the Client and Coates. Any terms contained in any document supplied by the Client, including any terms on the Client's purchase order, will not form part of the Agreement.

2. DEFINITIONS AND INTERPRETATION

In this Agreement:

Agreement means this Client Agreement – Design, Certification and Installation Services (together with those documents referred to in clause 1).

Background Intellectual Property means any Intellectual Property owned by or licenced to a Party (other than a licence to that Party by the other Party granted in accordance with this Agreement) that:

- (a) existed prior to the commencement of this Agreement;

(b) was developed independently of the Services; or

(c) subsists in the Party's technology, software, methodologies or know-how, including without limitation algorithms, templates, architecture, class libraries, objects and reports,

and any derivatives, improvements, enhancements, developments, modifications or extensions to any of the foregoing.

Business Day means a day that is not a Saturday, Sunday or public holiday in the state in which the Services are provided.

Client means the client as specified in the Proposal.

Client's Representative means the Client's representative as specified in the Proposal (or as otherwise advised by the Client to Coates, in writing).

Coates means Coates Hire Operations Pty Limited (ABN 99 074 126 971) and its successors and assigns.

Coates Representative means Coates' representative as specified in the Proposal (or as otherwise advised by Coates to the Client).

Commencement Date means the date this Agreement commences as stipulated in clause 4.

Completion Date means the completion date as set out in the Proposal or such date as otherwise agreed between the parties, in writing.

Confidential Information means the confidential, proprietary and commercially sensitive information of a Party (irrespective

of the form or the manner in which the information is disclosed, or the time of such disclosure) including information which: a Party knows, or reasonably ought to know, is confidential; relates to the business affairs and practices of the other Party, its divisions and any of its associated companies (including financial information, business opportunities, business plans, business processes and methodologies); but does not include information which is in, or comes into, the public domain (other by a breach of this Agreement) or is known by the other Party prior to entering into this Agreement.

Contamination means the presence in, on or under the Site, air or water of a substance (whether a solid, liquid, gas, odour, heat, sound, vibration or radiation) at a concentration above the concentration at which the substance is normally present in, on or under (respectively) land, air or water in the same locality, being a presence that presents a risk of harm to human health or any other aspect of the Environment, or could otherwise give rise to a risk of non-compliance with any Environmental Law.

Date for Delivery means the date, as agreed between the parties, in writing, by which Coates must deliver the Special Purpose Equipment to the Delivery Location.

Delivery Fee means the fee payable for delivery of the Special Purpose Equipment to the Delivery Location as set out in the Proposal or as otherwise agreed between the parties, in writing.

Delivery Location means the site address nominated by the Client, in writing, for the delivery of the Special Purpose Equipment.

Design Documentation means design documentation (including drawings, shop drawings, specifications, models, samples and calculations) in computer readable and written forms necessary for Coates to complete and deliver any part of the Services.

Direction includes any decision, demand, determination, explanation, instruction, notice, order, permission, rejection, request or requirement.

Dispute Letter means the letter sent by the disputing Party to the other Party initiating the disputing Party's question, dispute or

difficulty as more fully described in clause 20.1(a) of this Agreement.

Environment means components of the earth, including:

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

and includes interacting natural ecosystems that include components referred to in paragraphs (a) – (d) above.

Environmental Law means a law relating to the Environment, including but not limited to a law, regulation, code or standard relating to the use of the Site, planning, environmental assessment, the environmental heritage, water, water catchments, pollution of air, soil, ground water or water, noise, soil, chemicals, pesticides, hazardous substances, radioactive substances, the ozone layer, waste, building regulations, the occupation of buildings, public health, environmental hazard, or any other aspect of protection of the Environment.

Fees means the fees for the Services as set out in the Proposal, and payment conditions in respect of a Project (and includes any Delivery Fee).

Force Majeure Event means an event or circumstance which is beyond the reasonable control of the Party affected and includes, without limitation, acts of God, war, terrorism, mobilisation, civil commotion, riots, embargoes, orders or regulations of governments of any relevant jurisdiction, fires, storms, floods, strikes, lockouts or other labour difficulties, shortages of or inability to obtain shipping space or land transportation.

IFC Drawings means the final contract drawings or documents issued for construction by Coates;

Information means any information, including any designs, plans, instructions in any format (including any Design Documentation) provided either directly or indirectly by the Client to Coates in relation to the Services.

Insolvency Event means in respect of a Party:

- (a) where the Party is a person, the person is or becomes unable to pay their debts as and when they fall due or is otherwise presumed to be insolvent under the insolvency laws applying to that person; or the person suspends or threatens to suspend payment of its debts generally;
- (b) the board of the Party passes a resolution under section 436A of the *Corporations Act 2001* (Cth);
- (c) the Party is placed into administration pursuant to Part 5.3A of the *Corporations Act 2001* (Cth);
- (d) a deed of company arrangement is entered in respect of the Party;
- (e) an application is made to a court for the winding up of the Party;
- (f) the Party resolves that it be wound up voluntarily;
- (g) a winding up order is made in respect of the Party;
- (h) a receiver or receiver and manager is appointed to any substantial assets of the Party;
- (i) a court orders that there be a meeting of creditors or members of the Party for any purpose related to Part 5.1 of the *Corporations Act 2001* (Cth);
- (j) a mortgagee takes possession of any substantial assets of the Party; or
- (k) the Party informs the other Party or any creditor of the Party, in writing, that it is insolvent.

Intellectual Property means all industrial and intellectual property rights, whether protectable by statute, at common law or in equity, including, without limitation, all copyright, inventions, business processes, know-how, patents, designs (whether or not registrable), registered and unregistered trademarks, circuit layout designs and rights in relation to circuit layout designs, but excluding non-assignable moral rights and similar non-assignable personal rights of authors and producers. This definition includes, but is not limited to, any technical or

operational information communicated under this Agreement.

Latent Conditions means physical conditions on or near the Site that could not reasonably have been anticipated by Coates at the time of submitting its Proposal.

Laws means all relevant laws, legislation and regulations applying to the provision of the Services.

Party means a party to this Agreement.

Project means the project as described in the Proposal for which the Services are to be provided.

Proposal means the document entitled "Temporary Works Proposal" issued by Coates to the Client (and includes all drawings, documents and other appendices attached thereto or referenced within the Proposal).

Site means the site as stated in the Proposal.

Services means those services limited to those expressly specified and detailed in the Proposal.

Special Purpose Equipment means the equipment agreed to be supplied by Coates to the Client (and as more fully described in the Proposal). Such equipment may include equipment used for the purposes of dewatering, water management, water treatment, traffic control, compaction, shoring, bridging and propping.

Terms of Hire and Special Conditions means Coates' Terms of Hire and Special Conditions, a copy of which can be accessed at <https://www.coates.com.au>.

Utility Services includes electricity, natural gas, water, sewage, petrochemicals, telecommunication and broadband internet services, post-tensioned cabling and ducting.

2.1 Interpretation

In this Agreement, unless the context indicates a contrary intention:

- (a) The singular includes the plural and conversely.
- (b) A gender includes all genders.

- (c) If a word or phrase is defined, its other grammatical forms have a corresponding meaning.
- (d) A reference to includes or including should be construed without limitation.
- (e) A reference to a person, corporation, trust, partnership, unincorporated body or other entity includes any of them.
- (f) A reference to an agreement or document (including a reference to this Agreement) is to the agreement or document as amended, varied, supplemented, novated or replaced, except to the extent prohibited by this Agreement or that other agreement or document.
- (g) A reference to a Party to this Agreement or another agreement or document includes the Party's successors, permitted substitutes and assigns (and, where applicable, the Party's legal personal representatives).
- (h) A reference to legislation or to a provision of legislation includes a modification or re-enactment of it, a legislative provision substituted for it and a regulation or statutory instrument issued under it.
- (i) A reference to conduct includes an omission, statement and undertaking, whether or not in writing.
- (j) A reference to an agreement includes any undertaking, deed, agreement and legally enforceable arrangement whether or not in writing and a reference to a document includes an agreement (as so defined) in writing and any certificate, notice, instrument and document of any kind.
- (k) A reference to writing includes a facsimile transmission and any means of reproducing words in a tangible and permanently visible form.
- (l) A reference to any professional body includes the successors of that body.

- (m) A reference to a year, month, week or to a day is to a calendar year, month, week or day respectively.
- (n) A reference to dollars and \$ is to the Australian currency and all invoices and payments under this Agreement shall be in Australian dollars.
- (o) A reference to the Client includes the Client's Personnel, unless specified otherwise.

3. APPOINTMENT OF COATES

The Client hereby appoints Coates to provide the Services and Coates hereby agrees to provide the Services in accordance with the terms and conditions of this Agreement.

4. TERM OF AGREEMENT

This Agreement commences from the date the Client:

- (a) instructs Coates to proceed with providing the Services or production of IFC Drawings;
- (b) issues a purchase order with respect to the Services; or
- (c) otherwise accepts the Proposal,

(whichever is the earlier) and this Agreement shall remain in force until the Services in respect of the Project is completed.

5. LEGAL RELATIONSHIP BETWEEN THE PARTIES

The relationship between Coates and the Client is that of a principal and an independent contractor. Nothing in this Agreement or any conduct will constitute or deem either Party to be an employee of the other nor will anything herein be construed to be a legal business partnership or venture between Coates and the Client.

6. DUTIES AND RESPONSIBILITIES OF COATES

6.1 Delivery of Services

- (a) The Services are to be performed by Coates.
- (b) Coates acknowledges that the Coates' Representative has authority

to transmit information to and receive instructions, directions and documentation from the Client with respect to the Services and any provision of this Agreement.

- (c) Coates warrants that it will provide all the Services in accordance with the terms of this Agreement and:
- (i) in accordance with all reasonable, safe and lawful instructions issued by the Client's Representative;
 - (ii) in a thorough, professional and competent manner using that standard of care, skill and diligence that would reasonably be expected from an experienced provider of similar services and expertise in Australia; and
 - (iii) that the design, performance and delivery of such Services do not infringe the Intellectual Property rights of any third Party.

6.2 Latent Conditions

- (a) Where Coates, after the commencement of this Agreement or the Services, becomes aware of a Latent Condition, and where such Latent Condition will affect the performance of the Services, including necessitating additional staff, services or costs by Coates, the Client shall pay Coates at the agreed rates or if no rates are applicable then reasonable rates and prices (inclusive of profit and overheads), which shall be determined by Coates acting reasonably. No such change shall require an amendment to this Agreement, unless otherwise agreed between the parties or as may be set out in the Proposal.
- (b) Delay caused by a Latent Condition may justify an extension of time to complete the Services as determined by Coates (acting reasonably).

7. DUTIES AND RESPONSIBILITIES OF THE CLIENT

7.1 Payment for the Services

- (a) The Client shall pay the Fees to Coates for the provision of the Services in accordance with this Agreement and as set out in the Proposal.
- (b) The Client will provide accurate and timely decisions, Information and instructions.

7.2 Variations

- (a) The Fees relate exclusively to the Services as set out in the Proposal.
- (b) Where the Client, after the commencement of this Agreement or the Services, seeks to extend, increase, vary, delete or otherwise alter the Services ("Variation") to be provided, the Client shall provide notice of such proposed Variation to Coates and seek Coates' consent to the Variation in writing (such consent may be withheld by Coates in its absolute discretion).
- (c) Where a Variation necessitates additional staff, services or costs by Coates, the Client shall pay Coates the agreed rates or if no rates are applicable then reasonable rates and prices (inclusive of profit and overheads), which shall be determined by Coates acting reasonably. No such change shall require an amendment to this Agreement, unless otherwise agreed between the parties or as may be set out in the Proposal.
- (d) A Variation is deemed to include any Direction given by the Client's employees, agents, subcontractors or any other personnel within the Client's control to Coates' employees, agents and subcontractors where Coates incurs additional costs or expenses as a result of acting on such Direction.
- (e) Coates is entitled to unilaterally increase or decrease the Fees to the extent Coates incurs additional costs due to a change (including in any

interpretation or application) in any Laws, any statutory requirement or the Client's policies, processes or procedures that was not reasonably anticipated by Coates at the date the Agreement came into effect in accordance with clause 4, and the Client shall be required to pay Coates at the agreed rates or if no rates are applicable then reasonable rates and prices (inclusive of profit and overheads), which shall be determined by Coates acting reasonably.

Conditions to Coates prior to the Commencement Date.

7.3 Approval by Other Authorities

- (a) Unless otherwise provided for in this Agreement or explicitly required by legislation, where any aspect of the Services is subject to the approval or review of an authority, department of government, or agency (other than the Client) and/or requires a licence or permit to carry out the Services ("Approval"), the preparation, application and obtaining of the Approval, and all costs associated with such Approval shall be the responsibility of the Client.
- (b) For the avoidance of doubt, the Client's obligation to obtain Approvals includes obtaining approvals for the supply and discharge of water (where required) with respect to the Services.
- (c) The Client shall provide copies of all Approvals to Coates and shall advise Coates of any conditions in the Approvals that are required to be complied with by Coates in connection with the Services ("the Conditions") before the Commencement Date.
- (d) The Client acknowledges that Coates reserves the right to terminate the Agreement, without liability, in the event that the Client fails to obtain the required Approvals (or is otherwise in breach of this clause) and the Client releases and indemnifies Coates for all such costs, fines, penalties, damages and liabilities incurred by Coates as a result of the Client's failure to obtain the Approval and/or disclose such

7.4 Services

- (a) The Client shall be responsible to identify, locate, mark and (where feasible) expose all Utility Services and other hazards (whether aboveground, underground or otherwise concealed) and advise Coates of the location of any such Utility Services or hazards.
- (b) The Client is responsible for all costs associated with the re-location of any Utility Service where such relocation is required in order for Coates to comply with its obligations under this Agreement.
- (c) Should Coates cause any damage to any Utility Service not located by the Client, the cost of restoring such Utility Services shall be borne by the Client, and the Client indemnifies Coates for all such costs, damages and liabilities incurred by Coates as a result of the Client's failure to identify any Utility Service or hazard.

7.5 Data Retention

- 7.5.1 The Client must ensure that all records, documentation, information and data (including, but not limited to, data created by a telematic device or system) ("Data") required to be retained with respect to the Services are retained in compliance with:
 - (a) all Laws, legislation and regulations; and
 - (b) the requirements of any authority, department of government or agency.
- 7.5.2 The Client acknowledges that Coates is not responsible to retain any Data with respect to the Services and that such Data may:
 - (a) not be available for retrieval once the Services, with respect to any particular Project, are complete;
 - (b) be unavailable, or temporarily suspended, during the term of the Agreement and for reasons outside the control of Coates (including, but not limited to, the malfunction of any

telematic devices that are provided by Coates from a third party),

and the Client releases Coates from all loss or liability incurred by the Client arising from this clause 7.5.2.

- 7.5.3 The Client further indemnifies Coates from all liability with respect to any losses or claims sustained by Coates arising out of the Client's failure to comply with clause 7.5.1.

7.6 General Responsibilities

The Client shall:

- (a) if required by Coates, provide a survey of the Site and any Site conditions, geotechnical reports and any other testing results, as reasonably requested by Coates;
- (b) promptly review all documentation submitted by Coates, and inform Coates of decisions, in a timely manner for the orderly progress of Services;
- (c) arrange and make provision for Coates' entry and access to the Site (including, but not limited to, obtaining any necessary licence or approval for such purposes) in connection with the performance of the Services;
- (d) nominate in writing a Client Representative to have authority to transmit instructions to and receive information from Coates;
- (e) immediately notify Coates whenever the Client, or the Client's Representative, becomes aware of any inaccuracies in the Information supplied;
- (f) immediately notify Coates whenever the Client, or the Client's Representative, becomes aware of a defect or deficiency in any documentation submitted by Coates or the work performed by Coates in connection with the Services;
- (g) comply with all relevant industrial relations requirements, relevant Australian Standards, Work Health & Safety (WHS) & Environmental Codes of Practice and Laws

(including the establishment of appropriate exclusion zones to protect people and property), original equipment manufacturer's manuals and Coates' operating instructions (where applicable);

- (h) notify Coates immediately should it become aware of any constraint which may hinder Coates' execution of the Services on Site;
- (i) notify Coates immediately of any dangerous or potentially dangerous conditions on the Site (including the identification of any hazardous materials) and any fault, breakage or damage to any plant, equipment or material owned by Coates;
- (j) notify Coates of any incident including any significant injury to any persons and/or any significant environmental damage on or near the Site;
- (k) notify the applicable WHS and environmental regulator of all notifiable incidents within prescribed time frames and notify Coates of any order received from any such regulator (including prohibition and improvement notices);
- (l) ensure that the Client's plant, equipment and other items (where used in connection with the Services) are properly maintained and/or repaired such that they are available to operate or be used in an efficient, effective and safe manner at all times throughout the duration of the Project. Coates shall accept no responsibility for any loss or damage to the Client's plant, equipment or other items referred to herein; and
- (m) provide the services, facilities and other items stated as being provided by the Client uninterrupted and with due care, skill and diligence and fit for purpose. Except as provided by this clause or elsewhere by the Agreement, Coates shall provide the services and facilities reasonably necessary for the execution and completion of Services.

7.7 Equipment Hire

Where the Client has made a request to Coates for the installation and hire of the Special Purpose Equipment, the Terms of Hire and Special Conditions shall apply.

7.8 Directions

- (a) The Client shall ensure that its employees, agents, subcontractors or any other personnel within its control (other than the Client's Representative) refrain from giving any Direction to Coates' employees, agents or subcontractors with respect to the manner in which the Services are to be carried out in connection with this Agreement.
- (b) The Client shall further ensure that all Directions given by the Client shall be given by the Client's Representative to the Coates' Representative.
- (c) In the event the Client is in breach of its obligations pursuant to clause 7.8(a) herein, and Coates' employees, agents or subcontractors act on any such Direction, the Client shall indemnify and release Coates from and against all claims, actions, losses, expenses, costs or damages that the Client or Coates may suffer, sustain or incur as a result of Coates acting on such Direction. This indemnity shall survive termination of this Agreement.

7.9 Access to the Site

- (a) The Client must provide Coates with access to the Site as reasonably required by Coates to carry out the Services (including any Installation Works or de-installation works).
- (b) The Client must promptly rectify any inadequate access to the Site.

8 ENVIRONMENTAL OBLIGATIONS

- 8.1 The Client warrants that the Site is free from Contamination and, if required by Coates, will provide Coates with the necessary documentation to support such warranty.
- 8.2 The Client agrees to hold harmless, indemnify and defend Coates and Coates' sub-contractors from and against any and all

claims, losses, damages, liability, and costs of defence arising out of, or in any way connected with, a breach of the warranty referred to in clause 8.1 and with respect to the presence, discharge, release or escape of contaminants of any kind arising in connection with the Services whether arising from the Site or any adjoining property.

9 BACKGROUND INTELLECTUAL PROPERTY

- 9.1 Each Party acknowledges that:
 - (a) the other Party may require it to apply or use its Background Intellectual Property from time to time for the purposes of providing or receiving the Services;
 - (b) unless otherwise provided in this Agreement or the Proposal, all Background Intellectual Property remains the sole property of the Party who supplied it, and the other Party agrees that it will not use or apply the Background Intellectual Property except in accordance with this Agreement; and
 - (c) it will be held liable for any damage or loss arising out of the unauthorised disclosure or misuse of the other Party's Background Intellectual Property.

10 COPYRIGHT AND PATENTS

10.1 Ownership of Documents

- (a) The copyright in all drawings, reports, specifications, calculations and other documents ("the Documents") prepared or provided by Coates in connection with this Agreement belongs to Coates however the Client shall have a non-exclusive, royalty-free licence to use the Documents in connection with the Project. The Client shall not use the Documents other than in connection with the Project without Coates' prior written approval and upon such terms as required by Coates.
- (b) With the consent of the Client, Coates may publish alone, or in conjunction with any other person, any articles, photographs, or other illustrations relating to the Project. The Client's consent for the publication of such materials shall not be unreasonably withheld.

10.2 Patents

- (a) All concepts, products, or processes which are:
- (i) produced by, or resulting from, the Services rendered by Coates in connection with the Project;
 - (ii) otherwise developed by Coates in the performance of the Services; or
 - (iii) patentable, capable of trademark or otherwise,
- shall be and remain the property of Coates.
- (b) The Client shall have a non-exclusive, royalty free licence to use all concepts, products or processes which are:
- (i) patentable, capable of trademark or otherwise; and
 - (ii) produced by, or resulting from, the Services rendered by Coates in connection with the Project for the life of the Project and for no other purpose or project.

11 DELIVERY AND INSTALLATION OF SPECIAL PURPOSE EQUIPMENT

11.1 In the event the Client requires Coates to deliver and install the Special Purpose Equipment, the following provisions shall apply:

- (a) Unless otherwise agreed with the Customer, Coates will deliver the Special Purpose Equipment to the Delivery Location by the Date for Delivery.
- (b) The Client shall pay Coates the Delivery Fee for the delivery of the Special Purpose Equipment.
- (c) The Client shall ensure that the route to the Delivery Location is sufficiently spacious and that the transportation to the Delivery Location does not require any special arrangements.

Any expenses, such as permits, caused by special arrangements related to transportation are not included in the Delivery Fee.

- (d) Coates shall undertake the works required to install the Special Purpose Equipment ("**Installation Works**") in a proper and workmanlike manner.
- (e) The Client acknowledges that it shall be bound by the Terms of Hire and Special Conditions upon installation of the Special Purpose Equipment by Coates.
- (f) Unless otherwise excluded in the Proposal or specified as an item to be provided by the Client in the Proposal, Coates shall supply all labour, tools, equipment and materials necessary to complete the Installation Works.
- (g) The Client will not impede or interfere with the Installation Works undertaken by Coates and will ensure that the Special Purpose Equipment is not altered or interfered with by the Client or any other person.
- (h) The Client shall at its own expense obtain all Approvals, licenses and permits to comply with any Laws, regulations or ordinances in connection with the Installation Works.
- (i) Any certifications provided by Coates are of no further effect if, after the Installation Works are complete, the Client, its employees, agents, subcontractors or any third party damages, moves or in any way interferes with the Special Purpose Equipment. In the event that this occurs, the Client shall indemnify and release Coates from and against all claims, actions, losses, expenses, costs or damages that the Client or Coates may suffer, sustain or incur as a result of any matter arising with respect to this clause. This indemnity shall survive termination of this Agreement.

12 INFORMATION

12.1 The Client:

- (a) warrants that the Information is accurate, reliable and complete and agrees to indemnify Coates for any loss it may suffer as a result of a breach of this warranty or reliance on the Information; and
- (b) releases Coates from any loss it may suffer as a result of Coates' reliance on the Information supplied.

12.2 Any designs, calculations, drawings, specifications and sketches produced by Coates are prepared in reliance on the Information supplied.

12.3 If the Information or other assumptions Coates has relied upon (such as ground conditions or quality of works carried out by others) is inaccurate or deficient, Coates may suspend the carrying out of the whole or part of the Services for such time as it thinks fit (acting reasonably). The Client releases Coates from all liability with respect to Coates' exercise of its rights under this clause.

12.4 The Client acknowledges that (unless specified otherwise in the Proposal) Coates has not been provided with all necessary Information to determine whether the Services may cause the foundations to properties that are in the vicinity, or immediately adjoining, the Site ("Adjoining Properties") to be damaged or affected in any way.

13 PAYMENT TERMS

13.1 As compensation for the provision of the Services, the Client agrees to pay the Fees to Coates within the time required by this clause 13 and without deduction or set off.

13.2 Coates will issue invoices for the Fees. Invoices will be issued as tax invoices and contain a general itemisation of the fees and expenses.

13.3 The Client will pay Coates the Fees invoiced within 30 days from the date of the invoice.

13.4 In the event of a failure to pay the Fees due, or any part of them:

- (a) Coates may immediately and without

notice suspend the Services until the Fees invoiced are paid in full and without deduction or set off; and

- (b) the Client consents and must procure any consent necessary from third parties to Coates accessing the Site to collect its Equipment and Special Purpose Equipment.

13.5 If the Client is not willing or able to procure the consent of a third party to access the Site, the Client appoints Coates as its attorney to do all things necessary to procure such access.

13.6 The Client indemnifies and holds Coates harmless from any costs, loss or damage arising from or in connection with Coates suspending or accessing the Site in accordance with this clause.

14 BASIS OF PAYMENT

14.1 Fees calculated on a Time Basis

Where the Proposal specifies that Fees are calculated on a time basis, the following provisions shall apply:

- (a) the Client shall pay Coates a Fee, calculated on a time basis, for that part of the Services described in the Proposal. Fees shall be computed on the basis of hourly billing rates as noted in the Proposal; and
- (b) all time expended by Coates on the Project shall be chargeable, whether it is expended in the Client's office, at the Client's premises, or elsewhere. Chargeable time also includes, but is not limited to, time expended by clerical staff to prepare documents such as reports and specifications.

14.2 Fees calculated on a Lump-Sum Basis

Where the Proposal specifies that fees are calculated on a lump sum/fixed fee basis, the Client shall pay Coates a lump sum fee as specified in the Proposal for that part of the Services described therein.

15 INSURANCE

15.1 Coates shall obtain and maintain the following types of insurance (unless specified otherwise in the Proposal):

- (a) a Public Liability Insurance Policy in the sum of \$10,000,000.00;

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- (b) a Workers' Compensation Insurance Policy, as required by relevant state and territory legislation, to cover Coates and any other persons who may from time to time be employed or engaged by Coates; and
 - (c) a Professional Indemnity Insurance Policy in the sum of \$5,000,000.00.
- 15.2 Coates shall, if requested by the Client, supply a certificate of currency in respect of the insurances set out in this clause at the commencement of this Agreement.
- 16. INDEMNIFICATION**
- 16.1 Indemnification by Coates**
- Coates shall indemnify and save harmless the Client from and against all claims, actions, losses, expenses, costs or damages that the Client may suffer, sustain or incur arising from Coates' unlawful acts or omissions in the performance of this Agreement.
- 16.2 Indemnification by the Client**
- The Client releases and indemnifies Coates and its employees, contractors and agents ("the Indemnified Parties") from and against all actions whatsoever which may be brought or made against the Indemnified Parties by any person, including the Client, arising directly or indirectly from:
- (a) any breach of a duty owed by the Client or its subcontractors, or any person for whose conduct the Client is liable;
 - (b) any contravention of any legislative requirement or any unlawful or negligent act or omission by the Client, its subcontractors, or any person for whose conduct the Client is liable;
 - (c) any unlawful or negligent act or omission of the visitors, invitees or licensees of the Client;
 - (d) any death, personal injury, loss or damage suffered by Coates or the Client (or any of its subcontractors, employees, agents, visitors, invitees or licensees) or any other person,
- arising from any act or an unlawful or negligent act or omission of the Client (or any persons for whose conduct the Client is liable) in the course of the performance (or attempted performance) of this Agreement;
- (e) any loss of or damage to tangible property, including the Specialist Purpose Equipment, caused or contributed to by any act or omission of the Client or its subcontractors or any persons for whose conduct the Client is liable;
 - (f) any breach of this Agreement by the Client or arising from the act or omission of any persons for whose conduct the Client is liable;
 - (g) any loss, liability, claim or expense incurred by Coates as a result of the Services affecting support of the Adjoining Properties whether such claims are brought by a third Party or otherwise.
- 17. LIMITATION OF LIABILITY**
- 17.1 Notwithstanding any other provision in this Agreement:
- (a) to the extent permitted by law, Coates' maximum aggregate liability to the Client for all claims under or relating to this Agreement or its subject matter whether in contract, tort (including without limitation negligence), in equity, under statute, under an indemnity or otherwise, is limited to an amount equal to the Fees paid by the Client under this Agreement.
 - (b) Coates is not liable for indirect, consequential or economic loss or damage (including liquidated damages), loss or liability that is not the direct result or the immediately identifiable consequence of Coates' act or omission; loss of all profits or revenue (whether direct or indirect); loss of benefit of any contract; delay damages; loss of production or production stoppage or loss of data whether such loss is direct or indirect and is not liable for any exemplary or punitive damages of any kind.

18 TIME

18.1 SERVICES COMMENCEMENT & COMPLETION TIMES

The Services are to be provided in accordance with the Commencement and Completion Dates detailed in the Proposal, or as otherwise agreed between the parties (in writing).

18.2 DELAY AND DISRUPTION

- (a) In addition to Coates' rights elsewhere under this Agreement, Coates is entitled to a reasonable extension of time to provide the Services where it is, or is likely to be, delayed or disrupted in the supply of the Services due to:
- (i) any fact, event, matter or circumstance beyond Coates' reasonable control;
 - (ii) any breach, act or omission of the Client, its agents or contractors;
 - (iii) any Information that is incomplete, incorrect or inaccurate provided by the Client;
 - (iv) any change by the Client to the dates for Commencement and Completion, as detailed in the Proposal; or
 - (v) a Force Majeure Event;
 - (vi) a Latent Condition; or
 - (vii) a change in Laws.
- (b) In the event of any delay arising from an event described in clauses 18.2(a)(i), (ii), (iii) and (iv), Coates will be entitled to:
- (i) all reasonable costs caused by the delay or disruption (including labour and resources costs);
 - (ii) in respect of a delay arising from an event described in clause 18.2(a)(iv), Coates will also be entitled to charge its Fees from the initial date for Commencement, as identified in the Proposal; and
 - (iii) terminate the relevant Proposal or part thereof where the delay or delays exceed a single or aggregated period of 90 days.
- ### 18.3 FORCE MAJEURE EVENT
- (a) If a Party (the "Affected Party") is prevented, in whole or in part, from carrying

out its obligations under this Agreement (other than an obligation to pay the Fee) (the "Affected Obligations") as a result of a Force Majeure Event, then:

- (i) the Affected Obligations are suspended;
 - (ii) the Affected Party must: (i) promptly notify the other Party of the Force Majeure Event, specifying the nature, particulars and expected duration; (ii) use reasonable endeavours to overcome the effects of the Force Majeure Event as soon as reasonably practicable; (iii) take all reasonable steps to mitigate the impact of the Force Majeure Event on the Affected Obligations; and
 - (iii) unless this Agreement is terminated, the Affected Party must resume performance of the Affected Obligations as soon as possible after the Force Majeure Event ceases.
- (b) If a Force Majeure Event continues for a continuous period of 90 days or more, then either Party may terminate this Agreement by written notice to the other.

19 TERMINATION

19.1 Termination for Breach

Coates may terminate this Agreement:

- (a) by giving 7 days' written notice to the Client if it is in breach of any term of this Agreement, and the Client has failed to remedy that breach within 7 days of being requested to do so in writing by Coates;
- (b) immediately on written notice to the Client if it is in breach of any material term of this Agreement.

19.2 Termination by the Client

The Client may terminate this Agreement by giving 7 days' written notice to Coates if it is in breach of any material term of this Agreement, and Coates has failed to remedy that breach within 7 days of being requested to do so in writing by the Client.

19.3 Further Grounds for Termination

Either Party may terminate this Agreement immediately by written notice to the other Party, if the other Party:

- (a) suffers an Insolvency Event; or
- (b) attempts to assign this Agreement other than in accordance with the terms of this Agreement.

19.4 Accrued Rights and Obligations

Notwithstanding the above, termination of this Agreement for any reason shall not release either Party from any liability or obligation that, at the time of termination, has already accrued to the other Party or that is attributable to a period prior to termination, nor shall it preclude either Party from pursuing any rights and remedies it may have at law or in equity with respect to any breach of this Agreement.

20. DISPUTE RESOLUTION

20.1 The Parties agree that in the event of a question, dispute or difficulty arising from the content of this Agreement, the matter shall be dealt with as follows:

- (a) the Party initiating the question, dispute or difficulty will provide the other Party with a letter or email detailing the specifics of the question, dispute or difficulty;
- (b) the matter will be initially discussed between the chosen senior representatives of the Client and Coates within 20 Business Days of receipt of the Dispute Letter and each representative must attempt (in good faith) to resolve the dispute by negotiations and consultation between themselves;
- (c) if each Parties' senior representatives are unsuccessful in resolving the dispute within 20 Business Days of receipt of the Dispute Letter, a Party may take such further action as it considers appropriate, including commencing proceedings.
- (d) Each Party will continue to perform its obligations under this Agreement notwithstanding the existence of a dispute or the commencement of any proceedings under this clause.

21. GST

21.1 Unless otherwise expressly stated, all amounts payable for any supply under this Agreement are expressed to be exclusive of GST. If GST is payable on a taxable supply made by Coates to the Client under this Agreement, then the Client will pay to the supplier an amount in respect of the GST in addition to any other consideration provided that Coates provides the recipient with a "tax invoice" in accordance with the applicable legislation.

21.2 In this clause the terms "GST"; "supply", "taxable supply" and "tax invoice" have the meanings respectively given to them in the *A New Tax System (Goods and Services Tax) Act 1999 (Cth)*.

22. PRESERVATION OF CONFIDENTIALITY

22.1 Neither Party shall, without the prior written consent of the other Party:

- (a) disclose any of the Confidential Information to any person; or
- (b) use or exploit or copy any of the Confidential Information,

22.2 The obligations contained in this clause do not apply to disclosures to the extent that they are:

- (a) required by law or regulation (including disclosure to any stock exchange);
- (b) made to its legal advisers, accountants or auditors;
- (c) required to enable the disclosing Party to make or defend any claims under this Agreement.

23. MISCELLANEOUS PROVISIONS

23.1 Entire Agreement

- (a) The terms and conditions contained in this Agreement (including the Proposal) constitute the entire agreement and supersedes all prior proposals, negotiations, representations, agreement and any other understanding between the parties and constitutes the complete and exclusive agreement between Coates and the Client.
- (b) The Client acknowledges that it has not relied on any statement, promise or

representation made or given by or on behalf of Coates which is not set out in this Agreement.

- (c) Any reference to a purchase order or similar documentation on an invoice or other acceptance thereof is solely for the Client's convenience in record keeping, and no such reference or the provision of Services to the Client shall be deemed an acknowledgement of or agreement to any terms and conditions associated with any such purchase order or other Client-provided documentation. Any such associated terms and conditions shall be of no force and effect, and shall not in any way be deemed to amend, modify, supersede, alter or supplement this Agreement.
- (d) In the event of any inconsistency, the documents will prevail in the following order of precedence:
 - (1) the Proposal;
 - (2) any other drawings or documents submitted by Coates to the Client with respect to the Project; and
 - (3) the general terms and conditions of this Agreement (including any amendments, as agreed between the parties).

23.2 Severability

In the event of the invalidity of any part or provision of this Agreement, such invalidity shall not affect the enforceability of any other part or provision of this Agreement.

23.3 Amendment and variation

Unless specified otherwise in this Agreement, this Agreement cannot be amended except by an instrument in writing signed by the parties and stating the parties intention to amend this Agreement accordingly.

23.4 Assignment, novation and other dealings

The Client may not assign or novate this Agreement or otherwise deal with the benefit of it or a right under it, or purport to do so, without the prior written consent of Coates, which consent may be withheld at the absolute discretion of Coates.

Coates is entitled to assign or novate this Agreement or otherwise deal with the benefit

of it or a right under it, in its sole discretion and without the Client's consent.

23.5 No waiver

The failure of either Party to exercise or the delay in exercising, any right, power or privilege available to it under this Agreement will not operate as a waiver thereof or preclude any other or further exercise thereof or the exercise by that Party of any other right, power or privilege under this Agreement.

23.6 Survival

All warranties, indemnities and releases provided by the Client pursuant to this Agreement shall remain in full force and effect and shall survive any expiration or termination of this Agreement.

23.7 Time limit

The Client must notify Coates of any claim, right, obligation or liability whatsoever arising under or in connection with this Agreement within 6 months of completion of the Services. Any failure to do so, releases Coates from all liability in connection with that claim and its subject matter.

23.8 Governing Law

This Agreement is to be governed and construed according to the Laws of the state or territory specified in the Proposal (or if no state or territory is specified, then in accordance with the Laws of the state in which the Services are to be provided) and the parties irrevocably submit to the non-exclusive jurisdiction of the Courts of the said state including any Courts having appellate jurisdiction thereof.

23.9 Notices

- (a) A notice issued by a Party to the other Party under this Agreement must be:
 - (i) in writing;
 - (ii) directed to the recipient's address specified in this Agreement or as varied by written notice; and
 - (iii) left at or sent by prepaid registered post, hand

delivery or email to that address.

- (b) A notice issued by a Party to the other Party under this Agreement will be deemed to be duly given:

- (i) on the day of delivery if by hand;
- (ii) 3 days after the date of posting by prepaid registered post if posted within Australia, or 14 days after the date of posting by prepaid registered post if posted from outside Australia; or
- (iii) if sent by email, when the sender's email enters the email system of the recipient,

as the case may be.

24. Material Terms

- 24.1 Without in any way limiting the ability of the Parties to assert that other terms of this Agreement are material terms, the Client acknowledges that:

- (a) the payment terms stipulated in clause 13.3; and
- (b) the Client's obligations with respect to compliance with all WHS & Environmental Codes of Practice and Laws pursuant to 7.6(g),

are considered material terms of this Agreement.

- 24.2 Failure by the Client to comply with a material term shall give Coates a right (at its absolute discretion) to either suspend the Services (until the breach is made good by the Client) or terminate pursuant to clause 19.1(b).

25. Emergency Works

- 25.1 The Client acknowledges and agrees that in the event the Client instructs Coates to carry out *emergency works* in New South Wales in response to an *emergency event* (as such terms are defined by the *Water Management (General) Amendment (Emergency Works Exemption) Regulation 2021* (NSW) ("**Regulation**")), it authorises Coates (on the Client's behalf) to:

- (a) before or as soon as reasonably possible after commencing the relevant emergency works, lodge an emergency works exemptions report with the Natural Resources Access Regulator (or its equivalent) (NRAR) and to give such information as is prescribed by the Regulation to NRAR including, but not limited to:

- (i) the name and contact details of the Client and any other person by whom, or body by which, the emergency works are to be carried out;
- (ii) the address of the site of the emergency works; and
- (iii) the significant risk to be reduced by the emergency works; and

- (b) within 14 days after completing the relevant emergency works, lodge such further information as is prescribed by the Regulation to the NRAR.

- 25.2 The Client indemnifies and releases Coates from all liability with respect to any losses or claims sustained by the Client, Coates or any other third party arising out of, or in connection with, the performance of Coates' obligations contained in this clause 25.