

- (b) Macquarie warrants that it will perform Macquarie's Activities using the workmanship and Construction Materials required by this deed and which are fit for their intended purposes.
- (c) Macquarie must take all reasonable precautions to avoid obstruction and damage to any property (including the property of the Principal) and Services arising out of the performance of Macquarie's Activities.
- (d) In performing Macquarie's Activities, Macquarie must:
  - (i) prevent nuisance (except to the extent arising solely as a result of the existence or location of Martin Place Metro Station) and unreasonable noise, dust, vibration and disturbances; and
  - (ii) not interfere with the passage of people and vehicles, access to any premises, car parks, roads or pedestrian ways or the operations or activities carried out on or adjacent to the Construction Site, except to the extent that such interference is required for purposes of public health or safety or is not reasonably avoidable or is permitted by legislation.

#### 9.10 **Control of traffic**

Macquarie:

- (a) is responsible for the control, direction and protection of all road and pedestrian traffic, in any way affected by the carrying out of Macquarie's Activities;
- (b) must manage all such traffic to ensure:
  - (i) its continuous, safe and efficient movement;
  - (ii) the traffic carrying capacity of Local Areas is maintained; and
  - (iii) that any delays and disruptions to road traffic and the movement of road traffic are kept to an absolute minimum;
- (c) must at all times comply with the Construction Environmental Management Plan and the requirements of the SWTC and any Third Party Agreement in respect of road traffic management and safety; and
- (d) must comply with the Directions of any relevant Authority and the Principal's Representative with respect to such management.

#### 9.11 **Industrial relations**

Macquarie must, in performing Macquarie's Activities:

- (a) assume sole responsibility for and manage all aspects of industrial relations;
- (b) comply with its Workplace Relations Management Plan;
- (c) comply with the NSW Code and NSW Guidelines in respect of industrial relations; and
- (d) keep the Principal fully and promptly informed of all industrial relations problems or issues which materially affect or are likely to materially affect the carrying out of Macquarie's Activities.

## 9.12 Workforce development and industry participation

(a) Macquarie must:

- (i) ensure that workforce development is addressed throughout the performance of Macquarie's Activities;
- (ii) comply with the workforce development requirements set out in Appendix 50b to the SWTC;
- (iii) achieve the "Workforce Development and Industry Participation Outputs" required by Appendix 50b to the SWTC; and
- (iv) develop, implement and maintain a Workforce Development and Industry Participation Plan in accordance with the requirements in Appendix 50b to the SWTC.

(b) Without limiting clause 9.12(a), Macquarie must:

- (i) at all times comply with the requirements of the Workforce Development and Industry Participation Plan and the Aboriginal Participation Plan that Macquarie is permitted to use in accordance with clause 7.7;
- (ii) cooperate with the Principal and provide any assistance or documentation that the Principal may reasonably require in relation to the implementation of its workforce development and industry participation initiatives for Sydney Metro City & Southwest;
- (iii) attend and participate in working groups and forums established by the Principal in relation to its workforce development and industry participation initiatives for the Project;
- (iv) maintain records evidencing Macquarie's compliance with the requirements of Appendix 50b to the SWTC; and
- (v) make available all records maintained in accordance with clause 9.12(b)(iv) to the Principal or its nominees.

## 9.13 Australian Jobs Act

Macquarie must:

- (a) take reasonable steps, and must ensure that its Subcontractors take reasonable steps, to ensure that Australian companies have full, fair and reasonable opportunities to bid for the supply of key goods and services that Macquarie requires in order to perform Macquarie's Activities; and
- (b) without limiting clause 5.1, cooperate with the Principal in relation to:
  - (i) compliance with the requirements of the *Australian Jobs Act 2013* (Cth); and
  - (ii) the implementation of the Sydney Metro Australian Industry Participation Plan.

## 9.14 Community relations

Macquarie:

- (a) acknowledges that:

- (i) the areas where the Project Works are being carried out are of great importance to many people, including local residents and businesses; and
  - (ii) the Principal will retain a key role in the management of community relations activities for the Project; and
- (b) must manage and participate in all community relations and involvement programs and activities as:
- (i) required by this deed (including Appendix 51 to the SWTC);
  - (ii) required by any relevant Approval or Authority;
  - (iii) contained in the Community Communications Strategy; or
  - (iv) reasonably required by the Principal from time to time.

**9.15 Personnel**

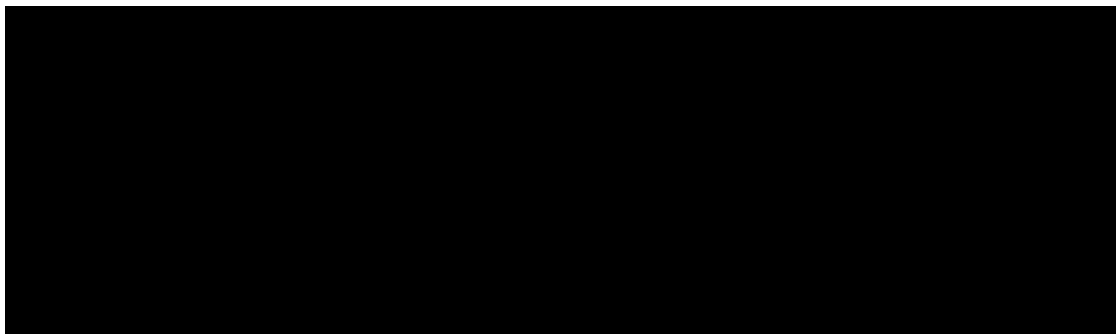
- (a) Macquarie must provide experienced and skilled personnel to perform Macquarie's obligations under this deed.
- (b) Macquarie must notify the Principal within 4 months after Financial Close, of the names and experience of the personnel to be employed by Macquarie or the D&C Contractor in the positions set out in Schedule A9 for the Principal's approval (which must not be unreasonably withheld).
- (c) Macquarie must:
  - (i) employ, and ensure that the D&C Contractor employs, those personnel approved by the Principal under clause 9.15(b) in the positions specified in Schedule A9 for which they are approved;
  - (ii) if any of the personnel referred to in clause 9.15(c)(i):
    - (A) die;
    - (B) become seriously ill;
    - (C) resign from the employment of Macquarie or the D&C Contractor; or
    - (D) become the subject of a direction under clause 9.15(e),
 replace them with personnel of at least equivalent experience, ability and expertise.
- (d) The personnel referred to in clause 9.15(c)(i) must:
  - (i) carry out the functions and be given the authorities and responsibilities specified for them in this deed; and
  - (ii) otherwise be available for consultation with the Principal's Representative when the Principal's Representative reasonably requires.
- (e) The Principal's Representative may, acting reasonably, direct Macquarie to remove any person from the performance of Macquarie's Activities.
- (f) Macquarie must ensure that any person the subject of a direction under clause 9.15(e) is not again involved in the performance of Macquarie's Activities.

9.16 **Services**

(a) Macquarie:

- (i) is solely responsible for obtaining, paying for, contracting for the provision of, acquiring or otherwise procuring or providing any Services and all connections for such Services (including electricity) it requires to perform Macquarie's Activities;
- (ii) must investigate, protect, relocate, remove, modify, disconnect, support and reinstate and provide for all Services necessary for it to comply with its obligations under the Project Documents;
- (iii) must not, without the Principal's Representative's prior written consent, obtain any Services or connect any Services to the Project Works that are not necessary to allow Macquarie to carry out Macquarie's Activities;
- (iv) must obtain the Principal's Representative's prior written consent (such consent not to be unreasonably withheld or delayed) in respect of any new connections for Services or changes or modifications to existing connections for Services;
- (v) must consult with and keep the Principal fully informed as to Macquarie's dealings with the Authorities providing the Services;
- (vi) must ensure there are no unplanned disruptions to the Services caused by Macquarie or its Associates in carrying out Macquarie's Activities and must ensure that any planned disruptions to the Services are minimised and that otherwise no Services are damaged, destroyed, disconnected, disrupted, interfered with or interrupted by reason of the performance of Macquarie's Activities;
- (vii) must ensure that maintenance points for Services are located within the Project Site in a location approved by the Principal's Representative in writing (such approval not to be unreasonably withheld or delayed);
- (viii) subject to clause 9.16(d)(i), assumes the risk of the existence, location, condition and availability of Services (in so far as they affect Macquarie's Activities); and
- (ix) must, to the extent not prohibited by law, indemnify the Principal from and against any Claims against the Principal, or Loss suffered by the Principal arising out of or in connection with:
  - (A) any damage to, disconnection or destruction of, disruption to or interference with or interruption to, any Service arising out of or in connection with:
    - (aa) a failure by Macquarie to comply with any obligations under this deed; or
    - (bb) any act or omission of Macquarie or its Associates which was undertaken fraudulently, recklessly, unlawfully, negligently or maliciously; or
  - (B) a failure by Macquarie to comply with any obligations under this deed with respect to the Services or the Service Works.

- (b) Macquarie is responsible for, and assumes the risk of all additional work, increased Costs and any other Loss, delay or disruption (including any delay in achieving Milestone Achievement of a Milestone or Construction Completion or Completion of a Portion) it suffers or incurs arising out of or in any way in connection with the existence, location, condition and availability of all Services required for the execution of Macquarie's Activities.
- (c) Macquarie must obtain the prior consent of the Principal (such consent not to be unreasonably withheld or delayed) in relation to:
  - (i) any proposal to construct any infrastructure in connection with the Services outside the Project Site; and
  - (ii) the exact location of any infrastructure in connection with the Services within or outside of the Project Site.



**9.17 Project Documentation**

- (a) Macquarie warrants that the Project Documentation will be fit for its purposes.
- (b) For the purposes of this clause 9.17, the Project Documentation does not include any documentation prepared by or on behalf of any Rail Contractor.

**9.18 Sustainability**

- (a) Macquarie must comply with the sustainability requirements set out in the SWTC, including those in section 5.8 of the SWTC and Appendix 50a to the SWTC.
- (b) Without limiting clause 9.18(a), Macquarie must achieve from the Green Building Council of Australia (GBCA) a "Green Star Design and As Built tool: Sydney Metro v1.1" rating of at least 5 stars no later than 18 months after Completion of the last Portion to achieve Completion.
- (c) Without limiting Macquarie's obligations under this clause 9.18, the Principal must use reasonable endeavours to assist Macquarie to comply with its obligations under Appendix 50a of the SWTC.

**10. INTERFACE WITH RAIL CONTRACTORS**

**10.1 Rail Contractors**

- (a) The parties acknowledge that, as at the Commencement Date, the Principal anticipates that:
  - (i) the Rail Contractors to be engaged by the Principal will comprise the TSE Contractor and the Follow-on Contractors; and

- (ii) the Follow-on Contractors to be engaged by the Principal will comprise a Line-wide Contractor, an Operator and an ETS Contractor.
- (b) Where the Principal engages a Follow-on Contractor other than those Follow-on Contractors referred to in clause 10.1(a)(ii), if such Follow-on Contractor is engaged to carry out Line-wide Works, that Contractor shall be treated as a Line-wide Contractor for the purposes of [REDACTED]

## 10.2 Cooperation and Integration Deeds

- (a) Macquarie must:
  - (i) within 5 Business Days after receipt of a request from the Principal, provide to the Principal:
    - (A) the TSE Cooperation and Integration Deed; and
    - (B) each Follow-on Contractor Cooperation and Integration Deed, each duly executed by Macquarie and, in relation to the Follow-on Contractor Cooperation and Integration Deed, by the D&C Contractor in the number of counterparts required by the Principal; and
  - (ii) at all relevant times, comply with (and procure that the D&C Contractor complies with):
    - (A) the terms of the TSE Cooperation and Integration Deed and each Follow-on Contractor Cooperation and Integration Deed; and
    - (B) without limiting any other obligation under this deed, the SWTC and Appendix 64 to the SWTC.
- (b) The Principal must within 20 Business Days of issuing a request referred to in clause 10.2(a):
  - (i) procure that the TSE Contractor executes the TSE Cooperation and Integration Deed; and
  - (ii) subject to clause 10.2(c), procure that each Follow-on Contractor and Rail Contractor (other than TSE) executes the Follow-on Contractor Cooperation and Integration Deed; and
  - (iii) execute the TSE Cooperation and Integration Deed and each Follow-on Contractor Cooperation and Integration Deed.
- (c) In relation to the ETS Contractor, the Principal must use reasonable endeavours to procure that the ETS Contractor executes the Follow-on Contractor Cooperation and Integration Deed within 20 Business Days of issuing a request referred to in clause 10.2(a).
- (d) The parties acknowledge and agree that, to the extent there is an inconsistency between the TSE Cooperation and Integration Deed and this deed, the relevant provisions of this deed will prevail.
- (e) The parties acknowledge and agree that a breach of a Project Cooperation and Integration Deed by the D&C Contractor or Macquarie's Associates which are party to the Project Cooperation and Integration Deeds will be taken to be a breach by Macquarie of this deed, other than for the purposes of clause 43.1 and clause 45.1.

- (f) The parties acknowledge and agree that the Principal must invite the D&C Contractor to attend meetings of the "Cooperation and Integration Control Group" (as that term is defined in the TSE Cooperation and Integration Deed) held in accordance with clause 3.1 of the TSE Cooperation and Integration Deed given the D&C Contractor is not a party to the TSE Cooperation and Integration Deed.

### 10.3 Cooperation and coordination with Rail Contractors

Without limiting Macquarie's obligations under the TSE Cooperation and Integration Deed and each Follow-on Contractor Cooperation and Integration Deed but subject to and without limiting clause 23, Macquarie:

- (a) acknowledges that:
  - (i) the Rail Contractors' Work forms part of Sydney Metro City & Southwest;
  - (ii) Macquarie's Activities interface with the Rail Contractors' Activities;
  - (iii) Rail Contractors will be executing work on parts of the Construction Site or Extra Land, or adjacent to the Construction Site or Extra Land, at the same time as Macquarie is performing Macquarie's Activities (provided that (except in relation to Construction Site (Area 6) until TSE Portion 14 Date of Construction Completion) the TSE Contractor will only be executing TSE Defect rectification work on the Construction Site at the same time that Macquarie is performing Macquarie's Activities on the relevant parts of the Construction Site);
  - (iv) the Principal may grant the Rail Contractors a non-exclusive licence to use and occupy the Construction Site to carry out the Rail Contractors' Activities (provided that any such licence granted to the TSE Contractor at the same time as Macquarie is performing Macquarie's Activities will be limited to the purpose of TSE Defect rectification work on the relevant parts of the Construction Site);
  - (v) without limiting clause 20.13, it may require certain design and work methodology from Rail Contractors to coordinate the design of the Project Works and Temporary Work with the Rail Contractors' Work;
  - (vi) Rail Contractors may require Macquarie to provide design and work methodology information to them to coordinate the design of the Rail Contractors' Work with the Project Works and the Temporary Works, and this must be provided in a timely manner by Macquarie; and
  - (vii) any delay in the performance of Macquarie's Activities or in Macquarie providing information to, or cooperating and coordinating with, any Rail Contractor may adversely impact upon, delay or disrupt any one or more Rail Contractors or Macquarie's Activities in a way which may lead to the Principal suffering or incurring additional Costs, Losses and damages; and
- (b) must at all times:
  - (i) permit the Rail Contractors (if Macquarie's consent or authority is required) to execute the Rail Contractors' Work on the applicable parts of the Construction Site or Extra Land or on any property adjacent to or in the vicinity of the Construction Site or Extra Land:
    - (A) at the same time as Macquarie is performing Macquarie's Activities; and

- (B) at the times agreed with the relevant Rail Contractor, or, failing agreement, at the times determined by the Principal's Representative (acting reasonably in the context of the Sydney Metro City & Southwest project as a whole),

and for this purpose ensure each Rail Contractor has safe, clean and clear access to those parts of the Construction Site or Extra Land, or property adjacent to or in the vicinity of the Construction Site or Extra Land (to the extent that Macquarie is occupying or carrying out Macquarie Activities in those areas), required by that Rail Contractor for the purpose of carrying out their work (subject to, where the relevant Rail Contractor is carrying out Construction Site Interface Work, the Rail Contractor engaged by the Principal for such Construction Site Interface Work executing a deed poll in favour of Macquarie and the Appointed Principal Contractor in the form set out in Schedule D3, except in relation to Construction Site (Area 6) during the period when the TSE Contractor is engaged as principal contractor as contemplated by clause 9.2);

- (ii) take all reasonable steps to protect the Project Works, Temporary Works and other improvements on the Construction Site or Extra Land from accidental damage by Rail Contractors and allow to the extent necessary (as determined by the Principal, acting reasonably in the context of the Sydney Metro City & Southwest project as a whole) goods and equipment supplied by Rail Contractors to be received and stored on the Construction Site;
- (iii) fully co-operate with the Rail Contractors, and do everything reasonably necessary to:
  - (A) facilitate the execution of work by the Rail Contractors, including providing each Rail Contractor with such assistance as may be directed by the Principal's Representative; and
  - (B) without limiting clause 20.13, ensure the effective coordination of the design and construction of the Project Works and the Temporary Works with the design and construction of the Rail Contractors' Work;
- (iv) carefully coordinate and interface Macquarie's Activities with the Rail Contractors' Work and for this purpose:
  - (A) make reasonable allowance in its programs for the Rail Contractors' Work;
  - (B) review all programs provided by Rail Contractors and confirm that they adequately allow for Macquarie's Activities and the interfaces between the Rail Contractors' Work and Macquarie's Activities;
  - (C) monitor the progress of the Rail Contractors' Work;
  - (D) notify the Principal's Representative of any interface or sequence of activities that may affect the commencement or progress of the Project Works, Milestone Achievement of a Milestone or Construction Completion or Completion of a Portion; and
  - (E) provide the Rail Contractors with sufficient information about the current and expected Macquarie's Activities to assist them to coordinate the Rail Contractors' Work with Macquarie's Activities;



- (v) cooperate, meet with, liaise and share information so that Macquarie and the relevant Rail Contractor each comply with the provisions of the relevant EPL (if applicable);
- (vi) perform Macquarie's Activities so as to minimise any interference with or disruption or delay to the Rail Contractors' Work;
- (vii) be responsible for coordinating Macquarie's Activities, including work sequencing, construction methods, safety and industrial relations matters, with those affecting, and influenced by, the Rail Contractors' personnel and work, including providing to the Principal's Representative copies of work method statements for those parts of the Project Works or Temporary Works which are adjacent to or interface with any Rail Contractors' Work, at least 15 Business Days prior to commencing the work described in the work method statement;
- (viii) work directly with Rail Contractors where required to complete the design of the Project Works and Temporary Works and provide all necessary information to Rail Contractors in respect of the Project Works and Temporary Works to permit the Rail Contractors to complete the design of the Rail Contractors' Works so that they are acceptable to the Principal and otherwise comply with this deed, including the SWTC;
- (ix) attend interface coordination meetings chaired by the Principal's Representative with Rail Contractors and others each 10 Business Days, or at other times to be advised by the Principal's Representative, to review current and future issues, including the exchange of information, status, problems, solutions, and newly identified interfaces;
- (x) when information is required from a Rail Contractor, provide reasonable written notice to that Rail Contractor requesting that information and specifying the date by which such information is required, which must be:
  - (A) as soon as reasonably practicable but in any event within 10 days after the date of the notice; or
  - (B) if a longer period for the provision of information is required by the SWTC, the date that period expires,
 with a copy to the Principal's Representative;
- (xi) ensure that any written notice given under clause 10.3(b)(vii) or (x) provides the Rail Contractor with the longest possible time for the provision of the information;
- (xii) when any information is requested by Rail Contractors relating to Macquarie's Activities, the Project Works or the Temporary Works, including confirming the compatibility or suitability of the design of, work methods to be used in, or any other aspect of, the Rail Contractors' Work with the Project Works, Temporary Works or Macquarie's Activities:
  - (A) provide the information to the Rail Contractor, with a copy to the Principal's Representative, within the time requested by the Rail Contractor (or, if the time requested by the Rail Contractor is not reasonable, within a reasonable period of time); and
  - (B) to the extent the information is prepared by, or otherwise the responsibility of, Macquarie, DevCo or the D&C Contractor, ensure and

warrant (as at the date the information is provided) that the information provided is accurate; and

(xiii) use its best endeavours to resolve any problems, and work closely and iteratively, with Rail Contractors, including providing design options, iterations, and work methodologies, to achieve the best solution to such problems, related to:

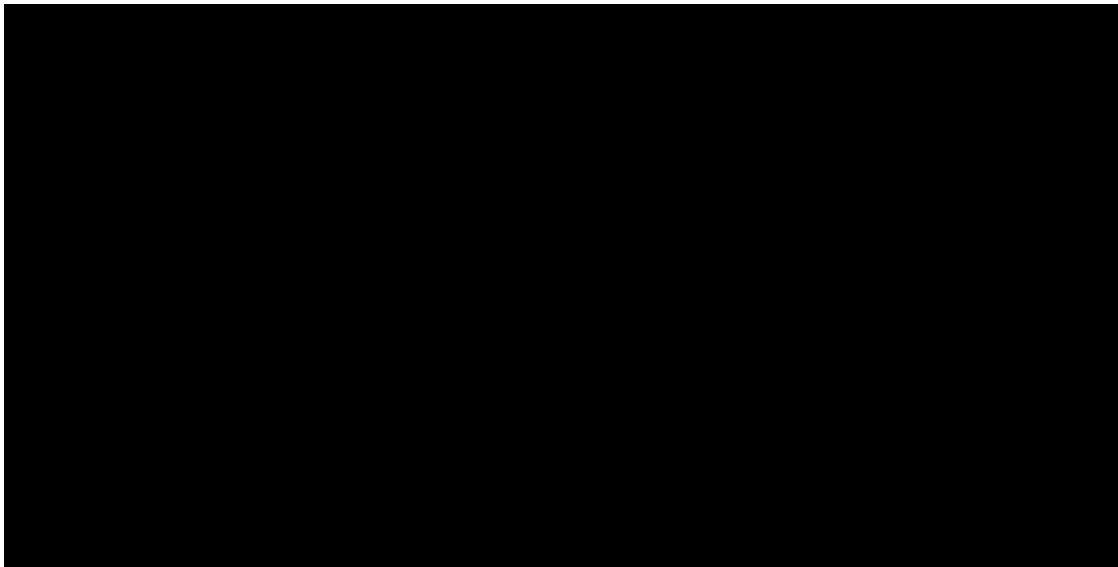
- (A) the provision of information;
- (B) the obtaining of information;
- (C) the adequacy of information provided to, or received from, Rail Contractors;
- (D) the compatibility of the Project Works and Temporary Works with the Rail Contractors' Work;
- (E) coordination in accordance with this clause 10.3(b); and
- (F) technical issues with the information provided to, or received from, Rail Contractors; and

(c) must promptly advise the Principal's Representative of all matters arising out of the liaison with Rail Contractors that may involve a change to design or construction of the Project Works or Temporary Works or otherwise have an adverse effect upon Macquarie's Activities.

(d) The Principal undertakes to Macquarie that the Principal will procure that conditions similar to those in this clause 10.3 applying to Macquarie will apply to all Rail Contractors engaged by the Principal that are working on the Construction Site.

(e) The parties acknowledge and agree that:

- (i) clause 10.3(b)(i) only applies to the TSE Contractor in respect of TSE Defect rectification work by the TSE Contractor; and
- (ii) clause 10.3(b)(iv)(A) does not apply in respect of the TSE Contractor.



#### 10.4 **Line-wide Contractors' design team meetings**

The Principal must:

- (a) notify Macquarie of, and provide Macquarie with a reasonable opportunity to attend, meetings of the Line-wide Contractors' design teams to the extent those meetings are relevant to the Project Works and Temporary Work; and
- (b) give Macquarie:
  - (i) the agenda for each such meeting within a reasonable time prior to each meeting; and
  - (ii) the minutes of each such meeting within a reasonable time after each meeting,

if such documents are submitted by the Line-wide Contractors to the Principal.

#### 10.5 **Disputes between Macquarie and Rail Contractors**

- (a) If, despite Macquarie having complied with all of its obligations in clause 10.3(b), Macquarie and any Rail Contractor fail to resolve any interface issue or dispute between them, Macquarie must promptly give the Principal's Representative written notice of any interface issue or dispute with any Rail Contractor (with a copy to the Rail Contractor).
- (b) Following receipt of Macquarie's notice under clause 10.5(a):
  - (i) the Principal's Representative must convene a meeting between Macquarie, the relevant Rail Contractor and any other relevant person (as reasonably determined by the Principal's Representative);
  - (ii) the Principal's Representative must work in good faith with Macquarie and the Rail Contractor to resolve the issues or dispute; and
  - (iii) Macquarie must work in good faith with the Principal's Representative and the Rail Contractor to resolve the issues or dispute.

#### 10.6 **Indemnity**

Without limiting clause 10.7, Macquarie indemnifies the Principal from and against any Claims against the Principal, or Loss suffered or incurred by the Principal, arising out of or in any way in connection with a breach of this clause 10 by Macquarie.

#### 10.7 **No Claims arising out of Rail Contractors' Work**

Macquarie:

- (a) acknowledges and agrees that:
  - (i) except to the extent expressly provided in this deed, no act or omission by a Rail Contractor will, whether or not it causes any delay, disruption or interference to Macquarie's Activities, constitute an Act of Prevention or direction by the Principal to carry out a Variation; and
  - (ii) subject to clauses 23.9 and 24 and except where the Principal's Representative directs a Variation, the Principal will not be liable upon any Claim by Macquarie arising out of or in any way in connection with:

- (A) any Rail Contractor carrying out Rail Contractors' Work; or
  - (B) any act or omission of a Rail Contractor;
  - (iii) the Rail Contractors will require access to the Construction Site in order to perform their obligations under their respective contracts with the Principal; and
  - (iv) the SDD Program will accommodate requirements for design iterations as part of the Rail Contractors' Work and incorporate the requirements specified in clause 3.4(a) and clause 3.4(b) of each of the Follow-on Contractor Cooperation and Integration Deeds; and
- (b) warrants that the SDD Program contains sufficient allowances for the assumption by Macquarie of the obligations and risks under clause 10.3 and this clause 10.7, including the cost of all the design iterations required to accommodate Rail Contractors' Work.

#### 10.8 **Excusable Causes of Delay**

Macquarie's entitlement to an extension of time, Delay Costs and [REDACTED] in relation to the Compensation Events referred to in paragraphs (c), (g), (j) and (k) of the definition of Compensation Event will be reduced to the extent that Macquarie's non-compliance with:

- (a) a Project Cooperation and Integration Deed;
- (b) the interface management requirements in the SWTC, and particularly Appendix 64 to the SWTC; or
- (c) its obligations under a Project Document or the OSD PDA in connection with the Rail Contractors, the TSE Works and any TSE Defects,

increased the length of any delay caused by the Compensation Event.

#### 10.9 **Interface Management Services**

- (a) Macquarie must:
  - (i) subject to clause 29.2, perform the Interface Management Services from Financial Close until Completion of the last Portion to achieve Completion; and
  - (ii) perform the Interface Management Services:
    - (A) in accordance with:
      - (aa) the SWTC;
      - (bb) Schedule A6;
      - (cc) any applicable Laws and Approvals; and
      - (dd) Good Industry Practice; and
    - (B) in an efficient and cooperative manner; and
  - (iii) allocate such resources and staff as is necessary to enable the due and proper performance of the Interface Management Services.

- (b) Subject to the remainder of this clause 10.9, the Principal must pay Macquarie the costs reasonably incurred by Macquarie each month in the performance of the Interface Management Services prior to the Last Date of Completion in accordance with clause 34.
- (c) Any claim for payment submitted by Macquarie pursuant to clause 34 in relation to Interface Management Services performed prior to the Last Date of Completion:
  - (i) must be calculated in a manner consistent with the information provided under clause 10.9(e) and required in accordance with Appendixes 56 and 64 to the SWTC and Schedule A6; and
  - (ii) must not include payment for services being performed by Macquarie that do not directly arise out of the carrying out of the services required in accordance with Appendixes 56 and 64 to the SWTC and Schedule A6,

and payment by the Principal of any costs claimed in such payment claims will only be made to the extent it is substantiated under clause 10.9(e).

- (d) The parties acknowledge and agree that the Principal is not obliged to pay Macquarie any of the amounts specified in the Cost Forecast Schedule other than where such amounts are payable pursuant to clause 10.9(c).
- (e) Without limiting clause 34.2(c), Macquarie must provide to the Principal a report detailing:
  - (i) the aggregate hours spent by Macquarie's personnel in performing the relevant Interface Management Services during the relevant month;
  - (ii) the details of the Interface Management Services performed in the relevant month and the costs for such services, including reference to the Cost Forecast Schedule;
  - (iii) the connection between the Interface Management Services performed and the requirements of Appendix 56 and Appendix 64 to the SWTC and Schedule A6; and
  - (iv) such other information as the Principal may reasonably require from time to time,

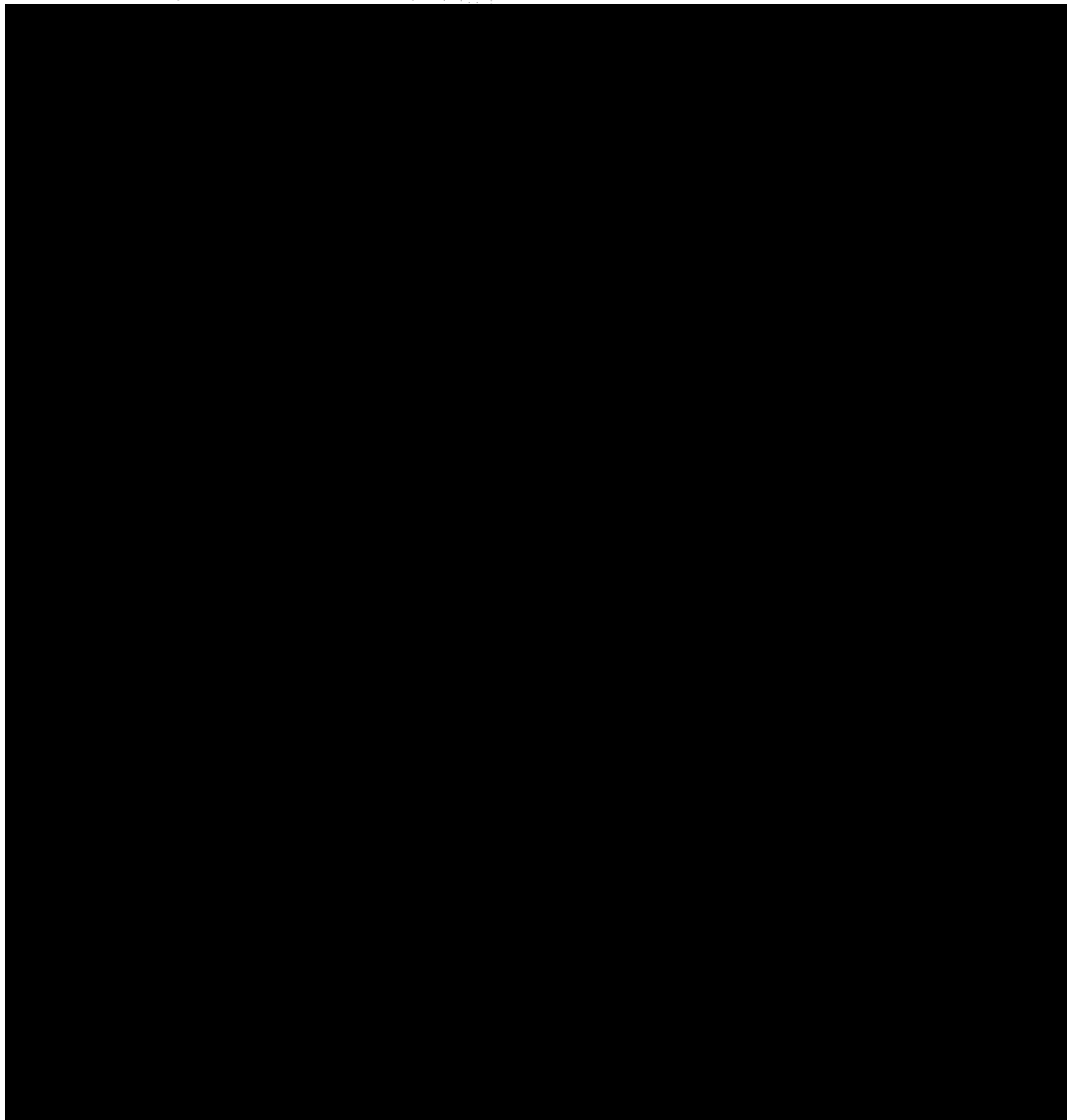
with every payment claim referred to in clause 10.9(c).

- (f) The parties acknowledge and agree that the total of all payments to Macquarie in respect of Interface Management Services performed by Macquarie prior to the Last Date of Completion must not exceed the IMS Cap.

#### 10.10 **Master Interface Protocols Deed Poll**

- (a) Subject to clause 10.10(d), Macquarie must:
  - (i) within ■ Business Days after receipt of a request from the Principal's Representative, provide to the Principal the Master Interface Protocols Deed Poll, duly executed by Macquarie; and
  - (ii) at all relevant times comply with the terms of the Master Interface Protocols Deed Poll.

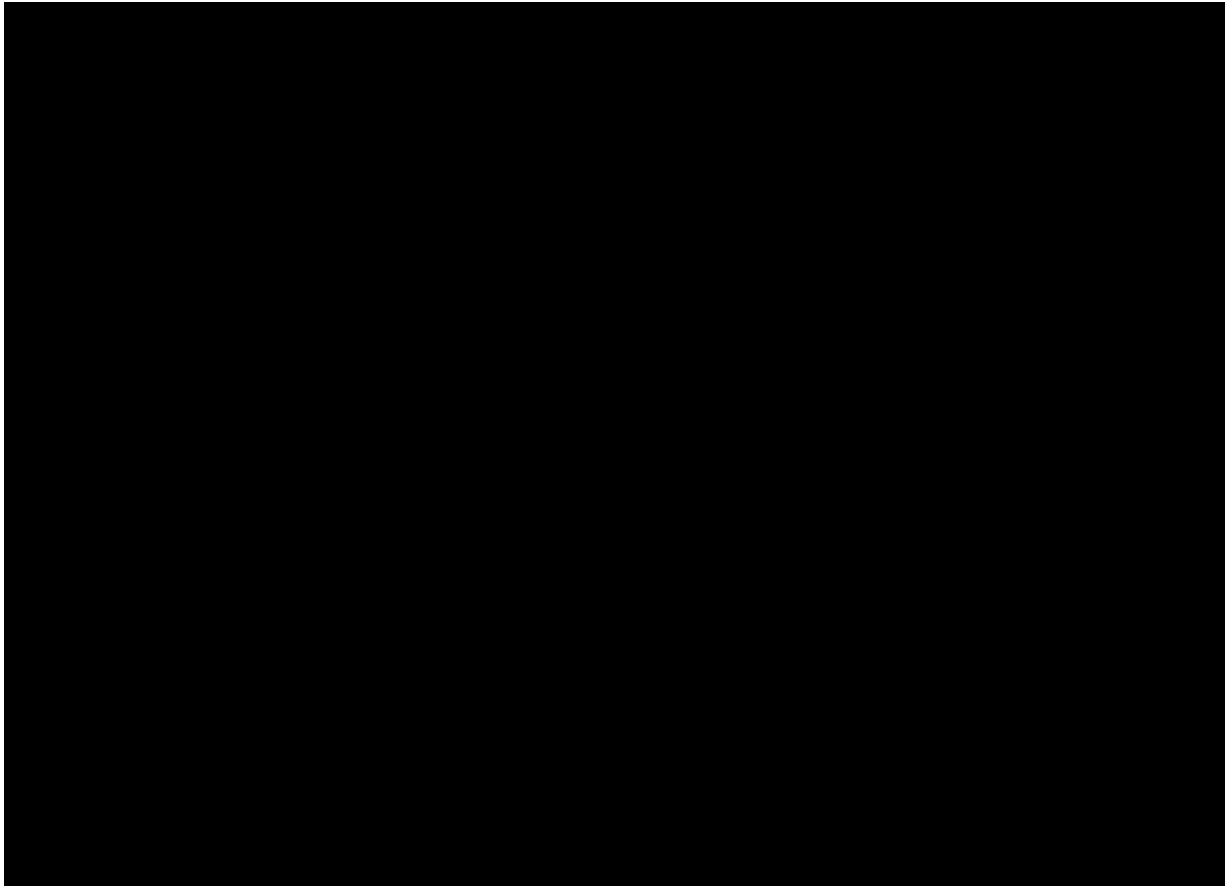
- (b) Macquarie may, with the prior written consent of the Principal, invite the D&C Contractor to meetings of the "Project Integration Group" held pursuant to the Master Interface Protocols Deed Poll.
- (c) The Principal must procure that each Rail Contractor nominated by the Principal executes a deed poll in substantially the same form as the Master Interface Protocols Deed Poll within 20 Business Days after the later of:
  - (i) the Rail Contractor executing the relevant Rail Contract; and
  - (ii) Macquarie providing the executed Master Interface Protocols Deed Poll to the Principal pursuant to clause 10.10(a).
- (d) The parties acknowledge and agree that:
  - (i) the Principal must provide Macquarie with a copy of the proposed form of the "Interface Scope Allocation Matrix" comprising Schedule 3 to the Master Interface Protocols Deed Poll prior to requesting that Macquarie executes the Master Interface Protocols Deed Poll in accordance with clause 10.10(a);



**10.11 Collateral Warranty Deed Poll**

Macquarie must, within 5 Business Days after receipt of a request from the Principal, ensure that the [REDACTED]  
[REDACTED]

**11. TSE CONTRACT**



**11.2 Principal initiated TSE Works Change**

- (a) The Principal's Representative may at any time issue to Macquarie written notice of a TSE Works Change proposed by the Principal or the TSE Contractor under the TSE Contract, except that this clause 11.2 does not apply to the TSE Adjustment Works.
- (b) If Macquarie (acting reasonably) considers that the proposed TSE Works Change, if implemented:
  - (i) would prevent Macquarie from complying with its obligations or exercising its rights under this deed, would increase Macquarie's costs of performing the Project Works in accordance with this deed or would otherwise require a Variation to be implemented under this deed, Macquarie must issue to the Principal:
    - (A) a Variation Impact Proposal in accordance with clause 35.2 for the Variation that Macquarie considers would be required:
      - (aa) to enable Macquarie to comply with its affected obligations or exercise its affected rights or to relieve Macquarie from its affected obligations; or

(bb) otherwise as a consequence of the proposed TSE Works Change, if the proposed TSE Works Change was implemented; and

(B) a written notice detailing any modification to the proposed TSE Works Change that Macquarie considers would be required to enable Macquarie to comply with its obligations and exercise its rights under this deed or to otherwise avoid the need to implement a Variation; or

(ii) would not prevent Macquarie from complying with its obligations or exercising its rights under this deed or would not increase Macquarie's costs of performing the Project Works in accordance with this deed or would not otherwise require a Variation to be implemented under this deed, Macquarie must provide the Principal's Representative with written confirmation of this,

within 20 Business Days after receipt of the written notice referred to in clause 11.2(a).

(c) If Macquarie does not give the Principal:

(i) a Variation Impact Proposal and notice in accordance with clause 11.2(b)(i); or

(ii) confirmation in accordance with clause 11.2(b)(ii),

within 20 Business Days after receipt of the written notice referred to in clause 11.2(a), Macquarie will be deemed to have given the Principal confirmation that the TSE Works Change will not prevent Macquarie from complying with its obligations or exercising its rights under this deed, and will not otherwise require a Variation to be implemented under this deed, in accordance with clause 11.2(b)(ii) and clause 11.2(e) will apply.

(d) If Macquarie gives the Principal a Variation Impact Proposal and written notice pursuant to clause 11.2(b)(i), the Principal may:

(i) if the Principal disagrees that the proposed TSE Works Change would prevent Macquarie from complying with its obligations or exercising its rights under this deed or would increase Macquarie's costs of performing the Project Works in accordance with this deed or would otherwise require a Variation to be implemented under this deed, refer the matter to dispute resolution in accordance with clause 52; or

(ii) if the Principal agrees, or it is determined under clause 52, that the proposed TSE Works Change would prevent Macquarie from complying with its obligations or exercising its rights under this deed or would increase Macquarie's costs of performing the Project Works in accordance with this deed or would otherwise require a Variation to be implemented under this deed:

(A) modify the proposed TSE Works Change, in which case this clause 11.2 will reapply;

(B) proceed with the proposed TSE Works Change, in which case the Principal must make an election with respect to the Variation Impact Proposal issued by Macquarie under clause 11.2(b)(i)(A):

(aa) under clause 35.4(a), in which case clause 35.6 will apply; or

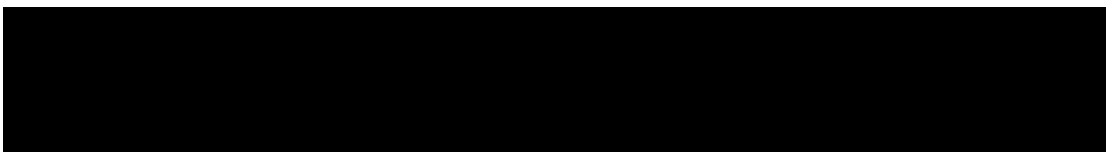
(bb) under clause 35.4(b), in which case:




- (a) the Principal must require that the parties consult in good faith and use their reasonable endeavours to agree on a mutually acceptable resolution to the matters set out in the Variation Impact Proposal which are in dispute pursuant to clause 35.7;
  - (b) if the parties are unable to reach agreement within 20 Business Days after the Principal rejects the Variation Impact Proposal, the Principal must refer the matter for dispute resolution pursuant to clause 35.9; and
  - (c) following determination of the dispute, the Principal must require Macquarie to implement the Variation in accordance with the Variation Impact Proposal, as varied by the determination pursuant to clause 35.11(a) by written notice to Macquarie (which must be a Variation Order); or
- (C) withdraw the proposed TSE Works Change, in which case clause 35.3 applies in respect of each Variation Impact Proposal issued by Macquarie pursuant to clause 11.2(b).
- (e) If Macquarie gives the Principal a written confirmation under clause 11.2(b)(ii) or it is determined under clause 52 that a proposed TSE Works Change would not prevent Macquarie from complying with its obligations or exercising its rights under this deed or would not increase Macquarie's cost of performing the Project Works in accordance with this deed or would not otherwise require a Variation to be implemented under this deed:
- (i) the Principal may proceed with the proposed TSE Works Change; and
  - (ii) Macquarie will be deemed to have confirmed that the TSE Works will remain fit for the purpose of enabling Macquarie to comply with its obligations and exercise its rights under this deed (notwithstanding the implementation of the TSE Works Change).
- (f) The Principal must reimburse Macquarie for all Costs reasonably incurred by Macquarie in assessing each proposed TSE Works Change pursuant to this clause 11.2 (to the extent that those Costs would not have been incurred by Macquarie had the Principal not proposed the relevant TSE Works Change).

### 11.3 MLC Pedestrian Link

- (a) Without limiting the Principal's rights under clause 11.2, the Principal must ensure that any TSE Works Change proposed by the Principal under clause 11.2 is implemented by the TSE Contractor in a manner that will not prevent Macquarie from utilising the MLC Pedestrian Link.
- (b) Macquarie will be entitled to issue a Variation Impact Proposal under clause 11.2(b)(i)(A) and a written notice under clause 11.2(b)(i)(B) to the Principal on the basis that a TSE Works Change proposed by the Principal under clause 11.2 would prevent Macquarie from exercising its rights, or complying with its obligations, under this deed with respect to the MLC Pedestrian Link.

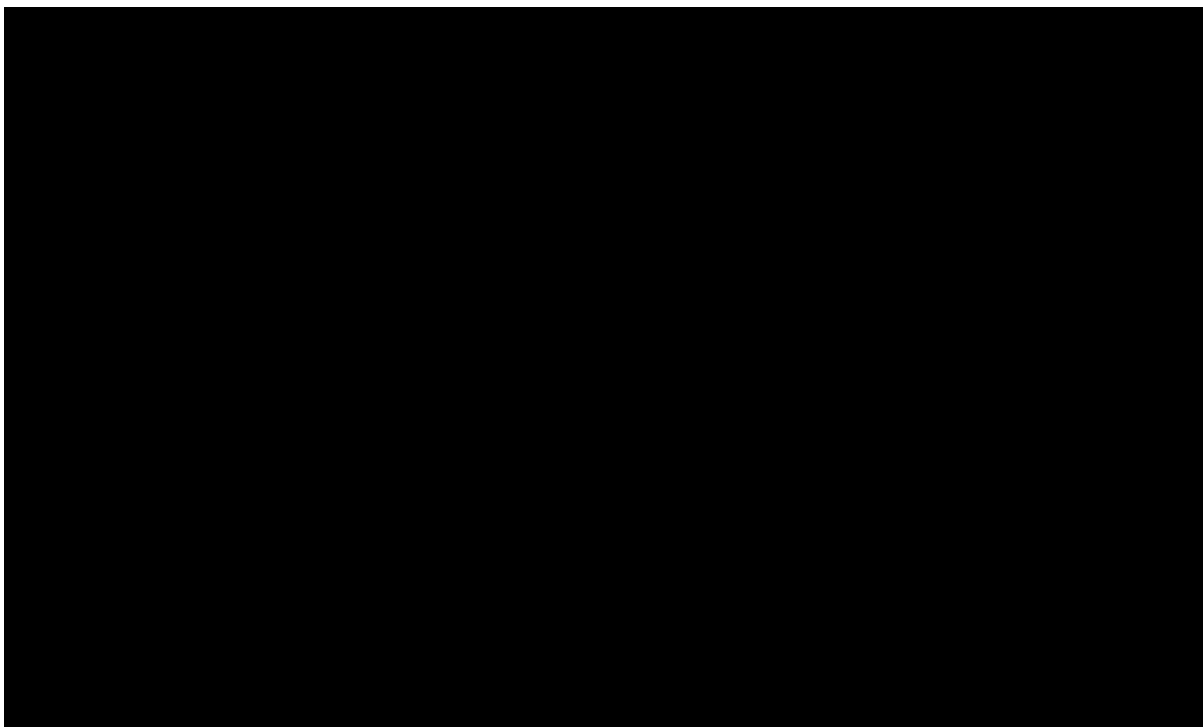


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- (d) The parties must negotiate in good faith to reach a mutually acceptable position on any amendments to the Draft BMS, the Draft Section 88B Instrument and the Draft Subdivision Plan to recognise the linkage to the Building (as that term is used and defined in the Draft BMS) of the MLC Pedestrian Link.

#### 11.4 Macquarie initiated TSE Works Change

- (a) If Macquarie wishes to request the Principal to procure a TSE Works Change (other than a TSE Adjustment Works), it must give the Principal a written notice with full details of:
  - (i) the proposed TSE Works Change; and
  - (ii) the reason for the proposed TSE Works Change.
- (b) Upon receipt of a notice under clause 11.4(a), the Principal must not, subject to clause 11.4(d), unreasonably refuse to procure the TSE Contractor to carry out a TSE Works Change, provided that Macquarie agrees to pay all Costs incurred by the Principal in connection with that TSE Works Change or its assessment, including the amount of any increase in the TSE Project Contract Sum payable by the Principal to the TSE Contractor pursuant to clause 13.4 of the TSE Contract with respect of that TSE Works Change and all other amounts payable to the TSE Contractor in connection with that TSE Works Change or its assessment.
- (c) Without limiting clause 11.4(b), if:
  - (i) Macquarie gives the Principal a written notice requesting that the Principal procure a TSE Works Change pursuant to clause 11.4(a);
  - (ii) the Principal gives the TSE Contractor a "Change Proposal Request" (as defined in the TSE Contract) with respect to that TSE Works Change; and
  - (iii) that TSE Works Change does not proceed,Macquarie must reimburse the Principal for any amount that is payable by the Principal to the TSE Contractor pursuant to clause 13.1(d) of the TSE Contract.
- (d) The Principal's refusal to procure a TSE Works Change will be deemed to be reasonable if the implementation of that TSE Works Change would:
  - (i) not promote the objectives and expected outcomes of the Project Document;
  - (ii) not, in the Principal's reasonable opinion, be in the public interest;
  - (iii) result in a delay to the achievement of Milestone Achievement of a Milestone or Construction Completion or Completion of a Portion; or
  - (iv) have any other material impact which the Principal reasonably considers to be unreasonable.
- (e) If required by the Principal, Macquarie must attend any meetings with the TSE Contractor regarding the TSE Works Change proposed by Macquarie and provide such further information regarding the TSE Works Change as may be required by the Principal or the TSE Contractor.
- (f) The Principal must notify Macquarie within:

- (i) 25 Business Days (or such longer period as the Principal reasonably requires, having regard to the size and complexity of the proposed TSE Works Change),  
after receiving a notice from Macquarie under clause 11.4(a):
  - (ii) that it will direct the TSE Contractor to carry out the TSE Works Change; or
  - (iii) that it will not direct the TSE Contractor to carry out the TSE Works Change.
- (g) Macquarie must pay any Costs referred to in clause 11.4(b) within 20 Business Days after being requested to do so by the Principal.
- (h) Subject to clause 11.13, Macquarie:
  - (i) will not be entitled to make any Claim against the Principal arising out of or in connection with a permitted refusal by the Principal under this clause 11.4 to direct the TSE Contractor to carry out the TSE Works Change; and
  - (ii) agrees that the refusal by the Principal to direct a TSE Works Change requested by Macquarie will not affect the operation of clause 11.1(b).
- (i) Macquarie warrants that if a TSE Works Change requested by Macquarie is implemented, the TSE Works will, if designed and constructed in accordance with the TSE Contract (amended to incorporate the TSE Works Change), be fit for the purposes of enabling Macquarie to comply with its obligations under the Project Documents.
- (j) The parties acknowledge and agree that they are bound by the certifications given by the TSE Independent Certifier in accordance with, and subject to, clause 6 of the TSE Cooperation and Integration Deed.
- (k) Macquarie must procure for the TSE Contractor, at Macquarie's Cost, any rights over the Macquarie Land that the TSE Contractor requires in order to implement any TSE Works Change requested by Macquarie under this clause 11.4.



#### 11.6 TSE Works design team meetings

The Principal must:

- (a) notify Macquarie of, and provide Macquarie with a reasonable opportunity to attend, meetings of the TSE Contractor's design teams to the extent those meetings are relevant to the TSE Works; and
- (b) give Macquarie:
  - (i) the agenda for each such meeting within a reasonable time prior to each meeting; and
  - (ii) the minutes of each such meeting within a reasonable time after each meeting,

if such documents are submitted by the TSE Contractor to the Principal.

#### 11.7 TSE Works Design Documentation

- (a) The Principal must provide Macquarie with a copy of all design documentation for the TSE Works (**TSE Works Design Documentation**) submitted by the TSE Contractor to the Principal, promptly following receipt by the Principal.
- (b) Macquarie may:
  - (i) review the TSE Works Design Documentation provided to it pursuant to clause 11.7(a); and
  - (ii) to the extent that the TSE Works Design Documentation does not comply with the requirements of the TSE Contract, provide written comments to the Principal within 10 Business Days after the date on which Macquarie received

the TSE Works Design Documentation (as applicable) pursuant to clause 11.7(a).

- (c) The Principal must:
  - (i) promptly provide a copy of any written comments provided by Macquarie under clause 11.7(b)(ii) to the TSE Independent Certifier and the TSE Contractor; and
  - (ii) provide Macquarie with a copy of any comments the Principal receives from the TSE Independent Certifier (as applicable) in response to any comments made by Macquarie under clause 11.7(b) promptly and in any event no later than 10 Business Days after receipt.

#### 11.8 TSE Works Asset Management Information

- (a) The Principal must provide Macquarie with a copy of any TSE Works Asset Management Information submitted by the TSE Contractor to the Principal, promptly following receipt by the Principal.
- (b) Macquarie may, or if requested by the Principal, must:
  - (i) review the TSE Works Asset Management Information provided to it pursuant to clause 11.8(a); and
  - (ii) provide written comments to the Principal within 5 Business Days after the date on which Macquarie received the TSE Works Asset Management Information pursuant to clause 11.8(a).
- (c) The Principal may provide a copy of any written comments provided by Macquarie under clause 11.8(b)(ii) to the TSE Independent Certifier and the TSE Contractor.
- (d) Without limiting clause 11.8(b), Macquarie does not assume a duty or owe any duty to the Principal to review the TSE Works Asset Management Information for errors, omissions or compliance with the requirements of this deed and, except as otherwise provided in this deed, no review by Macquarie pursuant to clause 11.8(b) will lessen or otherwise affect:
  - (i) the Principal's liabilities or responsibilities under this deed or otherwise according to Law; or
  - (ii) Macquarie's rights against the Principal, whether under this deed or otherwise according to Law.

#### 11.9 Inspection of TSE Works

- (a) If Macquarie wishes to inspect the TSE Works, Macquarie must submit a written request to the Principal's Representative a minimum of 10 Business Days in advance of the date it wishes to carry out the inspection (or such other period of time as the Principal's Representative may agree).
- (b) Macquarie may only inspect the TSE Works when accompanied by the Principal's Representative (or its nominee).
- (c) The Principal's Representative must:
  - (i) facilitate all reasonable requests by Macquarie to inspect the TSE Works; and

- (ii) notify Macquarie of, and provide Macquarie with a reasonable opportunity to attend, all joint inspections of the TSE Works carried out in accordance with clause 17.11 of the TSE Contract.
- (d) If Macquarie believes that the TSE Works do not comply with the requirements of the TSE Contract, Macquarie must provide written comments to the Principal:
  - (i) in the case of an inspection carried out in accordance with clause 17.11 of the TSE Contract, within 1 Business Day after the date of the relevant inspection; and
  - (ii) in the case of any other inspection under this clause 11.9, within 5 Business Days after the date of the relevant inspection.
- (e) The Principal must:
  - (i) provide a copy of any written comments provided by Macquarie under clause 11.9(d) to the TSE Independent Certifier and the TSE Contractor; and
  - (ii) provide Macquarie with a copy of any comments the Principal receives from the TSE Independent Certifier in response to any comments made by Macquarie under clause 11.9(d) promptly and in any event no later than 10 Business Days after receipt.

#### 11.10 TSE Works documentation

- (a) If requested by Macquarie, the Principal must:
  - (i) make available to Macquarie through its project data and collaboration system (or by such other method notified by the Principal's Representative to Macquarie); or
  - (ii) otherwise provide Macquarie with,
    - copies of:
      - (iii) all documents or other information in respect of the design, construction, occupation, use and maintenance of the TSE Works which:
        - (A) the TSE Contractor must provide to the Principal as a condition precedent to TSE Construction Completion; or
        - (B) must necessarily be provided to the Principal before the TSE Works can be used for their intended purpose;
      - (iv) any correspondence with, or certificates issued by, the TSE Independent Certifier in relation to the TSE Works (excluding any confidential commercial information regarding the TSE Contractor);
      - (v) any notices of TSE Defects notified to the Principal by the TSE Contractor, or by the Principal to the TSE Contractor, after TSE Construction Completion; and
      - (vi) any documents the Principal is entitled to, and actually, receives from the TSE Contractor in relation to the quality of the TSE Works,

to the extent that any documentation is not provided directly to Macquarie by the TSE Contractor or the TSE Independent Certifier.

- (b) Macquarie warrants that it does not require any further documents in relation to the TSE Contract or the TSE Works to enable Macquarie to carry out its obligations under this deed.

**11.11 Care and maintenance of TSE Works**

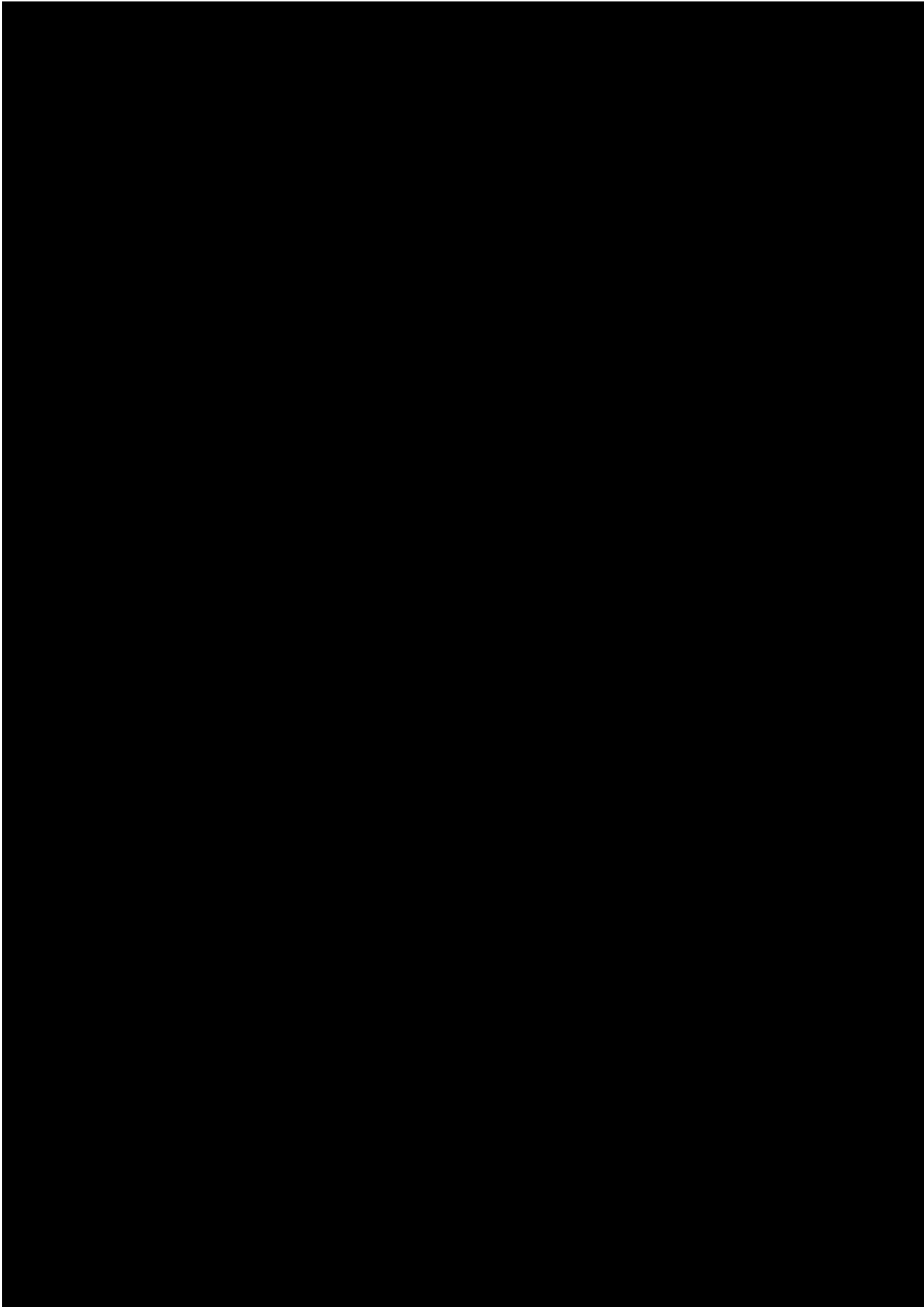
- (a) Subject to clauses 11.12, 11.13, 23.11, 24 and 41.1, Macquarie is responsible for the care and maintenance of any parts of the TSE Works located within the Principal Construction Site for the period from:
  - (i) in respect of Construction Site (Area 6), without limiting clause 9.9(c), the later of the Construction Licence Commencement Date for Construction Site (Area 6) and the TSE Portion 14 Date of Construction Completion; and
  - (ii) in respect of all areas of the Principal Construction Site other than Construction Site (Area 6), the Construction Licence Commencement Date for that part of the Principal Construction Site,

until the Date of Completion of the relevant Portion (or the Date of Construction Completion in relation to Portion 1) in accordance with the TSE Works O&M Manuals.

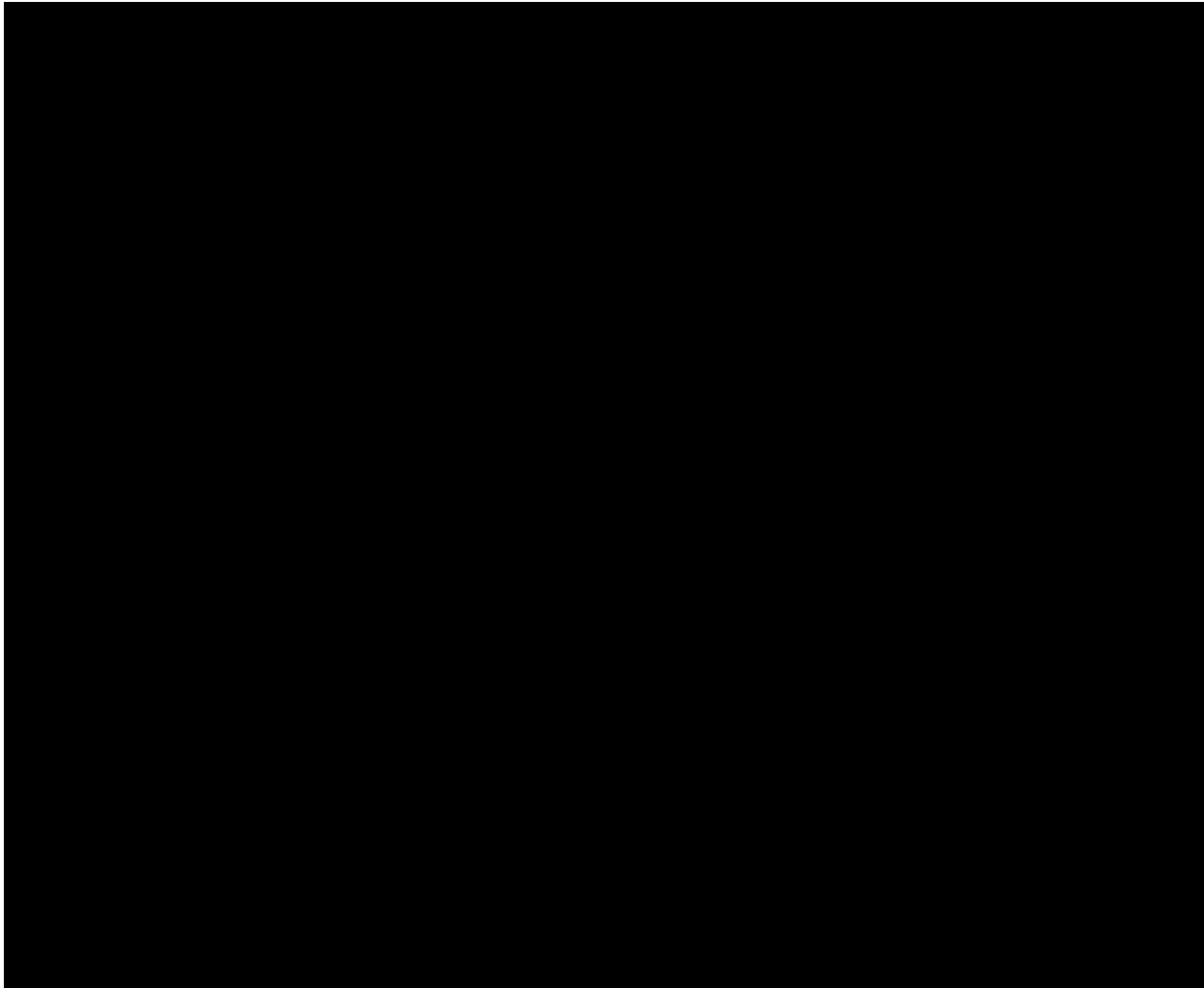
- (b) If:
  - (i) Macquarie fails to occupy a part of the Principal Construction Site from the date that Macquarie has been granted access to that part of the Principal Construction Site pursuant to clause 17.2 (**Relevant Date**); and
  - (ii) the Principal incurs a liability to the TSE Contractor in relation to TSE Transitional Handover Services carried out by the TSE Contractor on that part of the Construction Site on or after the applicable Relevant Date,

Macquarie indemnifies the Principal from and against such liability.









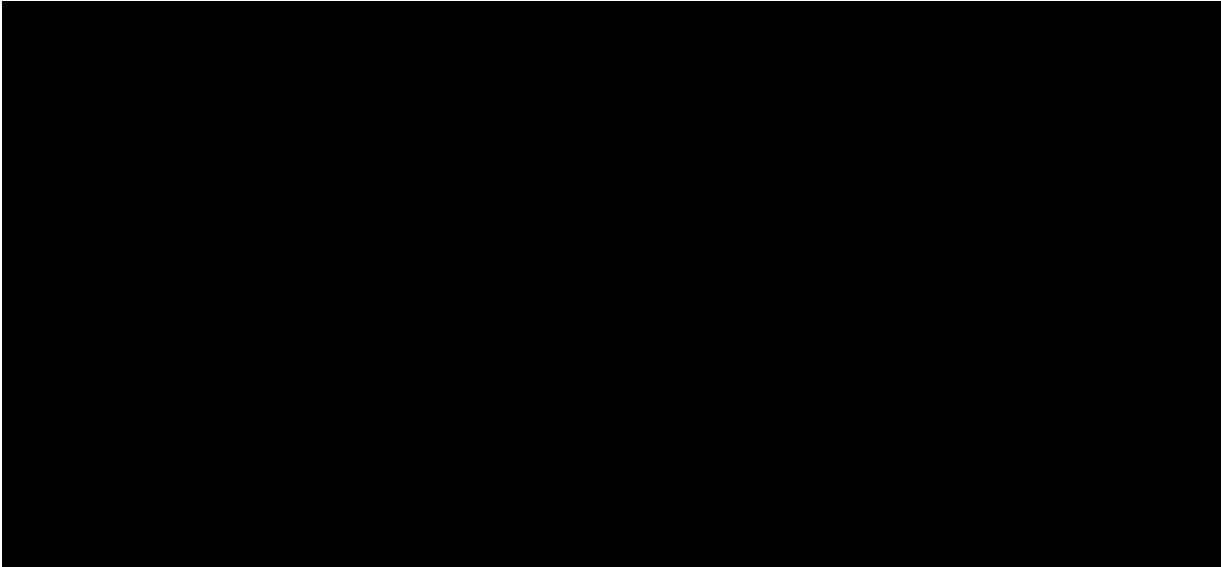
**11.15 Access by TSE Contractor**

Macquarie must provide the TSE Contractor (and any person authorised by the TSE Contractor) with such access to the Construction Site as is required by the TSE Contractor in order to meet its obligations under the TSE Contract and the TSE Cooperation and Integration Deed, including the rectification of:

- (a) any TSE Known Defects pursuant to clause 11.12(a)(iii); and
- (b) any TSE Defects pursuant to clause 11.13(c),

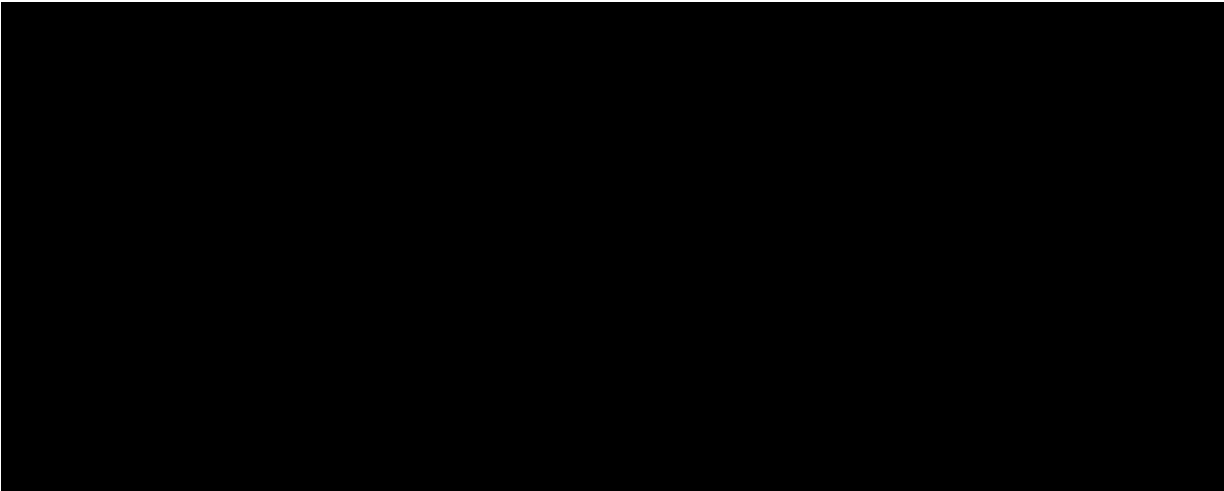
subject to the TSE Contractor complying with Macquarie's site access and work, health and safety procedures in accordance with the TSE Cooperation and Integration Deed and the deed poll referred to in clause 9.2(b).





11.18 **TSE Handover Works**

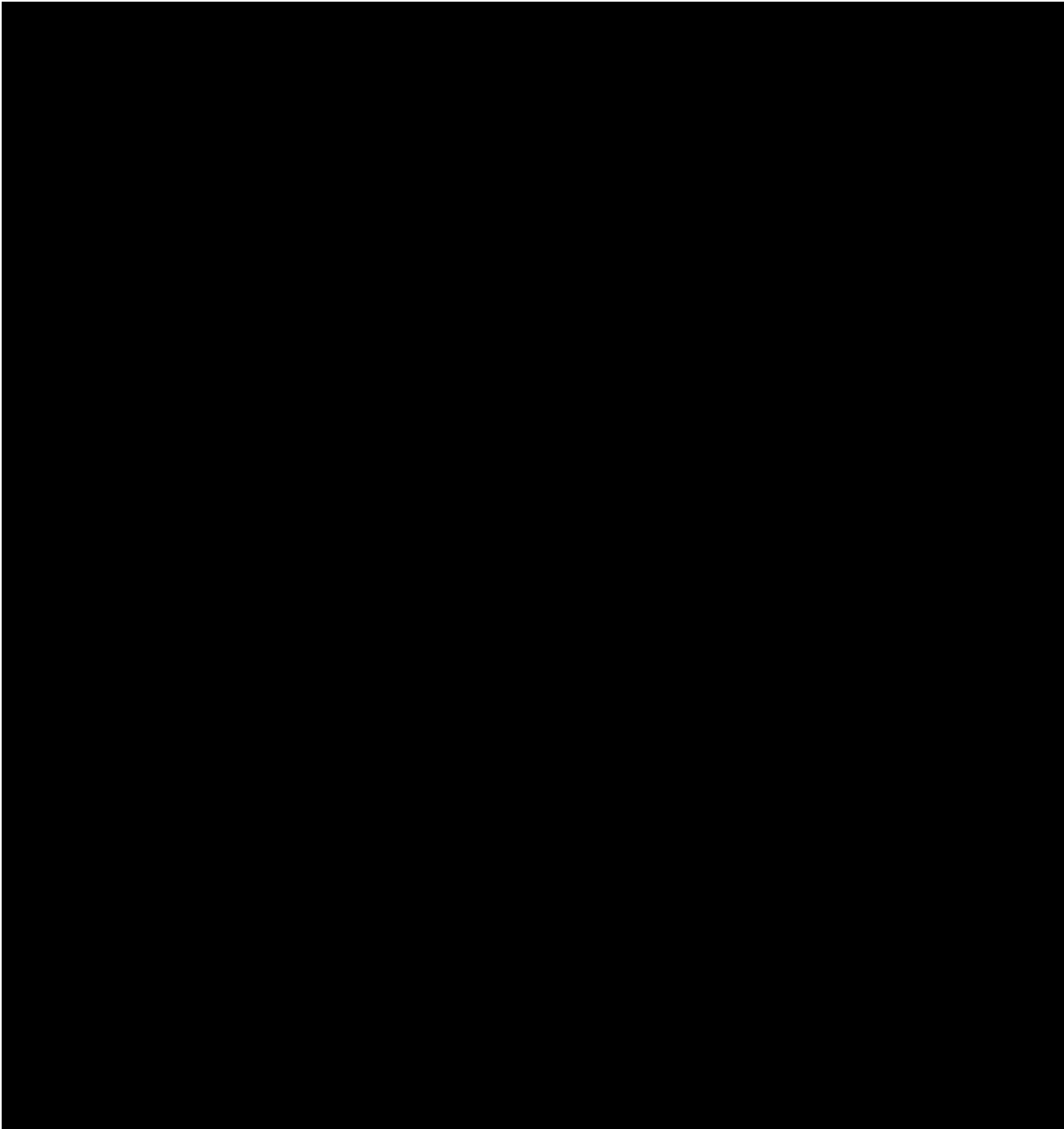
- (a) The Principal must, no later than 90 days before the TSE Date for Construction Completion:
  - (i) provide Macquarie with a list of the Handover Works that the TSE Contractor has constructed on the Construction Site; and
  - (ii) provide Macquarie with a reasonable opportunity to inspect the Handover Works.
- (b) Macquarie must, no later than 14 days after the date on which the Principal gives Macquarie the list referred to in clause 11.18(a), give the Principal a written notice of the Handover Works (if any) that Macquarie proposes will be removed from the Construction Site after TSE Construction Completion.
- (c) The Principal must procure the removal of the Handover Works referred to in Macquarie's notice from the Construction Site prior to the Construction Licence Commencement Date.
- (d) Without limiting clause 16, Macquarie bears all risks associated with any Handover Works on or about the Construction Site (other than Handover Works the subject of Macquarie's notice under clause 11.18(b)) and will not be entitled to make any Claim against the Principal arising out of or in connection with such risks.

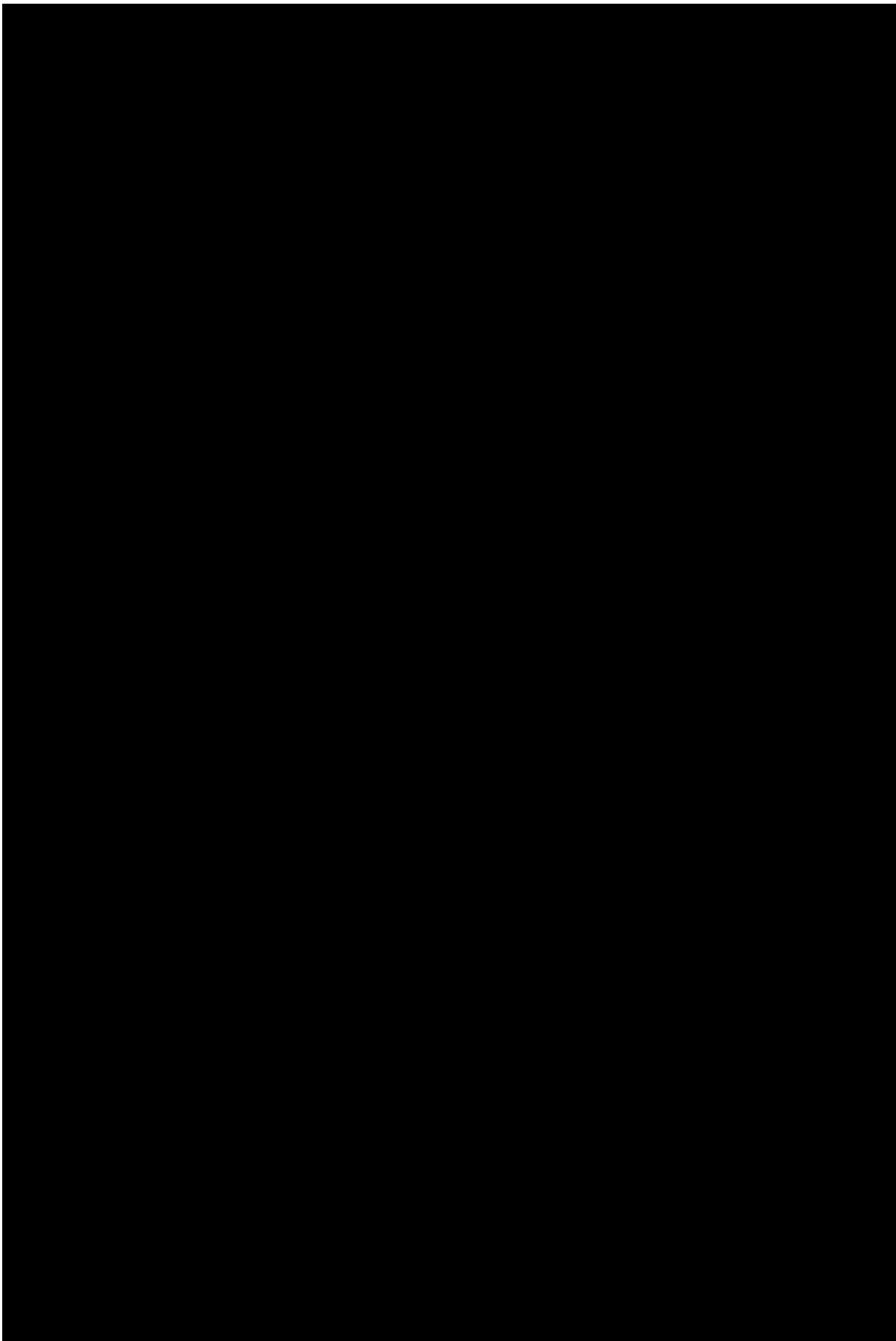


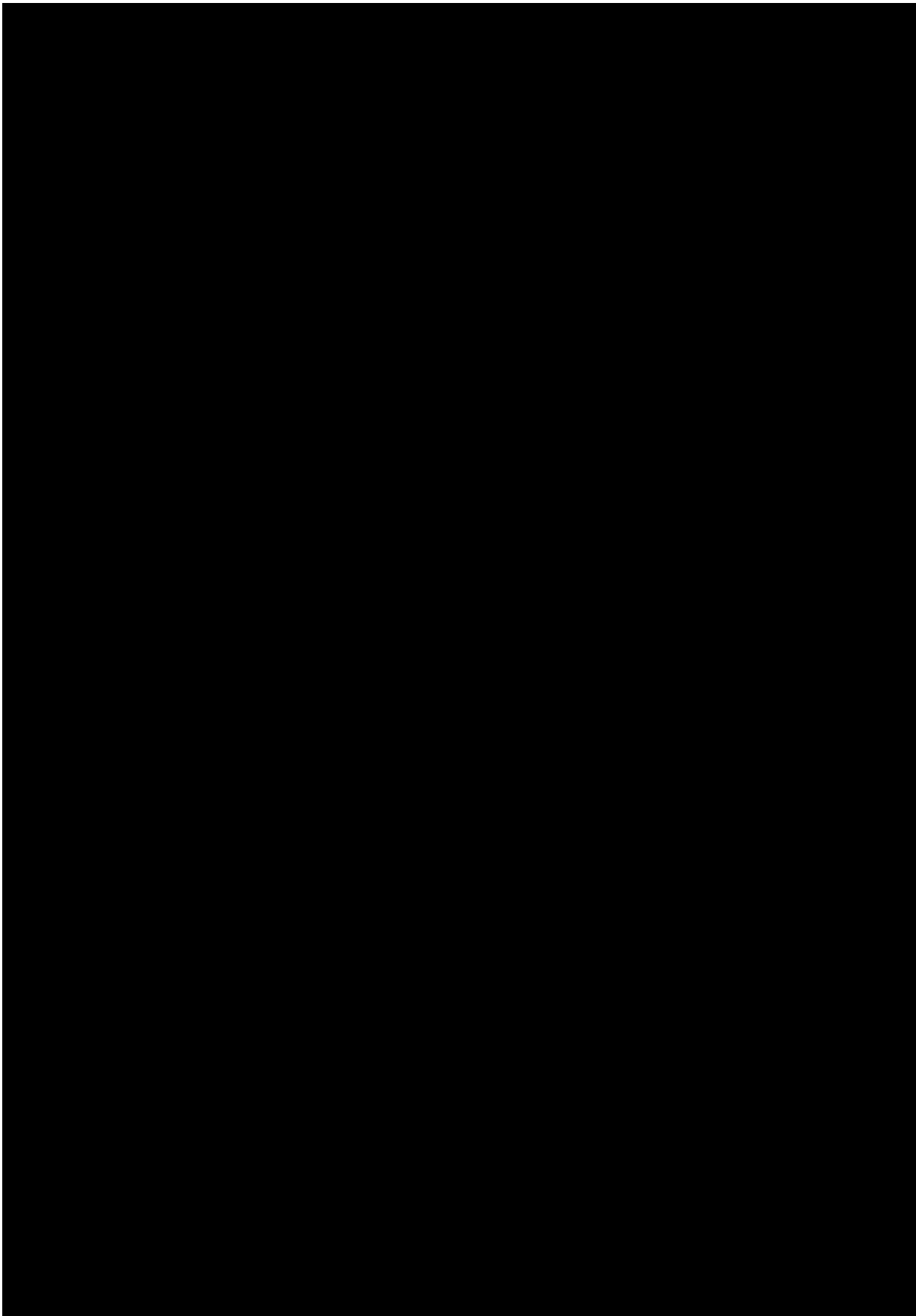


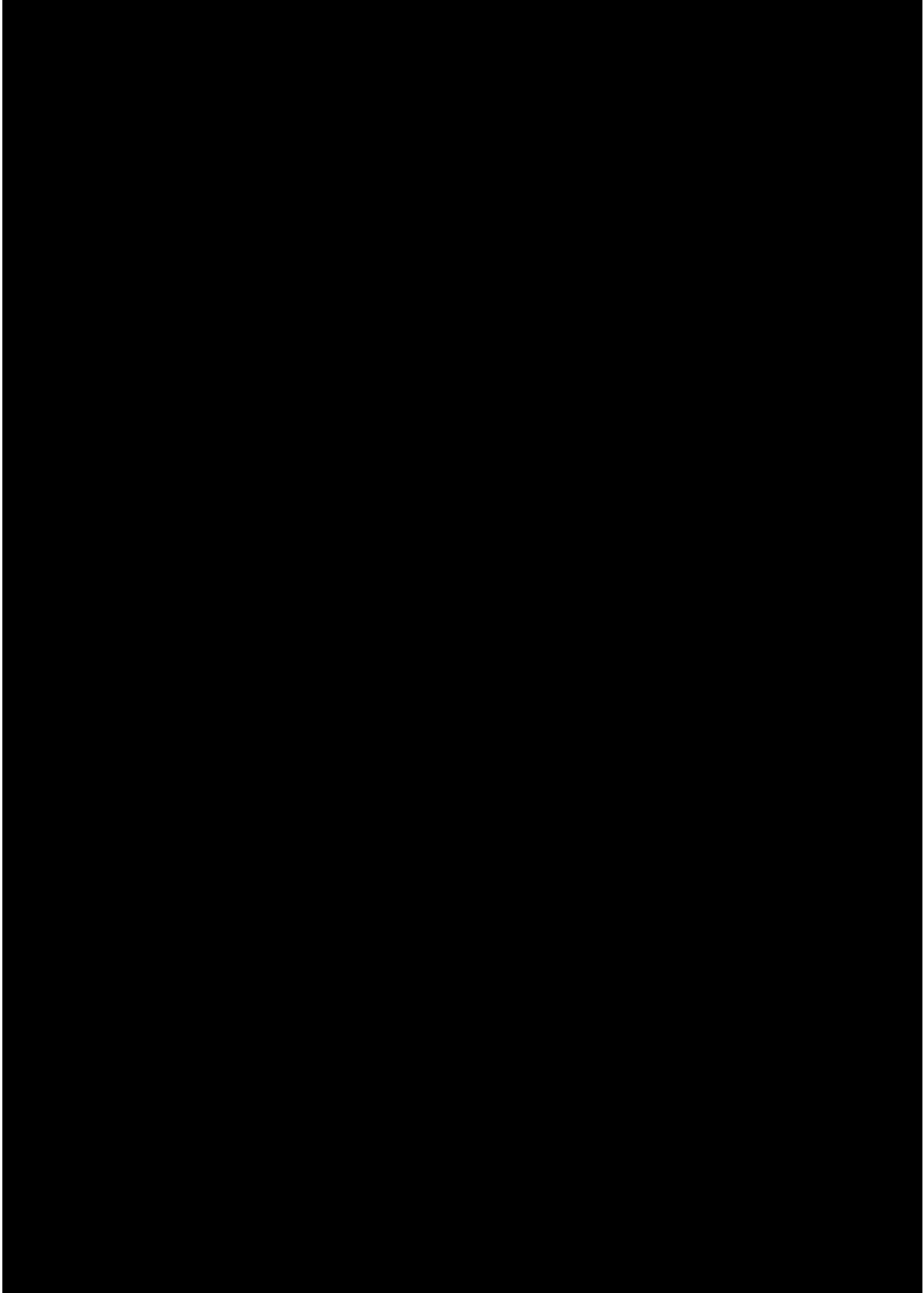
**11.20 Access by TSE Contractor to Principal Construction Site**

Despite any provision of this deed, the Principal must not provide Macquarie with access to any part of the Principal Construction Site (other than Construction Site (Area 1) and Construction Site (Area 6)) unless the TSE Contractor has achieved completion in relation to the TSE Works relevant to that part of the Principal Construction Site pursuant to the TSE Contract.









12.2 **Existing Operations**

(a) Macquarie acknowledges that:

- (i) Existing Operators must continue their Existing Operations during the course of the carrying out of Macquarie's Activities;
  - (ii) the access ways to the Construction Site are used by Existing Operators and will not be available exclusively to Macquarie; and
  - (iii) in using these access ways, Macquarie must ensure disturbance and inconvenience to the Existing Operations is minimised.
- (b) Macquarie bears the risk of:
- (i) co-ordinating its access to and from the Construction Site with any other relevant party (including Existing Operators) that use the access ways to the Construction Site; and
  - (ii) any delay and disruption to Macquarie's Activities which arises from any Existing Operations on or in the vicinity of the Construction Site.
- (c) Without limiting any other obligations of Macquarie, Macquarie must:
- (i) to the extent reasonably possible in performing the Project Works, not interfere with the free movement of traffic (vehicular, pedal cycle and pedestrian) into and out of, adjacent to, around, on or about the Construction Site or the Existing Operations or (except as an unavoidable consequence of performing the Project Works in accordance with this deed) block or impair access to any premises, carparks, roadways, pedestrian ways, public spaces, parks, pedal cycle paths, or other facilities associated with the Existing Operations and comply with the Principal's reasonable Directions in relation to them;
  - (ii) comply with the Principal's reasonable Directions in connection with:
    - (A) the Existing Operations (including access to and use of the Construction Site); and
    - (B) workplace health and safety issues to enable the Principal and Rail Contractors to comply with, and not place the Principal and Rail Contractors in breach of, their obligations under any Law relating to workplace health and safety;
  - (iii) comply with all policies, procedures and rules of the Principal applying from time to time (as notified by the Principal) in respect of the Existing Operations (including in relation to workplace health and safety and/or the Environment);
  - (iv) keep itself informed as to the requirements to comply with and not do anything which may place the Principal in breach of Law applying to the Existing Operations on or in the vicinity of the Construction Site;
  - (v) ensure that in carrying out and completing the Project Works, the Project Works properly interface and integrate with, and connect to, the physical infrastructure of the Existing Operations so as to enable the Project Works, when completed, to fully comply with the requirements of this deed; and
  - (vi) immediately:
    - (A) repair and make good any damage to the physical infrastructure of the Existing Operations to the extent arising out of or in any way in connection with the Project Works; and

- (B) when directed by the Principal's Representative, take such action as is required to ensure that its obligations in this clause 12.2(c) are complied with.
- (d) Except to the extent expressly permitted by this deed, Macquarie must:
  - (i) minimise disruption and interruption to, and interface with, the Existing Operations;
  - (ii) minimise any nuisance, unreasonable noise or inconvenience to the Existing Operations;
  - (iii) program and co-ordinate Macquarie's Activities under this deed using design and construct best practices and so as to minimise the effect that the carrying out of the Project Works under this deed has on the Existing Operations;
  - (iv) co-operate with Existing Operators;
  - (v) co-ordinate its activities with any activity of Existing Operators; and
  - (vi) protect all adjoining properties from damage which may arise from Macquarie's Activities.
- (e) Macquarie must ensure that its Associates at all times comply with this clause 12.2.

### 12.3 Pedestrian links proposed by Macquarie

- (a) The parties acknowledge that Macquarie intends to explore the viability and possibility of additional pedestrian links (including the Bligh Street Link) to and from the Principal's Land to manage and improve pedestrian flow in and around the Macquarie Land and the Principal's Land.
- (b) If Macquarie proposes a pedestrian link (including providing additional details or a proposal in relation to the Bligh Street Link), the Principal will:
  - (i) use reasonable endeavours to consider and to negotiate with Macquarie in good faith a mutually acceptable position on all delivery, operational and ownership issues relating to the pedestrian link proposed by Macquarie (including any costs and liabilities associated with these issues); and



- (c) If the parties agree in principle to proceed with a proposed pedestrian link (including the Bligh Street Link), and:
  - (i) if it is proposed that the Principal will own the proposed pedestrian link and the Principal reasonably considers that it should own the proposed pedestrian link:
    - (A) the Principal must issue a Variation Impact Request under clause 35 for the inclusion of the relevant pedestrian link in the Station Works, provided that:
      - (aa) the parties agree that the Principal is not required to accept the Variation Impact Proposal issued by Macquarie in response to the Variation Impact Request;



- (bb) the Principal may procure the works the subject of the proposed Variation Impact Request be conducted by another third party contractor; and
- (B) the parties must use reasonable endeavours to negotiate in good faith to reach a mutually acceptable position on:
  - (aa) the responsibility for the cost of the works associated with the inclusion of the relevant pedestrian link in the Station Works; and
  - (bb) any amendments to the Draft BMS, the Draft Section 88B Instrument and the Draft Subdivision Plan to incorporate the relevant pedestrian link as part of the Building (as that term is used and defined in the Draft BMS); or
- (ii) if it is proposed that the Principal will not own the proposed pedestrian link, the parties must use reasonable endeavours to negotiate in good faith to reach a mutually acceptable position on any amendments to this deed in order to enable the parties to design, construct, deliver and operate the proposed pedestrian link.

### 13. **INTERFACE WITH OSD AND RETAIL LESSEE**

#### 13.1 **Acknowledgements regarding OSD and Retail Lease interface**

The parties acknowledge that:

- (a) the Principal and the OSD Developer are party to the OSD PDA;
- (b) the OSD Developer may carry out the OSD Developer's Activities on the Construction Site pursuant to the OSD PDA, including prior to the Last Date of Completion;
- (c) the Principal will grant the OSD Developer a licence over the OSD Construction Site pursuant to clause 13 of the OSD PDA;

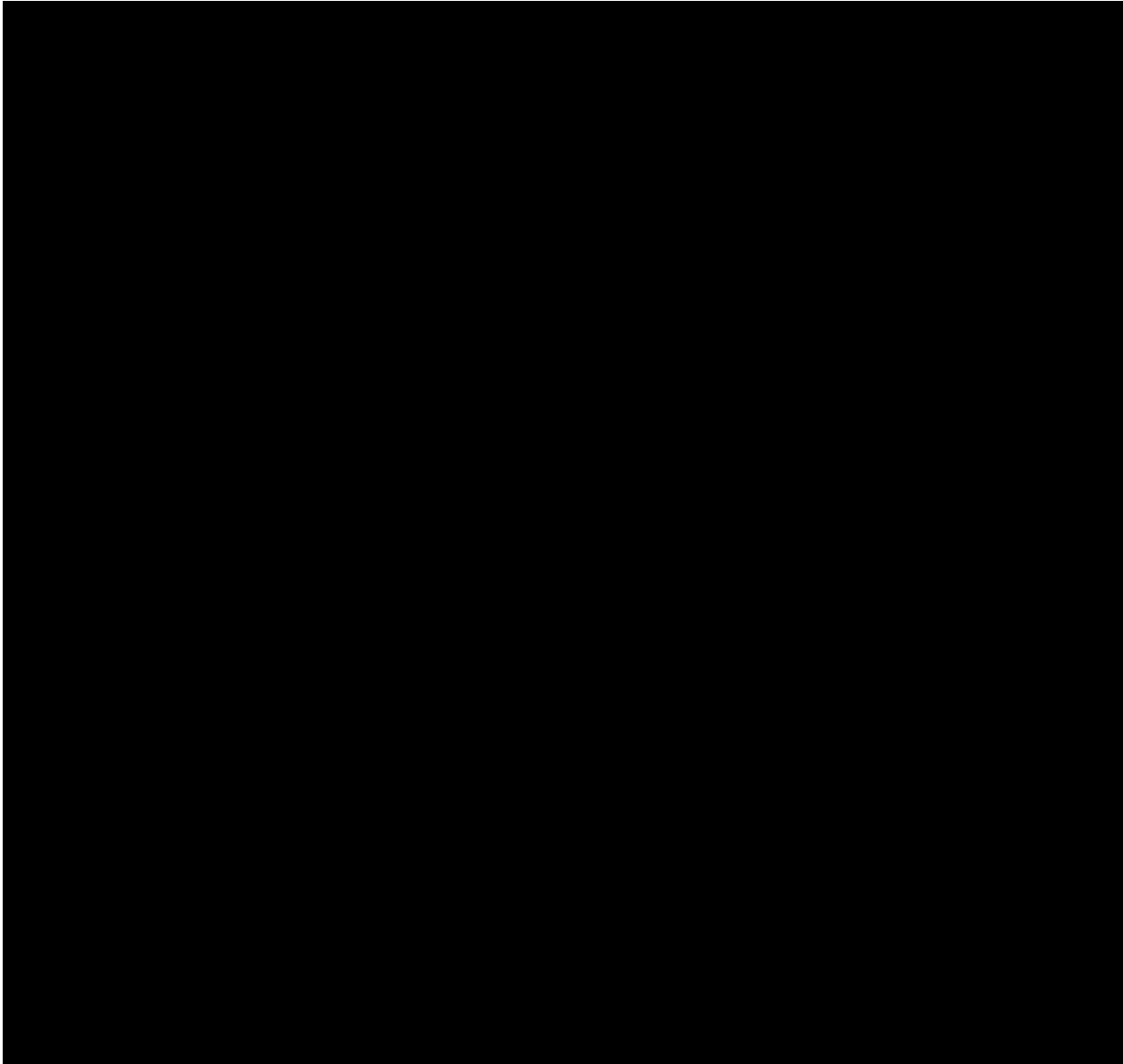


- (e) to the extent that Macquarie requires access to or a right to occupy or use:
  - (i) the OSD Construction Site, Macquarie must procure that access or right for itself from the OSD Developer; or
  - (ii) the Retail Lots after the commencement of the relevant Retail Lease, Macquarie must procure that access or right for itself from the relevant Retail Lessee or Sub-Tenant; and
- (f) Macquarie may permit the OSD Developer to access, occupy or use the Construction Site for the purposes of undertaking the OSD Developer's Activities as contemplated by clause 11 of the OSD PDA, provided that such access is subject to the same terms, conditions and restrictions as those that apply to access by Macquarie under this deed.

#### 13.2 **Procuring access to the OSD Construction Site**

Macquarie acknowledges and agrees that:

- (a) the Principal has no responsibility or obligation to procure the access or rights, or to assist Macquarie to procure the access or rights, referred to in clause 13.1(e); and
- (b) if Macquarie accesses, occupies or uses the OSD Construction Site and Retail Lots, it does so at its own Cost and risk.



#### 13.4 **OSD Step-in Events**

Notwithstanding any other provision of this deed or any other Project Document, if an OSD Step-in Event occurs and an OSD Step-in Party exercises any of the OSD Step-in Powers under clause 33 of the OSD PDA, Macquarie must:

- (a) cooperate with the OSD Step-in Party;
- (b) allow the OSD Step-in Party to access and use the Construction Site (to the extent necessary to enable the OSD Step-in Party to exercise the OSD Step-in Powers);
- (c) provide any information that the OSD Step-in Party reasonably requires to exercise the OSD Step-in Powers; and

- (d) ensure that its Significant Subcontractors, and use its best endeavours to ensure all other Subcontractors, do likewise,

and Macquarie will have no entitlement to make any Claim against the Principal or the OSD Step-in Party in relation to any action taken by the Principal or the OSD Step-in Party pursuant to this clause 13.4.

### 13.5 **Inconsistency**

The parties agree that, to the extent there is an inconsistency between this clause or clause 17, and clause 11 or clause 13 of the OSD PDA, the relevant provisions of this deed will prevail.

## 14. **NSW CODE AND NSW GUIDELINES**

### 14.1 **NSW Code and NSW Guidelines**

In addition to terms defined in this deed, terms used in this clause 14 have the same meaning as is attributed to them in the NSW Guidelines. The NSW Code and NSW Guidelines are available at [www.industrialrelations.nsw.gov.au](http://www.industrialrelations.nsw.gov.au).

### 14.2 **Primary obligation**

- (a) In carrying out Macquarie's Activities, Macquarie must at all times comply with, and meet any obligations imposed by, the NSW Code and the NSW Guidelines.
- (b) Macquarie must notify the Construction Compliance Unit and the Principal of any possible non-compliance with the NSW Code and NSW Guidelines and of remedial action taken, within 24 hours of becoming aware of the possible non-compliance.
- (c) Where Macquarie, DevCo or the D&C Contractor engage a Subcontractor or consultant, Macquarie must ensure that, and must ensure that DevCo and the D&C Contractor (as applicable) ensure that, the contract with the Subcontractor or consultant imposes on the Subcontractor or consultant equivalent obligations to those in this clause 14, including that the Subcontractor or consultant must at all times comply with, and meet any obligations imposed by, the NSW Code and the NSW Guidelines.
- (d) Macquarie must not appoint or engage another party in relation to Macquarie's Activities where that appointment or engagement would breach a sanction imposed on the other party in relation to the NSW Code or NSW Guidelines.

### 14.3 **Access and information**

- (a) Macquarie must maintain adequate records of compliance with the NSW Code and NSW Guidelines by it and its Subcontractors and consultants.
- (b) Macquarie must allow, and take reasonable steps to facilitate, authorised personnel (including personnel of the CCU) to:
  - (i) enter and have access to sites and premises controlled by Macquarie, including the Construction Site;
  - (ii) inspect any work, material, machinery, appliance, article or facility;
  - (iii) access information and documents;
  - (iv) inspect and copy any record relevant to the Project;

- (v) have access to personnel; and
- (vi) interview any person,

as is necessary for the authorised personnel to monitor and investigate compliance with the NSW Code and NSW Guidelines by Macquarie and its Subcontractors and consultants.

- (c) Macquarie must agree to, and comply with, any request from authorised personnel (including personnel of the CCU) for the production of specified documents by a certain date, whether in person, by post or electronic means.

#### 14.4 Sanctions

- (a) Macquarie warrants that, at the time of entering into this deed, neither it, nor any of its Related Entities, are subject to a sanction in connection with the NSW Code or NSW Guidelines that would have precluded it from responding to a procurement process for work to which the NSW Code and NSW Guidelines apply.
- (b) If Macquarie does not comply with, or fails to meet any obligation imposed by, the NSW Code or NSW Guidelines, a sanction may be imposed against it in connection with the NSW Code or NSW Guidelines.
- (c) Where a sanction is imposed:
  - (i) it is without prejudice to any rights that would otherwise accrue to the parties; and
  - (ii) the State (through its agencies, Ministers and the CCU) is entitled to:
    - (A) record and disclose details of non-compliance with the NSW Code or NSW Guidelines and the sanction; and
    - (B) take them into account in the evaluation of future procurement processes and responses that may be submitted by Macquarie, or its Related Entities, in respect of work to which the NSW Code and NSW Guidelines apply.

#### 14.5 Compliance

- (a) Macquarie bears the Cost of ensuring its compliance with the NSW Code and NSW Guidelines, including in respect of any positive steps it is obliged to take to meet its obligations under the NSW Guidelines. Macquarie is not entitled to make, and the Principal and the State will not be liable upon, any Claim against the Principal or the State arising out of or in any way in connection with Macquarie's compliance with the NSW Code and the NSW Guidelines.
- (b) Compliance with the NSW Code and NSW Guidelines does not relieve Macquarie from responsibility to perform Macquarie's Activities or any other obligation under this deed, or from Liability for any Defect in the Project Works or the Temporary Works or from any other legal liability, whether or not arising from its compliance with the NSW Code and NSW Guidelines.
- (c) Where a Variation is proposed that may be likely to affect compliance with the NSW Code and NSW Guidelines, Macquarie must immediately notify the Principal of:
  - (i) the extent to which compliance with the NSW Code and NSW Guidelines will be, or is likely to be, affected by the Variation; and

- (ii) the steps (if any) Macquarie proposes to take to mitigate any adverse impact of the Variation (including any amendments it proposes to the Workplace Relations Management Plan).

## 15. AUSTRALIAN GOVERNMENT REQUIREMENTS

### 15.1 Building Code

(a) Macquarie:

- (i) declares as at the Commencement Date; and
- (ii) must ensure during the term of this deed,

that, in relation to the Project Works and Temporary Works, it and its Subcontractors, consultants and each related entity:

- (iii) complies with, and acts consistently with, the Building Code;
- (iv) meets the requirements of section 11 of the Building Code;
- (v) is not subject to an Exclusion Sanction or a formal warning that any further failure to comply with the Building Code may result in the imposition of an Exclusion Sanction;
- (vi) has not been the subject of an adverse decision, direction or order, or failed to comply with a decision, direction or order, made by a court or tribunal for a breach of the BCIIIP Act, a designated building law, work health and safety law, competition and consumer law or the *Migration Act 1958* (Cth) (other than a decision, direction or order that is stayed or has been revoked);
- (vii) has not been required to pay any amount under an adjudication certificate or owed any unsatisfied judgement debts to a building contractor or building industry participant (as those terms are defined in the BCIIIP Act);
- (viii) only uses products that comply with the relevant Australian standards published by, or on behalf of, Standards Australia;
- (ix) unless approved by the ABC Commissioner, is not excluded from performing Building Work funded by a state or territory government; and
- (x) complies with the Workplace Relations Management Plan approved by the ABCC in accordance with Part 6 of the Building Code.

(b) Macquarie acknowledges and agrees that compliance with the Building Code does not relieve Macquarie from any responsibility or obligation under this deed, or from liability for any Defect arising from compliance with the Building Code.

(c) Macquarie must promptly:

- (i) notify the ABCC of:
  - (A) any breach or suspected breach of the Building Code as soon as practicable, but no later than 2 Business Days after becoming aware of the breach or suspected breach, and advise the ABCC of the steps proposed to be taken by Macquarie to rectify the breach; and
  - (B) the steps taken to rectify any breach of the Building Code within 14 days of providing a notification under clause 15.1(c)(i)(A); and

- (ii) give the Principal a copy of any notification given by Macquarie to the ABCC under clause 15.1(c)(i) and respond to any requests for information by the Principal concerning matters related to the Building Code so as to enable the Principal to comply with its obligations under section 28 of the Building Code.
- (d) Macquarie acknowledges the powers and functions of the ABC Commissioner and the ABCC under the BCIIIP Act and the Building Code and must ensure that it (and must procure that its Subcontractors, consultants and each related entity) complies with any requests made by the ABCC and the ABC Commissioner within those powers and functions, including requests:
  - (i) for entry under section 72 of the BCIIIP Act;
  - (ii) to interview any person under section 74 of the BCIIIP Act;
  - (iii) to produce records or documents under sections 74 and 77 of the BCIIIP Act; and
  - (iv) for information concerning matters relating to the Building Code under subsection 7(c) of the Building Code.
- (e) Macquarie must not, and must ensure that DevCo and the D&C Contractor do not, enter into a Subcontract for any aspect of the Project Works, the Temporary Works, or any aspect of Macquarie's Activities which constitutes "building work" as that term is defined in section 3(4) of the Building Code unless:
  - (i) the Subcontractor has submitted a Declaration of Compliance; and
  - (ii) the Subcontract with the Subcontractor includes an equivalent clause to this clause 15.
- (f) Macquarie must provide the Commonwealth with any Subcontractor's Declaration of Compliance referred to in clause 15.1(e) promptly upon request.
- (g) Macquarie must maintain adequate records of the compliance with the Building Code by:
  - (i) Macquarie;
  - (ii) the Subcontractors;
  - (iii) Macquarie's consultants; and
  - (iv) any related entity of Macquarie.
- (h) For the purposes of this clause 15.1, "related entity" has the meaning given to that term in subsection 3(2) of the Building Code.

## 15.2 **WHS Accreditation**

Macquarie:

- (a) represents and warrants to the Principal that the D&C Contractor is accredited under the WHS Accreditation Scheme;
- (b) must ensure that the D&C Contractor complies with all of the requirements of, and maintains accreditation under, the WHS Accreditation Scheme while building work (as defined in section 6 of the BCIIIP Act) is carried out; and

- (c) must ensure that all Subcontracts with Subcontractors carrying out work or providing services on the Construction Site impose obligations on those Subcontractors that enable Macquarie to comply with its obligations under this clause 15.2.

## 16. INFORMATION DOCUMENTS AND ENVIRONMENTAL ISSUES

### 16.1 Physical conditions

- (a) **(Examination and investigation):** Subject to clauses 16.2(e) and 16.4, Macquarie warrants that, prior to the Commencement Date, Macquarie:
  - (i) examined this deed (including the SWTC), the Project Documents, the TSE Contract and the Principal Construction Site, any Extra Land and its surroundings and any other information that was made available in writing by the Principal, TfNSW or any other person on the Principal's or TfNSW's behalf, to Macquarie or its Associates for the purpose of submitting its Binding Offer;
  - (ii) examined, and relied solely upon its own assessment, skill, expertise and enquiries in respect of, all information relevant to the risks, contingencies and other circumstances having an effect on the Binding Offer and its obligations under the Project Documents;
  - (iii) satisfied itself as to the correctness and sufficiency of the Binding Offer and that it has made adequate allowance for the costs of complying with all of its obligations under the Project Documents and of all matters and things necessary for the due and proper performance and completion of Macquarie's Activities;
  - (iv) informed itself of all matters relevant to the employment of labour and all industrial matters on the Construction Site;
  - (v) was given the opportunity prior to submitting its Binding Offer to itself undertake, and to request others to undertake, tests, enquiries and investigations:
    - (A) relating to the subject matter of the Information Documents;
    - (B) in connection with the TSE Contract; and
    - (C) for design purposes and otherwise;
  - (vi) had a sufficient opportunity to obtain and obtained all necessary legal, geotechnical and other technical advice in relation to the terms of this deed, the Project Documents, the TSE Contract, the Information Disclaimer, the Information Documents, the Site Conditions, as well as the risks, contingencies and other circumstances having an effect on the Binding Offer and the performance of its obligations and its potential liabilities under the Project Documents; and
  - (vii) had sufficient access to the Principal Construction Site, undertook sufficient tests, enquiries and investigations, had sufficient information and obtained a sufficient understanding of the risks involved to enable it to make an informed decision about whether or not to enter into the Project Documents and assume the obligations and potential risks and liabilities which it imposes on Macquarie.
- (b) **(Site Conditions):** Subject to clauses 11.13, 16.4, 23.11 and 24, Macquarie is responsible for, and assumes the risk of:

- (i) all Loss or delay it suffers or incurs; and
- (ii) any adverse effect on Macquarie's Activities,

arising out of, or in any way in connection with the Site Conditions encountered in performing Macquarie's Activities.

## 16.2 Information Documents

- (a) **(Information Disclaimer):** Prior to the Commencement Date, the Information Disclaimer was signed in respect of Information Documents provided by TfNSW to Macquarie and its Associates.
- (b) **(No warranty):** Without limiting clause 16.2(c) or the warranties in the Information Disclaimer:
  - (i) neither the Principal or TfNSW warrants, guarantees, assumes any duty of care or other responsibility for or make any representation about the accuracy, adequacy, suitability or completeness of the Information Documents;
  - (ii) Macquarie acknowledges that:
    - (A) whether or not an Information Document or any part thereof forms an exhibit or annexure to this deed, the Information Document or part thereof does not form part of this deed and clause 16.2(c) applies to the Information Document or part thereof; and
    - (B) where an Information Document or any part thereof forms an exhibit or annexure to this deed, it does so only for the purposes of identification of that document or part thereof; and
  - (iii) neither the Principal or TfNSW will be liable upon any Claim by Macquarie or its Associates arising out of or in any way in connection with:
    - (A) the provision of, or the purported reliance upon, or use of the Information Documents to or by Macquarie or its Associates or any other person to whom the Information Documents are disclosed; or
    - (B) a failure by the Principal or TfNSW to provide any information to Macquarie or its Associates, except where such failure is a breach of a Project Document.
- (c) **(No reliance):** Macquarie:
  - (i) subject to clause 16.2(e), warrants that it did not in any way rely upon:
    - (A) any Information Document or any other information, data, representation, statement or document made, or provided to Macquarie or its Associates, by the Principal, TfNSW or anyone on behalf of the Principal or TfNSW or any other information, data, representation, statement or document for which the Principal and/or TfNSW is responsible or may be responsible whether or not obtained from the Principal, TfNSW or anyone on behalf of the Principal or TfNSW; or
    - (B) the accuracy, adequacy, suitability or completeness of such Information Document or other information, data, representation, statement or document,



for the purposes of entering into the Project Documents or carrying out Macquarie's Activities but nothing in this clause 16.2(c) will limit or otherwise affect Macquarie's obligations under the Project Documents;

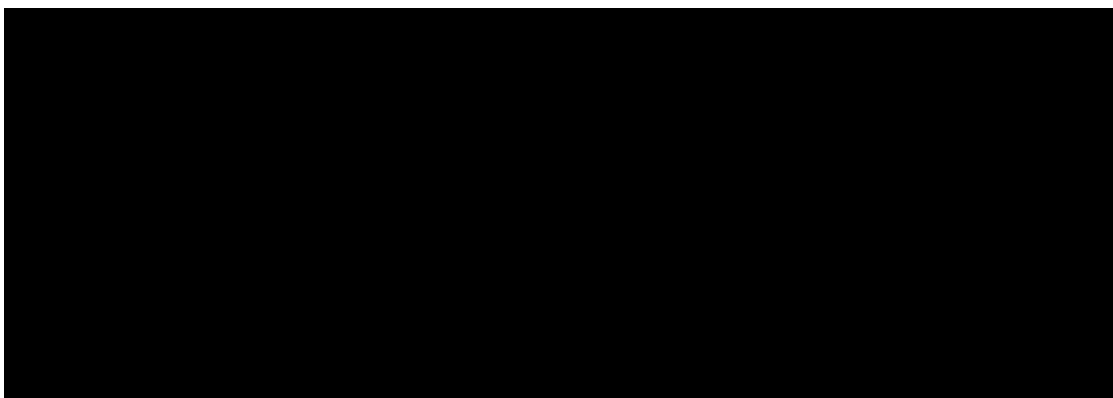
- (ii) subject to clause 16.2(e), warrants that it enters into the Project Documents based on its own investigations, interpretations, deductions, information and determinations; and
- (iii) acknowledges that it is aware that the Principal has entered into this deed relying upon:
  - (A) the warranties, acknowledgements and agreements in clauses 16.2(c)(i) and 16.2(c)(ii); and
  - (B) the agreements and acknowledgements in the Information Disclaimer and its Binding Offer.

(d) **(Release and indemnity)**: Macquarie releases and indemnifies the Principal and TfNSW from and against:

- (i) any Claim against the Principal and/or TfNSW by, or Liability of the Principal and/or TfNSW to, any person; or
- (ii) (without being limited by clause 16.2(d)(i)) any Loss incurred by the Principal and/or TfNSW,

arising out of or in any way in connection with:

- (iii) the provision of, or the purported reliance upon, or use of, the Information Documents to or by Macquarie or its Associates or any other person to whom the Information Documents are disclosed by Macquarie or a failure by the Principal and/or TfNSW to provide any information to Macquarie or its Associates;
- (iv) any breach by Macquarie of clause 16.1 or this clause 16.2; or
- (v) the Information Documents being relied upon or otherwise used by Macquarie or its Associates, or by any other person to whom the Information Documents are disclosed by Macquarie, in the preparation of any information or document, including any Information Document which is "misleading or deceptive" or "false and misleading" (within the meaning of those terms in sections 18 and 29 (respectively) of the Australian Consumer Law in Schedule 2 to the *Competition and Consumer Act 2010* (Cth) or any equivalent provision of State or Territory legislation),





16.3 **Condition of the Construction Site**

- (a) The Principal makes no representations and gives no warranty to Macquarie or its Associates in respect of:
- (i) the Site Conditions likely to be encountered during the execution of Macquarie's Activities or otherwise in respect of the condition of:
    - (A) the Construction Site, Extra Land or their surroundings; or
    - (B) any structure or other thing on, under, above or adjacent to the Construction Site or Extra Land;
  - (ii) the adequacy or suitability of the Construction Site or any Extra Land for Macquarie's Activities; or
  - (iii) the existence, location, condition or availability of Services on, under, above, adjacent to or related to the Construction Site or Extra Land.
- (b) Subject to clauses 11.13, 16.4, 23.11 and 24, Macquarie accepts:
- (i) the Principal Construction Site and any Extra Land; and
  - (ii) any structures or other things on, above or adjacent to, or under the surface of, the Principal Construction Site and any Extra Land,
- in their present condition subject to all defects and Site Conditions and agrees that it is responsible for, and assumes the risk of:
- (iii) all Loss, delay or disruption it suffers or incurs; and
  - (iv) any adverse effect on the Project Works, Macquarie's Activities, the Temporary Works and any part of the TSE Works during the period in which Macquarie is responsible for them in accordance with clause 11.11,
- arising out of, or in any way in connection with any defects or Site Conditions encountered in performing Macquarie's Activities.
- (c) Subject to clauses 11.13, 16.4, 23.11, 24 and 42.9, Macquarie assumes all risks associated with the Macquarie Land (including any defects or Site Conditions encountered on the Macquarie Land) and will not be entitled to make any Claim against the Principal arising out of or in connection with such risks.
- (d) Macquarie must investigate, design and construct the Project Works and Temporary Works in accordance with this deed and subject to clauses 11.13, 16.4(c), 16.4(d), 23.11 and 24, will not be relieved of its obligations under this deed, irrespective of:
- (i) the Site Conditions encountered in performing Macquarie's Activities;

- (ii) whatever may be the condition or characteristics (including all sub-surface conditions) of:
  - (A) the Construction Site or any Extra Land, the Environment or their surroundings; or
  - (B) any structure or other thing on, above or adjacent to, or under the surface of, the Construction Site or any Extra Land, the Environment or their surroundings; and
- (iii) any assumptions, projections, estimates, contingencies or otherwise that Macquarie or MCH may have made in relation to the Site Conditions or the conditions or the characteristics of any of the matters referred to in clause 16.3(d)(ii).

#### 16.4 Contamination

- (a) In addition to the requirements of the Environmental Documents and without limiting clauses 16.1 and 16.3 (but subject to clause 16.4(c) and 16.4(d), Macquarie bears the risk of all Contamination:
  - (i) on, in, over, under or about the Principal Construction Site to the extent it is actually disturbed by or interfered with in the carrying out of Macquarie's Activities, provided that Macquarie's risk and obligation to remediate is limited to that part of such Contamination which is actually disturbed by or interfered with in the carrying out of Macquarie's Activities (and not to remediate the entire mass of such Contamination or trace to the source of the Contamination, where that wider mass or source has not been disturbed or interfered with in the carrying out of Macquarie's Activities);
  - (ii) which migrates:
    - (A) on to the Principal Construction Site as a result of Macquarie's Activities and which could have been reasonably anticipated by a competent and experienced contractor that had examined:
      - (aa) the Principal Construction Site and its surroundings; and
      - (bb) all Information Documents and any other information that was made available in writing by the Principal, TfNSW, or by any other person on the Principal's or TfNSW's behalf, to Macquarie prior to the Commencement Date,
 provided that Macquarie is not required to trace to the source of such Contamination; or
    - (B) from the Principal Construction Site as a result of Macquarie's Activities due to a breach of a Project Document by Macquarie or a negligent or unlawful act or omission of Macquarie or its Associates,
 and Macquarie shall not otherwise be required to remediate Contamination which migrates on to or from the Principal Construction Site except to the extent Macquarie is required to remediate any migrating Contamination pursuant to clause 16.4(c);
  - (iii) on, in, over, under or about any Extra Land or which migrates onto or from any Extra Land as a result of Macquarie's Activities;

- (iv) on, in, over, under or about the Macquarie Construction Site or which migrates onto or from the Macquarie Construction Site; or
  - (v) to the extent it otherwise arises out of or in connection with Macquarie's Activities, provided that this clause 16.4(a)(v) shall not operate to expand Macquarie's risk in respect of Contamination of the type dealt with in clauses 16.4(a)(i), (ii) or (iii).
- (b) To the extent that Macquarie bears the risk of Contamination under clause 16.4(a), Macquarie must undertake Remediation of any such Contamination in accordance with Law, the Environmental Documents and all guidelines made or approved by the EPA so that:
- (i) in respect of Contamination on, in, over, under or about the Principal Construction Site:
    - (A) the Principal Construction Site is suitable for the performance of Macquarie's Activities and the further construction, operation and maintenance of Sydney Metro City & Southwest; and
    - (B) whole of life costs associated with the further construction, operation and maintenance of Sydney Metro City & Southwest at the relevant parts of the Principal Construction Site where the Remediation is undertaken are minimised; and
  - (ii) in respect of any Contamination in, on, over, under or about any land outside the Principal Construction Site (including any Extra Land), so that the Relevant Land is returned to the state that it would have been in if unaffected by Macquarie's Activities (unless otherwise agreed with the relevant third party).
- (c) If:
- (i) Contamination on, in, over, under or about the Principal Construction Site is caused by the Principal or its Associates after the Commencement Date and such Contamination is disturbed by or interfered with in the carrying out of Macquarie's Activities, clause 16.4(b) will apply; or
  - (ii) Macquarie is otherwise required by Law, an Authority or this deed to undertake Remediation of Contamination for which Macquarie is not responsible under clause 16.4(a), Macquarie must comply with its obligations at Law, under the Environmental Documents and all guidelines made or approved by the EPA in respect of any such requirement,
- however:
- (iii) where such compliance causes Macquarie to incur greater cost than otherwise would have been incurred had the Contamination not been caused by the Principal or its Associates, or Macquarie had not been required by Law, an Authority or this deed to remediate such Contamination (as applicable), the difference will be dealt with and valued as if it were a Variation; and
  - (iv) Macquarie will be entitled to an extension of time to any relevant Date for Milestone Achievement, Date for Construction Completion or Date for Completion under clause 23 if the requirements of that clause are satisfied.
- (d) Without limiting clause 11.5 and Schedule A21, the parties acknowledge that, under the TSE Contract, the TSE Contractor must remediate certain Contamination:

- (i) on, in, over, under or about the Construction Site which is disturbed by or interfered with in the carrying out of the TSE Contractor's Activities;
- (ii) which migrates to or from the Construction Site as a result of the TSE Contractor's Activities; and
- (iii) which otherwise arises out of or in connection with the TSE Contractor's Activities,

and that Macquarie will not be responsible for any Contamination on, in, over, under, about or migrating to or from the Construction Site under clause 16.4(a) to the extent that the TSE Contractor is required to remediate that Contamination under the TSE Contract.

- (e) For the purposes of this clause 16.4, Lot 1 in Deposited Plan 52616 (known as 9-19 Elizabeth Street) and the land on which the North Shaft Elongation Works will be carried out by Macquarie shall be treated as part of the Macquarie Construction Site.

## 16.5 Environmental compliance

Macquarie must:

- (a) **(no improper use of Construction Site or Extra Land)**: not use the Construction Site or any Extra Land, or allow Subcontractors to use the Construction Site or any Extra Land, so that:
  - (i) any Hazardous Chemical is abandoned or dumped on the Construction Site or Extra Land;
  - (ii) any Hazardous Chemical is handled in a manner which is likely to cause an Environmental Hazard; or
  - (iii) any other substance is released from, deposited to, or emanates from, the Construction Site or Extra Land such that a state of Contamination occurs except where such release, deposit or emanation was an unavoidable consequence of performing Macquarie's Activities in accordance with Good Industry Practice and otherwise in accordance with the requirements of this deed;
- (b) **(be environmentally responsible)**: at all times carry out, and ensure that Subcontractors carry out, Macquarie's Activities in an environmentally responsible manner, in accordance with Good Industry Practice, and so as to protect the Environment and keep the Construction Site and any Extra Land in a good and safe condition;
- (c) **(comply with Environmental laws)**: without limiting clause 5:
  - (i) comply with, and ensure that Subcontractors in performing Macquarie's Activities comply with:
    - (A) all Laws relating to the Environment;
    - (B) subject to Schedule D2, the Planning Approvals; and
    - (C) without limiting clause 16.4, all Environmental Notices arising out of or in connection with Macquarie's Activities; and
  - (ii) obtain and comply with all requirements of, and ensure that Subcontractors in performing Macquarie's Activities obtain and comply with all requirements

of, any Approvals required in order to release or emit anything from the Construction Site into the air or onto the ground or otherwise into the Environment or to emit any substantial noise or vibrations;

- (d) **(Corporate Environmental Management System)**: have a Corporate Environmental Management System which complies with the Law and is otherwise in accordance with the New South Wales Government Environmental Management System Guidelines (3rd Edition) (August 2013);
- (e) **(notification)**: notify the Principal in writing as soon as practicable after Macquarie:
  - (i) becomes aware of any non-compliance with the requirements of any Law or Approval regarding the Environment, or any Environmental Document, in the performing of Macquarie's Activities;
  - (ii) becomes aware of any information, fact or circumstance where, if the Principal were to be aware of such information, fact or circumstance, the Principal would be required to notify any Authority of that information, fact or circumstance pursuant to any Law relating to the Environment (without limiting any other obligation of Macquarie in relation to the information, fact or circumstances); or
  - (iii) notifies any Authority of any matter pursuant to any Law relating to the Environment, in which case Macquarie must provide to the Principal a copy of such notification and of any subsequent correspondence with the Authority in relation to the subject of the notification; and
- (f) **(indemnity)**: indemnify the Principal against any Loss incurred by the Principal arising out of or in any way in connection with an Environmental Notice received by the Principal to the extent that it arises out of or in connection with any Contamination:
  - (i) caused by Macquarie in connection with Macquarie's Activities; or
  - (ii) that occurs as a result of a breach by Macquarie of this deed,and release the Principal from and against any Claim against the Principal by Macquarie, or liability of the Principal arising out of or in any way in connection with any Contamination for which Macquarie is responsible under this deed.

## 16.6 Environmental Management Plans

Macquarie:

- (a) must prepare the Environmental Management Plans in accordance with the requirements applicable to an "Environmental Management Plan" set out in the New South Wales Government Environmental Management System Guidelines (3rd Edition) (August 2013);
- (b) must comply with, and ensure that Subcontractors in performing Macquarie's Activities comply with, the Environmental Management Plans; and
- (c) will not be relieved from compliance with any of its obligations or its liabilities whether under the Project Documents or otherwise according to Law as a result of:
  - (i) compliance with the Environmental Management Plans;
  - (ii) any audits or other monitoring by the Principal's Representative of Macquarie's compliance with the Environmental Management Plans; or

- (iii) any failure by the Principal's Representative, or anyone else acting on behalf of the Principal, to detect any non-compliance including where any failure arises from any negligence on the part of the Principal's Representative or other person.

#### 16.7 **Liability under the NGER Legislation**

- (a) Without limiting any other clause in this deed, Macquarie acknowledges and agrees that if Macquarie's Activities constitute a "facility" within the meaning of the NGER Legislation, then for the purposes of the NGER Legislation, it has operational control of that facility or facilities and will comply with any obligations arising in respect of Macquarie's Activities under the NGER Legislation.
- (b) If, for the purpose of the NGER Legislation, Macquarie is not taken to have operational control of the facility or facilities referred to in clause 16.7(a):
  - (i) Macquarie must comply with any obligations arising under the NGER Legislation in respect of Macquarie's Activities as if it was the person with operational control of such facility or facilities; and
  - (ii) where section 11B(1) of the NGER Legislation applies, Macquarie agrees that upon written request by the Principal the parties will, for the purposes of the NGER Legislation, jointly nominate Macquarie as the person with operational control of such facility or facilities (with such nomination continuing until the completion of Macquarie's Activities) and will do all things reasonably necessary to give effect to such nomination (including providing all relevant information and completing and executing all relevant documents and forms).
- (c) If, despite the operation of clauses 16.7(a) and 16.7(b), the Principal incurs, or but for this clause would incur, a liability under or in connection with the NGER Legislation as a result of or in connection with Macquarie's Activities, and the NGER Legislation provides:
  - (i) that such liability can be transferred by the Principal to Macquarie; or
  - (ii) for a declaration or other mechanism by which Macquarie can become the person with such liability under the NGER Legislation,

Macquarie must, upon written request by the Principal, do all things reasonably necessary to achieve such outcome (including providing all relevant information and completing and executing all relevant documents and forms).

#### 16.8 **Provision of Emissions and Energy Data to the Principal**

- (a) Macquarie must provide Macquarie's Emissions and Energy Data to the Principal's Representative:
  - (i) at such times as may be agreed by the Principal and Macquarie, or, if no such agreement is reached, within 10 Business Days after receiving written notice from the Principal indicating that it requires Macquarie's Emissions and Energy Data to be provided; and
  - (ii) on each occasion that Macquarie is required to provide Macquarie's Emissions and Energy Data to an Authority under the NGER Legislation or any other applicable Law.
- (b) The Principal may use Macquarie's Emissions and Energy Data for any purpose as it sees fit.

## 16.9 Reporting Emissions and Energy Data

- (a) This clause 16.9 applies if despite the operation of clause 16.7, the Principal incurs a liability under or in connection with the NGER Legislation as a result of or in connection with Macquarie's Activities.
- (b) Macquarie must assist the Principal to comply with the NGER Legislation in relation to any aspect of Macquarie's Activities.
- (c) Without limiting clause 16.9(b), if the Principal notifies Macquarie in writing that Macquarie is required to provide Macquarie's Emissions and Energy Data to the Principal, then Macquarie must:
  - (i) provide Macquarie's Emissions and Energy Data to the Principal in the same manner, form and level of detail, based on the same methods and at the same times:
    - (A) as if Macquarie were obliged under the NGER Legislation or any other applicable Law to provide Emissions and Energy Data to an Authority and the Principal was that Authority;
    - (B) in accordance with the requirements or Approvals of any Authority and any Directions given by the Principal; and
    - (C) without limiting clauses 16.9(c)(i)(A) or 16.9(c)(i)(B), as required to enable the Principal:
      - (aa) to discharge, as and when they fall due, any obligations that it may have to provide Macquarie's Emissions and Energy Data to any Authority; and
      - (bb) to provide to any Authority any Macquarie's Emissions and Energy Data concerning any greenhouse gas project;
  - (ii) keep all such Macquarie's Emissions and Energy Data required to enable it to discharge its obligations under clause 16.9(c)(i);
  - (iii) retain records of its activities that are the basis of Macquarie's Emissions and Energy Data for any financial year, for a period of not less than 7 years from the end of the year in which the relevant activities take place; and
  - (iv) permit Macquarie's Emissions and Energy Data to be examined, monitored, measured, copied, audited and verified by any persons appointed or authorised for that purpose by the Principal or any Authority, and co-operate with and provide all reasonable assistance to any such persons, including giving access to premises, plant and equipment, producing and giving access to documents (including any records kept and retained under clauses 16.9(c)(ii) and 16.9(c)(iii)) and answering questions.
- (d) Macquarie acknowledges and agrees that:
  - (i) Macquarie's Emissions and Energy Data is provided to the Principal:
    - (A) to discharge any obligations that the Principal may have to provide such Emissions and Energy Data to an Authority; and
    - (B) so that the Principal may provide to any Authority any Macquarie's Emissions and Energy Data concerning any greenhouse gas project;



- (ii) the Principal may provide or otherwise disclose Macquarie's Emissions and Energy Data to any Authority; and
- (iii) nothing in this clause 16.9 is to be taken as meaning that the Principal has agreed to perform on behalf of Macquarie, any obligation that Macquarie itself may have under any legislative requirement regarding the provision of Emissions and Energy Data to any Authority (including any obligation under the NGER Legislation).

## 17. COMMENCEMENT OF WORKS AND ACCESS

### 17.1 Interim Access Licence and interface coordination

- (a) The Principal may give Macquarie written notice when a part of the TSE Site is Accessible.
- (b) Subject to clauses 17.1(c) and 17.5, if the Principal gives Macquarie a notice in accordance with clause 17.1(a), the Principal must grant to Macquarie a non-exclusive licence to access and use, and to permit its Subcontractors to access and use, each Accessible part of the TSE Site the subject of a notice from the Principal to Macquarie under clause 17.1(a) for the purpose of performing Macquarie's Activities.
- (c) Each Interim Access Licence:
  - (i) commences on the first day of the Interim Access Period; and
  - (ii) terminates on the earlier of:
    - (A) the last day of the Interim Access Period; and
    - (B) termination of this deed;
  - (iii) is personal in nature and does not create any entitlement or interest in the TSE Site; and
  - (iv) is subject to:
    - (A) the restrictions upon the access, possession and use of that part of the TSE Site referred to in the Site Access Schedule, the Project Cooperation and Integration Deeds and Schedule D3; and
    - (B) Macquarie and the D&C Contractor executing a deed poll in favour of the TSE Contractor in the form of Schedule A12 to the TSE Contract if requested to do so by the Principal.
- (d) If the Principal grants Macquarie an Interim Access Licence pursuant to clause 17.1(b), Macquarie may, but is not obliged to, access and use the Accessible part of the TSE Site the subject of that Interim Access Licence.
- (e) Without limiting Macquarie's obligations under the TSE Cooperation and Integration Deed, to the extent that Macquarie uses or accesses the Accessible part of the TSE Site during the Interim Access Period, Macquarie:
  - (i) acknowledges that during an Interim Access Period:
    - (A) Macquarie's Activities interface with the TSE Works; and
    - (B) the TSE Contractor may be executing work on parts of the TSE Site at the same time as Macquarie is performing Macquarie's Activities; and

- (C) the TSE Contractor will be engaged as principal contractor in respect of the TSE Site;
- (ii) must at all times:
  - (A) fully co-operate with the TSE Contractor;
  - (B) carefully coordinate and interface Macquarie's Activities with the TSE Works;
  - (C) perform Macquarie's Activities so as to minimise any interference with or disruption or delay to the TSE Works; and
  - (D) attend coordination meetings as required in accordance with the TSE Cooperation and Integration Deed; and
- (iii) must promptly advise the Principal's Representative of all matters arising out of Macquarie's access to any part of the TSE Site that may have an adverse effect upon Macquarie's Activities.
- (f) Macquarie agrees that, except where expressly provided under this deed, Macquarie:
  - (i) will have no Claim; and
  - (ii) will not assert any right whatsoever,

against the Principal arising out of, or in relation to, Macquarie accessing any part of the TSE Site during an Interim Access Period or any failure by the Principal to notify Macquarie that any part of the TSE Site is Accessible or grant Macquarie an Interim Access Licence (including under clauses 23.11 and 24).

## 17.2 Construction Licence

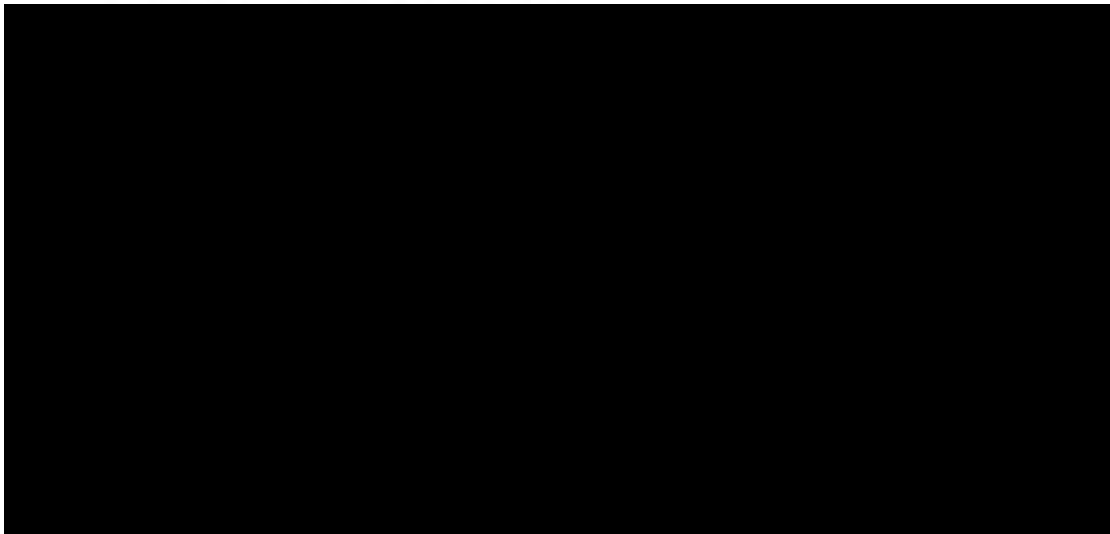
- (a) The Principal must provide Macquarie with access to each part of the Principal Construction Site by the relevant Site Access Date for that part in accordance with the Site Access Schedule.
- (b) Subject to clause 17.2(c) and clause 17.5, the Principal grants to Macquarie a non-exclusive licence to use and occupy, and to permit its Subcontractors and Sub-Tenants to use and occupy, the Principal Construction Site for the purposes of performing Macquarie's Activities in accordance with this deed and, in respect of Construction Site (Area 1) only, for the purposes described in clause 17.3(d), and Macquarie accepts the grant of that licence.
- (c) The Construction Licence:
  - (i) commences in respect of each part of the Principal Construction Site on:
    - (A) in relation to:
      - (aa) Construction Site (Area 1), the Commencement Date; and
      - (bb) Construction Site (Area 2), the Site Access Date for Construction Site (Area 2) set out in section 3 of the Site Access Schedule; and
    - (B) in relation to Construction Site (Area 3), Construction Site (Area 4), Construction Site (Area 5) and Construction Site (Area 6):

- (aa) where the Principal has not issued a notice under clause 17.2(e) in relation to that part of the Principal Construction Site, the date on which Macquarie is granted access for that part of the Principal Construction Site; and
    - (bb) where the Principal has issued a notice under clause 17.2(e) in relation to that part of the Principal Construction Site, the date in accordance with clause 17.2(f), 17.2(g)(i) or 17.2(g)(ii)(B); and
  - (ii) subject to clause 17.2(c)(iii), terminates in respect of each part of the Principal Construction Site on the earlier of:
    - (A) if:
      - (aa) a Site Access Expiry Date is specified in the Site Access Schedule with respect to the relevant part of the Principal Construction Site; and
      - (bb) Macquarie has not provided the Principal with a notice under clause 17.2(h) with respect to the relevant part of the Principal Construction Site,  
  
the Site Access Expiry Date for that part of the Principal Construction Site;
    - (B) if the relevant part of the Principal Construction Site forms part of a Retail Lot, the grant of the relevant Retail Lease;
    - (C) if the relevant part of the Principal Construction Site forms part of the 50 Martin Place Ancillary Amenities Lot, the earlier of the Last Date of Completion and the date on which the 50 Martin Place Ancillary Amenities Lot is transferred by the Principal to Macquarie Bank Limited under clause 31.11; and
    - (D) the relevant Portion Handover Date;
  - (iii) subject to clause 45.11(b), on the termination of this deed;
  - (iv) is personal in nature and does not create any entitlement or interest in the Principal Construction Site; and
  - (v) is subject to restrictions upon the access, possession and use of the Principal Construction Site referred to in the Site Access Schedule, the Project Cooperation and Integration Deeds and Schedule D4.
- (d) The Principal's Representative must give Macquarie:
  - (i) 6 months;
  - (ii) 3 months;
  - (iii) 1 month; and
  - (iv) 1 week,prior notice of the estimated TSE Date of Construction Completion.

- (e) If the TSE Date of Construction Completion is earlier than a Site Access Date, the Principal's Representative may (but is not obliged to) give written notice offering Macquarie access to the relevant part of the Principal Construction Site from a specified date prior to the Site Access Date.
- (f) If the date specified in the notice given by the Principal's Representative pursuant to clause 17.2(e) is on or later than the Early Site Access Date, then:
  - (i) Macquarie must accept the relevant part of the Principal Construction Site from the date specified in the notice given by the Principal's Representative pursuant to clause 17.2(e); and
  - (ii) the Construction Licence will commence with respect to the relevant part of the Principal Construction Site from the date specified in the Principal's Representative's notice.
- (g) If the date specified in the notice given by the Principal's Representative pursuant to clause 17.2(e) is earlier than the Early Site Access Date, Macquarie must, within 10 Business Days after receiving a notice under clause 17.2(e):
  - (i) accept the offer of early access by written notice, in which case the Construction Licence will commence with respect to the relevant part of the Principal Construction Site from the date specified in the Principal's Representative's notice or such other date as may be agreed by the parties; or
  - (ii) decline the offer of early access by written notice, in which case:
    - (A) Macquarie must accept the Principal Construction Site from the Early Site Access Date; and
    - (B) the Construction Licence will commence from the Early Site Access Date for the relevant part of the Principal Construction Site,

and if Macquarie fails to respond to the notice, Macquarie is deemed to have declined the offer of early access and clause 17.2(g)(ii) applies.
- (h) Subject to clause 17.2(i), if Macquarie requires access to a part of the Principal Construction Site for which a Site Access Expiry Date is specified in the Site Access Schedule after the applicable Site Access Expiry Date in order to carry out Macquarie's Activities, Macquarie must:
  - (i) notify the Principal's Representative in writing as soon as practicable, and in any event no less than 20 Business Days, prior to the applicable Site Access Expiry Date:
    - (A) that Macquarie requires access to that part of the Principal Construction Site after the Site Access Expiry Date; and
    - (B) of the date on which Macquarie will vacate the relevant part of the Principal Construction Site;
  - (ii) notify the Principal's Representative at least once every 20 Business Days after Macquarie has first given notice under clause 17.2(h)(i) of any change to the date on which Macquarie will vacate that part of the Principal Construction Site until Macquarie vacates that part of the Principal Construction Site;

- (iii) use its best endeavours to vacate that area of the Principal Construction Site as soon as practicable after the Site Access Expiry Date; and
  - (iv) immediately notify the Principal's Representative after Macquarie has vacated the relevant part of the Principal Construction Site.
- (i) Clause 17.2(h) and clause 23.11(b) do not apply to extend the Site Access Expiry Dates for the parts of the Construction Site referred to in:
- (i) rows 3 and 5 of the table in paragraph 5 in the Site Access Schedule beyond [REDACTED] in which case, access cannot extend beyond the relevant lease expiry date); and
  - (ii) ~~paragraph 7 in the Site Access Schedule beyond [REDACTED]~~ not used, and Macquarie must vacate that part of the Principal Construction Site by such date.
- (j) Clauses 17.2(e), 17.2(f) and 17.2(g) do not apply in relation to Construction Site (Area 1) or Construction Site (Area 2).



- (l) Notwithstanding clause 17.2(d), the Principal must:
- (i) give written notice to Macquarie informing it of the anticipated Construction Licence Commencement Date for Construction Site (Area 4); and
  - (ii) if, after a notice has been issued by the Principal pursuant to this clause 17.2(l), the Principal considers (acting reasonably) that the anticipated Construction Licence Commencement Date for Construction Site (Area 4) has changed such that it will be different to the anticipated Construction Licence Commencement Date specified in a former notice, issue an updated notice specifying the revised anticipated Construction Licence Commencement Date for Construction Site (Area 4),
- (each an **Area 4 Notice**).
- (m) The parties acknowledge and agree that the Principal may issue any number of Area 4 Notices under clause 17.2(l).

### 17.3 Access to and use of the Principal Construction Site

- (a) Macquarie is responsible for gaining access to and from the Principal Construction Site and, except as expressly provided in a Project Document, will not be entitled to make any Claim against the Principal in connection with access, or failure to gain or delay in gaining access, to and from the Principal Construction Site.
- (b) Macquarie:
  - (i) must access the Principal Construction Site only at the points of entry and exit and via the routes set out in the Environmental Documents; and
  - (ii) without limiting clause 17.1, bears the risk of coordinating its access to the Principal Construction Site with any other person that uses the access ways to the Principal Construction Site.
- (c) Subject to clause 17.3(d), Macquarie must not use the Principal Construction Site, or permit it to be used, for any purpose other than:
  - (i) Macquarie's Activities;
  - (ii) the OSD Developer's Activities, to the extent that the OSD Developer accesses, occupies or uses the Principal Construction Site as contemplated by clause 13.1(f); or
  - (iii) the fit-out of the Retail Lot,without the Principal's prior written consent.
- (d) Macquarie may use Construction Site (Area 1) for the following uses:
  - (i) accessing existing end of trip facilities and decommissioning and winding down of such facilities, provided such use does not delay the satisfaction of the conditions of approval referred to in clause 5.2(b)(vi) or the commencement of the demolition of the building located on Construction Site (Area 1); and
  - (ii) access in order to complete infill works on the Macquarie Land which are required as a result of the demolition referred to in clause 17.3(d)(i).
- (e) With respect to Construction Site (Area 6) and without limiting clause 21.8(c)(ii), Macquarie must rehabilitate Construction Site (Area 6) to the state it was in immediately prior to Macquarie obtaining access to Construction Site (Area 6), subject to any changes in respect of site amenities, logistics, access and egress required in order for Macquarie to perform Macquarie's Activities.

### 17.4 Variation of the Principal Construction Site

- (a) If a Variation causes, or will cause, any structure forming part of the Project Works or the Temporary Works to encroach into the OSD Construction Site:
  - (i) the Principal will give written notice to Macquarie:
    - (A) identifying the affected area of the OSD Construction Site (**Area of Encroachment**); and
    - (B) attaching an amended Site Access Schedule which includes the Area of Encroachment in the relevant section of the amended Site Access Schedule; and

- (ii) on and from the date specified in the Principal's notice:
  - (A) each reference to "Site Access Schedule" in the Project Documents will be deemed to be a reference to the amended Site Access Schedule attached to the Principal's notice to Macquarie; and
  - (B) the Area of Encroachment will be omitted from the OSD Construction Site.
- (b) Without prejudice to the OSD Developer's rights under the OSD PDA and subject to clauses 35 and 37, Macquarie will not be entitled to make any Claim against the Principal arising out of or in connection with the operation of this clause 17.4.

#### 17.5 **Conditions precedent to access the Principal Construction Site**

The Principal is not obliged to give Macquarie access to any area of the Principal Construction Site until Macquarie has:

- (a) provided the Principal with a Fire and Life Safety Report in a form acceptable to the Principal (acting reasonably); and
- (b) complied with clause 6.1(a).

#### 17.6 **Licence over Macquarie Construction Site**

- (a) Macquarie grants to the Principal an irrevocable, non-exclusive licence to use and occupy, and to permit any Rail Contractor to use and occupy, the Macquarie Construction Site on and from the first Business Day after the Commencement Date, and the Principal accepts the grant of that licence.
- (b) The licence referred to in clause 17.6(a):
  - (i) commences on the Commencement Date;
  - (ii) terminates in respect of each part of the Macquarie Construction Site on the Last Date of Completion; and
  - (iii) is subject to the restrictions upon the access referred to in this deed (including clause 46).
- (c) The Principal must:
  - (i) ensure that the TSE Contractor fulfils the functions and responsibilities of the principal contractor under the WHS legislation to the extent that the TSE Contractor undertakes any construction work on the Macquarie Construction Site; and
  - (ii) ensure that, subject to the other provisions of this deed, the Principal and all Rail Contractors using and occupying the Macquarie Construction Site pursuant to clause 17.6(a) bear the risk of coordinating their access to the Macquarie Construction Site.
- (d) This clause 17.6 survives termination of this deed on any basis.

#### 17.7 **Property Works**

- (a) Macquarie must:
  - (i) carry out the Property Works:

- (A) in accordance with the SWTC; and
  - (B) subject to clause 17.7(f), so that, on completion, they are fit for their intended purpose;
- (ii) after completion of the Property Works with respect to an Unowned Parcel, including the work described in clause 17.7(f), provide to the Principal's Representative:
- (A) a certificate in the form of Schedule B7, duly executed by the owner or owners of any part of the Unowned Parcel; or
  - (B) a statement signed by Macquarie to the effect that such owner or owners have failed or refused to sign a certificate in the form of Schedule B7 within 15 Business Days after it being provided by Macquarie to the owner or owners following completion of the Property Works including the work described in clause 17.7(f); and
- (iii) indemnify the Principal from and against any Claims against the Principal, or Loss suffered or incurred by the Principal, arising out of or in any way in connection with a claim by the owner or owners of any part of an Unowned Parcel where:
- (A) such owner or owners have not duly signed a certificate in the form of Schedule B7; and
  - (B) the Claim or Loss arises out of or in any way in connection with Macquarie's Activities.
- (b) The acceptance of a certificate or statement provided by Macquarie under clause 17.7(a)(ii) by the Principal's Representative is not approval by the Principal or the Principal's Representative of Macquarie's performance of its obligations under this clause 17.7.
- (c) Where any Property Works are required to be carried out on an Unowned Parcel, Macquarie must give a written notice to the owner or owners of the property (with a copy to the Principal's Representative) which:
- (i) describes the Property Works to be carried out;
  - (ii) requests access for the purpose of carrying out the Property Works; and
  - (iii) specifies the intended date for commencement of the Property Works,
- not less than 10 Business Days prior to the day which Macquarie intends to commence the Property Works.
- (d) If the owner or owners of a property do not provide Macquarie with sufficient access to carry out the Property Works from either:
- (i) the date notified in the notice under clause 17.7(c); or
  - (ii) such other date as may be agreed between Macquarie and the owner or owners,
- Macquarie:
- (iii) must:



- (A) give the Principal's Representative a notice stating this; and
- (B) not carry out the Property Works until the Principal's Representative gives Macquarie a notice specifying that the owner or owners of the property have agreed to give access (or Macquarie has otherwise procured the owner's consent to Macquarie accessing the property), in which event clause 17.7(c) will reapply; and
- (iv) will be liable for the consequences of, and will have no Claim against the Principal arising out of or in any way in connection with, any delay in accessing an Unowned Parcel to carry out the Property Works.
- (e) Upon being given access to any Unowned Parcel for the purpose of carrying out any Property Works, Macquarie must promptly carry out those Property Works in a manner which minimises inconvenience and disruption to the owners, occupiers and users of the Unowned Parcel.
- (f) Macquarie must:
  - (i) rehabilitate any part of an Unowned Parcel to the state agreed between Macquarie (or the D&C Contractor) and the owner of such Unowned Parcel prior to commencing the work or, if no such agreement is reached, the state it was in immediately prior to Macquarie obtaining access; and
  - (ii) otherwise repair any damage or degradation to such a part arising out of or in any way in connection with the performance of its obligations under this clause 17.7.
- (g) The following are conditions precedent to Construction Completion of Portion 1 and Completion of any Portion other than Portion 1:
  - (i) completion of all Property Works under this clause 17.7 that form part of the Portion, including all relevant work under clause 17.7(f); and
  - (ii) provision of all certificates or statements (as the case may be) to the Principal's Representative as required under clause 17.7(a)(ii) in respect of the Property Works that form part of the Portion.

**17.8 Native Title Applications and Threatened Species Claims**

- (a) Macquarie agrees that if:
  - (i) there is a Native Title Application; or
  - (ii) a Threatened Species Claim is commenced,  
affecting any part of the Construction Site or the carrying out of the Project Works,  
Macquarie must:
    - (iii) continue to perform its obligations under this deed and the other Project Documents unless otherwise:
      - (A) directed by the Principal's Representative;
      - (B) ordered by any court or tribunal; or
      - (C) required by Law;

- (iv) at the request of the Principal, or if required to do so under any Law or by order of a court or tribunal, provide all reasonable assistance in connection with dealing with the Native Title Application or Threatened Species Claim (including giving the Principal and any other person authorised by the Principal access to the Construction Site or that part of the Construction Site that is the subject of the Native Title Application or Threatened Species Claim when reasonably required by the Principal for that purpose); and
  - (v) take all reasonable steps to mitigate any Loss to the Principal in complying with its obligations under clause 17.8(a)(iii).
- (b) For the purposes of clause 17.8(a)(iii)(A), the Principal may by written notice direct Macquarie to suspend the performance of any or all of Macquarie's Activities until such time as the Principal gives Macquarie further notice.

#### 17.9 Finding of Artefacts

Macquarie:

- (a) acknowledges and agrees that:
  - (i) Artefacts may be found on, in or under the surface of the Construction Site; and
  - (ii) as between the Principal and Macquarie, any Artefacts found on, in or under the surface of the Principal Construction Site are and will remain the property of the Principal; and
- (b) must, upon the discovery of an Artefact:
  - (i) notify the Principal within 2 Business Days;
  - (ii) ensure that the Artefact is managed in accordance with the Construction Heritage Management Plan;
  - (iii) comply with all Laws and the Directions of Authorities and the Principal relating to the discovery of the Artefact; and
  - (iv) continue to perform Macquarie's Activities, except to the extent otherwise:
    - (A) directed by the Principal's Representative;
    - (B) ordered by a court or tribunal; or
    - (C) required by Law.

#### 17.10 Working hours

Unless otherwise agreed between Macquarie and the Principal's Representative, the hours of work applicable to Macquarie's Activities to be carried out on the Construction Site are those permitted by relevant Law and relevant Authorities.

#### 17.11 Extra Land

- (a) Macquarie must:
  - (i) procure for itself, and at its own Cost, the occupation or use of relevant rights over any land or buildings in addition to the Construction Site which is

necessary or which it requires for the execution of Macquarie's Activities or to exercise any right or perform any obligation under this deed; and

- (ii) as a condition precedent to Construction Completion of Portion 1 and Completion of any Portion other than Portion 1 in which Macquarie has had to procure occupation or use of or rights over any Extra Land:
  - (A) rehabilitate that Extra Land in accordance with the requirements of all relevant Authorities and any owner, occupier and any other relevant persons having an interest in the Extra Land; and
  - (B) provide to the Principal's Representative:
    - (aa) a properly executed release on terms satisfactory to the Principal's Representative (acting reasonably) releasing the Principal from all Claims from the owner or occupier of, and from any other person having an interest in that Extra Land; or
    - (bb) if Macquarie is unable to obtain such a release despite using its best endeavours to do so, a statement from Macquarie to the effect that such owner or occupier, or other person having an interest in that Extra Land, has failed or refused to execute such a release within 15 Business Days after it being provided by Macquarie to the owner, occupier or other person following completion of the work on that Extra Land; and
- (iii) indemnify the Principal from and against any Claims against the Principal, or Loss suffered or incurred by the Principal, arising out of or in any way in connection with a claim by the owner or occupier of any part of the Extra Land where:
  - (A) such owner or occupier has not executed such a release; and
  - (B) the claim or Loss arises out of or in connection with Macquarie's Activities.
- (b) Macquarie acknowledges that:
  - (i) integration of the requirements for access to Extra Land is at the sole responsibility, Cost and risk of Macquarie; and
  - (ii) the Principal will not be liable upon any Claim (insofar as is permitted by Law) by Macquarie arising out of or in any way in connection with:
    - (A) identifying and obtaining access to Extra Land; or
    - (B) any delay, additional Costs or other effects on the Project Works related to the ability or inability of Macquarie or its Subcontractors to obtain access to Extra Land or approval to use Extra Land or to integrate Extra Land with the Construction Site.

#### 17.12 Permitted use

Macquarie must not:

- (a) undertake the Project Works (other than the Third Party Works) such that the final location of such works is outside the Project Site;
- (b) undertake the Temporary Works outside the Construction Site; or

- (c) undertake the Local Area Works outside the Construction Site and the Local Areas.

### 17.13 Value Engineering

- (a) During the first three months following the Commencement Date, Macquarie must participate in a value engineering process with the Principal, including a series of up to six value engineering workshops of up to 4 hours each at times reasonably requested by the Principal's Representative, to identify measures which will, if adopted, achieve one or more of the following objectives:
  - (i) accelerate Milestone Achievement of a Milestone;
  - (ii) accelerate Construction Completion and Completion of a Portion;
  - (iii) reduce the cost of the Project Works or the Temporary Works;
  - (iv) improve the efficiency or value to the Principal of the completed Project Works;
  - (v) minimise the interface risks in relation to the Project Works, in particular as between Macquarie and any Rail Contractors;
  - (vi) reduce the whole of life costs associated with the operation and maintenance of the Project Works or the further construction, operation and maintenance of Sydney Metro City & Southwest; or
  - (vii) otherwise be of benefit to the Principal,(together the **VE Objectives**).

Macquarie must ensure that any relevant personnel reasonably requested by the Principal attend and participate in the value engineering workshops and any other meetings or forums connected with the process. As a minimum, such personnel will include Macquarie's design manager and construction manager and key personnel from any Significant Subcontractor that is undertaking the design of any part of the Project Works or the Temporary Works.

Each party shall bear its own costs of participating in such value engineering process.

- (b) Following the three month process referred to in clause 17.13(a), Macquarie must, during the course of performing Macquarie's Activities, consider the extent to which further measures may be adopted in order to achieve the VE Objectives.
- (c) If:
  - (i) through the value engineering process described in clause 17.13(a), the parties agree on a solution to achieve one or more of the VE Objectives then this shall be treated as a Macquarie proposed Variation under clause 36 and the Principal's Representative may give a written notice to Macquarie under clause 36.2; or
  - (ii) Macquarie identifies further measures which may be adopted in order to achieve one or more of the VE Objectives pursuant to clause 17.13(b) then Macquarie may propose this as a Variation pursuant to clause 36 and the Principal's Representative may give a written notice to Macquarie under clause 36.2.
- (d) This clause 17.13 is without prejudice to the Principal's rights under clauses 35 and 36.



**17.15 South Tower OSD Access**

- (a) The parties acknowledge and agree that:
- (i) following the Last Date of Completion, Macquarie requires non-exclusive access to the area shown hatched on plan "Southern Entrance Post Completion" in Appendix 4 to the SWTC (**OSD Access Area**) for the purposes of accessing the OSD Construction Site in order to complete the OSD Works and complete the floor finishes contemplated by clause 17.15(b)(i); and
  - (ii) if the Last Date of Completion is before [REDACTED]
    - (A) the Principal will grant to Macquarie a non-exclusive licence to use and occupy, and to permit its Subcontractors to use and occupy, the OSD Access Area for the purposes of accessing the OSD Construction Site to complete the OSD Works and for no other purpose;
    - (B) the construction licence referred to in clause 17.15(a)(i):
      - (aa) commences on the Last Date of Completion; and
      - (bb) will terminate on the earlier of:
        - (a) [REDACTED]
        - (b) if the OSD Access Area forms part of a Retail Lot, the grant of the relevant Retail Lease; and
        - (c) subject to clause 45.11(b), on the termination of this deed;
      - (C) Macquarie bears the risk of destruction, loss or damage to, the Project Works and any other works or equipment located in the OSD Access Area to the extent such damage is caused or contributed to by Macquarie or its Associates; and
      - (D) other than the obligations set out in this clause 17.15, the Principal has no liability to Macquarie under this deed or otherwise in relation to Macquarie's use of the OSD Access Area.
- (b) Notwithstanding any other provision of this deed, Macquarie must, on or before [REDACTED]
- (i) complete the floor finishes in the OSD Access Area in accordance with the requirements of Appendix 11 to the SWTC; and

- (ii) promptly repair and make good any damage to the floor surfaces or the Project Works in the OSD Access Area arising out of, or in any way in connection with:
  - (A) the carrying out by:
    - (aa) Macquarie of Macquarie's Activities; or
    - (bb) the OSD Developer of the OSD Developer's Activities;
  - (B) a failure by Macquarie to comply with its obligations under a Project Document; or
  - (C) Macquarie's use of or access to the OSD Access Area.
- (c) Macquarie indemnifies the Principal from and against any Loss incurred by the Principal arising out of or in connection with a failure by Macquarie to comply with its obligations under clause 17.15(b) on or before [REDACTED]

## 18. PORTIONS

### 18.1 Principal's Representative may direct Portions

- (a) In addition to the Portions identified in paragraph 3 of Schedule A2, the Principal's Representative may (in its absolute discretion), at any time and from time to time, by written notice to Macquarie direct additional Portions under this clause 18.1.
- (b) The notice by the Principal's Representative pursuant to clause 18.1(a) must set out that part of the Project Works which will become an additional Portion.
- (c) In respect of any additional Portion directed under this clause 18.1, if the notice under clause 18.1(a) is given by the Principal:
  - (i) before the Date for Construction Completion of the relevant existing Portion and before the relevant part of the Portion to be separated has reached a stage equivalent to Construction Completion, Macquarie will be entitled to payment pursuant to clause 18.1(d);
  - (ii) subject to clause 18.1(da), after the Date for Construction Completion of the relevant existing Portion but before the relevant part of the Portion to be separated has reached a stage equivalent to Construction Completion, Macquarie will not be entitled to any grant of additional time or payment of Costs or expenses (by way of Variation or otherwise) in respect of the direction of the additional Portion; or
  - (iii) subject to clause 18.1(da), after the date the relevant part of the Portion to be separated has reached a stage equivalent to Construction Completion, Macquarie will not be entitled to any grant of additional time or payment of Costs or expenses (by way of Variation or otherwise) in respect of the direction of the additional Portion.
- (d) In respect of any additional Portions to which clause 18.1(c)(i) applies:
  - (i) the Principal will pay to Macquarie an amount equal to the Variation Costs that are directly attributable to the direction of the relevant additional Portion (excluding any finance costs and any direct costs saved or which will be saved or which ought reasonably to have been saved in connection with the direction of the additional Portion) pursuant to clause 37; and

- (ii) Macquarie will be entitled to claim an extension of time to the Date for Construction Completion of the Portion affected by the direction for an additional Portion and clauses 23.9, 23.10 and 23.11 will apply to such claim, as if the Principal had directed a Variation.
- (da) In respect of any additional Portions to which clauses 18.1(c)(ii) or 18.1(c)(iii) apply, the Principal will pay Macquarie an amount equal to the net incremental costs of the D&C Contractor and Macquarie arising from changed access arrangements in, through and around the completed Portion (excluding any finance costs and any direct costs saved or which will be saved or which ought reasonably to have been saved in connection with the direction of the additional Portion) pursuant to clause 37 as if the Principal had directed a Variation).
- (e) Any notice given by the Principal's Representative under clause 18.1(a) must, for each Portion, include details of:
  - (i) the Project Works and Temporary Works;
  - (ii) the Date for Construction Completion;
  - (iii) the Date for Completion; and
  - (iv) respective amounts of liquidated damages,
 as determined by the Principal's Representative (acting reasonably).
- (f) If the Principal elects to direct any additional Portions pursuant to clause 18.1(a), the Principal must have regard to the obligations of the Appointed Principal Contractor in relation to the WHS Legislation.
- (g) Without prejudice to Macquarie's right to make a claim under clause 23.9 and clause 24.1 (where applicable), the Principal's Representative may, in its absolute discretion for any reason and at any time, from time to time, by notice in writing to Macquarie and the Principal unilaterally extend the Date for Construction Completion of a Portion by any period specified in that notice.
- (h) The Principal's exercise of its discretion under clause 18.1(g) does not limit Macquarie's right to make a claim under clause 23.9 and clause 24.1 where, but for the exercise of the discretion, Macquarie would have been entitled to an extension of time or a Compensation Event.
- (i) The power to extend the Date for Construction Completion of a Portion under clause 18.1(g):
  - (i) may be exercised whether or not Macquarie has made, or is entitled to make, a claim for an extension of time to any Date for Construction Completion, or is entitled to be, or has been, granted an extension of time to any relevant Date for Construction Completion, under clause 23;
  - (ii) subject to clause 18.1(i)(iii), may only be exercised by the Principal's Representative and the Principal's Representative is not required to exercise its discretion under clause 18.1(g) for the benefit of Macquarie;
  - (iii) without limiting clause 4.1, may be exercised or not exercised (as the case may be) by the Principal's Representative in accordance with the directions of the Principal; and

- (iv) is not a Direction which can be the subject of a Dispute pursuant to clause 52 or in any other way opened up or reviewed by any other person (including the IDAR Panel or any arbitrator or court).

## 18.2 Interpretation of Portions

The interpretations of:

- (a) Macquarie's Activities;
- (b) Project Works;
- (c) Temporary Works;
- (d) Works;
- (e) Third Party Works;
- (f) Local Area Works;
- (g) Service Works;
- (h) Property Works;
- (i) Project Site;
- (j) Construction Site;
- (k) Construction Completion;
- (l) Date for Construction Completion;
- (m) Date of Construction Completion;
- (n) Completion;
- (o) Date for Completion;
- (p) Date of Completion; and
- (q) Defects Correction Period,

and clauses 17.1 to 17.6, 17.11, 20.3(a)(x); 21.5; 21.8; 21.10; 21.11; 23; 24; 30; 34.2; 35.2(c); 41.3; 41.4; 41.14 and the SWTC (including its appendices) will apply separately to each Portion (including any Portion determined under clause 18.1) and references therein to any of the terms in clauses 18.2(a) to (q) (inclusive) above will mean so much of Macquarie's Activities, Project Works, Temporary Works, Works, Third Party Works, Local Area Works, Property Works, Service Works, Project Site, Construction Site, Construction Completion, Date for Construction Completion, Date of Construction Completion, Completion, Date for Completion, Date of Completion and Defects Correction Period as is comprised in, or associated with, the relevant Portion.

## 19. ENCUMBRANCES

### 19.1 Principal's Land

- (a) The Principal must ensure that it is the freehold owner of the Principal's Land by the Construction Licence Commencement Date.
- (b) Macquarie must comply with:



- (i) the terms of any easement, restrictions on use, covenants, agreements or other similar arrangements burdening or benefiting the Principal's Land as recorded in the register maintained by LRS under the *Real Property Act 1900* (NSW); and
  - (ii) any conditions or restrictions on access that apply to an area of the Construction Site as specified in the Site Access Schedule.
- (c) Except as otherwise provided in this deed (including clauses 10.3(a)(iv) and 19.1(d)) the Principal must not at any time create, or permit the creation of, any Encumbrance or Security Interest in respect of the Principal's Land after the Commencement Date without the consent of Macquarie (such consent not to be unreasonably withheld or delayed).
- (d) The Principal may, at any time and from time to time, create or permit the creation of the following Encumbrances on the title to the Principal's Land:
- (i) any Encumbrance necessary, in the opinion of the Principal, to enable the construction and/or operation of Sydney Metro City & Southwest (including Martin Place Metro Station); and
  - (ii) any Encumbrance required by an Authority.
- (e) If the Principal creates, or permits the creation of, any Encumbrance pursuant to clause 19.1(d) which prevents Macquarie from complying with its obligations or exercising its rights under this deed or increases Macquarie's costs of performing the Project Works in accordance with this deed, Macquarie will be entitled to be paid the net incremental costs (excluding finance costs) reasonably incurred by Macquarie as a direct result of the existence of the Encumbrance, except where the relevant Encumbrance:
- (i) was required by an Authority;
  - (ii) relates to the grant of a construction licence for a Rail Contractor or Retail Lessee;
  - (iii) is expressly contemplated by the Draft Section 88B Instrument or the Draft BMS; and/or
  - (iv) was known to Macquarie on the Commencement Date or otherwise should reasonably have been anticipated or contemplated by Macquarie at the Commencement Date having regard to the activities required to enable the construction and/or operation of Sydney Metro City & Southwest.
- (f) Macquarie must provide the Principal such evidence of the extra costs claimed pursuant to clause 19.1(e) as may be required by the Principal to substantiate the costs claimed.
- (g) The costs payable to Macquarie under clause 19.1(e) will be Macquarie's sole remedy in relation to any Encumbrance created, or permitted to be created, by the Principal pursuant to clause 19.1(d).
- (h) The parties agree that neither Macquarie nor the D&C Contractor will be liable to pay licence fees or rents to the Principal or any third party (including the Council of the City of Sydney) for any access or occupation right of the Principal Construction Site.

## 19.2 Macquarie Land

- (a) Macquarie:

- (i) must ensure that Macquarie Bank Limited is, and that it will remain, the freehold owner of the Macquarie Land until the date on which the Subdivision Plan is registered; and
  - (ii) acknowledges that certain parts of the Macquarie Land will form part of:
    - (A) the Macquarie Construction Site; and
    - (B) the Subdivision Land.
- (b) Macquarie:
- (i) must ensure that, prior to lodgement of the Subdivision Plan, the Relevant Land is free from Encumbrances and Security Interests and that all tenants and other parties who had a right to occupy the Relevant Land prior to the Commencement Date have vacated the Relevant Land; and
  - (ii) except as otherwise provided in this deed (including clause 19.2(c)), must not at any time create, or permit the creation of, any Encumbrance or Security Interest in respect of the Relevant Land after the Commencement Date without the consent of the Principal (such consent not to be unreasonably withheld).
- (c) Macquarie may, at any time and from time to time, create Encumbrances on the title to the Macquarie Land (other than the Relevant Land).

## 20. DESIGN AND DESIGN DOCUMENTATION

### 20.1 Design obligations

Macquarie must design the Project Works and the Temporary Works:

- (a) in accordance with:
  - (i) the SWTC;
  - (ii) any Variation:
    - (A) directed by the Principal by a Variation Order; or
    - (B) otherwise approved by the Principal as permitted under a term of this deed; and
  - (iii) the other requirements of this deed; and
- (b) without limiting clause 20.1(a), so that the Project Works comply with any applicable Law.

### 20.2 Design Stage 1

- (a) Subject to clause 20.3(c):
  - (i) Macquarie acknowledges that prior to the Commencement Date it prepared the Design Stage 1; and
  - (ii) the parties acknowledge and agree that the design development and review required to progress the concept design for the Project Works (other than the Additional SDD Scope of the [REDACTED] or the Caverns Scope) to Design Stage 1 occurred prior to the Commencement Date.

- (b) Macquarie agrees that it bears absolutely all risks howsoever they may arise as a result of Macquarie's use of, or reliance upon, the Design Stage 1 in performing Macquarie's Activities and that such use and reliance will not limit or otherwise reduce any of its obligations under this deed.
- (c) Subject to clause 20.3(c) and Macquarie's contractual right to claim under clauses 11.13, 16.4, 23.11 and 24, Macquarie is responsible for, and assumes the risk of, any Loss it suffers or incurs arising out of or in connection with:
  - (i) the design and construction of the Project Works and the Temporary Works using the Design Stage 1 costing more, or taking longer, than anticipated; and
  - (ii) any differences between the Project Works and the Temporary Works which Macquarie is required to design and construct (ignoring for this purpose any differences which are the subject of a Variation Order) and the Design Stage 1 including:
    - (A) differences necessitated by any Site Conditions encountered;
    - (B) differences required to ensure that:
      - (aa) the Project Works and the Temporary Works satisfy the requirements of this deed;
      - (bb) upon Construction Completion (in respect of Portion 1) or Completion (in respect of any Portion other than Portion 1) the Project Works are, and will be capable of remaining at all relevant times, fit for their intended purposes; and
      - (cc) the Temporary Works will upon Construction Completion (in respect of Portion 1) or Completion (in respect of any Portion other than Portion 1) be, and will be capable of remaining at all relevant times, fit for their intended purposes; and
    - (C) differences necessitated by the Additional SDD Scope ~~of the~~ [REDACTED] or the Caverns Scope, and irrespective of any assumptions, projections, estimates, contingencies or otherwise that Macquarie may have made in relation to any of the matters set out in clauses 20.2(c)(i) and (ii) above.
- (d) Despite any other provision in this deed, the parties acknowledge and agree that, in the event of any ambiguity, discrepancy or inconsistency in, or between, the Design Documentation (including the Design Stage 1) and the SWTC, the SWTC will prevail over the Design Documentation.

### 20.3 Design warranties

- (a) Subject to clause 16.2(e), Macquarie warrants to the Principal that:
  - (i) the Design Stage 1 has been prepared by Macquarie;
  - (ii) it remains responsible for ensuring that the Project Works and the Temporary Works will satisfy the requirements of this deed despite the Design Stage 1;
  - (iii) if the Project Works and the Temporary Works are designed and constructed using the Design Stage 1, the Project Works and the Temporary Works will satisfy the requirements of this deed but nothing in this clause 20.3(a)(iii)

affects or limits clause 20.2, which will prevail to the extent of any inconsistency;

- (iv) it will carry out and complete Macquarie's Activities using the Design Stage 1 but nothing in this clause 20.3(a)(iv) affects or limits clause 20.2, which will prevail to the extent of any inconsistency;
- (v) it will not make any adjustments to the Design Stage 1 that will reduce the:
  - (A) durability;
  - (B) whole of life performance;
  - (C) environment and sustainability performance; or
  - (D) safety,

of any part of the Project Works (all of which must comply with the SWTC as a minimum), or materially increase the whole of life costs associated with any part of the Project Works;

- (vi) it has checked, examined, analysed and carefully considered the SWTC (excluding the SWTC Reliance Provisions [REDACTED]) and Environmental Documents and that:
  - (A) it has satisfied itself as to the completeness, correctness, accuracy, appropriateness, suitability and adequacy of the SWTC;
  - (B) it has satisfied itself that there are no omissions, ambiguities, discrepancies or inconsistencies in or between the SWTC and Environmental Documents;
  - (C) the SWTC is proper, adequate and fit for its intended purpose including for the purpose of enabling Macquarie to carry out Macquarie's Activities in accordance with, and to ensure that the Project Works and the Temporary Works comply with, this deed including the other warranties in this clause 20.3;
  - (D) it will be fully and exclusively responsible and liable for the design of the Project Works and the Temporary Works (including the Design Documentation), including any submitted or re-submitted to the Independent Certifier or the Principal's Representative in accordance with this deed;
  - (E) it will be fully and exclusively responsible and liable for all risks howsoever they may arise as a result of the use by Macquarie of, or reliance upon, the SWTC; and
  - (F) the use of, or reliance upon, the SWTC does not affect any of its obligations under this deed or entitle Macquarie to make any Claim against the Principal arising out of or in any way in connection with the SWTC;
- (vii) the Design Documentation will:
  - (A) satisfy the requirements of the SWTC and the other requirements of this deed;
  - (B) be and will remain at all relevant times fit for its intended purpose; and

- (C) be prepared, certified, verified, completed and used in accordance with the requirements of this deed;
- (viii) construction will be carried out in accordance with the Design Documentation which Macquarie is entitled to use for construction purposes in accordance with clause 20.11(a);
- (ix) construction carried out in accordance with the Design Documentation which Macquarie is entitled to use in accordance with clause 20.11(a) will satisfy the requirements of this deed; and
- (x) each Portion (both individually and in combination with any earlier completed Portions) and the Project Works as a whole will:
  - (A) be completed in accordance with, and satisfy the requirements of, this deed;
  - (B) upon Construction Completion (in respect of Portion 1) or Completion (in respect of any Portion other than Portion 1), be fit for their intended purposes; and
  - (C) upon Construction Completion (in respect of Portion 1) or Completion (in respect of any Portion other than Portion 1), be capable of remaining at all relevant times after Construction Completion (in respect of Portion 1) or Completion (in respect of any Portion other than Portion 1) fit for their intended purposes.
- (b) Subject to clauses 16.2(e), 20.3(iii), 35.15(b) and 35.15(c), Macquarie agrees that its obligations under, and the warranties given in, clauses 20.2 and 20.3 will remain unaffected and that it will bear and continue to bear full liability and responsibility for the design (including the Design Documentation), construction, commissioning, testing and completion of the Project Works and the Temporary Works notwithstanding:
  - (i) any design work carried out by others prior to the Commencement Date and incorporated in this deed;
  - (ii) any Variation the subject of a Direction by the Principal's Representative; or
  - (iii) the termination (for any reason) of this deed.



20.4 **Preparation and submission of Design Documentation**

- (a) Macquarie must:
  - (i) prepare the Design Documentation in the following Design Stages:

- (A) Revised Design Stage 1;
  - (B) Design Stage 2; and
  - (C) Design Stage 3,
- or as otherwise contemplated by the Technical Management Plan;
- (ii) submit all Design Documentation (not including Design Documentation to the extent it relates solely to Temporary Works) to the Principal's Representative:
    - (A) in accordance with the Technical Management Plan;
    - (B) in a manner and at a rate which, having regard to the quantum of Design Documentation submitted, will give the Independent Certifier a reasonable opportunity to review the submitted Design Documentation; and
    - (C) in accordance with the requirements of the SWTC;
  - (iii) submit all Third Party Agreement Design Documentation to the required recipients under any relevant Third Party Agreement at the same time that Macquarie submits such Design Documentation to the Principal's Representative under this deed;
  - (iv) within 5 Business Days after a request by the Principal's Representative, provide the Principal's Representative with any Design Documentation to the extent it relates solely to Temporary Works; and
  - (v) ensure the Design Stage 3 Design Documentation submitted is of a level of detail which is sufficient to permit the Independent Certifier and the Principal's Representative to determine whether:
    - (A) the Design Documentation complies with this deed; and
    - (B) the Project Works and Temporary Works which will be constructed in accordance with the Design Documentation will comply with this deed.
  - (b) The Principal may, within 1 Business Day of receiving any Design Stage 3 Design Documentation from Macquarie, provide to the Independent Certifier any element of the Design Stage 3 Design Documentation (if any) that the Principal requires to be reviewed and certified by the Independent Certifier.
  - (c) Without limiting clause 20.4(a)(ii), Macquarie must submit the Revised Design Stage 1 within 5 Business Days of the Commencement Date.
  - (d) Macquarie acknowledges and agrees that the Design Documentation for Design Stage 2 required pursuant to this clause 20.4 must include design in relation to the Additional SDD Scope and the [REDACTED]


## 20.5 Third Party Works

Design Documentation that must be provided under or in connection with any Third Party Agreement must comply with the requirements of the relevant Third Party Agreement.

## 20.6 Certification of Design Documentation

- (a) All Design Documentation submitted pursuant to clause 20.4 for Revised Design Stage 1 and Design Stage 2 must be accompanied by a certificate in the form of

Schedule B8 from Macquarie certifying that the Design Documentation complies with all requirements of this deed including the SWTC.

- (b) All Design Documentation submitted pursuant to clause 20.4 for Design Stage 3 must be:
  - (i) accompanied by a certificate in the form of Schedule B9:
    - (A) from Macquarie certifying that the Design Documentation:
      - (aa) complies with all requirements of this deed including the SWTC; and
      - (bb) is suitable for construction; and
    - (B) 
  - (ii) where the Design Documentation relates to any Proof Engineered Temporary Works, be accompanied by a certificate in the form of Schedule B10.

#### 20.7 Explanation of Design Documentation

Macquarie must, whenever it submits Design Documentation for Revised Design Stage 1, Design Stage 2 or Design Stage 3 pursuant to clause 20.4:

- (a) deliver a design presentation workshop within 5 Business Days after its submission; and
- (b) if required by the Principal's Representative or the Independent Certifier, make available the appropriate design personnel to:
  - (i) explain the Design Documentation; and
  - (ii) provide such information regarding the Design Documentation as the Principal's Representative or the Independent Certifier reasonably requests.

#### 20.8 Review of Design Documentation

- (a) **(Principal's Representative's review):** The Principal may (but is not obliged to), within 15 Business Days after the date on which any Design Documentation for any Design Stage is submitted to it in accordance with clause 20.4, review the Design Documentation and notify the Independent Certifier and Macquarie in writing of any non-compliances or potential non-compliances in respect of the Design Documentation.
- (b) **(Independent Certifier review):** The Independent Certifier must, within the IC Design Review Period:
  - (i) review the Design Stage 3 Design Documentation received pursuant to clause 20.4(b) and, in so doing, must consider any non-compliances or potential non-compliances raised by the Principal's Representative under clause 20.8(a) or from any Authorities;
  - (ii) determine whether or not the Design Stage 3 Design Documentation received pursuant to clause 20.4(b) complies with the requirements of this deed and either:

- (A) reject a part or all of the Design Stage 3 Design Documentation received pursuant to clause 20.4(b) (with detailed reasons) (not including Design Documentation for the Non-Proof Engineered Temporary Works) if, and to the extent, the Design Documentation:
  - (aa) does not comply with the requirements of this deed (Minor Non-Compliances excepted); or
  - (bb) is not sufficiently complete to enable the Independent Certifier to form a view on whether it is compliant; or
- (B) if a part or all of the Design Stage 3 Design Documentation received pursuant to clause 20.4(b) complies with the requirements of this deed, certify that part or all of the Design Documentation (not including Design Documentation for Non-Proof Engineered Temporary Works) by:
  - (aa) including a notation on each document forming part of the Design Documentation;
  - (bb) providing to the Principal's Representative, Macquarie and, if required by the Principal's Representative, the Operator a certificate in the form of Schedule B11; and
  - (cc) providing any certificates that are required to be provided under the Third Party Agreements which relate to obligations in Schedule D4 with which Macquarie is required to comply.
- (c) **(Principal's Direction):** The Principal's Representative may at any time (including after the Independent Certifier has certified the Design Stage 3 Design Documentation pursuant to clause 20.8(b)(ii)(B) or 20.8(h)(ii)(A)) direct Macquarie to make amendments to the Design Documentation which are required to ensure the Design Documentation complies with this deed and, if it does so, and clauses 20.8(i) and (j) will apply.
- (d) **(Non-Proof Engineered Temporary Works):** the Independent Certifier is not required to certify any Design Documentation for Non-Proof Engineered Temporary Works.
- (e) **(Non-compliance of Revised Design Stage 1 and Design Stage 2 Design Documentation):** If the Principal's Representative notifies Macquarie under clause 20.8(a) that any Revised Design Stage 1 Design Documentation or Design Stage 2 Design Documentation contains an actual non-compliance with the requirements of this deed, Macquarie:
  - (i) must, at the same time or within 20 Business Days after receiving such notice, give the Principal's Representative a written response which explains how Macquarie will address the non-compliance in sufficient detail to satisfy the Principal's Representative that compliance will be achieved in the Design Stage 3 Design Documentation; and
  - (ii) must, prior to submitting:
    - (A) Design Stage 2 Design Documentation that relates to a Revised Design Stage 1 Design Documentation actual non-compliance; and
    - (B) Design Stage 3 Design Documentation that relates to a Design Stage 2 Design Documentation actual non-compliance,



give the Principal's Representative (with a copy to the Independent Certifier) a written statement which explains how the non-compliance has been addressed.

(f) **(Observations, comments and potential non-compliances of Stage 3 Design Documentation):** Macquarie is not obliged to respond to any comments received from the Principal's Representative regarding any potential non-compliance with the requirements of this deed or any other observation or comment which the Principal's Representative or the Independent Certifier (as applicable) has on the Design Documentation at Design Stage 3 which does not concern an actual non-compliance.

(g) **(Rejection of Design Documentation):** If any Design Stage 3 Design Documentation is rejected by the Independent Certifier under clause 20.8(b)(ii)(A), Macquarie must:

(i) promptly amend the relevant non-compliant element of the Design Documentation and re-submit it in accordance with clause 20.4, in which case the process in this clause 20.8 will be reapplied to the amended element of the Design Documentation except that reference to the IC Design Review Period will be deemed to be a reference to the IC Re-Review Period;

(ii) provide the Principal's Representative with a notice requesting a Variation to the requirements of this deed with which the Independent Certifier has stated that the Design Documentation is non-compliant, setting out any applicable details required by clause 36.1 (and such notice will be deemed to be a notice given under clause 36.1); or

(iii) provide the Principal's Representative and the Independent Certifier with a notice setting out any matters in relation to which it disagrees with the Independent Certifier's opinion, together with its reasons for doing so,

but Macquarie may commence or continue construction of those elements of the Design Documentation that the Independent Certifier has not identified as being non-compliant with this deed.

(h) **(Response by the Principal or Independent Certifier):** If Macquarie gives a notice under:

(i) clause 20.8(g)(ii), the Principal's Representative may approve or reject the requested Variation in accordance with clause 36.2 and:

(A) if the Principal's Representative approves the requested Variation, the process in clause 20.8(b) will reapply as if the relevant non-compliant element of the Design Documentation had been resubmitted to the Principal's Representative or the Independent Certifier (as applicable); or

(B) if the Principal's Representative rejects the request, clause 20.8(i)(i) will apply; or

(ii) clause 20.8(g)(iii), the Independent Certifier must (acting reasonably), within 10 Business Days after receipt of the notice, determine and notify the parties as to whether or not the notice satisfactorily addresses the Independent Certifier's concerns together with its reasons for forming that opinion and:

(A) if Macquarie's notice satisfactorily addresses the Independent Certifier's concerns, the Independent Certifier must provide the certification under clause 20.8(b)(ii)(B) as part of its notice; or

(B) if the notice does not satisfactorily address the Independent Certifier's concerns, clause 20.8(i)(ii) will apply.

(i) **(Resubmission of Design Documentation):** If:

- (i) the Principal's Representative rejects Macquarie's request under clause 20.8(g)(ii);
- (ii) the Independent Certifier notifies the parties under clause 20.8(h)(ii)(B) that it does not consider that Macquarie's notice satisfactorily addresses the Independent Certifier's concerns; or
- (iii) any Design Documentation is the subject of a Direction by the Principal's Representative under clause 20.8(c);

then:

- (iv) Macquarie must promptly amend the relevant non-compliant element of the Design Documentation and re-submit the relevant element in accordance with clause 20.4; and
- (v) the process in this clause 20.8 will be reapplied to the amended element of the Design Documentation except that reference to the IC Design Review Period will be deemed to be a reference to the IC Re-Review Period.

(j) **(Variations):** If Macquarie considers that any Design Documentation which is the subject of a Direction by the Principal's Representative under clause 20.8(c) constitutes or involves a Variation, Macquarie must, if it wishes to make a Claim in relation to the matter, give a notice and submit a claim in accordance with, and otherwise comply with, clause 54.1.

(k) **(Minor Non-Compliances):** If the certificate provided by the Independent Certifier pursuant to clause 20.8(b)(ii)(B)(bb) lists any Minor Non-Compliances:

- (i) the Independent Certifier may, in the certificate, recommend the action that could be taken by Macquarie to address the Minor Non-Compliance; and
- (ii) Macquarie must complete the recommended action, or take any other action Macquarie deems reasonable in the circumstances, to correct the Minor Non-Compliance to the extent required for the Design Documentation to comply with this deed, within the timeframe (if any) specified by the Independent Certifier and, in any event, as a pre-condition to Construction Completion of Portion 1 or Completion of any Portion other than Portion 1.

(l) **(Independent Certifier response to the Principal):** The Independent Certifier must, within 5 Business Days after:

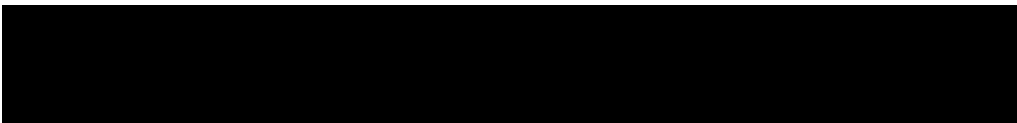
- (i) rejecting Design Stage 3 Design Documentation under clause 20.8(b)(ii)(A), to the extent that the Independent Certifier did not include in its notice to Macquarie any comments received from the Principal's Representative under clause 20.8(a) regarding non-compliances in Macquarie's Design Stage 3 Design Documentation, provide the Principal's Representative with detailed written reasons of why it did not include such comments; and
- (ii) certifying Design Stage 3 Design Documentation under clause 20.8(b)(ii)(B), to the extent that the Independent Certifier received comments from the Principal's Representative under clause 20.8(a) regarding non-compliances in Macquarie's Design Stage 3 Design Documentation, provide the Principal's Representative with detailed written reasons of why it certified the Design

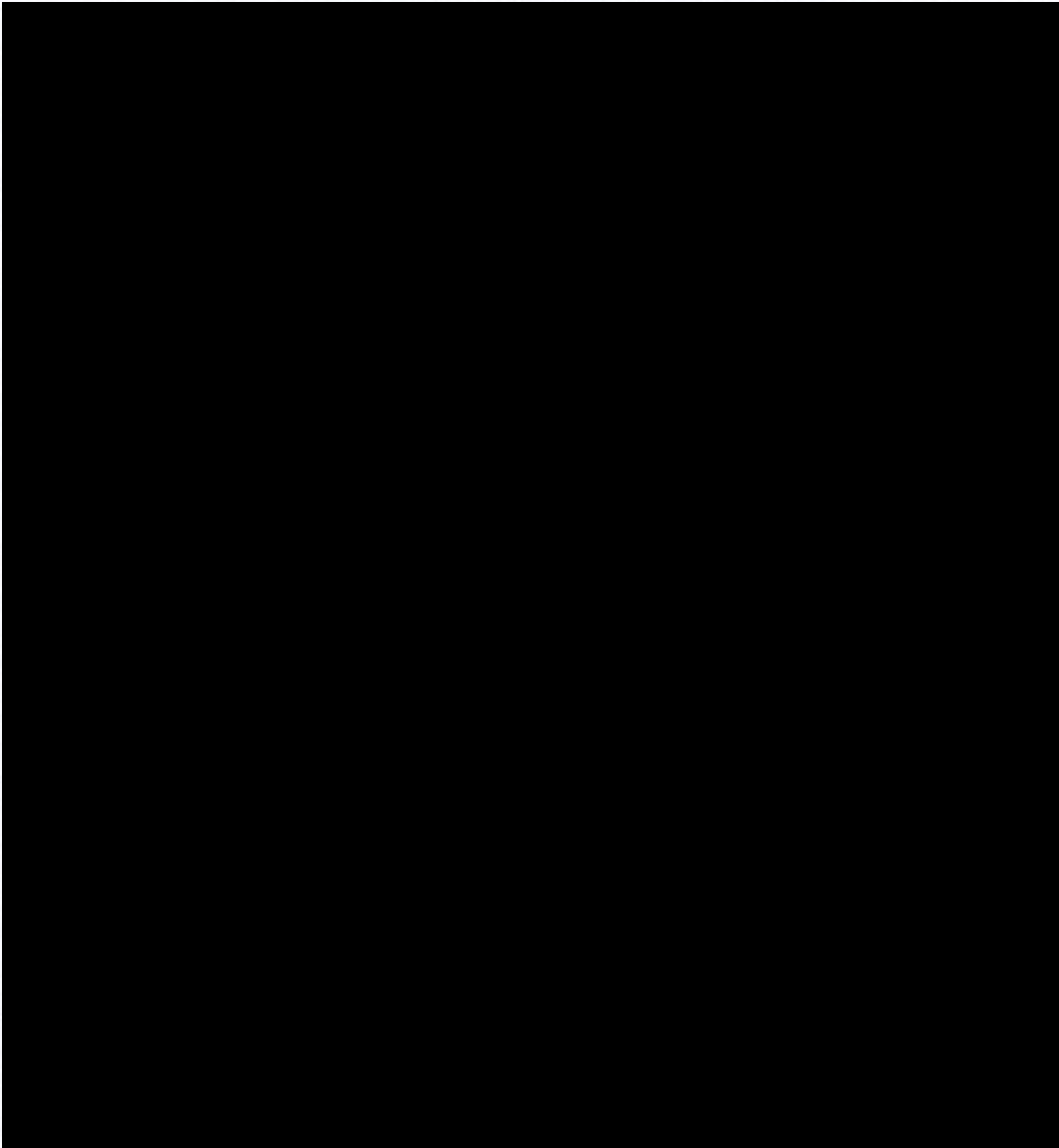
Stage 3 Design Documentation despite the comments received from the Principal's Representative.

**20.9 Design Review Panel**

- (a) The Principal may, in respect of any Design Documentation submitted by Macquarie:
  - (i) provide copies of any such Design Documentation received from Macquarie to; and
  - (ii) seek comments from and take into account the views of, the Design Review Panel.
- (b) Without limiting any other provision of this deed:
  - (i) the Design Review Panel does not represent the Principal for the purposes of this deed;
  - (ii) nothing which occurs during any workshop or meeting at which members of the Design Review Panel are present will:
    - (A) relieve Macquarie of its obligations, or constitute a waiver of any of the Principal's rights, under this deed; or
    - (B) be construed as a Direction or notice by the Principal to do or not to do anything and the parties confirm that all discussions on any matters raised at any workshop or meeting at which members of the Design Review Panel are present, or any comments made by the Design Review Panel, will not give rise to any obligation on the part of Macquarie to comply with anything which the members of the Design Review Panel say or do during such workshops or meetings;
  - (iii) Macquarie must not comply with any directions given or purported to be given by the Design Review Panel or a member of the Design Review Panel unless the Principal's Representative has given Macquarie a written Direction to the same effect; and
  - (iv) if Macquarie considers that any Direction by the Principal's Representative under clause 20.9(b)(iii) constitutes or involves a Variation, Macquarie must, if it wishes to make a Claim in relation to the matter, give a notice and submit a Claim in accordance with, and otherwise comply with, clause 54.1.

**20.10 Rail Contractors**

- (a) Macquarie acknowledges and agrees that the Principal's Representative and Independent Certifier (as applicable) may, in respect of Design Documentation submitted by Macquarie at Revised Design Stage 1, Design Stage 2 or Design Stage 3:
  - (i) provide copies of that Design Documentation to; and
  - (ii) seek comments from and take into account the views of, any Rail Contractor, Operator, the Trains and Systems Integrator and any Authority.
- (b) 



**20.11 Design Documentation for construction**

- (a) Subject to clauses 20.11(c) and 20.11(d), unless otherwise approved in writing by the Principal's Representative (including pursuant to clause 20.11(e)), Macquarie must not use any Design Stage 3 Design Documentation for construction purposes (not including any Design Documentation to the extent it relates solely to Non-Proof Engineered Temporary Works, unless requested by the Independent Certifier under clause 20.4(a)(iv)) unless it has been:
  - (i) submitted to the Principal's Representative and, where submitted to the Independent Certifier pursuant to clause 20.4, to the Independent Certifier; and
  - (ii) certified in accordance with clause 20.6(b);
  - (iii) if received pursuant to clause 20.4(b), certified by the Independent Certifier under clause 20.8(b)(ii)(B) or 20.8(h)(ii)(A); and
  - (iv) in respect of any Design Documentation that must be submitted to and approved by the Configuration Control Board pursuant to the SWTC [REDACTED]

\_\_\_\_\_ such Design Documentation has been submitted to and approved by the Configuration Control Board.

- (b) Macquarie must give the Principal's Representative one electronic copy, of:
  - (i) all Design Documentation which, pursuant to clause 20.11(a), Macquarie is entitled to use for construction purposes, in accordance with the requirements of the SWTC; and
  - (ii) surveys and work as executed Design Documentation in accordance with the requirements of the SWTC.
- (c) Without limiting clause 20.11(a)(iv), if the Independent Certifier does not, in respect of Design Stage 3 Design Documentation received pursuant to clause 20.4(b) that is not Third Party Agreement Design Documentation, either certify or reject the Design Documentation within the IC Design Review Period referred to in clause 20.8(b), Macquarie may use the Design Documentation for construction purposes at Macquarie's own risk.
- (d) If Macquarie exercises its right under clause 20.11(c) and the Independent Certifier subsequently rejects the Design Stage 3 Design Documentation received pursuant to clause 20.4(b), then (unless otherwise approved in writing by the Principal):
  - (i) Macquarie must immediately cease any construction being carried out in accordance with the relevant non-compliant element of the Design Documentation, but Macquarie may commence or continue construction in accordance with any element of the Design Documentation that the Independent Certifier has not identified as being non-compliant with this deed; and
  - (ii) clauses 20.8(e) to 20.8(i) will apply in relation to the non-compliant element of the Design Documentation.
- (e) Subject to clause 20.19(b)(iii), for the purposes of clause 20.11(a), the Principal confirms that Macquarie may use the Caverns Scope Design Documentation for construction purposes.

#### 20.12 Amendments to Final Design Documentation by Macquarie

- (a) Subject to clause 36, if Macquarie wishes to amend Final Design Documentation relating to Portion 1 prior to the Date of Construction Completion of Portion 1, or Final Design Documentation relating to any Portion other than Portion 1 prior to the Date of Completion of that Portion:
  - (i) Macquarie must submit the amended Design Documentation to the Principal's Representative and, in respect of Design Stage 3 Design Documentation, to the Principal's Representative and the Independent Certifier together with:
    - (A) the certifications referred to in clause 20.11(a); and
    - (B) an explanation as to why it is seeking to amend the Final Design Documentation; and
  - (ii) clause 20.8 will apply as if the Design Documentation is Design Stage 3 Design Documentation.
- (b) Macquarie may, at its own risk, use the amended Final Design Documentation (that is not Third Party Agreement Design Documentation) submitted in accordance with clause 20.11(a) for construction purposes prior to certification by the Independent

Certifier under clause 20.8(b)(ii)(B) if, and only if, the amendment to the Final Design Documentation:

- (i) is minor;
  - (ii) does not adversely impact the Project Works or the Temporary Works; and
  - (iii) is necessary to overcome an issue which:
    - (A) prevents or adversely affects Macquarie proceeding with construction; and
    - (B) has arisen or become evident since the Final Design Documentation was submitted to the Independent Certifier.
- (c) If Macquarie exercises its right under clause 20.12(b) and the Independent Certifier subsequently rejects the amended Final Design Documentation in accordance with clause 20.8(b)(ii)(A), then (unless otherwise approved in writing by the Principal's Representative):
- (i) Macquarie must immediately cease any construction being carried out in accordance with the relevant non-compliant element of the amended Final Design Documentation, but Macquarie may commence or continue construction in accordance with any element of the amended Final Design Documentation that the Independent Certifier has not identified as being non-compliant with this deed; and
  - (ii) clause 20.8(e) to 20.8(i) will reapply in relation to the non-compliant element of the amended Final Design Documentation.
- (d) Macquarie must submit any amended Final Design Documentation which is Third Party Agreement Design Documentation to the required recipients under any relevant Third Party Agreement at the same time that Macquarie submits that amended Final Design Documentation to the Principal's Representative and the Independent Certifier under clause 20.12(a)(i).

#### 20.13 **Amendments to Final Design Documentation required by Follow-on Contractors**

If an amendment is required to the Final Design Documentation to accommodate any Follow-on Works then to the extent that amendment has not been caused by a breach by Macquarie of its obligations under clause 10.2 or the relevant Follow-on Contractor Cooperation and Integration Deed, Macquarie will only be obliged to amend the Final Design Documentation to accommodate those Follow-on Works if the Principal has directed Macquarie to do so by a Variation Order.

#### 20.14 **No duty to review**

The Principal and Macquarie acknowledge and agree that:

- (a) neither the Principal nor the Principal's Representative assume a duty or owe any duty to Macquarie to review the Design Documentation for errors, omissions or compliance with the requirements of this deed or to consult with Macquarie or make any comments regarding any Design Documentation; and
- (b) neither:
  - (i) any review or rejection of, or consultation or comments or recommendations by the Principal, the Principal's Representative or the Independent Certifier, nor any failure by the Principal, the Principal's Representative or the

Independent Certifier regarding, any Design Documentation or any other Direction by the Principal's Representative in respect of any Design Documentation; nor

- (ii) the certification of any Design Documentation by the Independent Certifier under clause 20.8(b)(ii)(B),

will lessen or otherwise affect:

- (iii) Macquarie's warranties under clause 20.3 or any other of its liabilities or responsibilities under this deed or otherwise according to Law; or
- (iv) the Principal's rights against Macquarie, whether under this deed or otherwise according to Law.

#### 20.15 Ownership of documentation

- (a) Documents (including Design Documentation) supplied by or on behalf of Macquarie will be the Principal's property.

- (b) Macquarie (irrevocably for all time and despite any termination of this deed for any reason):

- (i) to the fullest extent permitted by Law, assigns to the Principal all of Macquarie's right, title and interest in the Intellectual Property Rights in or relating to:

- (A) the Design Documentation; and
- (B) the materials, documents, images, photographs and software relevant to Macquarie's Activities (other than processes and methods of working),

(collectively called the **Contract Documentation and Materials**) prepared or created by, or on behalf of, Macquarie for or in connection with Macquarie's Activities or the Project Works (other than the Temporary Works), which assignment is effective immediately from the time it is prepared or created; and

- (ii) in respect of all other Intellectual Property Rights in or relating to:

- (A) the Contract Documentation and Materials; and
- (B) the Temporary Works and the processes and methods of working relevant to Macquarie's Activities that Macquarie itself owns or has an irrevocable, royalty free, perpetual and fully assignable licence to use (and to sublicense others to use) (collectively called the **Contract Processes**),

grants to the Principal an irrevocable, royalty free, perpetual and fully assignable sub-sub-licence to use (and to sublicense others to use) the same for:

- (C) the purposes of completing the construction, commissioning and testing of, using, operating, duplicating, extending, maintaining, upgrading, altering or otherwise dealing with the whole or any part of Macquarie's Activities or the Project Works and the Temporary Works; and

- (D) any purpose associated with further development of the Construction Site and the Martin Place Metro Station,

which licence is effective immediately and will survive termination of this deed on any basis.

- (ba) In relation to any Intellectual Property Rights in or relating to the Contract Processes for which a licence is not granted pursuant to clause 20.15(b), Macquarie grants to the Principal a licence to the extent such terms as Macquarie's own rights allow, for:

- (i) the purposes of completing the construction, commissioning and testing of, using, operating, duplicating, extending, maintaining, upgrading, altering or otherwise dealing with the whole or any part of Macquarie's Activities or the Project Works and the Temporary Works; and
- (ii) any purpose associated with further development of the Construction Site and the Martin Place Metro Station,

which licence is effective immediately and will survive termination of this deed on any basis.

- (c) Macquarie:

- (i) warrants that the Principal's use of the Contract Documentation and Materials, or any other work provided by Macquarie under this deed, will not infringe any author's Moral Rights under the *Copyright Act 1968* (Cth) or similar legislation in any jurisdiction; and
- (ii) indemnifies the Principal against any Claims against, or Costs, expenses, Losses or damages suffered or incurred by the Principal arising out of, or in any way in connection with, any actual or alleged infringement of any author's Moral Rights under the *Copyright Act 1968* (Cth) or similar legislation in any jurisdiction in connection with the Project Works, the Temporary Works, Macquarie's Activities or the Contract Documentation and Materials.

- (d) For the purposes of clause 20.15(c), the Principal's use of the Contract Documentation and Material includes the Principal's right to reproduce, publish, copy, adapt, communicate to the public, materially distort, destroy, mutilate or in any way change the Contract Documentation or Material or part of the Project Works or Temporary Works to which the Contract Documentation or Material or any other work provided by Macquarie under this deed relates:

- (i) with or without attribution of authorship;
- (ii) in any medium; and
- (iii) in any context and in any way it sees fit.

- (e) Macquarie agrees to, and agrees to procure the cooperation of any third parties to, execute such further documents and do such further things (including assisting in relation to any litigation commenced by or brought against the Principal or its licensees, assignees or successors and their licensees, or any other person authorised by it) as reasonably requested by the Principal to give full effect to the provisions of this deed and to allow or assist the Principal (and its licensees, assignees and successors and their licensees, and any other person authorised by it) to obtain, perfect, assert, enforce or defend its (or their) interest in, rights and consents to the assigned or licensed Intellectual Property Rights (as the case may be) or any adaptation of it (or any part of the assigned or licensed Intellectual Property Rights (as the case may be) or of any such adaptation) or to prevent or



obtain other remedies from others infringing any of those rights, interests and consents anywhere in the world.

- (f) The Principal grants to Macquarie a royalty free licence for the duration of the performance of Macquarie's Activities (including each Defects Correction Period) to use, only for the purpose of executing Macquarie's Activities, TfNSW's Intellectual Property Rights or the Principal's Intellectual Property Rights in respect of which the Principal has absolute title under clause 20.15(b)(i).
- (g) Macquarie warrants that:
  - (i) the:
    - (A) assignment to the Principal and any use of the Intellectual Property Rights assigned under this clause 20.15; and
    - (B) use of the Intellectual Property Rights licensed under this clause 20.15 pursuant to the terms of this deed,does not and will not infringe the Intellectual Property Rights of any party; and
  - (ii) Macquarie is either:
    - (A) the absolute and unencumbered legal and beneficial owner of the Intellectual Property Rights referred to in clause 20.15(b)(i) and is able to assign those Intellectual Property Rights to the Principal pursuant to that clause; or
    - (B) able to grant the licence granted in clause 20.15(b)(ii).
- (h) Without limiting clause 20.15(g), where any action or claim for infringement or alleged infringement of any Intellectual Property Rights results in the use or enjoyment by the Principal or its licensees, assignees or successors or their licensees, or other person authorised by it, of the Contract Documentation and Materials, the Contract Processes, Macquarie's Activities or the Project Works or any part of them, being disrupted, impaired or adversely affected, Macquarie must at its own expense and at the Principal's option:
  - (i) procure for the benefit of the Principal and its licensees, assignees and successors and their licensees and any other person authorised by it the right to continue to use and exploit the Intellectual Property Rights assigned or licensed pursuant to this clause 20.15, in accordance with this deed; or
  - (ii) modify or replace the Contract Documentation and Materials, the Contract Processes, Macquarie's Activities or the Project Works or relevant part of them, in respect of which Intellectual Property Rights are assigned or licensed pursuant to this clause 20.15, so that no further infringement will occur and so that the modified or replaced Contract Documentation and Materials, the Contract Processes, Macquarie's Activities or the Project Works or relevant part of them in respect of which Intellectual Property Rights are assigned or licensed pursuant to this clause 20.15 will:
    - (A) comply with the requirements of this deed; and
    - (B) not limit or otherwise affect the Principal's rights, or Macquarie's ability to comply with its obligations, under this deed or otherwise according to Law.

- (i) Macquarie indemnifies, and agrees to keep indemnified, the Principal from and against any Claims against the Principal, or Loss suffered or incurred by the Principal, arising out of or in any way in connection with:
  - (i) a breach by Macquarie of any warranty set out in this clause 20.15; or
  - (ii) any actual or alleged infringement of an Intellectual Property Right in connection with the Contract Documentation and Materials, the Contract Processes, Macquarie's Activities or the Project Works or any part of them.
- (j) Macquarie:
  - (i) acknowledges that the Principal may provide the Operator or any Rail Contractor with copies of any documents (including Design Documentation) provided to the Principal, TfNSW or the Independent Certifier by or on behalf of Macquarie in any way in connection with this deed, the Project Works, the Temporary Works or Macquarie's Activities; and
  - (ii) must, upon request by the Principal's Representative, provide to the Principal's Representative copies of any Contract Documentation or Materials that the Operator or any Rail Contractor may reasonably require.

#### 20.16 **Delivery up of Design Documentation**

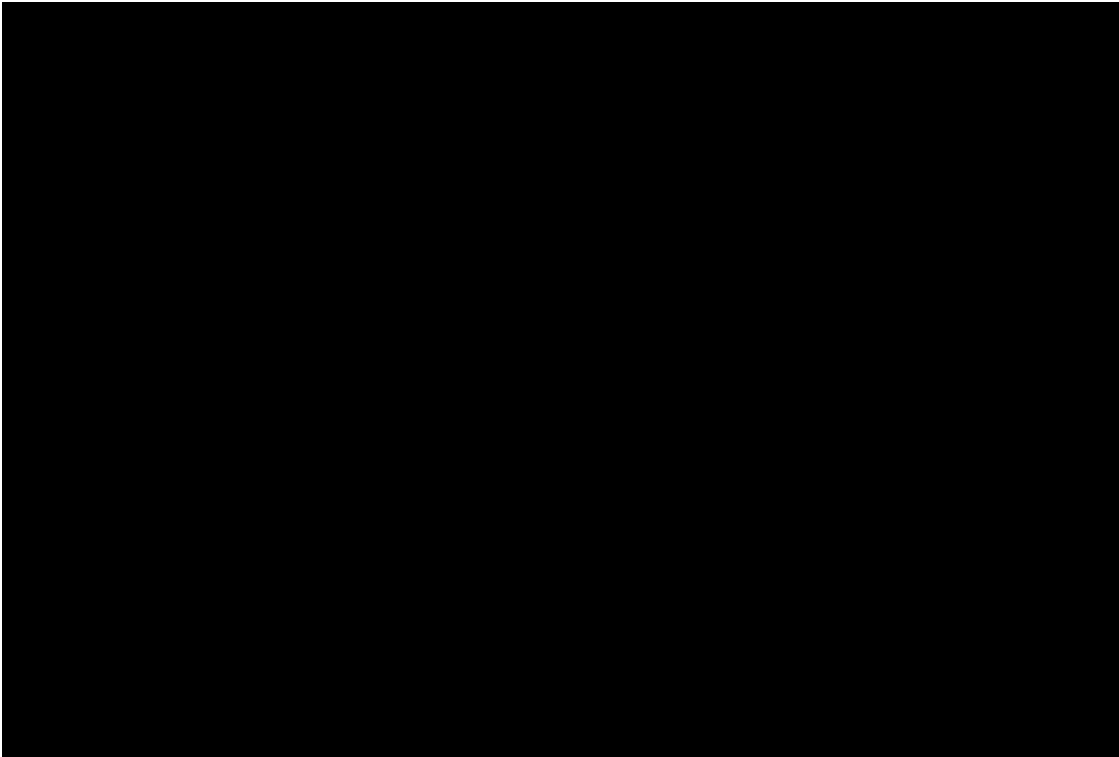
If this deed is terminated whether pursuant to clause 45 or otherwise at Law:

- (a) Macquarie must:
  - (i) subject to clause 20.16(b), immediately deliver the original and all sets and copies of all Design Documentation (whether complete or not and including any Design Documentation stored electronically) then in existence to the Principal; and
  - (ii) provide such details, memoranda, explanations, documentation and other assistance as the Principal reasonably requires in relation to the Design Documentation; and
- (b) Macquarie and each Subcontractor may retain a copy of all such Design Documentation.

#### 20.17 **Reference design**

- (a) Macquarie acknowledges that prior to the Commencement Date, TfNSW prepared a reference design for the Sydney Metro City & Southwest, a copy of which was provided to Macquarie as an Information Document.
- (b) The reference design will not form part of this deed and is subject to the provisions of this deed and the Information Disclaimer concerning Information Documents.
- (c) Macquarie agrees that it bears absolutely all risks howsoever they may arise as a result of the use by Macquarie of, or the reliance by Macquarie on, the reference design and the existence of the reference design will not limit any of Macquarie's obligations under this deed, including that Macquarie remains responsible for ensuring that the Project Works and the Temporary Works satisfy the requirements of this deed.
- (d) The parties acknowledge and agree that the reference design provided to Macquarie pursuant to this clause is not fully consistent with the Functional Design Layout or the SWTC Reliance Provisions.

20.18 **Design Life**



20.19 **Caverns Scope Design Documentation**

- (a) Macquarie acknowledges and agrees that:
  - (i) the Principal has prepared the Caverns Scope Design Documentation;
  - (ii) the Caverns Scope Design Documentation was not prepared on Macquarie's behalf;
  - (iii) the Independent Certifier has certified that the Caverns Scope Design Documentation complies with the requirements of this deed;
  - (iv) Macquarie has accepted the Caverns Scope Design Documentation; and
  - (v) notwithstanding that the Caverns Scope Design Documentation was prepared by the Principal:
    - (A) Macquarie accepts, and will bear absolutely all risks howsoever they may arise as a result of the use by Macquarie of, or the reliance by Macquarie on, the Caverns Scope Design Documentation and the Caverns Scope Design Documentation will not limit any of Macquarie's obligations under this deed, including that Macquarie remains responsible for ensuring that the Project Works and the Temporary Works satisfy the requirements of this deed; and
    - (B) the Principal has no Liability to Macquarie by reason of the form or content of the Caverns Scope Design Documentation.
- (b) The parties agree that:
  - (i) clauses 20.2(b), 20.2(c), 20.2(d) and clause 20.3 apply to Caverns Scope Design Documentation, except that references to Design Stage 1 in those

clauses will be deemed to be a reference to the Caverns Scope Design Documentation;

- (ii) Macquarie is not required to comply with the process set out in clause 20.4, clause 20.6, clause 20.7 and clause 20.8 with respect to the Caverns Scope Design Documentation; and
- (iii) if Macquarie wishes to amend the Caverns Scope Design Documentation, the provisions of clause 20.12 and clause 20.13 apply.

## 21. CONSTRUCTION

### 21.1 Construction obligations

(a) Macquarie must construct the Project Works and the Temporary Works:

(i) in accordance with:

- (A) the SWTC;
- (B) any Design Documentation which Macquarie is entitled to use for construction purposes under clause 20.11(a);
- (C) any Variation:
  - (aa) directed by the Principal by a Variation Order; or
  - (bb) otherwise approved by the Principal under the terms of this deed; and
- (D) the other requirements of this deed; and

(ii) without limiting clause 21.1(a), so that the Project Works prior to and on Construction Completion (in respect of Portion 1) and prior to and on Completion (in respect of any Portion of the Project Works other than Portion 1), comply with any applicable Law.

(b) Subject to clause 7.7, Macquarie must not commence any work upon the Construction Site:

(i) until each of the following Project Plans have not been rejected by the Principal's Representative within the review period under clause 7.5:

- (A) Contract Management Plan;
- (B) Risk Management Plan;
- (C) Project Health and Safety Management Plan;
- (D) Construction Environmental Management Plan;
- (E) Sustainability Management Plan;
- (F) Construction and Site Management Plan;
- (G) Community Communications Strategy;
- (H) Quality Plan; and
- (I) Technical Management Plan; and

- (ii) until all Hold Points required to be released prior to commencement of work upon the Construction Site have been released in accordance with the requirements of this deed, including the Quality Plan.
- (c) Macquarie must not commence construction of any Third Party Interface Works until the relevant preconditions to commencement of those Third Party Interface Works in the relevant Third Party Agreement have been satisfied. The Principal must promptly give notice to Macquarie upon satisfaction of those preconditions.
- (d) Macquarie accepts full responsibility for all construction means, methods and techniques used in the performance of Macquarie's Activities.

#### 21.2 **Construction warranties**

Macquarie warrants that:

- (a) construction will be carried out in accordance with the Design Documentation which Macquarie is entitled to use for construction purposes in accordance with clause 20.11(a);
- (b) construction carried out in accordance with the Design Documentation which Macquarie is entitled to use in accordance with clause 20.11(a) will satisfy the requirements of this deed;
- (c) the Project Works and the Temporary Works will be completed in accordance with, and upon Construction Completion (in respect of Portion 1) or Completion (in respect of any Portion other than Portion 1) satisfy the requirements of, this deed; and
- (d) each Portion will, upon Construction Completion (in respect of Portion 1) or Completion (in respect of any Portion other than Portion 1), be safe and fit for its intended purposes.

#### 21.3 **Setting out**

- (a) Macquarie must:
  - (i) set out the Project Works in accordance with the requirements of this deed, based on information and survey marks (including any survey peg, bench mark, reference mark, signal, alignment, level mark or any other mark for the purpose of setting out, checking or measuring work) identified by Macquarie that are suitable for their purposes;
  - (ii) carry out any survey (including providing all instruments and things) that may be necessary for this purpose; and
  - (iii) for this purpose keep all survey marks in their true positions.
- (b) If Macquarie discovers an error in the position, level, dimensions or alignment of any part of the Project Works, Macquarie must immediately notify the Principal's Representative and, unless the Principal's Representative otherwise directs, Macquarie must at its Cost rectify the error.

#### 21.4 **All work included**

- (a) Subject to any express term of this deed to the contrary, Macquarie must provide all services, labour, Construction Materials, Services, Temporary Works, Construction Plant and other work necessary for Macquarie's Activities whether or not they are:

- (i) expressly mentioned in this deed or the Design Documentation prepared by Macquarie which Macquarie is entitled to use for construction purposes under clause 20.11(a); or
  - (ii) anticipated by Macquarie.
- (b) Such services, labour, Construction Materials, Services, Temporary Works, Construction Plant and other work form part of Macquarie's Activities and must be undertaken and provided by Macquarie at its own Cost and will not constitute a Variation or otherwise entitle Macquarie to make a Claim against the Principal.

## 21.5 Incident management

- (a) Macquarie must identify clear guidelines for responding to any Incident arising from the performance of Macquarie's Activities and establish procedures to ensure that the Principal's Representative is promptly notified of any Incident.
- (b) Should an Incident occur, Macquarie must immediately report the Incident to:
- (i) if the Incident is reportable under any relevant Law, the relevant Authority; and
  - (ii) the Principal's Representative.
- (c) Without limiting clause 16.4 and subject to clauses 23 and 24, in relation to any environmental or safety Incident involving Contamination or waste that arises during the performance of Macquarie's Activities, Macquarie must:
- (i) at its own Cost promptly take all appropriate action to manage and dispose of all Contamination or waste arising from the Incident;
  - (ii) comply with all relevant Laws including any requirements to give notice to a relevant Authority; and
  - (iii) at its own Cost manage the Incident in a manner which minimises damage to the reputation of the Principal including complying with any reasonable request of the Principal's Representative.
- (d) Without prejudice to the Principal's other rights under this deed, if upon the occurrence (or imminent risk of the occurrence) of an Incident, Macquarie is not taking adequate measures to manage the Incident or control or eliminate the adverse impact or the risk of such an Incident arising in the future, the Principal may (but has no obligation to) take such actions as it deems necessary to overcome and alleviate the cause and consequences of any Incident. If the Principal takes any such action it will be entitled to recover its reasonable Costs and expenses from Macquarie as a debt due and payable from Macquarie to the Principal.
- (e) Without prejudice to the Principal's other rights under this deed, the Principal's Representative may only issue an immediate stop work order in the event of any Incident, or the imminent risk of any Incident, involving:
- (i) a significant spill of Contamination;
  - (ii) any actual damage to the Environment or a significant risk of harm to the Environment; or
  - (iii) a fatality or injury to any person including any Incident which must be reported to SafeWork NSW, ONRSR or other work health and safety regulator.

- (f) The Principal will not be liable upon any Claim by Macquarie for any Loss arising out of or in connection with any work stoppage due to a stop work order or for the failure by the Principal's Representative to issue a stop work order.
- (g) The Principal will be entitled to recover its reasonable Costs and expenses for any action the Principal's Representative deems necessary to avoid the issue of any stop work order to the extent caused or contributed to by Macquarie's or its Associates' acts or omissions in performing Macquarie's Activities as a debt due and payable from Macquarie to the Principal.

#### 21.6 Instructions from Authorities

Notwithstanding any other provision of this deed, Macquarie:

- (a) must not restrict, close, interfere with or obstruct the free flow of the public in public spaces, parks, pedestrian ways or pedal cycle paths, or traffic on any lane or shoulder of the existing road network, including Local Areas, contrary to the instructions of the New South Wales Police Service or any other Authority; and
- (b) in restricting, closing, interfering with or obstructing the free flow of the public in public spaces or parks, pedestrian ways or pedal cycle paths, or traffic on any lane or shoulder of the existing road network, including Local Areas, must act in accordance with any instructions of the New South Wales Police Service or any other Authority including to cease any of Macquarie's Activities and to re-open the public space, park, pedestrian way, pedal cycle path, lane or shoulder.

#### 21.7 Survey

- (a) Macquarie must, as a condition precedent to Construction Completion of Portion 1 and Completion of each Portion other than Portion 1 submit to the Principal's Representative a survey certificate (within the meaning of that term in the *Surveying and Spatial Information Regulation 2012 (NSW)*) signed by a land surveyor registered under the *Surveying and Spatial Information Act 2002 (NSW)* who is approved by the Principal's Representative stating that:
  - (i) the whole of the Portion is within the relevant boundaries of the Project Site stipulated in this deed, except only for parts of the Portion specifically required by this deed to be outside those boundaries (including any Service Works which this deed specifically states may be carried out outside the boundary of the Project Site);
  - (ii) the elements of the Portion are in the positions and within the tolerances required by this deed;
  - (iii) the survey information included in the Asset Management Information provided by Macquarie pursuant to clause 21.10 complies with the requirements of this deed; and
  - (iv) any other relevant matter identified by the Principal's Representative acting reasonably in relation to surveying or the boundaries of the Portion complies with the requirements of this deed.
- (b) Macquarie must submit to the Principal's Representative a survey plan detailing the final surface levels and locations of all disconnected and isolated utility services for Construction Site (Area 1), after completion of the demolition of the building as required under this deed, including in accordance with Appendix 65 of the SWTC.

## 21.8 **Cleaning up**

Without limiting clause 9.9, in carrying out Macquarie's Activities, Macquarie must:

- (a) keep the Construction Site, Extra Land and the Project Works and Temporary Works clean and tidy and free of refuse;
- (b) regularly remove rubbish, litter, graffiti and surplus material (including Construction Materials) from the Construction Site and Extra Land; and
- (c) as a condition precedent to Construction Completion of Portion 1 and Completion of each Portion other than Portion 1, remove all rubbish, surplus materials (including Construction Materials), Construction Plant and Temporary Works from the relevant parts of the Construction Site and Extra Land relevant to that Portion except:
  - (i) where the retention of any of these are required for the correction of Defects during the Defects Correction Period and this is approved in writing by the Principal's Representative; and
  - (ii) in respect of Construction Site (Area 6), any Temporary Works which were site amenities or changes made in respect of the access and egress to Construction Site (Area 6) which were required for the performance of Macquarie's Activities.

## 21.9 **Work methods**

Whether or not this deed prescribes a particular work method or a work method is otherwise a part of this deed or reviewed or approved (expressly or impliedly) by the Principal or the Principal's Representative, the fact that any work method that Macquarie adopts or proposes to adopt is impractical or impossible or that Macquarie, with or without the approval of the Principal's Representative, uses another work method will:

- (a) not entitle Macquarie to make any Claim against the Principal arising out of or in any way in connection with the work method proving to be impractical or impossible or any change in the work method; and
- (b) not cause this deed to be frustrated.

## 21.10 **Asset Management Information**

- (a) Macquarie must develop the Asset Management Information in accordance with this deed, including section 8A of the SWTC.
- (b) As a condition precedent to Construction Completion of Portion 1 and Completion of any Portion other than Portion 1, Macquarie must develop the Asset Management Information for that Portion.
- (c) The Asset Management Information must contain the contents required by the SWTC.
- (d) Macquarie must, for each Portion, submit to the Principal's Representative an initial draft of the Asset Management Information for that Portion which is not intended to differ in substance from the final draft but for minor details:
  - (i) no less than 180 days prior to the Date for Construction Completion of Portion 1 (with respect to the Asset Management Information for Portion 1) or the Date for Completion of the Portion (with respect to the Asset Management Information for any Portion other than Portion 1);



- (ii) if either:
    - (A) the Principal's Representative reasonably anticipates that the Date of Construction Completion or Date of Completion of the Portion (as applicable) will be prior to the Date for Construction Completion or Date for Completion of the Portion (as applicable), no less than 180 days prior to the Principal's Representative's reasonably anticipated Date of Construction Completion or Date of Completion for the Portion (as applicable), provided that the Principal's Representative gives Macquarie 35 days' notice of the required date for submission; or
    - (B) it is otherwise reasonably apparent that the anticipated Date of Construction Completion or Date of Completion of the Portion (as applicable) will be earlier than the Date for Construction Completion or Date for Completion for that Portion (as applicable), no less than 180 days prior to the reasonably anticipated Date of Construction Completion or Date of Completion for the Portion (as applicable); or
  - (iii) if the Principal's Representative has given a Direction under clause 18.1 and it is not possible for Macquarie to submit an initial draft of the Asset Management Information for the Portion within either of the time periods required by clauses 21.10(d)(i) or (ii), within such other reasonable period of time directed by the Principal's Representative.
- (e) Macquarie must, for each Portion, submit to the Principal's Representative a final draft of the Asset Management Information for that Portion:
- (i) no less than 90 days prior to the Date for Construction Completion of Portion 1 (with respect to the Asset Management Information for Portion 1) or the Date for Completion of the Portion (with respect to the Asset Management Information for any Portion other than Portion 1);
  - (ii) if either:
    - (A) the Principal's Representative reasonably anticipates that the Date of Construction Completion or Date of Completion of the Portion (as applicable) will be prior to the Date for Construction Completion or Date for Completion for the Portion (as applicable), no less than 90 days prior to the Principal's Representative's reasonably anticipated Date of Construction Completion or Date of Completion of the Portion (as applicable), provided that the Principal's Representative gives Macquarie 35 days' notice of the required date for submission; or
    - (B) it is otherwise reasonably apparent that the anticipated Date of Construction Completion or Date of Completion of the Portion (as applicable) will be earlier than the Date for Construction Completion or Date for Completion of the Portion (as applicable), no less than 90 days prior to the reasonably anticipated Date of Construction Completion or Date of Completion for the Portion (as applicable); or
  - (iii) if the Principal's Representative has given a Direction under clause 18.1 and it is not possible for Macquarie to submit a final draft of the Asset Management Information for the Portion within either of the time periods required by clauses 21.10(e)(i) or (ii), within such other reasonable period of time directed by the Principal's Representative.
- (f) Macquarie must, for each Portion, submit to the Principal's Representative the final Asset Management Information for the Portion:

- (i) no less than 30 days prior to the Date for Construction Completion of Portion 1 (with respect to the Asset Management Information for Portion 1) or the Date for Completion of the Portion (with respect to the Asset Management Information for any Portion other than Portion 1);
  - (ii) if the Principal's Representative reasonably anticipates that the Date of Construction Completion or Date of Completion of the Portion (as applicable) will be prior to the Date for Construction Completion or Date for Completion for the Portion (as applicable), no less than 30 days prior to the Principal's Representative's reasonably anticipated Date of Construction Completion or Date of Completion of the Portion (as applicable), provided that the Principal's Representative gives Macquarie 35 days' notice of the required date for submission; or
  - (iii) if the Principal's Representative has given a Direction under clause 18.1 and it is not possible for Macquarie to submit the final Asset Management Information for the Portion within either of the time periods required by clause 21.10(f)(i) or (ii), within such other reasonable period of time directed by the Principal's Representative.
- (g) Macquarie acknowledges and agrees that the Principal's Representative may review any Asset Management Information, or any draft of any Asset Management Information, submitted under clause 21.10(d), 21.10(e), 21.10(f), or 21.10(k).
- (h) The Principal's Representative may:
- (i) provide copies of any Asset Management Information, or any draft of any Asset Management Information, submitted under clause 21.10(d), 21.10(e), 21.10(f), or 21.10(k) to; and
  - (ii) seek comments in respect of any Asset Management Information, or any draft of any Asset Management Information, from,
- the Independent Certifier and any Rail Contractor.
- (i) Macquarie acknowledges and agrees that the Principal's Representative may (but is not obliged to) make comments to Macquarie in respect of any Asset Management Information, or any draft of any Asset Management Information, submitted under clause 21.10(d), 21.10(e), 21.10(f), or 21.10(k).
- (j) The Principal must, within 15 Business Days of the submission of the Asset Management Information for a Portion, either:
- (i) reject the Asset Management Information for a failure to comply with the requirements of this deed, which rejection must specify what development, updating and amendment of the Asset Management Information is required (together with reasons) and a time within which this must occur; or
  - (ii) advise in writing that the Asset Management Information is not rejected.
- (k) If a set of Asset Management Information for a Portion is rejected by the Principal's Representative under clause 21.10(j), Macquarie must update and resubmit the Asset Management Information and clause 21.10(j) will re-apply except that the reference to "15 Business Days" will be deemed to be a reference to:
- (i) 5 Business Days (if Macquarie has taken 5 Business Days or less to re-submit the Asset Management Information); or
  - (ii) 10 Business Days (otherwise).

- (l) The Principal's Representative owes no duty to Macquarie to review any Asset Management Information or any draft submitted by Macquarie for errors, omissions or compliance with this deed.
- (m) Without prejudice to Macquarie's rights pursuant to clauses 23 and 24, no review of, comments upon or rejection of any Asset Management Information or any draft by the Principal's Representative nor any other Direction by the Principal's Representative in respect of any Asset Management Information or any draft, will lessen or otherwise affect:
  - (i) Macquarie's liabilities or responsibilities under this deed or otherwise according to Law; or
  - (ii) the Principal's rights against Macquarie, whether under this deed or otherwise according to Law.
- (n) Macquarie acknowledges and agrees that a purpose of each set of Asset Management Information is for Macquarie to provide a detailed description of how the Principal (or any nominee of the Principal) should maintain the relevant Portion.
- (o) Macquarie warrants that each set of Asset Management Information will, upon Construction Completion (in respect of Asset Management Information for Portion 1) and upon Completion (in respect of Asset Management Information for any Portion other than Portion 1), be fit for its intended purpose, including for the purpose of enabling the Principal (or any nominee of the Principal) to maintain the relevant Portion.

**21.11 As-built drawings**

- (a) As a condition precedent to Construction Completion of Portion 1 and Completion of any Portion other than Portion 1, Macquarie must prepare and submit as-built drawings for the relevant Portion to the Principal.
- (b) All as-built drawings submitted by Macquarie under clause 21.11(a) must:
  - (i) comply with the requirements of this deed including the SWTC; and
  - (ii) be accompanied by a certificate in the form of Schedule B12 from:
    - (A) Macquarie; and
- (c) The Principal and Macquarie acknowledge and agree that the Principal must, within 15 Business Days of the submission of the as-built drawings for a Portion, either:
  - (i) if the as-built drawings do not comply with the requirements of this deed, give a written notice to the Principal and Macquarie which rejects those as-built drawings and specifies:
    - (A) the developments, updates or amendments to the as-built drawings that are required in order for the as-built drawings to comply with the requirements of this deed;

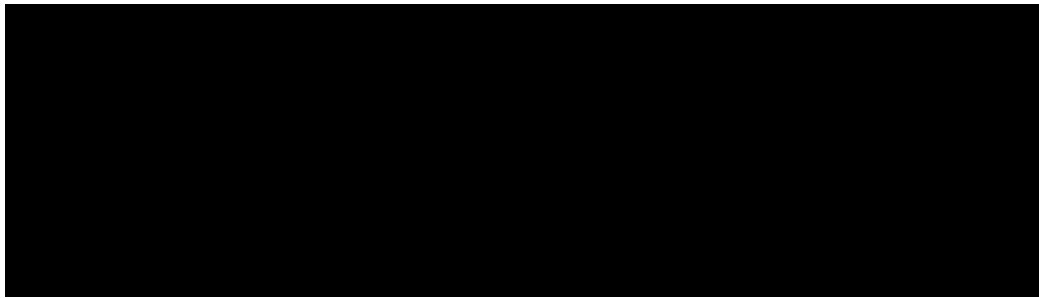
- (B) the reasons for the developments, updates or amendments referred to in clause 21.11(c)(i)(A); and
  - (C) the time within which the as-built drawings must be developed, updated or amended; or
- (ii) advise that the as-built drawings are not rejected by including a notation on the as-built drawings.
- (d) If the as-built drawings for a Portion are rejected by the Principal under clause 21.11(c)(i):
  - (i) Macquarie must develop, update or amend those as-built drawings and resubmit those as-built drawings to the Principal; and
  - (ii) clause 21.11(c) will re-apply to the resubmitted as-built drawings except that the reference to "15 Business Days" will be deemed to be a reference to the IC Re-Review Period.
- (e) Macquarie acknowledges and agrees that the Principal may (but is not obliged to) make comments to Macquarie in respect of any as-built drawings submitted under clause 21.11(a) or resubmitted under clause 21.11(d).
- (f) The Principal may:
  - (i) provide copies of any as-built drawings to; and
  - (ii) seek comments in respect of any as-built drawings from, the Rail Contractors.
- (g) The Principal owes no duty to Macquarie to review any as-built drawings submitted or resubmitted by Macquarie for errors, omissions or compliance with this deed.
- (h) Without prejudice to Macquarie's rights pursuant to clauses 23 and 24, no review of, comments upon or rejection of any as-built drawings by the Principal's Representative nor any other Direction by the Principal's Representative in respect of any as-built drawings, will lessen or otherwise affect:
  - (i) Macquarie's liabilities or responsibilities under this deed or otherwise according to Law; or
  - (ii) the Principal's rights against Macquarie, whether under this deed or otherwise according to Law.

#### 21.12 Training

- (a) During the final 3 months prior to the Date for Completion of the last Portion to achieve Completion or such earlier date reasonably specified by the Principal's Representative, Macquarie must train personnel as nominated by the Principal's Representative (which may include personnel of any Rail Contractor) in all aspects of the maintenance of the Project Works comprised in that Portion to a level of competency that will allow those personnel to operate, manage and maintain those Project Works after the Last Date of Completion.
- (b) Macquarie must ensure that it has competent and experienced personnel available to consult with the Principal (and any nominee of the Principal) on any aspect of the operation, maintenance and repair of the Project Works at any time until the date 12 months after the Last Date of Completion.

**21.13 Area 6 Handover Items**

- (a) On the Construction Licence Commencement Date for Construction Site (Area 6), the Principal must ensure that:
- (i) to the extent the relevant items were actually constructed or installed as part of the TSE Works, the Area 6 Handover Items are located on Construction Site (Area 6); and
  - (ii) subject to clause 38.3, the access tunnel off Bligh Street located in Construction Site (Area 6):
    - (A) does not contain obstructions that would prevent Macquarie from being able to access Construction Site (Area 6); and
    - (B) is capable of being used by Macquarie for ingress and egress to Construction Site (Area 3); and



- (b) Except as expressly provided in clause 21.13(a), the Principal makes no representations and gives no warranties to Macquarie or its Associates in respect of the condition of Construction Site (Area 6) or the Area 6 Handover Items, including in respect of:
- (i) the adequacy, suitability or fitness for purpose of the Area 6 Handover Items for Macquarie's Activities; or
  - (ii) the condition of the Area 6 Handover Items.
- (c) Macquarie acknowledges and agrees that:
- (i) without limiting clause 21.13(a)(iii), Macquarie accepts the Area 6 Handover Items in the condition in which they are provided onsite;
  - (ii) except to the extent the Principal has breached its obligations under clause 21.13(a):
    - (A) the Area 6 Handover Items will be suitable for Macquarie's Activities in the condition in which they are provided onsite; and
    - (B) Macquarie is responsible for, and assumes the risk of:
      - (aa) all Loss, delay or disruption it suffers or incurs; and
      - (bb) any adverse effect on the Project Works, Macquarie's Activities, the Temporary Works and any part of the TSE Works during the period in which Macquarie is responsible for them in accordance with clause 11.11,

arising out of, or in any way in connection with the Area 6 Handover Items, including in relation to their operation and maintenance.

- (d) Without limiting any other provision of this deed, Macquarie must, on and from the the later of the Construction Licence Commencement Date for Construction Site (Area 6) and the TSE Portion 14 Date of Construction Completion, at its own cost, operate and maintain the Area 6 Handover Items at the frequency and in the manner as specified in the column titled "Ongoing Maintenance Requirements" in Schedule A24.
- (e) Without limiting clause 21.13(a)(iii), Macquarie acknowledges and agrees that the Principal's obligations under this clause 21.13 apply only on the Construction Licence Commencement Date for Construction Site (Area 6).

## 22. **QUALITY**

### 22.1 **Quality Management System**

- (a) Macquarie must implement a Quality Management System for the management of all aspects of Macquarie's obligations under this deed, including in accordance with the applicable requirements of the SWTC and the Quality Plan.
- (b) Macquarie must develop and implement a Quality Plan in accordance with this deed.

### 22.2 **Quality management, verification and certification**

- (a) The Principal and Macquarie acknowledge that the design and construct project delivery method chosen for the Project Works and the Temporary Works:
  - (i) requires Macquarie to assume responsibility for all aspects of quality for Macquarie's Activities and for the durability of the Project Works and the Temporary Works;
  - (ii) allows the Independent Certifier to monitor, audit, review, assess and test all aspects of quality in Macquarie's Activities and the durability of the Project Works and the Temporary Works to certify compliance with the requirements of this deed;
  - (iii) requires the Independent Certifier by reviewing and assessing quality in Macquarie's Activities and the durability of the Project Works and the Temporary Works, to certify Macquarie's compliance with the requirements of this deed; and
  - (iv) allows the Principal's Representative to monitor compliance of Macquarie's Activities with the requirements of this deed.
- (b) Macquarie must ensure a Quality Manager is engaged who must:
  - (i) independently certify the effectiveness and integrity of Macquarie's quality system in achieving conformance with the requirements of this deed;
  - (ii) report to the Principal's Representative and the Independent Certifier on quality issues in accordance with the requirements of this deed; and
  - (iii) have the requisite experience and ability described for the Quality Manager in Schedule A9.
- (c) Macquarie must provide to the Principal's Representative a certificate executed by the Quality Manager in the form of:

- (i) Schedule B13 within 3 months of Financial Close;
  - (ii) Schedule B14 every 3 months from Financial Close until the Last Date of Completion;
  - (iii) Schedule B3 as a condition precedent to Construction Completion of any relevant Portion;
  - (iv) Schedule B23 as a condition precedent to Completion of any relevant Portion; and
  - (v) Schedule B15 upon the expiry of the last Defects Correction Period.
- (d) Macquarie must provide to the Principal's Representative a certificate executed by the Independent Certifier in the form of Schedule B6 upon the expiry of the last Defects Correction Period.
  - (e) Macquarie must provide to the Principal's Representative a certificate executed by the Environmental Manager in the form of Schedule B16 every 3 months from Financial Close until the Last Date of Completion.

### 22.3 **Project quality non-conformance**

- (a) Macquarie must comply with the procedure for non-conformances set out in the SWTC and the Quality Plan. Further to the provisions of clause 10.2 of AS/NZS ISO 9001:2016 and without limiting clause 30.4, the use, release or acceptance of non-conforming work can only be given by the Principal's Representative, at its absolute discretion and without being under any obligation to do so.
- (b) In addition to the procedure for non-conformances referred to in clause 22.3(a), and without limiting clause 30.3, if Macquarie has not complied with this deed including the SWTC, the Principal's Representative may give written notice to Macquarie of Macquarie's failure to comply and requiring compliance within a reasonable time specified in the notice.
- (c) If Macquarie does not comply with the notice referred to in clause 22.3(b), the Principal may employ others to carry out the direction.
- (d) The amount of any Loss the Principal suffers or incurs in taking action contemplated in clause 22.3(c) or as a result of Macquarie's failure to comply with clause 22.3(b) will be a debt due and payable from Macquarie to the Principal.
- (e) Corrective actions implemented under Macquarie's quality system must comply with the requirements of this deed including the SWTC.
- (f) Macquarie must promptly issue all documents relating to quality non-conformances to the Principal's Representative.

## 23. **TIME**

### 23.1 **Commencement**

Macquarie must promptly commence performance of Macquarie's Activities following Financial Close.

### 23.2 **Dates for Milestone Achievement, Construction Completion and Completion**

Macquarie must:

- (a) achieve Milestone Achievement of each Milestone by the Date for Milestone Achievement of that Milestone;
- (b) achieve Construction Completion of each Portion by the Date for Construction Completion of that Portion;
- (c) achieve Completion of each Portion (other than Portion 1) by the Date for Completion of that Portion;
- (d) achieve Completion of the Retail Works, OSD Entrance Works and Over Station Rail Works by the Date of Completion of the last Station Works Portion to achieve Completion; and
- (e) expeditiously and diligently progress Macquarie's Activities.

**23.3 Importance of Milestone Achievement, Construction Completion and Completion on time**

Macquarie acknowledges:

- (a) the importance of complying with its obligations under clause 23.2 to enable Rail Contractors to carry out and complete the Rail Contractors' Activities within the time required by their respective Rail Contracts, including so as to enable the Principal to pursue improved public transport in Sydney; and
- (b) that the Date for Construction Completion or Date for Completion of any Portion or Date for Milestone Achievement of any Milestone will only be extended as set out in clauses 23.9, 35.6(c), 35.8(c), 35.10(b)(iv) and 35.12(c).

**23.4 SDD Program**

- (a) The initial SDD Program is contained in Annexure G. The parties acknowledge and agree that:
  - (i) Macquarie must update the initial SDD Program to reflect the details of Macquarie's Activities and must submit the amended initial SDD Program within 30 Business Days of the Commencement Date;
  - (ii) any update to the initial SDD Program pursuant to clause 23.4(a)(i) must not include any amendments to the dates and timing specified in the initial SDD program for particular aspects of the Project Works but can be amended to provide further details; and
  - (iii) the updated initial SDD Program is subject to approval by the Principal.
- (b) Macquarie must:
  - (i) prepare the SDD Program in accordance with the Sydney Metro Programming Protocol, which must:
    - (A) be based upon the initial SDD Program; and
    - (B) contain details required by the Sydney Metro Programming Protocol;
  - (ii) update the SDD Program periodically at intervals no less than monthly to take account of:
    - (A) changes to the program;



- (B) delays which have occurred;
  - (C) any corrective action plan submitted by Macquarie under clause 23.7 for which the Principal does not issue any comments under clause 23.8(b);
  - (D) key interface activities identified by the Cooperation and Integration Control Group; and
  - (E) the Principal granting Macquarie any Interim Access Licence;
- (iii) ensure that each update of the SDD Program contains the details required by the SWTC and any other details which the Principal's Representative reasonably directs;
  - (iv) explain any changes to the critical path in the SDD Program;
  - (v) ensure that each update of the SDD Program makes allowance for the Project Plans and Design Documentation to be submitted to the Principal's Representative and Independent Certifier (as applicable) in a manner and at a rate which will give the Principal's Representative and Independent Certifier (as applicable) a reasonable opportunity to review the submitted Project Plans or Design Documentation within the applicable periods referred to in this deed; and
  - (vi) give each of the Independent Certifier and the Principal's Representative copies of each update of the SDD Program for its review.
- (c) Nothing in the SDD Program will bind the Principal or otherwise affect the time for the performance of the Principal's obligations under this deed.

### 23.5 **Acceleration by Macquarie**

If Macquarie chooses to accelerate progress of Macquarie's Activities then:

- (a) The Principal may assist Macquarie but will not be obliged to take any action to assist or enable Macquarie to achieve:
  - (i) Milestone Achievement of a Milestone before the Date for Milestone Achievement for that Milestone;
  - (ii) Construction Completion of a Portion before the Date for Construction Completion of that Portion; or
  - (iii) Completion of a Portion before the Date for Completion of that Portion;
- (b) the time for the performance of the Principal's or the Principal's Representative's obligations will not be affected; and
- (c) Macquarie will not be entitled to make any Claim against the Principal in relation to such acceleration (or any failure or inability by Macquarie or the Principal to accelerate).

### 23.6 **Suspension**

The Principal's Representative may, at any time, direct Macquarie to suspend and, after a suspension has been directed, to re-commence, the carrying out of all or a part of the Project Works.

### 23.7 Delays

(a) Without limiting Macquarie's obligations under clause 23.9, if Macquarie becomes aware of any matter which will, or is likely to, give rise to a delay in achieving Milestone Achievement of a Milestone or Construction Completion or Completion of a Portion (other than a Variation), Macquarie must give the Principal a written notice setting out detailed particulars of the delay (and identifying whether it considers the delay is an Excusable Cause of Delay) as soon as reasonably practicable.

(b) If:

(i) Macquarie becomes aware of any matter which will, or is likely to, give rise to a delay; or

(ii) the Principal (acting reasonably) gives Macquarie a written notice that the Principal believes that Macquarie will be delayed,

in achieving Milestone Achievement of a Milestone by the Date for Milestone Achievement of that Milestone, Construction Completion of a Portion by the Date for Construction Completion of that Portion or Completion of a Portion by the Date for Completion of that Portion (other than an Excusable Cause of Delay or a Variation), Macquarie must give the Principal a detailed corrective action plan in accordance with clause 23.8.

(c) Macquarie must take all reasonable steps to:

(i) prevent the cause of any delay to Macquarie's Activities; and

(ii) avoid or minimise the consequences or duration of any delay,

including any delay arising from an Excusable Cause of Delay or a Variation, provided Macquarie is not required to incur any additional expense or apply any additional resources in order to comply with its obligations under this clause 23.7(c).

### 23.8 Corrective action plan

(a) Each corrective action plan which Macquarie must provide pursuant to clause 23.7 must show how Macquarie proposes to avoid, mitigate or minimise the consequences of the delay consistent with its obligations under clause 23.2 and be provided together with a proposed updated SDD Program.

(b) The Principal may, within 20 Business Days after receipt of a corrective action plan, reject the corrective action plan (with detailed reasons) if the corrective action plan does not comply with the requirements of clause 23.8(a).

(c) If the Principal rejects the corrective action plan under clause 23.8(b), Macquarie must amend and resubmit the corrective action plan to the Principal, after which this clause 23.8 will reapply.

(d) Macquarie must comply with any corrective action plan which is not rejected under clause 23.8(b).

(e) Macquarie will not be relieved of any liability or responsibility under this deed or otherwise at Law arising out of or in connection with:

(i) any notice given by the Principal under clause 23.8(b); or

(ii) the implementation of any corrective action plan.

- (f) Macquarie will not be entitled to make any Claim against the Principal arising out of or in connection with any notice by the Principal under clause 23.8(b) or any Loss suffered or incurred by Macquarie in preparing, or complying with, a corrective action plan.

**23.9 Claim for extension of time**

- (a) If an Excusable Cause of Delay:
  - (i) occurs in respect of a Portion or Portions (as applicable) prior to the relevant Date of Construction Completion of that Portion or Portions (as applicable) and delays or will delay Macquarie in achieving:
    - (A) Milestone Achievement of a Milestone;
    - (B) Construction Completion of that Portion or Portions; or
    - (C) Completion of that Portion or Portions; or
  - (ii) occurs in respect of a Portion (other than Portion 1) after the Date of Construction Completion of that Portion or Portions and delays or will delay Macquarie in achieving Completion of that Portion or Portions by the Date for Completion of that Portion or Portions,

Macquarie may make a Claim under clause 23.9(b)(i).

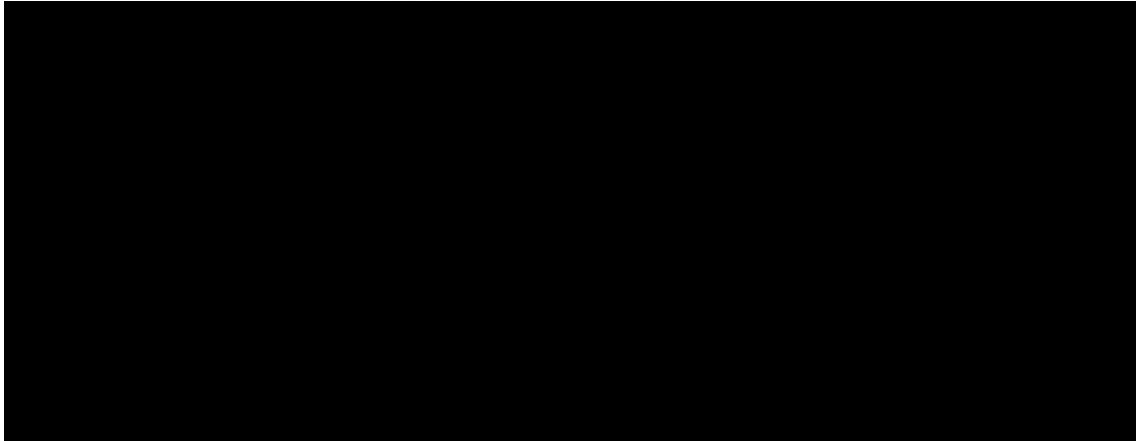
- (b) If Macquarie wishes to make a Claim under this clause 23.9 it must:
  - (i) within 20 Business Days after the date Macquarie first became aware of an Excusable Cause of Delay which delays or will delay Macquarie in achieving:
    - (A) Milestone Achievement of a Milestone as contemplated by clause 23.9(a)(i)(A);
    - (B) Construction Completion of a Portion as contemplated by clause 23.9(a)(i)(B); or
    - (C) Completion of a Portion as contemplated by clause 23.9(a)(i)(C) or clause 23.9(a)(ii),

submit a written claim for an extension to the Date for Milestone Achievement of that Milestone or Date for Construction Completion or Date for Completion of that Portion to the Principal's Representative which:

- (D) contains detailed particulars of:
  - (aa) the Excusable Cause of Delay causing the delay;
  - (bb) the parts of Macquarie's Activities that have been delayed; and
  - (cc) the delay caused by the relevant Excusable Cause of Delay;
- (E) states the number of days' extension of time to the Date for Milestone Achievement for the relevant Milestone or Date for Construction Completion or Date for Completion of the relevant Portion claimed by Macquarie (as applicable), together with the basis of calculating the total number of days claimed, including evidence that Macquarie will be delayed in achieving:

- (aa) Milestone Achievement of a Milestone as contemplated by clause 23.9(a)(i)(A);
  - (bb) Construction Completion of a Portion as contemplated by clause 23.9(a)(i)(B); or
  - (cc) Completion of a Portion as contemplated by clause 23.9(a)(i)(C) or clause 23.9(a)(ii),
    - (as applicable);
- (F) where the Excusable Cause of Delay is a Compensation Event, contains details of the Delay Costs arising from the Compensation Event to which it believes it will be entitled;
  - (G) if the Principal has granted an Interim Access Licence to Macquarie, contains detailed particulars of how Macquarie has used Accessible parts of the TSE Site to mitigate the delay; and
  - (H) includes evidence that the conditions precedent to any extension of time in clause 23.10 have been satisfied;
- (ii) within 5 Business Days after Macquarie has submitted a written claim for an extension of time in accordance with clause 23.9(b)(i), give the Principal details of how Macquarie proposes to avoid, mitigate or minimise the consequences of the delay consistent with its obligations under clause 23.2; and
  - (iii) if the effects of the delay continue beyond the period of 20 Business Days after the commencement of the relevant Excusable Cause of Delay causing the delay and Macquarie wishes to claim an extension of time to the Date for Milestone Achievement of the Milestone or Date for Construction Completion or Date for Completion of the relevant Portion in respect of the further delay, submit a further written claim to the Principal's Representative:
    - (A) every 20 Business Days after the first written claim until 10 Business Days after the relevant Excusable Cause of Delay ceases to cause the delay;
    - (B) containing the information required by clause 23.9(b)(i); and
    - (C) containing details of how the continuing delay will be mitigated or minimised.
- (c) The Principal's Representative may, within 10 Business Days after receiving Macquarie's claim or further claim for an extension of time to the Date for Milestone Achievement of the Milestone or Date for Construction Completion or Date for Completion of the relevant Portion, by written notice to Macquarie, request additional information in relation to the claim or further claim.
  - (d) Macquarie must, within 10 Business Days after receiving the request under clause 23.9(c), provide the Principal's Representative with the information requested, except to the extent such information is relevant to the Lifts and Escalators Work only, in which case to the extent the information requested by the Principal's Representative is information which the D&C Contractor:
    - (i) has a right to procure under the DSI Contract, then Macquarie must provide that information within 10 Business Days after receiving the request from the Principal's Representative; and

- (ii) does not have a right to procure under the DSI Contract, then Macquarie must use its best endeavours to procure this information as soon as possible.



- (f) Notwithstanding any other provision in this deed, Macquarie acknowledges and agrees that it will not be entitled to make, and the Principal will not be liable for, a Claim under this clause 23 for any delay in achieving Milestone Achievement of a Milestone, Construction Completion of a Portion or Completion of a Portion by virtue of an Area 6 Site Access Event or an Area 6 Licence Event.
- (g) If an Excusable Cause of Delay referred to in paragraphs (j) and (k) of the definition of Excusable Cause of Delay (each a **PC ECD**) occurs:
  - (i) Macquarie may make a Claim for an extension of time under clause 23.9(g)(iii);
  - (ii) the requirements of clauses 23.9(a) to 23.9(f), clause 23.10(a), clause 23.10(c) and clause 23.11(a) do not apply;
  - (iii) to make a claim for an extension of time, Macquarie must give the Principal's Representative a written Claim within 20 Business Days after the date Macquarie first became aware of the PC ECD:
    - (A) notifying the Principal:
      - (aa) of its Claim for an extension of time; and
      - (bb) the PC ECD to which Macquarie's Claim relates; and
    - (B) stating the number of days' extension of time to the dates set out in clause 23.9(g)(iv) claimed by Macquarie (as applicable); and
  - (iv) provided Macquarie has submitted a Claim in accordance with clause 23.9(g)(iii), the Principal will grant Macquarie an extension of time to:
    - (A) the Date for Milestone Achievement of Milestone 2B-North (as that Milestone is defined in paragraph 4 of Schedule A2);
    - (B) the Date for Milestone Achievement of Milestone 2B-South (as that Milestone is defined in paragraph 4 of Schedule A2); or
    - (C) the Date for Construction Completion of Portion 1,



(D) where the Claim is for the Excusable Cause of Delay referred to in paragraph (j) of the definition of Excusable Cause of Delay, [REDACTED]

(aa) [REDACTED]

(bb) [REDACTED] and

(E) where the Claim is for the Excusable Cause of Delay referred to in paragraph (k) of the definition of Excusable Cause of Delay, [REDACTED]

(aa) [REDACTED]

(bb) [REDACTED]

(h) Notwithstanding any other provision in this deed, Macquarie acknowledges and agrees that when determining Macquarie's entitlement to an extension of time pursuant to clause 23.9(g) where the Claim is for the Excusable Cause of Delay referred to in paragraphs (j) or (k) of the definition of Excusable Cause of Delay:

(i) subject to Macquarie's entitlement to a Claim for [REDACTED] pursuant to clause 38.3, the Principal will not be liable for a Claim for any delay in achieving Milestone Achievement of a Milestone, Construction Completion of a Portion or Completion of a Portion, other than in respect of Portion 1, Milestone 2B North and Milestone 2B South (as each of those Milestones are defined in paragraph 4 of Schedule A2);

(ii) in respect of a Claim for the Excusable Cause of Delay referred to in paragraph (j) of the definition of Excusable Cause of Delay, Macquarie will only be entitled to an extension of time for each day on and from [REDACTED] until the earlier of:

(A) [REDACTED] and

(B) [REDACTED] and

(iii) in respect of a Claim for the Excusable Cause of Delay referred to in paragraph (k) of the definition of Excusable Cause of Delay, Macquarie will only be entitled to an extension of time for each day on and from [REDACTED] until the earlier of:

(A) [REDACTED] and

(B) [REDACTED]

(i) Despite any other provision of this deed or any other Project Document (except as expressly provided in clause 23.9 and clause 24 but only with respect to the Compensation Event in paragraph (a) of the definition of Compensation Event to the extent it relates to [REDACTED]

and the Excusable Cause of Delay in paragraph (j) of the

definition of Excusable Cause of Delay (as applicable)), Macquarie acknowledges and agrees that:

- (i) the Principal will not be in breach of any of its obligations under this deed or any other Project Document; and
- (ii) clause 23.9 and clause 24 in relation to the Compensation Event in paragraph (a) of the definition of Compensation Event and the Excusable Cause of Delay in paragraph (j) of the definition of Excusable Cause of Delay (as applicable), are Macquarie's sole remedy,

in relation to:

(iii)

(iv)

(as applicable).

#### **23.10 Conditions precedent to extension**

It is a condition precedent to Macquarie's entitlement to an extension of time to any Date for Milestone Achievement, Date for Construction Completion or Date for Completion that:

- (a) Macquarie has submitted the written claim or claims in accordance with clause 23.9;
- (b) the cause of the delay was beyond the reasonable control of Macquarie and its Associates; and
- (c) Macquarie has been, or will be, delayed in achieving:
  - (i) Milestone Achievement of a Milestone as contemplated by clause 23.9(a)(i)(A);
  - (ii) Construction Completion of a Portion as contemplated by clause 23.9(a)(i)(B); or
  - (iii) Completion of a Portion as contemplated by clause 23.9(a)(i)(C) or clause 23.9(a)(ii),

(as applicable) by the Excusable Cause of Delay described in the claim.

#### **23.11 Grant of extension of time**

- (a) Subject to clauses 11.5, 23.11(d), 23.11(f), 23.11(g) and Schedule A21, if the conditions precedent in clause 23.10 have been satisfied, the Date for Milestone Achievement of the relevant Milestone or Date for Construction Completion or Date for Completion of the relevant Portion (as applicable) will be extended by a reasonable period determined by the Principal's Representative and notified to Macquarie within 20 Business Days after the later of:
  - (i) receipt of the last written claim under clause 23.9; or
  - (ii) provision by Macquarie of any additional information requested by the Principal's Representative under clause 23.9.

- (b) If there is an extension of time to a Date for Milestone Achievement, a Date for Construction Completion or a Date for Completion under clause 23.11(a) or clause 23.9(g), there will be a corresponding extension to the Site Access Expiry Date for any affected part of the Principal Construction Site.
- (c) In determining any extension of time, the Principal's Representative will not be bound by the SDD Program or any Progress Report.
- (d) The Principal's Representative will reduce any extension to a Date for Milestone Achievement, a Date for Construction Completion or Date for Completion that it would have otherwise granted to Macquarie under clause 23.11(a) to the extent that Macquarie or any of their Associates contributed to the delay or Macquarie or its Associates have not taken all proper and reasonable steps to prevent the cause of the delay and to avoid or minimise the consequences or duration of the delay in accordance with clause 23.7(c).
- (e) If a Date for Milestone Achievement, a Date for Construction Completion or a Date for Completion is extended pursuant to clause 23.11(a) and the Excusable Cause of Delay for which the extension was granted is a Compensation Event, Macquarie may make a claim for Delay Costs in accordance with clause 24 in respect of the period of time for which the extension of time was granted.
- (f) The Principal may, at its absolute discretion, by notice to Macquarie, in lieu of granting an extension of time to a Date for Milestone Achievement, a Date for Construction Completion or a Date for Completion under clause 23.11(a), and in circumstances where it is reasonably practicable for Macquarie to re-sequence or accelerate Macquarie's Activities in order to overcome the relevant delay, elect to pay Macquarie the Variation Costs which would have been payable by the Principal to Macquarie had the Principal directed Macquarie to implement a Variation which required Macquarie to accelerate the Project Works to achieve:
  - (i) Milestone Achievement of the relevant Milestone by the original Date for Milestone Achievement of that Milestone (being the Date for Milestone Achievement of that Milestone as at the date on which the conditions precedent in clause 23.10 were satisfied);
  - (ii) Construction Completion of the relevant Portion by the original Date for Construction Completion of that Portion (being the Date for Construction Completion of that Portion as at the date on which the conditions precedent in clause 23.10 were satisfied); or
  - (iii) Completion of the relevant Portion by the original Date for Completion of that Portion (being the Date for Completion of that Portion as at the date on which the conditions precedent in clause 23.10 were satisfied),
 (as applicable).
- (g) To the extent a Claim made under clause 23.9 relates to the Lifts and Escalators Work and the Principal's Representative has requested information pursuant to clause 23.9(c), then:
  - (i) if the D&C Contractor has a right to procure that information under the DSI Contract, clause 23.11(a) will operate without amendment to determine the time period for the Principal's notice; and
  - (ii) if the D&C Contractor does not have a right to procure that information under the DSI Contract, the time for the Principal's Representative to give its notice under clause 23.11(a) will be determined by reference to clause 23.11(a)(i) only.



**23.12 Liquidated damages for delay**

- (a) The parties agree and acknowledge that the Principal is pursuing a policy of building Sydney Metro City & Southwest and the Project Works for purposes that include achieving the objectives set out in clauses 3.1 and 3.2.
- (b) The parties acknowledge and agree that Macquarie's Activities represent an important element of the building of Sydney Metro City & Southwest as a major new public transport link which will service the needs of Sydney, including the needs of its workforce and its economy, and will provide frequent rapid transit services to handle projected population increases, create employment both during and after Macquarie's Activities, improve the efficiency of the Sydney public transport network and improve the local environment.
- (c) Macquarie acknowledges and agrees that its failure to achieve:
  - (i) Milestone Achievement of the Milestones by the required Dates for Milestone Achievement;
  - (ii) Construction Completion of a Portion by the required Date for Construction Completion; or
  - (iii) Completion of a Portion by the required Date for Completion,

will not only result in direct losses to the Principal, but will also lead to the failure of the Principal to achieve its policy objectives to the immediate detriment of the Principal and of those on whose behalf the policy objectives are pursued. The Loss arising from this failure of the Principal to achieve its policy objectives is not capable of easy or precise calculation.

- (d) Macquarie agrees that if it does not achieve Milestone Achievement of a Milestone by the Date for Milestone Achievement of that Milestone, it must:
  - (i) pay the Principal by way of liquidated damages the applicable amount for that Milestone set out in paragraph 4 of Schedule A2 (each of which is exclusive of GST) for every day after the Date for Milestone Achievement of that Milestone up to and including:
    - (A) the Date of Milestone Achievement of that Milestone; or
    - (B) the date that this deed is validly terminated,whichever first occurs; and
  - (ii) to the extent that Milestone Achievement of a Milestone has not occurred by the Date for Milestone Achievement for that Milestone, indemnify the Principal from and against any Liability suffered or incurred by the Principal arising out of or in connection with the failure to achieve Milestone Achievement of the Milestone by the Date for Milestone Achievement for that Milestone to the extent such Liability falls within a head of Loss specified in Schedule E3, up to an aggregate of [REDACTED] for every day after the relevant Date for Milestone Achievement up to and including:
    - (A) the Date of Milestone Achievement of the relevant Milestone; or
    - (B) the date that this deed is validly terminated,whichever first occurs.

Macquarie's total aggregate liability under clause 23.12(d)(ii) in respect of any day for which Macquarie indemnifies the Principal is [REDACTED] per day and is included in the LD Cap.

- (e) Macquarie agrees that if it does not achieve Construction Completion of a Portion by the Date for Construction Completion of that Portion, it must:
- (i) pay the Principal by way of liquidated damages the applicable amount for that Portion set out in paragraph 3 of Schedule A2 (each of which is exclusive of GST) for every day after the Date for Construction Completion of that Portion up to and including:
    - (A) the Date of Construction Completion of the relevant Portion; or
    - (B) the date that this deed is validly terminated,whichever first occurs; and
  - (ii) to the extent that Construction Completion of a Portion has not occurred by the Date for Construction Completion of that Portion, indemnify the Principal from and against any Liability suffered or incurred by the Principal arising out of or in connection with the failure to achieve Construction Completion of that Portion by the Date for Construction Completion of that Portion to the extent that such Liability falls within a head of Loss specified in Schedule E3, up to an aggregate of [REDACTED] for every day after the relevant Date for Construction Completion up to and including:
    - (A) the Date of Construction Completion of the relevant Portion; or
    - (B) the date that this deed is validly terminated,whichever first occurs.
- Macquarie's total aggregate liability under clause 23.12(e)(ii) in respect of any day for which Macquarie indemnifies the Principal is [REDACTED] per day and included in the LD Cap.

- (f) Macquarie agrees that if it does not achieve Completion of a Portion by the Date for Completion of that Portion, it must:
- (i) pay the Principal by way of liquidated damages the applicable amount for that Portion set out in paragraph 3 of Schedule A2 (each of which is exclusive of GST) for every day after the Date for Completion of that Portion up to and including:
    - (A) the Date of Completion of the relevant Portion; or
    - (B) the date that this deed is validly terminated,whichever first occurs; and
  - (ii) to the extent that Completion of a Portion has not occurred by the Date for Completion of that Portion, indemnify the Principal from and against any Liability suffered or incurred by the Principal arising out of or in connection with the failure to achieve Completion of that Portion by the Date for Completion of that Portion to the extent that such Liability falls within a head of Loss specified in Schedule E3, up to an aggregate of [REDACTED] for every day after the relevant Date for Completion up to and including:

- (A) the Date of Completion of the relevant Portion; or
- (B) the date that this deed is validly terminated,

whichever first occurs.

Macquarie's total aggregate liability under clause 23.12(f)(ii) in respect of any day for which Macquarie indemnifies the Principal is [REDACTED] per day and included in the LD Cap.

- (g) The parties agree that the liquidated damages provided for in clauses 23.12(d), 23.12(e) and 23.12(f):
  - (i) represent proper, fair and reasonable amounts recoverable by the Principal arising from the failure of Macquarie to achieve Milestone Achievement of a Milestone by the relevant Date for Milestone Achievement, Construction Completion of a Portion by the relevant Date for Construction Completion or Completion of a Portion by the relevant Date for Completion (as applicable) and do not constitute, and are not intended to be, a penalty and have been freely agreed by Macquarie; and
  - (ii) will be recoverable from Macquarie as a debt due and payable by the Principal.
- (h) The Principal and Macquarie acknowledge and agree that they are both parties contracting at arms' length, have equal bargaining power, possess extensive commercial experience and expertise and are being advised by their own legal, accounting, technical, financial, economic and other commercial professionals in relation to their rights and obligations pursuant to this deed.
- (i) Macquarie agrees to pay the liquidated damages and indemnify the Principal under clauses 23.12(d)(ii), 23.12(e)(ii) and 23.12(f)(ii) without any duress, coercion, undue influence or any other form of unconscionable conduct or impermissible or objectionable persuasion on the part of the Principal.
- (j) Macquarie entered into the obligation to pay the amounts specified in clauses 23.12(d), 23.12(e) and 23.12(f) with the intention that it is a legally binding, valid and enforceable contractual provision against Macquarie in accordance with its terms.
- (k) Macquarie agrees:
  - (i) to exclude, and expressly waives the right of the benefit of, to the extent permissible, the application or operation of any legal rule or norm, including under statute, equity and common law, relating to the characterisation of liquidated amounts payable under a deed upon a breach occurring as penalties or the enforceability or recoverability of such liquidated amounts; and
  - (ii) that if this clause 23.12 is found for any reason to be void, invalid or otherwise inoperative so as to disentitle the Principal from recovering liquidated damages, the Principal will be entitled to recover general damages (including loss of revenue and loss of profits from the loss of use of the Project Works) as a result of Macquarie failing to achieve:
    - (A) Milestone Achievement of the relevant Milestone by the Date for Milestone Achievement of that Milestone;
    - (B) Construction Completion of the relevant Portion by the Date for Construction Completion of that Portion; or

(C) Completion of the relevant Portion by the Date for Completion of that Portion,

(as applicable), but Macquarie's liability for such damages (whether per day or in the aggregate) shall not exceed the liability Macquarie would have had under this clause 23.12 if this clause had not been void, invalid or otherwise inoperative.

(l) The Principal's Representative, when issuing a payment schedule pursuant to clause 34.2(e) or 34.2(g), may include a provisional assessment of the amount then provisionally due by way of liquidated damages then accruing under clause 23.12(d)(i), clause 23.12(e)(i) or clause 23.12(f)(i) or under the indemnity in clause 23.12(d)(ii), clause 23.12(e)(ii) or clause 23.12(f)(ii) to the date of the payment schedule.

(m) The Principal and Macquarie agree that:

(i) the aggregate of the amounts payable under clauses 23.12(d)(i), 23.12(d)(ii) and 23.12(k)(ii)(A) is:

(A) limited in accordance with clause 42.2(b); and

(B) a limitation on Macquarie's liability to the Principal for:

(aa) a failure to achieve Milestone Achievement of any Milestone by the relevant Date for Milestone Achievement;

(bb) breach of clause 23.2(a); and

(cc) breach of clause 10 and under the indemnity in clause 10.6, but only to the extent that such breach or liability is due to a failure by Macquarie to achieve Milestone Achievement of a Milestone by the relevant Date for Milestone Achievement and not in any other circumstances;

(ii) the aggregate of the amounts payable under clauses 23.12(e)(i), 23.12(e)(ii) and 23.12(k)(ii)(B) is:

(A) limited in accordance with clause 42.2(b); and

(B) a limitation on Macquarie's liability to the Principal for:

(aa) a failure to achieve Construction Completion of any Portion by the relevant Date for Construction Completion;

(bb) breach of clause 23.2(b); and

(cc) breach of clause 10 and under the indemnity in clause 10.6, but only to the extent that such breach or liability is due to a failure by Macquarie to achieve Construction Completion of a Portion by the relevant Date for Construction Completion and not in any other circumstances; and

(iii) the aggregate of the amounts payable under clauses 23.12(f)(i), 23.12(f)(ii) and 23.12(k)(ii)(C) is:

(A) limited in accordance with clause 42.2(b); and

(B) a limitation on Macquarie's liability to the Principal for:

- (aa) a failure to achieve Completion of any Portion by the relevant Date for Completion;
  - (bb) breach of clause 23.2(c) or clause 23.2(d); and
  - (cc) breach of clause 10 and under the indemnity in clause 10.6, but only to the extent that such breach or liability is due to a failure by Macquarie to achieve Completion of a Portion by the relevant Date for Completion and not in any other circumstances;
- (iv) Subject to clause 23.12(m)(vi), the Principal will not be entitled to make, nor will Macquarie be liable upon, any Claim in the circumstances referred to in clauses 23.12(m)(i), (ii) or (iii) other than for the amount for which Macquarie is liable under this clause 23.12 (including, where applicable, liquidated damages under clauses 23.12(d)(i), 23.12(e)(i) and 23.12(f)(i), common law damages under clause 23.12(k)(ii) and under the indemnities in clauses 23.12(d)(ii), 23.12(e)(ii) and 23.12(f)(ii)), which will be the Principal's sole financial remedy against Macquarie for failing to achieve:
  - (A) Milestone Achievement of any Milestone by the relevant Date for Milestone Achievement;
  - (B) Construction Completion of any Portion by the relevant Date for Construction Completion;
  - (C) Completion of any Portion (other than Portion 1) by the relevant Date for Completion; or
  - (D) Completion of the Retail Works, OSD Entrance Works and Over Station Rail Works by the Date of Completion of the last Station Works Portion to achieve Completion;
- (v) the sole remedy provision in clause 23.12(m)(iv) relates to the delay itself and does not limit the Principal's rights with respect to an event giving rise to a delay or the consequences of that event (other than the delay) or limit or reduce Macquarie's Liability for any other acts, omissions or defaults (including the Principal's entitlement to damages other than delay damages) with respect to an event giving rise to delay or the consequences of that event; and
- (vi) nothing in this clause 23.12(m) in any way limits Macquarie's liability where this deed is terminated by the Principal under clause 45 or otherwise at Law.
- (n) If Macquarie has paid liquidated damages in accordance with clause 23.12(d)(i), clause 23.12(e)(i) or clause 23.12(f)(i) or an amount under the indemnity in clause 23.12(d)(ii), clause 23.12(e)(ii) or clause 23.12(f)(ii) and Macquarie is subsequently granted an extension of time pursuant to clause 23.11 in respect of the event giving rise to the liability for such liquidated damages or under the indemnity, then the Principal must repay those liquidated damages or the amount (as relevant) to Macquarie to the extent such extension of time was granted.
- (o) If, during any period of time:
  - (i) except where clause 23.12(p) applies, Macquarie is liable to the Principal for liquidated damages:
    - (A) in respect of a delay to:
      - (aa) Milestone Achievement of more than one Milestone;

- (bb) Construction Completion of more than one Portion; or
- (cc) Completion of more than one Portion; or
- (B) under more than one of:
  - (aa) clause 23.12(d)(i) in relation to Milestone Achievement;
  - (bb) clause 23.12(e)(i) in relation to Construction Completion; and
  - (cc) clause 23.12(f)(i) in relation to Completion,

Macquarie's maximum aggregate liability to the Principal for liquidated damages during that period will be limited to the highest daily rate of liquidated damages which are payable by Macquarie in respect of the relevant delays under this clause 23.12; or

- (ii) Macquarie is required to indemnify the Principal:

- (A) under:
  - (aa) clause 23.12(d)(ii) in respect of a delay to Milestone Achievement of more than one Milestone;
  - (bb) clause 23.12(e)(ii) in respect of a delay to Construction Completion of more than one Portion; or
  - (cc) clause 23.12(f)(ii) in respect of a delay to Completion of more than one Portion; or
- (B) under more than one of:
  - (aa) clause 23.12(d)(ii) in relation to Milestone Achievement;
  - (bb) clause 23.12(e)(ii) in relation to Construction Completion; and
  - (cc) clause 23.12(f)(ii) in relation to Completion,

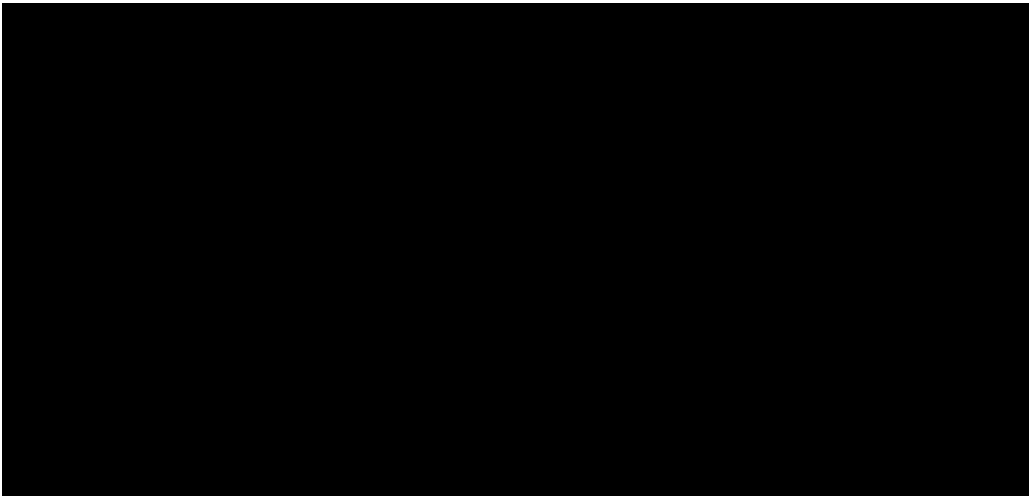
Macquarie's maximum aggregate liability to the Principal under the relevant indemnities for each day during that period will be limited to [REDACTED] per day.

- (p) Subject to clause 23.12(q), in respect of Portion 2A and Portion 2B, if Macquarie is liable to the Principal for liquidated damages:

- (i) in respect of a delay to:
  - (A) Construction Completion of more than one of Portion 2A and Portion 2B; or
  - (B) Completion of more than one of Portion 2A and Portion 2B; or
- (ii) under more than one of:
  - (A) clause 23.12(e)(i) in relation to Construction Completion; and
  - (B) clause 23.12(f)(i) in relation to Completion,

during the following periods:

[REDACTED]



- (q) Despite clause 23.12(p), the parties acknowledge and agree that Macquarie's maximum aggregate liability to the Principal for liquidated damages under clause 23.12(p):
  - (i) for every day after the Date for Construction Completion for Portion 2A and/or Portion 2B which occurs in the period prior to [REDACTED] will not exceed [REDACTED] per day; and
  - (ii) for every day after the Date for Construction Completion for Portion 2A and/or Portion 2B which occurs in the period on and from [REDACTED] will not exceed [REDACTED] per day.

**23.13 Extension to Site Access Expiry Date**

- (a) If an Excusable Cause of Delay:
  - (i) causes or will cause Macquarie to require access to part of the Principal Construction Site after the Site Access Expiry Date for that part of the Principal Construction Site; and
  - (ii) will not delay Macquarie in achieving:
    - (A) Construction Completion of Portion 1 by the Date for Construction Completion of that Portion; and
    - (B) Completion of any Portion other than Portion 1 by the Date for Completion of that Portion,

Macquarie may make a claim under this clause 23.13.

- (b) If Macquarie wishes to make a Claim under this clause 23.13, it must:
  - (i) within 20 Business Days after the date Macquarie first became aware of an Excusable Cause of Delay which causes or will cause Macquarie to require access to part of the Principal Construction Site after the Site Access Expiry Date for that part of the Principal Construction Site, submit a written claim for an extension to the Site Access Expiry Date, which:
    - (A) contains detailed particulars of the Excusable Cause of Delay, the delay and Macquarie's Activities that have been delayed; and

- (B) states the number of days extension of time to the Site Access Expiry Date, together with a basis for calculating the total number of days claimed; and
- (ii) if the effects of the delay continue beyond the period of 20 Business Days after the Excusable Cause of Delay and Macquarie wishes to claim an extension to the Site Access Expiry Date in respect of the further delay, submit an updated Claim to the Principal containing the information required by clause 23.13(b)(i) promptly.
- (c) If Macquarie satisfies the requirements of this clause 23.13, the relevant Site Access Expiry Date will be extended by a reasonable period determined by the Principal's Representative and notified to Macquarie within 20 Business Days after receipt of the last written claim under clause 23.13(b).
- (d) The Principal will reduce any extension to the relevant Site Access Expiry Date that it would otherwise have granted to Macquarie under clause 23.13(c) to the extent that Macquarie or any of their Associates contributed to the delay or has not taken all proper and reasonable steps to prevent the cause of the delay and to avoid or minimise the consequences or duration of the delay in accordance with clause 23.7(c).

#### **23.14 Unilateral extension**

Where Macquarie has been delayed in achieving Milestone Achievement of a Milestone or Construction Completion or Completion of a Portion by a breach of contract by the Principal, the Principal's Representative may, whether or not Macquarie has made a claim under clause 23.9, in its absolute discretion at any time, from time to time, unilaterally issue a notice under clause 23.11(a) to Macquarie extending the relevant Date for Milestone Achievement, Date for Construction Completion or Date for Completion (as applicable) by the period specified in the notice to Macquarie.

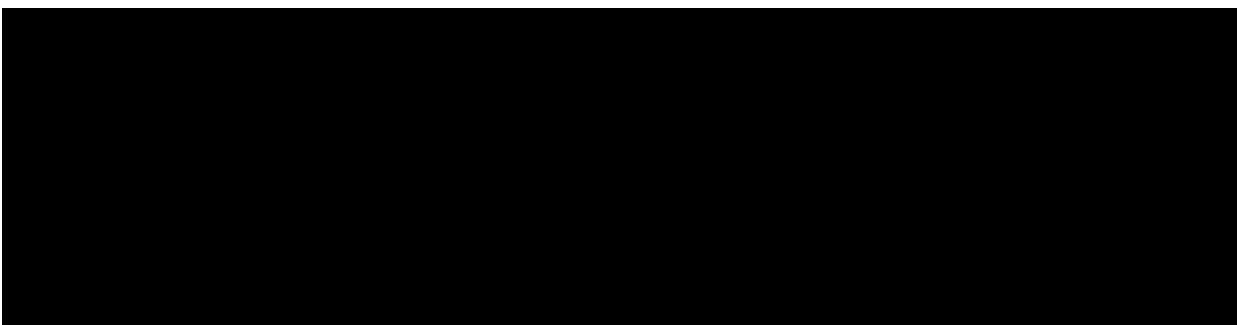
#### **23.15 Concurrent delays**

Macquarie is not entitled to make a Claim under clause 23.9 or claim an extension of time in respect of a delay to Milestone Achievement of a Milestone or Construction Completion or Completion of a Portion caused by an Excusable Cause of Delay to the extent that the delay is contemporaneous with a delay to Milestone Achievement of a Milestone or Construction Completion or Completion of a Portion caused by an event which is not an Excusable Cause of Delay.

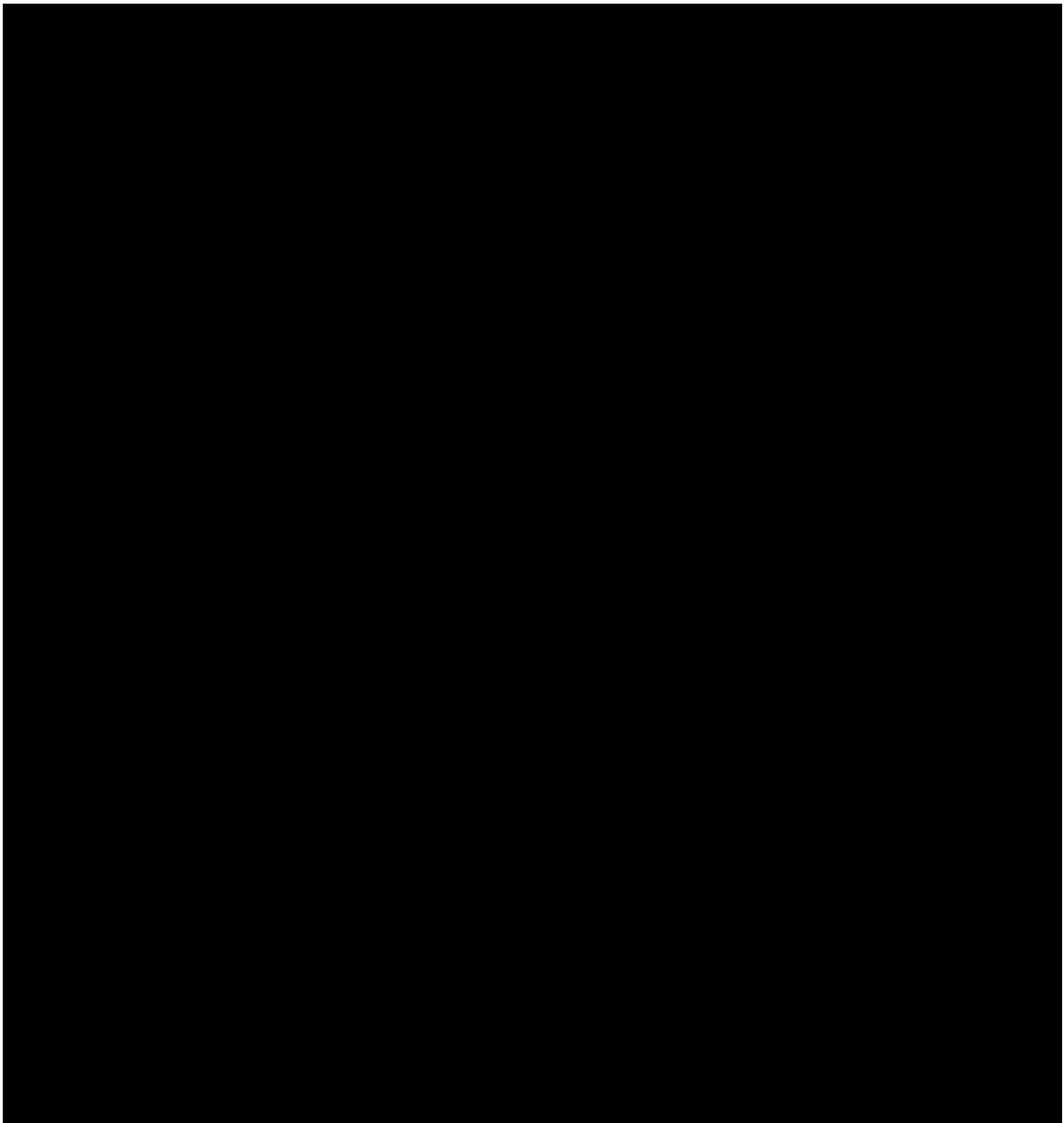
#### **23.16 Progress Reports**

In addition to Macquarie's obligations under clauses 23.7 and 23.8, Macquarie must give the Principal a Progress Report containing the details required by Appendix 53a to the SWTC.

#### **24. COMPENSATION EVENTS**







- (f) Notwithstanding any other provision in this deed, the parties acknowledge and agree that Macquarie will not be entitled to make, and the Principal will not be liable upon, any Claim for any [REDACTED] arising out of or in connection with the Principal's failure to provide Macquarie with access to Construction Site (Area 4) by the relevant Site Access Date.
  
- (g) Notwithstanding any other provision in this deed, Macquarie acknowledges and agrees that it will not be entitled to make, and the Principal will not be liable for, a Claim under this clause 24 by virtue of an Area 6 Site Access Event or an Area 6 Licence Event.

**24.2 Claim for compensation**

To claim Delay Costs or [REDACTED] in respect of a Compensation Event, Macquarie must:

- (a) within 40 Business Days after the earlier of the date Macquarie becomes aware, or ought reasonably to have become aware, that the Compensation Event is likely to cause Macquarie to incur Delay Costs or [REDACTED] (or if Macquarie becomes

so aware, or ought reasonably to have become so aware, in the period between the Commencement Date and Financial Close, within 40 Business Days after Financial Close), give to the Principal's Representative a written notice, expressly stating:

- (i) that Macquarie proposes to make a Claim for Delay Costs and/or [REDACTED] (as applicable); and
  - (ii) the Compensation Event upon which the Claim will be based; and
- (b) within 25 Business Days of giving the notice under clause 24.2(a), give the Principal's Representative a written Claim which must include (to the extent practicable):
- (i) detailed particulars concerning the Compensation Event upon which the Claim is based;
  - (ii) details of the obligations and rights of Macquarie which have been affected by the Compensation Event;
  - (iii) details of the Delay Costs and/or [REDACTED] claimed in respect of the Compensation Event and how those Delay Costs and/or [REDACTED] have been calculated;
  - (iv) detailed particulars of how:
    - (A) the delay for which Macquarie has been granted an extension of time has caused Macquarie to incur Delay Costs; and/or
    - (B) the Compensation Event has caused Macquarie to incur [REDACTED] and [REDACTED]
  - (v) details of the steps which Macquarie has taken to mitigate the effects of the relevant Compensation Event.

#### 24.3 Continuing Compensation Events

If the Compensation Event (or its effects) are continuing, Macquarie must:

- (a) continue to give the information required by clause 24.2(b) every 40 Business Days after the notice under clause 24.2(b) was provided to the Principal's Representative until after the Compensation Event (or its effects) have ceased; and
- (b) provide a final written Claim within 25 Business Days after the Compensation Event (or its effects) have ceased.

#### 24.4 Condition precedent to compensation

- (a) It is a condition precedent to Macquarie's entitlement to compensation that:
  - (i) in relation to:
    - (A) a claim for Delay Costs, a Compensation Event has occurred which has caused Macquarie to incur Delay Costs; and
    - a claim for [REDACTED] an event contemplated by paragraphs (a), (g) or (k) of the definition of Compensation Event has occurred which has caused Macquarie to incur [REDACTED]
  - (ii) Macquarie has complied with the requirements of clauses 24.2 and 24.3; and

- (iii) to the extent that Macquarie wishes to claim any Delay Costs that it has incurred and which arise out of or in connection with any delay to Construction Completion or Completion of a Portion, Macquarie has been granted an extension of time to the relevant Date for Construction Completion or Date for Completion under clause 23.11(a) or 23.14.
- (b) If Macquarie fails to comply with the requirements of clauses 24.2 and, if applicable, 24.3 within the periods required by those clauses:
  - (i) the Principal will not be liable (in so far as it is possible to exclude such liability) upon any Claim for Delay Costs and [REDACTED] by Macquarie; and
  - (ii) Macquarie will be absolutely barred from making any Claim for Delay Costs and [REDACTED] against the Principal,

arising out of or in connection with the relevant Compensation Event.

**24.5 Delay Costs and [REDACTED]**

- (a) If the conditions precedent in clause 24.4(a) have been satisfied, the Principal must pay Macquarie the Delay Costs that Macquarie has incurred as a direct result of the delay caused by the Compensation Event to Construction Completion or Completion of the Portion for which the extension of time was granted pursuant to clause 23.11(a) or clause 23.14, but only in respect of the period of time for which the extension of time was granted.
- (b) If the conditions precedent in clause 24.4(a) have been satisfied, the Principal must pay Macquarie the [REDACTED] that Macquarie has incurred as a direct result of the relevant Compensation Event.

**24.6 Limitation on Delay Costs**

Notwithstanding anything else in this deed, the Delay Costs to which Macquarie is entitled under clause 24.5 will not exceed:

- (a) with respect to D&C Delay Costs, the D&C Delay Cost Cap; and
- (b) with respect to Delay Costs (Macquarie), the Delay Costs (Macquarie) Cap,

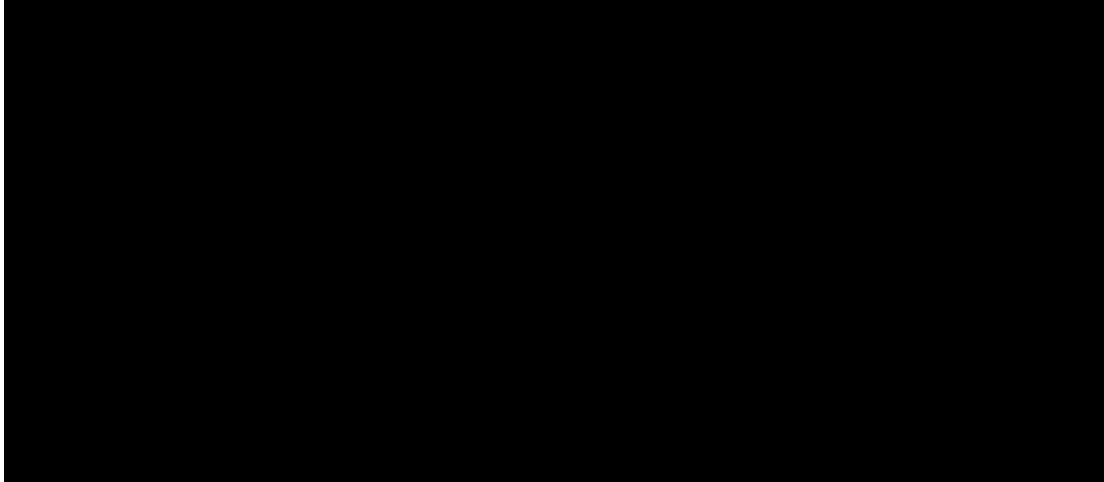
in respect of each Day of Delay or Day of Delay (Area 4) (as applicable) (as those terms are defined in Schedule E4).

**24.7 Mitigation**

- (a) Macquarie must use all reasonable endeavours to mitigate the effects of any Compensation Event (including by putting in place temporary measures reasonably acceptable to the Principal's Representative).
- (b) Without limiting clause 24.7(a), Macquarie must use all reasonable endeavours to:
  - (i) avoid or minimise the duration and consequences of any delay caused by a Compensation Event;
  - (ii) minimise any incremental costs or loss of revenue incurred or suffered as a result of a Compensation Event; and
  - (iii) maximise any cost savings or additional revenue derived as a result of a Compensation Event.

- (c) Macquarie's entitlement to Delay Costs and/or [REDACTED] will be reduced to the extent that Macquarie fails to comply with its obligations under this clause 24.7.

**24.8 Limitation of liability**



**25. MILESTONE ACHIEVEMENT**

**25.1 Milestone Achievement**

- (a) Macquarie must, in respect of each Milestone, give the Principal's Representative:

- (i) 6 months;
- (ii) 3 months;
- (iii) 1 month; and
- (iv) 1 week,

written notice of the estimated Date of Milestone Achievement of that Milestone.

- (b) Subject to clause 25.1(g), the Principal's Representative, Macquarie's Representative and the Independent Certifier must, within 5 Business Days after receipt of the notice referred to in clause 25.1(a)(ii) jointly inspect Macquarie's Activities at a mutually convenient time.

- (c) Within 2 Business Days after the joint inspection referred to in clause 25.1(b), the Independent Certifier must give the Principal and Macquarie a notice either:

- (i) containing a list of items which it believes must be completed before Milestone Achievement of the Milestone is achieved; or
- (ii) stating that it believes Macquarie is so far from achieving Milestone Achievement of the Milestone that it is not practicable to issue a list as contemplated in clause 25.1(c)(i).

- (d) When Macquarie considers it has achieved Milestone Achievement of a Milestone, Macquarie must notify the Principal's Representative and the Independent Certifier in writing and provide them with an executed certificate in the form of Schedule B17. Thereafter, and subject to clause 25.1(g), the Principal's Representative, Macquarie's Representative and the Independent Certifier must, within 5 Business Days after receipt of Macquarie's written notice, jointly inspect Macquarie's Activities at a mutually convenient time.

- (e) Following the joint inspection under clause 25.1(d), the Independent Certifier must within 5 Business Days of the joint inspection, or within 5 Business Days of receipt of a notice under clause 25.1(f) (as applicable):
  - (i) if Milestone Achievement of the Milestone has been achieved, provide to the Principal's Representative and Macquarie a document signed by the Independent Certifier in the form of Schedule B5; or
  - (ii) if Milestone Achievement of the Milestone has not been achieved, issue a notice to the Principal and Macquarie in which it states:
    - (A) the items which remain to be completed before Milestone Achievement of the Milestone; or
    - (B) that Macquarie is so far from achieving Milestone Achievement of the Milestone that it is not practicable to notify Macquarie of the items which remain to be completed as contemplated by clause 25.1(e)(ii)(A).
- (f) If the Independent Certifier issues a notice under clause 25.1(e)(ii), Macquarie must proceed with Macquarie's Activities and thereafter when it considers it has achieved Milestone Achievement of the Milestone, it must give the Principal's Representative and the Independent Certifier written notice to that effect after which clauses 25.1(d) and 25.1(e) will reapply.
- (g) Macquarie acknowledges and agrees that:
  - (i) the Principal's Representative may invite any other person to attend any joint inspection provided for by this clause 25.1, including representatives of any Rail Contractor; and
  - (ii) the Principal's Representative and any Rail Contractor may provide comments to the Independent Certifier (with a copy to Macquarie) in relation to any non-compliance of Macquarie's Activities with this deed.
- (h) The parties acknowledge that:
  - (i) Milestone Achievement of a Milestone will not be conditional upon the Follow-on Contractors carrying out any of the Follow-on Works; and
  - (ii) Macquarie may achieve Milestone Achievement of a Milestone prior to the Follow-on Contractors commencing the Line-wide Works.

## 25.2 **Effect of Notice of Milestone Achievement**

A Notice of Milestone Achievement will not:

- (a) constitute approval by the Principal or the Principal's Representative of Macquarie's performance of its obligations under this deed;
- (b) be taken as an admission or evidence that the Project Works comply with this deed; or
- (c) prejudice any rights or powers of the Principal or the Principal's Representative.

## 25.3 **Access for Follow-on Contractors**

- (a) Without limiting any other provision of this deed (including clause 10 and clause 11) or Macquarie's obligations under any Project Document (including the Project

Cooperation and Integration Deeds and the Master Interface Protocols Deed Poll), Macquarie must give the Follow-on Contractors access to the Project Works comprised in a Milestone from the Date of Milestone Achievement of that Milestone.

- (b) If:
- (i) Macquarie has complied with its relevant obligations under:
    - (A) this deed (including the SWTC) and the OSD PDA in connection with the Follow-on Contractors (including clause 10 and this clause 25); and
    - (B) each Follow-on Contractor Cooperation and Integration Deed;
  - (ii) the Follow-on Contractors do not commence the Follow-on Works in respect of a Milestone within a reasonable period of time after the later of the Date of Milestone Achievement, and the Date for Milestone Achievement, of that Milestone; and
  - (iii) Macquarie's Activities must be re-sequenced or accelerated as a direct result of the Follow-on Contractor's failure to commence those Follow-on Works within a reasonable period of time,

the Principal must direct a Variation requiring Macquarie to re-sequence or accelerate Macquarie's Activities to accommodate the delay to the commencement of the Follow-on Works in accordance with clause 35.

## 26. TESTING AND COMMISSIONING

### 26.1 Testing and Commissioning Plan

Macquarie must carry out the Tests in accordance with the Testing and Commissioning Plan, the SWTC and this clause 26.

### 26.2 Test Procedures

- (a) For each Test, Macquarie must:
- (i) prepare a Test Procedure which complies with Appendix 56 to the SWTC and the other requirements of the SWTC; and
  - (ii) submit the Test Procedure to the Independent Certifier and the Principal's Representative at least 60 Business Days prior to the date on which Macquarie proposes to conduct the Test.
- (b) The Principal's Representative may (but is not obliged to):
- (i) review any Test Procedure submitted under this clause 26.2; and
  - (ii) if the Test Procedure does not comply with the requirements of this deed, notify Macquarie in writing of the non-compliance including detailed reasons for the non-compliance,
- within 15 Business Days of the date on which it is submitted to the Principal's Representative.
- (c) If Macquarie receives a notice in accordance with clause 26.2(b)(ii) Macquarie must submit a revised Test Procedure to the Principal's Representative, whereupon the provisions of this clause 26.2 (other than clause 26.2(a)(ii)) will reapply to the revised Test Procedure.

### 26.3 Notice of Tests

- (a) Macquarie must give the Independent Certifier and the Principal at least 20 Business Days' notice of the date, time and place of each Test.
- (b) Macquarie may postpone a Test in respect of which it has given the Independent Certifier notice in accordance with clause 26.3(a).
- (c) If Macquarie postpones a Test in accordance with clause 26.3(b), Macquarie must give the Principal and the Independent Certifier at least 5 Business Days' notice of the rescheduled date, time and place of that Test.
- (d) Macquarie must give the Independent Certifier and the Principal:
  - (i) a program that specifies the date, time and place of each Test to be conducted for the following 25 Business Day period (**Test Program**); and
  - (ii) an updated Test Program each week during the period that Macquarie is carrying out Tests.
- (e) Unless otherwise agreed by the Principal's Representative, Macquarie will be deemed to have failed a Test if it fails to give the Independent Certifier and the Principal the required notice of when the Test will be conducted.

### 26.4 Conduct of Tests

- (a) Macquarie must conduct all Tests in accordance with:
  - (i) the relevant Test Procedure; and
  - (ii) the other requirements of this deed (including section 6.6 of the SWTC and Appendix 56 to the SWTC).
- (b) The Principal and the Independent Certifier may (but are not obliged to) attend and witness the conduct of all Tests.

### 26.5 Test Reports

- (a) Macquarie must, within 10 Business Days after carrying out a Test, submit a Test Report to the Principal for that Test, irrespective of the result of the Test.
- (b) Each Test Report must comply with, and be submitted in accordance with, the requirements of section 4.4 of Appendix 56 to the SWTC.
- (c) The Principal must, within 10 Business Days of the date on which it receives the Test Report, determine whether or not the Test has been passed or failed and either:
  - (i) if the Test has been passed in accordance with the Test Procedure, notify Macquarie that the Test has been passed in accordance with the Test Procedure; or
  - (ii) if the Test has been failed and/or the Test Report does not comply with the requirements of this deed, notify Macquarie that:
    - (A) the Test has been failed; and/or
    - (B) the Test Report does not comply with the requirements of this deed, (Minor Non-Compliances excepted).

- (d) If the notice issued pursuant to clause 26.5(c)(i) lists any Minor Non-Compliances:
  - (i) the Principal may, in the notice, recommend the action that could be taken by Macquarie to address the Minor Non-Compliance; and
  - (ii) Macquarie must complete the recommended action, or take any other action Macquarie deems reasonable in the circumstances to correct the Minor Non-Compliance to the extent required for the Test Report to comply with this deed, within the time frame (if any) specified by the Principal.

#### 26.6 **Failure of Test**

If the Principal's Representative notifies Macquarie under clause 26.5(c) that a Test has been failed (or that a Test has been failed and the Test Report is non-compliant), Macquarie must:

- (a) carry out all necessary rectification work; and
- (b) when it believes that it has completed all necessary rectification work, give a further notice in accordance with clause 26.3(a), provided that the time period in clause 26.3(a) will be reduced to 10 Business Days, whereupon clauses 26.4 and 26.5 will re-apply.

#### 26.7 **Non-compliant Test Report**

If the Principal's Representative notifies Macquarie that a Test Report is non-compliant (Minor Non-Compliances excepted), Macquarie must amend and re-submit the Test Report, whereupon clause 26.5 will re-apply.

#### 26.8 **Additional testing by the Principal**

- (a) The Principal's Representative may carry out, or direct Macquarie to carry out, additional tests in respect of the Project Works. The Principal's Representative must give Macquarie and the Independent Certifier reasonable prior notice of these tests (being at least 5 Business Days' prior notice). Macquarie must provide all reasonable assistance required by the Principal's Representative and the Independent Certifier in relation to these tests.
- (b) The Principal's Representative may, in relation to these tests, direct that any part of the Project Works not be covered up or made inaccessible for a period of not more than 5 Business Days without the Principal's Representative's prior written approval.
- (c) Subject to clause 26.8(d), if the Principal carries out, or directs Macquarie to carry out, tests pursuant to this clause 26.8, the carrying out of those tests will be treated as if they were a Variation directed by the Principal and clause 35 will apply.
- (d) If the Principal carries out, or directs Macquarie to carry out, tests pursuant to this clause 26.8 and:
  - (i) the results of the test show:
    - (A) the work is not in accordance with this deed (other than a Minor Defect); or
    - (B) that there is a Defect that Macquarie is responsible for having regard to clause 1.2(m) in respect of the work tested (other than a TSE Defect in respect of which the Principal has not directed a Variation as referred to in clause 11.13(c)(ii) or a Minor Defect);



- (ii) the test is in respect of work covered up or made inaccessible without the prior written approval of the Principal's Representative where that approval was required; or
- (iii) the test is upon work undertaken to correct or overcome a Defect that Macquarie is responsible for having regard to clause 1.2(m), (other than a TSE Defect in respect of which the Principal has not directed a Variation as referred to in clause 11.13(c)(ii) or a Minor Defect),

those tests will not be treated as if they were a Variation directed by the Principal under clause 26.8(c) and the reasonable Costs incurred by the Principal in connection with these tests will be a debt due and payable from Macquarie to the Principal.

- (e) Results of tests carried out by Macquarie under this clause 26.8 must be submitted to the Principal in accordance with clause 26.5.

## 27. CONSTRUCTION COMPLETION

### 27.1 Construction Completion


- (a) Macquarie must give the Principal's Representative:

- (i) 6 months;
- (ii) 3 months;
- (iii) 1 month; and
- (iv) 1 week,

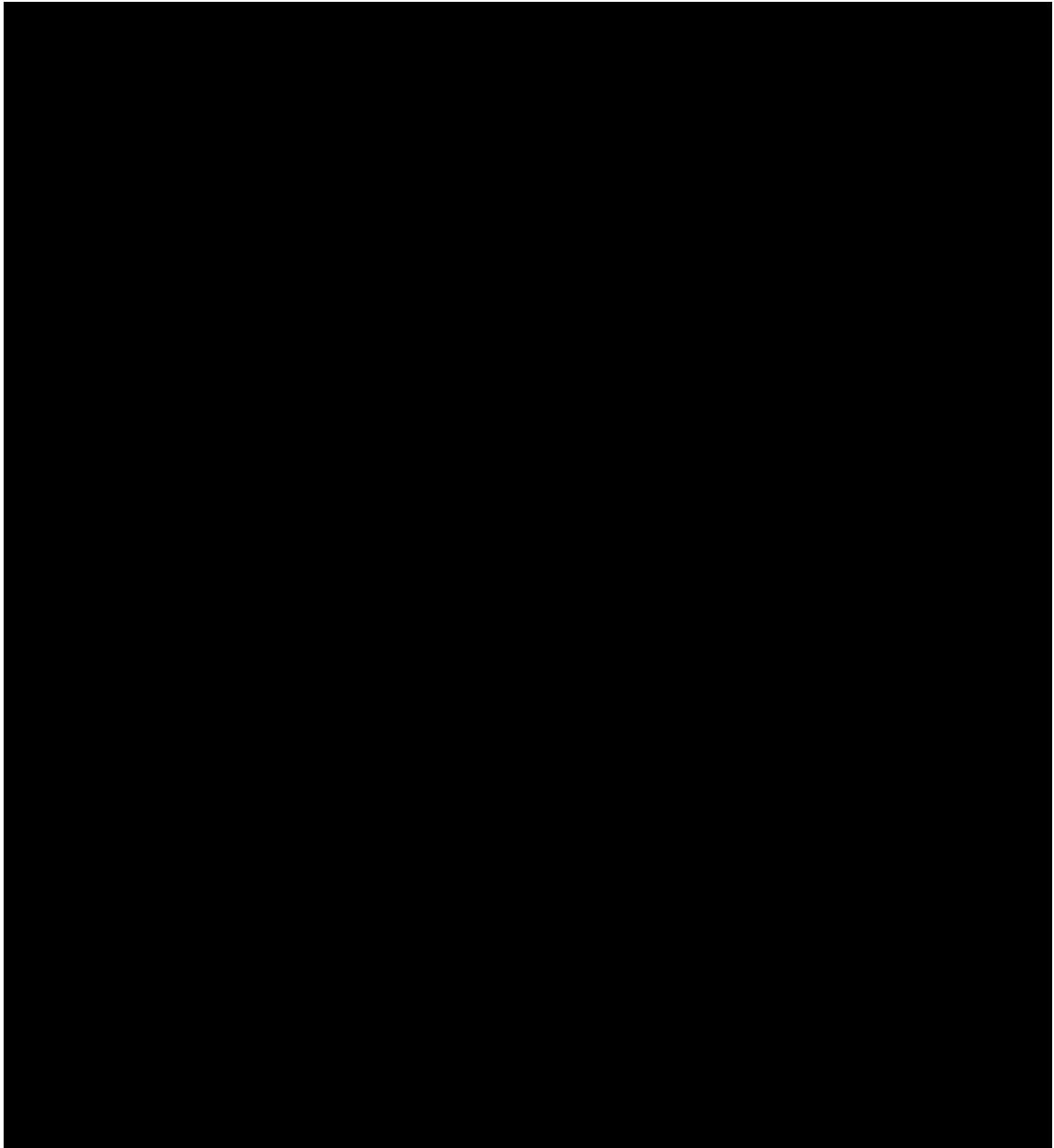
written notice of the estimated Date of Construction Completion of each Portion.

- (b) Subject to clause 27.1(g), the Principal's Representative, Macquarie's Representative and the Independent Certifier must, within 5 Business Days after receipt of the notice referred to in clause 27.1(a)(ii) jointly inspect Macquarie's Activities at a mutually convenient time.
- (c) Within 2 Business Days after the joint inspection referred to in clause 27.1(b), the Independent Certifier must give the Principal and Macquarie a notice either:
  - (i) containing a list of items which it believes must be completed before Construction Completion of the Portion is achieved; or
  - (ii) stating that it believes Macquarie is so far from achieving Construction Completion of the Portion that it is not practicable to issue a list as contemplated in clause 27.1(c)(i).
- (d) When Macquarie considers it has achieved Construction Completion of a Portion, Macquarie must notify the Principal's Representative and the Independent Certifier in writing and provide them with an executed certificate in the form of Schedule B2. Thereafter, and subject to clause 27.1(g), the Principal's Representative, Macquarie's Representative and the Independent Certifier must, within 5 Business Days after receipt of Macquarie's written notice, jointly inspect Macquarie's Activities at a mutually convenient time.
- (e) Following the joint inspection under clause 27.1(d), the Independent Certifier must within 5 Business Days of the joint inspection, or within 5 Business Days of receipt of a notice under clause 27.1(f) (as applicable):

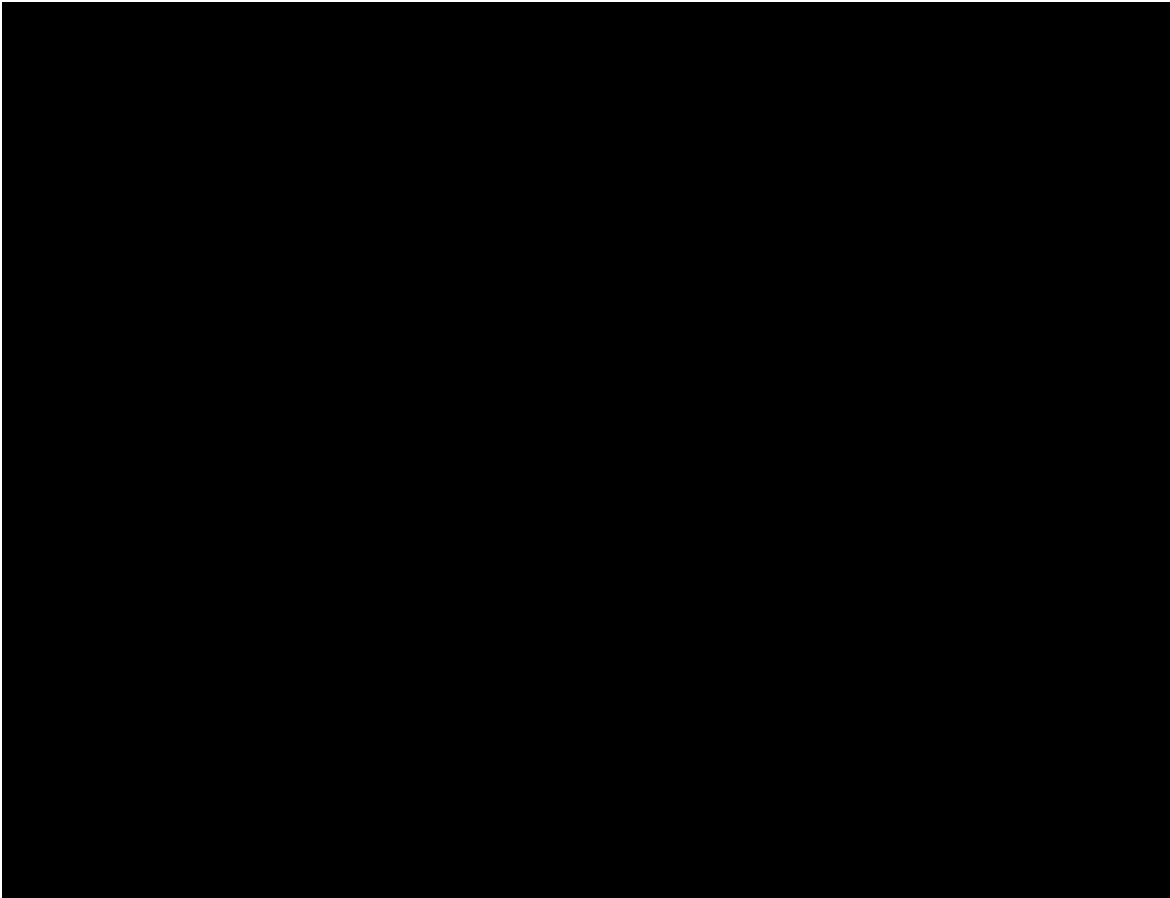
- (i) if Construction Completion of the Portion has been achieved:
  - (A) provide to the Principal's Representative and Macquarie a document signed by the Independent Certifier in the form in Schedule B4; and
  - (B) provide to the Principal's Representative and Macquarie any certifications required under any Third Party Agreements which relate to obligations in Schedule D4 that Macquarie is required to comply with;
- (ii) if Construction Completion of the Portion has not been achieved, issue a notice to the Principal and Macquarie in which it states:
  - (A) the items which remain to be completed before Construction Completion of the Portion can be achieved; or
  - (B) that Macquarie is so far from achieving Construction Completion of the Portion that it is not practicable to notify Macquarie of the items which remain to be completed as contemplated by clause 27.1(e)(ii)(A).
- (f) If the Independent Certifier issues a notice under clause 27.1(e)(ii) Macquarie must proceed with Macquarie's Activities and thereafter when it considers it has achieved Construction Completion of the Portion it must give the Principal's Representative and the Independent Certifier written notice to that effect after which clauses 27.1(d) and 27.1(e) will reapply.
- (g) Macquarie acknowledges and agrees that:
  - (i) the Principal's Representative may invite any other person to attend any joint inspection provided for by this clause 27.1 and clause 27.2, including representatives of any Rail Contractor; and
  - (ii) the Principal's Representative and any Rail Contractor may provide comments to the Independent Certifier (with a copy to Macquarie) in relation to any non-compliance of Macquarie's Activities with this deed.
- (h) Without affecting Macquarie's obligation to achieve Construction Completion of each Portion by the relevant Date for Construction Completion of those Portions, the parties acknowledge that:
  - (i) no separate Date for Construction Completion of the Project Works is specified in this deed;
  - (ii) Construction Completion of the Project Works is achieved by achieving Construction Completion of all Portions;
  - (iii) Construction Completion of the Project Works will be taken to have occurred once Construction Completion of all Portions has occurred; and
  - (iv) the Date of Construction Completion of the Project Works will be taken to be the Date of Construction Completion of the last Portion to achieve Construction Completion.
- (i) The parties acknowledge and agree that:
  - (i) Construction Completion of a Portion will not be conditional upon the Follow-on Contractors carrying out any of the Follow-on Works;

- (ii) Macquarie may achieve Construction Completion of a Portion prior to the Follow-on Contractors commencing the Follow-on Works; and
- (iii) without limiting clauses 16.2(e) and 20.3(c), when determining whether the tests for Construction Completion of a Portion have been achieved, the Independent Certifier must have regard to the SWTC Reliance Provisions and 
- (j) Macquarie must, as a condition precedent to Construction Completion of the last Portion to achieve Construction Completion, ensure that the Station Works and Retail Works are water proofed in accordance with the requirements of the SWTC and are protected from Loss or damage resulting from the conditions contemplated by paragraphs (d) and (j) of the definition of Site Conditions in accordance with the requirements of this deed.









**27.3 Effect of Notice of Construction Completion**

A Notice of Construction Completion will not:

- (a) constitute approval by the Principal or the Principal's Representative of Macquarie's performance of its obligations under this deed;
- (b) be taken as an admission or evidence that the Project Works comply with this deed;  
or
- (c) prejudice any rights or powers of the Principal or the Principal's Representative.

**28. COMPLETION**

**28.1 Completion**

(a) Macquarie must give the Principal's Representative:

- (i) 6 months;
- (ii) 3 months;
- (iii) 1 month; and
- (iv) 1 week,

written notice of the estimated Date of Completion of each Portion.

- (b) Subject to clause 28.1(g), the Principal's Representative, Macquarie's Representative and the Independent Certifier must, within 5 Business Days after receipt of the notice referred to in clause 28.1(a)(ii) jointly inspect Macquarie's Activities at a mutually convenient time.
- (c) Within 2 Business Days after the joint inspection referred to in clause 28.1(b), the Independent Certifier must give the Principal and Macquarie a notice either:
  - (i) containing a list of items which it believes must be completed before Completion of the Portion is achieved; or
  - (ii) stating that it believes Macquarie is so far from achieving Completion of the Portion that it is not practicable to issue a list as contemplated in clause 28.1(c)(i).
- (d) When Macquarie considers it has achieved Completion of a Portion, Macquarie must notify the Principal's Representative and the Independent Certifier in writing and provide them with an executed certificate in the form of Schedule B22. Thereafter, and subject to clause 28.1(g), the Principal's Representative, Macquarie's Representative and the Independent Certifier must, within 5 Business Days after receipt of Macquarie's written notice, jointly inspect Macquarie's Activities at a mutually convenient time.
- (e) Following the joint inspection under clause 28.1(d), the Independent Certifier must within 5 Business Days of the joint inspection, or within 5 Business Days of receipt of a notice under clause 28.1(f) (as applicable):
  - (i) if Completion of the Portion has been achieved:
    - (A) provide to the Principal's Representative and Macquarie a document signed by the Independent Certifier in the form in Schedule B24; and
    - (B) provide to the Principal's Representative and Macquarie any certifications required under any Third Party Agreements which relate to obligations in Schedule D4 with which Macquarie is required to comply;
  - (ii) if Completion of the Portion has not been achieved, issue a notice to the Principal and Macquarie in which it states:
    - (A) the items which remain to be completed before Completion of the Portion can be achieved; or
    - (B) that Macquarie is so far from achieving Completion of the Portion that it is not practicable to notify Macquarie of the items which remain to be completed as contemplated by clause 28.1(e)(ii)(A).
- (f) If the Independent Certifier issues a notice under clause 28.1(e)(ii) Macquarie must proceed with Macquarie's Activities and thereafter when it considers it has achieved Completion of the Portion it must give the Principal's Representative and the Independent Certifier written notice to that effect after which clauses 28.1(d) and 28.1(e) will reapply.
- (g) Macquarie acknowledges and agrees that:
  - (i) the Principal's Representative may invite any other person to attend any joint inspection provided for by this clause 28.1, including representatives of any Rail Contractor; and

- (ii) the Principal's Representative and any Rail Contractor may provide comments to the Independent Certifier (with a copy to Macquarie) in relation to any non-compliance of Macquarie's Activities with this deed.
- (h) Without affecting Macquarie's obligation to achieve Completion of each Portion by the relevant Date for Completion of those Portions, the parties acknowledge that:
  - (i) no separate Date for Completion of the Project Works is specified in this deed;
  - (ii) Completion of the Project Works is achieved by achieving Construction Completion of Portion 1 and Completion of all Portions other than Portion 1;
  - (iii) Completion of the Project Works will be taken to have occurred once Construction Completion of Portion 1, and Completion of all Portions other than Portion 1, has occurred; and
  - (iv) the Date of Completion of the Project Works will be taken to be the Last Date of Completion.

## 28.2 **Effect of Notice of Completion**

A Notice of Completion will not:

- (a) constitute approval by the Principal or the Principal's Representative of Macquarie's performance of its obligations under this deed;
- (b) be taken as an admission or evidence that the Project Works comply with this deed; or
- (c) prejudice any rights or powers of the Principal or the Principal's Representative.

## 29. **POST-COMPLETION ARRANGEMENTS**

### 29.1 **Access following Completion of a Portion**

- (a) Following:
  - (i) Construction Completion of Portion 1, the Principal must procure that each Follow-on Contractor provides Macquarie with such access to the Construction Site with respect to Portion 1 as may be reasonably required by Macquarie in order to rectify any Minor Defects and Agreed Defects identified in the Notice of Construction Completion for Portion 1; and
  - (ii) Completion of each Portion other than Portion 1, the Principal must procure that each Follow-on Contractor provides Macquarie with such access to the Construction Site with respect to the relevant Portion as may be reasonably required by Macquarie in order to rectify any Minor Defects and Agreed Defects identified in the Notice of Completion for that Portion,  
subject to Macquarie complying with:
    - (iii) the requirements of the applicable Project Cooperation and Integration Deeds; or
    - (iv) where Macquarie has not entered into a Project Cooperation and Integration Deed with the relevant Follow-on Contractor, the reasonable site access and work, health and safety procedures of that Follow-on Contractor.

- (b) Where Completion has been achieved with respect to a Portion that has been the subject of a notice under clause 18.1 but Macquarie still requires access to that Portion in order to continue Macquarie's Activities, the Principal must procure that Macquarie is provided with reasonable access to that Portion to the extent that Macquarie requires access to that Portion to enable Macquarie to continue Macquarie's Activities, however, the occupation and use of that Portion by the Principal or any of the Rail Contractors will not limit or affect the responsibilities, obligations or liabilities of Macquarie including the obligation of Macquarie to achieve Completion of each remaining Portion by the Dates for Completion for those Portions.

## 29.2 **Interface Management Services after Completion**

- (a) The Principal's Representative may give written notice to Macquarie at least 5 Business Days before Macquarie's estimated Last Date of Completion (which has been notified in accordance with clause 28.1(a)) that Interface Management Services must be carried out after Completion of that Portion.
- (b) If the Principal's Representative gives Macquarie a notice under clause 29.2(a):
  - (i) Macquarie must continue to carry out the Interface Management Services in accordance with clauses 10.9(a)(ii) and 10.9(a)(iii) until the date specified in a notice given by the Principal pursuant to clause 29.2(c); and
  - (ii) Macquarie is entitled to be paid for the Interface Management Services carried out by Macquarie between the Last Date of Completion and the date specified in the notice given by the Principal pursuant to clause 29.2(c) calculated in accordance with Schedule A6 and paid in accordance with clause 34.2.
- (c) At any time after issuing a notice under clause 29.2(a), the Principal's Representative may give further written notice to Macquarie that Macquarie is to cease performance of the Interface Management Services on the date specified in the further notice, which date must be at least 3 Business Days after the date on which Macquarie receives the further notice.
- (d) On Construction Completion of Portion 1 and in respect of any other Portion, Completion of that Portion, Macquarie must:
  - (i) hand control of the relevant Project Works (other than the Concourse Link Works) to the Principal; and
  - (ii) provide the Principal with all spare parts, consumables and special tools as required by the SWTC.

## 30. **DEFECTS RECTIFICATION**

### 30.1 **Defects**

- (a) Macquarie must promptly give the Principal's Representative, the Independent Certifier and, if required by the Principal's Representative, the Rail Contractors, a detailed written report of:
  - (i) any Defect it detects prior to expiry of the Defects Correction Period; and
  - (ii) all action proposed to correct that Defect, including the estimated time required.
- (b) Subject to clause 41.1(e) in relation to any Defect caused by an Excepted Risk and unless the Principal otherwise Directs under clause 30.2(a), Macquarie must correct all Defects arising prior to the expiry of the Defects Correction Period whether or not

the Principal's Representative, the Independent Certifier or a Rail Contractor notifies Macquarie of them, including correcting any Defects in a Milestone or Portion which existed at the time of issue of the Notice of Milestone Achievement for that Milestone or Notice of Construction Completion or Notice of Completion for that Portion (including any Minor Defects and Agreed Defects listed in the Notice of Milestone Achievement, Notice of Construction Completion or Notice of Completion).

- (c) Without limiting any other obligation of Macquarie to correct Defects in a Portion, Macquarie must:
  - (i) comply with the Defects Management Plan;
  - (ii) correct all Mandatory Defects as a pre-condition to the achievement of Milestone Achievement of the relevant Milestone or Construction Completion and Completion of the relevant Portion;
  - (iii) use its best endeavours to correct all Minor Defects and Agreed Defects identified in a Notice of Milestone Achievement, Notice of Construction Completion or Notice of Completion within 30 days after the Date of Milestone Achievement, Date of Construction Completion or Date of Completion (as applicable) of the relevant Milestone or Portion; and
  - (iv) without limiting clause 30.1(c)(iii), ensure that all Minor Defects and Agreed Defects identified in:
    - (A) a Notice of Construction Completion for Portion 1 are corrected within 90 days after the Date of Construction Completion of Portion 1; or
    - (B) a Notice of Completion for any other Portion (other than Portion 1) are corrected within 90 days after the Date of Completion of the relevant Portion.

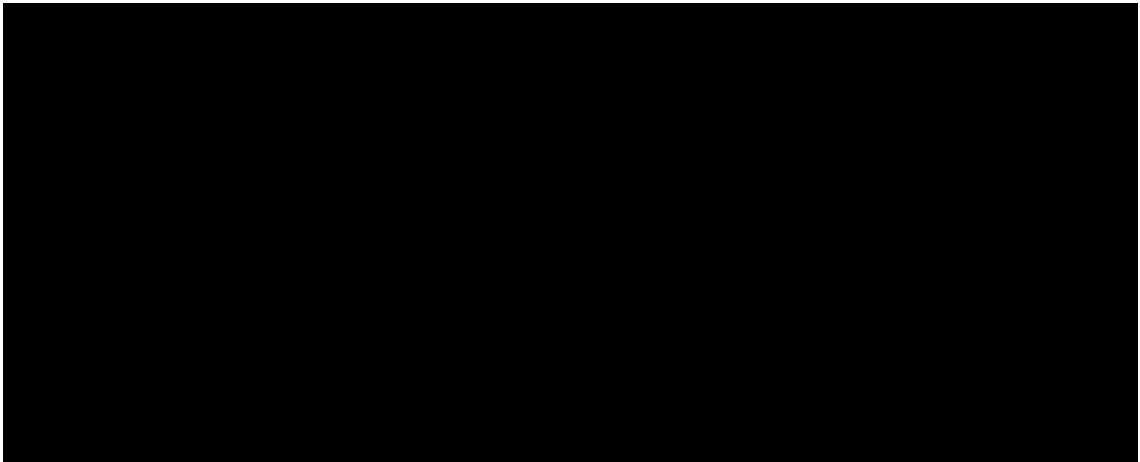
### 30.2 **Principal's Representative's Direction**

- (a) If prior to or during the applicable Defects Correction Period the Principal's Representative discovers or believes there is a Defect or is given notice of a Defect under clause 30.1(a), the Principal's Representative may, without prejudice to any other rights which the Principal may have under this deed or otherwise at Law, give Macquarie a Direction specifying the Defect and doing one or more of the following:
  - (i) requiring Macquarie to correct the Defect or a part of it and specifying the time within which this must occur;
  - (ii) requiring Macquarie to carry out a Variation to overcome the Defect or a part of it and specifying the time within which this must be carried out;
  - (iii) advising Macquarie that the Principal will accept the work or a part of it despite the Defect;
  - (iv) subject to clause 30.2(b), advising Macquarie that the Principal will direct a Rail Contractor to carry out a change or variation under its Rail Contract to overcome the Defect or a part of the Defect; or
  - (v) in respect of any Defect:
    - (A) to which clause 30.3(e) applies; or
    - (B) subject to clause 30.2(d), discovered during a Defects Correction Period,



advising Macquarie that a Rail Contractor will correct (or has corrected) the Defect, or any part of it.

- (b) The Principal may only give a direction referred to in clause 30.2(a)(iv) in respect of a Defect in the Project Works during the Defects Correction Period for those Project Works.
- (c) In determining the times at which Macquarie is required to correct a Defect or carry out a Variation for the purposes of this clause, the Principal's Representative is entitled to have regard to the need to minimise the interference and disruption to the activities which any Rail Contractor may be carrying out in discharge of its obligations under its relevant Rail Contract.



### 30.3 Correction of Defect or Change

- (a) If a Direction is given under clause 30.2(a)(i) or 30.2(a)(ii) at any time prior to the expiration of the Defects Correction Period applicable to the relevant part of the Project Works (whether before or after Construction Completion or Completion) Macquarie must correct the Defect (or the part of it) or carry out the Variation (as the case may be):
  - (i) within the time specified in the Principal's Representative's Direction;
  - (ii) at times notified by the Principal's Representative;
  - (iii) in accordance with the requirements of any relevant Authority;
  - (iv) so as to minimise the impact on the use of the relevant part of the Project Works;
  - (v) in a manner which causes as little inconvenience as possible to:
    - (A) the activities which any Rail Contractor may be carrying out in discharge of its obligations under its relevant Rail Contract; or
    - (B) users of the Project Works, a Local Area, a Service or any access and the adjacent community;
  - (vi) subject to clause 30.3(d), at Macquarie's risk in respect of any restrictions on access;
  - (vii) if a Rail Contractor has taken possession of the relevant part of the Construction Site, in accordance with the reasonable requirements of the relevant Rail Contractor in relation to access and site safety;

- (viii) in accordance with its obligations under the Project Cooperation and Integration Deed; and
  - (ix) regardless of the existence of a Dispute as to whether the Principal's Representative's notice is valid or whether the subject matter of the notice is a Defect;
- (b) If the Principal gives Macquarie a Direction under clause 30.2(a)(i) or if Macquarie must correct a Defect in accordance with clause 30.1(b), Macquarie will only be entitled to be reimbursed for the reasonable direct costs incurred by Macquarie in correcting the Defect to the extent that the Defect (or the part of it) is something for which Macquarie is not responsible having regard to clause 1.2(m); and
- (c) If the Principal gives Macquarie a Direction under clause 30.2(a)(ii), Macquarie will only be entitled to receive an extension of time (if relevant) and the Variation Costs of the Variation:
- (i) if Macquarie has complied with clause 35; and
  - (ii) to the extent that the Defect (or the part of it) is something for which Macquarie is not responsible having regard to clause 1.2(m).
- (d) If Macquarie (acting reasonably) requires access to part of the Principal Construction Site (other than Construction Site (Area 6)) after the Construction Licence in respect of that part of the Principal Construction Site has expired or terminated pursuant to clause 17.2(c)(ii) (including in order to rectify Defects and to perform any work excluded from Completion in Schedule A18 (if any)):
- (i) the Principal will procure such access to the relevant part of the Principal Construction Site as Macquarie reasonably requires to correct the Defect (or the part of it) or to carry out the Variation (as the case may be); and
  - (ii) such access will be subject to Macquarie procuring from the D&C Contractor and providing to the Principal and if directed by the Principal, Macquarie must procure from the D&C Contractor and provide to the Principal, executed deeds poll substantially in the form of Schedule D3 in favour of the relevant principal contractors.
- (e) If Macquarie does not comply with clause 30.3(a):
- (i) the Principal's Representative may, without prejudice to any other rights that the Principal may have against Macquarie with respect to the Defect under this deed or otherwise at Law:
    - (A) give Macquarie a Direction under clause 30.2(a)(iv) or clause 30.2(a)(v)(B); and
    - (B) to the extent that the Defect (or the part of it) is something for which Macquarie is responsible having regard to clause 1.2(m), have the correction or change or variation carried out at Macquarie's expense; and
  - (ii) the cost of the correction or change or variation suffered or incurred by the Principal arising out of taking the action contemplated in clause 30.3(e)(i) or as a result of Macquarie's failure to comply with clause 30.3(a) will be a debt due and payable from Macquarie to the Principal.
- (f) Despite any other provision in this deed, the parties acknowledge and agree that clause 30.3(d) does not apply in relation to Construction Site (Area 6).