

Schedule 12 – Public Art

(clause 10.33)

1. Definitions

For the purposes of this Schedule 12 (*Public Art*), the following definitions will apply:

Approved Artist means a Selected Artist that has been approved by the Principal in accordance with clause 2.2(d).

Art Approach Document means the 'Sydney Metro – Western Sydney Airport Art Approach' as described in Particular Specification 02 (*Built Environment*).

Art Concept means the bespoke, detailed art concept documentation prepared by a Shortlisted Artist in response to a competition art brief prepared by OpCo's public art manager in accordance with section 2.5.9.1 of Particular Specification 02 (*Built Environment*).

Art Master Plan means the 'Sydney Metro Art Masterplan' as described in Particular Specification 02 (*Built Environment*).

Artist means an individual artist or group of persons comprising a single artist.

Public Art Contract means a contract:

- (a) in the form contained in Annexure A of this Schedule 12 (*Public Art*); or
- (b) otherwise in a form materially similar to the contract contained in Annexure A and approved by the Principal (in its absolute discretion).

Selected Artist has the meaning given in clause 2.2(b)(iv).

Selection Panel has the meaning given in clause 2.2(b)(ii).

Shortlisted Artists means those Artists shortlisted by the Principal in accordance with the Art Master Plan and Art Approach Document.

2. Procurement of public art

2.1 General obligations

OpCo must comply with its obligations in Particular Specification 02 (*Built Environment*) in relation to the procurement of public art as part of the SSTOM Works for Sydney Metro – Western Sydney Airport.

2.2 Selection process for Shortlisted Artists

- (a) Within 25 Business Days of Financial Close, the Principal will provide OpCo with a list of Shortlisted Artists for each Station based on the expression of interest process conducted by the Principal prior to the date of this deed.
- (b) OpCo must:
 - (i) conduct artwork competitions in accordance with the requirements of section 2.5.9.1 of Particular Specification 02 (*Built Environment*) for each specific artwork commission required by section 2.5.9.1 of Particular Specification 02 (*Built Environment*) with the Shortlisted Artists, which must include the submission of Art Concepts by each Shortlisted Artist;
 - (ii) convene art selection panels in accordance with the Art Approach Document to judge the artwork competitions referred to in clause 2.2(b)(i) (**Selection Panel**);

- (iii) pay a nominal amount approved by the Principal to each Shortlisted Artist (which will not exceed [REDACTED] for each Shortlisted Artist) to prepare and submit an Art Concept; and
- (iv) procure that the Selection Panel selects the 'winning' Shortlisted Artist and its corresponding Art Concept (**Selected Artist**) for each specific artwork commission required by section 2.5.9.1 of Particular Specification 02 (*Built Environment*).
- (c) OpCo must obtain the Principal's approval of each Selected Artist prior to OpCo or a Core Contractor entering into a Public Art Contract with the Selected Artist.
- (d) The Principal may approve or reject each Selected Artist and their Art Concept at its absolute discretion.
- (e) Where the Principal rejects a Selected Artist, OpCo must procure that the Selection Panel selects the next best Shortlisted Artist and clauses 2.2(c) to 2.2(e) will reapply as if that Shortlisted Artist was the Selected Artist. The Principal must approve a Shortlisted Artist from each artwork competition for each specific artwork commission.

2.3 Engagement of Approved Artists

- (a) OpCo must:
 - (i) subject to clause 2.3(b), enter into, or procure a Core Contractor enters into, a Public Art Contract with the Approved Artist for each public artwork commission required by Particular Specification 02 (*Public Art*) prior to the commencement of Design Stage 2;
 - (ii) ensure the public artwork is carried out by the Approved Artist pursuant to the relevant Public Art Contract;
 - (iii) comply, or procure that the relevant Core Contractor complies, with its obligations under each Public Art Contract, including timely compliance with all payment obligations; and
 - (iv) not:
 - (A) make or permit any amendment to, replacement of or waiver of a provision of or any supplement or agreement collateral to;
 - (B) terminate, surrender, rescind or accept the repudiation of;
 - (C) permit the novation, assignment or substitution of any counterparty's right, obligation or interest in;
 - (D) enter into any agreement or arrangement which affects the operation or interpretation of; or
 - (E) direct any variation, change or modification under, any Public Art Contract without the Principal's consent.
- (b) OpCo must obtain the Principal's prior approval of each Public Art Contract (including the contract price agreed with the Approved Artist) before it is executed.

2.4 Compensation

- (a) Subject to clause 2.4(b) and clause 28.17 of the Operative Provisions, the Principal will have no liability to OpCo and OpCo will not be entitled to make any Claim, arising out of or in connection with any Shortlisted Artist, Selected Artist or Approved Artist including:
 - (i) the management of any Shortlisted Artist, Selected Artist or Approved Artist by OpCo or any OpCo Contractor; and

- (ii) the interface between, and the integration of, the public art works procured under the Public Art Contracts and the SSTOM Works and the rest of OpCo's Activities.
- (b) The Principal must compensate OpCo for the negative Net Financial Impact for the amount OpCo or a Core Contractor has paid, or is required to pay, to:
 - (i) a Shortlisted Artist in accordance with clause 2.2(b)(iii); and
 - (ii) an Approved Artist under an executed Public Art Contract approved by the Principal under clause 2.3(b),

which will be calculated and paid in accordance with Schedule 6 (*Net Financial Impact*).

Annexure A – Form of Public Art Contract



PUBLIC ART: DESIGN AND COMMISSION AGREEMENT

SYDNEY METRO – WESTERN SYDNEY AIRPORT

[Notes:

1. This Agreement uses a concept of 'SSTOM Contractor' to refer to the party who will engage the Artist. The counterparty is subject to OpCo's structure and procurement approach (ie the D&C Contractor may be the counterparty).

2. This Agreement is based on the SSTOM Contractor creating, constructing and installing the Artwork. If the Artist will attend to some or all of these actions, the Agreement will need to be amended accordingly.]

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The Gunnery 43-51 Cowper Wharf Road Woolloomooloo NSW 2011 Australia
Phone: +61 2 9356 2566/1800 221 457 Fax: +61 2 9358 6475 artslaw@artslaw.com.au www.artslaw.com.au
ABN 71 002 706 256 ACN 002 706 256

Council of Patrons Robyn Archer AO, Jan Chapman AO, Deborah Cheetham, Ian David, David Gulpill AM, Roger Knox, Frank Moorhouse AM, Professor Sally Morgan, David Page, Rachel Perkins, Peter Sculthorpe AO OBE, William Yang, The Hon. David Angel, The Hon. Justice Terence Buddin, Julian Burnside AO QC, The Hon. Jermold Cripps QC, The Hon. Elizabeth Evatt AC, The Hon. Malcolm Gray RFD, The Hon. Michael Kirby AC CMG, The Hon. David Levine AO RFD QC, The Hon. Justice John Mansfield AM, The Hon. Justice Jane Mathews AO, Shane Simpson AM, The Hon. Antony Whitlam QC

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PUBLIC ART DESIGN AND COMMISSION AGREEMENT

THIS IS AN AGREEMENT BETWEEN:

★[NAME, ABN]★

of ★[ADDRESS, TELEPHONE, FAX, EMAIL]★ (SSTOM Contractor)

AND

★[NAME, ABN]★

of ★[ADDRESS, TELEPHONE, FAX, EMAIL]★ (Artist)

RECITALS

- A. The Principal has prepared and issued a brief for the creation of a public artwork, a copy of which is attached to this agreement as Annexure A (**Brief**).
- B. Based on the Brief, a competition art brief was prepared as part of artwork competitions conducted by the SSTOM Contractor or its associates (**Competition Art Brief**). [*Note: This should be the competition art brief referred to in PS-02 (Built Environment) at section 2.5.9.1(f)(iii).*]
- C. Based on the Competition Art Brief, the Artist has prepared a bespoke, detailed written art concept for the public artwork, a copy of which is attached to this agreement as Annexure B (**Art Concept**).
- D. The SSTOM Contractor wishes to commission the Artist to produce a more detailed design based on the Brief, the Competition Art Brief and the Art Concept (**Design**) for the SSTOM Contractor to create, construct and install the public artwork.
- E. The Artist has agreed to produce the Design on the terms of this Agreement.

THE PARTIES AGREE AS FOLLOWS:

TIMEFRAMES

1. Project Timeframes

- 1.1. The SSTOM Contractor and the Artist agree to use their best endeavours to complete all stages of the process of development, creation, amendment and installation of the Design and the Artwork that are the subject matter of this Agreement in accordance with the Timeline or such other dates as the parties agree in writing.

2. Delay

- 2.1. If there is a delay due to circumstances beyond the control of the parties, including but not limited to non-availability of necessary materials, shipping delays or a Force Majeure Event each party agrees to take all reasonable steps to minimise its losses as a consequence of that delay.

TERMS OF ENGAGEMENT

2A. Engagement of the Artist

- 2A.1 The SSTOM Contractor engages the Artist to perform the Design Development Services on the terms of this Agreement, including to:
- (a) develop the Design, in accordance with clause 3;
 - (b) cooperate and coordinate the Design Development Services pursuant to clause 2J to ensure that the Artwork can be integrated with the SSTOM Works; and
 - (c) comply with all health and safety requirements in respect of the Design Development Services in accordance with clause 2F.

2B. Artist's Representative

- 2C.1 The Artist's Representative has the legal power to bind the Artist in respect of any matter arising in connection with the Agreement.
- 2C.2 Any substitute representative must be notified promptly in writing to the SSTOM Contractor.
- 2C.3 The Artist's Representative may by notice in writing to the SSTOM Contractor delegate any or all of its functions to another person.

2C. The SSTOM Contractor's Representative

- 2D.1 The SSTOM Contractor's Representative has the legal power to bind the Contractor in respect of any matter arising in connection with the Agreement.
- 2D.2 Any substitute representative must be notified promptly in writing to the Artist.
- 2D.3 The SSTOM Contractor's Representative may by notice in writing to the Artist delegate any or all of its functions to another person.

OBLIGATIONS OF THE ARTIST AND SSTOM CONTRACTOR

2D. General

- 2D.1 The Artist must:
- (a) perform the Design Development Services in compliance with the TfNSW Statement of Business Ethics;
 - (b) be readily available and work co-operatively and collaboratively with the SSTOM Contractor to ensure the SSTOM Contractor can perform its obligations in accordance with this Agreement;
 - (c) perform the Design Development Services to the standard of skill, care and diligence to be expected of an artist who regularly acts in the capacity in which the Artist is engaged and who possesses the knowledge, skill and experience of an artist qualified to act in that capacity;

- (d) use all reasonable endeavours to inform themselves of the requirements of the SSTOM Contractor and the Principal regarding the Design Development Services and the Artwork, and regularly consult with the SSTOM Contractor during the performance of the Design Development Services;
- (e) liaise, co-operate and confer with others as reasonably required by the SSTOM Contractor;
- (f) must not subcontract the whole of the Design Development Services but may subcontract part of the Design Development Services provided that the Artist supervises the subcontractor's work, remains responsible for delivery of the Design Development Services in accordance with the Agreement and discloses details of the engagement any subcontractors to the SSTOM Contractor;
- (g) promptly give written notice to the SSTOM Contractor if and to the extent the Artist becomes aware that any document or other information provided by the SSTOM Contractor or the Principal is ambiguous or inaccurate or is otherwise insufficient to enable the Artist to carry out the Design Development Services; and
- (h) as soon as practicable after becoming aware of any matter or circumstance which may adversely affect or has adversely affected the scope, costs, timing or performance of the Design Development Services, give written notice to the SSTOM Contractor detailing the matter or circumstance and its anticipated effect on the Design Development Services and the Artwork (if any).

2D.2 The SSTOM Contractor acknowledges that the Artist has an interest as the creator of the Design in the quality of the Artwork and accordingly the SSTOM Contractor will:

- (a) perform the SSTOM Contractor Activities in compliance with the TfNSW Statement of Business Ethics;
- (b) be readily available and work co-operatively and collaboratively with the Artist to ensure the Artist can perform their obligations in accordance with this Agreement;
- (c) perform the SSTOM Contractor Activities to the standard of skill, care and diligence to be expected of a company that regularly acts in the capacity in which the SSTOM Contractor is engaged and who possesses the knowledge, skill and experience of a company qualified to act in that capacity;
- (d) ensure that the Artwork is:
 - (i) of a high standard of quality and craftsmanship;
 - (ii) complies with the requirements of this Agreement, including the Brief and the Scope of Work and Specifications; and
 - (iii) created and fabricated with materials that are of the highest quality, are durable, are free from Defects and are safe and

suitable for their intended purpose; [**Note: To be amended if the Artist will fabricate the Artwork.**]

- (e) use all reasonable endeavours to inform itself of the requirements of the Principal regarding the Artwork and the Design Development Services, including in respect of any hazards and risks at the Site, and regularly consult with the Artist during the performance of the Design Development Services and the SSTOM Contractor Activities;
- (f) promptly give written notice to the Artist if and to the extent the SSTOM Contractor becomes aware that any document or other information provided by the Artist is ambiguous or inaccurate or is otherwise insufficient to enable the SSTOM Contractor to carry out the SSTOM Contractor Activities; and
- (g) as soon as practicable after becoming aware of any matter or circumstance which may adversely affect or has adversely affected the scope, costs, timing or performance of the SSTOM Contractor Activities or the Artwork, give written notice to the Artist detailing the matter or circumstance and its anticipated effect on the SSTOM Contractor Activities or the Artwork (if any).

2E. Complying with Statutory Requirements

- 2E.1 The Artist must comply with, and must ensure that any subcontractor, consultant or person employed or engaged by the Artist to undertake work or services in connection with the Design Development Services complies with, all Statutory Requirements in the performance of the Artist's obligations under this Agreement.
- 2E.2 The SSTOM Contractor must comply with, and must ensure that any subcontractor, consultant or person employed or engaged by the SSTOM Contractor to undertake work or services in connection with the SSTOM Contractor Activities complies with:
 - (a) all Statutory Requirements; and
 - (b) the requirements of the Building Code of Australia,
 in the performance of its obligations under this Agreement.

2F. Health and Safety

- 2F.1 Without limiting the obligations in clause 2E.2, the SSTOM Contractor must:
 - (a) ensure open and effective consultation with the Artist, providing timely responses to safety issues and concerns; and
 - (b) consult, cooperate and coordinate activities with all other persons who have a work health and safety duty in relation to the Artwork and the Site.
- 2F.2 If the SSTOM Contractor's Representative is of the opinion that the Artist or the Artist's Workers or subcontractors, have not complied, or are not complying with, any health and safety requirements under the WHS

Legislation or this Agreement, then the SSTOM Contractor's Representative or their delegate or nominee may:

- (a) direct the Artist to immediately comply with the obligation and procure compliance with that obligation by the Artist's Workers or a subcontractor; and
- (b) where there is an immediate risk to the health, safety or welfare of any persons as a result of the non-compliance, direct the Artist to immediately suspend carrying out all or any part of the Design Development Services until such time as the Artist, their Workers and subcontractors are compliant.

2F.3 Without limiting the obligations in clause 2E.1 and clause 2G, the Artist must:

- (a) prior to attending the Site or any other premises nominated by the SSTOM Contractor to complete its obligations under this Agreement or to view the Artwork, ensure that the Artist and the Artist's Key People have undertaken any induction or training required by the SSTOM Contractor and have reviewed any policies and procedures relating to health and safety as advised by the SSTOM Contractor;
- (b) in the performance of its obligations under this Agreement or to view the Artwork on the Site or any other premises nominated by the SSTOM Contractor, comply with, and procure that any subcontractor and its Workers comply with, all the requirements of the WHS Legislation and any other requirements of this Agreement for work health and safety management;
- (c) comply with, and procure that any subcontractors and the Artist's Workers comply with, any reasonable directions issued by the SSTOM Contractor's Representative in relation to work health and safety, including where the direction is given because the Artist's Key People are not complying with their obligations under this clause; and
- (d) consult, cooperate and coordinate activities with all other persons on the Site or any other premises nominated by the SSTOM Contractor in relation to work health and safety, including the SSTOM Contractor's Representative and any contractor engaged by the SSTOM Contractor with respect to the Project, and coordinate the Design Development Services with the SSTOM Works and any other contractor's works as directed by the SSTOM Contractor.

2G. Licensing and Authorisation

2G.1 The Artist must:

- (a) ensure that if any Statutory Requirement requires that:
 - (i) a person:
 - A. be authorised or licensed (in accordance with the WHS Legislation) to carry out any part of the Design Development Services, that person is so authorised or

licensed, and complies with any conditions of such authorisation or licence; and

- B. has prescribed qualifications or experience to carry out any part of the Design Development Services or, if not, is to be supervised by a person who has prescribed qualifications or experience (as defined in the WHS Legislation), that person has the required qualifications or experience or is so supervised; or
- (ii) workplace, plant or substance (or design), or work (or class of work) be authorised or licensed, that workplace, plant or substance, or work is so authorised or licensed;
- (b) not direct or allow its Workers or subcontractors to carry out work or use plant or substance at a workplace unless the requirements under clause 2G.1(a) are met (including any requirement to be authorised, licensed, qualified or supervised); and
- (c) if requested by the SSTOM Contractor or required by the WHS Legislation, produce evidence of any approvals, certificates, authorisations, licences, prescribed qualifications or experience, or any other information relevant to work health and safety (as the case may be) to the reasonable satisfaction of the SSTOM Contractor before the Artist commences the Design Development Services.

2H. Conflict of Interest

- 2H.1 The Artist warrants that no conflict of interest exists in relation to the Design Development Services at the date of this Agreement.
- 2H.2 The Artist must immediately give written notice to the SSTOM Contractor upon becoming aware of the existence, or possibility, of an actual or perceived conflict of interest in relation to the Design Development Services.
- 2H.3 On receipt of a notice under clause 2H.2, the SSTOM Contractor may require the Artist to prepare and promptly provide a plan to manage the conflict of interest for the approval of the SSTOM Contractor.
- 2H.4 The SSTOM Contractor may approve the conflict management plan provided in accordance with clause 2H.3 or provide comments to the Artist.
- 2H.5 The Artist must amend the conflict management plan to reflect the comments provided by the SSTOM Contractor in accordance with clause 2H.4 and promptly resubmit the plan to the SSTOM Contractor for approval.
- 2H.6 The SSTOM Contractor may approve the amended conflict management plan or refer the matter for resolution under clause 31.
- 2H.7 The Artist must manage the conflict in accordance with the conflict management plan approved in accordance with clause 2H.6.
- 2H.8 If a conflict management plan is approved in accordance with clause 2H.6 or determined under clause 31, the SSTOM Contractor will approve the Artist continuing to perform the Design Development Services.

- 2H.9 The SSTOM Contractor may, at its sole discretion at any time, require the Artist to sign and procure that each of its respective officers, employees, subcontractors or agents involved in providing the Design Development Services sign and deliver to the SSTOM Contractor a Statement of Interests and Associations in the form attached in Schedule 3.

2I. Fitness for Work

- 2I.1 The Artist acknowledges that the Principal maintains a zero tolerance approach to illegal drugs and alcohol in the workplace.
- 2I.2 The Artist must be, and must ensure that each of its respective Workers, officers and subcontractors and their Workers are, free of alcohol and illegal drugs when performing any of their respective obligations on the Site.
- 2I.3 The Artist acknowledges and agrees that they and each of their Workers, officers, and their subcontractors and their respective Workers, may be subject to random drug and alcohol testing while performing their respective obligations under this Agreement on the Site.

COOPERATION AND COORDINATION OF WORKS

2J. Interface Work

- 2J.1 The Artist acknowledges that the Design Development Services form part of the Project and the Artwork will be integrated with the SSTOM Contract Works.
- 2J.2 The Artist must:
- (a) if requested by the SSTOM Contractor, provide any information required to coordinate the installation of the Artwork with the SSTOM Works, and such information must be provided in a timely manner by the Artist;
 - (b) fully co-operate with the SSTOM Contractor and any other contractor engaged by the SSTOM Contractor and do everything reasonably necessary to ensure the effective coordination of the Design Development Services with the SSTOM Works;
 - (c) if the Artist visits the Site, [or if the installation is being carried out by the Artist's Construction Contractor, require that the Artist's Construction Contractor] execute a deed poll in favour of the SSTOM Contractor or any subcontractor engaged by the SSTOM Contractor, substantially in the form at Schedule 4, for the purpose of the SSTOM Contractor or any subcontractor engaged by the SSTOM Contractor discharging its duties under the WHS Legislation insofar as they relate to the Artist, the Artist's Construction Contractor, the Artist's Workers or the SSTOM Contractor's Workers; and ***[Note: Further updates may be necessary to this Agreement if the Artist is to be responsible for installation.]***
 - (d) promptly advise the SSTOM Contractor's Representative of all matters arising out of the liaison with the SSTOM Contractor that may have an adverse effect upon the Design Development Services or the Artwork.

- 2J.4 The SSTOM Contractor must promptly advise the Artist's Representative of all matters arising out of the liaison with the SSTOM Contractor that may have an adverse effect upon the Design Development Services or the Artwork.

2K. No Claims arising out of Interface Work

- 2K.1 Except in relation to the payment of the Fees, the Artist acknowledges and agrees that the SSTOM Contractor will not be liable for any claim by the Artist arising out of or in any way in connection with:

- (a) the SSTOM Contractor carrying out the SSTOM Works; or
- (b) any act or omission of the SSTOM Contractor,

including, without limitation, in respect of the obligations of the Artist and the requirements set out in clause 2J of this Agreement.

- 2K.2 The SSTOM Contractor acknowledges and agrees that the Artist will not be liable for any claim by it or the Principal arising out of or in any way in connection with:

- (a) the SSTOM Contractor carrying out the SSTOM Contract Works; or
- (b) any act or omission of the SSTOM Contractor,

except to the extent that such claim arises out of or in connection with a breach of this Agreement by the Artist.

STAGE 1: DESIGN DEVELOPMENT

3. The Design

- 3.1. The SSTOM Contractor acknowledges and agrees that:

- (a) the Art Concept conforms to, and is consistent with, the Competition Art Brief;
- (b) the Competition Art Brief contains all relevant information relating to:
 - (i) the intended life and use of the Artwork contemplated by the Competition Art Brief; and
 - (ii) the proposed site, together with the Site information in this Agreement, for the Artwork and the environment where the Artwork will be located including any work health and safety and accessibility considerations.

- 3.2. The Artist agrees to:

- (a) develop the Design in accordance with this Agreement;
- (b) create a detailed record of the Design in the form of a drawing, model or plan which includes clear information about:
 - (i) the scale and dimensions of the Artwork;
 - (ii) how it is intended to be situated in relation to the Site;

- (iii) the dimensions, weight, finish and suitability of the materials to be used and their durability given the proposed life, use and location of the Artwork as stated in the Brief and the Competition Art Brief,

and addresses any other issues identified in the Brief and the Competition Art Brief including the intended use of the Artwork, any particular features of the Site, any work health and safety and accessibility considerations, maintenance and any structural engineering requirements;

- (c) deliver the Design to the SSTOM Contractor on or before the date specified in the Timeline.

3.3. Following receipt of the Design and within the time specified in the Timeline, the SSTOM Contractor must either:

- (a) request changes to the Design in accordance with clause 4;
- (b) accept the Design in accordance with clause 5; or
- (c) reject the Design in accordance with clause 6.

4. Changes to the Design

4.1. The SSTOM Contractor may request a reasonable number of changes to the Design:

- (a) if changes are required to the Design in order to comply with the requirements specified in the Brief or the Competition Art Brief;
- (b) if changes are required to the Design in order to comply with the Scope of Work and Specifications;
- (c) which, subject to clause 4.1(a), does not request any change to the Design that is substantially different from the Brief, the Competition Art Brief, the Art Concept or the Design as first submitted; and
- (d) provided that the SSTOM Contractor requests all such changes in a single written notice to the Artist specifying the changes (**Amendment Notice**) delivered to the Artist on or before the date specified in the Timeline,

and the SSTOM Contractor must pay the Artist the relevant Design Amendment Fee as set out in clause 16 for the production of any further Design produced by the Artist to address the changes in the Amendment Notice (**Amended Design**), excluding any changes referred to in clause 4.1(a). The Artist is not entitled to payment for changes required due to the failure of the Design to comply with the Brief or the Competition Art Brief.

4.2. Within 15 Business Days of receiving the Amendment Notice, the Artist must either:

- (a) prepare an Amended Design and submit it to the SSTOM Contractor; or
- (b) notify the SSTOM Contractor that the Artist is not prepared to modify the Design and outline the reasons why.

4.3. Within 15 Business Days of the Artist submitting an Amended Design, the SSTOM Contractor must either:

- (a) accept the Amended Design in accordance with clause 5; or
- (b) request further changes to the Amended Design by issuing a further Amendment Notice to the Artist (**Further Amendment Notice**):
 - (i) if changes are required to the Amended Design in order to comply with the requirements specified in the Brief or the Competition Art Brief;
 - (ii) which, subject to clause 4.3(b)(i), does not request changes that are substantially different from the Brief, the Completion Art Brief, the Art Concept or the Amended Design;
 - (iii) such changes arising solely from the Amended Design and could not reasonably have been requested in the initial Amendment Notice; and
 - (iv) such changes which do not relate to the artistic merits but exclusively concern engineering or proposed maintenance, work health and safety issues, or are required to comply with the Scope of Work and Specifications, or are otherwise required by law,

and the SSTOM Contractor must pay the Artist the relevant Design Amendment Fee as set out in clause 16 for the production of any further Amended Design (**Further Amended Design**), excluding any changes referred to in clause 4.3(b)(i). The Artist is not entitled to payment for changes required due to the failure of the Amended Design to comply with the Brief or the Competition Art Brief.

4.4. Within 15 Business Days of receiving a Further Amendment Notice, the Artist must:

- (a) prepare a Further Amended Design and submit it to the SSTOM Contractor; or
- (b) notify the SSTOM Contractor that the Artist is not prepared to modify the Amended Design and outline the reasons why.

4.5. Within 15 Business Days of the Artist submitting a Further Amended Design, the SSTOM Contractor must:

- (a) accept the Further Amended Design in accordance with clause 5; or
- (b) reject the Further Amended Design in accordance with clause 6.

4.6. Within 15 Business Days of the Artist notifying the SSTOM Contractor under clause 4.2(b) or clause 4.4(b) that the Artist is not prepared to make changes to the Design or the Amended Design, the SSTOM Contractor must:

- (a) accept the Design or Amended Design by notifying the Artist in accordance with clause 5; or
- (b) reject the Design or the Amended Design in accordance with clause 6.

5. Acceptance of the Design

- 5.1. The SSTOM Contractor may accept the Design, the Amended Design or the Further Amended Design by notifying the Artist in writing within the time required by the Timeline.
- 5.2. The SSTOM Contractor is deemed to accept the Design, the Amended Design, or the Further Amended Design if the SSTOM Contractor does not, within the periods specified in this Agreement, either:
 - (a) expressly accept the Design, the Amended Design or the Further Amended Design in accordance with this Agreement;
 - (b) request changes to the Design, the Amended Design or the Further Amended Design in accordance with clause 4; or
 - (c) reject the Design, the Amended Design or the Further Amended Design in accordance with clause 6.
- 5.3. By accepting the Design, the Amended Design or the Further Amended Design, the SSTOM Contractor agrees that the Design, the Amended Design or the Further Amended Design (as applicable) is suitable given the intended life of the Artwork and the environment where the Artwork will be located and all other requirements of the Agreement.
- 5.4. A design accepted or deemed to be accepted in accordance with this clause 5 is the accepted design for the Artwork (**Accepted Design**).

6. Rejection of the Design

- 6.1. The SSTOM Contractor may reject the Design, the Amended Design or the Further Amended Design by notifying the Artist in writing within the time required by the Timeline.
- 6.2. Where the SSTOM Contractor rejects the Design, the Amended Design, or the Further Amended Design the SSTOM Contractor must pay the Artist the relevant Design Development Fee unless the Design, the Amended Design or the Further Amended Design:
 - (a) was delivered to the SSTOM Contractor more than [6 months] after the respective due date as set out in the Timeline; or
 - (b) did not conform to, or was substantially different from, the Art Concept, the Competition Art Brief and the Brief except to the extent such differences were as a result of changes requested in an Amendment Notice or Further Amendment Notice.
- 6.3. If a Further Amended Design is rejected, this agreement will terminate in accordance with clause 30.4.

STAGE 2: CREATION OF THE WORK

7. The Artwork

- 7.1. On or before the respective dates set out in the Timeline, the Artist agrees to:

- (a) perform the Design Development Services for the Artwork in accordance with this Agreement; and
 - (b) provide the Deliverables.
- 7.2. On or before the date set out in the Timeline, the SSTOM Contractor agrees to:
- (a) notify the Artist when the Artwork is completed and ready for installation or delivery to the Storage Facility; and
 - (b) provide the Artist with reasonable access to view the Artwork during fabrication and after completion.
- 7.3. If the Artwork is created on the Site or on the premises of the SSTOM Contractor or the SSTOM Contractor's employees, agents or contractors, the SSTOM Contractor will arrange for the Artist and the Artist's employees and agents to have full and free access to those premises at all reasonable times for the purpose of reviewing production of the Artwork, provided the Artist complies with clause 2F.3.
- 7.4. If the Artwork is created at a location other than as described in clause 7.3, the SSTOM Contractor will use reasonable endeavours to arrange for the Artist and the Artist's employees and agents to have reasonable access to the premises on which the Artwork is created for the purpose of reviewing production of the Artwork, provided the Artist complies with the reasonable site safety requirements applying to those premises (which the parties acknowledge are intended to be substantially consistent with clause 2F.3).
- 7.5. Within 10 Business Days of the Artist receiving notification of the Artwork's completion under clause 7.2(a), the SSTOM Contractor and the Artist must view the Artwork together and the SSTOM Contractor may either:
- (a) request changes to the Artwork in accordance with clause 8;
 - (b) accept the Artwork in accordance with clause 9; or
 - (c) reject the Artwork in accordance with clause 10.

8. Changes to the Artwork

- 8.1. The SSTOM Contractor may request a maximum of [5] changes to the Artwork provided that the SSTOM Contractor:
- (a) requests all such changes in a single written notice specifying the changes (**Artwork Amendment Notice**) delivered to the Artist within the time specified in the Timeline;
 - (b) acknowledges that the Artist has applied aesthetic skill and judgment in the creation of the Accepted Design for the Artwork and does not seek any changes based solely on artistic merits unless the Artwork is substantially different from the Accepted Design; and
 - (c) pays the Artist the Artwork Amendment Fee to undertake the requested changes as set out in clause 16.

8.2. Within 15 Business Days of receiving the Artwork Amendment Notice, the Artist must either:

- (a) amend the Artwork to incorporate the changes requested by the SSTOM Contractor, notify the SSTOM Contractor that the changes have been completed and provide the SSTOM Contractor with reasonable access to view the amended Artwork; or
- (b) notify the SSTOM Contractor that the Artist is not prepared to modify the Artwork.

8.3. Within 10 Business Days of receiving the Artist's notification under clause 8.2, the SSTOM Contractor must either:

- (a) accept the Artwork in accordance with clause 9; or
- (b) reject the Artwork in accordance with clause 10.

9. Acceptance of the Artwork

9.1. The SSTOM Contractor may accept the Artwork by notifying the Artist in writing within the time within the time specified in clause 8.3(a).

9.2. The SSTOM Contractor is deemed to accept the Artwork if the SSTOM Contractor does not:

- (a) expressly accept the Artwork in writing in accordance with clause 9.1;
- (b) request changes to the Artwork in accordance with clause 8; or
- (c) reject the Artwork in accordance with clause 10.

10. Rejection of the Artwork

10.1. The SSTOM Contractor may reject the Artwork by notifying the Artist in writing within the time specified in clause 8.3(b) provided that:

- (a) the Artwork is not produced substantially in accordance with the Accepted Design;
- (b) the SSTOM Contractor has requested changes to the Artwork under clause 8 in order to bring the Artwork into conformity with the Accepted Design;
- (c) the SSTOM Contractor has agreed to vary the Timeline to give the Artist a reasonable time to make those changes; and
- (d) the Artist has failed to make the necessary changes within the time specified.

STAGE 3: INSTALLATION OF THE WORK

11. The Site

11.1. A plan of the Site is attached to this agreement as Annexure D.

- 11.2. The SSTOM Contractor will ensure that the Site is adequately prepared for the creation and installation of the Artwork at the Site within the times specified in the Timeline.

12. Delivery and installation

- 12.1. Subject to clause 12.4, the SSTOM Contractor must install or procure the installation of the Artwork on the Site in consultation with the Artist and in accordance with any reasonable directions of the Principal and the SSTOM Contractor so that the Artwork, once installed, complies with the requirements of the Brief, the Scope of Work and Specifications and this Agreement.

- 12.2. The SSTOM Contractor will be responsible for all costs associated with the installation of the Artwork at the Site.

- 12.3. If the Artwork is not created on the Site, the SSTOM Contractor will:

- (a) if the Site is available for installation of the Artwork (in whole or in part), arrange for the transport of the Artwork (in whole or in part), including proper packaging, to the Site; and
- (b) if the Site is not available for installation of the Artwork (in whole or in part), arrange for the transport of the Artwork (in whole or in part), including proper packaging, to the Storage Facility; and
- (c) [the SSTOM Contractor] will pay for all costs involved in the transport of the Artwork to the Site. **[Note: Responsibility for transport costs to be confirmed between the parties prior to contract depending on which party is creating the Artwork.]**

- 12.4. In the event that the Artwork (in whole or in part) is required to be stored in the Storage Facility:

- (a) the SSTOM Contractor agrees to pay the reasonable costs of storage of the Artwork at the Storage Facility;
- (b) the SSTOM Contractor assumes all risk associated with the storage of the Artwork at the Storage Facility; and
- (c) the SSTOM Contractor will arrange for the transport of the Artwork (in whole or in part), including proper packaging, to the Site, and commence installation of the Artwork (in whole or in part) and [the SSTOM Contractor] will pay for all costs involved in the transport of the Artwork to the Site.

13. Maintenance manual

- 13.1. Within 10 Business Days of the acceptance of the Artwork by the SSTOM Contractor and its installation on the Site, the Artist will provide the SSTOM Contractor with a written manual containing comprehensive instructions for the proper cleaning, operation and maintenance of the Artwork (**Manual**).

- 13.2. The Manual will include:

- (a) a description of the materials used and any installed services or equipment and their mode of operation;

- (b) the following specifications as applicable:
 - (i) colour and materials (for replacement and repair);
 - (ii) program/functional requirements (for mechanical or digital components);
 - (iii) mechanical and/or technological (for replacement, for example motor and digital projections); and
 - (iv) lighting, including colour temperature (for replacement);
- (c) equipment operating procedures and supplier's names, addresses and telephone numbers;
- (d) an inspection, testing and maintenance program and cleaning methodology detailing the routine required to clean and maintain the Artwork throughout its intended lifespan, including a schedule of services for visual inspections and annual service (noting any particular aspects which should be checked);
- (e) "as built" drawings for the Artwork and all related equipment and services;
- (f) a list of major sub-contractors and specialist fabricators/installers/suppliers used with appropriate contact details;
- (g) catalogue of any replacement parts and/or pieces which have been provided; and
- (h) a comprehensive photographic survey of the final installed Artwork for future reference.

13.3. The SSTOM Contractor will take reasonable steps to ensure that the Artwork is properly maintained and protected from damage in accordance with the Manual.

13.4. The Artist acknowledges that the Artwork may be damaged or destroyed by reason of its location in a public place, and the SSTOM Contractor will not be liable to the Artist for the damage to or destruction of the Artwork by the environment or by members of the public.

14. Defects liability

14.1. A defects liability period will extend for a period of 12 months from the date of installation of the Artwork on the Site.

14.2. The Artist will make itself available to consult with the SSTOM Contractor and will rectify, without charge to the SSTOM Contractor, any Defects in the Artwork that become apparent during the period set out in clause 14.1.

14.3. Clause 14.2 will not apply to damage or deterioration which results from fair wear and tear, the inherent characteristics of the materials used to create the Artwork or the Site's environment.

14.4. The rights granted under this clause are in addition to any rights that a party may have at law.

14A. Warranty

14A.1 The SSTOM Contractor warrants that the Artwork will be designed and made with appropriate skill and care, will comply with the Accepted Design, and will be fit for the purpose set out in the Brief and the Competition Art Brief.

ARTIST PAYMENTS**15. Commission Fee**

15.1. The SSTOM Contractor agrees to pay the Artist the Commission Fee specified in Schedule 5:

- (a) in instalments in accordance with Schedule 5; and
- (b) within 10 Business Days of receiving the Artist's invoice.

16. Amendment Fees

16.1. Where the Artist produces an Amended Design or Further Amended Design pursuant to clause 4.2 or clause 4.4, the SSTOM Contractor must pay the Artist the fee specified in Schedule 5 (**Design Amendment Fee**) within 10 Business Days of receiving the Artist's invoice.

16.2. Where the Artist amends the Artwork in response to an Artwork Amendment Notice, the SSTOM Contractor must pay the Artist the fee specified in Schedule 5 (**Artwork Amendment Fee**) within 10 Business Days of receiving the Artist's invoice.

17. Not used**18. Not used****19. Interest**

19.1. The SSTOM Contractor must pay interest on late payments at the rate of 1% above the advertised rate at which the Commonwealth Bank of Australia charges interest on unsecured personal overdraft accounts:

- (a) accruing from (and including) the date any unpaid amount is due and is payable to the Artist until the amount is paid in full;
- (b) payable on demand;
- (c) accruing daily and capitalised if not paid every 7 calendar days; and
- (d) calculated on the basis of the actual number of calendar days on which interest has accrued and a 365 day year.

20. Goods and Services Tax

20.1. The parties agree that all amounts payable under this agreement are exclusive of Goods and Services Tax (**GST**).

20.2. If the whole or any part of any payment is the consideration for a Taxable Supply (as defined in the GST Law):

- (a) the payer must pay to the payee an additional amount equal to the GST Amount either concurrently with that payment or as otherwise agreed in writing;
- (b) the parties will ensure that they are registered for GST at all times; and
- (c) the parties will ensure that invoices exchanged between them are compliant with the GST Law.

TITLE AND INTELLECTUAL PROPERTY

21. Title

- 21.1. Title in the Artwork will only pass to the SSTOM Contractor after all payments due to the Artist under this Agreement have been made.

22. Intellectual Property and Attribution

- 22.1. The Artist warrants that the Design and the Artwork:

- (a) are the Artist's original works;
- (b) [to the extent they embody traditional ritual knowledge of the [TBA] community or any other Indigenous community, the Design was created, and the licences granted under this Agreement are granted, with the consent of the custodians of the [TBA] community]; **[Note: Provisions relating to traditional cultural knowledge embodied in the Artwork may or may not be required, depending on the Artwork to be procured.]**
- (c) do not infringe the Intellectual Property Rights or moral rights of any third party; and
- (d) are unique works of the Artist developed exclusively for the commission under this Agreement.

- 22.2. The parties acknowledge that the Artist is the owner of the Intellectual Property Rights in the Art Concept, the Design, any Amended Design and Further Amended Design, and the Artwork and all other materials created by the Artist under, or in relation to, this Agreement.

- 22.3. Subject to clause 22.5, the Artist grants the SSTOM Contractor a non-exclusive, transferrable, royalty free worldwide licence of the Intellectual Property Rights (including the right to sub-licence on comparable terms) subsisting in the Design for the purpose of fabricating, creating, installing, operating, maintaining and (subject to clause 23) repairing the Artwork in connection with the Project.

- 22.4. Subject to clause 22.5, the Artist grants the SSTOM Contractor a non-exclusive royalty free worldwide licence of the Intellectual Property Rights subsisting in the Artwork for as long as the Artwork remains installed on the Site for the purpose of making and using images of the Artwork for non-commercial purposes including but not limited to:

- (a) the maintenance, promotion and marketing of the Artwork, the Project and the SSTOM Contractor's public artwork policies and projects;

(b) promoting and marketing the business and activities of the Principal and the SSTOM Contractor generally including in the Principal or the SSTOM Contractor's financial and annual reports, multimedia presentations, website, and advertising materials; and

(c) archival purposes,

and the SSTOM Contractor agrees not to reproduce or use images of the Artwork except for the above purposes.

22.5. The SSTOM Contractor must make all reasonable efforts to ensure that the Artist is attributed in any publication or communication of images of the Artwork by the SSTOM Contractor.

22.6. The Artist will prepare appropriate details for attribution, which will be provided to the SSTOM Contractor for agreement.

22.7. Subject to clauses 23.3 and 24.4, the SSTOM Contractor will permanently display a notice of attribution agreed between the parties in a reasonably prominent position near the installed Artwork.

22.8. [Subject to clauses 23.3 and 24.4, the SSTOM Contractor will permanently display a notice in a reasonably prominent position near the installed Artwork, which identifies the custodial interest of the [TBA] community in the Artwork as follows:

"This artwork embodies traditional ritual knowledge of the [TBA] Community. It was created with the consent of the custodians of the [TBA] Community. Dealing with any part of this artwork for any purpose that has not been authorised by the custodians is a serious breach of the customary laws of the [TBA] Community. For enquiries regarding permitted use of this artwork, contact [TBA]."

REPAIRS, RESTORATION, ALTERATION AND DEACCESSION

23. Repairs and restoration

23.1. The SSTOM Contractor will give the Artist, by written notice to the Artist, first option to carry out any repairs or restoration to the Artwork. This option will lapse if the Artist does not confirm an intention to carry out such repairs or restoration of the Artwork within 10 Business Days after receiving the SSTOM Contractor's notice.

23.2. The SSTOM Contractor will pay the Artist a fee for repairs and restoration Artwork undertaken by the Artist at the relevant rate or fee set out in Schedule 5 (**Repair and Restoration Fee**) and if the Artist themselves is required travel to the location of the Artwork, the actual verifiable costs of the Artist's reasonable accommodation and travel expenses in respect of such travel to and from the Site, but not those costs for any other party.

23.3. The Artist reserves the right to demand the removal of any notice displayed with the Artwork, which identifies the Artist with the Artwork if the Artist does not perform the Artwork's repairs or restoration.

24. Alteration and deaccessioning of the Artwork

24.1. The SSTOM Contractor may destroy, remove or otherwise deaccession the Artwork if:

- (a) it is damaged or deteriorated beyond reasonable repair or conservation in the SSTOM Contractor's absolute discretion; and
 - (b) the SSTOM Contractor complies with the procedures set out in section 195AT of the *Copyright Act 1968* (Cth).
- 24.2. The SSTOM Contractor will not alter or modify the Artwork in any way whatsoever without the Artist's prior written consent provided that where such alterations or modifications are required for the proper maintenance of the Artwork, or by law to comply with work health and safety standards, such consent will not unreasonably be withheld or delayed.
- 24.3. The SSTOM Contractor may relocate the Artwork provided that the SSTOM Contractor complies with the procedures set out in section 195AT of the *Copyright Act 1968* (Cth).
- 24.4. If the SSTOM Contractor alters, modifies or relocates the Artwork, the SSTOM Contractor will, upon written request by the Artist, remove any notice displayed with the Artwork which identifies the Artist with the Artwork and the removal of that notice if so requested will be the Artist's sole remedy.
- 24.5. If the SSTOM Contractor intends to sell or otherwise dispose of the Artwork, the Artist or the Artist's estate will be given the first option to make a suitable reasonable commercial offer for the Artwork.
- 24.6. If the SSTOM Contractor sells the Artwork to a third party during the term of the Artist's copyright in respect of the Artwork, the SSTOM Contractor agrees to pay the Artist or the Artist's estate a resale royalty in accordance with the *Resale Royalty Right for Visual Artists Act 2009* (Cth) or the applicable artists resale royalty scheme in effect under Australian law at the time of such sale.

LIABILITY AND INSURANCE

25. Risk of loss or damage

- 25.1. If the Artwork is created on the Site, the SSTOM Contractor will:
- (a) bear the risk of loss of, or damage to, the Artwork until installation is complete; and
 - (b) take out and maintain insurance against loss or damage during that period.
- 25.2. To the extent the Artwork is not created on the Site:
- (a) the SSTOM Contractor will bear the risk of loss of, or damage to, the Artwork until it is delivered to the Site and will take out and maintain insurance against loss or damage during that period, including during transportation of the Artwork to the Site; and
 - (b) the SSTOM Contractor will bear the risk of loss of, or damage to, the Artwork during installation at the Site and will take out and maintain insurance against loss or damage during that period.
- 25.3. The SSTOM Contractor will bear the risk of loss of, or damage to, the Artwork after installation and will take out and maintain insurance against loss or damage for

the period until title to the Artwork passes to the SSTOM Contractor under clause 21.1.

26. Workers Compensation

- 26.1. The Artist will be responsible for maintaining worker's compensation insurance in relation to any work or other act associated with the performance of this agreement carried out by the Artist, the Artist's employees or its agents.

27. Public Liability

- 27.1. The Artist will be responsible for maintaining public liability insurance cover in relation to any work or other act associated with the performance of this Agreement carried out on the Artist's premises or on the premises of the Artist's employees with a limit of not less than [REDACTED] for any one occurrence.
- 27.2. The SSTOM Contractor will be responsible for ensuring public liability insurance cover with a limit of not less than [REDACTED] on any one occurrence is effected and maintained in relation to any work or other act associated with the performance of this Agreement carried out on the SSTOM Contractor's premises (including the Site) or on the premises of the SSTOM Contractor's employees or agents or otherwise in connection with the Artwork following delivery and/or installation.

28. Insurance policies

- 28.1. During the term of this Agreement, the Artist must provide the SSTOM Contractor with certificates of currency for all required policies of insurance and copies of the receipts evidencing payment of the current premiums.
- 28.2. All premiums necessary to maintain current insurance coverage are to be paid by the Artist at least 7 days before the renewal of such premiums fall due.
- 28.3. The SSTOM Contractor may (but is not required to) do all things necessary to effect and/or maintain such insurance coverage if the Artist fails to maintain insurance as required under this Agreement.
- 28.4. Any moneys expended by the SSTOM Contractor for the purpose described in clause 28.3 are a debt due and payable by the Artist upon demand and may be set off by the SSTOM Contractor from any moneys payable to the Artist.
- 28.5. The maintenance of insurance as required under this agreement shall not in any way limit the responsibilities and obligations of the Artist.

29. Liability

- 29.1. The SSTOM Contractor indemnifies the Artist against loss or damage, or claims by any person against the Artist, arising out of or in consequence of carrying out the Design Development Services but the SSTOM Contractor's liability to indemnify the Artist will be reduced proportionally to the extent that the act or omission of the Artist or the employees, agents or other contractors of the Artist contributed to the loss, damage or claim.

29.2. Subject to clause 29.4, the SSTOM Contractor's total aggregate liability to the Artist in contract, tort (including negligence) or otherwise under this Agreement is limited to the total of all amounts payable to the Artist under this Agreement.

29.3. Subject to clause 29.5, the limit of liability in clause 29.2 will not apply to the extent that:

- (a) the relevant liability of the SSTOM Contractor arises from any fraud, wilful misconduct or criminal conduct by the SSTOM Contractor or any of its employees, servants or agents;
- (b) the SSTOM Contractor is entitled to be indemnified for that liability under a policy of insurance, or would have been entitled to be indemnified for that liability but for any act or omission of the SSTOM Contractor;
- (c) the SSTOM Contractor is entitled to recover that liability from any other third party, or would have been entitled to recover for that liability but for any act or omission of the SSTOM Contractor; or
- (d) the relevant liability cannot be excluded or limited at law, or arises from a breach of Statutory Requirements by the SSTOM Contractor or a person for whom it is responsible.

29.4. The SSTOM Contractor will not be liable under this Agreement for any indirect or consequential losses including but not limited to loss of profits, loss of revenue, loss of opportunity, loss of bargaining power or loss to reputation.

29.5. The Artist indemnifies the SSTOM Contractor against:

- (a) loss or damage, or claims by any person against the SSTOM Contractor, arising out of or in consequence of carrying out the Design Development Services but the Artist's liability to indemnify the SSTOM Contractor will be reduced proportionally to the extent that the act or omission of the SSTOM Contractor or the Principal or the employees, agents or other contractors of the SSTOM Contractor or the Principal contributed to the loss, damage or claim; and
- (b) all losses, liabilities, costs and expenses (including reasonable legal expenses as between solicitor and client) arising out of or in relation to any breach of the Artist's warranties in clause 22.1.

29.6. Subject to clause 29.7, the Artist's total aggregate liability to the SSTOM Contractor in contract, tort (including negligence) or otherwise under this Agreement is limited to [REDACTED]

29.7. Subject to clause 29.8, the limit of liability in clause 29.6 will not apply to the extent that:

- (a) the relevant liability of the Artist arises from any fraud, wilful misconduct or criminal conduct by the Artist or any of its employees, servants or agents;
- (b) the Artist is entitled to be indemnified for that liability under a policy of insurance, or would have been entitled to be indemnified for that liability but for any act or omission of the Artist;

- (c) the Artist is entitled to recover that liability from any other third party, or would have been entitled to recover for that liability but for any act or omission of the Artist; or
- (d) the relevant liability cannot be excluded or limited at law, or arises from a breach of Statutory Requirements by the Artist or a person for whom it is responsible.

29.8. The Artist will not be liable under this Agreement for any indirect or consequential losses including but not limited to loss of profits, loss of revenue, loss of opportunity, loss of bargaining power or loss to reputation.

TERMINATION

30. Termination

30.1. If either party is in breach of a material term this Agreement, the other party may give a written notice to the party in breach of the agreement stating:

- (a) that it is a notice of breach under this clause 30;
- (b) details of the breach of material term relied upon; and
- (c) that this Agreement will be terminated unless the breach is remedied within the period set out in the Notice of Breach, which must be no less than 20 Business Days,

(Notice of Breach) and the party receiving the Notice of Breach must, within the period set out in the Notice of Breach or such other period agreed between the parties, either:

- (d) promptly remedy the breach; or
- (e) provide notice to the other party that it disagrees that there has been a breach of a material term of this Agreement and refer the matter for resolution as a dispute in accordance with clause 31,

and if that party does not do either of those things with the timeframe set out in this clause 30.1 or agreed between the parties, the party who issued the Notice of Breach may by notice terminate this Agreement.

30.2. In the event of the death or incapacity of the Artist prior to the acceptance of the Artwork, the SSTOM Contractor may, in its absolute discretion, do either of the following:

- (a) engage another artist to complete the Artwork in accordance with the Accepted Design (to the extent it has been completed) and Art Concept in which case:
 - (i) the SSTOM Contractor shall:
 - A. assume and perform, or cause to be assumed or performed, the obligations remaining to be performed by the Artist under

this Agreement, had the death or incapacity of the Artist not occurred;

- B. subject to clause 30.2(a)(i)D, be liable for any costs incurred by the SSTOM Contractor in engaging another artist to complete the Artwork in accordance with the Accepted Design and Art Concept;
- C. use its best endeavours to consult with the Artist's estate in respect of the completion of the Artwork;
- D. ensure that the Artist or the Artist's estate are paid the balance of the Commission Fee payable to the Artist under this Agreement less any amount payable in respect of the completion of the Artwork under clause 30.2(a)(i)B;

(ii) subject to payment of the amount under clause 30.2(a)(i)D by the SSTOM Contractor, the Principal shall become the owner of the Artwork once completed;

(iii) the Artist or the Artist's estate:

- A. shall grant the SSTOM Contractor a non-exclusive, transferrable, royalty free worldwide licence to use the Intellectual Property Rights (including the right to sub-licence on comparable terms) in the Artwork on the terms set out in clause 22.3 and 22.4; and
- B. may demand the removal of any notice displayed with the Artwork, which identifies the Artist with the Artwork, and if a notice is displayed section 195AG of the *Copyright Act 1968* (Cth) applies; and

(iv) the SSTOM Contractor shall complete the Artwork in accordance with the Accepted Design (to the extent it has been completed), the Scope of Work and Specifications and this Agreement (as applicable) in consultation with the Principal and any artist engaged to replace the Artist; or

(b) terminate the Agreement and abandon the completion of the Artwork, in which case:

- (i) the SSTOM Contractor must pay all amounts due to the Artist in respect of the Design Development Services completed as at the date of termination of this Agreement;
- (ii) clause 24 of the Agreement shall apply to the extent applicable; and
- (iii) the SSTOM Contractor and the Artist are otherwise discharged from all of the obligations remaining to be performed under this Agreement.

30.3. In the event of an Event of Insolvency in respect of the SSTOM Contractor, this Agreement may be terminated by either party giving notice of termination to the other party, in which case:

- (a) the Artist acknowledges and agrees that the Principal will:
 - (i) become the owner of any materials in the SSTOM Contractor's possession, custody or control relating to the Artwork in the condition in which they stand as at the date of the Event of Insolvency in respect of the SSTOM Contractor;
 - (ii) enter into an agreement with the Artist (or cause its nominee to enter into an agreement with the Artist) on substantially similar terms as this Agreement; and
 - (iii) in consultation with the Artist, ensure the Artwork is completed in accordance with the Accepted Design, the Art Concept, the Scope of Work and Specifications and this Agreement (as applicable);
- (b) the Artist agrees to enter into an agreement on substantially similar terms as this Agreement and shall collaborate with any other contractor or craftsperson engaged by the Principal to complete the Artwork, including providing a briefing on the Artwork and the Accepted Design and ongoing assistance reasonably required; and
- (c) the SSTOM Contractor must promptly provide all information in its possession in respect of any matter pursuant to this Agreement or the Artwork to the Principal and shall otherwise be discharged from its obligations under this Agreement.

30.4. This agreement is automatically terminated:

- (a) following rejection of the Design under clause 6; or
- (b) following rejection of the Artwork under clause 10.

30.5. In the event of termination under clause 30.1, the Artist will be entitled to receive and retain payment of:

- (a) all instalments of the Commission Fee due in the period up to the date of termination; and
- (b) if the Artwork has not been completed and the Artist was not the party who issued the Notice of Breach, the amount of any reasonable expenses incurred by the Artist in relation to the Artwork as at the date of termination which are not covered by instalments of the Commission Fee already due to the Artist.

30.6. In the event of termination under clause 30.4, the Artist will:

- (a) reimburse to the SSTOM Contractor all amounts paid to the Artist under this agreement other than the Design Development Fee and any Design Amendment Fees or Artwork Amendment Fees; and

- (b) have no right to any other payment under this Agreement or in respect of the Artwork.

30.7. In the event that termination under:

- (a) clause 30.1 due to breach of a material term of this Agreement by the Artist;
or
- (b) under clause 30.4(b),

occurs after acceptance of the Design, the SSTOM Contractor may either:

- (c) require reimbursement from the Artist of the instalments of the Commission Fee already paid less the amount of the Design Development Fee, in case the Artist has the sole right to complete, exhibit, sell and otherwise deal with the Art Concept, the Design and the Artwork; or
- (d) where the Artwork is substantially completed, pay the Artist the amounts specified in clauses 30.5(a) and 30.5(b) in which case, the SSTOM Contractor will own the Artwork in the condition in which the Artwork then stands and may engage other artists or crafts persons to complete the Artwork in accordance with the Design.

30.8. Subject to clause 30.7(d), if this agreement is terminated under clause 30.4(b) or at any stage prior to acceptance of the Artwork, the Artist will:

- (a) retain title to, and copyright in, the Art Concept, the Design and the Artwork, and
- (b) have sole right to complete, exhibit and sell the Art Concept, the Design and the Artwork.

30.9. If a delay under clause 2 has extended more than 180 days, either party may terminate this agreement by 20 Business Days written notice to the other party at which time the SSTOM Contractor shall not be liable to pay any further payments under this Agreement, and the Artist and the SSTOM Contractor shall be discharged from their respective obligations under this Agreement.

30.10. This clause 30 survives termination of this Agreement.

31. Disputes

31.1. If a dispute or disagreement (**Dispute**) arises between the parties in connection with this Agreement:

- (a) one party must notify the other party in writing about the Dispute (**Notice of Dispute**); and
- (b) neither party may start any litigation or arbitration in relation to the Dispute until the parties have complied with this clause 31.

31.2. The parties must meet within 14 Business Days after receipt of the Notice of Dispute and hold good faith discussions to attempt to resolve the Dispute. At such negotiations, each party must be represented by a person who has the authority to agree to a resolution.

- 31.3. If the Dispute is not resolved within 28 Business Days after receipt of the Notice of Dispute, the parties agree to submit the Dispute to mediation according to the Resolution Institute Mediation Rules.
- 31.4. If the parties are not able to agree to a mediator, the Resolution Institute must appoint a mediator.
- 31.5. The parties must continue to perform their respective obligations under this Agreement despite the existence of a Dispute.
- 31.6. Nothing in this clause 31 will impact on either party's rights to terminate the Agreement under clause 30.

32. General provisions

- 32.1. The parties acknowledge that the Artist is an independent contractor and that nothing in this Agreement creates any relationship of partnership or employment between the parties.
- 32.2. A notice required to be given under this Agreement may be delivered by hand, or sent by pre-paid post or fax to the address of the party indicated at the top of this Agreement or submitted by electronic communication. Notices are taken to have been served when received, or within 5 Business Days of having been sent, whichever occurs first.
- 32.3. Neither party may assign, subcontract, novate or otherwise divest this Agreement or any of the rights or obligations under this agreement without the other party's prior written consent. This consent must not be unreasonably withheld or delayed.
- 32.4. Subject to clause 32.6, this Agreement is the entire agreement between the parties about its subject matter. Any previous understanding, agreement, representation or warranty relating to this subject matter is replaced by this Agreement and has no further effect.
- 32.5. Nothing in this Agreement transfers or excludes any applicable cultural rights in favour of Australian Indigenous people that may be implemented under Australian law.
- 32.6. This Agreement may only be modified by a written amendment signed by the parties.
- 32.7. Invalidity of any clause of this Agreement will not affect the validity on any other clause except to the extent made necessary by the invalidity.
- 32.8. This Agreement is governed by the law in force in New South Wales. The parties submit to the jurisdiction of the courts of that State and any court competent to hear appeals from those courts.
- 32.9. A person signing this Agreement on behalf of a party to the agreement warrants, by that signing, that they have all the necessary authority from that party to sign this agreement of their behalf.
- 32.10. The following rules of interpretation apply to this Agreement unless the context requires otherwise:

- (a) if there is any inconsistency between the parts of this Agreement, the following order of precedence shall apply to the extent of the inconsistency:
 - (i) the General Conditions;
 - (ii) Schedule 1;
 - (iii) Schedule 2;
 - (iv) Schedule 5;
 - (v) Schedule 6;
 - (vi) the Scope of Work and Specifications (Annexure C);
 - (vii) the Art Concept (Annexure B);
 - (viii) the Brief (Annexure A);
 - (ix) Schedule 3; and
 - (x) Schedule 4;
- (b) headings are for convenience only and do not affect interpretation;
- (c) the singular includes the plural and conversely;
- (d) a reference to an agreement or document is to that agreement or document as amended in accordance with clause 32.6;
- (e) references to a person include an individual, a body politic, the estate of an individual, a firm, a corporation, an Authority, an association or joint venture (whether incorporated or unincorporated), or a partnership;
- (f) the words "including", "includes" and "include" will be read as if followed by the words "without limitation";
- (g) a reference to any party to this Agreement includes that party's executors, administrators, successors, and permitted substitutes and assigns, including any person taking part by way of novation;
- (h) a reference to any Authority, institute, association or body is:
 - (i) if that Authority, institute, association or body is reconstituted, renamed or replaced or if the powers or functions of that Authority, institute, association or body are transferred to another organisation, deemed to refer to the reconstituted, renamed or replaced organisation or the organisation to which the powers or functions are transferred, as the case may be; and
 - (ii) if that Authority, institute, association or body ceases to exist, deemed to refer to the organisation which serves substantially the same purposes or objects as that Authority, institute, association or body;
- (i) a reference to any legislation or to any section or provision of it includes:

- (i) any statutory modification or re-enactment of, or any statutory provision substituted for, that legislation, section or provision; and
 - (ii) ordinances, by-laws, regulations of and other statutory instruments issued under that legislation, section or provision
- (j) a reference to:
- (i) a party, clause, Schedule, Annexure or Exhibit is a reference to a party, clause, Schedule, Annexure or Exhibit of or to this Agreement; and
 - (ii) a paragraph or a sub-paragraph is a reference to a paragraph or sub-paragraph in the clause in which the reference appears;
- (k) where any word or phrase is given a defined meaning, any other part of speech or other grammatical form of that word or phrase has a corresponding meaning;
- (l) for all purposes (other than where otherwise designated as a Business Day), "day" means calendar day and "week" means a period of 7 calendar days;
- (m) a reference to \$ is to Australian currency;
- (n) no rule of construction applies to the disadvantage of a party on the basis that the party put forward or drafted this Agreement or any part; and
- (o) any reference to "information" will be read as including information, representations, statements, data, samples, calculations, assumptions, deductions, determinations, drawings, design, specifications, models, plans and other documents in all forms including the electronic form in which it was generated.

32.11. The Artist must do all things and execute all documents including, but not limited to, executing any agreements of assignment or agreements under hand or seal or licence agreement, which may reasonably be required by the SSTOM Contractor, to give effect to the provisions of this Agreement.

33. Principal's rights

The Artist acknowledges and agrees:

- (a) the Principal (and any person authorised by the Principal) may, at any time, enter the Site and any premises where the Design Development Services and SSTOM Contractor Activities are being carried out for the purpose of observing or inspecting the Design Development Services, subject to compliance with the relevant work health and safety procedures for the Site or other premises;
- (b) that it must provide the Principal with access and every reasonable facility and other assistance necessary for any such attendance or inspection by the Principal;
- (c) to provide the Principal with any information, documents or material reasonably requested by the Principal in relation to the Design Development Services and

SSTOM Contractor Activities, except to the extent that the information is subject to legal professional privilege;

- (d) to ensure the Principal (and any person authorised by the Principal) has direct access to any information, documents or material in respect of the Artist's obligations and deliverables under this Agreement that is maintained by a third party engaged by or related to the Artist; and
- (e) the Principal (or any person authorised by the Principal) may at any time assume, for any period of time, the rights and obligations of the SSTOM Contractor under this Agreement, as notified by the Principal to the Artist copied to the SSTOM Contractor, or as notified by the SSTOM Contractor to the Artist.

DEFINITIONS

34. Definitions

In this Agreement:

"Accepted Design" has the meaning given in clause 5.4.

"Agreement" means the contractual relationship between the Artist and the SSTOM Contractor constituted by:

- (a) the General Conditions, all Schedules including the Contract Particulars attached to these General Conditions and any Annexures; and
- (b) the other documents (if any), referred to in the Contract Particulars.

"Amendment Notice" has the meaning given in clause 4.1(a).

"Amended Design" has the meaning given in clause 0.

"Art Concept" has the meaning given in Recital C.

"Artist's Construction Contractor" means a contractor engaged by the Artist to install the Artwork, as may be agreed by the parties under this Agreement.

"Artist's Representative" means the party so named in the Contract Particulars.

"Artwork" means the public artwork based on the Accepted Design to be designed, created, fabricated and installed by the SSTOM Contractor in accordance with this Agreement. [**Note: To be amended if the Artist will fabricate the Artwork.**]

"Artwork Amendment Fee" has the meaning given in clause 16.2.

"Artwork Amendment Notice" has the meaning in clause 8.1(a).

"Authority" means any Federal, State or local government, semi-government, or other body, authority or person, statutory or otherwise, including any court or tribunal, having jurisdiction over the Project, the Design Development Services, the SSTOM Contractor Activities or the performance by the Artist or the SSTOM Contractor of their respective obligations under this Agreement or with whose utility services the Artwork is or will be connected.

"Brief" has the meaning given in Recital A.

"Business Day" means any day other than:

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

"Commission Fee" means the amount payable to the Artist in accordance with clause 15.1 in respect of the Design Development Services and the Artwork, as specified in Schedule 5.

"Competition Art Brief" has the meaning given in Recital B.

"Contract Particulars" means the particulars in Schedule 1.

"Defect" means any:

- (a) defect, deficiency, fault, error or omission in the Design Development Services and the Artwork; or
- (b) other aspects of the Design Development Services or the Artwork that are not in accordance with the requirements of this Agreement.

"Deliverables" means the reports listed in Schedule 6.

"Design" has the meaning given in Recital D.

"Design Amendment Fee" has the meaning given in clause 16.1.

"Design Development Fee" means the portion of the Commission Fee relating to the creation and development of the aesthetic appearance of the Design for the Artwork and any associated obligations under this Agreement as set out in Schedule 5.

"Design Development Services" means the creation and development of the Design for the Artwork by the Artist and any associated obligations under this Agreement.

"Event of Insolvency" means if:

- (a) a party informs the other party in writing or creditors generally that the party is insolvent or is financially unable to proceed with this Agreement;
- (b) execution is levied against a party by a creditor;
- (c) a party is an individual person or a partnership including an individual person, and if that person:
 - (i) commits an act of bankruptcy;
 - (ii) has a bankruptcy petition presented against him or her or presents his or her own petition;
 - (iii) is made bankrupt;
 - (iv) makes a proposal for a scheme of arrangement or a composition; or

- (v) has a deed of assignment or deed of arrangement made, accepts a composition, is required to present a debtor's petition, or has a sequestration order made, under Part X of the *Bankruptcy Act 1966* (Cth);
- (d) in relation to a party being a corporation:
 - (i) notice is given of a meeting of creditors with a view to the corporation entering a deed of company arrangement;
 - (ii) the party enters a deed of company arrangement with creditors;
 - (iii) a controller or administrator is appointed;
 - (iv) an application is made to a court for the winding-up of the party and not stayed within 14 days;
 - (v) a winding-up order is made in respect of the party;
 - (vi) resolves by special resolution that the party be wound up voluntarily (other than for a members' voluntary winding-up); or
 - (vii) a mortgagee of any property of the party takes possession of that property; or
- (e) any act is done or event occurs which has an analogous or similar effect to any of the events in paragraphs (a) to (d).

"Fees" means the Commission Fee, including the Design Development Fee, and any Repair and Restoration Fees, Design Amendment Fees and Artwork Amendment Fees.

"Force Majeure Event" means a circumstance beyond the reasonable control and without the fault or negligence of the party claiming force majeure including:

- (a) fire, flood, earthquake, pandemic or acts of God; or
- (b) strikes, industrial disputes, acts of war, terrorism, riots, civil disorder, rebellions or revolutions, quarantines, embargos and other similar governmental action;

"Further Amendment Notice" has the meaning given in clause 4.3(b).

"Further Amended Design" has the meaning given in clause 0.

"General Conditions" means these General Conditions of Contract clauses 1-34.

"GST Amount" means any payment (or the relevant part of the payment) multiplied by the appropriate rate of GST, together with any related interest, penalties, fines or other charges, but only to the extent such interest, penalties, fines or charges arise from the payer's failure to pay when due.

"GST Law" has the meaning given in *A New Tax System (Goods and Services Tax) Act 1999* (Cth).

"Key People" means the person(s) nominated in the Contract Particulars who are engaged by the SSTOM Contractor or the Artist, as the case may be.

"Intellectual Property Rights" includes any and all intellectual and industrial property rights throughout the world, whether subsisting now or in the future, including rights of any kind in:

- (a) inventions, trade secrets, discoveries and novel designs, whether or not registered or registrable as patents, innovation patents or designs, including developments or improvements of equipment, technology, processes, know-how, methods or techniques;
- (b) literary works, dramatic works, musical works, artistic works, cinematograph films, television broadcasts, sound broadcasts, published editions of works and any other subject matter in which copyright (including future copyright and rights in the nature of or analogous to copyright) may, or may upon creation of the subject matter, subsist anywhere in the world;
- (c) registered and unregistered trade marks and service marks, including goodwill in the business concerned in the relevant goods and/or services;
- (d) trade, business or company names;
- (e) internet domain names or social media accounts; and
- (f) proprietary rights under the *Circuit Layouts Act 1989* (Cth),

whether created or in existence before or after the date of this Agreement.

"Manual" has the meaning given in clause 13.1.

"Notice of Breach" has the meaning given in clause 30.1.

"Principal" means Sydney Metro.

"Project" means the project or projects stated in the Contract Particulars in respect of which the Design Development Services and SSTOM Contractor Activities are provided.

"Repair and Restoration Fee" has the meaning given in clause 23.2.

"Scope of Work and Specifications" means the requirements and specifications in respect of the Artwork or its creation and installation as set out in Annexure C and all Statutory Requirements relevant to the Artwork.

"Site" means the site where the Artwork will be installed as stated in the Contract Particulars.

"Statutory Requirements" means:

- (a) acts, ordinances, regulations, by-laws, orders, awards and proclamations of the Commonwealth and the State of New South Wales, including the WHS Legislation;
- (b) principles of law or equity established by decisions of courts;
- (c) certificates, licences, consent, permits, approvals and requirements of organisations having jurisdiction applicable to the Design Development Services and the Artwork; and

- (d) relevant rules, guidelines, codes of practice, requirements and Australian Standards applicable to the Design Development Services and the Artwork.

"SSTOM Contractor Activities" means the obligations that are necessary or required to be performed under this Agreement by the SSTOM Contractor, including the [fabrication, storage and installation] of the Artwork in accordance with the Accepted Design, the Art Concept, the Brief, the Scope of Work and Specifications and this Agreement.

"SSTOM Contractor's Representative" means the party so named in the Contract Particulars.

"SSTOM Works" means the works to be performed by the SSTOM Contractor pursuant to the [insert]. *[Note: Suitable description to be inserted – for example, if the D&C Contractor is the SSTOM Contractor engaging the Artist under this Agreement, this should be a reference to the D&C Contract.]*

"Storage Facility" means the storage facility nominated by the Artist for the storage of the Artwork.

"TfNSW Statement of Business Ethics" means the document titled "Transport for NSW Statement of Business Ethics" which can be found on the TfNSW website.

"Timeline" means the timeline for the Design Development Services and the SSTOM Contractor Activities set out in Schedule 2.

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

"WHS Legislation" means the following as it may apply from time to time:

- (a) the WHS Act and the WHS Regulation; and
- (b) all other acts, regulations, codes of practice and Australian Standards relating to work health and safety which apply to the Design Development Services and the SSTOM Contractor Activities.

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

"Worker" means 'worker' as defined in the WHS Act.

SCHEDULE 1 – CONTRACT PARTICULARS**Contract Documents:**

General Conditions of Contract

Schedule 1 to Schedule 6

Annexure A to Annexure D

Key People:[insert] (of the **Artist**)[insert] (of the **SSTOM Contractor**)**Project**

Sydney Metro – Western Sydney Airport

Artist's Representative:

[Insert name]

[Insert address]

[Insert email]

[Insert contact number]

SSTOM Contractor's Representative:

[Insert name]

[Insert address]

[Insert email]

[Insert contact number]

Site

[insert site details where the Artwork will be installed] as further described in Annexure D – Site Plan.

SCHEDULE 2 – TIMELINE

[Note: Timeline to be agreed between SSTOM Contractor and Artist.]

SCHEDULE 3 – STATEMENT OF INTERESTS AND ASSOCIATIONS

Sydney Metro Statement of Interests and Associations

Date	
Name	(Recipient)
Organisation	
In favour of	Sydney Metro (ABN 12 354 063 515) (Sydney Metro)
In relation to the	Sydney Metro (Permitted Use)

I _____, [insert full name] of
 _____ [insert business address]

agree and acknowledge that, except for the matters disclosed below:

To the best of my knowledge, I do not have:

1. any financial or other interest, either directly or indirectly in;
2. any immediate family members (spouse, children, parents or siblings) or close friends with any financial or other interest in;
3. any other interest or association, either directly or indirectly with,

the entities listed on the attached sheet (if supplied) or known to be involved in the Sydney Metro Project.

DISCLOSURE

1. _____
2. _____
3. _____
4. _____
5. _____
6. _____
7. _____

(if further space is required please attach a signed separate letter)

I undertake to:

1. notify the Principal as soon as possible after I become aware of any matter which could affect the accuracy or completeness of the statements made in this deed or which would make them incorrect if this deed was given again; and
2. make a further updated declaration as soon as practicable.

I confirm that the statements set out in this deed are true and correct as at the date indicated below.

EXECUTED AS A DEED

Signed, sealed and delivered

Signature of Declarant:	
Name of Declarant:	
Signature of Witness:	
Name of Witness:	

SCHEDULE 4 – SITE INTERFACE DEED POLL

Form of Site Interface Deed Poll

THIS DEED POLL is made on

IN FAVOUR OF:

- (1) [Insert details] (ABN [Insert details]) of [Insert details] (SSTOM Contractor); and
- (2) [Insert details] (ABN [Insert details]) of [Insert details] (Appointed Principal Contractor),

(together, the **Beneficiaries**)

GIVEN BY:

- (4) [Insert details] (ABN [Insert details]) of [Insert details] (Accessing Contractor)

RECITALS:

- (A) Pursuant to the deed titled "SSTOM Project Deed" dated [Insert date] (**Project Deed**), the SSTOM Contractor agreed to, among other things, design and construct certain works and carry out certain activities (**SSTOM Works**), on the land more particularly described in the Project Deed (the **Site**).
- (B) The Accessing Contractor has been appointed under a contract (**Accessing Contractor Contract**) to undertake certain works and activities on the Site (**Site Interface Work**).
- (C) For the purposes of the *Work Health and Safety Act 2011* (NSW) and the *Work Health and Safety Regulation 2017* (NSW) (together, the **WHS Legislation**), the SSTOM Works and the Site Interface Work are a 'construction project' within the meaning of the WHS Legislation.
- (D) The Appointed Principal Contractor is authorised to have management and control of the workplace for the purpose of discharging the duties imposed on a principal contractor for the construction project.
- (E) Under the provisions of the Accessing Contractor Contract, the SSTOM Contractor is required to procure the provision of this deed poll from certain contractors that undertake Site Interface Work.

This deed poll witnesses that the Accessing Contractor hereby covenants, warrants and agrees with and for the benefit of the Beneficiaries as follows:

1. In consideration of the SSTOM Contractor and the Appointed Principal Contractor accepting this deed poll, the Accessing Contractor agrees that:
 - (a) the Accessing Contractor, its subcontractors and their respective personnel while they are on the Site, will comply with Site safety regulations, any Site rules or regulations and with all directions of the SSTOM Contractor and the Appointed Principal Contractor with respect to work health and safety;

- (b) the Accessing Contractor, its subcontractors and their respective personnel will comply in a timely manner with directions of the SSTOM Contractor and the Appointed Principal Contractor so that the Appointed Principal Contractor discharges its obligations as principal contractor;
 - (c) the Accessing Contractor, its subcontractors and their respective personnel will consult, cooperate and coordinate activities with the SSTOM Contractor, the Appointed Principal Contractor, and all other persons who have a work health and safety duty in relation to the same matter;
 - (d) the Accessing Contractor, its subcontractors and their respective personnel will comply with the work health and safety plan(s) prepared by the SSTOM Contractor and the Appointed Principal Contractor while on the Site;
 - (e) the SSTOM Contractor and the Appointed Principal Contractor may exclude the Accessing Contractor, any of its subcontractors and their respective personnel from the Site for work health and safety reasons;
 - (f) the SSTOM Contractor and the Appointed Principal Contractor may direct the Accessing Contractor, any of its subcontractors and their respective personnel to perform or not perform certain acts for work health and safety reasons;
 - (g) where high risk construction work, as reasonably determined by the SSTOM Contractor or the Appointed Principal Contractor, is to be carried out in the performance of the Site Interface Work, the Accessing Contractor must:
 - (i) prepare a safe work method statement that complies with all requirements of the WHS Legislation;
 - (ii) provide a copy of the safe work method statement to the SSTOM Contractor and the Appointed Principal Contractor prior to the commencement of high risk construction work;
 - (iii) review and revise the safe work method statement in accordance with the WHS Legislation;
 - (iv) ensure that the high risk construction work is carried out in compliance with the safe work method statement; and
 - (v) where so directed by the SSTOM Contractor and the Appointed Principal Contractor, suspend the performance of any high risk construction work;
 - (h) the Accessing Contractor will in carrying out the Site Interface Work, comply with, and ensure that all subcontractors and personnel comply with the WHS Legislation; and
 - (i) in its contracts with subcontractors, the Accessing Contractor will ensure that the subcontractor is obliged to give the same obligations and rights as required of the Accessing Contractor under this deed poll.
2. The Accessing Contractor indemnifies the SSTOM Contractor and the Appointed Principal Contractor against any delay, damage, expense, loss, penalty or liability

suffered or incurred by the SSTOM Contractor and the Appointed Principal Contractor as a result of:

- (a) any failure by the Accessing Contractor to comply with any direction given by the SSTOM Contractor or the Appointed Principal Contractor in accordance with this deed poll; or
- (b) any breach by the Accessing Contractor, any of its subcontractors or their respective personnel of:
 - (i) their respective contractual or legislative work health and safety obligations; or
 - (ii) the provisions of this deed poll.

3. This deed poll will be governed by and construed in accordance with the law for the time being of New South Wales.

EXECUTED as a deed poll.

Executed by **[Accessing Contractor]** in accordance with section 127 of the *Corporations Act 2001* (Cth):

Signature of director

Signature of company secretary/other director

Full name of director

Full name of company secretary/other director

SCHEDULE 6 – DELIVERABLES

During the period from the date of the Agreement until completion of the Accepted Design, the Artist must provide periodic progress reports to the SSTOM Contractor, in an agreed format.

The progress reports must be issued at the following stages of the project:

1. Monthly Design Report
4. Final Progress Report

The **Monthly Design Report** is to be submitted by the 7th of the following month and, as a minimum, includes, addresses and details the following:

- a) the status and progress made by the Artist in respect of design, including details of any delays, potential delays or key risks and issues likely to affect timely completion of design;
- b) a summary of key design issues and the mitigation measures put in place;
- c) information required from the SSTOM Contractor and its contractors;
- d) any variations/changes in scope or quality; and
- e) program status report.

The **Final Progress Report**, as a minimum, includes, addresses and details the following:

- a) confirm any installation requirements;
- b) all non-conformances have been closed;
- c) the progress of the Manuals; and
- d) any variations/changes in scope or quality occurred during the Design Development Services.

In addition to the above deliverables, the Artist agrees to supply all additional information required in Annexure C - Scope of Work and Specifications.

[Note: Additions to this schedule may be agreed between the Artist and SSTOM Contractor to reflect the SSTOM Contractor's requirements for documentary or other supporting deliverables (eg. Safe Work Method Statements).]

ANNEXURE A – THE BRIEF AND THE COMPETITION ART BRIEF

[Note: Brief to be the Sydney Metro Western Sydney Airport Art Approach (as referred to in PS-02 section 2.5.9.1).]

ANNEXURE B – THE ART CONCEPT AND ARTWORK MATERIALS

ANNEXURE C – SCOPE OF WORK AND SPECIFICATIONS

ANNEXURE D – SITE PLAN

SIGNING PAGE

EXECUTED AS AN AGREEMENT

[Note: Execution blocks to be inserted.]