



Execution Version

SYDNEY METRO CITY & SOUTHWEST

Southwest Metro Station Upgrade Works
Package 5

Construct Only Delivery Deed

Contract Number: 00013/11766

Between

Sydney Metro

ABN 12 354 063 515

(PRINCIPAL)

and

Downer EDI Works Pty Ltd

ABN 66 008 709 608

(CONTRACTOR)

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Parties

1. **Sydney Metro** (ABN 12 354 063 515), a NSW Government agency constituted by section 38 of the *Transport Administration Act 1988* (NSW) and located at Level 43, 680 George Street, Sydney NSW 2000 (**Principal**).
2. **Downer EDI Works Pty Ltd** (ABN 66 008 709 608) of Trinita Business Campus, Level 2, 39 Delhi Road, North Ryde NSW 2113 (the **Contractor**).

Recitals

- A The Principal is procuring Sydney Metro City & Southwest on behalf of the NSW government and the people of New South Wales.
- B Following completion of a request for tenders process, the Principal selected the Contractor as the successful tenderer for the delivery of the Works.
- C The Principal and the Contractor now wish to enter into this Contract to set out the terms on which the Contractor will:
- (a) supply, construct, deliver, install, integrate, test, commission and complete the Works and otherwise carry out the Contractor's Activities;
 - (b) interface and co-ordinate the Contractor's Activities with the activities of the Interface Contractors; and
 - (c) hand over the Works to the Principal.

It is agreed as follows

1. Definitions and Interpretation

1.1 Definitions

In this Contract, unless the context otherwise indicates:

"**ABC Commissioner**" means the commissioner of the Australian Building and Construction Commission referred to in subsection 15(1) of the BCIIIP Act.

"**ABCC**" means the body referred to in subsection 29(2) of the BCIIIP Act.

"**Accepted Defect**" means a Defect accepted by the Principal under clause 8.2(b).

"**Accreditation**" means accreditation (including provisional accreditation, conditions or restrictions in respect of accreditation or any variation to the accreditation) under Part 3 of the Rail Safety National Law (or an exemption from same).

"Additional Hazardous Material" means [REDACTED]
[REDACTED]
[REDACTED] which:

- (a) was not described in, or could not have reasonably been inferred from, the Hazardous Material Report; and
- (b) could not have been identified or could not have been reasonably anticipated by a competent and experienced contractor which has done those things the Contractor is deemed to have done under clause 3.4A(a) as at the date of this Contract.

"Additional Third Party Agreement" has the meaning given in clause 2.12(b)(i)B.

"Additional Track Possession or Power Isolation" has the meaning given in paragraph clause 7.12(e).

"AFC Design Documentation" means the 'approved for construction' design documentation for the Works, as updated from time to time.

"AFC Design Documentation Procurement Date" means the date referred to in item 48 of Schedule 1.

"Agreed Defect" means a Defect (other than a Minor Defect) that:

- (a) the Principal and the Contractor agree in writing; or
- (b) the Principal's Representative otherwise directs,

does not need to be rectified in order to achieve Construction Completion of a Portion.

"Agreed Respite Notice" has the meaning given to that term in clause 9.17(e).

"Agreed Respite Services" has the meaning given to that term in clause 9.17(e).

"Appointed PC (CICG Process) Area" means those parts of the Site specified in the CICG Minutes or Appointment as the PC Letter (as applicable) which nominate the Contractor as the principal contractor.

"Appointment as the PC Letter" means the document of that name referred to in the Sydney Metro Principal Contractor Appointment and Transfer Process.

"ARTC" means Australian Rail Track Corporation Limited ABN 75 081 455 754.

"ARTC Access Protocols" means the Shared Corridor Protocols and the Possessions Protocol, a copy of which is included in electronic form in Schedule 40.

"ASA Authorisation" means an authorisation issued by the ASA to a legal entity which verifies that it has the relevant systems in place to carry out the class of Asset Lifecycle work specified in the authorisation, subject to any specified conditions of the authorisation.

"ASA Charter" means the document which identifies the ASA's objectives, functions, powers and governance and the duties of Rail Transport Agencies and AEOs in relation to the ASA (as amended from time to time), a copy of which can be found on www.asa.transport.nsw.gov.au.

"ASA Requirements" has the meaning assigned to it in the ASA Charter.

"Asset Lifecycle" has the meaning assigned to it in the ASA Charter.

"Asset Lifecycle Services" means the aspects of the Contractor's Activities which relate to the Asset Lifecycle of Transport Assets.

"Asset Management Information" means the information and documents relating to the operation and maintenance of the assets forming the Works as required by Appendix F06 of the SWTC.

"Asset Standards Authority" or "ASA" means the independent unit of that name established within Transport for NSW whose functions include setting, controlling, maintaining, owning and publishing the network and asset standards for Transport Assets for the Asset Lifecycle. Information about the ASA and the network and asset standards can be found on www.asa.transport.nsw.gov.au.

"Associates" means:

- (a) in respect of the Principal, the Principal's Representative and any of the respective employees, agents, contractors or officers of the Principal and the Principal's Representative, but excludes:
 - (i) the Independent Certifier;
 - (ii) the Environmental Representative;
 - (iii) the Contractor, each entity that comprises the Contractor and its Subcontractors;
 - (iv) any Interface Contractors and their respective subcontractors;
 - (v) the Operator and its subcontractors; and
 - (vi) employees, agents, consultants and officers of the persons listed in paragraphs (i) to (v) above; and
- (b) in respect of the Contractor, its Subcontractors, each entity that comprises the Contractor, the Parent Company Guarantors and any of the respective employees, agents, contractors or officers of the Contractor, its Subcontractors or the Parent Company Guarantors (excluding the Independent Certifier and its employees, agents, consultants and officers).

"Assurance and Governance Plan" means the Contract Management Plan of that name which the Contractor is required to develop, maintain and implement in accordance with Appendix F02 of the SWTC.

"ATSB" means the Australian Transport Safety Bureau constituted under the *Transport Safety Investigation Act 2003* (Cth).

"Authorised Engineering Organisation" or **"AEO"** means an organisation providing a defined engineering service or product that has been assessed and granted authorised engineering status for Sydney Metro City & Southwest by the ASA.

"Authorised User" has the meaning given in clause 5.4(e).

"Authority" includes:

- (a) any governmental or semi-governmental or local government authority, administrative or judicial body or tribunal, department, commission, public authority, agency, Minister, statutory corporation or instrumentality (and includes ASA);
- (b) any other person having a right to impose a requirement, or whose consent is required, under Law with respect to any part of the Contractor's Activities; or
- (c) any other person having jurisdiction over, or ownership of, any Utility Services, the Utility Service Works, any Local Areas or the Local Area Works undertaken on Local Areas, excluding the Operator.

"Authority Approval" means any licence, permit, consent, approval, determination, exemption, certificate, memorandum of understanding, notification or permission from any Authority or under any Law, or any requirement made under any Law, which must be obtained or satisfied (as the case may be) to:

- (a) carry out the Contractor's Activities including for the avoidance of doubt all things required for conducting work within the Rail Corridor or affecting rail operations and all things required for dealing with, transporting and disposing of Contamination, Hazardous Material or waste; or
- (b) occupy and use for its intended purpose the completed Works or a completed Portion,

and for the avoidance of doubt includes:

- (c) the Planning Approval; and
- (d) the EPL.

"Bankstown Line" means the railway line between Sydenham and Bankstown operated, as at the date of this Contract, by Sydney Trains for railway passenger services and associated infrastructure.

"BCIIP Act" means the *Building and Construction Industry (Improving Productivity) Act 2016* (Cth).

"BMCS Contractor" means the contractor identified in item 1 of Schedule 1 that:

- (a) has been engaged by the Principal under a framework agreement; and

(b) is to be engaged by the Contractor under the BMCS Supply and Installation Contract in accordance with clause 2.2B for the provision of the BMCS Works.

"BMCS Supply and Installation Contract" means the Nominated Subcontract to be entered into between the Contractor and the BMCS Contractor in respect of the BMCS Works, the form of which is included in electronic form in Schedule 40.

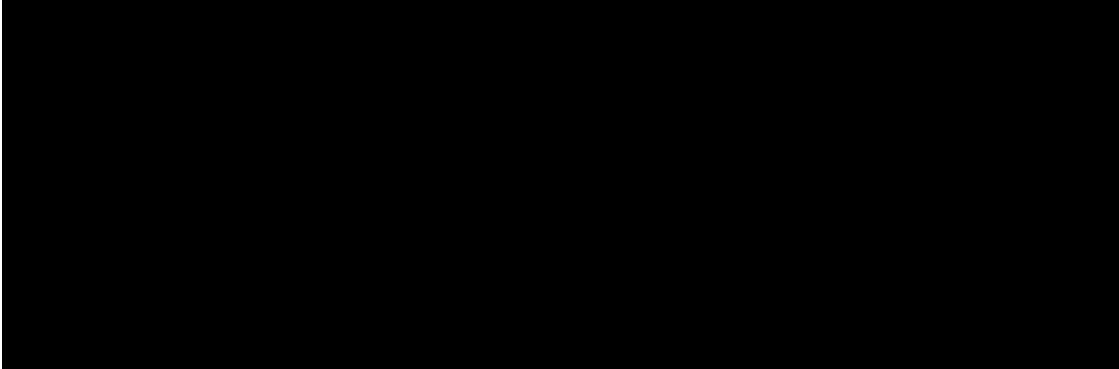
"BMCS Works" means the works to be performed by the BMCS Contractor in relation to the Works.

"Building Code" means the *Code for Tendering and Performance of Building Work 2016* (Cth), or any subsequent code of practice which takes effect and supersedes that Code.

"Building Work" has the meaning given in subsection 3(3) of the Building Code.

"Business Day" means any day other than a Saturday, Sunday, public holiday in New South Wales or 27, 28, 29, 30 or 31 December.

"CCU" means Construction Compliance Unit, the unit established within NSW Industrial Relations to monitor compliance with and receive reports of alleged breaches of the NSW Guidelines.



"CEMP Approval Date" means the date referred to in item 47 of Schedule 1.

"Chain of Responsibility Provisions" refers to any section of the Heavy Vehicle National Law under which the Contractor is "a party in the chain of responsibility" (within the meaning given to that term under the Heavy Vehicle National Law).

"Change in Authority Approval" means a change:

- (a) in an Authority Approval which is in existence as at the date of this Contract; and
- (b) which occurs after the date of this Contract.

"Change in Codes and Standards" means a change in the Codes and Standards taking effect after the date of this Contract, excluding a change in the Codes and Standards which, as at the date of this Contract:

- (a) was published or of which public notice had been given (even as a possible change in the Codes and Standards) in substantially the same form as the

change in the Codes and Standards eventuating after the date of this Contract;
or

- (b) a party experienced and competent in the delivery of works and services similar to the Works or the Contractor's Activities (as applicable) would have reasonably foreseen or anticipated.

"Change in Control" means, in respect of an entity, any event such that a change occurs in the Control of that entity.

"Change in Law" means (if it takes effect after the date of this Contract):

- (a) a change in an existing Law (other than a change in an Authority Approval, a decision of a court or a COVID-19 Change in Law);
- (b) a new Law (other than a new Authority Approval, a decision of a court or a COVID-19 Change in Law); or
- (c) a COVID-19 Change in Law,

but excludes:

- (d) a change in an existing Law in respect of Taxes or a new Law in respect of Taxes; and
- (e) a change in an existing Law or a new Law which:
 - (i) was caused or contributed to by any act or omission of the Contractor; or
 - (ii) as at the date of this Contract:
 - A. was published or of which public notice had been given (even as a possible change in an existing Law or a possible new Law) in substantially the same form as the change in an existing Law or new Law eventuating after the date of this Contract; or
 - B. in the case of paragraph (a) or (b) above, a person experienced and competent in the delivery of works and services similar to the Contractor's Activities would have reasonably foreseen or anticipated.

"CICG Minutes" means the minutes of the relevant meeting of the Cooperation and Integration Control Group.

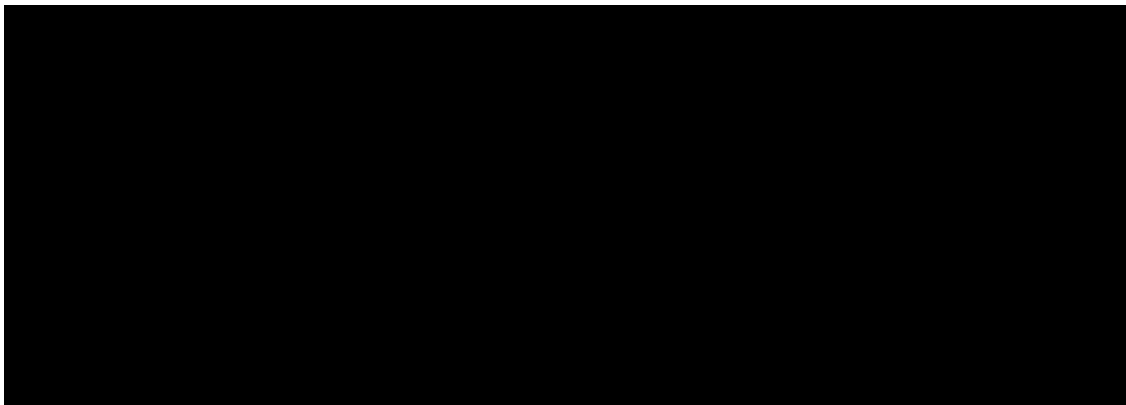
"City and Southwest Construction Noise and Vibration Guideline" means the process document of that name as referenced in the SWTC, as updated from time to time.

"Claim" includes any claim, demand, action, proceeding or suit of any kind whatsoever for an increase in the Contract Sum, for payment of money (including damages), for an extension of time to a Date for Construction Completion or a Date for Completion or for any other form of relief:

- (a) under, arising out of, or in any way in connection with, this Contract, including any direction of the Principal's Representative;
- (b) arising out of, or in any way in connection with, the Contractor's Activities or the Works or either party's conduct prior to the date of this Contract; or
- (c) otherwise at Law or in equity including:
 - (i) under or for breach of statute;
 - (ii) in tort for negligence or otherwise, including negligent misrepresentation; or
 - (iii) for restitution, including restitution based on unjust enrichment.

"Codes and Standards" means:

- (a) the relevant building codes (including the National Construction Code), Standards Australia codes, Asset Standards Authority (ASA) standards, and standards, specifications, guidelines, rules, procedures or other publications current at the date of this Contract (including the Disability (Access to Premises – Buildings) Standards 2010), including any specified or required for the Works or otherwise for the Contractor's Activities in the Principal's Design Documentation or otherwise by this Contract;
- (b) the NSW Government Aboriginal Participation in Construction Policy (June 2018), NSW Guidelines, Environmental Management Systems Guidelines (3rd edition) (May 2014), Work Health and Safety Management Systems and Auditing Guidelines (5th edition) (May 2014), Training Management Guidelines (February 2009), Quality Management System Guidelines for Construction (August 2013), GREP and any other NSW Government guidelines and requirements specified or required by this Contract; and
- (c) if (and to the extent) the codes and standards referred to in paragraphs (a) or (b) are irrelevant, then relevant international codes, standards, specifications, guidelines, rules, procedures or other publications current at the date of this Contract.



"Collateral Warranty Deed Poll" means a deed poll in substantially the same form as Schedule 32.

"Commissioning" has the meaning given to that term in the SWTC.

"Commonwealth" means the Commonwealth of Australia.

"Compensable Contamination" means Contamination other than:

- (a) General Solid Waste or groundwater; and
- (b) Contamination which:
 - (i) is caused by the Contractor's Activities; or
 - (ii) arises out of or in connection with a failure by the Contractor to:
 - A. implement environmental and safety management practices and procedures in accordance with Good Industry Practice; or
 - B. comply with any other requirement of this Contract.

"Completion" means in respect of all Portions, the stage in the execution of the Contractor's Activities in respect of a Portion when:

- (a) Construction Completion has been achieved in respect of the Portion;
- (b) not used;
- (c) the Contractor has rectified:
 - (i) all Agreed Defects and Minor Defects that are listed in the Independent Certifier's Notice of Construction Completion; and
 - (ii) all Defects identified after Construction Completion (including any Defects identified in a Pre-Completion Notice);
- (d) the Contractor has carried out and passed all tests which are required under this Contract to be carried out and passed prior to Completion being achieved;
- (e) the Contractor has confirmed that it will carry out any Post Construction Completion Activities which the Principal has, at that time, directed the Contractor to carry out; and
- (f) the Contractor has done everything else which is stated to be a condition precedent to Completion of the Portion or which the Contractor is otherwise expressly required by this Contract to do before Completion of the Portion.

"Completion Payment Claim" means a payment claim lodged by the Contractor in accordance with clause 11.9.

"Configuration Change Request" or "CCR" means a package of documentation required to be submitted by the Contractor to the Principal's Representative meeting the requirements set out in section 2.9 of Appendix F01 of the SWTC.

"Configuration Management Framework" means the framework established by the Asset Standards Authority from time to time for configuration management.

"Consequential Loss" means any:

- (a) loss of income, loss of revenue, loss of profit, loss of rent, loss of financial opportunity, loss of business or loss of business opportunity, loss of contract, loss of goodwill, loss of use or loss of production (whether the loss is direct or indirect); or
- (b) direct or indirect financing costs,

whether present or future, fixed or unascertained, actual or contingent.

"Constructability Issue" means an issue in the Design Stage 3 Design Documentation or the Principal's Design Documentation (as applicable) that will result in:

- (a) construction of the Works or the Temporary Works in accordance with the Design Stage 3 Design Documentation or the Principal's Design Documentation (as applicable) not being feasible (including not being feasible within the timeframe required by this Contract); or
- (b) the Works or the Temporary Works as specified in the Design Stage 3 Design Documentation or the Principal's Design Documentation (as applicable) not being constructible in a safe manner.

"Construction and Site Management Plan" means the Contract Management Plan of that name.

"Construction Completion" means, in respect of a Portion, the stage in the execution of the Contractor's Activities in respect of that Portion when:

- (a) the Portion is complete in accordance with this Contract except for any Accepted Defects, Agreed Defects or Minor Defects;
- (aa) the Contractor has rectified all Mandatory Defects except for any Accepted Defects, Agreed Defects or Minor Defects;
- (ab) the Contractor has given to the Principal's Representative (with a copy to any Interface Contractor as required by the Principal) all Asset Management Information (including 'work-as-executed' (WAE) drawings) as required by Appendix F06 of the SWTC and such Asset Management Information has not been rejected by the Principal's Representative in accordance with clause 9.8 with respect to that Portion;
- (b) the Contractor has:

- (i) carried out and passed all tests that:
 - A. are required under this Contract to be carried out and passed before the Portion reaches Construction Completion including those set out in Appendix F07 of the SWTC; or
 - B. must necessarily be carried out and passed before the Portion can be used for its intended purpose and to verify that the Portion is in the condition this Contract requires the Portion to be in at Construction Completion;
- (ii) without limiting clause 2.3(c)(v), obtained all Authority Approvals that it is required under this Contract to obtain before Construction Completion of the Portion and provided such Authority Approvals to the Principal's Representative;
- (iii) given to the Principal's Representative (with a copy to any Interface Contractor as required by the Principal) all documents and information in respect of the construction, testing, commissioning, completion, occupation, use and maintenance of the Portion which:
 - A. are required by this Contract to be given to the Principal's Representative before Construction Completion of the Portion; or
 - B. must necessarily be handed over before the Portion can be used for its intended purpose,including copies of all documentation in accordance with the requirements of the SWTC;
- (iv) executed a certificate in the form of Schedule 21B for the Portion and provided it to the Principal's Representative and the Independent Certifier;
- (v) provided the training referred to in Appendix F06 of the SWTC to the reasonable satisfaction of the Principal's Representative;
- (vi) removed all Construction Plant from the parts of the Site that relate to that Portion, other than:
 - A. where the Principal's Representative has given a notice under clause 12.10(a) prior to Construction Completion of the Portion directing the Contractor to carry out Post Construction Completion Activities after Construction Completion of that Portion, any Construction Plant required to carry out those Post Construction Completion Activities; and
 - B. any Construction Plant necessary to facilitate the handover of that Portion to the Principal (or its nominee) or the relevant Authority or which is required to be retained on the Site in accordance with clause 7.7(c) (where approved by the Principal's Representative in accordance with clause 7.7(c));

- (vii) in respect of each discrete part of Utility Service Works that form part of that Portion:
 - A. completed all such Utility Service Works in accordance with the requirements of this Contract and any relevant Third Party Agreement; and
 - B. provided the Principal's Representative with the documentation required by clause 2.5(a)(x);
- (viii) in respect of each discrete part of Property Works that form part of that Portion:
 - A. completed all such Property Works in accordance with clause 2.5A, including all relevant work under clause 2.5A(b); and
 - B. provided the Principal's Representative with the documentation required by clause 2.5A(c);
- (ix) in respect of each discrete part of Local Area Works that form part of that Portion:
 - A. completed all such Local Area Works in accordance with the requirements of this Contract and any relevant Third Party Agreement; and
 - B. provided the Principal's Representative with the documentation required by clause 2.5B(c);
- (x) in respect of each discrete part of Sydney Trains Works that form part of that Portion:
 - A. completed all such Sydney Trains Works in accordance with the requirements of this Contract and any relevant Third Party Agreement; and
 - B. provided the Principal's Representative with the documentation required by clause 2.5C(c);
- (xi) not used;
- (xii) in respect of any Extra Land occupied or used in connection with that Portion, provided the Principal's Representative with:
 - A. properly executed releases on terms satisfactory to the Principal's Representative from all claims or demands from the owners or occupiers of the Extra Land and from other persons having interests in such land; or
 - B. if the relevant Landowner 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 was provided by the Contractor to the owner, occupier or other person:

- 1) copies of all correspondence between the Contractor and the owner, occupier or other person; and
 - 2) evidence that the condition of the Extra Land satisfies the requirements of this Contract;
- (xiii) reinstated the Temporary Areas that relate to that Portion to a condition at least equivalent to the condition existing before that occupation or use;
- (xiv) submitted to the Principal's Representative the Survey Certificate referred to in clause 7.6(b) with respect to the relevant Portion;
- (xv) removed all rubbish, surplus materials and Temporary Works from the relevant parts of the Site and Extra Land relevant to that Portion in accordance with clause 7.7;
- (xvi) provided the Principal with all spare parts, consumables and special tools as required by the SWTC; and
- (xvii) executed the Collateral Warranty Deed Poll and provided it to the Principal's Representative; and
- (c) the Contractor has done everything else which is stated to be a condition precedent to Construction Completion of that Portion, or which Contractor is otherwise expressly required by this Contract to do prior to Construction Completion of that Portion being achieved.

"Construction Environmental Management Plan" means the plan which forms part of the Contract Management Plans which is required to be prepared by the Principal and provided to, accepted by and implemented by, the Contractor pursuant to this Contract (including the SWTC).

"Construction Methodology" means the Contractor's construction methodology for the Works and the Temporary Works detailed in Exhibit E and used as the basis for the Draft Construction Environmental Management Plan.

"Construction Plant" means equipment, appliances, machinery and things used in the execution of the Contractor's Activities but not forming part of the Works.

"Construction Traffic Management Plans" means the plans prepared by the Contractor as required by condition E47 of the Planning Approval.

"Contamination" means the presence in, on or under land or any other aspect of the Environment of a substance, gas, chemical, liquid or other matter (whether occurring naturally or otherwise [REDACTED]) which is at a concentration above the concentration at which the substance (whether occurring naturally or otherwise) is normally present in, on or under land or any other aspect of the Environment in the same locality, being a presence that presents a risk of harm to

human health or any other aspect of the Environment but excluding any Hazardous Material.

"Contestable Utility Service Works" means the Utility Service Works identified as "Contestable" in Schedule 19 and which are required to be carried out to the extent specified in, or required by, the Principal's Design Documentation or the SWTC.

"Contract" means this contract between the Principal and the Contractor in respect of the Works, the Temporary Works and otherwise, the Contractor's Activities.

"Contract Documentation" means all documentation in computer readable or written forms brought into (or required to be brought into) existence as part of, or for the purpose of, performing the Contractor's Activities (whether before or after the date of this Contract) including:

- (a) Shop Drawings;
- (b) Contract Management Plans;
- (c) Asset Management Information; and
- (d) all plans, manuals, programs and other documents.

"Contract Management Plan" means the documents required to be provided and implemented by the Contractor pursuant to the SWTC as developed, amended or updated from time to time in accordance with the Contract.

"Contract Sum" means the Original Contract Price increased or decreased by the amounts by which this Contract requires the Contract Sum to be increased or decreased.

"Contractor" means the person named as the Contractor in item 2 of Schedule 1.

"Contractor's Activities" means all things or tasks which the Contractor is, or may be, required to do to comply with its obligations under this Contract, including:

- (a) the construction, Commissioning and hand-over of the Works;
- (b) the provision of Temporary Works and Construction Plant;
- (c) the Post Construction Completion Activities;
- (d) each of the Mandatory Testing Activities; and
- (e) anything incidental or ancillary to the obligations in paragraphs (a) to (d).

"Contractor's Program" means the program prepared and provided by the Contractor in accordance with clause 10.2, as developed and updated in accordance with clause 10.2 from time to time.

"Contractor's Representative" means the person notified to the Principal's Representative in accordance with clause 9.4(a) as being the Contractor's Representative.

"Control" has the meaning given in the Corporations Act.

"Cooperation and Integration Control Group" has the meaning given in Schedule 35.

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

"Corridor Works" means all things, works and materials (including all systems and software incorporated in, or necessary to enable their operation) that the Corridor Works Contractor must, in accordance with the Corridor Works Contract, design, construct, manufacture, install, test and commission for the purposes of completing Sydney Metro City & Southwest, including the upgrade and reconfiguration of the Bankstown Line rail corridor, including bridge works, retaining structures, overhead wiring including high voltage and traction power, drainage, earthworks, maintenance access, track, service routes, enabling works, rail systems and communications, signalling and train control, fencing and screens.

"Corridor Works Contract" means a contract between the Principal and the Corridor Works Contractor for the provision of the Corridor Works.

"Corridor Works Contractor" means any entity that is engaged by the Principal to carry out the Corridor Works.

"COVID-19" means the infectious disease so named by the World Health Organisation.

"COVID-19 Change in Law" means (if it takes effect after the date of this Contract):

- (a) a change in (including any extension, repeal, revocation or expiry of) an existing Law in response to COVID-19 (other than a change in an Authority Approval or a decision of a court);
- (b) a new Law in response to COVID-19 (other than a new Authority Approval or a decision of a court); or
- (c) a new public health order or a change to (including any extension, repeal, revocation or expiry of) an existing public health order issued by the relevant Authority in New South Wales under the *Public Health Act 2010* (NSW) or by the relevant Authority in another Australian jurisdiction under the equivalent public health legislation in response to COVID-19.

"COVID-19 Laws" has the meaning given to that term in clause 2.3(da)(i)A.

"COVID-19 Management Plan" means the plan of that name required to be provided and updated by the Contractor pursuant to the SWTC.

"Crown Building Work" has the meaning given to that term in section 6.1 of the EP&A Act.

"Date for Completion" means, in respect of a Portion, the date that is ■ days after the Date of Construction Completion of the relevant Portion.

"Date for Construction Completion" means, in respect of a Portion:

- (a) at the date of this Contract, the applicable date specified for the Portion in Schedule A1; or
- (b) where, in respect of a Portion, an extension of time for Construction Completion is granted by the Principal's Representative or allowed in any Expert's determination or arbitration or litigation proceedings, the date resulting from that extension of time.

"Date of Completion" means, in respect of a Portion, the date notified in the Notice of Completion for that Portion as the date Completion was achieved.

"Date of Construction Completion" means, in respect of a Portion, the date notified in a Notice of Construction Completion for that Portion as the date Construction Completion was achieved.

"Declaration of Compliance" means a declaration in substantially the same form as the model declaration of compliance applicable to contractors and subcontractors in relation to the Building Code.

"Defect" means any:

- (a) defect, deficiency, fault, error or omission in the Works or Temporary Works, including subsidence, shrinkage and movement outside the required tolerances; or
- (b) other aspect of the Works, Temporary Works or Contractor's Activities that is not in accordance with the requirements of this Contract, including non-compliances, non-conformances and non-conformities.

"Defects Rectification Period" means each of the periods stated in:

- (a) with respect to the Sydney Metro Works, item 3 of Schedule 1, as extended by clause 8.6; and
- (b) with respect to the Third Party Works, clauses 2.5(e), 2.5A(e) (if applicable), 2.5B(d) and 2.5C(a).

"Design Contractor" means the contractor identified in item 4 of Schedule 1.

"Design Error" has the meaning given to that term in clause 5.1A(a).

"Design Stage 3 Design Documentation" means the design documentation set out in Appendix G of the SWTC.

"Difference in Conditions" has the meaning given to that term in clause 2.12(b)(iv).

"Dispute" has the meaning given to that term in clause 15.1.

"Document" means any document which is required to be submitted for the review of the Principal's Representative under this Contract.

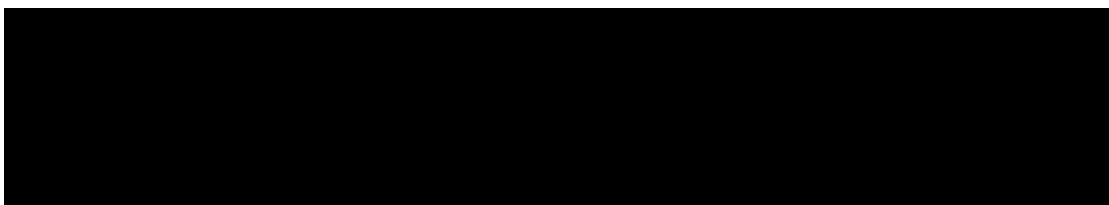
"Draft Construction Environmental Management Plan" means the plan set out in Exhibit F.

"Draft Third Party Agreement" has the meaning given to that term in clause 2.12(b)(i)A.

"Early Access Date" has the meaning given to that term in clause 3.1A(a).

"Early Access Period" means where the Contractor has accepted access to a part of the Site in accordance with clause 3.1A(b), or the Principal has directed early access to a part of the Site in accordance with clause 10.1(e), the period:

- (a) commencing on the Early Access Date; and
- (b) ending on the earlier of:
 - (i) the original Site access date for that part of the Site as specified in the Site Access Schedule; or
 - (ii) the date notified by the Principal to the Contractor.



"Environment" means components of the earth, including:

- (a) land, air and water;
- (b) any layer of the atmosphere;
- (c) any organic or inorganic matter and any living organism;
- (d) human-made or modified structures and areas; and
- (e) interacting natural ecosystems that include components referred to in paragraphs (a) to (c).

"Environmental Law" means any Law concerning the Environment and includes Laws concerning:

- (a) the carrying out of uses, works or development, the erection of a building or the subdivision of land (including the EP&A Act);
- (b) emissions of substances into the atmosphere, water and land;
- (c) Pollution and Contamination of the atmosphere, water and land;
- (d) production, use, handling, storage, transportation and disposal of:
 - (i) waste;
 - (ii) hazardous substances; and

- (iii) dangerous goods;
- (e) threatened, endangered and other flora and fauna species;
- (f) conservation, heritage and natural resources; and
- (g) the health and safety of people,

whether made or in force before or after the date of this Contract.

"Environmental Liabilities" means any of the following liabilities arising before the expiration or termination of this Contract:

- (a) all costs, expenses, losses, damages, fines or penalties associated with undertaking the remediation of any Contamination ordered or required by any Authority or court of any land or building;
- (b) any compensation or other monies that an Authority or court requires to be paid to any person under an Environmental Law for any reason;
- (c) any fines or penalties incurred under an Environmental Law;
- (d) all costs, charges and expenses incurred in complying with an Environmental Law; and
- (e) all other Claims, costs, expenses, losses, damages, fines or penalties payable under in respect of an Environmental Law.

"Environmental Representative" means the person identified in item 5 of Schedule 1 as appointed by the Principal and defined by the Planning Approval, or any replacement notified to the Contractor by the Principal's Representative.

"EP&A Act" means the *Environmental Planning and Assessment Act 1979* (NSW).

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

"EPL" means an environment protection licence issued under the *Protection of the Environment Operations Act 1997* (NSW).

"Excepted Risk" means:

- (a) war (declared or undeclared), revolution, insurrection, civil commotion, military action, an act of public enemy or an act of sabotage;
- (b) a terrorist act as defined in section 3 of the *Terrorism Insurance Act 2003* (Cth) (other than a declared terrorist incident as defined in section 3 of the *Terrorism Insurance Act 2003* (Cth)); and
- (c) ionising radiations or contamination by radioactivity from any nuclear fuel or from any nuclear waste from the combustion of nuclear fuel,

in each case occurring within Australia and only to the extent not caused by the Contractor or its Associates.

"Excluded Claim" means any claim:

- (a) with respect to a Change in Law under clause 2.3(d);
- (b) for a Variation directed in accordance with clause 6.2 or a direction by the Principal's Representative to which clause 17.1 applies;
- (c) for an extension of time under clause 10.8; or
- (d) for payment under clause 11, including claims under clauses 11.9 and 11.11.

"Exclusion Sanction" has the meaning given in subsection 3(2) of the Building Code.

"Existing Operations" means:

- (a) all infrastructure (including existing infrastructure, infrastructure that is under construction and Utility Services) which:
 - (i) does not form part of any Interface Work or infrastructure that is the subject of a Project Cooperation and Integration Deed;
 - (ii) is the subject of a Third Party Agreement (other than an Additional Third Party Agreement); and
 - (iii) is owned, operated or under the control of an Existing Operator; and
- (b) the businesses and operations undertaken by an Existing Operator, on or in the vicinity of the Site.

"Existing Operator" means:

- (a) ARTC;
- (b) TAHE;
- (c) Sydney Trains;
- (d) NSW Trains;
- (e) Ausgrid, being the statutory State owned corporation of that name established under the *Energy Services Corporations Act 1995* (NSW);
- (f) Jemena Limited ABN 95 052 167 405;
- (g) Sydney Water Corporation ABN 49 776 225 038;
- (h) TfNSW;
- (i) Telstra Corporation Limited ABN 33 051 775 556 and other telecommunication operators;
- (j) Transdev Sydney Pty Limited ABN 34 096 046 052;
- (k) local councils; and

- (l) any other person who owns, operates or controls any infrastructure (including existing infrastructure, infrastructure that is under construction and the Utility Services) or undertakes any business or operation on or in the vicinity of the Site,

and any of their Related Bodies Corporate and contractors.

"Expert" means the person appointed to determine a Dispute pursuant to clause 15.5.

"Extra Land" has the meaning given in clause 3.4(a).

"Final Certificate" has the meaning given in clause 12.8(e)(i).

"Final Completion" means the stage in the execution of the Contractor's Activities when the obligations of the Contractor pursuant to this Contract have been discharged (including all Mandatory Testing Activities have been passed) and all Defects Rectification Periods (including any extension under clause 8.6) have expired and the Contractor has rectified all Defects in accordance with the Contract.

"Final Payment Claim" means a payment claim lodged by the Contractor in accordance with clause 11.11.

"Financial Assessment" has the meaning given to that term in clause 9.11(a).

"Force Majeure Event" means:

- (a) an Excepted Risk;
- (b) a declared terrorist incident as defined in section 3 of the *Terrorism Insurance Act 2003* (Cth) occurring within Australia;
- (c) an earthquake occurring within Australia;
- (d) a flood which might at the date of this Contract be expected to occur less frequently than once every 100 years (based on the 1:100 year average recurrence interval flood event) occurring within Australia; or
- (e) a fire or explosion resulting from any event referred to in paragraphs (a), (c) or (d) above,

which:

- (f) is beyond the reasonable control of the Contractor and its Associates; and
- (g) prevents or delays the Contractor from performing the Contractor's Activities, where that event or the consequence of that event does not arise from any act or omission of the Contractor or its Associates (including from any breach by the Contractor or its Associates of a Station Contract Document).

"General Conditions" means clauses 1 to 20 of this Contract.

"General Solid Waste" means Contamination which is general solid waste (non putrescible) as defined in the Waste Classification Guidelines published by the EPA dated November 2014.

"Good Industry Practice" means that degree of skill, care, prudence, foresight and practice which would reasonably be expected of a skilled and experienced person, engaged in the same or a similar type of undertaking as that of the Contractor, as the case may be, under the same or similar circumstances as the performance of the Contractor's Activities or the delivery of the Works and the Temporary Works.

"Greenhouse Data" means all data, information, records and reports of the type that a registered corporation or any other person may be required or entitled to provide under the NGER Legislation, including as to:

- (a) greenhouse gas emissions, energy production or energy consumption; and
- (b) reduction of greenhouse gas emissions, removal of greenhouse gases or offsets of greenhouse gas emissions from any greenhouse gas project,

relating to any aspect of any of the Contractor's Activities or the activities of any of the Contractor's personnel in connection with the Contractor's Activities.

"GREP" means the NSW Government Resource Efficiency Policy.

"GST" or "Good and Services Tax" means the tax payable on taxable supplies under the GST Legislation.

"GST Law" means the same as "GST law" means in the *A New Tax System (Goods and Services Tax) Act 1999 (Cth)*.

"GST Legislation" means *A New Tax System (Goods and Services Tax) Act 1999 (Cth)* and any related Act imposing such tax or legislation that is enacted to validate, recapture or recoup such tax.

"Hand Back" occurs in respect of a Track Possession or Temporary Shutdown when the Contractor provides Sydney Trains (or Sydney Trains provides the Contractor) with the relevant documentation for hand back of a Track Possession or Temporary Shutdown as required by the Network Rules and Sydney Trains possession management processes.

"Hazardous Material" means any natural or artificial substance whether solid, liquid or gas (alone or in combination with any other substance) which is toxic, flammable or otherwise capable of causing harm to humans or damage to the Environment including asbestos, toluene, polychlorinated biphenyls, lead based paints, glues, solvents, cleaning agents, paints and water treatment chemicals, but excluding any such natural or artificial substances to the extent they are present in the soil (which shall be treated as Contamination for the purposes of this Contract).

"Hazardous Material Report" means together the documents listed in Schedule 6.

"Heavy Vehicle National Law" means the *Heavy Vehicle National Law (NSW) No. 42a* and all associated regulations.

"IC Letter of Intent" means a deed between the Principal, the Contractor and the Independent Certifier in the form attached to the Principal's Representative's notice pursuant to clause 9.5A(c)(i).

"IDAR Panel" means the Independent Dispute Avoidance and Resolution Panel constituted under the IDAR Panel Agreement, referred to in clause 15.

"IDAR Panel Agreement" means the agreement which appears in Schedule 39.

"IDAR Panel Agreement Accession Deed Poll" means an accession deed poll substantially in the form of Schedule 1 of the IDAR Panel Agreement.

"Incident" means:

- (a) any work health and safety or environmental or security incident arising from the performance of (or failure to perform) the Contractor's Activities including:
 - (i) a fatality or injury to any person including any incident which must be reported to SafeWork NSW, ONRSR or any other work health and safety regulator;
 - (ii) loss of containment, escape of or migration of Contamination off-Site and into the Environment;
 - (iii) an occurrence or set of circumstances as a consequence of which pollution (air, water, noise or land) or an adverse environmental impact has occurred or is likely to occur;
 - (iv) any fire or dangerous event on the Site or Extra Land;
 - (v) a security breach;
 - (vi) any unauthorised removal of trees;
 - (vii) a non-compliance with an Authority Approval;
 - (viii) any public complaint; or
 - (ix) any incident defined in the Sydney Metro Principal Contractor Health and Safety Standard; or
- (b) any unplanned and/or undesired event which results in or has the potential to result in injury, ill-health, damage to or loss of property, interruption to operations or environmental impairment,

and includes:

- (c) a near miss, breach of procedure, quality failure and/or injuries to contractors and members of the public; and
- (d) a "notifiable incident" under the WHS Legislation and a "notifiable occurrence" under the Rail Safety National Law.

"Independent Certifier" means the person or persons appointed to be the Independent Certifier:

- (a) (if applicable) by the Principal and the Contractor under the IC Letter of Intent; and

- (b) by the Principal, the Contractor and the Operator under the Independent Certifier Deed.

"Independent Certifier Deed" means the deed titled "Sydney Metro City & Southwest Independent Certification of the Southwest Metro Station Upgrade Works – Independent Certifier Deed" to be entered into between the Principal, the Contractor, the Independent Certifier and the Operator in the form set out in Attachment 1 to the form of IC Letter of Intent set out in Schedule 38 [REDACTED].

"Independent Property Impact Assessment Panel" means the "Independent Property Impact Assessment Panel" established by the Principal for the purpose of Sydney Metro City & Southwest in accordance with the requirements of the Planning Approval.

"Information Documents and Materials" means:

- (a) the items specified in Exhibit G;
- (b) the Reports; and
- (c) all other documents, core and other samples, exhibits and materials in any format or medium including any electronic form provided to the Contractor unless expressly identified as forming part of this Contract,

including anything which is expressly stated by this Contract to form part of the Information Documents and Materials.

"Initial Contract Management Plans" means the initial Contract Management Plans set out in Exhibit D.

"Initial Contractor's Program" means the program in Schedule 34.

"Initial COVID-19 Management Plan" means the initial COVID-19 Management Plan set out in Exhibit D.

"Insolvency Event" means when:

- (a) one party informs the other party in writing, or its creditors generally, that the party is insolvent or is unable to proceed with its obligations under this Contract for financial reasons;
- (b) in relation to an individual, the individual (being a party) commits an act of bankruptcy, a bankruptcy petition is presented against the individual or the individual is made bankrupt;
- (c) execution is levied against a party by a creditor, debenture holders or trustees or under a floating charge; or
- (d) in relation to a corporation any one of the following:

- (i) notice is given of a meeting of creditors with a view to the corporation entering into a deed of company arrangement or scheme of arrangement (other than a solvent scheme of arrangement);
- (ii) the corporation enters a deed of company arrangement or composition with creditors;
- (iii) an application is made for, a resolution is passed by the directors for the appointment of, or an order is made for, a controller, administrator, receiver, receiver and manager, provisional liquidator or liquidator to be appointed to the corporation;
- (iv) a controller, administrator, receiver, receiver and manager, provisional liquidator or liquidator is appointed to the corporation;
- (v) an application is made to a court for the sequestration or winding up of the corporation and not stayed, dismissed or discontinued within 21 days;
- (vi) a sequestration order or winding up order is made in respect of the corporation;
- (vii) the corporation resolves by special resolution that it be wound up voluntarily (other than for a members' voluntary winding-up), or a meeting of creditors of a party under administration or a deed of company arrangement resolves that the corporation be wound up;
- (viii) a mortgagee of any property of the corporation takes possession of that property; or
- (ix) the corporation ceases, suspends or threatens to cease or suspend the conduct of all or a substantial part of its business, or disposes or threatens to dispose of all or a substantial part of its assets.

"Inspection" includes auditing, surveillance, monitoring, testing, review, examination and measuring.

"Institution" means any:

- (a) authorised deposit taking institution holding an authority to carry on banking business in Australia under the terms of the *Banking Act 1959* (Cth); or
- (b) insurance company which is regulated by the Australian Prudential Regulatory Authority and has the Required Rating.

"Intellectual Property" means all rights in copyright, inventions (including patents and innovation patents), registered and unregistered trademarks or name, registered and registrable designs, confidential information, trade secrets, technical data and know how, circuit layout rights, and all other protected rights of intellectual property defined in Article 2 of the Convention Establishing the World Intellectual Property Organisation of July 1967.

"Interface Contractor" means an Other Contractor that is carrying out, or that will carry out, Interface Work, being those contractors:

- (a) listed in item 7 of Schedule 1; or
- (b) otherwise identified by the Principal's Representative as an Interface Contractor,

and may include TfNSW or contractors appointed by TfNSW.

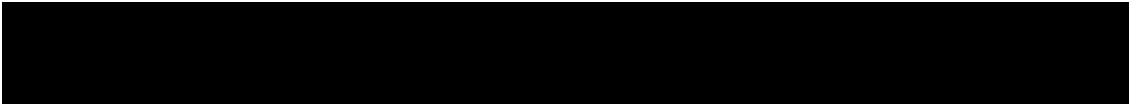
"Interface Contractor Cooperation and Integration Deed" means a deed to be entered into between the Principal, the Contractor and an Interface Contractor substantially in the form of Schedule 35.

"Interface Work" means any activities undertaken by an Interface Contractor which interface with or affect or are affected by the Contractor's Activities, the Works or the Temporary Works, including that described in the SWTC.

"Interface Works Change" means any change, modification or variation to the Interface Works after the date of this Contract, including any addition, reduction, increase, decrease, omission, deletion, demolition or removal to or from them, but not including a change, modification or variation that the relevant Interface Contractor is entitled to make to the design of the relevant Interface Works under the relevant Interface Works Contract without the Principal's consent where following any such change, modification or variation, the Interface Works will continue to comply with the requirements of the relevant Interface Works Contract.

"Interface Works Contract" means any contract entered into between the Principal and an Interface Contractor in respect of Interface Work.

"Investigative Authority" means any Authority having a statutory right to investigate the Contractor's Activities or any activities of the Principal which are affected by the Contractor's Activities, including ATSB, ONRSR and OTSI.



"L&E Contractor" means the contractor identified in item 8 of Schedule 1 that:

- (a) has been engaged by the Principal under a framework agreement; and
- (b) is to be engaged by the Contractor under the L&E Supply and Installation Contract in accordance with clause 2.2A to perform the Lifts and Escalators Works.

"L&E Supply and Installation Contract" means the Nominated Subcontract to be entered into between the Contractor and the L&E Contractor in respect of the Lifts and Escalators Works, the form of which is included in electronic form in Schedule 40.

"Landowner" means a person with a right or interest in land, including an owner, occupier or grantee of a registered interest.

"Latent Conditions" has the meaning given in clause 3.5(a).

"Law" means:

- (a) Commonwealth, New South Wales or local government legislation, including ordinances, instruments, codes of practice, policy and statutory guidance (but excluding the National Construction Code, any other building codes or Standards Australia codes), requirements, regulations, by-laws and other subordinate legislation;
- (b) principles of law or equity established by decisions of courts; and
- (c) Authority Approvals (including any condition or requirement under them).

"LD Cap" means the amount set out in item 39 of Schedule 1.

"Lifts and Escalators Works" means the works to be performed by the L&E Contractor in relation to the Works.

"Local Area Works" means the modification, reinstatement and improvement of Local Areas which the Contractor must construct and hand over to the Principal (or its nominee) or the relevant Authority in accordance with this Contract as further described in section 2.3.5 of the SWTC.

"Local Areas" means all public spaces, parks, pedestrian ways, pedal cycle paths, local roads, state highways, regional roads and main roads, including their associated road reserves, which are adjacent to, connect to, intersect, cross or are in any way affected by the Works or Temporary Works, including those sections of public spaces, parks, pedestrian ways, pedal cycle paths, local roads, state highways, regional roads and main roads, including any associated road reserves, that are made redundant or become service roads as part of the road network.

"LW Contract" means the contract titled "Sydney Metro City & Southwest Line-wide Works Incentivised Target Cost Contract" between the Principal and the LW Contractor dated 20 November 2018 in relation to the LW Works.

"LW Contractor" means the unincorporated joint venture between CPB Contractors Pty Limited (ABN 98 000 893 667) and UGL Engineering Pty Limited (ABN 96 096 365 972).

"LW Works" means all things, works and materials (including all systems and software incorporated in, or necessary to enable their operation) that the LW Contractor must, in accordance with the LW Contract, design, construct, manufacture, install, test and commission for the purposes of completing Sydney Metro City & Southwest, including tunnel ventilation, track, tunnel services (including drainage, lighting, fire systems and low voltage power supplies), combined services cable brackets, high voltage power supply, overhead line and traction supply and stabling facilities.

"Mandatory Defects" means a Defect which has been notified by the Principal's Representative under clause 8.2 at any time before the date that is 28 days prior to the Date of Construction Completion of any relevant Portion.

"Mandatory Testing Activities" means:

- (a) the System Integration and Acceptance Tests; and
- (b) Test Running.

"Master Interface Protocols Deed Poll" means a deed poll in substantially the same form as Schedule 37.

"Minor Defect" means a Defect which:

- (a) is capable of being corrected:
 - (i) after the relevant part of the Site has been handed over to the Principal (or its nominee) or the relevant Authority; and
 - (ii) without:
 - (A) causing unreasonable delay or disruption to the activities that are to be performed by any Interface Contractor within the Site; or
 - (B) prejudicing the convenient intended use of the Portion; and
- (b) the Independent Certifier determines (acting reasonably) that the Contractor has reasonable grounds for not promptly correcting prior to handover of the Works to the Principal (or its nominee) or the relevant Authority,

but does not include an Accepted Defect, an Agreed Defect or a Mandatory Defect.

"Mitigation Measure" means a measure, action, standard or precaution to mitigate the impact of the Works as specified in:

- (a) the Sydney Metro City & South West Chatswood to Bankstown Preferred Infrastructure Report located on the NSW Department of Planning and Environment website <http://www.planning.nsw.gov.au>; and
- (b) Schedule 4.

"Monument" has the meaning given to that term in the *Surveying and Spatial Information Regulation 2017* (NSW).

"Moral Rights" means the right of attribution of authorship, the right not to have authorship falsely attributed and the right of integrity of authorship conferred by the *Copyright Act 1968* (Cth) or any Law outside Australia and rights of a similar nature anywhere in the world, that exists now or in the future.

"NAC Requirements" means the NAC submission criteria referenced in Appendix F01 of the SWTC.

"National Construction Code" means the *National Construction Code 2019* published by the Australian Building Codes Board.

"Native Title Claim" means any application made pursuant to the *Native Title Act 1993* (Cth) or the *Native Title (New South Wales) Act 1994* (NSW).

"Network Assurance Committee" or "NAC" means the network assurance committee established by the Principal to manage configuration changes for the Sydney Metro delivery office in accordance with the Configuration Management Framework.

"Network Rules" means the rules, systems and procedures relating to railway operations established or adopted by Sydney Trains in its capacity as a rail infrastructure manager to ensure the safety of its railway operations for the purposes of sections 52(3)(c) and 52(4)(c) (Duties of rail transport operators) of the Rail Safety National Law which are available at <https://railsafe.org.au/> or as otherwise advised by the Principal.

"NGER Legislation" means *National Greenhouse and Energy Reporting Act 2007* (Cth), related regulations and legislative instruments.

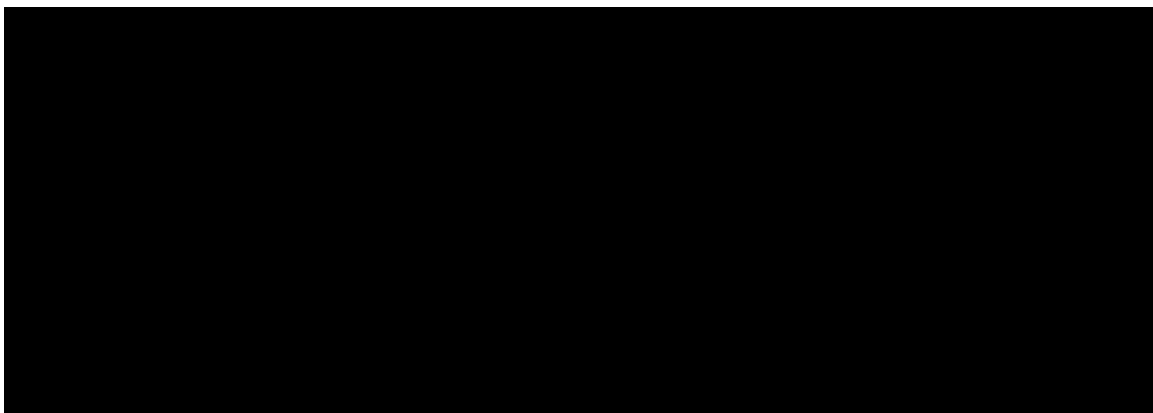
"Nominated Member" has the meaning given in clause 15.3(b).

"Nominated Subcontract" means each of the forms of subcontract referred to in Schedule 31.

"Nominated Subcontract Work" means the Contractor's Activities to be performed by a Nominated Subcontractor.

"Nominated Subcontractor" means the nominated subcontractors and suppliers specified in Schedule 31 or referred to in the SWTC.

"Non-Contestable Utility Service Works" means the Utility Service Works identified as "Non-Contestable" in Schedule 19 and which are required to be carried out to the extent specified in, or required by, the Principal's Design Documentation or the SWTC.



"Notice of Completion" means a notice in the form of Schedule 21A issued by the Independent Certifier pursuant to clause 12.3A(e)(i).

"Notice of Construction Completion" means a notice in the form of Schedule 21C issued by the Independent Certifier pursuant to clause 12.3(d)(i).

"NSW Guidelines" has the meaning given in clause 20.1.

"NSW Rail Assets" has the meaning assigned to it in the ASA Charter.

"NSW Trains" means the corporation by that name constituted by part 2B of the *Transport Administration (General) Regulation 2005* (NSW).

"ONRSR" means the Office of the National Rail Safety Regulator constituted under the Rail Safety National Law.

"Open Book Basis" means the provision of pricing, costing and other information reasonably required by the Principal in order to enable an assessment of actual costs in a clear, transparent and fully auditable manner.

"Operator" means:

- (a) the TSOM Contractor; or
- (b) any other entity that the Principal engages to operate and, if required by the Principal, maintain Sydney Metro City & Southwest or any part of it.

"Operator Cooperation and Integration Deed" means a deed to be entered into between the Principal, the Contractor and the Operator substantially in the form of Schedule 36.

"Option" means an option referred to in Schedule 15.

"Original Contract Price" means the amount set out in item 10 of Schedule 1, which is, and all components of which are, exclusive of GST.

"Other Contractor" means any contractor, consultant, artist, tradesperson or other person engaged by the Principal or others to do work on or about the Site, other than the Contractor and its Subcontractors of any tier involved in the Contractor's Activities.

"Other Contractor PC Area" means those parts of the Site the subject of a notice from the Principal that another person has been engaged as principal contractor in respect of that part of the Site.

"OTSI" means the Office of Transport Safety Investigations constituted under the *Transport Administration Act 1988* (NSW).

"Out of Hours Works Approval Process" means the process document of that name as referenced in the SWTC, as updated from time to time.

"Overhead Costs" means the costs referable to the items described in Part B of Schedule 10.

"Parent Company Guarantee" means the form of deed which appears in Schedule 17.

"Parent Company Guarantor" means the entity referred to in item 28 of Schedule 1.

"Payment Breakdown Schedule" means Schedule 2.

"Payment Claim Date" means each of the following dates:

- (a) prior to the time for submission of the Final Payment Claim, the 20th day of each month (or if this day is not a Business Day, the next Business Day after this day);
- (b) for the Completion Payment Claim, within the time required by clause 11.9; and
- (c) for the Final Payment Claim, within the time required by clause 11.11.

"PDCS" means the Principal's web based TeamBinder project data and collaboration system including any of its functionalities as required by the Principal, or such other electronic project data and collaboration system notified by the Principal's Representative under clause 16.1(b).

"Peak Hours" means the hours between 0600 and 0900 and 1600 and 1800 respectively on Monday to Friday (excluding public holidays).

"Performance Incentive Payment" has the meaning given in the Performance Incentive Payment Schedule.

"Performance Incentive Payment Schedule" means Schedule 2A.

"Planning Approval" means:

- (a) the Project Planning Approval (Sydenham to Bankstown);
- (b) any other Authority Approvals issued from time to time by either the Principal or the Minister for Planning and Infrastructure (acting in their capacity as determining authority) under the EP&A Act in respect of the Contractor's Activities; and
- (c) any Mitigation Measures and statement of commitments that are required to be complied with or fulfilled in the documents referred to in paragraphs (a) and (b).

"Planning Secretary" has the meaning given in the Project Planning Approval (Sydenham to Bankstown).

"POEO Act" means *Protection of the Environment Operations Act 1997* (NSW).

"Pollution" has the meaning given to "pollution" in the Dictionary to the *POEO Act*.

"Portion" means a part of the Contractor's Activities or Works, as described in Schedule 1A or as determined or directed under clause 12.6.

"Post Construction Completion Activities" means the activities referred to in Schedule 16.

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

"PPS Law" means:

- (a) the *PPS Act* and any regulations made at any time under the *PPS Act*, as amended from time to time; and

- (b) any relevant amendment made at any time to any other legislation as a consequence of paragraph (a).

"Practical Completion (Sydney Trains Works)" has the meaning given to the term "Practical Completion" in respect of the Sydney Trains Works in the Sydney Trains Transition Agreement.

"Pre-Completion Notice" means the notice issued under clause 12.3A(e)(ii).

"Principal" means Sydney Metro ABN 12 354 063 515.

"Principal's Design Documentation" means:

- (a) on and from the date of this Contract until the day before the date that the Principal issues the AFC Design Documentation to the Contractor pursuant to clause 5.1C(b), the Design Stage 3 Design Documentation, as updated from time to time; and
- (b) on and from the date that the Principal issues the AFC Design Documentation to the Contractor pursuant to clause 5.1C(b), the AFC Design Documentation, as updated from time to time.

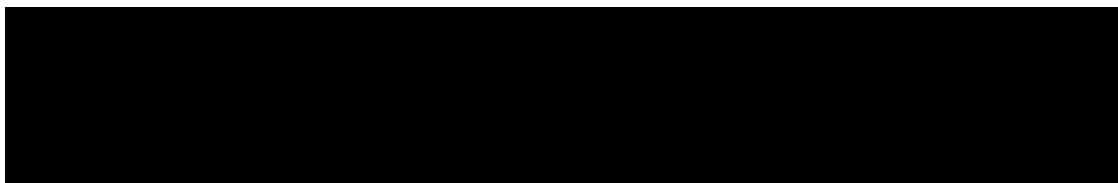
"Principal's Representative" means:

- (a) the person nominated in item 11 of Schedule 1; or
- (b) any other person appointed as a replacement from time to time by the Principal under clause 9.2,

and includes any appointee under clause 9.3.

"Principal's Vision Statement" means the Principal's vision statement, namely "Transforming Sydney with a world class metro" available at https://www.sydneymetro.info/sites/default/files/document-library/Sydney_Metro_Corporate_Plan.pdf.

"Programmed Activities" means:



"Progress Claim" has the meaning given in clause 11.2(c).

"Prohibited Subcontractor" means:

- (a) any Subcontractor:
 - (i) who has made an admission to the Independent Commission Against Corruption that it has engaged in;
 - (ii) in respect of whom the Independent Commission Against Corruption has made a finding that it has engaged in; or

(iii) that is the subject of a current investigation by the Independent Commission Against Corruption as to whether it has engaged in,

corrupt conduct as defined in the *Independent Commission Against Corruption Act 1988* (NSW); or

(b) any Subcontractor employing an employee in respect of whom paragraph (a)(i), (a)(ii) or (a)(iii) apply.

"Project Cooperation and Integration Deed" means each of:

(a) each Interface Contractor Cooperation and Integration Deed; and

(b) the Operator Cooperation and Integration Deed.

"Project Health and Safety Management Plan" means the Contract Management Plan of that name.

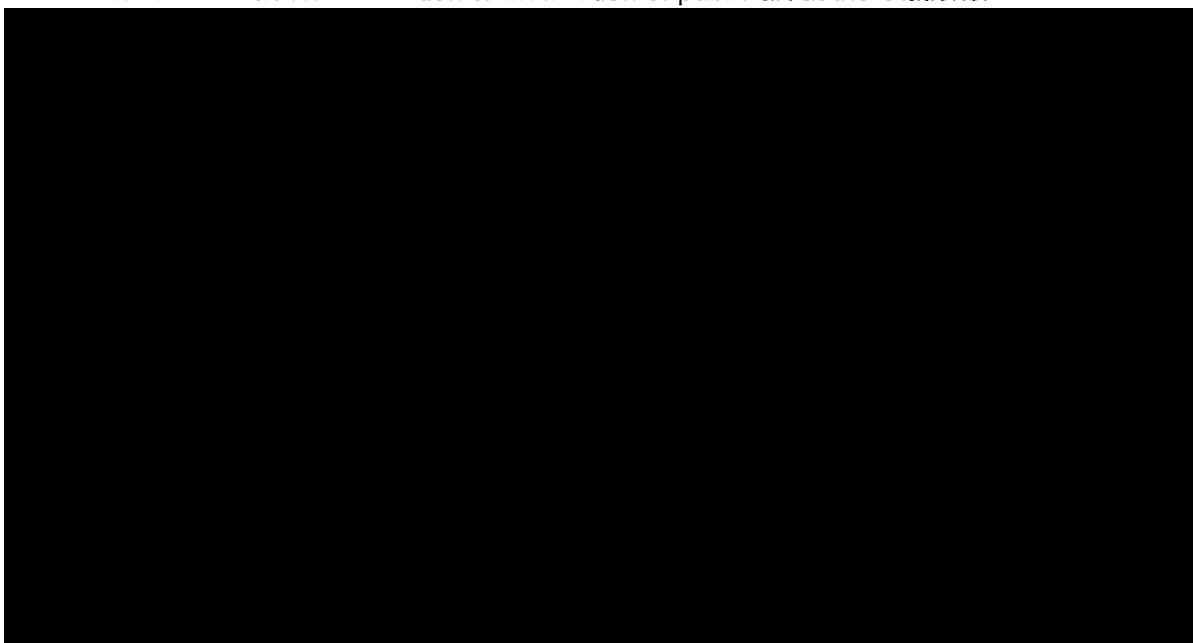
"Project Planning Approval (Sydenham to Bankstown)" means the approval granted by the Minister for Planning and Infrastructure under section 5.19 of the EP&A Act dated 12 December 2018, including all conditions to such approval and all documents incorporated by reference, as modified from time to time.

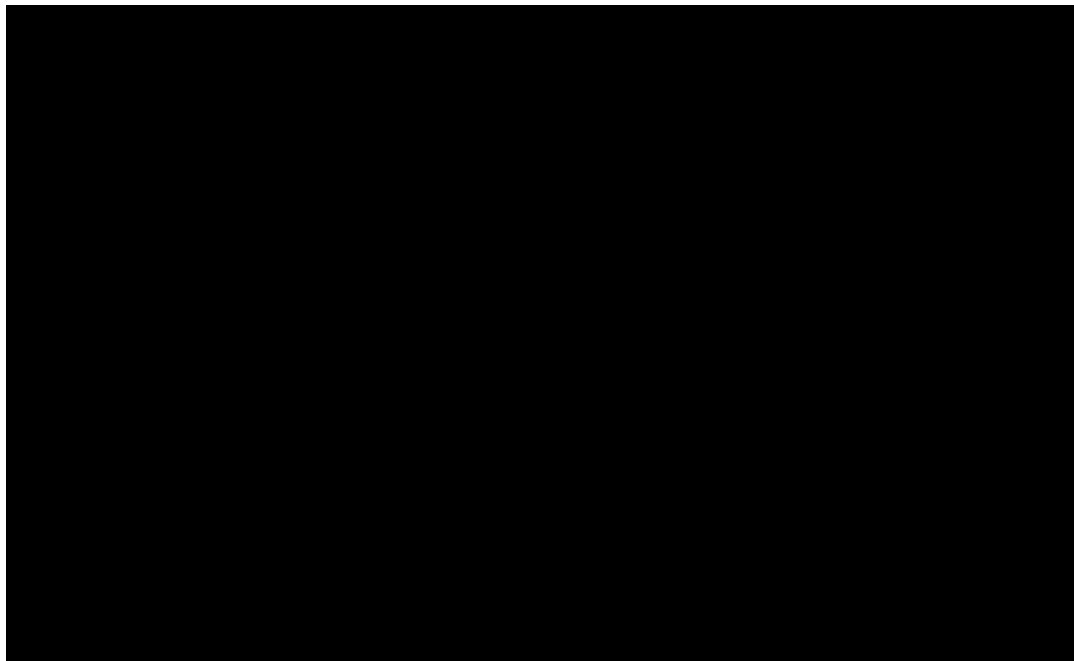
"Project Values" means the values that will guide the delivery of Sydney Metro City & Southwest, being safety and wellbeing, collaboration, integrity, innovation, excellence and achievement.

"Property Works" means all works required to existing buildings and infrastructure or to and within properties arising out of the Contractor's Activities as described or specified in section 2.3.6 of the SWTC (if any).

"Provisional Sum Work" means the work detailed in item 33 of Schedule 1.

"Public Art Technical Adviser" means the entity engaged by the Principal to liaise with the Contractor in relation to installation of public art at the Stations.





"RailCorp" means Rail Corporation New South Wales, a corporation constituted by section 4(1) of the *Transport Administration Act 1988* (NSW).

"Rail Corridor" means the area containing the Rail Tracks, rail junctions, level crossings, station buildings, platforms, signal boxes, tunnels, bridges and other associated structures. This area is often defined by railway boundary fencing and in the absence of such fencing, is defined by a physical boundary (i.e. tunnel, building or retaining walls) or everywhere within 15 metres of the outermost rails.

"Rail Safety National Law" means the *Rail Safety National Law* (NSW), as defined in the *Rail Safety (Adoption of National Law) Act 2012* (NSW), and any associated regulations.

"Rail Safety Regulations" means the regulations made under the Rail Safety National Law or the *Rail Safety (Adoption of National Law) Act 2012* (NSW).

"Rail Transport Agency" means the Principal, TfNSW (and each of its divisions), TAHE, Sydney Trains and NSW Trains.

"Rail Transport Operator" has the meaning given to that term in the Rail Safety National Law.

"Railway Track" or **"Rail Track"** or **"Track"** or **"Line"** means the rails fastened on sleepers or transoms and founded on ballast or bridge decking or concrete slab, associated signalling and overhead wiring components (in electrified areas).

"Related Body Corporate" has the meaning given in section 9 of the Corporations Act.



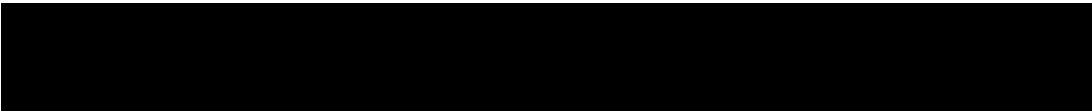
"Relevant Matters" has the meaning given to that term in clause 9.15(a).

"Remediation" has the meaning given in the *Contaminated Land Management Act 1997* (NSW).

"Report" means each report referred to in item 12 of Schedule 1.

"Required Rating" means a credit rating or financial strength rating of at least A by Standard & Poor's (Australia) Pty Ltd or A2 by Moody's Investors Service, Inc (or such other credit rating as the Principal may approve in writing from time to time) or, if no rating is provided by Standard and Poor's (Australia) Pty Limited or by Moody's Investor Services, Inc, an equivalent rating with another reputable rating agency.

"Resolution Institute" means the Resolution Institute Australia.



"Respite Services" means the respite and alternative accommodation services which may be provided to residents living in close proximity to construction works as mitigation measures, where such residents are likely to incur unreasonably high noise and vibration impacts over an extended period time.

"Revised Allocation" has the meaning given to that term in clause 2.12(b)(iii)D.

"Rolling Stock Operator" has the meaning given to that term in the Rail Safety National Law.

"Safety Management System" has the meaning given to that term in the Rail Safety National Law.

"Security Interest" has the meaning given to that term in clause 16.26(a).

"Shop Drawings" means any drawings or other documentation required to enable the AFC Design Documentation to be used for the purposes of construction in accordance with this Contract.

"Site" means:

- (a) the lands and other places described in the Site Access Schedule; and
- (b) any other lands and places made available to the Contractor by the Principal for the purpose of this Contract.

"Site Access Schedule" means Schedule 29.

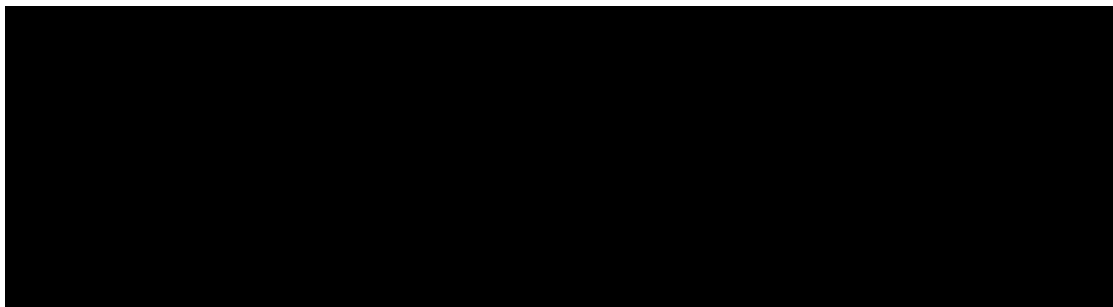
"Site Conditions" means any physical conditions and characteristics of, upon, above, below or over the surface, or in the vicinity of, the Site and any Extra Land or their surroundings including:

- (a) Valuable Finds and any other natural and artificial conditions;
- (b) physical and structural conditions, including old footings, underground structures, buildings, improvements, partially completed structures and in-ground works;

- (c) all improvements, including any artificial things, foundations, retaining walls and other structures installed by or on behalf of the Principal or others;
- (d) surface water, ground water, ground water hydrology and the effects of any dewatering;
- (e) any Contamination, Hazardous Material or other spoil or waste;
- (f) topography of the Site and Extra Land, ground surface conditions and geology, including rock and sub-surface conditions or other materials encountered at the Site or Extra Land;
- (g) geological, geotechnical and subsurface conditions or characteristics;
- (h) all Utility Services, systems and facilities, above or below ground level and all facilities with which such Utility Services and systems are connected; and
- (i) the Environment, water and weather or climatic conditions, or the effects of the Environment, water and weather or climatic conditions, including rain, surface water runoff and drainage, floods, water seepage, wind blown dust and sand, seasons and physical conditions that are a consequence of weather or climatic conditions.

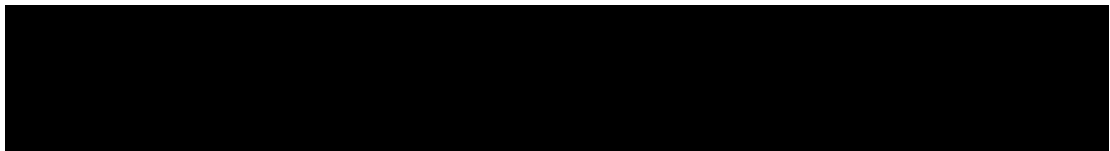
"SOP Act" means the *Building and Construction Industry Security of Payment Act 1999* (NSW).

"SOP Regulation" means the *Building and Construction Industry Security of Payment Regulation 2020* (NSW).



"State Indemnified Party" means:

- (a) the Principal;



"Statement of Business Ethics" means TfNSW's Statement of Business Ethics, which may be obtained from TfNSW and is located at: www.transport.nsw.gov.au.

"Station Contract Documents" means the documents listed in item 13 of Schedule 1.

"Stations" means the stations listed in item 14 of Schedule 1.

"Subcontract" includes an agreement for supply of goods or services (including professional services and plant hire) or both.

"Subcontractor" means:

- (a) for the purposes of clauses 11.8(c) and 16.11(f), any person who enters into a contract in connection with the Contractor's Activities with the Contractor; and
- (b) otherwise, any person (including a consultant or a supplier of goods or services including professional services and plant hire) who enters into a contract in connection with the Contractor's Activities with the Contractor or whose subcontract is in connection with any part of the Works or the Contractor's Activities and is in a chain of contracts where the ultimate contract is with the Contractor.

"Supporting Guidelines" means the Building Code 2013 - Supporting Guidelines (April 2016), any subsequent amendments to the Building Code 2013 – Supporting Guidelines (April 2016) and any other guidelines which take effect and supersede the Building Code 2013 – Supporting Guidelines (April 2016).

"Survey Certificate" has the meaning given to that term in the *Surveying and Spatial Information Regulation 2017* (NSW).

"Survey Plan" has the meaning given to that term in the *Surveying and Spatial Information Act 2002* (NSW).

"Sustainability Management Plan" means the document referred to as the Sustainability Management Plan in the SWTC, as updated from time to time.

"SWTC" means the Scope of Works and Technical Criteria for the Works described in Exhibit A.

"Sydney Metro City & Southwest" means the railway line from Chatswood to Bankstown, including:

- (a) the upgrade and conversion of the existing Bankstown line to metro standard, the stabling yard and maintenance depot at Marrickville, stations, tunnels, viaduct, bridges, earthworks, landscaping, equipment, systems, trackwork and support structures, rolling stock and ancillary infrastructure; and
- (b) the integration of Sydney Metro Northwest to form a single end to end metro system from Cudgegong Road to Bankstown.

"Sydney Metro City & Southwest Strategic Objectives" has the meaning given in clause 1.7.

"Sydney Metro Northwest" means the railway line from Chatswood to Cudgegong Road, including the stabling yard and maintenance depot at Tallawong Road, the stations, tunnels, viaducts, bridges, earthworks, landscaping, equipment, systems, trackwork and support structures, rolling stock and ancillary infrastructure.

"Sydney Metro Principal Contractor Appointment and Transfer Process" means the process document of that name (document number SM-18-00090912) prepared

by Sydney Metro (as amended from time to time), the process of which is referred to in the Sydney Metro Principal Contractor Health and Safety Standard.

"Sydney Metro Principal Contractor Health and Safety Standard" means the document referred to as the "Sydney Metro Principal Contractor Health and Safety Standard (SM-PS-ST-221)" in the SWTC, or any document issued from time to time which amends or substitutes this document, a copy of which is included in electronic form in Schedule 40.

"Sydney Metro Program Safety Management Plan" means the document referred to in the Sydney Metro Principal Contractor Health and Safety Standard.

"Sydney Metro Works" means the Works excluding the Third Party Works.

"Sydney Trains" means the corporation by that name constituted by section 36 of the *Transport Administration Act 1988* (NSW).

"Sydney Trains Approved Contractors" means those contractors listed in item 6 of Schedule 1.

"Sydney Trains Approved Contractor Works" has the meaning given to the term "Sydney Trains Approved Contractor Works" in section 2.3 of the SWTC.

"Sydney Trains' Representative" means the person nominated in item 15 of Schedule 1 (or any other person appointed by Sydney Trains as a replacement from time to time and notified to the Principal and the Contractor).

"Sydney Trains Transition Agreement" means the:

- (a) Third Party Agreement titled "Sydney Metro City & Southwest – City and Southwest Transition Agreement 000-TPA-ST_RC-02" dated 7 November 2018 as amended on 28 February 2019 and again on 22 July 2020; and
- (b) "Package 5 Scope of Works and Access Schedule",

each between the Principal, TAHE (previously known as RailCorp) and Sydney Trains (as may be updated or replaced in accordance with clause 2.12).

"Sydney Trains Works" has the meaning given to the term "Sydney Trains Works" in section 2.3.2 of the SWTC and includes the Sydney Trains Approved Contractor Works.

"System Acceptance Tests" means the system acceptance tests required to be carried out by the Contractor in accordance with Appendix F07 of the SWTC and the other requirements of this Contract.

"System Integration and Acceptance Tests" means the system integration and acceptance tests required to be carried out by the Contractor in accordance with Appendix F07 of the SWTC and the other requirements of this Contract.

"Systems Integration Plan" means the Contract Management Plan of that name.

"TAHE" means Transport Asset Holding Entity of New South Wales, a corporation constituted by section 4(1) of the *Transport Administration Act 1988* (NSW).

"Taxes" means income, stamp, indirect or other taxes levies, imposts, deductions, charges, duties (including import duty), compulsory loans and withholdings (including financial institutions duty, debits tax or other taxes whether incurred by, payable by return or passed on to another person) together with interest thereon or penalties, if any, and charges, fees or other amounts made on, or in respect thereof.

"Technical Management Plan" means the Contract Management Plan of that name.

"Temporary Areas" means the areas of the Site identified in section 4 of the Site Access Schedule and the areas of the Site described as "Temporary Areas" in the Site Access Schedule.

"Temporary Shutdown" means a shutdown set out in Schedule 30.

"Temporary Works" means any temporary works required to be carried out or provided by the Contractor for the purpose of the execution of the Contractor's Activities but not forming part of the Works.

"Tender" means the response provided by a Tenderer to the Principal's invitation to submit a tender to undertake the Contractor's Activities.

"Tenderer" means an entity or entities that submitted a Tender for the Contractor's Activities.

"Test Running" means the test running required to be carried out by the Contractor in accordance with Appendix F07 of the SWTC and the other requirements of this Contract.

"TfNSW" means Transport for NSW, a NSW Government agency, and a corporation constituted by section 3C of the *Transport Administration Act 1988* (NSW).

"Third Party" means a party to a Third Party Agreement other than the Principal.

"Third Party Agreement" means:

- (a) an agreement contained in Schedule 4A;
- (b) any Draft Third Party Agreement or Additional Third Party Agreement which the Contractor must comply with pursuant to clause 2.12; and
- (c) any other agreement that the Principal from time to time informs the Contractor constitutes a 'Third Party Agreement'.

"Third Party Works" means the Sydney Trains Works, Local Area Works, Property Works (if any) and Utility Service Works.

"Track Possession" means a period during which the Contractor has access to Rail Track for the purpose of carrying out the Contractor's Activities including for the purpose of rectifying Defects.

"Transport Assets" has the meaning assigned to it in the ASA Charter.

"Trigger Event" has the meaning given to that term in clause 2.12(b)(iv)G.

"TSOM Contract" means a contract between the Principal and the TSOM Contractor for the provision of the TSOM Works and the operation and maintenance of Sydney Metro City & Southwest.

"TSOM Contractor" means the entity that is engaged by the Principal to carry out the TSOM Works and the operation and maintenance of Sydney Metro City & Southwest.

"TSOM Works" means all things, works and materials (including all systems and software incorporated in, or necessary to enable their operation) that the TSOM Contractor must, in accordance with the TSOM Contract, design, construct, manufacture, install, test and commission for the purposes of completing the Sydney Metro City & Southwest, including equipment, systems (including all information systems, central control systems and communications systems), hardware and software, rolling stock, platform screen doors and control centre.

"Unowned Property Works Lands" means a parcel of land and any improvements of which the State is not the registered proprietor, lessee or licensee and in relation to which, or upon which, Property Works are to be undertaken.

"Utility Service" means any service utility, service facility or item of public or private infrastructure, including for the provision or measurement of water, electricity, gas, fuel, telephone, drainage, stormwater, sewerage, industrial waste disposal and electronic communications service (including power, electricity, gas, water, sewerage and telecommunications and all pipes, wires, cables, ducts and other conduits in connection with them).

"Utility Service Works" means the construction, modification, or relocation of Utility Services to be constructed by the Contractor and handed over to the Principal (or its nominee), the relevant Authority or any other person (and which includes the Contestable Utility Service Works and Non-Contestable Utility Service Works), in accordance with this Contract as set out in section 2.3.4 of the SWTC (and including, to the extent relevant to such works, Variations directed or approved in accordance with this Contract).

"Valuable Finds" has the meaning given in clause 3.8(a).

"Variation" means any change to the Works, the Temporary Works or the Contractor's Activities including:

- (a) any addition or increase to, or decrease, omission or deletion from, the Works, the Temporary Works or the Contractor's Activities;
- (b) any change to the character or quality, or demolition or removal, of any material or work; or
- (c) any change to the levels, lines, positions or dimensions of any part of the Works or the Temporary Works,

but it excludes any changes to the Works, the Temporary Works or the Contractor's Activities that are required as a result of the exercise of an Option by the Principal's Representative under clause 6.3.

"**Variation Order**" has the meaning given in clause 6.2(a).

"**Variation Proposal Request**" has the meaning given in clause 6.1(a).

"**WHS**" means work health and safety.

"**WHS Accreditation Scheme**" means the Work Health and Safety Accreditation Scheme referred to in section 43 of the BCIIIP Act.

"**WHS Guidelines**" means the NSW Government Work Health and Safety Management Systems and Auditing Guidelines (5th edition) (May 2014) or any document issued from time to time which amends or substitutes this document.

"**WHS Legislation**" means:

- (a) the *Work Health and Safety Act 2011* (NSW) and the *Work Health and Safety Regulation 2017* (NSW); and
- (b) any legislation in other States and Territories of Australia addressing work health and safety which applies to the Works.

"**Wilful Misconduct**" means an act or failure to act by a party or its Associates that was intended to cause, or was in reckless disregard of or wanton indifference to, harmful consequences, excluding any innocent act, omission, mistake or error of judgement.

"**Workplace Relations Management Plan**" means the plan described in the NSW Guidelines developed in relation to the Works.

"**Works**" means the whole of the physical works, including:

- (a) the Sydney Metro Works and the Third Party Works;
- (b) any changes to the Works that are required solely as a result of the exercise of an Option by the Principal's Representative under clause 6.3; and
- (c) all Variations to the Works,

that the Contractor must construct, commission, integrate and hand over to the Principal (or its nominee) or the relevant Authority under this Contract.

1.2 Interpretation

In this Contract unless the context otherwise requires:

- (a) references to a person include an individual, a body politic, the estate of an individual, a firm, a corporation, an authority, an association or joint venture (whether incorporated or unincorporated), or a partnership;

- (b) the words "including", "includes" and "include" will be read as if followed by the words "without limitation";
- (c) a reference to any party to this Contract includes that party's executors, administrators, successors, and permitted substitutes and assigns, including any person taking part by way of novation;
- (d) a reference to any Authority, institute, association or body is:
 - (i) if that Authority, institute, association or body is reconstituted, renamed or replaced or if the powers or functions of that Authority, institute, association or body are transferred to another organisation, deemed to refer to the reconstituted, renamed or replaced organisation or the organisation to which the powers or functions are transferred, as the case may be; and
 - (ii) if that Authority, institute, association or body ceases to exist, deemed to refer to the organisation which serves substantially the same purposes or objects as that Authority, institute, association or body;
- (e) a reference to this Contract or to any other deed, agreement, document or instrument is deemed to include a reference to this Contract or such other deed, agreement, document or instrument as amended, novated, supplemented, varied or replaced from time to time;
- (f) a reference to any legislation or to any section or provision of it includes:
 - (i) any statutory modification or re-enactment of, or any statutory provision substituted for, that legislation, section or provision; and
 - (ii) ordinances, by-laws, regulations of and other statutory instruments issued under that legislation, section or provision;
- (g) words in the singular include the plural (and vice versa) and words denoting any gender include all genders;
- (h) headings are for convenience only and do not affect the interpretation of this Contract;
- (i) a reference to:
 - (i) a party, clause, Schedule or Exhibit is a reference to a party, clause, Schedule or Exhibit of or to this Contract; and
 - (ii) a paragraph or a sub-paragraph is a reference to a paragraph or sub-paragraph in the clause in which the reference appears;
- (j) subject to clause 3.6, a reference to this Contract includes all Schedules and Exhibits;
- (k) where any word or phrase is given a defined meaning, any other part of speech or other grammatical form of that word or phrase has a corresponding meaning;

- (l) not used;
- (m) for the purposes of clauses 10.10, 10.11, 10.12 and 10.13:
 - (i) any extension of time to any Date for Construction Completion or Date for Completion (as applicable) stated in days; or
 - (ii) any reference to "day",
will include only those days indicated in item 16 of Schedule 1, or otherwise approved by the Principal's Representative, as working days;
- (n) for all purposes (other than as set out in clause 1.2(m), or where otherwise designated as a Business Day), "day" means calendar day;
- (o) for the avoidance of doubt, a reference to an Other Contractor includes an Interface Contractor;
- (p) a reference to "\$" is to Australian currency;
- (q) not used;
- (r) no rule of construction applies to the disadvantage of a party on the basis that the party put forward or drafted this Contract or any part;
- (s) any reference to "information" will be read as including information, representations, statements, data, samples, calculations, assumptions, deductions, determinations, drawings, design, specifications, models, plans and other documents in all forms including the electronic form in which it was generated;
- (t) the interpretations of:
 - (i) the terms Contractor's Activities, Works, Temporary Works, Third Party Works, Sydney Trains Works, Local Area Works, Utility Service Works, Property Works, Site, Temporary Areas, Date for Construction Completion, Date of Construction Completion, Construction Completion, Date for Completion, Date of Completion, Completion and Defects Rectification Period;
 - (ii) clauses 3.1 (Access), 3.4 (Land in Addition to the Site), 7.7 (Cleaning Up), 8 (Defects), 10 (Time and Progress), 11.2 (Payment Claims), 12 (Construction Completion and Completion) and 13 (Care of the Works, Risks and Insurance); and
 - (iii) the SWTC (including its component parts),
will apply separately to each Portion (including any Portion determined under clause 12.6) and references therein to any of the terms in clause 1.2(t)(i) will mean so much of the Contractor's Activities, Works, Temporary Works, Third Party Works, Sydney Trains Works, Local Area Works, Property Works, Utility Service Works, Site or Temporary Areas as is comprised, or associated with, in the relevant Portion;

- (u) not used;
- (v) any reference to "intended purpose" in this Contract will be read as referring to the intended use or intended purpose having regard to any intended use or intended purpose stated in, contemplated by or ascertainable from the terms of this Contract including the requirement that:
 - (i) the Works when completed will be constructed; and
 - (ii) the Temporary Works when completed will be designed and constructed, in compliance with all health and safety requirements of the WHS Legislation;
- (w) words and terms defined in the GST Legislation have the same meaning in clauses concerning GST;
- (x) on the basis that the Principal is notionally liable to pay GST under the GST Legislation, a reference in this Contract to a liability to pay GST or an entitlement to an input tax credit includes any notional GST liability or input tax credit entitlement;
- (y) if a person is a member of a GST group, references to GST which the person must pay and to input tax credits to which the person is entitled to claim include GST which the representative member of the GST group of which the party is a member must pay and input tax credits to which the representative member is entitled; and
- (z) any part or progressive or periodic component of a supply that is treated as a separate supply for GST purposes (including attributing GST to tax periods) will be treated as a separate supply.

1.3 Ambiguous terms

- (a) If the Principal's Representative considers, or if the Contractor notifies the Principal's Representative in writing that it considers, that there is an ambiguity, inconsistency or discrepancy in the Contract (including in any Schedule or Exhibit), then unless clause 1.4(a) applies, the Principal's Representative must direct the interpretation of this Contract which the Contractor must follow.
- (b) The Principal's Representative, in giving a direction in accordance with clause 1.3(a), is not required to determine whether or not there is an ambiguity, inconsistency or discrepancy in this Contract.

1.4 Order of Precedence

- (a) In the event of any other inconsistency, ambiguity or discrepancy between the various documents comprising this Contract then:
 - (i) where the inconsistency, ambiguity or discrepancy is between two or more documents that together comprise the SWTC, then to the extent of any inconsistency, ambiguity or discrepancy, the higher, or more onerous, or more rigorous, requirement will apply; and

- (ii) otherwise, to the extent of any inconsistency, ambiguity or discrepancy, the order of precedence in item 17 of Schedule 1 applies.
- (b) The documents which comprise this Contract are to be regarded as mutually explanatory and anything contained in one but not in the other will be equally binding as if contained in all, so as to ensure that the Works comply with this Contract.

1.5 Deed Poll by Contractor

If required by item 18 of Schedule 1, the Contractor must within 10 Business Days of the date of this Contract provide to the Principal's Representative an executed deed poll:

- (a) not used; and
- (b) in the form set out in Schedule 24 in favour of the persons named in item 19 of Schedule 1.

1.6 Authorities

- (a) This Contract will not in any way unlawfully restrict or otherwise unlawfully affect the unfettered discretion of:
 - (i) the Principal or any other Rail Transport Agency to exercise any of their respective functions and powers pursuant to any legislation; or
 - (ii) the ASA to exercise any of its functions and powers pursuant to the ASA Charter.
- (b) Without limiting clause 1.6(a), anything the Principal, any other Rail Transport Agency or ASA do, or fail to do or purport to do, pursuant to their respective functions and powers either as an AEO or under any legislation or the ASA Charter, will be deemed not to be an act or omission by the Principal under this Contract (including a breach of contract) and the Principal will have no liability to the Contractor in relation thereto.

1.7 Objectives for Sydney Metro City & Southwest

The Principal's objectives for Sydney Metro City & Southwest are to:

- (a) improve the quality of the transport experience for customers;
- (b) provide a fully integrated transport system that is able to satisfy long-term demand;
- (c) grow public transport patronage and mode share;
- (d) support the global economic corridor;
- (e) serve and stimulate urban development;
- (f) improve the resilience of the transport network;

- (g) improve the efficiency and cost effectiveness of the public transport system;
 - (h) implement a feasible solution recognising impacts, constraints and delivery risk; and
 - (i) deliver an enduring and sustainable legacy for Sydney,
- ("Sydney Metro City & Southwest Strategic Objectives").

1.8 Achievement of the Project Values

- (a) Each party will, subject to and in accordance with this Contract, perform its obligations under this Contract having regard to the achievement of:
 - (i) the Sydney Metro City & Southwest Strategic Objectives; and
 - (ii) the Principal's Vision Statement.
- (b) Each party will adhere to and uphold the Project Values and work collaboratively in a spirit of mutual trust and cooperation in the performance of their obligations under this Contract.
- (c) The obligations under clause 1.8(b) will not affect the exercise of a right or discretion under this Contract by the Principal or the Principal's Representative.

1.9 Electronic files

Where this Contract refers to an electronic file on a separate disc or other electronic storage device which forms part of this Contract, those electronic files are contained in the disc or other electronic storage device identified in Schedule 40.

2. Contractor's obligations

2.1 General

The Contractor:

- (a) must execute the Contractor's Activities, including construct, commission and hand-over the Works and each Portion, in accordance with this Contract;
- (b) warrants that the Temporary Works will at all relevant times be fit for their intended purposes;
- (ba) warrants that it is both competent and experienced in work of the type, complexity and scale of the Works;
- (c) must exercise all reasonable skill, care and diligence in the performance of the Contractor's Activities;
- (d) must, unless otherwise agreed by the Principal's Representative in writing, employ the person or persons specified in item 35 of Schedule 1, including the Contractor's Representative, in the performance of the Contractor's Activities;

- (e) must use all reasonable efforts to inform itself of the requirements of the Principal and regularly consult with the Principal during the performance of the Contractor's Activities; and
- (f) must liaise, cooperate and confer with the Principal and others as directed by the Principal.

2.2 Subcontracts

- (a) Subject to clause 2.2(b), the Contractor may enter into Subcontracts for the vicarious performance of its obligations under this Contract.
- (b) The Contractor must not enter into any Subcontract:
 - (i) with:
 - A. a Prohibited Subcontractor; or
 - B. in respect of the Sydney Trains Approved Contractor Works, a Subcontractor who is not a Sydney Trains Approved Contractor; or
 - C. an initial subcontract price equal to or over the amount specified in item 20 of Schedule 1 without the prior written approval of the Principal's Representative (which may be conditional but which will not be unreasonably withheld); or
 - (ii) for the parts of the Works specified in item 21 of Schedule 1 without the prior written approval of the Principal's Representative to the relevant subcontractor (which may be conditional but which will not be unreasonably withheld).

Any request by the Contractor for approval to subcontract under this clause 2.2(b) must be in writing and include such details as may be required by the Principal's Representative, including details:

- (iii) of the proposed Subcontract conditions, if requested by the Principal;
- (iv) of the proposed Subcontractor's capacity to undertake the relevant work, past performance in undertaking similar work, safety (including work health, safety and rehabilitation issues and providing evidence of compliance with clause 2.2(i)), environmental compliance (including any environmental management system) and other performance, management systems and proposed safe working procedures; and
- (v) as further set out in the SWTC.

Within 10 Business Days after a request by the Contractor for approval, the Principal's Representative will advise the Contractor whether the request is approved (and, if approved, any relevant conditions) or not and, where it is not approved, the reasons why approval is not given.

- (c) The Contractor must ensure that each Subcontractor referred to in item 22 of Schedule 1:
 - (i) effects and maintains professional indemnity insurance which:
 - A. covers the Subcontractor's liability in respect of breaches of professional duty (whether owed in contract or otherwise) by the Subcontractor or its Subcontractors in carrying out the work under the relevant Subcontract;
 - B. covers the Subcontractor for liability to the Principal or the Contractor for the relevant minimum amount listed in item 23 of Schedule 1;
 - C. unless the Subcontractor using its best endeavours is unable reasonably to procure such a term in the policy, includes at least one automatic reinstatement of the total limit of liability per annum after claims have been paid; and
 - D. remains in place at least until the expiration of a 7 year period from completion of the relevant Subcontract works or professional services; and
 - (ii) is obliged under the relevant Subcontract to comply with clause 13.7(c) of this Contract in relation to the insurance referred to in clause 2.2(c)(i).
- (d) The Contractor will be:
 - (i) fully responsible for the Contractor's Activities despite subcontracting the carrying out of any part of the Contractor's Activities; and
 - (ii) vicariously liable to the Principal for all acts, omissions and defaults of its Subcontractors (and those of the employees, Subcontractors and other agents of its Subcontractors) relating to, or in any way connected with, the Contractor's Activities.
- (e) The Contractor must:
 - (i) without limiting clause 13A.5(d), ensure that each of its Subcontracts that has an initial subcontract price of the amount specified in item 24 of Schedule 1 or more includes provisions to the effect set out in Schedule 5 and a clause to the same effect as this clause 2.2(e)(i) that is binding on the Subcontractor and provide evidence of this to the Principal's Representative when requested by the Principal's Representative;
 - (ii) not, without the prior written approval of the Principal's Representative (which must not be unreasonably withheld or delayed), direct a variation under a Subcontract with an initial subcontract price less than the amount specified in item 20 of Schedule 1 where the effect of such a direction would be to increase the subcontract price to or over the amount specified in item 20 of Schedule 1;

- (iii) ensure that each Subcontractor (and their Subcontractors) executes a Confidentiality Undertaking in the form of Schedule 3 and provides this to the Principal's Representative within 5 Business Days of the engagement of that Subcontractor;
- (iv) procure that each of its Subcontractors:
 - A. engaged under a Subcontract that has an initial subcontract price equal to or greater than the amount specified in item 25 of Schedule 1; or
 - B. not used,executes a deed in the form of Schedule 14 and provides this to the Principal's Representative within 5 Business Days of being engaged by the Contractor;
- (v) in respect of all Subcontracts in which it holds retention money from the Subcontractor, comply with all requirements under the *Building and Construction Industry Security of Payment Amendment (Retention Money Trust Account) Regulation 2015* (NSW); and
- (vi) ensure that each Subcontract includes a clause (and provide evidence of this to the Principal's Representative when requested by the Principal's Representative) providing that if:
 - A. this Contract is terminated for any reason;
 - B. the Principal takes out of the hands of the Contractor the whole or part of the work remaining to be completed; or
 - C. this Contract is frustrated under the Law,the Contractor and the Subcontractor must, after the Principal has given a direction to do so, promptly (and in any event within 5 Business Days) execute a deed of novation in the form of Schedule 18.
- (f) The Contractor must, as a condition precedent to Completion of a Portion, procure and provide the Principal's Representative with those warranties described in item 26 of Schedule 1 or elsewhere in this Contract from relevant Subcontractors undertaking or supplying the work or items the subject of the warranty.

These warranties:

- (i) must be in the form set out in Schedule 11 and must be in favour of the Principal and any other entity nominated by the Principal's Representative from time to time, including any Rail Transport Agency; and
- (ii) will not derogate from any rights that the Principal may have against the Contractor in respect of the subject matter of these warranties.

- (g) If directed by the Principal, the Contractor must, without being entitled to compensation, within 5 Business Days of the date of receipt by the Contractor of the direction, execute and deliver to the Principal a deed of novation in the form which appears in Schedule 18, such deed being between the Principal, the Contractor and the Subcontractor stated in item 27 of Schedule 1.
- (h) The Contractor irrevocably and severally appoints the Principal and any authorised representative of the Principal to be the Contractor's attorney to execute, sign, seal and deliver in the name of the Contractor, the deed referred to in clauses 2.2(e)(vi) and 2.2(g) and all notices, deeds and documents for that purpose.

Any direction given by the Principal and any novation occurring pursuant to clauses 2.2(e)(vi) or 2.2(g) will not:

- (i) relieve the Contractor from its liabilities or obligations (including those arising out of any warranties given under this Contract);
- (ii) limit or otherwise affect the Principal's rights against the Contractor (including those arising out of any warranties given under this Contract); or
- (iii) entitle the Contractor to make any Claim,

whether under this Contract or otherwise according to any Law.

- (i) The Contractor must:
 - (i) ensure that, if any Law, including in the State or Territory in which the Works are situated or the Works are carried out (as the case may be), require that:
 - A. a person:
 - 1) be authorised or licensed (in accordance with the WHS Legislation) to carry out any work at that workplace, that person is so authorised or licensed, and complies with any conditions of such authorisation or licence; and/or
 - 2) has prescribed qualifications or experience or, if not, is to be supervised by a person who has prescribed qualifications or experience (as defined in the WHS Legislation), that person has the required qualifications or experience or is so supervised; or
 - B. a workplace, plant or substance, or work (or class of work) be authorised or licensed, that workplace, plant or substance, or work is so authorised or licensed;
 - (ii) not direct or allow a person to carry out or use plant or substance at a workplace unless the requirements of clause 2.2(i)(i) are met (including any requirement to be authorised, licensed, qualified or supervised); and

- (iii) if requested by the Principal's Representative or required by the WHS Legislation, produce evidence of any approvals, certificates, authorisations, licences, prescribed qualifications or experience, or any other information relevant to work health and safety (as the case may be) to the satisfaction of the Principal's Representative before the Contractor or Subcontractor (as the case may be) commences such work.
- (j) The Contractor must:
 - (i) enter into the Nominated Subcontracts with the Nominated Subcontractors; and
 - (ii) ensure that Nominated Subcontract Work is carried out by the Nominated Subcontractors pursuant to the relevant Nominated Subcontract.
- (k) The Contractor will:
 - (i) be liable to the Principal for the acts and omissions of the Nominated Subcontractors in connection with the Contractor's Activities as if such acts or omissions were acts or omissions of the Contractor; and
 - (ii) not be relieved of any obligation or liability it has to the Principal under the Station Contract Documents by reason of the Contractor entering into any Nominated Subcontract with a Nominated Subcontractor.

2.2A Lifts and Escalators Works

The Contractor acknowledges and agrees that:

- (a) the Principal has entered into a framework contract with the L&E Contractor under which the L&E Contractor is required to make a standing offer to enter into contracts with other contractors of the Principal for Sydney Metro City & Southwest, including the Contractor on the terms and conditions set out in the template form of L&E Supply and Installation Contract included in electronic form in Schedule 40;
- (b) in order to accept the offer made by the L&E Contractor under the framework contract, the Contractor must issue a notice to the L&E Contractor ("**L&E Supply and Installation Order**") (with a copy to the Principal's Representative) that is:
 - (i) signed by a representative of the Contractor who has full authority to enter into the L&E Supply and Installation Contract on behalf of and to bind the Contractor; and
 - (ii) in the form of, and contains all information required by, Schedule 2 (*Form of Supply and Installation Order*) of the template form of L&E Supply and Installation Contract included in electronic form in Schedule 40, and includes:

- (A) in item 8A (*Delay Liquidated Damages*) of the L&E Supply and Installation Order, delay liquidated damages of [REDACTED]; and
 - (B) in items 11 (*Original Supply and Installation Contract Sum*), 11A (*Security Amount*), 12 (*Support Services Fee*), 13 (*Additional off-site storage costs*) and 14 (*DCP Extension Fee*), the relevant amounts for each item of equipment forming part of the Lifts and Escalators Works which are consistent with the corresponding amounts set out in Schedule 2 (*DSI Contracts – Indicative scope and pricing schedule*) of the framework contract between the Principal and the L&E Contractor, as provided by the Principal to the Contractor;
- (c) upon issue of a valid L&E Supply and Installation Order to the L&E Contractor in accordance with clause 2.2A(b), the Contractor and the L&E Contractor will be deemed to have entered into the L&E Supply and Installation Contract, incorporating:
- (i) the terms and conditions set out in the template form of L&E Supply and Installation Contract included in electronic form in Schedule 40; and
 - (ii) the L&E Supply and Installation Order issued by the Contractor;
- (d) if the L&E Contractor notifies the Contractor that it considers a notice purported to be given by the Contractor under clause 2.2A(b) does not comply with the requirements of clause 2.2A(b), the Contractor must work directly and fully cooperate with the L&E Contractor in good faith and do everything reasonably necessary to facilitate the issue of a valid L&E Supply and Installation Order; and
- (e) the Contractor is not entitled to make any Claim against the Principal arising out of or in connection with any delay or failure by the Contractor to issue a valid L&E Supply and Installation Order to the L&E Contractor.

2.2B BMCS Works

The Contractor acknowledges and agrees that:

- (a) the Principal has entered into a framework contract with the BMCS Contractor under which the BMCS Contractor is required to make a standing offer to enter into contracts with other contractors of the Principal for Sydney Metro City & Southwest, including the Contractor on the terms and conditions of the template form of BMCS Supply and Installation Contract included in electronic form in Schedule 40;
- (b) in order to accept the offer made by the BMCS Contractor under the framework contract, the Contractor will be required to issue a notice to the BMCS Contractor ("**BMCS Supply and Installation Order**") (with a copy to the Principal's Representative) that is:

- (i) signed by a representative of the Contractor who has full authority to enter into the BMCS Supply and Installation Contract on behalf of and to bind the Contractor; and
 - (ii) in the form of, and contains all information required by, Schedule 3 (*Form of Supply and Installation Order*) of the template form of BMCS Supply and Installation Contract included in electronic form in Schedule 40;
- (c) upon issue of a valid BMCS Supply and Installation Order to the BMCS Contractor in accordance with clause 2.2B(b), the Contractor and the BMCS Contractor will be deemed to have entered into the BMCS Supply and Installation Contract, incorporating:
- (i) the terms and conditions set out in the template form of BMCS Supply and Installation Contract; and
 - (ii) the BMCS Supply and Installation Order issued by the Contractor;
- (d) if the BMCS Contractor notifies the Contractor that it considers a notice purported to be given by the Contractor under clause 2.2B(b) does not comply with the requirements of clause 2.2B(b), the Contractor must work directly and fully cooperate with the BMCS Contractor in good faith and do everything reasonably necessary to facilitate the issue of a valid BMCS Supply and Installation Order; and
- (e) the Contractor is not entitled to make any Claim against the Principal arising out of or in connection with any delay or failure by the Contractor to issue a valid BMCS Supply and Installation Order to the BMCS Contractor.

2.3 Compliance with Law

- (a) Subject to clause 2.3(c)(i), the Contractor must in carrying out the Contractor's Activities:
- (i) comply (and ensure that its Associates comply) with, and ensure that the Works and the Temporary Works comply with, all applicable Law;
 - (ii) not do, or fail to do (and ensure that its Associates do not do, or fail to do), anything that may cause the Principal to be in breach of any Law;
 - (iii) give all notices and pay all fees, bonds and other amounts which it is required to pay in respect of the performance of its obligations under this Contract and give the Principal's Representative copies of all notices it gives to Authorities at the time or before it submits such notices to Authorities;
 - (iv) give the Principal's Representative copies of all documents (including Authority Approvals and other notices) that Authorities issue to it (or its Associates);

- (v) at all times conform and comply with, and ensure that the Works and the Temporary Works conform and comply with, all Codes and Standards; and
 - (vi) not engage in any fraud, bribery or corruption.
- (b) Where there is a Change in Codes and Standards:
- (i) the Contractor must give a written notice to the Principal's Representative within 20 Business Days of the Change in Codes and Standards containing:
 - A. details of the Change in Codes and Standards; and
 - B. an estimate of the Contractor's increased or decreased costs of complying with the Change in Codes and Standards including sufficient information to support the estimate; and
 - (ii) if a notice is given by the Contractor which complies with clause 2.3(b)(i), then within 10 Business Days of the notice being given, the Principal's Representative will either:
 - A. direct the Contractor to disregard the Change in Codes and Standards; or
 - B. direct a Variation under clause 6.2(a) in respect of the Change in Codes and Standards after which the relevant adjustments will be made under clause 6.4.

If there is any change in the Codes and Standards which does not constitute a Change in Codes and Standards the Contractor must comply with the change and will not be entitled to make, and the Principal will not be liable upon, any Claim arising out of or in any way in connection with the change.

- (c) The Contractor must:
- (i) obtain all Authority Approvals required for the execution of the Contractor's Activities and occupation and use of the completed Works or Portions (and for that purpose prepare and submit all applications and associated documents to relevant Authorities), except for those Authority Approvals specified in Schedule 7 that either:
 - A. were obtained by the Principal prior to the date of this Contract; or
 - B. will be obtained by the Principal after the date of this Contract where required;
 - (ii) unless otherwise expressly specified in Schedule 4, comply with, satisfy, carry out and fulfil the conditions and requirements of all Authority Approvals (whether obtained by the Contractor or the Principal), including those conditions and requirements that the Principal is

required, under the terms of the Authority Approvals, including the Planning Approval, to comply with, satisfy, carry out and fulfil;

- (iii) in respect of any:
 - A. Authority Approvals which are to be obtained by the Principal after the date of this Contract; or
 - B. conditions and requirements of Authority Approvals which pursuant to Schedule 4 are to be satisfied or fulfilled by the Principal,

provide the Principal with such reasonable assistance as may be reasonably required by the Principal to enable the Principal to obtain the Authority Approvals or satisfy or fulfil the conditions and requirements;

- (iv) for the purpose of obtaining all Authority Approvals as required by clause 2.3(c)(i), prepare all associated studies and reports required because of the design of the Temporary Works and the Shop Drawings proposed by the Contractor; and

- (v) as a condition precedent to Construction Completion of a Portion, ensure that it has:

- A. obtained all Authority Approvals it is required to obtain under this Contract;
- B. complied with, carried out and fulfilled all conditions and requirements of all Authority Approvals it is required to comply with, carry out and fulfil under this Contract;
- C. without limiting clauses 2.3(c)(v)A and 2.3(c)(v)B, complied with, carried out and fulfilled all conditions and requirements of the Planning Approval which it is required to comply with, carry out and fulfil (including obtaining the approval of any person for anything) under this Contract; and
- D. unless it is included in Schedule 7 as an Authority Approval which the Principal will obtain, obtained and supplied to the Principal's Representative certification that the Works or the Portion, as built, comply with the requirements of the National Construction Code to the extent applicable,

including for the avoidance of doubt any Authority Approvals, conditions or requirements which must be obtained, carried out or fulfilled to enable the Principal and any Rail Transport Agency to occupy and use the relevant Portion for its intended purpose.

- (d) Where there is:
 - (i) a Change in Law that results in a change to, an addition to or omission from the [REDACTED]; or

- (ii) a Change in Law that is a COVID-19 Change in Law and any measures set out in the then current COVID-19 Management Plan are:
 - A. required to be changed in order for the Contractor to comply with the COVID-19 Change in Law; or
 - B. no longer necessary following the COVID-19 Change in Law in order for the Contractor to comply with Law,

and such changes to the measures set out in the then current COVID-19 Management Plan result in an increase or decrease in the Contractor's costs of carrying out the Contractor's Activities,

then:

- (iii) if either party wishes this clause 2.3(d) to apply, then that party must, within 10 Business Days of the Change in Law, give a written notice to the other and the Principal's Representative stating that clause 2.3(d)(i) or clause 2.3(d)(ii) applies and containing details of the Change in Law including, where the notice is given by the Contractor, its impact on the Contractor's costs of carrying out the Contractor's Activities and any effect it will have on the Contractor's Program;
- (iv) if such a notice is given the Principal's Representative will determine:
 - A. where a Change in Law referred to in clause 2.3(d)(i) decreases the Contractor's costs of carrying out the Contractor's Activities in compliance with that Change in Law, a reasonable amount as the amount of the decrease;
 - B. where a Change in Law referred to in clause 2.3(d)(ii) decreases the costs of the Contractor carrying out the Contractor's Activities, a reasonable amount reflecting the changes being required to the measures set out in the then current COVID-19 Management Plan as the amount of the decrease;
 - C. where a Change in Law referred to in clause 2.3(d)(i) increases the Contractor's costs of carrying out the Contractor's Activities in compliance with that Change in Law, the amount of the additional costs reasonably and necessarily incurred by the Contractor on the basis that the Contractor took all reasonable steps to mitigate those increased costs; or
 - D. where a Change in Law referred to in clause 2.3(d)(ii) increases the costs of the Contractor carrying out the Contractor's Activities, the amount of the additional costs reasonably and necessarily incurred by the Contractor in implementing the changes required to the measures set out in the then current COVID-19 Management Plan, on the basis that the Contractor took all reasonable steps to mitigate those increased costs,

and the Contract Sum will be increased or decreased by that amount;
and

- (v) the Contractor must comply with the Change in Law.
- (da) The Contractor warrants that:
- (i) the Initial COVID-19 Management Plan includes:
 - A. all mitigation measures that the Contractor is implementing with respect to COVID-19 (including, but not limited to, supply chain impacts and WHS Legislation), and those in response to any and all:
 - 1) Laws in response to COVID-19; and
 - 2) public health orders issued by the relevant Authority in New South Wales under the *Public Health Act 2010* (NSW) or by the relevant Authority in another Australian jurisdiction under the equivalent public health legislation in response to COVID-19,

("COVID-19 Laws") that are in place at the date of this Contract;
and
 - B. any relevant COVID-19 related assumptions on which the Original Contract Price and the Initial Contractor's Program are based;
 - (ii) the Original Contract Price and the Initial Contractor's Program contain sufficient allowances for the assumption by the Contractor of all risk in relation to the impact of COVID-19 on the performance of the Contractor's Activities as at the date of the Contract, including for complying with and implementing the measures sets out in the Initial COVID-19 Management Plan; and
 - (iii) any updated COVID-19 Management Plan will include all mitigation measures the Contractor is implementing with respect to COVID-19 (including, but not limited to, supply chain impacts and WHS Legislation), and those in response to any and all COVID-19 Laws in place at the date of the relevant update.
- (e) If a Change in Authority Approval occurs which necessitates a Variation, the Contractor must:
- (i) if the relevant Authority Approval was obtained by the Principal, within 10 Business Days of the date on which the Contractor becomes aware or ought reasonably to have become aware of the Change in Authority Approval taking effect; or
 - (ii) otherwise within 10 Business Days of the Change in Authority Approval taking effect,

notify the Principal's Representative in writing with detailed particulars of the reason why the Change in Authority Approval necessitates a Variation. If the Contractor gives such a notice and the Change in Authority Approval does necessitate a Variation the Principal's Representative will direct a Variation under clause 6.2(a) after which relevant adjustments will be made under clause 6.4.

- (f) Other than as set out in clause 2.3(e), the Contractor will not be entitled to make, and the Principal will not be liable upon, any Claim arising out of or in any way in connection with:
 - (i) any Change in Authority Approval;
 - (ii) an Authority Approval obtained or issued or which otherwise takes effect after the date of this Contract;
 - (iii) a change in an Authority Approval after the date of this Contract; or
 - (iv) any:
 - A. assumptions the Contractor makes; or
 - B. failure by the Contractor to adequately satisfy itself,
as to what work methodologies and Temporary Works might be permissible under all Authority Approvals.

- (g) Notwithstanding clause 2.3(e), if:
 - (i) any further environmental impact assessment is required under Part 4 or Division 5.1 of the EP&A Act (or their equivalents) in connection with the Contractor's Activities;
 - (ii) the Principal determines that it is necessary to carry out any further environmental impact assessment under Part 5 of the EP&A Act (or its equivalent) in connection with the Contractor's Activities;
 - (iii) an Authority Approval is modified or amended under the EP&A Act; or
 - (iv) a new Authority Approval is issued under the EP&A Act in respect of the Contractor's Activities, either in substitution for or replacement of a Planning Approval or otherwise or any such new Authority Approval is modified under the EP&A Act,arising out of or in connection with:
 - (v) a Variation requested by the Contractor; or
 - (vi) any failure by the Contractor to comply with its obligations under this Contract,

then the Principal will have no liability to the Contractor in relation to any such events and any actions or additional work arising out of or in connection with

any such events, irrespective of who is required to, or does, carry out any such assessment.

2.4 Legal Challenge to Authority Approval

- (a) If there is a legal challenge, proceedings or action in relation to the assessment or determination of an application for an Authority Approval or a modification of an Authority Approval, performance of the Contractor's Activities or the Works, or compliance with any Authority Approval under:

- (i) the *Environmental Planning and Assessment Act 1979* (NSW);
- (ii) the *Protection of the Environment Operations Act 1997* (NSW);
- (iii) the *Environment Protection and Biodiversity Conservation Act 1999* (Cth); or
- (iv) any other Law,

the Contractor must continue to perform its obligations under this Contract unless, as a result of that legal challenge, proceedings or action, it is otherwise:

- (v) ordered or directed by an Authority;
 - (vi) ordered by a court or tribunal; or
 - (vii) directed by the Principal or the Principal's Representative.
- (b) Subject to clause 2.4(c), the Principal must pay the Contractor the additional costs reasonably and necessarily incurred by the Contractor as a direct result of:
- (i) an Authority order referred to in clause 2.4(a)(v);
 - (ii) a court or tribunal order referred to in clause 2.4(a)(vi); or
 - (iii) a direction by the Principal or Principal's Representative referred to in clause 2.4(a)(vii),

to the extent that such Authority order, court or tribunal order, or direction prevents the Contractor from achieving Construction Completion of a Portion by the relevant Date for Construction Completion or Completion of a Portion by the relevant Date for Completion. The Contractor's entitlement under this clause 2.4(b) will be its only right to payment arising out of or in any way in connection with an Authority order or direction, court or tribunal order or direction by the Principal or Principal's Representative in accordance with clause 2.4(a)(v), 2.4(a)(vi) or 2.4(a)(vii) (as applicable).

- (c) Clause 2.4(b) does not apply to the extent that a legal challenge, proceedings or action of the kind referred to in clause 2.4(a) is brought or upheld due to the Contractor's non-compliance with its obligations under this Contract or any Authority Approval.

2.5 Utility Services

- (a) The Contractor must:
- (i) obtain and pay for any Utility Service it needs to perform its obligations under this Contract;
 - (ii) relocate, remove, modify, support, protect, reinstate and provide all Utility Services necessary for the Contractor to comply with its obligations under this Contract;
 - (iii) subject to clause 2.5(d), assume the risk of the existence, location, condition and availability of all Utility Services required for the execution of the Contractor's Activities;
 - (iv) provide and maintain all signage, line marking, flagmen, barriers and other road traffic devices needed by the Contractor to comply with its obligations under this Contract, including any such devices reasonably required by the Principal's Representative;
 - (v) carry out all Utility Service Works in accordance with the requirements of this Contract and, where applicable, the Contractor's obligations in Schedule 4B;
 - (vi) procure that the Non-Contestable Utility Service Works are carried out in accordance with:
 - A. Schedule 19;
 - B. the AFC Design Documentation; and
 - C. the other requirements of this Contract;
 - (vii) exercise proper care when undertaking its obligations under clause 2.5(a)(ii) and make appropriate enquiries that any experienced and competent contractor would make to satisfy itself as to the existence, location, condition and/or availability of Utility Services;
 - (viii) despite any other provision in the Contract to the contrary, ensure that, as a consequence of or in relation to the performance of the Contractor's Activities:
 - A. there are no unplanned disruptions to the Utility Services;
 - B. any planned disruptions to the Utility Services are minimised; and
 - C. otherwise no Utility Services are:
 - 1) damaged or destroyed; or
 - 2) disconnected, disrupted, interfered with or interrupted during normal operating hours,

by reason of the performance of the Contractor's Activities;

- (ix) cooperate and coordinate with the owners of all Utility Services, and implement their requirements as part of the Contractor's Activities and must consult with and keep the Principal fully informed as to the Contractor's dealings with the Authorities providing the Utility Services;
 - (x) when each discrete part of the Utility Service Works are completed, provide the Principal's Representative with:
 - A. written notice from the relevant Authority with jurisdiction over the affected Utility Service confirming that the relevant part of the Utility Service Works is complete; or
 - B. if the relevant Authority has failed or refuses to provide such notice within 15 Business Days after it was requested by the Contractor:
 - 1) copies of all correspondence between the Contractor and the Authority relating to the notice referred to in clause 2.5(a)(x)A; and
 - 2) evidence satisfactory to the Principal's Representative that the relevant part of the Utility Service Works is complete and satisfies the requirements of this Contract and, where applicable, the Contractor's obligations in Schedule 4B; and
 - (xi) indemnify the Principal against any claim, damages, expense, costs, loss, liability, fine or penalty the Principal suffers or incurs arising out of or in any way in connection with any disconnection, interference with, interruption or disruption to any Utility Service arising out of or in any way in connection with the Contractor's Activities, provided that the Contractor's liability to indemnify the Principal will be reduced proportionally to the extent that an act or omission of the Principal or its Associates or an Interface Contractor contributed to the claim, damages, expense, costs, loss, liability, fine or penalty.
- (b) Subject to clauses 2.5(c) and 2.5(d), the Contractor agrees it is responsible for, and assumes the risk of all additional work, increased costs and any damages, expense, loss, liability, delay or disruption (including any delay in achieving Construction Completion or Completion) it suffers or incurs arising out of or in any way in connection with the existence, location, condition and availability of all Utility Services required for the execution of the Contractor's Activities.
- (c) If, in undertaking its obligations under clause 2.5(a)(ii), the Contractor is directed by a provider of a Utility Service to enhance or upgrade a Utility Service:
- (i) the Contractor must immediately notify the Principal; and
 - (ii) the Principal's Representative will issue a Variation Order under clause 6.2 in respect of such enhancement or upgrade works.

(d) If during the execution of the Contractor's Activities, the Contractor becomes aware of any Utility Services on the Site which are:

(i) not identified in the SWTC; or

(ii)



(iii) not capable of otherwise having been anticipated by a competent and experienced contractor at the date of this Contract if such a contractor had:

A. examined all information made available in writing by the Principal to the Contractor (including the SWTC) on or before the date of this Contract;

B. examined all information (including the SWTC) relevant to the risks, contingencies and other circumstances and obtainable by the making of reasonable enquiries with respect to the Contractor's Activities; and

C. inspected the Site and its surroundings,

then:

(iv) the Contractor must immediately notify the Principal; and

(v) if any updates to the Principal's Design Documentation are required as a consequence of the relevant Utility Service, the Principal's Representative will issue a Variation Order under clause 6.2 in respect of such Utility Services.

(e) Each discrete part of the Utility Service Works not handed over to the Principal (or its nominee) has:

(i) a Defects Rectification Period of [REDACTED], which begins when:

A. the relevant Authority which has jurisdiction in respect of the Utility Service gives written notice that the work is complete under 2.5(a)(x)A; or

B. if the Contractor is unable to obtain a notice required under clause 2.5(a)(x)A despite having used its best endeavours to do so, a written statement from the Contractor to the effect that:

1) the discrete part of the Utility Service Works is complete and the Contractor has notified the relevant Authority of this matter; and

2) the relevant Authority has failed or refused to provide the written notice required under clause 2.5(a)(x)A despite being given 15 Business Days to provide the notice requested by the Contractor,

and the Principal's Representative has been provided with a copy of the notice or statement; and

- (ii) a further Defects Rectification Period of [REDACTED] in respect of any work the subject of a direction under clause 8.2(a) (relating to the discrete part of the Utility Service Works) during the Defects Rectification Period, which begins:
 - A. when the relevant Authority gives written notice that the Defect (or the part of it) has been rectified and the Principal's Representative has been provided with a copy of the notice; or
 - B. if the relevant Authority fails or refuses to give the notice required under clause 2.5(e)(ii)A, when the Principal's Representative determines that the Defect (or the part of it) has been rectified,

provided that no Defects Rectification Period for any discrete part of the Utility Service Works will extend beyond the date that is [REDACTED] after the date of the applicable notice or statement given under clause 2.5(e)(i).

- (f) It is a condition precedent to Construction Completion of a Portion, that:
 - (i) a written notice of the kind referred to in clause 2.5(e)(i)A has been given for each discrete part of the Utility Service Work that form part of that Portion and the Principal's Representative has been provided with a copy of each such notice; or
 - (ii) if the relevant Authority has failed or refuses to provide such written notice for a discrete part of the Utility Service Work that forms part of that Portion the Contractor has:
 - A. used best endeavours to obtain and provide the Principal's Representative with a written notice of the kind referred to in clause 2.5(e)(i)A; and
 - B. provided the Principal's Representative with a written statement of the kind referred to in clause 2.5(e)(i)B.

2.5A Property Works

- (aa) If section 2.3.6 of the SWTC describes or specifies any works, then the Contractor must comply with this clause 2.5A.
- (a) The Contractor must carry out the Property Works:
 - (i) in accordance with the requirements of this Contract; and
 - (ii) in a manner which minimises inconvenience and disruption to the Landowners of the Unowned Property Works Lands.
- (b) The Contractor must:

- (i) rehabilitate any part of Unowned Property Works Lands to the state agreed between the Contractor and the Landowners of such Unowned Property Works Lands prior to commencing the work or, if no such agreement is reached, the state it was in immediately prior to the Contractor obtaining access; and
 - (ii) otherwise repair any damage or degradation to any part of the Unowned Property Works Lands which arises out of or in any way in connection with the performance of its obligations under this clause 2.5A.
- (c) When each discrete part of the Property Works is completed, the Contractor must provide the Principal's Representative with:
 - (i) a certificate in the form of Schedule 13, duly executed by the relevant Landowner; or
 - (ii) if the Landowner has failed or refused to sign a certificate in the form of Schedule 13 within 15 Business Days after it was provided by the Contractor to the relevant Landowner:
 - A. a signed written statement from the Contractor that the Landowner has refused or failed to sign such certificate;
 - B. copies of all correspondence between the Contractor and the Landowner relating to the certificate referred to in clause 2.5A(c)(i); and
 - C. evidence satisfactory to the Principal's Representative that the relevant part of the Property Works is complete and satisfies the requirements of this Contract.
- (d) The Contractor must indemnify the Principal from and against any Claims, damage, expense, loss, cost or liability suffered or incurred by the Principal, arising out of or in any way in connection with a Claim by the Landowners of any Unowned Property Works Lands where:
 - (i) such Landowners have not duly signed a certificate in the form of Schedule 13; and
 - (ii) the Claim or Loss arises out of or in any way in connection with a wrongful act or omission of the Contractor or its Associates in connection with the Property Works or a failure by the Contractor to comply with its obligations under this Contract relating to Property Works.
- (e) Each discrete part of the Property Works has:
 - (i) a Defects Rectification Period of [REDACTED], which begins upon:
 - A. the completion of the Property Works; or
 - B. submission by the Contractor of a signed written statement (as the case may be) to the Principal's Representative under clause 2.5A(c)(ii),

whichever is the later; and

- (ii) a further Defects Rectification Period of [REDACTED] in respect of any work the subject of a direction under clause 8.2(a) (relating to the discrete part of the Property Works) during the Defects Rectification Period, which begins on the date of rectification of the Defect (or the part of it).
- (f) No Defects Rectification Period for any discrete part of the Property Works will extend beyond the date that is [REDACTED] after the date from which the applicable certificate or signed statement required under clause 2.5A(c) has been provided to the Principal's Representative as the date on which the relevant part of the Property Works were completed.

2.5B Local Area Works

- (a) The Contractor must carry out all Local Area Works in accordance with the requirements of this Contract and, where applicable, the Contractor's obligations in Schedule 4B.
- (b) When the Contractor considers that a discrete part of the Local Area Works is complete, it must notify the Principal's Representative in writing and the Principal's Representative, the Contractor and a representative of the Authority with jurisdiction over the relevant part of the Local Area Works will jointly inspect the relevant part of the Local Area Works at a mutually convenient time.
- (c) When each discrete part of the Local Area Works are completed, the Contractor must provide the Principal's Representative with:
 - (i) written notice from the relevant Authority with jurisdiction over the relevant part of the Local Area Works stating that the Authority is satisfied that the relevant part of the Local Area Works is complete; or
 - (ii) if the relevant Authority has failed or refuses to provide such notice within 15 Business Days after it was requested by the Contractor:
 - A. a statement from the Contractor that the relevant Authority has failed to or refused to provide such notice; and
 - B. copies of all correspondence between the Contractor and the Authority relating to the notice referred to in clause 2.5B(c)(i).
- (d) Each discrete part of the Local Area Works has:
 - (i) a Defects Rectification Period of [REDACTED], which begins when:
 - A. the relevant Authority which has jurisdiction over the relevant part of the Local Area Works gives written notice that the work is complete under 2.5B(c)(i); or
 - B. if the Contractor is unable to obtain a notice required under clause 2.5B(c)(i) despite having used its best endeavours to do so, a written statement from the Contractor to the effect that:

- 1) the discrete part of the Local Area Works is complete and the Contractor has notified the relevant Authority of this matter; and
- 2) the relevant Authority has failed or refused to provide the written notice required under clause 2.5B(c)(i) despite being given 15 Business Days to provide the notice requested by the Contractor,

and the Principal's Representative has been provided with a copy of the notice or statement; and

- (ii) a further Defects Rectification Period of [REDACTED] in respect of any work the subject of a direction under clause 8.2(a) (relating to the discrete part of the Local Area Works) during the Defects Rectification Period, which begins:
 - A. when the relevant Authority gives written notice that the Defect (or the part of it) has been rectified and the Principal's Representative has been provided with a copy of the notice; or
 - B. if the relevant Authority fails or refuses to give the notice required under clause 2.5B(d)(ii)A, when the Principal's Representative determines that the Defect (or the part of it) has been rectified,

provided that no Defects Rectification Period for any discrete part of the Local Area Works will extend beyond the date that is [REDACTED] after the date notified under clause 2.5B(c) as the date on which the relevant part of the Local Area Works were completed.

- (e) It is a condition precedent to Construction Completion of a Portion that the written notices or statements required under clause 2.5B(c) have been provided to the Principal's Representative for all discrete parts of the Local Area Works that form part of that Portion.

2.5C Sydney Trains Works

- (aa) The Contractor must carry out the Sydney Trains Works in accordance with the requirements of this Contract and the Contractor's obligations in Schedule 4B.
- (a) The Sydney Trains Works within a Portion have:
 - (i) a Defects Rectification Period of [REDACTED], which begins on the Date of Construction Completion of the relevant Portion; and
 - (ii) a further Defects Rectification Period of [REDACTED] in respect of any work the subject of a direction under clause 8.2(a) (relating to the relevant Sydney Trains Works) during the Defects Rectification Period, which begins on the date of the rectification of the Defect (or the part of it),

provided that no Defects Rectification Period for any relevant part of the Sydney Trains Works will extend beyond the date that is [REDACTED] after the Date of Construction Completion of the relevant Portion.

- (b) The completion of the Sydney Trains Works will be assessed on an area by area basis in accordance with the procedure in the Sydney Trains Transition Agreement in relation to Practical Completion (Sydney Trains Works).
- (ba) The Contractor must procure that only Sydney Trains Approved Contractors carry out Sydney Trains Approved Contractor Works.
- (c) It is a condition precedent to the commencement of the Defects Rectification Period for any Sydney Trains Works that the Contractor provide the Principal's Representative with:
 - (i) a written notice from each Authority with jurisdiction over the discrete part stating that the Authority is satisfied that the discrete part is complete; or
 - (ii) if the Contractor is unable to obtain a notice required under clause 2.5C(c)(i) despite having used its best endeavours to do so, a statement from the Contractor to the effect that:
 - A. the relevant Sydney Trains Works are complete and the Contractor has notified the relevant Authority of this matter;
 - B. the relevant Authority has failed or refused to provide the written notice required under clause 2.5C(c)(i) despite being given 15 Business Days to provide the notice requested by the Contractor; and
 - C. Practical Completion (Sydney Trains Works) for those Sydney Trains Works has been confirmed in accordance with the Sydney Trains Transition Agreement.

2.6 Crown Building Work

- (a) The Contractor must, in relation to any part of the Works that is a Crown Building Work, certify (on behalf of the Principal) as required by section 6.28 of the EP&A Act.
- (b) Any certification under clause 2.6(a) will not lessen or otherwise affect:
 - (i) the Contractor's other liabilities or responsibilities under this Contract or otherwise according to Law; or
 - (ii) the Principal's rights against the Contractor, whether under this Contract or otherwise according to Law.

2.7 Unconditional Undertakings and Parent Company Guarantee

- (a) Without limiting clause 2.7(e), the unconditional undertakings to be provided under this clause 2.7 are for the purpose of ensuring the due and proper performance by the Contractor of its obligations under this Contract.

- (b) The Contractor must give the Principal:
- (i) [REDACTED] unconditional undertakings which in aggregate are equal to [REDACTED]; and
 - (ii) as a pre-condition to commencement of work on the Site, [REDACTED] further unconditional undertakings which in aggregate are equal to [REDACTED] so that, subject to its right of recourse, the Principal then holds unconditional undertakings which are in aggregate equal to [REDACTED].
- (c) Each unconditional undertaking to be provided under this clause 2.7 or clause 11.7(b) must:
- (i) be in the form of Schedule 8 (or such other form approved by the Principal);
 - (ii) be in favour of the Principal;
 - (iii) be issued by an Institution that:
 - A. is approved by the Principal; and
 - B. at all times maintains the Required Rating;
 - (iv) be payable at an office of the issuer in Sydney (or such other place approved by the Principal);
 - (v) not have an expiry date; and
 - (vi) where required by Law, be duly stamped at the cost of the Contractor.
- (d) Subject to its rights to have recourse to the unconditional undertakings and subject to clauses 2.7(h), 14.10 and 14.12, the Principal must:
- (i) within 20 Business Days after the Date of Completion of the last Portion to reach Completion, release so much of the unconditional undertakings provided by the Contractor under clause 2.7(b) as may be then held by the Principal, so that it then holds [REDACTED];
 - (ii) within 20 Business Days of the Principal confirming that the Mandatory Testing Activities have been carried out and passed by the Contractor in accordance with Appendix F07 of the SWTC and the other terms of this Contract, release so much of the unconditional undertakings provided by the Contractor under clause 2.7(b) as may be then held by the Principal, so that it then holds [REDACTED];
 - (iii) within 20 Business Days after the expiration of all the Defects Rectification Periods (excluding any extensions under clause 8.6), release so much of the unconditional undertakings provided by the Contractor under clause 2.7(b) as may be then held by the Principal, to such amount as the Principal's Representative determines to be

- reasonable, having regard to the work to which the remaining Defects Rectification Periods (including any extensions under clause 8.6) apply; and
- (iv) within 20 Business Days after the date of the Final Certificate, release the balance of the unconditional undertakings provided by the Contractor under clause 2.7(b) as may be then held by the Principal.
- (e) The Principal:
- (i) may have recourse to any unconditional undertaking provided under this clause 2.7 or clause 11.7(b) at any time;
 - (ii) is not obliged to pay the Contractor interest on:
 - A. any unconditional undertaking; or
 - B. the proceeds of any unconditional undertaking if it is converted into cash; and
 - (iii) does not hold the proceeds referred to in clause 2.7(e)(ii)B on trust for the Contractor.
- (f) The Contractor must not take any steps to injunct or otherwise restrain:
- (i) any issuer of any unconditional undertaking provided under this clause 2.7 or clause 11.7(b) from paying the Principal pursuant to the unconditional undertaking;
 - (ii) the Principal from taking any steps for the purposes of making a demand under any unconditional undertaking provided under this clause 2.7 or clause 11.7(b) or receiving payment under any such unconditional undertaking; or
 - (iii) the Principal using the money received under any unconditional undertaking provided under this clause 2.7 or clause 11.7(b).
- (g) If item 28 of Schedule 1 states that a Parent Company Guarantee is required, the Contractor must, on or before the date which is 10 days of the date of this Contract, give the Principal a guarantee duly executed by the Parent Company Guarantor in favour of the Principal in the form of the Parent Company Guarantee and which is, where required, duly stamped.
- (h) Despite any other provision of this Contract to the contrary, where this Contract may otherwise require the Principal to release an unconditional undertaking or this Contract is terminated by the Principal either pursuant to clause 14 or by reason of the Contractor repudiating this Contract (or otherwise at Law), the Principal may continue to hold the unconditional undertaking after the date for its release or the termination of this Contract to the extent of any claim which the Principal may have against the Contractor arising out of, or in any way in connection with, this Contract or the Contractor's Activities whether for damages (including liquidated damages) or otherwise.

2.8 Long Service Leave Levy

Where the Contractor is specified in item 29 of Schedule 1 as being responsible for payment of the long service leave levy, then, before commencing any construction work under this Contract (including any construction of Temporary Works), the Contractor must:

- (a) pay to the Long Service Corporation or that body's agent all amounts payable for the long service leave levy in respect of the Contractor's Activities under the *Building and Construction Industry Long Service Payments Act 1986* (NSW); and
- (b) produce to the Principal's Representative the documents evidencing payment of the amounts referred to in clause 2.8(a).

2.9 Co-operation and co-ordination with Interface Contractors

- (a) Without limiting the Contractor's obligations under the Project Cooperation and Integration Deeds, the Contractor:
 - (i) acknowledges that:
 - A. the Interface Work forms part of Sydney Metro City & Southwest;
 - B. the Contractor's Activities interface with the Interface Work;
 - C. Interface Contractors will be executing work on parts of the Site or Extra Land, or adjacent to the Site or Extra Land, at the same time as the Contractor is performing the Contractor's Activities;
 - D. the Principal may grant the Interface Contractors a non-exclusive licence to use and occupy the Site to carry out the Interface Works;
 - E. it may require certain work methodology input from Interface Contractors to coordinate the Works and Temporary Works with the Interface Work;
 - F. Interface Contractors may require the Contractor to provide work methodology information to them to coordinate the Interface Work with the Works and Temporary Works, and this must be provided in a timely manner by the Contractor; and
 - G. any delay in the performance of the Contractor's Activities or in the Contractor providing information to, or co-operating and co-ordinating with any Interface Contractor, may adversely impact upon, delay or disrupt any one or more Interface Contractors or the Contractor's Activities in a way which may lead to the Principal suffering or incurring additional costs, losses and damages; and
 - (ii) must at all times:
 - A. permit Interface Contractors (if the Contractor's consent or authority is required) to execute the Interface Work on the

applicable parts of the Site or Extra Land, or on any adjacent property to the Site or Extra Land:

- 1) at the same time as the Contractor is performing the Contractor's Activities; and
- 2) at the times agreed with the Interface Contractor, or failing agreement at the times determined by the Principal's Representative,

and for this purpose ensure that they have safe, clean and clear access to those parts of the Site or Extra Land, or property adjacent to or in the vicinity of the Site or Extra Land, required by that Interface Contractor for the purpose of carrying out their work subject to, where the relevant Interface Contractor is carrying out Interface Work on the Site or Extra Land during any period in which the Contractor has been engaged as principal contractor, the Interface Contractor executing a deed poll in favour of the Contractor, as principal contractor, and the Principal in the form set out in Schedule 23;

- B. protect the Works, Temporary Works and other improvements on the Site or Extra Land from accidental damage by Interface Contractors and provide means of receiving, storing and protecting goods and equipment supplied by Interface Contractors;
- C. fully co-operate with the Interface Contractors, and do everything reasonably necessary to facilitate the execution of work by Interface Contractors, including providing Interface Contractors with such assistance as may be directed by the Principal's Representative;
- D. carefully coordinate and interface the Contractor's Activities with the Interface Work and for this purpose:
 - 1) make proper allowance in all programs for the Interface Work;
 - 2) review all programs provided by Interface Contractors and confirm that they adequately allow for the Contractor's Activities and the interfaces of the Interface Work with the Contractor's Activities;
 - 3) monitor the progress of the Interface Work;
 - 4) notify the Principal's Representative of any interface or sequence of activities that may affect the commencement or progress of the Contractor's Activities or the achievement of Construction Completion or Completion of any Portion;
 - 5) provide the Interface Contractors with sufficient information about the current and expected Contractor's Activities to

assist them to coordinate their Interface Work with the Contractor's Activities; and

- 6) it must cooperate, meet with, liaise, and share information so that the Contractor and the relevant Interface Contractor each comply with the provisions of the relevant EPL (if applicable);
- E. perform the Contractor's Activities so as to minimise any interference with or disruption or delay to the Interface Work;
- F. be responsible for coordinating the Contractor's Activities, including work sequencing, construction methods, safety and industrial relations matters with those affecting, and influenced by, the Interface Contractors' personnel and Interface Work, including providing to the Principal's Representative copies of work method statements for those parts of the Works or Temporary Works which are adjacent to or interface with any Interface Work, at least 15 Business Days prior to commencing the work described in the work method statement;
- G. work directly with Interface Contractors where required to complete the design of the Temporary Works and Shop Drawings and provide all necessary information to Interface Contractors in respect of the Works and Temporary Works to permit the Interface Contractors to complete the design of the Interface Works so that they are acceptable to the Principal and otherwise comply with this Contract, including the SWTC;
- H. attend interface coordination meetings chaired by the Principal's Representative with Interface 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;
- I. when information is required from an Interface Contractor, provide reasonable written notice which must be at least 10 days (except in special circumstances) or any longer period of notice required under the SWTC to that Interface Contractor requesting such information and specifying the date by which such information is required, with a copy to the Principal's Representative;
- J. ensure that any written notice given under clause 2.9(a)(ii) provides the Interface Contractor with the longest possible time for the provision of the information;
- K. when any information is requested by Interface Contractors, including confirming the compatibility or suitability of work methods to be used in, or any other aspect of, the Interface Work with the Works, the Temporary Works or the Contractor's Activities:

- 1) provide the information to the Interface Contractor, with a copy to the Principal's Representative, within the time requested by the Interface Contractor provided that this time period is reasonable; and
 - 2) ensure and warrant (as at the date the information is provided) that the information provided is accurate; and
- L. use its best endeavours to resolve any problems, and work closely and iteratively, with Interface Contractors, including providing work methodologies, to achieve the best solution to such problems, related to:
- 1) the provision of information;
 - 2) the obtaining of information;
 - 3) the adequacy of information provided to, or received from, Interface Contractors;
 - 4) the compatibility of the Works and Temporary Works with the Interface Work;
 - 5) coordination in accordance with this clause 2.9(a); and
 - 6) technical issues with the information provided to, or received from, Interface Contractors;
- (iii) must promptly advise the Principal's Representative of all matters arising out of the liaison with Interface Contractors that may involve a change to construction work under this Contract or otherwise have an adverse effect upon the Contractor's Activities; and
- (iv) acknowledges that the Principal will ensure that conditions similar to those in this clause 2.9(a) applying to the Contractor will apply to all the Interface Contractors engaged by the Principal that are working on the Site other than Sydney Trains and TfNSW (and any contractors appointed by either of them).
- (b) Where the Contractor has complied with all its obligations in clause 2.9, the Contractor must promptly give the Principal's Representative written notice of any interface issue or dispute with any Interface Contractor.
- (c) Upon receipt of the Contractor's notice under clause 2.9(b):
- (i) the Principal's Representative must promptly convene a meeting between the Contractor, the relevant Interface 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 the Contractor and the Interface Contractor to resolve the issues or dispute; and

- (iii) the Contractor must work in good faith with the Principal's Representative and the Interface Contractor to resolve the issues or dispute.
- (d) The Contractor:
 - (i) acknowledges and agrees that:
 - A. the Interface Contractors will require access to the Site in order to perform their obligations under their respective contracts with the Principal;
 - B. no act or omission by an Interface Contractor will, whether or not it causes any delay, disruption or interference to the Contractor's Activities, constitute an act or omission of the Principal or the Principal's Representative (including any breach of Contract or Variation directed by the Principal's Representative); and
 - C. subject to clause 10.7 and clause 10.13 and except where the Principal's Representative directs a Variation in circumstances where the Contractor has fully complied with clause 2.9, the Principal will not be liable upon any Claim by the Contractor arising out of or in any way in connection with:
 - 1) the Interface Contractors carrying out their work; or
 - 2) any act or omission of an Interface Contractor; and
 - (ii) warrants that the Original Contract Price and the Contractor's Program contain sufficient allowances for the assumption by the Contractor of the obligations and risks under clause 2.9(a) and this clause 2.9(d).

2.9A Cooperation and Integration Deeds

- (a) The Contractor must:
 - (i) within [REDACTED] after receipt of a request from the Principal's Representative, provide to the Principal:
 - A. the Operator Cooperation and Integration Deed; and
 - B. an Interface Contractor Cooperation and Integration Deed with any Interface Contractor nominated by the Principal,each duly executed by the Contractor in the number of counterparts required by the Principal; and
 - (ii) at all relevant times comply with the terms of the Project Cooperation and Integration Deeds.
- (b) If the Principal makes a request under clause 2.9A(a)(i) for the Contractor to execute:

- (i) an Operator Cooperation and Integration Deed to which the Operator will be party; or
- (ii) an Interface Contractor Cooperation and Integration Deed to which any Interface Contractor nominated by the Principal will be party,

the Principal must, within [REDACTED] of receiving the executed documents from the Contractor, itself execute, and procure that the Operator or the relevant Interface Contractor nominated by the Principal (as applicable) executes, the relevant document.

2.9B Master Interface Protocols Deed Poll

- (a) The Contractor must:
 - (i) within [REDACTED] after receipt of a request from the Principal's Representative, provide to the Principal the Master Interface Protocols Deed Poll, duly executed by the Contractor; and
 - (ii) at all relevant times comply with the terms of the Master Interface Protocols Deed Poll.
- (b) The Principal will procure that the Operator and each Interface Contractor nominated by the Principal executes a Master Interface Protocols Deed Poll other than Sydney Trains and TfNSW (and any contractors appointed by either of them).

2.9C Collateral Warranty Deed Poll

[REDACTED]

2.10 Incident Management Reporting

- (a) The Contractor must identify clear guidelines for responding to any Incident arising from the performance of the Contractor's Activities and establish procedures to ensure that the Principal's Representative is promptly notified of any Incident in accordance with the SWTC.
- (b) Should an Incident occur which:
 - (i) is reportable under any relevant Law, the Contractor must immediately report the Incident to the relevant Authority and the Principal's Representative in accordance with the SWTC; and
 - (ii) relates to rail safety, the Contractor must notify the Principal and any relevant Rail Transport Agency management centre or the nearest network control officer.
- (c) In relation to any environmental or safety Incident involving Hazardous Material, Contamination, Pollution or other waste that arises during the performance of the Contractor's Activities, the Contractor must:

- (i) at its own cost promptly take all appropriate action to manage and dispose of all Hazardous Material, Contamination, Pollution or other 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) If the Contractor causes or contributes to the occurrence of an Incident and fails to ensure that the Principal is promptly notified, the Principal, may without prejudice to any other right it has under this Contract, immediately terminate the Contract by written notice to the Contractor.
- (e) Without prejudice to the Principal's other rights under this Contract, if the Principal forms the reasonable view, upon the occurrence (or imminent risk of the occurrence) of an Incident, that the Contractor 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 the Contractor as a debt due from the Contractor to the Principal.
- (f) Without prejudice to the Principal's other rights under this Contract, the Principal's Representative may issue a direction under clause 10.14 requiring the Contractor to suspend the carrying out of the whole or any part of the Contractor's Activities in the event:
- (i) of any Incident involving:
 - A. a significant spill of Contamination;
 - B. any accident or release of Contamination which it believes may pose a danger to health, life or property; or
 - C. any actual damage or harm to the Environment or a significant risk of harm to the Environment; or
 - (ii) any safety incident occurs which leads to, or has the potential to lead to, a fatality or injury to person (including any incident which must be reported to SafeWork NSW, ONRSR or other work health and safety regulator) or damage to property.

The Principal will not be liable upon any Claim by the Contractor for any cost, expense, loss, delay, disruption or penalty arising out of or in connection with:

- (iii) any suspension of the Contractor's Activities due to a direction to suspend issued, or for the failure to issue a notice to suspend, in the circumstances set out in this clause 2.10(f); and

- (iv) complying with a direction issued under clause 2.10(h), including complying with the steps which the Principal's Representative directs that the Contractor must take before the Principal's Representative will issue a direction to recommence the Contractor's Activities.
- (g) If the Principal's Representative issues a notice to suspend in the circumstances set out in clause 2.10(f), the Contractor may not recommence the Contractor's Activities in respect of the part of the Contractor's Activities to which the notice relates until the Principal's Representative issues a direction to the Contractor permitting the Contractor to recommence the Contractor's Activities affected by the notice to suspend.
- (h) If the Principal's Representative issues a notice to suspend in the circumstances set out in clause 2.10(f) the Principal's Representative may also direct the Contractor as to the steps which the Contractor must take before the Principal's Representative will issue a direction pursuant to clause 10.14 permitting the Contractor to recommence the Contractor's Activities affected by the notice to suspend. In these circumstances the Contractor must, at its cost, comply with the direction of the Principal's Representative, and only once the Principal's Representative is satisfied that the Contractor has complied with the requirements of the direction issued under this clause 2.10(h) will the Principal's Representative issue a direction to the Contractor permitting the Contractor to recommence the Contractor's Activities affected by the notice to suspend.
- (i) 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 notice to suspend in the circumstances set out in clause 2.10(f), as a debt due and payable from the Contractor to the Principal.

2.11 Principal Contractor

- (a) In this clause 2.11 the terms 'construction project', 'construction work', 'principal contractor' and 'workplace' have the same meanings assigned to those terms under the WHS Legislation.

For the purpose of the WHS Legislation and the Contract:

- (i) the construction work involved in the Contractor's Activities; and
- (ii) any construction work carried out on the Site by any Interface Contractor, the Principal or any other person which is performed during any period in which the Contractor has been engaged as principal contractor ("**Site Interface Work**"),

are taken to be part of the same 'construction project'.

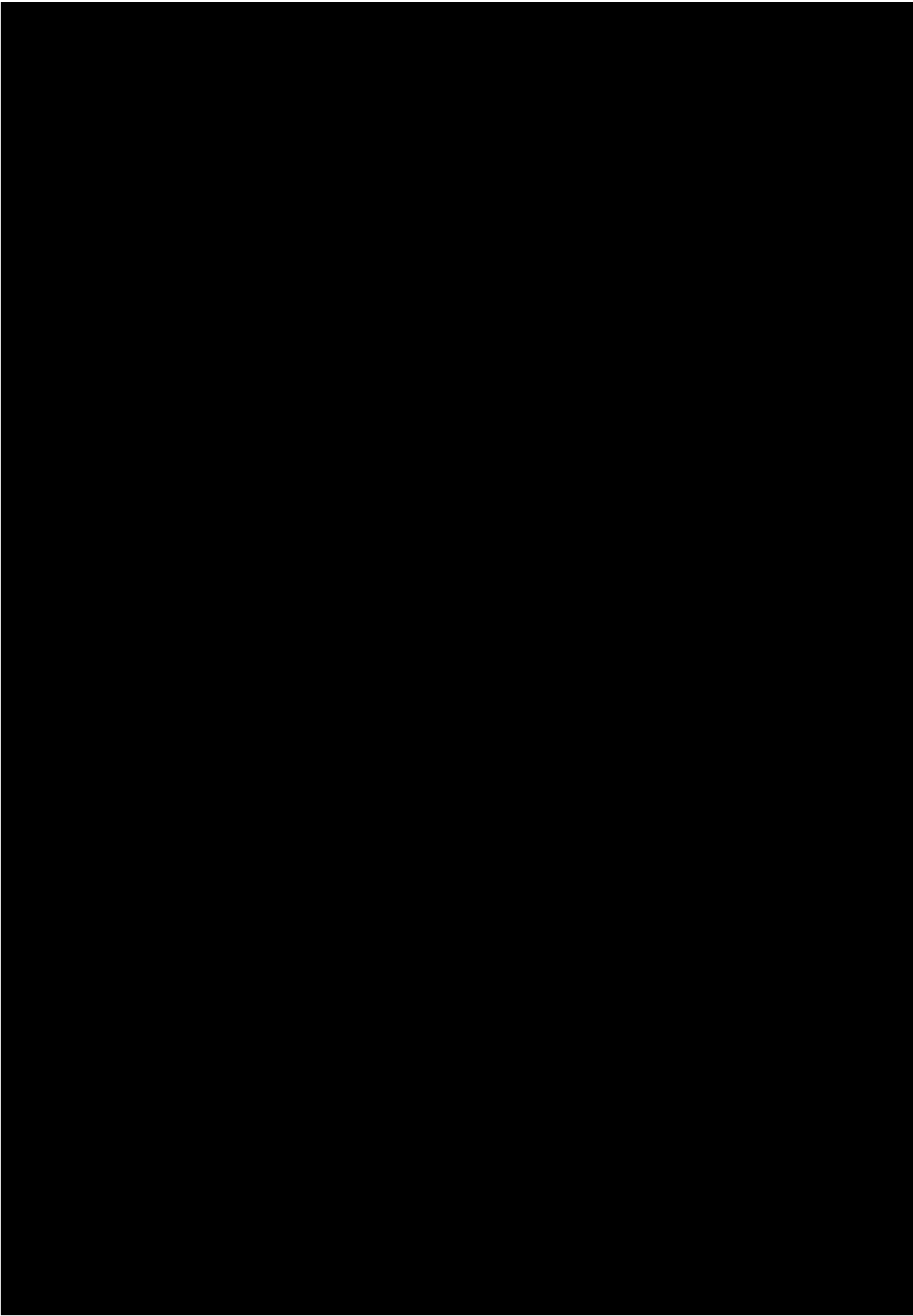
- (aa) The parties acknowledge and accept that any appointment by the Principal of the Contractor as principal contractor in relation to construction work involved in the Contractor's Activities and Site Interface Work in a part of the Site will be made subject to the provisions of the Sydney Metro Principal Contractor

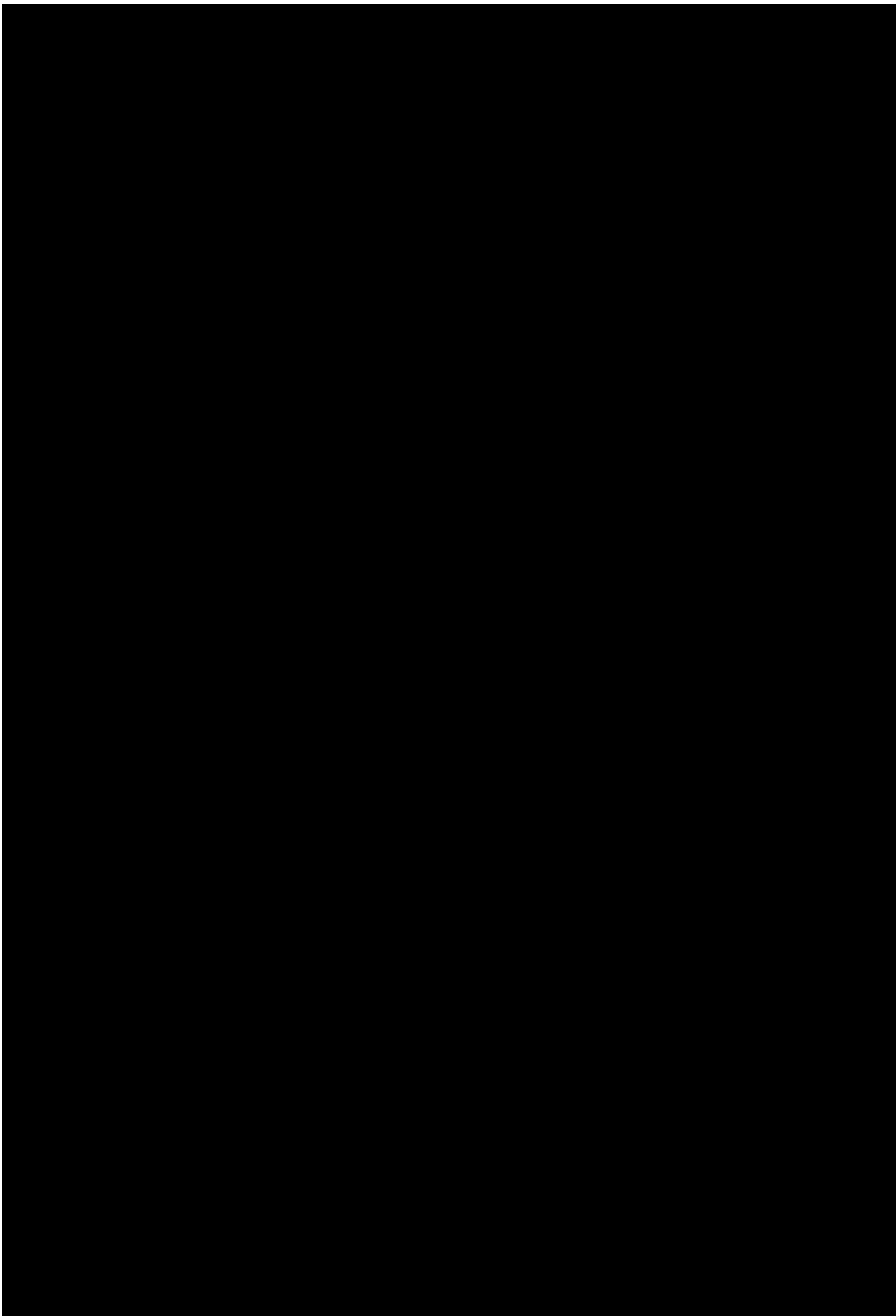
Appointment and Transfer Process, which includes provisions for the Appointed PC (CICG Process) Area.

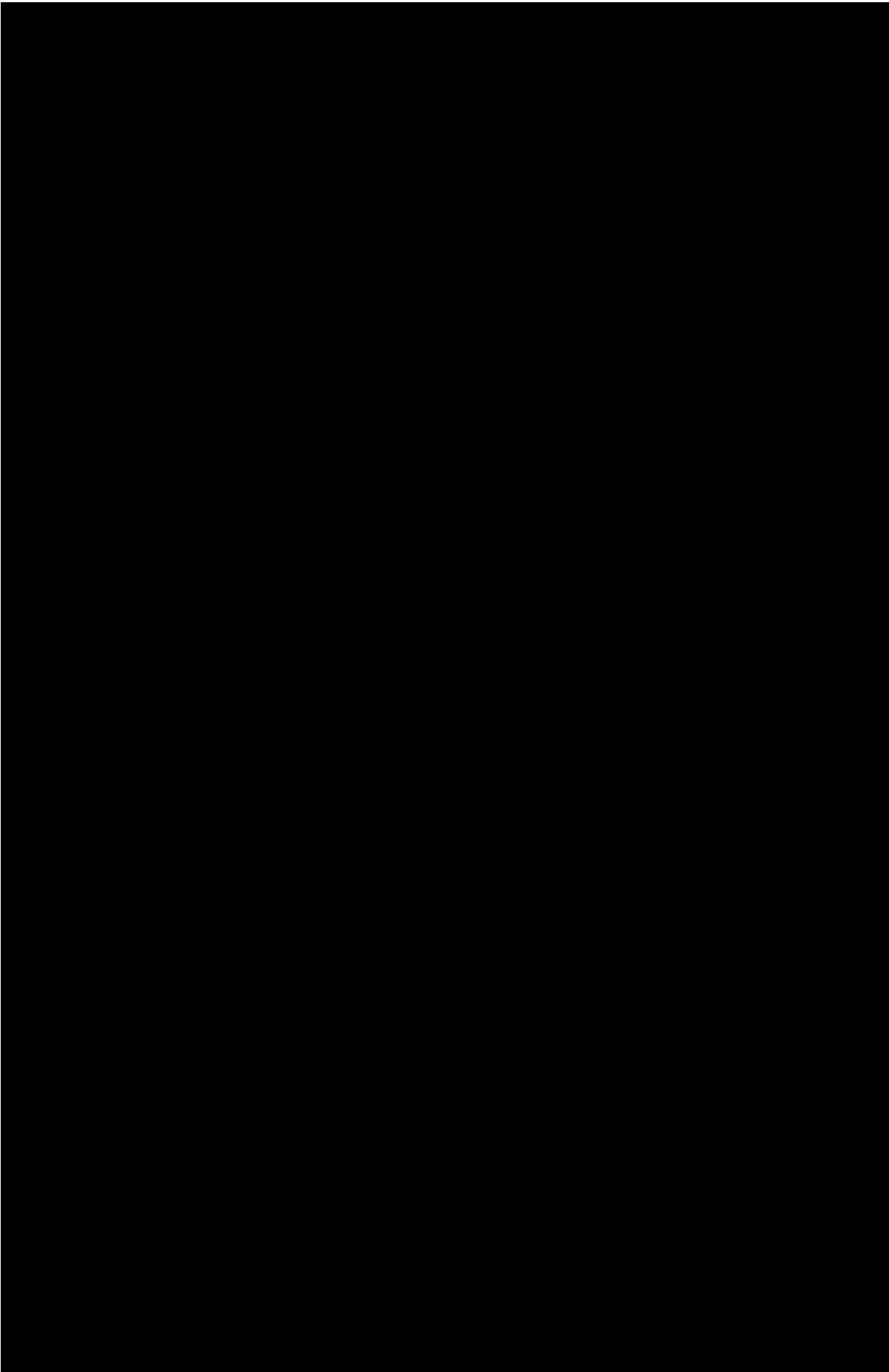
- (b) To the extent that the Contractor's Activities or any Site Interface Work carried out on the Site includes construction work:
 - (i) the Principal engages the Contractor as the principal contractor in respect of:
 - A. all Contractor's Activities and Site Interface Work carried out in each part of the Site (other than any Appointed PC (CICG Process) Area or an Other Contractor PC Area) for the period(s) of time:
 - 1) commencing on the earlier of:
 - a) the date and time specified in a notice from Sydney Trains or the Principal (as relevant) to the Contractor handing over control of the relevant part of the Site in the form of Appendix D (*Station Sydney Trains to Contractor Handover*) to the Sydney Metro Principal Contractor Appointment and Transfer Process or such other similar form as may be provided by Sydney Trains or the Principal; and
 - b) the point in time immediately prior to the Contractor commencing construction works in the relevant part of the Site; and
 - 2) ending on the earlier of:
 - a) the date that both the Contractor and Sydney Trains complete a form regarding hand back of control of the relevant part of the Site to Sydney Trains in the form of Appendix E (*Sydney Trains Railway Station Hand Back*) to the Sydney Metro Principal Contractor Appointment and Transfer Process; and
 - b) termination of this Contract;
 - B. all Contractor's Activities and Site Interface Work carried out in an Appointed PC (CICG Process) Area for the period of time:
 - 1) commencing on the date and time specified in the CICG Minutes or Appointment as the PC Letter (as applicable) for that Appointed PC (CICG Process) Area; and
 - 2) ending on the earlier of:
 - a) if applicable, the date and time specified in the CICG Minutes or Appointment as the PC Letter (as applicable) as the date on which the Contractor's

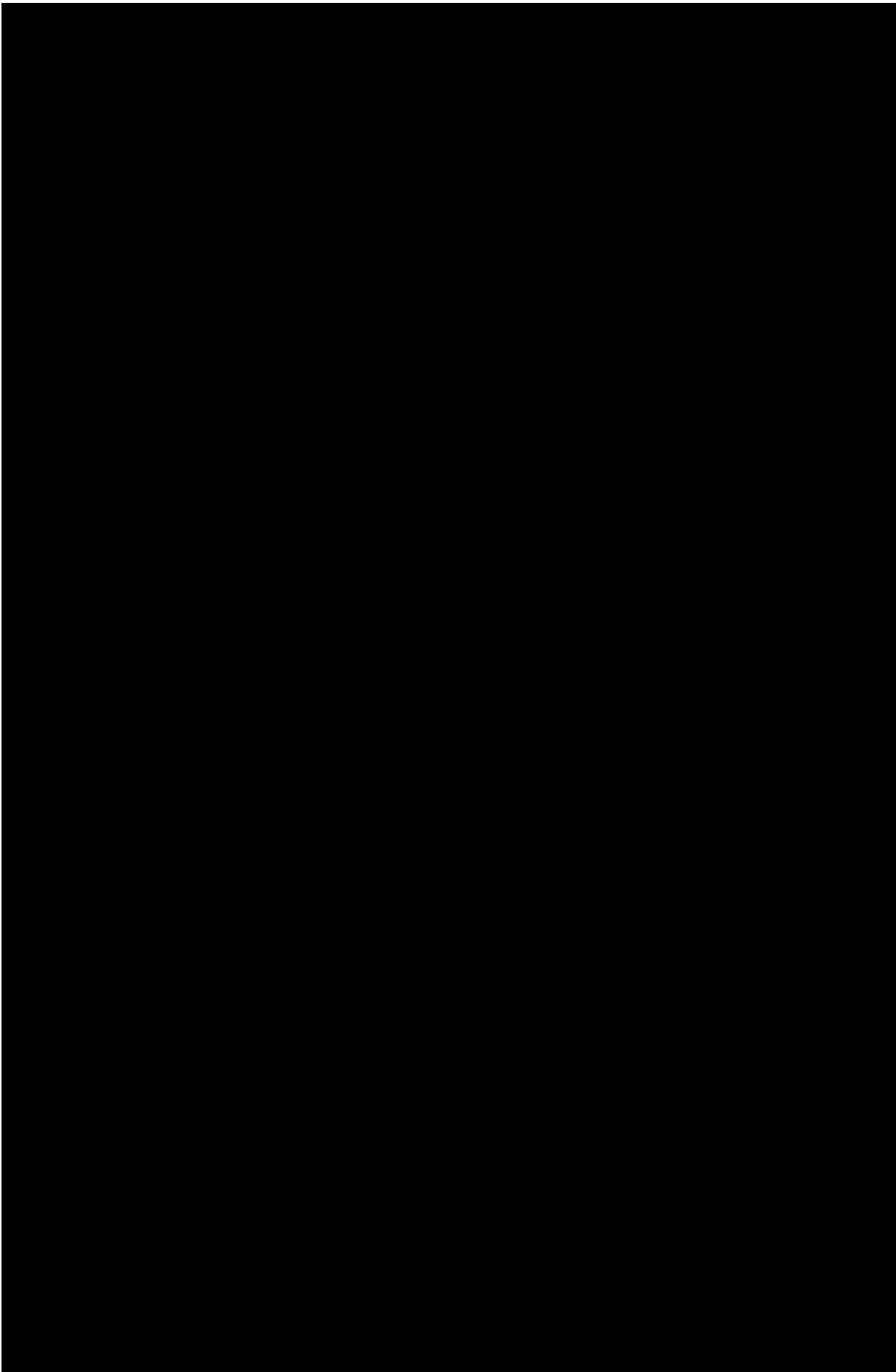
- appointment as principal contractor ends for that Appointed PC (CICG Process) Area;
- b) the Date of Construction Completion in respect of the relevant Portion to which the CICG Area relates; and
 - c) termination of this Contract;
- (ii) during any periods in which the Contractor has been engaged as principal contractor in respect of a part of the Site:
- A. the Contractor is authorised to:
 - 1) have management and control over that part of the Site and of each workplace at which the relevant Contractor's Activities and Site Interface Work is to be carried out; and
 - 2) discharge the duties of a principal contractor under the WHS Legislation;
 - B. the Principal must:
 - 1) give the Contractor prior notice of any Interface Contractor (other than Sydney Trains and TfNSW and any contractors appointed by either of them) undertaking Site Interface Work on that part of the Site; and
 - 2) provide the Contractor with executed deed polls in favour of the Contractor and the Principal in the form set out in Schedule 23 from each Interface Contractor engaged by the Principal undertaking Site Interface Work other than Sydney Trains and TfNSW (and any contractors appointed by either of them); and
 - C. the Contractor:
 - 1) accepts the engagement as principal contractor and agrees to discharge the duties imposed on a principal contractor by the WHS Legislation and the Contract;
 - 2) must comply with the requirements set out in the Sydney Metro Principal Contractor Appointment and Transfer Process including in relation to handover of principal contractor status to another person;
 - 3) must exercise and fulfil all of the functions and obligations of a principal contractor under the WHS Legislation so as to:
 - a) ensure that the responsibilities imposed on a principal contractor by the WHS Legislation are discharged; and

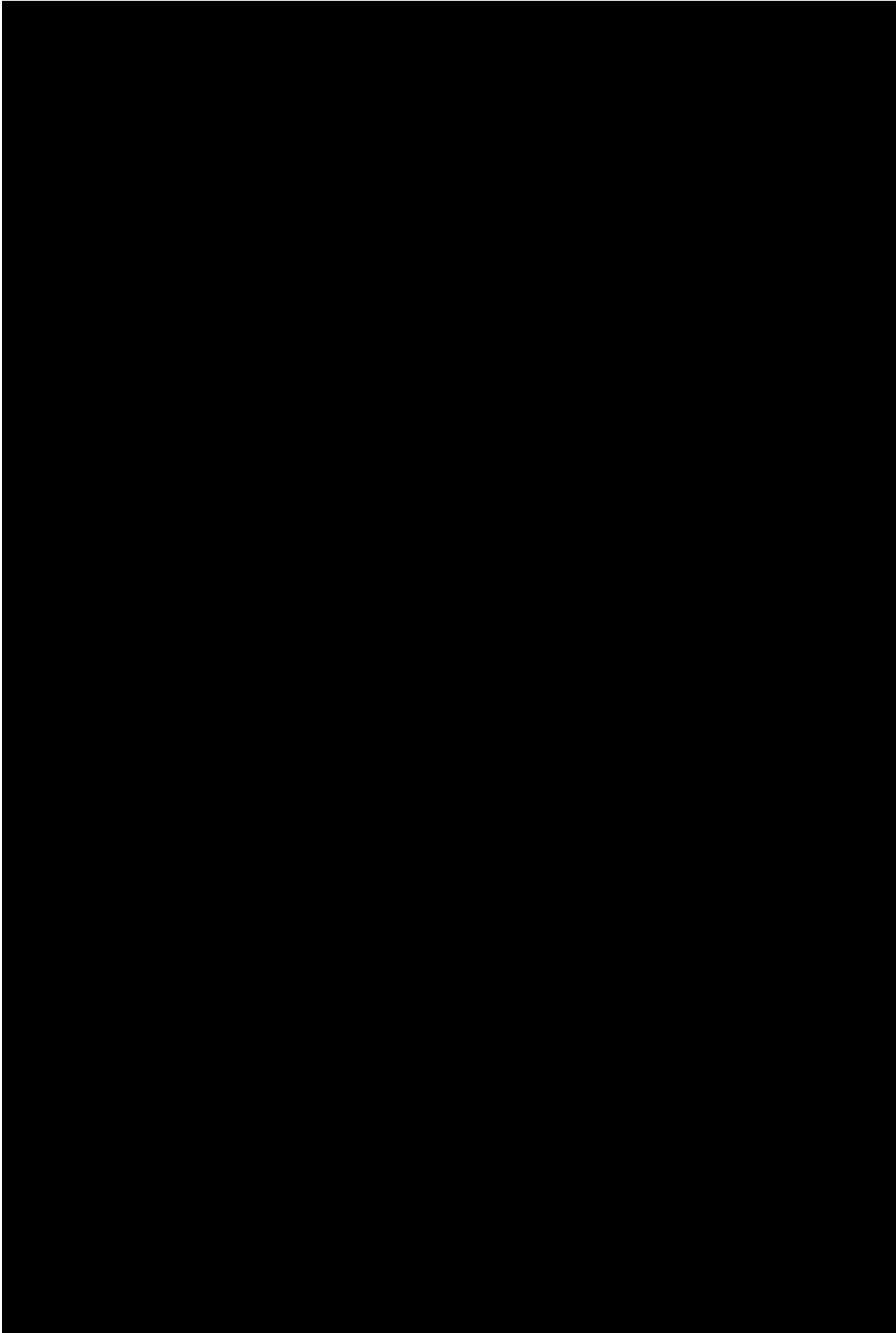
- b) enable the Principal to satisfy its obligations under the WHS Legislation in connection with the Site; and
- 4) warrants that the Original Contract Price and the Contractor's Program contains sufficient allowance for the assumption by the Contractor of all obligations in relation to its engagement as principal contractor as contemplated in this Contract; and
- (iii) if the Contractor's appointment as principal contractor ends in accordance with clause 2.11(b)(i)A.2) or clause 2.11(b)(i)B.2) (as applicable), the Contractor may be re-appointed as principal contractor for the same part of the Site in accordance with the provisions of clause 2.11(b)(i)A or clause 2.11(b)(i)B (as applicable).
- (c) To the extent not prohibited by Law, the Contractor must indemnify the Principal against any damage, expense, loss (including reasonable legal fees) or liability suffered or incurred by the Principal, arising out of or in connection with any failure of:
 - (i) the Contractor to exercise or fulfil the functions and responsibilities of a principal contractor under the WHS Legislation that the Contractor is required to discharge in accordance with this clause 2.11; or
 - (ii) the Contractor to otherwise comply with the WHS Legislation, Rail Safety National Law, Rail Safety Regulations, Heavy Vehicle National Law or other Law concerning work health and safety or clauses 4.4 and 7.8.
- (d) During any period where the Contractor has not been engaged as the principal contractor in respect of a part of the Site, the Contractor:
 - (i) acknowledges that the person who has been engaged as the principal contractor by the Principal is the principal contractor in respect of all construction work carried out by or on behalf of the Principal on that part of the Site during the relevant period;
 - (ii) must comply with any exercise by the person referred to in clause 2.11(d)(i) of such authority as is necessary to enable that person to discharge the duties imposed on a principal contractor by the WHS Legislation; and
 - (iii) must provide the person who has been engaged as the principal contractor with an executed site interface deed poll in favour of that person in the form set out in the relevant Project Cooperation and Integration Deed (where that person is an Interface Contractor) or otherwise in the same form as that set out in Schedule 23 but with such amendments as are required by the Principal to reflect that the Contractor will be the accessing contractor and not the principal contractor.

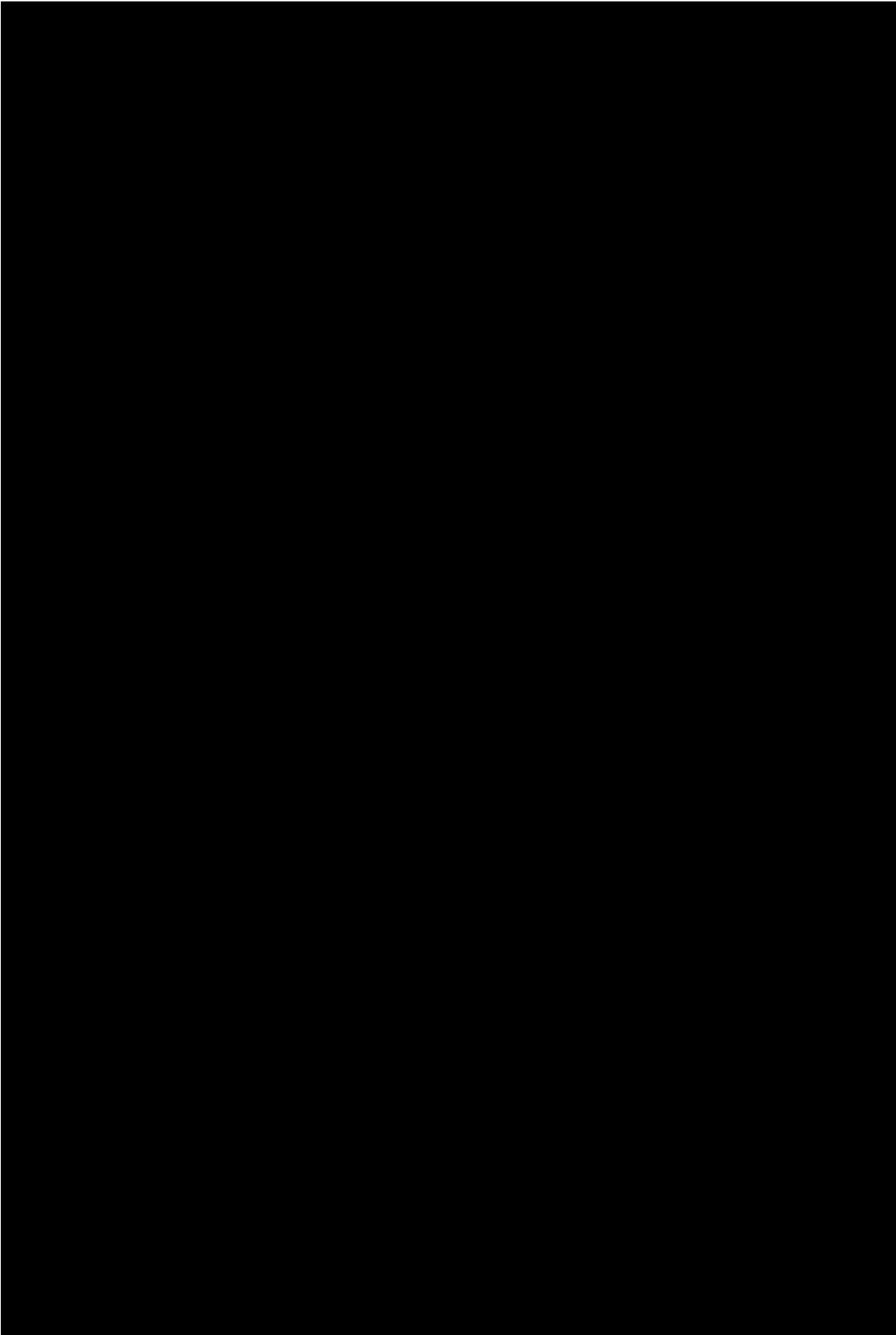


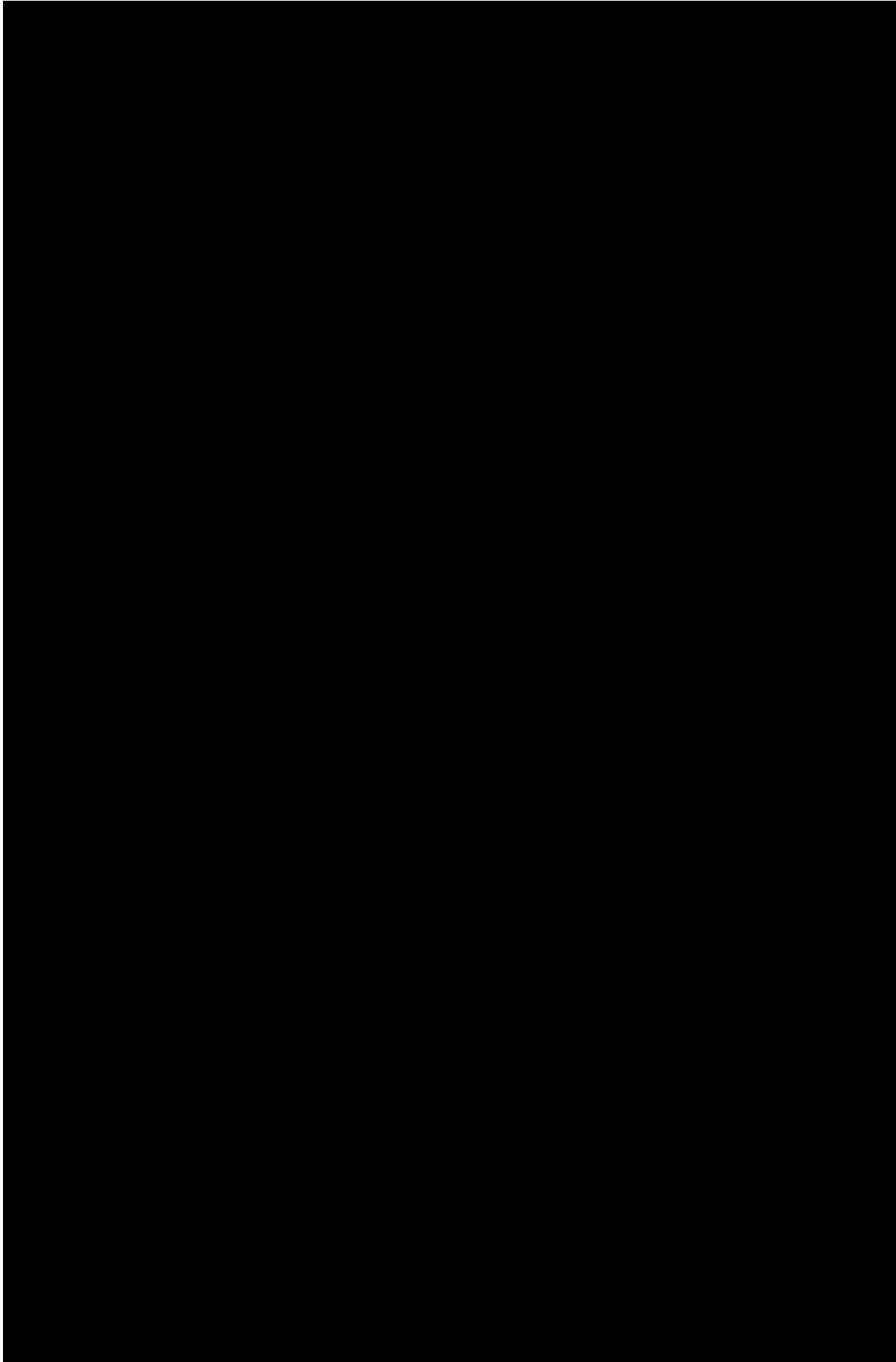












2.13 Public Art

- (a) The Contractor acknowledges and agrees that:
 - (i) the Principal will provide the Contractor with the public art digital package which the Contractor must install at the Stations as part of the Contractor's Activities in accordance with the requirements set out in the public art digital package and the SWTC; and
 - (ii) it will fully co-operate and liaise with the Design Contractor and the Public Art Technical Adviser in relation to the installation of the public art provided by the Principal at the Stations.

2.14 Not used

2.15 Existing Operations

- (a) The Contractor acknowledges that:
 - (i) Existing Operators and any other persons must continue their Existing Operations during the course of the carrying out of the Contractor's Activities;
 - (ii) the access ways to the Site are used by Existing Operators and other persons and will not be available exclusively to the Contractor; and
 - (iii) in using these access ways the Contractor must ensure the minimum disturbance and inconvenience to the Existing Operations.
- (b) The Contractor bears the risk of coordinating its access to the Site with any other relevant party (including Existing Operators) that use the access ways to the Site.
- (c) Without limiting any other obligations of the Contractor, the Contractor must:
 - (i) to the extent reasonably possible in performing the Contractor's Activities, not interfere with the free movement of traffic (vehicular, pedal cycle and pedestrian) into and out of, adjacent to, around, on or about the Site or the Existing Operations or 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 Site); and
 - B. workplace health and safety issues to enable the Principal to comply with, and not place the Principal in breach of, its obligations under any WHS Legislation;

- (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 the Site;
- (v) ensure that in carrying out and completing the Contractor's Activities, the Works properly interface and integrate with, and connect to, the physical infrastructure of the Existing Operations so as to enable the Works, when completed, to fully comply with the requirements of this Contract; 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 Contractor's Activities; and
 - B. when directed by the Principal's Representative, take such action as is required to ensure that its obligations in this clause 2.15(c) are complied with.
- (d) Except to the extent expressly permitted by this Contract, the Contractor must:
 - (i) not disrupt, interrupt or interfere in any way with the Existing Operations;
 - (ii) not cause any nuisance or inconvenience to the Existing Operations except to the extent such nuisance or inconvenience was a direct and unavoidable result of carrying out and completing the Contractor's Activities in accordance with this Contract; and
 - (iii) program and coordinate the Contractor's Activities under this Contract in accordance with Good Industry Practice and so as to minimise the effect that the carrying out of the Contractor's Activities under this Contract has on the Existing Operations.
- (e) The Contractor must ensure that its Associates at all times comply with this clause 2.15.

2.16 Contract Management Plans

The Contractor must:

- (a) develop the Contract Management Plans as required by the SWTC;
- (b) ensure that the relevant Contract Management Plans are consistent with the Initial Contract Management Plans and the Draft Construction Environmental Management Plan (as relevant);
- (c) update the Contract Management Plans as required by the SWTC or as directed by the Principal's Representative; and

- (d) comply with:
 - (i) the Contract Management Plans; and
 - (ii) to the extent the Contract Management Plans are not finalised, the Initial Contract Management Plans and the Draft Construction Environmental Management Plan (as relevant) as if they were the Contract Management Plans.

3. The Site and location of the Works

3.1 Access

- (a) The Contractor acknowledges and agrees that:
 - (i) the Contractor will be responsible for procuring access to [REDACTED] [REDACTED] to the extent required for the purposes of the Contractor's Activities; and
 - (ii) subject to clause 3.1(a)(i), access to the Site will be provided progressively to the Contractor as set out in the Site Access Schedule.
- (b) Subject to clauses 2.12, 3.1A, 3.1(a)(i) and 3.1(c) and any other provision of this Contract affecting access, the Principal must:
 - (i) give, or ensure the Contractor has, access to each part of the Site in respect of which the Principal is responsible for providing access by the dates set out in the Site Access Schedule (and if a period is specified in relation to access to a part of the Site, then by the last day of that period); and
 - (ii) once access to a part of the Site is provided to the Contractor, thereafter continue to allow, or ensure that the Contractor is continued to be allowed, access to that part of the Site in accordance with the Site Access Schedule.
- (c) The Contractor acknowledges and agrees that:
 - (i) access to:
 - A. the Site or any part thereof in respect of which the Contractor has been engaged as the principal contractor pursuant to clause 2.11 will only confer on the Contractor for the period of the engagement a right to such management and control as is necessary to enable the Contractor to execute the Contractor's Activities in accordance with this Contract and to discharge its responsibilities under the WHS Legislation, including, where relevant, to discharge its responsibilities as principal contractor; and
 - B. any part of the Site in respect of which the Contractor is not then engaged as the principal contractor will not confer on the

Contractor a right to management and control of that part of the Site;

- (ii) the Principal is not obliged to give the Contractor access to any part of the Site in respect of which the Principal is responsible for providing access and the Contractor must not access any other parts of the Site until the Contractor has:
 - A. complied with clause 2.7(b) and clause 2.7(g) of this Contract;
 - B. submitted the Project Health and Safety Management Plan, the Construction and Site Management Plan and the Systems Integration Plan, as required by the SWTC, and the Construction Traffic Management Plan, to the Principal's Representative under clause 9.8 and the Principal's Representative has not rejected the proposed Construction and Site Management Plan, Project Health and Safety Management Plan, Systems Integration Plan or Construction Traffic Management Plan within the time period specified in clause 9.8 after such submission in accordance with clause 9.8(c);
 - C. effected the insurance policies required under clause 13.6;
 - D. complied with clause 13.6 with respect to each insurance policy;
 - E. complied with the matters set out in item 31 of Schedule 1; and
 - F. complied with any requirements to access that part of the Site referred to in clause 3.1(g);
- (iii) the Principal is not obliged to provide, and the Contractor will not be given, exclusive access to the Site;
- (iv) the Principal is not obliged to carry out any work or provide any facilities to the Contractor which may be necessary to enable the Contractor to obtain access to the Site or carry out the Contractor's Activities;
- (v) the Principal and others will engage Other Contractors to work upon or in the vicinity of the Site and Extra Land at the same time as the Contractor;
- (vi) without limiting or otherwise restricting any other provision under this Contract, the Contractor is responsible for all costs arising from or in connection with accessing any railway services or stations and accessing [REDACTED] and [REDACTED];
- (vii) the Contractor:
 - A. must access the Site only at the points of entry and exit and using the routes for ingress and egress set out in the Planning Approval and the Construction Traffic Management Plans;

- B. acknowledges that the Principal has not secured rights of access over the routes for ingress and egress set out in the Planning Approval and the Construction Traffic Management Plans; and
 - C. except as expressly provided for in this Contract, is responsible, at its own cost and risk, for obtaining access to and from, and securing rights of ingress to and egress from, the Site and the Extra Land to perform the Contractor's Activities.
- (d) The Principal's obligations under clause 3.1(a) and 3.1(b) in respect of each part of the Site for which the Principal is providing access will cease:
- (i) where the Site Access Schedule specifies that access to the Site for the purposes of this clause 3.1 is provided for a particular period, on the date specified in the Site Access Schedule; or
 - (ii) upon the issue of a Notice of Completion in respect of the final Portion occupying that part of the Site,

except to the extent required to allow the Contractor to comply with its obligations during the Defects Rectification Periods or to undertake Post Construction Completion Activities and Mandatory Testing Activities. Any such access is subject to the Contractor:
 - (iii) complying with:
 - A. the requirements of the applicable Project Cooperation and Integration Deeds; or
 - B. where the Contractor has not entered into a Project Cooperation and Integration Deed with the relevant Interface Contractor, the site access and work, health and safety procedures of that Interface Contractor; and
 - C. any requirements to access that part of the Site referred to in clause 3.1(g); and
 - (iv) executing and complying with a deed poll substantially in the form of Schedule 23 in favour of the relevant principal contractor for the site.
- (e) Failure by the Principal to give access as required by clause 3.1(b) will not be a breach of this Contract but will entitle the Contractor to:
- (i) an extension of time to any relevant Date for Construction Completion or Date for Completion under clause 10.10 if the requirements of that clause are satisfied; and
 - (ii) claim the additional costs reasonably and necessarily incurred by the Contractor as a direct result of the delay in accordance with clause 10.13.
- (f) The Contractor's entitlement under clause 3.1(e)(ii) will be its only right to payment of money arising out of or in any way in connection with the Principal's failure to give access as required by clauses 3.1(a)(ii), 3.1(b)(i) or 3.1(b)(ii).

- (g) The Contractor must comply with:
- (i) any conditions of access that apply to an area of the Site as specified in the Site Access Schedule; and
 - (ii) the terms of any easement, restrictions on use, covenants, agreements or other similar arrangements burdening or benefitting the land contained in the Site as recorded in the register maintained by Land and Property Information New South Wales under the *Real Property Act 1900* (NSW).



3.1A Early Access

- (a) If the Principal estimates that a part of the Site will become accessible earlier than the relevant date set out in the Site Access Schedule for that part of the Site, the Principal's Representative may (but is not obliged to):
- (i) give notice requesting the Contractor accept early access to that part of the Site from the date specified by the Principal in the notice; or
 - (ii) pursuant to clause 10.1(e), direct that the Contractor accept early access to that part of the Site from the date specified by the Principal in the direction,
- the date specified being the "**Early Access Date**".
- (b) If the Principal gives notice to the Contractor under clause 3.1A(a)(i), the Contractor may (but is not obliged to) accept access to the relevant part of the Site from the Early Access Date.
- (c) Subject to clause 3.1(d) and clause 3.1(e), if the Contractor accepts access to the relevant part of the Site from the Early Access Date in accordance with clause 3.1A(b) or the Principal gives a direction to the Contractor to accept early access pursuant to clause 10.1(e), the Principal will give, or ensure that the Contractor has, access to the relevant part of the Site for the Early Access Period for the purpose of performing the Contractor's Activities during the Early Access Period.
- (d) The Contractor acknowledges and agrees that any early access given or directed by the Principal to the Contractor under this clause 3.1A is on the same

terms and conditions as access agreed to be provided by the Principal to the Contractor to the Site under the other provisions of this Contract (including clause 3.1(c) and clause 3.1(g)) and the Contractor must comply with all such terms and conditions in respect of any early access.

- (e) Without limiting the Contractor's rights or obligations under the Master Interface Protocols Deed Poll and each Project Cooperation and Integration Deed, the Contractor acknowledges that during the Early Access Period it must comply with the provisions of clause 2.9.
- (f) The Contractor agrees that, except where expressly provided under this Contract, the Contractor will have no Claim or assert any right whatsoever against the Principal arising out of, or in relation to, the Contractor accessing any part of the Site during the Early Access Period.

3.2 Temporary Works

The Contractor must carry out all Temporary Works required to execute the Contractor's Activities so that the Temporary Works will be fit for their intended purpose.

3.3 Management and Control of the Site

At all times after being given access to the Site or a part of the Site under clause 3.1(c)(i)A and before the Date of Construction Completion of the relevant Portion, the Contractor:

- (a) without limiting any right of the Principal or the Principal's Representative under this Contract, and subject to clauses 2.11 and 3.1(c)(i)B, will be responsible for the management and control of the Site;
- (b) must control access to, and the security and maintenance of, the Site or that part, except where the Principal's Representative advises otherwise;
- (c) must ensure public safety on and adjacent to the Site or that part;
- (d) must provide for the continuous safe passage of the public, road and railway system users on existing roads, footpaths, access ways, cycleways and Rail Tracks affected by the Contractor's Activities in accordance with this Contract;
- (e) must, subject to clauses 3.1 and 3.10, the SWTC and any relevant Law, limit access to the Site to its employees, Subcontractors and their employees and Subcontractors, and those with a legitimate interest in being on the Site as part of the Contractor's Activities;
- (f) must not impede access or Utility Services to private property without the consent of the Principal's Representative and the relevant owner or occupier; and
- (g) must ensure that existing buildings (including residences, whether occupied or unoccupied) on the Site are preserved and protected from damage (including

from theft and vandalism) until (where relevant) they are due for demolition by the Contractor if that forms part of the Contractor's Activities.

3.4 Land in Addition to the Site

The Contractor must:

- (a) procure for itself and at its own cost the occupation or use of or relevant rights over any land or buildings in addition to the Site, including any land owned by a Rail Transport Agency, which is necessary or which it may require for the purposes of carrying out the Contractor's Activities ("**Extra Land**");
- (b) at its own cost carry out all activities and procure all Utility Services necessary to make the Extra Land suitable for use by the Contractor;
- (c) as a condition precedent to Construction Completion of a Portion:
 - (i) rehabilitate any Extra Land in accordance with the requirements of all relevant Authorities and other relevant persons; and
 - (ii) provide to the Principal's Representative:
 - A. unless not required by the Principal's Representative, a properly executed certificate in the form of Schedule 13 or a release on terms otherwise satisfactory to the Principal's Representative from all claims or demands (whether for damages or otherwise howsoever arising) from the owner or occupier of, and from other persons having an interest in, such Extra Land; and
 - B. if the Contractor is unable to obtain such a release despite using its best endeavours to do so, a statement from the Contractor to the effect that the owner or occupier, or other person having an interest has failed or refused to execute such a release within 15 Business Days after it being provided by the Contractor to the owner, occupier or other person together with copies of all correspondence with the Authorities and the owner, occupier or other person and evidence that the Contractor has complied with the requirements of the relevant Authorities and the owner, occupier or other person of the Extra Land; and
- (d) indemnify the Principal against any damage, expense, loss, cost or liability suffered or incurred by the Principal arising out of or in any way in connection with a claim by the owner or occupier of, or any other person having any interest in any Extra Land, provided that the Contractor's liability to indemnify the Principal will be reduced proportionally to the extent that an act or omission of the Principal or an agent of the Principal contributed to the damage, expense, loss, cost or liability.

3.4A Site Conditions

- (a) Without limiting clause 3.6(c), the Contractor warrants and for all purposes it will be deemed to be the case that, prior to the date of this Contract, the Contractor:
 - (i) examined this Contract, the Site, any Extra Land and their surroundings and any other information that was made available in writing by the Principal, or any other person on the Principal's behalf, to the Contractor or its Associates for the purpose of tendering;
 - (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 its Tender and its obligations under this Contract;
 - (iii) satisfied itself as to the correctness and sufficiency of its Tender and that it has made adequate allowance for the costs of complying with all of its obligations under this Contract and of all matters and things necessary for the due and proper performance and completion of the Contractor's Activities;
 - (iv) informed itself of:
 - A. all matters relevant to the employment of labour at the Site; and
 - B. all industrial matters relevant to the Site;
 - (v) was given the opportunity during the tender period to itself undertake, and to request others to undertake, tests, enquiries and investigations:
 - A. relating to the subject matter of Information Documents and Materials; and
 - B. for construction 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 Contract, the Information Documents and Materials, the Site Conditions, as well as the risks, contingencies and other circumstances having an effect on its Tender, the performance of its obligations and its potential liabilities under this Contract; and
 - (vii) 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 this Contract and assume the obligations and potential risks and liabilities which it imposes on the Contractor.
- (b) Without limiting or otherwise affecting clauses 2.5, 3.5, 3.6, 3.7, 3.8 and 3.9, the Principal makes no representation and gives no warranty to the Contractor or its Associates in respect of:

- (i) the Site Conditions likely to be encountered during the execution of the Contractor's Activities or otherwise in respect of the condition of:
 - A. the Site, Extra Land or their surroundings; or
 - B. any structure or other thing on, under, above or adjacent to the Site or Extra Land including [REDACTED];
 - (ii) the adequacy or suitability of the Site or the Extra Land for the Contractor's Activities; or
 - (iii) the existence, location, condition or availability of any Utility Services on, under, above, adjacent to or related to the Site or Extra Land.
- (c) Subject to clauses 2.5, 3.5, 3.7, 3.8, 3.9, 10.7 and 10.13, the Contractor accepts:

- (i) the Site and any Extra Land; and
- (ii) any structures or other thing on, above or adjacent to, or under the surface of, the Site and any Extra Land including [REDACTED]

in their present condition from time to time 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 Works, the Temporary Works or the Contractor's Activities,

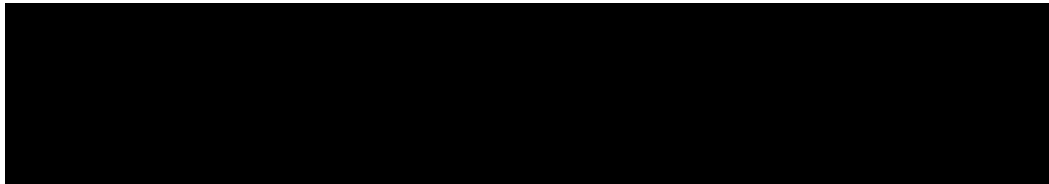
arising out of, or in any way in connection with any of the Site Conditions or any other condition of the Site encountered in performing the Contractor's Activities and releases the Principal from all Claims, costs, liabilities, expenses, losses or damages in connection with such matters.

- (d) The Contractor must construct the Works and Temporary Works in accordance with this Contract and will not be relieved of its obligations under this Contract, irrespective of:
- (i) the Site Conditions encountered in performing the Contractor's Activities; and
 - (ii) whatever may be the condition or characteristics (including all sub-surface conditions) of:
 - A. the 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 Site or any Extra Land including [REDACTED] [REDACTED] the Environment or their surroundings.

- (e) Nothing in this clause 3.4A or clause 3.6 limits the operation of clauses 2.5(d), 3.5, 3.7, 3.8(d), 3.9, 10.7 and 10.13.

3.5 Latent Conditions

- (a) Subject to the last paragraph of this clause 3.5(a), "**Latent Conditions**" are:
 - (i) sub-surface physical conditions on the Site or its surroundings which differ materially from:
 - A. the conditions identified in the Reports and could not be reasonably inferred from the Reports; and
 - B. the conditions which should reasonably have been anticipated by a competent and experienced contractor at the date of this Contract; and



if such a contractor had:

- (iii) examined all Information Documents and Materials and any other information that was made available in writing by the Principal, or any other person on the Principal's behalf, to the Contractor on or before the date of this Contract (including the Reports);
- (iv) examined all information (including the Reports) relevant to the risks, contingencies and other circumstances and obtainable by the making of reasonable enquiries with respect to the Contractor's Activities; and
- (v) inspected the Site and its surroundings,

and which difference results in a material impact on the cost or time of performing the Contractor's Activities.

Latent Conditions exclude:

- (vi) weather conditions or physical conditions which are a consequence of weather conditions at the Site, regardless of their severity;
 - (vii) Utility Services;
 - (viii) Valuable Finds;
 - (ix) Hazardous Material; and
 - (x) Contamination.
- (b) If during the execution of the Contractor's Activities, the Contractor becomes aware of a Latent Condition the Contractor must:

- (i) promptly; and
 - (ii) where possible before the physical conditions are disturbed,
- give written notice thereof to the Principal's Representative.

The Contractor must provide in that notice to the Principal's Representative a statement specifying:

- (iii) the conditions encountered and in what respects the Contractor considers they constitute a Latent Condition;
 - (iv) the additional work and additional resources which the Contractor estimates to be necessary to deal with the Latent Condition;
 - (v) the time the Contractor anticipates will be required to deal with the Latent Condition and the expected delay (if any) in achieving Completion of any Portion as a result of dealing with the Latent Condition;
 - (vi) the Contractor's estimate of the cost of the measures necessary to deal with the Latent Condition, including sufficient information to support the estimate; and
 - (vii) other details reasonably required by the Principal's Representative.
- (c) If a Latent Condition:
- (i) has a direct effect on the Contractor carrying out the Contractor's Activities; and
 - (ii) directly results in an increase in the Contractor's costs of carrying out the Contractor's Activities,

which a competent and experienced contractor could not have avoided or mitigated, and could not reasonably have anticipated at the date of this Contract, the Contract Sum will be increased by the additional costs reasonably and necessarily incurred by the Contractor (which are to be exclusive of any amount for preliminaries, Overhead Costs or profit) in carrying out the Contractor's Activities as a result of the Latent Condition as determined by the Principal's Representative together with the [REDACTED] applied to those additional costs.

- (d) In making a valuation pursuant to clause 3.5(c) or determining an extension of time under clause 10.10 in respect of a Latent Condition, regard will not be had to any Contractor's Activities, additional costs or delays suffered or incurred more than 14 days before the date on which the Contractor gives the written notice required by clause 3.5(b).

3.6 Information Documents and Materials

- (a) Whether or not any Information Documents and Materials or any part thereof form an Exhibit to this Contract, the Contractor acknowledges that:

- (i) the Information Documents and Materials or part thereof do not form part of this Contract and that clause 3.6(c) applies to the Information Documents and Materials or part thereof; and
 - (ii) where Information Documents and Materials or any part thereof form an Exhibit to this Contract, they do so only for the purposes of identification of that document or part thereof.
- (b) Without limiting clause 3.6(c):
- (i) the Contractor acknowledges that the Principal does not warrant, guarantee, assume any duty of care or other responsibility for or make any representation about the accuracy, adequacy, suitability or completeness of the Information Documents and Materials, and the Information Documents and Materials do not form part of this Contract; and
 - (ii) subject to clause 3.6(e), the Principal will not be liable upon any Claim by the Contractor 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 and Materials to or by the Contractor or any other person to whom the Information Documents and Materials are disclosed; or
 - B. a failure by the Principal to provide any other information, data or documents to the Contractor.
- (c) The Contractor:
- (i) warrants that it did not in any way rely upon:
 - A. any information, data, representation, statement or document made, or provided to the Contractor, by the Principal or anyone on behalf of the Principal or any other information, data, representation, statement or document for which the Principal is responsible or may be responsible whether or not obtained from the Principal or anyone on behalf of the Principal; or
 - B. the accuracy, adequacy, suitability or completeness of such information, data, representation, statement or document,for the purposes of entering into this Contract except to the extent that any such information, statement or document forms part of this Contract;
 - (ii) warrants that it enters into this Contract based on its own investigations, interpretations, deductions, information and determinations; and
 - (iii) acknowledges that it is aware that the Principal has entered into this Contract relying upon:
 - A. the warranties, acknowledgements and agreements in clauses 3.6(c)(i) and 3.6(c)(ii); and

- B. the agreements and acknowledgements in the Contractor's Tender.
- (d) The Contractor releases and indemnifies the Principal from and against:
 - (i) any claim against them by, or liability of them to, any person; or
 - (ii) (without being limited by clause 3.6(d)(i)) any costs, expenses, losses or damages suffered or incurred by them,
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 and Materials, as referred to in clauses 3.6(b) and 3.6(c)(i), to or by the Contractor or any other person to whom the Information Documents and Materials are disclosed or a failure by the Principal to provide any information, data or documents to the Contractor (other than any information, data or documents which the Principal is required to provide to the Contractor by the terms of this Contract);
 - (iv) any breach by the Contractor of this clause 3.6; or
 - (v) the Information Documents and Materials being relied upon or otherwise used by the Contractor or by any other person to whom the Information Documents and Materials are disclosed by the Contractor, in the preparation of any information or document, including any information or document which is "misleading or deceptive" or "false or misleading" (within the meaning of those terms in sections 18 and 29 (respectively) of the Australian Consumer Law in Schedule 2 of the *Competition and Consumer Act 2010* (Cth) or any equivalent provision of State or Territory legislation.
- (e) The acknowledgements, warranties, releases and indemnities referred to in clauses 3.6(a) to 3.6(d) do not affect the Contractor's rights under clauses 3.5(c), 3.7 and 3.9.

3.7 Hazardous Material

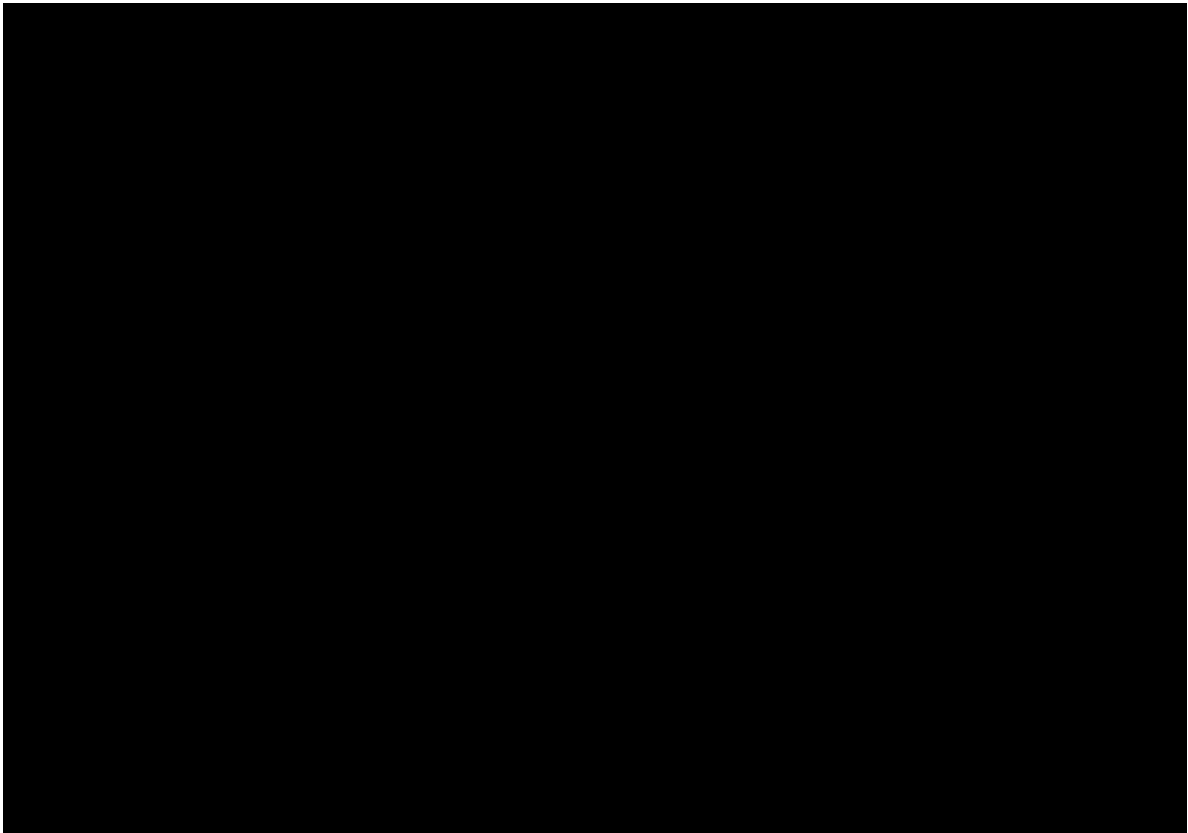
- (a) The parties acknowledge and agree that:
 - (i) the Contractor has been provided with the Hazardous Material Report;
 - (ii) the Hazardous Material Report identifies Hazardous Material in structures which are located on, in or under the Site;
 - (iii) there may be Hazardous Material (other than that identified in the Hazardous Material Report) in structures which are located on, in or under the Site; and
 - (iv) the Contractor's Activities include taking the appropriate steps referred to in this clause 3.7:

- A. in respect of any Hazardous Material identified in the Hazardous Material Report; and
- B. in respect of any Hazardous Material the Contractor discovers on the Site,

regardless of whether the Contractor provides the report and notice referred to in clause 3.7(d) and 3.7(e) (respectively) and whether or not the Hazardous Material was referred to in (or was reasonably able to be inferred from) the Hazardous Material Report.

- (b) Without limiting clause 3.7(a), the Principal does not make any representation or warranty (express or implied) as to the nature or extent of any Hazardous Material that may be present in structures on, in or under the Site.
- (c) The Contractor must provide for the management of any Hazardous Material in any structures in the Project Health and Safety Management Plan and take all measures required to protect workers and others from Hazardous Material in accordance with Law, the WHS Guidelines and the SWTC.
- (d) Without limiting clause 2.3(a)(i) and 3.7(a), the Contractor must carry out a Hazardous Material audit at the earliest practical opportunity prior to commencing any demolition work or construction work on structures which could potentially contain Hazardous Material and provide a copy of the audit report to the Principal's Representative.
- (e) Without limiting any obligation of the Contractor to comply with the Authority Approvals, the Contractor must submit a notice for the review of the Principal's Representative under clause 9.8 containing details of the works necessary to remove and dispose of any Hazardous Material identified in accordance with clause 3.7(d).
- (f) After the Principal's Representative has had the period referred to in clause 9.8(c)(ii) (or such shorter period as the Principal's Representative may advise to the Contractor in writing) and has not rejected the Contractor's notice under clause 3.7(e) the Contractor must comply with the notice and remove and dispose of any Hazardous Material in structures on, in or under the Site in accordance with relevant Laws, Authority Approvals and any direction of a relevant Authority where applicable.
- (g) The Contractor acknowledges and agrees that:
 - (i) other than for the amount referred to in clause 3.7(h), the Contractor will not be entitled to any increase in the Contract Sum or to make any Claim for payment:
 - A. for complying with this clause 3.7;
 - B. in respect of carrying out the Hazardous Material audit required by clause 3.7(d);

- C. for any costs incurred arising out of or in connection with any delay or disruption to the Contractor's Activities resulting from the presence of any Hazardous Material regardless of whether the Hazardous Material was referred to in (or reasonably able to be inferred from) the Hazardous Material Report or otherwise; or
 - D. in respect of any investigation of structures on the Extra Land and any removal and disposal of Hazardous Material from such structures; and
- (ii) the Contractor will not be entitled to an extension of time in respect of any delay arising out of or in connection with the discovery of Hazardous Material or the discharge of the obligations under this clause 3.7 regardless of whether the Hazardous Material was referred to in (or reasonably able to be inferred from) the Hazardous Material Report or otherwise.



3.8 Things of Value Found

- (a) Each valuable mineral, fossil, coin, article or object of value or antiquity, and each other remains or thing of geological, archaeological, anthropological or other special interest found on the Site (each a "**Valuable Find**") are, and will as between the Contractor and the Principal be and remain, the property of the Principal.
- (ab) Where a number of Valuable Finds are found in an area of the Site, each Valuable Find is treated as an individual Valuable Find for the purposes of this

clause 3.8. The Contactor is not entitled to aggregate individual Valuable Finds to claim they comprise or form part of another Valuable Find.

- (b) The Contractor must:
 - (i) immediately notify the Principal's Representative if it discovers a Valuable Find;
 - (ii) ensure the Valuable Find is protected and not lost, removed, disturbed or damaged;
 - (iii) comply with the requirements of any Authorities and all Laws (noting that compliance with Law is a contractual requirement and does not constitute a direction by the Principal) and Codes and Standards in relation to the Valuable Find; and
 - (iv) comply with any directions of the Principal's Representative in relation to the Valuable Find.
- (c) The Contractor acknowledges and agrees that compliance with clause 3.8(b)(iii) does not constitute a direction of the Principal's Representative for the purposes of clause 3.8(d).
- (d) Despite the acknowledgements, warranties, releases and indemnities referred to in clauses 3.6(a) to 3.6(c):
 - (i) the Contract Sum will be increased by the additional costs reasonably and necessarily incurred by the Contractor as determined by the Principal's Representative in complying with:
 - A. requirements of Authorities in accordance with clause 3.8(b)(iii) in relation to the Valuable Find, where such requirements are in addition to the requirements of Authorities with which the Contractor is already required to comply under Laws and Codes and Standards; or
 - B. the Principal's Representative's directions under clause 3.8(b)(iv); and
 - (ii) the Contractor will be entitled to make a claim for an extension of time under clause 10.8 in respect of the discovery of a Valuable Find (subject to the operation of clause 10.7(c)) to the extent that the discovery of that Valuable Find results in the Contractor being directed, ordered or required by the Principal's Representative, an Authority, a court or tribunal or by Law to suspend or cease to perform the Contractor's Activities, for more than 10 days in aggregate for each discovery of a Valuable Find,

but only to the extent that the Valuable Find was not identified in the SWTC or could not have been reasonably anticipated by a competent and experienced contractor at the date of this Contract if such a contractor had:

- (iii) examined all Information Documents and Materials and any other information that was made available in writing by the Principal, or any other person on the Principal's behalf, to the Contractor on or before the date of this Contract (including the SWTC);
 - (iv) examined all information (including the SWTC) relevant to the risks, contingencies and other circumstances and obtainable by the making of reasonable enquiries with respect to the Contractor's Activities; and
 - (v) inspected the Site and its surroundings,
- as determined by the Principal's Representative.

3.9 Contamination

- (a) The parties acknowledge and agree that:
 - (i) there may be Contamination on, in, under or migrating from or on to the Site including in surface soils generally and locations which have been filled;
 - (ii) the Principal does not make any representation or warranty (express or implied) as to the nature or extent of any Contamination;
 - (iii) part of the Contractor's Activities include taking the appropriate steps referred to in this clause 3.9 in respect of any Contamination the Contractor discovers on the Site; and
 - (iv) in addition to the requirements of the Planning Approval (but subject to clauses 3.9(h), 7.3(ab) and 7.3(b)), the Contractor bears the risk of all Contamination:
 - A. on, in, over, under or about the Site to the extent it is disturbed by or interfered with in the carrying out of the Contractor's Activities;
 - B. which migrates:
 - 1) onto the Site as a result of the Contractor's Activities and which could have been reasonably anticipated by a competent and experienced contractor that had examined the Site and its surroundings and all Information Documents and Materials; or
 - 2) from the Site as a result of the Contractor's Activities;
 - C. on, in, over, under or about any Extra Land or migrating onto or from any Extra Land; and
 - D. which otherwise arises out of or in connection with the Contractor's Activities.
- (b) The Contractor must:

- (i) provide for the management of any Contamination that may be present on, in, under or migrating from or on to the Site in the Project Health and Safety Management Plan and take all measures required to protect workers and others in accordance with the Law, the WHS Guidelines and the SWTC; and
- (ii) without limiting clause 3.9(b)(i) or clause 3.9(d) (but subject to clause 3.9(ca)), undertake Remediation of any Contamination on the Site and the Extra Land in accordance with Law, the Planning Approval and all guidelines made or approved by the EPA so that in respect of Contamination on, in, over, under or about:
 - A. the Site:
 - 1) the Site is suitable for the performance of the Contractor's Activities and the further construction, operation and maintenance of Sydney Metro City & Southwest; and
 - 2) whole of life costs associated with the further construction, operation and maintenance of Sydney Metro City & Southwest at the relevant parts of the Site where the Remediation is undertaken are considered when the Contamination is first identified and minimised; and
 - B. any land outside the Site, the relevant land is returned to the state that it would have been in if unaffected by the Contractor's Activities (unless otherwise agreed with the relevant third party).
- (c) Not used.
- (ca) To the extent that Contamination:
 - (i) on, in, over, under or about the Site is disturbed by or interfered with in the carrying out of the Contractor's Activities, the Contractor is:
 - A. required to Remediate only those parts of such Contamination that are actually disturbed by or interfered with in the carrying out of the Contractor's Activities; and
 - B. is not required 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 by or interfered with in the carrying out of the Contractor's Activities; or
 - (ii) migrates onto the Site as a result of the Contractor's Activities, the Contractor is not required to trace to the source of such Contamination where such source is outside the Site.
- (d) Without limiting any obligation of the Contractor to comply with all Authority Approvals, the Contractor must:
 - (i) in respect of all Compensable Contamination:

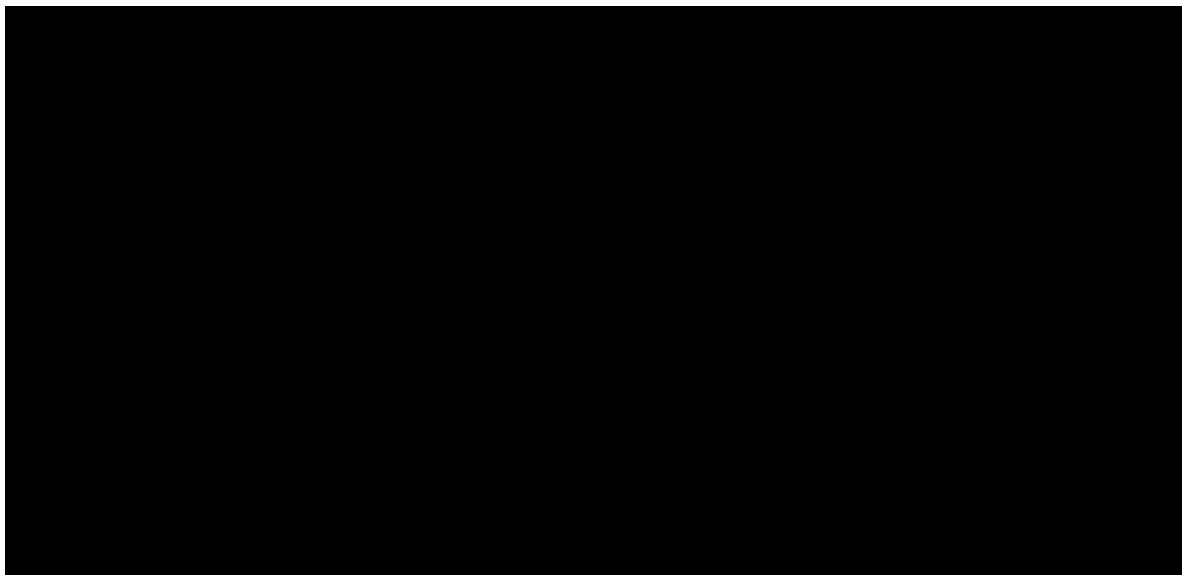
- A. notify the Principal's Representative in writing within 5 Business Days of becoming aware of the existence of any Compensable Contamination on, in, under or migrating from or on to the Site, and thereafter provide the Principal's Representative with such further written details as the Principal's Representative may request;
- B. promptly after providing a notice under clause 3.9(d)(i)A, submit a notice for the review of the Principal's Representative under clause 9.8 containing:
 - 1) details of the steps which the Contractor proposes to take to:
 - a) investigate, remediate, dispose of, manage, monitor, contain or otherwise deal with the Compensable Contamination so that the Site is remediated to a standard suitable for the proposed use of the Site;
 - b) ensure good handling practices are followed and that the Compensable Contamination is not mixed with other waste types and there is no mixing of Compensable Contamination and other waste with otherwise reusable materials;
 - c) ensure that the Compensable Contamination is correctly classified, including carrying out sufficient waste classification sampling to clearly delineate the Compensable Contamination (including to identify where further delineation is warranted),

(together paragraphs a) to c) being the **"Remediation Steps"**);
 - d) not used;
 - e) if necessary, dispose of Compensable Contamination off-site to a licensed waste disposal facility in accordance with clause 3.13; and
 - f) report to all relevant Authorities if required to do so,

in each case in accordance with any relevant Law, Authority Approvals and any written direction from a relevant Authority;
 - 2) the Contractor's estimate of any amount which will be payable in respect of any Compensable Contamination under clause 7.3(ab) to comply with the Remediation Steps and, where the estimate is not a fixed lump sum, the proposed administration and verification measures to evidence the cost of the Remediation Steps; and

- 3) a plan documenting the Remediation Steps determined pursuant to the criteria in clause 3.9(d)(i)B.1 ("**Remediation Action Plan**"); and
 - C. only after the Principal's Representative has had the period referred to in clause 9.8(c)(ii) (or such shorter period as the Principal's Representative may advise to the Contractor in writing) and has not rejected the Contractor's notice under clause 3.9(d)(i)B, implement the Remediation Action Plan in accordance with relevant Laws, Authority Approvals and any direction of a relevant Authority where applicable; and
- (ii) in dealing with any Contamination:
- A. take all measures necessary to protect workers and others in accordance with Law and the WHS Guidelines;
 - B. take all reasonable steps to ensure that the Contamination is quarantined from other in-situ or excavated materials so as to prevent cross-contamination; and
 - C. provide waste classification reports and documents demonstrating that cross-contamination has not occurred, including in the case of Compensable Contamination, cradle to grave waste tracking and waste classification information along with evidence supporting the quantum of Compensable Contamination disposal work undertaken such as volume and mass.
- (e) The Contractor must indemnify the Principal against any claim, damage, expense, loss, liability, fine or penalty suffered or incurred by the Principal arising out of or in any way in connection with any failure by the Contractor to comply with any obligation under this clause 3.9, provided that the Contractor's liability to indemnify the Principal will be reduced proportionally to the extent that an act or omission of the Principal or an Associate of the Principal may have contributed to the claim, damage, expense, loss, liability, fine or penalty.
- (f) The Contractor acknowledges and agrees that:
- (i) other than for the amounts referred to in clauses 3.9(h), 7.3(ab) and 7.3(b), the Contractor will not be entitled to any increase in the Contract Sum or to make any other Claim for payment:
 - A. for complying with this clause 3.9;
 - B. in respect of carrying out investigations of the Site or Extra Land to determine the presence and extent of any Contamination present on, in, under or migrating from or on to the Site or Extra Land;
 - C. in respect of any costs incurred in the management, handling and disposal of General Solid Waste;

- D. for any costs incurred arising out of or in connection with any delay or disruption to the Contractor's Activities resulting from the presence of any Contamination on, in, under or migrating from or on to the Site or Extra Land including arising out of or in connection with complying with its obligations under this clause 3.9; or
 - E. for Remediating or overcoming Contamination;
- (ii) subject to clause 3.9(f)(iii), the Contractor will not be entitled to an extension of time in respect of any delay arising out of or in connection with the discovery of Contamination or the discharge of its obligations under this clause 3.9; and
 - (iii) the Contractor may, if it is delayed as a consequence of Remediating any Contamination referred to in clause 3.9(h), claim an extension of time to the relevant Date(s) for Construction Completion and/or Date(s) for Completion.



3.10 Principal's Right to Access and Inspect

Subject to clause 3.14, the Contractor must:

- (a) without limiting clauses 3.3 and 3.4, minimise disruption or inconvenience to:
 - (i) the Principal, Sydney Trains, other occupiers (including railway system or rail passengers and other users), tenants and potential tenants of the Site, Extra Land or any other land or buildings on or adjacent to the Site or any Extra Land or a part thereof in their occupation or use of, or attendance upon, any part of the Site and Extra Land, including any occupation or use of the Works, a Portion or a part thereof under clause 12.6; and
 - (ii) others having a right of access to the Site, Extra Land or any other land or buildings on or adjacent to the Site or any Extra Land; and

- (b) at all times:
 - (i) give the Principal's Representative, the Principal, Sydney Trains and any person authorised by either the Principal's Representative, the Principal or Sydney Trains access to:
 - A. the Works and the Temporary Works;
 - B. the Site or any Extra Land; or
 - C. any other areas where the Contractor's Activities are being carried out,

including unobstructed vehicular access through the Site or any Extra Land; and
 - (ii) provide the Principal, the Principal's Representative and Sydney Trains with every reasonable facility necessary for the Inspection of the Contractor's Activities, including the Contractor's compliance with the Authority Approvals.

3.11 Not used

3.12 Condition Surveys

The Contractor must:

- (a) identify and prepare a condition survey of all property that could be affected or damaged by the Contractor's Activities and as required by the Planning Approval and in accordance with the SWTC;
- (b) prepare this condition survey a minimum of two weeks prior to commencing any work on the Site, or on any other land which is necessary for performing the Contractor's Activities or undertaking the Works, where that work could damage property on or off the Site;
- (c) in preparing this condition survey, must use suitably skilled, qualified, and experienced personnel or Subcontractors; and
- (d) prior to Construction Completion of a Portion, rectify any damage to property relating to the Contractor's Activities for that Portion caused by the Contractor's Activities.

3.13 Disposal of Hazardous Material, Contamination and other waste

- (a) The Contractor must remove from the Site and Extra Land and dispose of any Hazardous Material, Contamination or other waste pursuant to its obligations under this Contract to a licensed waste facility in accordance with all relevant Law and Authority Approvals.

- (b) The Contractor must:
 - (i) ensure that the entity that carries out the storage, treatment, transport and disposal of the Hazardous Material, Contamination or other waste from the Site or Extra Land holds all relevant Authority Approvals that are necessary or desirable; and
 - (ii) procure and provide evidence of such Authority Approvals to the Principal's Representative prior to removing and disposing of any Hazardous Material, Contamination or other waste from the Site or Extra Land pursuant to clause 3.13(a).

- (c) The Contractor must:
 - (i) sort all Hazardous Material, Contamination and other waste (including separating Hazardous Material and Compensable Contamination from clean material and any other type of Contamination or other waste);
 - (ii) not contaminate clean material by intermixing any Hazardous Material, Contamination or other waste; and
 - (iii) not intermix Hazardous Material or Compensable Contamination with clean material or any other type of Contamination or other waste,

and provide evidence of compliance with the above including evidence of appropriate investigation, processes and waste tracking.

- (d) The Contractor must ensure, and must ensure that its Associates ensure, that their respective employees, agents and contractors, as applicable, are suitably trained in correct and safe methods of loading, unloading and handling any Hazardous Material, Contamination or other wastes and that they comply with all applicable Laws.

- (e) The Contractor must:
 - (i) keep complete, accurate and up to date records of all materials that are disposed of or otherwise removed from the Site or any Extra Land (including all Contamination and other wastes) including classification certificates, tip dockets for all loads and evidence of the onsite tracking of all movements of Compensable Contamination; and
 - (ii) if requested, provide a copy of any such records to the Principal's Representative.

- (f) The Contractor must indemnify the Principal against any claim, damage, expense, loss, liability, fine or penalty suffered or incurred by the Principal arising out of or in any way in connection with any failure by the Contractor to comply with any obligation under this clause 3.13, provided that the Contractor's liability to indemnify the Principal will be reduced proportionally to the extent that an act or omission of the Principal or an Associate of the Principal contributed to the claim, damage, expense, loss, liability, fine or penalty.

3.14 Principal not in Control

The Contractor and Principal acknowledge that nothing in this Contract including the right to inspect pursuant to clause 3.10 or any audit by the Principal or the Principal's Representative at any time will be construed to mean or imply that:

- (a) the Principal has any management or control over the Contractor's Activities or the Site or Extra Land; or
- (b) the Principal has any responsibility for any act or omission by the Contractor or its Subcontractors or agents including compliance or non-compliance with any relevant Laws, Authority Approvals or this Contract.

4. Compliance

4.1 Quality of Work

The Contractor must in carrying out the Contractor's Activities use the materials and standard of workmanship required by this Contract, and otherwise comply with this Contract in the execution of the Contractor's Activities. In the absence of any other requirement or specification, the Contractor must use suitable new materials and ensure that all workmanship and materials are fit for their intended purpose.

4.2 SWTC

The Contractor must comply with the requirements of the SWTC.

4.3 Environmental Management

The Contractor must:

- (a) hold and maintain an environmental management system which complies with the requirements of the SWTC for so long as any Contractor's Activities are carried out;
- (b) as part of the Contract Management Plans, implement and maintain a contract specific Construction Environmental Management Plan for the management of environmental matters in accordance with the SWTC;
- (c) carry out the Contractor's Activities in accordance with the Construction Environmental Management Plan;
- (d) supervise Subcontractor's activities and ensure that they are complying with all relevant Law, Authority Approvals and the SWTC in relation to environmental management on the Site and Extra Land; and
- (e) use, and be able to demonstrate the use of, ecologically sustainable development principles (including any Sydney Metro sustainability initiatives under the Sustainability Management Plan) in the construction of the Works, Temporary Works and all other Contractor's Activities.

4.4 WHS Management

The Contractor must:

- (a) hold and maintain an WHS management system for so long as any Contractor's Activities are carried out that complies with the WHS Guidelines and the SWTC;
- (b) as part of the Contract Management Plans, develop, document and implement a contract specific Project Health and Safety Management Plan in accordance with the WHS Guidelines and SWTC;
- (c) carry out the Contractor's Activities in accordance with the Project Health and Safety Management Plan;
- (ca) comply with the requirements applicable to a "Safety Management Plan" set out in the Sydney Metro Principal Contractor Health and Safety Standard;
- (d) create a safe working environment for ensuring the safety of all authorised personnel on the Site and Extra Land and that no unauthorised individual gains access to the Site; and
- (e) supervise any Subcontractor's activities and ensure that they are complying with all relevant Law, Authority Approvals and the SWTC in relation to the WHS management on the Site and Extra Land.

4.4A Sydney Metro Principal Contractor Health and Safety Standard

- (a) The Contractor must comply with those parts of the Sydney Metro Principal Contractor Health and Safety Standard, as amended from time to time, that the Principal notifies the Contractor in writing that the Contractor must comply with as if it was a principal contractor for the purposes of that standard.
- (b) The Contractor acknowledges and agrees that:
 - (i) the Principal will update the Sydney Metro Principal Contractor Health and Safety Standard from time to time, including to address work health and safety issues relating to the Contractor's Activities and the Sydney Metro City & Southwest; and
 - (ii) notwithstanding any other provision of this Contract, the Contractor will not be entitled to make, and the Principal will not be liable on, any Claim arising out of or in any way in connection with:
 - A. any update or amendment to the Sydney Metro Principal Contractor Health and Safety Standard; or
 - B. any act or omission of the Principal in relation to the Sydney Metro Principal Contractor Health and Safety Standard (including any failure of the Principal to do anything specified in the Sydney Metro Principal Contractor Health and Safety Standard as being an obligation of the Principal or an Associate of the Principal).

4.5 No Relief from Obligations

The Contractor will not be relieved from any of its liabilities or responsibilities under this Contract (including under clause 8 or otherwise according to Law) nor will the rights of the Principal whether under this Contract or otherwise according to Law be limited or otherwise affected, by:

- (a) the implementation of, and compliance with, any management system or plan by the Contractor;
- (b) compliance with the Contract Management Plans by the Contractor;
- (c) any release, authorisation, approval or agreement by the Principal's Representative, or any other person acting on behalf of the Principal or the Principal's Representative, particularly those concerning or relating to the Contractor proceeding past any hold point or witness point identified in the SWTC or otherwise directed by the Principal's Representative;
- (d) any failure by the Principal, the Principal's Representative or any other person acting on behalf of the Principal or engaged by the Principal to detect any Defect, particularly whilst participating in any hold point or witness point procedure, including where such a failure is the result of a negligent act or omission; or
- (e) any inspections arranged by the Principal's Representative under the Contract or any related discussions between the Contractor's Representative and the Principal's Representative.

4.6 Engineering Authorisation

The Contractor represents and warrants that if it or any of its Subcontractors will carry out Asset Lifecycle Services that they are an AEO and have obtained ASA Authorisation to carry out the Asset Lifecycle Services.

4.7 ASA Compliance

- (a) Not used.
- (b) Without limiting or otherwise restricting clauses 4.7(c) and 4.7(d), if the Contractor or its Subcontractors have ASA Authorisation to carry out the Asset Lifecycle Services or obtain that ASA Authorisation prior to Construction Completion, the Contractor must:
 - (i) ensure that ASA Authorisation to carry out the Asset Lifecycle Services is held and maintained for so long as the Contractor's Activities are carried out; and
 - (ii) on and from the date that ASA Authorisation was granted, comply (and must ensure that its Subcontractors and all personnel for which the Contractor is responsible comply) with the conditions of the applicable ASA Authorisation.

- (c) The Contractor must (and must ensure that its Subcontractors and all personnel for which the Contractor is responsible):
 - (i) implement and comply with any ASA Requirements applicable to the Asset Lifecycle Services;
 - (ii) immediately notify the Principal's Representative in writing of any non-compliance with clauses 4.6 and 4.7;
 - (iii) cooperate fully with the ASA in the performance of the ASA's functions;
 - (iv) provide access to premises and resources as reasonably required by the ASA, including so that the ASA can effectively carry out its review, surveillance and audit functions;
 - (v) comply with the directions, instructions and requirements issued by the ASA;
 - (vi) notify the ASA of any matter that could reasonably be expected to affect the exercise of the ASA's functions;
 - (vii) provide the ASA with any information relating to its activities or any documents or other things reasonably required by the ASA in the exercise of its functions; and
 - (viii) provide the Principal with such reasonable assistance as may be reasonably required by the Principal to enable the Principal to cooperate fully with the ASA and to implement and comply with ASA Requirements.
- (d) The Contractor acknowledges and agrees that it is not entitled to make (and neither the Principal nor the ASA will be liable upon) any Claim arising out of or in connection with the requirements to obtain, or any delays or failure by the ASA in granting the Contractor, or its Subcontractors, ASA Authorisation or the obligation to comply with ASA Requirements with respect to ASA Authorisation.

5. Design and Design Documentation

5.1 Liability for Constructability Issues

- (a) The Contractor:
 - (i) acknowledges and agrees that:
 - A. prior to entering into this Contract, it undertook a review of the Design Stage 3 Design Documentation to ensure that there were no Constructability Issues in relation to the Design Stage 3 Design Documentation; and
 - B. without limiting clause 5.1B(a), it bears all risk in relation to all Constructability Issues; and

- (ii) warrants that the Original Contract Price and the Contractor's Program contain sufficient allowance for the assumption by the Contractor of all risk in relation to Constructability Issues.
- (b) Without limiting the Contractor's rights pursuant to clauses 6 and 17.1, the Contractor will not be entitled to make any Claim against the Principal, and the Principal will not be liable upon any Claim by the Contractor arising out of, or in any way in connection with Constructability Issues.
- (c) Without limiting clause 5.1(a) and 5.1(b) above, if during the execution of the Contractor's Activities the Contractor becomes aware of any Constructability Issue, the Contractor must immediately notify the Principal in writing including appropriate details of the Constructability Issue and how it considers the Constructability Issue should be resolved. If the Contractor considers that a change to the Principal's Design Documentation is required, it may give notice to the Principal in accordance with clause 6.7A(a) proposing a Variation.
- (d) The Contractor acknowledges and agrees that the approval of any Variation proposed by the Contractor pursuant to clause 5.1(c) will not relieve the Contractor from its liabilities or obligations (including those arising out of any warranties given under this Contract) or entitle the Contractor to an extension of time, whether under this Contract or otherwise according to any Law.

5.1A Design Errors

- (a) If during the execution of the Contractor's Activities, the Contractor becomes aware of any error or omission in the Principal's Design Documentation ("**Design Error**"), the Contractor must immediately notify the Principal in writing, including appropriate details of the Design Error.
- (b) The parties acknowledge and agree that:
 - (i) for the purposes of clause 5.1A(a), the Contractor is not required to:
 - A. engage a designer to review the Principal's Design Documentation for Design Errors; or
 - B. verify any design calculations or carry out "proof engineering" in connection with the Principal's Design Documentation to identify Design Errors; and
 - (ii) if the Contractor gives notice of a Design Error under clause 5.1A(a), the Contractor must continue with construction of the Works in accordance with clause 7.1(a)(i)A.2) (notwithstanding the existence of the alleged Design Error) and clause 10.1(a), unless otherwise directed by the Principal's Representative.
- (c) Following receipt of the notice given by the Contractor under clause 5.1A(a), the Principal's Representative must give written notice to the Contractor that either:

- (i) it does not consider the issue identified by the Contractor to be a Design Error with reasons;
 - (ii) it does consider the issue identified by the Contractor to be a Design Error but that no amendments to the Principal's Design Documentation are required to address the Design Error, in which case the Principal's Representative will direct the interpretation of the Principal's Design Documentation to address the Design Issue; or
 - (iii) it does consider the issue identified by the Contractor to be a Design Error and will procure the necessary amendments to the Principal's Design Documentation and issue the amended Principal's Design Documentation to the Contractor.
- (d) If:
- (i) clause 5.1A(c)(ii) applies:
 - A. the Contractor must comply with the Principal's Representative's direction; and
 - B. the Contractor's only entitlement against the Principal will arise in accordance with clause 17.1; or
 - (ii) clause 5.1A(c)(iii) applies, the Principal will issue a Variation pursuant to the procedure set out in clause 6 which shall be the Contractor's only entitlement against the Principal.

5.1B Responsibility for preparation of and updates to design documentation

- (a) The parties acknowledge and agree that if any amendments are required to the Principal's Design Documentation after the date of this Contract, including any amendments required to resolve any Constructability Issues or Design Errors, or arising out of or in connection with a Variation, the Principal will procure that such amendments are made by the Design Contractor and will issue the updated Principal's Design Documentation to the Contractor.
- (b) Except as expressly provided for in this Contract:
 - (i) the issue of any updated Principal's Design Documentation to the Contractor in accordance with clause 5.1B(a) will not constitute a direction by the Principal's Representative to which clause 17.1 applies; and
 - (ii) the Contractor will not be entitled to make, and the Principal will not be liable upon, any Claim arising out of, or in any way in connection with any updates to the Principal's Design Documentation.

5.1C AFC Design Documentation

- (a) Without limiting clause 5.1A, the parties acknowledge and agree that:

- (i) prior to the date of this Contract, the Principal procured the Design Stage 3 Design Documentation but had not yet procured the AFC Design Documentation; and
- (ii) the Contractor has accepted the Design Stage 3 Design Documentation and warrants that the Original Contract Price and the Initial Contractor's Program contain sufficient allowance by the Contractor for the carrying out of the Contractor's Activities in accordance with the Design Stage 3 Design Documentation, [REDACTED]
[REDACTED]
[REDACTED]

(aa) The parties agree that, without prejudice to either party's rights pursuant to the procedure in clauses 6 or 17.1 (as applicable), between the date of this Contract and the date that the Principal provides the AFC Design Documentation to the Contractor pursuant to clause 5.1C(b), the parties will work cooperatively and in good faith to identify any differences between the Design Stage 3 Design Documentation and the AFC Design Documentation and highlight whether any such differences would likely result in a Variation under this clause 5.1C or clause 17.1.

(b) The Principal must, on or before the AFC Design Documentation Procurement Date, procure the AFC Design Documentation [REDACTED]
[REDACTED] and provide a copy of that AFC Design Documentation to the Contractor, together with a written notice that the Principal considers that either:

- (i) any difference between the Design Stage 3 Design Documentation and the AFC Design Documentation does not constitute or give rise to a Variation; or
- (ii) the Principal considers that any difference between the Design Stage 3 Design Documentation and the AFC Design Documentation does constitute or give rise to a Variation.

[REDACTED]

(c) If:

(i) clause 5.1C(b)(i) applies:

- A. the Principal's Representative will direct that the Contractor should continue to proceed with the Contractor's Activities on the basis of the AFC Design Documentation;

- B. the Contractor must comply with the Principal's Representative's direction;
- C. Appendix G of the SWTC will be deemed to be replaced with the AFC Design Documentation; and
- D. the Contractor's only entitlement against the Principal in respect of the difference between the Design Stage 3 Design Documentation and the AFC Design Documentation (but excluding any changes to the Works, the Temporary Works or the Contractor's Activities that are required in respect of those matters which the Contractor elected to proceed with at risk pursuant to clause 5.1D(a)) will arise in accordance with clause 17.1; or

(ii) clause 5.1C(b)(ii) applies, the Principal will issue a Variation to take into account any difference between the Design Stage 3 Design Documentation and the AFC Design Documentation pursuant to the procedure set out in clause 6 (but excluding any changes to the Works, the Temporary Works or the Contractor's Activities that are required in respect of those matters which the Contractor elected to proceed with at risk pursuant to clause 5.1D(a)). The Variation shall be the Contractor's only entitlement against the Principal

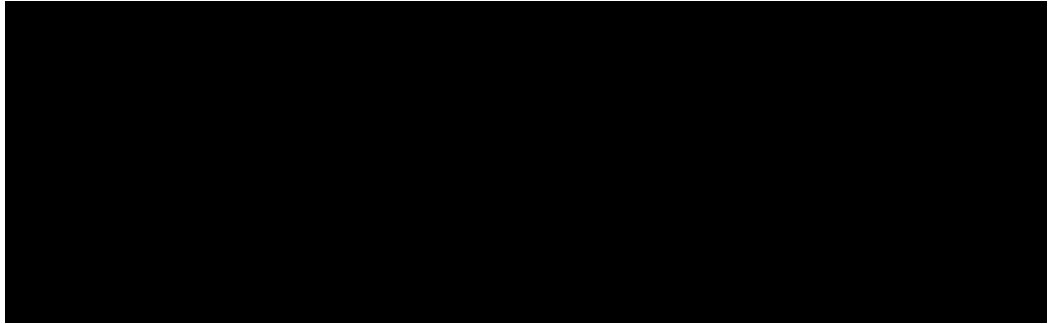
[REDACTED]

(e) The parties acknowledge that the AFC Design Documentation may be procured by the Principal and issued to the Contractor pursuant to clause 5.1C(b) progressively. If the Principal procures and issues the Contractor with the AFC Design Documentation progressively:

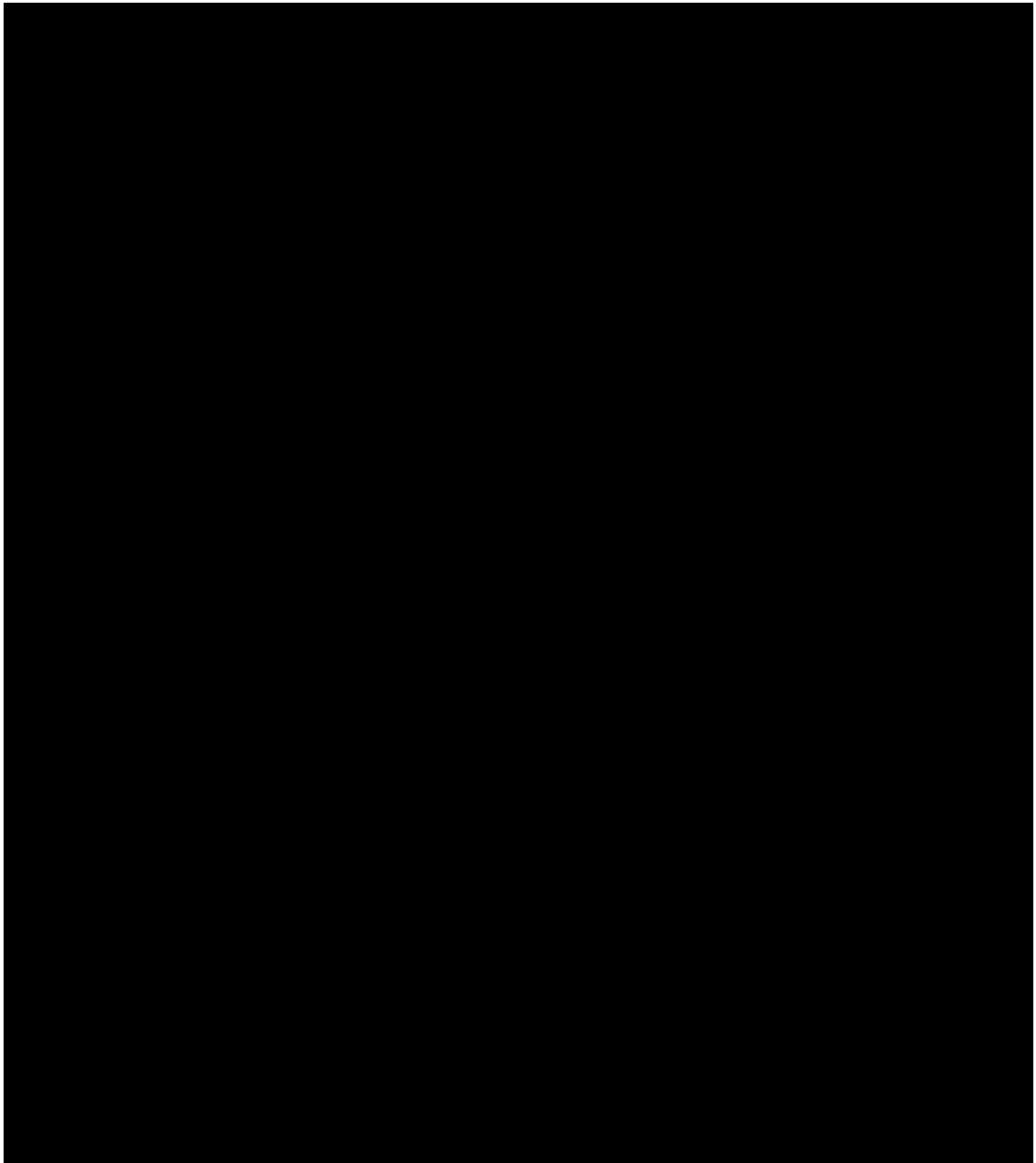
(i) the provisions of this clause 5.1C will apply separately to each package of the AFC Design Documentation issued to the Contractor; and

[REDACTED]

- (f) Failure by the Principal to procure and provide the AFC Design Documentation to the Contractor by the AFC Design Documentation Procurement Date will not be a breach of this Contract but will entitle the Contractor to:



5.1D Programmed Activities





5.2 Temporary Works

- (a) The Contractor must design the Temporary Works:
 - (i) in accordance with Good Industry Practice; and
 - (ii) so that the Temporary Works satisfy the SWTC and other requirements of this Contract upon construction.
- (b) If requested by the Principal's Representative, the Contractor must submit to the Principal's Representative for its review under clause 9.8 the design documentation for the Temporary Works referred to in such notice within 5 Business Days of being requested to do so.
- (c) The Contractor may, at its own risk, use any Temporary Works design documentation requested in accordance with clause 5.2(b) prior to the expiry of the time period in clause 9.8(c)(ii).
- (d) If the Contractor exercises its right under clause 5.2(c) and the Principal's Representative subsequently rejects the relevant Temporary Works design documentation (or any part) in accordance with clause 9.8(c)(iii) or makes comments on the relevant Temporary Works design documentation (or any part) in accordance with clause 9.8(c)(ii)B, then (unless otherwise approved in writing by the Principal's Representative):
 - (i) the Contractor must immediately cease construction of any Temporary Works being carried out in accordance with the relevant non-compliant element of the Temporary Works design documentation (but the Contractor may commence or continue construction in accordance with any element of the Temporary Works design documentation that the Principal's Representative has not identified as being non-compliant with this Contract); and
 - (ii) clause 9.8(d)(i) or clause 9.8(d)(ii) (as applicable) will apply in relation to the non-compliant element of the Temporary Works design documentation.

5.3 Shop Drawings

- (a) The Contractor must:
 - (i) (to the extent applicable) prepare the Shop Drawings in accordance with the SWTC;

- (ii) where requested by the Principal's Representative in accordance with clause 5.3(d), submit all Shop Drawings to the Principal's Representative:
 - A. in accordance with the SWTC, the Technical Management Plan and the Contractor's Program; and
 - B. in a manner and at a rate which, having regard to the quantum of Shop Drawings submitted, will give the Principal's Representative a reasonable opportunity to review the submitted Shop Drawings in accordance with clause 9.8;
 - (iii) ensure the Shop Drawings prepared by or on behalf of the Contractor:
 - A. satisfy the requirements of the SWTC and the other requirements of this Contract;
 - B. will be and remain at all relevant times until Construction Completion of the relevant Portion fit for their intended purpose;
 - C. are accurate, complete, appropriate for the Works and consistent with the Principal's Design Documentation; and
 - D. are at a level of detail which is sufficient to permit the Principal's Representative to determine whether:
 - 1) the Shop Drawings comply with this Contract; and
 - 2) the Works which will be constructed in accordance with the Shop Drawings will comply with this Contract;
 - (iv) provide any further information required by the Principal's Representative; and
 - (v) submit any amendment to the Shop Drawings to the Principal's Representative (in which case this clause 5.3 will re-apply).
- (b) The Contractor:
- (i) warrants that the Shop Drawings comply with the SWTC and the other requirements of this Contract;
 - (ii) remains responsible for ensuring that the Works comply with the SWTC and the other requirements of this Contract despite the Shop Drawings; and
 - (iii) bears all risks associated with the use of, or reliance upon, the Shop Drawings in performing its obligations or exercising its rights under this Contract and such use and reliance will not limit or otherwise reduce any of the Contractor's obligations under this Contract.
- (c) Unless otherwise approved in writing by the Principal's Representative, the Contractor must only use for construction purposes any Shop Drawings which

have been prepared by the Contractor and not rejected by the Principal's Representative within the period specified in clause 9.8.

- (d) If requested by the Principal's Representative, the Contractor must submit to the Principal's Representative for its review under clause 9.8 the Shop Drawings referred to in such notice within 5 Business Days of being requested to do so.
- (e) The Contractor may, at its own risk, use any Shop Drawings submitted in accordance with clause 5.3(a)(ii) for fabrication purposes prior to the expiry of the time period in clause 9.8(c).
- (f) If the Contractor exercises its right under clause 5.3(e) and the Principal's Representative subsequently rejects the relevant Shop Drawings (or any part) in accordance with clause 9.8(c)(iii) or makes comments on the relevant Shop Drawings (or any part) in accordance with clause 9.8(c)(iv), then (unless otherwise approved in writing by the Principal's Representative):
 - (i) the Contractor must immediately cease any construction or fabrication being carried out in accordance with the relevant non-compliant element of the Shop Drawings (but the Contractor may commence or continue construction or fabrication in accordance with any element of the Shop Drawings that the Principal's Representative has not identified as being non-compliant with this Contract); and
 - (ii) clause 9.8(d)(i) or clause 9.8(d)(ii) (as applicable) will apply in relation to the non-compliant element of the Shop Drawings.

5.3A Network Assurance Committee

- (a) In relation to the Works and the Temporary Works, the Contractor must:
 - (i) comply with the requirements set out in sections 2.9 and 3.2 of Appendix F01 of the SWTC in relation to the NAC assurance process; and
 - (ii) without limiting clause 5.3A(a)(i):
 - A. submit to the Principal's Representative each CCR required for submission to the NAC and the sub-NAC in accordance with section 2.9 of the SWTC and the Assurance and Governance Plan; and
 - B. cooperate with and provide all reasonable assistance to the Principal to facilitate the review of each CCR.
- (b) Within 3 Business Days commencing on the date on which the Principal's Representative is provided with a CCR by the Contractor under clause 5.3A(a), the Principal's Representative must review the CCR and either:
 - (i) reject the CCR (in writing, with reasons, to the Contractor) if the Principal's Representative reasonably considers that the CCR is not

- sufficiently complete to enable the NAC to form a view on whether the CCR satisfies the NAC Requirements; or
- (ii) submit that CCR to the NAC in accordance with Appendix F01 of the SWTC.
- (c) If the Principal's Representative rejects a CCR under clause 5.3A(b)(i), the Contractor must promptly amend the CCR and re-submit it to the Principal's Representative in accordance with clause 5.3A(a), and the process in clause 5.3A(b) will reapply.
 - (d) In respect of each CCR submitted by the Principal's Representative to the NAC under clause 5.3A(b)(ii), within 10 Business Days of submitting the CCR to the NAC, the Principal's Representative must either:
 - (i) give notice to the Contractor that the CCR has been accepted;
 - (ii) give notice to the Contractor setting out a list of actions which the Contractor must take in order for the CCR to satisfy the NAC Requirements ("**NAC Required Actions**"); or
 - (iii) give notice to the Contractor that the CCR has been rejected.
 - (e) If the Principal's Representative provides a notice under clause 5.3A(d)(ii) or clause 5.3A(d)(iii), the Contractor:
 - (i) must complete the NAC Required Actions (if applicable); and
 - (ii) may provide the Principal's Representative with a notice stating that the CCR satisfies the NAC Requirements and setting out any matters in relation to which it disagrees with the need to carry out any of the NAC Required Actions (if applicable), together with its reasons.
 - (f) If the Contractor gives a notice under clause 5.3A(e)(ii), the parties will promptly meet and in good faith seek to resolve the disagreement within 10 Business Days of the notice under clause 5.3A(e)(ii).
 - (g) If the parties are unable to resolve a disagreement contemplated by clause 5.3A(e)(ii) within 10 Business Days of first meeting in relation to the disagreement, either the Principal or the Contractor may refer the disagreement for resolution in accordance with clause 15.
 - (h) If the Principal has issued a notice under clause 5.3A(d)(iii), the Contractor must promptly amend the CCR and re-submit it to the Principal's Representative and the process under clauses 5.3A(b) to 5.3A(d) will re-apply.

5.3B Asset Management Information

- (a) Prior to Construction Completion of a Portion, the Contractor must:
 - (i) submit the Asset Management Information it is required to provide in accordance with the requirements set out in Appendix F06 of the SWTC to the Principal for review in accordance with clause 9.8; and

- (ii) in order to facilitate compliance by the Design Contractor with its Asset Management Information obligations under its design contract with the Principal:
 - A. liaise with and provide the Design Contractor with the Asset Management Information referred to in clause 5.3B(a)(i) that has been reviewed by the Principal and has not been rejected by it provided that if comments have been made on it those comments have been responded to in a manner satisfactory to the Principal's Representative under clause 9.8(c)(ii); and
 - B. certify to the Principal that the Asset Management Information provided to the Design Contractor in accordance with clause 5.3B(a)(ii)A. is accurate, complete and correct.

5.4 Assignment and ownership of Intellectual Property

- (a) All Contract Documentation will be the Principal's property.
- (b) By this Contract, the Contractor assigns or transfers to the Principal all of its right, title and interest, including all Intellectual Property in or to:
 - (i) the Contract Documentation;
 - (ii) the materials, documents, images, photographs and software (other than processes and methods of working); and
 - (iii) the Works,

(collectively called the "**Contract Documentation and Materials**") created by or on behalf of the Contractor for or in connection with the Contractor's Activities or the Works, so that such right, title and interest throughout the world vests in the Principal immediately and automatically on creation.
- (c) The Contractor grants, and will procure from any applicable third party the grant of, an irrevocable, perpetual, non-exclusive, royalty free, fully assignable licence (including the right to sub-license) to use all Intellectual Property in or relating to:
 - (i) to the extent not assigned under clause 5.4(b), the Contract Documentation and Materials; and
 - (ii) to the Temporary Works and Construction Plant and the processes and methods of working relevant to the Contractor's Activities (collectively called the "**Contract Processes**"),

for:

 - (iii) 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 the Contractor's Activities or the Works or the Temporary Works;

- (iv) any purpose associated with further development of the Site; and
- (v) any other purpose connected with transport projects in New South Wales,

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

- (d) For the purposes of clause 5.4(c), the Principal's use of the Contract Documentation and Materials and the Contract Processes 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 and Materials or the Contract Processes or part of the Works or Temporary Works to which the Contract Documentation and Materials or the Contract Processes or any other work provided by the Contractor under this Contract 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) The Contractor agrees to, and will procure any applicable third party to, do such things as reasonably requested by the Principal to assist the Principal and its licensees, assignees and successors and their licensees, and any other person authorised by it (each an "**Authorised User**") to obtain, perfect, enforce or defend its (or their) interest in the Intellectual Property assigned or licensed (as applicable) to the Principal under this Contract.
- (f) The Principal grants to the Contractor a royalty free licence (including the right to sublicense) to use:
 - (i) the SWTC (including the Principal's Design Documentation); and
 - (ii) the Intellectual Property assigned to the Principal under clause 5.4(b),solely to the extent necessary to enable the Contractor to perform the Contractor's Activities.
- (g) The Contractor represents and warrants that:
 - (i) neither the grant of the rights granted to the Principal under this Contract, nor their use by the Principal or any Authorised User infringes or will infringe the rights, including the Intellectual Property or Moral Rights, of or duties owed to any third party; and
 - (ii) the Intellectual Property assigned or licensed to the Principal under this Contract are complete and they are the only Intellectual Property necessary or desirable to enable the Principal, and any Authorised User, to fully enjoy and exercise all rights granted to it under this Contract.

- (h) Without limiting clause 5.4(g), where any action or claim for infringement or alleged infringement of any Intellectual Property results in the use or enjoyment by the Principal or any Authorised User of the Contract Documentation and Materials, the Contract Processes, the Contractor's Activities or the Works or any part of them, being disrupted, impaired or adversely affected, the Contractor must at its own expense and at the Principal's option:
 - (i) procure for the benefit of the Principal and its Authorised Users the right to continue to use and exercise the rights granted to the Principal under this clause 5.4 in accordance with this Contract; or
 - (ii) modify or replace any relevant Contract Documentation and Materials, Contract Processes, Contractor's Activities or Works or any part of them so that no further infringement will occur and so that the modified or replaced Contract Documentation and Materials, Contract Processes, Contractor's Activities or Works or relevant part of them in respect of which Intellectual Property is assigned or licensed pursuant to this clause 5.4 will:
 - A. comply with the requirements of this Contract; and
 - B. not limit or otherwise affect the Principal's rights, or the Contractor's ability to comply with its obligations, under this Contract or otherwise according to Law.
- (i) The Contractor must:
 - (i) indemnify the Principal against any claims against, and costs, expenses, losses and damages suffered or incurred by the Principal arising out of, or in any way in connection with:
 - A. a breach by the Contractor of any warranty set out in this clause 5.4; or
 - B. any actual or alleged infringement of any Intellectual Property in connection with the Contract Documentation and Materials, Contract Processes, Contractor's Activities or Works or relevant part of them;
 - (ii) ensure that all Subcontracts between the Contractor and all Subcontractors for design and documentation contain provisions to the same effect as clause 5.4(b);
 - (iii) obtain confirmation of the inclusion of such provisions in the form of a signed acknowledgment from such Subcontractors for design and documentation; and
 - (iv) where requested by the Principal's Representative, obtain such an acknowledgement from other Subcontractors.

5.5 Delivery Up of Contract Documentation

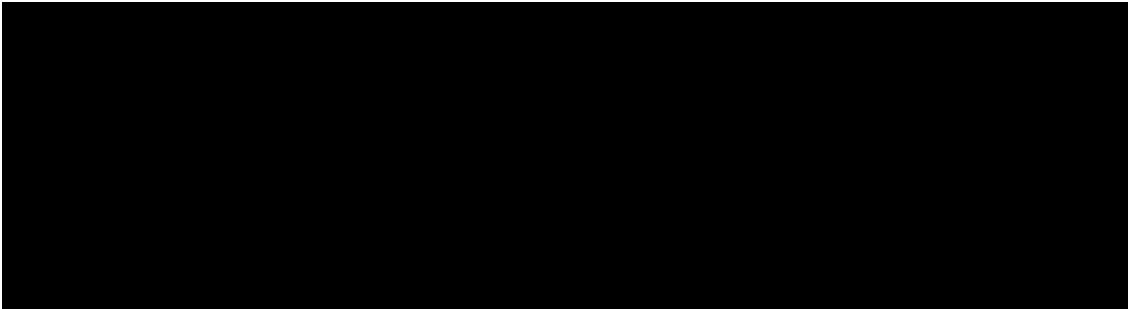
If this Contract is frustrated or terminated the Contractor must:




- (a) immediately deliver the original and all sets and copies of all Contract Documentation (whether complete or not), including fully detailed electronic versions in unlocked native format (with all logic links intact and nothing hidden or protected), then in existence to the Principal; and
- (b) provide such details, memoranda, explanations, documentation and other assistance as the Principal reasonably requires in relation to the Contract Documentation.

6. Variations

6.1 Proposed Variations

- (a) At any time prior to the expiry of the Defects Rectification Period (but without limiting clauses 8 and 13.3) the Principal's Representative may issue a document titled "Variation Proposal Request" to the Contractor, which will set out details of a proposed Variation that the Principal is considering.



- (b) Within 10 Business Days of the receipt of a "Variation Proposal Request" 


or at such other time as is approved by the Principal's Representative, the Contractor must provide the Principal's Representative with a written notice in which the Contractor sets out:

- (i) the Contractor's proposed adjustments to the Contract Sum and the Payment Breakdown Schedule, to be determined on the basis of:
 - A. the prices and rates set out in Part A of Schedule 10 (where applicable or where it is otherwise reasonable to use them for valuing the Variation); or
 - B. to the extent clause 6.1(b)(i)A does not apply, the reasonable prices and rates (which are to be exclusive of any amount for preliminaries, Overhead Costs or profit), to be increased by the following percentage of that amount:

- 1) where the proposed adjustment to the Contract Sum is an increase, [REDACTED] which will be in total satisfaction of all the Contractor's preliminaries, Overhead Costs and profit; or
 - 2) where the proposed adjustment to the Contract Sum is a decrease, [REDACTED]
- (ii) the effect (if any) that the proposed Variation will have on the Contractor's Program (including any extension of time required to a Date for Construction Completion or Date for Completion and the measures the Contractor proposes to take to avoid, mitigate or minimise the effect of the proposed Variation on the Contractor's Program);
 - (iii) any Approvals required to implement the proposed Variation, and the effect of the proposed Variation on any existing Approvals or the Contractor's ability to comply with those Approvals;
 - (iv) the effect (if any) which the proposed Variation will have on the Contractor's ability to satisfy its obligations under this Contract (including any warranties given by the Contractor under this Contract) or exercise its rights under this Contract;
 - (v) whether any Constructability Issues arise as a direct result of the proposed Variation;
 - (vi) the Contractor's view on the likely impact of the proposed Variation on any Interface Works, including whether the Contractor considers that an Interface Works Change will, or is likely to, be required to enable the proposed Variation to be implemented or as a consequence of the proposed Variation and if so, any change that could be made to the proposed Variation (including any change to the timing of the proposed Variation or to the manner in which the Variation is proposed to be implemented) to reduce or avoid the impact of the proposed Variation on the relevant Interface Works; and
 - (vii) such other details as may be reasonably required by the Principal's Representative.
- (c) The Principal will not be obliged to proceed with any proposed Variation that is the subject of a "Variation Proposal Request".

6.2 Variation Orders

- (a) Whether or not the Principal's Representative has issued a "Variation Proposal Request" under clause 6.1, the Principal's Representative may at any time prior to expiry of the Defects Rectification Period (but without limiting clauses 8 and 13.3) direct the Contractor to carry out a Variation by issuing a written document

titled "Variation Order", in which the Principal's Representative will state one of the following:

- (i) the proposed adjustments to the Contract Sum and the Payment Breakdown Schedule set out in the Contractor's notice under clause 6.1 are agreed and the Contract Sum and Payment Breakdown Schedule will be adjusted accordingly; or
 - (ii) any adjustment to the Contract Sum will be determined under clause 6.4(b).
- (b) There is no limitation on the power of the Principal's Representative to direct a Variation, and no Variation or direction to carry out a Variation will invalidate this Contract.
- (c) The Contractor must comply with a "Variation Order" irrespective of :
- (i) the nature, extent or value of the work the subject of the Variation;
 - (ii) the location or timing (including the impact on any Date for Construction Completion or Date for Completion (as relevant)) of the work involved in the Variation; or
 - (iii) any Dispute related to the Variation.
- (d) The Contractor's entitlement (if any) to an extension of time and delay costs arising out of or in connection with a Variation will be dealt with under clause 10 and not this clause 6. The valuation of Variations under clause 6.4 will exclude any amount for costs incurred by the Contractor as a result of any delay or disruption caused by the Variation.
- (e) Except as directed in a Variation Order or where the Principal's Representative approves a Variation proposed by the Contractor under clause 6.7A(c), the Contractor will not be entitled to vary or change the Works or the Temporary Works.

6.3 Options

The Principal's Representative may, by written notice given to the Contractor at any time within the period stated in Schedule 15, exercise any Option. Commencing upon the issue of such a notice by the Principal's Representative, the Principal and the Contractor must perform their obligations under this Contract on the basis that the Contract Sum, the SWTC and the provisions of this Contract will be adjusted as set out in Schedule 15 for the relevant Option.

For the avoidance of doubt:

- (a) the Principal is not under any obligation whatsoever to exercise; and
- (b) the Contractor is not entitled to make, nor will the Principal be liable upon, any Claim in respect of the Principal not exercising,

any Option.

Where the Principal does not exercise its discretion to exercise an Option, the Principal may, either by itself or by third parties, undertake the work contemplated by the relevant Option.

The exercise of an Option by the Principal's Representative under this clause 6.3 will not:

- (c) relieve the Contractor from its liabilities or obligations (including those arising out of any warranties given under this Contract);
- (d) limit or otherwise affect the Principal's rights against the Contractor or the Contractor's rights against the Principal (including those arising out of any warranties given under this Contract); or
- (e) entitle the Contractor to an extension of time,

whether under this Contract or otherwise according to any Law.

6.4 Valuation

Subject to clauses 15 and 17, the Contract Sum and the Payment Breakdown Schedule will be adjusted for all Variations that have been directed by the Principal's Representative by:

- (a) to the extent that clause 6.2(a)(i) applies, the agreed amount as specified in the Variation Order; or
- (b) to the extent that clause 6.2(a)(ii) applies, an amount in respect of the Variation to be determined by the Principal's Representative on the basis of:
 - (i) the prices and rates set out in Part A of Schedule 10 (where applicable or where it is otherwise reasonable to use them for valuing the Variation); or
 - (ii) to the extent clause 6.4(b)(i) does not apply, reasonable prices and rates (which are to be exclusive of any amount for preliminaries, Overhead Costs or profit) to be agreed between the parties, or failing agreement, determined by the Principal's Representative, which will be increased by the following percentage of that amount:

A. where the adjustment to the Contract Sum is to be an increase, [REDACTED] which will be in total satisfaction of all the Contractor's preliminaries, Overhead Costs and profit; or

B. where the adjustment to the Contract Sum is to be a decrease, [REDACTED]

provided however that where the Principal's Representative has issued a Variation Proposal Request, the Contractor's entitlement under this clause

6.4(b) will not be greater than any amount set out in the Contractor's notice under clause 6.1.

6.5 Omissions

If a Variation the subject of a direction by the Principal's Representative requires the omission or deletion of any part of the Works:

- (a) the Principal may thereafter either perform this work itself or employ or engage any other person or persons to carry out and complete the omitted or deleted work;
- (b) the Principal will not be liable upon any Claim by the Contractor arising out of or in any way in connection with any work being omitted or deleted from the Contractor's Activities whether or not the Principal thereafter performs this work itself or employs or engages any other person or persons to carry out and complete the omitted or deleted work; and
- (c) the adjustment to the Contract Sum arising from the work that has been omitted or deleted will be valued in accordance with clause 6.4.

6.6 Not used

6.7 Not used

6.7A Contractor initiated Variations

- (a) The Contractor may propose a Variation by giving written notice to the Principal's Representative with:
 - (i) details of:
 - A. the proposed Variation;
 - B. the reason for the proposed Variation;
 - C. the time within, and the manner in which, the Contractor proposes to implement the proposed Variation;
 - D. the effect (if any) of the proposed Variation on the Contractor's Activities, including the Contractor's Program and the Dates for Construction Completion and Dates for Completion;
 - E. the cost effect of assessing and carrying out the proposed Variation, including:
 - 1) where the proposed Variation will involve additional costs, any increased costs;
 - 2) where the proposed Variation will lead to cost savings, the cost savings that the Contractor expects to arise from the Variation; and

- 3) the effect the proposed Variation will have on any operating and maintenance costs; and
- F. the effect (if any) that the proposed Variation will have on any Interface Works, including whether an Interface Works Change will, or is likely to, be required to enable the proposed Variation to be implemented, or as a consequence of the proposed Variation; and
- (ii) a written statement stating that the proposed Variation:
 - A. will not adversely affect:
 - 1) the functional integrity of any of the elements of the Contractor's Activities; or
 - 2) the Contractor's ability to satisfy its obligations under this Contract (including any warranties given by the Contractor under this Contract and the performance standards required by this Contract); and
 - B. is consistent with and complies with the conditions and requirements of the Planning Approval.
- (b) The Principal's Representative:
- (i) (in its absolute discretion) may, by notice in writing, approve or reject any Variation the Contractor proposes;
 - (ii) will be under no obligation to approve any such Variation for the convenience of, or to assist, the Contractor; and
 - (iii) may give written notice to the Contractor requesting any other information and supporting documentation the Principal reasonably requires in order to decide whether to approve or reject any Variation.
- Prior to giving any direction under clause 6.7A(b)(i), the Principal's Representative may seek to negotiate with the Contractor over the level of cost increase or savings arising from the proposed Variation. If the parties agree in writing upon a different level of cost increase or savings, the Contractor's notice will be deemed to be amended by the inclusion of this different level of cost increase or savings in place of the original cost increase or savings notified by the Contractor.
- (c) If the Principal's Representative gives a direction under clause 6.7A(b)(i) approving a Variation proposed by the Contractor, the Contractor must perform its obligations under this Contract in accordance with the approved Variation but until such time, the Contractor must continue to carry out the Contractor's Activities and otherwise comply with its obligations under this Contract.
 - (d) Unless otherwise agreed, where a proposed Variation that results in a cost saving is approved by the Principal's Representative, there will be a reduction

in the Contract Sum and the Payment Breakdown Schedule by ■■■ of the reduction in costs specified by the Contractor in the Contractor's notice under clause 6.7A(a) (as deemed amended pursuant to clause 6.7A(b) if applicable).

- (e) The Contractor will:
- (i) bear all costs associated with proposing a Variation under clause 6.7A(a), including:
 - A. any amounts reasonably incurred by the Principal that are payable to the Design Contractor, any Interface Contractor or the Operator in assessing the proposed Variation;
 - B. any amounts that are payable by the Contractor or the Principal to any Interface Contractor(s) under any Project Cooperation and Integration Deeds or any other contracts entered into between the Principal and an Interface Contractor; and
 - C. any amounts incurred by the Principal that are payable by the Principal to the Design Contractor in association with updating the Principal's Design Documentation as a result of the Variation; and
 - (ii) unless otherwise agreed and except as provided for in clause 6.7A(d):
 - A. where a proposed Variation is approved by the Principal's Representative, bear all costs associated with carrying out the proposed Variation; and
 - B. not be entitled to make any Claim against the Principal arising out of or in connection with the Variation.

6.7B Consultation with Interface Contractors

Without limiting clause 2.9, if the Contractor becomes aware that a Variation will, or is likely to, impact on any Interface Works or necessitate an Interface Works Change, then prior to:

- (a) submitting a written notice in accordance with clause 6.1(b); or
- (b) proposing a Variation in accordance with clause 6.7A(a),

the Contractor must:

- (c) notify the relevant Interface Contractor(s) of the proposed Variation; and
- (d) work closely and iteratively with the relevant Interface Contractor(s) in good faith regarding the scope and, if relating to the Temporary Works, design of the proposed Variation (and, where applicable, the corresponding Interface Works Change) in order to reduce the overall cost to the Principal of implementing the Variation.

6.8 Contractor's Entitlements

Subject to clauses 10.7 and 10.13, this clause 6 is an exhaustive code of the Contractor's rights in any way in connection with any Variation. The Contractor waives all rights at Law to make any Claim against the Principal in any way in connection with any of the matters set out in this clause 6 otherwise than in accordance with the terms of this Contract.

7. Construction

7.1 Construction

- (a) The Contractor must construct and hand over to the Principal (or its nominee) or the relevant Authority the Works and construct the Temporary Works:
 - (i) in accordance with:
 - A. subject to clause 7.1(b):
 - 1) the SWTC;
 - 2) the AFC Design Documentation; and
 - 3) the Shop Drawings prepared by the Contractor in accordance with the requirements of this Contract and, where elected to be reviewed by the Principal's Representative, the Shop Drawings that have not been rejected by the Principal's Representative and if comments have been made on them those comments have been responded to in a manner satisfactory to the Principal's Representative under clause 9.8(c)(ii);
 - B. any direction of the Principal's Representative given or purported to be given under a provision of this Contract; and
 - C. the other requirements of this Contract.
- (aa) The Contractor must not commence:
 - (i) construction of any Works, or the procurement of any Non-Contestable Utility Service Works, until the Principal has issued the AFC Design Documentation to the Contractor pursuant to clause 5.1C(b); and
 - (ii) without limiting clause 7.1(aa)(i), construction of any Third Party Works or the Contractor's Activities which interface with Third Parties until the relevant preconditions to commencement of that work in the relevant Third Party Agreement have been satisfied (or waived by the relevant Third Party).
- (b) If there is any ambiguity, discrepancy or inconsistency between this Contract (including the SWTC) and any Shop Drawings which have been prepared by the Contractor and where elected to be reviewed by the Principal's

Representative, not rejected by the Principal's Representative under clause 9.8, then, unless otherwise directed by the Principal's Representative, the requirements of this Contract will prevail.

- (c) At monthly intervals during the construction work and at Construction Completion and Completion of each Portion, the Contractor must submit to the Principal's Representative a Certificate of Construction Compliance in the form of Schedule 20.

7.2 All Work Included

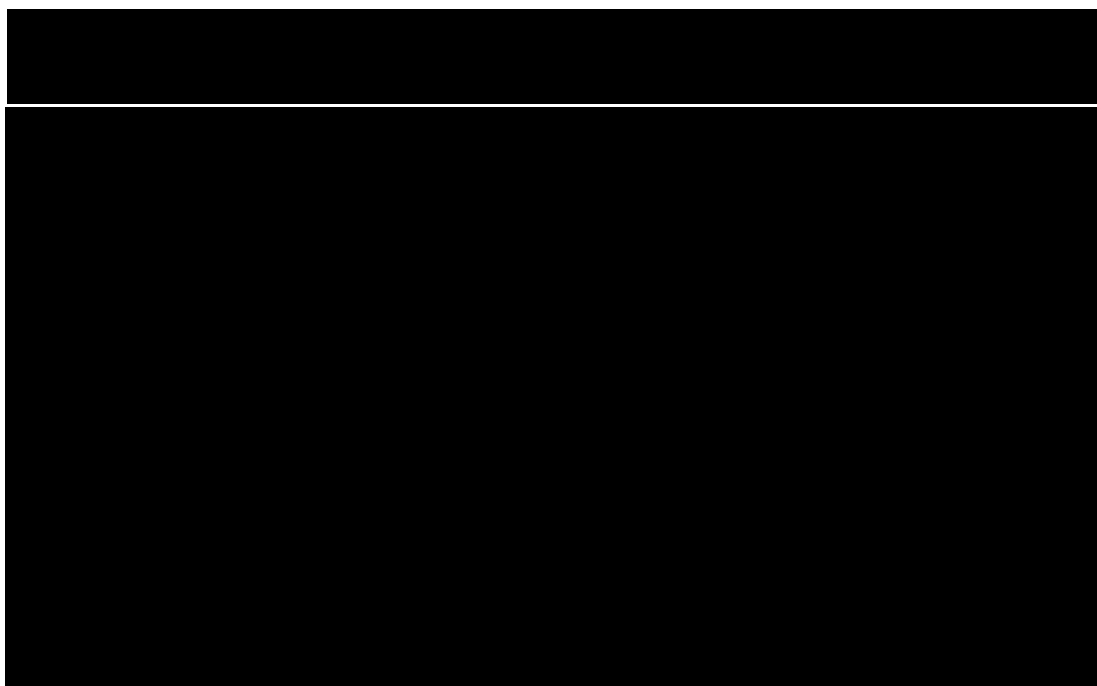
The Contractor:

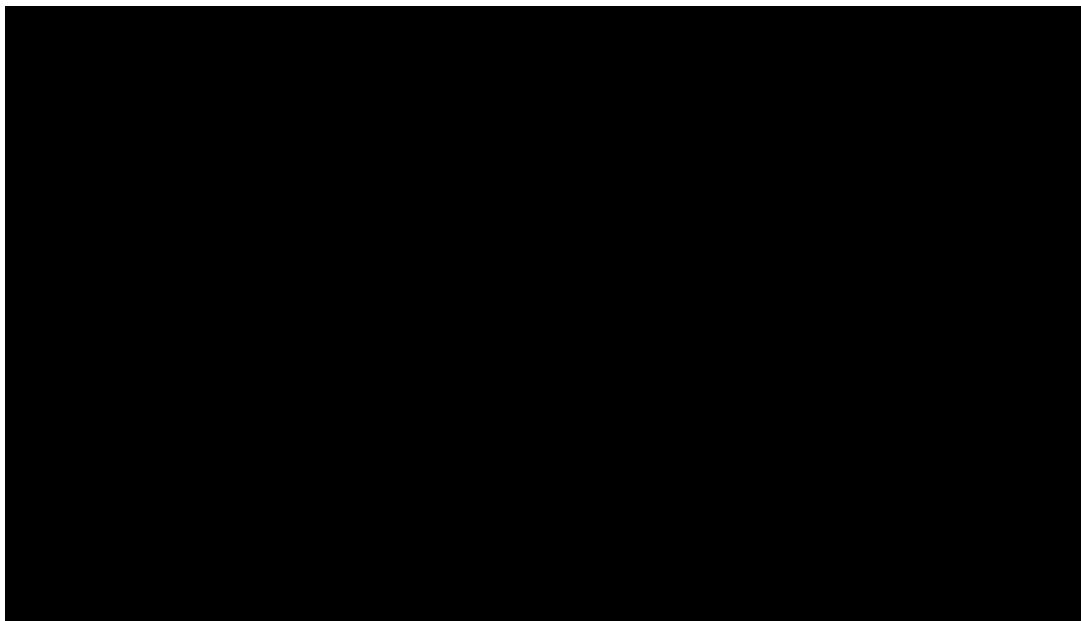
- (a) warrants it has allowed for the provision of;
- (b) must undertake and provide; and
- (c) will not be entitled to make, and the Principal will not be liable upon, any Claim except as otherwise provided for in this Contract, relating to the provision of,

all Construction Plant, Temporary Works, labour, materials and other work necessary to execute the Contractor's Activities, whether or not expressly mentioned in this Contract or anticipated by the Contractor, and agrees that all such Construction Plant, Temporary Works, labour, materials and work forms part of the Contractor's Activities.

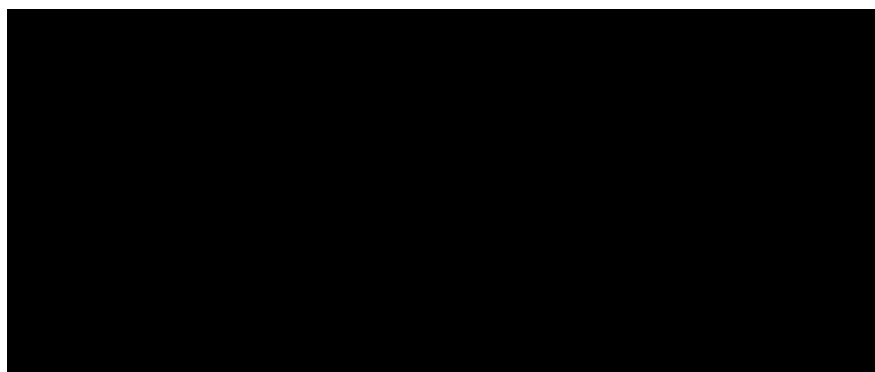
7.3 Provisional Sum Work

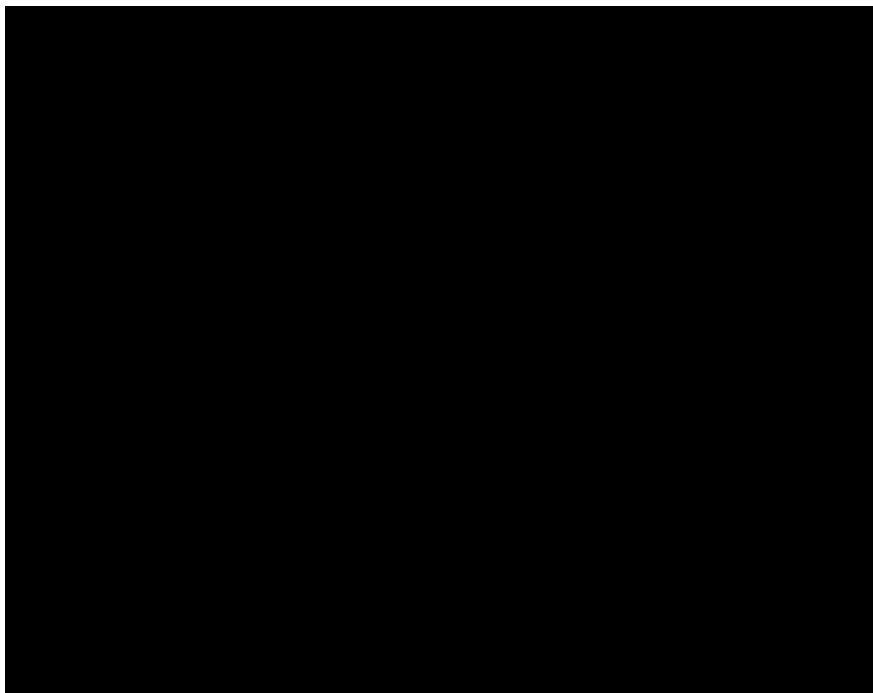
- (a) Subject to clauses 7.3(aa) and 7.3(ab), for each item of Provisional Sum Work, the Principal's Representative will give the Contractor a direction either requiring the Contractor to proceed with the item of Provisional Sum Work or deleting the item of Provisional Sum Work.







- (b) [REDACTED] and otherwise where the Principal's Representative gives the Contractor a notice requiring the Contractor to proceed with an item of Provisional Sum Work, the Contract Sum will be adjusted for the item of Provisional Sum Work by the difference between:
- (i) the amount allowed for the item of Provisional Sum Work in the Payment Breakdown Schedule; and
 - (ii) either:
 - A. a fixed amount agreed between the Contractor and the Principal's Representative; or
 - B. if they fail to agree:
 - 1) subject to clauses 7.3(b)(ii)B.2) and 7.3(b)(ii)B.3), the amount determined by the Principal's Representative having regard to the rates set out in Schedule 10 and any other relevant market rates and prices, excluding any amount for the Contractor's preliminaries, Overhead Costs or profit;





and the difference will be added to or deducted from the Contract Sum.

- (c) The Contractor acknowledges and agrees that, 

 - (i) the Original Contract Price includes an amount for the Contractor's preliminaries, Overhead Costs and profit in respect of all Provisional Sum Work set out in item 33 of Schedule 1; and
 - (ii) any adjustment to the Contract Sum determined in accordance with clause 7.3(b) will not include any amount for the Contractor's preliminaries, Overhead Costs or profit.
- (d) Where the Principal's Representative gives the Contractor a direction deleting an item of Provisional Sum Work:
 - (i) the Contract Sum will be reduced by the amount allowed for the item of Provisional Sum Work in item 33 of Schedule 1;
 - (ii) the Principal may thereafter either carry out the Provisional Sum Work itself or engage any other person or persons to carry out the item of Provisional Sum Work; and
 - (iii) the Principal will not be liable upon any Claim by the Contractor arising out of the deletion of the item of Provisional Sum Work.

7.4 Co-operation with Other Contractors

Without limiting or being limited by clause 2.9, the Contractor must:

- (a) permit Other Contractors to carry out their work;
- (b) fully co-operate with Other Contractors;

- (c) carefully coordinate and interface the Contractor's Activities with the work carried out or to be carried out by Other Contractors; and
- (d) carry out the Contractor's Activities so as to minimise any interfering with, disrupting or delaying the work of Other Contractors.

The Principal shall procure that each of its Other Contractors that undertakes work on part of the Site during any period in which the Contractor has been engaged as principal contractor in respect of that part of the Site (other than Sydney Trains and TfNSW (and any contractors appointed by either of them)) executes a deed poll in favour of the Contractor, as principal contractor, and the Principal in the form set out in Schedule 23 and provide the Contractor with an executed copy of each such deed poll.

7.5 Setting Out

The Contractor must:

- (a) set out the Works in accordance with the requirements of this Contract, 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 the Contractor that are suitable for their purposes;
- (b) carry out any survey (including providing all instruments and things) that may be necessary for this purpose; and
- (c) for this purpose keep all survey marks in their true positions.

If the Contractor discovers an error in the position, level, dimensions or alignment of any part of the Works, the Contractor must immediately notify the Principal's Representative and, unless the Principal's Representative otherwise directs, the Contractor must at its cost rectify the error.

7.6 Survey

The Contractor must, as a condition precedent to Construction Completion of a Portion and as otherwise required by the Principal's Representative, submit to the Principal's Representative:

- (a) for its review under clause 9.8 a Survey Plan for the Works or the relevant Portion that:
 - (i) has regard to the setback requirements in the National Construction Code;
 - (ii) has regard to any stratum lots whether above or below ground;
 - (iii) has regard to the survey control requirements of any relevant Rail Transport Agency;
 - (iv) shows the location of all Monuments, and their relation to horizontal and vertical boundaries;

- (v) shows all internal title boundaries;
 - (vi) shows all easements; and
 - (vii) shows the location of the relevant Portion and all Utility Services; and
- (b) a Survey Certificate which complies with all Law addressed to the Principal and signed by a land surveyor registered under the *Surveying and Spatial Information Act 2002* (NSW) stating that:
- (i) the whole of the Works or the Portion has been constructed within the relevant boundaries of the Site;
 - (ii) the elements of the Portion are in the positions and within the tolerances required by Law and this Contract;
 - (iii) the survey information included in the configuration materials provided pursuant to the SWTC complies with the requirements of this Contract; and
 - (iv) any other matter identified by the Principal's Representative, complies with the requirements of this Contract.

7.7 Cleaning Up

In carrying out the Contractor's Activities, the Contractor must:

- (a) keep the Site, Extra Land and the Works clean and tidy and free of refuse;
- (b) regularly remove rubbish, litter, graffiti and surplus material from the Site and Extra Land; and
- (c) as a condition precedent to Construction Completion of any Portion, remove all rubbish, surplus materials, Construction Plant and Temporary Works from the Site and Extra Land or the part of the Site or Extra Land relevant to the Works or the Portion, except where the retention of any of these are required for the correction of Defects during the Defects Rectification Period and this is approved in writing by the Principal's Representative.

7.8 Safety

- (a) The Contractor must carry out the Contractor's Activities:
 - (i) safely and in a manner that does not put the health and safety of persons at risk; and
 - (ii) in a manner that protects property.
- (aa) If the Principal's Representative reasonably considers there is a risk to the health and safety of people or damage to property arising from the Contractor's Activities:

- (i) the Principal's Representative may direct the Contractor to change its manner of working or to cease working; and
 - (ii) the Contractor must, at its cost, comply with any direction by the Principal's Representative under clause 7.8(aa)(i).
- (b) The Contractor must:
- (i) ensure that in carrying out the Contractor's Activities:
 - A. it complies with all Laws (including the WHS Legislation, Rail Safety National Law, Rail Safety Regulations and the Heavy Vehicle National Law), Codes and Standards, Australian Standards, and other requirements of this Contract for work health, safety and rehabilitation management;
 - B. all Subcontractors comply with the requirements referred to in this clause 7.8 and their respective obligations under all Laws (including the WHS Legislation, Rail Safety National Law, Rail Safety Regulations, Heavy Vehicle National Law and Chain of Responsibility Provisions), Codes and Standards, Australian Standards and other requirements of this Contract for work health, safety and rehabilitation management; and
 - C. it complies with its obligations under the WHS Legislation to consult, cooperate and coordinate activities with all other persons who have a work health and safety duty in relation to the same matter;
 - (ii) notify the Principal's Representative immediately (and in the event within 12 hours of such matter arising) of all work health, safety and rehabilitation matters arising out of, or in any way in connection with, the Contractor's Activities, unless otherwise directed by the Principal;
 - (iii) institute systems to obtain regular written assurances from all Subcontractors about their ongoing compliance with the WHS Legislation including the due diligence obligation contained therein;
 - (iv) provide the Principal's Representative with the written assurances obtained pursuant to clause 7.8(b)(iii), together with written assurance(s) from the Contractor about the Contractor's ongoing compliance with the WHS Legislation;
 - (v) provide the Principal's Representative with a written report at each meeting in accordance with clause 9.5, on all work health, safety and rehabilitation matters (including matters concerning or arising out of, or in any way in connection with, this clause 7.8), or any other relevant matters as the Principal's Representative may require from time to time, including a summary of the Contractor's compliance with the WHS Legislation;

- (vi) consult, cooperate and coordinate with all Other Contractors and the Principal to ensure that all parties are able to comply with their respective obligations under the WHS Legislation;
 - (vii) exercise a duty of the utmost good faith to the Principal in carrying out the Works and the Temporary Works to enable the Principal to discharge the Principal's duties under the WHS Legislation;
 - (viii) ensure that it does not do anything or fail to do anything that would cause the Principal to be in breach of the WHS Legislation; and
 - (ix) ensure its Subcontracts include provisions equivalent to the obligations of this clause 7.8.
- (c) Without limiting clause 16.14 the Principal may take any action necessary to protect or to prevent or minimise risks to, the Works, the Environment, other property or the health or safety of people.
- (d) If the action taken by the Principal is action which the Contractor was required to take under this Contract but did not take, the amount of any penalty, fine, damage, expense, cost (including any reasonable legal fees), loss or liability that the Principal suffers or incurs arising out of or in any way in connection with:
- (i) taking the action contemplated in this clause 7.8(c); or
 - (ii) the Contractor's failure to take that action,
- will, except to the extent prohibited by Law, be a debt due from the Contractor to the Principal.
- (e) Where clause 16.28 applies, the Contractor:
- (i) warrants that it is accredited under the WHS Accreditation Scheme; and
 - (ii) must comply with all the requirements of, and maintain accreditation under, the WHS Accreditation Scheme while "building work" (as defined in section 5 of the BCIIIP Act) is carried out.

7.9 Construction Plant and Materials Removal

Except for the purpose of achieving Construction Completion of a Portion as contemplated by clause 7.7(c), the Contractor must not remove from the Site or the Contractor's Activities any:

- (a) significant materials or major items of Construction Plant; or
- (b) materials or Construction Plant specified in any written notice issued by the Principal's Representative,

without the prior written approval of the Principal's Representative, which approval will not be unreasonably withheld.

7.10 Not used

7.11 Rail Safety

- (aa) Without limiting any other clause in this Contract, the Contractor must comply, and ensure that its Associates comply, with the Rail Safety National Law and the Principal's reasonable requirements in relation to rail safety.
- (ab) The Contractor acknowledges that:
- (i) the Contractor's Activities and the Works are being undertaken for the purpose of constructing a railway;
 - (ii) relevant to the Contractor's Activities, the following entities hold Accreditation under the Rail Safety National Law as a Rail Transport Operator:
 - A. the Principal;
 - B. Sydney Trains; and
 - C. ARTC; and
 - (iii) to the extent that the Contractor's Activities comprise Railway Operations (as that term is defined in the Rail Safety National Law), for the purposes of the Rail Safety National Law it carries out those Contractor's Activities for and on behalf of:
 - A. the Principal under the Principal 's Accreditation;
 - B. Sydney Trains under Sydney Trains' Accreditation; and
 - C. ARTC under ARTC's Accreditation,

as the case may be (together, the "**Applicable Accreditations**").
- (ac) The Contractor must ensure that it does not do anything or fail to do anything that would cause:
- (i) the Principal; or
 - (ii) where ARTC or Sydney Trains holds Accreditation under the Rail Safety National Law as a Rail Transport Operator and the Contractor's Activities comprise Railway Operations that are being carried out for or on behalf of ARTC or Sydney Trains,
- to be in breach of the Rail Safety National Law and Rail Safety Regulations.
- (b) In carrying out any part of the Contractor's Activities which require Accreditation as a Rail Transport Operator, the Contractor must:
- (i) comply with all conditions of the Applicable Accreditations as a Rail Transport Operator and the Safety Management System (as applicable);

- (ii) not do anything or fail to do anything that may cause the Principal, Sydney Trains or ARTC to breach its obligations under the Rail Safety National Law; and
 - (iii) ensure that the Subcontractors engaged in or in connection with the Contractor's Activities comply with clauses 7.11(b)(i) and 7.11(b)(ii).
- (c) In carrying out any part of the Contractor's Activities which require Accreditation as a Rolling Stock Operator, the Contractor must:
 - (i) ensure that the Contractor, or one of its Subcontractors, holds the necessary Accreditation for that part of the Contractor's Activities; and
 - (ii) comply with the conditions of that Accreditation.
- (d) Without limiting or otherwise affecting any other provision under this Contract, the Contractor must, and must ensure that its Subcontractors, comply with all obligations under the Rail Safety National Law including entering into interface agreements required by Part 3 of the Rail Safety National Law in respect of any part of the Contractor's Activities which require Accreditation as a Rolling Stock Operator.
- (e) The Contractor must liaise and cooperate with the Principal and any other Rail Transport Operator and provide any reasonable assistance and documentation to the Principal, or any other Rail Transport Operator, as such party may require in relation to safety matters.
- (f) Without limiting clause 7.11(e), the Contractor must provide the Principal with copies of all notices, reports and other correspondence given or received by the Contractor under or in connection with the Rail Safety National Law and the Rail Safety Regulations:
 - (i) relating to the Contractor's Activities; or
 - (ii) which may adversely affect the ability of the Contractor to perform the Contractor's Activities,

promptly after such notices are given or received (but in any event no later than 5 Business Days after they are given or received by the Contractor).
- (g) Without limiting clause 7.11(d), the Contractor must ensure that all persons engaged by the Contractor in or in connection with the Contractor's Activities:
 - (i) are competent to carry out the work for which they are engaged for the purposes of section 52 of the Rail Safety National Law; and
 - (ii) comply with their obligations under the Rail Safety National Law (including under section 56 of the Rail Safety National Law).
- (h) The Contractor must and must ensure that its Subcontractors:

- (i) promptly give all Investigative Authorities such access to premises and information as any Investigative Authority lawfully requests, within the time requested;
 - (ii) cooperate with and respond to any lawful requests made by any Investigative Authority, within the time requested; and
 - (iii) do not hinder or delay any Investigative Authority in carrying out its duties.
- (i) Compliance by the Contractor with its obligations under this clause 7.11 does not discharge the Contractor from complying with its other obligations under the Contract and is not evidence of compliance by the Contractor with its other obligations under the Contract.
- (j) To the extent not prohibited by Law, the Contractor must indemnify the Principal against any damage, expense, loss or liability suffered or incurred by the Principal arising out of or in any way in connection with the Contractor's failure to comply with this clause 7.11.

7.12 Track Possessions and Temporary Shutdowns

- (a) The table in Schedule 30 identifies the available Track Possessions and Temporary Shutdowns (with power isolations) and shall be deemed to also include any Track Possession or Temporary Shutdown (as applicable) provided as an alternative to a cancelled Track Possession or Temporary Shutdown as referred to in paragraph (a)(ii) of items 36 and 37 of Schedule 1.
- (b) The Principal will liaise with any relevant Rail Transport Agency to procure for the benefit of the Contractor the Track Possessions and Temporary Shutdowns as set out in Schedule 30.
- (c) The Contractor must:
- (i) coordinate the Contractor's Activities with the calendar of available Track Possessions and Temporary Shutdowns and make proper allowances in all programs for the calendar of available Track Possessions and Temporary Shutdowns; and
 - (ii) set out in each version of the Contractor's Program the Track Possessions and Temporary Shutdowns that it proposes to utilise in carrying out the Works.
- (d) The Contractor acknowledges that it will not have exclusive access to any Track the subject of a Track Possession or Temporary Shutdown and must:
- (i) without limiting clauses 2.9 or 7.4, coordinate its activities with whoever else is sharing the relevant Track Possession or Temporary Shutdown; and

- (ii) allow any relevant Rail Transport Agency and Other Contractors to pass through any Track the subject of the relevant Track Possession or Temporary Shutdown.
- (e) If the Contractor requires a Track Possession or power isolation in addition to the Track Possessions identified in clause 7.12(a) for the performance of the Contractor's Activities ("**Additional Track Possession or Power Isolation**") and requires the Principal to liaise with the relevant Rail Transport Agency in this regard, it must provide no less than:
 - (i) 52 weeks prior written notice in respect of each Additional Track Possession or Power Isolation that falls on a weekend; or
 - (ii) 26 weeks prior written notice in respect of each Additional Track Possession or Power Isolation that falls on a weeknight,

and identify whether a power isolation is required during the requested Additional Track Possession or Power Isolation.

- (f) Following receipt of a request for an Additional Track Possession or Power Isolation under clause 7.12(e), the Principal may assist the Contractor to obtain the requested Additional Track Possession or Power Isolation, but is under no obligation to do so and in no way guarantees that the requested Additional Track Possession or Power Isolation will be granted by any relevant Rail Transport Agency.

The Contractor acknowledges and agrees that it will bear the risk and cost of, and resulting from, any request by the Contractor for an Additional Track Possession or Power Isolation under clause 7.12(e).

- (g) If an Additional Track Possession or Power Isolation is granted by a Rail Transport Agency, the Contractor must make the necessary arrangements for the Additional Track Possession or Power Isolation in accordance with Appendix F02 of the SWTC.
- (h) The Contractor must effectively and efficiently utilise each Track Possession and Temporary Shutdown.
- (i) The Contractor acknowledges and agrees that:
 - (i) the Principal or any relevant Rail Transport Agency may alter or cancel any Track Possession, Temporary Shutdown, power isolation or Additional Track Possession or Power Isolation at any time;
 - (ii) it bears the risk and cost of the alteration or cancellation of any Additional Track Possession or Power Isolation; and
 - (iii) its only remedy for the alteration or cancellation by the Principal or any relevant Rail Transport Agency of a Track Possession, Temporary Shutdown or power isolation referred to in clause 7.12(a) is set out in clauses 10.7 and paragraph (a) of item 36 of Schedule 1 and clause 10.13 and paragraph (a) of item 37 of Schedule 1.

7.13 Indemnity for delays to rail services

- (a) The Contractor must:
- (i) Hand Back the relevant part of the Rail Corridor by the scheduled end of each Track Possession and Temporary Shutdown;
 - (ii) not cause any delay to rail services;
 - (iii) in the event of an emergency, cease to occupy the relevant part of the Rail Corridor within a reasonable period of the emergency occurring; and
 - (iv) immediately notify Sydney Trains' Representative (with a copy to the Principal) if the Contractor anticipates it may be late in vacating the Rail Corridor.
- (b) Subject to clause 7.13(d), the Contractor must indemnify the Principal against all costs, expenses, losses or damages suffered or incurred by the Principal (including arising out of or in any way in connection with any claim by Sydney Trains or TAHE against the Principal or any liability of the Principal to Sydney Trains or TAHE) if:
- (i) the Contractor is late in achieving Hand Back of the relevant part of the Rail Corridor that is the subject of a Track Possession or Temporary Shutdown; or
 - (ii) there is a delay to rail services arising out of or in connection with the Contractor's Activities.

The maximum liability which the Contractor will have to the Principal pursuant to this clause 7.13(b) for each event described in clauses 7.13(b)(i) or 7.13(b)(ii) will be determined on the basis of the maximum period by which any train was delayed by the event or late return of a Track Possession or Temporary Shutdown calculated by applying the following rates:

- (iii) [REDACTED] or part thereof that elapses during Peak Hours:
 - A. between the time that the relevant part of the Rail Corridor the subject of the Track Possession or Temporary Shutdown was scheduled to end and the Hand Back of the Track Possession or Temporary Shutdown; or
 - B. while the delay to rail services arising out of or in connection with the Contractor's Activities is subsisting; and
- (iv) [REDACTED] or part thereof that elapses outside of Peak Hours:
 - A. between the time that the relevant part of the Rail Corridor the subject of the Track Possession or Temporary Shutdown was scheduled to end and the Hand Back of the Track Possession or Temporary Shutdown; or

- B. while the delay to rail services arising out of or in connection with the Contractor's Activities is subsisting.
- (c) Clause 7.13(b) sets out the Principal's sole and exclusive remedy for loss as a result of an event described in clause 7.13(b)(i) or 7.13(b)(ii).
- (d) The Contractor's liability to indemnify the Principal under clause 7.13(b) will be reduced proportionally to the extent that any act or omission of the Principal, its Associates, Sydney Trains or TAHE contributed to the costs, expenses, losses or damages.
- (e) A delay to the commencement of a Track Possession or Temporary Shutdown will not:
 - (i) affect the Contractor's liability to indemnify the Principal under clause 7.13(b); or
 - (ii) constitute an act or omission of the Principal, its Associates, Sydney Trains or TAHE for the purposes of clause 7.13(d).

8. Defects

8.1 Defects Liability

- (a) If during the Defects Rectification Period, any Defect is found in the Works (whether or not it is the subject of a notice under clause 8.2), the Contractor must rectify such Defect and any damage to the Works to the extent caused by the Defect.
- (b) Without limiting clause 8.1(a), the Contractor must:
 - (i) following Construction Completion of a Portion, use its best endeavours to correct all Minor Defects and Agreed Defects identified in a Notice of Construction Completion within 30 days after the achievement of Construction Completion; and
 - (ii) ensure that all Minor Defects and Agreed Defects identified in a Notice of Construction Completion for any Portion are corrected as soon as possible after Construction Completion of that Portion.
- (c) When rectifying Defects which existed at the Date of Construction Completion of a Portion, the Contractor must do so at times and in a manner which causes as little inconvenience to the occupants or users of the Works or a Portion, Local Areas, Utility Services (or any access to them) and the adjacent community as is reasonably possible.

8.2 Defect Notification

If at any time prior to the expiration of any Defects Rectification Period, the Principal's Representative discovers or believes there is a Defect, the Principal's Representative may give the Contractor a direction which identifies the Defect and does one or more of the following:

- (a) requires the Contractor to rectify the Defect, or any part of it, and specifying the time within which this must occur;
- (b) advises the Contractor that the Principal will accept the work, or any part of it, despite the Defect; or
- (c) in respect of any Defect to which clause 8.3(b) applies, advises the Contractor that an Other Contractor will rectify (or has rectified) the Defect, or any part of it, or carry out (or has carried out) a change or variation under its contract with the Principal to overcome the Defect, or any part of it.

8.3 Rectification of Defect

If a direction is given under clause 8.2(a):

- (a) the Contractor must rectify the Defect (or the part of it notified):
 - (i) within the times specified in the Principal's Representative's direction, which will generally be limited to the periods during which the rectification work will cause minimal or no inconvenience to the operators, including any Rail Transport Agency (where relevant), and occupants of the Works; and
 - (ii) if after Construction Completion of the relevant Portion:
 - A. at other times otherwise agreed with the Principal's Representative;
 - B. in accordance with the requirements of the operators of the Works, including any Rail Transport Agency (where relevant), and any other relevant Authority;
 - C. so as to minimise the impact on the use of the Works or the Portion;
 - D. in a manner which causes as little inconvenience as possible to users of the Works or the Portion or the public, any Utility Service or any access to the Works or the Portion;
 - E. if an Interface Contractor has taken possession of the relevant part of the Site, in accordance with the reasonable requirements of the relevant Interface Contractor in relation to access and site safety; and
 - F. in accordance with its obligations under the Project Cooperation and Integration Deeds; and
- (b) if the Contractor does not comply with clause 8.3(a)(i), the Principal's Representative may, without prejudice to any other rights that the Principal may have against the Contractor with respect to the Defect under this Contract or otherwise at Law, give the Contractor a direction under clause 8.2(c) and have the rectification work carried out at the Contractor's expense, and the cost of

the rectification work incurred by the Principal will be a debt due from the Contractor to the Principal.

The Contractor must pay the Principal all costs incurred by the Principal in providing access to the Works or a Portion, or arranging the availability of any resources (including the resources of any other Rail Transport Agency), as may be necessary for the Contractor to rectify any Defect during the Defects Rectification Period.

8.4 No Claim for Correction of Defect

Where a direction is given under clause 8.2(a), the Contractor will not be entitled to make a Claim against the Principal for rectifying the Defect (or the part notified) and must bear all costs, losses and expenses suffered or incurred in rectifying the Defect.

8.5 Acceptance of Work

If a direction is given under clause 8.2(b):

- (a) where the value to the Principal of the Works is reduced (which will include having regard to any additional operating or maintenance costs) arising out of or in any way in connection with the Defect (or the part notified), the Contract Sum will be reduced by the amount determined by the Principal's Representative as the higher of the cost of rectifying the Defect (or the part notified) and the diminution in the value to the Principal of the Works; or
- (b) where the value to the Principal of the Works increases because of the acceptance of the Defect (or the part notified):
 - (i) the Principal's Representative will determine an amount by subtracting the cost of rectifying the Defect from the increased value of the Works; and
 - (ii) the Contract Sum will:
 - A. be reduced by the amount determined by the Principal's Representative, where that amount is negative; and
 - B. not be changed where the amount determined by the Principal's Representative is positive.

8.6 Extension of Defects Rectification Period

If:

- (a) the Principal's Representative gives the Contractor a notice under clause 8.2(a) during any Defects Rectification Period; and
- (b) the Contractor rectifies the Defect (or the part notified),

the relevant Defects Rectification Period for the work required by the notice will be extended by the period set out in paragraph (b)(ii) of item 3 of Schedule 1, commencing upon completion of the rectification of the Defect (or the part notified), or

in the case of the Third Party Works, by the periods set out in clauses 2.5(e)(ii), 2.5A(e)(ii) (if applicable), 2.5B(d)(ii) or 2.5C(a)(ii) (as relevant).

8.7 Defect Rectification by Other Contractor

Where a direction is given under clause 8.2(c):

- (a) without limiting or otherwise affecting clauses 2.9 or 7.4, the Contractor must not impede the Other Contractor from having sufficient access to the Site or Extra Land to rectify the Defect or carry out the change or variation under its contract with the Principal (as applicable); and
- (b) any costs, losses or damages suffered or incurred by the Principal arising out of or in any way in connection with the Other Contractor rectifying the Defect or carrying out the change or variation under its contract with the Principal (as applicable), will be a debt due from the Contractor to the Principal.

8.8 Rights Not Affected

Neither the Principal's rights, nor the Contractor's liability, whether under this Contract or otherwise according to Law in respect of Defects, whether before or after the expiration of any relevant Defects Rectification Period, will be in any way affected or limited by:

- (a) the rights conferred upon the Principal or the Principal's Representative by this clause 8 or any other provision of this Contract;
- (b) the exercise of, or the failure by the Principal or the Principal's Representative to exercise, any such rights; or
- (c) any notice or direction of the Principal's Representative under clause 8.2.

9. Administration

9.1 Principal's Representative

- (a) The Principal must ensure that at all times until Final Completion there is a Principal's Representative. The Contractor acknowledges and agrees that the Principal's Representative will give directions and carry out all its other functions under this Contract as the agent of the Principal (and not as an independent certifier, assessor or valuer) and is subject to the directions of the Principal.
- (b) A discretion (including an absolute or sole discretion), power or decision of the Principal's Representative is validly and properly exercised or made for the purposes of this Contract if exercised or made (or if it is not exercised or made) by the Principal's Representative:
 - (i) independently;
 - (ii) after consultation with the Principal and its advisers; or
 - (iii) as directed by the Principal.

- (c) Any control or influence exercised by the Principal over the Principal's Representative does not:
 - (i) affect the valid and proper exercise of any power or discretion (including an absolute or sole discretion) or the making of a decision by the Principal's Representative; or
 - (ii) entitle the Contractor to make any Claim against the Principal's Representative or the Principal, or to challenge the effect or validity of the discretion (including an absolute or sole discretion), power, or decision.
- (d) The Contractor must comply with any direction by the Principal's Representative given or purported to be given under a provision of this Contract.
- (e) Except where this Contract otherwise provides, the Principal's Representative may give a direction orally but will as soon as practicable confirm it in writing.
- (f) The Principal will not be liable upon any Claim by the Contractor arising out of or in connection with any direction by the Principal's Representative in circumstances where it is incorrect, subsequently overturned pursuant to clause 15 or is unreasonable (other than in accordance with the corrected determination). The Contractor acknowledges and agrees that its sole means of redressing any errors contained in or associated with any such direction by the Principal's Representative is by giving a Notice of Issue in accordance with clause 15.3.

9.2 Replacement of the Principal's Representative

The Principal may at any time replace the Principal's Representative, in which event the Principal must appoint another person as the Principal's Representative and notify the Contractor of that appointment.

Any substitute Principal's Representative appointed under this clause 9.2 will be bound by anything done by the former Principal's Representative to the same extent as the former Principal's Representative would have been bound.

9.3 Delegation of Functions

- (a) The Principal's Representative may:
 - (i) by written notice to the Contractor appoint persons to exercise any of the Principal's Representative's functions under this Contract;
 - (ii) not appoint more than one person to exercise the same function under this Contract; and
 - (iii) revoke any appointment under clause 9.3(a)(i) by notice in writing to the Contractor.

- (b) The Principal's Representative may continue to exercise a function under this Contract despite appointing another person to exercise the function under clause 9.3(a)(i).
- (c) All references in this Contract to the Principal's Representative include a reference to an appointee appointed under clause 9.3(a)(i).

9.4 Contractor's Personnel

- (a) The Contractor must notify the Principal's Representative in writing of the name of the Contractor's Representative (who at the date of this Contract is the relevant person listed in item 35 of Schedule 1) and of any subsequent changes.
- (b) The Contractor must:
 - (i) employ the individuals nominated by the Contractor and listed in item 35 of Schedule 1 in the positions specified in item 35 of Schedule 1 or equivalent positions;
 - (ii) subject to clause 9.4(b)(iii), not replace the individuals referred to in clause 9.4(b)(i) without the Principal's Representative's prior written approval which will not be unreasonably withheld; and
 - (iii) if any of the individuals referred to in clause 9.4(b)(i):
 - A. dies;
 - B. becomes unable to continue in their positions due to illness;
 - C. resigns from the employment of the Contractor (other than to accept other employment with the Contractor or any Related Body Corporate of the Contractor); or
 - D. becomes the subject of a direction under clause 9.4(c),

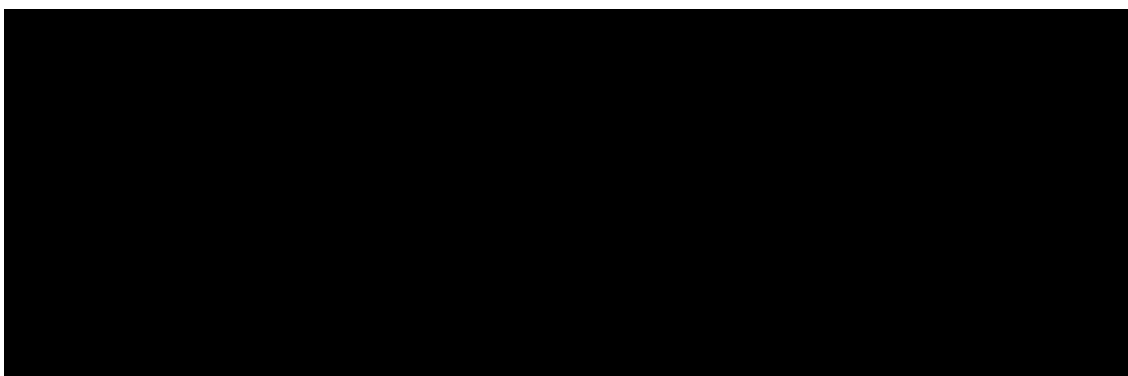
replace them with personnel of at least equivalent experience, ability, knowledge and expertise approved by the Principal's Representative.
- (c) The Principal's Representative may, at its absolute discretion and without being obliged to give any reasons, by notice in writing direct the Contractor to remove any person (including a person referred to in clause 9.4(a) or clause 9.4(b)) from the Site and the Contractor's Activities. The Contractor must then cease to engage that person in the Contractor's Activities and must appoint a replacement.
- (d) The Contractor must ensure that any person the subject of a direction under clause 9.4(c) is not again employed in the Contractor's Activities or on the Site.
- (e) Any direction under clause 9.1(a) will be deemed to have been given to the Contractor if given to the Contractor's Representative. Matters within the knowledge of the Contractor's Representative will be deemed to be within the knowledge of the Contractor.

9.5 Site Meetings

The Contractor must convene meetings on the Site or such other place (or places) as the Principal's Representative may direct at:

- (a) prior to the Date of Completion of the last Portion to reach Completion, weekly or such longer intervals as may be directed in writing by the Principal's Representative; and
- (b) monthly intervals after the Date of Completion of the last Portion to reach Completion until all Defects Rectification Periods (including any extension under clause 8.6), have expired or at such other intervals as may otherwise be agreed.

9.5A Independent Certifier



- (b) Once the final form of the Independent Certifier Deed is agreed in writing between the Principal, the Contractor, the Independent Certifier and the Operator:
 - (i) the Principal will provide the final version of the Independent Certifier Deed to the Contractor; and
 - (ii) the Contractor must provide to the Principal the Independent Certifier Deed, duly executed by the Contractor in the number of counterparts required by the Principal's Representative, within 10 Business Days after receipt of the final version of the Independent Certifier Deed from the Principal's Representative.
- (c) Without limiting [REDACTED] clause 9.5A(b):
 - (i) the Principal's Representative may, by written notice to the Contractor and in its absolute discretion, request the Contractor to execute an IC Letter of Intent in the form attached to the Principal's Representative's notice, which must be substantially in the form set out in Schedule 38; and
 - (ii) if requested by the Principal's Representative, the Contractor must:
 - A. provide to the Principal the IC Letter of Intent, duly executed by the Contractor in the number of counterparts required by the

Principal, within 10 Business Days after receipt of the Principal's Representative's request; and

- B. at all relevant times thereafter comply with the terms of the IC Letter of Intent.
- (d) The Independent Certifier will be engaged on the terms of:
 - (i) the IC Letter of Intent (if required by the Principal's Representative pursuant to clause 9.5A(c)(i)); and
 - (ii) the Independent Certifier Deed.
- (e) The Independent Certifier is obliged to act independently of the Principal, the Contractor and their respective Associates.
- (f) Both parties must provide the Independent Certifier with all information and documents and allow the Independent Certifier:
 - (i) to attend meetings; and
 - (ii) access to all premises,as may be necessary or reasonably required by the Independent Certifier to allow the Independent Certifier to perform its obligations under the IC Letter of Intent (if applicable) and the Independent Certifier Deed.
- (g) All notices and documents provided by a party to the Independent Certifier must be copied to the other party. If a party is required to provide a notice or document to the Independent Certifier within a specified time period, that notice or document must be provided to the other party within the same time period.
- (h) The Principal's Representative may provide comments to the Independent Certifier in respect of the Contractor's Activities.

9.5B Effect of Independent Certifier decisions

- (a) No certification or determination by the Independent Certifier will:
 - (i) constitute an approval by the Principal of the Contractor's performance of its obligations under this Contract;
 - (ii) be taken as an admission or evidence that the Works or Temporary Works or any other matters certified or determined by the Independent Certifier comply with this Contract; or
 - (iii) prejudice any rights or powers of the Principal under this Contract or otherwise according to Law, including any rights which the Principal may have in respect of Defects in the Works.
- (b) No act or omission of the Independent Certifier, including any certification or determination by the Independent Certifier:

- (i) is an act or omission by the Principal (including a breach of contract) under or in connection with the Station Contract Documents; or
- (ii) without limiting clause 9.5B(b)(i), will give rise to any liability of the Principal to the Contractor.

9.6 Environmental Representative

The Contractor acknowledges and agrees that:

- (a) the Principal has appointed the Environmental Representative as required by an Authority Approval;
- (b) the Environmental Representative:
 - (i) is independent of the parties;
 - (ii) shall oversee the implementation of all environmental management plans and monitoring programs required under the Planning Approval, and shall advise the Principal upon achievement of the outcomes contemplated in the Planning Approval;
 - (iii) shall advise the Principal and the Principal's Representative on the Contractor's compliance with the Planning Approval; and
 - (iv) shall have the authority and independence to:
 - A. direct the Contractor as to; or
 - B. advise the Principal's Representative to direct the Contractor as to,
 - reasonable steps the Contractor must take to avoid or minimise unintended or adverse environmental impacts;
- (c) it must comply with the directions of the Environmental Representative or the Principal's Representative as contemplated by clause 9.6(b)(iv); and
- (d) it bears the full risk of complying with any directions given by the Environmental Representative or the Principal's Representative as contemplated by clause 9.6(c) and none of the Principal, the Principal's Representative or the Environmental Representative will be liable upon any Claim arising out or in any way in connection with such directions.

9.7 Industrial Relations

The Contractor must in carrying out the Contractor's Activities:

- (a) assume sole responsibility for and manage all aspects of industrial relations for the Contractor's Activities;
- (b) ensure all Subcontractors manage all aspects of the industrial relations with their employees appropriately;

- (c) ensure that the rates of pay and conditions of employment specified in all relevant industrial, enterprise and project based agreements and awards, and any relevant Law, for all employees engaged in any capacity by any person in connection with the Contractor's Activities, are always observed in full;
- (d) keep the Principal's Representative fully and promptly informed of industrial relations problems or issues that affect or are likely to affect the carrying out of the Contractor's Activities;
- (e) without limiting clauses 2.3 and 20, comply with all the requirements of the NSW Guidelines;
- (f) conduct its industrial relations affairs in accordance with the Workplace Relations Management Plan developed and submitted by the Contractor as part of the Contract Management Plans, in accordance with the SWTC and clause 9.8;
- (g) prepare, document and implement a project Workplace Relations Management Plan which must be based on the draft outline Workplace Relations Management Plan (if any) submitted with the Contractor's Tender;
- (h) not commence any work on the Site or Extra Land until the Workplace Relations Management Plan has been submitted to the Principal's Representative and the Principal's Representative has not rejected it within the period specified in clause 9.8;
- (i) submit to the Principal's Representative, before beginning work on the Site or Extra Land, a statement detailing:
 - (i) the location of time and wage records and other documents that are required to be kept to verify ongoing compliance with all employment and legal obligations;
 - (ii) the names of each award or enterprise agreement that is likely to cover the Contractor and Subcontractors involved in the Contractor's Activities; and
 - (iii) the names of those responsible for coordinating industrial relations for the Contractor's Activities;
- (j) not do, or omit to do, anything that is, or is likely to be, prejudicial to the performance of the Contractor's Activities;
- (k) before beginning work on the Site or Extra Land, submit a statement on the Contractor's letterhead and signed by an authorised person, attesting to the Contractor's compliance, in the preceding twelve months, with all employment and legal obligations, including:
 - (i) payment of remuneration to employees;
 - (ii) annual leave provisions;
 - (iii) Long Service Leave Payment Scheme registration;

- (iv) obligations to register workers under the *Building and Construction Industry Long Service Payments Act 1986* (NSW);
 - (v) workers' compensation insurance, including self-insurance arrangements;
 - (vi) superannuation fund membership and contributions; and
 - (vii) over-award payments such as redundancy fund contributions; and
- (l) continue to provide during the Contractor's Activities appropriate information to verify compliance with the awards, enterprise and workplace agreements and all other legal obligations relating to the employment of people for the Contractor's Activities.

If the Contractor engages an independent industry or employer association or other specialist organisation to audit and verify compliance with employment and legal obligations, a statement or declaration from that organisation may be submitted instead of the statement by the Contractor under clause 9.7(i).

The industrial relations requirements contained in this Contract and the NSW Guidelines:

- (m) are in addition to, but are not in substitution for, any requirements of Law; and
- (n) do not limit the powers of the Principal or the liabilities and responsibilities of the Contractor.

The Contractor warrants and acknowledges that it has allowed in the Original Contract Price for all the costs and expenses involved with complying with all the requirements of this Contract relating to industrial relations and all relevant awards, enterprise and industrial agreements and project specific agreements and awards.

9.8 Submission for Review by the Principal's Representative

- (a) The Contractor must submit each Document:
 - (i) in accordance with the times stated in this Contract or otherwise progressively and in a timely manner to ensure that the Contractor's Activities are commenced, progressed and completed by the times required under this Contract, and by the times or within the periods:
 - A. identified in the Contractor's Program which is not rejected by the Principal's Representative; or
 - B. in the absence of a time or period in the Contractor's Program, required by the Principal's Representative; and
 - (ii) under cover of a written notice entitled "Submit for Review", which identifies:
 - A. the Document; and

- B. the provision of this Contract under which the Document is submitted.
- (b) A Document will be deemed not to have been submitted to the Principal's Representative unless and until:
- (i) the Document covers, fully details and co-ordinates the whole of discrete areas of work so as to allow the area of work to be fully understood; and
 - (ii) the Contractor has otherwise complied with this clause 9.8, in addition to any other requirement of this Contract relating to the submission of that Document.
- (c) The Principal's Representative may, after the submission of a Document which satisfies the requirements of clause 9.8(b):
- (i) review the Document, or any resubmitted Document, prepared and submitted by the Contractor within 20 Business Days of submission by the Contractor of such Document or resubmitted Document; or
 - (ii) where submitted or resubmitted in accordance with a program which has not been rejected by the Principal's Representative, within 15 Business Days of submission by the Contractor of such Document or resubmitted Document,
- and either:
- (iii) reject the Document if in its opinion the Document (or any part) does not comply with the requirements of this Contract, stating the nature of the non-compliance;
 - (iv) make comments on the Document; or
 - (v) notify the Contractor that it has no (or has no further) comments to make.
- (d) If any Document:
- (i) is rejected or deemed to be rejected, the Contractor must submit an amended Document to the Principal's Representative within 10 Business Days of the date of such rejection or deemed rejection and this clause 9.8 will re-apply; or
 - (ii) is not rejected and the Principal's Representative responds to the submission with comments, the Contractor must respond to the comments within 10 Business Days or such other period as may be directed by the Principal's Representative.

If the Contractor fails to respond to the Principal's Representative's comments within this period in a manner satisfactory to the Principal's Representative the Document will be deemed to be rejected.

- (e) The Contractor must not commence construction of any part of the Works to which any Document (other than the Contractor's Program) submitted to the

Principal's Representative applies, unless the Principal's Representative has had the relevant period referred to in clause 9.8(c)(ii) to review the Document and has not rejected the Document or made any comments on the Document (except in the case where the Contractor has responded to the Principal's Representative's comments within the required time period and in a manner satisfactory to the Principal's Representative as referred to in clause 9.8(d)).

- (f) The Contractor must not amend for construction purposes any Document that has:
 - (i) been submitted to the Principal's Representative; and
 - (ii) not been rejected or not had comments made about it under clause 9.8(c)(ii),

unless the Contractor submits the proposed amendments to the Principal's Representative, in which case this clause 9.8 will re-apply.

- (g) The Principal's Representative does not assume or owe any duty of care or other responsibility to the Contractor to review, or in reviewing, a Document submitted by the Contractor, including for errors, omissions or non-compliance with this Contract.
- (h) The Contractor will not be entitled to make, and the Principal will not be liable upon, any Claim arising out of or in any way in connection with the Principal's Representative not detecting and notifying the Contractor of any errors, omissions or non-compliance with the requirements of this Contract in any Document submitted.
- (i) No review of, comment upon or rejection of, or failure to review or comment upon or reject, a Document prepared by the Contractor, or any other direction by the Principal's Representative in connection with the Document, will:
 - (i) constitute a direction to carry out a Variation pursuant to clause 6.2, unless it is in a written document titled "Variation Order" and describes the nature of the Variation in accordance with clause 6.2(a);
 - (ii) relieve the Contractor from or alter its liabilities or obligations, whether under this Contract or otherwise according to any Law; or
 - (iii) limit or otherwise affect the Principal's rights against the Contractor, whether under this Contract or otherwise according to any Law.
- (j) In considering any Document, the Principal's Representative may provide copies of the Document to, and consult with and take into account any views or requirements of, the Independent Certifier, the Design Contractor, any Interface Contractor and/or any relevant Authority.
- (k) Unless otherwise advised by the Principal's Representative, the Contractor must submit the number of copies of a Document stated in this Contract, or if no number is stated then:

- (i) an electronic version (in both pdf and native formats) via the PDCS, which must be virus free; and
- (ii) 1 printed version.

9.9 Work Method

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

- (a) not entitle the Contractor 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 the Contract to be frustrated.

9.10 Exchange of Information between Government Agencies

The Contractor authorises the Principal and its Associates to make information concerning the Contractor (including any information provided under clause 9.11) available to NSW government departments or agencies. Such information may include, but need not be limited to, any information provided by the Contractor to the Principal and any information relating to the Contractor's performance under this Contract.

The Contractor acknowledges that any information about the Contractor from any source, including but not limited to substantiated reports of unsatisfactory performance, may be taken into account by the Principal and NSW government departments and agencies in considering whether to offer the Contractor future opportunities for NSW government work.

The Contractor also acknowledges that the Principal has in place processes for assessing the performance of its contractors, that these processes will apply to the Contractor's performance under this Contract and that it will participate in the Principal's "Contractor Performance Reporting" process.

9.11 Financial Assessment

Without limiting or otherwise restricting clause 9.10, the Contractor acknowledges and agrees that:

- (a) the Principal may, during the term of the Contract, either itself, or through the engagement of private sector service providers, undertake ongoing financial assessments ("**Financial Assessment**") of the Contractor and any Subcontractors;
- (b) the Financial Assessment may be undertaken at three monthly (or longer) intervals from the date of commencement of the Works; and

- (c) it must, if requested by the Principal's Representative, within 10 Business Days of receiving such request, provide any documents, information and evidence as is reasonably required by the Principal's Representative under, out of, or in connection with the Financial Assessment.

9.12 Aboriginal Participation

The Contractor must comply with the requirements of the NSW Government Aboriginal Participation in Construction (**APIC**) Policy (June 2018) as specified in Appendix F04 of the SWTC.

9.13 Waste Reduction and Purchasing Policy

The Contractor must:

- (a) use its best endeavours to reduce wastage and increase the use of recycled materials in accordance with the GREP;
- (b) not used; and
- (c) provide reports to the Principal's Representative in such format and within such times as may be required by the Principal's Representative for the use by the Principal in complying with its GREP obligations to report performance.

9.14 Not used

9.15 National Greenhouse and Energy Reporting Act 2007 (Cth)

The Contractor acknowledges and agrees that:

- (a) if any of the Contractor's Activities, or the activities of any of the Contractor's personnel, in connection with the Contractor's Activities (the "**Relevant Matters**") constitute a "facility" within the meaning of the NGER Legislation, then, for the purposes of the NGER Legislation, the Contractor has operational control of that facility and will comply with any obligations arising in respect of the Principal's activities under the NGER Legislation;
- (b) if, despite the operation of clause 9.15(a), 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 any of the Relevant Matters, and the NGER Legislation provides that such liability can be transferred by the Principal or the NSW Government or any of its agencies to the Contractor, the Contractor must, on the written request of the Principal, do all things reasonably necessary to ensure the liability is transferred to the Contractor;
- (c) if the Principal requests it, the Contractor must provide Greenhouse Data to the Principal:
 - (i) to the extent that, in a manner and form that, and at times that, will enable the Principal to comply with the NGER Legislation irrespective of whether the Principal or the Contractor or any other person has an obligation to

comply with the NGER Legislation in connection with any Relevant Matters; and

- (ii) otherwise as requested by the Principal from time to time;
- (d) the Contractor must also provide to the Principal all Greenhouse Data and other information which the Contractor provides to any other person under the NGER Legislation in connection with any Relevant Matters, at the same time as the Contractor provides that Greenhouse Data or other information to that other person;
- (e) the Contractor must:
 - (i) collect and record all such Greenhouse Data as may be required to enable reporting under the NGER Legislation or enable the Contractor to discharge its obligations under this clause 9.15, and keep that Greenhouse Data for at least 7 years after the end of the year in which the Relevant Matters occur; and
 - (ii) permit any persons appointed or authorised by the Principal to examine, monitor, measure, copy, audit and/or verify the Greenhouse Data and co-operate with and provide all reasonable assistance to any such persons (including by doing such things as giving access to premises, plant and equipment, producing and giving access to documents and answering any relevant questions);
- (f) the Principal may provide or otherwise disclose the Greenhouse Data and any other information which the Principal obtains under this clause 9.15 to any other person, and may otherwise use the Greenhouse Data and other information for any purpose as the Principal sees fit; and
- (g) nothing in this clause 9.15 is to be taken as meaning that the Principal has agreed to perform any statutory obligation that the Contractor may have regarding the provision of Greenhouse Data to any Authority.

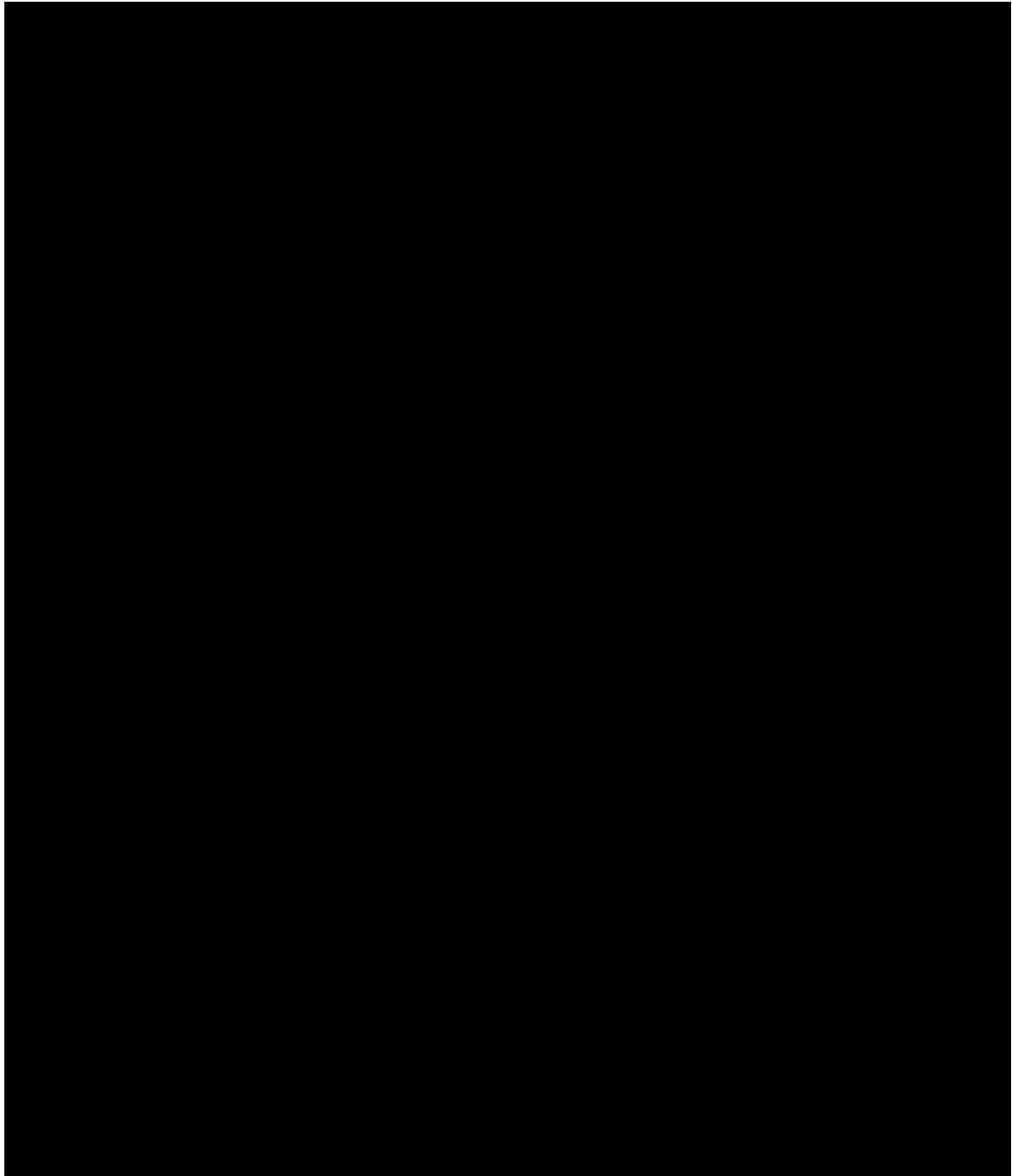
9.16 Independent Property Impact Assessment Panel

- (a) The Contractor acknowledges that the Principal has established an Independent Property Impact Assessment Panel for Sydney Metro City & Southwest in accordance with the requirements of the Planning Approval.
- (b) The Contractor must (at its cost):
 - (i) cooperate with the Independent Property Impact Assessment Panel and provide the Independent Property Impact Assessment Panel with any assistance, information or documentation that the Independent Property Impact Assessment Panel may reasonably require in order to carry out its functions;
 - (ii) permit the Independent Property Impact Assessment Panel to access the Site or Extra Land and inspect the Contractor's Activities provided that the Contractor is given reasonable prior written notice and the members

of the Independent Property Impact Assessment Panel comply with the Contractor's reasonable work health and safety procedures; and

- (iii) attend any meeting of the Independent Property Impact Assessment Panel that it is requested to attend by the Principal's Representative or the chairperson of the Independent Property Impact Assessment Panel provided that the Contractor is given reasonable prior written notice of any such meeting.

9.17 Respite Services





9A. Construction Environmental Management Plan

9A.1 Definitions

Terms used in this clause 9A that are capitalised but are not defined in this Contract have the same meaning as in the Project Planning Approval (Sydenham to Bankstown).

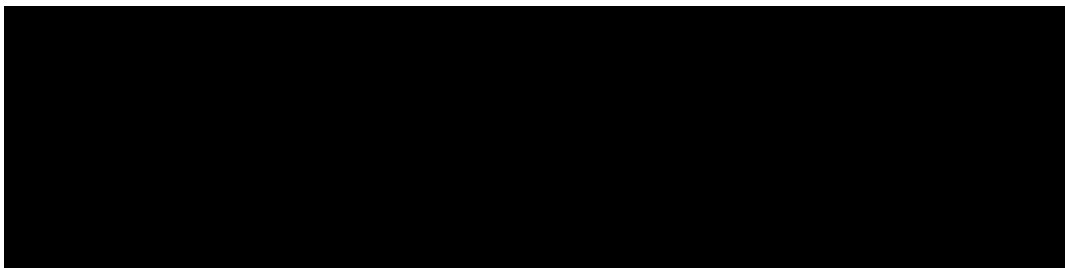
9A.2 Draft Construction Environmental Management Plan

The Contractor acknowledges and agrees that:

- (a) prior to the date of this Contract:
 - (i) the Principal has prepared the Draft Construction Environmental Management Plan as set out in Exhibit F which is in accordance with the SWTC and the Planning Approvals and which is based on, and consistent with, the Construction Methodology; and
 - (ii) it reviewed and approved the form of the Draft Construction Environmental Management Plan; and
- (b) notwithstanding that the Draft Construction Environmental Management Plan was prepared by the Principal, but subject to clauses 9A.3(a), 10.7 and 10.13 and clauses 3(b)(xxi) and 3(b)(xxii) of Schedule 4:
 - (i) the Contractor accepts, and will bear all responsibility for, the Draft Construction Environmental Management Plan under the provisions of this Contract;
 - (ii) the Principal has no Liability to the Contractor by reason of the form or content of the Draft Construction Environmental Management Plan; and
 - (iii) the Contractor warrants that the Original Contract Price and the Initial Contractor's Program contain sufficient allowance for the assumption by the Contractor of all risk in relation to the Construction Environmental Management Plan, including for complying with and implementing the Construction Environmental Management Plan.

9A.3 Process for approval

- (a) The Principal must:
- (i) obtain the ER's endorsement of the Draft Construction Environmental Management Plan; and
 - (ii) submit the Draft Construction Environmental Management Plan to the Planning Secretary for approval,
- in accordance with conditions C1 to C6 (inclusive) of the Project Planning Approval (Sydenham to Bankstown).
- (b) The Principal's Representative may, by written notice, request that the Contractor provide the Principal's Representative with all the information, documents, details and data relating to the Contractor's Activities to enable the Principal to comply with its obligations in clause 9A.3(a) and conditions C1 to C6 (inclusive) of the Project Planning Approval (Sydenham to Bankstown), including information, documents, details and data required to respond to the requests and requirements of the relevant government agencies, including those identified in the table in condition C3 of the Project Planning Approval (Sydenham to Bankstown).
- (c) The Contractor must, within 5 Business Days (or such other period as determined by the Principal's Representative, acting reasonably) after receipt of the Principal's notice under clause 9A.3(b), provide the Principal's Representative with the requested information, documents, details and data. The information, documents, details and data provided by the Contractor must be full, complete, adequate and accurate.
- (d) The Contractor must work closely and iteratively with the Principal's Representative and in good faith to resolve any requests with respect to, issues with, or non-compliances with the Planning Approvals of, the Draft Construction Environmental Management Plan to allow the Principal to:
- (i) obtain the Planning Secretary's approval of the Draft Construction Environmental Management Plan by the CEMP Approval Date; and
 - (ii) comply with its obligations in clause 9A.3(a) and conditions C1 to C6 (inclusive) of the Project Planning Approval (Sydenham to Bankstown).
- (e) Failure by the Principal to obtain the Planning Secretary's approval of the Draft Construction Environmental Management Plan by the CEMP Approval Date will not be a breach of this Contract but will entitle the Contractor to:





10. Time and Progress

10.1 Rate of Progress

- (a) The Contractor must:
 - (i) immediately commence, and thereafter regularly and diligently progress the Contractor's Activities;
 - (ii) proceed with the Contractor's Activities with due expedition and without delay; and
 - (iii) achieve:
 - A. Construction Completion of each Portion by the relevant Date for Construction Completion; and
 - B. Completion of each Portion by the relevant Date for Completion.
- (b) Without limiting the Contractor's rights under the *SOP Act*, the Contractor must not suspend the progress of the whole or any part of Contractor's Activities except where directed by a court or by the Principal's Representative under clause 10.14.
- (c) Without limiting the next paragraphs of this clause 10.1 or clause 10.4, the Contractor must give the Principal's Representative reasonable advance notice of any information, documents or directions required by the Contractor to carry out the Contractor's Activities in accordance with this Contract.
- (d) The Principal and the Principal's Representative will not be obliged to furnish information, documents or directions earlier than the Principal or the Principal's Representative, as the case may be, should reasonably have anticipated at the date of this Contract.
- (e) The Principal's Representative may, by written notice expressly stated to be pursuant to this clause 10.1, direct in what order and at what time the various stages or parts of the Contractor's Activities must be performed, including directing the Contractor to accept early access to a part of the Site early as contemplated in clause 3.1A . If the Contractor can reasonably comply with the direction, the Contractor must do so. If the Contractor cannot reasonably comply, the Contractor must notify the Principal's Representative in writing, giving reasons. For the avoidance of doubt, no direction by the Principal's Representative will constitute a direction under this clause 10.1 unless the direction is in writing and expressly states that it is a direction under this clause 10.1.

- (f) If compliance with a written direction expressly stated to be pursuant to this clause 10.1 causes the Contractor to necessarily incur more or less cost than otherwise would have been incurred, the difference will be dealt with and valued as if it were a Variation except where the direction was necessary because of, or arose out of or in any way in connection with, a failure by the Contractor to comply with its obligations under this Contract.
- (g) Such costs shall be the Contractor's sole entitlement, and the Contractor will not be entitled to make, and the Principal will not be liable upon, any other Claim, arising out of or in any way in connection with any direction pursuant to this clause 10.1.

10.2 The Contractor's Programming Obligations

The Contractor must:

- (a) based on the Initial Contractor's Program, prepare and provide a Contractor's Program that complies with and includes the details required by this Contract and any requirements of the Principal's Representative. The parties acknowledge and agree that the Initial Contractor's Program is deemed to have been submitted to the Principal's Representative for review under clause 9.8 and not been rejected by the Principal's Representative;
- (b) submit the Contractor's Program to the Principal's Representative for its review in accordance with clause 9.8 at any time required by the SWTC;
- (c) when directed to do so by the Principal's Representative, prepare and submit to the Principal's Representative specific detailed programs and schedules for the Contractor's Activities within 5 Business Days of receipt of such a direction;
- (d) update, revise and submit to the Principal's Representative an updated Contractor's Program:
 - (i) to allow for delays to non-critical activities, extensions of time granted by the Principal's Representative in accordance with clause 10.10, the actual progress made by the Contractor, Variations and any other changes to the Contractor's Activities but excluding claims for extensions of time to any Date for Construction Completion or Date for Completion which have been submitted by the Contractor to the extent that they have not been granted by the Principal's Representative; and
 - (ii) on a monthly basis or whenever directed to do so by the Principal's Representative;
- (e) prepare and provide for the Principal's Representative's information only versions of all Contractor's Programs prepared in accordance with clause 10.2(d) that also allow for those claims for an extension of time that have been made by the Contractor in accordance with clause 10.8 but to which the Principal's Representative has not yet responded in accordance with clause 10.10;

- (f) comply with the requirements of the Principal's Representative and its other obligations under this Contract in preparing and using programs, including the requirements in clause 9.8; and
- (g) not depart from the current version of the Contractor's Program that has been submitted to the Principal's Representative for review under clause 9.8 and not been rejected by the Principal's Representative within the time period allowed under clause 9.8(c).

10.3 Contractor not Relieved

Without limiting clause 9.8, no submission of, review of or comment upon, acceptance or rejection of, or any failure to review or comment upon or reject, a program (including the Contractor's Program) prepared by the Contractor, by the Principal's Representative in connection with the program, will:

- (a) relieve the Contractor from or alter its liabilities or obligations under this Contract, including the obligation under clause 10.1;
- (b) evidence or constitute notification of a delay or the claiming of or the granting of an extension of time to any Date for Construction Completion or Date for Completion or a direction by the Principal's Representative to compress, disrupt, prolong or vary any, or all, of the Contractor's Activities; or
- (c) affect the time for the performance of the Principal's or the Principal's Representative's obligations under this Contract.

10.4 Compression by Contractor

If the Contractor chooses to compress the Contractor's Activities or otherwise accelerate progress:

- (a) neither the Principal nor the Principal's Representative will be obliged to take any action to assist or enable the Contractor to achieve Construction Completion or Completion of a Portion before the relevant Date for Construction Completion or Date for Completion (as applicable);
- (b) the time for carrying out the obligations of the Principal or the Principal's Representative will not be affected; and
- (c) the Contractor does so at its own cost and risk.

10.5 Importance of Construction Completion and Completion on Time

The Contractor acknowledges:

- (a) the importance of complying with its obligations under clause 10.1 to enable Interface Contractors to carry out and complete the activities of the Interface Contractors within the time required by their respective Interface Works Contract, 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 will only be extended in accordance with clause 10.10 or clause 10.12, or when so determined under clause 15.

10.6 Risk and Notice of Delay

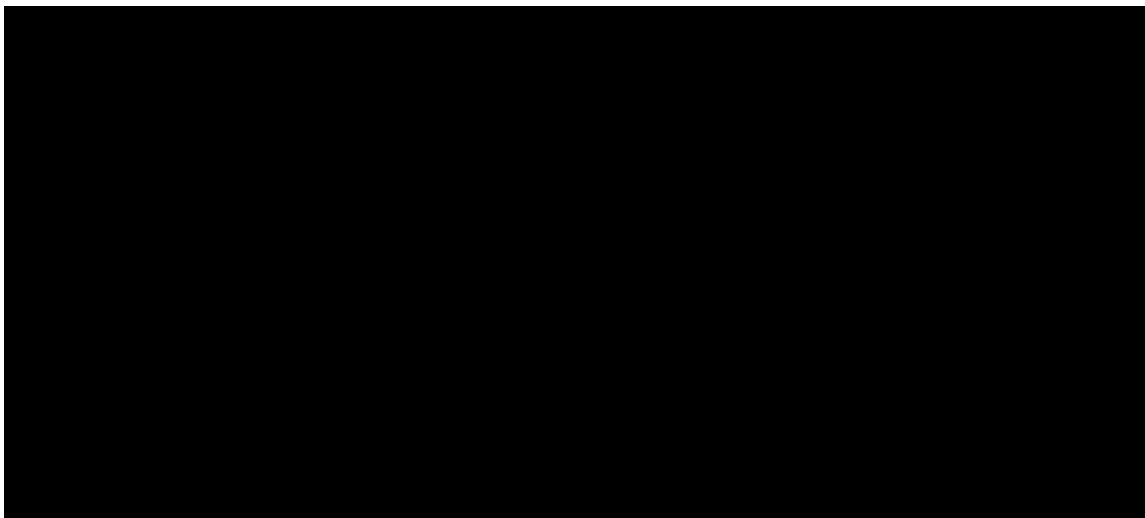
- (a) Except as expressly provided for in clause 10.10, the Contractor accepts the risk of all delays in, and disruption to, the carrying out of the Contractor's Activities and performance of its obligations under this Contract both before and after any Date for Construction Completion or Date for Completion.
- (b) The Contractor must, within 5 Business Days of the commencement of an occurrence causing any delay or which is likely to cause delay, give the Principal's Representative written notice of:
 - (i) any delay or likely delay to the carrying out of the Contractor's Activities;
 - (ii) details of the cause; and
 - (iii) how any Date of Construction Completion or Date of Completion is likely to be affected (if at all).

10.7 Entitlement to Claim Extension of Time

- (a) If the Contractor is, or will be, delayed on or prior to the Date for Construction Completion or Date for Completion of a Portion by reason of:
 - (i) an act or omission of the Principal or the Principal's Representative (including any breach of this Contract or Variation directed by the Principal's Representative but excluding any act or omission of the Principal or the Principal's Representative authorised or permitted by this Contract); or
 - (ii) a cause set out in item 36 of Schedule 1,in a manner that will delay it from achieving Construction Completion or Completion of a Portion by the relevant Date for Construction Completion or Date for Completion (as applicable), the Contractor may claim an extension of time to the relevant Date for Construction Completion or Date for Completion (as applicable).
- (b) If the Contractor is, or will be, delayed from achieving:
 - (i) Construction Completion of a Portion after the relevant Date for Construction Completion; or
 - (ii) Completion of a Portion after the relevant Date for Completion,by reason of an act or omission of the Principal or the Principal's Representative (including any breach of this Contract or Variation directed by the Principal's Representative but excluding any act or omission of the Principal or the Principal's Representative authorised or permitted by this Contract) in a manner which will delay it in achieving Construction Completion or Completion of the

Portion (as applicable), the Contractor may claim an extension of time to the relevant Date for Construction Completion or Date for Completion (as applicable).

- (c) The Contractor acknowledges and agrees that, when determining the Contractor's entitlement to claim an extension of time pursuant to clause 10.7(a) where the Contractor is delayed by reason of the cause set out in paragraph (g) of item 36 of Schedule 1, the Contractor will only be entitled to claim an extension of time in respect of each day of delay that occurs after the 10 day period referred to in paragraph (g) of item 36 of Schedule 1 has elapsed.
- (d) The Contractor acknowledges and agrees that, when determining the Contractor's entitlement to claim an extension of time pursuant to clause 10.7(a) where the Contractor is delayed by reason of the cause set out in paragraph (n) of item 36 of Schedule 1, the Contractor will only be entitled to claim an extension of time in respect of each day of delay that occurs after the [REDACTED] [REDACTED] referred to in paragraph (n) of item 36 of Schedule 1 has elapsed.



10.8 Claim for Extension of Time

To claim an extension of time the Contractor must:

- (a) within 15 Business Days after the Contractor's initial notice under clause 10.6(b), submit a written claim to the Principal's Representative for an extension of time to the relevant Date for Construction Completion or Date for Completion, which:
 - (i) gives detailed particulars of the:
 - A. delay and the occurrence causing the delay; and
 - B. activities that are critical to the maintenance of progress in the execution of the Contractor's Activities;
 - (ii) states the number of days for which the extension of time is claimed together with the basis of calculating that period, including evidence that the:

- A. conditions precedent to an extension of time in clause 10.9 have been met; and
 - B. occurrence actually delayed or will delay it in achieving Construction Completion or Completion in the manner described in clause 10.7; and
- (iii) attaches an updated Contractor's Program which complies with the requirements of clause 10.2(e); and
- (b) if the effects of the delay continue for more than 20 Business Days after the commencement of the occurrence causing the delay and the Contractor wishes to claim an extension of time in respect of the further delay, submit a further written claim to the Principal's Representative:
 - (i) every 15 Business Days after the first written claim made under clause 10.8(a) (or such other period as may be approved by the Principal's Representative in writing);
 - (ii) within 5 Business Days after the end of the effects of the delay; and
 - (iii) containing the information required by clause 10.8(a) (except to the extent otherwise directed by the Principal's Representative).

The Principal's Representative may, within 10 Business Days of receiving the Contractor's claim or further claim for an extension of time for Construction Completion or Completion, by written notice to the Contractor, request additional information in relation to the claim or further claim. The Contractor must, within 10 Business Days of receiving such request, provide the Principal's Representative with the information requested.

10.9 Conditions Precedent to Extension of Time

It is a condition precedent to the Contractor's entitlement to an extension of time to any relevant Date for Construction Completion or Date for Completion that:

- (a) the Contractor gives the notices and claims required by clauses 10.6(b) and 10.8 as required by those clauses;
- (b) the Contractor complies with any request for additional information under clause 10.8 within the time required;
- (c) the cause of the delay is beyond the reasonable control of the Contractor; and
- (d) the Contractor is actually, or will be, delayed in achieving Construction Completion or Completion:
 - (i) on or prior to the Date for Construction Completion or Date for Completion of the relevant Portion (as applicable) by reason of one or more of the causes set out in clause 10.7(a) in the manner described in clause 10.7(a); or

- (ii) after the Date for Construction Completion or Date for Completion of the relevant Portion (as applicable) by reason of an act or omission of the Principal or the Principal's Representative (including any breach of Contract or Variation directed by the Principal's Representative but excluding any act or omission of the Principal or the Principal's Representative authorised or permitted by this Contract) in the manner described in clause 10.7(b).

If the Contractor fails to comply with the conditions precedent in this clause 10.9:

- (e) the Principal will not be liable upon any Claim by the Contractor; and
- (f) the Contractor will be absolutely barred from making any Claim against the Principal,

arising out of or in any way in connection with the event giving rise to the delay and the delay involved.

10.10 Extension of Time

- (a) Subject to clause 10.11, if the conditions precedent in clause 10.9 have been satisfied, the Principal's Representative must determine the reasonable extension of time to the Date for Construction Completion or Date for Completion of a Portion to which the Contractor is entitled either:

- (i) within 15 Business Days after the latest of the:
 - A. Contractor's written claim under clause 10.8(a); and
 - B. provision by the Contractor of any additional information regarding the claim required under clause 10.8,

by giving the Contractor:

- (ii) written notice of the determination which includes the extension of time granted and the adjusted Date for Construction Completion or Date for Completion (as applicable), with reasons where the extension of time granted is for a shorter period of time than that claimed by the Contractor; or
- (iii) if no extension is granted, written notice of that decision, with reasons.

- (b) A failure of the Principal's Representative to grant a reasonable extension of time to the Date for Construction Completion or Date for Completion within the relevant 15 Business Day period will not cause an affected Date for Construction Completion or Date for Completion to be set at large, but nothing in this clause 10.10 will prejudice any right of the Contractor to damages.

10.11 Reduction in Extension of Time

The Principal's Representative will reduce any extension of time to the relevant Date for Construction Completion or Date for Completion it would otherwise have determined under clause 10.10 to the extent that:

- (a) the Contractor or any of its Associates caused or contributed to the delay;
- (b) the Contractor failed to take all reasonably practicable steps necessary to preclude the cause of the delay or to avoid or minimise the consequences of the delay;
- (c) a delay caused by an Excusable Cause of Delay and a delay caused other than by an Excusable Cause of Delay occurred at the same time and the Contractor would have been delayed even if the Excusable Cause of Delay had not occurred; or
- (d) the Contractor failed to comply with:
 - (i) a Project Cooperation and Integration Deed; or
 - (ii) its obligations under this Contract in connection with the Interface Contractors,

and such failure caused or contributed to the delay the subject of the Contractor's claim.

For the purposes of clause 10.11(c), "Excusable Cause of Delay" means:

- (e) on or prior to the Date for Construction Completion or Date for Completion of a Portion (as applicable), a delay caused by one or more of the causes set out in clause 10.7(a) in the manner described in clause 10.7(a); or
- (f) after the Date for Construction Completion or Date for Completion of a Portion (as applicable), a delay caused by reason of an act or omission of the Principal or the Principal's Representative (including any breach of Contract or Variation directed by the Principal's Representative but excluding any act or omission of the Principal or the Principal's Representative authorised or permitted by this Contract) in the manner described in clause 10.7(b).

10.12 Unilateral Extensions

- (a) Whether or not the Contractor has made, or is entitled to make, a claim for an extension of time to any relevant Date for Construction Completion or Date for Completion, or is entitled to be, or has been, granted an extension of time to any relevant Date for Construction Completion or Date for Completion, under clause 10.10(a), the Principal's Representative may, in its absolute discretion, for any reason and at any time, from time to time by written notice to the Contractor and the Principal, unilaterally extend any Date for Construction Completion or Date for Completion by any period specified in a notice to the Contractor and the Principal.

- (b) The Principal's Representative is not required to exercise its discretion under this clause 10.12 for the benefit of the Contractor.
- (c) The discretion to grant an extension of time under clause 10.12(a) may only be exercised by the Principal's Representative and the exercise or failure to exercise that discretion is not a "direction" which can be the subject of a Dispute pursuant to clause 15 or in any other way opened up, reviewed or exercised by any other person in any forum (including in any expert, the IDAR Panel or any arbitrator or court).

10.13 Delay Damages

- (a) For each day by which the Date for Construction Completion or Date for Completion of a Portion is extended due to a cause set out in item 37 of Schedule 1, the Contractor will be entitled to be paid the additional costs reasonably and necessarily incurred by the Contractor as a direct result of the delay the subject of the extension of time (as determined by the Principal's Representative).
- (b) Not used.
- (c) The amounts payable pursuant to this clause 10.13 will be a limitation upon the Principal's liability to the Contractor for any delay or disruption that:
 - (i) the Contractor encounters in carrying out the Contractor's Activities; and
 - (ii) arises out of, or in any way in connection with, the breach of this Contract by the Principal,

and the Contractor will not be entitled to make, nor will the Principal be liable upon, any Claim in these circumstances other than for the amount which is payable by the Principal under this clause 10.13.

10.14 Suspension

The Principal's Representative may direct the Contractor to suspend and, after a suspension has been directed, to re-commence, the carrying out of all or a part of the Contractor's Activities. Nothing in this clause limits the Principal's rights under clause 2.10.

If the suspension under this clause 10.14 arises in the circumstance set out in clause 2.10(f) then clauses 2.10(f) and 2.10(g) will apply, otherwise where it arises as a result of:

- (a) the Contractor's failure to carry out its obligations in accordance with this Contract (including under clause 4.6 or clause 4.7 or where the Contractor otherwise fails to comply with its obligations in relation to engineering authorisation or ASA compliance in accordance with this Contract or where any process, procedure, test method, calculation, analysis or report required by this Contract has resulted in or will result in a non-conformance), the Contractor will not be entitled to make, and the Principal will not be liable upon, any Claim arising out of, or in any way in connection with, the suspension; or

- (b) a cause other than the Contractor's failure to perform its obligations in accordance with this Contract:
 - (i) a direction to suspend under this clause 10.14 will entitle the Contractor to:
 - A. be paid by the Principal the additional costs reasonably and necessarily incurred by it as a direct result of the suspension as determined by the Principal's Representative; and
 - B. an extension of time to any relevant Date for Construction Completion or Date for Completion where it is otherwise so entitled under this clause 10;
 - (ii) the Contractor must take all steps possible to mitigate the additional costs incurred by it as a result of the suspension; and
 - (iii) the Contractor will not be entitled to make, and the Principal will not be liable upon, any Claim arising out of, or in any way in connection with, the suspension other than as allowed under this clause 10.14(b).

10.15 Compression

- (a) Subject to clause 10.15(d), if the Contractor makes a claim under clause 10.8, the Principal's Representative may direct the Contractor to compress the Contractor's Activities by taking those measures which are necessary:
 - (i) to overcome or minimise the extent and effects of some or all of the delay, which may include taking the measures necessary in order to achieve (as applicable):
 - A. Construction Completion of a Portion by the relevant Date for Construction Completion; or
 - B. Completion of a Portion by the relevant Date for Completion; or
 - (ii) to complete the Contractor's Activities in advance of the dates for completion of those activities shown on the Contractor's Program, including to achieve (as applicable):
 - A. Construction Completion of a Portion prior to the relevant Date for Construction Completion; or
 - B. Completion of a Portion prior to the relevant Date for Completion.
- (b) The Principal's Representative will have the right to direct that the Contractor's Activities be compressed by means of overtime, additional crews, additional shifts, resequencing of the Contractor's Activities, or otherwise, whether or not the Contractor's Activities are progressing without delay or in accordance with the Contractor's Program.

- (c) Prior to carrying out any compression of the Contractor's Activities, the Contractor must provide the Principal's Representative with a plan for such compression, including:
 - (i) the methodology required for an effective and economical compression of the Contractor's Activities; and
 - (ii) where the compression is pursuant to a direction under this clause 10.15, an estimate of the additional direct costs for complying with the direction, including sufficient information to support the estimate.
- (d) Despite clause 10.15(a), the Principal's Representative may give such a direction whether or not the cause of delay for which the Contractor has made its claim under clause 10.8 entitles the Contractor to an extension of time to any relevant Date for Construction Completion or Date for Completion.
- (e) The Principal's Representative may at any time by notice in writing withdraw any direction given by it under this clause 10.15, after which the Contractor will be entitled to any extension of time to which it may have otherwise been entitled in respect of the cause of delay in respect of which the Contractor made a claim under clause 10.8.
- (f) Any extension in accordance with clause 10.15(e) will be determined having regard to the effect which the compression of the Contractor's Activities taken by the Contractor prior to the withdrawal of the direction has had on mitigating the delay which is the subject of the claim for an extension of time made by the Contractor under clause 10.8.
- (g) If the Principal's Representative's direction to compress under this clause 10.15 only applies to part of a delay, the Contractor's entitlement to any extension of time which it otherwise would have had if a direction to compress had not been given, will only be reduced to the extent to which the direction to compress requires the Contractor to compress to overcome the delay.
- (h) The Principal must pay the Contractor the additional costs reasonably and necessarily incurred by the Contractor, as determined by the Principal's Representative, as a direct result of compliance with such a direction, provided that where the direction to compress is subsequently withdrawn under clause 10.15(e), the Contractor will only be entitled to additional payment in relation to the compression:
 - (i) if the withdrawal was not caused or contributed to by the Contractor; and
 - (ii) in respect of the period up to the date of withdrawal of the direction.
- (i) The Contractor will not be entitled to make any Claim, and releases and waives any entitlement it may have to a Claim, against the Principal in respect of any compression of the Contractor's Activities, except as provided for under this clause 10.15.

11. Payment

11.1 Contractor's Payment Entitlements

- (a) Subject to clause 11.6, clause 16.12 and any other right to set-off that the Principal may have, the Principal must pay the Contractor the Contract Sum and any other amounts expressly payable by the Principal to the Contractor under this Contract, in accordance with the procedure in this clause 11.
- (b) Except to the extent expressly provided for in this Contract, the Contract Sum is not subject to rise and fall.

11.2 Payment Claims

The Contractor may give the Principal's Representative a claim for payment on account of the Contract Sum and any other amount expressly payable by the Principal to the Contractor under the Contract on or after each Payment Claim Date.

The Contractor agrees that each Payment Claim Date is the date on and from which the Contractor is entitled to make a Progress Claim for the purposes of the *SOP Act* (including section 13(1B) of the *SOP Act*).

Each claim for payment must:

- (a) generally follow the form of the Payment Breakdown Schedule and otherwise be in such form as the Principal's Representative reasonably requires;
- (b) include all the evidence reasonably required by the Principal's Representative of the amount of work completed in accordance with this Contract and the amount payable (including a breakdown of the amount of work completed and the amounts payable in respect of Sydney Metro Works, each category of Third Party Works and any specific assets notified by the Principal to the Contractor, including evidence of the relevant completion date of the category of Third Party Works and any such specific assets (as the case may be));
- (c) for each monthly claim pursuant to clause 11.2 (a "**Progress Claim**"), set out the amount claimed:
 - (i) for work completed in accordance with the Contract and incorporated in the Works or to which clause 11.7 applies, to the end of the previous month and details of how the amount has been calculated broken down between Sydney Metro Works, each category of Third Party Works and any specific assets notified by the Principal to the Contractor;
 - (ii) on account of the Performance Incentive Payments, [REDACTED] (if any) to which the Contractor is entitled as at the relevant Payment Claim Date; and
 - (iii) in respect of Post Construction Completion Activities and Mandatory Testing Activities performed during the previous month (if any); and

- (d) include such further information and evidence in respect of the payment claim as is reasonably required by the Principal's Representative.

The Contractor may not include in any payment claim under this clause 11 any amount:

- (e) for the provision of Asset Management Information until all of the information has been submitted to the Principal in accordance with the Contract and to the satisfaction of the Principal; or
- (f) in respect of a Claim which is barred by clause 17.6 or any other provision of this Contract.

11.3 Payment Statements

The Principal's Representative must (on behalf of the Principal), within 10 Business Days of receiving a Progress Claim which complies with the requirements of clause 11.2, a Completion Payment Claim under clause 11.9 or a Final Payment Claim under clause 11.11, issue to the Contractor and the Principal a payment statement which identifies the Progress Claim, Completion Payment Claim or Final Payment Claim to which it relates, and which sets out:

- (a) its determination of the value of the Contractor's Activities carried out in accordance with this Contract, using the methodology in clause 11.2(c) where the payment statement relates to a Progress Claim;
- (b) the amount already paid to the Contractor;
- (c) the amount the Principal is entitled to retain, deduct, withhold or set-off under this Contract, including under clauses 11.6, 11.7, 11.8 and 16.12;
- (d) the amount (if any) which the Principal's Representative believes to be then payable by the Principal to the Contractor on account of the Contract Sum and which the Principal proposes to pay to the Contractor or the amount which the Principal's Representative believes to be then payable by the Contractor to the Principal; and
- (e) if the amount in clause 11.3(d) is less than the amount claimed in the Progress Claim, Completion Payment Claim or Final Payment Claim:
 - (i) the reason why the amount in clause 11.3(d) is less than the amount claimed in the relevant Progress Claim, Completion Payment Claim or Final Payment Claim; and
 - (ii) if the reason for the difference is that the Principal proposes to retain, deduct, withhold or set-off payment for any reason, the reason for the Principal retaining, deducting, withholding or setting-off payment.

The issue of a payment statement by the Principal's Representative does not constitute approval of any work nor will it be taken as an admission or evidence that the part of the Works or Contractor's Activities covered by the payment statement has been satisfactorily carried out in accordance with this Contract.

Failure by the Principal's Representative to set out in a payment statement an amount, or the correct amount, which the Principal is entitled to retain, deduct, withhold or set-off from the amount which would otherwise be payable to the Contractor by the Principal will not prejudice the Principal's right to subsequently exercise its right to retain, deduct, withhold or set-off any amount under this Contract.

Where the Principal has notified the Contractor in accordance with clause 18(f)(iv) that it no longer proposes to issue a recipient created tax invoice for a taxable supply made by the Contractor to the Principal, the Contractor must, within 2 Business Days after receipt of the payment statement issued by the Principal's Representative give the Principal's Representative a tax invoice (which complies with the GST Law) for the amount of the payment statement.

11.4 Payment

- (a) Where, pursuant to clause 11.3(d), the Principal's Representative sets out in a payment statement an amount payable by the Principal to the Contractor, the Principal must, within 15 Business Days of receipt of the payment claim to which the payment statement relates, pay the Contractor the amount set out in the payment statement referred to in clause 11.3.
- (b) Where, pursuant to clause 11.3(d), the Principal's Representative sets out in a payment statement an amount payable by the Contractor to the Principal, the Contractor must, within 5 Business Days of the Principal's Representative issuing the payment statement under clause 11.3, pay the Principal the amount set out in the payment statement referred to in clause 11.3.

11.5 Payment on Account

A payment of moneys under clause 11.4(a) is not:

- (a) an admission or evidence of the value of work or that work has been satisfactorily carried out in accordance with this Contract;
- (b) an admission of liability; or
- (c) approval by the Principal or the Principal's Representative of the Contractor's performance or compliance with this Contract,

but is only to be taken as payment on account.

11.6 Provision of documentation and other requirements

The value of the construction work carried out by the Contractor, and the amount of the progress payment to which the Contractor is entitled, will be:

- (a) no more than ████ of the amount that the Principal's Representative would otherwise have set out in any payment statement unless the Contractor has:
 - (i) complied with clause 1.5;
 - (ii) provided the Principal with the unconditional undertakings and the Parent Company Guarantee (if any) required under clause 2.7;

- (iii) provided the Principal's Representative with:
 - A. a statutory declaration by the Contractor, or where the Contractor is a corporation, by a representative of the Contractor who is in a position to know the facts attested to, in the form of Schedule 12, made out not earlier than the date of the payment claim;
 - B. a Contractor's Certificate of Construction Compliance, in the form of Schedule 20, as required by clause 7.1(c); and
 - C. where clause 11.16(g) applies, the statement and the evidence (if any) required to be provided by the Contractor pursuant to that clause;
- (iv) in relation to any unfixed plant and materials which the Contractor proposes to claim in a payment claim, provided the evidence and documents required by, and otherwise satisfied the requirements of, clause 11.7;
- (v) effected or procured to be effected the insurances required to be effected by the Contractor by clause 13.6 and (if requested) provided evidence of this to the Principal's Representative; and
- (vi) done everything else that it is required to do under this Contract before being entitled to make a payment claim or receive payment; and
- (b) no more than █████ of the amount that the Principal's Representative would otherwise have set out in any payment statement unless the Contractor has provided the updated Contractor's Program required by clause 10.2(d).

Any amount withheld by the Principal under this clause 11.6 must be paid within 10 Business Days after the Contractor has complied with the relevant obligation.

11.7 Unfixed Plant and Materials

The Contractor is only entitled to make a claim for payment for plant or materials intended for incorporation in the Works but not yet incorporated, and the Principal is only obliged to make payment for such plant or materials in accordance with clause 11.4(a) if:

- (a) the Contractor provides evidence of:
 - (i) ownership of the plant or materials;
 - (ii) identification and labelling of the plant and materials as the property of the Principal; and
 - (iii) adequate and secure storage and protection;
- (b) security acceptable to the Principal in the form of the unconditional undertaking in Schedule 8 issued by an Institution approved by the Principal in an amount equal to the payment claimed for the unfixed plant and materials has been provided by the Contractor to the Principal;

- (c) the plant and materials are on the Site or are available for immediate delivery to the Site;
- (d) the insurance held and the storage arrangements for the unfixed plant and materials are acceptable to the Principal's Representative;
- (e) the condition of the unfixed plant and materials has been confirmed in an inspection by the Principal's Representative; and
- (f) if the PPS Law applies, the Contractor has registered a Security Interest in the unfixed plant and materials in favour of the Principal in accordance with clause 16.26.

The only such unfixed plant or materials to be allowed for in a payment statement are those that have become or (on payment) will become the property of the Principal. Upon a payment against a payment statement that includes amounts for unfixed plant and materials, title to the unfixed plant and materials included will vest in the Principal.

The security provided in accordance with clause 11.7(b) will be released once the applicable unfixed plant and materials are incorporated into the Works and are fit for their intended purpose.

11.8 Payment of Employees and Subcontractors

- (a) When submitting any Progress Claim, Completion Payment Claim or Final Payment Claim, the Contractor must give the Principal's Representative a statutory declaration in accordance with clause 11.6(a)(iii)A.
- (b) If any moneys are shown as unpaid in the Contractor's statutory declaration under clause 11.6(a)(iii)A, the Principal may withhold the moneys so shown until the Contractor provides evidence to the satisfaction of the Principal's Representative that the moneys have been paid to the relevant persons.
- (c) If an employee or a Subcontractor obtains a court order in respect of the moneys payable to him, her or it in respect of his, her or its employment on, materials supplied for, or work performed with respect to, the Contractor's Activities, and produces to the Principal the court order and a statutory declaration that it remains unpaid, the Principal may (but is not obliged to) pay the amount of the order and costs included in the order (exclusive of GST) to the employee or Subcontractor, and the amount paid will be a debt due from the Contractor to the Principal.
- (d) If the Principal receives notice of any Insolvency Event in relation to the Contractor the Principal will not make any payment to an employee or Subcontractor without the concurrence of the administrator, provisional liquidator, liquidator, trustee or official receiver, as the case may be, of the Contractor.
- (e) Nothing in this clause 11.8 limits or otherwise affects the Principal's right under section 175B(7) of the *Workers Compensation Act 1987* (NSW), section 18(6) of schedule 2 of the *Payroll Tax Act 2007* (NSW) or section 127(5) of the *Industrial Relations Act 1996* (NSW).

11.9 Completion Payment Claim

No later than 20 Business Days after the issue of the Notice of Completion for the last Portion to reach Completion, but subject to clause 11.6, the Contractor may lodge with the Principal's Representative a payment claim marked "Completion Payment Claim" stating:

- (a) the Contract Sum;
- (b) all payments received on account of the Contract Sum; and
- (c) the balance, if any, due to the Contractor.

The Completion Payment Claim must be accompanied by such information as the Principal's Representative may reasonably require.

With the Completion Payment Claim the Contractor must lodge with the Principal's Representative a "**First Statement of Outstanding Claims**". The First Statement of Outstanding Claims must identify all Claims that the Contractor wishes to make against the Principal in respect of any fact, matter or thing arising out of, or in any way in connection with, the Contractor's Activities, the Works or this Contract which occurred prior to the date of submission of the Completion Payment Claim.

The Completion Payment Claim and First Statement of Outstanding Claims must address all facts, matters or things arising out of, or in any way in connection with, the Contractor's Activities, the Works or this Contract up to the date of submission of the Completion Payment Claim in respect of all Claims included in the Completion Payment Claim and First Statement of Outstanding Claims.

11.10 Release after Completion Payment Claim

The Contractor releases the Principal from any Claim in respect of any fact, matter or thing arising out of, or in any way in connection with, the Contractor's Activities, the Works or this Contract that occurred prior to the date of submission of the Completion Payment Claim, except for any Claim which:

- (a) has been included in the Completion Payment Claim or First Statement of Outstanding Claims which is given to the Principal's Representative within the time required by, and in accordance with clause 11.9; and
- (b) has not been barred under another provision of this Contract.

11.11 Final Payment Claim

No later than 20 Business Days after the date of Final Completion, but subject to clause 11.6, the Contractor may lodge with the Principal's Representative a payment claim marked "Final Payment Claim" stating:

- (a) the Contract Sum;
- (b) all payments received on account of the Contract Sum; and
- (c) the balance, if any, due to the Contractor.

The Final Payment Claim must be accompanied by such information as the Principal's Representative may reasonably require.

With the Final Payment Claim the Contractor must lodge with the Principal's Representative a "**Second Statement of Outstanding Claims**". The Second Statement of Outstanding Claims must identify all Claims that the Contractor wishes to make against the Principal in respect of any fact, matter or thing arising out of, or in any way in connection with, the Contractor's Activities, the Works or this Contract which occurred prior to the date of submission of the Final Payment Claim.

The Final Payment Claim and Second Statement of Outstanding Claims must address all such facts, matters or things arising out of or in any way in connection with the Contractor's Activities, the Works or this Contract up to the date of submission of the Final Payment Claim in respect of all Claims included in the Final Payment Claim and Second Statement of Outstanding Claims.

11.12 Release after Final Payment Claim

The Contractor releases the Principal from any Claim in respect of any fact, matter or thing arising out of, or in any way in connection with, the Contractor's Activities, the Works or this Contract that occurred prior to the date of submission of the Final Payment Claim, except for any Claim which:

- (a) has been included in the Final Payment Claim or Second Statement of Outstanding Claims which is given to the Principal's Representative within the time required by, and in accordance with, clause 11.11; and
- (b) has not been barred under another provision of this Contract.

11.13 Interest

If any moneys due to either party remain unpaid after the date upon which, or the expiration of the period within which, they should have been paid, then interest will be payable thereon from but excluding the date upon which, or the date at the end of the expiration of the period within which, they should have been paid to and including the date upon which the moneys are paid.

The rate of interest will be the rate from time to time prescribed for judgement debts under the *Uniform Civil Procedure Rules 2005* (NSW). Interest will be compounded at six monthly intervals.

This will be the party's sole entitlement to interest, including damages for loss of use of, or the cost of borrowing, money.

11.14 Correction of Payment Statements

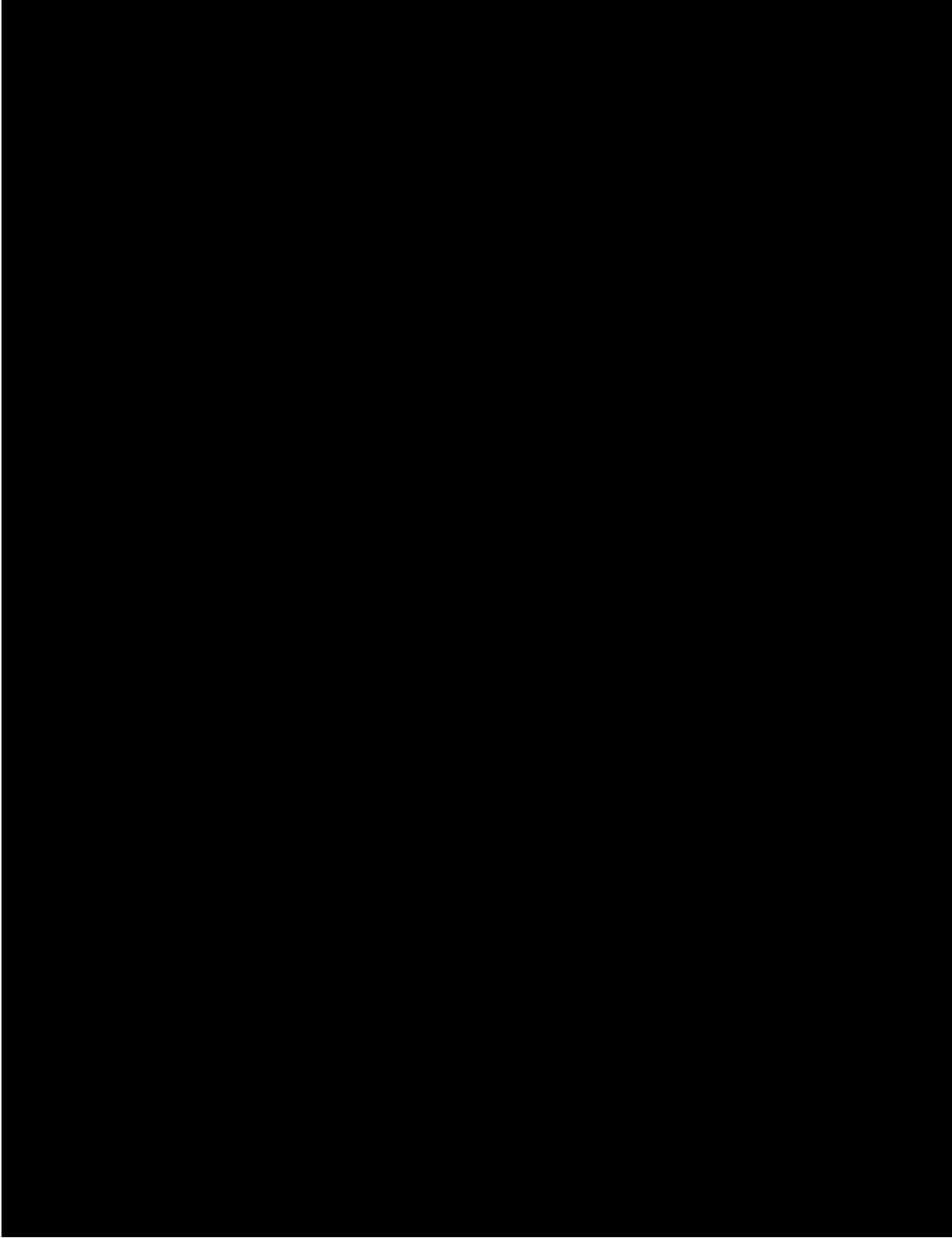
The Principal's Representative may, in any payment statement:

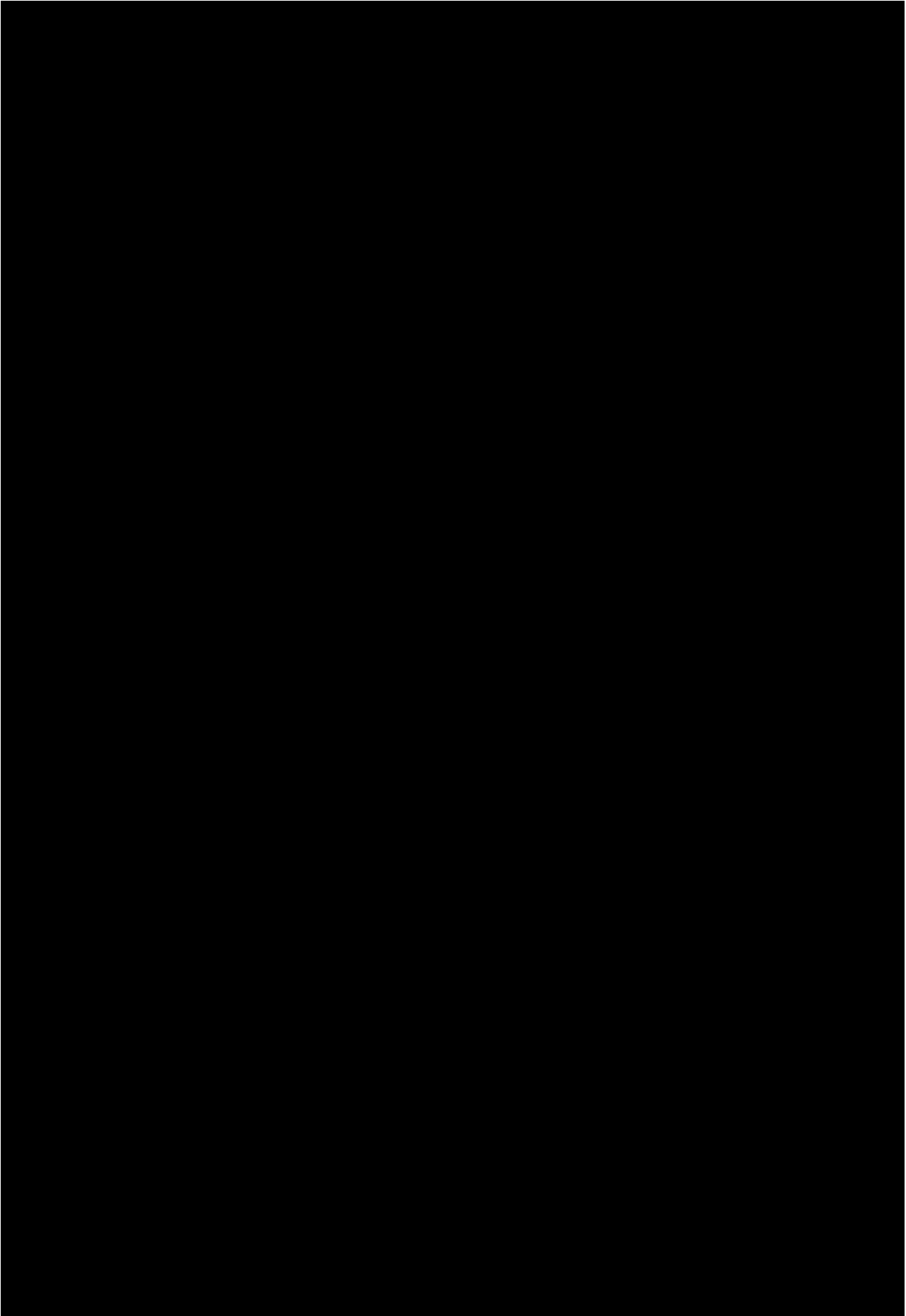
- (a) correct any error; and
- (b) modify any assumptions or allowances made,

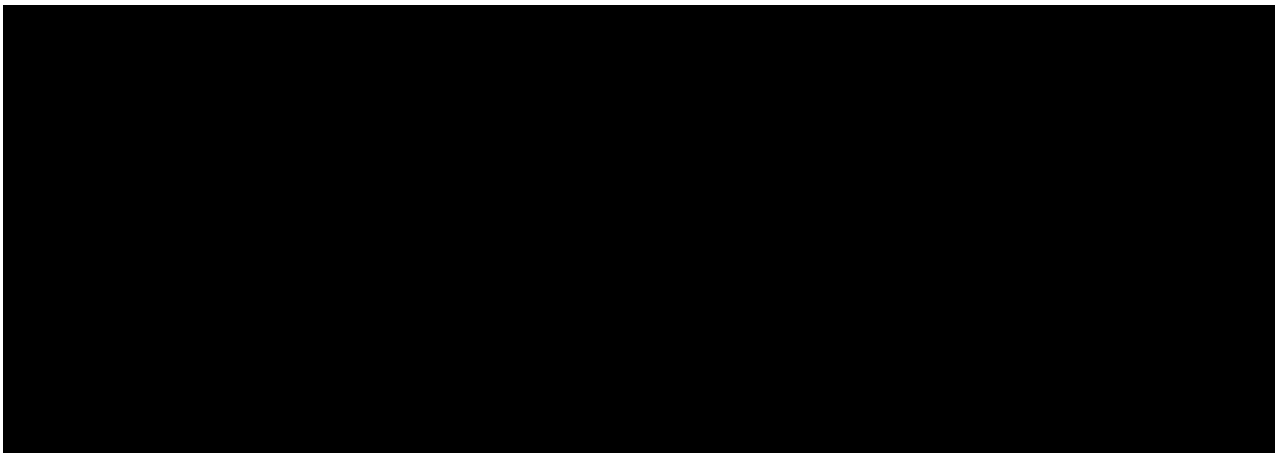
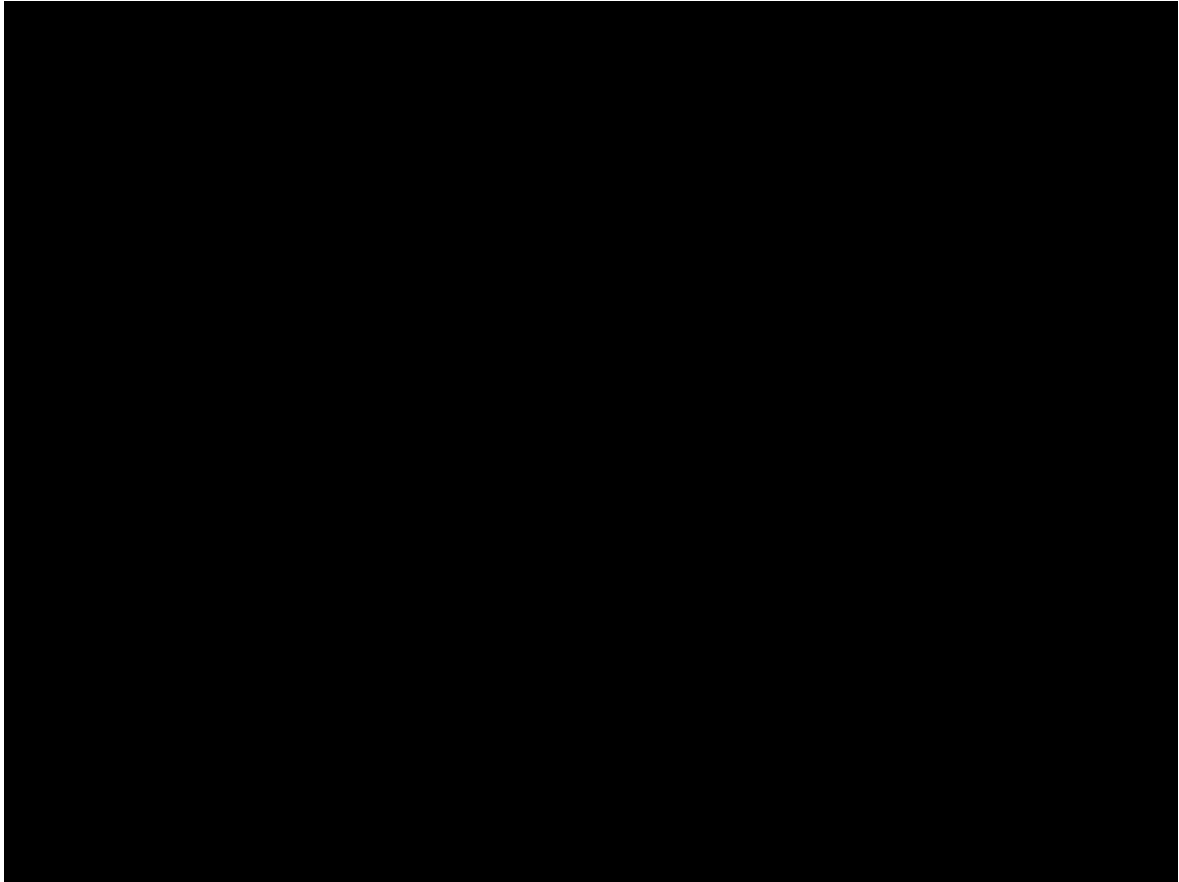
in any previous payment statement issued by the Principal's Representative.

11.14A Performance Incentive Payments

The Contractor will be entitled to claim Performance Incentive Payments in accordance with the Performance Incentive Payment Schedule.







11.15 Costs Allowed by Contractor

Unless otherwise provided in this Contract, it is agreed that the Contractor has, and will be deemed to have, allowed in the Original Contract Price for and will be wholly responsible for the payment of:

- (a) without limiting clause 18, all customs duties, tariffs and similar taxes (other than GST) and charges paid or payable on all items that are:
 - (i) intended to be used for, or that are to be incorporated into, the Works; or
 - (ii) otherwise used for the Contractor's Activities;

- (b) any long service leave levy which may be payable in respect of the Contractor's Activities or the Works;
- (c) all royalties, licence fees and similar payments for Intellectual Property in respect of:
 - (i) the items that are intended to be used for, or that are to be incorporated into, the Works; and
 - (ii) all Contract Documentation; and
- (d) all fluctuations in the value of the Australian dollar against other currencies.

The Contractor will have no entitlement to any increase in the Contract Sum or otherwise to make any Claim against the Principal in respect of any of those amounts, whatever they may actually be.

11.16 Security of Payment Act

- (aa) The Contractor must ensure that a copy of any written communication it delivers or arranges to deliver to the Principal of whatever nature in relation to the *SOP Act*, including a payment claim under the *SOP Act*, is provided to the Principal's Representative at the same time.
- (ab) In responding to the Contractor under the *SOP Act*, the Principal's Representative acts as the agent of the Principal and the Principal authorises the Principal's Representative to issue payment schedules on its behalf (without affecting the Principal's right to issue a payment schedule itself).
- (ac) If, within the time allowed by the *SOP Act* for the service of a payment schedule by the Principal, the Principal does not:
 - (i) serve the payment schedule itself; or
 - (ii) notify the Contractor that the Principal's Representative does not have authority from the Principal to issue the payment schedule on its behalf,
 then a payment statement issued by the Principal's Representative under this Contract which relates to the period relevant to the payment schedule will be taken to be the payment schedule for the purpose of the *SOP Act* (whether or not it is expressly stated to be a payment schedule).
- (ad) For the purposes of this Contract and the *SOP Act* (including sections 9 and 10 of the *SOP Act*), the amount of:
 - (i) the progress payment to which the Contractor is entitled under this Contract; and
 - (ii) the "progress payment" (as defined in the *SOP Act*) calculated in accordance with this Contract to which the Contractor is entitled in respect of this Contract,

will be the amount certified by the Principal's Representative in a payment statement under clause 11.3 less any amount the Principal may elect to retain, deduct, withhold, apply or set off in accordance with this Contract.

- (a) If an adjudication occurs under the *SOP Act* and the Principal has paid an adjudicated amount to the Contractor:
 - (i) the amount will be taken into account by the Principal's Representative in issuing a payment statement under clause 11.3;
 - (ii) if it is subsequently determined pursuant to the Contract that the Contractor was not entitled under the Contract to payment of some or all of the adjudicated amount that was paid by the Principal ("**overpayment**"), the overpayment will be a debt due and payable by the Contractor to the Principal which the Contractor must pay to the Principal upon demand and in respect of which the Contractor is not entitled to claim or exercise any set-off, counterclaim, deduction or similar right of defence; and
 - (iii) if the adjudicator's determination is quashed, overturned or declared to be void, the adjudicated amount then becomes a debt due and payable by the Contractor to the Principal upon demand and in respect of which the Contractor is not entitled to claim or exercise any set-off, counterclaim, deduction or similar right of defence.
- (b) For the purposes of section 17(3) of the *SOP Act* the Contractor irrevocably chooses the Resolution Institute, as the "authorised nominating authority" (as that term is defined in the *SOP Act*) for any adjudication application it may make under the *SOP Act* in respect of the subject matter of this Contract.
- (c) Without limiting clauses 11.8 or 16.12, the Principal may withhold any amount that is less than or equal to the amount claimed to be owed under a payment withholding request served on the Principal pursuant to Division 2A of Part 3 of the *SOP Act*.
- (d) If the Principal withholds from money otherwise due to the Contractor any amount that is less than or equal to the amount claimed to be owed under a payment withholding request served on the Principal pursuant to Division 2A of Part 3 of the *SOP Act*, then:
 - (i) the Principal may plead and rely upon Division 2A of Part 3 of the *SOP Act* as a defence to any claim for the money by the Contractor from the Principal; and
 - (ii) the period during which the Principal retains money due to the Contractor pursuant to an obligation under Division 2A of Part 3 of the *SOP Act* will not be taken into account for the purpose of determining:
 - A. any period for which money owed by the Principal to the Contractor has been unpaid; and

- B. the date by which payment of money owed by the Principal to the Contractor must be made.
- (e) The Contractor agrees not to commence proceedings to recover any amount withheld by the Principal pursuant to a payment withholding request served on the Principal pursuant to Division 2A of Part 3 of the *SOP Act*.
 - (f) Any amount paid by the Principal pursuant to section 26C of the *SOP Act* will be a debt due from the Contractor to the Principal.
 - (g) If the Principal withholds money pursuant to a payment withholding request served on the Principal pursuant to Division 2A of Part 3 of the *SOP Act* and the Contractor:
 - (i) pays the amount claimed to be due under the adjudication application to which the payment withholding claim relates; or
 - (ii) becomes aware that the adjudication application to which the payment withholding claim relates has been withdrawn,

then the Contractor must so notify the Principal within 5 Business Days of the occurrence of the event in clause 11.16(g)(i) or clause 11.16(g)(ii) (as applicable) by providing to the Principal a statement in writing in the form of a statutory declaration together with such other evidence as the Principal may require evidencing that the amount has been paid or the adjudication application has been withdrawn (as the case may be).
 - (h) If the Contractor holds retention monies from any of its Subcontractors, the Contractor must:
 - (i) comply with the requirements of Division 2 of the SOP Regulation; and
 - (ii) provide the Principal's Representative with a copy of any notification that the Contractor gives to the Secretary (as defined in the *SOP Act*) pursuant to Division 2 of the SOP Regulation within 24 hours of providing such notification.
 - (i) The Contractor indemnifies and must keep indemnified the Principal against all Loss suffered or incurred by the Principal arising out of a suspension by a Subcontractor of work which forms part of the Contractor's Activities pursuant to the *SOP Act* unless and except to the extent that the suspension is due to non-payment by the Principal of an amount that is due and payable under this Contract.
 - (j) Nothing in this Contract will be construed to:
 - (i) make any act or omission of the Principal in contravention of the *SOP Act* (including failure to pay an amount becoming due under the *SOP Act*) a breach of this Contract (unless the Principal would have been in breach of this Contract if the *SOP Act* had no application); or

- (ii) subject to clause 11.16(j)(i), give to the Contractor rights under this Contract which extend or are in addition to rights given to the Contractor by the *SOP Act* in respect of any act or omission of the Principal in contravention of the *SOP Act*.

11.17 Title

Title in each item forming part of the Works will pass progressively to the Principal on the earlier of payment for that item or delivery of that item to the Site. Risk in all such items remains with the Contractor in accordance with clause 13.

12. Construction Completion and Completion

12.1 Progressive Inspection and Testing

- (a) At any time prior to Completion of a Portion, the Principal's Representative may direct that any materials or work forming part of the Contractor's Activities in respect of that Portion be tested. The Contractor must provide such assistance, documentation, records, personnel (including Subcontractors) and samples and make accessible such parts of the Contractor's Activities or Works as may be required. On completion of any test the Contractor must make good the Contractor's Activities or Works so that they fully comply with this Contract.
- (b) The Principal's Representative may direct that any part of the Contractor's Activities or the Works must not be covered up or made inaccessible without the Principal's Representative's prior approval.
- (c) The tests prescribed in this Contract must be conducted by the Contractor as and when provided for in this Contract, or may be conducted by the Principal's Representative or a person (that may include the Contractor) nominated by the Principal's Representative.
- (d) Any testing required to be done by an independent authority must be carried out by an authority recognised by the Joint Accreditation System of Australia and New Zealand.
- (e) Unless otherwise stated in this Contract, before conducting a test under this Contract, the Principal's Representative or the Contractor must give not less than two Business Days' notice in writing to the other of the time, date and place of the test. If the other party does not then attend, the test may nevertheless proceed.
- (f) Without prejudice to any other rights or remedies under this Contract, if the Contractor or the Principal's Representative delays in conducting a test, the other, after giving reasonable notice in writing of intention to do so, may conduct the test.
- (g) Each party must promptly make the results of tests available to the other and to the Principal's Representative.

- (h) Where the Principal's Representative directs that materials or work be tested, the costs of and incidental to testing must be valued under clause 6.4 and must be borne by the Principal or paid by the Principal to the Contractor unless:
 - (i) this Contract provides that the Contractor must bear the costs or the test is one which the Contractor was required to conduct other than pursuant to a direction under clause 12.1;
 - (ii) the test shows that the material or work is not in accordance with this Contract;
 - (iii) the test is in respect of a part of the Contractor's Activities or the Works covered up or made inaccessible without the Principal's Representative's prior approval where such was required; or
 - (iv) the test is consequent upon a failure of the Contractor to comply with a requirement of this Contract.
- (i) Where the extra costs in clause 12.1(h) are not to be borne by the Principal, they will be borne by the Contractor and will be a debt due from the Contractor to the Principal or paid by the Contractor to the Principal on demand.

12.2 Contractor to Notify before Date of Construction Completion

The Contractor must, in respect of each Portion, give the Principal's Representative:

- (a) 6 months;
- (b) 3 months;
- (c) 1 month; and
- (d) 1 week,

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

12.3 Inspection before Construction Completion

- (aa) The completion of the Sydney Trains Works will be assessed on an area by area basis in accordance with the procedure in the Sydney Trains Transition Agreement in relation to Practical Completion (Sydney Trains Works) (as defined in the Sydney Trains Transition Agreement).
- (a) Subject to clause 12.3(f), the Principal's Representative, the Contractor's Representative and the Independent Certifier must, within 5 Business Days after receipt of the notice referred to in clause 12.2(b) jointly inspect the Contractor's Activities at a mutually convenient time.
- (b) Within 2 Business Days after the joint inspection referred to in clause 12.3(a), the Independent Certifier must give the Contractor and the Principal 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 the Contractor is so far from achieving Construction Completion of the Portion that it is not practicable to issue a list as contemplated in clause 12.3(b)(i).
- (c) When the Contractor considers it has achieved Construction Completion of the Portion, the Contractor must notify the Principal's Representative and the Independent Certifier in writing and provide them with an executed certificate in the form of Schedule 21B. Subject to clause 12.3(f), the Principal's Representative, the Contractor's Representative, the Independent Certifier, and, in respect of Sydney Trains Works only, the representative of any relevant Authority, must within 5 Business Days after receipt of the notice referred to in this clause 12.3(c) jointly inspect the Contractor's Activities at a mutually convenient time.
- (d) Within 5 Business Days after the joint inspection under clause 12.3(c), the Independent Certifier must:
 - (i) if Construction Completion of the Portion has been achieved, provide to the Principal's Representative and the Contractor a document signed by the Independent Certifier in the form in Schedule 21C; or
 - (ii) if Construction Completion of the Portion has not been achieved, issue a notice to the Contractor and the Principal in which it states:
 - A. the items which remain to be completed before Construction Completion of the Portion can be achieved; or
 - B. that the Contractor is so far from achieving Construction Completion of the Portion that it is not practicable to notify the Contractor of the items which remain to be completed as contemplated by clause 12.3(d)(ii)A.
- (e) If the Independent Certifier issues a notice under clause 12.3(d)(ii) the Contractor must proceed with the Contractor'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 12.3(c) and 12.3(d) will reapply.
- (f) The Contractor acknowledges and agrees that:
 - (i) the Principal's Representative may invite any other person to attend any joint inspection provided for by this clause 12.3, including representatives of the Operator; and
 - (ii) the Principal's Representative or the Operator may provide comments to the Independent Certifier (with a copy to the Contractor) in relation to any non-compliance of the Contractor's Activities with this Contract.

- (g) Without affecting the Contractor's obligation to achieve Construction Completion of each Portion by the relevant Date for Construction Completion, the parties acknowledge that:
 - (i) no separate Date for Construction Completion of the Works is specified in this Contract;
 - (ii) Construction Completion of the Works is achieved by achieving Construction Completion of all Portions;
 - (iii) Construction Completion of the Works will be taken to have occurred once Construction Completion of all Portions has occurred; and
 - (iv) the Date of Construction Completion of the Works will be taken to be the Date of Construction Completion of the last Portion to reach Construction Completion.

12.3A Completion

- (a) The Contractor must, in respect of each Portion, give the Principal's Representative:
 - (i) 3 months; and
 - (ii) 1 month,written notice of the estimated Date of Completion of the Portion.
- (b) Subject to clause 12.3A(g), the Principal's Representative, the Contractor's Representative and the Independent Certifier must, within 5 Business Days after receipt of the notice referred to in clause 12.3A(i) jointly inspect the Contractor's Activities at a mutually convenient time.
- (c) Within 2 Business Days after the joint inspection referred to in clause 12.3A(b), the Independent Certifier must give the Contractor and the Principal 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 the Contractor is so far from achieving Completion of the Portion that it is not practicable to issue a list as contemplated in clause 12.3A(c)(i).
- (d) When the Contractor considers that it has achieved Completion of a Portion, the Contractor must notify the Principal's Representative and the Independent Certifier in writing and provide them with an executed certificate in the form of Schedule 21. Subject to clause 12.3A(g), the Principal's Representative, the Contractor's Representative and the Independent Certifier must, within 5 Business Days after receipt of the notice referred to in this clause 12.3A(d), jointly inspect the Contractor's Activities at a mutually convenient time.

- (e) Within 5 Business Days after the joint inspection under clause 12.3A(d), the Independent Certifier must:
 - (i) if Completion of the Portion has been achieved, provide to the Principal's Representative and the Contractor a document signed by the Independent Certifier in the form in Schedule 21A; or
 - (ii) if Completion of the Portion has not been achieved, issue a notice ("**Pre-Completion Notice**") to the Contractor and the Principal in which it states:
 - A. the items which remain to be completed before Completion of the Portion can be achieved; or
 - B. that the Contractor is so far from achieving Completion of the Portion that it is not practicable to notify the Contractor of the items which remain to be completed as contemplated by clause 12.3A(e)(ii)A.
- (f) If the Independent Certifier issues a notice under clause 12.3A(e)(ii), the Contractor must proceed with the Contractor's Activities and thereafter, when it considers that 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 12.3A(d) and 12.3A(e) will reapply.
- (g) The Contractor acknowledges and agrees that:
 - (i) the Principal's Representative may invite any other person to attend any joint inspection provided for by this clause 12.3A, including representatives of the Operator; and
 - (ii) the Principal's Representative or the Operator may provide comments to the Independent Certifier (with a copy to the Contractor) in relation to any non-compliance of the Contractor's Activities with this Contract.
- (h) Without affecting the Contractor's obligation to achieve Completion of each Portion by the relevant Date for Completion, the parties acknowledge that:
 - (i) no separate Date for Completion of the Works is specified in this Contract;
 - (ii) Completion of the Works is achieved by achieving Completion of all Portions;
 - (iii) Completion of the Works will be taken to have occurred once Completion of all Portions has occurred; and
 - (iv) the Date of Completion of the Works will be taken to be the Date of Completion of the last Portion to reach Completion.

12.4 Unilateral Issue of Notice of Construction Completion or Notice of Completion

If at any time a notice required to be given by the Contractor to the Principal's Representative under clauses 12.3(c), 12.3(e), 12.3A(d) or 12.3A(f) is not given by the Contractor yet the Principal's Representative is of the opinion that Construction Completion or Completion of any Portion (as applicable) has been achieved, the Principal's Representative may direct the Independent Certifier to issue (as applicable):

- (a) a Notice of Construction Completion under clause 12.3(d)(i) for the Portion; or
- (b) a Notice of Completion under clause 12.3A(e)(i) for the Portion.

12.5 Hand Over upon Construction Completion

The Contractor acknowledges that the Principal will require a progressive handover of the Works. On Construction Completion of each Portion, the Contractor must:

- (a) hand control of the relevant Works to the Principal; and
- (b) provide the Principal with all spare parts, consumables and special tools as required by the SWTC.

12.6 Part of the Works or a Portion


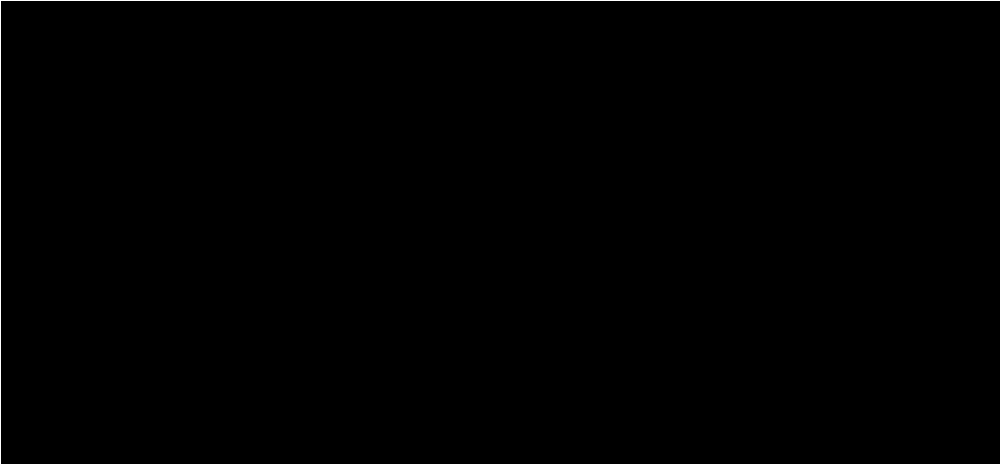


- (a) Without limiting clause 12.6(b), further Portions may be created by the Principal's Representative by issuing a written direction to the Contractor which clearly identifies for each Portion:
 - (i) the Works and the Temporary Works;
 - (ii) the Date for Construction Completion;
 - (iii) the Date for Completion; and
 - (iv) the respective amounts of liquidated damages,

all as determined by the Principal's Representative (acting reasonably).
- (b) If part of a Portion has reached a stage equivalent to Construction Completion but another part of the Portion has not reached Construction Completion and the parties cannot agree upon the creation of new Portions, the Principal's Representative may, by written notice to the Contractor, determine that the respective parts will be Portions.
- (c) Without limiting clause 12.6(a) or 12.6(b), the Principal may, after the Contractor is given written notice by the Principal's Representative, occupy or use any part of a Portion although the whole of the Portion has not reached Construction Completion.

- (d) If the Principal's Representative gives a notice under clause 12.6(b):
 - (i) the Principal must allow the Contractor reasonable access to the part of the Portion referred to in the notice and being occupied or used by the Principal, to enable the Contractor to bring the Portion of which the area being occupied or used forms part to Construction Completion; and
 - (ii) this will not otherwise limit or affect the obligations of the parties under this Contract, including the obligation of the Contractor to achieve Construction Completion of the relevant Portion of which the area being occupied or used forms part, by the relevant Date for Construction Completion.

12.7 Liquidated Damages for Delay in Reaching Construction Completion

- (aa) The Principal and the Contractor agree and acknowledge that:
 - (i) the Principal is pursuing a policy of building Sydney Metro City & Southwest and the Works for purposes that include achieving the objectives set out in clause 1.7; and
 - (ii) the Contractor's Activities represent a most important element of the building of Sydney Metro City & Southwest, as a major new public transport link which, together with Sydney Metro Northwest (and their integration), 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 the Contractor's Activities, improve the efficiency of the Sydney public transport network and improve the local environment.
- (ab) The Contractor acknowledges and agrees that its failure to achieve Construction Completion of each Portion by the required Dates for Construction 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.
- (a) Subject to clause 12.7(e), if Construction Completion of a Portion has not occurred by the relevant Date for Construction Completion, the Contractor must pay the Principal liquidated damages at the rates stated in Schedule 1A for every day after the relevant Date for Construction Completion up to and including:
 - (i) the Date of Construction Completion of the Portion; or
 - (ii) the date that this Contract is terminated under clause 14,whichever is first. If the Contractor is liable under this clause 12.7(a) in respect of more than one Portion on any one day, the Contractor's maximum liability to the Principal for liquidated damages in respect of such day will be determined in accordance with clause 12.7(f).

- (b) The parties agree that the liquidated damages provided for in Schedule 1A:
 - (i) represent proper, fair and reasonable amounts recoverable by the Principal arising from the failure of the Contractor to achieve Construction Completion of a Portion by the relevant Date for Construction Completion and do not constitute, nor are they intended to be, a penalty and have been freely agreed to by the Contractor; and
 - (ii) will be recoverable from the Contractor as a debt immediately due and payable to the Principal.
- (c) Not used.
- (d) If clause 12.7(a) 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 Works) as a result of the Contractor failing to achieve Construction Completion of a Portion by the relevant Date for Construction Completion, but the Contractor's liability for such damages (whether per day or in aggregate) will not be any greater than the liability which the Contractor would have had if clause 12.7(a) had not been void, invalid or otherwise inoperative.
- (e) The Contractor's aggregate liability under clauses 12.7(a) and 12.7(d) is limited to the amount set out in clause 13A.2(b). 

- (f) Without limiting clause 12.7(e), where, on any day, the Contractor is liable for liquidated damages under clauses 12.7(a) or 12.7(d) in respect of more than one Portion, the Contractor's maximum liability to the Principal for liquidated damages in respect of such day will be limited to , unless on such day the only Portions in respect of which the Contractor is liable for liquidated damages is one or more of Portions P5-13, P5-14 or P5-15 (each as described in Schedule 1A, Part A) in which case the Contractor's maximum liability to the Principal for liquidated damages in respect of such day will be limited to .

12.7A Mandatory Testing Activities

- (a) At any time after Construction Completion of a Portion, where directed by the Principal's Representative the Contractor must carry out the:
 - (i) System Integration and Acceptance Tests; or
 - (ii) Test Running,within the timeframe specified by the Principal's Representative and in accordance with Appendix F07 of the SWTC and the other requirements of this Contract.

Clause 12.1 shall apply to the carrying out of such tests.
- (b) The Contractor will not be relieved of its obligations in respect of the relevant Mandatory Testing Activity unless the Principal's Representative has confirmed in writing that the:
 - (i) System Integration and Acceptance Tests; or
 - (ii) Test Running,as relevant, have been carried out and passed in accordance with Appendix F07 of the SWTC and the other requirements of this Contract.
- (c) The Principal will bear the costs of the Mandatory Testing Activities which must be valued under clause 6.4, except where clause 12.1(h)(ii) or clause 12.1(h)(iv) apply.

12.8 Final Completion

- (a) The Contractor must give the Principal's Representative written notice two months before it anticipates completing all the work to be completed prior to achieving Final Completion.
- (b) Subject to clause 12.8(g), the Principal's Representative and the Contractor's Representative must, within 20 Business Days before the date the Principal's Representative expects Final Completion to occur, but no earlier than 20 Business Days before the end of the latest Defects Rectification Period, jointly inspect the Works at a mutually convenient time.
- (c) Following the joint inspection under clause 12.8(b), the Principal's Representative must issue a notice to the Principal and the Contractor containing a list of the items that are apparent and it believes must be completed before Final Completion is achieved.
- (d) If the Principal's Representative issues a notice under clause 12.8(c), the Contractor must continue to bring the Works to Final Completion and thereafter when the Contractor considers it has achieved Final Completion, the Contractor must notify the Principal's Representative in writing and provide it with an executed certificate in the form of Schedule 22. Thereafter, and subject to

clause 12.8(g), the Principal's Representative and the Contractor's Representative must jointly inspect the Works at a mutually convenient time.

- (e) Following the joint inspection under clause 12.8(d), the Principal's Representative must within 15 Business Days of receipt of a notice under clause 12.8(d), or of receipt of a notice under clause 12.8(f), issue to the Principal and the Contractor:
 - (i) if satisfied that Final Completion has been achieved, a notice stating the date on which the Principal's Representative determines Final Completion was achieved ("**Final Certificate**"); or
 - (ii) if not satisfied that Final Completion has been achieved, a notice:
 - A. containing a list of the items which it believes must be completed before Final Completion is achieved; or
 - B. stating that it believes the Contractor is so far from achieving Final Completion that it is not practicable to issue a list as contemplated by clause 12.8(e)(ii)A.
- (f) If the Principal's Representative issues a notice under clause 12.8(e)(ii)A or clause 12.8(e)(ii)B, the Contractor must continue to proceed to bring the Works to Final Completion and thereafter when it considers it has achieved Final Completion of the Works the Contractor must notify the Principal's Representative in writing after which the second sentence of clause 12.8(d), clause 12.8(e) and this clause 12.8(f) will reapply.
- (g) The Contractor acknowledges and agrees that:
 - (i) the Principal's Representative may invite any other person to attend any joint inspection provided for by this clause 12.8, including representatives of the Operator; and
 - (ii) the Operator may provide comments to the Principal's Representative in relation to any non-compliance of the Contractor's Activities with this Contract.
- (h) The Final Certificate is without prejudice to any of the Principal's rights under this Contract and is not evidence of accord and satisfaction of the Contractor's Activities or the Works.

12.9 Effect of Notice of Construction Completion, Notice of Completion or Final Completion

- (a) A notice issued under clauses 12.3(d)(i), 12.3A(e)(i) or 12.8(e)(i) will not:
 - (i) constitute approval by the Principal, the Principal's Representative or the Independent Certifier of the Contractor's performance of its obligations under this Contract;

- (ii) be taken as an admission or evidence that the relevant Portion complies with the requirements of this Contract; or
 - (iii) prejudice any rights or powers of the Principal, the Principal's Representative or the Independent Certifier.
- (b) Without limiting clause 12.9(a), the parties agree that, in the absence of manifest error on the face of the certification, the Independent Certifier's certification as set out in a Notice of Construction Completion or Notice of Completion is final and binding on the parties for the purposes only of establishing that Construction Completion or Completion of the relevant Portion (as applicable) has occurred.

12.10 Post Construction Completion Activities

- (a) At any time after Construction Completion of a Portion, the Principal's Representative may give written notice to the Contractor that the Contractor is to commence performance of the Post Construction Completion Activities specified in the notice in respect of the Portion on the date specified in the notice, which date must be at least 5 Business Days after the date on which the Contractor receives the notice under this clause 12.10(a).
- (b) If the Principal's Representative gives the Contractor a notice under clause 12.10(a) in respect of a Portion:
- (i) the Contractor must carry out the Post Construction Completion Activities in respect of that Portion from:
 - A. in the case of a notice given prior to Construction Completion of the Portion, the relevant Date of Construction Completion (unless a later date is specified in the notice); or
 - B. in the case of a notice given after Construction Completion of the Portion, the date specified in the notice,until the earlier of:
 - C. the date specified in a further notice given by the Principal pursuant to clause 12.10(c); and
 - D. the termination of this Contract; and

- (c) At any time after issuing a notice under clause 12.10(a) in respect of a Portion, the Principal's Representative may give further written notice to the Contractor that the Contractor is to cease performance of the Post Construction Completion Activities specified in the notice in respect of the Portion on the date specified in the further notice, which date must be at least 3 Business Days after the date on which the Contractor receives the notice under this clause 12.10(c).

13. Care of the Works, Risks and Insurance

13.1 Care of the Works

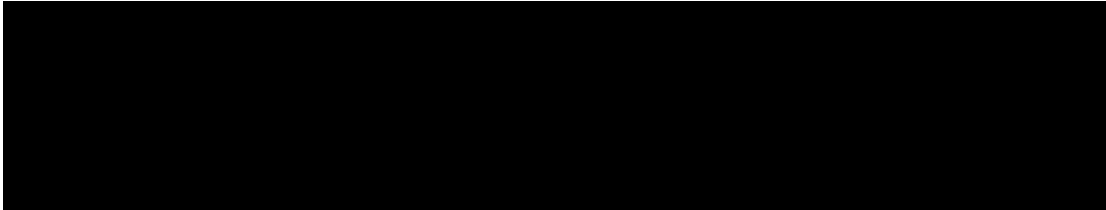
- (a) Except where it arises from an Excepted Risk, and without limiting the generality of the Contractor's obligations, the Contractor is responsible for the care of and bears the risk of, and indemnifies the Principal against:
- (i) any destruction, loss of, or damage to:
 - 1) the Contractor's Activities;
 - 2) the Works;
 - 3) Temporary Works;
 - 4) Construction Plant;
 - 5) unfixed plant and materials (whether on or off the Site) the value of which has been included in a payment statement under clause 11.3;
 - 6) things entrusted to the Contractor by the Principal or brought onto the Site by a Subcontractor for the purpose of carrying out the Contractor's Activities; and
 - 7) any Extra Land,
 from the date of this Contract; and
 - (ii) any destruction, loss of, or damage to the relevant parts of the Site (including any improvements on the Site), from the date on which access is granted under clause 3.1(a),
- in each case up to and including the Date of Construction Completion of the relevant Portion.
- (b) The Contractor must provide the storage and protection necessary to preserve the things referred to in clause 13.1(a)(i).

- (c) After the time referred to in clause 13.1(a), the Contractor will bear the risk of, and indemnify the Principal against, any destruction, loss of or damage to that part of the Works or other thing, arising from:
 - (i) any act or omission of the Contractor during the Defects Rectification Periods (including any extension under clause 8.6) or any other Contractor's Activities; or
 - (ii) any event which occurred while the Contractor was responsible for the care of the relevant part of the Works or other thing under clause 13.1(a)(i) in connection with the Contractor's Activities.

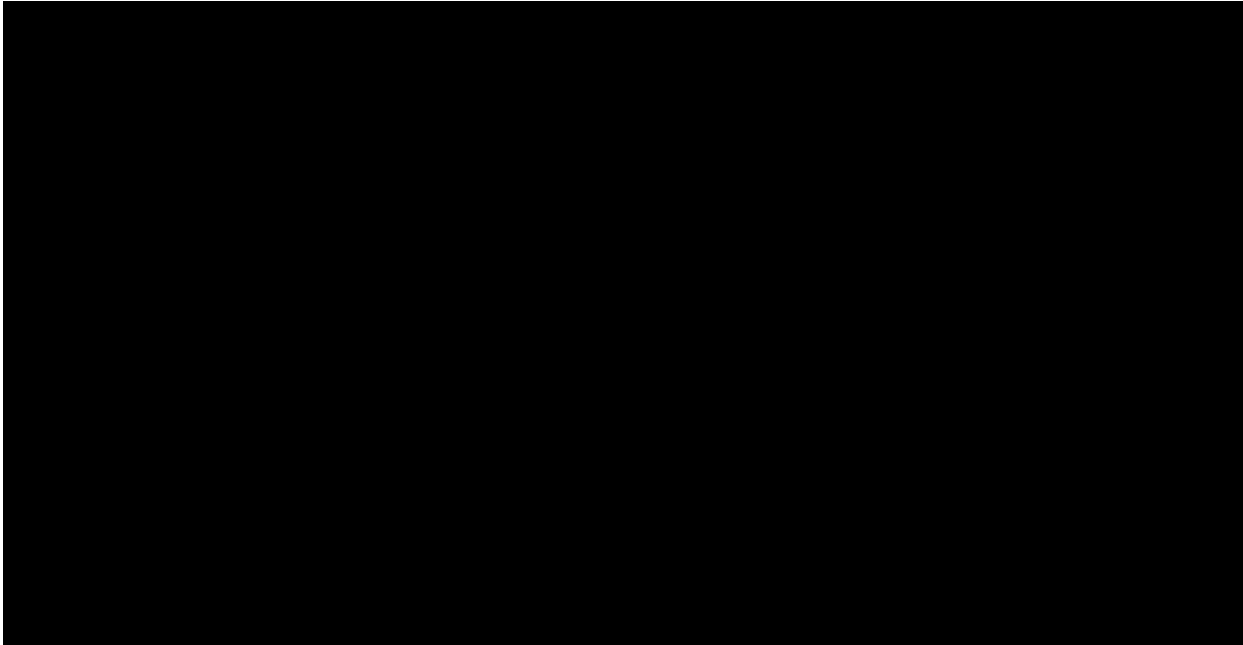
13.2 Indemnity

- (a) The Contractor must indemnify each State Indemnified Party from and against:
 - (i) any cost, expense, loss, damage, liability, fine, penalty or other amount incurred or suffered by a State Indemnified Party in respect of:
 - A. loss or destruction of or damage to, or loss of use of or access to (whether total or partial), any State Indemnified Party's real or personal property; or
 - B. any Claim against a State Indemnified Party (including by another State Indemnified Party) or liability a State Indemnified Party may have to a third party in respect of, arising out of or in connection with:
 - 1) loss or destruction of or damage to any real or personal property;
 - 2) the loss of use of or access to (whether total or partial) any real or personal property; or
 - 3) any illness, personal injury to or death of persons, caused by, or arising out of, or in any way in connection with, the Contractor's Activities, the Works or the Temporary Works; and
 - (ii) any:
 - A. liability to or Claim by any other person; or
 - B. costs, expenses, losses, damages, fines and penalties suffered or incurred by a State Indemnified Party, arising out of, or in any way in connection with:
 - C. the Contractor's breach of a term of this Contract or any other Station Contract Document or failure of the Contractor to otherwise comply with any of its obligations under this Contract or any other Station Contract Document;

- D. any fraudulent act or omission by the Contractor or any of its Associates; or
- E. any Environmental Liabilities arising out of or in connection with any:
 - 1) a breach of this Contract by the Contractor; or
 - 2) wrongful or reckless act or omission of the Contractor or its Associates.



- (c) The indemnity in clause 13.2(a) will not:
 - (i) exclude any other right of the Principal to be indemnified by the Contractor; or
 - (ii) apply to the extent to which the Contractor must indemnify the Principal under clause 13.1.



13.3 Reinstatement

During the period during which the Contractor bears the risk of loss or damage, and while the Contractor is responsible for its care, if loss or damage occurs to anything for which the Contractor is responsible under clause 13.1, the Contractor must:

- (a) subject to clause 13.3(b), promptly replace or otherwise make good the loss or repair the damage; and

- (b) where the loss or damage arises from an Excepted Risk, without fault or omission on the part of the Contractor, only comply with clause 13.3(a) to the extent directed by the Principal's Representative.

The Contractor will bear the cost of such replacement, making good or repair except to the extent that the loss or damage arises from an Excepted Risk, in which event this replacement, making good or repair will, to the extent the loss or damage arises from an Excepted Risk (but subject to clause 13.3(b)), be treated as if it were a Variation the subject of a direction by the Principal's Representative and clause 6.4 applied.

13.4 Contract Works (Material Damage) Insurance

The Principal will effect and maintain contract works (material damage) insurance on the terms of the policy which is included in Exhibit B. This insurance will cover the Contractor, the Principal, the Principal's Representative and all subcontractors employed by the Contractor in respect of the Contractor's Activities.

This insurance is subject to the exclusions, conditions and excesses noted in Exhibit B, and is deemed to satisfy the Principal's obligation to effect insurance. The Contractor acknowledges and agrees that prior to the date of this Contract it reviewed and examined Exhibit B and:

- (a) has satisfied itself as to the nature and extent of the cover provided by those insurance policies;
- (b) acknowledges that the policies of insurance included in Exhibit B do not cover every risk to which the Contractor or its Associates might be exposed and are subject to deductibles and limits and the Contractor may, if it chooses to do so, at its cost effect appropriate insurance for any risk or liability which is not covered by the policies of insurance included in Exhibit B; and
- (c) where it bears the risk of the relevant loss or damage under clause 13.1, or is required to indemnify the Principal under clause 13.2, agrees to bear the cost of any excesses in the insurance policies included in Exhibit B or any insurance taken out under this clause 13.4.

13.5 Public and Products Liability Insurance

The Principal will effect and maintain public and products liability insurance on the terms of the policy which is included in Exhibit B. The insurance will cover the Contractor, the Principal, the Principal's Representative and all subcontractors employed by the Contractor in respect of the Contractor's Activities.

This insurance is subject to the exclusions, conditions and excesses noted on the policies, and is deemed to satisfy the Principal's obligation to effect insurance. The Contractor acknowledges and agrees that prior to the date of this Contract it reviewed and examined Exhibit B and:

- (a) has satisfied itself as to the nature and extent of the cover provided by those insurance policies;

- (b) acknowledges that the policies of insurance included in Exhibit B do not cover every risk to which the Contractor or its Associates might be exposed and are subject to deductibles and limits and the Contractor may, if it chooses to do so, at its cost effect appropriate insurance for any risk or liability which is not covered by the policies of insurance included in Exhibit B; and
- (c) where it bears the risk of the relevant loss or damage, or is required to indemnify the Principal, agrees to bear the cost of any excesses in the insurance policies included Exhibit B, or any insurance taken out under this clause 13.5.

13.6 Contractor's Insurance Obligations

The effecting of insurance will not limit the liabilities or obligations of a party under any other provision of this Contract.

The Contractor must, or in the case of asbestos liability insurance, either the Contractor or its specialist asbestos removal Subcontractor must (if required by clause 13.6(a)(iii) below), before the Contractor commences the Contractor's Activities or as otherwise required by this Contract:

- (a) effect and have in place the following insurance with insurers of the Required Rating and on terms satisfactory to the Principal's Representative:
 - (i) workers compensation insurance, employers indemnity insurance or similar insurance, in accordance with the Laws of any State, Territory or other jurisdiction where the Contractor's Activities are being performed;
 - (ii) an insurance policy covering loss or damage to Construction Plant in connection with the Contractor's Activities;
 - (iii) if the Contractor's Activities include any work involving asbestos or asbestos decontamination, including stripping, encapsulation or removal, asbestos liability insurance;
 - (iv) professional indemnity insurance [REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
 - (v) motor vehicle insurance covering all mechanically propelled vehicles used in connection with the Contractor's Activities, whether registered, capable of being registered or required under the Law to be registered, extended specifically to cover the transportation of items and substances, and including:
 - A. insurance against personal injury or death, as required under all applicable Laws; and
 - B. in addition to the public liability insurance required under this Contract, insurance for third party property damage and personal injury or death;

- (vi) if the things the care of which the Contractor is responsible for under clause 13.1 are in transit (including storage and transshipment) from any place outside of Australia, marine transit insurance on an "all risks" basis, including war, riots, strikes and civil commotion coverage, covering those things until they are delivered to the Site, unpacked, inspected and confirmed as in sound condition; and
- (vii) any insurance that the Contractor is required to obtain by virtue of any Law or Change in Law,

for amounts not less than the amounts (if any) referred to in item 40 of Schedule 1;

- (b) ensure the Construction Plant insurance, motor vehicle insurance (except for compulsory third party insurance for bodily injury as required by the law and motor vehicle third party property damage insurance) and marine transit insurance:

- (i) includes the Principal as an additional insured, and covers the Principal, the Principal's Representative (including any appointee under clauses 9.2 or 9.3), the Contractor and all its Subcontractors, for their respective rights and interests; and
- (ii) is for an amount in respect of any occurrence not less than the amount referred to in item 40 of Schedule 1;

- (ba) ensure the asbestos liability insurance, motor vehicle third party property damage insurance and any insurance required by sub-paragraph (a)(vii):

- (i) includes the Principal as an additional insured and covers the Principal, the Principal's Representative (including any appointee under clauses 9.2 or 9.3), the Contractor and all its Subcontractors, for their respective rights and interests and their liabilities to third parties and liability to each other;
- (ii) cover loss or damage to property (other than property described in clause 13.1) and the death of or injury to any person (other than liability which the law requires to be covered under a workers compensation insurance or similar insurance policy), arising out of, or in any way in connection with, the Contractor's Activities; and
- (iii) is for an amount in respect of any occurrence not less than the amount referred to in item 40 of Schedule 1;

- (c) ensure the professional indemnity insurance:

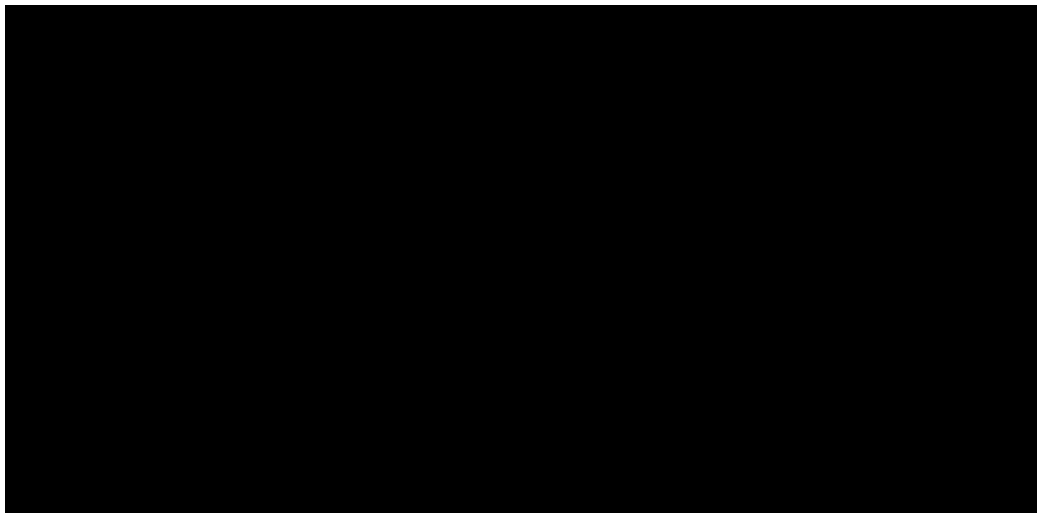
- (i) covers the Contractor for liability to the Principal arising from errors or omissions in:
 - A. Shop Drawings and design or documentation of the Temporary Works; and

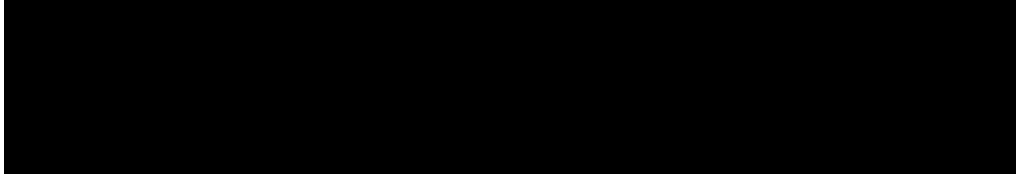
- B. other professional services,
carried out by the Contractor or any of its Subcontractors; and
- (ii) provide:
 - A. cover for any amount in respect of any one claim of not less than;
and
 - B. cover for an amount in the aggregate of not less than,
the amount stated in item 40 of Schedule 1; and
- (d) in relation to the workers compensation insurance or similar insurance:
 - (i) where permitted by Law, extend the insurance policy to provide indemnity to the Principal for its statutory liability to the Contractor's employees;
 - (ii) ensure that each of its Subcontractors has such workers compensation insurance or similar insurance covering the Subcontractor's employees; and
 - (iii) ensure it insures against liability for death of or injury to persons employed by the Contractor as required by any Law for an amount not less than the amount stated in item 40 of Schedule 1 (if any) for any one event, subject to the maxima or minima imposed by relevant Law.

13.7 General Insurance Requirements

The Contractor must:

- (a) in respect of any insurance policy (including an insurance policy which this Contract requires the Contractor to procure to be effected by a Subcontractor) which it is required to effect or procure to be effected, pursuant to this Contract and where required by the Principal's Representative, provide the Principal's Representative (or other person nominated for this purpose by the Principal's Representative) within 5 Business Days of a request:





- (b) ensure that (except for professional indemnity or workers' compensation or similar insurance):
 - (i) the Principal receives at least 30 days' notice of any cancellation or material change of any insurance policy effected under clause 13.6;
 - (ii) a notice of claim given to the insurer by the Principal, the Contractor or a Subcontractor will be accepted by the insurer as a notice of claim by all insured parties; and
 - (iii) upon becoming aware of any fact, matter or thing entitling the insurer to cancel the policy, give immediate notice in writing to the Principal about that fact, matter or thing at least 30 days prior to the insurer giving any notice of cancellation; and

- (c) ensure that it:
 - (i) does not do anything which prejudices any insurance;
 - (ii) where required, rectifies anything which might prejudice any insurance;
 - (iii) reinstates an insurance policy if it lapses;
 - (iv) does not cancel, vary or allow an insurance policy to lapse without the prior written consent of the Principal's Representative;
 - (v) immediately notifies the Principal's Representative of any event that may result in an insurance policy lapsing or being cancelled, and replaces that insurance policy prior to it lapsing or being cancelled; and
 - (vi) gives full, true and particular information to the insurer of all matters and things the non-disclosure of which might in any way prejudice or affect any such policy or the payment of all or any benefits under the insurance.

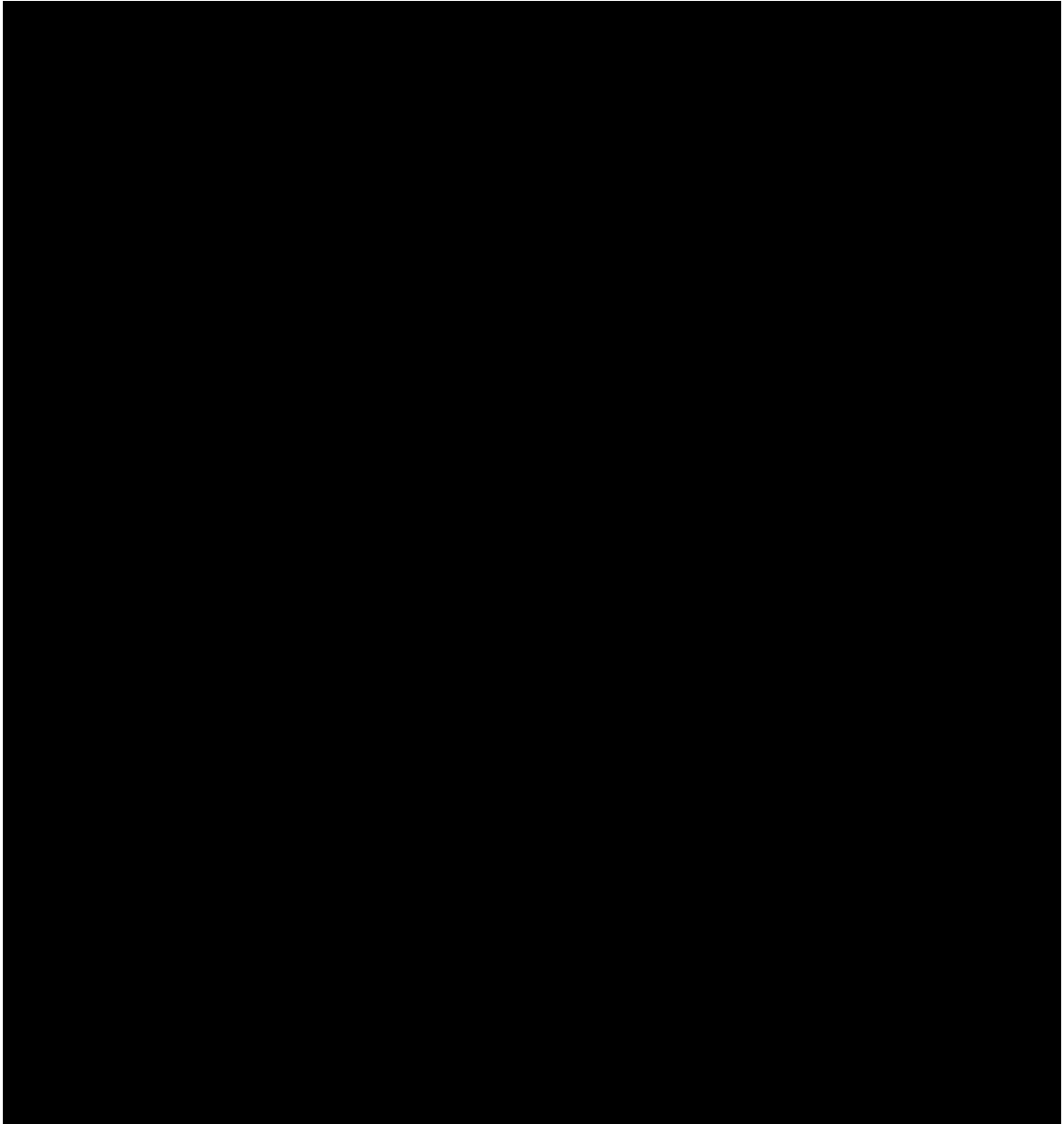
If the Contractor fails to:

- (d) provide, or make copies available of any insurance policy (including an insurance policy which this Contract requires the Contractor to procure a Subcontractor to effect) which the Contractor is required to effect together with evidence satisfactory to the Principal's Representative that the policy is current; or
- (e) effect or procure to be effected insurance which is with insurers of the Required Rating and on terms satisfactory to the Principal's Representative,

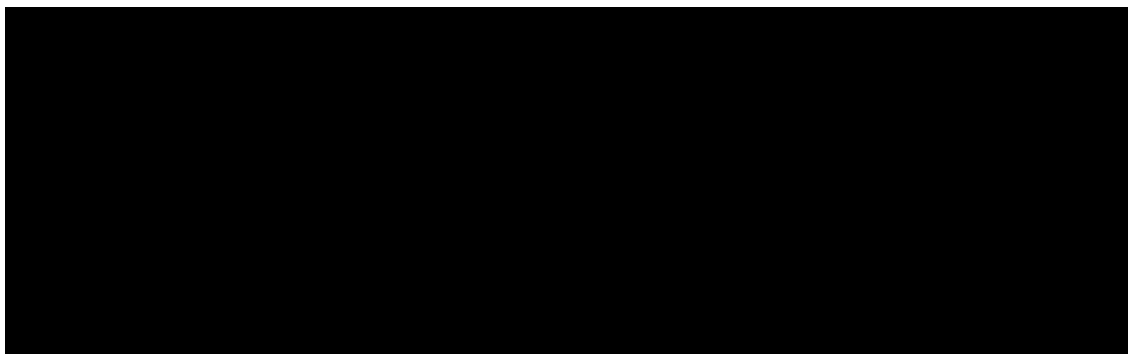
as required by clauses 2.2(c), 13.6 or this clause 13.7, the Principal may, at its sole discretion and without prejudice to any other rights that it may have, take out that insurance and the cost will be a debt due from the Contractor to the Principal.

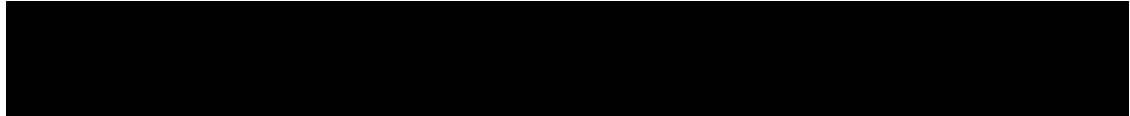
13.8 Period of Insurance

The Contractor must ensure that the insurances it is required to have in place under this clause 13:

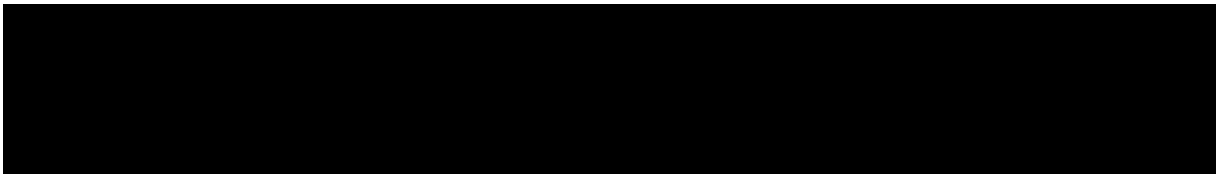
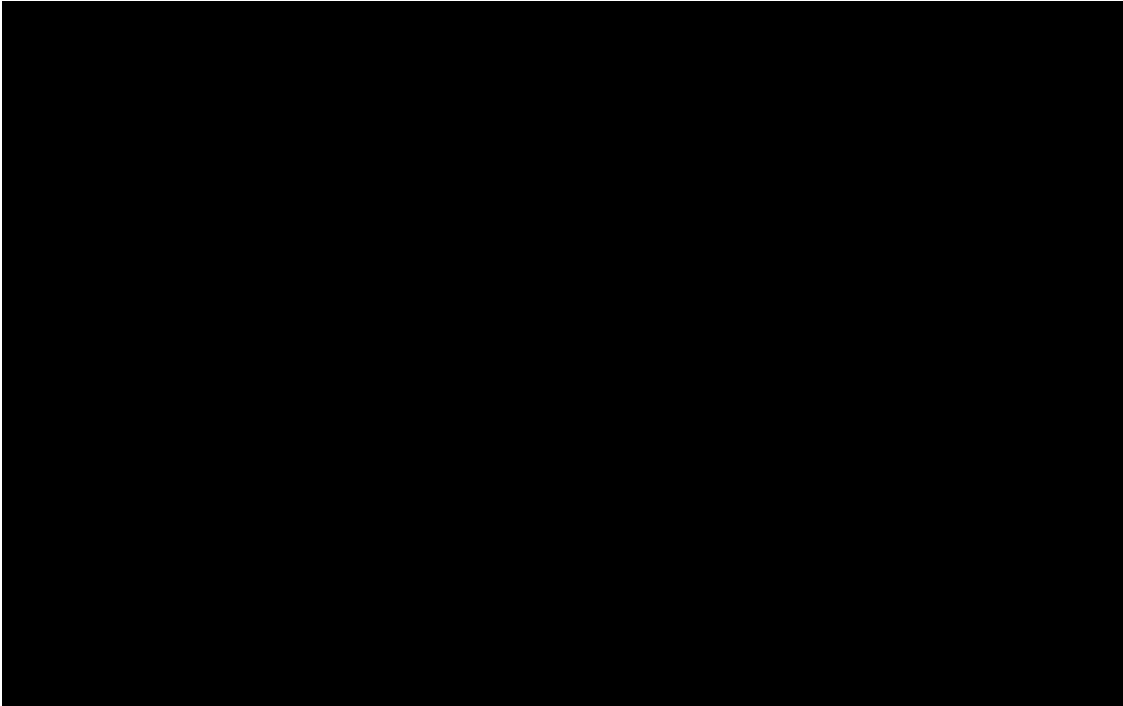


13.9 Notice of Potential Claim

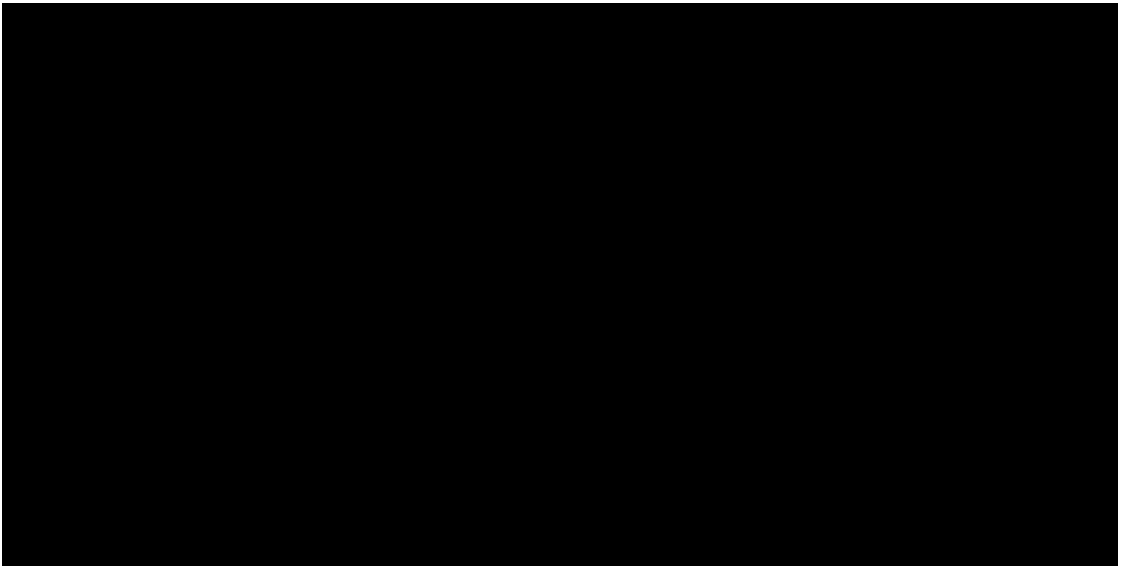




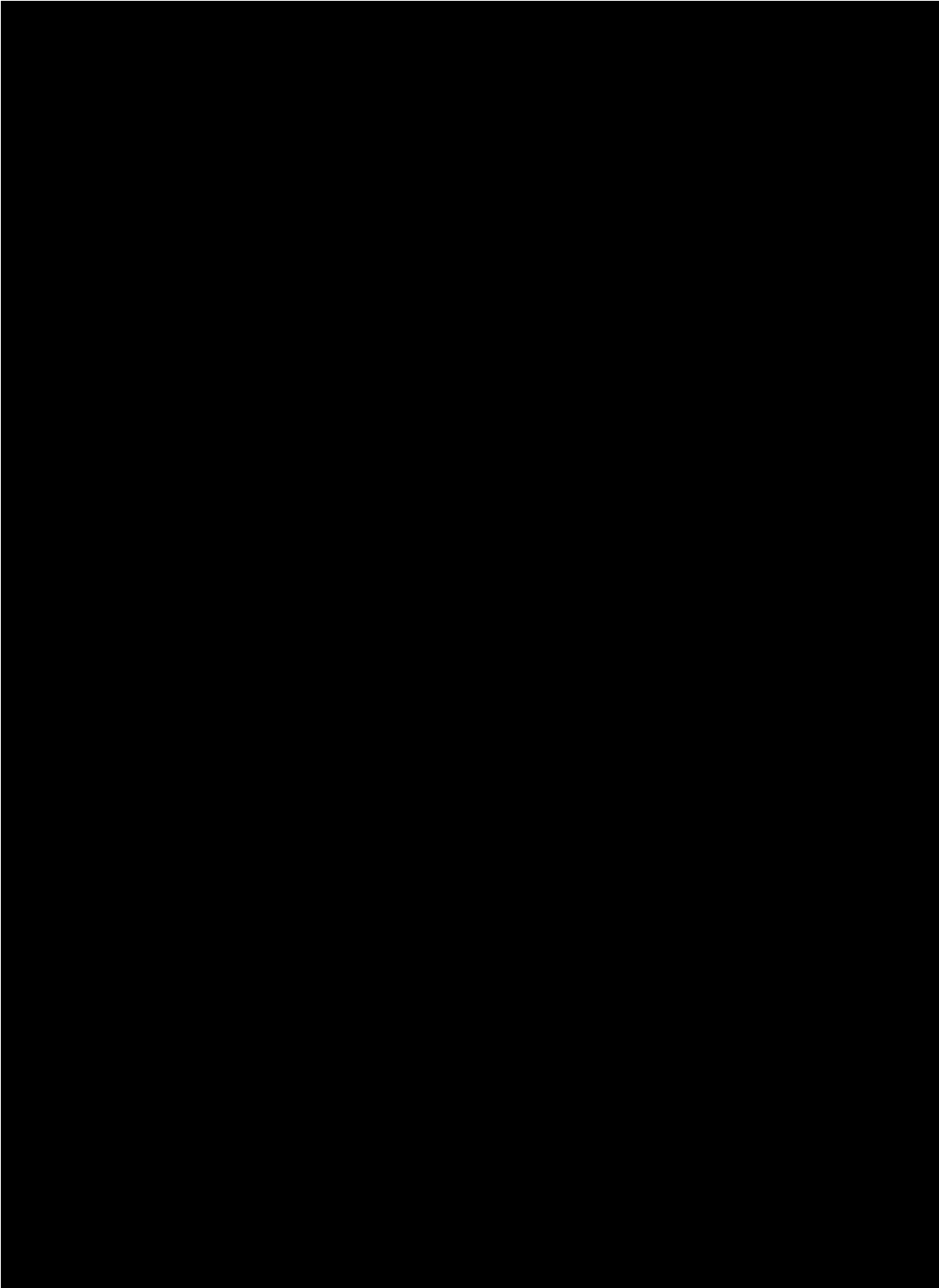
13.10 Cross Liability

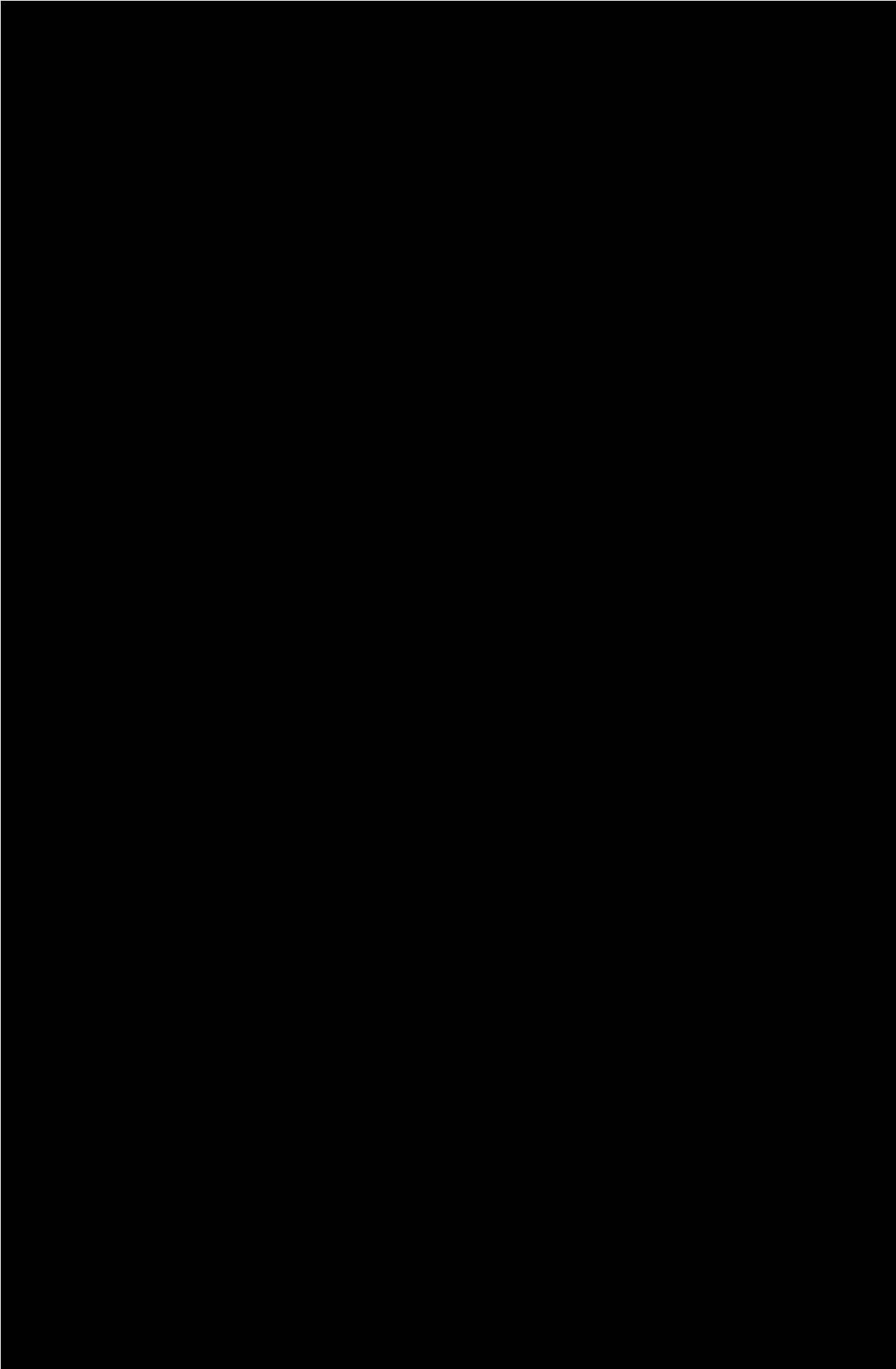


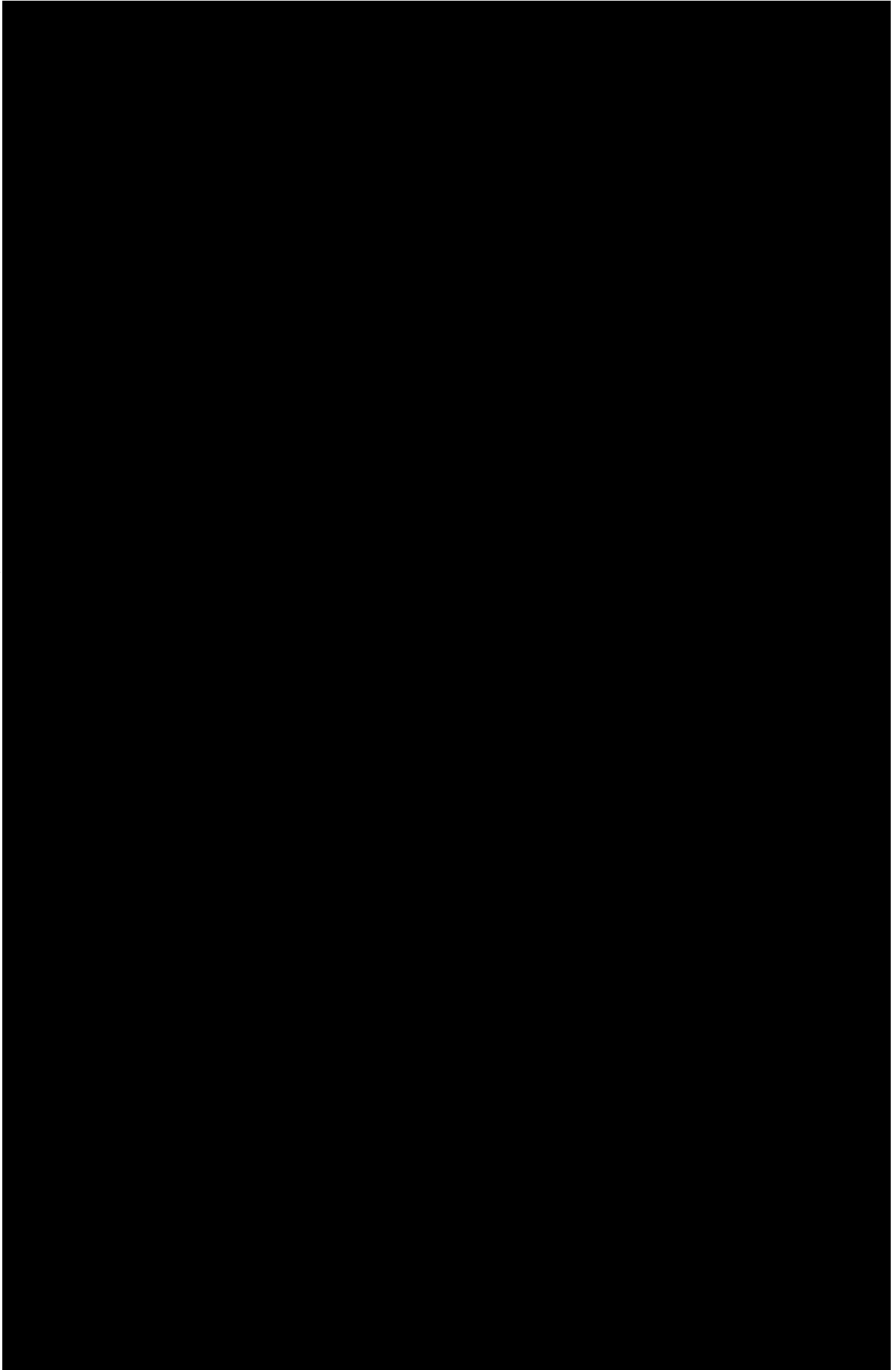
13.12 Application of insurance proceeds



13A Liability







13A.5 Proportionate Liability

- (a) To the extent permitted by Law, Part 4 of the *Civil Liability Act 2002* (NSW) (and any equivalent statutory provision in any other state or territory) is excluded in relation to all and any rights, obligations or liabilities of either party under or in any way in connection with this Contract whether such rights, obligations or liabilities are sought to be enforced in contract, tort or otherwise.
- (b) Without limiting the above, the rights, obligations and liabilities of the Principal and the Contractor under this Contract with respect to proportionate liability are as specified in this Contract and not otherwise, whether such rights, obligations or liabilities are sought to be enforced by a claim in contract, in tort or otherwise.
- (c) To the extent permitted by Law:
 - (i) the Contractor must not seek to apply the provisions of Part 4 of the *Civil Liability Act 2002* (NSW) in relation to any claim by the Principal against the Contractor (whether in contract, tort or otherwise); and
 - (ii) if any of the provisions of Part 4 of the *Civil Liability Act 2002* (NSW) are applied to any claim by the Principal against the Contractor (whether in contract, tort or otherwise), the Contractor will indemnify the Principal against any loss, damage, cost or expense that forms part of a claim by the Principal against the Contractor which the Principal is not able to recover from the Contractor because of the operation of Part 4 of the *Civil Liability Act 2002* (NSW).
- (d) The Contractor must:
 - (i) in each subcontract into which it enters for the carrying out of the work under this Contract or for the supply of materials or services, include a term that (to the extent permitted by Law) excludes the application of Part 4 of the *Civil Liability Act 2002* (NSW) in relation to all and any rights, obligations or liabilities of either party under or in any way in connection with each Subcontract whether such rights, obligations or liabilities are sought to be enforced by a claim in contract, tort or otherwise; and
 - (ii) require each Subcontractor or supplier of materials or services to include, in any further contract that it enters into with a third party for the carrying out of the work under this Contract, a term that (to the extent permitted by Law) excludes the application of Part 4 of the *Civil Liability Act 2002* (NSW) in relation to all and any rights, obligations or liabilities of either party under or in any way in connection with each further agreement whether such rights, obligations or liabilities are sought to be enforced by a claim in contract, tort or otherwise.

- (e) The Contractor must ensure that all policies of insurance covering third party liability it is required by this Contract to effect or maintain (including the professional indemnity policy referred to in clause 13.7):
 - (i) cover the Contractor for potential liability to the Principal assumed by reason of the exclusion of Part 4 the *Civil Liability Act 2002* (NSW); and
 - (ii) do not exclude any potential liability the Contractor may have to the Principal under or by reason of this Contract.
- (f) The powers conferred and restrictions imposed on a court by Part 4 of the *Civil Liability Act 2002* (NSW) are not conferred on an expert appointed in accordance with the provisions of this Contract.
- (g) An expert has no power to make a binding or non-binding determination or any award in respect of a claim by applying or considering the provisions of Part 4 of the *Civil Liability Act 2002* (NSW) (and any equivalent statutory provisions in any other state or territory) which might, in the absence of this provision, have applied to any dispute referred to the expert.

14. Default or Insolvency

14.1 Contractor's Default

If the Contractor commits a breach of this Contract referred to below, the Principal may give the Contractor a written notice.

The breaches by the Contractor to which this clause applies are:

- (a) not commencing or not progressing the Contractor's Activities regularly and diligently in accordance with the requirements of this Contract, in breach of clause 10.1;
- (b) suspension of work, or failing to proceed with the Contractor's Activities with due expedition and without delay, in breach of clause 10.1;
- (c) failing to provide the security, in breach of clause 2.7;
- (d) failing to provide evidence of insurance, in breach of clause 13;
- (e) failing to use the materials or standards of workmanship required by this Contract, in breach of clause 4.1;
- (f) not complying with any direction of the Principal's Representative made in accordance with this Contract, in breach of clause 9.1(a);
- (g) not complying with the requirements of this Contract regarding the Contract Management Plans in a material respect;
- (h) not complying with its obligations under:
 - (i) the SWTC with regard to the Contract Management Plans; or

- (ii) the SWTC with regard to technical management;
- (i) not complying with its environmental obligations under this Contract;
- (j) not complying with its obligations under this Contract regarding work health and safety;
- (k) the failure to comply with all applicable Law, including the failure to comply with, carry out and fulfil the conditions and requirements of all Authority Approvals in breach of clause 2.3; or
- (l) any other failure to comply with a material obligation under the Contract.

14.2 Contents of Notice

A written notice under clause 14.1 must:

- (a) state that it is a notice under clause 14.1;
- (b) specify the alleged breach;
- (c) require the Contractor to remedy the breach or, in the case of a notice by the Principal where the breach is not capable of being remedied, make other arrangements satisfactory to the Principal; and
- (d) specify the time and date by which the Contractor must remedy the breach or make other arrangements satisfactory to the Principal (which time must not be less than 21 clear days after the notice is given).

14.3 Rights of the Principal Following Notice

If, by the time specified in a notice under clause 14.1, the Contractor fails to remedy the breach or make arrangements satisfactory to the Principal, the Principal may, by notice in writing to the Contractor:

- (a) take out of the hands of the Contractor the whole or part of the work remaining to be completed; or
- (b) terminate this Contract.

14.4 Immediate Termination or Take-Out

If:

- (a) whether or not the Contractor is then in breach of this Contract:
 - (i) an Insolvency Event occurs:
 - A. to the Contractor;
 - B. where the Contractor comprises more than one person, any one of those persons; or
 - C. to a person specified in item 42 of Schedule 1; or

- (ii) the Contractor causes or contributes to the occurrence of an Incident and fails to ensure that the Principal is promptly notified as set out in clause 2.10;
- (b) the Contractor fails to comply with any of its obligations under clause 4.6 or 4.7;
- (c) the aggregate liability of the Contractor under or in connection with the Contract, the other Station Contract Documents and the Third Party Agreements is equal to or exceeds ■■■ of the Contract Sum;
- (d) the aggregate liability of the Contractor to the Principal under or in connection with clauses 12.7(a) and 12.7(d) is equal to or exceeds:
 - (i) if the Principal and the Contractor have agreed in writing to increase the LD Cap to above ■■■ of the Contract Sum, such increased LD Cap; or
 - (ii) in any other event, ■■■ of the Contract Sum;
- (e) a Change in Control occurs in respect of an entity that comprises the Contractor without the prior written consent of the Principal (other than a Change in Control that is permitted under clause 16.4(a)(iii)); or
- (f) a Change in Control occurs in respect of a Parent Company Guarantor without the prior written consent of the Principal (other than a Change in Control that is permitted under clause 16.4(b)(iii)),

then, whether or not the Contractor is then in breach of this Contract, the Principal may, without giving a notice under clause 14.1, exercise the right under clause 14.3(a) or 14.3(b).

14.5 Principal's Common Rights After Take-Out or Termination

If:

- (a) the Principal:
 - (i) exercises its rights under clause 14.3(a); or
 - (ii) terminates this Contract under clauses 14.3(b), 14.4 or 14.9;
- (b) the Contractor repudiates this Contract and the Principal otherwise terminates this Contract; or
- (c) this Contract is frustrated under the Law,

then:

- (d) the Contractor:
 - (i) must novate to the Principal or the Principal's nominee those Subcontracts between the Contractor and its Subcontractors that the Principal directs;

- (ii) irrevocably appoints (for valuable consideration) the Principal and any authorised representative of the Principal to be the Contractor's attorney to:
 - A. execute, sign, seal and deliver all notices, deeds and documents; and
 - B. undertake actions in the name of the Contractor, for the purposes referred to in clause 14.5(d)(i); and
- (iii) must immediately hand over to the Principal's Representative all copies of:
 - A. any documents provided by the Principal to the Contractor;
 - B. all Contract Documentation prepared by the Contractor to the date on which:
 - 1) the Principal exercises its rights under clauses 14.3(a), 14.3(b), 14.4 or 14.9;
 - 2) the Contractor repudiates this Contract and the Principal terminates this Contract; or
 - 3) this Contract is frustrated under the Law, (whether complete or not); and
 - C. any other documents or information in existence that is to be provided to the Principal under the terms of this Contract; and
- (e) the Principal:
 - (i) will be entitled to require the Contractor to remove from the Site or any area affected by the Works, any Construction Plant and Temporary Works and all materials, equipment and other things intended for the Works;
 - (ii) may complete that work itself or by engaging others (including but not limited to the Contractor's Subcontractors);
 - (iii) may take possession of such of the Construction Plant, Temporary Works and other things on or in the vicinity of the Site or Extra Land as are owned by the Contractor and are reasonably required by the Principal to facilitate completion of the work;
 - (iv) must, if it takes possession of the items referred to in clause 14.5(e)(iii):
 - A. for the period during which it retains possession of the Construction Plant, Temporary Works or other things pay to the Contractor rent for the use of the Construction Plant, Temporary

Works or other things at a market rate to be agreed by the parties or, failing agreement, to be determined pursuant to clause 15; and

- B. maintain the Construction Plant, Temporary Works or other things and, subject to clause 14.6, on completion of the work return to the Contractor the Construction Plant, Temporary Works and any things taken under clause 14.5(e)(iii) which are surplus;
- (v) may direct the Contractor to store or transport any component of the Works which has not yet been delivered to Site at or to a location directed by the Principal; and
- (vi) must, if it issues a direction under clause 14.5(e)(v), reimburse the Contractor its reasonable costs incurred in storing or transporting the relevant component of the Works.

This clause 14.5 will survive the termination or frustration of this Contract.

14.6 Principal's Entitlements after Take-Out

- (a) If the Principal exercises the right under clause 14.3(a), the Contractor will not be entitled to any further payment in respect of the work taken out of the hands of the Contractor unless a payment becomes due to the Contractor under this clause 14.6.
- (b) When work taken out of the hands of the Contractor under clause 14.3(a) is completed, the Principal's Representative will ascertain the cost incurred by the Principal in completing the work and will issue a certificate certifying the amount.
- (c) If the cost incurred by the Principal is greater than the amount that would have been paid to the Contractor if the Contractor had completed the work, the difference will be a debt due from the Contractor to the Principal. If the cost incurred by the Principal is less than the amount that would have been paid to the Contractor if the Contractor had completed the work, the difference will be a debt due to the Contractor from the Principal.
- (d) Without limiting clause 14.6(c), if the Principal exercises the right under clause 14.3(a), the Principal will be entitled to recover from the Contractor any costs, expenses, losses or damages incurred or suffered by it as a result of, or arising out of, or in any way in connection with, the exercise of such right.
- (e) If the Contractor is indebted to the Principal, the Contractor grants to the Principal a lien over the Construction Plant, Temporary Works or other things taken under clause 14.5 such that the Principal may retain that property until the debt is met. If after reasonable notice, the Contractor fails to pay the debt, the Principal may sell the Construction Plant, Temporary Works or other things and apply the proceeds to satisfaction of the debt and the costs of sale. Any excess will be paid to the Contractor.

14.7 Principal's Rights after Termination

Subject to clause 14.11, if the Principal terminates this Contract under clauses 14.3 or 14.4, or if the Contractor repudiates this Contract and the Principal otherwise terminates this Contract the Principal will:

- (a) be absolutely entitled to call upon, convert and have recourse to and retain the proceeds of any unconditional undertaking held under clause 2.7 or clause 11.7(b); and
- (b) be entitled to recover from the Contractor any costs, expenses, losses or damages incurred or suffered by it as a result of, or arising out of, or in any way in connection with, such termination.

This clause 14.7 survives the termination of this Contract.

14.8 Contractor's Rights after Repudiation or Wrongful Termination

- (a) If the Principal:
 - (i) repudiates this Contract and the Contractor terminates this Contract; or
 - (ii) wrongfully:
 - A. exercises or attempts to exercise any right or power conferred on it by clauses 14.3, 14.4 or 14.9; or
 - B. determines or purports to determine this Contract at common law,

then the:

 - (iii) Principal's actions will be deemed to have been a lawful termination in accordance with clause 14.9 and the Contractor's sole rights in such circumstances will be those set out in clause 14.10; and
 - (iv) Contractor:
 - A. will not be entitled to the payment of damages;
 - B. will not be entitled to any payment on a quantum meruit basis; and
 - C. waives all other rights it has to make a Claim in such circumstances.
- (b) This clause 14.8 will survive the termination of this Contract.

14.9 Termination for Convenience

Without prejudice to any of the Principal's other rights or entitlements or powers under this Contract, the Principal may:

- (a) at any time for its sole convenience, and for any reason, by written notice to the Contractor terminate this Contract effective from the time stated in the notice or if no such time is stated, at the time the notice is given to the Contractor; and

- (b) thereafter, at the Principal's absolute discretion complete the uncompleted part of the Contractor's Activities or the Works either itself or by engaging other contractors.

14.10 Payment for Termination for Convenience

If the Principal terminates this Contract under clause 14.9, the Contractor:

- (a) will be entitled to payment of the following amounts as determined by the Principal's Representative:
 - (i) for work carried out prior to the date of termination, the amount which would have been payable if this Contract had not been terminated and the Contractor submitted a payment claim under clause 11.2 for work carried out to the date of termination;
 - (ii) the cost of plant and materials reasonably ordered by the Contractor for the Works and for which it is legally bound to pay provided that:
 - A. the value of the plant or materials have not been previously paid or included in the amount payable under clause 14.10(a)(i); and
 - B. title in the plant and materials vests in the Principal upon payment;
 - (iii) the reasonable costs of removing from the Site or Extra Land all labour, Construction Plant, Temporary Works (where required by the Principal) and other things used in the Contractor's Activities that are not part of, or to be part of, the Works;
 - (iv) the costs reasonably incurred by the Contractor in the expectation of completing the whole of the Contractor's Activities and not included in any other payment by the Principal; and
 - (v) the amount specified in item 43 of Schedule 1, for all Overhead Costs and profit associated with, and to the extent not included in, the work and costs determined under clauses 14.10(a)(ii), 14.10(a)(iii) and 14.10(a)(iv); and
- (b) must take all steps possible to mitigate the costs referred to in clauses 14.10(a)(ii) and 14.10(a)(iii).

To the extent it has not had recourse to them, the Principal will return all unconditional undertakings then held by it under clause 2.7 or 11.7(b) when the Contractor has complied with all its obligations under this clause.

The amount to which the Contractor is entitled under this clause 14.10 will be a limitation upon the Principal's liability to the Contractor arising out of, or in any way in connection with, the termination of this Contract and the Principal will not be liable to the Contractor upon any Claim arising out of, or in any way in connection with, the termination of this Contract other than for the amount payable under this clause 14.10.

This clause 14.10 will survive the termination of this Contract by the Principal under clause 14.9.

14.11 Preservation of Rights

Subject to clause 14.8, nothing in this clause 14 or that the Principal does or fails to do pursuant to this clause 14 will prejudice the right of the Principal to exercise any right or remedy (including recovering damages or exercising a right of set-off under clause 16.12) which it may have where the Contractor breaches (including repudiates) this Contract.

14.12 Termination by Frustration

If under the Law this Contract is frustrated the Principal will:

- (a) pay the Contractor the following amounts as determined by the Principal's Representative:
 - (i) an amount calculated in accordance with clause 14.10(a)(i) for work carried out prior to the date of frustration;
 - (ii) the costs calculated in accordance with the terms of, and subject to the conditions in, clauses 14.10(a)(ii); and
 - (iii) the costs calculated in accordance with the terms of clauses 14.10(a)(iii) and 14.10(a)(iv); and
- (b) to the extent it has not had recourse to them, return all unconditional undertakings then held by it under clauses 2.7 or 11.7(b) when the Contractor has complied with its obligations under this clause.

The amount to which the Contractor is entitled under this clause 14.12 will be a limitation upon the Principal's liability to the Contractor arising out of, or in any way in connection with, the frustration of this Contract and the Principal will not be liable to the Contractor upon any Claim arising out of, or in any way in connection with, the frustration of this Contract other than for the amount payable under this clause 14.12.

Without limiting any other provision of this Contract, this clause 14.12 will survive the frustration of this Contract.

14.13 Codification of Contractor's Entitlements

This clause 14 is an exhaustive code of the Contractor's rights arising out of or in any way in connection with any termination and the Contractor:

- (a) cannot otherwise terminate, rescind or treat this Contract as repudiated; and
- (b) waives all rights at Law to terminate, rescind or treat this Contract as repudiated,

otherwise than in accordance with this clause 14.

15. Disputes

15.1 Disputes generally

Any dispute, difference, controversy or Claim ("**Dispute**") directly or indirectly based upon, arising out of, relating to or in connection with this Contract or the Works, the Temporary Works or the Contractor's Activities, including any questions relating to the existence, validity or termination of this Contract, but excluding a failure by a party to comply with a final and binding decision of the Expert, must be resolved in accordance with this clause 15.

15.2 Independent Dispute Avoidance and Resolution Panel

- (a) The IDAR Panel has been constituted under the IDAR Panel Agreement.
- (b) The Contractor must, within 5 Business Days of receipt of a request from the Principal, execute the IDAR Panel Agreement Accession Deed Poll.
- (c) Each party must:
 - (i) following execution of the IDAR Panel Agreement Accession Deed Poll (if applicable), at all times comply with the terms of the IDAR Panel Agreement;
 - (ii) attend meetings with the IDAR Panel as required pursuant to the IDAR Panel Agreement or this Contract; and
 - (iii) provide all reasonable assistance to the IDAR Panel in fulfilling its function(s) in respect of the Contractor's Activities, including providing all information it reasonably requests.

15.3 Consultation

- (a) Where a Dispute arises, the Dispute must be notified to the IDAR Panel by written notice of the issues in Dispute ("**Notice of Issue**") from the dissatisfied party ("**Party A**") to the IDAR Panel and the other party ("**Party B**"). The Notice of Issue must:
 - (i) provide brief particulars of the issues in Dispute; and
 - (ii) be issued within 10 Business Days after Party A first became aware of the fact, matter or thing on which the Dispute is based.
- (b) Within 2 Business Days of the Notice of Issue, the parties must agree upon a member of the IDAR Panel ("**Nominated Member**") to review the Dispute. If:
 - (i) the parties fail to reach such agreement within 2 Business Days; or
 - (ii) the Nominated Member declines to act or is unable to act as a result of death, disability, resignation or termination of appointment,

the chairperson of the IDAR Panel, as appointed under the IDAR Panel Agreement from time to time ("**Chair**") must nominate a replacement Nominated Member within a further 2 Business Days.

- (c) If a replacement Nominated Member declines to act or is unable to act as a result of death, disability, resignation or termination of appointment, the Chair must nominate a further replacement Nominated Member within a further 2 Business Days. The Chair cannot nominate itself as the Nominated Member.
- (d) If a further replacement Nominated Member declines to act or is unable to act as a result of death, disability, resignation or termination of appointment, the process in clause 15.3(c) will be reapplied until there are no IDAR Panel members to accept the appointment, in which case the Chair must request the Resolution Institute to appoint a replacement member. This appointment will be final and conclusive.
- (e) Within 3 Business Days of the appointment of the Nominated Member, the Nominated Member must convene at least one meeting ("**Consultation**") to facilitate genuine and good faith negotiations with a view to:
 - (i) resolving the Dispute; and
 - (ii) clarifying and narrowing the issues in Dispute, in the event that the Dispute is not resolved.
- (f) Each Consultation will be attended by:
 - (i) the Nominated Member;
 - (ii) the Principal's Representative;
 - (iii) the Contractor's Representative; and
 - (iv) other persons as agreed between the Principal's Representative and the Contractor's Representative.
- (g) The Consultation process must conclude within 15 Business Days of the first Consultation, or such other period as the parties may agree. The Nominated Member will advise the parties in writing when the Consultation process has concluded.
- (h) A failure to comply with clause 15.3(a) will be treated as a breach of this Contract by the relevant party.

15.4 Recommendation

- (a) Within 5 Business Days of the conclusion of Consultation, the Nominated Member must notify the parties in writing of its non-binding recommendation as to:
 - (i) the formulation of the issues in Dispute;

- (ii) the most appropriate Expert(s) to be appointed to determine the Dispute pursuant to clause 15.5; and
- (iii) whether the Dispute is not suitable for expert determination and should be determined in accordance with clause 15.8,

("Recommendation").

(b) Subject to clause 15.4(d), if the Dispute is not resolved within the later of:

- (i) 5 Business Days of the Recommendation; and
- (ii) 15 Business Days of the Notice of Issue,

Party A must refer those parts of the Dispute that remain unresolved to expert determination by notice to Party B (with a copy to the IDAR Panel) within 20 Business Days after the later of (i) and (ii) above or such other period of time as agreed between the parties ("**Notice of Dispute**").

(c) The Notice of Dispute must:

- (i) be in writing;
- (ii) state that it is a Notice of Dispute under this clause 15.4(c);
- (iii) include or be accompanied by reasonable particulars of those parts of the Dispute including:
 - A. references to any:
 - 1) provisions of this Contract; and
 - 2) acts or omissions of any person, relevant to the Dispute;
 - B. the relief sought and the basis for claiming the relief sought; and
 - C. copies of, or relevant extracts from, any documents in support of the claim.

(d) If the Nominated Member makes a Recommendation:

- (i) under clause 15.4(a)(ii), the parties may accept the recommendation or clause 15.5(a) will apply; or
- (ii) under clause 15.4(a)(iii) that the Dispute is not suitable for expert determination, the parties may agree to have the Dispute determined in accordance with clause 15.8, however if the parties have not so agreed within 5 Business Days of the Recommendation, clause 15.5 will apply.

15.5 Expert determination

- (a) Any Dispute which is referred to expert determination by a Notice of Dispute will be conducted in accordance with the Resolution Institute's Expert Determination Rules, as modified by Schedule 26.
- (b) Both parties must promptly make available to the Expert all such additional information, access to the Site and other relevant places and all appropriate facilities, as the Expert may require for the purposes of making a determination on the Dispute.
- (c) The parties agree that, to the extent permitted by law:
 - (i) the powers conferred and restrictions imposed on a court by Part 4 of the *Civil Liability Act 2002* (NSW) are not conferred on the Expert; and
 - (ii) the Expert has no power to make a binding or non-binding determination or any award in respect of a Dispute by applying or considering the provisions of Part 4 of the *Civil Liability Act 2002* (NSW) (and any equivalent statutory provisions in any other state or territory) which might, in the absence of this provision, have applied to any Dispute referred to expert determination.
- (d) Within 50 Business Days after the Expert has been appointed, or within such other period as may be proposed by the Expert and approved by both parties, the Expert must give its determination in writing, which must be reasoned and must state that it is given under this clause 15.5. The determination will be immediately binding on both parties, who must give effect to it unless and until it is revised, overturned or otherwise changed by written agreement between the parties or a court judgment or an arbitral award made in court proceedings or an arbitration pursuant to this clause 15.

15.6 Notice of dissatisfaction

- (a) If:
 - (i) either party is dissatisfied with a determination made by an Expert under clause 15.5, then either party may, within 10 Business Days after receiving the determination, give notice to the other party of its dissatisfaction; or
 - (ii) an Expert fails to give its determination within a period of 50 Business Days after the Expert has been appointed by the parties (or within such other period as may be proposed by the Expert and approved by both parties) then either party may, within 10 Business Days after this period has expired, give a notice to the other party of its dissatisfaction,

("Notice of Dissatisfaction").
- (b) A Notice of Dissatisfaction issued under clause 15.6 must:
 - (i) state that it is given under clause 15.6; and

- (ii) set out the matter in Dispute and the reason(s) for dissatisfaction.
- (c) Except as stated in clause 15.4(d), neither party will be entitled to commence court proceedings or arbitration in respect of the Dispute unless a Notice of Dissatisfaction has been given in accordance with this clause 15.6.

15.7 Final and binding decision

- (a) If an Expert has made a determination as to a Dispute, and no Notice of Dissatisfaction has been given by either party under clause 15.6, within 10 Business Days after it received the Expert's determination, then the determination will become final and binding upon both parties.
- (b) Once a determination of an Expert has become final and binding under clause 15.7(a), neither party will be entitled to challenge the determination on any basis.

15.8 Litigation or arbitration

Where this clause applies, the Principal in its absolute discretion, may within 5 Business Days:

- (a) after issuing or receiving a Notice of Dissatisfaction; or
- (b) of reaching an agreement under clause 15.4(d)(ii),

(as applicable) issue a notice to the Contractor stating that the Dispute is to be determined by litigation pursuant to court proceedings. If the Principal does not issue such a notice within the 5 Business Day period, the Dispute will be referred to arbitration.

15.9 Arbitration rules

- (a) Any arbitration conducted in relation to a Dispute will be conducted in accordance with the arbitration rules of the Australian Centre for International Commercial Arbitration known as the ACICA Arbitration Rules.
- (b) The seat of the arbitration will be Sydney, Australia.
- (c) The language of the arbitration will be English.
- (d) The parties agree:
 - (i) that they have chosen arbitration for the purposes of achieving a just, quick and cost-effective resolution of any Dispute;
 - (ii) that any arbitration conducted pursuant to this clause will not necessarily mimic court proceedings and the practices of those courts will not regulate the conduct of the proceedings before the arbitral tribunal; and
 - (iii) that in conducting the arbitration, the arbitral tribunal must take into account the matters set out above, particularly in deciding issues such as:

- A. the number of written submissions that will be permitted;
 - B. where appropriate, the length of written submissions;
 - C. the extent of document discovery permitted, if any;
 - D. the consolidation of proceedings, when requested;
 - E. the joinder of parties, when requested;
 - F. the length of any hearing, if any; and
 - G. the number of experts, if any, each party is permitted to appoint.
- (e) The parties agree that:
- (i) subject to clause 15.10, the arbitral tribunal will have the power to grant all legal, equitable and statutory remedies, except punitive damages; and
 - (ii) section 24 of the *International Arbitration Act 1974* (Cth) will apply in an international arbitration context.
- (f) The arbitral tribunal has the power, on the application of any party to this arbitration agreement, to allow a third party who the arbitral tribunal considers has a sufficient interest in the outcome of the arbitration to be joined in the arbitration as a party. Each party hereby consents to such joinder. In the event of such joinder of parties in the arbitration, the arbitral tribunal has the power to make a single final award, or separate awards, in respect of all parties so joined in the arbitration.
- (g) Any award of the arbitral tribunal will be final and binding upon the parties.
- (h) This arbitration agreement will be governed by and must be construed according to the laws applying in New South Wales.

15.10 Exclusion from determination or award

- (a) The powers conferred and restrictions imposed on a court by Part 4 of the *Civil Liability Act 2002* (NSW) are not conferred on an arbitral tribunal appointed in accordance with this clause 15.
- (b) The arbitral tribunal has no power to make a binding or non-binding determination or any award in respect of a claim by applying or considering the provisions of Part 4 of the *Civil Liability Act 2002* (NSW) (and any equivalent statutory provisions in any other state or territory) which might, in the absence of this provision, have applied to any Dispute referred to the arbitral tribunal.

15.11 Payments

The Principal may withhold payment of that part of any amount which is the subject of a Dispute.

15.12 Contractor to continue performing obligations

Despite the existence of any Dispute the Contractor must:

- (a) continue to perform the Contractor's Activities; and
- (b) perform its other obligations under this Contract.

15.13 Urgent relief

Nothing in this clause 15 will prejudice:

- (a) the right of a party to seek urgent injunctive or declaratory relief from a court; or
- (b) the Principal from making an application to the court pursuant to sections 415E, 434K and 451F of the Corporations Act, when enacted, or an equivalent provision under any Law.

15.14 Dispute under related contracts

The parties acknowledge and agree that:

- (a) the provisions of this clause 15 will not apply to any dispute, difference, controversy or claim between one or both of the parties and the Independent Certifier which is to be resolved under:
 - (i) prior to execution of the Independent Certifier Deed, the provisions of the IC Letter of Intent (if applicable); or
 - (ii) the provisions of the Independent Certifier Deed;
- (b) the parties will be bound by the outcome of any dispute, difference, controversy or claim between the parties which is resolved pursuant to the IC Letter of Intent (if applicable) or the Independent Certifier Deed;
- (c) the provisions of this clause 15 will not apply to any dispute, difference, controversy or claim between the parties which is to be resolved under a Project Cooperation and Integration Deed;
- (d) the parties will be bound by the outcome of any dispute, difference, controversy or claim between the parties which is resolved pursuant to a Project Cooperation and Integration Deed; and
- (e) where the Dispute is a Common Dispute, as that term is defined in clause 9 of Schedule 4B, then this clause 15 will apply subject to the provisions of clause 9 of Schedule 4B.

15.15 Survive termination

This clause 15 will survive termination of this Contract.

16. General

16.1 Notices

- (a) Wherever referred to in this clause, "**Notice**" means each communication (including each notice, consent, approval, request, claim and demand) under or in connection with this Contract.
- (b) At any time and from time to time, the Principal's Representative may notify the Contractor that a PDCS will be used for giving Notices under or in connection with this Contract. The Principal's Representative's notice will set out:
 - (i) the name of the relevant PDCS;
 - (ii) the commencement date for use of the PDCS;
 - (iii) any password, login details or similar information required for the Contractor to use the PDCS;
 - (iv) any requirements for specific notices (eg notices of Claims);
 - (v) the name and contact details of any additional person which the Principal's Representative nominates for receipt of Notices under this Contract; and
 - (vi) any other information reasonably necessary for the use and service of Notices via the PDCS.
- (c) At any time and from time to time, the Principal's Representative may notify the Contractor that a PDCS will not be used for giving certain Notices under or in connection with this Contract. The Principal's Representative's notice will state that such Notices will be given in accordance with clause 16.1(d)(i).
- (d) Each Notice must:
 - (i) before the date referred to in clause 16.1(b)(ii) or where clause 16.1(c) applies:
 - A. be in writing;
 - B. be addressed:
 - 1) in the case of a Notice from the Contractor, to the Principal's Representative and any additional person notified by the Principal in writing; or
 - 2) in the case of a Notice from the Principal, to the Contractor's Representative; or
 - C. comply with any requirements for specific notices (eg notices of Claims) specified by the Principal in writing;

- D. be signed by the party making it or (on that party's behalf) by the solicitor for, or any attorney, director, secretary or authorised agent of, that party; and
 - E. be delivered or posted to the relevant address or sent to the email address shown in item 44 of Schedule 1 (or to any new address or email address notified by the intended recipient); and
- (ii) from the commencement date for use of the PDCS referred to in clause 16.1(b)(ii) and other than where clause 16.1(c) applies:
- A. be sent through the PDCS in accordance with the requirements set out in clause 16.1(f) and:
 - 1) in the case of a Notice from the Contractor, be addressed to the Principal's Representative and any additional person notified in accordance with clause 16.1(b)(v) and comply with any requirements notified in accordance with clause 16.1(b)(iv); or
 - 2) in the case of a Notice from the Principal, be addressed to the Contractor's Representative;
 - B. in circumstances where the PDCS is temporarily disabled or not operating, be issued in accordance with clause 16.1(d)(i).
- (e) A communication is taken to be received by the addressee:
- (i) (in the case of a Notice sent through the PDCS) at the time recorded on the PDCS as being the time at which the Notice was sent;
 - (ii) (in the case of prepaid post sent to an address in the same country) 2 Business Days after the date of posting;
 - (iii) (in the case of international post) 7 Business Days after the date of posting;
 - (iv) (in the case of delivery by hand) on delivery; and
 - (v) (in the case of email):
 - A. if it is transmitted by 5.00 pm (Sydney time) on a Business Day - on that Business Day; or
 - B. if it is transmitted after 5.00 pm (Sydney time) on a Business Day, or on a day that is not a Business Day - on the next Business Day,
- provided that if the communication is received on a day which is not a Business Day or after 5.00pm on a Business Day, it is deemed to be received at 9.00am on the next Business Day.

- (f) With respect to Notices sent through the PDCS:
 - (i) all Notices must be submitted by the party making it or (on that party's behalf) by the solicitor for, or any attorney, director, secretary or authorised agent of, that party;
 - (ii) only the text in any Notice, or subject to paragraph 16.1(f)(iii), any attachments to such Notice which are referred to in the Notice, will form part of the Notice. Any text in the subject line will not form part of the Notice; and
 - (iii) an attachment to a Notice will only form part of a Notice if it is uploaded to the PDCS in:
 - A. .pdf format;
 - B. a format compatible with Microsoft Office; or
 - C. such other format as may be agreed between the parties in writing from time to time.
- (g) The Contractor must:
 - (i) ensure that it has internet access which is sufficient to facilitate use of the full functionality of the PDCS;
 - (ii) ensure that relevant personnel log on and use the PDCS and check whether Notices have been received on each Business Day;
 - (iii) ensure all relevant personnel attend all necessary training required by the Principal's Representative;
 - (iv) advise the Principal's Representative of which personnel require access to the PDCS;
 - (v) at all times, ensure that it has access to personnel trained in the use of the PDCS so as to be able to view, receive and submit communications (including Notices) using the PDCS; and
 - (vi) as soon as practicable, at the first available opportunity following any period of time during which the PDCS is temporarily disabled or not operating, send all communications which have been issued pursuant to clause 16.1(d)(ii)B to the Principal's Representative through the PDCS.
- (h) The Principal has no liability for any losses the Contractor may suffer or incur arising out of or in connection with its access to or use of the PDCS or any failure of the PDCS, and the Contractor will not be entitled to make, and the Principal will not be liable upon, any Claim against the Principal arising out of or in connection with the Contractor's access to or use of the PDCS or any failure of the PDCS.

16.2 Governing Law and jurisdiction

- (a) This Contract is governed by and will be construed according to the Laws of New South Wales.
- (b) Each party irrevocably:
 - (i) submits to the non-exclusive jurisdiction of the courts of the State of New South Wales, and the courts competent to determine appeals from those courts, with respect to any proceedings which may be brought at any time relating to this Contract; and
 - (ii) waives any objection it may now or in the future have to the venue of any proceedings, and any claim it may now or in the future have that any proceedings have been brought in an inconvenient forum, if that venue falls within clause 16.2(b)(i).

16.3 No Waiver

- (a) Failure to exercise or enforce or a delay in exercising or enforcing or the partial exercise or enforcement of any right, power or remedy provided by Law or under this Contract by the Principal will not in any way preclude, or operate as a waiver of, any exercise or enforcement, or further exercise or enforcement of that or any other right, power or remedy provided by Law or under this Contract.
- (b) Any waiver or consent given by the Principal under this Contract will only be effective and binding on the Principal if it is given or confirmed in writing by the Principal.
- (c) No waiver by the Principal of:
 - (i) a breach of any term of this Contract; or
 - (ii) any other failure by the Contractor to comply with a requirement of this Contract, including any requirement to give any notice which it is required to give in order to preserve its entitlement to make any Claim against the Principal,

will operate as a waiver of another breach of that term or failure to comply with that requirement or of a breach of any other term of this Contract or failure to comply with any other requirement of this Contract.

16.4 Assignment and Change in Control

- (a) (Change in Control of an entity that comprises the Contractor)
 - (i) Subject to the terms of this clause 16.4(a), the Contractor must ensure that there is no Change in Control of any entity that comprises the Contractor without the prior written consent of the Principal (which must not be unreasonably withheld).
 - (ii) The Contractor must notify the Principal in writing of any Change in Control of any entity that comprises the Contractor, and provide:

- A. full details of the Change in Control, including the acquisition of voting power, the change in equity interests or any other event which will cause or constitute the Change in Control; and
 - B. all other information necessary for the Principal to determine whether to exercise its rights under clause 16.4(a)(iv), in relation to the Change in Control of the relevant entity that comprises the Contractor.
- (iii) The Principal's approval is not required for a Change in Control arising from:
- A. a transfer of any share or unit or other interest in the nature of equity which is listed on a recognised stock exchange; or
 - B. any transfer of a share or unit or other interest in the nature of equity by a person to a Related Body Corporate of that person, provided the Contractor gives the Principal prior written notice of the transfer.
- (iv) The Principal will be deemed to be acting reasonably if it withholds its approval to a Change in Control of an entity that comprises the Contractor where the Principal is of the reasonable opinion that:
- A. the person or entity which will exercise Control of the Contractor or the relevant entity that comprises the Contractor:
 - 1) is not solvent and reputable;
 - 2) has an interest or duty which conflicts in a material way with the interests of the Principal; or
 - 3) is involved in a business or activity which is incompatible, or inappropriate, in relation to Sydney Metro City & Southwest; or
 - B. as a result of the Change in Control, the Contractor will no longer:
 - 1) have sufficient expertise and ability; or
 - 2) be of sufficiently high financial and commercial standing,to properly carry out the obligations of the Contractor under this Contract.
- (v) If a Change in Control of any entity that comprises the Contractor occurs without the permission of the Principal (other than a Change in Control permitted under clause 16.4(a)(iii)), the Contractor acknowledges that the Principal may terminate this Contract by notice in writing to the Contractor.

(vi) The Principal's approval of a Change in Control of any entity that comprises the Contractor will not relieve the Contractor of any of its obligations under this Contract.

(b) (Change in Control of a Parent Company Guarantor)

(i) Subject to the terms of this clause 16.4(b), the Contractor must ensure that there is no Change in Control of a Parent Company Guarantor without the prior written consent of the Principal (which must not be unreasonably withheld).

(ii) The Contractor must notify the Principal in writing of any Change in Control of a Parent Company Guarantor, and provide:

A. full details of the Change in Control, including the acquisition of voting power, the change in equity interests or any other event which will cause or constitute the Change in Control; and

B. all other information necessary for the Principal to determine whether to exercise its rights under clause 16.4(b)(iv), in relation to the Change in Control of that Parent Company Guarantor.

(iii) The Principal's approval is not required for a Change in Control arising from:

A. a transfer of any share or unit or other interest in the nature of equity which is listed on a recognised stock exchange; or

B. any transfer of a share or unit or other interest in the nature of equity by a person to a Related Body Corporate of that person, provided the Contractor gives the Principal prior written notice of the transfer.

(iv) The Principal will be deemed to be acting reasonably if it withholds its approval to a Change in Control of a Parent Company Guarantor where the Principal is of the reasonable opinion that:

A. the person or entity which will exercise Control of the relevant Parent Company Guarantor:

1) is not solvent and reputable;

2) has an interest or duty which conflicts in a material way with the interests of the Principal; or

3) is involved in a business or activity which is incompatible, or inappropriate, in relation to Sydney Metro City & Southwest; or

B. as a result of the Change in Control, the relevant Parent Company Guarantor will no longer:

1) have sufficient expertise and ability; or

- 2) be of sufficiently high financial and commercial standing, to properly carry out the obligations of the Parent Company Guarantor under the relevant Parent Company Guarantee.
- (v) If a Change in Control of a Parent Company Guarantor occurs without the permission of the Principal (other than a Change in Control permitted under clause 16.4(b)(iii)), the Contractor acknowledges that the Principal may terminate this Contract by notice in writing to the Contractor.
- (c) The Principal's approval of a Change in Control of a Parent Company Guarantor will not relieve the Contractor of any of its obligations under this Contract.
- (d) The Contractor cannot assign, transfer or novate any of its rights or liabilities under this Contract without the prior written consent of the Principal and except on such terms and conditions as are determined in writing by the Principal.
- (e) (Assignment and Novation by the Principal)
- (i) Without limiting clause 16.31, the Principal may:
- A. assign, novate or otherwise transfer all or any part of its rights under this Contract without the Contractor's prior approval, provided that the assignee, novatee or transferee (as applicable) is an authority of the State, a minister or a government entity including a wholly owned State corporation or any other entity that is wholly owned or controlled by the State; and
- B. not otherwise assign, novate or otherwise transfer all or any part of its rights under this Contract without the Contractor's prior written consent (which must not be unreasonably withheld or delayed),
- and may disclose to a proposed assignee, novatee or transferee any information in the possession of the Principal relating to the Contractor.
- (ii) The Contractor agrees to such assignment, novation or transfer as contemplated in clause 16.4(e)(i) such that no further consent is required.
- (iii) In the case of a novation by the Principal under this clause:
- A. the Principal will be released from its obligations under this Contract and the respective rights of the Principal and the Contractor against one another under this Contract will cease;
- B. the novated agreement will be on the same terms as this Contract, such that the incoming party and the Contractor will assume the same obligations to one another and acquire the identical rights against one another as the rights and obligations discharged under clause 16.4(e)(iii)A, except that the incoming party replaces the Principal for all purposes under the agreement; and

- C. the Contractor consents to the disclosure by or on behalf of the Principal to the incoming party of their confidential information for the purposes of the novation.
- (iv) The Principal may at any time enter into any subcontracting, delegation or agency agreements or arrangements in relation to any of its functions.
- (f) If there is a Change in Control of the Contractor:
 - (i) the Contractor must procure a replacement Parent Company Guarantee from an entity, and on terms, approved by the Principal and which is, where required, duly stamped; and
 - (ii) provide the replacement Parent Company Guarantee procured under clause 16.4(f)(i) to the Principal within 10 Business Days of the date of the Change in Control of the Contractor.

16.5 Entire Agreement

This Contract constitutes the entire agreement and understanding between the parties and will take effect according to its tenor despite, and supersede:

- (a) any prior agreement (whether in writing or not), negotiations and discussions between the parties in relation to the subject matter of this Contract; and
- (b) any correspondence or other documents relating to the subject matter of this Contract that may have passed between the parties prior to the date of this Contract and that are not expressly included in this Contract.

16.6 Joint and Several Liability

The rights and obligations of the Principal and the Contractor, if more than one person, under this Contract, are joint and several. Each person constituting the Contractor acknowledges and agrees that it will be causally responsible for the acts and omissions (including breaches of this Contract) of the other as if those acts or omissions were its own and the Principal may proceed against any or all of them.

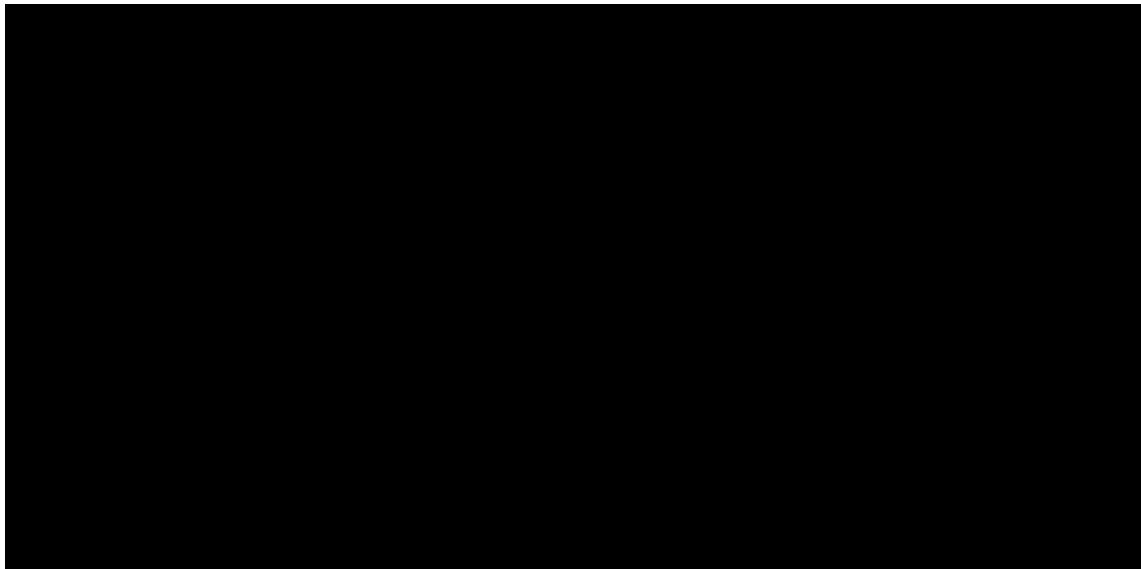
16.7 Severability

If at any time any provision of this Contract is or becomes illegal, invalid or unenforceable in any respect under the Law of any jurisdiction that will not affect or impair:

- (a) the legality, validity or enforceability in that jurisdiction of any other provision of this Contract; or
- (b) the legality, validity or enforceability under the Law of any other jurisdiction of that or any other provision of this Contract.

16.8 Indemnities to Survive

- (a) Each indemnity in this Contract is a continuing obligation, separate and independent from the other obligations of the parties, and survives termination, completion or expiration of this Contract.
- (b) Nothing in this clause 16.8 prevents any other provision of this Contract, as a matter of interpretation also surviving the termination of this Contract.
- (c) It is not necessary for a party to incur expense or make any payment before enforcing a right of indemnity conferred by this Contract.



16.9 Stamp Duty and Other Fees

The Contractor must pay all stamp duties and other fees payable in respect of the execution of this Contract and the performance of its obligations in respect of this Contract.

16.10 Taxes

Without limiting clause 2.3 but subject to clause 18, the Contractor must pay all Taxes that may be payable in respect of the Contractor's Activities, including any customs duty or tariff, and primage applicable to imported materials, plant and equipment required for the Contractor's Activities.

16.11 Confidentiality

- (a) Subject to clause 16.11(b), the Contractor must:
 - (i) keep confidential this Contract and any information relating to the Contractor's Activities and any discussions concerning this Contract;
 - (ii) not use the information referred to in clause 16.11(a)(i) except as necessary for the performance of the Contractor's Activities; and

- (iii) ensure that each of its Associates complies with the terms of clause 16.11(a)(i) and clause 16.11(a)(ii).
- (b) The Contractor is not obliged to keep confidential any information:
 - (i) which is in the public domain through no default of the Contractor; or
 - (ii) the disclosure of which is:
 - A. required by Law;
 - B. consented to in writing by the Principal; or
 - C. given to a court in the course of proceedings to which the Contractor is a party.
- (c) The Contractor must:
 - (i) execute and submit to the Principal within 10 Business Days of this Contract a Confidentiality Undertaking in the form in Schedule 3;
 - (ii) ensure that all employees of the Contractor that have access to the information described in the Confidentiality Undertaking are aware of their obligations under the terms of the Confidentiality Undertaking; and
 - (iii) ensure that each Subcontractor, including suppliers and consultants, to the Contractor execute and submit a Confidentiality Undertaking to the Principal.
- (d) The Contractor acknowledges that the Principal may disclose this Contract (and information concerning the terms of this Contract) under or in accordance with any one or more of the following:
 - (i) the *Government Information (Public Access) Act 2009* (NSW);
 - (ii) to satisfy the disclosure requirements of the New South Wales Auditor General or to satisfy the requirements of Parliamentary accountability; and
 - (iii) any other Law.
- (e) The Contractor must provide to the Principal any other information which the Principal reasonably requires to comply with its obligations under the items referred to in clause 16.11(d).
- (f) Subject to clause 16.11(a)(iii), the Contractor may provide this Contract and any information referred to in clause 16.11(a)(i) to its Subcontractors, employees, agents, advisors, equity investors and each of these parties' advisors as is necessary to enable the Contractor to perform its obligations under this Contract or any other Station Contract Document, provided that the Contractor ensures that the relevant recipient is subject to the same obligations of confidentiality as those contained in this Contract.

16.12 Right of Set-Off

The Principal may at any time withhold, set-off or deduct from moneys otherwise due to the Contractor:

- (a) any debt or other moneys due from the Contractor to the Principal (including any debt due from the Contractor to the Principal pursuant to section 26C of the *SOP Act*);
- (b) any amount that is less than or equal to the amount claimed to be owed under a payment withholding request served on the Principal pursuant to Division 2A of the *SOP Act*; or
- (c) any claim to money which the Principal may have against the Contractor whether for damages (including liquidated damages) or otherwise,

whether under this Contract or otherwise at Law.

If those moneys are insufficient, the Principal can have recourse to the security held under clause 2.7.

16.13 Not used

16.14 Principal May Act

- (a) The Principal may, either itself or by a third party, perform an obligation under this Contract that the Contractor was obliged to perform but which it failed to perform. The costs, losses, expenses and damages suffered or incurred by the Principal in so performing such an obligation will be a debt due from the Contractor to the Principal.
- (b) Where the Principal or the Principal's Representative is entitled under this Contract to exercise any right or power to:
 - (i) direct or instruct the Contractor to; or
 - (ii) itself step in to,

take any action or omit to take any action, it is not obliged to exercise that right or power, and may do so in their absolute discretion.

Where the Principal or the Principal's Representative does exercise any such right or power, the Contractor remains responsible for, controls and assumes the risk of all environmental, health and safety issues relating to the Works.

16.15 Process Agent

If the Contractor is a foreign company (as defined in the Corporations Act), the Contractor must:

- (a) appoint a local process agent acceptable to the Principal as its agent to accept service of process under or in any way in connection with this Contract. The

appointment must be in a form acceptable to the Principal and may not be revoked without the Principal's consent; and

- (b) obtain the process agent's consent to the appointment.

16.16 Not used

16.17 Variation of Contract

This Contract may only be varied by a document signed by or on behalf of both the Principal and the Contractor.

16.18 Not used

16.19 Not used

16.20 Not used

16.21 Not used

16.22 Not used

16.23 Prior Work

The Contractor agrees that the work in connection with the Contractor's Activities carried out by the Contractor prior to the date of this Contract will be deemed to be governed by the provisions of this Contract and will be deemed to be part of the Contractor's Activities and any payments made to the Contractor by the Principal prior to the date of this Contract in respect of the Contractor's Activities will be treated as part payments of the amount required to be paid by the Principal under this Contract.

16.24 Not used

16.25 Counterparts

This Contract may be executed in any number of counterparts. All counterparts together will be taken to constitute one instrument.

16.26 Personal Property Securities Act

- (a) By signing this Contract, the Contractor acknowledges and agrees that if this Contract and the transactions contemplated by it, operate as, or give rise to, a security interest for the purposes of the PPS Law ("**Security Interest**"), the Contractor shall do anything (including amending this Contract or any other document, executing any new terms and conditions or any other document, obtaining consents, getting documents completed and signed and supplying information) that the Principal considers necessary under or as a result of the PPS Law for the purposes of:
 - (i) ensuring that the Security Interest is enforceable, perfected or otherwise effective and has the highest priority possible under PPS Law;

- (ii) enabling the Principal to apply for any registration, or give any notification, in connection with the Security Interest, including the registration of a financing statement or financing change statement; or
 - (iii) enabling the Principal to exercise rights in connection with the Security Interest and this Contract.
- (b) If Chapter 4 of the *PPS Act* applies to the enforcement of the Security Interest, the Contractor agrees that sections 95, 120, 121(4), 125, 130, 132(3)(d), 132(4), 135, 142 and 143 of the *PPS Act* will not apply to the enforcement of the Security Interest.
- (c) The Contractor:
 - (i) acknowledges that the Security Interests created under or pursuant to this Contract relate to collateral and all proceeds in respect of that collateral (until the Principal is paid in full for the collateral);
 - (ii) acknowledges that to the maximum extent permitted by Law, it waives any right to receive a verification statement under the PPS Law in respect of the Security Interest; and
 - (iii) undertakes it will not register a financing change statement without the prior written consent of the Principal.
- (d) The parties agree that neither of them will disclose information of the kind referred to in section 275(1) of the *PPS Act* and that this clause constitutes a confidentiality agreement within the meaning of the PPS Law.
- (e) The Contractor agrees to waive any right it may have, or but for this clause may have had, under section 275(7)(c) of the *PPS Act* to authorise the disclosure of the above information.

16.27 Vienna Convention

The United Nations Convention on Contracts for the International Sale of Goods does not apply to this Contract.

16.28 Australian Government Requirements

- (a) The Contractor:
 - (i) declares as at the date of this Contract; and
 - (ii) must ensure during the term of this Contract,

that, in relation to the Contractor's Activities, 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) will comply with any Workplace Relations Management Plan which has been approved by the ABCC in accordance with Part 6 of the Building Code.
- (b) The Contractor acknowledges and agrees that compliance with the Building Code does not relieve the Contractor from any responsibility or obligation under this Contract, or from liability for any Defect in the Works arising from compliance with the Building Code.
- (c) The Contractor 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 the Contractor 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 16.28(c)(i)A; and
 - (ii) give the Principal a copy of any notification given by the Contractor to the ABCC under clause 16.28(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) The Contractor 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) The Contractor must not enter into a Subcontract for any aspect of the Works unless:
- (i) the Subcontractor has submitted a Declaration of Compliance, including the further information outlined in Attachment A to the Declaration of Compliance, which the Contractor agrees is substantially in the same form as the model declaration of compliance applicable to contractors and subcontractors in relation to the Building Code; and
 - (ii) the Subcontract with the Subcontractor includes an equivalent clause to this clause 16.28.
- (f) The Contractor must provide the Commonwealth with any Subcontractor's Declaration of Compliance referred to in clause 16.28(e) promptly upon request.
- (g) The Contractor must maintain adequate records of the compliance with the Building Code by:
- (i) the Contractor;
 - (ii) the Subcontractors;
 - (iii) the Contractor's consultants; and
 - (iv) any related entity of the Contractor.
- (h) For the purposes of this clause 16.28, "related entity" has the meaning given to that term in subsection 3(2) of the Building Code.

16.29 Chain of responsibility legislation

- (a) To the extent heavy vehicles are used in the performance of the Contractor's Activities, the Contractor:
- (i) acknowledges that it is a primary duty holder under the COR Laws with responsibility for developing COR Systems;
 - (ii) must ensure that:

- A. any heavy vehicles are appropriately maintained with loads that do not exceed vehicle mass or dimension limits and are appropriately secured;
 - B. operators carrying freight containers have a valid Container Weight Declaration; and
 - C. drivers do not exceed speed limits or regulated driving hours, do not drive while impaired by fatigue and observe minimum rest requirements;
- (iii) must proactively provide reasonable assistance to the Principal's Representative to enable the Principal (and any of the Principal's personnel) to satisfy its duties and responsibilities under the COR Laws;
 - (iv) must obtain and maintain, and ensure that each of its personnel or Subcontractors obtains and maintains, all approvals required to enable the applicable activity, function or task to be undertaken lawfully;
 - (v) must undertake any audits or monitoring as requested by the Principal's Representative to demonstrate compliance with this clause; and
 - (vi) warrants that it is familiar with and has the capability and resources to comply with the COR Laws and ensure that its personnel and Subcontractors comply with all COR Laws.
- (b) Where used in this clause 16.29:
- (i) **"COR Laws"** means any section of the Heavy Vehicle Law under which the Contractor is "a party in the chain of responsibility" (within the meaning given to that term under the Heavy Vehicle Law);
 - (ii) **"COR Systems"** means policies, procedures, standards, training and systems designed to ensure, so far as is reasonably practicable, compliance with the COR Laws;
 - (iii) **"Heavy Vehicle Law"** means the:
 - A. Heavy Vehicle National Law (NSW) within the meaning of that term under the *Heavy Vehicle (Adoption of National Law) Act 2013* (NSW); and
 - B. regulations in force under the Heavy Vehicle National Law (NSW) as applied (with modifications) under the *Heavy Vehicle (Adoption of National Law) Act 2013* (NSW) as amended, reproduced or updated from time to time; and
 - (iv) terms which are defined in the Heavy Vehicle Law have the meaning given in the Heavy Vehicle Law.

16.30 No Merger

Terms contained in this Contract which are capable of taking effect, or capable of continuing after Completion, will remain in full force and effect and will not merge on Completion.

16.31 Survival of certain provisions

Without limiting clause 16.8(a) or the schedules to this Contract:

- (a) clause 1 (Definitions and interpretation), clause 2.7 (Unconditional Undertakings and Parent Company Guarantee), clause 3.6 (Information Documents and Materials), clause 5.4 (Assignment and ownership of Intellectual Property), clause 11.13 (Interest), clause 13A (Liability), clause 14.5 (Principal's common rights after take out or termination), clause 14.7 (Principal's rights after termination), clause 14.8 (Contractor's rights after repudiation or wrongful termination), clause 14.9(b), clause 14.10 (Payment for termination for convenience), clause 14.12 (Termination by frustration), clause 15 (Disputes), clause 16 (General), clause 17 (Notification of Claims) and clause 18 (General Provisions Relating to GST), the representations, warranties and indemnities given by the Contractor under this Contract and any other provisions which are expressed to survive termination or by implication from their nature are intended to survive termination (together, the "**Surviving Clauses**") and any rights arising on termination will survive rescission, termination or expiration of this Contract; and
- (b) if this Contract is rescinded or terminated, no party will be liable to any other party except:
 - (i) under the Surviving Clauses; or
 - (ii) in respect of any breach of this Contract occurring before such rescission or termination.

16.32 Transfer of Functions or NSW Rail Assets

- (a) The parties acknowledge that:
 - (i) a Rail Transport Agency may be reconstituted, renamed, dissolved, replaced or restructured and that some or all of the powers, functions, assets, rights, liabilities or responsibilities of a Rail Transport Agency may be transferred to or vested in another entity;
 - (ii) if a Rail Transport Agency is reconstituted, renamed, dissolved, replaced or restructured or if some or all of a Rail Transport Agency's powers, functions, rights or responsibilities are transferred to another entity, then other than as notified by the Rail Transport Agency, references in this Contract to that party (as the case may be) must, subject to any facilitative legislation, be deemed to refer, as applicable, to that reconstituted, renamed, restructured or new entity to the extent that the entity has assumed or has had transferred to it or vested in it those powers, functions, rights or responsibilities; and

- (iii) a Rail Transport Agency may, or may be required to (including as a result of changes to New South Wales Government policy or directions) acquire, or dispose of, any property or assets forming part of a Rail Transport Agency's assets at its absolute discretion.
- (b) The Contractor acknowledges and agrees that it must, to the extent required by a Rail Transport Agency and without limiting any facilitative legislation, negotiate in good faith any variations required to this Contract, or any replacement agreement or agreements for this Contract to give effect to a Rail Transport Agency being reconstituted, renamed, dissolved, replaced or restructured.
- (c) The Contractor will be taken for all purposes to have consented to, and will not have, and no Rail Transport Agency will be liable for, any claim as a result of any action, matter or circumstance referred to in, or contemplated by clause 16.32.
- (d) For the purposes of this clause 'another entity' means a government or semi-government entity including any agency, statutory corporation, statutory authority, department or state owned corporation.

16A. Representations and warranties

16A.1 Principal representations and warranties

The Principal represents and warrants for the benefit of the Contractor that:

- (a) it is a statutory body validly constituted and existing under the *Transport Administration Act 1988* (NSW);
- (b) it has or will have in full force and effect all authorisations necessary under its constituent legislation to enter into and perform its obligations under this Contract (or will have them in full force and effect at the time the obligation is to be performed);
- (c) this Contract constitutes a valid and legally binding obligation on it in accordance with its terms; and
- (d) the execution, delivery and performance of this Contract does not violate any law, or any document or agreement to which it is a party or which is binding on it or its assets.

16A.2 Contractor Representations and Warranties

The Contractor represents and warrants for the benefit of the Principal that:

- (a) it is duly registered and remains in existence;
- (b) the execution, delivery and performance of this Contract does not violate any law, or any document or agreement to which it is a party or which is binding on it or any of its assets;

- (c) it has taken all action required to enter into this Contract and to authorise the execution and delivery of this Contract and the satisfaction of its obligations under it;
- (d) this Contract constitutes a valid and legally binding obligation of it in accordance with its terms;
- (e) it subsists and is properly constituted;
- (f) it is not the trustee or responsible entity of any trust, nor does it hold any property subject to or impressed by any trust;
- (g) it does not have immunity from the jurisdiction of a court or from legal process (whether through service of notice, attachment prior to judgment, attachment in aid of execution, execution or otherwise);
- (h) there has been no material change in the financial condition of the Contractor (since the date of its last audited accounts) which would prejudice the ability of the Contractor to perform its obligations under this Contract;
- (i) the most recently published financial statements of the Contractor has been prepared on a basis consistently applied and using accounting principles which are generally accepted and give a true and fair view of the financial condition of the Contractor;
- (j) the Contractor is not aware of any material facts or circumstances that have not been disclosed to the Principal and which might, if disclosed, materially adversely affect the decision of a prudent person considering whether or not to enter into this Contract with the Contractor; and
- (k) no litigation, arbitration, mediation, conciliation, criminal or administrative procedures are current, pending or to its knowledge, threatened, which, if adversely determined, would or could have a material adverse effect upon it or its ability to perform its financial or other obligations under this Contract.

16A.3 Repetition of representation and warranties

The representations and warranties contained in clauses 16A.2(h), 16A.2(i), 16A.2(j) and 16A.2(k) are made on the date of this Contract. Each other representation and warranty contained in this clause 16A.2:

- (a) is made on the date of this Contract; and
- (b) will be deemed to be repeated on each anniversary of the date of this Contract, with reference to the facts and circumstances then subsisting.

17. Notification of Claims

17.1 Notice of Variation

If a direction by the Principal's Representative, other than a "Variation Order" under clause 6.2, constitutes or involves a Variation, the Contractor must, if it wishes to make a Claim against the Principal arising out of, or in any way in connection with, the direction:

- (a) within the time specified in item 45 of Schedule 1 of receiving the direction and before commencing work on the subject matter of the direction, give notice to the Principal's Representative, as required under clause 17.3(a), that it considers the direction constitutes or involves a Variation;
- (b) within the time specified in item 46 of Schedule 1 of giving the notice under clause 17.1(a), submit a written Claim to the Principal's Representative, which includes the details required by clause 17.3(b); and
- (c) continue to carry out the Contractor's Activities in accordance with this Contract and all directions of the Principal's Representative, including any direction in respect of which notice has been given under this clause 17.1.

17.2 Notice of Other Claims

If the Contractor wishes to make any Claim (other than an Excluded Claim) against the Principal in respect of any direction of the Principal's Representative or any other event, circumstance, act, omission, fact, matter or thing (including a breach of this Contract by the Principal) under, arising out of, or in any way in connection with, this Contract, the Contractor's Activities or the Works, including anything in respect of which:

- (a) it is otherwise given an express entitlement under this Contract; or
- (b) this Contract expressly provides that:
 - (i) specified costs are to be added to the Contract Sum; or
 - (ii) the Contract Sum will be otherwise increased or adjusted,as determined by the Principal's Representative,

the Contractor must give the Principal's Representative:

- (c) the notice required by clause 17.3(a); and
- (d) a Claim in accordance with clause 17.3(c).

17.3 Prescribed Notices

- (a) Any written notice referred to in clauses 17.1(a) and 17.2(c) must:
 - (i) be provided not later than the time specified in item 45 of Schedule 1 after the Contractor:

- A. receives the direction (in respect of a notice under clause 17.1(a)); or
 - B. first becoming aware (or when it ought reasonably to have first become aware) of alleged entitlement arising as a result of an event, circumstance, act, omission, fact, matter or thing (in respect of a notice under clause 17.2(c)); and
- (ii) expressly specify:
- A. that the Contractor proposes to make a Claim; and
 - B. the direction event, circumstance, act, omission, fact, matter, or thing, which gave rise to the alleged entitlement in the Claim.
- (b) Any written Claim referred to in clause 17.1(b) must include:
- (i) detailed particulars, including the date or dates, of the direction, including any related event, circumstance, act, omission, fact, matter or thing upon which the Claim is based;
 - (ii) the provisions of this Contract or other legal basis upon which the Claim is based; and
 - (iii) details of the amount claimed and how it has been calculated.
- (c) Any written Claim referred to in clause 17.2(d) must:
- (i) be provided not later than the time specified in item 46 of Schedule 1; and
 - (ii) include:
 - A. detailed particulars, including the date or dates, of the direction, event, circumstance, act, omission, fact, matter or thing upon which the Claim is based;
 - B. the legal basis for the Claim, whether based on a term of this Contract or otherwise, and if based on a term of this Contract, clearly identifying the specific term;
 - C. the facts relied upon in support of the Claim in sufficient detail to permit verification; and
 - D. details of the amount claimed and how it has been calculated.

17.4 Submission of Claims

- (a) Claims submitted by the Contractor under clauses 17.1(b) and 17.2 will be considered in the first instance by the Principal's Representative who may accept or reject the Claim in part or in full or request further information from the Contractor in order to assess the Claim.

- (b) Subject to clause 17.4(c), if within 20 Business Days after first receipt of a Claim the Principal's Representative has not made a decision on the Claim, the Claim will be deemed to have been rejected on that 20th Business Day.
- (c) The Principal's Representative may, upon written notice to the Contractor, reasonably extend the time within which it will make a decision on the Claim.

17.5 Continuing Events

If the direction, event, circumstance, act, omission, fact, matter or thing upon which a Claim is based, or their consequences are continuing, the Contractor must continue to give the information required by clause 17.3(b) or 17.3(c) every 20 Business Days after the written Claim under clause 17.1(b) or 17.2 (as the case may be) was submitted or given to the Principal's Representative, until after the direction, event, circumstance, act, omission, fact, matter or thing or the consequences thereof have ceased.

17.6 Bar

If the Contractor fails to comply with clauses 2.3(d), 17.1, 17.2, 17.3 or 17.5:

- (a) the Principal will not be liable upon any Claim by the Contractor; and
- (b) the Contractor will be absolutely barred from making any Claim against the Principal,

arising out of or in any way in connection with the relevant direction, event, circumstance, act, omission, fact, matter or thing (as the case may be) to which those clauses apply.

17.7 Other Provisions Unaffected

Nothing in clauses 17.1 to 17.6 will limit the operation or effect of any other provision of this Contract that requires the Contractor to give notice to the Principal's Representative in order to preserve an entitlement to make a Claim against the Principal.

18. General Provisions Relating to GST

- (a) The parties acknowledge that unless otherwise expressly stated all amounts of monetary consideration in this Contract are exclusive of GST.
- (b) If GST is or becomes payable on a supply made by a party ("**Supplier**") under or in connection with this Contract, including the Contractor's Activities or the Works, the party providing consideration for the supply ("**Recipient**") must pay an additional amount to the Supplier equal to the GST payable by the Supplier (or representative member of a GST group of which the Supplier is a member) in relation to the supply.
- (c) Any amount payable under clause 18(b) will be paid to the Supplier at the same time as the consideration for the supply is paid to the Supplier.

- (d) If any party is required under this Contract to reimburse or pay to the other party an amount (other than any payment on account of the Contract Sum) calculated by reference to a cost, expense, or an amount paid or incurred by that party, the amount of the reimbursement or payment will be reduced by the amount of any input tax credits to which that party (or representative member of a GST group of which that party is a member) is entitled in respect of any acquisition relating to that cost, expense or other amount.
- (e) Notwithstanding any other provision of this Contract, a party will not be obliged to pay any amount in respect of GST to the other party (whether under this clause 18 or otherwise) unless and until a tax invoice that complies with the GST Legislation has been issued by the Supplier in respect of that taxable supply.
- (f) The parties agree that unless otherwise agreed in writing, the following will apply to all taxable supplies made by the Contractor to the Principal under or in connection with this Contract:
 - (i) the Principal will issue to the Contractor a recipient created tax invoice ("RCTI") for each taxable supply made by the Contractor to the Principal under this Contract;
 - (ii) the Principal will issue to the Contractor an adjustment note for any adjustment event;
 - (iii) the Contractor will not issue a tax invoice in respect of any taxable supply it makes to the Principal; and
 - (iv) the Principal may notify the Contractor that it will no longer issue a RCTI for each taxable supply made by the Contractor under this Contract, in which case, from that point in time, the Principal will not be required to issue RCTIs in respect of such supplies and the Contractor will be required to issue tax invoices to the Principal (including under clause 11.3) as a condition precedent to the Principal being obliged to pay any amount in respect of GST to the Contractor in respect of any such taxable supply.
- (g) Each party agrees to do all things, including providing invoices or other documentation, that may be necessary or desirable to:
 - (i) enable or assist the other party to claim input tax credits to the maximum extent possible; or
 - (ii) itself claim all input tax credits that might be available to it in order to reduce the amount recoverable from the other party under this Contract.
- (h) If the GST payable in relation to a supply made by the Supplier under this Contract varies from the additional amount paid by the other party under this clause 18 in respect of that supply, then the Supplier will provide a corresponding refund or credit to or will be entitled to receive the amount of that variation from the other party (as appropriate).

19. TfNSW's Statement of Business Ethics

- (a) The Contractor must at all times comply with TfNSW's Statement of Business Ethics, a copy of which is available at www.transport.nsw.gov.au.
- (b) Prior to the engagement of any Subcontractor by the Contractor, the Contractor must obtain a written acknowledgement from such Subcontractor that it has received, read, understood and will comply with TfNSW's Statement of Business Ethics.

20. NSW Guidelines

20.1 NSW Guidelines

In addition to terms defined in this document, terms used in this clause 20 have the same meaning as is attributed to them in the New South Wales Government's NSW Industrial Relations Guidelines: Building and Construction Procurement ("**NSW Guidelines**") (as published by the NSW Treasury July 2013 and updated in September 2017). The NSW Guidelines are available at www.industrialrelations.nsw.gov.au.

20.2 Primary Obligation

- (a) The Contractor must at all times comply with, and meet any obligations imposed by, the NSW Guidelines.
- (b) The Contractor must notify the CCU and the Principal of any possible non-compliance with the NSW Guidelines and of remedial action taken, within 24 hours of becoming aware of the possible non-compliance.
- (c) Where the Contractor engages a Subcontractor, the Contractor must ensure that the contract imposes on the Subcontractor equivalent obligations to those in this clause 20, including that the Subcontractor must at all times comply with, and meet any obligations imposed by the NSW Guidelines.
- (d) The Contractor must not appoint or engage another party in relation to the Works where that appointment or engagement would breach a sanction imposed on the other party in relation to the NSW Guidelines.

20.3 Access and information

- (a) The Contractor must maintain adequate records of compliance with the NSW Guidelines by it, its Subcontractors and related entities.
- (b) The Contractor 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 the Contractor, including but not limited to the 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 Works;
- (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 Guidelines, by the Contractor, its Subcontractors and related entities.

- (c) The Contractor, and its related entities, must agree to, and comply with, a 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.

20.4 Sanctions

- (a) The Contractor warrants that at the time of entering into this Contract, neither it, nor any of its related entities, are subject to a sanction in connection with the NSW Guidelines that would have precluded it from responding to a procurement process for work to which the NSW Guidelines apply.
- (b) If the Contractor does not comply with, or fails to meet any obligation imposed by, the NSW Guidelines, a sanction may be imposed against it in connection with the 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 of NSW (through its agencies, Ministers and the CCU) is entitled to:
 - A. record and disclose details of non-compliance with the 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 the Contractor, or its related entities, in respect of work to which the NSW Guidelines apply.

20.5 Compliance

- (a) The Contractor bears the cost of ensuring its compliance with the NSW Guidelines, including in respect of any positive steps it is obliged to take to meet its obligations under the NSW Guidelines. The Contractor is not entitled to make a claim for reimbursement or an extension of time from the Principal or the State of NSW for such costs.

- (b) Compliance with the NSW Guidelines does not relieve the Contractor from responsibility to perform the Contractor's Activities, and any other obligation under the Contract, or from liability for any Defect in the Works or from any other legal liability, whether or not arising from its compliance with the NSW Guidelines.
- (c) Where a change in the Contract or the Works is proposed, and that change may, or may be likely to, affect compliance with the NSW Guidelines, the Contractor must immediately notify the Principal (or nominee) of the change, or likely change and specify:
 - (i) the circumstances of the proposed change;
 - (ii) the extent to which compliance with the NSW Guidelines will be, or is likely to be, affected by the change; and
 - (iii) what steps the Contractor proposes to take to mitigate any adverse impact of the change (including any amendments it proposes to a Workplace Relations Management Plan or Project Health and Safety Management Plan),

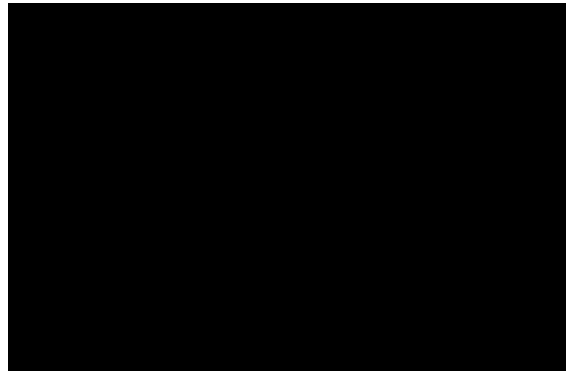
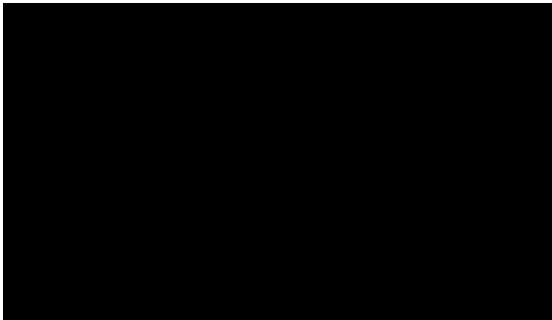
and the Principal will direct the Contractor as to the course it must adopt within 10 Business Days of receiving notice.

CONTRACT EXECUTION PAGE

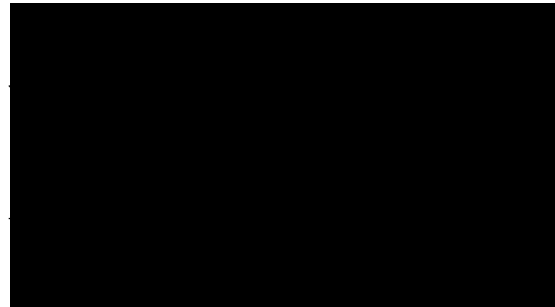
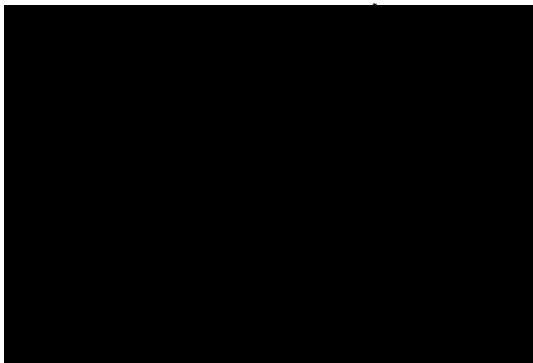
DATED 19th day of February 2021

Executed and delivered as a deed in Sydney

EXECUTED by **SYDNEY METRO** (ABN 12 354 063 515) by its authorised delegate, in the presence of:



EXECUTED by **DOWNER EDI WORKS PTY LTD** (ABN 66 008 709 608) by its duly authorised attorney who hereby states that at the time of executing this instrument they have no notice of the revocation of the Power of Attorney dated 18 February 2021:



Schedule 1. Contract Particulars

(Clause 1.1)

No	Item	Details
1.	BMCS Contractor: (Clause 1.1)	
2.	Contractor: (Clause 1.1)	Downer EDI Works Pty Ltd (ABN 66 008 709 608) Triniti Business Campus Level 2, 39 Delhi Road North Ryde NSW 2113
3.	Defects Rectification Period: (Clause 1.1)	The Defects Rectification Period for each Portion: (a) commences on the Date of Construction Completion of that Portion; and (b) expires on the later to occur of: (i) [REDACTED] after the Date of Construction Completion of the last Portion to achieve Construction Completion; and (ii) in respect of rectification work, [REDACTED] after the date of completion of the rectification work for each Defect notified under clause 8.2.
4.	Design Contractor: (Clause 1.1)	Metron T2M (the unincorporated joint venture between Arcadis Australia Pacific Pty Ltd (ABN 76 104 485 289) and Mott MacDonald Australia Pty Ltd (ABN 13 134 120 353))
5.	Environmental Representative: (Clauses 1.1 and 9.6)	
6.	Sydney Trains Approved Contractors: (Clauses 1.1 and 2.5C(ba))	
7.	Interface Contractors: (Clauses 1.1 and 2.9)	<ul style="list-style-type: none"> • TSOM Contractor; • Operator; • LW Contractor; • Sydney Trains; and • Corridor Works Contractor.

No	Item	Details
8.	L&E Contractor: (Clause 1.1)	
9.	Nominated Subcontract: (Clause 1.1)	BMCS Supply and Installation Contract L&E Supply and Installation Contract
10.	Original Contract Price: (Clause 1.1)	
11.	Principal's Representative: (Clause 1.1)	
12.	Reports: (Clause 1.1)	Refer to Exhibit C
13.	Station Contract Documents: (Clause 1.1)	<p>(a) this Contract;</p> <p>(b) each Parent Company Guarantee (if any);</p> <p>(c) the Independent Certifier Deed;</p> <p>(d) (if required by the Principal's Representative pursuant to clause 9.5A(c)(i)) the IC Letter of Intent;</p> <p>(e) each Project Cooperation and Integration Deed;</p> <p>(f) the Master Interface Protocols Deed Poll;</p> <p>(g) the Collateral Warranty Deed Poll;</p> <p>(h) the IDAR Panel Agreement;</p> <p>(i) the Interface Agreement Deed Poll (to be executed by the Contractor in the form of Schedule 24); and</p> <p>(j) any document which the Principal and the Contractor acknowledge in writing to be a Station Contract Document.</p>
14.	Stations: (Clause 1.1)	<ul style="list-style-type: none"> • Dulwich Hill Station; • Campsie Station; and • Punchbowl Station.
15.	Sydney Trains' Representative: (Clause 1.1)	The person set out in Item 18 of the Contract Particulars to the "Sydney Trains Transition Agreement - Package 5 Scope of Works and Access Schedule".

No	Item	Details
16.	Working days: (Clause 1.2(m))	Monday to Saturday excluding public holidays in Sydney and rostered days off, plus any day included in a Track Possession or Temporary Shutdown.
17.	Order of Precedence: (Clause 1.4)	(a) this Contract excluding the Schedules and the Exhibits; then (b) this Schedule 1; then (c) Schedules 1A to 40; then (d) the SWTC; then (e) Exhibits B to G.
18.	Are Deed Polls in Schedule 24 required: (Clause 1.5)	Yes
19.	Names of persons in whose favour the Deed Poll in Schedule 24 is required: (Clause 1.5)	Sydney Trains
20.	Amount for approval of Subcontracts: (Clauses 2.2(b)(i) and 2.2(e)(ii))	
21.	Parts of Works requiring approval for particular Subcontractor: (Clause 2.2(b))	
22.	Subcontractors required to effect professional indemnity insurance: (Clause 2.2(c))	
23.	Minimum amount of professional indemnity insurance required: (Clause 2.2(c))	
24.	Subcontract prices for which security of payment provisions are required: (Clause 2.2(e)(i))	

No	Item	Details					
25.	Subcontractors required to execute deed in form of Schedule 14: (Clause 2.2(e)(iv)A)						
26.	Warranties required from Subcontractors: (Clause 2.2(f))	Refer to Schedule 10A					
27.	Subcontractors to be novated to Contractor: (Clause 2.2(g))						
28.	Parent Company Guarantee: (Clause 2.7(g))						
29.	The party responsible for payment of the Long Service Leave Levy is: (Clause 2.8)	Contractor					
30.	Not used						
31.	Site access preconditions: (Clause 3.1(c)(ii)E)	<p>The Contractor has:</p> <p>(a) complied with the preconditions set out in the Site Access Schedule relevant to that part of the Site; and</p> <p>(b) complied with any other restrictions on access in the SWTC.</p>					
32.	Percentages to be applied to Variation costs: (Clause 6.4)	<table border="1"> <thead> <tr> <th data-bbox="742 1603 970 1671">Clause No</th> <th data-bbox="970 1603 1437 1671">Percentage</th> </tr> </thead> <tbody> <tr> <td colspan="2" data-bbox="742 1671 1437 1852"></td> </tr> </tbody> </table>	Clause No	Percentage			
Clause No	Percentage						

No	Item	Details
33.	Provisional Sum Work: (Clause 1.1 and 7.3(a))	
34.	Not used	
35.	Contractor's Personnel: (Clauses 2.1(d), 9.4(a) and 9.4(b)(i))	Refer to Schedule 27
36.	Causes of delay entitling the Contractor to extension of time: (Clause 10.7)	

No	Item	Details

No	Item	Details

No	Item	Details
37.	Causes of delay entitling the Contractor to delay damages: (Clause 10.13)	

No	Item	Details

No	Item	Details

No	Item	Details
38.	Not used	
39.	Limit of liability for liquidated damages for delay: (Clause 12.7(e))	█ of the Contract Sum
40.	Amount of Contractor's insurance: (Clauses 13.6(a) and 13.6(f)(iii))	<ul style="list-style-type: none"> • Workers compensation insurance █ █ • Construction Plant Insurance █ • Professional Indemnity Insurance █ • Motor Vehicle Insurance █ • Asbestos Liability Insurance █ • Marine transit insurance █ • Insurance required by Law or Change in Law █ • Insurance of materials fabricated overseas █
41.	Period for Professional Indemnity Insurance: (Clause 13.8(b)(iii))	

No	Item	Details
42.	Person in Insolvency Event: (Clause 14.4(a)(i)C)	
43.	Amount for termination for convenience: (Clause 14.10(a)(v))	
44.	Addresses: (Clause 16.1(d)(i)E)	<p>Principal</p> <p>Address: Level 43, 680 George Street Sydney NSW 2000</p> <p>Email: [REDACTED]</p> <p>Attention: [REDACTED]</p> <p>Any Notice in relation to a Claim or a Dispute must also be addressed to the General Counsel – Sydney Metro and sent to [REDACTED].</p> <p>Principal's Representative</p> <p>Address: Level 43, 680 George Street, Sydney NSW 2000</p> <p>Email: [REDACTED]</p> <p>Attention: [REDACTED]</p> <p>Any Notice in relation to a Claim or a Dispute must also be addressed to the General Counsel – Sydney Metro and sent to [REDACTED].</p> <p>Contractor</p> <p>Address: Triniti Business Campus, T3, 39 Delhi Road, North Ryde NSW 2113</p> <p>Email: [REDACTED]</p> <p>Attention: [REDACTED]</p> <p>Contractor's Representative</p> <p>Address: Triniti Business Campus, T3, 39 Delhi Road, North Ryde NSW 2113</p> <p>Email: [REDACTED]</p> <p>Attention: [REDACTED]</p>
45.	Time for giving notices: (Clauses 17.1(a) and 17.3(a))	10 Business Days

No	Item	Details
46.	Time for written Claims: (Clauses 17.1(b) and 17.3(c))	20 Business Days
47.	CEMP Approval Date: (Clause 1.1)	
48.	AFC Design Documentation Procurement Date: (Clause 1.1)	

Schedule 1A. Portions

(Clause 1.1)

1. General

- (a) Subject to clause 1(b), unless the context requires otherwise, terms which are defined in the General Conditions and in the SWTC have the same meaning where used in this Schedule 1A.
- (b) In this Schedule 1A:
 - (i) **Degree 1 Activities Completion** means the stage in execution of the Contractor's Activities in respect of a specified part of the Works when all of the activities identified as "Degree 1 Activities" in Table 2 of Part A of this Schedule 1A have been completed, as applicable, in accordance with this Contract; and
 - (ii) **Degree 2 Activities Completion** means the stage in execution of the Contractor's Activities in respect of a specified part of the Works when all of the activities identified as "Degree 2 Activities" in Table 2 of Part A of this Schedule 1A have been completed, as applicable, in accordance with this Contract.

Part A: Portions

Table 1: Portions

Portion	Description	Date Construction Completion	for	Liquidated damages post Date for Construction Completion (\$/day)
Portion P5-1				
Portion P5-2				

Portion	Description	Date Construction Completion	for Liquidated damages post Date for Construction Completion (\$/day)
Portion P5-3			
Portion P5-4			

Portion	Description	Date Construction Completion	for Liquidated damages post Date for Construction Completion (\$/day)
Portion P5-5			
Portion P5-6			

Portion	Description	Date Construction Completion	for Liquidated damages post Date for Construction Completion (\$/day)
Portion P5-7	[REDACTED]		
Portion P5-8			

Portion	Description	Date Construction Completion	for Liquidated damages post Date for Construction Completion (\$/day)
Portion P5-9			
Portion P5-10			

Portion	Description	Date Construction Completion	for	Liquidated damages post Date for Construction Completion (\$/day)
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Portion P5-11				
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Portion	Description	Date Construction Completion	for Liquidated damages post Date for Construction Completion (\$/day)
Portion P5-12			
Portion P5-13			

Portion	Description	Date Construction Completion	for Liquidated damages post Date for Construction Completion (\$/day)
Portion P5-14			
Portion P5-15			

Note: Where on any day the Contractor is liable for liquidated damages under clauses 12.7(a) or 12.7(d) in respect of more than one Portion, the Contractor's maximum liability to the Principal for liquidated damages in respect of such day will be limited to [REDACTED] unless on such day the only Portions in respect of which the Contractor is liable for liquidated damages is one or more of Portions P5-13, P5-14 or P5-15 in which case the Contractor's maximum liability to the Principal for liquidated damages in respect of such day will be limited to [REDACTED].

Table 2: Activities for Civil & Building Degrees of Activities Completion

Degree 1 Activities	Degree 2 Activities	Degree 3 Activities
<p>1.1. Building and padmount structure, complete, clean, dry and watertight.</p> <p>1.2. NOT USED</p> <p>1.3. Blockwalls, partition walls, all plinths and upstands complete.</p> <p>1.4. Sealing of blockwork, plastering, painting, floor screeding and epoxy floor paint complete, i.e. all wet trades complete.</p> <p>1.5. Building and padmount structure, as-built survey complete.</p> <p>1.6. Structural and blockwork electrical and mechanical openings formed and survey complete.</p> <p>1.7. Movement and expansion joints complete.</p> <p>1.8. NOT USED</p> <p>1.9. NOT USED</p> <p>1.10. Construction equipment and scaffolding and falsework removed.</p> <p>1.11. Underground earth mat, earth rods, lightning pits and earth pits to building and padmount complete and test results accepted.</p> <p>1.12. Underground pipework to building and padmount complete, cleaned and</p>	<p>2.1. All activities identified for Degree 1 Activities Completion complete.</p> <p>2.2. Permanent door frames installed with temporary doors and locks.</p> <p>2.3. Metal staircases, cat-ladders and catwalks complete.</p> <p>2.4. NOT USED</p> <p>2.5. Louvres and grilles installed.</p> <p>2.6. Wall and ceiling finishes complete for back of house.</p> <p>2.7. Framework for wall panels and cladding complete.</p> <p>2.8. Complete mounting brackets, hangers supports, primary ceiling support frames, power and data points for the Interface Contractors.</p> <p>2.9. Air tight and acoustic doors for all air plenums installed.</p> <p>2.10. Joinery / framing / counter for supporting Interface Contractor equipment available.</p> <p>2.11. Complete pedestal fixing brackets and installation of floor panels for raised floors.</p> <p>2.12. Temporary air conditioning available and operational.</p>	<p>3.1. All activities identified for Degree 2 Activities Completion complete.</p> <p>3.2. Electrical and mechanical critical equipment room installation and main cabling complete.</p> <p>3.3. HV and LV power related equipment installation and cabling complete.</p> <p>3.4. All works in HV and LV power supply electrical equipment rooms including installation of permanent doors complete.</p> <p>3.5. Headwall, tail wall and auxiliary communication cupboards installation including all associated electrical and mechanical services complete.</p> <p>3.6. Ceiling framework and grids complete and all service panels that accommodate Interface Contractors' equipment installed.</p> <p>3.7. NOT USED</p> <p>3.8. NOT USED</p> <p>3.9. Smoke curtain, roller shutters, fire shutters and smoke barriers installation complete.</p> <p>3.10. Wiring and termination to roller shutters, fire shutters and smoke barriers complete.</p>

Degree 1 Activities	Degree 2 Activities	Degree 3 Activities
<p>tested including manholes ductwork, valve pits and drawpits.</p> <p>1.13. NOT USED</p> <p>1.14. Drainage system including oil interceptors, terminal manholes and discharge connections complete.</p> <p>1.15. NOT USED</p> <p>1.16. NOT USED</p> <p>1.17. All works areas backfilled or formed to required formation level.</p> <p>1.18. Water-tightness testing to all tanks complete.</p> <p>1.19. Waterproofing complete.</p> <p>1.20. Confirmation of final positions of openings, holes, recesses, chases, and fixings after concreting.</p> <p>1.21. Installation of concealed conduits (with fixings and sleeves to be cast in concrete) complete, including accessories and draw wires.</p> <p>1.22. Temporary safety barriers at landings and at all floor openings.</p> <p>1.23. NOT USED</p> <p>1.24. All access requirements for Interface Contractors as specified in or required by the SWTC are provided.</p>	<p>2.13. Installation of cable containment and support systems complete, including ladder racks, cable trays, cable trunking and conduits, brackets anchors and guides.</p> <p>2.14. Completion of the activities described in Table 3 as being "Degree 2 Provision Activities".</p> <p>2.15. Completion of the activities described in Table 4 as being "Building Services First Fix Activities".</p>	<p>3.11. Platform isolation and platform floor finishes up to the platform screen doors threshold complete.</p> <p>3.12. All internal and external finishes to all floors, walls and ceilings complete.</p> <p>3.13. All openings, accesses and service penetrations sealed.</p> <p>3.14. All signage wiring and termination complete.</p> <p>3.15. All door contact wiring complete.</p> <p>3.16. All permanent portable fire extinguisher complete and all related fire services requirements complete.</p> <p>3.17. Completion of the activities described in Table 3 as being "Degree 3 Provision Activities".</p> <p>3.18. Completion of the activities described in Table 4 as being "Building Services Second Fix Activities".</p>

Degree 1 Activities	Degree 2 Activities	Degree 3 Activities
1.25. Completion of the activities described in Table 3 as being "Degree 1 Provision Activities".		

Table 3: Provision Activities by Interface Contractors

Degree 1 Provision Activities	Degree 2 Provision Activities	Degree 3 Provision Activities
<ul style="list-style-type: none"> 1.1. Cast-in sockets, cable supports and pipe brackets complete. 1.2. Supports / subframe for trackside advertising panel complete. 1.3. Temporary power and lighting complete. 1.4. Temporary ventilation complete. 1.5. Plant access and material delivery routes clear with permanent frames for delivery or access hatches installed. 1.6. Lifting facilities (beams, lugs and eyes) complete and certified. 1.7. Niches, recesses and box outs complete. 1.8. Cable service routes and trenches complete. 1.9. Cable duct runs / risers complete. 1.10. Concealed trunking and conduit complete. 1.11. Sleeves for penetrations complete. 1.12. Works and storage areas available. 1.13. Flood protection provision(s) installed. 1.14. Survey reference lines and benchmark. 1.15. Top plate and hanger beams at concourse level complete. 	<ul style="list-style-type: none"> 2.1. Clean, safe and dust free access for Interface Contractors. 2.2. Site facilities are in place for use by the Interface Contractors, in accordance with the SWTC. 	<p>Nil</p>

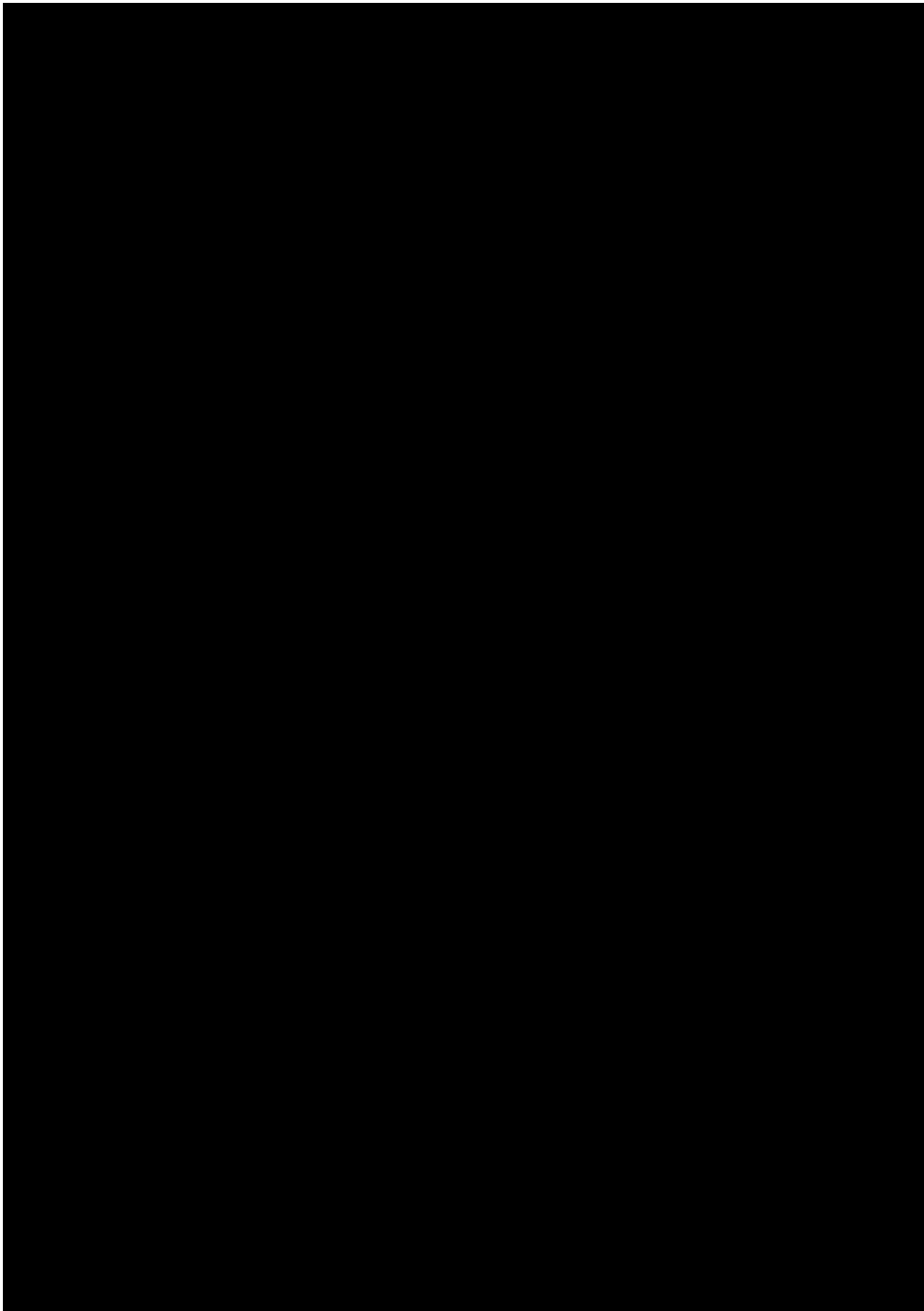
Table 4: Activities for Building Services Fix Stages Activities Completion

Part of the Station Works	Building Services First Fix Activities	Building Services Second Fix Activities
Environmental control system	<p>A1.1 The installation of all environmental control system equipment complete, including chillers, pumps, control panels for chillers, cooling tower, motor control centres, fans, split units, air handling units, primary air units and fan coil units.</p> <p>A1.2 The installation of all duct work and pipe work systems complete, including valves, silencers, dampers, access panels, supports, anchors and guides.</p> <p>A1.3 All sectional testing complete, where necessary due to concealment or other construction constraints.</p>	<p>A2.1 Insulation of all ductwork and pipework systems complete.</p> <p>A2.2 Leakage test for all ductwork and pipework complete.</p> <p>A2.3 Power and control cabling / wiring with termination complete.</p>
LV power supply and distribution system and electrical system	<p>B1.1 The installation of isolating transformers, switchboards, main earthing system, bonding, termination complete and test results accepted.</p> <p>B1.2 Installation of cable containment and support systems complete, including ladder racks, cable trays, cable trunking and conduits, brackets anchors and guides.</p>	<p>B2.1 Installation of all isolators, fused spur units, sockets, lighting and exit signs, distribution boards and UPS / batteries complete.</p> <p>B2.2 Installation and testing of all circuitry including cabling / wiring and termination at isolators, fused spur units, sockets, lighting and exit signs, isolating transformers, switchboards, distribution boards, UPS / batteries, power and control points, advertising panels, directional signs complete.</p> <p>B2.3 All electrical testing and Commissioning works for the power supply electrical rooms completed ready for operation.</p>
Hydraulic services	<p>C1.1 The installation of all pumps for flushing water system, sump pumps, potable water system and drainage system complete.</p> <p>C1.2 The installation of all pipe runs, with associated valves, supports, anchors and guides complete.</p> <p>C1.3 All sectional testing complete, where necessary due to concealment or other construction constraints.</p>	<p>C2.1 Installation of the controls for the flushing water system, sump pumps, potable water and drainage system complete.</p> <p>C2.2 The power and control cabling / wiring with termination complete.</p> <p>C2.3 The hydraulic testing of all piping systems for the pumps and associated pipework complete.</p>

Part of the Station Works	Building Services First Fix Activities	Building Services Second Fix Activities
Fire services system	<p>D1.1 The installation of all pump-motor sets for sprinkler system, gaseous suppression system, fire hydrant/hose reel system and trackside firefighting systems complete.</p> <p>D1.2 The installation of all pipe runs, with associated valves, supports, anchors and guides complete.</p> <p>D1.3 The cable containment and support systems for fire services system complete.</p> <p>D1.4 All sectional testing complete, where necessary due to concealment or other construction constraints.</p>	<p>D2.1 The installation of all control and monitoring for sprinkler system, gaseous suppression system, fire hydrant / hose reel system and trackside firefighting systems at both the local fire control panels and integrated back-up panels complete.</p> <p>D2.2 The installation and termination of all power and control cabling / wiring complete.</p> <p>D2.3 The hydraulic testing of all pipework complete.</p> <p>D2.4 All cabling / wiring with termination at automatic fire alarm (AFA) system panels and AFA loops complete.</p> <p>D2.5 The installation of detector base plates and remote indicators.</p>
Building management control system	<p>E1.1 The installation of building management control system equipment complete, including building services controllers, PLC panel and station environmental control system controllers.</p>	<p>E2.1 Cabling and wiring for the building management control system complete, with termination at the station building services controllers, station environmental control system controllers, fire services control panels, LV switchboards, motor control centres, integrated back-up panels, power and control system and other station based control system equipment.</p>

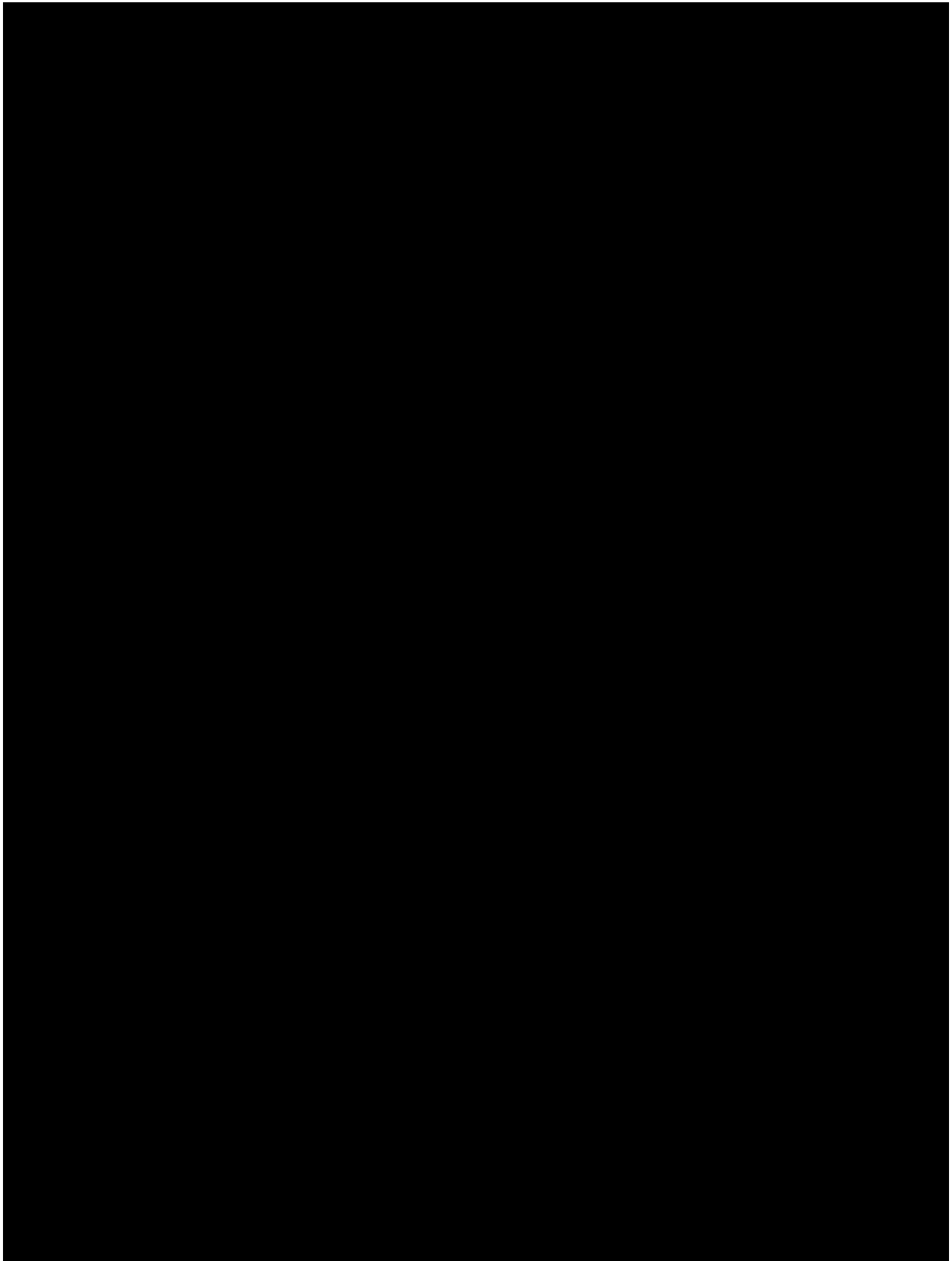
Schedule 2. Payment Breakdown Schedule

Execution Version



Schedule 2A. Performance Incentive Payment Schedule

(Clauses 1.1, 11.2 and 11.14A)



Schedule 3. Form of Confidentiality Undertaking

(Clauses 2.2(e)(iii) and 16.11(c)(i))

To: **Sydney Metro ABN 12 354 063 515** of Level 43, 680 George Street, Sydney NSW 2000

We _____ the engaged Consultant/Supplier/Contractor/Subcontractor body, undertake to treat as confidential all information received/generated from the _____ (Principal) in respect of work performed by the Principal.

The Consultant/Supplier/Contractor/Subcontractor hereby undertakes:

- (a) To disclose information to its employees only on a need-to-know basis;
- (b) Not to disclose information to any other person without first obtaining the written consent of the Principal;
- (c) To ensure that its employees to whom information is disclosed will comply with (a) and (b) above.

This undertaking will not apply to information about the Principal which is in the public domain (except where the availability of the information in the public domain is due to any unauthorised disclosure by the Consultant/Supplier/Contractor/Subcontractor, its employees or agents) or which was already known to the Consultant/Supplier/Contractor/Subcontractor.

Any breach of this undertaking by the Consultant/Supplier/Contractor/Subcontractor's employee or agent will constitute a breach of this undertaking by the Consultant/Supplier/Contractor/Subcontractor and at the direction of the Principal the Consultant/Supplier/Contractor/Subcontractor must institute proceedings or do whatever the Principal regards as reasonable to prevent or contain the breach.

The Consultant/Supplier/Contractor/Subcontractor undertakes that on request from the Principal it will forthwith return to the Principal all originals and copies of the confidential information, however embodied, supplied by the Principal and destroy all documents containing or prepared using any confidential information however embodied.

The Consultant/Supplier/Contractor/Subcontractor also undertakes to declare to the Principal any conflict of interests that exists or arises during the course of its engagement which may impinge on the objectivity or probity of the work performed. Such declarations are to be made as soon as the conflict of interests issues arises.

This undertaking will remain in force until each part of the confidential information is released by the Principal into the public domain.

Dated:

SIGNED for and on behalf of:

.....
(Print Company Name)

By:
(Print Name)

.....
(Signature)

in the presence of:

.....
(Print Name)

.....
(Signature)

Schedule 4. Project Planning Approval and Conditions

(Clause 2.3(c))

1. APPROVALS TO BE OBTAINED BY THE PRINCIPAL

1.1 Existing Approvals

The Project Planning Approval (Sydenham to Bankstown).

1.2 Future Approvals to be obtained by the Principal

None.

2. OBLIGATIONS IN RESPECT OF THE PLANNING APPROVAL

(a) The Contractor must, in performing the Contractor's Activities, comply with all of the obligations, conditions and requirements of the Planning Approval, as if it were the Principal, to the extent that they relate to the Works, the Temporary Works or the Contractor's Activities except to the extent that this Schedule 4 provides that the Principal will comply with the obligation, condition or requirement or this Schedule 4 limits the Contractor's obligation in respect of that obligation, condition or requirement.

(b) Nothing specified in this Schedule 4 as being the responsibility of the Principal will, in any way, relieve the Contractor from complying with any obligation set out elsewhere in the Contract.

3. THE PRINCIPAL'S OBLIGATIONS IN RESPECT OF PROJECT PLANNING APPROVAL (SYDENHAM TO BANKSTOWN)

(a) Terms which have a defined meaning in the Project Planning Approval (Sydenham to Bankstown) have the same meaning where used in this section 3.

(b) In relation to the conditions in schedule 2 of the Project Planning Approval (Sydenham to Bankstown) the Principal will:

(i) be responsible for A7;

(ii) in relation to A9, submit the information provided by the Contractor, to the Planning Secretary. The Contractor must undertake all activities necessary to comply with this condition (except submission to the Planning Secretary) and provide the information to the Principal;

(iii) be responsible for A10 and A11;

(iv) be responsible for A12 to A15, except that:

(A) the Contractor must inform the Principal if staging of deliverables is required in addition to that identified in the Staging Report; and

(B) the Contractor must carry out the Contractor's Activities in accordance with the Staging Report;

(v) in relation to A17, submit the information provided by the Contractor to the Planning Secretary. The Contractor must undertake all activities necessary to

comply with this condition (except submission to the Planning Secretary) and provide the information to the Principal;

- (vi) in relation to A22, engage, nominate, and seek approval from the Planning Secretary of a suitably qualified and experienced Environmental Representative (ER). The Principal will be the single point of contact with the Planning Secretary and will provide the Contractor with the date the submission for approval is made, or notify the Contractor of any other timeframe relevant to this condition;
- (vii) in relation to A23 to A25, notify the Contractor when the approval of the ER is given by the Planning Secretary;
- (viii) be responsible for A26, except that the Contractor must:
 - (A) provide the Principal with all information, documents, details and data relating to the Contractor's Activities that could relate to the approved ER's functions and obligations under condition A26; and
 - (B) facilitate any actions necessary for the ER to carry out its functions and obligations under condition A26;
- (ix) be responsible for A28, except that the Contractor must provide the Principal with all information, documents, details and data relating to the Contractor's Activities that are relevant to the Planning Secretary's audit under condition A28;
- (x) be responsible for A29 to 32, except that the Contractor must:
 - (A) provide the Principal with all the information, documents, details and data relating to the Contractor's Activities to enable the Principal to comply with this condition; and
 - (B) participate in any activities necessary under the Compliance Monitoring and Reporting Program;
- (xi) be responsible for A33;
- (xii) be responsible for A34 and A35, except that the Contractor must:
 - (A) provide the Principal with all the information, documents, details and data relating to the Contractor's Activities to enable the Principal to comply with conditions A34 and A35;
 - (B) participate in any activities necessary under the Independent Audit Program; and
 - (C) provide reasonable assistance required to enable the independent audits to be carried out.

The Principal will submit the Independent Audit Program to the Planning Secretary and advise the Contractor of the date of submission or any other timeframe relevant to conditions A34 and A35;

- (xiii) be responsible for A36 and A37, except that the Contractor must immediately advise the Principal of any incident and promptly provide the Principal with all the information, documents, details and data relating to the Contractor's Activities to enable the Principal to comply with conditions A36 and A37;
- (xiv) be responsible for B1 to B4 to the extent that the Principal will prepare and submit for approval only an Overarching Community Communication Strategy. The Contractor must:
 - (A) prepare its own Community Communication Strategy in relation to the Contractor's Activities in accordance with condition B3 and consistent with the Principal's Overarching Community Communication Strategy; and
 - (B) comply with the Community Communication Strategy.

The Contractor's Community Communication Strategy must be submitted to the Principal for approval at least two months before the commencement of construction, or within another timeframe agreed with the Principal;

- (xv) be responsible for B5 and B6, except that the Contractor must:
 - (A) provide the Principal with all the information, documents, details and data relating to the Contractor's Activities that are required to prepare the "Complaints Management System";
 - (B) implement the Complaints Management System; and
 - (C) provide reasonable assistance required to enable the mediation system to be implemented;
- (xvi) be responsible for B7; except that the Contractor must ensure that the telephone number, postal address and email address is placed on site hoarding at each construction site before commencement of Construction (as defined in the Project Planning Approval (Sydenham to Bankstown)) in accordance with condition B7;
- (xvii) be responsible for B8 and B9, except that the Contractor must provide the Principal with all information, documents, details and data relating to the Contractor's Activities that are required to enable the Principal to comply with these conditions;
- (xviii) be responsible for B10 to B12, except that the Contractor must:
 - (A) provide the Principal and the Community Complaints Mediator with all information, documents, details and data relating to the Contractor's Activities in order for the Community Complaints Mediator to perform its functions; and
 - (B) co-operate with, and respond to the reasonable requests and requirements of, the Community Complaints Mediator;

- (xix) be responsible for B13, except that the Contractor must provide the Principal with all information, documents, details and data relating to the Contractor's Activities that are required to enable the Principal to comply with this condition;
- (xx) be responsible for B14, except that the Contractor must:
 - (A) establish and maintain a new website, or dedicated pages within an existing website, and comply with condition B14 in relation to the Contractor's Activities;
 - (B) agree with the Principal on the extent of documentation to be posted on the Contractor's website considering privacy and confidentiality in relation to information, documents, details and data provided by the Contractor;
 - (C) comply with level AA accessibility requirements in the Web Content Accessibility Guidelines (WCAG 2.0); and
 - (D) provide the Principal with all information, documents, details and data relating to the Contractor's Activities that are required for the Principal to comply with condition B14;
- (xxi) be responsible for C1 to C6, except that the Contractor must:
 - (A) provide the Principal with all the information, documents, details and data relating to the Contractor's Activities to enable the Principal to comply with conditions C1 to C6; and
 - (B) co-operate and respond to the requests and requirements of the relevant government agencies, including those identified in the table in condition C3;
- (xxii) not used;
- (xxiii) in relation to C7, notify the Contractor when the approval of the Planning Secretary is given;
- (xxiv) be responsible for C8 to C11, except that the Contractor must:
 - (A) provide the Principal with all the information, documents, details and data relating to the Contractor's Activities to enable the Principal to comply with conditions C8 to C11; and
 - (B) co-operate and respond to the requests and requirements of the relevant government agencies, including those identified in the table in condition C8;
- (xxv) in relation to C12, notify the Contractor of the date of approval of the Construction Monitoring Programs;
- (xxvi) in relation to C14, submit the Construction Monitoring Reports to the Planning Secretary. The Contractor must prepare and provide the Construction Monitoring Reports to the Principal in a timely manner to enable the Principal to comply with its retained obligation;

- (xxvii) be responsible for D1 to D5;
- (xxviii) be responsible for E1, except that the Contractor must provide protection of physical and operational Sydney Trains assets and services during construction;
- (xxix) in relation to E2, the Principal is responsible complying with this condition in respect of Operation, and the Contractor is responsible during Construction only;
- (xxx) be responsible for E5, except that the Contractor must:
 - (A) produce a Tree Report for trees impacted or to be removed by the Contractor's Activities and make provision for their replacement in accordance with Condition E6. The Contractor must provide the Tree Report to the Principal in a timely manner to enable the Principal to submit it to the Planning Secretary in compliance with condition E5; and
 - (B) implement the recommendations of the Tree Report, unless otherwise agreed by the Planning Secretary;
- (xxxi) in relation to E7, submit the report, which details the type, size, number and location of replacement trees, to the Planning Secretary. The Contractor must prepare and provide such report in relation to replacement trees for those trees impacted or removed by the Contractor's Activities, to the Principal in a timely manner to enable the Principal to submit the report to the Planning Secretary before Operation;
- (xxxii) be responsible for E12 only to the extent of submitting the Heritage Report and Excavation Director's Report to the Planning Secretary. The Contractor must provide the Reports to the Principal in a timely manner to enable the Principal to comply with its retained obligation;
- (xxxiii) in relation to E13, prepare and submit the Heritage Interpretation Strategy to the Planning Secretary. The Contractor must comply with the Heritage Interpretation Strategy developed during design to satisfy this condition;
- (xxxiv) in relation to E14, prepare the Heritage Interpretation Plan. The Contractor must comply with the Heritage Interpretation Plan developed during design to satisfy this condition;
- (xxxv) be responsible for E16 only to the extent of submitting the Unexpected Heritage Finds and Human Remains Procedure to the Planning Secretary. The Contractor must prepare and provide the Unexpected Heritage Finds and Human Remains Procedure to the Principal in a timely manner to enable the Principal to comply with its retained obligation;
- (xxxvi) be responsible for E17 only in relation to operational maintenance work;
- (xxxvii) be responsible for E18 only in relation to noise associated with Operations;
- (xxxviii) in relation to E23, be responsible for submission of the outcomes of the community consultation, the identified respite periods and the scheduling of

likely Out-of-Hours Work to the Planning Secretary (for high risk activities after 9pm) upon request;

- (xxxix) in relation to E28, be responsible for submitting the request form in respect of Noise Generating Work, from the Contractor, to the Planning Secretary, and for notifying the Contractor of approval;
- (xi) be responsible for E25 only to the extent of preparing and submitting the Out-of-Hours Work Protocol/Strategy to the Planning Secretary for approval. The Contractor must:
 - (A) provide the Principal with all information, documents, details and data relating to the Contractor's Activities that are required for the Principal to prepare the Out-of-Hours Work Protocol/Strategy; and
 - (B) implement and comply with the approved Out-of-Hours Work Protocol/Strategy;
- (xli) be responsible for E31, except that the Contractor must:
 - (A) provide the Principal with all information, documents, details and data relating to the Contractor's Activities that are required for the Principal to comply with this condition; and
 - (B) consider and implement the identified noise and vibration control measures, treatments and mitigations through the Contractor's Activities;
- (xlii) be responsible for E33 and E34, except that the Contractor must provide the Principal with all information, documents, details and data relating to the Contractor's Activities that are required for the Principal to comply with these conditions;
- (xlili) be responsible for E35, except that the Contractor must:
 - (A) provide the Principal and the Independent Property Assessment Panel with all information, documents, details and data relating to the Contractor's Activities in order for the Independent Property Assessment Panel to perform its functions; and
 - (B) co-operate with, and respond to the reasonable requests and requirements of, the Independent Property Assessment Panel;
- (xliv) be responsible for E37, except in relation to items referred to in E37(a), (b), (c) and (e). The Contractor must provide the Principal with all information, documents, details and data relating to Contractor's Activities for items referred to in E37(d) and (f);
- (xlv) be responsible for E43, except that the Contractor must:
 - (A) provide the Principal with all information, documents, details and data relating to the Contractor's Activities in order for the Principal to prepare and implement the Sustainability Strategy; and

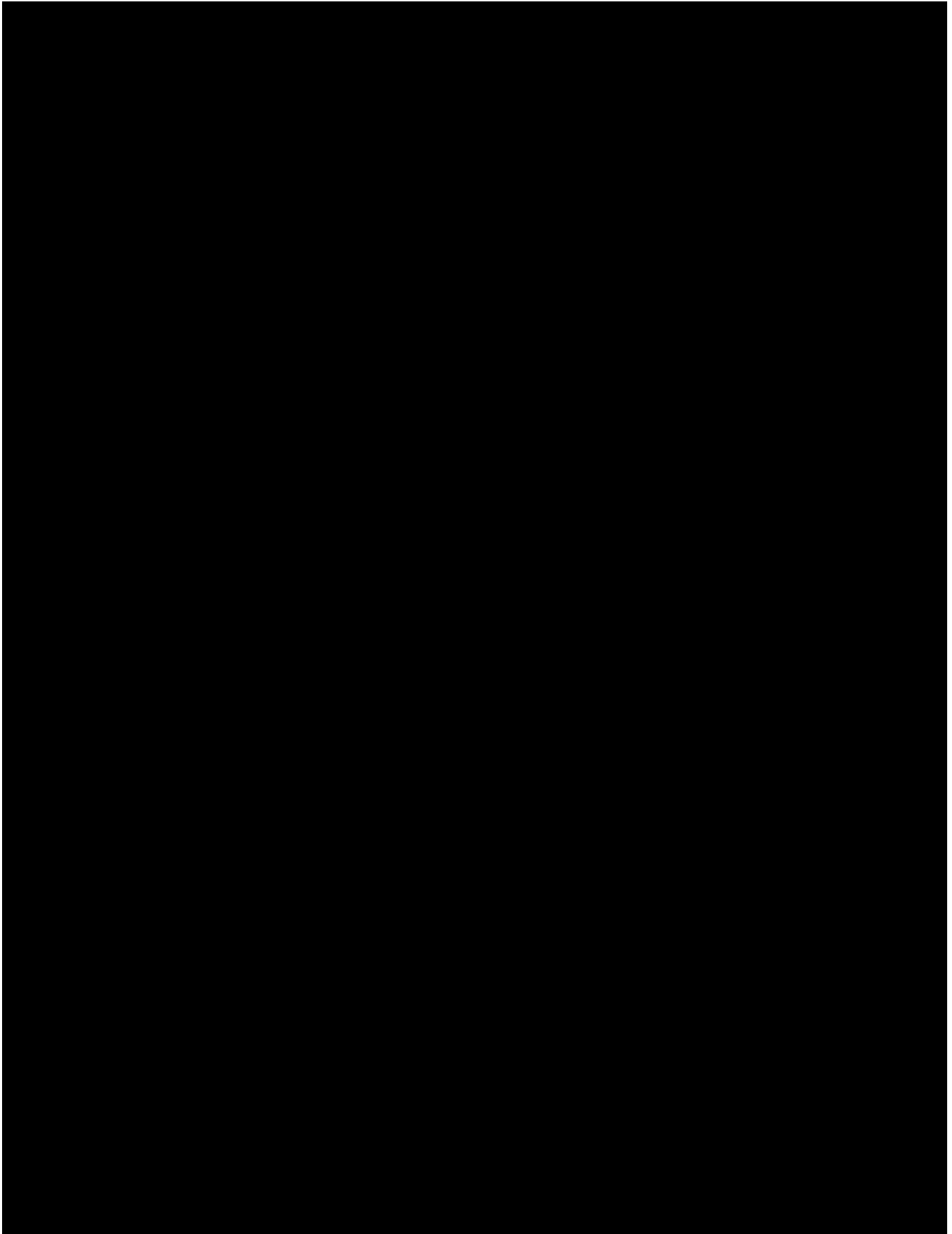
- (B) implement the Sustainability Strategy referred to in condition E43 to the extent it relates to the Contractor's Activities;
- (xlv) be responsible for E44 only to the extent of reviewing, updating and implementing the sustainability initiatives identified under condition E44 throughout design development and annually during Operation;
- (xlvii) be responsible for E45;
- (xlviii) be responsible for E46, except that the Contractor must:
 - (A) provide a representative to attend relevant meetings of the Traffic and Transport Liaison Group(s);
 - (B) provide all relevant information, documents, details and data relating to the Contractor's Activities to the Traffic and Transport Liaison Group(s);
 - (C) consult with the Traffic and Transport Liaison Group(s) in preparing the Construction Traffic Management Plans; and
 - (D) implement and comply with any traffic and transport management measures that relate to construction activities;
- (xlix) be responsible for E47 only to the extent of submitting the Construction Traffic Management Plans to the Planning Secretary. The Contractor must prepare and provide the Construction Traffic Management Plans to the Principal in a timely manner to enable the Principal to comply with its retained obligation;
- (l) be responsible for E48, except that the Contractor must provide the Principal with all information, documents, details and data relating to the Contractor's Activities in a timely fashion in order for the Principal to prepare and implement the Temporary Transport Management Plan;
- (li) be responsible for E53, except that the Contractor must consider and implement the outputs of the Walking and Cycling Strategy where relevant to the Contractor's scope of works;
- (lii) be responsible for E54 only during Operation;
- (liii) be responsible for E55;
- (liv) in relation to E56, E57 and E59 to E64, prepare the Station Design and Precinct Plans. The Contractor must implement the approved Station Design and Precinct Plans or any subsequent revisions, where relevant to the Contractor's scope of works;
- (lv) be responsible for E58;
- (lvi) be responsible for E65;
- (lvii) in relation to E66 and E67, submit the relevant Station Design and Precinct Plans to the Planning Secretary for approval. The Contractor must not commence construction until these conditions have been satisfied;

- (lviii) in relation to E71, submit the Utilities Management Strategy to the Planning Secretary for approval. The Contractor must:
 - (A) prepare and provide the Utilities Management Strategy to the Principal in a timely manner to enable the Principal to comply with its retained obligation; and
 - (B) implement and comply with the approved Utilities Management Strategy; and
- (lix) be responsible for E72 only to the extent of appointing a Utility Coordination Manager. The Contractor must:
 - (A) provide the Utility Coordination Manager with all relevant information, documents, details and data relating to the Contractor's Activities to enable the Utility Coordination Manager to carry out its functions; and
 - (B) co-operate with, and respond to the reasonable requests and requirements of, the Utility Coordination Manager.
- (c) In relation to the Revised Environmental Mitigation Measures the Principal will:
 - (i) be responsible for TC1, except that the Contractor must provide the Principal with all information, documents, details and data relating to the Contractor's Activities in order for the Principal to prepare and implement the Temporary Transport Management Plan;
 - (ii) be responsible for TC2;
 - (iii) be responsible for TC6, except that the Contractor must provide the Principal with all information, documents, details and data relating to the Contractor's Activities that are required to enable the Principal to comply with this measure;
 - (iv) be responsible for TO1 and TO2;
 - (v) be responsible for TC9 and TC10, except that the Contractor must provide the Principal with all information, documents, details and data relating to the Contractor's Activities that are required to enable the Principal to comply with these measures;
 - (vi) be responsible for TO3, except that the Contractor must consider and implement the outputs of the Walking and Cycling Strategy where relevant to the Contractor's scope of works;
 - (vii) be responsible for TO4 and TO5;
 - (viii) be responsible for NVO1 to NVO3, except that the Contractor must:
 - (A) provide the Principal with all information, documents, details and data relating to the Contractor's Activities that are required to enable the Principal to comply with this measure; and
 - (B) consider and implement the identified noise and vibration control measures, treatments and mitigations through the Contractor's Activities;

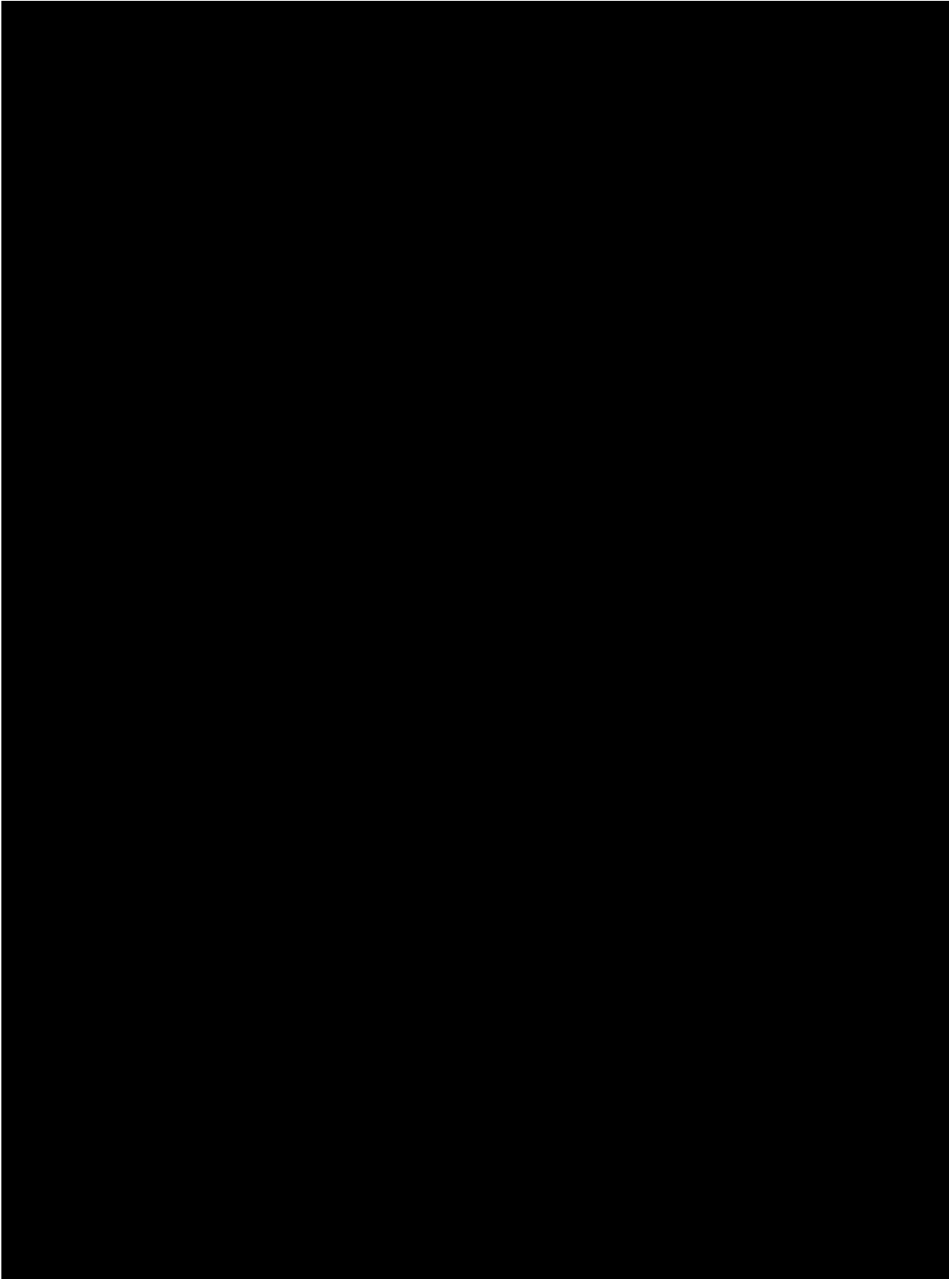
- (ix) be responsible for NVC15, but only to the extent of selecting routes for bus services associated with the Temporary Transport Strategy;
- (x) be responsible for NVC16, except that the Contractor must implement and comply with the Out-of-Hours Work Protocol/Strategy;
- (xi) be responsible for NAH1 to NAH4;
- (xii) be responsible for NAH5, except that the Contractor must comply with and implement the adaptive reuse strategy developed during design;
- (xiii) be responsible for NAH6, except that the Contractor must comply with the Heritage Interpretation Plan developed during design;
- (xiv) be responsible for NAH7, except that the Contractor must comply with and implement the moveable heritage item strategy developed during design;
- (xv) be responsible for NAH8 to NAH9;
- (xvi) be responsible for NAH10, except that:
 - (A) the Contractor must ensure the Contractor's Activities are consistent with the Final Design Documentation; and
 - (B) where alternate designs or construction methodologies are proposed by the Contractor, the Contractor must comply with NAH10;
- (xvii) be responsible for NAH13, except that the Contractor must carry out a photographic archival recording of all stations aside from Bankstown Station and the Bankstown Parcels Office (former), unless this has already been undertaken by another contractor;
- (xviii) be responsible for NAH21 and NAH22, except that the Contractor must:
 - (A) provide the Principal with all information, documents, details and data relating to the Contractor's Activities in order for the Principal to comply with this measure; and
 - (B) comply with the conservation management plan and conservation management strategy accordingly in undertaking the Contractor's Activities;
- (xix) be responsible for AH1;
- (xx) be responsible for AH4, except that the Contractor must
 - (A) provide the Principal with all information, documents, details and data relating to the Contractor's Activities in order for the Principal to comply with this measure; and
 - (B) implement appropriate Aboriginal heritage interpretation in undertaking the Contractor's Activities;
- (xxi) be responsible for LU1 to LU3;

- (xxii) be responsible for BI2, except that the Contractor must:
 - (A) provide the Principal with all information, documents, details and data relating to the Contractor's Activities in order for the Principal to comply with this measure; and
 - (B) implement the Sydney Metro City & Southwest Small Business Owners Support program in undertaking the Contractor's Activities;
- (xxiii) be responsible for LV1 and LV2;
- (xxiv) be responsible for LV3, except that the Contractor must implement the approved Station Design and Precinct Plans or any subsequent revisions, where relevant to their scope of works;
- (xxv) be responsible for LV5;
- (xxvi) be responsible for LV9;
- (xxvii) be responsible for SC9;
- (xxviii) be responsible for FHW1, except that:
 - (A) the Contractor must ensure the Contractor's Activities are consistent with the Project's design; and
 - (B) where alternate designs or construction methodologies are proposed by the Contractor, the Contractor must comply with FHW1;
- (xxix) be responsible for FHW2 and FHW3;
- (xxx) be responsible for FHW11;
- (xxxi) be responsible for B8 to B10;
- (xxxii) be responsible for SCC4;
- (xxxiii) be responsible for SCC9 to SCC12;
- (xxxiv) be responsible for HRS1 and HRS2;
- (xxxv) be responsible for WM1; and
- (xxxvi) in relation to CI1, but only to the extent of being the single point of contact with the Department of Planning and Environment if consultation is required with the Department of Planning and Environment in order to co-ordinate the interface with projects under construction.

Schedule 4A. Third Party Agreements



Schedule 4B. Requirements of Third Party Agreements



Schedule 5. Subcontractors - Security of Payment

(Clause 2.2(e)(i))

The following terms must be included in each Subcontract, and the Subcontracts let by those Subcontractors, as referred to in clause 2.2(e) of the General Conditions of this Contract.

1. Options as to Form of Security

A clause which allows the Subcontractor to lodge an approved unconditional undertaking from a bank or financial institution instead of a cash security or retention moneys as its security for performance of the Subcontract.

A clause which provides that if the Subcontractor does lodge an unconditional undertaking for the required amount, the Contractor must not deduct further retention moneys and any retention moneys or other cash security then held will be promptly released to the Subcontractor.

2. Trust for Cash Security and Retention Moneys

A clause which has the effect that:

- (a) cash securities and retentions under the Subcontract and the cash proceeds of any security converted to cash (other than in exercise of a contractual right of enforcement) is trust money and must be deposited into and held in a trust account with a bank within 24 hours of receipt or conversion;
- (b) the trust money is beneficially owned by the party which provided the security at all times unless the other party becomes entitled to receive them under the Subcontract;
- (c) the security holder must hold proper records and account to the security provider for the trust moneys; and
- (d) any interest earned by the trust account will not be held in trust, and will be owned by the security holder.

3. Payment Provisions

A clause which:

- (a) has the effect of requiring the Contractor to pay the Subcontractor (and Subcontractors their subcontractors) regular progress payments for 100% of the value of work (less only retention moneys, if any, paid into the trust account) for which payment is claimed by the Subcontractor and for which the Contractor has claimed payment from the Principal, no later than:
 - (i) in the case of the Contractor's Subcontractors, 7 days; and
 - (ii) in the case of the Subcontractor's subcontractors, 14 days,
 after the last day for payment by the Principal to the Contractor for such work;
- (b) states nothing in the clause referred to in paragraph (a) is to be read so as to prevent the Contractor from paying the Subcontractor an amount in excess of that claimed from the Principal, or before the time stipulated in that clause; and

- (c) states if anything in the clause referred to in paragraph (a) is inconsistent with any other provision in the Subcontract, the provisions of that clause will prevail to the extent of the inconsistency.

A clause that prescribes an interest rate for overdue payments that is not less than the interest rate specified in clause 11.13 of the General Conditions of this Contract.

4. Alternative Dispute Resolution

A clause that requires alternative dispute resolution procedures of the type required in this Contract.

A clause making it optional for the Subcontractor to comply with the alternative dispute resolution process if the only remedy it seeks is an order for payment of money which is not disputed to be due and payable under the Subcontract.

5. Documents to be Provided to Subcontractors

A clause that requires the Contractor to provide the Subcontractor with a copy of extracts from this Contract before the Subcontractor starts work under the Subcontract. The extracts to be provided are:

- (a) clauses 2.2(e)(i) and 2.2(e)(vi);
- (b) this Schedule 5;
- (c) clause 11; and
- (d) clause 15.

Schedule 6. Hazardous Material Report

(Clause 3.7)

This Schedule 6 lists the documents which form the Hazardous Material Report, and which are included in Schedule 40 as electronic files.



Schedule 7. Authority Approvals to be obtained by the Principal

(Clause 2.3(c)(i))

- The Planning Approval



Schedule 8. Form of Unconditional Undertaking

(Clause 2.7)

This deed poll ("Undertaking") made the _____ day of _____ 20_____

In favour of: **Sydney Metro (ABN 12 354 063 515)** of Level 43, 680 George Street, Sydney NSW 2000 ("Principal")

Given by: [_____] ("Institution")

Recitals:

- A. By a contract dated [_____] ("Contract") between [_____] ("Contractor") and the Principal the Contractor agreed to carry out the Contractor's Activities (as defined in the Contract).
- B. Under the provisions of the Contract, the Contractor is required to provide this Undertaking to the Principal.

Operative:

1. The Institution unconditionally undertakes and covenants to pay to the Principal on demand, without reference to the Contractor and notwithstanding any notice given by the Contractor to the Institution not to do so, any sum or sums which may from time to time be demanded in writing by the Principal to a maximum aggregate sum of # (\$ _____).
2. Demands under this Undertaking may be made at [*insert current address of Institution*] or any other office maintained by the Institution in Sydney from time to time.
3. The Institution's liability under this Undertaking will be a continuing liability and will continue until payment is made under this Undertaking of the maximum aggregate sum or until the Principal notifies the Institution that this Undertaking is no longer required.
4. The liability of the Institution under this Undertaking must not be discharged or impaired by reason of any variation or variations (with or without the knowledge or consent of the Institution) in any of the stipulations or provisions of the Contract or the Contractor's Activities or acts or things to be executed, performed and done under the Contract or by reason of any breach or breaches of the Contract by the Contractor or the Principal.
5. The Institution may at any time without being required so to do pay to the Principal the maximum aggregate sum less any amount or amounts it may previously have paid under this Undertaking and thereupon the liability of the Institution hereunder will immediately cease.
6. [The Institution accepts, and submits to, the jurisdiction of the New South Wales courts in relation to any disputes associated with the Undertaking.] [**Note: This clause is to be included in the Undertaking where the Institution is headquartered outside Australia**]
7. This Undertaking will be governed by and construed in accordance with the laws for the time being of the State of New South Wales.

Executed as a deed poll.

Signed Sealed and Delivered)

by [] being signed)

sealed and delivered by its duly constituted)

Attorney [] under)

Power of Attorney No. in the)

presence of:)

.....

(Signature)

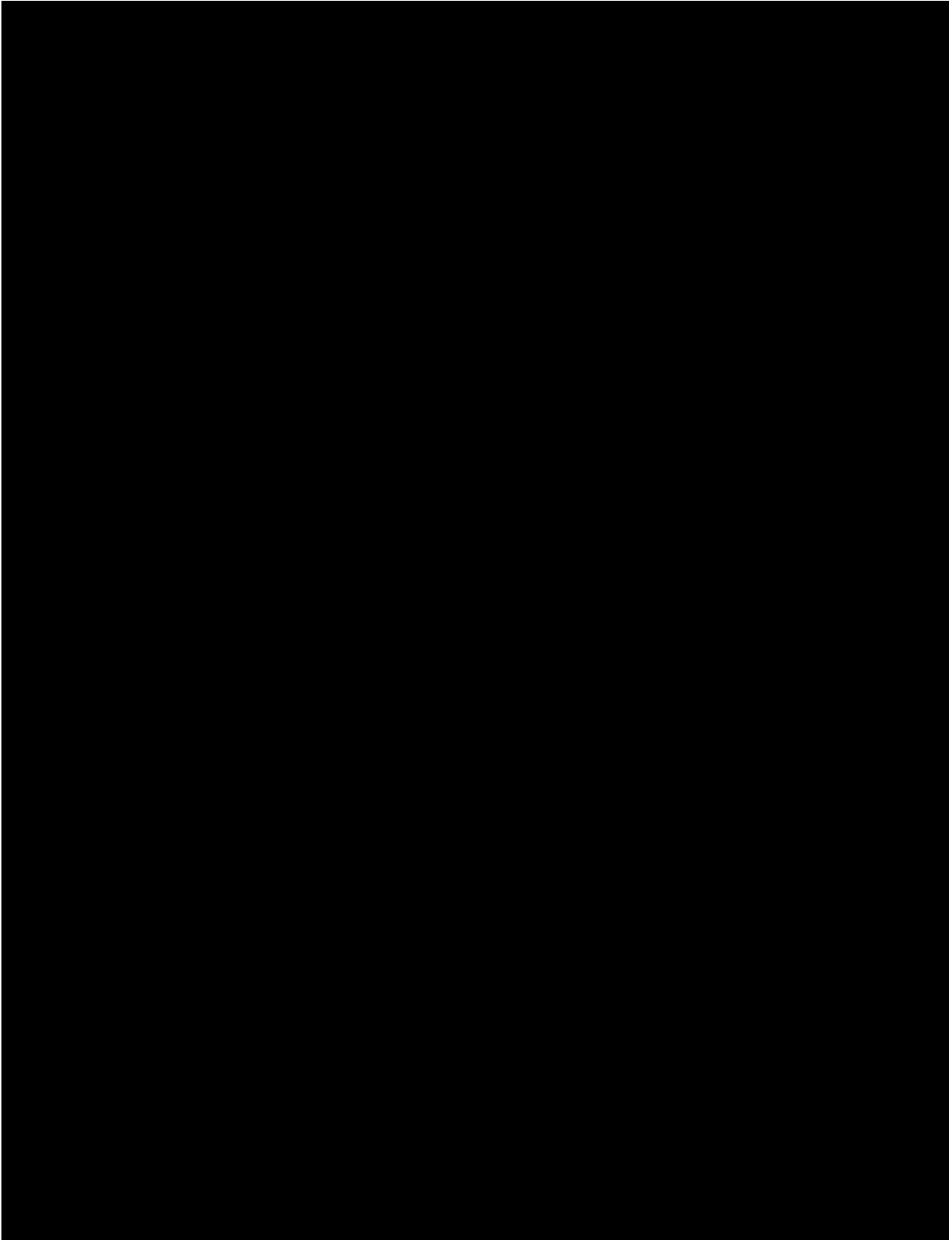
.....
(Signature of Witness)

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



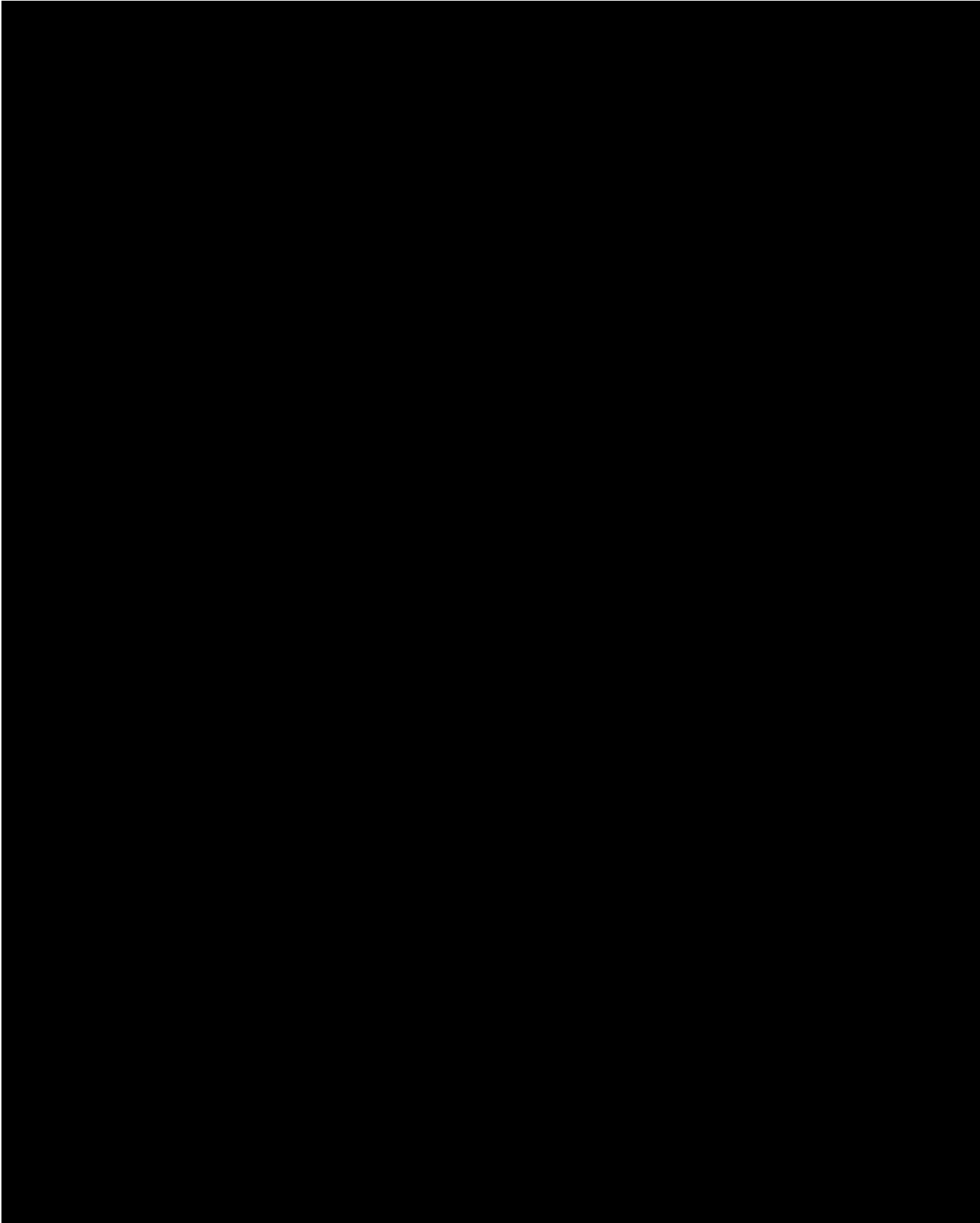
Schedule 9. Programmed Activities

(Clause 5.1D)



Schedule 10. Prices and Rates for valuation of Variations and Overhead Costs

(Clauses 3.7(h)(iii), 6.1(b)(i), 6.4(b), 7.3(ab), 7.3(b), 9.17(b) and 12.10(b)(ii))



Schedule 10A. List of warranties required from Subcontractors

(Clause 2.2(f))

Equipment	Beneficiary (other than the Principal)	Warranty Period
Structural Works		
Structural concrete		
Structural steel		
Waterproofing membranes		
Architectural Works		
Architectural grade steelwork including screens, framing systems, custom balustrades, handrails, and fabricated metalwork such as access walkways		
Electrical		
Uninterrupted power supply including batteries		
Distribution boards		
Light fittings		
All other electrical equipment and fittings not including light fittings and distribution boards		
Electrical and data cables		
Services and systems		
Building systems and services		
Fire protection		
Fire extinguishers		
Smoke and thermal detectors		
Gas suppression		
Surface Finishes		

Equipment	Beneficiary (other than the Principal)	Warranty Period
Exterior paint finishes including painting to structural steel and clear sealer/anti-graffiti coating		
Steel coatings other than paintwork including powder coating		
Hot dip galvanising		

3. Warrantor to bear cost

The Warrantor covenants to the Principal and the Beneficiary that it will bear the cost of any work necessary to any part of the Works to enable the requirements of clause 2 to be carried out or to make good the Works afterwards.

4. Principal not liable

The Warrantor acknowledges to the Principal and the Beneficiary that nothing contained in this deed poll is intended to nor will render either the Principal or the Beneficiary in any way liable to the Warrantor in relation to any matters arising out of the Contract or otherwise.

5. This deed poll may not be revoked

This deed poll may not be revoked or otherwise modified without the prior written consent of the Principal and the Beneficiary.

6. Governing Law

This deed poll is governed by the laws of the State of New South Wales.

7. Jurisdiction

The Warrantor irrevocably submits to the non-exclusive jurisdiction of the Courts of New South Wales.

8. Enforcement of this deed poll

For the avoidance of doubt this deed poll is enforceable by any of the Principal or the Beneficiary.

9. Limit of Liability

The aggregate of the Warrantor's liability to the Principal and Beneficiary under this deed poll and the Warrantor's liability to the Contractor under the Warrantor Contract will not exceed the liability that the Warrantor would have had under the Warrantor Contract if the Warrantor Contract had named, as parties having the benefit of the performance of the obligations of the Warrantor:

- (a) the Principal;
- (b) the Beneficiary; and
- (c) the Contractor.

Schedule

Item 1: Name and Address of Warrantor

Item 2: Equipment
(Recital A)

Item 3: Contractor
(Recital A)

Item 4: Subcontractor
(Recital A)

Item 5: Contract
(Recital A)

Item 6: Detailed Warranty of Warrantor
(Clause 1(b))

Item 7: Period of Years
(Clause 2)

[insert period] years from the expiry of the final "Defects Rectification Period" as defined in the General Conditions (including any extension under clause 8.6 of the General Conditions).

Executed as a deed poll.

**Executed by [insert name of Warrantor]
(ABN [insert ABN])** by or in the presence
of:

Signature of Director

Signature of Secretary/other Director

Name of Director in full

Name of Secretary/other Director in full

6. In all cases where a subcontractor or supplier to the Contractor has provided services and/or materials in respect of the Contract and has submitted a claim to the Contractor for these services or materials which as at the date of this statutory declaration would have been due and payable but which the Contractor disputes, the reasons for such dispute have been notified in writing to the subcontractor or supplier by the Contractor prior to the date of this statutory declaration. Where such dispute relates to part only of the subcontractor or supplier's claim, that part of the claim not in dispute has been paid by the Contractor to the subcontractor or supplier as at the date of this statutory declaration except for the amounts listed in 5 above.

7. The provisions of the Contract relating to the payment of employees, subcontractors and suppliers of the Contractor have been complied with by the Contractor.

8. The Contractor has been informed by each subcontractor to the Contractor (except for subcontracts not exceeding \$25,000 at their commencement) by statutory declaration in equivalent terms to this declaration (made no earlier than the date 14 days before the date of this declaration):

(a) that their subcontracts with their subcontractors and suppliers comply with the requirements of the Contract relating to payment of employees and subcontractors, and

(a1) that all their subcontractors, as at the date of the making of such a declaration, have been paid in accordance with the relevant subcontracts and any applicable industrial instruments (as defined in the Industrial Relations Act 1996 (NSW)), and

(b) that all their employees, as at the date of the making of such a declaration:

- i) have been paid all remuneration and benefits due and payable to them by; or
- ii) had accrued to their account all benefits to which they are entitled from;

the subcontractor of the Contractor or from any other subcontractor (except for subcontracts not exceeding \$25,000 at their commencement) in respect of any work under the Contract, and

(c) of details of any amounts due and payable or benefits due to be received or accrued described in 8(a1) and 8(b) above which have not been paid, received or accrued,

except for the following subcontractors to the Contractor who have failed to provide such a declaration:

Subcontractor:	Due amount unpaid:
.....
.....
.....
.....

insert names and addresses of the Contractor's subcontractors who have not submitted a declaration, and unpaid amounts due or otherwise due to each of them by the Contractor in respect of this claim

9. Where a subcontractor to the Contractor has provided a declaration as in 8 above, and it includes unpaid amounts or benefits either not received or not accrued, details of the subcontractor, details of the affected employees, suppliers and subcontractors of the subcontractor, and the respective amounts or benefits either unpaid or not accrued are as follows:

Employee, subcontractor or supplier:	Amount unpaid or not accrued:
.....
.....
.....
.....

insert names of the subcontractors, the name and addresses of the unpaid employees, subcontractors and suppliers and amounts listed as unpaid or not accrued to them.

10. In relation to the statutory declaration provided by each subcontractor to the Contractor, I am not aware of anything to the contrary of what is contained therein, and on the basis of the contents of those statutory declarations, I believe that information to be true.

11. Attached to and forming part of this declaration, as Annexure B, is a "Subcontractor's Statement" given by the Contractor in its capacity as 'subcontractor' (as that term is defined in the Workers Compensation Act 1987, Payroll Tax Act 2007 and Industrial Relations Act 1996) which is a written statement:

- (a) under section 175B of the Workers Compensation Act 1987 in the form and providing the detail required by that legislation;
- (b) under section 18(6) of part 5 of schedule 2 of the Payroll Tax Act 2007 in the form and providing the detail required by that legislation; and
- (c) under section 127 of the Industrial Relations Act 1996 in the form and providing the detail required by that legislation.

- 12. I personally know the truth of the matters which are contained in this declaration and the attached Subcontractor's Statement.
- 13. All statutory declarations and Subcontractor's Statements received by the Contractor from subcontractors were:
 - (a) given to the Contractor in its capacity as 'principal contractor' as defined in the Workers Compensation Act 1987, the Payroll Tax Act 2007 and the Industrial Relations Act 1996 ("Acts"); and
 - (b) given by the subcontractors in their capacity as 'subcontractors' as defined in the Acts.
- 14. I am not aware of anything which would contradict the statements made in the statutory declarations or written statements provided to the Contractor by its subcontractors, as referred to in this declaration.

I make this solemn declaration conscientiously believing the same to be true and by virtue of the Oaths Act 1900 (NSW). I am aware that I may be subject to punishment by law if I wilfully make a false statement in this declaration.

Declared at on
(place) (day) (month) (year)

.....
(Signature of Declarant)

Before me:

.....
(Signature of person before whom the declaration is made)

.....
(Name of the person before whom the declaration is made)

.....
(Title* of the person before whom the declaration is made)

And as a witness, I certify the following matters concerning the person who made this declaration (**declarant**):

[*strike out the text that does not apply]

- 1. *I saw the face of the declarant.
OR
*I did not see the face of the declarant because the declarant was wearing a face covering, but I am satisfied that the declarant had a special justification for not removing the covering.
- 2. *I have known the declarant for at least 12 months.
OR
*I confirmed the declarant's identity using the following identification document:

Identification document relied on
(may be original or certified copy)

Signature of person before whom the declaration is made

Before me:

.....
(Signature of person before whom the declaration is made)

.....
(Name of the person before whom the declaration is made)

.....
(Title* of the person before whom the declaration is made)

- * The declaration must be made before one of the following persons:
 - where the declaration is sworn within the State of New South Wales:
 - (i) a justice of the peace of the State of New South Wales;
 - (ii) a solicitor of the Supreme Court of New South Wales with a current practising certificate; or
 - (iii) a notary public.
 - where the declaration is sworn in a place outside the State of New South Wales:
 - (i) a notary public; or

(ii) any person having authority to administer an oath in that place.

Annexure A

Supporting statement by head contractor regarding payment to subcontractors

This statement must accompany any payment claim served on a principal to a construction contract by a head contractor.

For the purposes of this statement, the terms “principal”, “head contractor”, “subcontractor”, and “construction contract” have the meanings given in section 4 of the *Building and Construction Industry Security of Payment Act 1999*.

Head contractor: *[business name of head contractor]*

ABN: *[ABN]*

* 1. has entered into a contract with: *[business name of subcontractor]*

ABN: *[ABN]*

Contract number/identifier: *[contract number/identifier]*

OR

* 2. has entered into a contract with the subcontractors listed in the attachment to this statement.

* *[Delete whichever of the above does not apply]*

This statement applies for work between *[start date]* and *[end date]* inclusive (the construction work concerned), subject of the payment claim dated *[date]*.

I, *[full name]*, being the head contractor, a director of the head contractor or a person authorised by the head contractor on whose behalf this declaration is made, hereby declare that I am in a position to know the truth of the matters that are contained in this supporting statement and declare that, to the best of my knowledge and belief, all amounts due and payable to subcontractors have been paid (not including any amount identified in the attachment as an amount in dispute).

Signature: Date:

Full name: Position/Title:

Attachment

Schedule of subcontractors paid all amounts due and payable				
Subcontractor	ABN	Contract number identifier /	Date of works (period)	Date of payment claim (head contractor claim)

Schedule of subcontractors for which an amount is in dispute and has not been paid				
Subcontractor	ABN	Contract number identifier /	Date of works (period)	Date of payment claim (head contractor claim)

Annexure B

SUBCONTRACTOR'S STATEMENT

**REGARDING WORKERS COMPENSATION, PAYROLL TAX AND REMUNERATION
(Note 1 - see back of form)**

For the purposes of this Statement a "subcontractor" is a person (or other legal entity) that has entered into a contract with a "principal contractor" to carry out work.

This Statement must be signed by a "subcontractor" (or by a person who is authorised, or held out as being authorised, to sign the statement by the subcontractor) referred to in any of s175B *Workers Compensation Act 1987*, Schedule 2 Part 5 *Payroll Tax Act 2007*, and s127 *Industrial Relations Act 1996* where the "subcontractor" has employed or engaged workers or subcontractors during the period of the contract to which the form applies under the relevant Act(s). The signed Statement is to be submitted to the relevant principal contractor.

SUBCONTRACTOR'S STATEMENT (Refer to the back of this form for Notes, period of Statement retention, and Offences under various Acts.

Subcontractor:
(Business name)

ABN:

of

.....
(Address of subcontractor)

has entered into a contract with

ABN:.....
(Business name of principal contractor) (Note 2)

Contract number/identifier (Note 3)

This Statement applies for work between:/...../..... and/...../..... inclusive, (Note 4)

subject of the payment claim dated:/...../..... (Note 5)

I, a Director or a person authorised by the Subcontractor on whose behalf this declaration is made, hereby declare that I am in a position to know the truth of the matters which are contained in this Subcontractor's Statement and declare the following to the best of my knowledge and belief:

- (a) The abovementioned Subcontractor has either employed or engaged workers or subcontractors during the above period of this contract. Tick [] if true and comply with (b) to (g) below, as applicable. If it is not the case that workers or subcontractors are involved or you are an exempt employer for workers compensation purposes tick [] and only complete (f) and (g) below. You must tick one box. (Note 6)
- (b) All workers compensation insurance premiums payable by the Subcontractor in respect of the work done under the contract have been paid. The Certificate of Currency for that insurance is attached and is dated/...../.....(Note 7)
- (c) All remuneration payable to relevant employees for work under the contract for the above period has been paid. (Note 8)
- (d) Where the Subcontractor is required to be registered as an employer under the *Payroll Tax Act 2007*, the Subcontractor has paid all payroll tax due in respect of employees who performed work under the contract, as required at the date of this Subcontractor's Statement. (Note 9)
- (e) Where the Subcontractor is also a principal contractor in connection with the work, the Subcontractor has in its capacity of principal contractor been given a written Subcontractor's Statement by its subcontractor(s) in connection with that work for the period stated above. (Note 10)
- (f) Signature

Full name.....
(g) Position/Title
Date/...../.....

NOTE: Where required above, this Statement must be accompanied by the relevant Certificate of Currency to comply with section 175B of the Workers Compensation Act 1987.

Notes

1. This form is prepared for the purpose of section 175B of the *Workers Compensation Act 1987*, Schedule 2 Part 5 *Payroll Tax Act 2007* and section 127 of the *Industrial Relation Act 1996*. If this form is completed in accordance with these provisions, a principal contractor is relieved of liability for workers compensation premiums, payroll tax and remuneration payable by the subcontractor.
A principal contractor can be generally defined to include any person who has entered into a contract for the carrying out of work by another person (or other legal entity called **the subcontractor**) and where employees of the subcontractor are engaged in carrying out the work which is in connection with the principal contractor's business.
2. For the purpose of this Subcontractor's Statement, a principal contractor is a person (or other legal entity), who has entered into a contract with another person (or other legal entity) referred to as the subcontractor, and employees/workers of that subcontractor will perform the work under contract. The work must be connected to the business undertaking of the principal contractor.
3. Provide the unique contract number, title, or other information that identifies the contract.
4. In order to meet the requirements of s127 *Industrial Relations Act 1996*, a statement in relation to remuneration must state the period to which the statement relates. For sequential Statements ensure that the dates provide continuous coverage.
Section 127(6) of the *Industrial Relations Act 1996* defines remuneration 'as remuneration or other amounts payable to relevant employees by legislation, or under an industrial instrument, in connection with work done by the employees.'
Section 127(11) of the *Industrial Relations Act 1996* states 'to avoid doubt, this section extends to a principal contractor who is the owner or occupier of a building for the carrying out of work in connection with the building so long as the building is owned or occupied by the principal contractor in connection with a business undertaking of the principal contractor.'
5. Provide the date of the most recent payment claim.
6. For Workers Compensation purposes an exempt employer is an employer who pays less than \$7500 annually, who does not employ an apprentice or trainee and is not a member of a group.
7. In completing the Subcontractor's Statement, a subcontractor declares that workers compensation insurance premiums payable up to and including the date(s) on the Statement have been paid, and all premiums owing during the term of the contract will be paid.
8. In completing the Subcontractor's Statement, a subcontractor declares that all remuneration payable to relevant employees for work under the contract has been paid.
9. In completing the Subcontractor's Statement, a subcontractor declares that all payroll tax payable relating to the work undertaken has been paid.
10. It is important to note that a business could be both a subcontractor and a principal contractor, if a business 'in turn' engages subcontractors to carry out the work. If your business engages a subcontractor you are to also obtain Subcontractor's Statements from your subcontractors.

Statement Retention

The principal contractor receiving a Subcontractor's Statement must keep a copy of the Statement for the periods stated in the respective legislation. This is currently up to seven years.

Offences in respect of a false Statement

In terms of s127(8) of the *Industrial Relations Act 1996*, a person who gives the principal contractor a written statement knowing it to be false is guilty of an offence if:

- (a) the person is the subcontractor;
- (b) the person is authorised by the subcontractor to give the statement on behalf of the subcontractor; or
- (c) the person holds out or represents that the person is authorised by the subcontractor to give the statement on behalf of the subcontractor.

In terms of s175B of the *Workers Compensation Act* and clause 18 of Schedule 2 of the *Payroll Tax Act 2007* a person who gives the principal contractor a written statement knowing it to be false is guilty of an offence.

Further Information

For more information, visit the WorkCover website www.workcover.nsw.gov.au, Office of State Revenue website www.osr.nsw.gov.au, or Office of Industrial Relations, Department of Commerce website www.commerce.nsw.gov.au. Copies of the *Workers Compensation Act 1987*, the *Payroll Tax Act 2007* and the *Industrial Relations Act 1996* can be found at www.legislation.nsw.gov.au.

Schedule 13. Property Owner's Certificate

(Clauses 2.5A and 3.4(c)(ii))

This deed poll is made the _____ day of _____ 20____

To: **Sydney Metro (ABN 12 354 063 515)** of Level 43, 680 George Street, Sydney NSW 2000 ("**Principal**")

By: [_____].

Property Address:

1. I/We confirm that the following works have been carried out and completed on my/our property to my/our satisfaction:

[Insert description of Property Works]

2. I/We confirm that our land has been rehabilitated and all damage and degradation on it repaired.

3. I/We release the Principal from all claims and actions which I/we may have arising out of or in connection with the works referred to in paragraph 1.

4. This deed poll may not be revoked or otherwise modified without the prior written consent of the Principal.

Executed as a deed poll.

Signed sealed and delivered
by _____ in the presence
of: _____

Signature

Signature of Witness

Name of Witness in full

Schedule 14. Form of Subcontractor Deed

(Clause 2.2(e)(iv))

THIS DEED POLL is made on, 20..... by

..... ACN..... of

..... (the "**Subcontractor**").

RECITALS:

- A. **Sydney Metro (ABN 12 354 063 515)** of Level 43, 680 George Street, Sydney NSW 2000 (the "**Principal**") and [] ("**Contractor**") have entered into the deed titled "Sydney Metro City & Southwest – Southwest Metro Station Upgrade Works Package 5 – Construct Only Delivery Deed" dated [*insert*] ("**Contract**") under which the Contractor is required to construct and handover to the Principal the "Works" as defined in the Contract ("**Works**").
- B. The Subcontractor has an agreement (the "**Subcontract**") with the Contractor for the execution and completion of the [] (the "**Subcontract Works**") for the Works.
- C. It is a condition of the Subcontract that the Subcontractor executes this Deed Poll.

THIS DEED WITNESSES THAT THE SUBCONTRACTOR HEREBY COVENANTS, WARRANTS AND AGREES with and for the benefit of the persons named in the Schedule as follows:

- 1. It will comply with its obligations under the Subcontract and upon completion of the Works, the Subcontract Works will satisfy the requirements of the Subcontract.
- 2. The persons named in the Schedule may assign or charge the benefits and rights accrued under this Deed Poll.
- 3. The Subcontractor:
 - (a) must if required by a written notice by the Principal, sign a deed in the form of the attached Deed of Novation (Attachment 1) with such substitute contractor as the Principal may nominate; and
 - (b) for this purpose irrevocably appoints the Principal to be its attorney with full power and authority to complete the particulars in and sign the attached Deed of Novation.
- 4. This Deed Poll is governed by the laws of the State of New South Wales.
- 5. This Deed Poll may not be revoked or otherwise modified without the prior written consent of the Principal.
- 6. The Subcontractor's liability in respect of a breach of a particular obligation under this Deed Poll will be reduced to the extent to which the Subcontractor has already paid money to or performed work for the Contractor in respect of that breach.

PERSONS NAMED IN THE SCHEDULE TO THE DEED POLL

Sydney Metro (ABN 12 354 063 515)

[Insert relevant details]

EXECUTED AS A DEED POLL.

Executed by ***[insert name]*** (ABN ***[insert ABN]***) by or in the presence of:

Signature of Director

Signature of Secretary/other Director

Name of Director in full

Name of Secretary/other Director in full

Attachment 1 (to Schedule 14)

THIS DEED OF NOVATION is made on [] between the following parties:

1. **Sydney Metro (ABN 12 354 063 515)** of Level 43, 680 George Street, Sydney NSW 2000 ("**Principal**")
2. [] ABN [] of [] ("**Contractor**"); and
3. [] ABN [] of [] ("**Subcontractor**").

Recitals

- A. By agreement dated [] (the "**Subcontract**"), the Contractor engaged the Subcontractor to, and the Subcontractor agreed to, undertake certain works for the Contractor (the "**Subcontract Works**").
- B. By agreement dated [] (the "**Contract**"), the Principal engaged the Contractor to, and the Contractor agreed to, undertake certain works for the Principal, which includes the Subcontract Works.
- C. Under the Contract and the Subcontract, the Contractor and the Subcontractor must enter into this deed when the Principal requires them to do so.
- D. Subject to this deed, the Subcontractor agrees to accept the Principal in place of the Contractor for the performance of all the obligations of the Contractor and to release completely and discharge the Contractor from all of its obligations under the Subcontract and from all claims and demands in respect of it.

THIS DEED WITNESSES that in consideration, among other things, of the mutual promises contained in this deed, the parties agree:

1. The Subcontractor must perform its obligations under, and be bound by, the Subcontract as if the Principal was originally named in the Subcontract as the Contractor.
2. The Subcontractor:
 - (a) releases and forever discharges the Contractor from its obligations under the Subcontract and from all claims and demands in respect of the Subcontract; and
 - (b) accepts the liability of the Principal in place of the liability of the Contractor in respect of the Subcontract.
3. The Principal must perform all the obligations of the Contractor under, and be bound by, the Subcontract as if the Principal were originally named in the Subcontract as the Contractor.
4. Upon the execution and exchange of this deed:
 - (a) the Contractor must release any securities given to it by the Subcontractor in accordance with the Subcontract;

- (b) the Subcontractor must give the Principal security in the same form and for the same amounts as any security required by the Subcontract; and
 - (c) the Subcontractor must ensure that the Principal is appropriately noted on all relevant insurance policies as required by the Subcontract.
5. This deed is governed by the laws of New South Wales and the parties agree to submit to the non exclusive jurisdiction of the courts of that state.

EXECUTED by the parties as a deed:

Executed by [] ABN []
by or in the presence of:

Signature of Director

Signature of Secretary/other Director

Name of Director in full

Name of Secretary/other Director in full

Executed by [] ABN []
by or in the presence of:

Signature of Director

Signature of Secretary/other Director

Name of Director in full

Name of Secretary/other Director in full

Executed by [] ABN [] by
or in the presence of:

Signature of Director

Signature of Secretary/other Director

Name of Director in full

Name of Secretary/other Director in full

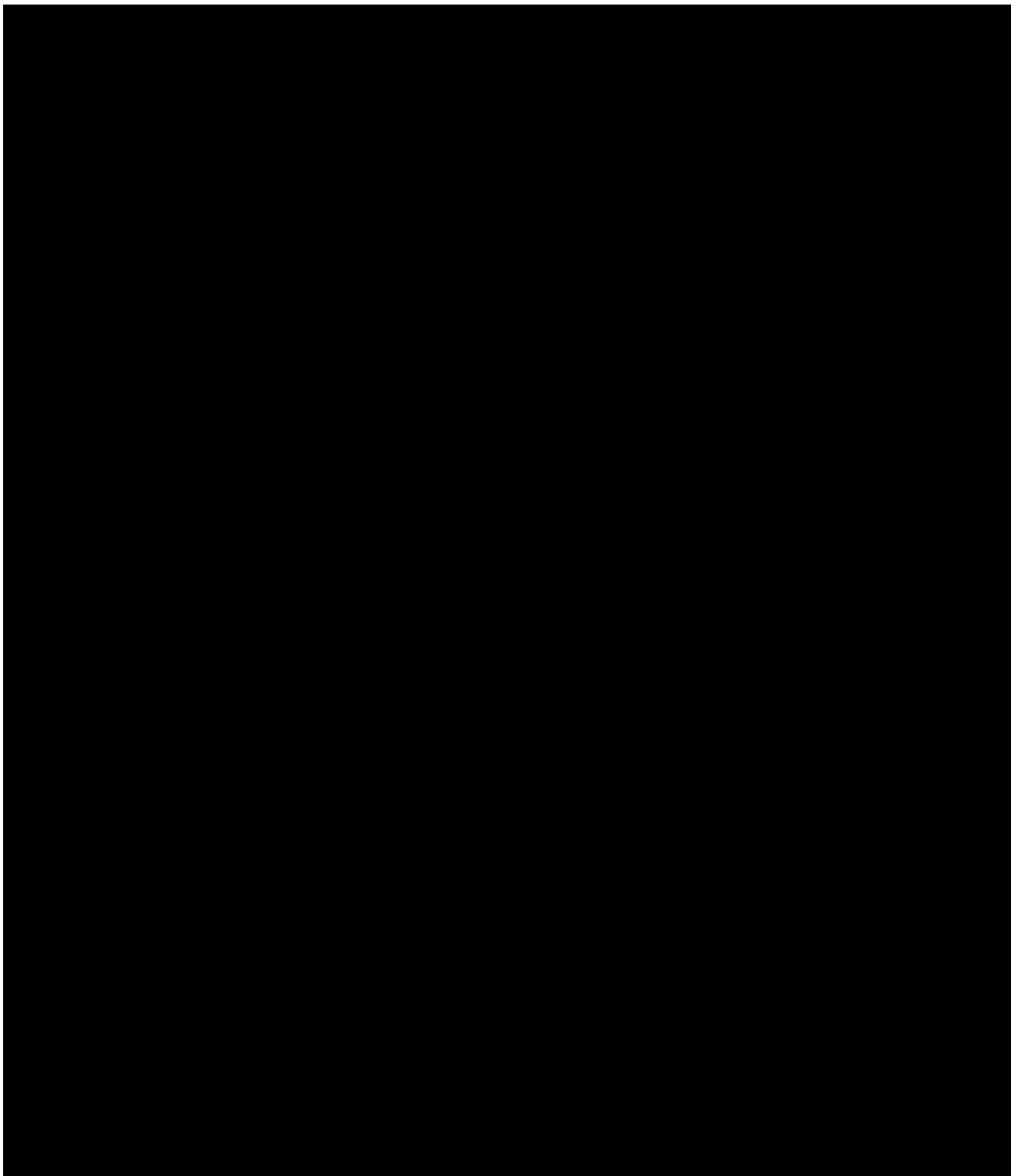
Schedule 15. Options

(Clause 6.3)

OPTION	
Description:	Nil
Adjustment to the Contract Sum:	-
Period for exercising the Option:	-
Amendments to SWTC:	-
Drawing Amendments:	-

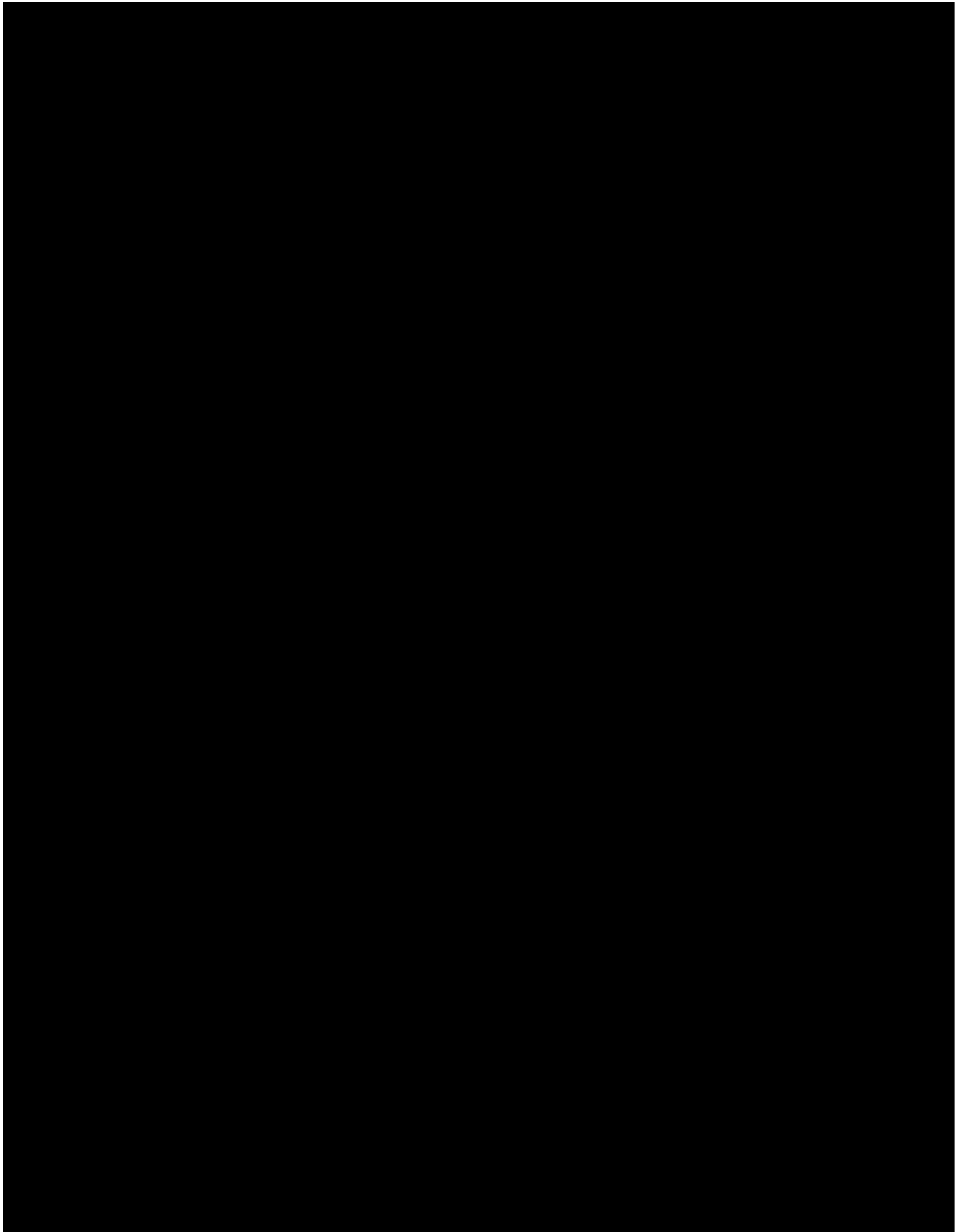
Schedule 16. Post Construction Completion Activities

(Clause 12.10)



Schedule 17. Deed of Guarantee and Indemnity

(Clause 2.7(g))



Schedule 18. Deed of Novation (Principal, Contractor and Subcontractor)

(Clauses 2.2(e)(vi) and 2.2(g))

THIS DEED OF NOVATION is made on [] between the following parties:

1. **Sydney Metro (ABN 12 354 063 515)** of Level 43, 680 George Street, Sydney NSW 2000 ("**Principal**")
2. [] ABN [] of [] ("**Contractor**"); and
3. [] ABN [] of [] ("**Subcontractor**").

Recitals

- A. By agreement dated [] (the "**Subcontract**"), the Contractor engaged the Subcontractor to, and the Subcontractor agreed to, undertake certain works for the Contractor (the "**Subcontract Works**").
- B. By agreement dated [] (the "**Contract**"), the Principal engaged the Contractor to, and the Contractor agreed to, undertake certain works for the Principal, which includes the Subcontract Works.
- C. Under the Contract and the Subcontract, the Contractor and the Subcontractor must enter into this deed when the Principal requires them to do so.
- D. Subject to this deed, the Subcontractor agrees to accept the Principal in place of the Contractor for the performance of all the obligations of the Contractor and to release completely and discharge the Contractor from all of its obligations under the Subcontract and from all claims and demands in respect of it.

THIS DEED WITNESSES that in consideration, among other things, of the mutual promises contained in this deed, the parties agree:

1. The Subcontractor must perform its obligations under, and be bound by, the Subcontract as if the Principal was originally named in the Subcontract as the Contractor.
2. The Subcontractor:
 - (a) releases and forever discharges the Contractor from its obligations under the Subcontract and from all claims and demands in respect of the Subcontract; and
 - (b) accepts the liability of the Principal in place of the liability of the Contractor in respect of the Subcontract.
3. The Principal must perform all the obligations of the Contractor under, and be bound by, the Subcontract as if the Principal were originally named in the Subcontract as the Contractor.
4. Upon the execution and exchange of this deed:

- (a) the Contractor must release any securities given to it by the Subcontractor in accordance with the Subcontract;
 - (b) the Subcontractor must give the Principal security in the same form and for the same amounts as any security required by the Subcontract; and
 - (c) the Subcontractor must ensure that the Principal is appropriately noted on all relevant insurance policies as required by the Subcontract.
5. This deed is governed by the laws of New South Wales and the parties agree to submit to the non exclusive jurisdiction of the courts of that state.

Schedule 19. Contestable Utility Service Work and Non-Contestable Utility Service Work

(Clauses 1.1 and 2.5(a))

This Schedule 19 sets out those parts of the Utility Services which the Principal classifies as "Contestable Utility Service Works" and "Non-Contestable Utility Service Works". Whilst this list covers various utility service types relevant to Utility Services, the Contractor is only required to carry out (or in the case of the Non-Contestable Utility Service Works, procure the carrying out of) the Utility Service Works under this Contract to the extent specified in, or required by, the Principal's Design Documentation or the SWTC.

Utility Service Asset Owner	Utility Service Type	Construct	
		Contestable	Non-Contestable
Ausgrid	Transmission cables and aerial transmission lines, including 33kV and higher voltage.		✓
	Transmission cables and aerial transmission lines (lower voltage than 33kV)	✓	
	New trench, pit, duct, cable and line joints	✓	
	Modifications to existing pits		✓
	New substations	✓	
	Modifications to existing substations		✓
	Commissioning of all Ausgrid assets		✓
Jemena	Gas - modification and/or installation of gas-containing pipes, valves, pipe apperturnances and connections, including commissioning of all Jemena assets		✓
Qenos	Gas - modification of live gas assets only		✓
	Removal of abandoned assets	✓	
NBN Co	Fibre		✓
	New trench, pit, and ducts		✓
	Commissioning of assets		✓
Visionstream /Nextgen	Telecommunications cables, (including commissioning of assets)		✓

Utility Owner	Service Asset	Utility Service Type	Construct	
			Contestable	Non-Contestable
Optus		Fibre and copper infrastructure		✓
		New trench, pit, and ducts		✓
		Commissioning of assets		✓
Sydney Water		Water supply	✓	
		Wastewater	✓	
		Stormwater	✓	
		Commissioning of assets		✓
Telstra		Telecommunications cables		✓
		Fibre and copper infrastructure		✓
		New trench, pit, and ducts		✓
		Commissioning of assets		✓
TPG, also assets that are owned by: <ul style="list-style-type: none"> • AAPT • Pipe Networks • PowerTel • Soul Pattinson Telecommunications 		All works (including commissioning of assets)		✓
Worldcom/Verizon Australia		All works (including commissioning of assets)		✓
AARNet		All works (including commissioning of assets)		✓
Macquarie Telecom Group		All works (including commissioning of assets)		✓
Vocus, also assets that are owned by: <ul style="list-style-type: none"> • iPrimus • NextGen • Amcom • Megaport • Firstpath • Digital River 		All works (including commissioning of assets)		✓

Schedule 20. Contractor's Certificate of Construction Compliance

(Clauses 7.1(c) and 11.6(a)(iii)(B))

CONTRACTOR'S CERTIFICATE OF CONSTRUCTION COMPLIANCE	
CONTRACTOR:	
<u>WORK PACKAGE</u>	<u>DESCRIPTION</u>
<i>(Attach schedule of work packages if insufficient space)</i>	
<p>I certify that the procurement/construction of the work packages or part thereof described above have been completed to the extent indicated above in accordance with the requirements of the "Sydney Metro City & Southwest – Southwest Metro Station Upgrade Works – Construct Only Delivery Deed (Contract No: 00013/11766) dated <u>[insert]</u> (as amended from time to time) (Contract) between the Principal and _____, and comply with the requirements of the Contract, subject to the register of outstanding minor construction non conformance and unresolved issues attached.</p> <p>I further certify that the attached compliance records as required by the Contract reflect the true status of the work packages.</p> <p>NAME: _____ SIGNATURE: _____ DATE: / / <i>(Contractor's Representative)</i></p>	
<p>THIS SECTION MUST BE COMPLETED BY THE RELEVANT CONTRACTOR'S SUBCONTRACTOR</p> <p>I certify that the procurement/construction of the work packages (one certificate per work package) or part thereof described above have been completed to the extent indicated above in accordance with the requirements of the Contract between the Principal and _____, and comply with the requirements of the Contract, subject to the register of outstanding minor construction non-conformances and unresolved issues attached.</p> <p>I further certify that the attached compliance records as required by the Contract reflect the true status of the work packages.</p> <p>SIGNATURE: _____ <i>(Contractor's Subcontractor)</i></p> <p>DATE: _____</p>	

Schedule 21. Contractor's Certificate of Completion

(Clause 12.3A(d))

To: The Principal's Representative and the Independent Certifier

From: *[Insert name of Contractor]* (ABN [])

This certificate is given in accordance with the "Sydney Metro City & Southwest – Southwest Metro Station Upgrade Works – Construct Only Delivery Deed" (Contract No: 00013/11766) dated *[insert]* (**Construct Only Delivery Deed**). Words defined in the Construct Only Delivery Deed have the same meaning in this certificate.

In accordance with the terms of clause 12.3A(d) of the Construct Only Delivery Deed, we hereby certify that Completion of Portion *[insert number]* has been achieved by the Contractor on *[insert date]* in accordance with the terms of the Construct Only Delivery Deed.

.....
Signed for and on behalf of
[Insert name of the Contractor]

Schedule 21A. Notice of Completion

(Clause 1.1 and Clause 12.3A(e)(i))

[ON INDEPENDENT CERTIFIER LETTERHEAD]

[insert date]

Sydney Metro
Level 43
680 George Street
Sydney NSW 2000

Contractor
[insert address]

Dear [insert name]

**NOTICE OF COMPLETION
Sydney Metro City & Southwest
Southwest Metro Construct Only Delivery Deed
Works – Portion [insert number]**

This Notice of Completion is given in accordance with the "Sydney Metro City & Southwest – Southwest Metro Station Upgrade Works – Construct Only Delivery Deed" (Contract No: 00013/11766) dated [insert] (**Construct Only Delivery Deed**). Words defined in the Construct Only Delivery Deed have the same meaning in this certificate.

In accordance with clause 12.3A(e)(i) of the Construct Only Delivery Deed, the Independent Certifier confirms that Completion in respect of Portion [insert number] has been achieved. The Date of Completion in respect of Portion [insert number] is [insert date].

A list of Accepted Defects is **attached**.

This Notice of Completion does not relieve the Contractor of its obligation to rectify Defects under clause 8 of the Construct Only Delivery Deed and to complete any other outstanding obligations under the Construct Only Delivery Deed.

Yours sincerely

.....
[insert name]

for and on behalf of the Independent Certifier

Attachment – List of Accepted Defects

No.	Accepted Defects
1.	
2.	

Schedule 21B. Contractor's Certificate of Construction Completion

(Clause 12.3(c))

To: The Principal's Representative and the Independent Certifier

From: *[Insert name of Contractor]* (ABN [])

This certificate is given in accordance with the "Sydney Metro City & Southwest – Southwest Metro Station Upgrade Works – Construct Only Delivery Deed" (Contract No: 00013/11766) dated *[insert]* (**Construct Only Delivery Deed**). Words defined in the Construct Only Delivery Deed have the same meaning in this certificate.

In accordance with the terms of clause 12.3(c) of the Construct Only Delivery Deed, we hereby certify that Construction Completion of Portion *[insert number]* has been achieved by the Contractor on *[insert date]* in accordance with the terms of the Construct Only Delivery Deed.

.....
Signed for and on behalf of
[Insert name of the Contractor]

Schedule 21C. Notice of Construction Completion

(Clause 1.1 and Clause 12.3(d)(i))

[ON INDEPENDENT CERTIFIER LETTERHEAD]

[insert date]

Sydney Metro
Level 43
680 George Street
Sydney NSW 2000

Contractor
[Insert address]

Dear [insert name]

NOTICE OF CONSTRUCTION COMPLETION
Sydney Metro City & Southwest
Southwest Metro Construct Only Delivery Deed
Works – Portion [insert number]

This Notice of Construction Completion is given in accordance with the "Sydney Metro City & Southwest – Southwest Metro Station Upgrade Works – Construct Only Delivery Deed" (Contract No: 00013/11766) dated [insert] (**Construct Only Delivery Deed**). Words defined in the Construct Only Delivery Deed have the same meaning in this certificate.

In accordance with clause 12.3(d)(i) of the Construct Only Delivery Deed, the Independent Certifier confirms that Construction Completion in respect of Portion [insert number] has been achieved. The Date of Construction Completion in respect of Portion [insert number] is [insert date].

A list of Minor Defects, Agreed Defects and Accepted Defects is **attached**.

This Notice of Construction Completion does not relieve the Contractor of its obligation to rectify Defects (including Minor Defects and Agreed Defects listed in this notice) under clause 8 of the Construct Only Delivery Deed and to complete any other outstanding obligations under the Construct Only Delivery Deed.

Yours sincerely

.....
[Insert name]

for and on behalf of the Independent Certifier

Attachment – List of Minor Defects, Agreed Defects and Accepted Defects

No. Minor Defects	
1.	
2.	
No. Agreed Defects	
1.	
2.	
No. Accepted Defects	
1.	
2.	

Schedule 22. Contractor's Certificate of Final Completion

(Clause 12.8(d))

To: The Principal's Representative

From: *[Insert name of Contractor]* (ABN [])

This certificate is given in accordance with the "Sydney Metro City & Southwest – Southwest Metro Station Upgrade Works – Construct Only Delivery Deed" (Contract No: 00013/11766) dated *[insert]* (**Construct Only Delivery Deed**). Words defined in the Construct Only Delivery Deed have the same meaning in this certificate.

In accordance with the terms of clause 12.8(d) of the Construct Only Delivery Deed, we hereby certify that Final Completion has been achieved by the Contractor on *[insert date]* in accordance with the terms of the Construct Only Delivery Deed.

.....
Signed for and on behalf of
[Insert name of the Contractor]

Schedule 23. Form of Site Interface Deed Poll

(Clauses 2.9(a)(ii)(A), 2.11(b)(ii)(B)(2), 2.11(d)(iii), 3.1(d)(iv) and 7.4)

THIS DEED POLL is made on [year]

IN FAVOUR OF:

- (1) [Insert name] ABN [number] of [address] (**Site Contractor**);
- (2) [Insert name] ABN [number] of [address] (**Appointed Principal Contractor**); and
- (3) **Sydney Metro** ABN 12 354 063 515 a New South Wales Government agency constituted by section 38 of the Transport Administration Act 1988 (NSW) and located at Level 43, 680 George Street, Sydney NSW 2000 (**Principal**),

(together, the **Beneficiaries**)

GIVEN BY:

- (4) [Insert name] ABN [number] of [address] (**Accessing Contractor**)

RECITALS:

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

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

1. In consideration of the Site Contractor and the Appointed Principal Contractor accepting this deed poll, the Accessing Contractor agrees that:
 - (a) the Accessing Contractor, its subcontractors and their respective personnel while they are on the Construction Site, will comply with Construction Site safety regulations, any

Construction Site rules or regulations and with all directions of the Site Contractor and the Appointed Principal Contractor with respect to work health and safety;

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

2. The Accessing Contractor indemnifies the Site Contractor and the Appointed Principal Contractor against any delay, damage, expense, loss, penalty or liability suffered or incurred by the Site Contractor and the Appointed Principal Contractor as a result of:
 - (a) any failure by the Accessing Contractor to comply with any direction given by the Site Contractor or the Appointed Principal Contractor in accordance with this deed poll; or
 - (b) any breach by the Accessing Contractor, any of its subcontractors or their respective personnel of:
 - (i) their respective contractual or legislative work health and safety obligations; or
 - (ii) the provisions of this deed poll.
3. This deed poll will be governed by and construed in accordance with the law for the time being of New South Wales.

EXECUTED as a deed poll.

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

Signature of director

Signature of company secretary/other director

Full name of director

Full name of company secretary/other director

Schedule 24. Form of Interface Agreement Deed Poll in favour of Rail Transport Agency and Sydney Metro

(Clause 1.5(b))

This deed poll ("Deed Poll") made the day of 20

in favour of: **Transport for NSW** ABN 18 804 239 602 a New South Wales agency constituted by section 3C of the *Transport Administration Act 1988* (NSW) of Level 43, 680 George Street, Sydney NSW 2000 ("**TfNSW**");

and

Sydney Metro ABN 12 354 063 515 a New South Wales Government agency constituted by section 38 of the *Transport Administration Act 1988* (NSW) and located at Level 43, 680 George Street, Sydney NSW 2000 ("**Principal**");

and

Sydney Trains ABN 38 284 779 682 of 477 Pitt Street Sydney NSW 2000 ("**Rail Transport Agency**")

By: [insert name of Contractor] (ABN [insert Contractor's ABN]) of [insert Contractor's address] ("**Contractor**").

Recitals

- A. Rail Transport Agency operates the commuter rail system in Sydney in the surrounds where the Works (the "**Project**") are to be undertaken by the Contractor and others.
- B. TfNSW and the Principal are responsible for developing certain major railway systems and other major transport projects.
- C. The Principal is responsible for procuring the execution and completion of the Project, and has entered into a safety interface agreement dated 28 June 2013 ("**Global Safety Interface Agreement**") with Rail Transport Agency to cover the Project.
- D. Rail Transport Agency is relying on the Principal to procure the Contractor (with others) to execute and complete the Project in accordance with the Contract to ensure that Rail Transport Agency will satisfy, among other things, its obligation to provide an operating commuter rail system.
- E. Rail Transport Agency will suffer loss if the Principal does not procure the Contractor to execute and complete the Works in accordance with the Contract and the Global Safety Interface Agreement.

Operative

- 1. The Contractor will comply with its obligations under the Global Safety Interface Agreement as specified in the Contract.
- 2. During and upon Completion of the Project, the Contractor's Activities will satisfy the requirements of the Global Safety Interface Agreement.

3. Rail Transport Agency and the Principal may assign or charge the benefits and rights accrued under this Deed Poll.
4. This Deed Poll is governed by the laws of the State of New South Wales.
5. This Deed Poll may not be revoked or otherwise modified without the prior written consent of Rail Transport Agency and the Principal.
6. Where terms used in this Deed Poll are defined in the Contract or the Global Safety Interface Agreement, those terms have the meaning given to them in the Contract or the Global Safety Interface Agreement.

Executed as a deed poll.

Executed by [insert name of Contractor]
(ABN [insert]) by or in the presence of:

Signature of Director

Signature of Secretary/other Director

Name of Director in full

Name of Secretary/other Director in full

Schedule 25. Not used

Schedule 26. Modification to the Expert Determination Rules

(Clause 15.5)

Pursuant to Rule 4(2)(b) of the Resolution Institute Expert Determination Rules (**Rules**), the parties agree to modify the application of the Rules as follows:

Modifications are underlined or ~~struck-out~~.

RULE 1 Definitions

"Business Days" means any day in New South Wales other than a Saturday, Sunday or public holiday or 27, 28, 29, 30 or 31 December.

"Contract" means the deed titled "Southwest Metro Station Upgrade Works Package 5 – Construct Only Delivery Deed" (Contract No: 00013/11766) between the Principal and the Contractor.

"IDAR Panel Agreement" means the agreement titled "Independent Dispute Avoidance and Resolution Panel Agreement" between the Principal, the Members, the Contractor and any other party that accedes to the agreement from time to time.

"Member" has the meaning given in the IDAR Panel Agreement.

"Relevant Proportionate Liability Legislation" means:

- (a) Part IV of the *Civil Liability Act 2002* (NSW);
- (b) Part IVAA of the *Wrongs Act 1958* (Vic);
- (c) Chapter 2, Part 2 of the *Civil Liability Act 2003* (Qld);
- (d) Part 1F of the *Civil Liability Act 2002* (WA);
- (e) the *Proportionate Liability Act 2005* (NT);
- (f) Chapter 7A of the *Civil Law (Wrongs) Act 2002* (ACT);
- (g) Part 3 of the *Law Reform (Contributory Negligence and Apportionment of Liability) Act 2001* (SA);
- (h) Part 9A of the *Civil Liability Act 2002* (Tas); and
- (i) any Regulations enacted pursuant to the Acts listed in (a)-(h) above.

"Relevant Security of Payment Legislation" means:

- (a) the *Building and Construction Industry Security of Payment Act 1999* (NSW);
- (b) the *Building and Construction Industry Security of Payment Act 2002* (Vic);
- (c) the *Building and Construction Industry Payments Act 2004* (Qld);
- (d) the *Construction Contracts Act 2004* (WA);

- (e) the Construction Contracts (Security of Payment) Act 2004 (NT);
- (f) the Building and Construction Industry (Security of Payment) Act 2009 (ACT);
- (g) the Building and Construction Industry Security of Payment Act 2009 (SA);
- (h) the Building and Construction Industry Security of Payment Act 2009 (Tas); and
- (i) any Regulations enacted pursuant to the Acts listed in (a)-(h) above.

“Subject-Matter Expert” means those persons listed in Schedule 3 to the IDAR Panel Agreement.

RULE 2 Appointment of the Expert

1. Unless otherwise agreed in writing by the parties, the Process shall be conducted:
 - a. by a Member or a Subject-Matter Expert ~~person~~ agreed between the parties; or
 - b. if the parties are unable to agree on the identity of the person to be appointed within 3 Business Days of Party A giving Party B a Notice of Dispute, by a Member or a Subject-Matter Expert ~~person~~ nominated by the Australian Centre for International Commercial Arbitration (ACICA) ~~Resolution Institute~~,
 who accepts appointment as Expert.
2. Rule 2.2 is deleted in its entirety.
3. [no modification]
4. [no modification]
5. [no modification]

RULE 3 Agreement to be bound

1. [no modification]
2. Rule 3.2 is deleted in its entirety.

RULE 5 Role of the Expert

1. The Expert shall determine the Dispute as an expert in accordance with these Rules, the Contract, the requirements of procedural fairness and according to law.
2. [no modification]
3. [no modification]
4. (a) The Expert shall be independent of, and act fairly and impartially as between the parties, giving each a reasonable opportunity of putting its case and dealing with that of any opposing party, and a reasonable opportunity to make submissions on the conduct of the Process.
 (b) The Expert must take all reasonable steps to avoid any conflict of interest, potential conflict of interest or other circumstances that might reasonably be considered to

adversely affect the Expert's independence or capacity to act fairly and impartially in relation to the Dispute.

(c) If at any time during the Process, the Expert becomes aware of any circumstances that might reasonably be considered to adversely affect the Expert's independence or capacity to act fairly or impartially in relation to the Dispute, the Expert must inform the parties immediately.

(d) The Expert's mandate will be terminated 7 days after the notice is provided by the Expert under Rule 5.4(c), unless the parties agree otherwise.

5. [no modification]

RULE 9 Conduct of the Process

1. [no modification]

2. [no modification]

3. ~~If The parties agree in writing (in the Agreement or otherwise),~~ that the procedure in Schedule B shall will apply.

4. The rules of evidence do not apply to the Process.

RULE 10 The Expert's Determination

1. ~~As soon as reasonably practicable after receiving the submissions and evidentiary material from the parties pursuant to Rule 9,~~ The Expert shall determine the Dispute between the parties and notify such determination in writing to the parties within the time period specified in the Contract.

2. [no modification]

3. ~~Subject to any rule of law or equity or written agreement of the parties to the contrary,~~ Unless otherwise agreed by the parties, the Expert's determination:

a. may include for the payment of interest on any monetary sum determined, in such amount as the Expert considers reasonable;

b. must allow for any amount already paid to a party under or for the purposes of any Relevant Security of Payment Legislation;

c. may make such orders as he or she considers appropriate for the restitution of any amount so paid, and such other orders as he or she considers appropriate; and

d. to the extent permitted by law, will not apply or have regard to the provisions of any Relevant Proportionate Liability Legislation.

4. [no modification]

RULE 12 Waiver of Right to Object

Rule 12 is deleted in its entirety.

RULE 14 Extension of Limitation Period

Rule 14 is deleted in its entirety.

SCHEDULE B

1. The reference to "twenty one (21) days" is replaced by "ten Business Days".
2. The reference to "twenty one (21) days" is replaced by "twenty Business Days".
3. The reference to "twenty one (21) days" is replaced by "five Business Days".
4. [no modification]
5. [no modification]
6. [no modification]
7. [no modification]
8. [no modification]

Schedule 27. Contractor's Personnel

(Clause 9.4)

Position	Nominated Personnel	
Project Director / Contractor's Representative		
Construction Manager (if applicable)		
Snr Project Manager (s) (if applicable)		
Area/Station Manager(s)		

Position	Nominated Personnel	
Station Supervisor / General Foreman (s)		
Services Manager(s)		
Environmental Manager		

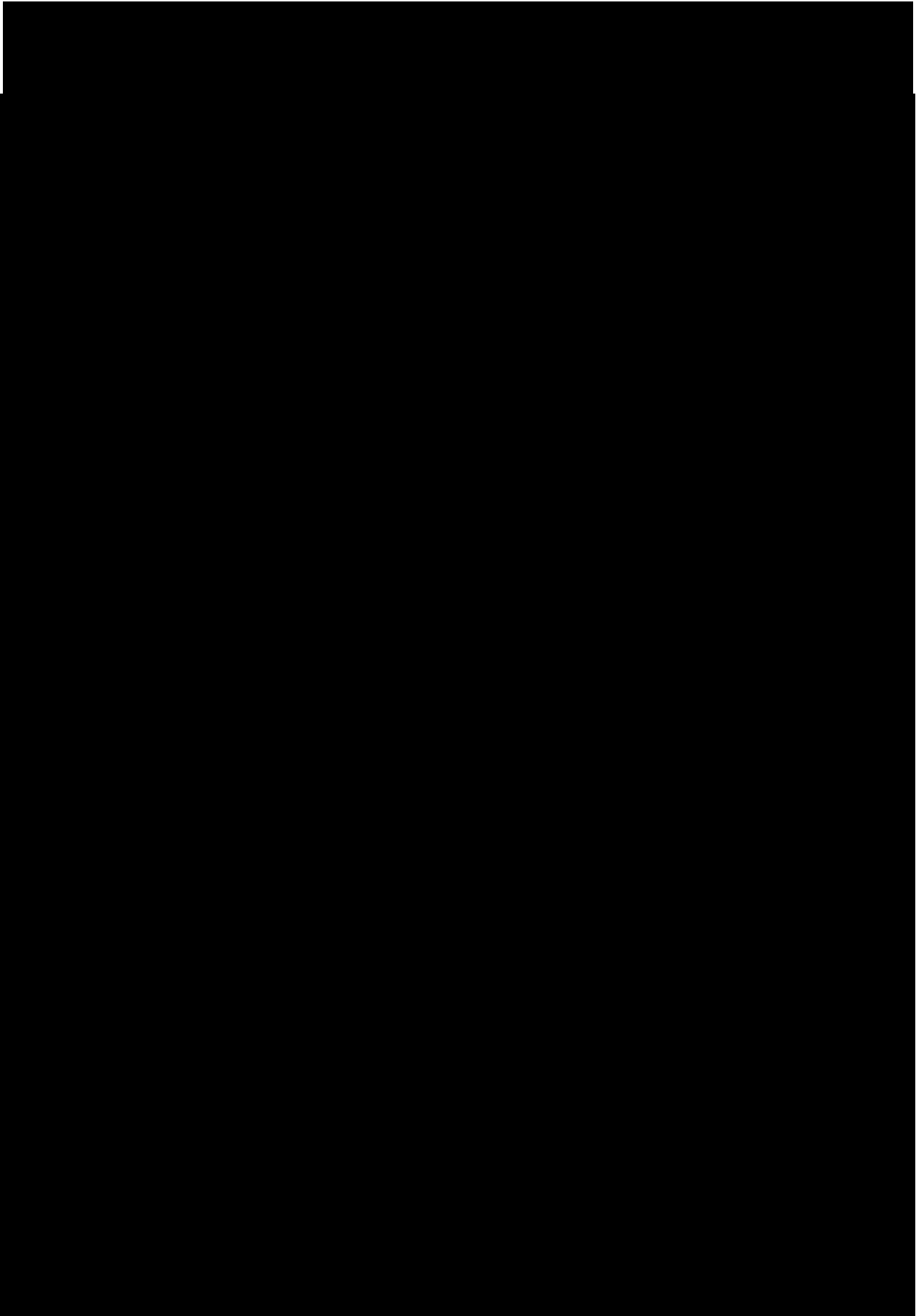
Position	Nominated Personnel	
Sustainability Manager		
WHS/Rail Safety Manager		

Position	Nominated Personnel	
Quality Assurance Manager		
System / Safety Assurance / Configuration Change Manager		

Position	Nominated Personnel	
Testing and Commissioning		
Workforce Development and Industry Participation Manager		

Position	Nominated Personnel	
Aboriginal Participation Manager		
Stakeholder and Community Liaison Officer(s)		
Commercial Manager		
Planner		

Position	Nominated Personnel	
Heritage Specialist (s)		



Schedule 29. Site Access Schedule

(Clause 3.1)

1. OVERVIEW AND SCOPE

1.1 General

- (a) This Schedule 29 identifies:
 - (i) the Site including Temporary Areas;
 - (ii) the "Site Access Date" and "Site Access Expiry Date" for each part of the Site; and
 - (iii) the conditions of access that will apply to the Contractor's access to or use of each part of the Site.
- (b) This Schedule 29 is subject to the requirements of:
 - (i) this Contract; and
 - (ii) any other document or condition referred to in this Schedule 29 (including in the "Conditions of Access" column of the tables contained in sections 3 and 4 of this Schedule 29).

1.2 References

In this Schedule 29, a reference to:

- (a) an **Area** is a reference to an area of land depicted in the Site Drawings with an individual Area reference (e.g. Area 'A4');
- (b) **Site Drawings** is a reference to the drawings described in Table 1 of section 2.1 of this Schedule 29;
- (c) **Lot [No.] DP [No.]** are references to land contained in the lots and deposited plans (DPs) registered with LRS as at the date of this Contract under the *Real Property Act 1900* (NSW); and
- (d) **Lot [No.] in Draft DP [No.]** is a reference to the area contained in the lot so numbered in the unregistered plan so numbered in Table 2 of section 2.1 of this Schedule 29.

2. SITE – DRAWINGS

2.1 Drawings and Unregistered Plans of Acquisition

- (a) This Schedule 29 contains the drawings identified in Table 1 of this section 2.1 and the Unregistered Plans of Acquisition identified in Table 2 of this section 2.1, which are included in Schedule 40 as electronic files.

Table 1 Drawings

Drawing number	Revision	Drawing title (number of sheets)	Electronic file reference
NWRLSRT-RPS-WEC-SR-DWG-000014-H.1-Site Access Plans	H.1	Sydney Metro City and Southwest Figure 2.1 Site Access Areas Sheet 7 of 34	NWRLSRT-RPS-WEC-SR-DWG-000014- H.1-Site Access Plans.dwg
NWRLSRT-RPS-WEC-SR-DWG-000014-H.1-Site Access Plans	H.1	Sydney Metro City and Southwest Figure 2.1 Site Access Areas Sheet 11 of 34	NWRLSRT-RPS-WEC-SR-DWG-000014- H.1-Site Access Plans.dwg
NWRLSRT-RPS-WEC-SR-DWG-000014- H.1-Site Access Plans	H.1	Sydney Metro City and Southwest Figure 2.1 Site Access Areas Sheet 13 of 34	NWRLSRT-RPS-WEC-SR-DWG-000014- H.1-Site Access Plans.dwg
NWRLSRT-RPS-WEC-SR-DWG-000014- H.1-Site Access Plans	H.1	Sydney Metro City and Southwest Figure 2.1 Site Access Areas Sheet 17 of 34	NWRLSRT-RPS-WEC-SR-DWG-000014- H.1-Site Access Plans.dwg
NWRLSRT-RPS-WEC-SR-DWG-000014- H.1-Site Access Plans	H.1	Sydney Metro City and Southwest Figure 2.1 Site Access Areas Sheet 18 of 34	NWRLSRT-RPS-WEC-SR-DWG-000014- H.1-Site Access Plans.dwg
NWRLSRT-RPS-WEC-SR-DWG-000014- H.1-Site Access Plans	H.1	Sydney Metro City and Southwest Figure 2.1 Site Access Areas Sheet 25 of 34	NWRLSRT-RPS-WEC-SR-DWG-000014- H.1-Site Access Plans.dwg
NWRLSRT-RPS-WEC-SR-DWG-000014- H.1-Site Access Plans	H.1	Sydney Metro City and Southwest Figure 2.1 Site Access Areas Sheet 26 of 34	NWRLSRT-RPS-WEC-SR-DWG-000014- H.1-Site Access Plans.dwg
NWRLSRT-RPS-WEC-SR-DWG-000014- H.1-Site Access Plans	H.1	Sydney Metro City and Southwest Figure 2.1 Site Access Areas Sheet 27 of 34	NWRLSRT-RPS-WEC-SR-DWG-000014- H.1-Site Access Plans.dwg
NWRLSRT-RPS-WEC-SR-DWG-	H.1	Sydney Metro City and Southwest Figure 2.1	NWRLSRT-RPS-WEC-SR-DWG-

000014- H.1-Site Access Plans		Site Access Areas Sheet 30 of 34	000014- H.1-Site Access Plans.dwg
NWRLSRT-RPS-WEC-SR-DWG-000014- H.1-Site Access Plans	H.1	Sydney Metro City and Southwest Figure 2.1 Site Access Areas Sheet 31 of 34	NWRLSRT-RPS-WEC-SR-DWG-000014- H.1-Site Access Plans.dwg
NWRLSRT-RPS-WEC-SR-DWG-000014- H.1-Site Access Plans	H.1	Sydney Metro City and Southwest Figure 2.1 Site Access Areas Sheet 32 of 34	NWRLSRT-RPS-WEC-SR-DWG-000014- H.1-Site Access Plans.dwg

Table 2**Not used****2.2 Explanation of Tables 3 and 4**

Tables 3 and 4 in this Schedule 29 comprise 4 columns as follows:

- (a) "Area of Site" specifies the specific parcel of land within the Site;
- (b) "Site Access Date" is the date on which the Principal must give the Contractor access to the land referred to in the corresponding "Area of Site" column, and must be read in conjunction with the corresponding "Site Access Expiry Date" and "Conditions of Access" columns;
- (c) "Site Access Expiry Date" is the date on which the Principal is no longer required to give the Contractor access to the land referred to in the corresponding "Area of Site" column; and
- (d) "Conditions of Access" are the conditions upon which access to each area of the Site specified in the second column of Table 3 and Table 4 in this Schedule 29 is given to the Contractor. The Conditions of Access are set out in the fourth column of Table 3 and Table 4 in this Schedule 29 and clause 2.3(a) of this Schedule 29.

2.3 Conditions of Access

- (a) Without limiting clause 2.2(d) of this Schedule 29 or any other obligation of the Contractor under this Contract, the following conditions of access apply to the Contractor's access to the Site:
 - (i) the Contractor must establish each part of the Site for which it has access to the extent required to undertake the Contractor's Activities;

- (ii) the removal of any trees is subject to the prior written approval of the Principal's Representative;
 - (iii) the Contractor must comply with the conditions of all leases, licences and easements under which the Principal or any relevant Rail Transport Agency is entitled (as against the owner of a part of the Site) to have access to a part of the Site (including any Third Party Agreements);
 - (iv) the Contractor acknowledges that a part of the Site may extend across, over and under railways and the Contractor will not have exclusive use of these railways. The Contractor must coordinate its use of these railways with any relevant Rail Transport Agency and Other Contractors; and
 - (v) when accessing or using any part of the Site controlled by ARTC, the Contractor must comply with the ARTC Access Protocols.
- (b) Nothing in this Schedule 29 limits the Contractor's obligations to comply with this Contract (including the SWTC) or the Contract Management Plans.

2.4 Boundaries

- (a) Subject to sections 2.4(b), 2.4(d), 2.4(e) and 2.4(f) of this Schedule 29, each Area in the Site Drawings contains the land enclosed by the plan area represented for that Area in the Site Drawings.
- (b) Areas in the Site Drawings are unrestricted in height and depth above and below the plan area represented in the Site Drawings, unless a limit is specified in the Site Drawings or this Schedule 29.
- (c) Where boundaries of the Site are identified as curved in the Site Drawings, the boundary is defined by the schedule of curved boundaries included in the Site Drawings.
- (d) The upper boundary of each of Areas B4, B11 and B22 is the top of the bridge superstructure (excluding the asphalt surface).
- (e) Areas AR2, AR3, AR9 and AR10 exclude areas outside of the existing Rail Corridor boundary fence.
- (f) For the avoidance of doubt, the Site (including Area AR9) excludes the existing Dulwich Hill Light Rail station concourse, stairs and lift infrastructure located off Bedford Crescent in Dulwich Hill, the structure for which are depicted within Attachment 2 of this Schedule 29.

3. SITE

Table 3 Site

No	Area of Site	Site Access Date	Site Access Expiry Date	Conditions of Access
1.	ST1-1, ST1-2			1. Access is subject to the requirements of Attachment 1 of this Schedule 29 and clause 3 of Schedule 4B.
2.	ST1-3, ST1-4, ST1-5			1. Access to the Site is subject to the requirement of the relevant Authority.
3.	B4			1. Access is subject to the requirements of Attachment 1 of this Schedule 29 and clause 3 of Schedule 4B.
4.	ST5-1, ST5-2			1. Access is subject to the requirements of Attachment 1 of this Schedule 29 and clauses 3 and 4 of Schedule 4B.
5.	ST5-3			1. Access to the Site is subject to the requirements of the relevant Authority.

No	Area of Site	Site Access Date	Site Access Expiry Date	Conditions of Access
6.	B11			1. Access to the Site is subject to the requirements of Attachment 1 of this Schedule 29 and clauses 3 and 4 of Schedule 4B.
7.	AR2, AR3			1. Access is subject to the requirements of Attachment 1 of this Schedule 29 and clauses 3 and 4 of Schedule 4B.
8.	ST8-1, ST8-2			1. Access is subject to the requirements of Attachment 1 of this Schedule 29 and clauses 3 and 4 of Schedule 4B.
9.	ST8-3, ST8-4			1. Access to the Site is subject to the requirements of the relevant Authority.
10.	B22			1. Access to the Site is subject to the requirements of Attachment 1 of this Schedule 29 and clauses 3 and 4 of Schedule 4B.
11.	AR9, AR10			1. Access is subject to the requirements of Attachment 1 of this Schedule 29 and clauses 3 and 4 of Schedule 4B.

4. TEMPORARY AREAS FORMING PART OF THE SITE

Table 4 Temporary Areas

No	Area of Site	Site Access Date	Site Access Expiry Date	Conditions of Access
1.	TW3-2			1. Access is subject to the requirements of clauses 3 and 7 of Schedule 4B.

Attachment 1

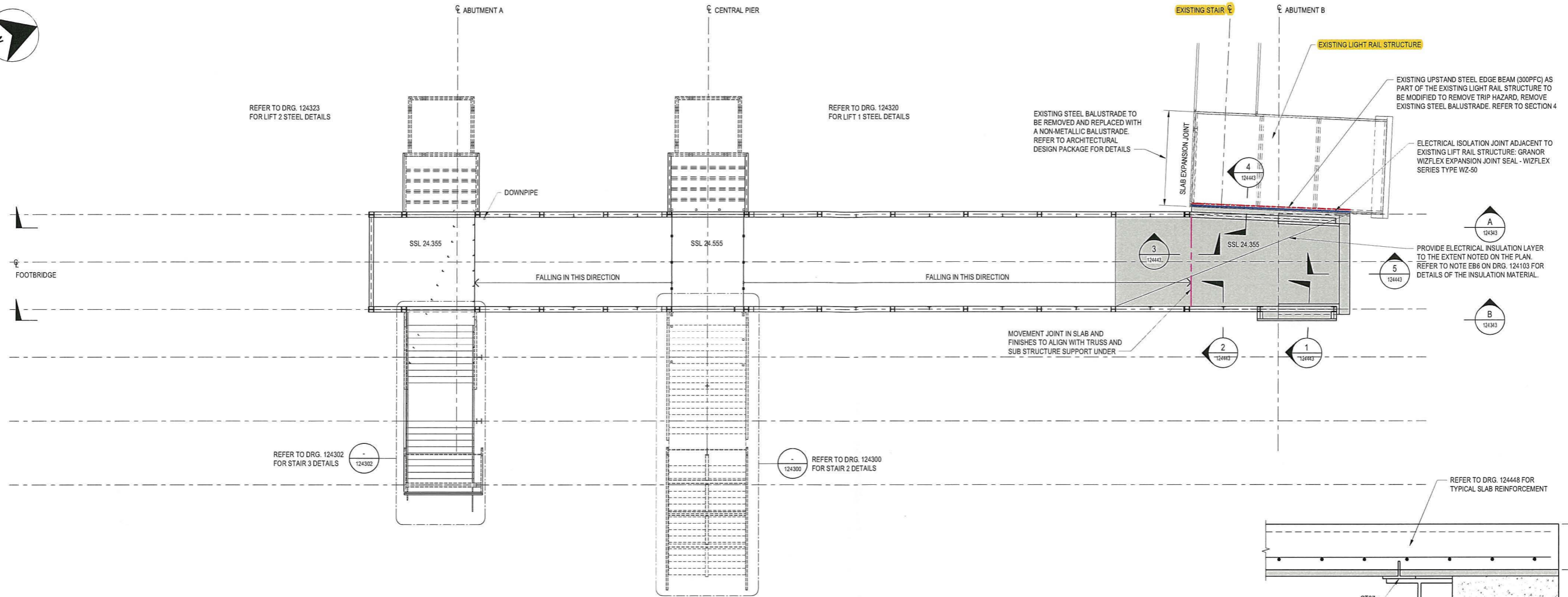
Access to Rail Corridor

1. Access which does not require a Track Possession or Temporary Shutdown is subject to the requirements of clause 8.3 of the Sydney Trains Transition Agreement and Annexure C to the Scope of Works and Access Schedule in accordance with Schedule 4B.
2. Track Possession and Temporary Shutdown access must be in accordance with:
 - (a) the configuration of the Track Possessions and Temporary Shutdowns as detailed in Schedule 30; and
 - (b) the requirements of clause 7 of the Sydney Trains Transition Agreement and Annexure A to the Scope of Works and Access Schedule in accordance with Schedule 4B.
3. The Contractor must comply with Clause 11 "Working In and Adjacent to the Rail Corridor and Rail Environment" of the MR-PA and the Rail Transport Agency "Network Access Manual".
4. The Contractor must provide and maintain a minimum clear width access of 4 metres wide for all relevant Authorities including the Rail Transport Agency to the Rail Corridor which must be kept clear at all times.
5. Access to any Area forming part of the Shared Corridor (as that term is defined in clause 2.5(a) of the Sydney Trains Transition Agreement) is subject to the requirements of clause 2.7 of the Sydney Trains Transition Agreement and the Licence for Permitted Use of the Shared Corridor applicable to that Area in accordance with Schedule 4B.

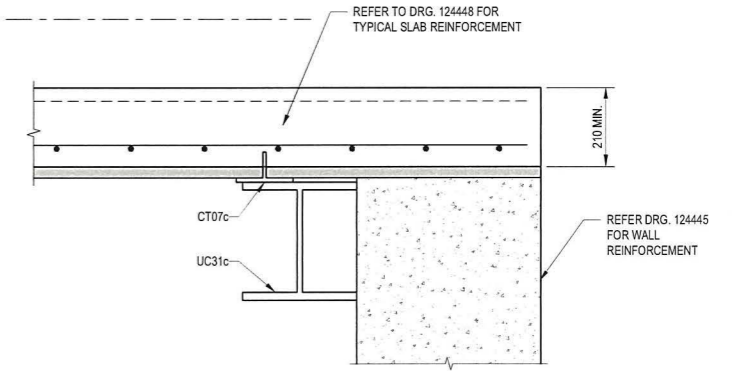


Attachment 2

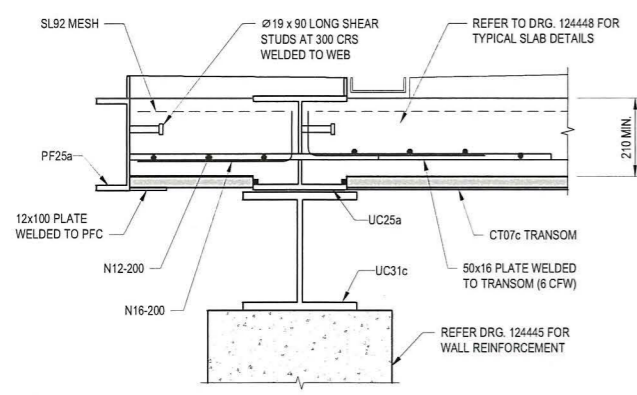
Existing Dulwich Hill Light Rail station concourse, stairs and lift infrastructure



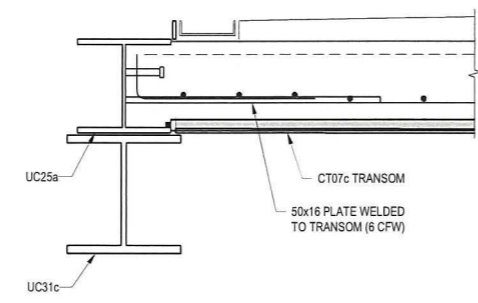
FOOTBRIDGE CONCOURSE SLAB PLAN
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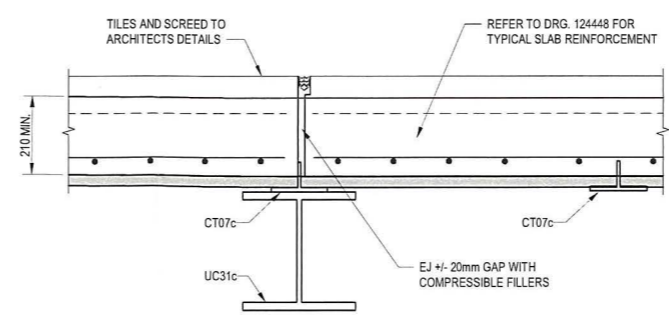
SECTION 5
1:10



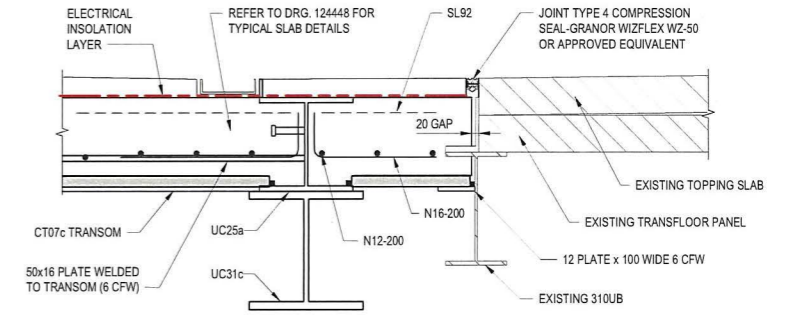
SECTION 1
1:10



SECTION 2
1:10



DETAIL 3
1:10



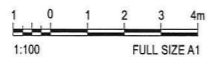
DETAIL 4
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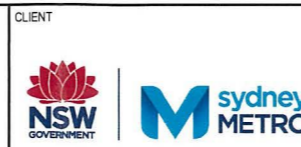
DRAWING COLOUR CODED - PRINT ALL COPIES IN COLOUR

NOT FOR CONSTRUCTION

REV.	BY	DATE	DESCRIPTION	APPD.
B	DL	29.05.2020	ISSUED FOR STAGE 3	LP
A	DL	11.10.2019	ISSUED FOR STAGE 2	LP



NOTE: Do not scale from this drawing. ALT. DRG No.



CLIENT
The information shown on this drawing is for the purposes of the Sydney Metro Project only. No warranty is given or implied as to its suitability for any other purpose. The Service Providers accept no liability arising from the use of this drawing and the information shown thereon for any purpose other than the Sydney Metro Project.

SERVICE PROVIDERS
METRON T2M

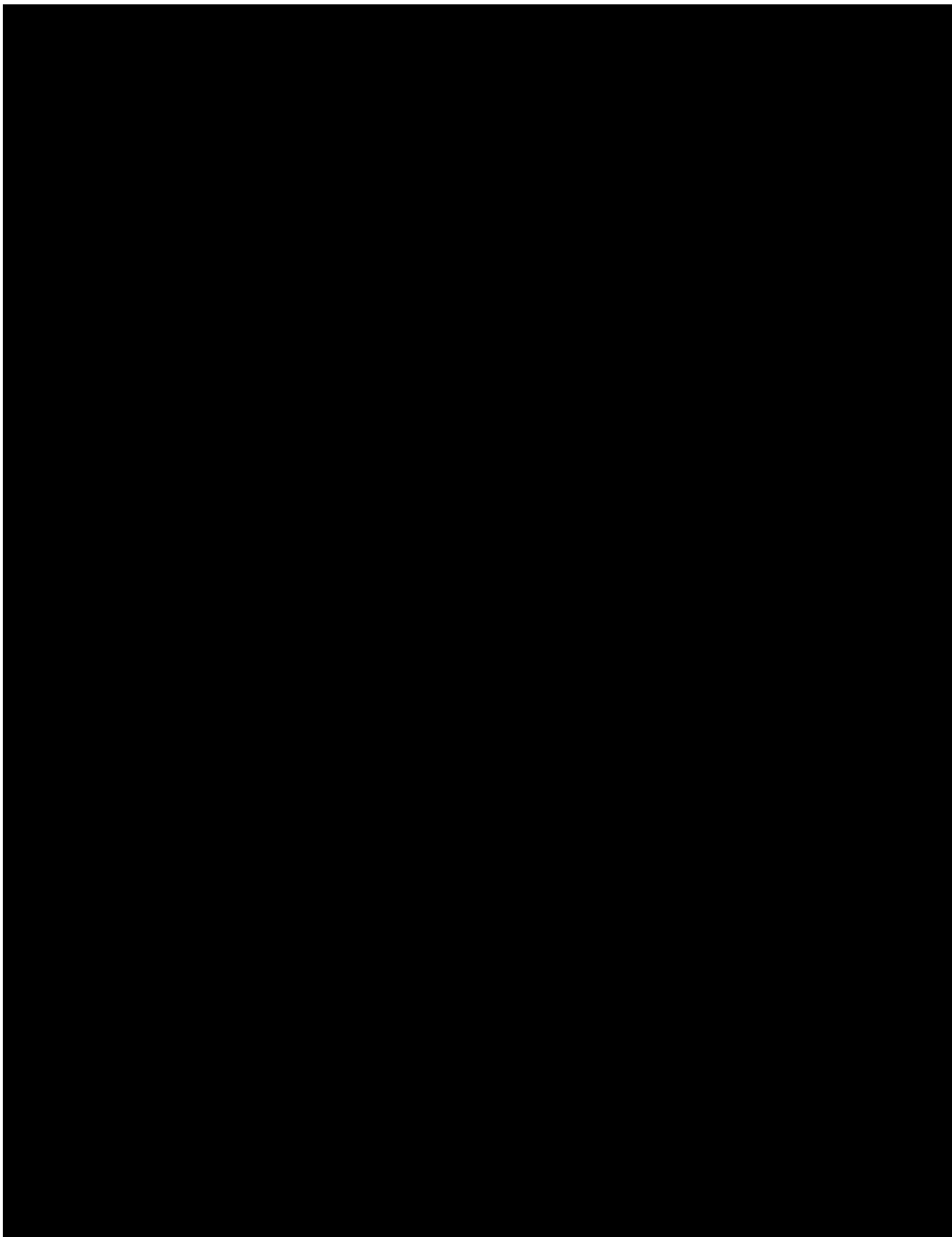
DRAWN: D.LYWOOD
DESIGNED: I.LEI
DRG CHECK: N.SAWANT
DESIGN CHECK: V.MCLAUGHLIN
APPROVED: B.BUUC

SYDNEY METRO
DULWICH HILL STATION (8.374km to 8.718km)
STRUCTURAL
CONCRETE DETAILS
FOOTBRIDGE - SHEET 4

STATUS: STAGE 3
SHEET 4 OF 8
DRG No. SMCSWSWM-MTM-WDH-ST-DWG-124443
REV. B

Schedule 30. Track Possessions and Temporary Shutdowns

(Clauses 1.1 and 7.12)



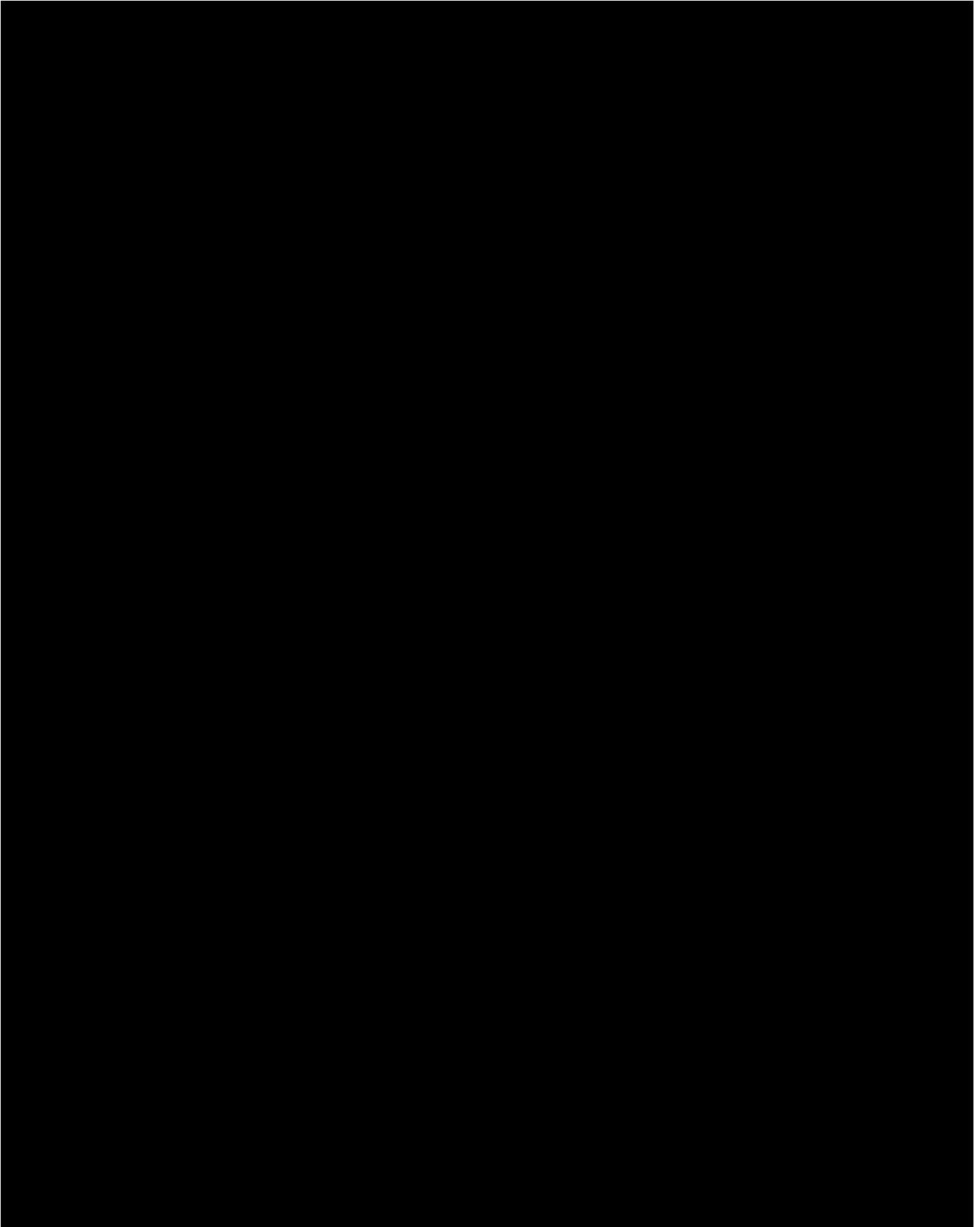
Schedule 31. Nominated Subcontracts

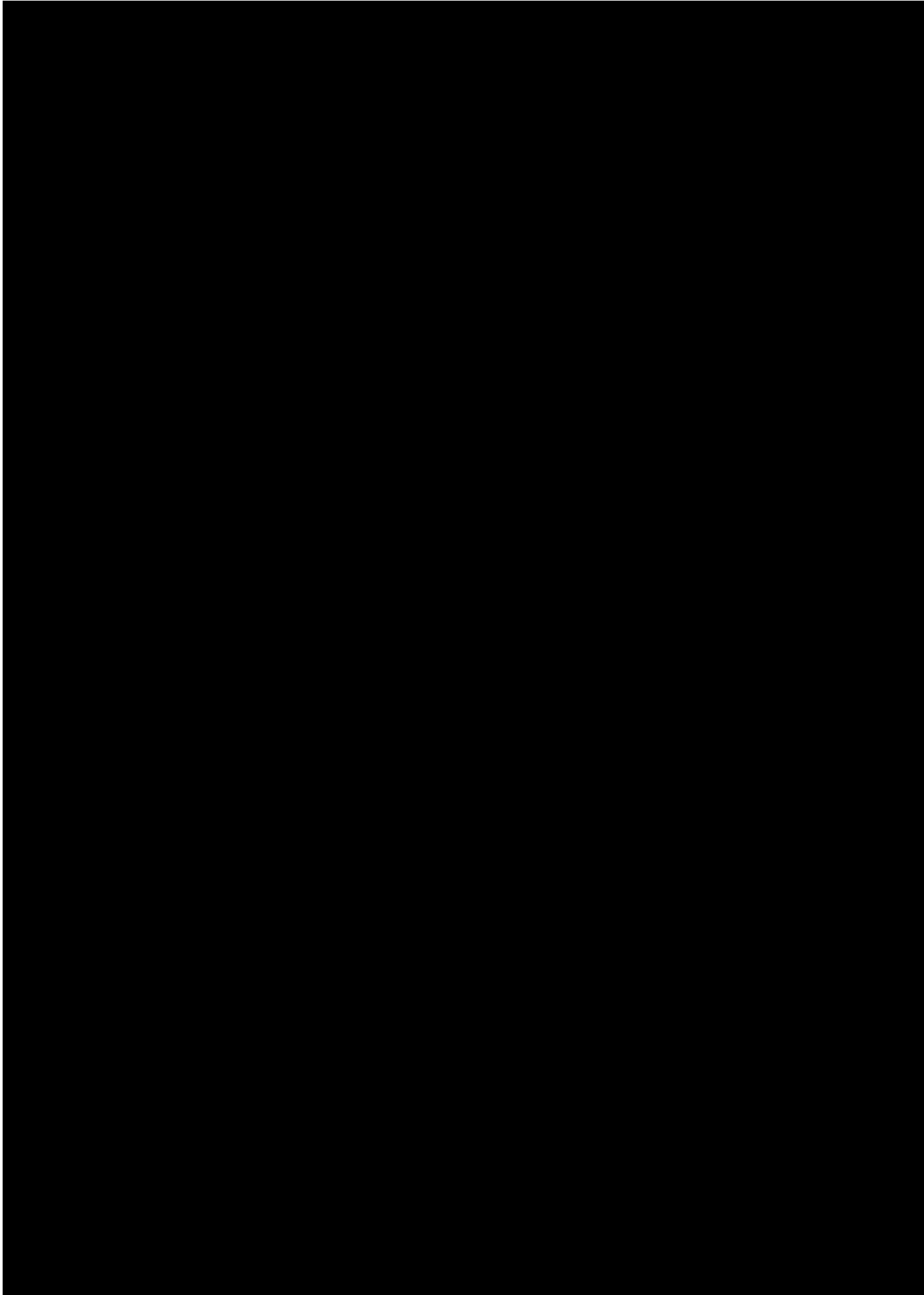
(Clause 2.2)

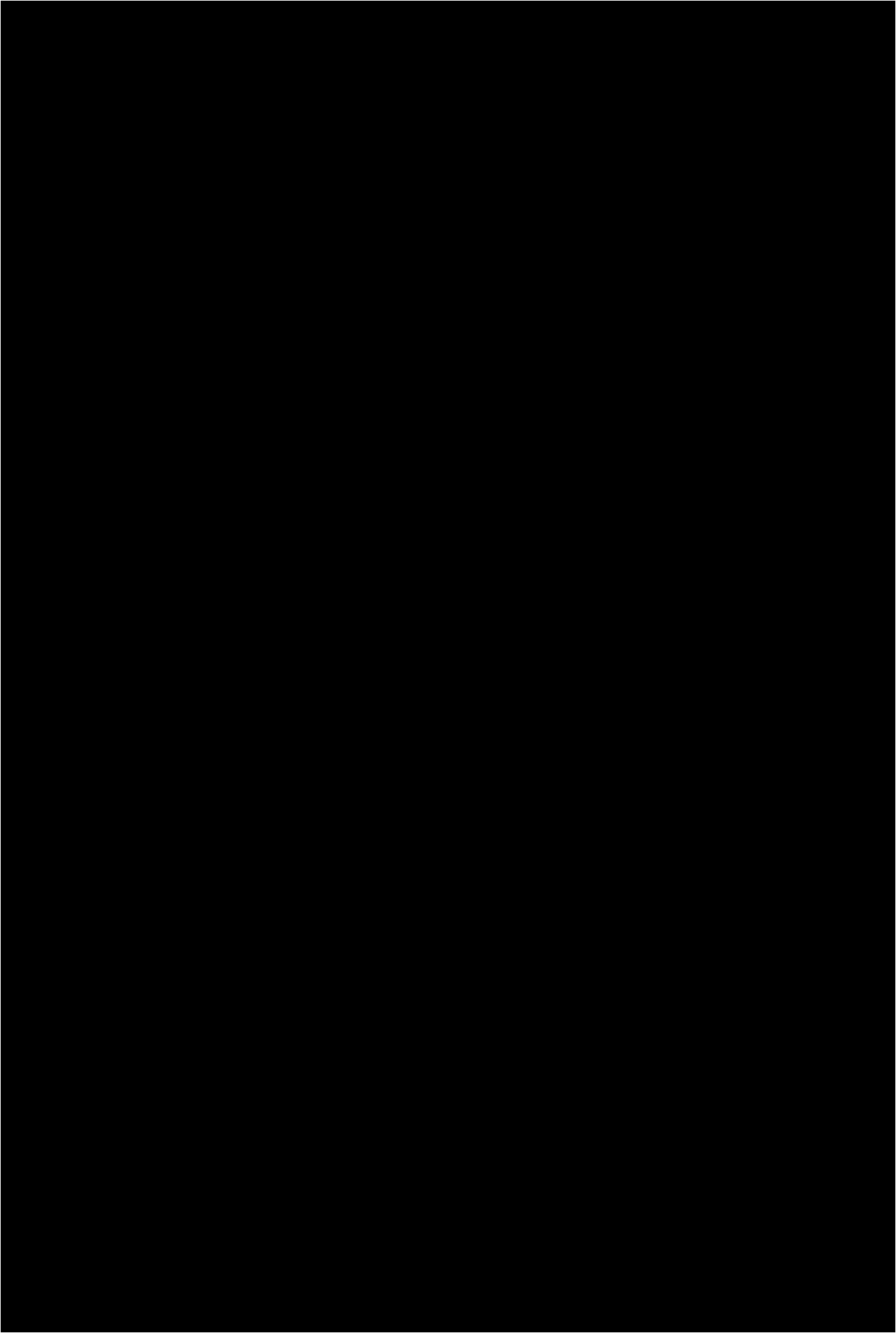
Nominated Subcontract Work	Nominated Subcontractor	Form of Nominated Subcontract
Lifts and Escalators Work		The template form of L&E Supply and Installation Contract included in Schedule 40, to be entered into by the Contractor in accordance with clause 2.2A.
BMCS Work		The template form of BMCS Supply and Installation Contract included in Schedule 40, to be entered into by the Contractor in accordance with clause 2.2B.

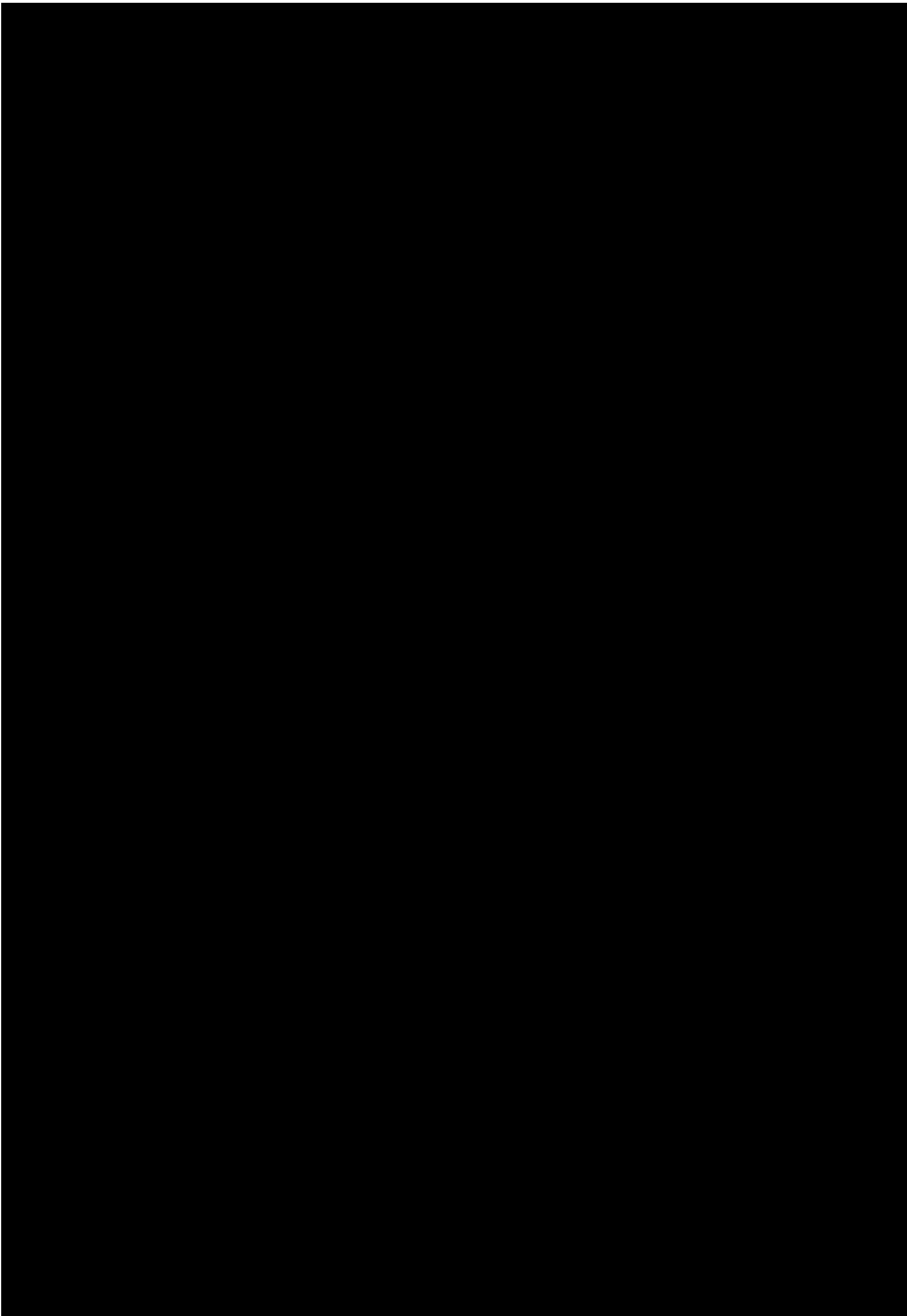
Schedule 32. Form of Collateral Warranty Deed Poll

(Clause 2.9C)









Schedule 34. Initial Contractor's Program

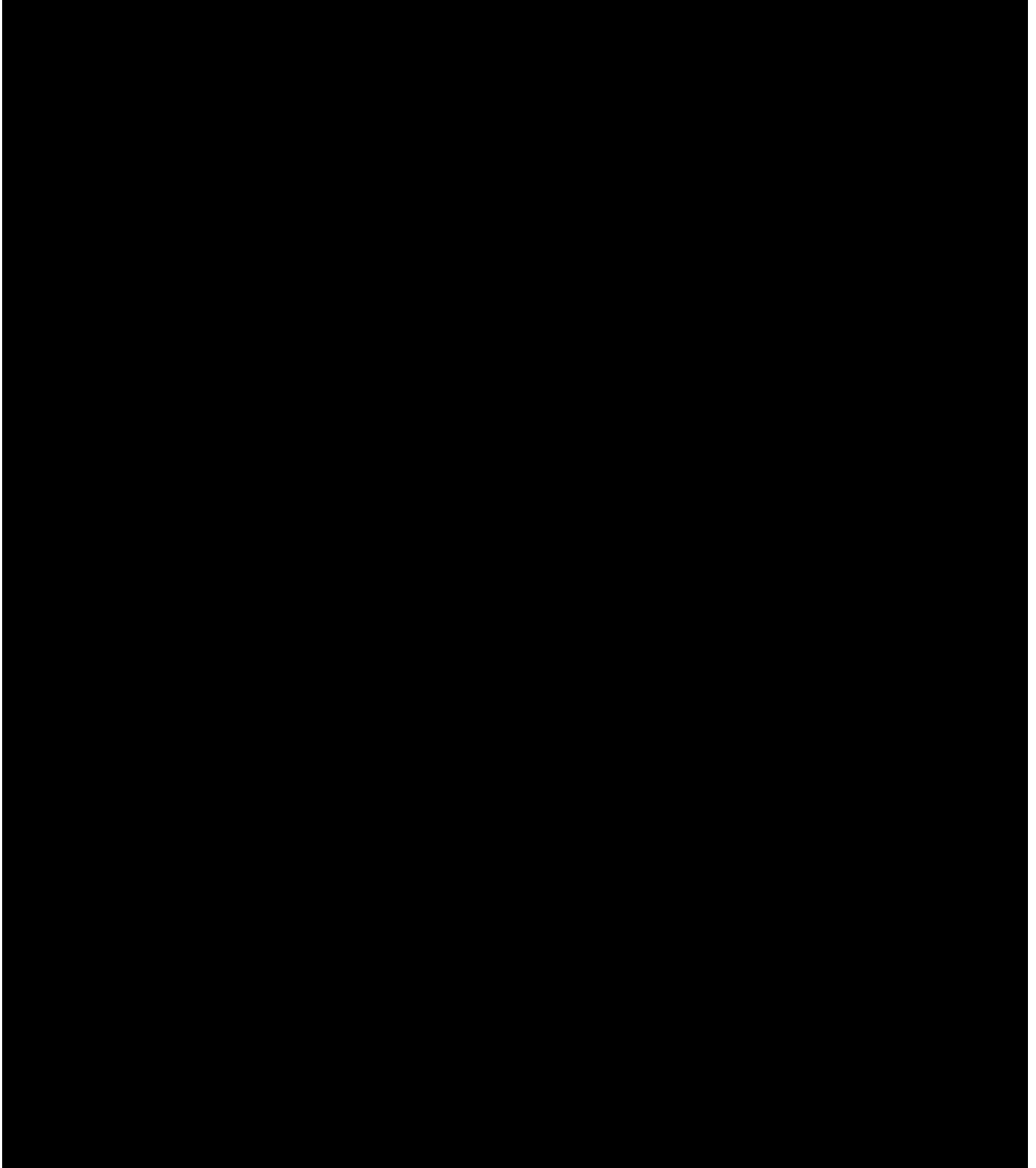
(Clauses 1.1 and 10.2(a))

This Schedule 34 contains the Initial Contractor's Program which is also included in Schedule 40 as an electronic file.

Schedule 35. Interface Contractor Cooperation and Integration Deed

(Clauses 1.1 and 2.9A)

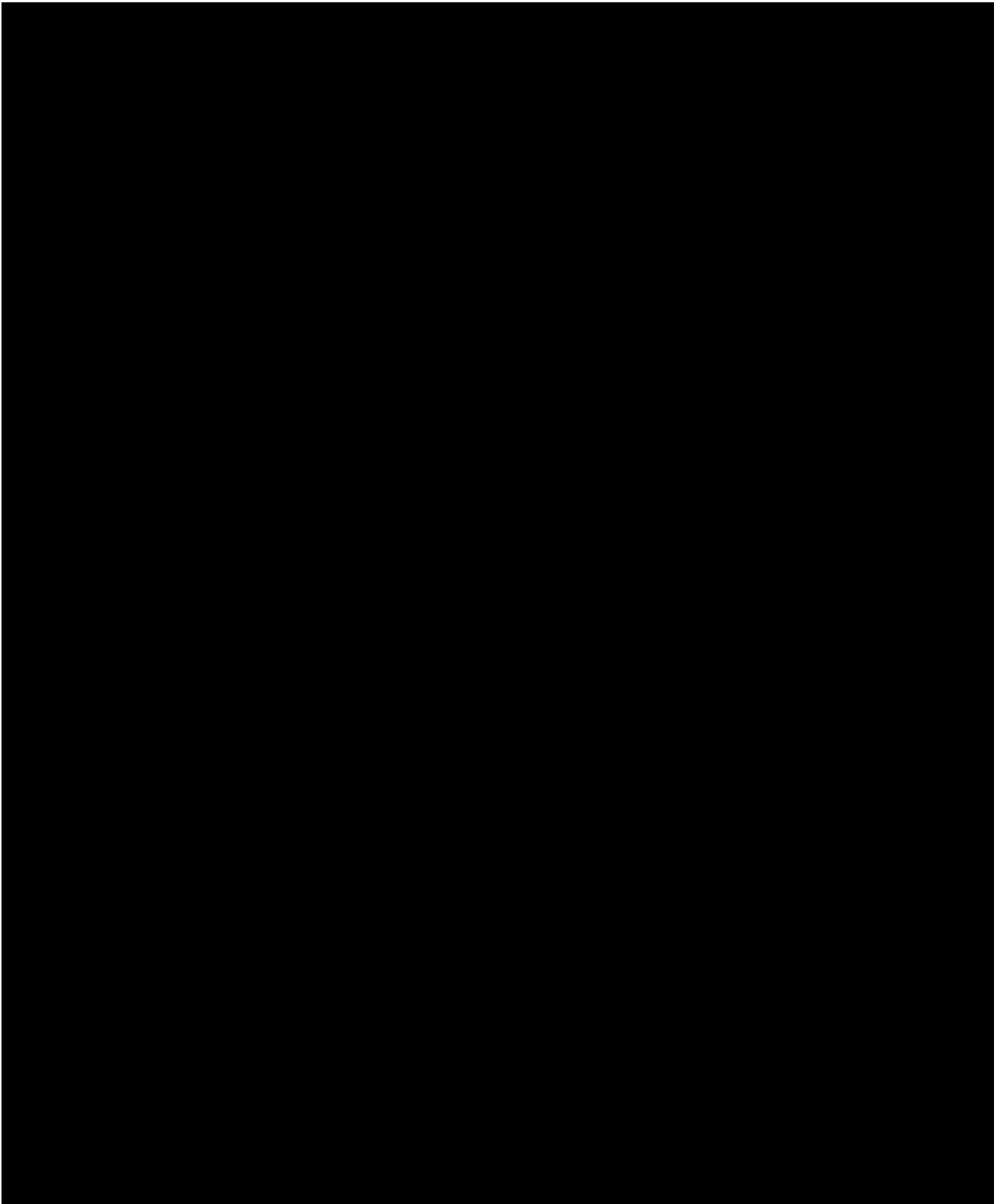
Part A: LW Contractor Cooperation and Integration Deed



Schedule 35. Interface Contractor Cooperation and Integration Deed

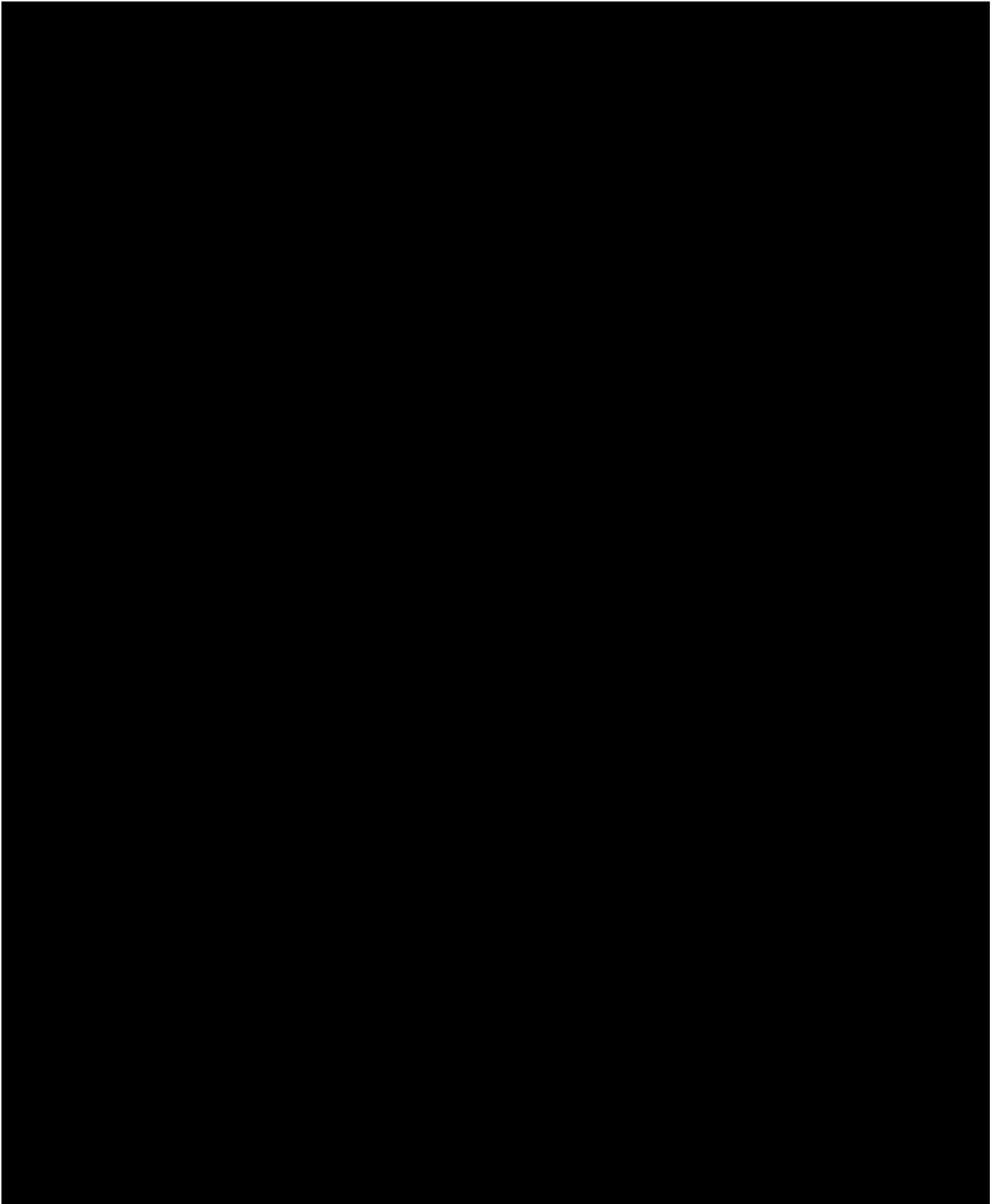
(Clauses 1.1 and 2.9A)

Part B: SSJ Contractor Cooperation and Integration Deed



Schedule 36. Operator Cooperation and Integration Deed

(Clause 1.1 and 2.9A)



Schedule 37. Master Interface Protocols Deed Poll
(Clause 2.9B)



Schedule 38. IC Letter of Intent

(Clause 9.5A)





To: AECOM Australia Pty Ltd (**Independent Certifier**)
Level 21, 420 George Street, Sydney NSW 2000

Email: [REDACTED]

Attention: [REDACTED], the Independent Certifier's Representative

AND

To: Downer EDI Works Pty Ltd (**Contractor**)
Trinita Business Campus, T3, 39 Delhi Road, North Ryde NSW 2113

Email: [REDACTED]

Attention: [REDACTED], the Contractor's Representative

Date: 2021

Dear [REDACTED] and [REDACTED]

Letter of Intent to execute the Sydney Metro City & Southwest Independent Certification of the Southwest Metro Station Upgrade Works Package 5 Independent Certifier Deed (Letter of Intent)

1. This Letter of Intent is a deed between Sydney Metro (**Principal**), the Contractor and the Independent Certifier (**Parties**).
2. We refer to the draft version of the contract titled "Sydney Metro City & Southwest Independent Certification of the Southwest Metro Station Upgrade Works Package 5 Independent Certifier Deed" intended to be entered into by the Principal, the Contractor, the Independent Certifier and NRT CSW Pty Ltd (**Operator**), set out in Attachment 1 to this Letter of Intent (the **Southwest Metro Package 5 CODD Independent Certifier Deed**).
3. Capitalised terms used but not otherwise defined in this Letter of Intent have the meaning given to them in the Southwest Metro Package 5 CODD Independent Certifier Deed.
4. The Parties acknowledge and agree that:
 - (a) the Parties have reviewed the Southwest Metro Package 5 CODD Independent Certifier Deed and agree to comply with and be bound by its terms on and from the Effective Date (as defined in clause 12); and
 - (b) in order to provide greater certainty that the time objectives of the Services set out in the Construct Only Delivery Deed will be met, the Independent Certifier will perform the Services on the basis set out in this Letter of Intent on and from the Effective Date.

5. Notwithstanding that the Southwest Metro Package 5 CODD Independent Certifier Deed has not been executed, the Parties acknowledge and agree that, subject to clause 6, on and from the Effective Date:
 - (a) the Independent Certifier is required to carry out the Services in accordance with the terms of the Southwest Metro Package 5 CODD Independent Certifier Deed; and
 - (b) the Parties will comply with, and be bound by, the terms of the Southwest Metro Package 5 CODD Independent Certifier Deed as if it was duly executed by all parties and in full force and effect.
6. Notwithstanding anything to the contrary in this Letter of Intent, it is understood that the Operator's rights, obligations and liabilities under the Southwest Metro Package 5 CODD Independent Certifier Deed will only become effective upon the execution of the Executed Independent Certifier Deed in accordance with clause 8.
7. The Parties acknowledge and agree that the Principal has entered into negotiations with the Operator in order to finalise the execution of the Southwest Metro Package 5 CODD Independent Certifier but there is the possibility that the Operator will provide additional comments on the Southwest Metro Package 5 CODD Independent Certifier Deed. The Parties must act in good faith in dealing with any additional comments of the Operator promptly and with a view to agreeing the final version of the Southwest Metro Package 5 CODD Independent Certifier Deed as soon as possible.
8. Once a final version of the Southwest Metro Package 5 CODD Independent Certifier Deed is agreed in writing between the Parties and the Operator, the Principal will provide the final version of the Southwest Metro Package 5 CODD Independent Certifier Deed to the Independent Certifier and to the Contractor, who agree to execute the final version of the Southwest Metro Package 5 CODD Independent Certifier Deed within 10 Business Days.
9. Once the final version of the Southwest Metro Package 5 CODD Independent Certifier Deed has been executed by the Parties and the Operator (the **Executed Independent Certifier Deed**), on and from the date of execution:
 - (a) the Services performed pursuant to this Letter of Intent will form part of the Services provided under the Executed Independent Certifier Deed and be deemed to have been performed by the Independent Certifier under the Executed Independent Certifier Deed, notwithstanding that such Services may have been performed prior to the date of execution;
 - (b) all amounts paid in accordance with this Letter of Intent will be allocated to and form part of the Fee under the Executed Independent Certifier Deed; and
 - (c) this Letter of Intent will cease to be of any further force and effect.
10. At any time prior to the execution of the Executed Independent Certifier Deed the Principal may terminate the appointment of the Independent Certifier under the terms of this Letter of Intent, in which case:

- (a) clause 10 of the Southwest Metro Package 5 CODD Independent Certifier Deed will apply to such termination; and
- (b) subject to clauses 10(a) and 13 of this Letter of Intent and clauses 5.2, 10.7 and 12.17 of the Southwest Metro Package 5 CODD Independent Certifier Deed, which will apply mutatis mutandis and survive the termination of this Letter of Intent, this Letter of Intent will be of no further force and effect on and from the date the appointment of the Independent Certifier is terminated in accordance with clause 10.2 of the Southwest Metro Package 5 CODD Independent Certifier Deed.

- 11. By countersigning this Letter of Intent in the space provided below, each of the Principal, the Independent Certifier and the Contractor confirms the appointment of the Independent Certifier in accordance with, and otherwise agrees to the terms of, this Letter of Intent.
- 12. This Letter of Intent is effective on and from the date of this Letter of Intent, being the date of the last countersignature by the Principal, the Contractor and the Independent Certifier (the **Effective Date**).
- 13. This Letter of Intent is governed by the laws of New South Wales and may be executed in counterparts.

Kind regards,

██████████

Principal's Representative

Executed as a deed on

2021

Executed by Sydney Metro (**ABN 12 354 063 515**) by its authorised delegate, in the presence of:

Signature of witness

Signature of authorised delegate

Name of witness in full

Name of authorised delegate

Executed as a deed on

2021

EXECUTED by **DOWNER EDI WORKS PTY LTD (ABN 66 008 709 608)** by its duly authorised attorney who hereby states that at the time of executing this instrument they have no notice of the revocation of the Power of Attorney dated

.....:

Signature of witness

Signature of Attorney

Name of witness

Name of Attorney

Executed as a deed on

2021

Signed, sealed and delivered for and on behalf of **AECOM Australia Pty Ltd (ABN 20 093 846 925)** under power of attorney dated

.....
(and the Attorney declares that he has not received any notice of revocation of such power of attorney) in the presence of:

Signature of witness

Signature of attorney

Full name of witness

Full name of attorney

Address of witness

ATTACHMENT 1

(Clause 2)

Form of the document titled "Sydney Metro City & Southwest Independent Certification of the Southwest Metro Station Upgrade Works Package 5 Independent Certifier Deed Package".

See attached.



Draft

Sydney Metro City & Southwest Independent
Certification of the
Southwest Metro Station Upgrade Works
Package 5
Independent Certifier Deed

Contract No: [insert]

Downer EDI Works Pty Ltd

ABN 66 008 709 608

Contractor

Sydney Metro

ABN 12 354 063 515

Principal

AECOM Australia Pty Ltd

ABN 20 093 846 925

Independent Certifier

and

NRT CSW Pty Ltd

ACN 635 509 036

Operator

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BETWEEN:

- (1) **Downer EDI Works Pty Ltd** ABN 66 008 709 608 of Triniti Business Campus, Level 2, 39 Delhi Road North Ryde NSW 2113 (**Contractor**);
- (2) **Sydney Metro** ABN 12 354 063 515 a New South Wales Government agency constituted by section 38 of the *Transport Administration Act 1988* (NSW) and located at Level 43, 680 George Street, Sydney NSW 2000 (**Principal**);
- (3) **AECOM Australia Pty Ltd** ABN 20 093 846 925 of Level 8, 540 Wickham Street, Fortitude Valley QLD 4006 (**Independent Certifier**); and
- (4) **NRT CSW Pty Ltd** ACN 635 509 036 of 'Rialto South Tower' Level 43, 525 Collins Street, Melbourne VIC 3000, in its personal capacity and in its capacity as trustee of the NRT CSW Unit Trust (the **Operator**).

RECITALS:

- (A) The Contractor has entered into the Construct Only Delivery Deed with the Principal for the delivery of the Works.
- (B) The Independent Certifier represents that it is experienced generally in construction and, in particular, in the construction of works similar to the Works and offers its expertise in those fields.
- (C) The Project Agreements contemplate that the Independent Certifier will discharge those functions set out in Schedule 1.
- (D) The Independent Certifier will perform its obligations on the terms of this deed.
- (E) In accordance with the Construct Only Delivery Deed, the Contractor will progressively hand control of the Works to the Principal, so that the Principal may hand control of the Works to the Operator in order to allow it to undertake the OTS2 Project Works and to commence operation of Sydney Metro City & Southwest.
- (F) The Independent Certifier will issue a Notice of Construction Completion and a Notice of Completion in respect of each Portion of the Works and the Operator will be bound by the Independent Certifier's certification as set out in each Notice of Construction Completion and Notice of Completion.

THE PARTIES AGREE AS FOLLOWS:

1. INTERPRETATION

1.1 Definitions

In this deed:

Additional Services means any additional services requested by the Principal from the Independent Certifier from time to time by the issue of an Additional Services Order, as those services are described in each Additional Services Order.

Additional Services Fee means the fee specified in any Additional Services Order for the Additional Services set out in that Additional Services Order, calculated in accordance with clause 7.1(a)(ii).

Additional Services Order means a written request from the Principal to the Independent Certifier to carry out Additional Services issued under clause 7.1(a).

Certification Methodology means the certification methodology set out in Schedule 8.

Certification Plan means the plan that the Independent Certifier is required to prepare in accordance with clause 4.8, and in respect of which the Principal has not issued a notice under clause 4.8(c), as that plan is updated from time to time in accordance with clause 4.9 of this deed.

Completion Phase Services means all Core Services related to:

- (a) the construction of the Works;
- (b) Construction Completion and Completion of each Portion; and
- (c) the performance by the Contractor of its obligations in respect of Construction Completion and Completion of each Portion.

Consequential Loss means any:

- (a) loss of income, loss of revenue, loss of profit, loss of financial opportunity, loss of business or loss of business opportunity, loss of contract, loss of goodwill, loss of use or loss of production (whether the loss is direct or indirect); or
- (b) direct or indirect financing costs,

whether present or future, fixed or unascertained, actual or contingent.

Construct Only Delivery Deed means the deed titled "Sydney Metro City & Southwest – Southwest Metro Station Upgrade Works Package 5 – Construct Only Delivery Deed" between the Principal and the Contractor dated on or about the date of this deed.

Core Services means the services set out in Schedule 1 to this deed, and includes the Completion Phase Services.

Core Services Fee means the amount payable to the Independent Certifier for the performance of the Core Services, as calculated in accordance with paragraph 1(b) of the Payment Schedule.

Criminal Conduct means where an employee or officer of the Independent Certifier, or any person for whom the Independent Certifier is vicariously liable, has been convicted of a crime.

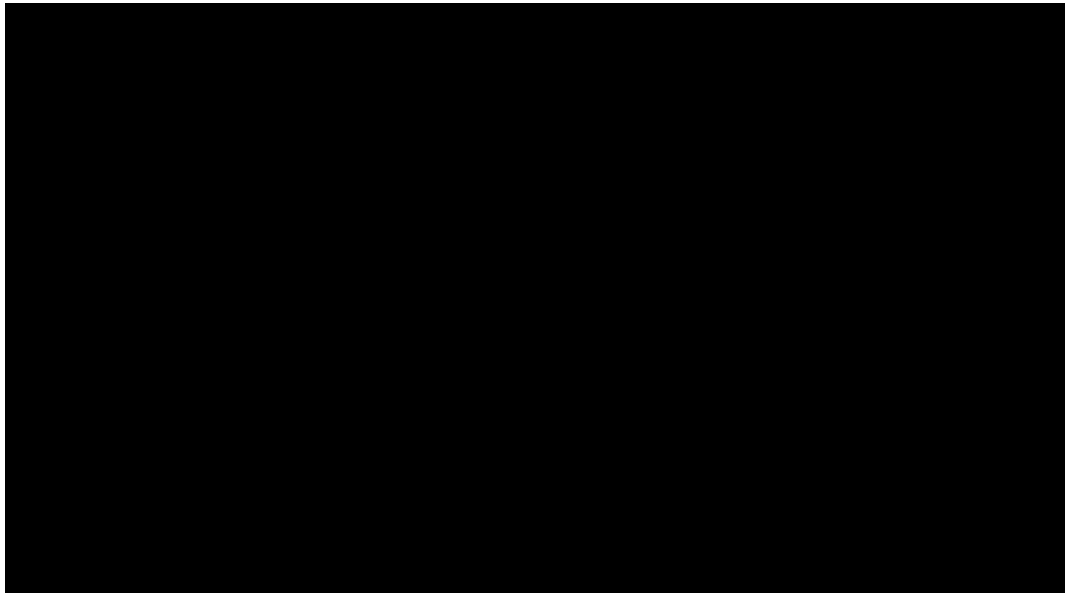
Dispute Representatives has the meaning given to that term in clause 9.2.

Fee means the amount payable to the Independent Certifier for the performance of the Services in accordance with the Payment Schedule.

Fraud means an intentional deceptive and dishonest act (but not omission) by an employee or officer of the Independent Certifier, or any person for whom the Independent Certifier is vicariously liable, committed with the intention of deceptively and dishonestly obtaining financial gain.

Gross Negligence means a gross, high and reprehensible failure to take reasonable care in circumstances whereby the Independent Certifier knew that it was failing to take reasonable care and that such failure to take reasonable care had an obvious high risk of causing the Loss claimed, and nevertheless proceeded with conscious and intentional indifference and disregard thereto but does not include errors of judgement, mistakes, errors or acts or omissions made in good faith.

GST, GST law and other terms used in clause 11 have the meanings used in the *A New Tax System (Goods and Services Tax) Act 1999* (Cth) (as amended from time to time) or any replacement or other relevant legislation and regulations, except that **GST law** also includes any applicable rulings. Any reference to GST payable by the Supplier (as defined in clause 11) includes any GST payable by the representative member of any GST group of which the Supplier is a member.



Independent Certifier's Project Director means the relevant person referred to in Schedule 3 or any other person holding that position in accordance with clause 4.4(b)(ii).

Independent Certifier's Representative means the relevant person referred to in Schedule 3 or any other person holding that position in accordance with clause 4.4(b)(ii).

Liquidated Damages Loss means any liability for liquidated damages under the Construct Only Delivery Deed caused by any conduct, act or omission of the Independent Certifier (other than any conduct or act performed in accordance with

this deed) causing delay to the Contractor achieving Construction Completion of each Portion by the required Dates for Construction Completion.

Loss means any cost, expense, loss, damage, liability or other amount whether present, future, fixed, unascertained, actual or contingent.

NSW Trains means the body corporate constituted by section 37(1) of the *Transport Administration Act 1988* (NSW).

Other Parties means the Principal, the Contractor and the Operator.

OTS2 Project Works means all things, works and materials (including all systems and software incorporated in, or necessary to enable their operation) that the Operator must, in accordance with the OTS2 Project Deed, design, construct, manufacture, install, test and commission for the purposes of completing the Sydney Metro City & Southwest, including equipment, systems (including all information systems, central control systems and communications systems), hardware and software, rolling stock, trackwork and support structures, platform screen doors and control centre.

OTS2 Project Deed means a deed between the Principal and the Operator for the provision of the OTS2 Project Works and the performance of various services, including in particular the operation and maintenance of Sydney Metro City & Southwest and Sydney Metro Northwest.

Payment Schedule means Schedule 2 to this deed.

PDCS means the Principal's web based TeamBinder project data and collaboration system, or such other electronic project data and collaboration system notified by the Principal's Representative under clause 12.1.

Project Agreements means:

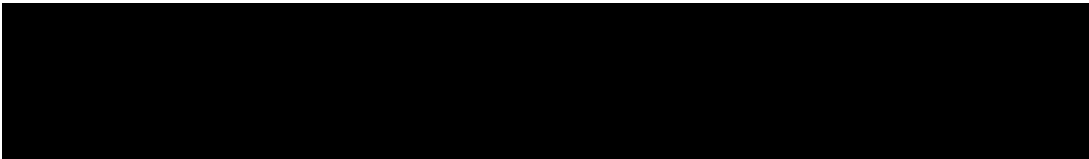
- (a) the Construct Only Delivery Deed; and
- (b) the Project Cooperation and Integration Deed.

Public Transport Agency means the Principal, TfNSW (and each of its divisions), TAHE, Sydney Trains and NSW Trains.

Services means:

- (a) the Core Services; and
- (b) any Additional Services,

and includes all things necessary for, or incidental to, the proper and professional performance of those services.



SMCSW Independent Certifier Deeds means:

- (a) this deed;
- (b) the Independent Certifier Deed to be entered into by the Principal, the Independent Certifier, the Operator and the designer for the performance of independent certifier services in respect of the Southwest Metro Design Services Professional Services Contract dated 1 April 2019; and
- (c) any other Independent Certifier Deeds to be entered into by the Principal, the Independent Certifier, the Operator and the relevant contractor for the performance of independent certifier services under the construct only delivery deeds to be entered into for the delivery of station and other works at, or in the vicinity of, the following stations:
 - (i) Marrickville Station;
 - (ii) Canterbury Station;
 - (iii) Lakemba Station;
 - (iv) Hurlstone Park Station;
 - (v) Belmore Station; and
 - (vi) Wiley Park Station.

Substitute Certifier has the same meaning as in clause 7.4(a).

Sydney Trains means Sydney Trains, the body corporate constituted by section 36(1) of the *Transport Administration Act 1988* (NSW).

TAHE means Transport Asset Holding Entity of New South Wales, a corporation constituted by section 4(1) of the *Transport Administration Act 1988* (NSW).

Term means the term of this deed as set out in clause 3.2.

TfNSW means Transport for NSW, a NSW government agency constituted by section 3C of the *Transport Administration Act 1988* (NSW).

Upper Limiting Fee means each upper limiting fee specified in paragraph 1(b) of the Payment Schedule, as adjusted in accordance with this deed.

Works means the Works (as defined in the Construct Only Delivery Deed) and the Temporary Works.

Wilful Misconduct means any malicious conduct or any breach of this deed which results from a conscious and intentional indifference and disregard to the relevant provisions of this deed and the risk of causing the Loss claimed by the relevant Other Party in respect of the breach but does not include errors of judgement, mistakes, errors or acts or omissions made in good faith.

1.2 Definitions in Construct Only Delivery Deed

Except as otherwise defined in clause 1.1, capitalised terms used in this deed that are defined in the Construct Only Delivery Deed will have the same meaning in this deed as in the Construct Only Delivery Deed.

1.3 Interpretation

In this deed:

- (a) headings are for convenience only and do not affect interpretation,
and the following rules apply in interpreting this deed unless the context makes clear that a rule is not intended to apply:
- (b) an obligation or a liability assumed by, or a right conferred on, 2 or more persons binds or benefits them jointly and severally;
- (c) **person** includes an individual, the estate of an individual, a body politic, a corporation, a statutory or other authority, an association or a joint venture (whether incorporated or unincorporated), a partnership and a trust;
- (d) a reference to a party includes that party's executors, administrators, successors and permitted substitutes and assigns, including persons taking by way of novation and, in the case of a trustee, includes a substituted or an additional trustee;
- (e) a reference to a document (including this deed and any other deed, agreement, instrument, guideline or code of practice) is to that document as amended, varied, novated, ratified, supplemented or replaced from time to time;
- (f) a reference to a statute includes its delegated legislation and a reference to a statute or delegated legislation or any section or provision of either of these includes:
 - (i) all ordinances, by-laws, regulations of and other statutory instruments (however described) issued under the statute or delegated legislation; and
 - (ii) any consolidations, amendments, re-enactments and replacements;
- (g) a word importing the singular includes the plural (and vice versa), and a word indicating a gender includes every other gender;
- (h) a reference to a part, clause, schedule, exhibit, attachment or annexure is a reference to a part, clause, schedule, exhibit, attachment or annexure to or of this deed and a reference to this deed includes all schedules, exhibits, attachments and annexures to it;
- (i) if a word or phrase is given a defined meaning, any other part of speech or other grammatical form of that word or phrase has a corresponding meaning;
- (j) **includes** in any form is not a word of limitation;

- (k) a reference to **\$** or **dollar** is to Australian currency;
- (l) where under this deed:
 - (i) a notice, certificate or direction is required to be given; or
 - (ii) a default must be remedied,

within a stated number of days, only Business Days will be counted in computing the number of days;
- (m) for all purposes other than as set out in clause 1.3(l), day means calendar day;
- (n) a reference to a **month** is a reference to a calendar month;
- (o) a reference to a court or tribunal is to an Australian court or tribunal;
- (p) a reference to a group of persons is a reference to all of them collectively, to any two or more of them collectively and to each of them individually; and
- (q) any reference to **information** will be read as including information, representations, statements, data, samples, calculations, assumptions, deductions, determinations, drawings, design, specifications, models, plans and other documents in all forms including the electronic form in which it was generated.

1.4 **Business Day**

If the day on or by which anything is to be done under this deed is not a Business Day, that thing must be done no later than the next Business Day.

1.5 **Ambiguous terms**

- (a) If the Principal considers, or if any of the Independent Certifier, Contractor or the Operator notifies the Principal's Representative in writing that it considers, that there is an ambiguity, discrepancy, or inconsistency in, or between, the documents comprising this deed (including in any schedules), the Principal's Representative must direct the interpretation of this deed which the parties must follow.
- (b) The Principal's Representative, in giving a direction in accordance with clause 1.5(a), is not required to determine whether or not there is an ambiguity, discrepancy, or inconsistency in, or between, the documents comprising this deed.
- (c) Any direction which the Principal's Representative gives in accordance with clause 1.5(a):
 - (i) will not relieve the Independent Certifier, the Contractor or the Operator from or alter its liabilities or obligations under this deed or otherwise according to Law;

- (ii) will not limit or otherwise affect the Principal's rights against any of the Independent Certifier, the Contractor or the Operator, whether under this deed or otherwise according to Law; and
- (iii) must, in respect of a notice given under clause 1.5(a) by the Independent Certifier, the Contractor or the Operator, be given within 20 Business Days of receipt of that notice.

1.6 No bias against drafter

In the interpretation of this deed, no rule of construction applies to the disadvantage of one party on the basis that the party or its representative put forward or drafted this deed or any provision in it.

1.7 Excluding liability

Any provision of this deed which seeks to limit or exclude a liability of a party is to be construed as doing so only to the extent permitted by Law.

2. NOT USED

3. APPOINTMENT OF THE INDEPENDENT CERTIFIER

3.1 Appointment

- (a) Each of the Other Parties appoint the Independent Certifier under this deed to perform the Services.
- (b) The Independent Certifier confirms its acceptance of the appointment referred to in clause 3.1(a).
- (c) The Independent Certifier must carry out the Services in accordance with the requirements of this deed and the Project Agreements and, to the extent the Certification Plan is not inconsistent with the Project Agreements or the nature of the Services, it will carry out and perform the Services in accordance with the Certification Plan.

3.2 Term

The Term of this deed commences on the date of this deed and continues until the earlier of:

- (a) completion of the Services; or
- (b) termination in accordance with clause 10.

3.3 Payment

The Principal will pay the Independent Certifier the Fee subject to and in accordance with the Payment Schedule.

3.4 **Nature of Services**

- (a) The Independent Certifier and the Other Parties acknowledge and agree that the Certification Plan is incidental to, and does not limit or otherwise affect the Services or the Independent Certifier's obligations under the deed.
- (b) Where this deed contemplates an action, agreement, decision, direction or the like by the Other Parties, and the Other Parties cannot reach agreement in respect of such action, decision, direction or the like, then the Principal must, acting reasonably and after prior consultation with the Contractor and the Operator, determine the appropriate action, agreement, decision, direction or the like.
- (c) In reaching decisions in relation to this deed which may affect the Other Parties, the Principal will take into account representations made by the Contractor and the Operator.

3.5 **Rights under the Project Agreements**

The Independent Certifier may exercise any of the rights granted to it under the Project Agreements for the purpose of performing the Services.

4. INDEPENDENT CERTIFIER'S OBLIGATIONS

4.1 **Acknowledgement**

The Independent Certifier acknowledges that:

- (a) it has received a copy of the execution version of the Project Agreements and that it has read, and is familiar with, the terms of those documents to the extent they relate to the Services;
- (b) it must continue performing the Core Services notwithstanding that the relevant Upper Limiting Fee may have been reached; and
- (c) it will not be entitled to payment of any amount in addition to the relevant Upper Limiting Fee (as adjusted in accordance with paragraph 4 of Schedule 2) for the performance of the Core Services.

4.2 **General representations and warranties**

The Independent Certifier represents and warrants that:

- (a) it is a company duly incorporated and existing under Law and has the power to execute, deliver and perform its obligations under this deed and that all necessary corporate and other action has been taken to authorise that execution, delivery and performance;
- (b) the information provided by it in connection with this deed is true, accurate and complete in all material respects and not misleading in any material respect (including by omission);

- (c) its obligations under this deed are valid, legal and binding obligations enforceable against it in accordance with its terms, subject to equitable remedies and Laws in respect of the enforcement of creditor's rights;
- (d) the execution, delivery and performance of this deed by it will not contravene any Law to which it is subject or any deed or arrangement binding on it;
- (e) it does not (in any capacity) have immunity from the jurisdiction of a court or from legal process (whether through service of notice, attachment prior to judgment, attachment in aid of execution, execution or otherwise); and
- (f) no litigation, arbitration, tax claim, dispute or administrative or other proceeding has been commenced or threatened against it which is likely to have a material adverse effect upon its ability to perform its obligations under this deed.

4.3 Further acknowledgements and warranties

The Independent Certifier:

- (a) acknowledges that each of the Other Parties:
 - (i) is relying upon the skill, expertise and experience of the Independent Certifier in the performance of its obligations under this deed; and
 - (ii) may suffer loss if the Independent Certifier does not perform its obligations in accordance with the requirements of this deed;
- (b) warrants to the Other Parties that, in performing the Services, it will comply with all Law, act honestly, diligently, reasonably, impartially and with the degree of professional care, knowledge, skill, expertise, experience and care which would be reasonably expected of a professional providing services similar to the Services within the design and construction industries generally and the design and construction of major engineering works in particular;
- (c) must, at all times, act within the time requirements for the performance of its obligations under this deed and within the times prescribed under the Project Agreements (and, where no time is prescribed, within a reasonable time) and will comply with the requirements of the Payment Schedule;
- (d) without limiting clauses 4.3(a) and 4.3(b), acknowledges that the Other Parties are entitled to and will rely on any certificate or other document signed or given by the Independent Certifier under or pursuant to this deed or any Project Agreement;
- (e) without limiting its obligations under any provision of this deed, warrants to the Other Parties that:
 - (i) it will carry out and perform the Services;
 - (ii) it will make available for the performance of the Services, as a minimum, the levels of resources specified in Schedule 3; and

- (iii) without limiting subparagraphs (i) and (ii), to the extent the Certification Plan is not inconsistent with:
 - (A) the Project Agreements;
 - (B) the nature of the Services; or
 - (C) without limiting subparagraphs (A) or (B), the requirements of clause 4.15,

it will carry out and perform the Services in accordance with the Certification Plan;
- (f) will provide transport on site for the use of its site personnel;
- (g) will, in carrying out the Services, carry out physical inspections of the Site, any Extra Land, the Works and the Contractor's Activities:
 - (i) when appropriate or necessary to do so in order to perform the Core Services (including for the purpose of determining whether Construction Completion or Completion of any Portion has been achieved by the Contractor);
 - (ii) when otherwise reasonably requested by the Principal; and
 - (iii) in a manner which satisfies the requirements of the Certification Plan,

and will invite and permit the Principal and the Operator to accompany it on all such inspections;
- (h) will carry out the Services in a manner which does not prevent, hinder, disrupt, delay or otherwise interfere with any work or services performed by any person (including the Contractor and the Operator) except where it is the unavoidable consequence of performing the Services; and
- (i) in undertaking the Services, will comply with all the safe working requirements of the Contractor and the Operator, including the reasonable instructions of the Contractor in relation to safety and site security while on the Site.

4.4 Personnel

- (a) The Independent Certifier must provide experienced and skilled personnel to perform its obligations under this deed.
- (b) The Independent Certifier must ensure that the nominated people referred to in Schedule 3:
 - (i) perform the services required of their respective positions;
 - (ii) are not removed without the prior written consent of the Principal (which consent must not be unreasonably withheld or delayed, and will be deemed to have been given in relation to a party if no response has

been received from that party within 7 days of the request for removal), and if any of the people are removed:

- (A) they must be replaced by people of at least equivalent skill, expertise and experience, having regard to the indicative requirements set out in paragraph 2 of Schedule 3 to this deed;
 - (B) they must be approved in writing by the Principal, having regard to the indicative requirements set out in paragraph 2 of Schedule 3 to this deed; and
 - (C) there must be, prior to their removal and replacement, a proper handover to ensure that the new personnel have a reasonable understanding of the Project Agreements and the Services; and
- (iii) are located in Sydney for the performance of the Services and are available for consultation as any party may reasonably require from time to time.
- (c) The Principal may direct the Independent Certifier to remove from the performance of the Services any of the people referred to in Schedule 3 and the Independent Certifier must comply promptly with any such direction and nominate a replacement.
- (d) The Independent Certifier must notify the Other Parties in writing of the names of the person or persons that are authorised to sign the certificates and documents referred to in Schedule 1 which the Independent Certifier is required to execute as part of the Services, and must ensure that these certificates and documents are signed by the person or persons so notified.
- (e) The Independent Certifier must make available additional personnel to the extent required by the Principal.
- (f) The Independent Certifier must ensure that the persons appointed to the positions of:
- (i) the Independent Certifier's Project Director; and
 - (ii) the Independent Certifier's Representative,
- including any replacements, at all times:
- (iii) have the authority to act on behalf of and to bind the Independent Certifier in respect of the Services;
 - (iv) have full authority to promptly execute documents (including any certifications) and to promptly make decisions in relation to the Services; and
 - (v) have authority to bind the Independent Certifier in relation to any matter arising out of or in connection with the Services.

4.5 **Subcontracting**

- (a) Subject to clause 4.5(c), the Independent Certifier may not subcontract the performance of any of the Services without the prior written consent of the Other Parties (which consent must not be unreasonably withheld or delayed, and will be deemed to have been given in relation to a party if no response has been received from that party within 7 days of the request to subcontract).
- (b) The Independent Certifier remains responsible for the performance of the Services in accordance with this deed, notwithstanding any such subcontracting and will be liable for the acts and omissions of any subcontractor as if they were acts or omissions of the Independent Certifier.
- (c) Unless the Principal otherwise approves in writing, the Independent Certifier must contract with the subcontractors set out in Schedule 5 for the performance of the relevant parts of the Services.

4.6 **Quality Assurance**

- (a) The Independent Certifier must implement a quality system in accordance with AS/NZS ISO9000 and AS/NZS ISO9001, and otherwise in a form reasonably acceptable to the Other Parties to ensure compliance of the Services with the requirements of this deed.
- (b) The Independent Certifier will not be relieved of any requirement to perform any obligation under this deed as a result of:
 - (i) compliance with the quality assurance requirements of this deed; or
 - (ii) any acts or omissions of the Other Parties with respect to the quality assurance requirements of this deed, including any review of, comments upon, or notice in respect of, the Certification Plan or any audit under clause 4.11.

4.7 **Information provided to Independent Certifier**

- (a) The Independent Certifier is entitled to rely on information provided to it in accordance with the Construct Only Delivery Deed by either of the Principal or the Contractor as being true and correct in all material respects unless:
 - (i) such information is:
 - (A) manifestly incorrect;
 - (B) provided on a qualified basis; or
 - (C) actually known or ought to reasonably have been known by the Independent Certifier to be untrue or incorrect as a result of it carrying out the Services:
 - (aa) in accordance with:

- (a) the Certification Methodology contained in Schedule 8, until such time as the Independent Certifier must comply with the Certification Plan pursuant to clause 4.8(e); and
 - (b) the Certification Plan submitted by the Independent Certifier in accordance with clause 4.8 (as that plan is updated from time to time in accordance with clause 4.9), thereafter; and
- (bb) to the standards acknowledged, required by, or warranted in this deed; or
- (ii) the Principal or the Contractor (as the case may be) subsequently informs the Independent Certifier of any change to the information provided to it.

(b) Not used.

4.8 Certification Plan

- (a) The Independent Certifier must prepare and submit to the Other Parties within 25 Business Days of the date of this deed a Certification Plan which must:
 - (i) be based on the Certification Methodology contained in Schedule 8;
 - (ii) meet or exceed the requirements of Schedule 4;
 - (iii) not reduce the effectiveness, methodology, scope, effect, resources or expertise contained in the Certification Methodology contained in Schedule 8; and
 - (iv) comply with the requirements for the Certification Plan in Schedule 4 of this deed.
- (b) The Other Parties may review the Certification Plan submitted under clause 4.8(a).
- (c) The Principal may, if the Certification Plan does not comply with this deed or if the Principal believes (after prior consultation with the Contractor and the Operator) that the Certification Plan does not provide the information required by Schedule 4, notify the Independent Certifier of the non-compliance.
- (d) If the Independent Certifier receives a notice under clause 4.8(c), the Independent Certifier must promptly submit an amended Certification Plan to the Other Parties, after which clause 4.8(b) will reapply.
- (e) If the Independent Certifier does not receive a notice under clause 4.8(c) within 15 Business Days after the submission of the relevant Certification Plan, the relevant Certification Plan submitted by the Independent Certifier will be the Certification Plan with which the Independent Certifier must comply (as it is updated under clause 4.9).

4.9 Revisions to Certification Plan

- (a) The Independent Certifier must:
 - (i) progressively amend, update and develop the Certification Plan throughout the performance of the Services as necessary to reflect the commencement of new stages of the Works, any Variations and any changes in the manner of performing the Services;
 - (ii) ensure that any amendments, updates or developments of the Certification Plan under clause 4.9(a)(i) are consistent with, and provide, the information set out in Schedule 4; and
 - (iii) submit each revision of the Certification Plan to the Other Parties for their review and comment.
- (b) The Other Parties may review the Certification Plan submitted under clause 4.9(a)(iii).
- (c) The Principal may, if the Certification Plan does not comply with this deed or the Principal believes (after prior consultation with the Contractor and the Operator) that the revised Certification Plan will lead to a reduction in the effectiveness, methodology, scope, effort, resources or expertise contained in the Certification Plan, notify the Independent Certifier of that non-compliance or reduction.
- (d) If the Independent Certifier receives a notice under clause 4.9(c), the Independent Certifier must promptly submit an amended Certification Plan to the Other Parties after which clause 4.9(b) will reapply.
- (e) The Other Parties owe no duty to the Independent Certifier to review the Certification Plan for errors, omissions or compliance with this deed.
- (f) Without limiting clauses 3.1(c) or 4.3(e), the Independent Certifier must not, either in the preparation of the Certification Plan required by clause 4.8 or the amending, updating and development of the Certification Plan required by clauses 4.9(a) and 4.9(d), decrease or otherwise reduce the effectiveness, methodology, performance and timing requirements, scope, effort, resources or expertise from that set out in the Certification Methodology contained in Schedule 8 or the then existing Certification Plan without the written approval of the Principal's Representative (after prior consultation with the Contractor and the Operator).
- (g) The Independent Certifier may not amend the Certification Plan other than in accordance with this clause 4.9.

4.10 Progress Reports by the Independent Certifier

The Independent Certifier must provide a monthly progress report to the Principal's Representative, the Contractor and the Operator no later than 5 Business Days after the end of the month and in such format as is required by the Principal's Representative, containing, identifying or setting out:

- (a) an executive summary of the Services undertaken by the Independent Certifier during the reporting period, which must include a summary and status of the key issues identified by the Independent Certifier in connection with the performance of the Works by the Contractor, including actions taken to address the issues in the reporting period and proposed future actions;
- (b) a high level summary of the Services proposed to be undertaken by the Independent Certifier in the forthcoming reporting period;
- (c) the Independent Certifier's current and predicted resourcing structure for the performance of the Services;
- (d) a summary of the Core Services Fee paid to date;
- (e) the forecast effort to complete the Completion Phase Services and the estimated Core Services Fee that would be payable in respect of that effort based on the assumption that there is no applicable Upper Limiting Fee;
- (f) details of any actual or potential Defects or other non-compliances in the Works that it has identified during the reporting period; and
- (g) any additional information requested by the Other Parties from time to time.

4.11 **Audit and surveillance**

- (a) The Independent Certifier must:
 - (i) allow any audit of its quality assurance system under this deed by the Principal or a third party at, in the case of a third party, the request of the Other Parties or any one of the Other Parties; and
 - (ii) fully co-operate with the Principal or the relevant third party in respect of the carrying out of the quality assurance audit.
- (b) Without limiting the foregoing, the Independent Certifier must, at all times:
 - (i) give to the Principal or the third party access to premises occupied by the Independent Certifier where the Services are being undertaken; and
 - (ii) permit the Principal or the third party to inspect applicable information relevant to the quality assurance audit.

4.12 **Access to records**

The Independent Certifier must, within a reasonable time of any request, give the Other Parties access to any records or other documents received, prepared or generated by the Independent Certifier in the course of carrying out the Services.

4.13 **Copies of notices and documents**

All notices and documents:

- (a) provided by the Independent Certifier to an Other Party must be copied to the other parties; and

- (b) provided by an Other Party to the Independent Certifier must be provided by the Independent Certifier to the other parties.

4.14 **Not used**

4.15 **Co-operation with Other Independent Certifiers**

- (a) The parties acknowledge and agree that:
 - (i) the Contractor's Activities interface with the Interface Work; and
 - (ii) another independent certifier may be engaged by the Principal (**Other Independent Certifier**) to certify that any Interface Work has been designed and/or constructed in accordance with the requirements of the relevant Interface Contract.
- (b) Without limiting or otherwise affecting any of the Independent Certifier's obligations under this deed, the Independent Certifier must co-operate with Other Independent Certifiers, and do everything reasonably necessary to facilitate Other Independent Certifiers to certify the design and/or construction of Interface Work, including providing Other Independent Certifiers with such assistance or information as may be directed by the Principal's Representative.
- (c) The Independent Certifier must ensure that the Principal is provided with a copy of any written communication given by the Independent Certifier to an Other Independent Certifier within 2 Business Days of providing the same to that Other Independent Certifier.

4.16 **Document management and transmission**

- (a) Without limiting clause 12.1, the Independent Certifier must manage and transmit documents, including using an electronic medium (such as the PDCS) where required by the Principal's Representative, in accordance with the processes, procedures and systems in the SWTC or as otherwise required by the Principal's Representative.
- (b) Documents supplied to the Independent Certifier will remain the property of the Principal and must be returned by the Independent Certifier to the Principal on demand in writing. The documents must not, without the prior written approval of the Principal, be used, copied or reproduced for any purpose other than the execution of the Services.
- (c) The Independent Certifier must keep all the Independent Certifier's records relating to the Services in a secure and fire proof storage.
- (d) The Independent Certifier will not be entitled to make, and the Principal or the Contractor will not be liable upon, any claim arising out of or in any way in connection with complying with its obligations under this clause 4.16.
- (e) The Independent Certifier must ensure that any documentation that it provides to the Principal or the Contractor in computer readable form contains no virus or computer software code which is intended or designed to:

- (i) permit access to or use of a computer system by a third person not authorised by the Principal; or
- (ii) disable, damage or erase, or disrupt or impair the normal operation of any other software or data on a computer system.

5. INDEPENDENCE, CONFIDENTIALITY AND EXCLUSIVITY

5.1 Independent Certifier to be independent

- (a) The Independent Certifier warrants to the Other Parties that in performing the Services, it will act:
 - (i) independently of the Other Parties;
 - (ii) honestly and reasonably;
 - (iii) with the degree of professional care, knowledge, skill, expertise, experience and diligence which would be reasonably expected of a professional providing services similar to the Services within the design and construction industry generally and the design and construction of major engineering works in particular; and
 - (iv) within the times prescribed under the Project Agreements or as anticipated by the Contractor's Program, or such other programs that become relevant to the performance of the Services during the Term.
- (b) Without limiting clause 5.3(a), the parties acknowledge that:
 - (i) the Independent Certifier is obliged to act independently of the Operator;
 - (ii) the Independent Certifier may (after consultation with the Other Parties) be engaged by the Operator in relation to the OTS2 Project Works but must demonstrate to the satisfaction of the parties that it has sufficient separation procedures in place to permit it to act independently of the Operator;
 - (iii) the Contractor may not make any claim against the Principal or (to the extent that the Independent Certifier complies with this deed) the Independent Certifier arising out of or in any way in connection with the Independent Certifier being engaged by the Operator in relation to the OTS2 Project Works; and
 - (iv) neither the Principal, the Contractor nor the Operator may challenge a decision of the Independent Certifier on the basis that the Independent Certifier lacks independence solely because it is engaged by the Operator in relation to the OTS2 Project Works.

5.2 Confidentiality

The Independent Certifier must:

- (a) keep confidential details of this deed and all information and documents provided to, or by, the Independent Certifier relating to the Services, the Works, this deed, the Project Agreements or Sydney Metro City & Southwest and not provide, disclose or use the information or documents except:
 - (i) to disclose them to the Other Parties;
 - (ii) for the purposes of performing the Services;
 - (iii) where required by Law or to obtain legal advice on this deed; or
 - (iv) with the prior written consent of the Other Parties; and
- (b) ensure that its subcontractors comply with the terms of clause 5.2(a).

This obligation will survive completion of the Services or the termination of this deed.

5.3 **Exclusivity**

- (a) The Independent Certifier must not, and must procure that:
 - (i) any related body corporate (as defined by sections 9 and 50 of the Corporations Act) of the Independent Certifier; and
 - (ii) any employees, agents, subcontractors and consultants who are involved in the provision of the Services,

do not, from the date of execution of this deed until the date of expiry of the Term in accordance with clause 3.2:

- (iii) have any direct or indirect involvement (whether under contract or any other arrangement):
 - (A) with the Contractor or any of its contractors, consultants or providers, or the Operator or any of its contractors, consultants or providers in relation to the Project Agreements; or
 - (B) in the Project Agreements; or
- (iv) provide services to or advise any other person in relation to the Project Agreements,

other than the provision of the Services under this deed, except with the prior written consent of the Principal which may be withheld or granted (after consultation with the Other Parties) in its absolute discretion.

- (b) The Independent Certifier agrees that:
 - (i) having regard to the Project Agreements and the Services, clause 5.3 is reasonable as regards the nature of the involvement restrained and the duration and scope of the restraint and that the restraints are reasonably necessary for the probity of the Project Agreements and to ensure the best value for money of the Project Agreements; and

- (ii) damages may not be a sufficient remedy for a breach of clause 5.3 and the Other Parties may be entitled to specific performance or injunctive relief (as appropriate) as a remedy for any breach or threatened breach by the Independent Certifier, in addition to any other remedies available at Law or in equity.

6. OBLIGATIONS OF THE OTHER PARTIES

6.1 No interference or influence

- (a) The Other Parties will not interfere with or attempt to improperly influence the Independent Certifier in the performance of any of the Services. The parties acknowledge that any communication allowed by this deed will not of itself constitute a breach of this clause.
- (b) Clause 6.1(a) will not prevent the Other Parties from providing written comments in accordance with the Project Agreements to the Independent Certifier in respect of any aspect of the Contractor's Activities (including in connection with the Independent Certifier's determination of whether Construction Completion or Completion of any Portion has been achieved by the Contractor) and the Independent Certifier must consider any such comments received from the Other Parties.

6.2 Co-operation

- (a) Without limiting or otherwise affecting any of the Contractor's obligations under this deed or the Project Agreements, the Contractor must:
 - (i) co-operate with and provide the Independent Certifier with all information and documents necessary or reasonably required by the Independent Certifier, or otherwise reasonably requested by the Independent Certifier or directed by the Principal;
 - (ii) allow the Independent Certifier to attend all meetings and procure for the Independent Certifier access to all premises as may be reasonably necessary to enable the Independent Certifier to perform the Services or as reasonably requested by the Independent Certifier or directed by the Principal, including allowing the Independent Certifier to have safe, convenient and unimpeded access to the Site and any Extra Land and all areas where the Works are being performed, from the date on which the Contractor is provided with access under the Construct Only Delivery Deed; and
 - (iii) ensure that hold points and witness points are included in the Contractor's Program as reasonably required by the Independent Certifier to enable the Independent Certifier to perform the Services.
- (b) The Contractor must ensure that the Principal is provided with a copy of any written communication given by the Contractor to the Independent Certifier within 2 Business Days of providing the same to the Independent Certifier.

- (c) The Operator must ensure that the Principal is provided with a copy of any written communication given by the Operator to the Independent Certifier within 2 Business Days of providing the same to the Independent Certifier.

6.3 **Principal to have no liability**

Each party acknowledges that the Principal is not liable, nor will be taken to have a liability, or to have assumed a liability or become (on enforcement of any of their powers or otherwise) liable:

- (a) to any party to this deed by reason of the Principal being a party to this deed; or
- (b) for the performance of any obligation of the Contractor, the Operator or the Independent Certifier under this deed or under any Project Agreement.

7. **ADDITIONAL SERVICES, CHANGES TO CORE SERVICES, SUSPENSION OF SERVICES AND APPOINTMENT OF SUBSTITUTE CERTIFIER**

7.1 **Additional Services**

- (a) At any time during the Term, the Principal may issue an Additional Services Order to the Independent Certifier including the following details:
 - (i) a description of the Additional Services to be performed by the Independent Certifier under the Additional Services Order, including:
 - (A) the program for carrying out the Additional Services;
 - (B) the personnel required to perform the Additional Services; and
 - (C) the estimated number of hours or days (as applicable) required to be performed by each personnel; and
 - (ii) the Additional Services Fee payable by the Principal for the performance of the Additional Services the subject of the Additional Services Order, which must be:
 - (A) calculated by reference to the schedule of rates set out in the Payment Schedule; or
 - (B) if the nature of the services are such that the schedule of rates set out in the Payment Schedule is not applicable, based on reasonable rates and prices.
- (b) The Independent Certifier must, within five Business Days of receipt of the Additional Services Order, provide the Principal with a notice either:
 - (i) accepting the Additional Services Order; or
 - (ii) containing detailed written reasons why it cannot accept the Additional Services Order.

- (c) An Additional Services Order is deemed accepted for all purposes under this deed if no notice is received by the Principal from the Independent Certifier in accordance with clause 7.1(b).
- (d) If an Additional Services Order is accepted or deemed to be accepted by the Independent Certifier under this clause 7.1:
 - (i) the Additional Services set out in that Additional Services Order become part of the Services and must be performed in accordance with this deed; and
 - (ii) the Additional Services Fee (if any) set out in that Additional Services Order becomes part of the Fee and must be paid in accordance with this deed.
- (e) The Principal is not obliged to issue any Additional Services Order to the Independent Certifier under clause 7.1(a).
- (f) The Independent Certifier acknowledges that:
 - (i) the Principal has made no representations as to the amount of work (if any) which the Principal may request the Independent Certifier to perform under Additional Services Orders;
 - (ii) the Independent Certifier may not make any claim against the Principal on the basis that the Principal has not requested or engaged the Independent Certifier to perform any or sufficient work under Additional Services Orders; and
 - (iii) the Principal is entitled to engage other contractors to perform services similar to the Services.

7.2 Change to Core Services

Without limiting clause 7.1, the Principal (after prior consultation with the Contractor and the Operator) may, by written notice to the Independent Certifier, direct the Independent Certifier to carry out a change to the Core Services (including an addition or omission) and the Independent Certifier must comply with that direction.

7.3 Suspension of Services

The Principal (after prior consultation with the Contractor and the Operator) may, by written notice to the Independent Certifier (copied to the Contractor and the Operator), direct the Independent Certifier to suspend any or all of the Services for the period of time specified in the notice.

7.4 Appointment of Substitute Certifier

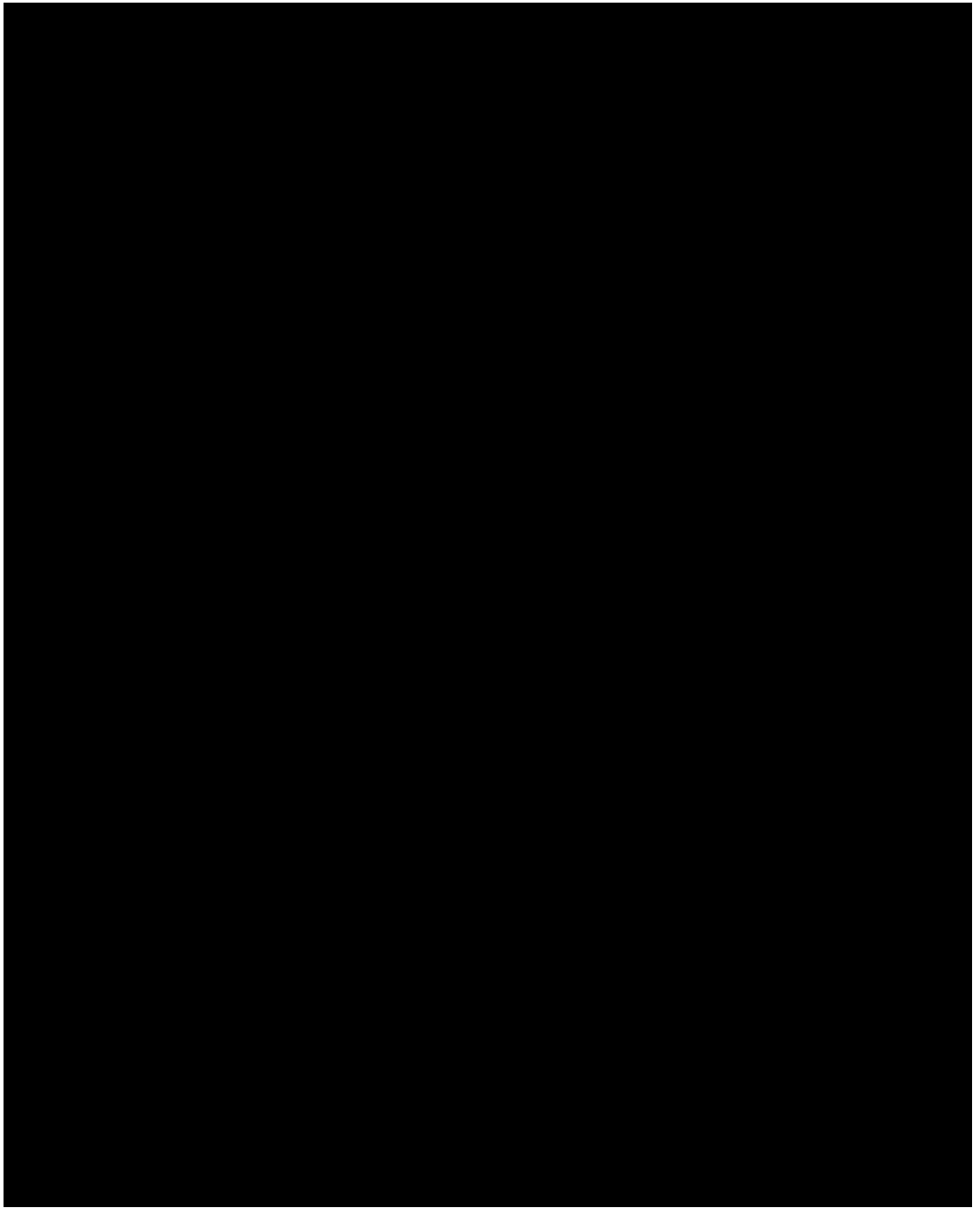
- (a) The Independent Certifier acknowledges and agrees that the Principal may, after consultation with the Other Parties, appoint another certifier (**Substitute Certifier**) to carry out those Services which are omitted as a result of a change to the Core Services directed under clause 7.2, and any decision of a Substitute Certifier appointed will be treated (between the Principal, the Contractor, the Operator and the Independent Certifier) as if it is a decision

of the Independent Certifier, and the Substitute Certifier will have all of the rights, powers and obligations of the Independent Certifier under the Project Agreements in connection with those Services.

- (b) Notwithstanding a change to the Core Services or the appointment of a Substitute Certifier, the Independent Certifier must continue to perform the Services, as varied in accordance with this clause 7, in accordance with this deed. Without prejudice to any claim in respect of the performance of the Independent Certifier, the Independent Certifier is not responsible for the performance of the Substitute Certifier.

8. LIABILITY, INSURANCE AND INDEMNITY

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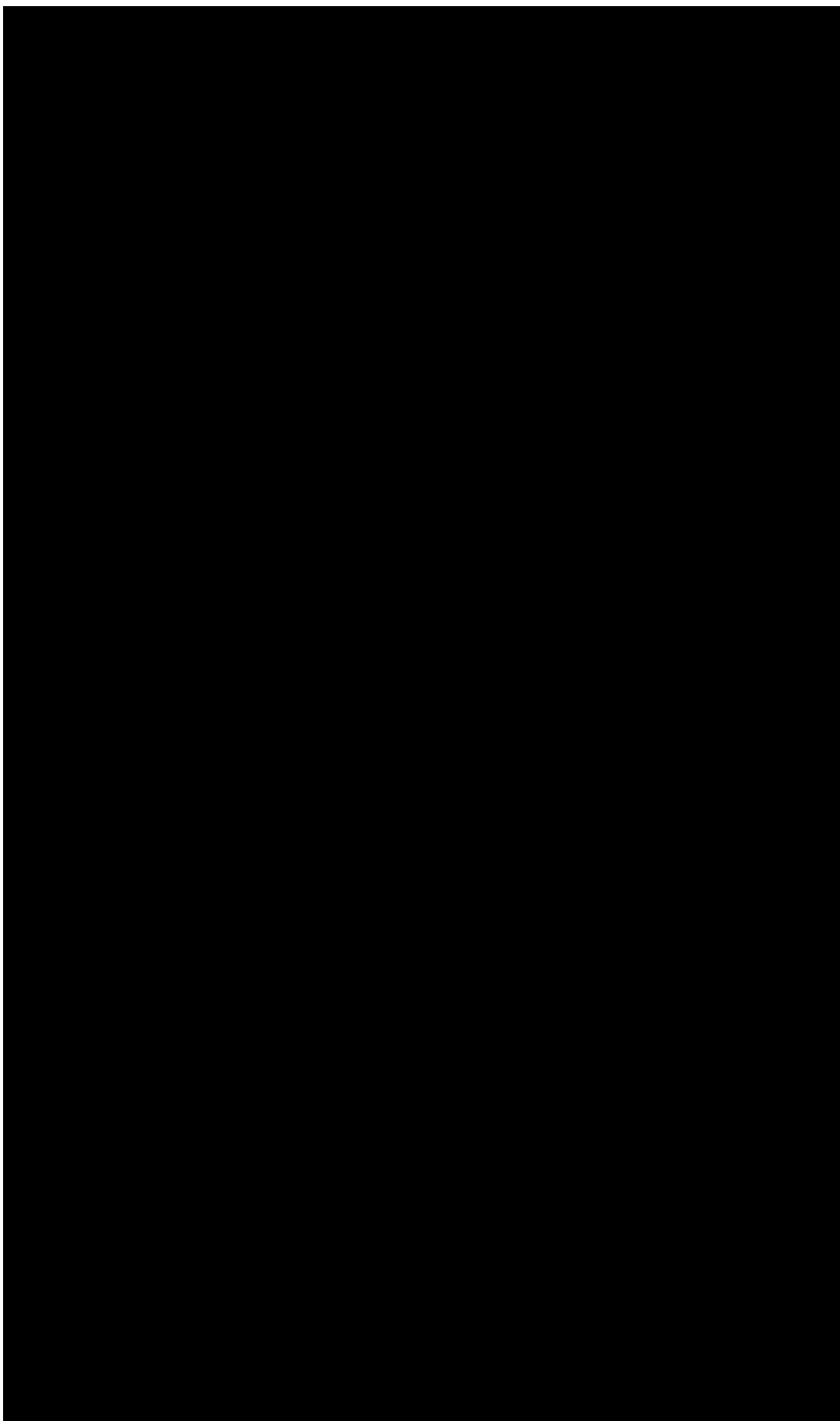
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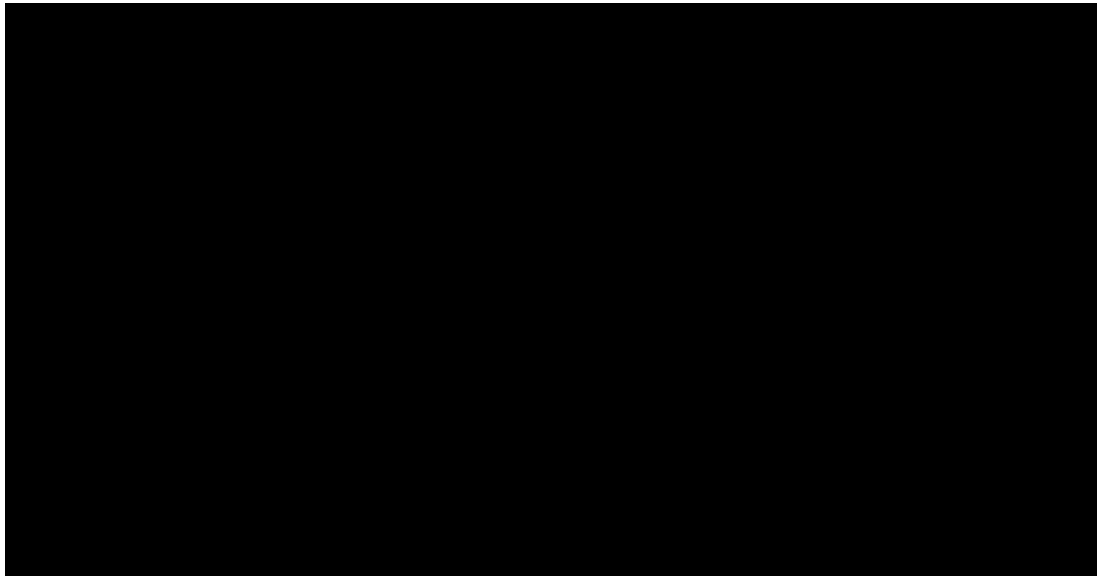
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9. DISPUTE RESOLUTION

9.1 Procedure for resolving disputes

- (a) The parties agree that they will attempt to resolve all disputes in accordance with the procedures set out in this clause 9.
- (b) It is a condition precedent to the referral of a dispute to litigation that a party first exhausts the procedures referred to in clause 9.2.

9.2 Negotiation

- (a) If a dispute arises, then a party to the dispute may give notice to the other parties to the dispute, requesting that the dispute be referred for resolution to the respective chief executive officers of those parties to the dispute.
- (b) A notice under clause 9.2(a) must:
 - (i) be in writing;
 - (ii) state that it is a notice under this clause 9.2; and
 - (iii) include, or be accompanied by, reasonable particulars of the matters in dispute.
- (c) If a dispute is referred to the persons referred to in clause 9.2(a) (**Dispute Representatives**), then the Dispute Representatives (or the persons for the time being acting in those positions) must meet and use reasonable endeavours acting in good faith to resolve the dispute (in whole or in part) within 10 Business Days of the date on which the notice under clause 9.2(a) is received. The joint decisions (if any) of the Dispute Representatives must be reduced to writing within the 10 Business Days referred to in this clause 9.2(c) and will be contractually binding on the parties to the dispute.
- (d) The 10 Business Days referred to in clause 9.2(c) may be extended by agreement of the parties to the dispute in writing.

9.3 **Continue to perform**

Notwithstanding the existence of a dispute, each of the Other Parties and the Independent Certifier must continue to perform their obligations under this deed.

10. **TERMINATION OF APPOINTMENT**

10.1 **Notice of termination**

Following consultation with the Other Parties, the Principal may terminate the appointment of the Independent Certifier under this deed by notice in writing served on the Independent Certifier (copied to the Contractor and the Operator) if:

- (a) the Independent Certifier is in breach of this deed and the breach is not remediable in the reasonable opinion of the Principal;
- (b) the Independent Certifier is in breach of this deed and the breach, being remediable in the reasonable opinion of the Other Parties, has not been remedied within 7 days of the service by the Principal of a notice specifying the breach and requiring the breach to be remedied;
- (c) an Insolvency Event occurs in relation to the Independent Certifier; or
- (d) the Principal in its absolute discretion for any reason whatsoever serves on the Independent Certifier a notice of termination of the appointment of the Independent Certifier in respect of the Services, on a date specified in the notice, being not less than 15 Business Days after the date of issue of the notice.

10.2 **Termination**

Where a notice is served on the Independent Certifier under clause 10.1, the appointment of the Independent Certifier will terminate upon the earlier of:

- (a) the date specified in the notice issued under clause 10.1; or
- (b) the appointment of a replacement for the Independent Certifier.

10.3 **Delivery of documents**

Upon the earlier of the date of termination of the appointment of the Independent Certifier and the date of completion of the Services, the Independent Certifier:

- (a) must deliver up to the Other Parties or to such other person as the Other Parties may direct, all books, records, drawings, specifications and other documents in the possession, custody or control of the Independent Certifier relating to the Services;
- (b) may retain a copy of those books, records, drawings, specifications and other documents referred to in clause 10.3(a) for the sole purpose of business record keeping, insurance and quality assurance, subject to the Independent Certifier complying with its confidentiality obligations under clause 5.2; and

- (c) acknowledges that the Other Parties have the right to use all such documents for any purposes in connection with the Sydney Metro City & Southwest, the Works, the Contractor's Activities or the Project Agreements, provided that the Independent Certifier will have no liability to the Other Parties in relation to any documents handed over pursuant to clause 10.3(a) unless such documents have been formally issued and marked as final by the Independent Certifier.

10.4 **Reasonable assistance**

Where the Other Parties give a notice under clause 10.1 of termination of the appointment of the Independent Certifier, the Independent Certifier must provide full assistance to the Other Parties and any appointed replacement for the Independent Certifier in order to enable such replacement to be in a position to perform the Services with effect from the appointment of such replacement.

10.5 **Payment until date of termination**

Where the appointment of the Independent Certifier is terminated under clause 10.1(d), the Independent Certifier is only entitled to be paid by the Principal the proportion of the Fee for Services performed up to the date of the termination.

10.6 **Termination without prejudice**

Termination of the appointment of the Independent Certifier will be without prejudice to any claim which any of the Other Parties may have in respect of any breach of the terms of this deed which occurred prior to the date of termination.

10.7 **Survive termination**

This clause 10 will survive the termination of this deed by the Other Parties under clause 10.1.

10.8 **Rights upon termination**

If the appointment of the Independent Certifier is terminated pursuant to clauses 10.1(a) to 10.1(c), the parties' remedies, rights and liabilities will be the same as they would have been under the Law governing the deed had the Independent Certifier repudiated the deed and the Other Parties elected to treat the deed as at an end and recover damages.

11. **GST**

- (a) Except where the context suggests otherwise, terms used in this clause 11 have the meaning given to those terms by the *A New Tax System (Goods and Services Tax) Act 1999* (Cth) (as amended from time to time).
- (b) Any part of a supply that is treated as a separate supply for GST purposes (including attributing GST payable to tax periods) will be treated as a separate supply for the purposes of this clause 11.
- (c) Unless otherwise expressly stated, all consideration to be provided under this deed (other than under this clause 11) is exclusive of GST. Any consideration

that is specified to be inclusive of GST must not be taken into account in calculating the GST payable in relation to a supply for the purpose of this clause 11.

- (d) Any payment or reimbursement required to be made under this deed that is calculated by reference to a cost, expense or other amount paid or incurred will be limited to the total costs, expense or amount less the amount of any input tax credit to which an entity is entitled for the acquisition to which the cost, expense or amount relates.
- (e) If GST is payable in relation to a supply made under or in connection with this deed, then any party (**Recipient**) that is required to provide consideration to another party (**Supplier**) for that supply must pay an additional amount to the Supplier equal to the amount of that GST at the same time as any other consideration is to be first provided for that supply.
- (f) The Supplier must provide a tax invoice to the Recipient at the same time as any consideration is to be first provided for that supply.
- (g) If the GST payable in relation to a supply made under or in connection with this deed varies from the additional amount paid by the Recipient under clause 11(e), then the Supplier will provide a corresponding refund or credit to, or will be entitled to receive the amount of that variation from, the Recipient. Any payment, credit or refund under this clause 11(g) is deemed to be a payment, credit or refund of the additional amount payable under clause 11(e). If any adjustment event occurs in relation to a supply, the Supplier must give the Recipient an adjustment note event within 7 days after the date of the adjustment event.

12. GENERAL

12.1 Notices

- (a) Wherever referred to in this clause, "**Notice**" means each communication (including each notice, consent, approval, request and demand) under or in connection with this deed.
- (b) At any time and from time to time the Principal's Representative may notify the Independent Certifier that a PDCS will be used for giving Notices under or in connection with this deed. The Principal's Representative's notice will set out:
 - (i) the name of the relevant PDCS;
 - (ii) the commencement date for use of the PDCS;
 - (iii) any password, login details or similar information required for the Independent Certifier to use the PDCS; and
 - (iv) any other information reasonably necessary for the use and service of Notices via the PDCS.
- (c) Each Notice must:

- (i) before the date referred to in clause 12.1(b):
 - (A) be in writing;
 - (B) be addressed as follows (or as otherwise notified by that party to each other party from time to time):

- (aa) to the Principal's Representative:

- Address: [REDACTED]
[REDACTED]

- Email: [REDACTED]

- Attention: [REDACTED]

- Any Notice in relation to a Claim or a Dispute must also be addressed to the General Counsel – Sydney Metro and sent to [REDACTED]

- (bb) to the Independent Certifier:

- Address: [REDACTED]
[REDACTED]

- Email: [REDACTED]

- Attention: [REDACTED] Independent Certifier's Project Director

- (cc) to the Contractor:

- Address: [REDACTED]
[REDACTED]
[REDACTED]

- Email: [REDACTED]

- Attention: [REDACTED], the Contractor's Representative

- (dd) to the Operator:

- Email: [REDACTED]

- Attention: [REDACTED]

- (ii) on and from the commencement date for use of the PDCS referred to in clause 12.1(b):

- (A) be sent through the PDCS in accordance with the requirements set out in clause 12.1(e); and
 - (B) in circumstances where the PDCS is temporarily disabled or not operating for a period in excess of 2 hours, be issued in accordance with clause 12.1(c)(i).
- (d) A communication is taken to be received by the addressee:
 - (i) (in the case of a Notice sent through the PDCS) at the time recorded on the PDCS as being the time at which the Notice was sent;
 - (ii) (in the case of prepaid post sent to an address in the same country) 2 Business Days after the date of posting;
 - (iii) (in the case of international post) 7 Business Days after the date of posting;
 - (iv) (in the case of delivery by hand) on delivery; and
 - (v) (in the case of email):
 - (A) if it is transmitted by 5:00pm (Sydney time) on a Business Day – on that Business Day; or
 - (B) if it is transmitted after 5:00pm (Sydney time) on a Business Day, or on a day that is not a Business Day – on the next Business Day.
- (e) With respect to Notices sent through the PDCS:
 - (i) all Notices must be submitted by the party making it or (on that party's behalf) by the solicitor for, or any attorney, director, secretary or authorised agent of, that party;
 - (ii) only the text in any Notice, or subject to clause 12.1(e)(iii), any attachments to such Notice which are referred to in the Notice, will form part of the Notice. Any text in the subject line will not form part of the Notice; and
 - (iii) an attachment to a Notice will only form part of a Notice if it is uploaded to the PDCS in:
 - (A) pdf format;
 - (B) a format compatible with Microsoft Office; or
 - (C) such other format as may be agreed between the parties in writing from time to time.
- (f) The Independent Certifier warrants that it will:
 - (i) ensure that it has internet access which is sufficient to facilitate use of the full functionality of the PDCS;

- (ii) ensure that relevant personnel log on and use the PDCS and check whether Notices have been received on each Business Day;
 - (iii) comply with any user guide and protocol with respect to the PDCS provided by the Principal to the Independent Certifier from time to time;
 - (iv) ensure all relevant personnel attend all necessary training required by the Principal's Representative;
 - (v) advise the Principal's Representative of which personnel require access to the PDCS;
 - (vi) at all times, ensure that it has access to personnel trained in the use of the PDCS so as to be able to view, receive and submit communications (including Notices) using the PDCS; and
 - (vii) as soon as practicable, at the first available opportunity following any period of time during which the PDCS is temporarily disabled or not operating, send all communications which have been issued pursuant to clause 12.1(c)(ii)(B) to the Principal's Representative through the PDCS.
- (g) If the Independent Certifier is an unincorporated joint venture and one of the joint venturers is, a foreign company (as defined in the Corporations Act), the Independent Certifier must:
- (i) appoint a local process agent acceptable to the Principal as its agent to accept service of process under or in any way in connection with this deed. The appointment must be in a form acceptable to the Principal and may not be revoked without the Principal's consent; and
 - (ii) obtain the process agent's consent to the appointment.
- (h) The Principal has no liability for any losses the Independent Certifier may suffer or incur arising out of or in connection with its access to or use of the PDCS or any failure of the PDCS, and the Independent Certifier will not be entitled to make, and the Principal will not be liable upon, any claim against the Principal arising out of or in connection with the Independent Certifier's access to or use of the PDCS or any failure of the PDCS.
- (i) Wherever this deed requires the Independent Certifier to provide any documents, notices or other communications to the Operator, the Independent Certifier must address such communications to the Operator:
- (i) at the address notified to the Independent Certifier by the Principal; or
 - (ii) if required by the Principal, by way of the PDCS.

12.2 **Governing Law**

This deed is governed by and must be construed according to the law applying in New South Wales.

12.3 **Jurisdiction**

Each party irrevocably:

- (a) submits to the non-exclusive jurisdiction of the courts of New South Wales and the courts competent to determine appeals from those courts, with respect to any action or proceedings which may be brought at any time relating in any way to this deed; and
- (b) waives any objection it may now or in the future have to the venue of any action or proceedings, and any claim it may now or in the future have that any action or proceedings have been brought in an inconvenient forum, if that venue falls within clause 12.3(a).

12.4 **Principal as a public authority**

- (a) This deed will not in any way unlawfully restrict or otherwise unlawfully affect the unfettered discretion of the Principal to exercise any of its functions and powers pursuant to any Law.
- (b) Each of the Independent Certifier, the Contractor and the Operator acknowledges and agrees that, without limiting clause 12.4(a), anything which the Principal does, fails to do or purports to do pursuant to its functions and powers under any Law will be deemed not to be an act or omission by the Principal under this deed and will not entitle any of the Independent Certifier, the Contractor or the Operator to make any claim against the Principal.
- (c) The parties agree that clauses 12.4(a) and 12.4(b) are taken not to limit any liability which the Principal would have had to the Independent Certifier, the Contractor or the Operator under this deed as a result of a breach by the Principal of a term of this deed but for clauses 12.4(a) and 12.4(b) of this deed.

12.5 **Amendments**

This deed may only be varied by a deed executed by or on behalf of each of the parties.

12.6 **Waiver**

- (a) Failure to exercise or enforce, or a delay in exercising or enforcing, or the partial exercise or enforcement of, a right, power or remedy provided by Law or under this deed by a party does not preclude, or operate as a waiver of, the exercise or enforcement, or further exercise or enforcement, of that or any other right, power or remedy provided by Law or under this deed.
- (b) A waiver or consent given by a party under this deed is only effective and binding on that party if it is given or confirmed in writing by that party.
- (c) No waiver of a breach of a term of this deed operates as a waiver of another breach of that term or of a breach of any other term of this deed.

12.7 Cost of performing obligations

Each party must, unless this deed expressly provides otherwise, pay its own costs and expenses in connection with performing its obligations under this deed.

12.8 Further acts and documents

Each party must promptly do all further acts and execute and deliver all further documents (in form and content reasonably satisfactory to that party) required by Law or reasonably requested by another party to give effect to this deed.

12.9 Consents

A consent required under this deed from a party may be given or withheld, or may be given subject to any conditions, as that party (in its absolute discretion) thinks fit, unless this deed expressly provides otherwise.

12.10 Assignment

(a) Assignment by the Independent Certifier

The Independent Certifier cannot assign, novate or otherwise transfer any of its rights, interests or obligations under this deed without the prior written consent of the Principal and except on such terms as are determined in writing by the Principal.

(b) Assignment by the Contractor

The Contractor cannot assign, novate or otherwise transfer any of its rights, interests or obligations under this deed without the prior written consent of the Principal and except on such terms as are determined in writing by the Principal.

(c) Assignment and novation by the Principal

(i) Without limiting clause 12.11, the Principal may:

(A) assign, novate or otherwise transfer all or any part of its rights under this deed without the Independent Certifier, Contractor or the Operator's prior approval, provided that the assignee, novatee or transferee (as applicable) is an authority of the State, a Minister or a government entity including a wholly owned State corporation or any other entity that is wholly owned or controlled by the State; and

(B) not otherwise assign, novate or otherwise transfer all or any part of its rights under this deed without each of the Other Parties' prior written consent (which must not be unreasonably withheld or delayed),

and may disclose to a proposed assignee, novatee or transferee any information in the possession of the Principal relating to the Independent Certifier, Contractor or the Operator.

- (ii) The Independent Certifier, the Contractor and the Operator agree to such assignment, novation or transfer such that no further consent is required.
 - (iii) In the case of a novation by the Principal under this clause:
 - (A) the Principal will be released from its obligations under this deed and the respective rights of the Principal, the Independent Certifier, the Contractor and the Operator against one another under this deed will cease;
 - (B) the novated agreement will be on the same terms as this deed, such that the incoming party, the Independent Certifier, the Contractor and the Operator will assume the same obligations to one another and acquire the identical rights against one another as the rights and obligations discharged under clause 12.10(c)(iii)(A), except that the incoming party replaces the Principal for all purposes under the agreement; and
 - (C) the Independent Certifier, the Contractor and the Operator consent to the disclosure by or on behalf of the Principal to the incoming party of their confidential information for the purposes of the novation.
 - (iv) The Principal may at any time enter into any subcontracting, delegation or agency agreements or arrangements in relation to any of its functions.
- (d) Assignment by the Operator
- (i) Subject to clause 12.10(d)(ii), the Operator cannot assign, novate or otherwise transfer any of its rights or obligations under this deed without the prior consent of each other party unless this deed expressly provides otherwise.
 - (ii) The Operator may grant security over its rights under and interests in this deed in favour of its financiers.

12.11 **Transfer of functions or Public Transport Agency assets**

- (a) The parties acknowledge that:
 - (i) a Public Transport Agency may be reconstituted, renamed, dissolved, replaced or restructured and that some or all of the powers, functions, assets, rights, liabilities or responsibilities of a Public Transport Agency may be transferred to or vested in another entity;
 - (ii) if a Public Transport Agency is reconstituted, renamed, dissolved, replaced or restructured and/or some or all of that Public Transport Agency's powers, functions, rights or responsibilities are transferred to or vested in another entity, then unless otherwise notified by the Public Transport Agency, references in this deed to that Public Transport Agency must, subject to any facilitative legislation, be deemed to refer,

as applicable, to the reconstituted, renamed, restructured or new entity or entity replacing that Public Transport Agency to the extent that such entity has assumed or has had transferred to it or vested in it those powers, functions, rights or responsibilities; and

- (iii) a Public Transport Agency may be required to or may, at its absolute discretion, elect to (including as a result of changes to New South Wales government policy or directions) acquire, or dispose of, any property or assets.
- (b) The Independent Certifier, the Contractor and the Operator acknowledge and agree that they must, to the extent required by a Public Transport Agency and without limiting any facilitative legislation, negotiate in good faith any variations required to this deed, or any replacement agreement or agreements for this deed to give effect to a Public Transport Agency being reconstituted, renamed, dissolved, replaced or restructured.
- (c) The Independent Certifier, the Contractor and the Operator will be taken for all purposes to have consented to, and will not have, and no Public Transport Agency will be liable for, any claim as a result of any action, matter or circumstance referred to in, or contemplated by this clause 12.11.
- (d) For the purposes of this clause 12.11, "another entity" means a government or semi-government entity including any agency, statutory corporation, statutory authority, department or state owned corporation.

12.12 **Replacement body**

Where a reference is made to any Authority, institute, association, body, person or organisation (**Former Body**) which is reconstituted, renamed, replaced, ceases to exist or has its powers or functions transferred to another Authority, institute, association, body, person or organisation, that reference will be deemed to refer to the Authority, institute, association, body, person or organisation (**Replacement Body**) which then serves substantially the same powers, functions or objects as the Former Body. Any reference to any senior officer of the Former Body will be to the equivalent senior officer of the Replacement Body.

12.13 **Counterparts**

This deed may be executed in any number of counterparts and by the parties on separate counterparts. Each counterpart constitutes the deed of each party who has executed and delivered that counterpart.

12.14 **No representation or reliance**

- (a) Each party acknowledges that no party (nor any person acting on a party's behalf) has made any representation or other inducement to it to enter into this deed, except for representations or inducements expressly set out in this deed.
- (b) Each party acknowledges and confirms that it does not enter into this deed in reliance on any representation or other inducement by or on behalf of any

other party, except for representations or inducements expressly set out in this deed.

12.15 Expenses

Except as otherwise provided in this deed, each party must pay its own costs and expenses in connection with negotiating and preparing this deed.

12.16 Entire agreement

To the extent permitted by Law, in relation to its subject matter, this deed:

- (a) embodies the entire understanding of the parties, and constitutes the entire terms agreed by the parties; and
- (b) supersedes any prior written or other agreement of the parties.

12.17 Indemnities

- (a) Each indemnity in this deed is a continuing obligation, separate and independent from the other obligations of the parties, and survives termination, completion or expiration of this deed.
- (b) It is not necessary for a party to incur expense or to make any payment before enforcing a right of indemnity conferred by this deed.
- (c) A party must pay on demand any amount it must pay under an indemnity in this deed.

12.18 No agency, partnership, joint venture or other fiduciary relationship

Nothing in this deed will be construed or interpreted as:

- (a) conferring a right in favour of any party to enter into any commitment on behalf of another party or otherwise to act as agent of another party; or
- (b) constituting the relationship between any two or more of the parties (or all of the parties) as that of partners, joint venturers or any other fiduciary relationship.

12.19 Severance

If at any time any provision of this deed is or becomes void, illegal, invalid or unenforceable in any respect under the law of any jurisdiction, then that will not affect or impair:

- (a) the legality, validity or enforceability in that jurisdiction of any other provision of this deed; or
- (b) the legality, validity or enforceability under the law of any other jurisdiction of that or any other provision of this deed.

12.20 Moratorium legislation

To the fullest extent permitted by Law, the provisions of all Laws which at any time operate directly or indirectly to lessen or affect in favour of a party any obligation under this deed, or to delay or otherwise prevent or prejudicially affect the exercise by a party of any right, power or remedy under this deed or otherwise, are expressly waived.

13. AUSTRALIAN GOVERNMENT REQUIREMENTS

(a) The Independent Certifier:

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

that, in relation to the Services, 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) The Independent Certifier acknowledges and agrees that compliance with the Building Code does not relieve the Independent Certifier from any responsibility or obligation under this deed.

(c) The Independent Certifier 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 the Independent Certifier to rectify the breach; and
 - (B) the steps taken to rectify any breach of the Building Code within 10 days of providing a notification under clause 13(c)(i)(A); and
 - (ii) give the Principal a copy of any notification given by the Independent Certifier to the ABCC under clause 13(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) The Independent Certifier 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) The Independent Certifier must not enter into a subcontract for any aspect of the Services unless:
- (i) the subcontractor has submitted a Declaration of Compliance, including the further information outlined in Attachment A to the Declaration of Compliance, which the Independent Certifier agrees is substantially in the same form as the model declaration of compliance applicable to contractors and subcontractors in relation to the Building Code; and
 - (ii) the subcontract with the subcontractor includes an equivalent clause to this clause 13.
- (f) The Independent Certifier must provide the Commonwealth with any subcontractor's Declaration of Compliance referred to in clause 13(e) promptly upon request.
- (g) The Independent Certifier must maintain adequate records of the compliance with the Building Code by:

- (i) the Independent Certifier;
 - (ii) the subcontractors;
 - (iii) the Independent Certifier's consultants; and
 - (iv) any related entity of the Independent Certifier.
- (h) For the purposes of this clause 13, "related entity" has the meaning given to that term in subsection 3(2) of the Building Code.

SCHEDULE 1

Core Services

1. GENERAL

- (a) The Independent Certifier is engaged to certify that the Contractor has constructed the Works in accordance with the requirements of the relevant sections of the Construct Only Delivery Deed.
- (b) The Independent Certifier must:
 - (i) at all times:
 - (A) act independently of the Principal, the Operator and the Contractor; and
 - (B) be familiar with its role, functions, obligations, duties and services (express or implied) under this deed;
 - (ii) in carrying out its obligations under this deed, review and have regard to all:
 - (A) documents and information made available to the Independent Certifier by the Principal; and
 - (B) comments provided by the Principal's Representative and the Contractor's Representative in respect of the Contractor's Activities; and
 - (iii) provide no lesser levels of resourcing than that detailed in Schedule 3.
- (c) Without limiting paragraph 1(b)(ii)(A), the documents and information that the Principal may make available to the Independent Certifier include:
 - (i) minutes in respect of each meeting referred to in paragraph 2.1(a);
 - (ii) monthly reports submitted by the Contractor;
 - (iii) reports submitted by the Contractor in relation to any Defects that it detects (including all action proposed to correct that Defect);
 - (iv) reports or results of any on-site or off-site inspection, testing and audits regarding quality or compliance; and
 - (v) any other reports, notices, correspondence and other documents in relation to any actual or potential non-compliance with the Construct Only Delivery Deed.
- (d) The Core Services include:
 - (i) all the functions, obligations, duties and services set out in this Schedule 1; and

- (ii) all things which would be reasonably expected of a professional performing those functions, obligations, duties and services.

2. CORE SERVICES UNDER THE CONSTRUCT ONLY DELIVERY DEED

2.1 General Services

The Independent Certifier must, throughout the Term:

- (a) ensure that a representative attends a monthly progress meeting with the Principal's Representative within 5 Business Days of the submission of each monthly progress report to the Principal's Representative in accordance with clause 4.10 of this deed;
- (b) inspect the Contractor's Activities from time to time as reasonably required to perform the Completion Phase Services in accordance with the requirements of this deed, including spot-checking and inspection of any significant non-compliances with the Construct Only Delivery Deed which have been reported; and
- (c) promptly notify the Other Parties of:
 - (i) actual or potential Defects; or
 - (ii) other non-compliances with the Construct Only Delivery Deed,

that it identifies when attending meetings and performing its surveillance and other functions.

2.2 Completion Phase Services

- (a) Construction Completion
 - (i) **Clause 12.3(a):** The Independent Certifier must, within 5 Business Days of receipt by the Principal's Representative of a three month written notice from the Contractor of the estimated Date of Construction Completion of a Portion under clause 12.2(b) of the Construct Only Delivery Deed, jointly with the Principal's Representative and the Contractor's Representative, inspect the Contractor's Activities at a mutually convenient time.
 - (ii) **Clause 12.3(b):** Within 2 Business Days after the joint inspection referred to in clause 12.3(a) of the Construct Only Delivery Deed, the Independent Certifier must give the Contractor and the Principal a notice either:
 - (A) containing a list of items which it believes must be completed before Construction Completion of the Portion is achieved; or
 - (B) stating that it believes the Contractor is so far from achieving Construction Completion of the Portion that it is not practicable to issue a list as contemplated in clause 12.3(b)(i) of the Construct Only Delivery Deed.

- (iii) **Clause 12.3(c):** The Independent Certifier must, after receipt of a notice from the Contractor in writing stating that it considers it has achieved Construction Completion of a Portion under clause 12.3(c) of the Construct Only Delivery Deed and an executed certificate in the form of Schedule 21B to the Construct Only Delivery Deed, jointly inspect the Contractor's Activities with the Principal's Representative, the Contractor's Representative and, in respect of Sydney Trains Works only, the representative of any relevant Authority at a mutually convenient time within 5 Business Days after receipt of the notice.
 - (iv) **Clause 12.3(d):** Within 5 Business Days after the joint inspection under clause 12.3(c) of the Construct Only Delivery Deed, the Independent Certifier must:
 - (A) if Construction Completion of the Portion has been achieved, provide to the Principal's Representative and the Contractor a document signed by the Independent Certifier in the form in Schedule 21C of the Construct Only Delivery Deed; or
 - (B) if Construction Completion of the Portion has not been achieved, issue a notice to the Contractor and the Principal in which it states:
 - 1) the items which remain to be completed before Construction Completion of the Portion can be achieved; or
 - 2) that the Contractor is so far from achieving Construction Completion of the Portion that it is not practicable to notify the Contractor of the items which remain to be completed as contemplated by clause 12.3(d)(ii)(A) of the Construct Only Delivery Deed.
 - (v) **Clause 12.3(f)(ii):** In making its determination under clause 12.3(b) of the Construct Only Delivery Deed, the Independent Certifier must consider comments from the Principal's Representative or the Operator in relation to any non-compliance of the Contractor's Activities with the Construct Only Delivery Deed.
- (b) Completion
- (i) **Clause 12.3A(b):** The Independent Certifier must, within 5 Business Days of receipt by the Principal's Representative of a three month written notice from the Contractor of the estimated Date of Completion of a Portion under clause 12.3A(a)(i) of the Construct Only Delivery Deed, jointly with the Principal's Representative and the Contractor's Representative, inspect the Contractor's Activities at a mutually convenient time.
 - (ii) **Clause 12.3A(c):** Within 2 Business Days after the joint inspection referred to in clause 12.3A(b) of the Construct Only Delivery Deed, the Independent Certifier must give the Contractor and the Principal a notice either:

- (A) containing a list of items which it believes must be completed before Completion of the Portion is achieved; or
 - (B) stating that it believes the Contractor is so far from achieving Completion of the Portion that it is not practicable to issue a list as contemplated in clause 12.3A(c)(i) of the Construct Only Delivery Deed.
- (iii) **Clause 12.3A(d):** The Independent Certifier must, after receipt of a notice from the Contractor in writing stating that it considers it has achieved Completion of a Portion under clause 12.3A(d) of the Construct Only Delivery Deed and an executed certificate in the form of Schedule 21 to the Construct Only Delivery Deed, jointly inspect the Contractor's Activities with the Principal's Representative and the Contractor's Representative at a mutually convenient time within 5 Business Days after receipt of the notice.
- (iv) **Clause 12.3A(e):** Within 5 Business Days after the joint inspection under clause 12.3A(d) of the Construct Only Delivery Deed, the Independent Certifier must:
- (A) if Completion of the Portion has been achieved, provide to the Principal's Representative and the Contractor a document signed by the Independent Certifier in the form in Schedule 21A of the Construct Only Delivery Deed; or
 - (B) if Completion of the Portion has not been achieved, issue a notice to the Contractor and the Principal in which it states:
 - 1) the items which remain to be completed before Completion of the Portion can be achieved; or
 - 2) that the Contractor is so far from achieving Completion of the Portion that it is not practicable to notify the Contractor of the items which remain to be completed as contemplated by clause 12.3A(e)(ii)A of the Construct Only Delivery Deed.
- (v) **Clause 12.3A(g)(ii):** In making its determination under clause 12.3A(c) of the Construct Only Delivery Deed, the Independent Certifier must consider comments from the Principal's Representative or the Operator in relation to any non-compliance of the Contractor's Activities with the Construct Only Delivery Deed.

SCHEDULE 2

Payment Schedule

1. THE FEE

(a) The Independent Certifier may claim payment for the performance of Services on a monthly basis.

(b) The Core Services Fee will consist of:

(i) [REDACTED]

(ii) [REDACTED]

(c) [REDACTED]

(d) [REDACTED]

2. PAYMENT CLAIM

(a) At the end of each month after the later of the date of the Construct Only Delivery Deed and the date of this deed, the Independent Certifier must submit to the Principal (copying the Contractor) an account for payment on account of:

(i) any Core Services performed during the relevant month:

(A) setting out:


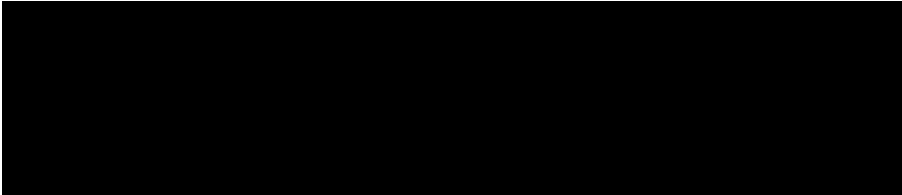
(aa) the value of the Core Services performed in accordance with this deed during the relevant month, calculated in accordance with paragraph 1(b) of this Payment Schedule; and

(bb) the aggregate of all amounts claimed for Core Services under this deed up to and including the relevant month in respect of the Completion Phase Services; and

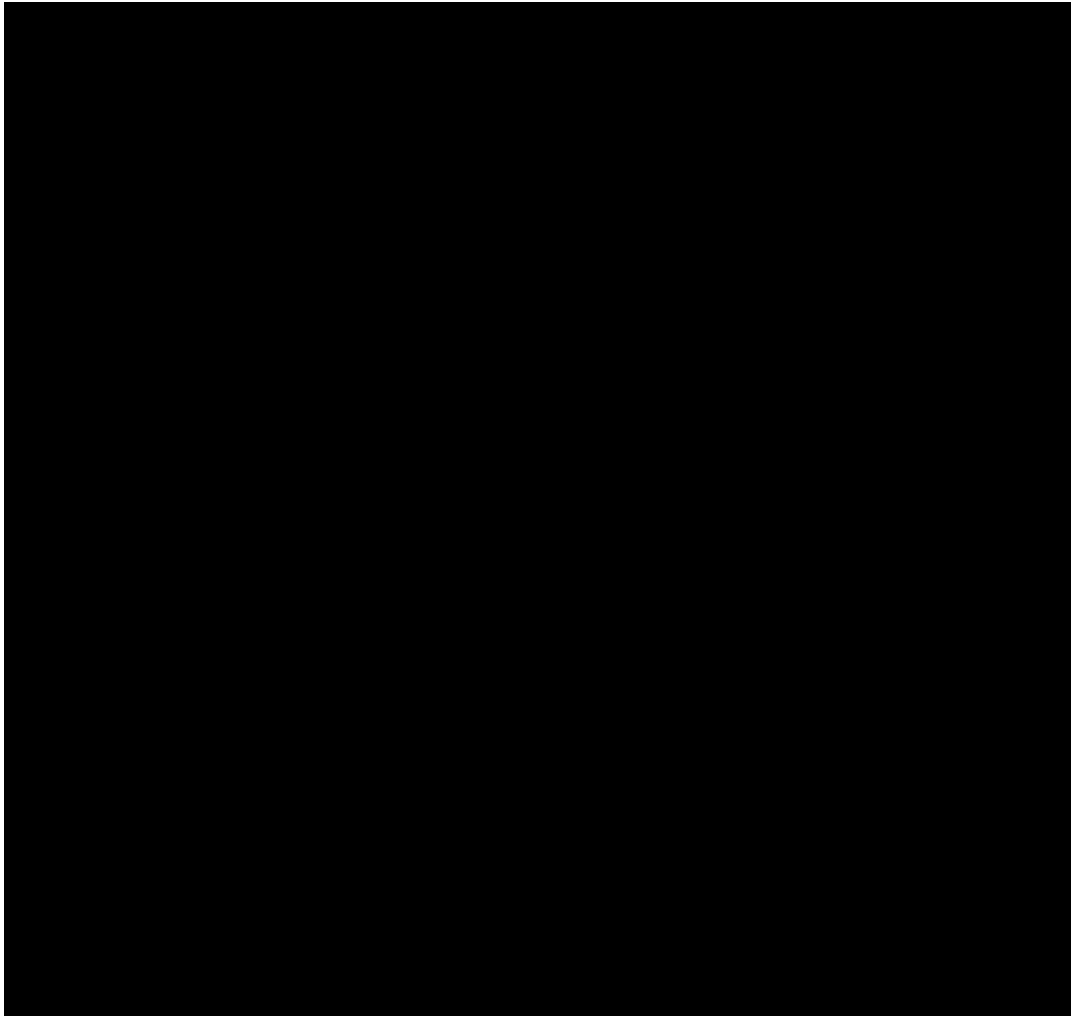
- (B) in such form and with such details and supporting documentation as the Principal and the Contractor may reasonably require, including:
 - (aa) details of the time expended by the Independent Certifier in performing the Core Services during the relevant month;
 - (bb) a list or schedule of the surveillance activities undertaken by the Independent Certifier during the reporting period, including:
 - (a) the visits made by the Independent Certifier to the Site and elsewhere in connection with the Project; and
 - (b) any attendance at tests;
 - (cc) a comprehensive schedule of the status of all correspondence and documentation exchanged between the Independent Certifier and the Other Parties;
 - (dd) details of any Defects raised by the Independent Certifier; and
 - (ee) details of the current version of the Certification Plan and a summary of any amendments, updates and developments to the Certification Plan during the reporting period; and
- (ii) any Additional Services performed during the relevant month, setting out:
 - (A) in respect of each Additional Service:
 - (aa) the date of the Additional Services Order to which the claimed Additional Services Fee relates;
 - (bb) a description of the Additional Services performed under that Additional Services Order to the date of the claim, including details of the time expended by the Independent Certifier in performing the Additional Services; and
 - (cc) the Additional Services Fee the Independent Certifier claims on account of that Additional Service, calculated in accordance with paragraph 1(c), but excluding:
 - (a) any amounts previously paid to the Independent Certifier in respect of the Additional Service; or
 - (b) any amounts in respect of Core Services included in the amount payable under paragraph 1(b);

- (B) the aggregate of all amounts claimed for Additional Services for the relevant month; and
 - (C) in such form and with such details and supporting documentation and evidence as the Principal and the Contractor may reasonably require.
- (b) The Independent Certifier is not entitled to payment or to make a claim for payment to the extent that any Services have not been carried out during the month in question.
 - (c) Not used.
 - (d) Each account for payment submitted by the Independent Certifier must be accompanied by an executed Subcontractor's Statement and Supporting Statement in the form set out at paragraph 7 of this Payment Schedule.

3. PAYMENT AND NOTIFICATION OF DISPUTED AMOUNTS

- (a) The parties agree that:
 - (i) 
 - (ii) 
- (b) Not used.
- (c) Subject to paragraph 2(b) of this Payment Schedule, the Principal must, within 15 Business Days after receipt of the account for the month (submitted in accordance with paragraph 2), pay the Independent Certifier any portion of the Fee attributable to the Services performed during the month which is not disputed.
- (d) If the Principal or the Contractor (as applicable) disagrees with an amount included in an account submitted by the Independent Certifier then, within 10 Business Days of receipt of the Independent Certifier's account, the Principal or the Contractor (as applicable) must notify the Independent Certifier in writing of the reasons for any amount which is disputed (which in the case of notification by the Contractor must be copied to the Principal).
- (e) If the parties do not resolve the matter within 10 Business Days after the issue of the Principal's or the Contractor's written notice, the Principal's Representative (acting reasonably and independently) must determine the dispute. Any determination by the Principal's Representative in respect of the amount payable must be given effect to by the parties unless and until it is reversed or overturned in any subsequent court proceedings.

4. **ADJUSTMENTS TO THE CORE SERVICES FEE**



5. **SCHEDULE OF RATES**

The rates set out below contain allowances for the provision of all labour, materials, work, telecommunications, disbursements and other costs necessary for and arising out of or in connection with the Services for which the Independent Certifier is to be paid on a schedule of rates basis under this deed.

Core Services

Role	Daily Rate (\$) (excluding GST)
Core Team	
Independent Certifier's Project Director	
Independent Certifier's Representative	
Project Engineer	

Role	Daily Rate (\$) (excluding GST)
Design/Engineering Coordinator	
Specialists	
Lead Reviewer System Engineering / Requirement	
Lead Reviewer System & Safety Assurance	
Lead Reviewer Environmental, Community & Stakeholder Advisor	
Lead Reviewer Rail Systems / Systems Integration	
Lead Reviewer Durability	
Lead Reviewer Noise and Vibration	
Lead Reviewer Signalling	
Lead Reviewer Communication	
Lead Reviewer Traction and Power Supply	
Lead Reviewer E&B / EMC	
Lead Reviewer OHLE	
Lead Reviewer Permanent Way and Track Alignment	
Lead Reviewer PSD	
Lead Reviewer Security	
Lead Reviewer Geotechnical Reviewer	
Lead Reviewer Tunnel - Cut and Cover	
Lead Reviewer Tunnel - Mined	
Lead Reviewer Civil General	
Lead Reviewer Roads	
Lead Reviewer Drainage	
Lead Reviewer Flood Assessment	
Lead Reviewer Structures	
Lead Reviewer Culverts	

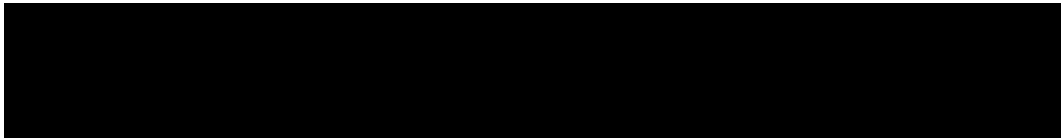
Role	Daily Rate (\$) (excluding GST)
Lead Reviewer CSR	
Lead Reviewer Water	
Lead Reviewer Sewer	
Lead Reviewer Power	
Lead Reviewer Telecomms	
Lead Reviewer Gas	
Lead Reviewer Vertical Transport	
Lead Reviewer Electrical	
Lead Reviewer Mechanical	
Lead Reviewer Ventilation	
Lead Reviewer Hydraulics	
Lead Reviewer Structures Buildings	
Lead Reviewer Fire Life Safety	
Lead Reviewer Architecture	
Lead Reviewer Heritage	
Lead Reviewer DDA	
Lead Reviewer BCA	
Secondary Reviewer Durability	
Secondary Reviewer Signalling	
Secondary Reviewer Traction and Power Supply	
Secondary Reviewer E&B / EMC	
Secondary Reviewer Permanent Way and Track Alignment	
Secondary Reviewer Geotechnical Reviewer	
Secondary Reviewer Civil General	
Secondary Reviewer Roads	

Role	Daily Rate (\$) (excluding GST)
Secondary Reviewer Drainage	
Secondary Reviewer Flood Assessment	
Secondary Reviewer Structures	
Secondary Reviewer Culverts	
Secondary Reviewer Water	
Secondary Reviewer Sewer	
Secondary Reviewer Power	
Secondary Reviewer Telecomms	
Secondary Reviewer Gas	
Secondary Reviewer Vertical Transport	
Secondary Reviewer Electrical	
Secondary Reviewer Mechanical	
Secondary Reviewer Ventilation	
Secondary Reviewer Hydraulics	
Secondary Reviewer Structures Buildings	

Additional Services

Role	Daily Rate (\$) (excluding GST)
Specialists	
Lead Reviewer Sustainability	
Lead Reviewer Project Controls	
Lead Reviewer Operations & Maintenance	
Lead Reviewer Health & Safety	
Lead Reviewer Demolition Management	

Role	Daily Rate (\$) (excluding GST)
Lead Reviewer Quality Assessor / Auditor / Compliance	
Lead Reviewer BIM / Digital Engineering	
Lead Reviewer Interface & Track Possession	
Lead Reviewer Pavements	
Lead Reviewer Traffic & Transport	
Lead Reviewer Operational Control Systems	
Lead Reviewer Fire Protection	
Lead Reviewer Pedestrian Modelling	
Lead Reviewer Human Factors	
Lead Reviewer Urban Design & Landscaping	
Completion Engineer	



6. GST

All Upper Limiting Fees, lump sums, rates and amounts in this Payment Schedule exclude GST.

7. SUBCONTRACTOR'S STATEMENT AND SUPPORTING STATEMENT

See next page.

**Subcontractor's Statement and Supporting Statement
(Paragraph 2(d) of Schedule 2 (Payment Schedule))**

SUBCONTRACTOR'S STATEMENT

**REGARDING WORKERS COMPENSATION, PAYROLL TAX AND REMUNERATION
(Note 1 - see back of form)**

For the purposes of this Statement a "subcontractor" is a person (or other legal entity) that has entered into a contract with a "principal contractor" to carry out work.

This Statement must be signed by a "subcontractor" (or by a person who is authorised, or held out as being authorised, to sign the statement by the subcontractor) referred to in any of s175B *Workers Compensation Act 1987*, Schedule 2 Part 5 *Payroll Tax Act 2007*, and s127 *Industrial Relations Act 1996* where the "subcontractor" has employed or engaged workers or subcontractors during the period of the contract to which the form applies under the relevant Act(s). The signed Statement is to be submitted to the relevant principal contractor.

SUBCONTRACTOR'S STATEMENT (Refer to the back of this form for Notes, period of Statement retention, and Offences under various Acts.)

Subcontractor: ABN:

.....

(Business name)

of:

.....
.....

(Address of subcontractor)

has entered into a contract with: ABN:

.....

(Business name of principal contractor)

(Note 2)

Contract number/identifier:

.....

(Note 3)

This Statement applies for work between:/...../..... and/...../..... inclusive,

(Note 4)

subject of the payment claim dated:/...../.....

(Note 5)

I, a Director or a person authorised by the Subcontractor on whose behalf this declaration is made, hereby declare that I am in a position to know the truth of the matters which are contained in this Subcontractor's Statement and declare the following to the best of my knowledge and belief:

(a) The abovementioned Subcontractor has either employed or engaged workers or subcontractors during the above period of this contract. Tick [] if true and comply with **(b) to (g)** below, as applicable. If it is not the case that workers or subcontractors are involved or you are an exempt employer for workers compensation purposes tick [] and only complete **(f) and (g)** below. *You must tick one box.* **(Note 6)**

(b) All workers compensation insurance premiums payable by the Subcontractor in

respect of the work done under the contract have been paid. The Certificate of Currency for that insurance is attached and is dated/...../..... **(Note 7)**

- (c) All remuneration payable to relevant employees for work under the contract for the above period has been paid. **(Note 8)**
- (d) Where the Subcontractor is required to be registered as an employer under the *Payroll Tax Act 2007*, the Subcontractor has paid all payroll tax due in respect of employees who performed work under the contract, as required at the date of this Subcontractor's Statement. **(Note 9)**
- (e) Where the Subcontractor is also a principal contractor in connection with the work, the Subcontractor has in its capacity of principal contractor been given a written Subcontractor's Statement by its subcontractor(s) in connection with that work for the period stated above. **(Note 10)**

(f) Signature: Full Name:
.....

(g) Position/Title Date
...../...../.....

NOTE: Where required above, this Statement must be accompanied by the relevant Certificate of Currency to comply with section 175B of the Workers Compensation Act 1987.

Notes

1. This form is prepared for the purpose of section 175B of the *Workers Compensation Act 1987*, schedule 2 part 5 *Payroll Tax Act 2007* and section 127 of the *Industrial Relations Act 1996*. If this form is completed in accordance with these provisions, a principal contractor is relieved of liability for workers compensation premiums, payroll tax and remuneration payable by the subcontractor.

A principal contractor can be generally defined to include any person who has entered into a contract for the carrying out of work by another person (or other legal entity called **the subcontractor**) and where employees of the subcontractor are engaged in carrying out the work which is in connection with the principal contractor's business.

2. For the purpose of this Subcontractor's Statement, a principal contractor is a person (or other legal entity), who has entered into a contract with another person (or other legal entity) referred to as the subcontractor, and employees/workers of that subcontractor will perform the work under contract. The work must be connected to the business undertaking of the principal contractor.
3. Provide the unique contract number, title, or other information that identifies the contract.
4. In order to meet the requirements of s127 *Industrial Relations Act 1996*, a statement in relation to remuneration must state the period to which the statement relates. For sequential Statements ensure that the dates provide continuous coverage.
Section 127(6) of the Industrial Relations Act 1996 defines remuneration 'as remuneration or other amounts payable to relevant employees by legislation, or under an industrial instrument, in connection with work done by the employees.'
Section 127(11) of the Industrial Relations Act 1996 states 'to avoid doubt, this section extends to a principal contractor who is the owner or occupier of a building for the carrying out of work in connection with the building so long as the building is owned or occupied by the principal contractor in connection with a business undertaking of the principal contractor.'
5. Provide the date of the most recent payment claim.
6. For Workers Compensation purposes an exempt employer is an employer who pays less than \$7500 annually, who does not employ an apprentice or trainee and is not a member of a group.
7. In completing the Subcontractor's Statement, a subcontractor declares that workers compensation insurance premiums payable up to and including the date(s) on the Statement have been paid, and all premiums owing during the term of the contract will be paid.
8. In completing the Subcontractor's Statement, a subcontractor declares that all remuneration payable to relevant employees for work under the contract has been paid.
9. In completing the Subcontractor's Statement, a subcontractor declares that all payroll tax payable relating to the work undertaken has been paid.
10. It is important to note that a business could be both a subcontractor and a principal contractor, if a business 'in turn' engages subcontractors to carry out the work. If your business engages a subcontractor you are to also obtain Subcontractor's Statements from your subcontractors.

Statement Retention

The principal contractor receiving a Subcontractor's Statement must keep a copy of the Statement for the periods stated in the respective legislation. This is currently up to seven years.

Offences in respect of a false Statement

In terms of s127(8) of the *Industrial Relations Act 1996*, a person who gives the principal contractor a written statement knowing it to be false is guilty of an offence if:

- (a) the person is the subcontractor;
- (b) the person is authorised by the subcontractor to give the statement on behalf of the subcontractor; or
- (c) the person holds out or represents that the person is authorised by the subcontractor to give the statement on behalf of the subcontractor.

In terms of s175B of the Workers Compensation Act and clause 18 of schedule 2 of the Payroll Tax Act 2007 a person who gives the principal contractor a written statement knowing it to be false is guilty of an offence.

Further Information

For more information, visit the WorkCover website www.workcover.nsw.gov.au, Office of State Revenue website www.osr.nsw.gov.au, or Office of Industrial Relations, Department of Commerce website www.commerce.nsw.gov.au. Copies of the *Workers Compensation Act 1987*, the *Payroll Tax Act 2007* and the *Industrial Relations Act 1996* can be found at www.legislation.nsw.gov.au.

Supporting statement

- (a) This statement must accompany any payment claim served on a principal to a construction contract by a head contractor.
- (b) For the purposes of this statement, the terms “principal”, “head contractor”, “subcontractor”, and “construction contract” have the meanings given in section 4 of the *Building and Construction Industry Security of Payment Act 1999*.

*Head contractor: *[business name of head contractor]* ABN *[insert ABN]* has entered into a contract with:*[business name of subcontractor]* ABN *[insert ABN]*, contract number/identifier *[insert]*.

OR

*Head contractor: *[business name of head contractor]* ABN *[insert ABN]* has entered into a contract with the subcontractors listed in the attachment to this statement.

* *[Delete whichever of the above does not apply]*

This statement applies for work between *[start date]* and *[end date]* inclusive (the construction work concerned), subject of the payment claim dated *[date]*.

I, *[full name]*, being the head contractor, a director of the head contractor or a person authorised by the head contractor on whose behalf this declaration is made, hereby declare that I am in a position to know the truth of the matters that are contained in this supporting statement and declare that, to the best of my knowledge and belief, all amounts due and payable to subcontractors have been paid (not including any amount identified in the attachment as an amount in dispute).

Signature: Date:

Full name: Position/Title:

Attachment to the Supporting Statement

Schedule of subcontractors paid all amounts due and payable				
Subcontractor	ABN	Contract number/ identifier	Date of works (period)	Date of payment claim (head contractor claim)

Schedule of subcontractors for which an amount is in dispute and has not been paid				
Subcontractor	ABN	Contract number/ identifier	Date of works (period)	Date of payment claim (head contractor claim)

Notes for Supporting Statement

Offences for False Statement

In terms of s 13(8) of the Building and Construction Security of Payment Act 1999 a head contractor who serves a payment claim accompanied by a supporting statement knowing that the statement is false or misleading in a material particular in the particular circumstances is guilty of an offence.

Further Information

These notes are not intended as legal advice and contractors should obtain their own professional advice if they have any questions about this Statement or these Notes. Copies of relevant legislation can be found at www.legislation.nsw.gov.au.

SCHEDULE 3

Minimum resources commitment

1. MINIMUM RESOURCES COMMITMENT

The Independent Certifier acknowledges and agrees that the minimum levels of resources set out in this Schedule 3 are minimum requirements only and do not in any way limit or otherwise affect the obligations of the Independent Certifier to perform the Services in accordance with this deed.

The Independent Certifier must provide at least the following key personnel to perform the Core Services, with the minimum days to be committed at each phase as set out below:

Position	Name	Minimum commitment in the performance of the Completion Phase Services (days)
Core Team		
Independent Certifier's Project Director		
Independent Certifier's Representative		
Project Engineer		
Completions Engineer 1		
Completions Engineer 2		
Engineering Coordinator		
Specialists		
Lead Reviewer System & Safety Assurance		
Lead Reviewer Environmental, Community & Stakeholder Advisor		
Lead Reviewer Sustainability		
Lead Reviewer Rail Systems / Systems Integration		

Position	Name	Minimum commitment in the performance of the Completion Phase Services (days)
Lead Reviewer Durability		
Lead Reviewer Noise and Vibration		
Lead Reviewer Signalling		
Lead Reviewer Communication		
Lead Reviewer Traction and Power Supply		
Lead Reviewer E&B / EMC		
Lead Reviewer OHLE		
Lead Reviewer Permanent Way and Track Alignment		
Lead Reviewer PSD		
Lead Reviewer Security		
Secondary Reviewer Geotechnical Reviewer		
Lead Reviewer Tunnel - Cut and Cover		
Lead Reviewer Tunnel – Mined		
Lead Reviewer Civil General		
Lead Reviewer Roads		
Lead Reviewer Drainage		
Lead Reviewer Flood Assessment		
Lead Reviewer Culverts		
Lead Reviewer CSR		

Position	Name	Minimum commitment in the performance of the Completion Phase Services (days)
Lead Reviewer Water		
Lead Reviewer Sewer		
Lead Reviewer Power		
Lead Reviewer Telecomms		
Lead Reviewer Gas		
Lead Reviewer Vertical Transport		
Lead Reviewer Electrical		
Lead Reviewer Mechanical		
Lead Reviewer Ventilation		
Secondary Reviewer Hydraulics		
Lead Reviewer Structures - Buildings		
Lead Reviewer Fire Life Safety		
Lead Reviewer Fire Protection		
Lead Reviewer Architecture		
Lead Reviewer Heritage		
Lead Reviewer DDA		
Lead Reviewer Human Factors		

Position	Name	Minimum commitment in the performance of the Completion Phase Services (days)
Lead Reviewer Landscape		
Lead Reviewer Urban Design		
Lead Reviewer Pedestrian Modelling		
Lead Reviewer Pavements		
Lead Reviewer Operational Control Systems		
Lead Reviewer Lighting		
Lead Reviewer BCA		
Secondary Reviewer Durability		
Secondary Reviewer Signalling		
Secondary Reviewer Traction and Power Supply		
Secondary Reviewer E&B / EMC		
Secondary Reviewer Permanent Way and Track Alignment		
Secondary Reviewer Civil General		
Secondary Reviewer Roads		
Secondary Reviewer Drainage		
Secondary Reviewer Flood Assessment		
Secondary Reviewer Structures		

Position	Name	Minimum commitment in the performance of the Completion Phase Services (days)
Secondary Reviewer Culverts		
Secondary Reviewer Water		
Secondary Reviewer Sewer		
Secondary Reviewer Power		
Secondary Reviewer Telecomms		
Secondary Reviewer Gas		
Secondary Reviewer Vertical Transport		
Secondary Reviewer Electrical		
Secondary Reviewer Mechanical		
Secondary Reviewer Ventilation		
Secondary Reviewer Structures Buildings		

Note: In this Schedule 3, a reference to "days" excludes public holidays and includes only those days which are stated in the Contractor's Program as working days.

2. INDICATIVE ABILITY, KNOWLEDGE, SKILL, EXPERTISE AND EXPERIENCE OF INDEPENDENT CERTIFIER'S PERSONNEL

The following are indicative of the level of ability, knowledge, skill, expertise and experience required of the Independent Certifier's personnel for the specified roles. The Principal will have regard to the criteria set out in this paragraph 2 in determining whether to approve replacement personnel in accordance with clause 4.4 of this deed.

2.1 Independent Certifier's Project Director

Appropriately qualified and with 20+ years' experience on major infrastructure projects in senior roles with recent (within the past 5 years) local experience on verification and certification projects in NSW.

2.2 Independent Certifier's Representative

Appropriately qualified and with 20+ years' experience on major infrastructure projects in senior roles with recent (within the past 5 years) local experience on verification and certification projects in NSW.

2.3 Lead Reviewers and Project Engineers

Appropriately qualified and with 10+ years' experience on major infrastructure projects.

SCHEDULE 4

Requirements for Certification Plan

The Certification Plan must, as a minimum, address and detail:

- (a) the management team structures, positions, nominated personnel and subcontractors to be engaged on and off the Site and the roles and tasks of the nominated personnel and subcontractors;
- (b) the minimum skill, expertise and experience levels of each position and details of personnel resource levels;
- (c) the Independent Certifier's internal and external lines of authority, communication and reporting, including those with the Other Parties;
- (d) the identification of delegated authorities of the Independent Certifier's personnel, including identification of personnel with delegated authority to execute certificates on behalf of the Independent Certifier;
- (e) the Independent Certifier's internal processes for ensuring all documents and supporting evidence have been completed and approved (where required) by persons with appropriate delegated authority and competency and are available as supporting evidence;
- (f) all compliance records to be maintained;
- (g) the proposed timing of progressive performance of discrete elements of the Services including the timing for conducting reviews of aspects of the Contractor's Activities;
- (h) hold points and witness point requirements, in the form of a schedule, including the identification of all witness points and hold points required by the Independent Certifier;
- (i) the Independent Certifier's comprehensive plans for (as applicable):
 - (i) monitoring, auditing, reviewing, assessment and testing of the Contractor's Activities;
 - (ii) without limiting sub-paragraph (i), monitoring, auditing, reviewing, assessment and testing of the quality and durability of the Works to determine and ensure the Contractor's compliance with the requirements of the Construct Only Delivery Deed; and
 - (iii) audit and surveillance, including identification of resources, methodology, scope, levels of surveillance, inspection, testing and survey;
- (j) the Independent Certifier's strategies, processes, methodologies and procedures for:
 - (i) addressing environmental monitoring and protection;

- (ii) audit, surveillance and monitoring of the Contractor's construction activities, including the processes used for determining the levels and scope of surveillance of activities;
 - (iii) identifying and managing the Services to be subcontracted, including quality, reporting and communication aspects of the Services;
 - (iv) providing comments to the Contractor in respect of its carrying out of the Contractor's Activities;
 - (v) ensuring that the Contractor has addressed all issues of review, comment and consultation with the Principal in respect of the Contractor's Activities; and
 - (vi) risk management of the work covered by sub-paragraphs (i) and (ii) above;
- (k) the Independent Certifier's strategies, systems, procedures, processes, methodologies and reporting protocols to be applied whereby each of the following requirements will be achieved and satisfied:
- (i) the functions, obligations, duties and services which the Construct Only Delivery Deed contemplates will be discharged by the Independent Certifier as set out in Schedule 1;
 - (ii) certification of Construction Completion and Completion of each Portion (Schedule 21A & 21C, Construct Only Delivery Deed); and
 - (iii) determination of any matters required by the Construct Only Delivery Deed;
- (l) the Independent Certifier's proposed standards including:
- (i) committed surveillance activities; and
 - (ii) committed resources;
- (m) the basis of the Certification Methodology contained in Schedule 8 in terms of the assumptions relating to the Contractor's Activities including:
- (i) program durations; and
 - (ii) how the Independent Certifier will address the reporting requirements set out in clause 4.10 of this deed and otherwise advise the Principal of issues that it identifies in carrying out the Services, and considers may impact on or delay the ability of the Contractor to construct the Works in accordance with the requirements of the Construct Only Delivery Deed.

SCHEDULE 5

Subcontractors

Name of subcontractor	Part of the Services

SCHEDULE 6

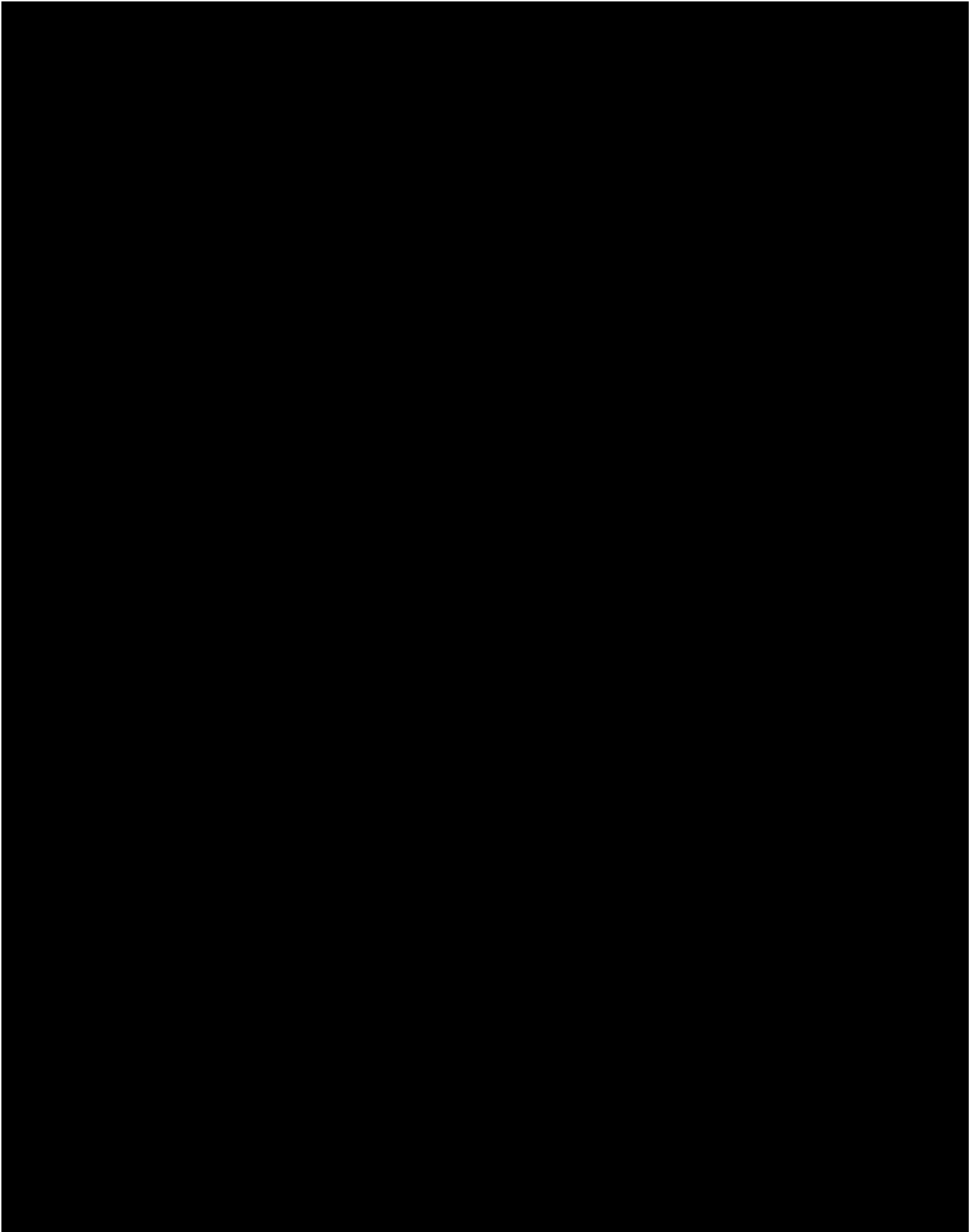
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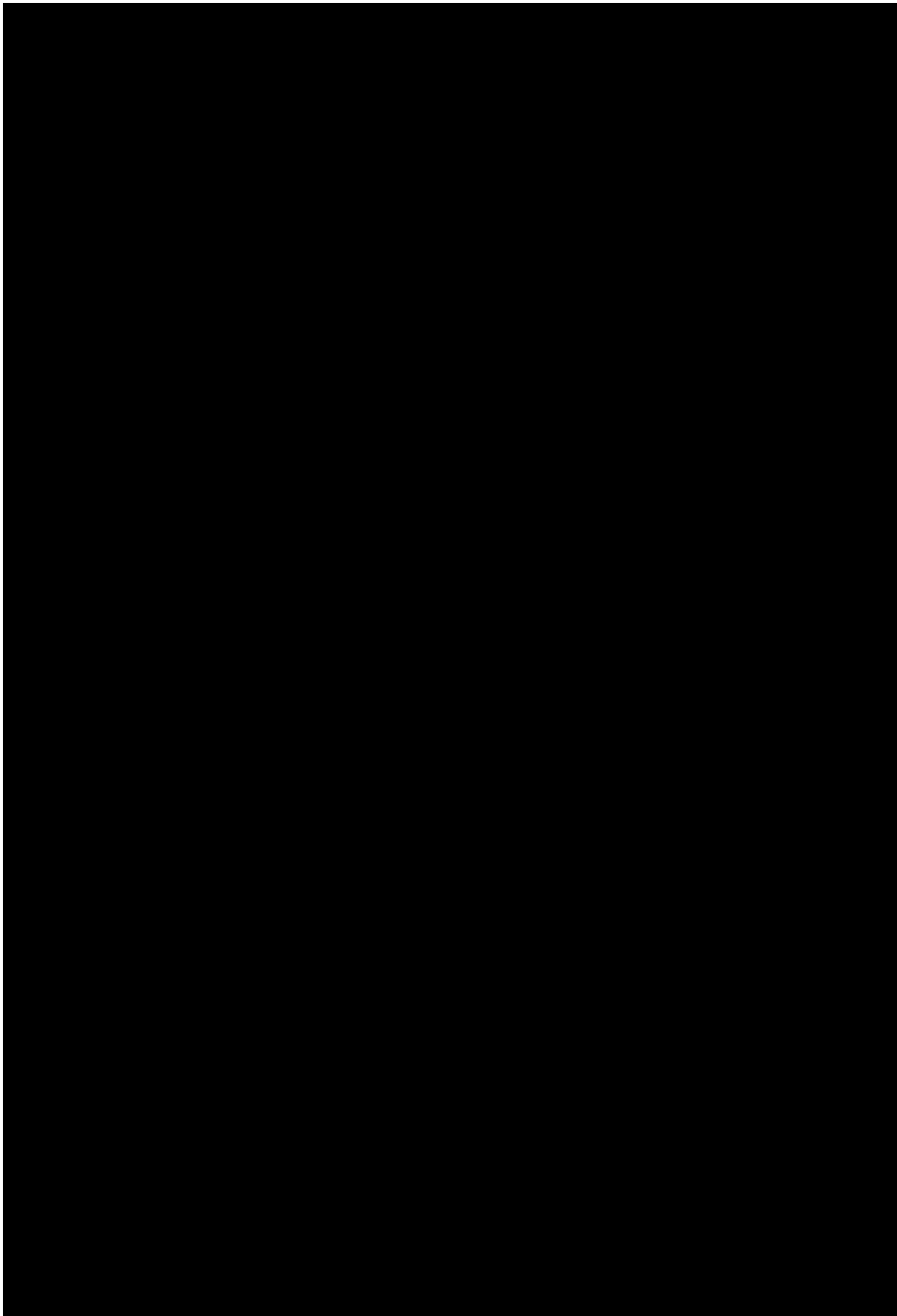
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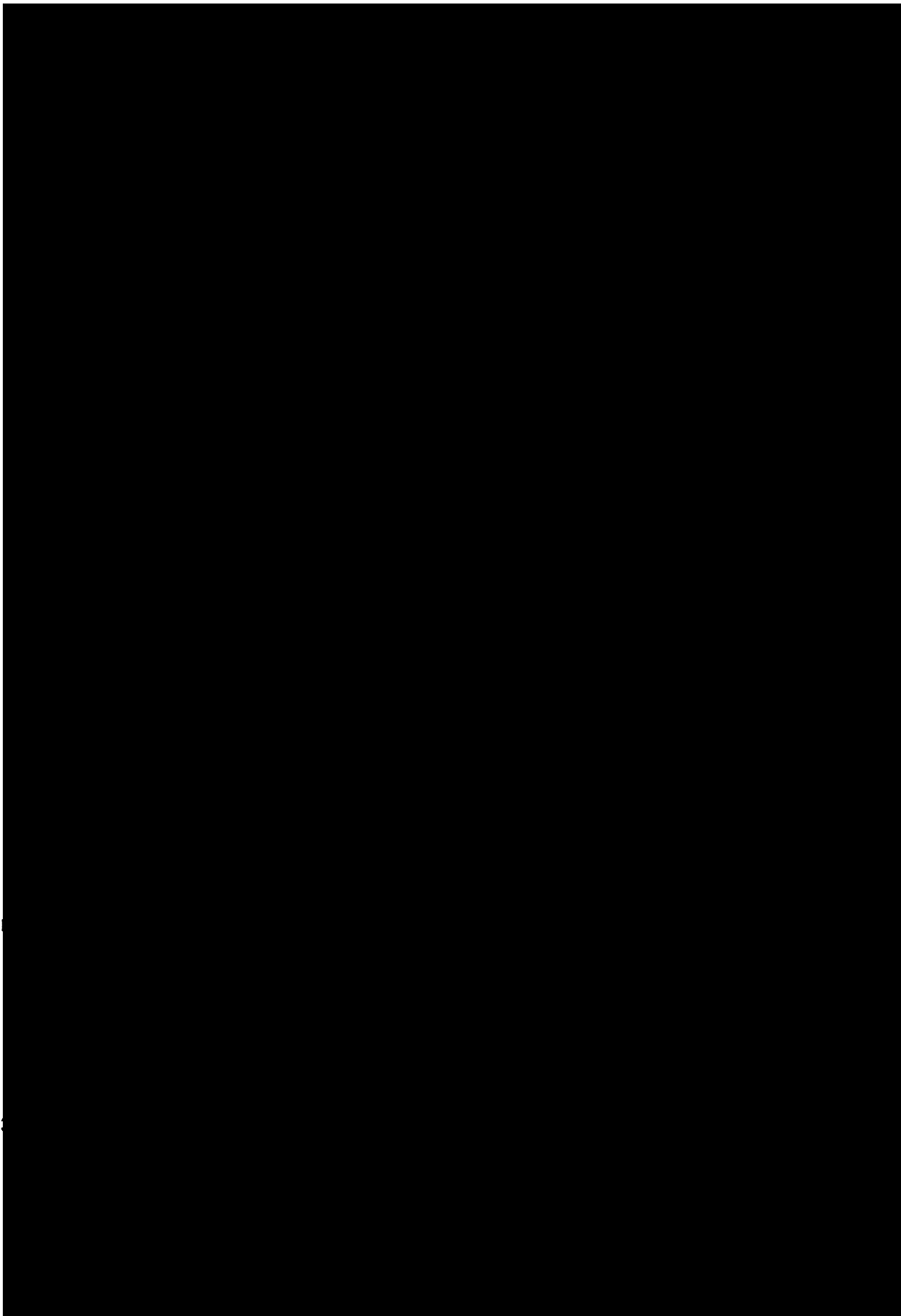
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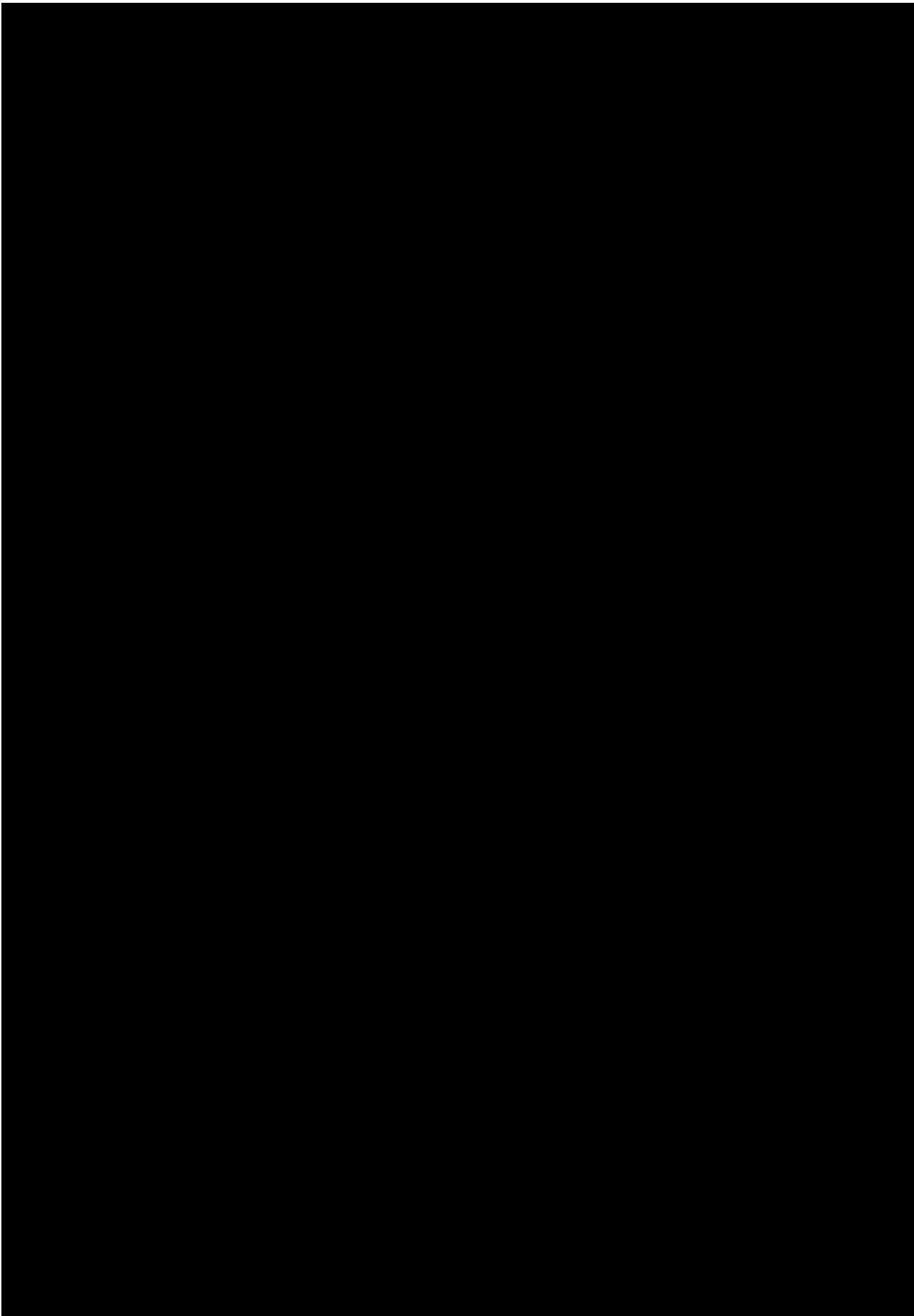
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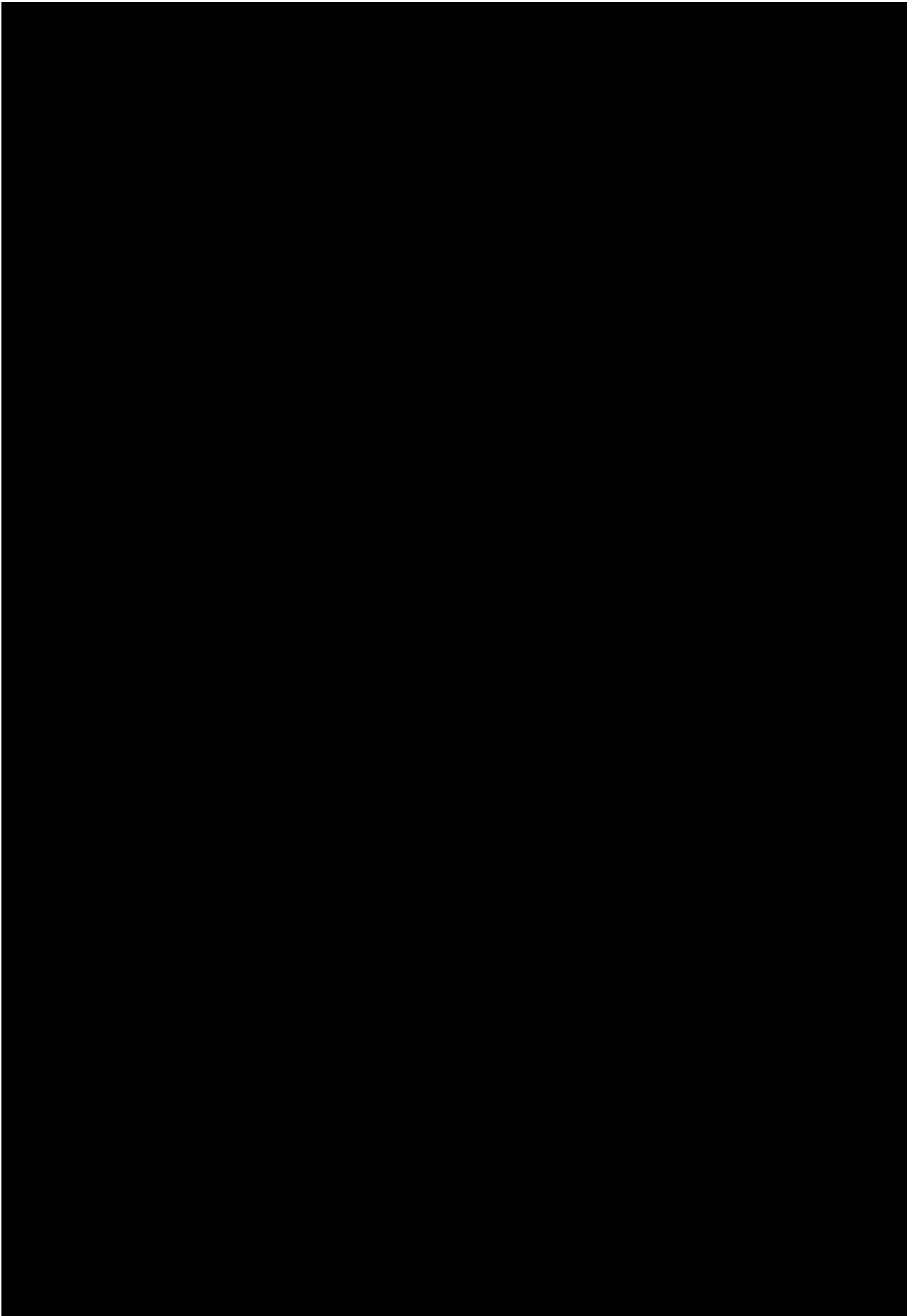
Certification Methodology

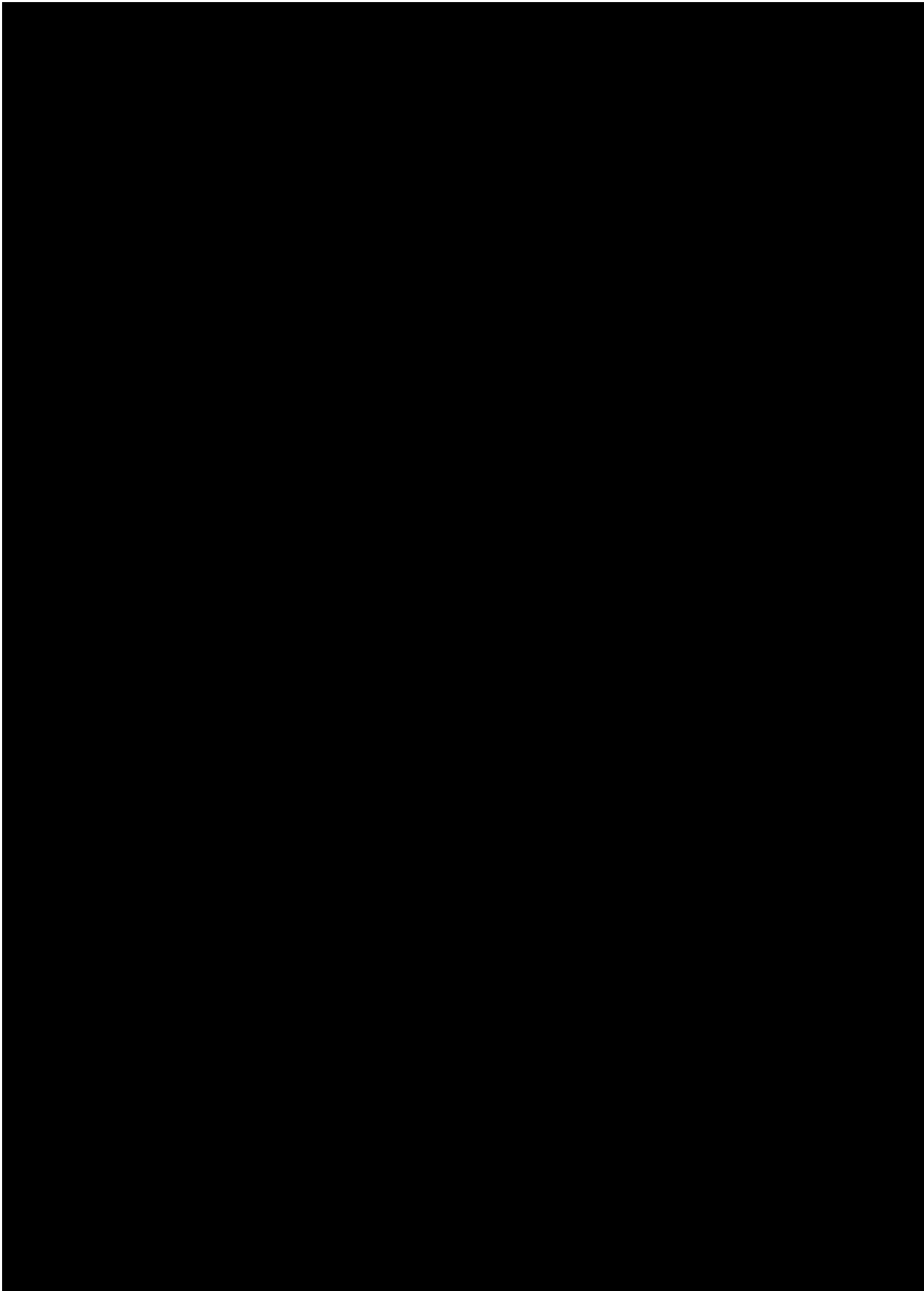


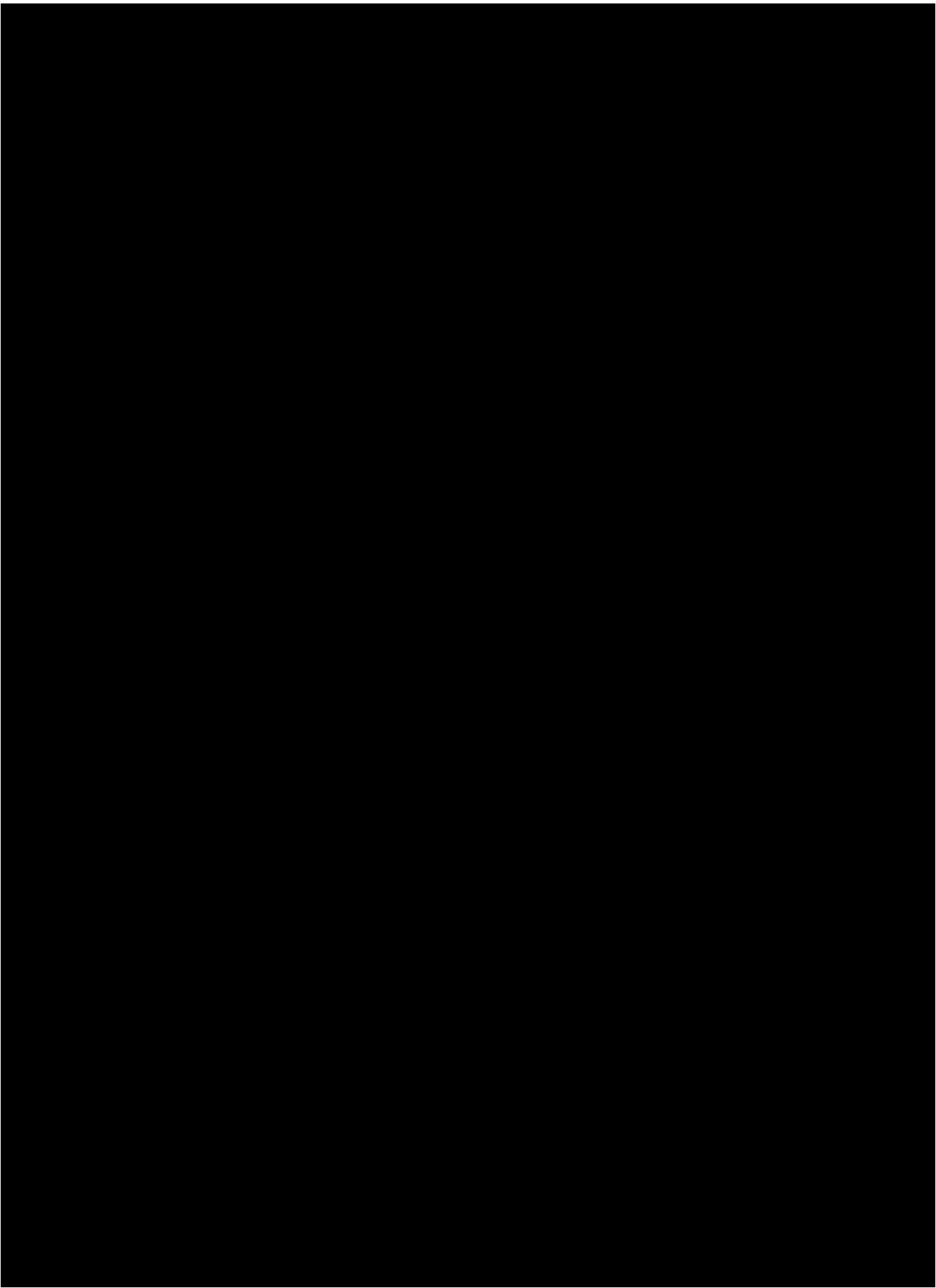


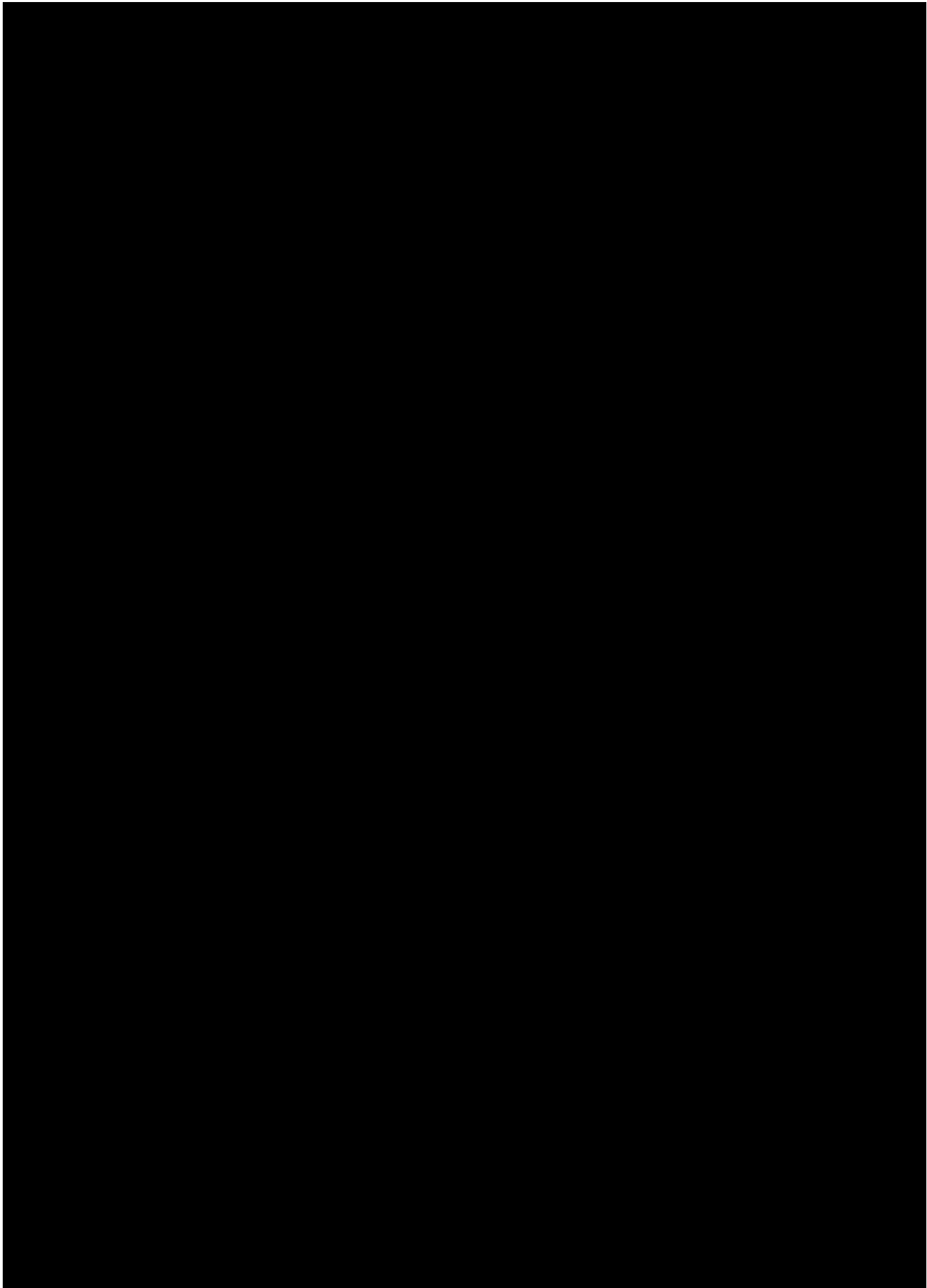














EXECUTED as a deed.

Executed by Sydney Metro (ABN 12 354 063 515) by its authorised delegate, in the presence of:

Signature of witness

Name of witness in full

Signature of authorised delegate

Name of authorised delegate

EXECUTED by DOWNER EDI WORKS PTY LTD (ABN 66 008 709 608) by its duly authorised attorney who hereby states that at the time of executing this instrument they have no notice of the revocation of the Power of Attorney dated

.....:

Signature of witness

Name of witness

Signature of Attorney

Name of Attorney

Signed, sealed and delivered for and on behalf of **AECOM Australia Pty Ltd (ABN 20 093 846 925)** under power of attorney in the presence of:

Signature of witness

Full name of witness

Address of witness

Signature of attorney

Date of power of attorney

SIGNED, SEALED and DELIVERED for **NRT CSW PTY LTD (ACN 635 509 036)** in its personal capacity and as trustee of the NRT CSW Unit Trust under power of attorney in the presence of:

Signature of witness

Name

Address of witness

Signature of attorney

Name

Date of power of attorney

Schedule 39. IDAR Panel Agreement

(Clause 15.2)

IDAR PANEL AGREEMENT

This Agreement is made at *Sydney* on the *11th* day of *February* 2019 between the following parties:

1. **Sydney Metro** ABN 12 354 063 515 a New South Wales Government agency constituted by section 38 of the Transport Administration Act 1988 (NSW) and located at Level 43, 680 George Street, Sydney NSW 2000 (**Principal**)

and

2. **Members of the IDAR Panel** (collectively **Members**), namely:



and

3. (From each Accession Date) each person who accedes to this agreement under clause 4, being the person identified as the "Acceding Party" in an Accession Deed Poll (**Project Contractor**).

RECITALS:

- A. The Principal is responsible for delivering Sydney Metro City & Southwest. Sydney Metro City & Southwest involves multiple packages of works to be undertaken by contractors engaged by the Principal and by developers above or adjacent to the new Metro stations under separate contracts (**Project Contracts**).
- B. The Principal will progressively engage or enter into contracts with Project Contractors. As each Project Contract is entered into, the Project Contractor will execute an Accession Deed Poll substantially in the form set out in Schedule 1 and will thereby accede to the terms of this agreement.
- C. The Project Contracts provide for a dispute resolution process through the establishment and the operation of an IDAR Panel to assist in avoiding and resolving Disputes under the Project Contracts.
- D. The role of the IDAR Panel is to, among other things, encourage the Principal and the relevant Project Contractor to proactively resolve Disputes by providing a non-binding forum for the parties to establish their positions and narrow the issues in Dispute.
- E. The parties acknowledge the benefits of a project-wide IDAR Panel include an improvement in the quality of assessments and determinations as a result of the IDAR Panel's familiarity with complex interfaces across multiple integrated works packages.
- F. This agreement sets out the rights, obligations and duties of the Members, the Principal and (from each Accession Date) the Project Contractors in relation to the IDAR Panel and the Disputes (the **Agreement**).

THIS AGREEMENT PROVIDES:

1. DEFINITIONS AND INTERPRETATION

1.1 Definitions

In this Agreement:

Accession Date has the same meaning as given to the term "Effective Date" in the Accession Deed Poll, being the date from which each Project Contractor accedes to this Agreement.

Accession Deed Poll means the deed poll in substantially the same form as Schedule 1 (with relevant details duly completed) which is to be executed by each Project Contractor in accordance with clause 4.

Continuing Parties has the same meaning as given to the term "Continuing Parties " in the Accession Deed Poll, being those parties to the Agreement at the Accession Date, excluding the Principal.

Fees and Disbursements Letter means each of the following:

- (a) the letter titled "Fees and Disbursements for Independent Dispute Avoidance and Resolution Panel" between the Principal, each Project Contractor and [REDACTED] dated on or about the date of this agreement;
- (b) the letter titled "Fees and Disbursements for Independent Dispute Avoidance and Resolution Panel" between the Principal, each Project Contractor and [REDACTED] dated on or about the date of this agreement;
- (c) the letter titled "Fees and Disbursements for Independent Dispute Avoidance and Resolution Panel" between the Principal, each Project Contractor and [REDACTED] dated on or about the date of this agreement; and
- (d) the letter titled "Fees and Disbursements for Independent Dispute Avoidance and Resolution Panel" between the Principal, each Project Contractor and [REDACTED] dated on or about the date of this agreement.

Joint Project Committee means the committee established under the Master Interface Protocols Deed Poll.

Members means the four individuals appointed to the IDAR Panel in accordance with this Agreement.

Project Briefing has the meaning given in clause 6.

Project Contract has the meaning given in Recital A.

1.2 Terms defined in the Project Contracts

Terms used in this Agreement which are not otherwise defined will have the meaning given to them in the Project Contracts.

1.3 Interpretation

In this Agreement unless the context otherwise requires:

- (a) references to a person include an individual, a body politic, the estate of an individual, a firm, a corporation, an authority, an association or joint venture (whether incorporated or unincorporated), or a partnership;
- (b) the words "including", "includes" and "include" will be read as if followed by the words without limitation;
- (c) a reference to any party to this Agreement includes that party's executors, administrators, successors, and permitted substitutes and assigns, including any person taking part by way of novation;
- (d) a reference to any Authority, institute, association or body is:
 - (i) if that Authority, institute, association or body is reconstituted, renamed or replaced or if the powers or functions of that Authority, institute, association or body are transferred to another organisation, deemed to refer to the reconstituted, renamed or replaced organisation or the organisation to which the powers or functions are transferred, as the case may be; and
 - (ii) if that Authority, institute, association or body ceases to exist, deemed to refer to the organisation which serves substantially the same purposes or objects as that Authority, institute, association or body;
- (e) a reference to this Agreement or to any other deed, agreement, document or instrument is deemed to include a reference to this Agreement or such other deed, agreement, document or instrument as amended, novated, supplemented, varied or replaced from time to time;
- (f) a reference to any legislation or to any section or provision of it includes:
 - (i) any statutory modification or re-enactment of, or any statutory provision substituted for, that legislation, section or provision; and
 - (ii) ordinances, by-laws, regulations of and other statutory instruments issued under that legislation, section or provision;
- (g) words in the singular include the plural (and vice versa) and words denoting any gender include all genders;
- (h) headings are for convenience only and do not affect the interpretation of this Agreement;
- (i) a reference to:
 - (i) a party or clause is a reference to a party or clause of or to this Agreement; and
 - (ii) a paragraph or a sub-paragraph is a reference to a paragraph or sub-paragraph in the clause in which the reference appears;
- (j) where any word or phrase is given a defined meaning, any other part of speech or other grammatical form of that word or phrase has a corresponding meaning;
- (k) for all purposes (other than where designated as a Business Day), day means calendar day;
- (l) a reference to "\$" is to Australian currency;

- (m) no rule of construction applies to the disadvantage of a party on the basis that the party put forward or drafted this Agreement or any part; and
- (n) any reference to "information" will be read as including information, representations, statements, data, samples, calculations, assumptions, deductions, determinations, drawings, design, specifications, models, plans and other documents in all forms including the electronic form in which it was generated.

2. AGREEMENT TO PREVAIL

- (a) The parties agree that if there is any inconsistency between the terms of this Agreement and a Project Contract the terms of this Agreement will prevail to the extent of the inconsistency.
- (b) This Agreement is effective as of the date the Principal and the Members sign this document and will continue, unless terminated earlier, until it terminates in accordance with clause 16.

3. FORMATION OF THE IDAR PANEL

The parties acknowledge that the IDAR Panel:

- (a) has been formed;
- (b) is constituted by the Members;
- (c) will be chaired by that Member designated as Chair or such other Member as the Principal nominates, by written notice to the Members and Project Contractors, from time to time; and
- (d) must perform its obligations and functions under the Project Contracts and this Agreement.

4. ACCESSION BY PROJECT CONTRACTORS

- (a) The Principal will ensure that each Project Contractor who enters into a Project Contract that contemplates the involvement of the IDAR Panel in the relevant dispute resolution process accedes to this Agreement.
- (b) The Project Contractors may accede to this Agreement by execution of an Accession Deed Poll without the Continuing Parties' prior approval.
- (c) Upon accession of any Project Contractor to this Agreement as referred to in clause 4(a), the rights and liabilities of the parties to this Agreement will be as set out in this Agreement as amended in accordance with the requirements of the Accession Deed Poll.
- (d) The Principal will provide the Members with a copy of the Accession Deed Poll duly executed by the Project Contractor.

5. ROLE OF THE IDAR PANEL

The parties acknowledge and agree that the role of the IDAR Panel is to:

- (a) provide specialised expertise in technical and administration aspects of each Project Contract in order to assist the relevant parties in firstly, attempting to prevent, and if unable to prevent, in determining Disputes under each Project Contract in a timely manner;

- (b) function as an objective, impartial and independent body at all times; and
- (c) utilise knowledge gained from Disputes across each Project Contract in its recommendations and determinations.

6. **PROJECT BRIEFINGS**

- (a) The Principal will:
 - (i) hold meetings with the Members for the purpose of the Principal providing a Sydney Metro City & Southwest project briefing and update (**Project Briefing**); and
 - (ii) provide the Members at least 10 Business Days' notice to convene a Project Briefing.
- (b) The Members must attend the Project Briefings.
- (c) During the first Project Briefing, the IDAR Panel will establish procedures for the conduct of its routine site visits and other matters (excluding the rules governing the dispute resolution process as it relates to the IDAR Panel in each Project Contract) in accordance with the procedures included in Schedule 2 to this Agreement (unless otherwise agreed by the parties).

7. **JOINT PROJECT COMMITTEE**

- (a) The Chair must attend Joint Project Committee meetings.
- (b) The Principal will provide the Chair at least 10 Business Days' notice of each meeting of the Joint Project Committee.

8. **MEMBER'S OBLIGATIONS**

8.1 **Impartiality**

Each Member agrees to consider fairly and impartially the Disputes and other matters referred to the IDAR Panel.

8.2 **Independence**

Each Member agrees to act honestly and independently in the performance of its obligations under this Agreement (including the consideration of facts and conditions relating to a Dispute) and in accordance with clause 8 of this Agreement.

8.3 **General Duties**

Each Member agrees to carry out his or her obligations as a Member of the IDAR Panel:

- (a) with due care and diligence;
- (b) in compliance with the Project Contracts and this Agreement; and
- (c) in compliance with all applicable Laws.

9. **SELECTION OF NOMINATED MEMBER**

- (a) Where a Dispute has been notified to the IDAR Panel by Notice of Issue under the relevant provisions of the Project Contract, and:
 - (i) the parties to the Dispute are unable to agree on a Nominated Member; or

- (ii) a Member declines to act or is unable to act as a result of death, disability, resignation or termination of appointment,

the Chair must nominate a Nominated Member within a further 2 Business Days.

- (b) If a Member nominated under clause 9(a) declines to act or is unable to act as a result of death, disability, resignation or termination of appointment, the Chair must nominate a further Nominated Member within a further 2 Business Days.
- (c) The Chair may not nominate itself as the Nominated Member.
- (d) If a replacement member appointed under clause 9(b) declines to act or is unable to act as a result of death, disability, resignation or termination of appointment, the process in clause 9(b) will be reapplied until there are no Members to accept the appointment, in which case the Chair must request the Resolution Institute to appoint a replacement member. This appointment will be final and conclusive.

10. SELECTION OF EXPERT

The parties acknowledge and agree that:

- (a) those persons listed in Schedule 3:
 - (i) have been appointed by the Principal to a panel of subject-matter experts; and
 - (ii) may be recommended to determine a Dispute referred to expert determination by a Notice of Dispute under the relevant provisions of the Project Contract; and
- (b) any Dispute which is referred to expert determination by a Notice of Dispute under the relevant provisions of the Project Contract will be conducted in accordance with the Resolution Institute's Expert Determination Rules, as modified by the relevant Project Contract.

11. COSTS AND FEES

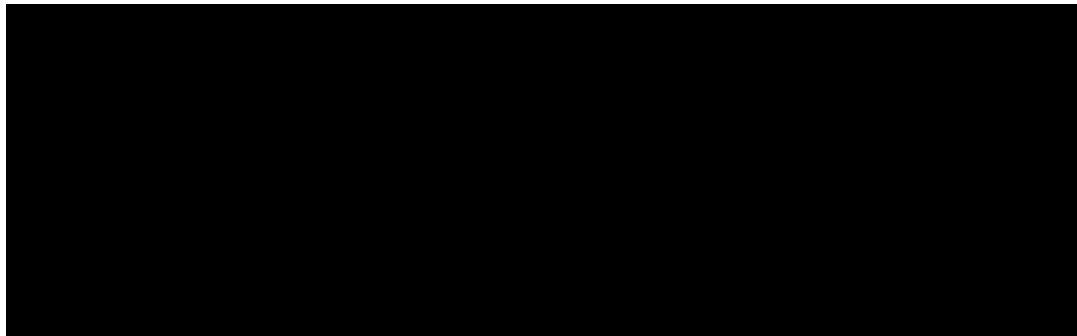
11.1 Monthly retainer

- (a) The Principal is liable for the payment of the Members' monthly retainer set out in the Fees and Disbursements Letter for each Member.
- (b) The Principal is liable for the payment of the Chair's attendance at the Joint Project Committee as set out in the Fees and Disbursements Letter for the Chair.

11.2 Agreed rates for work and services

With respect to each Dispute between the Principal and a Project Contractor:

- (a) the Principal and the relevant Project Contractor are jointly and severally liable for the payment of the Members' fees and disbursements (other than those in clause 11.1), calculated in accordance with the Fees and Disbursements Letter for each Member; and
- (b) the Principal and the relevant Project Contractor agree as between themselves that:
 - (i) [REDACTED]



11.3 **Payment claims**

All claims for payment by the Members must be submitted and processed in accordance with the payment procedure set out in Schedule 4.

12. **THE PARTIES' COMMITMENTS AND RESPONSIBILITIES**

The Principal and each Project Contractor acknowledges and agrees that it must:

- (a) act in good faith towards each Member and the IDAR Panel;
- (b) comply with the reasonable requests and directions of the IDAR Panel; and
- (c) except for its participation in the IDAR Panel's activities as provided in the Project Contracts and this Agreement, not solicit advice or consultation from the IDAR Panel or the Members on matters dealing with the resolution of Disputes which may compromise the IDAR Panel's integrity or compliance with this Agreement.

13. **CONFIDENTIALITY**

In relation to all confidential information disclosed to the IDAR Panel at any time each Member agrees:

- (a) to keep that information confidential;
- (b) not to disclose that information except if compelled by Law to do so;
- (c) not to use that information for a purpose other than the resolution of the Dispute in relation to which the confidential information was disclosed; and
- (d) to be bound by this obligation of confidentiality whether or not such confidential information is or later becomes in the public domain.

14. **CONFLICT OF INTEREST**

- (a) If a Member, during the term of appointment as a Member, becomes aware of any circumstance that might reasonably be considered to affect the Member's capacity to act independently, impartially and without bias, the Member must inform the Principal and each Project Contractor and the other Members.
- (b) The other Members will within [REDACTED] of notification under clause 14(a) confer and inform the parties and the Member, whether they believe the circumstances notified are such that the Member should be replaced. In the event that one or both of the other Members believe that the Member should be replaced, the Member will immediately resign from the IDAR Panel and a reappointment will occur pursuant to clause 17.3.

15. LIABILITY AND INDEMNITY

15.1 Liability

Each Member is not liable to either the Principal or a Project Contractor for any act or omission done in good faith and with due care and diligence.

15.2 Indemnity

The Principal and each Project Contractor each indemnify each Member against all claims from a person not a party to this Agreement for any act or omission done in connection with this Agreement in good faith and with due care and diligence.

15.3 Due Care and Diligence

For the purpose of clauses 15.1 and 15.2, the parties agree that the Member's act will have been done in good faith and with due care and diligence unless no reasonable person in the position of the Member would have so acted or made such an omission.

16. TERMINATION OF AGREEMENT

- (a) The Principal may terminate this Agreement by written notice to the Members and each Project Contractor.
- (b) Each Project Contractor's rights and obligations under this Agreement will terminate automatically upon termination of the Project Contractor's Project Contract, and the terms of this Agreement will be of no further force and effect.

17. MEMBERS' TERMINATION

17.1 Resignation

A Member may resign from the IDAR Panel by providing [REDACTED] written notice to the other Members, the Principal and each Project Contractor.

17.2 Termination

A Member's appointment may be terminated at any time by the Principal.

17.3 Re-Appointment

The parties acknowledge and agree that if:

- (a) a Member resigns under clause 14(b) or 17.1; or
- (b) the appointment of a Member is terminated by the Principal under clause 17.2;

then:

- (c) a replacement Member will be appointed by the Principal; and
- (d) the parties, the Members and any new Member must enter into a replacement agreement substantially similar to this Agreement.

18. GOVERNING LAW

- (a) This Agreement will be governed by and construed in accordance with the Laws of the State of New South Wales.

- (b) Each party submits to the non-exclusive jurisdiction of the courts of New South Wales and any courts that may hear appeals from any of those courts, for any proceedings in connection with this Agreement, and waives any right it might have to claim that those courts are an inconvenient forum.

19. **RELATIONSHIP OF THE PARTIES**

Nothing in this Agreement will be construed or interpreted as constituting the relationship between the Principal, the Project Contractors and the Members as that of partners, joint venturers or any other fiduciary relationship.

20. **NOTICES**

- (a) Any notices contemplated by this Agreement must be in writing and delivered to the relevant address, sent by email in the form of a .pdf file as set out below (or to any new address or email address that a party notifies to the others).

- (i) to the Principal: [REDACTED]

- (ii) to the Members: [REDACTED]
 - [REDACTED]
 - [REDACTED]
 - [REDACTED]

- (iii) to a Project Contractor: To the address or email address set out in the relevant Accession Deed Poll.

- (b) A notice sent by post will be taken to have been received at the time when, in due course of the post, it would have been delivered at the address to which it is sent.

- (c) A notice sent by email will be taken to have been received:

- (i) if it is transmitted by 5.00 pm (Sydney time) on a Business Day - on that Business Day; or
 - (ii) if it is transmitted after 5.00 pm (Sydney time) on a Business Day, or on a day that is not a Business Day - on the next Business Day.

21. **GIVING EFFECT TO THIS AGREEMENT**

Each party must do anything (including execute any document), and must ensure that its employees and agents do anything (including execute any document), that the other party may reasonably require to give full effect to this Agreement.

22. **SURVIVAL OF TERMS**

The parties agree that clauses 11 and 15 and this clause 22 (and any other terms of this Agreement necessary for or incidental to the operation of the preceding terms) will survive the termination or expiry of this Agreement.

23. **WAIVER OF RIGHTS**

A right may only be waived in writing, signed by the party giving the waiver, and:

| |

- (a) no other conduct of a party (including a failure to exercise, or delay in exercising, the right) operates as a waiver of the right or otherwise prevents the exercise of the right;
- (b) a waiver of a right on one or more occasions does not operate as a waiver of that right if it arises again; and
- (c) the exercise of a right does not prevent any further exercise of that right or of any other right.

24. OPERATION OF THIS AGREEMENT

- (a) Except as otherwise expressly specified in this Agreement, this Agreement contains the entire agreement between the parties about its subject matter, and any previous understanding, agreement, representation or warranty relating to that subject matter is replaced by this Agreement and has no further effect.
- (b) Any right that a person may have under this Agreement is in addition to, and does not replace or limit, any other right that the person may have.
- (c) Any provision of this Agreement which is unenforceable or partly unenforceable is, where possible, to be severed to the extent necessary to make this Agreement enforceable, unless this would materially change the intended effect of this Agreement.

25. AMENDMENT

- (a) Subject to clause 25(b), this Agreement can only be amended, supplemented, replaced or novated by another document signed by the parties.
- (b) The Principal may amend Schedule 3 by written notice without the Continuing Parties' prior approval.

26. COUNTERPARTS

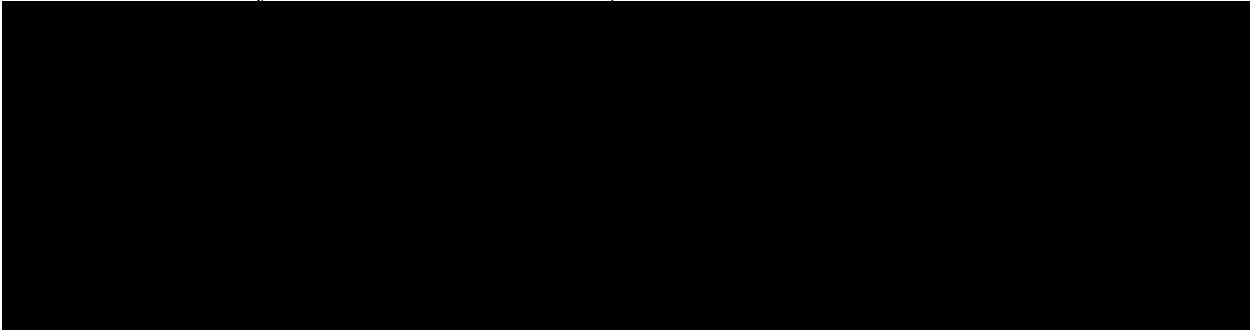
- (a) This Agreement may be executed in counterparts, which taken together constitute one instrument.
- (b) A party may execute this Agreement by executing any counterpart.

27. ATTORNEYS

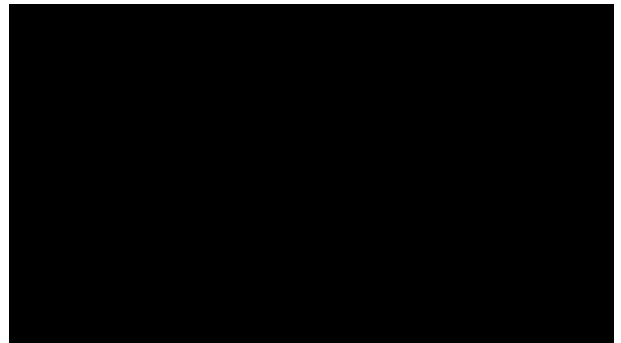
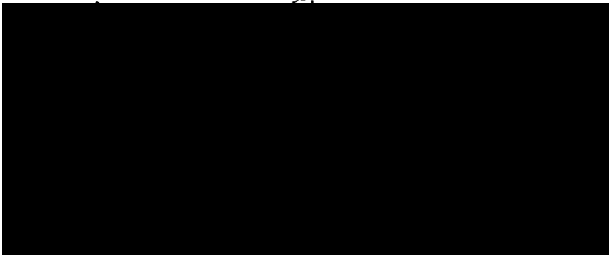
Each person who executes this Agreement on behalf of a party under a power of attorney declares that he or she is not aware of any fact or circumstance that might affect his or her authority to do so under that power of attorney.

EXECUTED as an agreement.

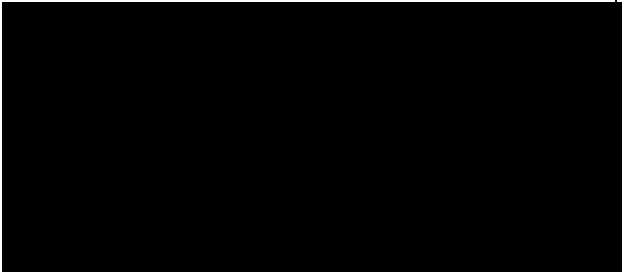
Executed by **SYDNEY METRO ABN 12 354 063 515** by its authorised delegate in the presence of:



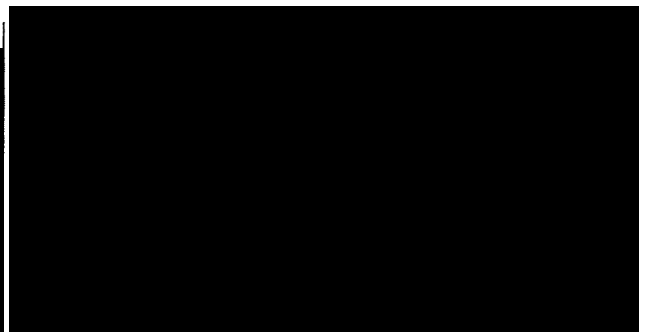
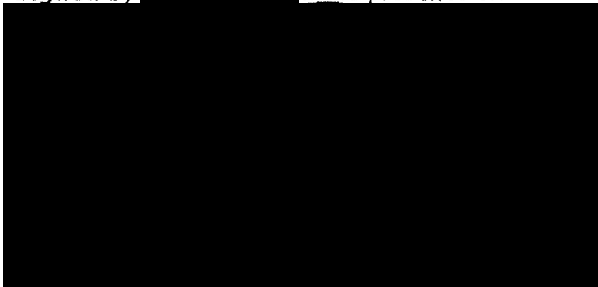
Signed by [redacted] in the presence of:



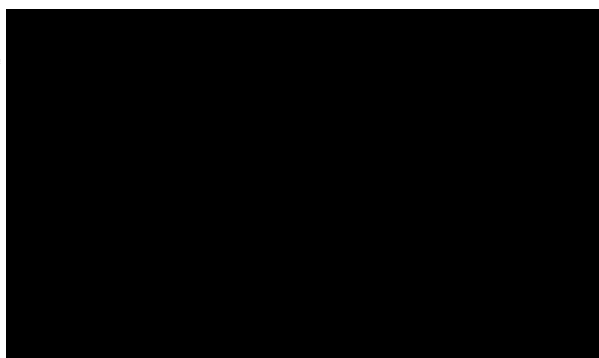
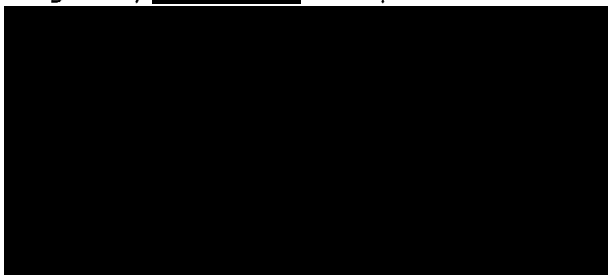
Signed by [redacted] in the presence of:



Signed by [redacted] in the presence of:



Signed by [redacted] in the presence of:



SCHEDULE 1

Form of Accession Deed Poll

THIS DEED POLL is made on [2018/2019]

BY: [Insert name] ABN [number] whose registered office is at [address] (**Acceding Party**)

IN FAVOUR OF: (1) **Sydney Metro** ABN 12 354 063 515 a New South Wales Government agency of Level 43, 680 George Street, Sydney NSW 2000 (**Principal**)
and
(2) **Members of the IDAR Panel** (collectively **Members**), namely:
(a) [REDACTED]
(b) [REDACTED]
(c) [REDACTED]
(d) [REDACTED]
and
(3) each person who has acceded to the IDAR Panel Agreement,
(together (2) and (3) being the **Continuing Parties**).

RECITALS:

- (A) This deed poll is supplemental to the agreement titled "IDAR Panel Agreement" between the Principal and the Continuing Parties dated [insert] as amended or acceded to from time to time (**IDAR Panel Agreement**).
- (B) The Principal and the Continuing Parties are each party to the IDAR Panel Agreement.
- (C) The Principal has entered into the [insert name of relevant Project Contract] with the Acceding Party.
- (D) Each of the Continuing Parties has acknowledged and agreed that the Acceding Party will accede to the IDAR Panel Agreement.
- (E) By this deed poll, the Acceding Party accedes to the IDAR Panel Agreement and the IDAR Panel Agreement is amended on the terms set out in this deed poll.

THE ACCEDING PARTY COVENANTS AS FOLLOWS:

1. INTERPRETATION

Capitalised terms used in this deed poll and not otherwise defined have the same meanings as those given in the IDAR Panel Agreement. The following definitions apply in this deed poll:

Effective Date means the date of execution of this deed poll.

[Insert name of relevant Project Contract] means the contract entered into between the Principal and the Acceding Party titled [insert title] and dated [insert date].

2. PRIMARY COVENANTS

- (e) The Acceding Party:
- (i) confirms that it has been supplied with a copy of the IDAR Panel Agreement;
and
 - (ii) covenants with each of the Principal and the Continuing Parties, with effect from the Effective Date, to be bound by the provisions of, and to perform all of its obligations under the IDAR Panel Agreement.
- (f) For the purposes of the IDAR Panel Agreement, the Acceding Party's representative is as set out below:
- [Insert details of Acceding Party's representative]
- (g) For the purposes of clause 20 of the IDAR Panel Agreement, the Acceding Party's notice address details are as set out below:
- Address:
Email:
For the attention of:
- (h) Clause 18 of the IDAR Panel Agreement applies to this deed poll.

EXECUTED as a deed poll.

[Note: Appropriate execution block to be inserted by the Acceding Party prior to execution.]

SCHEDULE 2

IDAR Panel General Operating Procedures

1. General

- 1.1 Each Project Contractor will furnish to each of the Members all documents necessary for the IDAR Panel to perform its functions, including copies of all Project Contract documents plus periodic reports, such as progress reports, minutes of weekly or other project control meetings, site meetings or similar meetings and any other documents that would be helpful in informing the Members of Disputes and other matters.
- 1.2 The Members must make prompt disclosure from time to time of any new or previously undisclosed circumstance, relationship or dealing, which comes to their attention and which might give rise to a conflict of interest or apprehension of bias.
- 1.3 Communications between the parties and the IDAR Panel for the purpose of attempting to prevent or resolve Disputes are without prejudice communications and may not be adduced as evidence in any dispute resolution process under the relevant Project Contract.

2. Frequency of regular meetings and site visits

- 2.1 The frequency and scheduling of meetings and site visits necessary to keep the IDAR Panel properly informed of the project circumstances will generally be agreed between the IDAR Panel and the parties to each Project Contract.
- 2.2 In the case of a failure to agree between the IDAR Panel and the parties to a Project Contract, the Principal will schedule the meetings and visits as it sees fit.

3. Agenda for regular meetings

- 3.1 IDAR Panel meetings held for the purposes of briefing and updating the Members on performance and progress of the work under each Project Contract and issues or potential issues between the relevant parties will be held on an in-confidence and without prejudice basis to encourage full and frank disclosure and discussions.
- 3.2 At the conclusion of the meeting, the IDAR Panel will generally inspect the Project Works and the Construction Site in the company of representatives of both parties to the relevant Project Contract. Any areas of the Project Works or Construction Site that are or may be the subject of any potential Dispute will be pointed out by the parties to the relevant Project Contract.

4. Minutes of meetings

- 4.1 The Chair will prepare minutes of the regular meetings of the IDAR Panel and these draft minutes will be circulated to the parties of the relevant Project Contract and the Members for comments, additions and corrections.
- 4.2 In accordance with clause 3.1 above, the minutes of IDAR Panel meetings held will be marked "in-confidence, without prejudice".
- 4.3 Minutes as amended will be adopted by the relevant parties and the Members at the next meeting.

5. Communications

- 5.1 All communications by the parties to the IDAR Panel outside the IDAR Panel meetings should be directed in writing to the Chair and copied to the other Members and to the

other party of the relevant Project Contract. All communications by the Members to the parties should be addressed to the Principal's Representative and the relevant Project Contractor's representative.

6. Representation

- 6.1 The parties must each ensure they are represented at IDAR Panel meetings by at least one senior project personnel and at least one senior off-site person to whom the on-site personnel reports. The parties must inform the Chair of the names and project roles of each of their respective representatives and, if applicable, the names and roles of any alternatives.



SCHEDULE 3

Appointed panel of Experts

As notified by the Principal in writing,



SCHEDULE 4**Payment procedure****1. Payment claims**

At the end of each month in which the Members perform services under this Agreement with respect to each Dispute between the Principal and a Project Contractor, each Member must submit to both the Principal and the relevant Project Contractor an account for payment on account of the Member's fees and disbursements:

- (a) setting out the value of the services performed in accordance with this Agreement during the relevant month;
- (b) calculated in accordance with the Fees and Disbursements Letter for that Member; and
- (c) in such form and with such details and supporting documentation as the Principal and the relevant Project Contractor may reasonably require (including details of the time expended by the Member in performing the services).

2. Payment and notification of disputed amounts

- (a) Within 20 Business Days after receipt of the account for the month (submitted in accordance with section 1 of this Schedule 4):
 - (i) the Principal must pay:
 - (A) the Member's monthly retainer set out in the Fees and Disbursements Letter for that Member; and
 - (B) the Chair's attendance at the Joint Project Committee as set out in the Fees and Disbursements Letter for the Chair; and
 - (ii) the Principal and the relevant Project Contractor must each pay each Member ■■■ of the amount claimed by each Member for services performed (other than those in (i) above) during the month which is not disputed.
- (b) If the Principal or the relevant Project Contractor disagrees with the amount included in an account submitted by a Member then, within 10 Business Days of receipt of the relevant Member's account, the Principal or the relevant Project Contractor (as applicable) must notify the relevant Member in writing of the reasons for any amount which is disputed (with a copy to the Principal and the relevant Project Contractor).
- (c) If the Principal, the relevant Project Contractor and the relevant Member do not resolve the matter within 10 Business Days after the issue of the Principal's or the relevant Project Contractor's written notice, the Principal and the relevant Project Contractor (acting reasonably) must jointly determine the dispute. Any determination by the Principal and the relevant Project Contractor in respect of the amount payable must be given effect to by the Principal, the relevant Project Contractor and the relevant Member unless and until it is reversed or overturned in any subsequent court proceedings.

3. Goods and services tax

- (a) A party must pay GST on a taxable supply made to it under this Agreement, in addition to any consideration (excluding GST) that is payable for that taxable supply. The party making the taxable supply must provide a valid tax invoice to

the other party at or before the time that the other party is required to pay the GST.

- (b) Terms used in this section 3 have the meaning given to them in *A New Tax System (Goods and Services Tax) Act 1999* (Cth).



FORM OF FEES AND DISBURSEMENTS LETTER

[Date]

[Member details]

Dear [Member]

Fees and Disbursements for IDAR Panel

This letter (**Fees and Disbursements Letter**) forms part of the IDAR Panel Agreement between Sydney Metro, each Project Contractor and Members of the IDAR Panel dated on or about the date of this Fees and Disbursements Letter.

All defined terms used in this Fees and Disbursements Letter have the meaning given to them in the IDAR Panel Agreement.

The fees and disbursements due to [Member] in respect of his/her responsibilities as a Member of the IDAR Panel are agreed as follows:

Item	Work scope/description	Fee arrangement	Fee (excl. GST)
1.	Preparation for, and attendance at, one Project Briefing per month		
2.	(Chair only) Preparation for, and attendance at, Joint Project Committee meetings		
3.	All other work carried out in connection with this Agreement, other work set out in items (1) and (2)		
4.	Disbursements		
5.	Rates escalation		

Payment terms

Payment terms will be in accordance with Schedule 4 of the IDAR Panel Agreement.

Counterparts

This Fees and Disbursements Letter may be executed in counterparts, which taken together constitute one instrument. A party may execute this Fees and Disbursements Letter by executing any counterpart.

Acceptance

Please acknowledge your acceptance of the fees and disbursements of this letter by signing, dating and returning the enclosed copies to Sydney Metro.

Executed by **SYDNEY METRO ABN 12 354 063 515** by its authorised delegate in the presence of:

Signature of witness

Signature of [insert position]

Full name of witness

Name of [insert position]

Signed by [Member] in the presence of:

Signature of Witness

Signature

Name of Witness in full



FEES AND DISBURSEMENTS LETTER

11th February 2019

Dear [REDACTED]

Fees and Disbursements for IDAR Panel

This letter (**Fees and Disbursements Letter**) forms part of the IDAR Panel Agreement between Sydney Metro, each Project Contractor and Members of the IDAR Panel dated on or about the date of this Fees and Disbursements Letter.

All defined terms used in this Fees and Disbursements Letter have the meaning given to them in the IDAR Panel Agreement.

The fees and disbursements due to [REDACTED] in respect of his/her responsibilities as a Member of the IDAR Panel are agreed as follows:

Item	Work scope/description	Fee arrangement	Fee (excl. GST)
1.	Preparation for, and attendance at, one Project Briefing per month		
2.	(Chair only) Preparation for, and attendance at, Joint Project Committee meetings		
3.	All other work carried out in connection with this Agreement, other work set out in items (1) and (2)		
4.	Disbursements		
5.	Rates escalation		

Payment terms

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Counterparts

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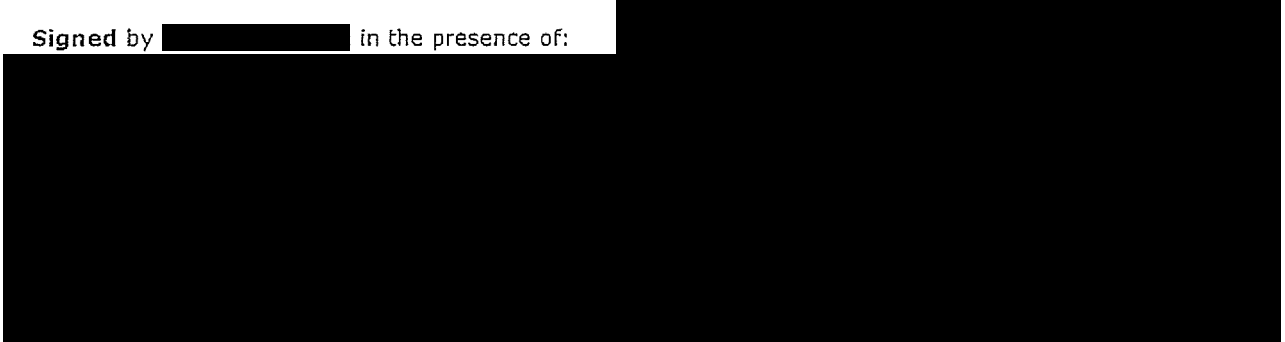
Acceptance

Please acknowledge your acceptance of the fees and disbursements of this letter by signing, dating and returning the enclosed copies to Sydney Metro.

Executed by **SYDNEY METRO ABN 12 354 063 515** by its authorised delegate in the presence of:



Signed by [redacted] in the presence of:



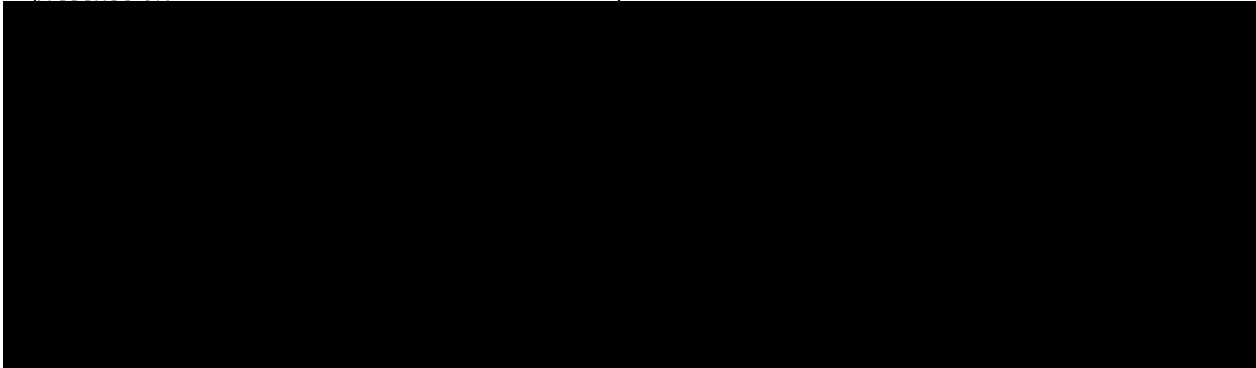
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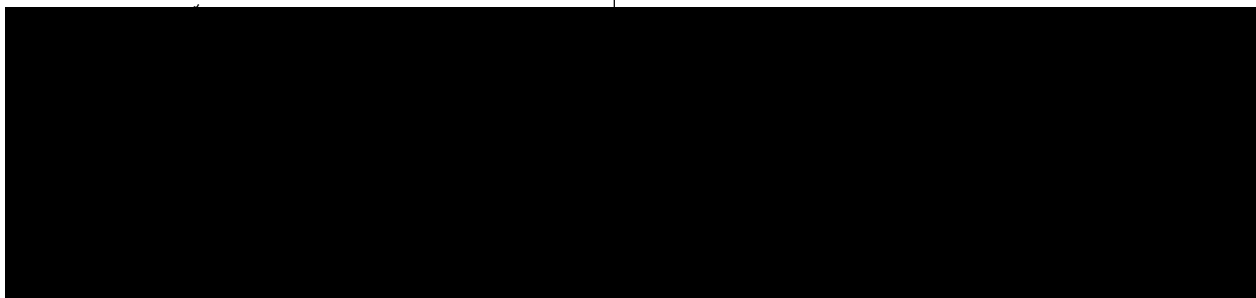
Acceptance

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Executed by **SYDNEY METRO ABN 12 354 063 515** by its authorised delegate in the presence of:



Signed by [redacted] in the presence of:



FEES AND DISBURSEMENTS LETTER

11th February 2019

[Redacted]

Dear [Redacted]

Fees and Disbursements for IDAR Panel

This letter (**Fees and Disbursements Letter**) forms part of the IDAR Panel Agreement between Sydney Metro, each Project Contractor and Members of the IDAR Panel dated on or about the date of this Fees and Disbursements Letter.

All defined terms used in this Fees and Disbursements Letter have the meaning given to them in the IDAR Panel Agreement.

The fees and disbursements due to [Redacted] in respect of his/her responsibilities as a Member of the IDAR Panel are agreed as follows:

Item	Work scope/description	Fee arrangement	Fee (excl. GST)
1.	Preparation for, and attendance at, one Project Briefing per month		
2.	(Chair only) Preparation for, and attendance at, Joint Project Committee meetings		
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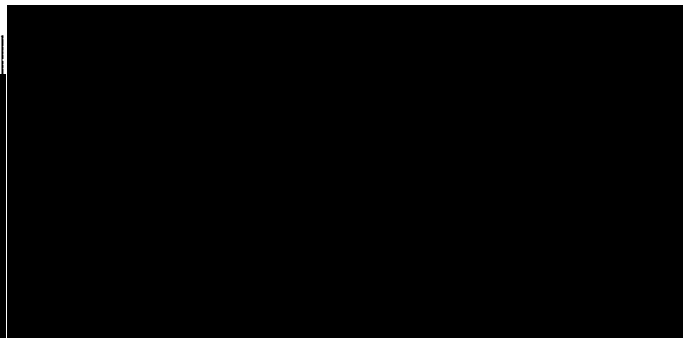
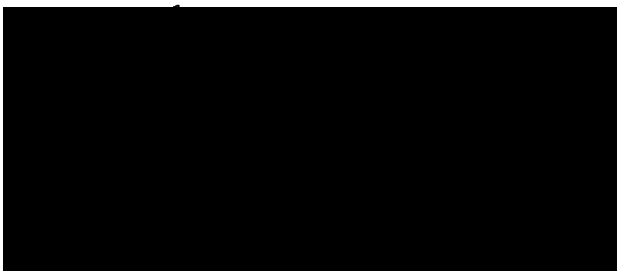
Acceptance

Please acknowledge your acceptance of the fees and disbursements of this letter by signing, dating and returning the enclosed copies to Sydney Metro.

Executed by **SYDNEY METRO ABN 12 354 063 515** by its authorised delegate in the presence of:



Signed by [redacted] in the presence of:



FEES AND DISBURSEMENTS LETTER11th February 2019

Dear [REDACTED]

Fees and Disbursements for IDAR Panel

This letter (**Fees and Disbursements Letter**) forms part of the IDAR Panel Agreement between Sydney Metro, each Project Contractor and Members of the IDAR Panel dated on or about the date of this Fees and Disbursements Letter.

All defined terms used in this Fees and Disbursements Letter have the meaning given to them in the IDAR Panel Agreement.

The fees and disbursements due to [REDACTED] in respect of his/her responsibilities as a Member of the IDAR Panel are agreed as follows:

Item	Work scope/description	Fee arrangement	Fee (excl. GST)
1.	Preparation for, and attendance at, one Project Briefing per month		
2.	<i>(Chair only)</i> Preparation for, and attendance at, Joint Project Committee meetings		
3.	All other work carried out in connection with this Agreement, other work set out in items (1) and (2)		
4.	Disbursements		
5.	Rates escalation		

Payment terms

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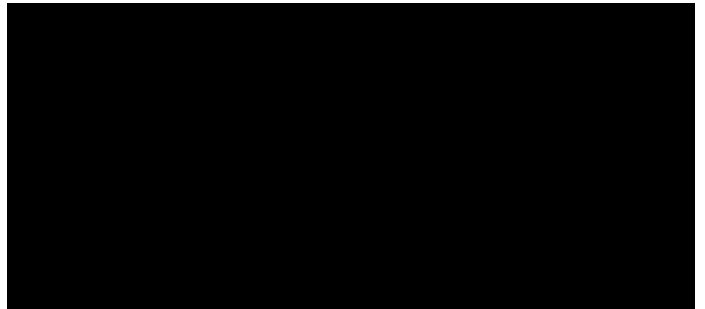
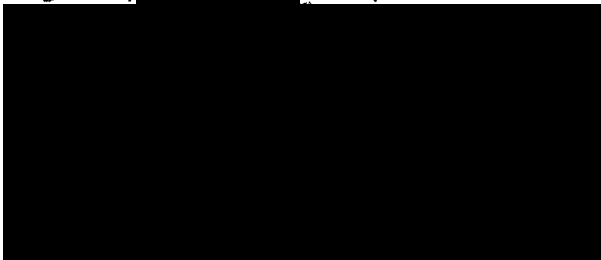
Acceptance

Please acknowledge your acceptance of the fees and disbursements of this letter by signing, dating and returning the enclosed copies to Sydney Metro.

Executed by **SYDNEY METRO ABN 12 354 063 515** by its authorised delegate in the presence of:



Signed by [redacted] in the presence of:



Schedule 40. Electronic Files

(Clause 1.9)

Schedule 40 - Electronic Files

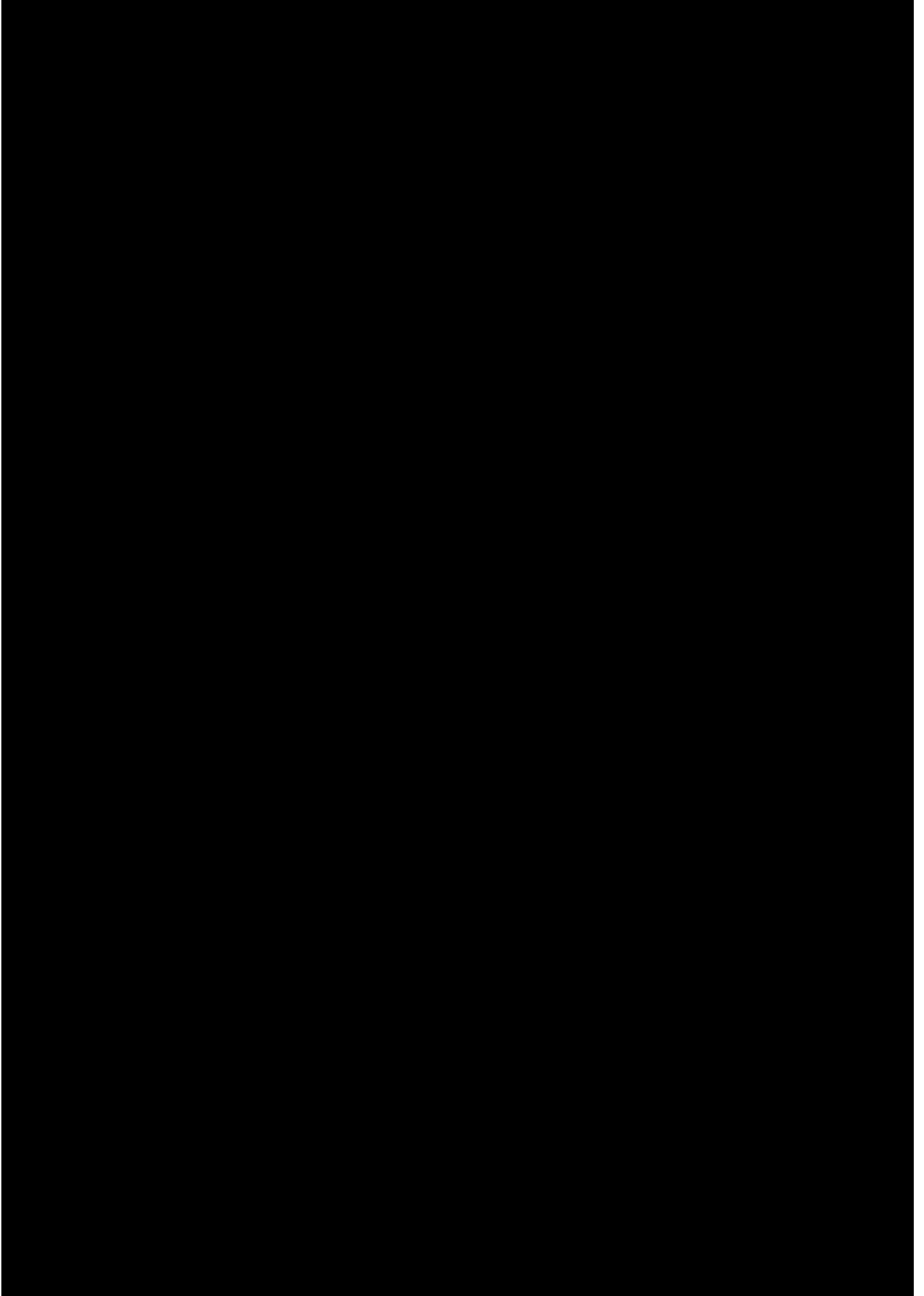


EXHIBIT A – SWTC

EXHIBIT B – PRINCIPAL’S INSURANCE POLICIES

For the purposes of clauses 13.4 and 13.5 of the General Conditions, refer to the following insurance policy documents which are included in Schedule 40 as electronic files.

No.	Principal's Insurance	Relevant documents	Electronic file reference
1.	Contract works (material damage) insurance	Contract Works Insurance Policy	
2.	Public and products liability insurance	Public and Products Liability Insurance Policy	
		Memorandum of Insurance (Excess Liability Insurance – Project Specific issued on [REDACTED] and naming Sydney Metro a NSW Government agency constituted by section 3D of the <i>Transport Administration Act 1988</i> (NSW) as the named insured)	
		Endorsement to Public & Products Liability	

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EXHIBIT C – REPORTS

EXHIBIT C REPORTS

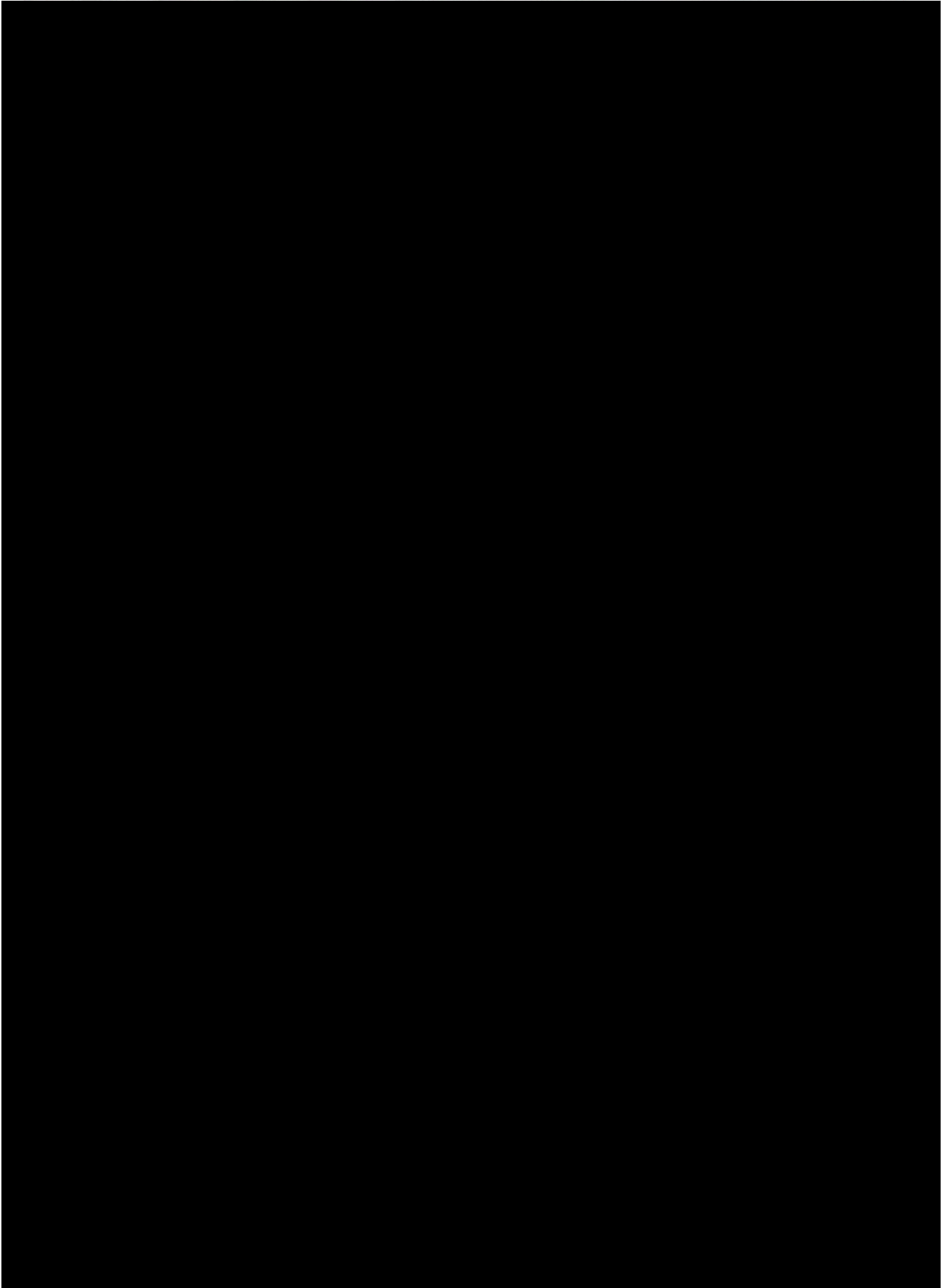


EXHIBIT D – INITIAL CONTRACT MANAGEMENT PLANS

This Exhibit D lists the documents which form the Initial Contract Management Plans, and which are included in Schedule 40 as electronic files.

No.	Plan	Rev	Date
1	Work Relations Management Plan		
2	Work Health Safety Management Plan		
3	Draft COVID-19 Management Plan_V2		

EXHIBIT E – CONSTRUCTION METHODOLOGY

This Exhibit E is included in Schedule 40 as an electronic file.

EXHIBIT F – DRAFT CONSTRUCTION ENVIRONMENTAL MANAGEMENT PLAN

This Exhibit F is included in Schedule 40 as an electronic file.



EXHIBIT G – INFORMATION DOCUMENTS AND MATERIALS
